

CCASE:
MSHA V. SUGARTREE, TERCO & RANDAL LAWSON
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FMSHRC-WDC
July 16, 1986

SECRETARY OF LABOR,
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA),
on behalf of JAMES CORBIN,
ROBERT CORBIN, and
A. C. TAYLOR

v. Docket No. KENT 84-255-D

SUGARTREE CORPORATION,
TERCO, INC., and RANDAL LAWSON

BEFORE: Chairman Ford; Backley, Doyle, and Lastowka,
Commissioners

ORDER

BY: Chairman Ford; Backley and Doyle, Commissioners

In connection with a Motion for Immediate Reinstatement, also ruled on today, the Secretary of Labor has filed a Motion to Direct the Payment of Sums into Escrow or, in the Alternative, to Direct Posting of a Bond as Security. Respondent Terco, Inc., has filed an opposition to the motion.

The Secretary has not made a clear showing that this form of relief is necessary. Accordingly, the Secretary's motion is denied. The Commission, however, will expedite its review process in this matter.

Ford B. Ford, Chairman

Richard V. Backley, Commissioner

Joyce A. Doyle, Commissioner

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Commissioner Lastowka, dissenting:

The Secretary of Labor's motion should be granted. The administrative law judge has determined after a full hearing that complainants were unlawfully discharged. The Secretary does not seek immediate payment to the miners themselves of the damages awarded by the judge. Rather, the Secretary desires only to have the operator post sufficient security to ensure payment of the damages in the event that the operator's appeal is unsuccessful. Certainly, the Commission is empowered to afford the requested relief. 30 U.S.C. § 815(c)(3). Cf. *Metric Constructors*, FMSHRC Docket No. SE 80-31-DM (Order of August 21, 1984); see Fed. R. App. P. 7. The exercise of this authority is especially appropriate where one of the respondents ceased operations shortly after the Secretary's institution of these discrimination proceedings and the major issue before the Commission concerns the question of successorship.

In weighing the relative interests of the complainants and the operator in this particular matter, I can discern no persuasive reason why the interim security sought by the Secretary should not be provided. Accordingly, I dissent from the denial of the Secretary's motion.

James A. Lastowka, Commissioner

Distribution

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