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November 17, 2014

CONFIDENTIAL

Via E-mail (kcollins@fec.gov)

Attn: Kim Collins
Paralegal, Office of Complaints Examination
and Legal Administration
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Re: MUR 6661

Dear Ms. Collins:

This is in response to the supplemental information provided by the complainant in MUR 6661 which was forwarded by your office on October 7, 2014. The supplemental information consists of the unfounded, reckless claims of a fired employee who appears bent on extorting "settlement" money from Murray Energy Corporation or one of its subsidiaries. As will be explained below, the respondents vigorously deny the false assertions of threats and coercion brought forth by the disgruntled fired employee and her lawyer. For reasons very similar to those set forth in our April 3, 2013 response in this matter, we believe the Commission should cut through the angry rhetoric recently submitted and find no reason to believe that respondents' solicitations for contributions have crossed any legal lines.

Complainant CREW, again with no personal knowledge, has merely forwarded a court complaint filed by Ms. Jean F. Cochenour, a former prep plant supervisor at a Marion County West Virginia mine operated by a subsidiary of respondent Murray Energy Corporation. At the outset, the Commission should know that Murray Energy Corporation, on behalf of the subsidiary that actually terminated Ms. Cochenour's employment, has confidently and publicly stated: Ms. Cochenour was fired because she grossly failed to perform her job adequately; undoubtedly, her lack of management cost Murray Energy Corporation thousands of dollars; and her firing has nothing to do with anything but her demonstrated lack of performance.[1] It should be abundantly

[1] *See* Attachment 1 (copy of statement issued by Murray Energy Corporation to *New Republic* reporter who apparently had been contacted by Ms. Cochenour or her attorney trying to generate a news story). Note that Ms. Cochenour's former employer, Marion County Coal Company, has filed a suit against her for its monetary losses stemming from her misconduct. Specifically, the

clear to the Commission that Ms. Cochenour is hurt, angry, and vengeful regarding the fact that she was let go, and her willingness to say or do anything is on full display.

In her court complaint, Ms. Cochenour notes that she received written requests from respondent Robert E. Murray for contributions to particular candidates, and even provides a sample copy of such a letter, but then launches into claims based on "information and belief" that "Mr. Murray has a long history of requiring his employees to contribute part of their salaries to his PAC" and that he has a "policy of requiring . . . individuals and entities who wish to supply goods or services to the defendant companies to make financial contributions to support his own political views."[2] But there is no evidence whatsoever provided by Ms. Cochenour to prove that Mr. Murray requires anything of the sort.

Like the letters Mr. Murray has been sending for years (as described at pp. 9-11 of our earlier response in MUR 6661), the personal letter provided by Ms. Cochenour did not even remotely suggest that Mr. Murray was requiring anyone to make contributions to the favored candidates. It clearly indicated Mr. Murray was merely "requesting" contributions, and noted, "If you cannot give the requested amount, contribute what you can and join our evening, even if you cannot give at all."

The letter, for obvious reasons, listed specific candidates, listed specific suggested contribution amounts, and gave information about how checks should be made payable and how the enclosed forms (standard contributor forms) should be returned to the P.O. Box that Mr. Murray uses for his candidate solicitation efforts. There is nothing insidious, let alone illegal, in these common practices. Nor is there anything unusual (if it occurred) about tracking whether people solicited have given so that follow-up requests might be made by Mr. Murray or someone who helps him. Ms. Cochenour's claims to the contrary are simply unfounded and erroneous. If this type of political fundraising by politically active citizens somehow amounts to coercive corporate activity in violation of the FEC's regulation at 11 C.F.R. § 114.2(f)(2)(4) ("threat of a detrimental job action"), then the FEC is going to be very busy with complaints in the future.

Ms. Cochenour attempts to support her complaint with the statement that, "At least one manager at the Marion County mine told Ms. Cochenour and other foremen that failing to contribute as Mr. Murray requested could adversely affect their jobs."[3] As we noted at pp. 3-5 of our earlier

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complaint in that matter alleges that Ms. Cochenour wrongfully scheduled and/or allowed to be scheduled unnecessary overtime work for employees. *See* Attachment 2 (copy of complaint filed in Belmont County Ohio Court of Common Pleas).

[2] Paragraphs 18 and 20 of Complaint attached to CREW supplemental MUR 6661 submission.

[3] Paragraph 19 of Complaint attached to CREW supplemental MUR 6661 submission.

response, the Commission should give no weight to hearsay statements supposedly backed by an anonymous source. This is a statement that is easy for a disgruntled complainant to craft, and it no doubt was designed to pique the Commission's curiosity. But the full force of the Federal Government should not be unleashed based on such unreliable "evidence."

Ms. Cochenour would have the Commission believe that she was terminated because she had not contributed to any of the candidates Mr. Murray had been helping raise funds. As noted earlier, Murray Energy Corporation has reviewed the situation and issued the clear, emphatic statement that Ms. Cochenour was terminated "because she grossly failed to perform her job adequately", exhibited "lack of management", and "demonstrated lack of performance." *See* Attachment 1. These are uncomfortable facts for Ms. Cochenour, no doubt.

