

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

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

December 4, 2001

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	
	:	
and	:	
	:	
UNITED MINE WORKERS OF AMERICA	:	Docket No. WEVA 2000-55
	:	
v.	:	
	:	
ARCH OF WEST VIRGINIA	:	

BEFORE: Verheggen, Chairman; Jordan, Riley and Beatty, Commissioners

ORDER

BY THE COMMISSION:

This matter arises under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (1994) (“Mine Act”). In this case, the Secretary of Labor issued two citations to Arch of West Virginia (“Arch”) for the condition of fuel trucks alleging violations of 30 C.F.R. § 77.1606(c), which provides: “Equipment defects affecting safety shall be corrected before the equipment is used.” Arch contested the citations and the United Mine Workers of America (“UMWA”) intervened in support of the Secretary’s position. After a hearing, Administrative Law Judge Hodgdon vacated the two citations. 23 FMSHRC 447, 452-53 (Apr. 2001) (ALJ). Although the UMWA filed a petition for discretionary review with the Commission, the Secretary did not.

After granting the UMWA’s petition, the Commission issued a briefing order directing the parties to address the issue of the standing of the UMWA to file an appeal when the Secretary has not sought review of a judge’s decision. The Commission also invited the Secretary to address the standing issue. Pursuant to that order, the Secretary filed a brief, in which she stated that it was her intention not to enforce the citations and to vacate them if the case proceeded. Sec’y Br. at 1. Subsequently, the Secretary vacated both citations.

In light of the Secretary's vacation of the citations at issue, we vacate our direction for review and dismiss these proceedings.

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Theodore F. Verheggen, Chairman

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Mary Lu Jordan, Commissioner

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James C. Riley, Commissioner

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Robert H. Beatty, Jr., Commissioner

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