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THE MILITANT

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INSIDE

'Militant' responds to harassment lawsuit by Utah mine bosses

—LEGAL BRIEF, PAGE 7

6,000 Syrian troops retreat to Lebanon-Syria border

Protests in Lebanon demand full withdrawal; Saudi, Egyptian gov'ts press for pullout

BY PAUL PEDERSON

Some 6,000 Syrian troops began redeploying to the eastern Bekaa Valley in Lebanon March 8 in face of ongoing popular mobilizations there against the nearly 30-year Syrian military occupation, and deepening pressure from Washington and Paris as well as Arab regimes in the region. In a speech the same day at the National Defense University in Washington, D.C., U.S. president George Bush demanded a full withdrawal of Syrian troops from Lebanon before parliamentary elections there in May.

Protests demanding Damascus withdraw its troops continued to gain steam in the wake of the February 28 resignation of Lebanese prime minister Omar Karami. The protests began following the February 14 bombing assassination of Rafik Hariri, a billionaire who served five times as Lebanon's prime minister and in the recent period had been a critic of the Syrian presence.

On March 7, an estimated 100,000 people turned out in Beirut's Martyrs' Square, where Hariri is buried, to mark the third week since his killing. In addition to an end to the Syrian military presence, the protesters are demanding the resignation of Karami's boss, Lebanese president Emile Lahoud, a staunch ally of the Syrian government.

Under deepening pressure from the broad anti-Syrian government protests, Hezbollah, a party based among Shiite Muslims, staged a pro-Damascus counterdemonstration March 8 in Beirut that drew hundreds of thousands of its supporters. Two huge banners at the square read, in English, "Thank you Syria" and "No to foreign interference." Hezbollah's leaders did not openly call for the Syrian troops to remain, instead demanding that any withdrawal be carried out according to the guidelines of the Taif Accords, signed by the Syrian and Lebanese governments in 1989.

The isolation of the Baathist regime in Damascus deepened when the Saudi monarchy warned Syrian president Bashar Assad March 3 that he would risk damaging relations between the two governments if Syrian troops were not withdrawn. Egyptian president Hosni Mubarak also backed calls for Damascus to pull its troops out of Lebanon.

The Saudi rulers insist on the full withdrawal of Syria's 14,000 troops and intelligence forces from Lebanon, AP reported, and they wanted it to start "soon." The Saudi government also rejected Assad's request that the upcoming Arab League summit give its stamp of approval to a partial pullback from Lebanon.

"I have been talking to him about the withdrawal for two years because I was afraid of the external pressure," the Egyp-

Continued on Page 2

Utah miners reach out to build March 12 union rally

Militant/Terri Moss

Co-Op miner Juan Salazar, with Bill Estrada, another Co-Op miner, translating on right of podium, speaking March 6 to PACE union conference in Reno, Nevada.

BY PAT MILLER
AND GUILLERMO ESQUIVEL

PRICE, Utah—"Our fight for representation by the United Mine Workers of America (UMWA) is about respect and dignity," said Juan Salazar, a coal miner at the Co-Op mine near Huntington, Utah. He was addressing the Region XI conference of the Paper, Allied-Industrial, Chemical and Energy (PACE) workers union. The 200 delegates met March 6 in Reno, Nevada.

Build March 12 rally!

— see editorial, p. 10

"We want a better future not just for ourselves and our families but also for other miners," Salazar continued. "Thanks to your ongoing support we have stayed united for a year and a half. If we win, other miners win too."

Co-Op miners José Contreras and Bill Estrada also addressed the gathering. Kyle Wulle, a PACE delegate from Salt Lake City, Utah, who has been an active supporter of the union-organizing fight in Huntington, introduced the miners.

The same day, another group of Co-Op miners addressed the monthly meeting of UMWA Local 1385 in Craig, Colorado. The local organizes 100 surface coal miners at the Seneca mine near Hayden, Colorado.

At these meetings and other activities, the Co-Op miners invited unionists and all supporters of their fight for a union to help build and take part in a solidarity rally scheduled for March 12 at the UMWA hall in Price, Utah.

The delegates at the PACE meeting in

Continued on Page 10

'Militant,' SWP file motion to dismiss harassment suit by Utah mine bosses

BY NORTON SANDLER

The *Militant* and the Socialist Workers Party filed a motion and supporting memorandum February 28 in Central Utah Federal District Court in Salt Lake City seeking a court order dismissing all claims brought against them in the lawsuit filed last year by the Kingston family, the owners of the Co-Op mine in Huntington, Utah. The *Militant* and SWP have also requested that the court order the Kingstons to pay all the costs they have incurred in defending themselves from "this frivolous lawsuit."

"The Kingston family has demonstrated a disturbing trend of using improper and frivolous 'defamation' actions as a powerful tool in their attempts to silence the press and their critics," the brief says. "The current lawsuit constitutes yet another attempt by the Kingstons to chill the constitutional rights of the press, and deter political opponents from fully exercising their freedom of the press and speech in order to avoid public scrutiny of their business practices at the Co-Op Mine, and the Plaintiffs should not be allowed to abuse the legal system in this way."

Defend 'Militant,' SWP!

— see editorial, p. 10

Representing the *Militant* and the SWP

Continued on Page 6

Canadian gov't grandstands on missile shield

BY NATALIE DOUCET
AND ROBERT SIMMS

TORONTO—Canadian prime minister Paul Martin said February 24 that Ottawa would not take part in the ballistic missile defense (BMD) program currently being developed and tested by Washington.

The Martin administration's announcement was more political grandstanding than an act of defiance against the U.S. rulers.

During his visit to Canada last November, U.S. president George Bush had pointedly urged Ottawa to sign on to BMD. Washington is paying for the system and all missiles and radar installations are stationed outside Canada. The U.S. rulers are developing the

Continued on Page 3

Also Inside:

Syrian forces in Lebanon

Continued from front page

tian president said. Mubarak was referring to the campaign against Syria being led by Washington that accelerated with the U.S. invasion of Iraq.

According to AP, the Saudi rulers also rejected the Syria government's proposal that its withdraw from Lebanon be conditional on keeping 3,000 troops and early-warning radar systems in Lebanon as a buffer against Israel. Israeli warplanes have attacked Syria's early-warning radar installations in the past. According to Agence France-Presse, an unnamed minister in Assad's government said that a complete withdrawal of Syrian troops from Lebanon would depend on what security guarantees Damascus is given.

Hezbollah holds rally

Hezbollah, which maintains a militia and is backed by Syria and Iran, staged a massive rally in Beirut March 8 that reportedly drew hundreds of thousands of people. The group has won widespread popularity in Lebanon for resisting the occupation of southern Lebanon by Tel Aviv, which withdrew in 2000.

Bowing to the pressure of the broad opposition to Syrian interference, Hezbollah fell short of calling for the Syrian troops to stay.

Instead the organizers of the demonstration attacked UN Resolution 1559, passed last fall, which calls for withdrawal of foreign troops and the disbanding of domestic militias. Hezbollah maintains an armed force of some 20,000 men. "The resistance will not give up its arms…because Lebanon needs the resistance to defend it," said Hezbollah leader Sheik Hassan Nasrallah, according to Reuters.

"The troop withdrawal must happen according to the mechanism of the Taif Accords," Nasrallah said at the rally, the Beirut *Daily Star* reported. "The governments of the two countries alone have the right to set the suitable timetable for the troops' withdrawal." Referring to the opposition coalition, Nasrallah said, "The other party holds different views than ours, which we respect. But we must withdraw the dialogue from the street and take it where it belongs. Either we argue as a national unity government or else keep the dialogue at a roundtable for as long as it takes."

The Taif Accords, signed by the Syrian and Lebanese governments in 1989 in Taif, Saudi Arabia, restructured the political system in Lebanon by transferring power away from the Maronite Christian minority, which had been given privileged status in Lebanon by its former French colonial masters. The accords established a cabinet divided equally between Christians and Muslims. They also reinforced Syria's direct role in Lebanese affairs.

While Hezbollah has depended upon a close relationship with Damascus for military and financial support, the deep popular opposition to the Syrian troop presence has forced it to modify its demands. Many saw the Hezbollah-organized demonstration not so much as a protest against the troop withdrawal, but as a show of strength by Hezbollah to bargain for its place in a future Lebanese government.

"They're like us; they want no foreign interference and want the U.S., Israel, and France out," opposition demonstrator Samer Samer told the *New York Times*, referring to Hezbollah. "But we also want the Syrians out too."

Syrian troops entered Lebanon in an effort to crush a nationalist uprising with revolutionary dynamics in 1976 (see excerpt below). They have remained in Lebanon to enforce the will of the Syrian government there, often coming into conflict with the interests of the Lebanese majority and the hundreds of thousands of Palestinians living in refugee camps there.

Opposition parties in the Lebanese parliament for more than a week had lobbied Hezbollah to join them. Until Assad's announcement of the troop withdrawal, Hezbollah confined its statements to ones encouraging negotiations between the Lebanese government, opposition parties, and Damascus. Hezbollah has 12 members in the Lebanese parliament.

Washington rejects proposal

"Leaders in the Middle East have important choices to make," Bush said in a March 8 speech at the National Defense University in Washington, D.C. "The world community, including Russia and Germany and France and Saudi Arabia and the United States has presented the Syrian government with one of those choices—to end its nearly 30-year occupation of Lebanon or become even more isolated from the world."

All Syrian military forces and intelligence personnel must withdraw before the Lebanese elections, for those elections to be "free and fair," Bush said, demanding that "international observers" monitor the vote.

Washington began ratcheting up its pressure on Damascus in the lead up to and following the invasion and occupation of Iraq in 2003. U.S. officials accuse Assad's regime of interfering in Iraq by permitting supporters of the Baathist regime of Saddam Hussein to finance and plan attacks on U.S. and Iraqi government forces from Syrian territory. Washington has worked closely with Tel Aviv to pressure Damascus to crack down on Palestinian organizations operating there as well.

The French rulers have also sought to use the weakening of the Baathist regime in Syria to shore up the influence of French imperialism in the region. French president Jacques Chirac reiterated his call March 4 for the "full and immediate application of UN Security Council Resolution 1559." British foreign minister Jack Straw said Damascus risked becoming a "pariah state." During a March 3 visit to Yemen German chancellor Gerhard Schröder also called for the implementation of the UN resolution.

Machinists union strikes Georgia Lockheed plant

Militant/Ellie Garcia

International Association of Machinists (IAM) Local 709 struck Lockheed Martin in Marietta, Georgia, at midnight on March 8. The union represents 2,800 workers at the plant. Union members rejected a contract that offered a 10 percent wage increase over three years and a $1,500 signing bonus, but would also raise health-care and retirement insurance costs. Spirits were high at the union hall as workers prepared for the evening shift change for picket duty. IAM Local 709 president Cornell "Slim" Stevens is at far right in photo.

Origin of Syrian troops in Lebanon

Below is an excerpt from *Palestine and the Arabs' Fight for Liberation* published by Pathfinder Press. It explains the origin of Syrian intervention in Lebanon in 1976. It is copyright © 1989 by Pathfinder Press. Reprinted by permission.

With the crushing of the Palestinian upsurge in Jordan in 1970, Lebanon was now the Palestinian fighters' most important base of operations. More than 400,000 Palestinians lived as refugees in a country of some 3 million people. In 1969 the Lebanese government had been forced to grant the Palestinians and their organizations wide latitude to organize and control the refugee camps. This deepened the revolt of growing numbers

Continued on Page 3

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Canada missile defense

Continued from front page

nuclear shield in order to gain first-strike nuclear capacity and use it to blackmail any regime that doesn't bow to Washington's dictates. They are also pressing their imperialist allies and other governments to come under the U.S. nuclear umbrella. Washington has already won cooperation on the program from the governments of Australia, Japan, and the United Kingdom.

The newly appointed Canadian ambassador to Washington, Frank McKenna, precipitated Martin's announcement just days before he took up his post by telling reporters February 22 that Canada was already part of the BMD system. He cited a new amendment to the North American Aerospace Defense Command (NORAD) treaty signed last year by the Canadian and U.S. governments. "We're part of it now," he said, referring to ballistic defense.

"The question is how much more do we want [to do]," McKenna said. "There's no question the NORAD amendment has already given a great deal of what the United States needs in terms of input on North American defense."

NORAD has run the military surveillance and control of North American airspace since the 1950s. The amendment allows for all radar data collected by NORAD to flow to ballistic missile defense installations for their use. U.S. and Canadian officers rotate in NORAD's command structure.

By coincidence, the same day Martin made his announcement, the U.S. Navy cruiser *Lake Erie* carried out another successful test of the Aegis system that's part of BMD. *Lake Erie* shot an interceptor missile that destroyed another ballistic missile launched minutes earlier. The February 24 mission was the fifth successful test for the SM-3 interceptor missile and its radar components in the system.

Martin's announcement posed the possibility of new tensions in relations between Ottawa and Washington. These were strained by Ottawa's refusal to take part in the U.S.-led "coalition of the willing" in the war on Iraq, and Washington's retaliatory trade sanctions, which have sharply reduced Canadian exports of beef and softwood lumber to the United States.

Following Martin's announcement, U.S. secretary of state Condoleezza Rice sent a diplomatic signal of displeasure by postponing a scheduled visit to Ottawa in April.

Martin's decision contradicted his statements of support for BMD during his campaign to be elected Liberal party chief. Minister of Defense William Graham had also made numerous statements in favor of signing on to the system.

U.S. ambassador to Canada Paul Cellucci expressed Washington's surprise with Martin's position. "We simply cannot understand why Canada would in effect give up its sovereignty—its seat at the table—to decide what to do about a missile that might be coming towards Canada," he said. Cellucci pointed out that U.S. forces would shoot down such missiles anyway.

The Martin government's decision seems to flow from the administration's political weakness and internal divisions. Martin heads a Liberal minority government that needs votes from opposition party members to remain in office. While there was a strong possibility the premier could have counted on Conservative Party votes on this issue, media reports indicate that Martin faced fierce opposition to BMD from a sizeable minority in his own party. At the federal Liberal party convention March 4, delegates passed a motion against Canadian participation in BMD. The Parti Quebecois, based in Quebec, and the New Democratic Party, a social-democratic party, have also opposed BMD.

Opposition to ballistic missile defense is higher in Quebec than the rest of the country, according to opinion polls. Martin needs to make electoral gains there to have a chance to win a majority government in the next election.

Despite the BMD decision, Canada's imperialist rulers are preparing more military cooperation with Washington. Military spending in Canada has remained relatively low until recently. It was 1.2 percent of gross domestic product (GDP) in 2003—the lowest among NATO members after Luxemburg and Iceland.

This is now changing. The federal budget presented in parliament February 23 included a Can$2.5 billion (US$10.3 billion) increase in military spending over the next five years, the biggest jump in two decades. The Canadian rulers are adding 8,000 active and reserve troops to the Canadian Forces, and new equipment aimed at transforming the military into a larger, more mobile, and flexible force.

Negotiations between Ottawa and Washington have also been underway for months for a new treaty to expand continental military cooperation into areas of maritime and land surveillance and control along the same lines as NORAD. There is a May 2006 deadline for an agreement.

Thousands mark 1965 Alabama civil rights march

Militant/Clay Dennison

SELMA, Alabama—Thousands of people from around the country came here March 5–6 to mark the 40th anniversary of Bloody Sunday by reenacting a 1965 march that was a turning point in the fight for civil rights.

