

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

601 NEW JERSEY AVENUE, NW
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March 2, 2005

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	
	:	Docket No. WEVA 2004-36
v.	:	
	:	
BAYLOR MINING, INC.	:	

BEFORE: Duffy, Chairman; Jordan, Suboleski, and Young, Commissioners

DIRECTION FOR REVIEW AND ORDER

BY THE COMMISSION:

This matter arises under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (2000) (“Mine Act”). On February 9, 2005, the Secretary of Labor filed with the Commission a petition for interlocutory review challenging Administrative Law Judge T. Todd Hodgdon’s order denying her motion to certify for interlocutory review an earlier order by the judge. Unpublished Order dated Jan. 10, 2005 (ALJ). In his earlier order, Judge Hodgdon denied the Secretary’s motion for reconsideration of his order granting in part the motion of Baylor Mining, Inc. (“Baylor”) to compel the Secretary to disclose certain documents. *See* 26 FMSHRC 905 (Nov. 2004) (ALJ) (denying reconsideration); 26 FMSHRC 739 (Aug. 2004) (ALJ) (granting in part operator’s motion to compel discovery).

Upon consideration of the Secretary’s petition for interlocutory review, we grant the petition.

The Secretary shall file her opening brief on or before 20 days from the date of issuance of this order. Baylor shall file its response brief on or before 15 days from service of the Secretary’s opening brief. The Secretary may file her reply brief on or before 10 days from service of Baylor’s response brief. The Secretary’s opening brief and the operator’s response brief shall not exceed 25 pages. The Secretary’s reply brief shall not exceed 15 pages.

In the briefs, the parties shall address the issues raised in the Secretary's petition, including the historical practice of handling the statements of miner informants who also serve as witnesses in Mine Act proceedings; whether the disclosure of the subject statements at issue would reveal the miner witness' status (or that of any other miner) as informants; the applicability of the Commission's decision in *Secretary of Labor on behalf of Logan v. Bright Coal Co., Inc.*, 6 FMSHRC 2520 (Nov. 1984) and subsequent Commission decisions addressing the informant's privilege to the current proceeding; and the applicability of the principles of the Jencks Act, 18 U.S.C. § 3500, to Mine Act proceedings.

Michael F. Duffy, Chairman

Mary Lu Jordan, Commissioner

Stanley C. Suboleski, Commissioner

Michael G. Young, Commissioner

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