FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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November 17, 2023

SECRETARY OF LABOR, MINE SAFETY AND HEALTH ADMINISTRATION (MSHA), Petitioner v. Warrior Met Coal Mining LLC, Respondent.	INTERFERENCE PROCEEDINGS Docket No. SE 2023-0146 Mine: No. 4 Mine Mine ID No. 01-01247 Docket No. SE 2023-0147 Mine: No. 7 Mine Mine ID No. 01-01401

ORDER DENYING THE ACTING SECRETARY'S MOTION FOR SUMMARY DECISION, DENYING THE ACTING SECRETARY'S MOTION TO STRIKE WARRIOR MET'S AMENDED ANSWER, AND GRANTING WARRIOR MET'S MOTION FOR LEAVE TO FILE AMENDED ANSWER

Before: Judge Thomas P. McCarthy

These dockets are before the undersigned upon the Secretary of Labor's interference complaint filed against Respondent Warrior Met Coal Mining, LLC, for alleged violations of section 105(c)(1) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 815(c)(1).

I. Procedural History

Dockets SE 2023-0146 and SE 2023-0147 were assigned to the undersigned on April 12, 2023. Prior thereto, the undersigned disposed of numerous other dockets that pre-dated the assignment of the instant dockets and that arose during an economic strike. In the interest of providing a comprehensive record, a truncated recitation of the procedural history for the prior dockets is included below.

a. Prior Dockets

In the prior dockets, the Secretary issued five 104(a) citations and thirteen penalty assessments to Warrior Met Coal Mining LLC ("Respondent"), each alleging a violation under section 103(f) of the Mine Act. The collective citations alleged that Respondent violated the Mine Act on multiple occasions by denying "miners' representatives" access to the No. 4 and No. 7 Mines. Respondent denied these allegations and asserted that the individuals claiming to be

miners' representatives were not properly designated by an individual or individuals actively working in a coal or other mine. *See* 30 U.S.C. § 802(g); *see also Cyprus Empire Corp.*, 15 FMSHRC 10 (Jan. 25, 1993).

On November 8, 2022, Respondent timely filed two documents titled "Notice of Contest and Unopposed Request for Expedited Hearing." The first of these filings concerned Docket Nos. SE 2023-0028 and -0029, which both involved alleged violations at the No. 7 Mine. The second filing concerned Docket Nos. SE 2023-0030, -0031, and -0032, which related to alleged violations at the No. 4 Mine. On December 2, 2022, the Secretary of Labor filed Answers to each Notice of Contest.[1]

Following these initial submissions, the parties engaged in protracted parleys involving complex discovery that was at times directly overseen by this administrative tribunal. Both parties engaged in written discovery and Respondent conducted depositions of an MSHA district manager, assistant district manager, and coal field office supervisor. On January 11, 2023, the Acting Secretary submitted a Motion in Limine to Exclude Irrelevant Evidence and Testimony. On January 27, 2023, Respondent filed a Motion for Temporary Relief requesting that the undersigned

> consolidate all Petitions for Civil Assessment of Civil Penalties against [Respondent] [Dockets Nos. SE 2023-0041, SE 2023-0042, SE 2023-0051, SE 2023-0053, SE 2023-0056, and SE 2023-0057] and prohibit any future Petitions for Civil Assessment of Civil Penalties against [Respondent] related to the Enforcement Actions or any similar circumstances pending the resolution of this matter.

Resp't App. for Temp. Relief at 3. Respondent then filed a Motion to Compel on January 31, 2023, seeking to require the Acting Secretary to "fully respond to [Respondent's] Interrogatories

[1] The Secretary and, after March 11, 2023, the Acting Secretary, submitted Civil Penalty Petitions on the following dates:

- January 6, 2023, for SE 2023-0041 and -0042;
- January 17, 2023, for SE 2023-0056 and -0057;
- January 19, 2023, for SE 2023-0051 and -0053;
- February 21, 2023, for SE 2023-0067 and -0068;
- March 2, 2023, for SE 2023-0089;
- March 21, 2023, for SE 2023-0098, -0099, and -0101; and
- April 3, 2023, for SE 2023-0118.

Respondent submitted Answers to eight of the thirteen Civil Penalty Petitions, which were received on:

- February 6, 2023, for SE 2023-0041 and -0042;
- February 15, 2023, for SE 2023-0051, -0053, -0056, and -0057; and
- March 23, 2023, for SE 2023-0067 and -0068.

and Requests for Production of Documents, and to provide further testimony." Resp't Mot. to Compel at 1.