Participants this year included youth and students; veterans of the civil rights movement; working people from cities throughout the state; farmers; and some immigrant workers from Mexico.

The 1965 demonstration was blocked by police using clubs and tear gas from proceeding across the Edmund Pettus Bridge, on the edge of Selma. Marchers had planned to bring their demands for voting rights for Blacks to Montgomery, the state capital. After a week of national protests and a federal court order, then-Governor George Wallace was forced to allow the march to proceed. Thousands of civil rights supporters poured into Alabama from around the country to join the 50-mile march, which was completed on March 25, 1965. The 1965 Voting Rights Act, a major victory for the entire working class, was passed in August five months after the march to Montgomery.

The Voting Rights Act is up for extension in May 2007. At the march, Jesse Jackson announced plans to gather a million signatures in support of extension of the act that will culminate in an August 6 demonstration for voting rights in Atlanta.

—SUSAN LAMONT

Syrian troops blocked popular struggle in 1970s

Continued from Page 2

of Lebanese against an archaic political and social setup.

The French imperialists, rulers of Lebanon until the end of World War II, had sponsored a political arrangement under which the president and armed forces chief of staff had to be Maronite Christians. The much less powerful post of prime minister went to a Sunni Muslim and the largely symbolic post of speaker of the Chamber of Deputies to a Shiite Muslim. The parliament was divided according to a six-to-five ratio in favor of the Maronite Christians, based on a 1932 census, the last official census taken in Lebanon.

This guaranteed ascendancy to that section of merchants and landlords belonging to the Maronite denomination. They had worked hand in glove first with the French and later with the U.S. imperialists.

This setup largely disenfranchised Muslims, including most of the workers and farmers. By 1975 Muslims made up at least 60 percent of the population.

By formalizing divisions based on religious affiliation, the system blocked the forging of a unified, independent Lebanese nation. There was plenty of leeway for the French government and other imperialist powers to use divide-and-rule tactics.

A 1958 revolt against this system had been contained through U.S. military intervention. The rise of the Palestinian movement helped spur a new uprising. A broad range of opposition groups pressed for revamping the political system and supported the Palestinian struggle. The power of the Maronite-dominated army and rightist militias formed to defend Maronite privileges was increasingly challenged by militias based in the predominantly Muslim communities.

In 1975 the army began to disintegrate as revolts spread among officers and rank-and-file soldiers who supported majority rule. From the start of the conflict, leaders of the Phalange, an ultrarightist paramilitary party based in the Maronite communities, declared that disarming the Palestinians was a top priority.

Fatah, the leading group in the PLO, advocated nonintervention in political disputes in host countries as long as Palestinians were granted freedom of action in fighting for Palestine. However, when the Lebanese rightists destroyed a refugee camp, inhabited mostly by Palestinian Christians, and laid siege to the Tel al-Zaatar camp, home to more than 50,000 people, the PLO, including Fatah, joined forces with the Lebanese nationalists against the rightists. As the coalition of rebel forces gained ground, Syrian troops entered the country in April 1976 to prop up the government and prevent the defeat of the rightists. Syrian President Assad favored modifications in the Lebanese political structure that would strengthen Muslim- and thereby, he hoped, Syrian-influence in Lebanon. He viewed an allied regime in Lebanon as a buffer against Israeli attacks. But Assad opposed the revolutionary upsurge that threatened to topple the regime.

Syrian troops tied down Lebanese nationalist and Palestinian fighters outside Beirut while the rightists and the Lebanese army closed in on Palestinian refugee camps. This culminated in the siege and fall of the Tel al-Zaatar camp and the slaughter of many hundreds of camp residents.

In a news conference before reporters were allowed in to view the carnage, Bashir Gemayel, commander of the Phalange militia, proclaimed, "We are proud of what you are going to see here." Gemayel was to become the first choice of the Israeli regime and Washington to rule Lebanon six years later.

On Oct. 13, 1976, Syrian troops attempted to deal further blows to the Lebanese nationalist forces and their Palestinian allies with an attack, backed up by the Phalangist militia, on the village of Bhamdoun. Syrian troops were pushed back, however, and the civil war settled into a stalemate.

In the wake of these battles five Arab heads of state met with Yassir Arafat in Saudi Arabia. They authorized Syrian troops, together with a few units from other countries, to police Lebanon under the Lebanese government's command. But they also reaffirmed the 1969 accords permitting Palestinian forces to operate in Lebanon.

Supreme Court strikes down death penalty for juveniles

BY BRIAN WILLIAMS

Acknowledging growing international opposition to capital punishment, the U.S. Supreme Court March 1 halted the use of the death penalty against those convicted of crimes committed before the age of 18.

The 5-to-4 decision upheld a ruling by the Missouri Supreme Court in the case of Christopher Simmons, who was 17 at the time of the 1993 murder for which he was convicted. The ruling removes 72 inmates from death row in 12 states.

The decision represents a reversal of the court's ruling just 16 years ago that upheld the use of the death penalty for individuals convicted for crimes committed at the age of 16 or 17. At that time, the justices said these executions did not violate the Eighth Amendment to the Constitution, which prohibits "cruel and unusual punishments."

Writing for the court's majority, Justice Anthony Kennedy said this decision was necessary to keep pace with the "evolving standards of decency" that for the past half century have affected the Supreme Court's view of what constitutes a violation of the Eighth Amendment.

"Our determination that the death penalty is disproportionate punishment for offenders under 18 finds confirmation in the stark reality that the United States is the only country in the world that continues to give official sanction to the juvenile death penalty," wrote Kennedy. "Only seven countries other than the United States have executed juvenile offenders since 1990: Iran, Pakistan, Saudi Arabia, Yemen, Nigeria, the Democratic Republic of Congo, and China. Since then each of these countries has either abolished capital punishment for juveniles or made public disavowal of the practice."

The Supreme Court justice further noted, "The United Nations Convention on the Rights of the Child, which every country in the world has ratified save the United States and Somalia, contains an express prohibition on capital punishment for crimes committed by juveniles under 18."

There have been 19 such executions in the United States since 1990. Prior to the court's ruling, 20 states permitted the death penalty for juvenile crimes. There are 29 inmates in Texas on death row, by far the largest number in the country.

The Supreme Court's ruling is the latest over the past several years that have restricted use of the death penalty. In 1988 the court barred the execution of those 15 and younger at the time of the crime, though a year later upheld executions for those aged 16 and 17. In 2002 the court struck down execution of those who were mentally retarded, removing some 300 inmates from death row. The following year the court overturned the death sentence of a Maryland man because of ineffective representation by his court-appointed attorney, ruling that defendants have the right not just to counsel but to "effective counsel." Also struck down at that time was the conviction of a Texas death row prisoner because of racially biased jury selection.

Since the Supreme Court reinstated the use of the death penalty in 1976, there have been 950 executions—339 of them in Texas. As of January 2005, 3,455 individuals are on death row—42 percent of them in three states: 639 in California, 447 in Texas, and 382 in Florida. Currently, the District of Columbia and 12 states—Alaska, Hawaii, Iowa, Maine, Massachusetts, Michigan, Minnesota, North Dakota, Rhode Island, Vermont, West Virginia, and Wisconsin—do not permit use of the death penalty.

Utah daily papers answer defamation suit

'Salt Lake Tribune' and 'Deseret Morning News' file motion to dismiss charges

Printed below are major excerpts from the "Memorandum in Support of Motion to Dismiss" jointly filed February 17 by the *Salt Lake Tribune* and the *Deseret Morning News* in the United States District Court, District of Utah, Central Division, in the case of *International Association of United Workers Union, et al. v. United Mine Workers of America, et al.* The Utah daily newspapers, together with a number of their editors and reporters, are defendants in the lawsuit filed by the Kingston family, owners of the Co-Op Mine located in Huntington, Utah. The lawsuit charges the two papers, along with the *Militant* and numerous other individuals and organizations, with defamation (see front page article on the legal brief filed by the *Militant* and the Socialist Workers Party).

Militant/Terri Moss

United Mine Workers Region 4 director Bob Butero (center) presents statements from 49 miners who have agreed to return to work at the Co-Op mine in Huntington, Utah, to C.W. Mining boss Charles Reynolds (holding papers).

INTRODUCTION

This case concerns a contentious and very public labor dispute between a coal mine owned by the Kingston family and a number of mine workers who have fought for union representation and better working conditions at the mine. For more than a year, the dispute has generated both local and national publicity, as well as widespread criticism of the Kingston family by mine workers, union leaders, and national advocacy groups. The dispute has been the subject of extensive proceedings before the National Labor Relations Board ("NLRB"), which continues today to investigate the mine and conduct proceedings relating to claims of unfair labor practices and union representation for mine workers.

The issues raised by this labor dispute are of significant public interest. Nearly one-hundred workers claimed to be illegally fired from the mine, citing widespread exploitation, physical and verbal abuse, unsafe work conditions, violation of child-labor laws, and other unfair labor practices by mine officials. Throughout this bitter dispute, the local news media has provided ongoing coverage of both sides of the debate, attempting to properly inform the citizenry of the significant issues at stake. Often, mine officials and other members of the Kingston family have used this media coverage to articulate their positions and to refute the allegations of the workers. Those statements have been reported along with the public allegations of the mine workers.

Now, in an unfortunate attempt to punish their opponents in the labor dispute, and to chill any further negative publicity regarding the mine, the Kingstons have sued nearly 100 different defendants, all of whom allegedly "defamed" the Kingstons by reporting the claims of the mine workers during the dispute. Plaintiffs' sweeping 70-page Amended Complaint is a laundry-list of virtually every statement made about the Kingstons and their mine in the press, all of which Plaintiffs claim are defamatory. Included among the Kingstons' targets are the *Salt Lake Tribune* and the *Deseret Morning News*, together with a number of their editors and reporters, who now bring this Motion to Dismiss.

Plaintiffs' claims against the *Tribune* Defendants and the *Morning News* Defendants are meritless, and they should be dismissed for at least six reasons: (1) Defendants' publications are protected by the neutral reportage privilege; (2) Defendants' publications are protected by the public interest privilege; (3) the alleged defamatory statements are not capable of sustaining defamatory meaning as a matter of law; (4) the alleged defamatory statements are statements of opinion, and not verifiable statements of fact; (5) many of the alleged defamatory statements are protected by the official proceedings privilege; and (6) none of the alleged defamatory statements are "of and concerning" the individual plaintiffs.

RELEVANT ALLEGATIONS IN THE COMPLAINT

As is clear from the Plaintiffs' Amended Complaint (hereafter the "Complaint"), for more than a year there has been a very contentious and public labor dispute involving the Co-op Mine owned by C. W. Mining and located near Price, Utah (the "Co-op Mine"), current and former employees of the Co-op Mine, and officials of the United Mine Workers of America ("UMWA"). Plaintiffs here are: (1) the Co-op Mine; (2) some of the Co-op Mine's officers and employees; (3) the International Association of United Workers Union ("IAUWU") (the local and international union entities at the Co-op Mine); and (4) their officials.

The Defendants bringing this Motion are two Utah daily newspapers who regularly have reported on this ongoing labor dispute and the NLRB's actions related to the same. Plaintiffs now improperly seek to hold these Defendants liable for reporting and opining upon this dispute. Rather than specifying which specific statements Plaintiffs believe to be defamatory, Plaintiffs' prolix Complaint contains a laundry-list of virtually every statement made by opponents of the Co-op Mine and reported in the *Tribune* or *Morning News*. No attempt is made to explain why these statements are false, why they have harmed Plaintiffs' reputation, or why they are actionable in tort. Instead, in violation of Fed. R. Civ. P. 8(a), Plaintiffs' strategy seems to be to include every statement ever made about the mine in the Complaint, hoping something will stick.

Given Plaintiffs' laxity, it is not the task of this Court or of Defendants to decipher the morass of allegations contained in the Complaint and try to construct a coherent defamation claim. Nevertheless, for purposes of this Motion, and in the interest of clarity, Defendants have attempted to categorize the numerous statements in the *Tribune* and *Morning News* that Plaintiffs claim are defamatory, and which appear in the various newspaper articles published in 2003 and 2004 referenced in the Complaint (hereafter the "Articles"). Those categories are as follows:

1. **Statements Regarding the Lockout:** Workers and union leaders say the Co-op Mine locked them out, fired them, and/or otherwise retaliated when the workers tried to organize or support a new union.

2. **Statements Regarding the IAUWU:** Workers and union leaders say the IAUWU does not represent workers' interests, is a sham union controlled by the Kingstons, and does not have a "true" labor contract with workers; and that the Kingstons tried to stack the union vote with family members.

3. **Statements Regarding Working Conditions at the Mine:** Workers and union leaders say that workings conditions at the Co-op Mine are poor; that the Co-op Mine exploits, intimidates, and abuses workers; that wages are meager and workers are forced to work with injuries, work overtime, and pay for equipment; that workers lack training and health-care benefits; that Kingston children work in the mine; and that mine conditions are analogous to human rights violations and slavery.

4. **Statements Regarding NLRB Proceedings and Rulings:** Workers and union leaders say the NLRB ordered reinstatement and backpay, found the firing and intimidation of workers to be illegal, and excluded Kingston family members from the union vote.

These statements are exactly the type of vigorous rhetoric and hyperbole one expects to hear in the course of a contentious labor dispute, and the fact that the local media reported these allegations is hardly surprising. Apparently, however, Plaintiffs believe that negative publicity equates to defamation, and that the *Tribune* and *Morning News* should therefore be held liable for reporting both sides of this labor dispute. Plaintiffs are mistaken, and their claims should be dismissed as a matter of law.

ARGUMENT

Plaintiffs' defamation claims against the *Tribune* Defendants and the *Morning News* Defendants suffer from at least six legal defects, any one of which is sufficient for dismissal: (1) the alleged defamatory statements are protected by the neutral reportage privilege; (2) the statements are protected by the public interest privilege; (3) the statements are not capable of sustaining defamatory meaning as a matter of law; (4) the statements are expressions of opinion, and not verifiable statements of fact; (5) many of the statements are protected by the official proceedings privilege; and (6) none of the statements are "of and concerning" the individual plaintiffs. These arguments will be considered in turn.

I. THE ARTICLES IN QUESTION ARE PROTECTED BY THE CONSTITUTIONAL PRIVILEGE OF NEUTRAL REPORTAGE.

First, Plaintiffs' defamation claims fail because the Articles are constitutionally privileged as neutral reports of an ongoing public controversy. The existence of a privilege in a defamation case is a question of law for the court. See *Russell v. Thomson Newspapers, Inc.*, 842 P.2d 896, 900 (Utah 1992).

The First Amendment to the United States Constitution protects accurate and disinterested reports of public controversies and charges made by participants in those controversies. *See Edwards v. Nat'l Audubon Soc'y, Inc.*, 556 F.2d 113, 120 (2d Cir. 1977), *cert. denied* 434 U.S. 1002 (1977) (neutral reportage privilege protects newspaper article containing accusations by Audubon Society that prominent scientists were paid by pesticide industry to lie about effects of pesticide on birds)….

