

COMMONWEALTH OF KENTUCKY
OCCUPATIONAL SAFETY AND HEALTH
REVIEW COMMISSION
10-KOSH-00092

KOSHRC 4734-10

SECRETARY OF THE LABOR CABINET
COMMONWEALTH OF KENTUCKY

COMPLAINANT

v

THE OKONITE COMPANY

and

THE INTERNATIONAL BROTHERHOOD
OF ELECTRICAL WORKERS,
LOCAL UNION 2356,
TOM GRIMES

RESPONDENTS

ORDER OF THIS COMMISSION
CALLING THIS CASE FOR
INTERLOCUTORY APPEAL,
CANCELLING THE DEPOSITION
OF AN INJURED EMPLOYEE
AND REMAND TO THE
HEARING OFFICER

This case is before us on complainant's April 16, 2010, request for interlocutory appeal of the hearing officer's order permitting the deposition of an injured Okonite employee. Then on April 22 union filed a timely request for interlocutory appeal.

We have not received a response from Okonite.

With the record of the proceedings before us, as well as the two requests for interlocutory appeal, we are sufficiently informed to grant interlocutory review without asking for briefs.

Section 27 (1) of our rules of procedure, Discovery, Depositions and Interrogatories says in part:

Except by special order of the commission or the hearing officer, discovery depositions of parties, intervenors or witnesses and interrogatories directed to parties, intervenors or witnesses shall not be allowed.

803 KAR 50:010, section 27 (1) (emphasis added)

According to our hearing officer's April 12 order approving the deposition, Okonite seeks to take the deposition of an injured employee. Our record contains a notice of deposition filed by respondent Okonite; that notice schedules the deposition of David Sparks.

Section 27 (1) of our rules says discovery by deposition and interrogatories may only be had upon special order of the commission or hearing officer. This of course means discovery by these methods will not ordinarily be permitted.

After our review of the record in this case, the notice to take deposition, the hearing officer's order and the two requests for interlocutory appeal, we see no special reasons were advanced for this deposition. Neither depositions nor interrogatories will be permitted in this case.

This case is remanded to the hearing officer for a trial on the merits.

It is so ordered.

May 4, 2010.

s
Faye S. Liebermann
Chair

s
Michael L. Mullins
Commissioner

S
Paul Cecil Green
Commissioner

Certificate of Service

A copy of this order on interlocutory appeal has been served this May 4, 2010 on the following individuals in the manner indicated:

By messenger mail:

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S
Frederick G. Huggins