On February 2, 2023, my office received 1) Respondent's Opposition to the Secretary's Motion in Limine, 2) Respondent's Motion to Postpone and Reschedule Hearing and Related Prehearing Deadlines, and 3) the Secretary's Opposition to Respondent's Application for Temporary Relief. On February 7, 2023, the undersigned held a conference call with the parties to discuss outstanding motions, including Respondent's Motion to Compel and the Acting Secretary's Motion in Limine. During the conference call, the parties were encouraged to narrow and work toward resolution of outstanding discovery issues. In addition, the Secretary was ordered to provide a privilege log consistent with Fed. R. Civ. Proc. 26(b)(5)(A)(ii). Further, the undersigned agreed to review disputed documents *in camera* if the parties were unable to resolve redaction or privilege issues through a privilege log or protective order.

On February 13, 2023, the undersigned issued an Order Denying Respondent's Application for Temporary Relief.[2] On February 15, 2023, the Secretary submitted a Response to Respondent's Motion to Compel. On February 21, 2023, following receipt of the Secretary's Response, the undersigned held a follow-up conference call to further discuss all discovery issues that were outstanding, including the discoverability of certain topics, the production of documents by MSHA to Respondent, the submission of other documents for *in camera* review, and further depositions of MSHA and United Mine Workers of America ("UMWA") representatives.[3] At the

[2] In its Application for Temporary Relief, Respondent argued that the miners' representatives at issue in this case were not properly designated by striking employees, who do not meet the Commission's definition of "miners" under *Cyprus Empire Corp*., 15 FMSHRC 10 (Jan. 1993). Respondent averred that the Secretary issued a new civil penalty each time Respondent declined entry to the person designated as a miners' representative by the striking employees. For relief, Respondent requested that the undersigned consolidate all Petitions for Assessment of Civil Penalties against Respondent. At the time the Application for Temporary Relief was filed, the applicable Dockets Nos. were SE 2023-0041, SE 2023-0042, SE 2023-0051, SE 2023-0053, SE 2023-0056, and SE 2023-0057. Respondent also requested that the undersigned prohibit any future Civil Penalty Assessments against Respondent relating to these underlying matters. *See* Resp't App. for Temp. Relief at 3.

The undersigned denied Warrior Met's application for temporary relief from the issuance of further 104(a) citations, for three reasons. First, the Mine Act only allows temporary relief to be granted from "order[s]," not from citations. *See* 30 U.S.C. § 815(b)(2). Second, the relevant provision of the Mine Act explicitly precludes the Commission from granting temporary relief from "a citation issued under subsection (a) . . . of section 104." *Id.*; *see also* 29 C.F.R. § 2700.46(a). Finally, the Commission does not have the authority to stop the Secretary from proposing penalties. *See generally, Am. Coal Co. v. FMSHRC*, 933 F.3d 723, 724 (D.C. Cir. 2019).

[3] With regard to Respondent's discovery requests seeking the identity of striking miners who designated the UWMA representatives, the undersigned found that MSHA was not obligated to disclose the names of the designating miners. *Wolf Run Mining*, 446 F. Supp. 651, 655-56 (N.N. W. Va. 2006). Accordingly, with regard to that issue, the undersigned granted the Secretary's Motion in Limine and denied Warrior Met's Motion to Compel. Given the parties' representation that they were working towards a settlement of the above matters, the undersigned found it unnecessary to definitively rule on other outstanding discovery or evidentiary issues at that time.

conclusion of this conference call, Respondent was given until March 3, 2023 to file a Reply to the then Acting Secretary's Opposition, and the Acting Secretary was given until March 10, 2023 to file a Sur-Reply. Respondent timely filed a Reply on March 10, 2023, and the Acting Secretary submitted a Sur-Reply on March 12, 2023.

On March 26, 2023, the Acting Secretary filed a Motion to Dismiss all of the five Contest Proceedings and five of the thirteen Civil Penalty Proceedings in the exercise of her prosecutorial discretion. *See RBK Construction, Inc.*, 15 FMSHRC 2099, (October 1993). My office received a first amended version of this Motion to Dismiss on April 2, 2023, which was updated to include all thirteen of the pertinent Civil Penalty Dockets. On April 10, 2023, my office received a second amended version of the Acting Secretary's Motion to Dismiss ("Amended Motion to Dismiss"). That same day, the Acting Secretary filed a section 105(c)(1) interference complaint with two counts. Count One alleged that Respondent interfered with the exercise of statutory rights by miners and miners' representatives at the No. 4 and No. 7 mines by refusing to allow properly designated miners' representatives to accompany MSHA on inspections, thereby discouraging miners and their representatives from exercising their rights under section 103(f) and chilling their participation in MSHA inspections. Count Two alleged that Respondent interfered with the exercise of statutory rights by miners and miners' representatives at the No. 4 and No. 7 mines by filing a motion to hold the UMWA and individual picketers in contempt of Alabama Circuit Court for alleged violations of the Court's latest injunction, including their attempts to exercise section 103(f) rights, thereby chilling miner and miners' representatives exercise of those rights.

