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Labor and Employment Law

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INTRODUCTION

As was pointed out in earlier survey articles, the U.S. Court of Appeals for the Sixth Circuit has often reversed or substantially modified the decisions of the National Labor Relations Board ("NLRB" or "the Board") as well as other agencies. This court's labor and employment decisions during the 1998 term for the most part continue this pattern.

This article will discuss several significant decisions made by the circuit court interpreting the NLRA and other employment-related statutes. While the court made some important rulings in this area, especially regarding the nature of concerted activity, it did not alter its traditionally skeptical view of NLRB decisions.

The court addressed five main subjects in labor law this last year: the appropriateness of the bargaining order remedy; the reach of section 7 of the NLRA and the nature of concerted activity, whether nurses are supervisors, the nature of concerted activity, and the issue of employee benefits, most notably under the Black Lung Benefits Act ("BLBA").[1] With respect to this last issue, the court, after hearing a remarkable seven cases[2] involving the

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1. 30 U.S.C. §§ 901-945 (1994).

2. *See* Robbins v. Cyprus Cumberland Coal Co., 146 F.3d 425 (6th Cir. 1998); Caney Creek Coal Co. v. Satterfield, 150 F.3d 568 (6th Cir. 1998); Glen Coal Co. v. Seals, 147 F.3d 502 (6th Cir. 1998); Cunningham v. Island Creek Coal Co., 144 F.3d 388 (6th Cir. 1998); Peabody Coal Co. v. Ferguson, 140 F.3d 634 (6th Cir. 1998); Peabody Coal Co. v. White, 135

BLBA in one year, ruled only once in favor of the individual coal miner to recover benefits under the BLBA. Throughout most of the decisions, the court cited congressional intent to liberalize the black lung requirements to make recovery easier,[3] but restricted recovery to a limited and technical definition.

I. CASES AND ANALYSIS

A. *NLRB v. Taylor Machine Products, Inc.*[4]

The central question in this case surrounded the Board's authority to issue a bargaining order particularly after a lengthy lapse of time. Taylor Machine Products ("the Employer") produces and sells small brass and steel parts to American automakers.[5] The company operates two distinct manufacturing processes: in the so-called "core" operation, parts are shaped and cut, while in the "secondary" operation, the remaining aspects of the manufacturing process are completed. Prior to August 6, 1992, the Company housed both operations at its only plant located in Taylor, Michigan.[6]

In January of 1992, the Local Lodge 82, District Lodge 60, International Association of Machinists and Aerospace Workers, AFL-CIO-CLC ("The Union") started an organizing campaign among Taylor's fifty-eight production and maintenance employees.[7] During that campaign, thirty-nine employees signed a petition authorizing the union to represent them in collective bargaining. On March 25, 1992, a majority of employees voted in favor of the Union.[8]

Taylor objected to the pre-election conduct of the Union, alleging that Union supporters had harassed and threatened employees opposed to the Union and had vandalized property owned by anti-union workers.[9] The Acting Regional Director set aside the election and ordered a new election, but held the order in abeyance pending the outcome of the unfair labor practice charges lodged by the Union against the Employer.[10]

F.3d 416 (6th Cir. 1998); Creek Coal Co. v. Bates, 134 F.3d 734 (6th Cir. 1997) (this case was originally an unpublished opinion).

3. *See, e.g.*, Glen Coal Co. v. Seals, 147 F.3d 502 (6th Cir. 1998) (regarding a detailed discussion on congressional intent). This case will be discussed in detail in Part I.E of this article.

4. 136 F.3d 507 (6th Cir. 1998).

5. *See Taylor*, 136 F.3d at 510.

6. *See id.*

7. *See id.*

8. *See id.*

9. *See Taylor*, 136 F.3d at 510.