The purpose of the privilege is obvious — "The public interest in being fully informed about controversies that often rage around sensitive issues demands that the press be afforded the freedom to report such charges without assuming responsibility for them." *Edwards*, 556 F.2d at 120. Said another way:

> A robust and unintimidated press is a necessary ingredient of self-government...Thus, the doctrine of neutral reportage gives bent to a privilege by the terms of which the press can publish items of information relating to public issues, personalities or programs which need not be literally accurate. If the journalist believes, reasonably and in good faith, that his story accurately conveys information asserted about a personality or program, and such assertion is made under circumstances wherein the mere assertion is, in fact, newsworthy, than he need inquire no further.

Krauss v. Champaign News Gazette, Inc., 375 N.E.2d 1362, 1363 (Ill. Ct. App. 1978) (applying neutral report to newspaper article reporting state's investigation into use of drugs at youth group home).

Although the court in Edwards referred to the privilege as protecting "prominent" or "responsible" persons, 556 F.2d at 120, the neutral reportage privilege is not limited to reporting of statements made only by such people. Rather, it applies to all neutral reports of "serious charges made by one participant in an existing public controversy against another participant in that controversy," and the appropriate focus is on the neutrality of the report, not the prominence of the persons involved in the controversy.

The presence of a labor dispute here presents especially compelling arguments for the application of the neutral reportage privilege for the press. Consider the nature of labor disputes:

> Labor disputes are ordinarily heated affairs; the language that is commonplace there might well be deemed actionable per se in some state jurisdictions. Indeed, representation campaigns are frequently characterized by bitter and extreme charges, countercharges, unfounded rumors, vituperations, personal accusations, misrepresentations and distortions. Both labor and management often speak bluntly and recklessly, embellishing their respective positions with imprecatory language.

Linn v. United Plant Guard Workers of Am., 383 U.S. 53, 58 (1966) (citing *Cafeteria Employees Union v. Angelos*, 320 U.S. 293, 295 (1943)). The Tenth Circuit also has recognized these same principles. *See, e.g., Gen. Motors Corp. v. Mendicki*, 367 F.2d 66, 71 n. 3 (10th Cir. 1966). Thus, the federal courts have restricted libel claims in this context.

Specifically, in *Linn*, the United States Supreme Court held that defamation claims made by labor dispute participants are preempted and governed by the National Labor Relations Act ("NLRA") and not actionable in tort. The only exception the Court allowed is when a libel plaintiff proves the statements at issue were published with known falsity or reckless disregard of the truth. *See Linn*, 383 U.S. at 65-66 (relying on *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964)). This restriction was established to prevent "unwarranted intrusion upon free discussion envisioned by the Act [NLRA]" and because the national labor laws favor "uninhibited, robust and wide-open debates in labor disputes ...." *Old Dominion Branch No. 496, Nat'l Ass'n of Letter Carriers v. Austin*, 418 U.S. 264, 272-73 (1974). The press needs similar breathing space to report on the uninhibited, robust and wide-open debates that occur in labor disputes.

The neutral reportage privilege clearly applies to this case. Plaintiffs are, at the very least, limited purpose public figures, being involved and/or thrust into the center of this controversy, a major labor dispute. In *Madsen v. United Television, Inc.*, 797 P.2d 1083 (Utah 1990), the Utah Supreme Court stated:

> The law recognizes public figures for limited purposes who are sometimes referred to as "vortex public figures" because although they are not pervasive public figures, such as actors and other prominent persons, they have voluntarily or involuntarily been

Continued on Page 5

Utah papers' brief

Continued from Page 4

injected into a specific controversy of public interest.

Id. at 1084 (citing *Gertz v. Robert Welch, Inc*., 418 U.S. 323, 345 (1974)). Plainly, both sides of this labor dispute have made charges and countercharges during the course of the dispute. The public has a great interest in understanding both sides of the dispute and the significant social issues involved. The Articles, in neutrally and accurately reporting both sides of the issues, served to inform the public of this controversy, and thus are privileged.

Allegations misleadingly incomplete

In their Complaint, Plaintiffs conveniently omit any reference in the Articles to comments made by mine officials or Kingston representatives, giving the false impression that the Articles are merely one-sided reports of the mine controversy….

These balanced accounts of the public labor dispute between the Mine and its workers are precisely the type of newsworthy reporting encouraged by the neutral reportage privilege. Plaintiffs are not entitled to bar any news coverage of their labor dispute by refusing to offer public comment, nor are they entitled to sue for defamation when an article reports both sides of a public controversy. Because the Articles fall within the ambit of the neutral reportage privilege, Plaintiffs' claims should be dismissed.

II. THE ARTICLES IN QUESTION ARE PROTECTED BY UTAH'S "PUBLIC INTEREST" PRIVILEGE.

Plaintiffs' defamation claims also fail because the Articles are privileged under the "public benefit" or "public interest" privilege recognized under Utah law. The privilege applies if "the publication...of the matter complained of was for the public benefit." Utah Code Ann. § 45-23(5). While the statute does not define which publications are for the "public benefit," Utah courts have made clear that publications concerning public health and safety, the functioning of governmental bodies, or the expenditure of public funds fall within the ambit of the privilege. As the Utah Supreme Court has explained:

> The "public interest" privilege is applicable, at least, when the public health and safety are involved and when there is a legitimate issue with respect to the functioning of governmental bodies, officials, or public institutions, or with respect to matters involving the expenditure of public funds.

Seegmiller v. KSL, Inc., 626 P.2d 968, 978 (Utah 1981); *see also Cox v. Hatch*, 761 P.2d 556, 559 n. 3 (Utah 1988) (recognizing public interest qualified privilege). To overcome the privilege, Plaintiffs must prove that Defendants acted with ill will or spite ("common law malice"), that the Articles were excessively published, or that Defendants did not reasonably believe the statements in the Articles were true ("actual malice"). *See Russell v. Thomson Newspapers, Inc.,* 842 P.2d 896, 904-905 (Utah 1992); *Ogden Bus Lines v. KSL, Inc.,* 551 P.2d 222, 225 (Utah 1976); *Williams v. Standard-Examiner Publ'g Co*., 27 P.2d 1, 17 (Utah 1933).

A matter of significant public interest

In this case, it is clear that the Articles concern a matter of significant public interest and were published for the public benefit. The allegations surrounding the Co-op Mine concern health and safety conditions at the mine, the alleged exploitation and abuse of numerous workers, the use of child labor, allegedly unlawful working conditions and labor practices, accusations of human rights violations, a large-scale strike by miners, and, eventually, multiple proceedings before the NLRB. Close to a hundred workers were involved in the initial strike and subsequent lockout by the Co-op Mine, and numerous other miners continue to work at the mine. A myriad of government and advocacy groups have been involved in the dispute in connection with the workers' health and safety claims, including the United Mine Workers, Utah Jobs with Justice, the Disabled Rights Action Committee, the Mine Safety and Health Administration, the National Organization for Women, and Code Pink.

The Co-op Mine dispute has generated substantial coverage in both local and national press, as the voluminous allegations of Plaintiffs' own Complaint make clear. The news media plays a significant constitutional role in providing the public with newsworthy information on a matters of public interest and thereby facilitating legitimate public debate. In fulfilling this role by publishing the Articles, the *Tribune* and *Morning News* helped keep the public informed of a situation that implicated the health, safety, and rights of hundreds of workers in Utah, as well as ongoing proceedings before governmental agencies. Because the statements in the Articles deal not only with public health and safety, but also issues before the NLRB, they fall within the scope of the public interest privilege. *See Seegmiller*, 626 P.2d at 978; *Mast v. Overson*, 971 P.2d 928, 931 (Utah Ct. App. 1998) (political dispute over local development project was "issue of public interest"); *Brown v. Wanlass*, No. 980404712 (4th Dist. Ct. August 11, 1999) (Stott, J.) (granting newspaper defendant's motion for summary judgment on defamation claim based on public interest privilege); *Jacob v. Bezzant*, No. 000403530 (4th Dist. Ct. April 2, 2004) (Davis, J.) (dismissing defamation claims against newspaper on the pleadings based on public interest privilege).

To overcome the public interest privilege applicable to the Articles, it is Plaintiffs' burden to demonstrate that Defendants published the Articles with common law malice, that the articles were excessively published, or that Defendants did not reasonably believe that the statements in the Articles were true. Plaintiffs have failed to plead facts supporting any of these three exceptions.

First, Plaintiffs must plead facts demonstrating common law malice by Defendants (*i.e.,* ill will or spite) in order to overcome the public interest privilege. See *Russell*, 842 P.2d at 905 and n. 28; *Combes v. Montgomery Ward & Co.*, 278 P.2d 272, 277 (Utah 1951). "Whether the evidence in a defamation case is sufficient to support a finding of malice is a question of law." *Russell*, 842 P.2d at 905.

Plaintiffs' complaint devoid of facts

Plaintiffs' Complaint is entirely devoid of any facts supporting a finding of common law malice by Defendants. The only allegation in the Complaint that relates to malice is Paragraph 132, which states, in full, as follows: "Defendants' statements as described above were made with malice." [Complaint ¶ 132.] Notably, this conclusory allegation is not specific to the *Tribune* Defendants, or the *Morning News* Defendants, but is rather applied to all of the nearly 100 defendants in this case. The Complaint contains no specific facts explaining why the *Tribune* or *Morning News* would have any spite or ill will towards the Co-op Mine, or why the Articles would be the product of such common law malice.

Under Utah law, a plaintiff must do more than simply include the word "malice" in his complaint to overcome a conditional privilege. "[U]nless plaintiff pleads and proves facts which indicate actual malice in that the utterances were made from spite, ill will or hatred toward him and, unless the plaintiff produces such evidence, there is no issue to be submitted to the jury. *Combes v. Montgomery Ward & Co.,* 228 P. 2d 272, 277 (Utah 1951) (emphasis added). Cf. *Karacand v. Edwards*, 53 F. Supp. 2d 1236, 1241 (D. Utah 1999) (on a motion to dismiss, although well-pleaded facts taken as true, legal conclusions and unsupported assertions are insufficient to preclude dismissal); *Caprin v. Simon Transp. Servs.,* 112 F. Supp. 2d 1251, 1255 (D. Utah 2000) ("Legal conclusions, deductions, and opinions couched as facts are, however, not given such a presumption.").

Because it is Plaintiffs that "[have] the burden of presenting evidence to overcome the privilege," *Russell*, 842 P.2d at 905 n. 28, and because the Complaint fails to plead facts sufficient to carry that burden, the common law malice exception does not apply.

The second exception to the privilege —excessive publication—is irrelevant here. The Complaint contains no allegations or supporting facts contending that the Articles were excessively published. Under Utah law, excessive publication requires that "publication of the defamatory material extended beyond those who had a legally justified reason for receiving it." *DeBry v. Godbe*, 1999 UT 111, ¶ 21, 992 P.2d 979 (quoting *Brehany v. Nordstrom, Inc.,* 812 P.2d 49, 58 (Utah 1991)). Here, the Articles were published to those who subscribed to the *Tribune* or the *Morning News* — precisely those with a legally justified reason for receiving those papers.

Finally, the "actual malice" exception to the public interest privilege does not apply here. In alleging actual malice, Plaintiffs face a heightened burden of proving their claim by "clear and convincing" evidence. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 254 (1986). To prove that a false statement was made with "reckless disregard" for its truth, the plaintiff must show that the defendant (1) published the statement with a "high degree of awareness of... probable falsity," or (2) "in fact entertained serious doubts as to the truth of his publication." *St. Amant v. Thompson* 390 U.S. 727, 731 (1968); *Garrison v. Louisiana*, 379 U.S. 64, 74 (1964). Whether the facts as pled support such a showing is a question of law for the Court. *See Russell*, 842 P.2d at 905

The Complaint contains no facts supporting such a showing. The sole allegation in the Complaint relating to actual malice is the sweeping assertion that *all* of the defendants' statements "were made with knowledge of their falsity, or with reckless disregard as to their truth or falsity." [Complaint ¶ 131]. There are no facts in the Complaint supporting this legal conclusion, no allegations regarding any investigation or fact-checking performed by the *Tribune* or *Morning News*, and no assertions of any background knowledge those defendants had regarding the underlying facts of the Co-op Mine dispute. Again, under Utah law, a plaintiff must do more than simply parrot the legal standard for actual malice. He must allege specific facts that, if proven true, would carry his burden at trial. *Combes*, 228 P.2d at 277. Plaintiffs have not done so here.

Because the Articles in question clearly fall within the scope of Utah's public interest privilege, and because Plaintiffs have not alleged any specific facts establishing an exception to the privilege, Plaintiffs' claims should be dismissed.

III. IN THE CONTEXT OF THE CO-OP MINE LABOR DISPUTE, THE ALLEGED DEFAMATORY STATEMENTS DO NOT CONVEY DEFAMATORY MEANING AS A MATTER OF LAW.

Plaintiffs' defamation claims also fail because the Articles, published in the context of a heated labor dispute, do not convey defamatory meaning as a matter of law.

"Whether a statement is capable of sustaining a defamatory meaning is a question of law[.]" *West v. Thomson Newspapers*, 872 P.2d 999, 1008 (Utah 1994) (ordering dismissal of politician's libel claim because newspaper article was not capable of conveying a defamatory meaning as a matter of law). If the Court determines that, given the context of the Co-op Mine labor dispute, the alleged falsehoods in the Articles are not capable of conveying a defamatory meaning to "reasonable" members of its audience, then Plaintiffs' defamation claims fail as a matter of law. *Cox*, 761 P.2d at 561 (affirming dismissal of defamation claim because publication not defamatory as a matter of law). Consequently, it is not enough that Plaintiffs may believe the Articles damaged their reputations or were otherwise upsetting:

> A publication is not defamatory simply because it is nettlesome or embarrassing to a plaintiff, or even because it makes a false statement about the plaintiff. Thus, **an embarrassing, even though false, statement that does not damage one's reputation is not actionable as libel or slander**. If no defamatory meaning can reasonably be inferred by reason-

Continued on Page 9

Militant/Terri Moss

Coal miners on picket line outside Co-Op mine near Huntington, Utah, Dec. 13, 2003, during an expanded picket line of 100 miners and supporters. The sign says, "Amigo, you are about to cross a line of dignity and honor. If you cross to avoid losing your car or your house, keep in mind that what you are about to lose is your soul."

Militant and Perspectiva Mundial Subscription Renewal Campaign
February 5 – March 13: Final chart

	Militant			PM	
Country	**Goal**	**Sold**	**%**	**Goal**	**Sold**
AUSTRALIA	**10**	**15**	**150%**	**2**	**1**
SWEDEN	**4**	**5**	**125%**	**1**	**0**
NEW ZEALAND					
Auckland	**7**	**8**	**114%**	**0**	**0**
Christchurch	**3**	**3**	**100%**	**0**	**0**
N.Z. total	**10**	**11**	**110%**	**0**	**0**
UNITED STATES					
Pittsburgh	**10**	**14**	**140%**	**1**	**1**
NE Pennsylvania	**8**	**11**	**138%**	**5**	**3**
Seattle	**8**	**10**	**125%**	**3**	**1**
Des Moines	**10**	**12**	**120%**	**5**	**5**
Los Angeles	**20**	**23**	**115%**	**10**	**14**
Newark	**15**	**17**	**113%**	**2**	**3**
Philadelphia	**10**	**11**	**110%**	**1**	**0**
Washington	**14**	**15**	**107%**	**3**	**3**
Miami	**12**	**12**	**100%**	**3**	**2**
Houston	15	14	93%	3	1
Detroit	8	7	88%	2	2
Price, UT	8	7	88%	6	5
Boston	15	13	87%	5	5
Chicago	15	12	80%	5	5
Twin Cities	15	12	80%	6	0
Birmingham	10	6	60%	2	0
Craig, CO	10	6	60%	2	0
New York	30	16	53%	8	3
Tampa	6	3	50%	3	3
Atlanta	15	7	47%	3	1
Cleveland	8	3	38%	3	1
San Francisco	18	4	22%	7	0
Omaha	5	1	20%	4	2
U.S. total	285	236	83%	92	60
UNITED KINGDOM					
Edinburgh	3	2	67%	0	0
London	10	8	80%	0	0
UK total	13	10	77%	0	0
CANADA					
Montreal	6	5	83%	2	0
Toronto	10	7	70%	0	0
CANADA total	16	12	75%	2	0
ICELAND	2	0	0%	0	0
Int'l totals	340	289	85%	97	61
Goal/Should be	**325**	**325**	**100%**	**80**	**80**

‘Militant,’ SWP fight attack by mine owners

Continued from front page

as their lead counsel is Salt Lake attorney Randy Dryer, who has defended many newspapers in cases where defense of freedom of the press and free speech are involved. Also working on this case is Dryer’s colleague Michael Petrogeorge.