Also on April 10, 2023, Respondent filed a Motion to Consolidate the collective Contest and Civil Penalty Proceedings with the above-captioned Interference Complaints.

On April 18, 2023, the undersigned held a conference call with the parties to ascertain their respective positions on the pending motion to consolidate. During that call, the undersigned represented that he was inclined to grant the Acting Secretary's Motion to Dismiss, but reserved decision on this matter until Respondent had an opportunity to file a written response to this motion. On April 20, 2023, the Acting Secretary filed an Opposition to Respondent's Motion to Consolidate, and Respondent filed a Response to the Acting Secretary's Amended Motion to Dismiss.

On April 28, 2023, the undersigned issued a written order granting the Acting Secretary's Amended Motion to Dismiss and Denying Warrior Met's Motion to Consolidate the collective Contest and Civil Penalty Proceedings with these interference dockets.

b. Active Interference Dockets

The Acting Secretary filed an initial Interference Complaint on April 10, 2023, and, as previously stated, this matter was assigned to the undersigned on April 12, 2023. On April 14, 2023, the Acting Secretary filed an Amended Interference Complaint in Docket Nos. SE 2023-0146 and -0147, alleging that Respondent chilled miner and miners' representatives' exercise of section 103(f) rights when it filed a Motion for Contempt in Alabama Circuit Court in response to alleged continued violations of the Circuit Court's injunction. In this Amended Complaint, the Acting Secretary alleges that Respondent refused to allow designated miners' representatives to

accompany MSHA on inspections on November 4, 2022; November 8–9, 2022; November 14–17, 2022; November 22–23, 2022; November 29, 2022; December 1–2, 2022; December 5–6, 2022; December 8, 2022; December 15, 2022; January 11–13, 2023; January 20, 2023; January 26–27, 2023; January 30, 2023; February 22–23, 2023; March 10, 2023; and March 13, 2023. *See* Sec'y Am. Compl., ¶¶ 9–44. The Acting Secretary dropped Count One of the original interference complaint and alleged that in January 2023, the UMWA, Floyd Conley, Eddie Pinegar, and Keri Bester filed section 105(c) complaints with MSHA alleging interference with statutory rights. The sole remaining count remained the same as Count Two of the original complaint alleging section 105(c)(1) interference by pursuit of state court contempt charges for the exercise of statutory rights under the Mine Act, including section 103(f) walkaround rights.

On May 15, 2023, Respondent filed an Answer to the Amended Interference Complaint. On May 24, 2023, the Secretary filed a Motion for Default Judgement, which was withdrawn on May 25, 2023.

Thereafter, on August 31, 2023, the Secretary filed a Motion for Summary Decision. On September 5, 2023, Respondent filed an Amended Answer to the Amended Interference Complaint. On September 6, 2023, the undersigned conducted a conference call with the parties and discussed the arguments set forth in the Secretary's Motion for Summary Decision and in Respondent's Amended Answer.[4] Near the conclusion of the call, the undersigned denied the Secretary's motion for summary decision, as follows:

> [At appx. 3:53 to 4:23] "With regard to the motion for summary decision, I am denying that motion. Under Section [105(c)(1)], the language of the Act says that 'because of the exercise of any statutory right.' And, I find a genuine issue of law as to whether, in fact, there is any protected activity in this case. So, that motion is denied."[5]

Following the September 6, 2023 conference call, the undersigned received the Secretary's Motion to Strike Respondent's Amended Answer and Respondent's Initial Opposition to the Secretary's Motion for Summary Decision. On September 8, 2023, Respondent filed a Motion for Leave to File Amended Answer, which pertains to its answer previously filed on September 5, 2023. On September 10, 2023, the Secretary filed its Opposition to Respondent's Motion to Amend its Answer.

The undersigned is in receipt of a number of other filings from the parties, including 1) Respondent's Motion to Compel, filed September 20, 2023, and the Secretary's Response thereto, filed September 28, 2023; and 2) Respondent's Motion for Phone Status and Hearing on Motions, filed October 4, 2023, and the Secretary's Response in Opposition, filed October 17, 2023. Further, the undersigned is in receipt of two October 16, 2023 filings from the United Mine

[4] In addition to the previously referenced calls on April 18 and September 6, 2023, the undersigned also conducted a conference call on July 31, 2023 to ascertain the procedural status of the two interference dockets as of that date.

[5] In denying the Secretary's Motion for Summary Decision, the undersigned inadvertently cited Section 105(c)(3) rather than 105(c)(1).

