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Can a Federal Court Block the Enforcement Action of a Federal Administrative Agency Before the Agency Has Reviewed the Action?

by Jay E. Grenig

Thunder Basin Coal Company

v.

Robert B. Reich, as Secretary of Labor
(Docket No. 92-896)

Argument Date: October 5, 1993

ISSUE

Can a coal mine operator, who claims that the Secretary of Labor and the Mine Safety and Health Administration have taken enforcement actions that are unconstitutional and in conflict with its rights under another federal statute, raise these claims in federal district court or must the operator first raise them in a statutorily created administrative process?

FACTS

Thunder Basin operates a coal mine near Wright, Wyoming, with a nonunion work force. Although the United Mine Workers of America ("Mine Workers") had previously lost a representation election, in 1990 the union sought to have one of its organizers and another Mine Workers' employee, along with the union itself, designated under the Federal Mine Safety and Health Act of 1977 ("Mine Safety Act") as a "representative of miners." This designation would give the union access to the mines's operations, records, and employees.

The Mine Safety and Health Administration ("MSHA") granted the Mine Workers' request, designated the union as a representative of miners, and directed Thunder Basin to honor the designation. Thunder Basin protested, claiming that the Mine Workers' designation as a representative of miners was nothing more than an attempt to unionize the mine's employees. Thunder Basin asserted that the designation abused the

purposes of the Mine Safety Act and compromised its right under the National Labor Relations Act ("NLRA") to exclude union organizers from its mine.

MSHA rejected the protest and advised Thunder Basin to honor the Mine Workers' designation. Thunder Basin was told that, if it failed to comply, MSHA would issue a citation of violation.

Thunder Basin responded by filing suit in the U.S. District Court for the District of Wyoming seeking an order barring enforcement of MSHA's directive that it honor the designation of the Mine Workers as a representative of miners. Before the district court, Thunder Basin asserted that MSHA

had erroneously applied the term "represents" by failing to construe the term in light of employer and employee rights under the NLRA. Thunder Basin alleged that MSHA was seeking, by threat of substantial penalties, to coerce Thunder Basin into abandoning its NLRA right to keep union organizers off its premises and, in the process, was distorting the balance in labor-management rights struck by Congress in the NLRA. Thunder Basin also alleged a violation of due process because MSHA's coercive conduct, through its threat of severe sanctions, compelled Thunder Basin to waive its NLRA rights before an administrative hearing had determined the validity of MSHA's action.

The district court concluded that it had jurisdiction to hear the suit. After a hearing, the court found

irreparable harm and granted a preliminary injunction preventing MSHA from requiring Thunder Basin to comply with the Mine Workers' designation pending a full hearing on whether the Mine Workers could properly be a representative of miners under the Mine Safety Act consistent with Thunder Basin's NLRA right to exclude union organizers.

The U.S. Court of Appeals for the Tenth Circuit reversed, holding that the district court lacked jurisdiction to prevent MSHA's allegedly improper enforcement action. *Thunder Basin Coal Co. v. Reich* 969 F.2d 970 (10th Cir. 1992). The court based its decision on Section 816 of the Mine Safety

Case at a Glance

An administrative agency, as a general rule, is empowered to take regulatory action in a defined area of expertise and to review the legality of any action taken. In most cases, a court has no authority to determine the legality of an agency's action until the agency has reviewed it. In the context of coal mine safety, *Thunder Basin* tests these principles through the following question: Does a federal district court have jurisdiction to hear a mine operator's constitutional and federal statutory claims against an enforcement action before these claims have been presented to the appropriate federal administrative agency?

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Act, which provides that any one “adversely affected or aggrieved” by an order entered by the Federal Mine Safety and Health Review Commission at the conclusion of an administrative hearing may obtain judicial review of the Commission’s order in the U.S. court of appeals.

The Tenth Circuit concluded that Congress had intended to preclude district court jurisdiction to review pre-enforcement challenges to administrative action under the Mine Safety Act, even if based on constitutional or federal statutory grounds. Thunder Basin’s request that the Supreme Court review the Tenth Circuit’s decision was granted.

