FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES
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September 15, 2000

SECRETARY OF LABOR,	:	DISCRIMINATION PROCEEDING
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. WEVA 2000-31-D
ON BEHALF OF MICHAEL JENKINS	:	HOPE CD 99-10
AND MICHAEL MAHON,	:	
Complainants	:	
	:	
v.	:	Mine No. 1
	:	Mine ID 46-08102
DURBIN COAL, INC.,	:	
Respondent	:	

ORDER DENYING, IN PART, AND GRANTING, IN PART,
THE SECRETARY'S MOTION TO DETERMINE SUFFICIENCY OF
RESPONSES TO REQUESTS FOR ADMISSIONS
AND TO COMPEL ANSWERS TO INTERROGATORIES

This case is before me on a complaint by the Secretary of Labor on behalf of two miners, Michael Jenkins and Michael Mahon, alleging that they had been discriminated against in violation of Section 105(c)(1) of the Federal Mine Safety and Health Act of 1977, ("the Act"), 30 U.S.C. § 815(c)(1). The Secretary served Requests for Admissions and Interrogatories on Respondent on April 7, 2000. Dissatisfied with the responses, the Secretary presented its concerns to Respondent by letter. Respondent replied to the letter, submitted amended responses to three of the requests and declined to supplement or amend its other responses. The Secretary has moved to determine the sufficiency of Durbin Coal's responses to twenty requests for admissions[1] and to compel responses to six interrogatories. For the reasons set forth below, the motion is granted in part and denied in part.

[1] The Secretary included a discussion of three other responses in her motion, but noted that Respondent had amended those responses and does not seek relief as to them.

Requests for Admissions

Requests for admissions in Commission proceedings are governed by Commission Rule 58(b), 29 C.F.R. § 2700.58(b), and through § 2700.1(b), Rule 36, Fed. R. Civ. Proc., which provides, in pertinent part:

> * * * *
>
> Each matter of which an admission is requested shall be separately set forth. The matter is admitted unless, within [25 days of service, unless the party making the request agrees to a longer time][2] the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by the party's attorney. If objection is made, the reasons therefor shall be stated. The answer shall specifically deny the matter or set forth in detail why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify an answer or deny only a part of the matter of which an admission is requested, the party shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless the party states that the party has made reasonable inquiry and that the information known or readily obtainable by the party is insufficient to enable the party to admit or deny. * * * *
>
> The party who has requested the admissions may move to determine the sufficiency of the answers or objections. Unless the court determines that an objection is justified, it shall order that an answer be served. If the court determines that an answer does not comply with the requirements of this rule, it may order either that the matter is admitted or that an amended answer be served. The court may, in lieu of these orders, determine that final disposition of the request be made at a pre-trial conference or at a designated time prior to trial. * * *

Proper use of requests for admissions can expedite and streamline litigation by establishing matters not truly in dispute and avoiding the expenditure of time and effort required by other discovery devices. *See gen.*, 7 Moore's Federal Practice, § 36.02[1] (Matthew Bender 3d ed.). However, in order to achieve that desired result both parties must fulfill their obligations under the rule. "Parties may not view requests for admissions as a mere procedural exercise requiring minimally acceptable conduct. They should focus on the goal of the Rules, full and efficient discovery, not evasion and word play." *Marchand v. Mercy Medical Center*, 22 F.3d 933, 936 (9th Cir. 1994)(citations omitted).

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[2] The inserted language is from Commission Rule 58(b).

Parties should endeavor to propound requests that are "direct, simple and limited to singular relevant facts so that [they] can be admitted or denied without explanation." *Herrera v. Scully*, 143 F.R.D. 545, 549 (S.D.N.Y. 1992)(citations omitted). "[I]t is entirely within the discretion of the court as to what level of expression and detail should be tolerated for each individual case." *Diederich v. Dept. Of the Army*, 132 F.R.D. 614, 619 (S.D.N.Y. 1990). Parties responding to requests, as the rule specifically states, should exercise good faith by admitting or denying parts of requests, and qualifying responses, where appropriate, rather than noting blanket objections.

> Where it is evident that multiple, interdependent issues are contained in one request, defendant may deny the entire statement if one fact, on which the remainder of the request is premised, is denied; plaintiff drafts complex requests at his peril. Compound requests that are capable of separation into distinct components and that follow a logical or chronological order, however, should be denied or admitted in sequence with appropriate designation or qualification by defendant in its response.

Diederich, supra, 132 F.R.D. at 621.

