

Editor's note: appealed - aff'd, Civ.No. 84-583 (E.D. Okla. June 30, 1986), aff'd, No. 86-2146 (10th Cir. Nov. 23, 1988), petition for rehearing denied (Feb. 17, 1989), cert denied sub nom. East Texas Steel Facilities v. Lujan, No. 88-1962 (Oct. 2, 1989), 493 U.S. 815

LONE STAR STEEL CO.

IBLA 82-164

82-618

Decided June 29, 1982

Consolidated appeals from the several decisions of the New Mexico State Office of the Bureau of Land Management imposing certain readjusted terms and conditions on coal leases NM 050405 (OK), NM 050406 (OK), NM 059992 (OK), and NM 059996 (OK).

Affirmed.

1. Coal Leases and Permits: Leases -- Mineral Leasing Act: Generally

Where coal leases issued under the provisions of sec. 7 of the Mineral Leasing Act of 1920, 30 U.S.C. § 207 (1976), provide that the United States may readjust their terms and conditions at the end of 20 years, a decision by BLM to include additional requirements will be affirmed where each of the readjusted provisions objected to by the lessee is mandated by statute and/or regulation.

APPEARANCES: William A. Osborn, Esq., Lone Star, Texas, for appellant;
Robert J. Uram, Esq., Office of the Regional Solicitor, Santa Fe, New Mexico, Departmental Counsel.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

The appeals above captioned are consolidated upon the motion of Departmental counsel, with the acquiescence of appellant.

Three of the subject coal leases were issued in 1959 and the other (NM 05996 (OK)) was issued in 1960. In each case the New Mexico State Office of the Bureau of Land Management (BLM) notified the lessee, Lone Star Steel Company, in advance of the 20th anniversary of the lease that there would be a readjustment of the lease terms and conditions pursuant to the provisions of

43 CFR 3451. Cf. Kaiser Steel Corp., et al., 63 IBLA 363 (1982). Subsequently, BLM notified the lessee of the specific alterations in the lease terms and conditions in consequence of the readjustments. The notices of readjustment provided that the lessee would be allowed 60 days within which either to file objections to any of the readjusted terms it deemed unacceptable, or to relinquish the lease.

In each instance, the company filed timely, detailed objections to the inclusion of certain sections of the readjusted leases.

By its decisions dated February 17, 1982 (re NM-05996 (OK)), and October 26, 1981 (re NM 050405 (OK), NM 050406 (OK), and NM 059992 (OK)), BLM held that the readjusted lease provisions to which the lessee had objected were properly imposed, stating as follows:

Lone Star Steel Company has filed objections to the following terms and conditions:

Section 3. Diligence
Section 11. Logical Mining Units (LMU)
Section 6. Production Royalty
Section 15. Equal Opportunity Clause
Section 16. Certification of Nonsegregated Facilities
Section 17. Employment Practices

We respond first to the objections as to the diligence requirements and the provision on logical mining units concerning the exhaustion of the leased reserves within 40 years in order to comply with such diligence. On May 26, 1976 and December 29, 1976, the Department of the Interior adopted diligent development and continued operations regulations. In the Federal Coal Leasing Amendments Act of 1976 (FCLAA), Congress adopted diligent development and continued operations standards for new leases. The Secretary in his June 1979 decision on the Federal coal management program directed enforcement of the Department's pre-FCLAA diligence requirements published July 19, 1979. Accordingly, all leases readjusted subsequent to the effective date of the 1976 regulations must be made subject to the diligence requirements under 43 CFR 3475 by virtue of the readjusted terms.

Lessee's attention is invited to the regulations under 43 CFR 3475.4(b) which provide that for coal leases issued before August 4, 1976, the 10 lease-year period for achieving diligent development may be increased under certain conditions as set out therein.

Regarding the production royalty, the regulations contained in 43 CFR 3451.1(a)(2) require that any lease subject to readjustment must be readjusted to conform to the minimum royalty as

prescribed in 43 CFR 3473.3-2. That minimum royalty has been determined to be not less than 12.5 percent of the value of the coal removed from a surface mine and not less than 8 percent of the value of the coal removed from an underground mine. However, relief is provided in 43 CFR 3473.3-2(d)(1). This provision allows the Secretary to reduce the royalty, but not advance royalty, whenever he determines it to be necessary to promote development or whenever a lease cannot be successfully operated under the terms provided therein. An application for such relief must be filed in triplicate with the District Mining Supervisor, Minerals Management Service, 6136 E. 32nd Avenue, Tulsa, Oklahoma 74135.

Sections 15 and 16 of the readjusted terms must be included in every lease in order to be in compliance with Executive Order 11246 of September 24, 1965 and the regulations of the Department of Labor under Title 41, Chapter 60. Except as otherwise provided, we are required by 41 CFR 60-1.4 to include the equal opportunity clause contained in Section 202 of the order in each Government contract. Also, 41 CFR 60-1.8 requires that such contracts contain a certification of nonsegregated facilities.

Wherever the word "contractor" appears in the equal opportunity clause on Form 1140-2 attached to the readjusted lease, it is intended to mean the lessee and the lessee must comply with the provisions therein.

As defined in 41 CFR 60-1.3 a "Government contract" means any agreement or modification thereof between any contracting agency and any person for the furnishing of supplies or services or for the use of real property or personal property, including lease arrangements. Accordingly, all standard Bureau of Land Management contract forms, including mineral and land use forms have been appropriately revised to include the equal opportunity clause and certification of nonsegregated facilities.

Section 17 of the readjusted leases was included under Sec. 2(1) in the original lease issued April 1, 1960, and it is required by Section 30 of the Act of February 25, 1920 (41 Stat. 449) as amended.

For the reasons stated above, the terms and conditions objected to by the lessee must remain as set out in the coal lease readjustments transmitted with our notice of October 6, 1981.