10. *See id.*

The Union alleged that Taylor, through its supervisors, had coerced employees in violation of section 8(a)(1) of the Labor Management Relations Act ("the Act")[11] and had terminated employees in violation of section 8(a)(3) as well.[12] The Administrative Law Judge ("ALJ") found that Taylor threatened employees with termination if the Union won the election, illegally interrogated Union supporters, implemented an unlawfully restrictive rule prohibiting the distribution of literature in non-work areas, and allowed harassment of pro-Union employees by anti-Union employees.[13] The ALJ also found that Taylor had breached section 8(a)(1) of the Act by permitting anti-union employees to harass pro-Union women.[14] In addition, the ALJ found that Taylor violated section 8(a)(3) by transferring its secondary operations unit to a new facility in Kentucky and then discharging six female pro-union employees in that unit. Among the proposed remedies for these violations, the ALJ ordered Taylor to recognize the Union, collectively bargain with it and transfer its secondary operations back to Taylor, Michigan from its Kentucky facility.[15]

The Board adopted the ALJ's findings of facts and conclusions of law in an order dated July 21, 1995.[16] More than one year later, on August 2, 1996, the Board applied to the court of appeals to enforce its order.[17] Taylor objected on several grounds including that the long delay in seeking enforcement barred its enforcement under the equitable doctrine of laches.[18] With regard to the argument that delay barred enforcement of the order, the court held that the Act does not impose strict time limits within which the Board must seek enforcement of an order under §10(c) of the Act, and furthermore, that the delay had not prejudiced Taylor or given the Board an unfair advantage.[19] "Absent such a change in the relative positions of the parties," the court ruled that, "the doctrine of laches will not apply."[20]

While the court of appeals sustained the Board's determination that Taylor's decisions to relocate secondary operations and discharge six employees violated the Act, the court refused to enforce the Board's

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11. 29 U.S.C. § 158 (1994).
12. *See Taylor*, 136 F.3d at 510-11.
13. *See id.* at 511.
14. *See id.* at 512.
15. *See id.* at 512-13. Taylor had transferred the secondary operations unit to Kentucky in an attempt to defeat the certification of the Union. *See id.*
16. *See Taylor*, 136 F.3d at 513.
17. *See id.* at 513-14.
18. *See id.* at 513.
19. *See id.* at 514.
20. *Taylor*, 136 F.3d at 514. (quoting NLRB v. Michigan Rubber Products, Inc., 738 F.2d 111, 113 (6th Cir. 1984)).

bargaining order.[21] The Board had concluded that Taylor committed a large number of unfair labor practices, including threats of job loss and plant closure.[22] The situation worsened, the Board determined, when the secondary operations were transferred to Kentucky.[23] This latter conduct, the Board found, "is the sort of drastic measure certain to live on *in the lore of the shop* and to exert a substantial coercive effect on any employee-current or subsequently hired-considering voting for the Union in a new election."[24]

While the court of appeals is statutorily bound to review enforcement orders under the abuse of discretion standard,[25] the court in this instance closely scrutinized the Board's decision to impose the bargaining order.[26] The court stated that the Board had not explained why other, less drastic remedies, including reinstatement of discharged employees, relocation of secondary operations to the Taylor facility and a cease and desist order, would be insufficient to remedy the situation.[27] The court observed that Taylor's threats took place before the Union won the election and noted that the Board had failed to consider the fact that the union-won election had to be set aside because of misconduct by union supporters.[28] The court stated it could find no other case in which the Board had set aside an election for Union related misconduct and then issued a bargaining order.[29] Thus, the bargaining order was set aside.[30]

In his concurring and dissenting opinion, however, Judge Jones concluded that the bargaining order was appropriate.[31] The totality of Taylor's actions, he reasoned, outweighed the minor allegations of misconduct by Union supporters.[32] While he recognized that the majority of Taylor's actions were committed before the election, the most egregious of them, especially the move of the secondary operations to Kentucky, occurred after the election.[33] Notwithstanding these observations, however, a majority of the court refused to require that Taylor recognize and bargain with the union.[34]

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21. *See id.* at 518-20.
22. *See id.* 519.
23. *See id.*
24. *Taylor*, 136 F.3d at 519. (quoting the ruling of the Board).
25. *See* NLRB v. Kentucky May Coal Co., 89 F.3d 1235, 1243 (6th Cir. 1996) (citation omitted).
26. *See Taylor*, 136 F.3d at 519.
27. *See id.* at 520.
28. *See id.*
29. *See id.*
30. *See Taylor*, 136 F.3d at 520.
31. *See id.* at 520-21 (Jones, J., concurring in part and dissenting in part).
32. *See id.* at 520.
33. *See id.* at 521.
34. *See Taylor*, 136 F.3d at 520.

