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EMERY MINING AND UTAH POWER & LIGHT V. MSHA, UMWA
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FEDERAL MINE SAFETY & HEALTH REVIEW COMMISSION
WASHINGTON, D.C.
February 6, 1989

EMERY MINING CORPORATION
and UTAH POWER AND LIGHT
COMPANY

v. Docket Nos. WEST 87-130-R, etc.

SECRETARY OF LABOR,
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA)

and

UNITED MINE WORKERS
OF AMERICA (UMWA)

BEFORE: Ford, Chairman; Backley, Doyle and Lastowka, Commissioners

ORDER

BY THE COMMISSION:

On January 10, 1989, we granted the petition for interlocutory review filed by the Secretary of Labor in this consolidated civil penalty and review proceeding arising under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (1982)("Mine Act"). Our Direction for Review and Order was for the limited purpose of remanding this proceeding to the administrative law judge for a determination of whether, pursuant to Fed. R. Civ. P. 54(b), a certification of finality of his order of August 30, 1988, was appropriate. We held in abeyance our ruling on the Secretary's petition and retained jurisdiction pending the judge's determination on remand.

Following proceedings on remand, the judge issued an order on

January 27, 1989, certifying the finality of his order of August 30, 1988. Any party aggrieved by the judge's August 30 order, as made final by his certification order, may file with the Commission a petition for discretionary review within the 30-day statutory period for seeking such review (30 U.S.C. § 823(d)(2)), which is deemed to have commenced running as of the judge's January 27, 1989 certification order.

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Accordingly, the Secretary's petition for interlocutory review is dismissed, our direction for review is vacated, and this interlocutory proceeding is dismissed.

Ford B. Ford, Chairman

Richard V. Backley, Commissioner

Joyce A. Doyle, Commissioner

James A. Lastowka, Commissioner

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