The introduction to the memorandum submitted to the court in support of the motion to dismiss explains, “For more than 75 years, *The Militant*, a socialist newsweekly published in New York, has written extensively on the labor movement, the efforts of workers to unionize and to obtain greater rights, and on issues of public health and safety particularly affecting workers. Given its interest in labor issues, *The Militant* has written extensively over the past 18 months on the contentious and very public dispute between a central Utah coal mine (the “Co-Op Mine”) owned by the Kingston family, and a number of the mine’s workers.

“Like other newspapers, including *The Salt Lake Tribune* and *The Deseret Morning News*, *The Militant’s* articles have reported extensively on the workers’ allegations that they lack genuine union representation at the Co-Op mine, and that they have experienced unsafe working conditions, retaliatory, and anti-union labor practices, and other egregious and unfair treatment.”

It further explains that the *Militant* has reported extensively and reprinted documents about the Co-Op miners’ fight from hearings and proceedings of the National Labor Relations Board (NLRB) and the federal Mine Safety and Healthy Administration.

Reprinted in this issue (see facing page) is the full text of the legal documents submitted on behalf of the *Militant* and SWP to the federal district court. Many of the arguments in the motion to dismiss filed by the *Militant* and SWP are based on the arguments put forward in the brief filed on February 17 by the *Salt Lake Tribune* and the *Deseret Morning News,* Utah’s most prominent daily newspapers, which have also been sued by the Kingstons. For that reason, substantial excerpts of that brief are also reprinted here (see *Salt Lake Tribune* and *Deseret Morning News* brief on page 4).

This lawsuit originated last September, when the Kingstons sued the United Mine Workers of America (UMWA), its international officers and other officials, several Co-Op miners, several labor organizations, newspapers, and other groups and individuals, who have supported or written about this important labor struggle.

Attorneys for the Kingstons filed an amended brief in December, dropping some publications and a number of individuals from the suit. The Socialist Workers Party is named as a target in the Kingston lawsuit.

Prominent among the defendants in the amended brief is the *Militant*, its editor, and 25 of its volunteer correspondents. In fact, 24 of the 70 pages of the Kingston complaint alleging defamation are citations from the *Militant*’s nearly weekly coverage of the Co-Op miners’ fight over more than a year’s time.

Militant/Teri Moss

Drill team from International Longshore and Warehouse Union Local 10 in San Francisco at Feb. 7, 2004, Day of Solidarity with Co-Op strikers in Huntington, Utah.

In addition to seeking a judgment of unfair labor practices against the UMWA and the individual miners, and defamation against nearly 100 named defendants, the Kingstons are asking for damages claiming the UMWA “intentionally interfered” with their business and “civil conspiracy” against both the Kingston-owned C.W. Mining Company and the in-house Kingston family-operated International Association of United Workers Union (IAUWU), which claims to be the union representing miners at Co-Op. The Kingstons are requesting that the court award C.W. Mining in excess of $1 million as well as court costs.

This lawsuit stems from the struggles workers at the Co-Op mine have waged over the past 19 months. The coal miners are fighting for reinstatement to their jobs, better wages and working conditions, job safety, and to be treated with dignity. They are fighting to win union representation by the UMWA. The Kingstons have resisted this union-organizing effort at every step.

After 10 months on the picket line, the miners and the UMWA won a National Labor Relations Board (NLRB) ruling last summer affirming that the miners were unjustly fired and ordering the company to reinstate the workers. A union representation election was held in December. The election results are still pending.

Harassment and retributive lawsuit

Following the NLRB ruling and before the union election, C.W. Mining and the IAUWU filed their harassment lawsuit on September 24. They filed an amended complaint on December 9, the same day that 30 of the Mexican-born miners, including many named as defendants in the suit, were fired for allegedly not having valid documentation showing eligibility to work in the United States.

The Kingstons “draft their Complaint with an extremely broad brush, boldly contending that nearly *each and every* article *The Militant* published about the Co-op Mine labor dispute between October 2003 and December 2004 is defamatory. Such sweeping and conclusory allegations of defamation defy all common sense and reveal Plaintiffs’ true motive to harass *The Militant* (and other media defendants), and to deter further negative press about the Co-op Mine and the claims of its workers,” the *Militant* and SWP brief explains.

While the Socialist Workers Party is also named as a defendant, the brief explains that the only allegation against it is that “it owns and controls *The Militant*.”

“Even assuming (as we must for this motion) that this allegation is true (which it is not), the plaintiffs’ claims against the Socialist Workers Party rise and fall with their claims against *The Militant*, and because the claims against *The Militant* should be dismissed, so too should the claims against the Socialist Workers Party.”

The *Militant* and SWP brief explains that newspapers are afforded broad latitude in reporting on issues of public interest, in quoting or reporting on opinions expressed in the course of a dispute, and in reporting on matters before governmental bodies such as the NLRB and MSHA, and as a result the Kingston’s claims are frivolous and should be thrown out.

The Kingstons’ attorneys have 30 days to reply to the motions filed by the various defendants, although it is common for the court to grant an additional 30-day extension to respond. All of the defendants will then have 15 days to submit an additional reply before the motions to dismiss this case are decided upon by the federal district court in Utah.

Bosses, gov’t use suits to harass workers movement

BY NORTON SANDLER

A footnote in the *Militant* and SWP brief, addressing judicial precedent for an author’s or a reporter’s constitutional right to neutrality protection, cites the *Price v. Viking* case. This was a suit filed by FBI Special Agent David Price in 1984 in an attempt to prevent the distribution of *In the Spirit of Crazy Horse*. This book by Peter Matthiessen is an account of the FBI assault on American Indian Movement (AIM) activists at Wounded Knee on the Pine Ridge Indian reservation in South Dakota in 1975.

“The republication of *In the Spirit of Crazy Horse* marks a great victory against a new kind of censorship,” New York attorney Martin Garbus wrote in the afterword to the book’s 1991 edition. Garbus, who defended Matthiessen and Viking Press, explains that libel suits filed by Price and by former South Dakota governor William Janklow in three states kept Matthiessen’s book from being sold for seven years. In addition to filing the lawsuit, Price, the FBI, and Janklow called and threatened book buyers and bookstores to intimidate them away from distributing *Crazy Horse*.

Garbus’s account of the legal fight details the toll a harassment lawsuit can take, even if it does not win. Matthiessen and Viking Press had to expend considerable resources to defeat the suits. Matthiessen was subject to invasive interrogation and legal discovery and investigation for two years. In the end, the courts had to decide whether or not it is libelous to report on unproven charges or countercharges in a public controversy. The courts ultimately rejected Price and Janklow’s claim that the book was libelous because Matthiessen quoted so-called “disreputable” sources, such as AIM members, their sympathizers, and leftists, as opposed to “responsible sources” like members of Congress and the *New York Times.*

Gelfand suit

The Socialist Workers Party has defended itself previously from harassment lawsuits. In 1979, Alan Gelfand, a lawyer employed at the time by Los Angeles County, sued claiming his constitutional rights were violated because the SWP was run by FBI agents who engineered his expulsion from the party. Gelfand asked the court to remove the party’s leadership.

“The suit has been prepared, organized, and financed by an antilabor group known as the Workers League, with which Gelfand is associated,” the *Militant* explained at the time.

With wild conspiracy allegations at its center, the case went on for 10 years until federal judge Mariana Pfaelzer finally dismissed it in August 1989. The SWP was awarded some of its costs. In a separate out-of-court settlement, Gelfand’s previous attorneys were forced to pay some of the legal costs the SWP incurred in defending itself in the case.

The SWP mounted a public campaign against the suit reaching out broadly to the labor movement and to defenders of workers rights for support. Through the efforts of the Political Rights Defense Fund, which adopted the case, thousands and thousands of dollars were raised to cover the legal expenses.

In her final ruling, Pfaelzer stated that “there is no evidence” to back Gelfand’s charges and that his motivation in bringing the suit was to “disrupt the SWP.”

Militant/Diane Jacobs

Federal Judge Mariana Pfaelzer presided over 10-year harassment suit.

“Gelfand,” the judge continued, did not “have any substantial basis in fact for any of his allegations, nor did he have a good faith belief that the allegations were true.”

The judge concluded that years of “pretrial discovering” that she had allowed, which included hours of sworn depositions from SWP members and supporters with questions by attorneys paid by the Workers League, were “abusive, harassing, and in large part directed to matters which could have no probative value in this litigations. The discovery was not conducted for the purpose of discovering evidence in support of plaintiff’s claims; one of its main purposes was to generate material for political attacks on the SWP by the Workers League.”

The judge went on to lament, “I made a bad mistake during the trial. I should have granted the defendants motion for summary judgment six years ago.”

She later told the SWP’s attorney that the case was “painful, because it cost your client so much money. All the trips [back and forth to Los Angeles] for legal hearings were a drain on the party’s treasury.”

‘Militant’ answers defamation lawsuit

Legal brief by socialist weekly, SWP backing motion to dismiss Kingston suit

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Attorneys for defendants The Militant and the Socialist Workers Party

IN THE UNITED STATES DISTRICT COURT DISTRICT OF UTAH, CENTRAL DIVISION

INTERNATIONAL ASSOCIATION OF UNITED WORKERS UNION, et al.,
Plaintiffs,
vs.
UNITED MINE WORKERS OF AMERICA, et al.,
Defendants.
Case No. 2:04CV00901

MEMORANDUM IN SUPPORT OF MOTION TO DISMISS ALL CLAIMS AGAINST DEFENDANTS *THE MILITANT* AND THE SOCIALIST WORKERS PARTY

Judge Dee V. Benson

Defendants *The Militant* and the Socialist Workers Party[1] (collectively “Defendants”), by and through undersigned counsel, hereby submit this memorandum in support of their motion to dismiss all claims asserted against them by the plaintiffs[2] in the above captioned matter.

INTRODUCTION

For more than 75 years, *The Militant*, a socialist newsweekly published in New York, has written extensively on the labor movement, the efforts of workers to unionize and to obtain greater rights, and on issues of public health and safety particularly affecting workers. Given its interest in labor issues, *The Militant* has written extensively over the past 18 months on the contentious and very public dispute between a central Utah coal mine (the “Co-op Mine”) owned by the Kingston family,[3] and a number of the mine’s workers. Like other newspapers, including *The Salt Lake Tribune* and *The Deseret Morning News*, *The Militant’s* articles have reported extensively on the workers’ allegations that they lack genuine union representation at the Co-op Mine, and that they have experienced unsafe working conditions, retaliatory and anti-union labor practices, and other egregious and unfair treatment. *The Militant* has also reported extensively on (and reprinted documents relating to) proceedings before and rulings by the National Labor Relations Board (“NLRB”) regarding the labor dispute at the Co-op Mine, and the actions of the Mine Safety and Health Administration (“MSHA”) with respect to unsafe working conditions at the mine.[4]

Frustrated with the negative publicity about the Co-op Mine, Plaintiffs have now sued *The Militant*, *The Salt Lake Tribune* (the “*Tribune*”), *The Deseret Morning News* (the “*Morning News*”), and numerous others for defamation. As with their allegations against the *Tribune* and the *Morning News* the plaintiffs do not attempt to allege or articulate what portions of *The Militant*’s articles on the Co-op Mine dispute are actually defamatory or why. Plaintiffs have instead drafted their Complaint with an extremely broad brush, boldly contending that nearly ***each and every*** article *The Militant* published about the Co-op Mine labor dispute between October 2003 and December 2004 is defamatory.[5] Such sweeping and conclusory allegations of defamation defy all common sense and reveal Plaintiffs’ true motive to harass *The Militant* (and the other media defendants), and to deter further negative press about the Co-op Mine and the claims of its workers. *The Militant*’s articles are entitled to the fullest protection of the First Amendment, however, and Plaintiffs should not be allowed to use this litigation as a means to squelch *The Militant*’s constitutional rights to freedom of the press and freedom of speech.

Plaintiffs’ claims against Defendants are meritless and should be dismissed for at least five reasons: (1) *The Militant*’s publications are protected by the public interest privilege; (2) *The Militant*’s allegedly defamatory statements, when taken in context, are not capable of sustaining defamatory meaning, (3) *The Militant*’s allegedly defamatory statements are statements of non-actionable opinion, and not statements of fact; (4) many of *The Militant*’s allegedly defamatory statements are protected by the official proceedings privilege; and (5) with few exceptions, *The Militant*’s allegedly defamatory statements are not “of and concerning” the individual plaintiffs. Plaintiffs should also be required to reimburse Defendants for their reasonable attorneys’ fees and costs incurred in defending this frivolous lawsuit.[6]

Militant/Anne Carroll

Co-Op strikers’ March 29, 2004, picket line in Huntington, Utah. Mark Reynolds of Co-Op management is videotaping the strikers.