B. *Arrow Electric Co. v. NLRB*[35]

This case represented the one instance in which the court of appeals broadly deferred to the Board's judgment with respect to the reach of section 7 of the NLRA. On February 27, 1996, four employees of Arrow Electric Co. ("Arrow") walked off the job to protest the actions of one of their supervisors, Sonny Collins.[36] The four were subsequently dismissed. The Board found the discharges to have violated section 8(a)(1) of the Act and ordered the reinstatement of the employees.[37] On appeal, Arrow contended that the organized walkout was not protected under §7 of the NLRA and that the employees were discharged for violating established company policy by leaving work without permission.[38]

The problems at Arrow arose from complaints by employees regarding Mr. Collins' allegedly belligerent attitude, disrespectful and demeaning comments to employees, specific instances of threatening to withhold a paycheck and "sneaking around" the site to observe the employees and comment negatively on their job performance.[39] A supervisor, Donald Jefferies, had attempted to rectify the situation by conducting four meetings with the disgruntled workers. Mr. Collins attended the second meeting and apologized for his conduct, promising to "do better" in the future. Mr. Jefferies told the employees that if another problem arose, they should to contact him directly.[40]

The following week Mr. Collins continued to harass the employees.[41] Remembering Mr. Jefferies' instructions, the four employees phoned, radioed and paged him without success. They then left the work site and drove to the shop in attempt to communicate with him in person. Since Mr. Jefferies was not at the shop when the employees arrived, they contacted the Personnel Director, Jessica Thompson, regarding Mr. Collins. Ms. Thompson told them to report for work on Monday morning. On Monday, the employees filled out a questionnaire detailing the actions of Mr. Collins, but the next day were terminated for "leaving the jobsite without notice."[42]

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35. 155 F.3d 762 (6th Cir. 1998).
36. *See Arrow*, 155 F.3d at 763-64.
37. *See id.* at 765.
38. *See id.*
39. *See id.* at 764.
40. *See Arrow*, 155 F.3d at 764.
41. *See id.*
42. *Id.*

The ALJ and the NLRB concluded that the employees' actions were protected under Section 7 of the Act and that their termination violated section 8(a)(1) of the Act.[43] The essential question on appeal was whether the actions of the four employees were protected under section 7 of the Act and, if so, whether they were discharged due to their exercise of those rights in violation of section 8(a)(1) of the Act. Since the ALJ determined that the walkout was designed to remedy the negative impact of Collins' behavior on working conditions and productivity of the specific employees, he concluded that their actions were protected under section 7.[44] The ALJ further found that Arrow was aware of Collins' actions and reacted by terminating the employees.[45] Since Arrow failed establish that it would have taken the same action regardless of whether the employees walked out, and did not offer an alternative reason for their termination, their discharges violated section 8(a)(1) of the Act.[46]

Under the U.S. Supreme Court's decision in *NLRB v. Washington Aluminum Co.*,[47] employees may protest working conditions, even without making a specific demand on the employer to remedy the condition.[48] The Sixth Circuit has similarly ruled, in *Vic Tanny International, Inc. v. NLRB*,[49] that walkouts by employees to protest job conditions are protected activity under section 7 of the NLRA.

In this instance, the court of appeals was persuaded that the employees had sought to bring to the attention of management their ongoing problems with Collins on more than one occasion and that their actions in driving to the shop to find someone to talk to were reasonable, especially given yet another confrontation with Collins and their failed attempts to reach Jeffries by other means.[50]

Having determined that the employees were engaged in protected, concerted activity, the remaining question was whether those employees were fired for that activity or, as Arrow asserted, for violating an established work rule. In the court's view, Arrow did not demonstrate that the terminations would have occurred notwithstanding the employees' protected conduct.[51] In essence, the court relied on the concerted efforts of the Arrow employees on more than one occasion to bring to the attention of management the problems

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43. *See id.*
44. *See Arrow*, 155 F.3d at 764.
45. *See id.*
46. *See id.* This paraphrased the ALJ's opinion cited by the court.
47. 370 U.S. 9 (1962).
48. *See Washington Aluminum Co.*, 370 U.S. at 15.
49. 622 F.2d 237 (6th Cir. 1980).
50. *See Arrow*, 155 F.3d at 766.
51. *See id.* at 766-67.