To further demonstrate the reliability of Murray Energy Corporation's statement, the undersigned counsel examined certain relevant personnel materials[4] which demonstrated that Ms. Cochenour was one of 13 prep plant supervisors reviewed by their immediate supervisor for performance in May of 2014. She was one of three who initially were recommended for termination, meaning ten were not initially recommended for termination. Importantly, an analysis of public records demonstrates that there is absolutely no correlation between any termination decision and any political contribution history. According to the FEC database, none of the 13 supervisors reviewed made any federal contributions. And while four of the supervisors appear to have made contributions at the non-federal level, one of those is one of the three who were recommended for termination.[5] In other words, nine of the 13 supervisors reviewed who were recommended from the outset to keep their jobs gave no contributions at all. And one of the supervisors recommended for termination in fact did make some political contributions.[6] So, an examination of the facts emphatically demonstrates that failing to make contributions was not a factor in who was terminated, and making contributions did not prevent being terminated. The bottom line is that Ms. Cochenour's claim that she was terminated

[4] These personnel records are highly sensitive, obviously, and subject to potential privacy claims. The undersigned would be willing to work with Office of General Counsel staff to reach agreement on a process for reviewing redacted versions, if that is deemed essential.

[5] The federal research was conducted by the undersigned, and the non-federal research of Ohio, Pennsylvania, and West Virginia databases was conducted by Dickstein Shapiro associate Jen Carrier.

[6] Because this information is tied to particular names in the sensitive personnel area, the undersigned would need to work out an agreement with the Office of General Counsel for sharing this type of information before providing information linking contribution histories to particular unnamed supervisors, and would do so only if there is a clearly demonstrated need.

because she did not respond favorably to Mr. Murray's occasional letters asking for political contribution help simply does not hold water.

Because the supplemental information provided by complainant relies on unsubstantiated assertions of a terminated employee, supported by mere hearsay about an anonymous source, and because the claim of politically-based termination by the central "witness' is demonstrably false, the Commission should determine there is no reason to believe any violation occurred.

Respectfully submitted,

Scott E. Thomas
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Attachments
1 – Murray Energy Corporation statement for *New Republic* reporter
2 – Complaint filed by Marion County Coal Company against Cochenour

Attachment II

IN THE COURT OF COMMON PLEAS FOR BELMONT COUNTY, OHIO
GENERAL DIVISION

COMMON PLEAS COURT
BELMONT COUNTY, OHIO

2014 SEP 26 PM 3 25

CYNTHIA E. McGEE
CLERK OF COURT

THE MARION COUNTY COAL COMPANY, 46226 National Road St. Clairsville, Ohio 43950 PLAINTIFF, v. JEAN F. COCHENOUR, 220 Falls Avenue Connellsville, Pennsylvania 15424 DEFENDANT.	:	Case No. 14CV292 COLLEEN CLOWAN, II Judge _____

COMPLAINT WITH JURY DEMAND ENDORSED HEREON

Plaintiff The Marion County Coal Company files this Complaint against Defendant Jean F. Cochenour and states as follows:

NATURE OF THE CASE

1. This is a civil action by Plaintiff The Marion County Coal Company to hold Defendant responsible for misconduct she committed at work that cost Plaintiff a substantial amount of money. Specifically, Defendant was formerly employed by Plaintiff as a plant supervisor and she wrongfully scheduled and/or allowed to be scheduled unnecessary overtime work for employees. When Plaintiff discovered this misconduct and considered her overall unsatisfactory performance, it terminated Defendant's employment. Accordingly, Plaintiff now brings this action to enforce its rights under state law and to recover against Defendant for the monetary losses caused by her misconduct.

JURISDICTION AND VENUE

2. All of the preceding paragraphs are incorporated by reference as if set forth herein.

3. This Court has original jurisdiction pursuant to R.C. 1907.03 and R.C. 2305.01 because this is a civil action where the amount in controversy exceeds the county court's exclusive original jurisdiction of $500.00.

4. This Court has personal jurisdiction over Defendant because the Ohio Long-Arm Statute, R.C. 2307.381, is satisfied; and Defendant purposefully availed herself of the privilege of conducting business in the State of Ohio, her tortious conduct arises out of this purposeful availment in the State of Ohio, and it is reasonable to hold her accountable in the State of Ohio.

5. This Court is the appropriate venue pursuant to Civ.R. 3(B)(6) or, in the alternative, pursuant to Civ.R. 3(B)(12) because Belmont County, Ohio is the county in which all or part of the claims for relief arose and, in the alternative, Belmont County, Ohio is the county in which Plaintiff has its principal place of business.

PARTIES

6. All of the preceding paragraphs are incorporated by reference as if set forth herein.

7. Plaintiff The Marion County Coal Company (MCCC) is a for-profit Delaware corporation with a principal place of business in St. Clairesville, Ohio. MCCC is engaged in the business of mining and processing coal.

