

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

1331 PENNSYLVANIA AVENUE, NW, SUITE 520N
WASHINGTON, D.C. 20004-1710

OCT 16 2014

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

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Docket No. LAKE 2011-13

v.

THE AMERICAN COAL COMPANY

BEFORE: Nakamura, Acting Chairman; Cohen and Althen, Commissioners

ORDER

BY THE COMMISSION:

The United Mine Workers of America (“UMWA”) has filed a motion to intervene in this proceeding. The Secretary of Labor has filed an opposition to the UMWA’s motion, and the UMWA has filed a reply to the Secretary’s opposition. In addition, the United Steel, Paper and Forestry, Rubber Manufacturing, Energy, Allied Industrial and Service Workers International Union (“USW”) has filed a motion to intervene in this proceeding, and the Secretary has filed an opposition to the USW’s motion.

The Secretary opposes intervention by the UMWA and the USW on the basis that, because neither union represents miners at the subject mine, neither union has “[a] legally protectable interest directly relating to the property or events that are the subject of the case on review” within the meaning of Commission Procedural Rule 73, 29 C.F.R. § 2700.73. S. Opp’n at 2.

Whether to permit intervention lies within “the sound discretion of the Commission.” 29 C.F.R. § 2700.73. Although neither the UMWA nor the USW represents miners at the mine, both unions have a longstanding commitment to the health and safety of miners and represent miners at other mines under the jurisdiction of the Department of Labor’s Mine Safety and Health Administration (“MSHA”). Resolution of the issue regarding interpretation of section 110(k) of the Mine Act, 30 U.S.C. § 820(k), addressed in this proceeding will impact the adjudication of every case in which MSHA seeks approval of a settlement entered into with an operator.¹ The Secretary’s choice to advance this interpretation in a case where miners are not

¹ In contrast with this proceeding, in *Excel Mining LLC*, 22 FMSHRC 318 (Mar. 2000), the Commission denied a union intervenor status because that case pertained to standards

represented by the UMWA or the USW should not foreclose intervention by the unions, particularly where there is no party to this action to challenge the Secretary's position.² Having reviewed the pleadings filed by the unions and the Secretary, we conclude that the unions have a sufficient legally protectable interest relating to this proceeding. Pursuant to Commission Procedural Rule 73, we hereby grant the motions and permit the UMWA and the USW to intervene. 29 C.F.R. § 2700.73.

Subsequent to the filing of the unions' motions, Congressman George Miller filed a motion to participate as amicus curiae in this proceeding. Pursuant to Commission Procedural Rule 74, we hereby grant the motion and permit The Honorable George Miller to participate as amicus. 29 C.F.R. § 2700.74.

Within 30 days of the date of this order, the Union Intervenors shall file a joint brief with the Commission. The joint brief shall not exceed 50 pages.

Within 20 days of service of the Union Intervenors' brief, The Honorable George Miller shall file his amicus brief. The amicus brief shall not exceed 25 pages.


Within 30 days of service of the amicus brief, the Secretary shall file any reply brief. That reply brief shall not exceed 20 pages.



Patrick K. Nakamura, Acting Chairman



Robert F. Cohen, Jr., Commissioner



William I. Althen, Commissioner

applicable only to coal mines, while the union's separate litigation, which was the basis for its request to intervene, pertained to standards applicable to metal and non-metal mines. *Id.* at 320.

² We note that a cornerstone of the Mine Act is encouraging the participation of miners in the enforcement of the Mine Act. *See, e.g.*, 30 U.S.C. §§ 813(f), 813(g), 815(c); 29 C.F.R. 2700.1(c) ("These rules shall be construed to . . . encourage the participation of miners and their representatives.").

Distribution:

Daniel Kovalik, Esq.
Sr. Associate General Counsel
United Steelworkers
5 Gateway Center
Pittsburgh, PA 15222

Gary M. Broadbent, Esq.
Assistant General Counsel
Murray Energy Corporation
46226 National Road
St. Clairsville, Ohio 43950

W. Christian Schumann, Esq.
Counsel, Appellate Litigation
Office of the Solicitor
U.S. Department of Labor
1100 Wilson Blvd., Room 2220
Arlington, VA 22209-2296

Sara L. Johnson, Esq.
Office of the Solicitor
U.S. Department of Labor
1100 Wilson Blvd., Room 2220
Arlington, VA 22209-2296

Laura P. Karr, Esq.
United Mine Workers of America
18354 Quantico Gateway Drive
Suite 200
Triangle, VA 22172

Arthur Traynor, Esq.
Associate General Counsel
United Mine Workers of America
18354 Quantico Gateway Drive
Suite 200
Triangle, VA 22172

Randy Rabinowitz, Esq.
Co-Director
Occupational Safety & Health Law Project
P.O. Box 3769
Washington, D.C. 20027

Administrative Law Judge William Moran
Federal Mine Safety & Health Review Commission
Office of the Administrative Law Judges
1331 Pennsylvania Avenue, N.W., Suite 520N
Washington, D.C. 20004