Workers of America ("UMWA"), including 1) a Motion to Revoke Third Party Witness Subpoenas and Notice of Deposition, and 2) a Motion to Revoke Third Party Subpoena Duces Tecum. The undersigned will hold a conference call with parties and the UMWA on Tuesday, November 21, 2023, to discuss their respective positions as to the aforementioned filings. A hearing is currently scheduled to commence on December 18, 2023.

II. The Acting Secretary's Motion for Summary Decision

The Secretary argues that the initial pleadings in these matters are sufficient to establish, as a matter of law, that Respondent's actions were violative of the Mine Act's interference provision. *See* 30 U.S.C. § 815(c)(1). More specifically, the Secretary submits, in part:

> The undisputed material facts establish that Warrior interfered with walkaround rights. The principal issue in this case is whether Warrior interfered with miners' rights when it included in its contempt motion explicit reference to section 103(f) rights, which were not a subject of the injunctions that Warrior bases the motion on. Warrior has a right to pursue its state court claims; it has no right to leverage the power and prestige of the courts to condemn—unnecessarily and extraneously—section 103(f) rights. Warrior's actions—filing a motion seeking to hold persons in contempt for attempts to accompany MSHA during inspections—would be viewed by reasonable miners or miners' representatives, under the totality of the circumstances, as tending to interfere with the exercise of walkaround rights.

Sec'y Mot. for Summary Decision at 8.

The Secretary's motion essentially restates its position initially set forth before dismissal of the prior dockets when the Secretary opined, as follows:

> The question in the interference case is not whether striking miners are "miners." It is whether, from the perspective of a reasonable miner, [Respondent's] actions tended to interfere with miners' or miners' representatives' exercise of protected rights, and whether those actions were justified by a legitimate and substantial business interest. *See* 30 U.S.C. 815(c)(1); *Marshall Cnty. Coal Co. v. Fed. Mine Safety & Health Rev. Comm'n*, 923 F.3d 192, 201-204 (D.C. Cir. 2019). That analysis focuses on any reasonable miner or miners' representative, not on any particular one. *Wilson v. Fed. Mine Safety & Health Rev. Comm'n*, 863 F.3d 876, 882 (D.C. Cir. 2017).

Sec'y Opp'n to Resp't Mot. to Consolidate at 2.

In support of its request for summary decision, the Secretary identifies the following set of "undisputed facts" that are purportedly sufficient to satisfy the Secretary's burden of proof:

1. Warrior and the United Mine Workers of America were engaged in a labor dispute arising from the bargained contract between the parties from April 2021 through March 2023.

2. During the dispute, Warrior filed in the Circuit Court of Tuscaloosa County, Alabama five injunctions seeking to bar the UMWA and other individuals from various actions (including property damage and business interference).
3. During the labor dispute, beginning in October 2022, several UMWA members attempted to exercise section 103(f) rights to accompany MSHA on inspections.
4. Warrior refused to allow those UMWA members to accompany MSHA.
5. These attempts continued through the time Warrior filed a motion for contempt.
6. On December 9, 2022, Warrior filed a motion in the Circuit Court of Tuscaloosa County, Alabama to hold the UMWA and individual picketers in contempt of court for violations of the fifth injunction.
7. The contempt motion asserts various reasons for holding individuals in contempt, including trespass and damage to equipment, placing jack rocks in the road, holding a demonstration, and intimidation of other workers.
8. None of these are the basis for the Secretary's interference complaint.
9. The motion then concludes with a final rationale for contempt:
   Since October 26, 2022 and on numerous occasions continuing to the present at both No. 4 Mine and No. 7 Mine, UMWA agents and employees, usually two at a time, have arrived at various entrance gates and informed Warrior managers that they are there to conduct an inspection of the Warrior mine. They claim to be exercising their rights as miners' representatives under Section 103(f) of the Mine Act, which says a representative designated by two or more miners shall be given an opportunity to accompany the [Mine Safety and Health Administration] inspector during a physical inspection of the mine. These UMWA agents claim to have been designated by Warrior miners, but will not provide the names or contact information of the alleged designators (i.e., the Warrior miners who chose them). Warrior has responded professionally and consistently that they may not enter the mine property. The Federal Mine Safety and Health Review Commission (and its ALJ[s]) is the administrative judicial body charged with the interpretation of the Mine Act and it has previously ruled that striking miners are not "miners[]" under the Mine Act and therefore striking miners cannot designate representatives to accompany MSHA inspectors during MSHA's inspections of the mine. Therefore, the UMWA agents are not at the mine lawfully in these circumstances and are in direct violation of the Fifth Injunction when they park at the mine entrance gate and get out of […] their cars to confront with mine management with these unlawful demands.
10. The contempt motion is a public filing.
11. The day after it was filed, screenshots were shared on Twitter.
12. The state court has yet to rule on that motion as of the date of this filing.
13. The UMWA and two individuals subsequently filed section 105(c) discrimination complaints with MSHA alleging that Warrior violated section 105(c) when it refused to allow them to accompany MSHA on inspections.
14. Based on the complaint[s], MSHA conducted an investigation and gathered publicly available information regarding the parties' relationship, activities,

court filings and social media posts in order to determine if any section 105(c) rights were affected.