caused by Mr. Collins' supervision.[52] For these reasons, the court of appeals affirmed the decisions of the ALJ and the Board.[53]

The result of this ruling has further established employees' protected right to engage in concerted activity to protest adverse working conditions. Paradoxically, Mr. Jefferies, the man who availed himself to the four employees as a voice of reason and assurance that their grievance was taken seriously and without retaliation, had recommended to Arrow that the employees be discharged for walking off the job.[54]

C. *Mid-America Care Foundation v. NLRB*[55]; *Grancare, Inc. v. NLRB*[56]

These cases raised important and ongoing questions of law regarding whether licensed practical nurses ("LPN") are "supervisors" and therefore, outside the reach of the Act. As to this issue, the court of appeals has consistently ruled that LPNs and charge nurses ("CN") are supervisors.[57] For over a decade, however, the NLRB has regularly disagreed. This disagreement over the meaning of the Act has come to epitomize the longstanding conflict between the Board and the court.

Section 2(11) of the NLRA defines a "supervisor" as any employee who exercises authority in one of the eleven statutorily listed areas, exercises authority in the interests of the employer, and uses independent judgment in the exercise of their authority.[58] It is the exercise of *independent* judgment, as well as the frequency of authority used, that constitutes the difference between the NLRB's and the court's view of the supervisory status of LPNs and CNs.

In essence, the NLRB's position regarding LPNs and CNs is that if their exercise of independent judgment is sporadic or isolated, or their decisions are subject to review, such job duties are insufficient to confer supervisory status.[59] In most cases, LPNs and CNs responsibilities include directing aides

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52. *See id.*

53. *See id.* at 767

54. *See Arrow,* 155 F.3d at 767 (citation omitted).

55. 148 F.3d 638 (6th Cir. 1998).

56. 137 F.3d 372 (6th Cir. 1998).

57. *See generally* Grancare, Inc. v. NLRB, 137 F.3d 372 (6th Cir. 1998); Caremore, Inc. v. NLRB, 129 F.3d 365 (6th Cir. 1997); Manor West, Inc. v. NLRB, 60 F.3d 1195 (6th Cir. 1995); Health Care & Retirement Corp. of America v. NLRB, 987 F.2d 1256 (6th Cir. 1993); Beverly California Corp. v. NLRB, 970 F.2d 1548 (6th Cir. 1992); NLRB v. Beacon Light Christian Nursing Home, 825 F.2d 1076 (6th Cir. 1987).

58. *See Caremore,* 129 F. 3d at 369.

59. *See id.* (citing Beverly California Corp., v. NLRB, 970 F.2d 1548, 1550, n.3 (6th Cir. 1992); NLRB Medina County Publications, Inc., 735 F.2d 199, 201 (6th Cir. 1984);

regarding "aspects of patient care."[60] In addition, they may request off-duty aides to come in to work, or request on-duty aides to work overtime, and they may recommend aides be disciplined with such suggestion being strongly considered by nurses' supervisors.[61]

The NLRB has consistently concluded in these cases that although nurses may exercise this power, they do not do so with real independent judgment.[62] That is, their judgments are subject to review and they possess no real authority.[63] The Board, also, has attempted to shift the burden of proving supervisory status from the NLRB to the employer.[64] With the exception of Justices Moore and Jones, who stated in *Grancare* that it was reasonable under the Act for the NLRB to shift this burden of proof, it is a concept the Sixth Circuit has consistently rejected.[65]

In *Mid-America*, LPNS and CNS evaluated nursing assistants' performances and recommended to the Administrator whether or not an assistant should be dismissed after an initial period of employment.[66] They also supervised employees to some degree and handled problems outside the nursing department during the afternoon and night shifts.[67] Based upon this evidence, the court found LPNs and CNs to be supervisors within the meaning of the Act and refused to defer to the Board's contrary determination as to the meaning of the phrase "independent judgement."[68] Thus, the Board's order was vacated.

