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May 13, 2011

The Honorable Tim Walberg
Chairman
Subcommittee on Workforce Protections
Committee on Education and the Workforce
2181 Rayburn House Office Building
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Walberg:

As part of the hearing record, we ask that you seek written clarification from a witness, Anthony Bumbico of Arch Coal, about statements that he made during the "*Modernizing Mine Safety*" hearing on Wednesday, May 4, 2011.

Witnesses before the Committee have the duty to provide truthful testimony, and the Committee must take care to ensure the integrity of its proceedings and the accuracy of the record we collect. For these reasons, Mr. Bumbico's testimony, on behalf of both Arch Coal and the National Mining Association, is of concern.

Specifically, Mr. Bumbico's testimony appears to be contradicted by a final decision and order of the Federal Mine Safety and Health Review Commission (FMSHRC) regarding unlawful retaliation against Charles Scott Howard, an employee of Arch Coal's subsidiary, Cumberland River Coal Company (CRCC), following his multiple disclosures to management, and subsequent release of a videotape that documented a number of seals leaking water at the company's Band Mill No. 2 mine in Letcher County, Kentucky, at an MSHA public hearing.

Defective seals present a potentially lethal risk for miners because if they break, they could lead to flooding and inundation. Pursuant to §303(d)(1) of the Mine Act, the preshift examiner must "examine seals ... to determine whether they are functioning properly" and must note any violations of law or hazardous conditions in the preshift examination report. It is a requirement that mine management must countersign each pre-shift examination report, which provides acknowledgement that management has read the preshift examination report.

Below is the transcript of the relevant questions and answers from the May 4 hearing:

“Mr. Miller. What happened to the person that you fired for showing the video of the leaking water seals?

Mr. Bumbico. I think –

Mr. Miller. Was that retaliation against a whistleblower?

Mr. Bumbico. I think you are mischaracterizing what occurred there.

Mr. Miller. You characterize it for me.

Mr. Bumbico. Sure. One, I am not going to talk into great detail because that issue is currently matter of civil litigation. But I will say this: The individual questioned took a video camera underground and did a tape of seals that were leaking. Instead of calling that to the attention of mine management or instead of calling MSHA and complaining about the problem, he took the videotape and brought it to a public hearing to show it. And then after the fact –

Mr. Miller. So he never addressed it prior -- he never addressed this prior with you, the company?

Mr. Bumbico. -- the issue was dealt with. No. The individual questioned --

Mr. Miller. I don't think that is what the record shows.”

Indeed, there is substantial evidence which contradicts the underlined portion of Mr. Bumbico's testimony.

- 1) The August 13, 2010, FMSHRC decision in *Charles Scott Howard v. Cumberland River Coal Company*¹ stated that Mr. Howard notified management on many occasions, as did others, about the leaking seals. The opinion states: “During the performance of his duties in March and April 2007, Howard noted in the examination book that numerous seals at Band Mill were ‘leaking water.’ Howard also expressed his concern over the condition of the seals to many mine foremen, including John Scarbro, Terry Mullins, Bob Kilbourne, Ronnie Adams and James Turner.”
- 2) Also according to documents included in the hearing record, in his capacity as a preshift examiner, Mr. Howard documented in the preshift examination book on 11 separate occasions that the seals were leaking, as well as the fact that parts of the seals were cracked. John Scarbro, the mine superintendent, admitted under oath during the FMSHRC trial that Mr. Howard had informed management of the leaking seals within the mine. The trial transcript, which is a public document, states:²

¹ Docket # KENT 2008-736-D

² Trial Transcript, December 16, 2008, pp. 51

Mr. Opegard (attorney for Mr. Howard): “Now, prior to Mr. Howard showing the video at a public hearing, he had been documenting in the pre-shift book that you had seals in the Band Mill Number Two Mine that were leaking water, had he not?”

Mr. Scarbro (Mine Superintendent): “Yes sir.”

Mr. Opegard (attorney for Mr. Howard): “And in fact, Mr. Howard had told you that those seals needed to be repaired, did he not?”

Mr. Scarbro: “Yes sir.”

As I previously stated, witnesses before our Committee have a duty to provide truthful testimony. Given the questionable testimony provided by Mr. Bumbico, its inconsistency with other official records, and its relevance to oversight as well as pending and future legislation, we ask that you submit these questions to Mr. Bumbico in order to clarify the record:

- 1) Prior to videotaping the leaking mine seals, did Mr. Howard call the leaking seals to the attention of management? Yes or no?
- 2) Did John Scarbro, the mine superintendent, receive notification of the leaking seals? Yes or no?
- 3) FMSHRC’s August 10, 2010, Decision and Order in *Charles Scott Howard v. Cumberland River Coal Company* stated that management personnel including Terry Mullins, Bob Kilbourne, Ronnie Adams and James Turner were also notified of leaking seals by Mr. Howard. Is this statement correct? Yes or No?
- 4) Is your testimony factually correct that Mr. Howard, “instead of calling that to the attention of mine management or instead of calling MSHA and complaining about the problem, he took the video tape and brought it to a public hearing to show it.” Yes or no?
- 5) Did Arch or its subsidiary CRCC, appeal the FMSHRC August 10, 2010, Decision and Order in this discrimination proceeding? If not, is this judgment final?

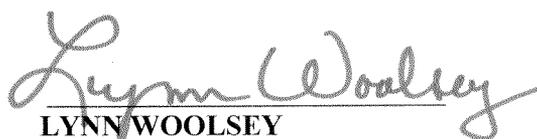
This Committee has the obligation to maintain the integrity of its proceedings. If there is any question about the reliability of testimony, whether due to potential conflicts or otherwise, the Committee should give serious consideration to the administration of oaths to witnesses prior to their testimony.

Thank you in advance for ensuring the witness’s answers to the above questions are included in the hearing record.

Sincerely,



GEORGE MILLER
Senior Democratic Member



LYNN WOOLSEY
Senior Democratic Member
Subcommittee on Workforce Protections