15. MSHA determined that the specific clause in the contempt motion referring to section 103(f) rights constituted interference under section 105(c).
16. MSHA determined that the public nature of the contempt motion filing and the fact that it was shared on social media created an atmosphere that suggested miners could be punished in state court for attempting to exercise their rights.
17. Warrior has a history of violations of the Mine Act over the 15 months preceding the alleged section 105(c) violation at issue in this case.
18. Warrior is a large operator; in 2022, it produced 6.3 million tons of coal.

Sec'y Mot. for Summary Decision at 3-5.

The Secretary argues that the factual assertions delineated above establish that Respondent's actions "reasonably tended to discourage miners from engaging in protected activities," and tended to interfere with the exercise of statutory rights. *See Sec'y of Lab. ex rel. Poddey v. Tanglewood Energy, Inc*., 18 FMSHRC 1315, 1321 (Aug. 1996); *see also Marshall Cnty. Coal Co.*, 923 F.3d at 202 (D.C. Cir. 2019) (quoting *Moses v. Whitley Dev. Corp*., 4 FMSHRC 1475, 1479 n.8 (1982), aff'd, 770 F.2d 168 (6th Cir. 1985)(holding that "[w]hether an operator's actions are proscribed by the Mine Act must be determined by what is said and done, and by the circumstances surrounding the words and actions.").

In its Opposition to the Secretary's Motion for Summary Decision, Respondent argues as follows:

> The Secretary relies almost exclusively on her own unverified allegations found in the Secretary's Amended Complaint – many of which were specifically denied by Warrior in its Answer and subsequent Amended Answer. For example, in paragraph 3 of the Secretary's MSD, she states: "During the labor dispute, beginning in October 2022, several UMWA members attempted to exercise section 103(f) rights to accompany MSHA on inspections." Of course, contrary to the Secretary's unsupported representation to the Court, this paragraph is not "undisputed." Indeed, a central question in this case is whether the UMWA members—who undisputedly were not lawfully designated as miners' representatives by "miners" as defined in the Mine Act—were in fact "exercis[ing] section 103(f) rights to accompany MSHA on inspections." The Commission's controlling case law clearly answers that question in the negative. *See Cyprus Empire Corp*., 15 FMSHRC 10 (Jan. 1993) ("The Mine Act's definition of 'miner' is not grounded in the rights of employees under the [National Labor Relations Act] or under private collective bargaining agreements. We perceive no statutory warrant in the Mine Act for treating an operator's striking employees as 'miners.'"); *see also Sherwin Alumina*, 37 FMSHRC 2153 (Sept. 2015) (ALJ McCarthy) ("*Cypress Empire* controls in the context of an economic strike."). Moreover, the Secretary fails to adequately explain why the United States Supreme Court decision in *Bill Johnson's Restaurants, Inc. v. N.L.R.B.*, 461 U.S. 731 (1983) does not prevent the ALJ from deciding the issues presented in this case while Warrior's

> Fourth Motion for Contempt remains pending before the Circuit Court for Tuscaloosa County, Alabama.

Warrior Opp. to Mot. for Summary Decision at 3-4. Respondent further contends that:

> It is well-established that Rule 56(c)(1)(A) does not permit a party to rely on the pleadings to establish a fact. *Middlegate Dev., LLP v. Beede*, Case NO. 10-0565-WS-C, 2011 U.S. Dist. LEXIS 88327 *43-44 (S.D. Ala. Aug. 9, 2011) ("[H]owever, the Beedes' only citation for the fact is to "Beede Answer and Counterclaim." That is not sufficient to satisfy the Beedes' threshold burden under Rule 56 of the Federal Rules of Civil Procedure. As summary judgment movants, the Beedes must support their assertions of undisputed fact by reference not to pleadings, but to specific materials in the record."); *Keever v. First Am. Title Ins. Co.*, Case No. 4:13-cv-00246-HLM, 2014 U.S. Dist. LEXIS 186782, *6-7 (N.D. Ga. May 21, 2014), *aff'd*, 605 App'x 953 (11th Cir. 2015) (holding that plaintiff could not cite only unsubstantiated allegations in the complaint in support of a summary judgment motion). The Secretary's failure to provide actual evidence in support of a Motion for Summary Decision is alone grounds for denial of that Motion.

Warrior Opp. to Mot. for Summary Decision at 3, n. 2.

