

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

1730 K STREET NW, 6TH FLOOR
WASHINGTON, D.C. 20006

September 5, 1991

EVERETTE E. BALLARD,	:	CONTEST PROCEEDING
Contestant	:	
	:	Docket No. WEVA 91-1385-R
v.	:	Decertification letter
	:	dated 4/18/91
	:	
SECRETARY OF LABOR,	:	Birchfield Mining Company
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Mine No. 1
Respondent	:	
}	:	Mine ID 46-07273

DECISION

Before: Judge Merlin

This case is a notice of contest filed under section 105(d) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 815(d), seeking to challenge a proposed revocation of contestant's status as a person certified by the Secretary of Labor to take respirable dust samples. The Secretary has filed a motion to dismiss and contestant has submitted a brief in opposition.

Contestant's brief is virtually identical to the one filed in Roberts v. Secretary Docket No. KENT 91-896-R. The Solicitor has submitted a letter dated August 23, 1991, stating that a determination in Roberts would be controlling. Upon review of the instant file I find that the issues presented here are the same as those in Roberts and that therefore, the decision in that case governs.

On September 4, 1991, I held in Roberts that an individual such as contestant has rights arising from his certification which are entitled to due process protection. However, I further held that I had no jurisdiction to entertain the suit or to grant him relief. Those conclusions obtain here as well.

It should be noted, however, that by letter dated August 27, 1991, the Solicitor advised that a penalty petition has been filed against the operator with respect to the matters involved herein and that the operator has answered. (Docket No. WEVA 91-1719). Contestant may wish to consider the possibility of becoming a party in the penalty suit. (See Footnote 1, page 3 of the Roberts decision).

In light of the foregoing, it is ORDERED that this case be and is hereby DISMISSED.

A handwritten signature in black ink that reads "Paul Merlin". The signature is fluid and cursive, with the first name "Paul" and last name "Merlin" clearly distinguishable.

Paul Merlin
Chief Administrative Law Judge

Enclosure

Distribution:

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