

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 20-1215**September Term, 2019****MSHR-4/14/20 Letter****Filed On: July 16, 2020**

In re: United Mine Workers of America
International Union and United Steel, Paper
and Forestry, Rubber, Manufacturing, Energy,
Allied-Industrial and Service Workers
International Union, AFL-CIO-CLC,

Petitioners

BEFORE: Tatel, Griffith, and Millett, Circuit Judges

ORDER

Upon consideration of the emergency petition for a writ of mandamus, the opposition thereto, and the reply; and the motions for leave to participate as amici curiae and the lodged amici briefs, it is

ORDERED that the motions for leave to participate as amici curiae be granted. The Clerk is directed to file the lodged briefs. It is

FURTHER ORDERED that the emergency petition for a writ of mandamus be denied. After petitioners filed a writ of mandamus in this court to compel the Mine Safety and Health Administration (the “MSHA”) to issue, within 30 days, an emergency temporary standard for infectious diseases (“ETS”), the MSHA denied the United Mine Workers of America, International Union’s (the “UMWA”) May 20 request for an ETS. In light of the MSHA’s denial of the UMWA’s request for an ETS, the court construes the petition for mandamus as a petition for review of that denial. Cf. In re Int’l Chem. Workers Union, 830 F.2d 369 (D.C. Cir. 1987).

Under the Federal Mine Safety and Health Act of 1977 (the “Mine Act”), 30 U.S.C. § 801 et seq., the MSHA “shall provide” for an ETS if it determines that “miners are exposed to grave danger” from hazards in the workplace, and an ETS is “necessary” to protect them from that danger. 30 U.S.C. § 811(b). In Oil, Chem. & Atomic Workers Int’l Union v. Zegeer, 768 F.2d 1480, 1483 n.4 (D.C. Cir. 1985), this court noted that the Mine Act ETS provision “tracks” the emergency temporary standard provision of the Occupational Safety and Health Act of 1970 (the “OSH Act”), 29 U.S.C. § 655(c). In a comparable case brought under the OSH Act, this court recognized that “the authority to establish emergency standards . . . is an ‘extraordinary power’ that is to be ‘delicately exercised’ in only certain ‘limited situations.’” In re Int’l Chem. Workers Union, 830 F.2d at 370 (quoting Pub. Citizen Health Research Grp. v. Aucther, 702

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F.2d 1150, 1155 (D.C. Cir. 1983)). This court’s “limited review is not to determine whether we, as a reviewing court, would issue emergency standards,” but rather, whether the MSHA’s “decision not to issue such standards lacks support in the record.” Id. at 371. Despite the deference afforded to the agency, this court takes into account the mandatory language of 30 U.S.C. § 811(b), and the fact that personal interests in life and health are at stake. Cf. Auchter, 702 F.2d at 1156.

The MSHA has determined that its existing mandatory safety and health standards, coupled with other regulatory tools, are sufficiently broad to allow it to require mine operators to take steps specific at each mine to abate a variety of health hazards, including COVID-19. The MSHA has assured the court that it views its existing standards as imposing COVID-related duties on mine operators and that it is issuing citations with respect to COVID-related violations. In light of our highly deferential standard of review, cf. In re Int’l Chem. Workers Union, 830 F.2d at 371, we cannot say at this time that the MSHA’s necessity determination is unreasonable. Given this, the court need not address the MSHA’s finding that the information presently before it does not support a determination of a “grave danger” to miners within the meaning of 30 U.S.C. § 811(b).

In view of the ever developing situation with COVID-19, however, the UMWA may renew its administrative petition for an ETS should existing safety procedures prove inadequate.

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after resolution of any timely petition for rehearing or petition for rehearing en banc. See Fed. R. App. P. 41(b); D.C. Cir. Rule 41.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/
Scott H. Atchue
Deputy Clerk