

OFFICE OF THE GENERAL COUNSEL
Division of Operations Management

MEMORANDUM 80-10

February 19, 1980

TO: All Regional Directors, Officers-in-Charge,
and Resident Officers

FROM: Joseph E. DeSio, Associate General Counsel

SUBJECT: Memorandum of Understanding with the Mine Safety and Health
Administration (MSHA), U.S. Department of Labor, concerning
Cases Arising Under Section 105(c) of the Mine Act

Section 105(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) protects employees from discrimination or interference for filing or making a complaint under or related to the Mine Act, including a complaint notifying a mine operator of an alleged danger or safety or health violation in a coal or other mine, or instituting or testifying in a proceeding under or related to the Mine Act. Following discussions between representatives of the Mine Safety and Health Administration and the General Counsel, a Memorandum of Understanding was entered into which establishes procedures for coordinating cases where alleged unfair labor practices may also constitute a violation of Section 105(c) of the Mine Act. The express purpose of this Memorandum of Understanding is to "(1) obviate duplicate litigation and (2) insure that employee rights in the area of safety and health will be protected." A copy of the Memorandum of Understanding is attached.

It should be noted that the "access to MSHA" cases which are to be deferred under Section B-1 of the Memorandum of Understanding concern alleged unlawful conduct in retaliation for such activities as filing complaints with MSHA or instituting or testifying in MSHA proceedings. In all other NLRB cases related to mine safety and health, including those involving employee protected concerted activity concerned with notifying a mine operator about alleged safety or health violations protected by Section 105(c)(1) of the Mine Act, the Regions are to submit such cases to the Division of Operations Management for consultation with MSHA.

The Memorandum of Understanding was published in the Federal Register and is now in effect. Any questions concerning this memorandum should be directed to your Assistant General Counsel.

Attachment

J. E. D.

Distribution:

Washington - Special
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MEMORANDUM 80-10

MEMORANDUM OF UNDERSTANDING
BETWEEN THE MINE SAFETY AND HEALTH ADMINISTRATION
U.S. DEPARTMENT OF LABOR
AND THE
GENERAL COUNSEL, NATIONAL LABOR RELATIONS BOARD

The Mine Safety and Health Administration (MSHA), U.S. Department of Labor, and the General Counsel, National Labor Relations Board (General Counsel), enter into this agreement in order to establish a procedure for coordinating Section 105(c) litigation under the Federal Mine Safety and Health Act of 1977 (Mine Act), and litigation under Section 8 of the National Labor Relations Act (NLRA), which will (1) obviate duplicate litigation and (2) ensure that employee rights in the area of safety and health will be protected.

A. BACKGROUND

1. The Mine Act establishes in the Department of Labor the Mine Safety and Health Administration. MSHA is responsible for the administration and enforcement of the Mine Act. This responsibility includes the investigation of complaints of alleged discrimination and interference filed by miners, representatives of miners, or applicants for employment under Section 105(c) of the Mine Act. Section 105(c) provides in pertinent part:

Discrimination or interference prohibited; complaint;
investigation; determination; hearing

(1) 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, representative of miners or applicant for employment in any coal or other mine subject to this Act because such miner, representative of miners or applicant for employment has filed or made a complaint under or related to this Act, including a complaint notifying the operator or the operator's agent, or the representative of miners at the coal or other mine of an alleged danger or safety or health violation in a coal or other mine, . . . or because such miner, representative of miners or applicant for employment has instituted or caused to be instituted any proceeding under or related to this Act or, has testified or is about to testify in any such proceeding, or because of the exercise by such miner, representative of miners or applicant for employment on behalf of himself or others of any statutory right afforded by this Act.

(2) Any miner or applicant for employment or representative of miners who believes that he has been discharged, interfered with, or otherwise discriminated against by any person in violation of this subsection may within 60 days after such violation occurs, file a complaint with the Secretary alleging such discrimination. . . .

2. Section 7 of the NLRA provides that "[e]mployees shall have the right to . . . engage in . . . concerted activities for the purpose of collective bargaining or other mutual aid or protection" Section 8 of the NLRA provides in pertinent part that it shall be an unfair labor practice for an employer to interfere with, restrain, or coerce employees and for a labor organization to restrain or coerce employees in the exercise of the rights guaranteed in Section 7.

