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THUNDER BASIN COAL V. SOL (MSHA)
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FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION
1730 K STREET NW, 6TH FLOOR
WASHINGTON, D.C. 20006

THUNDER BASIN COAL COMPANY :
 :
 v. : Docket Nos. WEST 94-238-R
 : WEST 94-239-R
 SECRETARY OF LABOR, MINE SAFETY :
 AND HEALTH ADMINISTRATION (MSHA) :

ORDER

On March 28, 1994, Thunder Basin Coal Company ("Thunder Basin") filed a Motion for Expedited Consideration and a Petition for Discretionary Review of Administrative Law Judge Arthur J. Amchan's Order Denying Temporary Relief, issued March 25, 1994. The Secretary of Labor informed the Commission by letter dated March 29, 1994, that he did not object to Thunder Basin's petition for review, but objected to its request for a stay contained therein.

We grant the petition and affirm, in result, the judge's denial of temporary relief.

The judge based his decision on two grounds: first, on his conclusion that the Commission does not have authority under section 105(b)(2) of the Federal Mine Safety and Health Act of 1977 ("Mine Act"), 30 U.S.C. 801, 815(b)(2)(1988), to grant applications for temporary relief from section 104(b) orders designated as "no area affected." Dec. at 3-5. The judge erred. The Mine Act places no limitation on the applicability of section 105(b)(2) except that "[n]o temporary relief shall be granted in the case of a citation issued under subsection (a) or (f) of section 104." Thunder Basin's challenge to the order is separate and distinct from any challenge to the validity of the underlying citation.(Footnote 1) Thunder Basin asserts that the order was issued because the time given for abatement of the citation was unreasonable (fifteen minutes to post the designation of the miners' representative) and because MSHA unreasonably refused to extend the abatement time.

Section 105(b)(2) provides that the Commission may, in its discretion, grant temporary relief from an order issued under section 104 if a hearing has been held, the requested relief will not adversely affect the health and safety of miners, and the applicant shows that there is "substantial likelihood" that the findings of the Commission will be favorable to him. 30 U.S.C. 815(b)(2).

1 See Clinchfield Coal Co., 11 FMSHRC 2120, 2128 (November 1989).

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We agree with the judge's second conclusion, that Thunder Basin has failed to qualify for temporary relief because it has not demonstrated a substantial likelihood that the Commission's findings will be favorable to it. Dec. at 5-6. Thunder Basin has not shown that the Commission is likely to determine that the time allowed for abatement of the violation was unreasonable or that it was unreasonable not to extend that time.

For the foregoing reasons we affirm, in result, the judge's decision to deny Thunder Basin's application for temporary relief. (Footnote 2)

Arlene Holen, Chairman

Richard V. Backley, Commissioner

Joyce A. Doyle, Commissioner

2 In light of our disposition, we need not address Thunder Basin's Motion for Expedited Consideration.