In *Grancare, Inc. v. NLRB*,[69] the court faced the same issue whether CN's are supervisors within the meaning of the Act. As in *Mid-America*, the facts showed that CNs are the highest authority in the facility during the night shift and, for the most part, on weekends.[70] Their job description includes supervising nursing and ancillary personnel, implementing nursing care plans, participating in progressive discipline and orientation, monitoring and assisting in evaluation of nursing staff performance, assigning staff based on

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Federal Compress & Warehouse Co. v. NLRB, 398 F.2d 631, 634 (6th Cir. 1968)).

60. *Id.*
61. *See id.* at 369-70.
62. *See Caremore,* 129 F.3d at 371.
63. *See id.*
64. *See id.* at 375.
65. *See id.* at 377 (Jones, J., concurring); *see also id.* (Moore, J., concurring).
66. *See Mid-America,* 148 F.3d at 639-40.
67. *See id.* at 640.
68. *See id.* at 641-43.
69. 137 F.3d 638 (6th Cir. 1998).
70. *See Grancare,* 137 F.3d at 374.

facility needs, approving overtime and sending employees home as necessary.[71]

Notwithstanding this list of duties, however, the NLRB had found that CNs use of this supervisory authority was sporadic.[72] For instance, of twenty-one documents offered as evidence that LPNs have authority to discipline, only five showed that some discipline was given.[73] Based on this and similar evidence, the Regional Director concluded that "[a]t best, the exhibits represent isolated incidents of supervision insufficient to elevate the nurses as a whole to supervisory level."[74]

In *Caremore, Inc. v. NLRB*,[75] the court noted that for the fourth time in the decade, the court was being called upon to revisit the question whether, and under what circumstances, nurses qualify as supervisors under the act.[76] In this case, like the others, entire shifts were supervised by LPNs and aides with no Administrator present.[77] While LPNs spent most of their time providing direct patient care, they were also called upon to assign or provide direction to aides in certain circumstances. For example, they assigned aides to particular patients, called in off duty aides, evaluated and disciplined aides, and filed disciplinary notices relating to aides. In concluding they were not supervisors, the NLRB again relied in large part on the idea that they exercised authority only in "sporadic or isolated instances."[78]

The court strongly disagreed with the Board's view of the matter. On the contrary, it stated that "[i]t is the existence of [disciplinary] authority that counts under the statute, and not the frequency of its exercise."[79] Because at least one of the definitional elements of the statute was satisfied, the court concluded that the respondent's charge nurses are "supervisors" and vacated the orders of the Board.[80]

This difference of opinion as to the meaning of supervisory status in the nursing profession has kept the NLRB and the court at odds for nearly a decade. Frustrated with the NLRB's refusal to accept its precedent on this issue, the court of appeals in 1998 utilized their decisions to emphatically remind the Board of its views on the subject. A few quotes from the court's ruling in *Caremore* will illuminate this author's view of the level of tension

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71. *See id.*
72. *See id.* at 375-76.
73. *See id.* at 376.
74. *Grancare,* 137 F.3d at 576. (alteration in original) (citation omitted).
75. 129 F.3d 365 (6th Cir. 1997).
76. 129 F.3d at 366.
77. *See id.* at 376.
78. *Id.* at 368.
79. *Id.* at 369 (quoting Beverly California Corp., 970 F.2d at 1550, n.3).
80. *See Beverly California,* 970 F.2d at 1550.

between the NLRB and the Sixth Circuit in this area. In one instance the court wrote, "[w]e therefore have had to admonish the NLRB for choosing not 'to follow the law of this Circuit' and repeatedly to 'remind the [NLRB] that it is the courts, and not the [NLRB], who bear the final responsibility for interpreting the law.'"[81] In addition, the court stated that the NLRB continues to misapprehend both the law and its own place in the legal system, . . . [nurses] are supervisors within the meaning of the NLRA."[82] Indeed, to further emphasize their position, the appeals court awarded costs and attorneys' fees in *Caremore*.[83]

D. *Schaub v. Detroit Newspaper Agency*[84]

For the last four years, employees at the Detroit Newspaper Agency ("Agency")[85] have been engaged in a protracted and highly contentious work stoppage. The Detroit News and the Detroit Free Press bargaining together under a joint operating agreement,[86] entered into three-year collective bargaining agreement with ten different collective bargaining units. By April 30, 1995, the partnership had reached new agreements with four of these units.[87] In July 1995, however, the remaining six went out on strike and the Agency hired approximately 1,280 employees to replace the more than 2,000 that initially struck.[88]