RELEVANT FACTS

Plaintiffs initiated this lawsuit against *The Militant* and numerous other publications and news organizations on or about September 24, 2004, asserting claims of defamation in an effort to squelch negative press about the Co-op Mine and its owners. *See* Amended Complaint.[7] On or about February 17, 2005, defendants the *Tribune* and the *Morning News*, along with individually named editors and reporters (collectively “*Tribune/Morning News* Defendants”), filed a Motion to Dismiss Plaintiffs’ claims against them, together with a supporting memorandum entitled “Memorandum in Support of Motion to Dismiss” (hereinafter “*Tribune/Morning News* Memorandum”). In that memorandum, the *Tribune/Morning News* Defendants group their allegedly defamatory statements into four categories, which categories apply equally to the allegedly defamatory statements published by *The Militant*. The four categories, and the corresponding articles from *The Militant*, are as follows:

1. ***Statements Regarding the Lockout:*** Workers and union leaders say the Co-op Mine locked them out, fired them, and/or otherwise retaliated when the workers tried to organize or support a new union;[8]

2. ***Statements Regarding the IAUWU:*** Workers and union leaders say the IAUWU does not represent workers’ interests, is a sham union controlled by the Kingstons, and does not have a genuine labor contract with workers; and that the Kingstons tried to stack the union vote with family members;[9]

3. ***Statements Regarding Working Conditions at the Co-op Mine:*** Workers and union leaders say that working conditions at the Co-op Mine are poor; that the Co-op Mine exploits, intimidates, and abuses workers; that wages are meager and workers are forced to work with injuries, work overtime, and pay for equipment and training; that workers lack adequate training and health-care benefits; that Kingston children work in the Co-op Mine; and that the Co-op Mine conditions are analogous to human rights violations and tantamount to slavery;[10] and

4. ***Statements Regarding the NLRB/MSHA Proceedings and Rulings:*** Workers and union leaders statements regarding proceedings before and investigations of the NLRB and MSHA relating to complaints by the Co-op Mine workers and/or UMWA leaders, and reports on rulings and/or citations from the NLRB and/or MSHA ordering reinstatement and back pay, finding the firing and intimidation of workers to be illegal, finding safety violations at the Co-op Mine and/or excluding Kingston family members from the union vote.[11]

In the interest of judicial economy, and because the arguments set forth in the *Tribune/Morning News* Memorandum apply with equal or greater force to the statements published by *The Militant*, Defendants hereby rely upon and incorporate by express reference the following portions of the *Tribune/Morning News* Memorandum:

- “Introduction,” paragraphs one thru three, *see Tribune/Morning News* Memorandum at iii-iv;

- “Relevant Allegations of the Complaint,” particularly the argument that Plaintiffs failed to plead their defamation claims in accordance with the requirements of Federal Rule of Civil Procedure 8(a), *see id.* at iv-vi & 1;

- “Argument,” Sections II-VII, *see id* at 7-28;[12] and

- Exhibits C thru H.

ARGUMENT

I. *THE MILITANT* IS ENTITLED TO THE SAME FIRST AMENDMENT PROTECTIONS AS THE *TRIBUNE/MORNING NEWS* DEFENDANTS, AND PLAINTIFFS’ CLAIMS AGAINST *THE MILITANT* SHOULD BE DISMISSED FOR THE SAME REASONS SET FORTH IN ARGUMENT SECTIONS II-VI OF THE *TRIBUNE/MORNING NEWS* MEMORANDUM

Sections II-VI of the *Tribune/Morning News* Memorandum contain persuasive analyses regarding the nature of the labor dispute between the Co-op Mine and its workers as an important public controversy, and a thorough explanation as to why the statements made by the press regarding this highly-publicized dispute, and the proceedings before the NLRB and/or MSHA, are not, as a matter of law, defamatory. *See Tribune/Morning News* Memorandum at iii-iv & 1-28.

Like the statements published by the *Tribune/Morning News* Defendants, and for the same reasons set forth in their memorandum, the statements published in *The Militant*:

1. concern matters of significant public interest and inform the public about the contentious labor dispute between the Co-op Mine and its workers and the serious claims of mistreatment by the Co-op Mine workers, and are thus protected by Utah’s “public interest” privilege, *see Tribune/Morning News* Memorandum at 7-12, Argument, Section II; and

2. were published in the context of a very public, heated and well-publicized labor dispute, by a publication with a history of covering workers’ rights and organizing labor drives, and thus, by their very nature and context, do not convey a defamatory meaning to a reasonable reader, *see id.* at 12-16, Argument, Section III; and

3. report the point of view and opinions of the Co-op Mine workers regarding their working conditions and their treatment at the Co-op Mine, by a publication historically interested in labor disputes and issues of public health and safety as they relate to workers, and thus constitute statements of opinion which are not capable of being objectively verified as true or false, *see id.* at 16-20, Argument, Section IV; and

4. report on the administrative proceedings of the NLRB and/or MSHA to investigate and review the Co-op Mine workers’ complaints about lack of genuine union representation, deplorable and unsafe working conditions, and retaliatory and unlawful anti-labor practices at the Co-op Mine, and are thus privileged under Utah law as reports of governmental proceedings, *see id.* at 20-23, Argument, Section V; and/or

5. are directed at the Co-op Mine and/or the International Association of United Workers’ Union (“IAUWU”), and are not “of and concerning” the individual plaintiffs. *See id.* at 23-25, Argument, Section VI.

All of the arguments set forth in Sections II-VI of the *Tribune/Morning News* Memorandum apply with equal or greater force to statements published by *The Militant*, and likewise require the dismissal of all of claims asserted against Defendants.[13]

II. THIS COURT SHOULD EXERCISE ITS POWER TO NOT ONLY DISMISS PLAINTIFFS’ CLAIMS, WITH PREJUDICE, BUT TO AWARD DEFENDANTS THEIR REASONABLE ATTORNEYS’ FEES AND COSTS IN DEFENDING THIS FRIVOLOUS ACTION.

Defendants join in and adopt in full the arguments and analyses set forth in Section VII of the *Tribune/Morning News* Memorandum, *see id.* at 25-28, and urge this Court to not only dismiss all of Plaintiffs’ claims, with prejudice, but to require Plaintiffs’ to fully reimburse Defendants the reasonable attorneys’ fees and costs incurred in defending this frivolous action. Defendants specifically agree with the *Tribune/Morning News* Defendants that (i) the Kingston family has demonstrated a disturbing trend of using improper and frivolous “defamation” actions as a powerful tool in their attempts to silence the press and their critics, (ii) the current lawsuit constitutes yet another attempt by the Kingstons to chill the constitutional rights of the press, and deter political opponents from fully exercising their freedom of the press and speech in order to avoid further public scrutiny of their business practices at the Co-op Mine, and (iii) Plaintiffs should not be allowed to abuse the legal system in this way.

This Court has the power under both federal procedural law and Utah substantive law to require Plaintiffs to pay Defendants’ reasonable attorneys’ fees and costs in this case.[14] *See* Fed. R. Civ. P. 11 (c)(l) & (c)(2) (allowing Court, upon motion or on its own initiative, to award “monetary sanctions” where it determines that a lawsuit has been filed for “any improper purpose, such as to harass,” or lacks a good faith basis in the law); U.C.A. § 78-27-56(1) (requiring the court to “award reasonable attorney’s fees to a prevailing party if the court determines that the action... was without merit and not brought or asserted in good faith.”). The exercise of such power is particularly appropriate in this case given the clear policy of the State of Utah against using claims

Continued on Page 8

Legal brief of 'Militant'

Continued from Page 7

for defamation as tools to chill public participation in the processes of government, a policy which is clearly reflected in the Citizen Participation in Government Act, Utah Code Ann. § 78-58-101 *et seq*. (the "Anti-SLAPP Statute").

As set forth more fully in the *Tribune/Morning News* Memorandum, the Anti-SLAPP Statute is specifically designed to deter the potential for unscrupulous litigants to abuse the legal system and use it as a means of interfering with a party's First Amendment rights (including freedom of the press), to engage in free and full debate on matters of public importance. *See id.* at 26-27. The very public and contentious labor dispute between the Co-op Mine and its workers raises important issues of workers' rights, health and safety in the coal mines, and social justice issues of particular interest to *The Militant* and its readers. *The Militant*'s coverage raises public awareness about these important issues, and constitutes active participation in a highly publicized and public debate. *The Militant*'s coverage of the Co-op Mine dispute is thus particularly ripe for protection under the Anti-SLAPP Statute.[15]

CONCLUSION

For all of the foregoing reasons, as well as those set forth in the incorporated portions of the *Tribune/Morning News* Memorandum, Defendants respectfully request that their Motion to Dismiss be granted, that Plaintiffs' claims against them be entirely dismissed, with prejudice, and that Defendants be awarded all of the reasonable attorneys' fees and costs they have incurred in defending this frivolous lawsuit.

DATED this 28th day of February, 2005.

s/Michael Petrogeorge

RANDY L. DRYER
MICHAEL P. PETROGEORGE
PARSONS BEHLE & LATIMER
Attorneys for defendants The Militant and the Socialist Workers Party

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[1] The only allegation against the Socialist Workers Party is that it owns and controls *The Militant*, and is therefore derivatively liable for *The Militant*'s allegedly defamatory publications. See Amended Complaint at 4, ¶133 ("*The Militant* is a newspaper owned and/or controlled by the Socialist Workers Party and is responsible for its content."). Even assuming (as we must for this motion) that this allegation is true (which it is not), the plaintiffs' claims against the Socialist Workers Party rise and fall with their claims against *The Militant*, and because the claims against *The Militant* should be dismissed, so too should the claims against the Socialist Workers Party.

[2] The plaintiffs in this case (collectively referred to herein as "Plaintiffs") are (i) the Co-op Mine, (ii) some of the Co-op Mine's officers and employees, (iii) the International Association of United Workers Union ("IAUWU") (an association currently operating at the Co-op Mine), and (iv) a number of IAUWU officials.

[3] The Co-op Mine is technically owned by C.W. Mining, an entity owned and controlled by the Kingstons.

[4] Both of these governmental agencies have issued rulings and/or citations affirming claims of the Co-op Mine workers.

[5] Copies of *The Militant*'s allegedly defamatory articles are attached hereto as Exhibit A so that this Court can review them in their entirety. Because these articles are referenced and relied upon in the Amended Complaint, *see* Amended Complaint at 10-36, ¶¶ 8 l(a)-(ppp), they are properly before this Court on a Rule 12(b)(6) motion to dismiss. *See, e.g., GFF Corp. v. Associated Wholesale Grocers, Inc.,* 130 F.3d 1381, 1384 (10th Cir. 1997) ("[I]f a plaintiff does not incorporate by reference or attach a document to its complaint, but the document is referred to in the complaint and is central to the plaintiff's claim, a defendant may submit an indisputably authentic copy to the court to be considered on a motion to dismiss. If the rule were otherwise, a plaintiff with a deficient claim could survive a motion to dismiss simply by not attaching a dispositive document upon which the plaintiff relied.").

[6] In addition to the claims of defamation, Plaintiffs' Amended Complaint purports to set forth claims for intentional interference with economic relations, negligence, and civil conspiracy. *See* Amended Complaint at 67-69, ¶¶ 143-167. Although these claims appear to be directed solely at the United Mine Workers of America ("UMWA"), and not *The Militant* (or the Socialist Workers Party), the Amended Complaint is less than clear. *See id*. To the extent Plaintiffs intended to allege these additional claims against *The Militant* (or the Socialist Workers Party), however, these claims must also fail with their defamation claims because the only allegedly wrongful conduct by *The Militant* (or the Socialist Workers Party) is the publication of the allegedly defamatory statements.

[7] Plaintiffs filed their Amended Complaint on or about December 9, 2004.

[8] *The Militant* Articles: 10/06/03; 10/13/03; 10/27/03; 11/03/03; 11/10/03; 11/17/03; 11/24/03; 11/24/03; 12/1/03; 12/1/03; 12/8/03; 12/15/03; 12/22/03; 12/29/03; 1/12/04; 1/19/04; 1/26/04; 2/2/04; 2/9/04; 2/16/04; 2/23/04; 3/8/04; 3/15/04; 3/22/04; 4/27/04; 5/04/04; 5/04/04; 5/11/04; 5/25/04; 5/31/04; 6/14/04; 6/28/04; 7/6/04; 7/20/04; 8/3/04; 8/17/04; 8/31/04; 9/07/04; 9/14/04; 9/14/04; 9/21/04; 9/28/04; 10/05/04; 10/12/04; 10/12/04; 10/19/04; 10/26/04; 11/02/04; 11/9/04; 11/16/04; 11/23/04; 11/30/04; and 12/7/04, true and correct copies attached hereto as Exhibit A.

[9] *The Militant* Articles: 10/06/03; 10/27/03; 11/03/03; 11/10/03; 11/24/03; 12/1/03; 12/1/03; 12/29/03; 1/26/04; 2/2/04; 2/9/04; 4/13/04; 5/25/04; 6/7/04; 6/14/04; 6/28/04; 7/20/04; 8/3/04; 8/10/04; 8/17/04; 8/31/04; 9/07/04; 9/14/04; 9/14/04; 9/21/04; 9/28/04; 10/05/04; 10/12/04; 10/12/04; 10/19/04; 10/26/04; 11/02/04; 11/9/04; 11/23/04; 11/30/04; and 12/7/04, true and correct copies attached hereto as Exhibit A.

[10] *The Militant* Articles: 10/13/03; 10/27/03; 11/03/03; 11/10/03; 11/17/03; 11/24/03; 11/24/03; 12/1/03; 12/1/03; 12/8/03; 12/15/03; 12/22/03; 12/29/03; 1/12/04; 1/19/04; 1/26/04; 2/2/04; 2/9/04; 2/16/04; 2/23/04; 3/1/04; 3/8/04; 3/15/04; 3/22/04; 4/20/04; 5/11/04; 5/18/04; 5/25/04; 6/07/04; 6/14/04; 6/28/04; 7/6/04; 7/20/04; 8/3/04; 8/17/04; 8/31/04; 9/14/04; 9/28/04; 10/19/04; 10/26/04; 11/02/04; 11/9/04; 11/16/04; and 12/7/04, true and correct copies attached hereto as Exhibit A.

Militant/Terri Moss

Co-Op miners won support from working people in Utah. Jan. 17, 2004, solidarity picket at Standard Restaurant Supply in Salt Lake City, owned by Kingston family.

[11] *The Militant* Articles: 7/20/04; 8/10/04; 8/31/04; 9/14/04; 9/21/04; 9/28/04; 10/05/04; 10/12/04; 10/19/04; 10/26/04; 11/02/04; 11/9/04; 11/16/04; 11/23/04; 11/30/04; and 12/7/04, true and correct copies attached hereto as Exhibit A.

[12] *The Militant* does not incorporate, adopt, or rely upon Argument, Section I of the *Tribune/Morning News* Memorandum regarding the "neutral reporting" privilege at this time, but expressly reserves the right to invoke the privilege as appropriate in the future. *The Militant* nonetheless agrees with the *Tribune/Morning News* Defendants that the "neutral reporting" privilege is an important privilege that should be recognized under the First Amendment for all members of the press. The privilege is satisfied by accurately reporting what was said or done by participants in the course of a newsworthy public controversy, *Price v. Viking Penguin, Inc*., 881 F.2d 1426, 1434 (8th Cir. 1989), *cert. denied*, 493 U.S. 1036 (1990), and where the reporter or publication refrains from "in fact espous[ing] or concur[ring] in the charges made by others." *Edwards v. National Audubon Soc'y*, 556 F.2d 113, 120 (2d Cir. 1977).

[13] *The Militant* acknowledges that not all of the statements it published fall within each of the identified categories. By way of nonexclusive example, a small handful of articles do contain statements about some of the individually named plaintiffs. *See, e.g., The Militant* Articles 1/12/04; 4/20/04; 8/3/04; 8/10/04; 8/17/04; 8/31/04; 9/21/04; 10/05/04; 11/9/04; and 12/7/04, true and correct copies attached hereto as Exhibit A. Likewise, only about one-third of the articles report on the proceedings before the NLRB and/or MSHA. *See infra* note 11. However, because all of *The Militant*'s articles fall into at least one of the identified categories, it is appropriate for this Court to entirely dismiss Plaintiffs' claims against *The Militant* (and the Socialist Workers Party), with prejudice.

[14] Should this Court determine that an award of reasonable attorneys' fees and costs is appropriate in this case, counsel for Defendants will submit the appropriate affidavits to support such an award.

