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MSHA V. ARCH MINERAL COAL  
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FEDERAL MINE SAFETY & HEALTH REVIEW COMMISSION  
WASHINGTON, D.C.  
March 9, 1979

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

On behalf of John Koerner,           No. DENV 78-564  
Applicant

v.

ARCH MINERAL COAL COMPANY,  
Respondent

DIRECTION FOR REVIEW AND ORDER

The decision of the Administrative Law Judge, dated February 7, 1979, is directed for review. We find that the Judge's decision may be contrary to law or Commission policy, or that a novel question of policy is presented.

On September 12, 1978, the Secretary filed with the Commission his findings that John Koerner had brought a complaint of unlawful discrimination by Arch Mineral Coal Company, and that the complaint was not frivolously brought. He moved that Mr. Koerner be reinstated to his former position, or equivalent position, until a final Commission order on the complaint is issued. The motion was granted. On January 31, 1979, the Secretary filed a motion to vacate the order of reinstatement. The only stated basis for the motion was that "the parties have successfully negotiated a settlement of all matters formally in issue." Judge Malcolm P. Littlefield noted the ground for the motion, stated that "[a]s a result [of the settlement], continuation of the reinstatement order serves no purpose", and granted the motion to vacate. The terms of the settlement were not entered into the record; the record also does not disclose whether Mr. Koerner agreed to or acquiesced in the motion to vacate the

reinstatement order.

The issue is: Were there sufficient grounds to grant the motion?

The Commission concludes that the record should be supplemented before we resolve this issue. Accordingly, we remand this case to Judge Littlefield for the limited purpose of supplementing the record

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with answers to the following questions that are the terms of the settlement agreement? Did Mr. Koerner agree to or acquiesce in the motion to vacate the order of reinstatement. The Commission otherwise retains jurisdiction of this case. The parties need not file briefs unless the Commission requests them to.

A. E. Lawson, Commissioner

Marian Pearlman Nease, Commissioner