In 1995, the striking Unions lodged unfair labor practices charges and the NLRB issued complaints asserting that the strike had been caused by the papers' unfair labor practices.[89] In June, 1997, the ALJ ruled that the strike was an unfair labor practice strike.[90] In the meantime, in February, 1997, the unions offered unconditionally to return to work, but the papers, maintaining that the work stoppage was prompted by economic considerations and not by unfair labor practices, refused to discharge the permanent replacements and

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81. *Caremore*, 129 F.3d at 371.
82. *Id.*
83. *See id.*
84. 154 F.3d 276 (6th Cir. 1998)
85. The Detroit Newspaper Agency is a partnership consisting of the non-editorial departments of both the Detroit News and the Detroit Free Press. The editorial departments remain separate entities. *See Schaub*, 154 F.3d at 277.
86. *See id.*
87. *See id.*
88. *See id.*
89. *See id.* at 277-78.
90. *See id.* at 278.

reinstate the striking employees.[91] Instead, they placed such employees on a preferential hiring list for positions as they became available.[92]

On July 2, 1997, the Regional Director, William Schaub, petitioned the U.S. District Court for the Eastern District of Michigan for injunctive relief under § 10(j) of the Act.[93] The NLRB took the position that the continued use of replacement workers, in lieu of strikers, would "irreparably damage the integrity of the collective bargaining process and [might] ultimately result in an irreparable dissipation of employee support for the Unions."[94] The district court denied the request and the decision was appealed.[95]

Injunctive relief of the sort sought by the NLRB may not be granted under the Act unless the court finds reasonable cause to believe that the alleged unfair labor practice occurred and the relief sought would be "just and proper" under the circumstances.[96] On appeal, the Sixth Circuit deferred to the discretion of the district court's judgment that issuance of the degree failed the "just and proper" aspect.[97] In the appellate court's view, "the relief to be granted is only that reasonably necessary to preserve the ultimate remedial power of the Board and is not to be a substitute for the exercise of that power."[98] Put differently, if the Board's remedial powers would be effective without the use of the extraordinary relief, the injunction will not issue.

As to the NLRB's argument that refusal to issue the injunction will create an impediment to collective bargaining, the court noted that bargaining had continued and that the district court was not necessarily wrong in rejecting this claim.[99] As to the NLRB's other claim that the injunction is necessary to prevent further "scattering" of employees, the court found such an assertion to be speculative.[100] For these reasons, the court concluded that the denial of the injunction was not an abuse of discretion.[101]

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91. *See Schaub*, 154 F.3d at 278.
92. *See id.*
93. *See id.*
94. *Id.* (alteration in original) (citation omitted).
95. *See Schaub*, 154 F.3d at 278.
96. *See id.* at 78-79 (citations omitted).
97. *See id.* at 279-80.
98. *Id.* at 279 (quoting Gottfried v. Frankel, 818 F.2d 485, 494 (6th Cir. 1987)).
99. *See Schaub*, 154 F.3d at 279.
100. *See id.* at 280.
101. *See id.*

E. *Glen Coal Co. v. Seals*[102]

During its 1998 term, the Sixth Circuit heard an unusually high number of cases involving the BLBA. In each instance, the court either shifted the burden of payments or denied or restricted benefits, and with the exception of *Caney Creek Coal Co. v. Satterfield*,[103] discussed below, the court in each case ruled contrary to the claim of the coal miner.

In this matter, an employee of Glen Coal Co. ("Glen Coal"), Jess Seals, requested benefits under the Black Lung Benefits Act,[104] as a result of his having contracted pneumoconiosis. Initially, Old Republic Insurance Company ("Old Republic"), the insurer of Glen Coal, honored Seals' disability request and awarded benefits.[105] Thereafter, however, questions arose as to the legitimacy of Seal's eligibility under the BLBA.[106] The ALJ ordered the continuation of benefits, regardless of the legitimacy, since recognition of disability satisfies the requirements under the BLBA.[107] The ALJ relied on the Fourth Circuit's decision[108] in *Doris Coal Co. v. Director, Office of Workers' Compensation Programs, United States Department of Labor.*[109]

The BLBA was enacted to provide benefits to coal miners who are totally disabled due to pneumoconiosis and to the surviving dependents of miners whose death was due to such illness.[110] Pneumoconiosis is a "chronic dust disease of the lung and its sequelae, including respiratory and pulmonary impairments, arising out of coal mine employment."[111]

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102. 147 F.3d 502 (6th Cir. 1998).