BACKGROUND AND SIGNIFICANCE

The Mine Safety and Health Act was enacted to “protect the health and safety of the Nation’s coal [and] other miners.” 30 U.S.C. § 801(g). The Secretary of Labor, acting through MSHA, is charged with enforcing the Act. 29 U.S.C. § 557a. A mine operator may seek review of any enforcement action before the Federal Mine Safety and Health Review Commission, an adjudicatory agency independent of the Department of Labor. 30 U.S.C. §§ 815(d), 823.

Under the Mine Safety Act’s enforcement scheme, the Secretary of Labor, or anyone designated as a representative of miners, is authorized to conduct safety inspections of mines. The Act gives miners the right to have a “representative authorized by [the] miners” accompany safety inspectors for the purpose of “aiding” inspections. A representative of miners may request that MSHA inspect a mine. The representative may participate in pre- and post-inspection conferences and may review internal mine operations and records. A representative of miners also can initiate and participate in certain administrative proceedings against the mine operator.

Regulations promulgated under the Mine Safety Act define a “representative of miners” as “[a]ny person or organization which represents two or more miners at a coal or other mine for the purposes of the Act.” Designation as a representative of miners is permanent and can be withdrawn only by the representative.

Under the Mine Safety Act, a mine operator can challenge the designation only by refusing to comply with MSHA’s order and receiving a citation of violation from MSHA. The operator can challenge the citation in an administrative hearing before an Administrative Law Judge. The operator is entitled to seek discretionary review of the law judge’s decision before the Review Commission and judicial review by a U.S. court of appeals. If the citation is upheld, substantial fines and, in certain cases, criminal penalties can be imposed on the company and individuals. 30 U.S.C. § 820. In addition, if the mine operator does not promptly correct the alleged violation, a failure to abate order can be issued closing the affected mine area. 30 U.S.C. § 814(b).

There is an apparent conflict between the Tenth Circuit’s *Thunder Basin* decision and a decision of the Sixth Circuit in *Southern Ohio Coal Co. v. Donovan*, 774 F.2d 693 (6th Cir.

1985), *amended*, 781 F.2d 57 (6th Cir. 1986). The Sixth Circuit held that a federal district court has jurisdiction to consider a pre-enforcement claim that certain Mine Safety Act procedures violated a mine operator’s due process rights.

In a case pre-dating the Mine Safety Act, the Fourth Circuit also held that a federal district court has jurisdiction to consider a pre-enforcement claim under the Coal Mine Health and Safety Act, the predecessor to the Mine Safety Act. *Bituminous Coal Operators’ Ass’n v. Secretary of Interior*, 547 F.2d 240 (4th Cir. 1977). However, unlike the Mine Safety Act, the Coal Mine Health and Safety Act gave mine operators the right directly to contest civil penalty assessments in federal district court.

The Supreme Court has held that, merely because a statute expressly makes some acts judicially reviewable, it does not follow that Congress intended to exclude judicial review as to others. Instead, the issue is, whether in the context of the entire legislative scheme, Congress intended to preclude pre-enforcement judicial review. *Abbott Laboratories v. Gardner*, 387 U.S. 136 (1967).

In applying *Abbott* to a case involving the Mine Safety Act, the U.S. District Court for the District of Columbia held that it lacked jurisdiction over a pre-enforcement challenge. *Bituminous Coal Operators’ Ass’n v. Marshall*, 82 F.R.D. 350 (D.D.C. 1979). By providing for unrestricted review of disputes under the Mine Safety Act by the Federal Mine Safety and Health Review Commission and then by a U.S. court of appeals, the district court concluded that Act provided two adequate forums for adjudicating all legal claims made by the mine operator and clearly evidenced an intent to preclude review by a federal district court.

