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MSHA V. MATHIES COAL
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FMSHRC-WDC
February 3, 1987

SECRETARY OF LABOR,
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA),
on behalf of
JOSEPH G. DeLISIO, JR.

v. Docket No. PENN 86-83-D

MATHIES COAL COMPANY

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

ORDER

BY THE COMMISSION:

In this discrimination proceeding arising under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (1982), counsel for the Secretary of Labor has requested Commission Administrative Law Judge George A. Koutras to clarify the remedial relief awarded in his decision of November 21, 1986. 8 FMSHRC 1772 (November 1986)(A.J). We remand the matter to the judge to rule upon the merits of the Secretary's request.

In his decision, Judge Koutras concluded that Mathies Coal Company ("Mathies") violated section 105(c)(1) of the Mine Act, 30 U.S.C. § 815(c)(1), by unlawfully interfering with Joseph G. DeLisio's right as a representative of miners to accompany federal inspectors during inspection of the mine. To remedy the violation, the Judge ordered Mathies to permit DeLisio to drive his private automobile to the mine portal where inspections normally begin or, in the alternative, provide DeLisio with company transportation underground to that location.

Neither party sought review of the judge's decision by filing a petition for discretionary review with the Commission under section 113(d)(1)(A)(i) of the Act. 30 U.S.C. § 823(d)(1)(A)(i). However, on December 22, 1986, the judge received from counsel for the Secretary a document entitled "Request for Clarification." The Secretary asserted that Mathies had refused DeLisio the use of his private automobile and that DeLisio cannot reach, in a timely manner, the portal where inspections begin by using company-provided underground transportation. The Secretary requested the judge to clarify or amend the relief previously ordered by requiring Mathies to provide DeLisio with transportation that will allow him to reach in 20 minutes or less the portal where the inspections begin.

Because he had issued his final decision in this matter under 29 C.F.R. § 2700.65, the judge forwarded the Secretary's request to the Commission. By order dated December 30, 1986, we stayed the running of the period within which the judge's decision would become a final order of the Commission: and directed Mathies to respond to the Secretary's request. Mathies has filed a response and contends that the relief ordered originally by the judge is "final and beyond review" and that the Commission lacks jurisdiction to entertain the Secretary's request.

When the judge's decision was released, his jurisdiction terminated and any subsequent request for substantive review or modification must be directed to the Commission, not the judge. 29 C.F.R. § 2700.65(c). Contrary to Mathies' assertions, a judge's decision does not become a final order of the Commission until 40 days after it is issued (30 U.S.C. § 823(d)(1)) and we have jurisdiction to act upon the Secretary's request.

We construe the Secretary's Request for Clarification as constituting, in effect, a timely petition for discretionary review of the relief ordered by the judge. *Gravelly v. Ranger Fuel Co.*, 6 FMSHRC 799 n. 1 (April 1984). Under the anti-discrimination provisions of the Mine Act, the Commission has broad authority, "as the Commission deems appropriate," to fashion appropriate remedies to abate violations of section 105(c)(1). See *Brock v. Metric Constructors, Inc.*, 766 F.2d 469, 472-73 (11th Cir. 1985). The purpose of such remedies is to eradicate the existence and effect of the unlawful discrimination to the greatest extent possible. Where, as here, a party timely disputes the efficacy or meaning of the remedy and requests that the judgment be clarified or amended, the request may be entertained by the Commission. Cf. Fed. R. Civ. P. 59(e).

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This matter is remanded to the judge to rule upon the request for clarification. The judge may conduct such expedited proceedings as may be necessary for purposes of his ruling. Any party dissatisfied with the judge's further ruling may timely petition the Commission for review of the decision as clarified or amended.

Ford B. Ford, Chairman

Richard V. Backley, Commissioner

Joyce A. Doyle, Commissioner

James A. Lastowka, Commissioner

L. Clair Nelson, Commissioner

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