

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES
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October 26, 2000

SECRETARY OF LABOR, MSHA	:	DISCRIMINATION PROCEEDING
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. WEVA 2000-58-D
ON BEHALF OF GARY DEAN MUNSON,	:	MORG CD 2000-01
Complainant	:	
v.	:	
	:	
EASTERN ASSOCIATED COAL CORP.,	:	Federal No. 2
Respondent	:	Mine ID 46-01456

**ORDER GRANTING MOTION TO COMPEL AND
DENYING MOTION FOR PROTECTIVE ORDER**

Before me are two motions addressed to a discovery dispute. Respondent has moved for an order compelling the appearance of Richard L. Eddy, President of District 31, United Mine Workers of America, at a resumption of his deposition. The deponent, Mr. Eddy, through counsel, has opposed that motion and moved for a protective order, barring resumption of the deposition.

Mr. Eddy was served with a subpoena directing him to appear for deposition on October 4, 2000, in the offices of Respondent's counsel, to give testimony regarding the issues in this discrimination proceeding. Mr. Eddy duly appeared, without counsel, and responded to questions. However, when counsel for Respondent attempted to question Mr. Eddy about his definition of a "good employee", a term he had used in an unsworn statement he had provided to the Mine Safety and Health Administration (MSHA), he refused to answer. He objected to counsel's framing of a question as to how he would assess the conduct of one of District 31's employees in a hypothetical situation. Mr. Eddy viewed the question as inquiring into his running of the District office, which he viewed as irrelevant. At that point, he determined that he should be represented by counsel and requested an opportunity to return to his office to contact counsel. The deposition was adjourned.

Respondent served its motion on October 12, 2000, seeking an order compelling Mr. Eddy to appear for a resumption of his deposition, or, alternatively, to bar use of his unsworn statement as evidence in this proceeding. Mr. Eddy has moved for a protective order, requesting that Respondent's motion be denied on grounds that compelling resumption of the deposition would amount to "unjust harassment." The basis for the harassment claim is that the deposition had consumed approximately two hours and that Respondent's counsel had inquired into privileged matters and had improperly terminated the deposition. The basis of the assertion of privilege is not explained, except by a reference to "internal Union affairs."

Deponent's position is not well-founded, either factually or legally. The claim of privilege is unexplained, unsupported by citation to legal authority and is not apparent from the nature of the inquiry. The deposition transcript also makes clear that it was the deponent who requested an adjournment of the deposition in order to return to his office to contact and secure legal representation, presumably for a resumption of the deposition, which could not be accomplished in a matter of days, in part, because of his unavailability. While it is possible that Mr. Eddy would have remained and participated in a continuation of the deposition, that is not at all clear from the record.

Based upon the forgoing, Eddy's motion for a protective order will be denied and Respondent's motion to compel will be granted. All counsel, parties and witnesses are admonished to cooperate in the discovery process. Good faith attempts to rephrase questions can often avoid an objection. Counterproductive attempts to pursue details of questionable significance should be avoided. The particular question that generated the problem here, for example, might be reconsidered. The basis for Mr. Eddy's belief that Complainant was a "good worker" had been explored in some detail. In fact, Respondent's witnesses had been somewhat complimentary of Complainant's work performance at the temporary reinstatement hearing. Hopefully, counsel will find more productive lines of inquiry than pressing Mr. Eddy for a response to a very limited hypothetical question about actions of a District 31 employee.

Counsel are also reminded of the requirements of Fed. R. Civ. P. 30(d), applicable here through Commission Rule 2700.1(b), 30 C.F.R. § 2700.1(b). Objections are to be stated concisely and in a non-argumentative and non-suggestive manner. In most situations, the question should be answered after the objection is noted. A witness can be instructed not to answer only in very limited circumstances, as applicable here, to preserve a privilege or to allow prompt presentation of a motion for a protective order on grounds that the examination is being conducted in bad faith, or such a manner as unreasonably to annoy, embarrass, or oppress the deponent. If privilege is asserted as an objection, the specific privilege claimed should be identified and the basis for asserting it should be explained. Efforts should be made to rephrase the inquiry to avoid a bona fide claim of privilege. As noted above, the unexplained mention of privilege in Deponent's motion does not appear bona fide. And, while the line of inquiry might have been shaped in a more effective or less objectionable manner, it did not approach the level for which relief might be appropriately sought under Rule 30(d)(3).

Based upon the foregoing, Respondent's motion to compel is granted and Deponent's motion for a protective order is denied. Mr. Eddy is directed to appear for resumption of his deposition, in the offices of Respondent's counsel, at the earliest convenience of the parties to this proceeding.

Michael E. Zielinski
Administrative Law Judge

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