Lessee then appealed to this Board from those BLM decisions, contending generally that the regulation providing for objections and appeals is "an illusory right and meaningless gesture" if all the readjusted provisions are required by regulation and may not be altered; and, further, "that the regulations recognize that the law intends 'to encourage the greatest ultimate

recovery of coal' (43 CFR § 3473.3-2(d)(1)) for the benefit of national energy needs; and that, therefore, exceptions will be made among lessees upon equitable consideration."

We will observe first that the fact that some terms of readjusted leases are required by statute, regulation, or executive order, and are thus mandatory, does not render the opportunity for objection and appeal "an illusory right and [a] meaningless gesture." Not all conceivable terms of readjustment are so mandated. Appellant should understand that BLM and this Board, like the courts of the judicial branch, must apply those provisions imposed by law, and are without authority to waive or disregard legal obligations simply because an appellant utilizes an administrative appeals procedure to complain of them.

Appellant complains that adjusted lease sections 3 and 11 (concerning diligent development and logical mining units are unreasonable, unrealistic and arbitrary because it is not feasible for appellant to develop underground mines on all of its LMU's and operate them economically. It asserts, "The rules should employ equitable considerations and require that production be only from such LMU's from which the lessee can produce economically at a particular point in time." This argument, coupled with the long history of nonproduction of these leases, suggests that appellant has leased more Federal coal deposits than it can use. If so, perhaps considerations of public interest would require that either development and production be commenced on these leases within the designated period or else they be terminated and reissued to a lessee who is better able and willing to initiate production. However, we make no finding in this regard, as this is a matter which can only be addressed and determined at such time as the lessee seeks a suspension of the production requirements or when administrative action is taken to compel compliance or to terminate for noncompliance. See 43 CFR 3473.4; 30 U.S.C. § 207 (1976).

With regard to appellant's argument that 43 CFR 3473.3-2(d)(1) authorizes the Secretary to waive or reduce rental or royalty in certain instances, Departmental counsel has pointed out in his reply brief, the question is not properly before the Board now because appellant has not even taken the first step to seek a reduction by filing an application for waiver or reduction, with the Mining Supervisor. In addition, appellant asserts that for royalty computation purposes, no provision is made in the regulations for fixing the value of the coal to a lessee who mines for its own consumption rather than for sale to the open market. In this, appellant is simply wrong. Such a circumstance is expressly addressed in 30 CFR 211.63(b). We conclude that section 6 of the readjusted lease terms, concerning royalty obligations, was properly imposed in conformity with the Federal Coal Lease Amendments Act, 30 U.S.C. § 207(a) (1976). Garland Coal and Mining Co., 49 IBLA 400 (1980); Solicitor's Opinion, M-36939 (Sept. 17, 1980).

With regard to appellant's objections to sections 15, 16, and 17 of the readjusted leases, we will simply adopt the following excerpt from the answer filed by Departmental counsel.

Sections 15 and 16 of the lease establish various requirements intended to prevent discrimination and to promote equal opportunity in hiring. These lease clauses are required by regulations issued by the Office of Federal Contract Compliance Programs, U.S. Department of Labor.

The regulations in 41 CFR Part 60-1 are intended to promote and insure equal opportunity for all persons working with government contracts or IBLA 82-164; 82-618 federally-assisted construction projects. 41 CFR 60-1.1 (1980). The regulations specifically apply to "government contracts," 41 CFR 60-1.1 which defines that term to mean:

. . . any agreement or modification thereof between any contracting agency and any person for the furnishing of supplies or services or for the use of real or personal property, including lease arrangements. (Emphasis added.)

41 CFR 60-1.3 (1980).

The regulations go on to say that each government contract will contain certain equal opportunity requirements, 41 CFR 60-1.4 (1980). Paragraph 15 of the lease incorporates these requirements by reference as allowed by 43 CFR 60-1.4(d) (1980).

The Department of Labor's regulations also require government contractors to make various certifications of nonsegregated facilities. 41 CFR 60-1.8(b) (1980). Paragraph 16 of the lease contains the necessary certification.

Lone Star maintains that the lease terms corresponding to the Department of Labor regulations are unauthorized and overbroad. This Board, of course, has no authority to review the basis of regulations issued by the Department of Labor. 43 CFR 4.1(b)(3) (1980). Lone Star's complaint that the lease term should be limited to its leasehold interest and not directed to other facilities should also be directed to the Department of Labor. Labor's regulations say the Director of the Office of Equal Opportunity may:

. . . exempt [sic] from the requirements of the equal opportunity clause any of a prime contractor's or subcontractor's facilities which he finds to be in all respects separate and distinct from activities of the prime contractor or subcontractor related to the performance of the contract or subcontract, provided that he also finds that such an exemption will not interfere with or impede the effectuation of the order.

41 CFR 60-1.5(b)(2). To the best of our knowledge, Lone Star has made no effort to seek relief from the proper authority.

Section 17 of Lone Star's lease forms simply carries out four provisions of 30 U.S.C. § 187 (1976) which require the Secretary to include, in each lease, provisions to protect workers at mines using federal coal. As the Bureau's decision below says, "Section 17 of the readjusted leases was included [in part] under Section 2(1) in the original leases" issued to Lone Star. Strictly speaking, Section 17 is not a "readjustment" of a lease term, it is only a change in the location of an existing term. Under any view, the Mineral Leasing Act requires its inclusion in the lease.

BLM's decision in this case is a cogent and commendably explicit and correct exposition of the reasons for its inclusion of the subject provisions in the readjusted leases.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are affirmed.

Edward W. Stuebing
Administrative Judge

We concur:

James L. Burski
Administrative Judge

C. Randall Grant, Jr.
Administrative Judge

