

CCASE:
EMERY MINING V. MSHA AND UMWA
DDATE:
19901019
TTEXT:

FEDERAL MINE SAFETY & HEALTH REVIEW COMMISSION
WASHINGTON, D.C.
October 19, 1990

EMERY MINING CORPORATION
and UTAH POWER AND LIGHT CO.,
MINING DIVISION

v. Docket Nos. WEST 87-130-R, etc.

SECRETARY OF LABOR,
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA)

and

UNITED MINE WORKERS OF
AMERICA (UMWA)

BEFORE: Backley, Acting Chairman; Doyle and Nelson, Commissioners

ORDER

BY THE COMMISSION:

On March 8, 1989, the Commission directed for review cross-petitions for discretionary review filed by the Secretary of Labor and Utah Power and Light Company ("UP&L") in these consolidated contest and civil penalty proceedings arising under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et seq. (1988). On March 24, 1989, the Commission granted the joint motion of the cross-petitioners to stay this matter pending resolution of related proceedings before Commission Administrative Law Judge John J. Morris involving Emery Mining Corporation ("Emery") because resolution of those related proceedings could render review in this matter unnecessary. The parties were directed to keep the Commission informed of the status of the related cases on a periodic basis, and they have done so since the stay was granted.

In September 1990, the Secretary and UP&L each filed a separate Motion to Voluntarily Dismiss Petition for Discretionary Review. The cross-petitioners state that on September 17, 1990, Judge Morris approved in the related cases a settlement between the Secretary and Emery that resolved all issues in those proceedings. The Secretary and

~1912

UP&L state that as a result of the settlement in the Emery cases, they are no longer interested in pursuing this matter before the Commission. Each cross-petitioner also supports the dismissal of the other's petition. The United Mine Workers of America has not filed a response to the dismissal motions. Upon consideration of the Secretary's and UP&L's motions, we conclude that adequate reasons have been presented for dismissal of this proceeding and we grant both motions. See generally, e.g., Youghioghney & Ohio Coal Co., 7 FMSHRC 200, 203 (February 1985).

Accordingly, the previous stay is dissolved, the Commission's direction for review is vacated, and this proceeding is dismissed. 1/

Richard V. Backley, Acting Chairman

Joyce A. Doyle, Commissioner

L. Clair Nelson, Commissioner

Distribution

Timothy Biddle, Esq.
Thomas Means, Esq.
Crowell & Moring
1001 Pennsylvania Ave.
Washington, D.C. 20004

Dennis D. Clark, Esq.
Office of the Solicitor
U.S. Department of Labor
4015 Wilson Blvd.
Arlington, VA 22203

Mary Lu Jordan, Esq.
900 15th St., N.W.
Washington, D.C. 20005

1/ Pursuant to section 113(c) of the Mine Act, 30 U.S.C. 823(c), we have designated ourselves as a panel of three Commissioners to exercise the powers of the Commission in this matter.