

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

OFFICE OF ADMINISTRATIVE LAW JUDGES  
1331 PENNSYLVANIA AVE., N.W., SUITE 520N  
WASHINGTON, DC 20004-1710  
TELEPHONE: 202-434-9900 / FAX: 202-434-9949

July 29, 2021

SECRETARY OF LABOR, U.S.  
DEPARTMENT OF LABOR on behalf of  
DARCY WHITE,

Complainant,

v.

PRAIRIE STATE GENERATING CO.,  
Respondent.

TEMPORARY REINSTATEMENT  
PROCEEDING

Docket No. LAKE 2021-0158  
MSHA Case No. MORG-CD-2020-08

Mine: Lively Grove Mine  
Mine ID: 11-03193

**ORDER GRANTING JOINT MOTION TO APPROVE  
TEMPORARY ECONOMIC REINSTATEMENT  
MOTION AND AGREEMENT**

Before: Judge McCarthy

This matter is before the undersigned on the Secretary of Labor’s Application for Temporary Reinstatement filed on behalf of miner Darcy White pursuant to section 105(c) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801, et seq., as amended (“Mine Act”), and 29 C.F.R. § 2700.45. On July 01, 2021, Respondent filed a Motion to Dismiss Application for Temporary Reinstatement for Failure to Join a Required Party or To Join Required Party, wherein it attached a Declaration from Prairie State Safety Manager, Lane Hendricks. On July 08, 2021, the Secretary filed its Response to Respondent’s Motion to Dismiss, opposing the motion. On July 12, 2021, the Respondent filed a Reply to the Secretary’s Response, wherein it attached the contractual agreement between Prairie State and Custom Staffing, White’s employer.

On July 09, 2021, a Notice of Hearing was sent to the parties for a virtual hearing via Zoom to be held on July 20, 2021. On that date, the undersigned opened the hearing and asked the parties if there was any further possibility of exploring settlement avenues. The parties thereafter agreed to explore settlement possibilities in breakout rooms over Zoom. After approximately three hours, including status updates with the undersigned, the parties and their clients reached a meeting of the minds on material terms of settlement and placed the material terms of the tentative agreement on the record.

On July 27, 2021, the parties filed a Joint Motion to Approve Temporary Economic Reinstatement, as well as an Agreement Regarding Economic Reinstatement for Darcy White. The full terms and conditions of the parties’ economic reinstatement agreement are hereby incorporated by reference. The undersigned has reviewed the Motion and Agreement, and the undersigned concludes that the proposed economic reinstatement agreement is fair, reasonable, appropriate, and protects the public interest because it will further the intent and purpose of the Mine Act.

## ORDER

It is hereby **ORDERED** that **Darcy White** be **TEMPORARILY ECONOMICALLY REINSTATED** per the terms of the parties' Agreement, effective on the date of this Order. White shall receive the wages she was formerly paid, as well as other terms of her employment, as set forth in the Agreement.

This Order **SHALL** remain in effect until final order or determination on the underlying discrimination complaint as set forth in section 105(c)(2) of the Mine Act. 30 U.S.C. § 815(c)(2). The undersigned retains jurisdiction over this temporary reinstatement proceeding. 29 C.F.R. § 2700.45(e)(4).

Pursuant to section 105(c)(3) of the Act, the Secretary is required to notify the Complainant whether a violation has occurred within 90 days of the receipt of the complaint. Ms. White filed her complaint on April 20, 2021, and the Secretary is beyond the 90-day statutory requirement. The Secretary is **ORDERED** to complete its investigation and to make a determination within 30 days, or to provide this tribunal with a detailed reason for why this deadline cannot be met.

**SO ORDERED.**

*Thomas P. McCarthy*

Thomas P. McCarthy  
Administrative Law Judge

Distribution: (Email)

Suzanne F. Dunne, Esq., Office of the Solicitor, U.S. Department of Labor, 230 S. Dearborn Street, Rm. 844, Chicago, IL 60604; [dunne.suzanne@dol.gov](mailto:dunne.suzanne@dol.gov)

Tony Opegard, Esq., P.O. Box 22446, Lexington, KY 40522; [tonyoppegard@gmail.com](mailto:tonyoppegard@gmail.com)

Wes Addington, Esq., Appalachian Citizens' Law Center, 317 Main Street, Whitesburg, KY 41858; [wes@aclc.org](mailto:wes@aclc.org)

Arthur Wolfson, Esq., Fisher Phillips LLP, Six PPG Place, Suite #830, Pittsburgh, PA 15222; [awolfson@fisherphillips.com](mailto:awolfson@fisherphillips.com)