103. 150 F.3d 568 (6th Cir. 1998)

104. *See Glen Coal*, 147 F.3d at 504; *see also* §§ 30 U.S.C. 901-945 (1994).

105. *See Glen Coal*, 147 F.3d at 504.

106. *See id.*

107. *See id.*

108. This matter originated in the Fourth Circuit, but was transferred to the Sixth when it was discovered that Mr. Seals' condition occurred while he was working as a miner in Kentucky.

109. 938 F.2d 492 (4th Cir. 1991).

In Doris Coal, the court held that:

> A mine operator is responsible for the miner's pneumoconiosis if either (1) it is determined in an adjudication that the miner is totally disabled due to pneumoconiosis, and is, therefore, entitled to benefits under the [BLBA] or (2) the mine operator voluntarily agrees to pay the cost of such treatment by conceding the miner's general eligibility.

Doris Coal, 938 F.2d at 496. (citation omitted).

110. *See* 30 U.S.C. § 901(a).

111. *Id.* at § 902 (b).

> Part B of the [BLBA] provides for monthly cash benefits to the claimants, but no health care benefits. Part B claims are paid by the federal government and do not involve the mine operators or the [Department of Labor].
>
> Part C of the [BLBA], on the other hand establishes an employer-funded federal workers compensation program to provide benefits, in cooperation with the states, for total disability or death due to pneumoconiosis, and is administered by the DOL.[112]

According to the Fourth Circuit, there are two elements of liability: the first involves whether the coal miner's disability was caused by pneumoconiosis and the second surrounds whether the employer/operator is liable for individual medical bills.[113] If the first element is met, then there is a presumption of responsibility under the second element.[114]

Mr. Seals stopped working in 1972 after sustaining a back injury.[115] In 1979, he filed a claim for health benefits under Part C of the Act. Old Republic was notified of the claim in 1984, and agreed, without further investigation, to pay the cost of black lung related health care. On June 11, 1984, the DOL issued an award of benefits which stated that Glen Coal was required to provide Seals "all reasonable and necessary medical benefits required for the treatment of his pneumoconiosis condition."[116] The DOL also ordered the benefits be made current. Old Republic had owed Seals back pay from June 1979 to June 1984. DOL informed Old Republic that Mr. Seals had not submitted any bills since June 1979.[117]

In 1985, Old Republic began receiving bills for prescriptions for antibiotics and bronchodilators[118] for Mr. Seals.[119] Old Republic refused to honor the bills, however, contending they were not responsible for the antibiotics because pneumoconiosis is not infectious in nature. In 1987, Seals submitted the unpaid bills to the DOL. The DOL agreed that although Old Republic was correct in their position that they were not obligated to pay for

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112. *Glen Coal*, 147 F.3d at 505 (citations omitted); *see also* Lute v. Split Vein Coal Co.,11 BLR 1-82, 1987 WL 107347, at *2 (DOL Ben. Rev. Bd.).

113. *See Glen Coal*, 147 F.3d at 505 (citing *Lute*, 1987 WL 107347, at *2).

114. *See Lute*, 1987 WL 107347, at *2.

115. *See Glen Coal*, 147 F.3d at 506.

116. *Id.*

117. *See id.* at 507.

118. *See id.* A bronchodilator is "[A]ny drug that causes relaxation of bronchial muscle resulting in expansion of the air passages of the bronchi." *Glen Coal*, 147 F.3d. at 507, n.4 (quoting WEBSTER'S NEW INTERNATIONAL DICTIONARY).

