FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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January 12, 2016

MICHAEL WILSON, Complainant, v. JARROD FARRIS, DAVID TAYLOR, & ROSS GLAZER, Respondents.	DISCRIMINATION PROCEEDING Docket No. KENT 2015-672-D MSHA Case No. MADI-CD-2015-13 Mine: Parkway Mine Mine ID: 15-19358

ORDER DENYING MOTION FOR LEAVE TO TAKE DISCOVERY

Before: Judge Moran

This case is before the Court upon a complaint of discrimination under section 105(c)(3) of the Federal Mine Safety and Health Act of 1977 ("Mine Act"). Complainant ("Wilson") has filed a Motion for Leave to Take Discovery ("Motion"), which Respondents opposed. For the reasons that follow, the motion is DENIED.

As outlined more fully below, the essence of this discrimination complaint rests on a simple set of facts: Respondents Farris, Taylor and Glazer, ram car drivers at the Parkway mine, allegedly asked an MSHA inspector how they could get Michael Wilson, a non-employee representative of miners the Parkway Mine, removed as a miners' representative and keep him off mine property. Complaint Ex. B. Complainant argues that without taking depositions of the three respondents and the inspectors, this case is not ripe for summary decision because it will rest on speculative facts.

Complainant argues that "[t]he Commission's procedural rules impliedly grant parties the right to take discovery before a motion for summary decision is filed with the presiding ALJ." Motion at 1. In support, Complainant first notes that discovery is generally allowed, and that Procedural Rule 67(b) states that "[a] motion for summary decision shall be granted only [upon consideration of] the entire record, including the pleadings, depositions, answers to interrogatories, admissions, and affidavits." *Id.* at 1-2 (quoting 29 C.F.R. § 2700.67(b)). Because the parties have not engaged in discovery, Complainant argues, there "has been no development of the record on which the Court can reasonably consider a motion for summary decision." *Id.* at 2.

Respondents' opposition contends that Procedural Rule 67(b) merely provides examples of what may "typically be in a record ripe for summary decision, but those are not required if . . . the Court cognizes legal grounds from which to independently resolve the matter."

Response at 1. They note that discovery may not be used as an "ever-expansive fishing expedition" and, a related concern, Respondents assert that allowing depositions under these circumstances would put them to inordinate expense. *Id.* at 2. Finally, Respondents makes the point that "a complainant who initiates his own proceeding before the Commission is confined to the four corners of his complaint as it was presented to and investigated by MSHA." *Id.* (citing *Hatfield v. Colquest Energy, Inc.*, 13 FMSHRC 544, 546 (Apr. 1991)).

Discussion

The subject of summary decision is set forth in Commission Procedural Rule 67(b), which provides:

> A motion for summary decision shall be granted only if the entire record, including the pleadings, depositions, answers to interrogatories, admissions, 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).

Although that provision speaks to summary decision, it does not grant to parties an unequivocal right to take discovery prior to the Court ruling on a motion for summary decision. Instead, the ruling on discovery is connected to the nature of the complaint. In section 105(c)(3) discrimination complaints in particular, per the Commission's decision in *Hatfield*, such matters are confined to the miner's complaint to MSHA.

Wilson's Complaint, dated June 18, 2015, states in its entirety:

> I am a non-employee "representative of miners" at Armstrong Coal Company's Parkway underground mine. I worked for Armstrong at the Parkway mine from August 2009 until May 6, 2015. Since my employment with Armstrong Coal ended, I have continued to act as a "representative of miners" at the mine.
>
> On or about May 12, 2015, I traveled underground with a MSHA inspector. That same day, three ram car drivers from the unit approached MSHA Inspector Jeremy Walker and asked Walker how they could get rid of me as a miners' rep and keep me off of mine property.
>
> These actions constitute interference with my rights as a "representative of miners" under the Mine Act, and violate section 105(c) of the Act.
>
> I will provide MSHA with the names of the ram car drivers on the unit and ask that the MSHA Special Investigator interview each of them. When it is determined which miners asked the MSHA inspector how to remove me as a miners' rep, I will amend my discrimination complaint to include their names.
>
> I want each of these miners to be fined for violating section 105(c) of the Mine

> Act, and I want each of them to be required to take training – taught by MSHA personnel – in miners' rights under the Act, including the rights of "representatives of miners." I also want each of the miners to be ordered to cease and desist from interfering with my rights as a "representative of miners."
>
> I am not filing this complaint against Armstrong Coal. I am filing it against the three ram car drivers individually.

Complaint Ex. A at 2.

On July 16, 2015, Wilson amended his complaint, by adding Farris, Taylor, and Glazer, thereby identifying the names of the ram car drivers. In both his June 18th and July 16th discrimination complaint filings, Wilson checked "no" in the box, inquiring if the alleged discriminatory action resulted in his being suspended, laid off, or discharged.

Accordingly, the full content of Wilson's complaint and its amendment, the latter adding only the names of the three ram car drivers, represents the four corners of his discrimination claim. Depositions of the three ram car drivers and the inspector, which is the discovery requested by Complainant, would not provide any possible issue of material fact that would prevent the Court from ruling on the motion for summary decision. This is also true for answers to interrogatories, admissions, and affidavits. Given that state of affairs, no amount of legerdemain, through the vehicle of discovery or otherwise, can conjure up genuine issues as to any material fact, nor could they disprove that the moving party may be entitled to summary decision as a matter of law. In short, when the Court subsequently rules upon the motion for summary judgment, it will be working from the proposition that each of Wilson's allegations in his complaint is taken to be true.

Under Complainant's reading of the summary decision provision of the Commission's procedural rules, depositions, answers to interrogatories, admissions, and affidavits would all be required prior to the filing of a motion for summary decision, even in those cases in which some or all of those documents are unnecessary and unhelpful to the motion for summary decision. Rule 67(b) does not mandate that depositions be allowed in all instances. Further, Commission Procedural Rule 56(c) infers the result taken in this Order by providing that a judge may limit discovery to prevent undue delay or to protect a party from oppression or undue burden or expense. *See* 29 C.F.R. § 2700.56(c). That is to say, where such discovery will not alter the core facts nor materially change the basis of the discrimination claim, and therefore, to put it plainly, would not only be an undue expense on the party burdened by it, but also a waste of time, it should be denied.

The Court finds that these circumstances exist here. Further, in its order on the motion for summary decision, the Court will resolve all of the claims made by Wilson as true.[1]

[1] That Order will be issued once the Complainant has had an opportunity to respond to the motion for summary decision and after the Court has considered it. However, it is noted that in the Respondents' Memorandum of Law in Support of its Motion for Summary Decision, they have conceded, for the purposes of the motion, that "each and every fact asserted in the

As Respondents are not disputing the allegations of the Complaint, and for the reasons set forth above, at least for the purposes of Complainant's motion for leave to take discovery, allowing depositions of the three respondent miners and the inspector would needlessly delay the resolution of this proceeding, and it would force them to endure unnecessary and undue expense. Furthermore, given the concession by Respondents, there is no genuine issue as to any material fact, and this leaves the Court only with the question of whether, as a matter of law, Complainant has alleged a cognizable claim of discrimination under section 105(c) of the Mine Act.

Accordingly, Complainant's motion is **DENIED**. As previously agreed, Complainant is directed to file his response to Respondents' motion for summary decision within two weeks of the date of this Order.

William B. Moran

William B. Moran
Administrative Law Judge

complaint is true." Mem. Supp. Summ. Decision 1.

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