

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES
601 New Jersey Avenue, N.W., Suite 9500
Washington, D.C. 20001

December 14, 2006

UNITED MINE WORKERS OF AMERICA, LOCAL 1248,	:	COMPENSATION PROCEEDING
Complainant	:	Docket No. PENN 2002-23-C
	:	
v.	:	
	:	
MAPLE CREEK MINING, INC.,	:	Maple Creek Mine
Respondent	:	Mine ID 36-00970

ORDER GRANTING RESPONDENT'S MOTION TO CERTIFY FOR INTERLOCUTORY REVIEW

This case is before me on a complaint filed pursuant to section 111 of the Mine Safety and Health Act of 1977 ("Act"), 30 U.S.C. § 821. The United Mine Workers of America, Local 1248 ("UMWA"), seeks compensation for miners idled by an order issued by the Secretary of Labor's Mine Safety and Health Administration ("MSHA") requiring the withdrawal of miners from the Maple Creek Mine, specifically, Order No. 7060223, which was issued pursuant to section 104(b) of the Act on July 31, 2001. Maple Creek moved for summary decision, contending that Order No. 7060223 was later vacated in conjunction with settlement of a civil penalty proceeding and, consequently, that the prayed-for compensation is not available under section 111. By Order dated May 4, 2006, I found that the subject order had become "final" within the meaning of section 111, and denied the motion. 28 FMSHRC 407.

Maple Creek then moved for reconsideration. The Secretary of Labor was invited to appear as amicus, and filed a brief addressing certain issues. By order dated October 24, 2006, that motion was denied. 28 FMSHRC 904. Maple Creek has now moved for certification of that ruling for interlocutory review, pursuant to Commission Procedural Rule 76, 29 C.F.R. § 2700.76. The UMWA has opposed the motion.

Interlocutory review is appropriate where the ruling sought to be appealed "involves a controlling question of law and . . . immediate review may materially advance the final disposition of the proceedings." 29 C.F.R. § 2700.76(a). For the reasons that follow, I find that the ruling at issue, the denial of Maple Creek's motion for summary decision, involves a controlling question of law and that immediate review by the Commission may materially advance the final disposition of the case.

The central issue controlling Maple Creek's liability for compensation is whether the section 104(b) withdrawal order became final for purposes of section 111 of the Act. If it did, as the UMWA contends, then Maple Creek is obligated to pay compensation to miners idled by the

order. If the order did not become final, i.e., was vacated after all interested parties were given an opportunity for a public hearing, then Maple Creek would have no obligation to pay compensation and it would be entitled to summary decision. As noted in the order denying Maple Creek's motion for reconsideration, there has been considerable inconsistency in both the Secretary's position and rulings by Commission Administrative Law Judges on related issues. Moreover, the Commission has identified, but not decided, a jurisdictional issue that could have a substantial impact upon resolution of the ultimate question.

Immediate review could materially advance the ultimate disposition of the proceedings because, if Maple Creek prevails, further litigation of potentially difficult liability issues and numerous potential disputes over entitlement and amounts of compensation owed to individual miners might be avoided. The UMWA seeks compensation, not only for miners directly affected by the withdrawal order, but for miners working at a preparation plant, which operates under a different mine identification number, and whom the UMWA contends were also idled as a result of the order. Maple Creek opposed the UMWA's motion to amend the complaint to add a claim for the preparation plant miners, and contends that they are not entitled to compensation under the Act. If Maple Creek prevailed on appeal, the issue of the preparation plant miners' entitlement would not have to be decided.

As noted in Maple Creek's reply to the UMWA's opposition to its motion, there are approximately 200 miners who may have been directly affected by the order, and an additional 50 preparation plant miners who claim to have been affected. Available records may be sufficient to establish the identities of miners entitled to compensation, and the amount of compensation they would be entitled to. However, the task of examining those records has not yet been completed, and there are numerous potential factual issues that could arise over both entitlement and amount of compensation, particularly as to the preparation plant workers. If Maple Creek prevailed on appeal, performance of those tasks and resolution of those issues would be avoided.

Based upon the foregoing, Maple Creek's motion to certify for interlocutory review the ruling on its motion for summary decision is hereby **GRANTED**.

Michael E. Zielinski
Administrative Law Judge
202-434-9981

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