119. *See Glen Coal*, 147 F.3d at 507.

the antibiotics, they were nevertheless liable for the bronchodilator bills. Old Republic refused again to honor the bills.[120]

The DOL referred the matter to an ALJ as provided for under the statute, and the ALJ adopted DOL's position and ordered the payment of the bronchodilator bills.[121] As previously stated herein, "[t]he ALJ then noted that under the [BLBA], Seals was required to establish that the medical bills were necessary to treat his pneumoconiosis, but held that Seals did not need to make any preliminary evidentiary offering."[122]

The court of appeals refused to follow the Fourth Circuit's decision in *Doris Coal* in this instance, contending instead that the presumption of disability under that case "ran afoul" of the meaning and intent of the statute.[123]

F. *Caney Creek Coal Co. v. Satterfield*[124]

In *Caney Creek*, the court ruled that because the coal miner, Raymond Satterfield, did not elect review of the denial of his Social Security claim of pneumoconiosis, liability for disability benefits properly rested with the coal mine operator, rather than the Black Lung Disability Fund ("Fund").[125] The court recognized Congress' intent to streamline benefits to coal miners.[126] "In 1969, Congress began providing benefits for the survivors of miners who died from pneumoconiosis, and also for miners who were totally disabled by the disease."[127] Congress, in 1972 and again in 1977, liberalized the criteria for proving disability.[128] A reading of the BLBA proves the obvious intent of Congress. The court of appeals intent, however, appears to narrowly construe the Act.

In 1973, Mr. Satterfield applied to the Social Security Administration ("SSA") for disability benefits.[129] His claim was denied in November of the same year and no further action was taken until May of 1978. His widow then pursued his claim after his death in December of 1978, and the DOL authorized benefits in August of 1981. Caney Creek appealed this decision and both the ALJ and the DOL held in Satterfield's favor, authorizing benefits

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120. *See id.*
121. *See id.*
122. *Id.* (citation omitted).
123. *See Glen Coal*, 147 F.3d at 507.
124. 150 F.3d 568 (6th Cir. 1998).
125. *See Caney Creek*, 150 F.3d at 569-70.
126. *See id.* at 570.
127. *See id.* (citations omitted).
128. *See* id. (citations omitted).
129. *See Caney Creek*, 150 F.3d at 571.

be paid to Mr. Satterfield's estate.[130] Caney Creek then appealed the decision of the Board to the court of appeals.

Caney Creek argued that Satterfield's claim was not filed as a Part B claim In addition, Caney Creek asserted that if the DOL was correct in categorizing it as such, Satterfield needed not appeal to receive benefits from the Fund.[131] Caney Creek relied on the following provision:

> [N]o benefits shall be payable by any operator on account of death or total disability due to pneumoconiosis . . . which was the subject of a claim denied before March 1, 1978, and which is or has been approved in accordance with the [BLBA].[132]

According to the plain language of §932(c), Satterfield's benefits should have been transferred to the Fund.

The soundness of this argument fails to consider the DOL's regulations that provide a denied Part B claim by the SSA may be revived by an election card or "other equivalent document."[133] If the ruling of the DOL is a permissible construction of the statute, the court is bound to uphold the ruling.[134] Surprisingly, the court of appeals did not flex its strength and rule, as it so often has in these cases, that the decision of the DOL was unreasonable.

The court of appeals ruled that it was Congress' intent to liberalize recovery from pneumoconiosis for coal miners.[135] Since the DOL did not stray from the intent of Congress, and the Satterfield's sufficiently adhered to the requirements, Caney Creek, and not the Fund, owed Mr. Satterfield's widow benefits under the BLBA.[136]

CONCLUSION

As the foregoing recitation indicates, there were a few important developments in the area of labor and employment law in the Sixth Circuit during the 1998 term. While there were clashes between the court and the NLRB of the variety that have characterized the Court's posture as to the NLRB, especially regarding the criteria of supervisors for collective bargaining purposes, there were also cases in which the Court approved the Board's position, especially regarding the nature of concerted activity. More curious is the court's narrow view regarding coal miners' benefits under the

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130. *See id.*
131. *See id.* at 571-72.
132. 30 U.S.C. § 932(c) (1994).
133. 20 C.F.R. § 725.496(d) (1999). *See also* 20 C.F.R. § 410.704(d).
134. *See* 30 U.S.C. § 936(a) (1994).
135. *See supra* notes 119-21 and accompanying text.
136. *See Caney Creek*, 150 F.3d at 574-75.

BLBA. In the end, the Court, for the most part, continued to demonstrate its skeptical view of agency positions, according many of them little credence.