[15] Because *The Militant* has filed a motion to dismiss under Rule 12(b)(6), rather than an Answer, it has not filed a counterclaim against Plaintiffs under the Anti-SLAPP Statute. *The Militant* firmly believes that it has a stand alone claim against Plaintiffs under Section 105 the Anti-SLAPP statute, however, and expressly reserves the right to assert a substantive claim in a separate proceeding, after Plaintiffs' claims are dismissed in this case. Any subsequent action would necessarily include a claim for the same attorneys' fees and costs sought through this motion to dismiss (along with other compensatory damages). See U.C.A. § 78-58-105. By awarding *The Militant* its fees and costs now, this Court will avoid the necessity for this subsequent action, which would involve additional needless expense and time, and constitute a waste of judicial resources.

Utah dailies' legal brief

Continued from Page 5

able persons from the communication, the action must be dismissed for failure to state a claim.

Cox, 761 P.2d at 561 (emphasis added); *see also West*, 872 P.2d at 1009.

Moreover, political invective, exaggerated commentary or rhetorical hyperbole, such as saying a politician manipulated a situation, is not actionable as libel, *i.e.,* "such criticism is not defamatory." *West*, 872 P.2d at 1010. For example, the Utah Supreme Court has noted that it is not necessarily defamatory to use comments or phrases such as "coarse," "vile," "obscene," "abusive," "insensitive," "malicious," "hypocritical," "hatchet man," "scalawag," "scab," "rake," "scoundrel," and/or "traitor." *Id.; see also Greenbelt Coop. Publ'g Ass'n v. Bresler,* 398 U.S. 6, 14 (1994) (use of word "blackmail" in context was nonactionable rhetorical hyperbole); *Pring v. Penthouse Int'l Ltd.,* 695 F.2d 438, 443 (10th Cir. 1983) (references to alleged sexual acts by Miss Wyoming were nonactionable rhetorical hyperbole).

In determining whether a statement can convey defamatory meaning, the overall context in which the statements were made is critically important. Rather than looking at the Articles in isolation, the Court "must carefully examine the context in which the statement was made, giving the words their most common and accepted meaning," to determine if the statement is capable of being defamatory in the manner Plaintiffs allege. *West*, 872 P.2d at 1009.

When statements are made in the context of a heated political debate, or contentious labor dispute, courts properly give wide berth to participants in those debates to encourage vigorous public dialogue. As noted in Section I, *supra*, labor disputes are "ordinarily heated affairs" involving language that, in some other context, "might well be deemed actionable per se[.]" *Linn v. United Plant Guard Workers of America*, 383 U.S. 53, 58 (1966). Such disputes "are frequently characterized by bitter and extreme charges, countercharges, unfounded rumors, vituperations, personal accusations, misrepresentations and distortions." *Id*. Given the need to prevent chilling of participants in such disputes, the U.S. Supreme Court has held that defamation claims against labor participants are only actionable if the plaintiff can demonstrate actual malice. *Id.* at 65-66.

In reporting on such disputes and the statements made by participants, the news media fulfills an important constitutional function of facilitating these debates, and consequently merits the same latitude afforded the participants themselves. Otherwise, the goals of encouraging "uninhibited, robust and wide-open debates in labor disputes" would be frustrated, resulting in an "unwarranted intrusion upon free discussion envisioned by the Act [NLRA]." *Old Dominion Branch No. 496, Nat'l Ass'n of Letter Carriers v. Austin*, 418 U. S. 264, 272-73 (1974)….

IV. THE ALLEGED DEFAMATORY STATEMENTS ARE NON-ACTIONABLE STATEMENTS OF OPINION.

A related, but distinct, element of Plaintiffs' defamation claims is that the alleged defamatory statements must be statements of verifiable fact, rather than simply expressions of opinion. To state a claim for defamation, a plaintiff must allege defamatory statements of fact that are "capable of being objectively verified as true or false." *West v. Thomson Newspapers*, 872 P.2d 999, 1018 (Utah 1994). This requirement is derived both from the common law elements of defamation and from the constitutional importance of a free and unrestrained press. The Utah Supreme Court has emphasized the importance of allowing the press latitude to express opinions on public issues:

> [E]xpressions of opinion are the mainstay of vigorous public debate. Without opinion, such debate is virtually nonexistent. Thus, if expressions of opinion could serve as the basis for defamation actions, the press would be forced to choose between publishing opinions knowing that no amount of editorial oversight could protect it from exposure to civil liability or ceasing altogether to publish expressions of opinion. Given the importance of opinion in the marketplace of ideas, either alternative would constitute significant abridgement or restraint of the press.

Id. at 1014-15 (citation omitted).

The Utah Supreme Court has identified four factors to consider in determining whether a statement is fact or opinion in the defamation context: (1) the common usage or meaning of the words used; (2) whether the statement is capable of being objectively verified as true or false; (3) the full context of the statement, *i.e.,* the entire article in which the statement is made; and (4) the broader setting in which the statement appears. *West*, 872 P.2d at 1018. All four of these factors weigh in favor of finding the alleged defamatory statements here to be non-actionable opinions.

First, the common meaning of the allegedly defamatory words in the Articles suggests the words are nothing more than spirited rhetoric common in public debates. As noted above, the Articles frequently introduce statements made by participants with indications that the statements are "contentions," "arguments," or "claims." [See Section I, *supra*.] Moreover, the context of the Articles as reporting on a labor dispute further indicates that the allegations are expressions of the opinions of workers and union activists….

Second, few, if any, of the allegedly defamatory statements identified by Plaintiffs are capable of objective verification as true or false. The first two categories of statements identified above (claims that workers were illegally locked out and terminated, and claims that the IAUWU was not a proper legal union and did not fairly represent worker interests), as well as the fourth category of statements (interpreting the rulings of the NLRB), are essentially legal opinions offered by laymen. Courts have consistently held that statements of legal opinion are not verifiable as true or false, particularly where no court has yet ruled on the issue, and thus cannot support a claim for defamation. As the court stated in the leading case of *Coastal Abstract Serv., Inc. v. First Am. Title Ins. Co.,* "[a]bsent a clear and unambiguous ruling from a court or agency of competent jurisdiction, statements by laypersons that purport to interpret the meaning of a statute or regulation are opinion statements, and not statements of fact.... As a matter of law, the statement... [therefore] did not constitute defamation." 173 F.3d 725, 731-32 (9th Cir. 1999). *See also Rodriguez v. Panayiotou,* 314 F.3d 979, 986 (9th Cir. 2002) (rejecting defamation claim based on statement of legal opinion); *Dial-A-Car, Inc. v. Trans., Inc.,* 884 F. Supp. 584, 592 (D.D.C. 1995) ("At this point, all that can be said is that defendants were expressing an opinion on an inconclusive question of law and were not making representations of verifiable or 'hard definable facts.'")

The remaining category of statements (involving claims of exploitation and abuse of workers) also includes very few statements that are capable of objective verification. Exaggerated rhetoric and hyperbole, such as claims that the Co-op Mine is akin to "slavery" and guilty of "abuse, intimidation, and exploitation" are immediately obvious as statements of subjective intent, often made by clearly partisan activists in the dispute. See *West*, 872 P.2d at 1019 (statement of subjective intent is mere opinion). The remaining statements dealing with more specific claims, such as forced overtime, lack of health care, charges for equipment, and the use of child labor, are closer to factual claims, but, because they are made in the context of a contentious labor dispute, are likely to be seen by a reasonable reader as expressions of opinion in an ongoing debate, rather than authoritative statements of fact. *See Ogden Bus Lines*, 551 P.2d at 224.

The third factor in the fact/opinion test considers the verbal context of the Articles, *i.e.,* whether other words used in the Articles convey to the reader that the statements contained therein are expressions of opinion. As noted in detail above, the Articles consistently use such words and relate background facts explaining to readers that the Co-op Mine and its workers are involved in a heated labor dispute. In this context, readers are made aware that the Articles are not conveying statements from the workers or mine officials as statements of verified fact, but rather reporting those statements as the assertions and claims of the parties to that dispute. As a result, the statements are not defamatory. *See Ogden Bus Lines*, 551 P.2d at 224. Moreover, several of the Articles alleged by Plaintiffs as defamatory are clearly identified as editorials or "op-ed" opinion pieces, explicitly informing the reader that the statements contained therein are protected expressions of editorial opinion.

Militant/Anne Carroll

Retired miners from UMWA Local 9958 discuss the strike for a union by the Co-Op miners with strikers and members of International Longshore and Warehouse Union Local 23 from Tacoma, Washington, during a June 19, 2004, solidarity visit.

A spirited public debate

Fourth, and perhaps most compelling, the Articles were published in the broader context of a spirited public debate. Under Utah law, statements made in such contexts are much more likely to be construed as statements of opinion, rather than fact. *See West*, 872 P.2d at 1019 (statements made in course of political campaign). This presumption that such statements are opinion is even stronger when the statements are published in an editorial context by a newspaper. *Id.* at 1020 ("It is well understood that editorial writers and commentators frequently resort to the type of caustic bombast traditionally used in editorial writing to stimulate public reaction.") (quotation omitted).

As demonstrated at length above, Defendants' participation in the process of public debate is a constitutionally important role that should not be abridged by retaliatory defamation claims by one side to a dispute. For the same reasons that the broader context of the Co-op Mine dispute renders the statements in the Articles incapable of sustaining defamatory meaning, that context also informs the reader that the assertions made by participants in the dispute are likely to be expressions of opinion, not fact. As a result, those statements cannot support a defamation claim.

V. SOME OF THE STATEMENTS AT ISSUE ARE PRIVILEGED REPORTS OF OFFICIAL GOVERNMENTAL PROCEEDINGS.

Even if the foregoing arguments did not apply, some of the statements at issue in the Articles are independently privileged as reports of governmental proceedings and thus not actionable as defamation.

This issue is governed directly by common law privileges, a Utah statute (Utah Code Ann. § 45-2-3(2), (4)), and a Utah Supreme Court decision, Russell y. Thomson Newspapers, Inc., 842 P.2d 896 (Utah 1992). Each provide that a fair and true report of judicial records and/or proceedings is privileged. The statute states, in relevant part:

> A privileged publication or broadcast which shall not be considered as libelous or slanderous per se, is one made:
>
> (2) In any publication or broadcast of any statement made in any legislative or judicial proceeding, or in any other official proceeding authorized by law....
>
> (4) By a fair and true report, without malice, of a judicial, legislative or other public official proceeding, or anything said in the course thereof, or of a charge or complaint made by any person to a public official, upon which a warrant shall have been issued or an arrest made.

In *Russell*, a Cedar City nurse sued in tort after a newspaper reported on disciplinary proceedings initiated against her and a doctor named David Brown. The trial court granted the newspaper's summary judgment motion, concluding the statements at issue were non-actionable privileged reports of official proceedings under the statutes discussed above and under the common law. The Utah Supreme Court agreed that the fair report privileges were valid and applied to all but one of the statements at issue in the case. *Russell*, 842 P.2d at 902.

Whether a privilege exists is a question of law for the court. *Id.* at 900. Under *Russell* a statement will "qualify for privilege under the statute" if it meets three criteria:

- It must be a report of a judicial, legislative, or other public official proceeding or anything said in the course thereof or of a charge or complaint upon which a warrant shall have been issued or an arrest made;
- It must be a fair and true report of the proceeding or charge (i.e. "the report must accurately reflect the proceedings and the statements or allegations made therein"); and
- It must be made without malice.

Id. at 900, 902. The court held, "If the report correctly and accurately reflects the proceedings it covers, then it will maintain the privilege, absent malice, regardless of the falsity of the statements or allegations made in the proceedings themselves." *Id.* at 902.

All three of these elements are satisfied here. First, the Articles were all published in the context of a labor dispute that is still subject to official NLRB proceedings. The statements made by participants in the dispute mirror the allegations made by those parties to the NLRB. More directly, many of the Articles specifically report on proceedings before the NLRB and convey the content of various NLRB rulings.

Articles reflect NLRB rulings

Second, the Articles accurately reflect the NLRB settlement and rulings, as well as the statements and allegations made in the course of those proceedings. Plaintiffs imply that certain statements regarding forced reinstatement, backpay, and illegal firings are not an accurate reflection of the NLRB settlement. According to Plaintiffs, the Co-op Mine voluntarily gave unilateral offers of reemployment, rather than being ordered to reinstate workers. Plaintiffs appear to suggest this was all done without any pressure or involvement from the NLRB. However, the NLRB settlement documents tell a different story.

They indicate that: (1) unfair labor practice charges were filed with the NLRB; (2) a negotiated settlement was reached in the face of, and in lieu of litigating, such charges and the NLRB was actively involved in the process; (3) the settlement

Continued on Page 11

Defend the 'Militant,' SWP!

We are calling on readers of the *Militant* and backers of workers rights everywhere to support the Socialist Workers Party and the *Militant* in defending themselves from the harassment lawsuit by the millionaire Kingston family that owns the Co-Op coal mine in Huntington, Utah. Funds are urgently needed for the Militant Fighting Fund, which helps make possible the legal and public defense campaign against this suit.

Attorneys Randy Dryer and Michael Petrogeorge representing the SWP and the *Militant* filed a motion to dismiss the suit in federal district court in Salt Lake City, Utah, on February 28 (see front-page article and legal brief on page 7).

This is a frivolous lawsuit, as the memorandum in support of the motion to dismiss explains. It is designed to intimidate the miners and their supporters and divert time and energy away from their fight to win reinstatement at the mine, and to be represented by the United Mine Workers of America.

Through this suit the Kingstons also seek to frighten and bully newspapers away from covering this fight, or at least to push them to alter their coverage toward being more "balanced," that is, giving more space and prominence to the bosses' claims.

The *Militant* is a special target of this lawsuit because of the prominent coverage we have given this struggle from its inception in September 2003, and our steadfastness in reporting on what the workers involved have to say about it. We too will not be intimidated or censored from covering this fight.

We urge our readers to stand firm with us in defending the constitutionally protected rights of freedom of the press and freedom of speech. We will continue to report on the unionization battle at that mine, to quote the opinions of the miners involved in this fight, and to cover the proceedings and the decisions of governmental bodies like the National Labor Relations Board and the federal Mine Safety and Health Administration. And we ask for your political and financial support to be able to do this free of harassment by the bosses.

We also proudly defend our right to express an editorial stance in support of the miners, to rally support for their struggle, and to explain how this is the opening salvo in the unionization of western coal—from Wyoming's Powder River Basin, to the coal fields of Utah and Colorado, and to those in New Mexico.

A decision on whether the case will go forward will likely come later this spring or early summer. As the articles on page 6 of this week's issue point out, however, civil lawsuits like the one by the Kingstons are a tool the bourgeoisie and its agents have often used against the workers' movement.

Examples include the 1984 FBI lawsuit against Peter Matthiessen and Viking Press attempting to censor Matthiessen's book *In the Spirit of Crazy Horse* or the case Alan Gelfand filed against the SWP in Los Angeles in 1979. Those who bring the suits are often granted wide latitude by the courts to "investigate" and harass the defendants at great financial expense, even if the court ultimately rules against them. "I should have granted the defendants' motion for summary judgment six years ago," said judge Mariana Pfaelzer, when she dismissed Gelfand's case against the SWP in 1989. But she didn't, allowing it to drag on for years—a common practice by the courts against revolutionary workers' organizations or socialist newspapers.

The best defense against this kind of lawsuit is a broad public campaign, where the issues at stake are clearly explained to expand and solidify support, accompanied by a vigorous legal defense.