The legal standards governing disposition of a motion for summary decision within Commission proceedings are relatively straightforward. Commission Rule 67(b), 29 C.F.R. § 2700.67(b), provides that: "[a] motion for summary decision shall be granted only if the entire record, including the pleadings, depositions, answers to interrogatories, and affidavits, shows: 1) that there is no genuine issue as to any material fact; and 2) that the moving party is entitled to summary decision as a matter of law." 29 C.F.R. § 2700.67(b); *see also Missouri Gravel Co.*, 3 FMSHRC 2470, 2471 (Nov. 1981) ("[A] party must move for summary decision and it may be entered only when there is no genuine issue as to any material fact and when the party in whose favor it is entered is entitled to it as a matter of law."). The Commission has long held that:

> Summary decision is an extraordinary procedure. If used improperly it denies litigants their right to be heard. Under our rules, a party must move for summary decision and it may be entered only when there is no genuine issue as to any material fact and when the party in whose favor it is entered is entitled to it as a matter of law.

Missouri Gravel Co., 3 FMSHRC 2470, 2471 (Nov. 1981) (footnote omitted). It "is authorized only 'upon proper showings of the lack of a genuine, triable issue of material fact.'" *Energy W. Mining Co.*, 16 FMSHRC 1414, 1419 (July 1994) (*quoting Celotex Corp. v. Catrett*, 477 U.S. 317, 327 (1986)).[6]

[6] Summary judgment is proper only if there is no reasonably contestable issues of fact that are potentially outcome determinative. *See e.g., Wallace v. SMC Pneumatics, Inc*., 103 F.3d 1394, 1396 (7th Cir. 1997). This standard mirrors the standard for a directed verdict under Federal Rule of Civil Procedure 50(a). Under that standard, the trial judge must direct a verdict if, under the governing law, there can be but one

A motion shall be accompanied by a memorandum of points and authorities and a statement of material facts specifying each material fact as to which the party contends there is no genuine issue, and be supported by reference to accompanying affidavits or other verified documents. 29 C.F.R. § 2700.67(c). An opposition shall include a memorandum of points and authorities and may be supported by affidavits or other verified documents. The opposition shall also include a separate concise statement of each genuine issue of material fact supported by reference to any accompanying affidavits or other verified documents. Material facts identified as not in issue by the moving party shall be deemed admitted unless controverted by the statement in opposition. If a party does not respond in opposition, summary decision, if appropriate, shall be entered for the moving party. 29 C.F.R. § 2700.67(d).

When considering a motion for summary decision, the judge must draw all "justifiable inferences" from the evidence in favor of the non-moving party. FED. R. CIV. P. 56; *Celotex Corp. v. Catrett*, 477 U.S. 317, 327 (1986). The judge should only grant a summary decision "upon proper showings of the lack of a genuine, triable issue of material fact." *Energy West Mining Co.*, 16 FMSHRC 1414, 1419 (July 1994) (quoting *Missouri Gravel Co.*, 3 FMSHRC 2470, 2471 (Nov. 1981) and *Celotex Corp. v. Catrett*, 477 U.S. 317, 327 (1986)); see also *Lakeview Rock Prods., Inc.*, 33 FMSHRC 2985, 2987-88 (Dec. 2011) (reiterating the Commission's summary decision rules). In reviewing a record on summary decision, a judge must evaluate the evidence in the light most favorable to the party opposing the motion. *Hanson Aggregates New York, Inc.*, 29 FMSHRC 4, 9 (Jan. 2007); see also *Poller v. Columbia Broadcasting Sys., Inc.*, 368 U.S. 464, 473 (1962); *United States v. Diebold, Inc.*, 369 U.S. 654, 655 (1962)).

Here, the Secretary attempts to dictate a set of "undisputed facts" alleged to support her request for summary decision. 'Undisputed Fact 3' avers that "During the labor dispute, beginning in October 2022, several UMWA members attempted to exercise section 103(f) rights to accompany MSHA on inspections." Sec'y Mot. for Summary Decision at 3. During disposition of the prior dockets, and throughout the course of these subsequent interference proceedings, Respondent has opposed the contention that UMWA members' repeated efforts to accompany MSHA on routine inspections constituted protected attempts to exercise section 103(f) walkaround rights. *See* Sec'y Mot. for Summary Decision at 3. Indeed, Respondent contends that "a central question in this case is whether the UMWA members—who undisputedly were not lawfully designated as miners' representatives by 'miners' as defined in the Mine Act—were in fact 'exercis[ing] section 103(f) rights to accompany MSHA on inspections.'" Warrior Opp. to Mot. for Summary Decision at 3-4. Whether the UMWA members were properly designated and thus empowered to exercise section 103(f) rights thus presents a genuine issue of material fact that might affect the Secretary's ability to carry her ultimate burden to establish that Respondent interfered with the exercise of the statutory rights of any miner or miners' representative because of the exercise by such miner or representative of miners, on behalf of himself or others, of any statutory right afforded by the Act. As noted, at the summary decision stage, an inference must be drawn in Respondent's favor that the UMWA members at issue here *were not* properly designated