Thunder Basin raises the question of whether Congress intended to bar a pre-enforcement challenges to actions taken by the Secretary of Labor acting through MSHA. The only language in the Mine Safety Act that expressly limits the jurisdiction of federal district courts relates to temporary restraining orders or preliminary injunctions restraining the enforcement of mandatory health or safety standards. 30 U.S.C. § 960. However, the Mine Safety Act, unlike its predecessor the Coal Mine Health and Safety Act, provides an administrative review process for disputes involving enforcement actions followed by judicial review by a U.S. court of appeals.

Thunder Basin suggests that, if the Supreme Court rejects its position, MSHA will be able to threaten statutory penalties, including fines and closure, thereby causing irreparable harm to mine operators during the pendency of the administrative process. Thunder Basin maintains that the promise of judicial review at the end of administrative proceedings is an empty one.

Thunder Basin argues, that when the Mine Safety Act conflicts with another federal statute, here, the NLRA, or when constitutional questions are raised, the specialized administrative process becomes too time-consuming to avert the inevitable irreparable harm caused by enforcement

actions that continue in effect while the agency considers the case.

The Secretary of Labor, on the other hand, contends that the Mine Safety Act's review provisions provide Thunder Basin with a full and adequate hearing on all its claims. The Secretary argues that these provisions evidence an intent, consistent with Congress' desire for prompt enforcement of the Act, to preclude preemptive strikes in federal district court against enforcement actions, even if those claims seek to resolve a conflict between two federal statutes or raise fundamental issues of due process.

According to the Secretary of Labor, mine operators could seriously hamper enforcement of the Mine Safety Act with little difficulty by invoking the jurisdiction of a federal district court. It is claimed that disrupting enforcement by allowing a district court to insert itself into the process would undermine the Congressional objective that the enforcement procedures provide an incentive for quick compliance with the Mine Safety Act to ensure that dangerous conditions do not go uncorrected and that mines become relatively safe places to work.

In addition to determining whether or not Thunder Basin was entitled to have its claims heard immediately by a federal district court, the Supreme Court may have to determine whether the Mine Safety Act and the NLRA actually create conflicting rights and obligations. If it finds that there are conflicts between the two acts with respect to the selection of employee representatives, the Court may then be required to reconcile the two acts.

ARGUMENTS

For Thunder Basin Coal Company (*Counsel of Record: Charles W. Newcom; Sherman & Howard, 3000 First Interstate Tower North, 633 Seventeenth Street, Denver, CO 80202, telephone (303) 297-2900*):

1. Federal district courts have jurisdiction to hear pre-enforcement and collateral challenges to administrative action absent clear and convincing evidence that Congress intended to preclude such challenges.
2. The Mine Safety Act does not preclude pre-enforcement and collateral challenges in federal district court.
3. Thunder Basin presented a justiciable claim of statutory conflict and constitutional infirmity appropriate for federal question jurisdiction.

For the Robert B. Reich, Secretary of Labor (*Counsel of Record: Drew S. Days, III; Solicitor General; Department of Justice, Washington, DC 20530, telephone (202) 514-2217*):

1. The Mine Safety Act precludes the district court from exercising jurisdiction over Thunder Basin's objections to the designation of miners' representatives.
2. Even if the district court was not foreclosed from exercising jurisdiction, it was required to dismiss the complaint because Thunder Basin has no cause of action, Thunder Basin's claims are not ripe for judicial review, and administrative procedures have not been exhausted.

AMICUS BRIEFS

In Support of Thunder Basin Coal Company

Joint brief of the American Mining Congress and the National Coal Association (*Counsel of Record: Timothy M. Biddle; Crowell & Moring, 1001 Pennsylvania Avenue, N.W., Washington, DC 20004, telephone (202) 624-2500*).

In Support of the Secretary of Labor

International Union, United Mine Workers of America (*Counsel of Record: Patrick K. Nakamura; Longshore, Nakamura & Quinn, 2100 First Avenue North, Suite 300, Birmingham, AL 35203, telephone (205) 323-8504*).