3. Although there may be some safety and health activities which may be protected solely under the Mine Act, it appears that many employee safety and health activities may be protected under both Acts. However, since the rights of "miners" to engage in safety and health activity is specifically protected by the Mine Act and is only generally included in the broader right to engage in concerted activities under the NLRA, enforcement actions to protect such safety and health activities should, where appropriate, be taken under the Mine Act rather than the NLRA.

B. PROCEDURAL AGREEMENT

1. Section 105(c) gives individuals the right to complain to MSHA if they believe they have been discriminated against for exercising rights under the Mine Act (access to MSHA activities). Where a charge involving such access to MSHA activities protected by Section 105(c)(1) of the Mine Act has been filed with the General Counsel, and the General Counsel has been advised by the charging party or MSHA that a complaint has also been filed pursuant to Section 105(c)(2) of the Mine Act as to the same factual matters, the General Counsel will,

absent withdrawal of the matter, defer or dismiss the charge. The General Counsel will inform the charging party of its action and will send a copy of such letter to MSHA.

2. Where a charge involving access to MSHA activities protected by Section 105(c)(1) of the Mine Act has been filed with the General Counsel, and the General Counsel has determined that no complaint has been filed pursuant to Section 105(c)(2) of the Mine Act, the General Counsel shall notify the charging party of the right to file a complaint pursuant to Section 105(c)(2) of the Mine Act. Following such notification:

(a) If the General Counsel is informed by the charging party or MSHA that a Section 105(c)(2) complaint has been timely filed, the General Counsel will then follow the procedure described in paragraph B-1 above.

(b) If the charging party does not file a complaint pursuant to Section 105(c)(2) of the Mine Act, or has withdrawn a complaint filed under Section 105(c)(2), the General Counsel will proceed with the matter under the NLRA.

(c) If the charging party has untimely filed a Section 105(c)(2) complaint (such complaints may be filed within 60 days after the alleged discrimination) the Office of the Solicitor of Labor, and the General Counsel will consult to determine the appropriate handling of the matter.

3. Where a charge has been filed with the General Counsel which includes access to MSHA activities protected by Section 105(c)(1) of the Mine Act and matters within the exclusive jurisdiction of the General Counsel, the Office of the Solicitor of Labor and the General Counsel will consult in order to determine the appropriate handling of the matter. Further, the Solicitor of Labor and the General Counsel will so consult where a charge has been filed with the General Counsel involving activities protected by Section 105(c)(1) of the Mine Act other than access to MSHA issues.

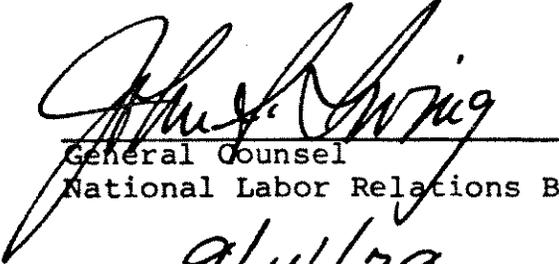
4. The parties to this agreement will consult periodically to review the agreement and its implementation.

C. MODIFICATION AND TERMINATION

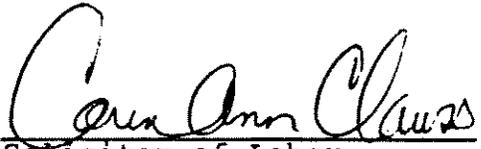
1. This Memorandum of Understanding may be modified in writing by mutual consent of MSHA and the General Counsel.

2. This Memorandum of Understanding may be terminated at any time by either party giving written notice to the other party at least thirty (30) days prior to the date fixed in such notice.

3. This Memorandum shall be effective immediately and shall remain in effect until modified or terminated in accordance with the procedures described in paragraph C-1 or C-2 above.


 General Counsel
 National Labor Relations Board

Date: 9/14/79


 Solicitor of Labor

Date: 10/12/79