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reasonable conclusion as to the verdict. If reasonable minds could differ as to the import of the evidence, however, a verdict should not be directed. See *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250-251 (1986), citing *Brady v. Southern R. Co.*, 320 U.S. 476, 479-480 (1943) and *Wilkerson v. McCarthy*, 336 U.S. 53, 62 (1949).

as miners' representatives. *See, generally, MClass Mining, LLC*, 41 FMSHRC at 582; *see also* 30 U.S.C. § 813(f). As the Secretary has thus not met her burden to establish the lack of a genuine, triable issue of material fact, taking the extraordinary step of granting summary decision in her favor would be inappropriate. *See generally, Energy W. Mining Co.*, 16 FMSHRC at 1419.

Furthermore, the Secretary's case, in her own words, turns on a determination of "how a reasonable miner or miners' representative—regardless of whether any particular person was on strike—would be affected by Respondent's actions." Sec'y Opp'n to Resp't Mot. to Consolidate at 2. The Secretary alleges that "Warrior's specific identification of the attempted exercise of Mine Act rights as part of the contemptible behavior is interference." Sec'y Mot. for Summary Decision at 8, n. 2; see also alleged "Undisputed Fact 15" above ("MSHA determined that the specific clause in the contempt motion referring to section 103(f) rights constituted interference under section 105(c)." In the clause MSHA relies on, Respondent states: "They [i.e., UMWA agents and employees] claim to be exercising their rights as miners' representatives under Section 103(f) of the Mine Act …." Sec'y Mot. for Summary Decision at 4. At Undisputed Fact 16, MSHA also determined that the public nature of the contempt motion filing and the fact that it was shared on social media created an atmosphere that suggested miners could be punished in state court for attempting to exercise their rights. Sec'y Mot. for Summary Decision at 5.

Despite MSHA's arguments, I find summary judgment inappropriate. The language of section 105(c)(1) speaks to interference with the exercise of the statutory rights of any miner or miner representative because of the exercise by such miner or representative of miners, on behalf of himself or others, of any statutory right afforded by the Act. If there is no exercise of a statutory right and only the attempted exercise of purported walkaround rights that have not been recognized as protected activity by the Commission, there is a genuine issue of law as to whether there can be any interference because of the exercise of any statutory right under the Act.

In sum, I find the Secretary's motion insufficient to establish the absence of any genuine issue of material fact, or to mollify this tribunal's concerns as to the existence of the requisite protected activity to support a finding of interference. Accordingly, the Secretary's Motion for Summary Decision is **DENIED.**

III. Respondent's Motion to Amend its Answer

On September 5, 2023, the undersigned received Respondent's Amended Answer to the Amended Interference Complaint. Respondent did not request formal leave to file its amended answer, but rather filed a motion on September 8, 2023, seeking retrospective leave to file its amended answer. On September 6, 2023, the undersigned received the Secretary's Motion to Strike Respondent's Amended Answer. On September 10, 2023, the undersigned received the Secretary's Opposition to Respondent's Motion to Amend its Answer.

The Commission has no specific rule regarding amendment of pleadings. Commission Rule 29 C.F.R § 2700.1(b), however, states that "[o]n any procedural question not regulated by the Act, these Procedural Rules, or the Administrative Procedures Act . . . the Commission and its judges shall be guided so far as practicable by the Federal Rules of Civil Procedure." Federal Rule of Civil Procedure 15 allows a party to amend a pleading once as a matter of course within 21 days

after serving it (or 21 days after service of a responsive pleading, or Rule 12(b), (e) or (f) motion). Fed. R. Civ. P. 15(a)(1)(A),(B); *see also* 29 C.F.R. 2700.1(b) (the Commission incorporates the Federal Rules of Civil Procedure, so far as practicable, on any procedural question not regulated by the Mine Act, the Commission's Procedural Rules, or the Administrative Procedure Act). In all other cases, a party may amend pleadings only with the opposing party's consent or leave of the court; the court should freely give leave where justice so requires. Fed. R. Civ. P. 15(a)(2). The Commission has required a liberal application of Rule 15(a), explaining that "amendments are to be liberally granted unless the moving party has been guilty of bad faith, has acted for the purpose of delay, or where the trial of the issue will be unduly delayed. *See Wyoming Fuel*, 14 FMSHRC 1282, 1290 (Aug. 1992), citing *Cyprus Empire Corp*., 12 FMSHRC 911, 916 (May 1990).