As noted in the rule, the party propounding the requests may file a motion challenging the sufficiency of responses. The party opposing such a motion has the burden of persuasion to show that objections to a request are warranted or that the answers are sufficient. Moore's Federal Practice, *supra*, § 36.12[1]

Neither party has fulfilled its obligations here. As a result, rather than expediting resolution of the issues, considerable effort of both the parties and the judge has been diverted to litigating discovery disputes spawned by poor drafting of requests and responses that appear to be motivated more by evasion than good faith.

The requests for admissions propounded to Respondent, at least those addressed in the motion, suffer from two recurring flaws that opened the door to uncomplimentary responses -- compound questions and inclusion of an element that was known to be disputed. Some requests were compound and so far reaching that sufficient responses were virtually impossible. Request numbered 16, for example, reads:

> Admit that Forest Newsome or other persons in mine management had actual or constructive knowledge, at some point in time between February 25, 1999 and March 3, 1999, that someone had written "Rat" on Complainant Mahon's belt.

This request is addressed to the actual knowledge of a number of persons as well as to information not directly known by them but that was so widely known in their respective spheres of operation that they could be legally charged with knowledge. It cannot, even with the most

charitable of constructions, be characterized as "direct, simple and limited to a singular relevant fact."

Despite the unwieldy wording of the request, however, it provided an opportunity for Respondent to exhibit good faith by responding to those parts that were capable of succinct reply. For example, it could have responded as to Forest Newsome's actual knowledge and the actual knowledge of other specified individuals in mine management, and objected to the more ambiguous parts of the request. Respondent declined the opportunity. It noted an objection to the compound nature of the request and claimed such uncertainty as to its meaning that it was unable to answer. It also added to its response the following sentence: "To the extent that Durbin cannot respond to this request, it should be deemed denied."

The extent of this qualified denial is unclear. On the one hand, Durbin claims an inability to respond to the entire request based upon lack of understanding. The denial could, therefore, be viewed as applying to the entire request, a sufficient response under the rule. However, the request must be fairly read to address at least Forest Newsome's actual knowledge. By its terms, the denial does not include parts of the request that could or should have been understood.

Many of the requests included a reference to the alleged termination of Complainants' employment, a fact that Durbin has consistently denied.[3] This problem could have been avoided by more thoughtful drafting of the requests, for example, by referring instead to a date and time, or, an undisputed description of the event, e.g. when complainants ceased working at the mine. Respondent frequently objected to such requests, even when the "termination" part was not interdependent on other parts of the request.

Further problems with the parties' approach to discovery in this case are evidenced by three requests as to jurisdictional matters that are described in the motion, but which are no longer part of this dispute. Illustrative is the Secretary's request no. 7 which asked Durbin to:

> Admit that during Complainant's employment at Durbin, and at all relevant times herein, they were miners as defined by Section 3(g) of the Federal Mine Safety and Health Act of 1977 (hereinafter the "Mine Act").

It is unclear why the Secretary propounded this request. In its answer to the complaint Durbin had admitted "that Complainants William Jenkins and Michael Mahon were employed at Durbin's Mine No. 1 and that they were miners as defined in § 3(g) of the Federal Mine Safety

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[3] Respondent's version of the events of March 2, 1999, includes an explanation that Complainants specifically asked whether they were fired, were told that they weren't, but that they, nevertheless, left the job site and did not return. See, Durbin Coal Inc.'s Response to the Secretary's First Set of Interrogatories, interrogatory number 1.

and Health Act of 1977 ("Act"), 30 U.S.C. § 802(g)."[4] Rather than simply admitting the request, however, which Durbin later effectively did after an exchange of correspondence with the Secretary, the following response was made:

> Durbin objects to this Request on the ground that it is vague and ambiguous, and, therefore, unanswerable. Durbin cannot ascertain from the phrase "at all relevant times herein" the time period to which the Secretary refers. In addition, the term "they" is vague and undefined. Further, this request calls for a legal conclusion. Durbin cannot, therefore, answer this Request. To the extent that Durbin cannot respond to this Request, it should be deemed denied.

It would take a more than charitable characterization to describe this response in terms other than evasion and word play in disregard of Respondent's obligations under the Rule.

The Secretary moves that the disputed requests be taken as admitted. The Rule provides other, less drastic, and here more appropriate alternatives i.e. directing that supplemental or amended responses be filed, or deferring final resolution of disputed responses until a later time in the litigation.

Durbin will be directed to submit amended responses to requests numbered 3, 5, 18, 19, 30, 32, 33 and 34. Objections noted to those requests are overruled. The responses were evasive and insufficient. It may qualify its amended responses as appropriate under the standards discussed above.