Readers of the *Militant* have contributed generously thus far, enabling us to retain attorneys in Utah and to meet initial expenses in the case. To be as prepared as possible for the next stage of this fight, we urge you to contribute again now and to continue to support the Militant Fighting Fund. Please write your check or money order to "The Militant," earmarked Militant Fighting Fund, and send it to 306 W. 37th Street, 10th Floor, New York, NY 10018.

Build March 12 miners' rally

"Thanks to the support we've received, we've been able to hang tough," said Juan Salazar, a fired miner and leader of the Co-Op miners' struggle, quoted in the January-February issue of the *United Mine Workers Journal*. "Without that support, I don't know if we would have been able to do it. That support still continues. We have faith that we'll be able to win this fight and improve our conditions, because it's not just for us—it's for all the other non-union miners around here, too. When they see we can do this, they'll say, 'we can too.'"

We agree with Salazar. The fight of the Co-Op miners is an example for miners and working people across the West. That's why we urge every class conscious worker west of the Mississippi to use the remaining days to build the March 12 solidarity rally with the Co-Op miners in Price, Utah.

The capitalist family that owns the mine—the Kingstons—has used every tool at its disposal to resist the Co-Op miners' just struggle for a union, and for safety, dignity, and a decent livelihood. Intimidating lawsuits, arbitrary firings, legal challenges to every labor board ruling, and efforts to buy off individual miners—all of these actions are the stock-in-trade of the bosses' anti-union efforts everywhere.

The miners have answered these tricks by sticking together, refusing to be cowed, and seeking solidarity. They have reached out broadly in the labor movement in the West and beyond and they have received a warm response from fighting workers in every place the news of their battle has reached.

This has had an impact. As Salazar points out, when workers in the largely nonunion mines across the West see that the Co-Op miners can win, they'll say, "we can too." The same life-and-death questions facing workers at the Co-Op mine face underground miners everywhere. Where the union is weak or nonexistent, so too are safety protections on the job. Where miners have built a strong union, they are better able to defend life and limb and resist the bosses' drive to speed up production and drive down wages and working conditions.

This is why the federal labor board and its lackeys can't be relied upon to give the miners a fair shake. The NLRB has sat on the ballots from the union representation election for three months, hoping the fight would dissipate and the example it provides to workers more broadly would be forgotten.

This is a crucial moment for this struggle. Solidarity is needed to counter the pressure on the miners and their supporters to just wait and see if a positive development will come from the slow-turning wheels of "justice" of the labor boards and the courts.

The March 12 rally is the miners' clear answer to those who hope their struggle will simply fade away quietly. It is their answer to the intimidation campaign of the bosses, who, when they couldn't force the workers to back down, tried to muscle them by slapping a lawsuit on them. And finally, a week before the union election, the bosses fired about 30 miners, most of them UMWA supporters, supposedly because they lacked sufficient proof of their "eligibility" to work in the United States.

Fighting workers should join the miners at the UMWA hall in Price, Utah, at noon on March 12—or send donations and solidarity messages if they can't be present physically—to send a clear signal both to the mine bosses and the government, and to fellow workers everywhere, that the miners will not be intimidated or isolated. Their cause is the cause of all labor.

— MILITANT LABOR FORUMS —

FLORIDA

Tampa

Why Reproductive Freedom is a Precondition to Women's Equality Speakers: Cheryl Goertz, Socialist Workers Party. Fri. March 18. Program 7:30 p.m. Donation requested. *1441 E. Fletcher Ave. (at 15th Street) (813) 910-8507*

TEXAS

Houston

Halt U.S., Japanese War Moves Against North Korea Speaker: Tom Leonard, Socialist Workers Party, Fri., March 18. Dinner: 6:30 p.m., program: 7:30 p.m. Donation: $5 dinner; $5 program. *4800 W. 34th St., Suite C-51A, (713) 869-6550*

UTAH

Price

Defend the Right to a Drivers License! Speakers to be announced. Fri., March 18. Dinner 6:30 p.m., program 7:30 p.m. Donation requested. *11 West Main St., #103. (435) 613-1091*

AUSTRALIA

Sydney

The Cuban Revolution, Culture and Internationalism Sat. March 19. Reception: 6:00 p.m., program: 7:00 p.m. Donation: $4/$2. *3/281-7 Beamish St., Campsie (upstairs in the arcade near Evaline St. corner). 02 9718 9698*

UNITED KINGDOM

London

Meeting to Launch Communist League General Election Campaign. Sat. March 19. Dinner: 6:30 p.m., program: 7:30 p.m. Donation: £3 dinner; £3 program. *First floor, 120 Bethnal Green Road, London E2 6DG (Entrance in Brick Lane) (020)7613 2466*

Miners build rally

Continued from front page

Nevada, who came from many western states, gave the miners a standing ovation. PACE locals in Utah and Idaho have made generous financial donations to the Co-Op miners throughout their fight. In Reno, PACE members donated another $1,300 by passing the hat. The miners set up a table with information and talked to many PACE members from California, Arizona, Montana, Idaho, and Utah soliciting support for their struggle.

"We wanted to tell PACE members, who have been some of our most consistent backers, that the National Labor Relations Board (NLRB) is still stalling on deciding to count the votes of pro-UMWA miners in the union representation election and has also not ruled yet on the company's illegal firing of UMWA supporters at the mine," said Bill Estrada.

One week before the Dec. 17, 2004, union representation election, the bosses fired most Co-Op miners who support the union on the pretext the workers did not provide proof of their eligibility to work in the United States. Many of these miners have explained to the press the company had them working in the mine for low wages and in unsafe working conditions for years with the same documentation as when they were hired. Only when the union election was one week away did the company charge nearly all UMWA supporters with being undocumented.

Reaching out throughout West

The trip by Co-Op miners to the PACE conference in Reno was part of stepped-up activity by the miners to reach out to working people in Utah and throughout the western United States with news about their fight and appeals for solidarity.

Four Co-Op miners traveled to Craig, Colorado, March 6 to speak to the monthly meeting of UMWA Local 1385. The four—Ricardo Chávez, Abel Olivas, Alyson Kennedy, and Francisco Carrillo—were warmly received by the Colorado miners. The Co-Op miners invited everyone to the March 12 benefit and solidarity rally in Price.

Local 1385 has supported the Co-Op miners fight for dignity on the job and a union from the beginning. The local participated in a solidarity rally for the miners in Craig in January 2004, has contributed money, and its members have walked the picket line in Huntington during the 10-month strike and made announcements to the local meetings about Co-Op solidarity events. In January of this year Local 1385 wrote a letter to the NLRB urging it to act in favor of the Co-Op miners and sent $300 to the fight.

Peabody Coal Co. has announced it would be shutting down the Seneca mine later this year. Seneca miners see this as a union-busting move by Peabody, aimed at shifting and expanding production in nonunion operations.

'We won't give up'

"Many of the miners in Colorado wanted to know how we have kept up the fight for so long, and are we afraid of losing," Chávez told the *Militant*. "We had a good discussion about this and let them know their solidarity and that of many other working people makes it possible to continue fighting. We also told the miners we've gone beyond the point of being afraid of losing. If we lose, we lose fighting. We will not give up."

Some of the Seneca workers wanted to know how the Co-Op miners responded to the company use of immigration threats to fire pro-UMWA miners before the union elections. The miners said they have the same documents they had when they were hired. A number had worked with these documents for many years. They said they don't see this as an immigration question but a union question.

"Before, during, and after the meeting, UMWA members came by the Co-Op miners' information table set up at the back of the room to talk to us, pick up more information, buy raffle tickets for the March 12 solidarity event, and make contributions," Co-Op miner Alyson Kennedy told the *Militant*. "By the end of the meeting, there was $165 in the contribution bucket."

In another act of solidarity in the Craig area, Pastor Melinda Bobo, who received information on the Co-Op miners' fight, explained the struggle to her congregation at St. Mark's Episcopal Church and organized a collection. The congregation responded by contributing $195. Several churchgoers are coal miners or family members of miners.

Support activities expand in Utah

Co-Op miners and supporters have also been expanding their solidarity efforts in this area. The first week of March the miners put up an information table at BK's, the local convenience store and gas station at the entrance of Huntington, Utah. Co-Op miners picked this spot because many coal miners going to and coming from work stop at the store.

Half a dozen Co-Op miners staffed the table for a few hours over two days last week giving out flyers about the March 12 solidarity rally and asking for support. Passersby dropped $250, much of it from miners and their families, into the donations bucket.

"Remember me?" said one woman as she came up to the table to make a contribution. "I joined you on the picket line when you were in front of the mine last year. I sure hope you win, you certainly deserve to." The woman told the miners she was proud her son chose as his school project putting together a scrapbook of articles about their fight.

A student from the University of Utah in Salt Lake City, who is doing a documentary about the Co-Op miners' fight, filmed the tabling at BK's. The miners said the filming helped. It made the information table more prominent. "People came over and wanted to know what all the excitement was about," a miner said.

The Co-Op miners for the first time spoke about their struggle to UMWA Local 1261 members at the Consolidation Coal Co. mine south of Huntington in early March. This mine has recently gone back into production. About 100 UMWA members are working there now. It is one of two UMWA-organized mines in the Price area.

The Co-Op miners said their immediate priority the next few days is building the March 12 solidarity event at the UMWA hall in Price. The rally starts at noon. The event includes a Mexican meal and the drawing for a fund-raising raffle. Those who can't make the event, the miners said, are encouraged to send messages of support and financial contributions to: "Co-Op Miners" c/o UMWA District 22, 525 East 100 South, Price, UT 84501; Tel: (435) 637-2037; Fax: (435) 637-9456.

United Mine Workers files to dismiss boss suit

BY PAT MILLER

PRICE, Utah—"We have a just cause, so I've never been intimidated by what the Co-Op mine bosses have done and that includes this lawsuit," Ricardo Chávez, one of the Co-Op miners who is a defendant in the Kingston lawsuit, told the *Militant* March 8. It was a week after attorneys working with the United Mine Workers of America (UMWA) and representing the embattled workers filed legal briefs requesting dismissal of the harassment lawsuit by the owners of the Co-Op mine, against the UMWA and 17 individual miners.

"The company tried to make us fearful of them by threatening to haul us into court, but we have the support of the UMWA in this case and we will defend ourselves even if we end up in court," Chávez said. He also pointed out that the miners' immediate response to this lawsuit is a March 12 rally at the UMWA hall here in solidarity with their 17-month-long battle for a union.

Motions to dismiss case

The union's lawyers filed motions on March 1 asking a Utah federal district court to dismiss the Kingston lawsuit, calling the legal action by the owners of C.W. Mining, which operates the Co-Op mine, "vexatious litigation."

The UMWA and miners who worked at the mine and have led the fight to win UMWA representation are central targets of the harassment lawsuit filed by C.W. Mining and the so-called International Association of United Workers Union (IAUWU). Workers say the IAUWU is an outfit created by the bosses to keep out a real union. The Kingstons are suing the UMWA specifically for "unfair labor practices" and "defamation," and 17 individual miners for acting as UMWA "agents" in relation to these charges. Scores of others who support the Co-Op miners, or have written about their fight for better working conditions, higher pay, and dignity, are also named in the suit.

The legal brief responding to the lawsuit submitted on behalf of the UMWA and its officers explains that the Kingstons are attempting to use the courts as yet another club against the union and the Co-Op miners. C.W. Mining bosses and their counsel "have initiated a substantial number of legal actions against those critical of the Kingston family enterprises, or their leaders," says the UMWA legal brief. "The allegations herein are broad and sweeping, and not well-predicated on viable legal theories arising from the facts. Filing and serving the lawsuit on the fifteen or so of the most outspoken leaders among CW Mining's low-wage workforce—not to mention members of a bargaining unit Plaintiff IAUWU is supposed to be representing—represents nothing more than hard-ball tactics intended to chill their free speech, not to mention their rights under federal labor law."

"The Kingston lawsuit basically doesn't have any merit," Bob Butero, director of organizing for UMWA Region IV, told the *Militant*. "This is why we are trying to get the case thrown out before it gets very far in the courts. But you still have to defend against the lawsuit and put up a serious argument, which is what the union has done."

The union brief says the Kingstons' complaint "raises nothing more than a traditional—and peaceful—labor relations dispute." As a result, it argues, there is no viable case for action and federal law preempts the claims the Kingstons are making. "It is well-settled, black letter law that Plaintiffs cannot pursue their unfair labor practice claim because the National Labor Relations Act preempts it," the UMWA brief says. It explains that the bosses are asking for a "second bite at the apple" on matters already decided or before the National Labor Relations Board (NLRB) in this dispute.

As for the Kingstons' defamation allegations, the union brief asserts that national labor relations law gives wide latitude to the use of terms like "scab," "unfair," or "liar," which are commonplace in labor disputes. In addition, the UMWA brief says, Utah state law applies and "opinion" is protected against malice claims. Other alleged defamations are protected as privileged reporting on public proceedings, like NLRB hearings. The UMWA brief says it stands in this regard on the arguments put forward by the *Salt Lake Tribune* and *Deseret Morning News* in their response to the Kingstons' lawsuit (see major excerpts from brief starting on page 4).

"The main reason the Kingstons filed their lawsuit was to muzzle the miners and mass group of people who support them," said Butero. "It's another part of the company's intent to suppress workers' rights. Every indication is that the support for the workers at the Co-Op mine continues, so in that sense the Co-Op owners have not accomplished what they set out to do with their intimidation tactics."

Side by side with the UMWA answer, union attorneys also filed a separate motion to dismiss the Kingston lawsuit on behalf of 16 individually named miners. Most of these miners were served with court papers about the lawsuit the same day C.W. Mining fired them, one week before the December 17 union representation election. The bosses dismissed virtually all the foreign-born workers allegedly for not providing the company with additional proof of their eligibility to work in the United States.

'They got rich off our labor'

"The Co-Op mine owners have made themselves rich off of our labor," Chávez said, pointing to the long years many of the miners worked at the mine for low wages and under terrible work conditions, and with the same work documents the company called into to question on the eve of the union representation election. "We want to be treated fairly and we want to see this fight through to the end. That is why, even though a lot of us are suffering real hardships, we have not buckled under the company pressures and left the area."

"People who support us need to know that the Kingston lawsuit is an intimidation tactic," said José Contreras, another Co-Op miner who is part of the fight for the union, in a March 8 interview.

"Even before filing the lawsuit the bosses used to tell some workers who are strong backers of the UMWA they could go back to Mexico to avoid being named in a lawsuit. They wanted people like that to quit the mine, and quit fighting for the union," Contreras said. "Some of the miners like myself who are not named in the lawsuit were told those listed are the trouble makers trying to create a scandal against the company. All of us standing up to this lawsuit, whether we were named in it or not, are part of the fight for the union."

Militant/Anne Carroll

Co-Op miners at new picket trailer May 24. In their fight for UMWA representation, they defeated attempts by the bosses and cops to shut down their first trailer.

The union's brief on behalf of the individually named miners in the Kingston lawsuit records the efforts of the miners to win UMWA representation at the Co-Op mine and the various National Labor Relations Board charges filed and won by the union against C.W. Mining. It also recounts the company efforts to thwart the will of the majority of the miners every step of the way. "The parties have been engaged in a long and bitter labor dispute," says the union response to the lawsuit filed on behalf of the miners. "This lawsuit represents nothing more than another form of retribution by Plaintiffs against Defendant Miners for lawfully protesting the working conditions and seeking different union representation."