8. Defendant Jean F. Cochenour ("Defendant") is a natural person and a resident of the State of Pennsylvania. MCCC employed Defendant as a plant supervisor in West Virginia in a supervisory role from December 6, 2013 until her termination of employment in May of 2014.

FACTS

9. All of the preceding paragraphs are incorporated by reference as if set forth herein.

10. Defendant was employed by MCCC as a coal preparation plant supervisor.

11. As a plant supervisor, Defendant had a measure of authority and responsibility over employee hours, employee shifts, and employee work schedules.

12. Defendant's authority and responsibility included a measure of oversight on overtime hours and shifts for several employees of the mine.

13. Defendant had been directed and trained that overtime hours worked by employees result in increased costs to the company in terms of wages, payroll taxes, and other charges, and that overtime work must only be scheduled as absolutely required by business needs.

14. Defendant was not authorized to allow overtime when it was unnecessary to do so, or to schedule overtime for more employees than were necessary to meet MCCC's business needs.

15. One of Defendant's job duties was to exercise reasonable oversight to ensure that unnecessary overtime was not allowed.

16. Defendant knew or should have known the company's expectations for her job and the significant financial impact overtime costs have on MCCC's operations.

17. Despite this knowledge and responsibility, Defendant (a) improperly scheduled unnecessary overtime for employees and/or (b) improperly allowed the scheduling and/or work of unnecessary overtime.

18. Defendant engaged in this improper behavior without consideration for MCCC's

needs and workload, or whether such overtime was justified, authorized, or appropriate.

19. Upon information or belief, Defendant had an improper purpose in scheduling unnecessary overtime and/or allowing unnecessary overtime to be scheduled. Defendant also was extremely deficient in her overall job performance.

20. When MCCC learned of Defendant's misconduct in May 2014 and considered her overall poor job performance record, it promptly terminated her employment.

CLAIMS FOR RELIEF

COUNT I

Negligence

21. All of the preceding paragraphs are incorporated by reference as if set forth herein.

22. Defendant owed MCCC a duty to carry out her plant supervisor responsibilities with reasonable care and diligence.

23. Defendant breached her duty to MCCC by, among other things, failing to exercise reasonable care and diligence with respect to employee overtime and other supervisory duties.

24. As a proximate result of Defendant's acts and/or omissions, Plaintiff has been and continues to be damaged in amount exceeding $25,000 to be determined at trial.

25. Consistent with Ohio Revised Code § 2315.21, Defendant's actions demonstrate malice or aggravated or egregious fraud and therefore Plaintiff seeks punitive damages as a result of Defendant's misconduct.

COUNT II

Breach of Employee Duty of Loyalty

26. All of the preceding paragraphs are incorporated by reference as if set forth

herein.

27. Defendant owed MCCC a duty of utmost good faith and loyalty.

28. Defendant breached her duty to MCCC by, among other things, failing to exercise good faith and act loyally with respect to employee overtime and her other supervisory responsibilities.

29. As a proximate result of Defendant's acts and/or omissions, Plaintiff has been and continues to be damaged in amount exceeding $25,000 to be determined at trial.

30. Pursuant to the faithless servant doctrine, Plaintiff seeks damages compromised of Defendant's salary and benefits paid by Plaintiff during the period of disloyalty.

31. Consistent with Ohio Revised Code § 2315.21, Defendant's actions demonstrate malice or aggravated or egregious fraud and therefore Plaintiff seeks punitive damages as a result of Defendant's misconduct.

COUNT III

Unjust Enrichment

32. All of the preceding paragraphs are incorporated by reference as if set forth herein.

33. Plaintiff conferred a benefit on Defendant consisting, of among other things, in paying for the excessive overtime caused by Defendant's misconduct.

34. Defendant had knowledge of the benefits conferred on her by Plaintiff.

35. Retention of these benefits by Defendant under these circumstances would be unjust without payment to Plaintiff.

36. As a proximate result of Defendant's acts and/or omissions, Plaintiff has been and continues to be damaged in amount exceeding $25,000 to be determined at trial.

COUNT IV

Contribution

37. All of the preceding paragraphs are incorporated by reference as if set forth herein.

38. Plaintiff paid a debt of Defendant consisting, of among other things, the excessive overtime caused by Defendant's misconduct.

39. Plaintiff is entitled to a contribution from Defendant for Plaintiff's payment of Defendant's debt.

40. As a proximate result of Defendant's acts and/or omissions, Plaintiff has been and continues to be damaged in amount exceeding $25,000 to be determined at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests judgment in its favor on all claims in this Complaint and requests the following relief:

(a) Actual damages, punitive or exemplary damages, and attorneys' fees in an amount in excess of $25,000 to be determined at trial;

(b) Any other non-monetary relief this Court deems just and proper under the circumstances.

JURY DEMAND

Pursuant to Ohio Rule of Civil Procedure 38(B), Plaintiff demands a jury trial with the maximum amount of jurors permitted by law for all issues in its Complaint triable to a jury.

Respectfully submitted,

Mark S. Stemm

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