The motion as to requests numbered 15, 16, 17, 21, 22, 23, 24, 25, 26, 27, 28 and 29 is denied. Durbin's responses to those requests were sufficient in that the objections noted are sustained (requests numbered 16 and 17) or, despite objections invalid at least in part, the answers were sufficient (Requests numbered 22, 23, 27, 28 and 29). As to others, while objections interposed cannot be sustained, particularly the objections as to relevance, information responsive to the request has been supplied either in the response itself or in binding responses to other discovery requests (requests numbered 15, 21, 24, 25 and 26).

Interrogatories

The Secretary has moved to compel responses to six interrogatories. The criticisms of the parties' approach to discovery with respect to the requests for admissions are largely applicable here, except that for the most part the questions are better drafted and the precise wording of an interrogatory is not nearly as critical as in the case of requests for admissions. The Secretary's primary concern appears to be objections interposed by Respondent. However, in many instances, Respondent also provided an answer. The Secretary does not address the propriety of the answers provided. The interrogatories, objections and answers will not be discussed in detail.

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[4] Durbin Coal, Inc.'s Answer, ¶ 2.

Interrogatory numbered 1 requested the basis for any denial or qualification of Respondent's responses to the Secretary's requests for admissions. While the objections noted in response to this inquiry are of questionable validity, the information provided, as a whole was reasonably responsive. In light of the disposition of the motion with respect to the requests for admissions, the Secretary is entitled to no further relief and the motion as to this interrogatory is denied.

Interrogatory numbered 5 requested information as to any discipline that was or would have been imposed for legitimate, non-discriminatory reasons. The interrogatory, fairly read, refers to Complainants' alleged termination. Respondent interposed multiple objections, none of which have merit, and referred to other discovery responses. The Secretary complains that "Respondent seeks to preserve the availability of this defense while refusing to give the Secretary any meaningful information about the facts that purportedly support such a defense." Motion at p. 18. Respondent's objections are overruled. However, the answer provided despite the objections may well be complete. The Secretary has not presented any evidence that there is additional information responsive to this question that Respondent has refused to disclose. Respondent will be bound by its answer, and the Secretary need not be concerned about confronting new facts in support of any such defense. If, in light of this disposition, Respondent determines to amend or supplement its answer to this interrogatory it must do so on or before September 29, 2000.

Interrogatory numbered 6 requested information regarding communications about the subject matter of Complainants' termination or disciplinary action. Respondent objected to the question as "overbroad and burdensome" and referred to its other discovery responses. Respondents' objections are not well founded and are overruled. Again, however, there is no direct evidence to indicate that the answer provided was incomplete, though the question is not confined to communications that occurred on March 2, 1999. The motion as to this interrogatory will be granted. Respondent must disclose communications and discussions known to it that occurred on March 2, 1999 and thereafter, with the exception of privileged communications.

Interrogatory numbered 7 requested information regarding disciplinary procedures in effect at the mine. Respondent objected on numerous grounds and referred to other discovery responses. The objections as to relevance, and overbreadth have some merit because the request was not limited in time or to procedures that might have been applicable to Complainants. Respondent's objections are sustained, except as to disciplinary procedures, written or *de facto*, applicable to Complainants from March 2, 1998 through March 2, 1999 and any changes to those procedures subsequent to the alleged terminations. Respondent must answer the interrogatory as so limited. On or before September 29, 2000, Respondent must supplement its answer or certify that its original answer was complete.

Interrogatory numbered 8 requested information as to disciplinary actions taken against Complainants. Respondent objected on numerous grounds and referred to other discovery responses. Respondent's objections are overruled. On or before September 29, 2000, Respondent must supplement its answer or certify that its original answer was complete.

Interrogatory numbered 9 requested information about changes in responsibilities and duties of Forest Newsome subsequent to the alleged terminations. Respondent objected on grounds of relevance and stated that the information could be "better provided" by Mr. Newsome. Respondent also proceeded to describe a change in Mr. Newsome's responsibilities. However, no documents associated with the change were identified and there was no reference to documents produced in discovery. Respondent's objections are overruled. On or before September 29, 2000, Respondent must supplement its answer or certify that its original answer was complete.

ORDER

The Secretary's motion is granted in part and denied in part. As to requests for admissions numbered 15, 16, 17, 21, 22, 23, 24, 25, 26, 27, 28 and 29, and, as to interrogatory numbered 1, the motion is denied.

The motion is granted as to requests for admissions numbered 3, 5, 18, 19, 30, 32, 33 and 34. On or before September 29, 2000, Respondent shall submit amended responses to those requests, complying fully with the requirements discussed above. The motion is also granted as to interrogatories numbered 5, 6, 7, 8 and 9. On or before September 29, 2000, Respondent shall supplement its answers to interrogatories numbered 6, 7, 8 and 9, or certify that its original answers to those interrogatories were complete.

Michael E. Zielinski
Administrative Law Judge

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