

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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WASHINGTON, DC 20004-1710

FEB 26 2015

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	
	:	
v.	:	Docket Nos. WEST 2013-319-RM
	:	WEST 2013-299-M
RESOLUTION COPPER MINING, LLC	:	

BEFORE: Nakamura, Acting Chairman; Cohen and Althen, Commissioners

ORDER

BY THE COMMISSION:

These proceedings arise under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (2012) ("Mine Act"). On May 10, 2013, the Secretary of Labor filed with the Commission a petition for discretionary review of a decision by Commission Administrative Law Judge Richard Manning ruling in favor of Resolution Copper Mining, LLC ("Resolution"). 35 FMSHRC 1072 (Apr. 2013) (ALJ). On May 17, 2013, the Commission granted the Secretary's petition for discretionary review. Since the issuance of the Commission's Direction for Review, however, there have been developments that may affect the status of this case.

Those developments arise from a proceeding before Department of Labor Administrative Law Judge Richard M. Clark. That case involved a petition for modification of application of 30 C.F.R. § 57.19076¹ — the same standard involved in this case — filed by Resolution before the issuance of the citation in dispute here.

On April 12, 2011, Resolution filed a petition for modification of application of section 57.19076. That petition was heard by Judge Clark on May 23 and 24, 2012, and on November 7, 2012, he ruled in favor of Resolution. He found that section 57.19076 did not apply to personnel conveyance systems. Judge Clark did not reach the question of whether Resolution's petition satisfied the requirements set forth in section 101(c) of the Mine Act, 30 U.S.C. § 811(c), for

¹ Section 57.19076 provides that "[w]hen persons are hoisted in buckets, speeds shall not exceed 500 feet per minute and shall not exceed 200 feet per minute when within 100 feet of the intended station." 30 C.F.R. § 57.19076.

modifying the application of a standard. Approximately two weeks later, on November 28, 2012, MSHA issued Citation No. 8596049 to Resolution alleging a violation of section 57.19076.

Subsequent to issuance of the citation and to the Commission's grant of the Secretary's petition for discretionary review, the Assistant Secretary for Mine Safety and Health set aside Judge Clark's initial decision on the basis that disputes regarding the interpretation and applicability of standards must be resolved before the Commission. The Assistant Secretary remanded the case for a determination of whether Resolution's proposed alternative satisfied the standard for petitions for modification. On remand, Judge Clark has now granted Resolution's petition for modification on the basis that the operator's proposed alternative guaranteed no less than the same measure of protection afforded by section 57.19076.

As a result, the Commission now questions whether the issue directed for review is affected by Judge Clark's granting of Resolution's petition for modification. Accordingly, the Commission directs supplemental briefing from the parties on this issue. The supplemental briefing shall address all relevant issues, including what the parties believe should occur next and how the parties believe 30 C.F.R. § 44.4(c) applies to this case. The briefs of the parties shall be filed within 30 days of the date of this order and shall not exceed ten pages in length.



Patrick K. Nakamura, Acting Chairman



Robert F. Cohen, Jr., Commissioner



William I. Althen, Commissioner

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