Respondent's motion to amend its answer presents several new defenses. First, Respondent submits that, under *Bill Johnson's Restaurants, Inc. v. NLRB*, 461 U.S. 731 (1983), the Commission cannot enjoin or interfere with state court proceedings, or any arguments advanced in those proceedings. *See* Warrior Amended Ans. at 6-7. Second, Respondent submits that, under the U.S. Supreme Court's decision in *Bill Johnson's*, the substance of the state law claims are reserved for the state court to adjudicate. *Id.* Third, Respondent submits that that the Secretary's amended complaint must be dismissed for failure to state a claim on which relief can be granted. *Id.* Fourth, Respondent asserts that the Secretary's proposed remedy violates the First Amendment by seeking to enjoin speech made truthfully within a state court proceeding. *Id*.

As an initial matter, the undersigned admonishes Respondent for its failure to request leave *before* filing its amended answer. As the Secretary has accurately observed, Respondent's motion to amend its answer was filed approximately four months following the filing of its initial answer, and five months after the Secretary filed its amended interference complaint. *See* Sec'y Mot. to Strike at 2. Therefore, the 21-day period in which Respondent was entitled to amend its answer as a matter of course has long since passed, and the proper course of action would have been for Respondent to request either consent to amend its answer from the Secretary or leave from this tribunal in advance of filing its amended answer, rather than seeking forgiveness after the fact for its failure to abide by the appropriate procedural standards. *See* Fed. R. Civ. P. 15(a)(1)(A),(B); *see also* 29 C.F.R. 2700.1(b).

The undersigned disagrees, however, with the Secretary's assertion that allowing Respondent to amend its answer through the exercise of leave of this tribunal would somehow run afoul of party presentation principles. *See* Sec'y Mot. to Strike at 2-3. In her Motion to Strike, the Secretary states:

> Warrior offers these defenses ex post facto, after having the benefit of listening to the judge discuss Bill Johnson's, following an unrecorded status conference call during which the judge raised the case and questioned the Secretary as to its applicability. This raises party presentation issues; courts "rely on parties to frame the issues for decision and assign to [themselves] the role of neutral arbiter of matters the parties present." *Hopedale Mining, LLC*, 42 FMSHRC 589, 593 (Aug. 2020) (quoting *U.S. v. Sineneng-Smith*, 590 U.S. ___, 140 S.Ct. 1575, 1579 (2020)). Warrior must frame its own issues rather than poaching a framing from the Court; likewise, the role of the Court is to evaluate the facts and law presented, not to sua

> sponte furnish a party with defenses or frame the issues prior to the parties' presenting arguments.

The import of a U.S. Supreme Court decision represents mandatory legal authority, where and when applicable. I reject the Secretary's suggestion that this tribunal has somehow overstepped its adjudicatory responsibilities by asking the parties to address the possible limitations imposed by a U.S. Supreme Court case that *the Secretary herself* has identified in her Motion for Summary Decision (*see* Sec'y Mot. for Summary Decision at 8, n. 2.). I conclude that it is a judge's unique responsibility to review potentially controlling legal authority and inquire whether it applies to the facts at hand in a particular case. Requesting the parties' respective positions as to potentially controlling Supreme Court case law is not 'furnishing' a legal defense; rather, it is one of the core responsibilities of this tribunal.

The undersigned agrees with the Secretary's observation that Respondent could have identified its position concerning the *Bill Johnson's* holdings in its Opposition to the Secretary's Motion for Summary Decision. *See* Sec'y Mot. to Strike at 2. The fact that Respondent chose not to do so, however, does not establish that it would be contrary to the interests of justice to allow Respondent to raise these issues now by amending its answer, especially in the absence of evidence that Respondent has been guilty of bad faith or acted for the purpose of delay. *See Wyoming Fuel*, 14 FMSHRC at 1290, citing *Cyprus Empire Corp*., 12 FMSHRC at 916. Moreover, Respondent correctly notes that granting its request for leave to file its amended answer would not alter any deadlines or otherwise impact the scope of discovery in this proceeding, nor would the Secretary suffer any identifiable prejudice as a result of Respondent being afforded leave to amend its Answer. *See* Warrior Mot. for Leave to Amend at 2. Therefore, the undersigned interprets Rule 15(a) liberally, and will **GRANT** Respondent's request to amend its Answer to the Amended Interference Complaint.

ORDER

For the reasons discussed above, the Acting Secretary's Motion for Summary Decision is **DENIED;**

Further, the Acting Secretary's Motion to Strike Respondent's Amended Answer is **DENIED**;

Finally, Respondent's Motion for Leave to File Amended Answer is **GRANTED**.

Thomas P. McCarthy

Thomas P. McCarthy
Administrative Law Judge

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