

Secretary alleges that respondents announced to miners that if they contacted MSHA with a safety complaint, they needed to provide that complaint to mine management as well.

In her November 18, 2015 decision, the Judge concluded that the Secretary demonstrated that the respondents had in fact interfered with miners' statutory rights in violation of section 105(c) of the Mine Act.³ As a remedy, the Judge ordered that the respondents do the following: cease and desist from violating section 105(c); rescind their policy requiring that miners provide notice to management about any complaint made pursuant to section 103(g); rescind any adverse action that has been taken against any miner as a result of that policy; post a notice detailing a miner's right to make complaints pursuant to section 103(g); and for respondents' CEO Robert Murray to personally read a statement notifying miners of their section 103(g) rights. In addition, the Judge assessed a civil penalty of \$30,000 for each of the five violations found pursuant to her authority under section 110(i), 30 U.S.C. 820(i).

On December 18, 2015, the respondents filed a motion to stay the effect of the Judge's decision during the pendency of the appellate proceedings. They request that the Commission stay the Judge's orders during the Commission review process, as well as during any appeal of the Commission's decision to a United States Court of Appeals. The Secretary does not oppose the request for a stay pending a final decision of the Commission; however, the Secretary opposes the request for a stay during any subsequent appeal to a Court of Appeals.

In *Sec'y of Labor ex rel. Price and Vacha v. Jim Walter Res., Inc.*, 9 FMSHRC 1312 (Aug. 1987), the Commission held that a party seeking a stay must satisfy the factors in *Virginia Petroleum Jobbers Ass'n v. FPC*, 259 F.2d 921, 925 (D.C. Cir. 1958). Those factors include: (1) likelihood of prevailing on the merits of the appeal; (2) irreparable harm if the stay is not

exists, such miner or representative shall have a right to obtain an immediate inspection by giving notice to the Secretary or his authorized representative of such violation or danger. Any such notice shall be reduced to writing, signed by the representative of the miners or by the miner, and a copy shall be provided the operator or his agent no later than at the time of inspection, except that the operator or his agent shall be notified forthwith if the complaint indicates that an imminent danger exists. The name of the person giving such notice and the names of individual miners referred to therein shall not appear in such copy or notification. Upon receipt of such notification, a special inspection shall be made as soon as possible to determine if such violation or danger exists in accordance with the provisions of this title. If the Secretary determines that a violation or danger does not exist, he shall notify the miner or representative of the miners in writing of such determination.

³ Section 105(c) provides that "no person shall discharge or in any manner discriminate against or cause to be discharged or cause discrimination against or otherwise interfere with the exercise of the statutory rights of any miner" 30 U.S.C. § 815(c).

granted; (3) no adverse effect on other interested parties; and (4) a showing that the stay is in the public interest. A stay constitutes “extraordinary relief.” *Id.* The burden is on the movant to provide “sufficient substantiation” of the requirements for the stay. *Stillwater Mining Co.*, 18 FMSHRC 1756, 1757 (Oct. 1996).


With respect to the civil penalty, the Commission has recognized that “economic loss does not, in and of itself, constitute irreparable harm.” *UMWA on behalf of Franks v. Emerald Coal Res.*, 35 FMSHRC 2373, 2374 (Aug. 6, 2013) (citing *Wisconsin Gas Co. v. FERC*, 758 F.2d 669, 674 (D.C. Cir. 1985)). However, the Secretary has not opposed the request to stay the civil penalty, and will not be prejudiced by a stay pending appeal. Accordingly, we grant a stay of the payment of the civil penalty.

Furthermore, we conclude that the remedial measures ordered by the Judge are consistent with the public interest. However, we are mindful of the uniquely personal nature of one aspect of the remediation ordered by the Judge, and the fact that the stay is not opposed by the Secretary. In recognition of these additional considerations in this case, we have decided to grant a stay of the portion of the Judge’s order requiring Mr. Murray to read the prepared statement. With the exception of the specific aforementioned aspects of the relief ordered in the November 18, 2015 decision, the motion is denied.

The motion to stay during a subsequent appeal of a Commission decision is also denied as being premature.


Mary Lu Jordan, Chairman


Michael G. Young, Commissioner


Robert F. Cohen, Jr., Commissioner

Commissioners Nakamura and Althen, concurring in part and dissenting in part:

Except for that portion of the motion that requests a stay during any future appeal to a circuit court, neither the Secretary nor miners (represented by the United Mine Workers of America) filed an objection to the stay motion. For that reason we would grant it, except for the portion that would grant a stay during any future appeal.



Patrick K. Nakamura, Commissioner



William I. Althen, Commissioner

Appendix A

SECRETARY OF LABOR,	:	Docket Nos. WEVA 2015-584-D
MINE SAFETY AND HEALTH	:	WEVA 2015-585-D
ADMINISTRATION (MSHA) on behalf	:	WEVA 2015-586-D
of RICK BAKER and RON	:	WEVA 2015-587-D
BOWERSOX	:	
	:	
v.	:	
	:	
OHIO COUNTY COAL CO.,	:	
CONSOLIDATION COAL COMPANY	:	
MURRAY AMERICAN ENERGY, INC.,	:	
AND MURRAY ENERGY CORPORATION	:	
	:	
	:	
SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA) on behalf	:	
of ANN MARTIN and RON	:	
BOWERSOX	:	
	:	
v.	:	
	:	
HARRISON COUNTY COAL CO.,	:	
CONSOLIDATION COAL COMPANY	:	
MURRAY AMERICAN ENERGY, INC.,	:	
AND MURRAY ENERGY CORPORATION	:	
	:	
	:	
SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA) on behalf	:	
of RAYMOND COPELAND and RON	:	
BOWERSOX	:	
	:	
v.	:	
	:	
MONONGALIA COUNTY COAL CO.,	:	
CONSOLIDATION COAL COMPANY	:	
MURRAY AMERICAN ENERGY, INC.,	:	
AND MURRAY ENERGY CORPORATION	:	
	:	

SECRETARY OF LABOR, :
MINE SAFETY AND HEALTH :
ADMINISTRATION (MSHA) on behalf :
of MICHAEL PAYTON and RON :
BOWERSOX :
 :
 :
v. :
 :
MARION COUNTY COAL CO., :
CONSOLIDATION COAL COMPANY :
MURRAY AMERICAN ENERGY, INC., :
AND MURRAY ENERGY CORPORATION :

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