The Co-Op miners are pressing ahead with plans for a March 12 benefit and rally at the UMWA district union hall in Price, Utah. Workers say the event is an important answer to C.W. Mining's many actions to frustrate the union organization of the Co-Op mine and the many intimidation tactics, like the lawsuit, the bosses have used against the miners and the UMWA.

Butero said the UMWA is looking for a good turnout for the March 12 solidarity event here. "Solidarity with the miners hasn't died off, even after this long of a struggle," he said. "We keep hearing of new labor groups discussing how to help the miners. So we hope that will be reflected at the rally in Price."

"All of us Co-Op miners have our eyes on March 12," said Chávez. "We have gotten a lot of support during this struggle and we are asking people to respond again on March 12. The solidarity from workers in Utah, but also from other areas of the country, has made our fight endure."

Utah daily papers answer defamation suit

Continued from Page 9

provides for reinstatement and backpay for the Co-op Mine employees, as well as the removal from employee files of certain disciplinary documents the Co-op Mine had issued; (4) the NLRB is reviewing, approving and monitoring enforcement of the settlement; (5) the NLRB will be determining the amount of backpay due to the Co-op Mines employees of the parties cannot agree on an amount; and (6) the Co-op Mine had to post notices restating its recognition of the employees' federal rights to engage in concerted activity and union organizing activities. [See Exhibits "C" and "D" hereto.]

Third, as discussed in detail above, Plaintiffs have not alleged any facts in their Complaint supporting a showing of malice—either common law or actual— by Defendants. Such a showing is Plaintiffs' burden, and they have failed to carry it here.

As a result, because the Articles accurately report the assertions made in connection with the NLRB proceedings, as well as the resulting NLRB settlement and rulings, the Articles are privileged.

VI. THE CLAIMS OF THE INDIVIDUAL PLAINTIFFS SHOULD BE DISMISSED BECAUSE THE ARTICLES ARE NOT "OF AND CONCERNING" THE INDIVIDUAL PLAINTIFFS.

Even if the Court were to assume that the statements contained in the Articles were defamatory, and were not privileged, the defamation claims of the individual plaintiffs (as opposed to the Co-op Mine and the IAUWU) should be dismissed because the allegedly defamatory statements in the Articles are not "of and concerning" those persons (hereafter, the "Individual Plaintiffs.")

The Utah Supreme Court has defined libel as "words specifically directed at the person claiming injury…." Thus, as part of their defamation claims here, the Individual Plaintiffs must prove that the statements at issue are "of and concerning" them….

Accordingly, because the allegedly defamatory statements outlined in the Amended Complaint concern only the Corporate Plaintiffs, all the claims of the Individual Plaintiffs fail and should be dismissed.

VII. THE COURT SHOULD AWARD DEFENDANTS THEIR COSTS AND ATTORNEYS FEES INCURRED IN THIS ACTION.

This is not the first "defamation" action filed by the Kingston family, nor, unfortunately, is it likely to be the last. In recent months, Defendants are informed that various members of the Kingston family have filed multiple lawsuits against news media organizations, political opponents, lawyers, and any other person who dares to make public statements critical of the Kingstons or their business enterprises. This lawsuit, with its sweeping allegations of a nationwide conspiracy involving nearly 100 defendants, is simply the latest attempt by the Kingstons to silence their critics through the threat of costly and protracted litigation.

Even if Plaintiffs' claims here are dismissed with prejudice, the lawsuit will have served its purpose. Defendants have been forced to incur substantial legal fees responding to claims which are so riddled with legal defects that their only apparent purpose is to harass the Defendants. There will be an inevitable chilling of the news media's willingness to publish statements critical of the Kingston family and their business enterprises if every such publication results in a meritless, but nonetheless costly, lawsuit. There must be some accountability for Plaintiffs' pattern of conduct.

The only way to deter Plaintiffs from filing repeated meritless suits, and to avoid the patently unfair result of making Defendants pay the cost of defending against Plaintiffs' meritless claims, is to require Plaintiffs to compensate Defendants for their attorneys fees and costs. This Court, of course, has the inherent power to impose whatever sanctions is deems appropriate to deter meritless litigation and abuse of the judicial process, including attorneys fees and costs…. However, there is a particular reason why, in this specific case, such a sanction would be uniquely appropriate.

In 2001, the Utah Legislature enacted the Citizen Participation in Government Act…(the "Anti-SLAPP Statute"), joining a growing number of states that have recognized the potential for strategic abuse of the legal system to interfere with a party's right to public commentary and participation. The purpose of this Statute is, in part, to prevent the chilling of the valid exercise of constitutional rights, such as freedom of speech and the press under the First Amendment. The Anti-SLAPP Statute applies when a lawsuit is instituted in response to a defendant's participation in the process of government, which includes "the exercise by a citizen of the right to influence [governmental] decisions under the First Amendment to the U.S. Constitution." *See* Utah Code Aim. § 78-58-102(5), -103, and -105. As discussed above, by facilitating public debate about an ongoing labor dispute and NLRB proceedings, Defendants were exercising their First Amendment rights to affect those decisions through a more informed citizenry. This case therefore falls within the ambit of the Anti-SLAPP Statute….

CONCLUSION

For all of the foregoing reasons, Defendants respectfully request that their Motion to Dismiss be granted, and that Plaintiffs' claims against them be dismissed with prejudice and on the merits.

RESPECTFULLY SUBMITTED this 17th day of February 2005.

PARR WADDOUPS BROWN GEE & LOVELESS

by: Jeffrey J. Hunt
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by: Michael Patrick O'Brien
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THE MILITANT

Washington to train Indonesian forces

BY BRIAN WILLIAMS

The U.S. government will resume training members of the Indonesian armed forces, Secretary of State Condoleezza Rice announced February 26. Under the new administration policy, Indonesia will be reinstated into the Pentagon's International Military Education and Training program (IMET), which provides combat training for selected officers in the United States. The participation of Indonesian forces in this program had been suspended since 1992.

The U.S. rulers' decision to admit Indonesian officers into IMET is a product of their successful efforts to integrate the government of Indonesian president Susilo Bambang Yudhoyono into Washington's "war on terrorism." The regime in Jakarta has pursued "Islamic" groups it accuses of involvement in the 2002 bombings in Bali and other armed actions.

"The Bush administration has been eager to get closer to the Indonesian military, which it sees as an important potential partner in its campaign against Al Qaeda," said a March 1 *New York Times* article. "But until Indonesia accepted American military help in the tsunami rescue in January, the administration had not pushed Congress hard for resumption of full-scale training."

Jakarta, for its part, took advantage of the relief operations for victims of last year's devastating tsunami to deploy more soldiers to Aceh province against the decades-long fight by the people of Aceh against national oppression and for independence.

Among those condemning the renewed U.S.-Indonesian military program was the New York–based East Timor Action Network. Spokesman John Miller called it "a setback for justice," the Associated Press reported. "The Indonesian military's many victims throughout the country and East Timor will recognize this policy shift as a betrayal of their quests for justice and accountability," he said.

Washington has backed and provided major funding to the Indonesian military since the 1950s. More than 8,000 Indonesian officers were trained at U.S. military institutions over four decades. In fact President Yudhoyono, a retired army general who became president of Indonesia last year, was trained through the IMET program and graduated from the U.S. Army Command and General Staff College.

In 1965, Washington backed a military coup in Indonesia launched by General Suharto and other officers against the bourgeois nationalist Sukarno government. Led by the Communist Party of Indonesia to place political trust in Sukarno, instead of their own independent action, workers and farmers were left defenseless against the Suharto dictatorship. The U.S.-backed regime massacred hundreds of thousands during its first years in power.

Suharto's military government counted on full political and military support from Washington for most of its 33 years in power. Suharto stepped down in 1998 in the face of mass protests by working people and youth, and pressure from the imperialist powers and local ruling-class figures who hoped his resignation would defuse a social crisis triggered by a wave of currency devaluations across the region the year before.

In 1975 Indonesia invaded and occupied East Timor in an effort to halt the independence struggle there. In 1991, Indonesian troops deploying U.S.-supplied M-16 rifles killed 271 pro-independence demonstrators. In response to a growing public outcry, the U.S. Congress cut off Indonesia's eligibility for participation in the IMET program and the purchase of certain kinds of "lethal" military equipment.

Eight years later Indonesian forces were accused of involvement in the killing some 1,500 East Timorese in an effort prevent the territory from gaining independence. Following the widely abhorred massacre Washington announced a halt to all military cooperation with the Indonesian armed forces. Congress further sanctioned the ban in 2002 after generals in Jakarta were charged with blocking an investigation into the killing of two U.S. schoolteachers in Papua province.

However, since Sept. 11, 2001, "the administration has gradually renewed ties by providing aid through new anti-terrorism accounts, resuming joint military exercises, and inviting Indonesian officers to participate in regional military conferences," reports an article from the OneWorld news.

Indonesian troops stand above killed Aceh independence fighters May 22, 2003.

UN forces in Congo rape, sexually abuse girls

BY SAM MANUEL

As news reports mounted of widespread sexual abuse of Congolese girls by United Nations staff and troops, UN officials announced March 5 that its envoy to Congo, William Lacy Swing, would be replaced later in the year. Prior to the announcement, Swing had been ordered to return to New York in the first week in March for "consultations" with top UN officials.

At the same time, the 14,000-strong UN military force in the Democratic Republic of Congo has increased its open war-fighting role. On March 1 UN troops killed more than 50 people in an assault on an alleged rebel camp in Congo's northeastern Ituri region.

The UN mission in Congo, led by Swing, a U.S. diplomat, is the largest military intervention under UN cover in the world. Its top personnel includes officers from the governments of New Zealand, France, the Netherlands, Iran, and Nigeria. The force commander, Maj. Gen. Samaila Iliya, is a Nigerian officer trained in France and the United States.

Sexual abuse by UN troops

According to UN Security Council Resolution 1565 passed last October, one of the stated missions of the UN forces in Congo is "to assist in the promotion and protection of human rights, with particular attention to women, children and vulnerable persons." However, the London *Times* reported that Congolese defense minister Jean Pierre Ondekane said the UN soldiers will be remembered in his country primarily for "running after little girls."

Over the past year the United Nations has investigated 150 allegations against some 50 soldiers of sexual abuse of Congolese women and girls, including gang rape, Reuters reported. Some of the victims, as young as 12 or 13 years old, were bribed with offers of eggs, milk, or a few dollars.

The Moroccan government said it arrested six soldiers from its contingent in Congo who were accused of sexual exploitation of underage girls. Two of the contingent's officers were also dismissed, according to the report.

Last year, Congolese police arrested a senior UN official, Didier Bourguet, in a sting operation in which he solicited sex from a 12-year-old girl, according to press reports. Police say they found on Bourguet's computer dozens of videos and photos of him having sex with children.

Similar videos were sent by two Russian pilots with the UN mission to Russia. The pilots were reportedly tipped off that they were under investigation and left the country. A Canadian and a Ukrainian soldier with the UN mission also left the country to avoid being caught up in the scandal, the London *Times* reported.

In another case a 14-year-old girl told UN investigators that she had sex with UN troops in exchange for two eggs. She said her family was starving. Another said she had sex with UN soldiers for $2, some bread, and chocolate.

UN officials have said that the investigation shows that sex abuse by its "peacekeeping" troops and officials appears to exist in each of its 16 missions around the world. In addition to Congo, they include Burundi, Liberia, Ivory Coast, and Haiti. In Congo, one of the members of the UN investigative arm that is assigned to look into the sexual abuse allegations was forced to resign "after being accused of consorting with a prostitute," the *Times* reported. "We think this will look worse before it begins to look better," Jane Holl Lute, assistant secretary-general for peacekeeping, told reporters. "We are prepared for that."

"Robust" UN action kills 50

Col. Dominique Demange, spokesman for UN forces in Congo, said more than 50 alleged members of a Congolese militia group were killed in a March 1 firefight with UN forces in Congo's northeastern Ituri region. The UN troops employed helicopters and armored personnel carriers in the battle.

Congolese officials in the area said that as many as 25 civilians were killed in the attack, including three children and several women who were burned to death after rounds from helicopter gunships set fire to their huts, according to the March 3 London *Telegraph*. Colonel Demange denied there were any civilians killed. Elaine Nabaa, a UN spokeswoman in Ituri, said, "What we are sure of is that the militiamen were using civilians as human shields," the *Telegraph* reported.

Subsequently UN officials acknowledged its forces had killed women in the fighting, but said they were members of the militia group, Reuters reported.

The attack was aimed at the camp of the militia associated with the Nationalist Integrationist Front (FNI). It took place five days after nine UN troops from Bangladesh were killed in an ambush in the same area. UN and Congolese government officials suspect that the FNI militia was involved in the ambush. Several FNI leaders were arrested in Kinshasa, the capital, according to a UN news agency report.

UN officials have described the action as part of a more "robust" use of firepower by its troops.

"The Security Council reaffirms its full support for MONUC and urges MONUC to continue to fulfill its mandate with determination," said Security Council president Ronaldo Mota Sardenberg, of Brazil. MONUC is the French acronym for the UN mission in Congo.

Last October the Security Council authorized an increase in the number of soldiers in the MONUC mission from 10,000 to up to 16,750. Its troop strength is currently at 13,950. It also doubled the number of attack helicopters for the force, some of which are equipped with night vision capabilities, and set up two rapid reaction battalions with a division headquarters in Ituri.

UN envoy Swing said his troops now have the firepower and flexibility to engage in armed actions. "I think you will see us moving in this direction more and more," he said.

Conflict over land, mineral wealth

FNI is one of several militia groups in the Ituri region where the government and opposition groups have fostered fratricidal fighting between ethnic Lendu and Hema. An estimated 50,000 people have been killed in fighting between the two groups since 1999, according to Reuters. This year alone the fighting in Ituri forced 70,000 people to flee their homes.

While the big-business media often portrays the ongoing civil war as the result of age-old "ethnic hatreds," the underlying cause of the conflict has been the fight between government forces and their opponents over land and mineral wealth—the same fundamental reason that the Belgian, French, U.S., and other imperialist powers have repeatedly intervened in Congo over the years.

In 1997 the Alliance of Democratic Forces for the Liberation of Congo-Zaire, led by Laurent Kabila and supported by the Rwandan government, overthrew the crumbling pro-imperialist regime of Mobutu Sese Seko. The Alliance rapidly split in the ensuing factional struggle for control of Congo's vast mineral wealth.

In August 1998 Kabila ordered the mostly Tutsi Rwandan military forces who had helped to overthrow Mobutu to leave the country. This action precipitated a military rebellion against the regime in Kinshasa.

The rebels, a fractured assortment of groupings calling themselves the Congolese Rally for Democracy (RCD), are based among the Lendu and Rwandan Tutsi forces that had helped Kabila gain power. The governments of neighboring Uganda, Rwanda, and Burundi—who had relied on these military forces to defend their borders from opposition groups launching incursions against them from eastern Congo—threw their support behind the anti-Kabila forces.

By late 1998 the RCD controlled much of the eastern provinces of Congo. It was on the verge of taking the Congolese capital but was turned back after troops from Angola, Zimbabwe, and Namibia intervened in support of Kabila's government. Kabila was killed by one of his bodyguards in January 2001. His son Joseph Kabila is now president.

In July 1999 the governments involved in the civil war signed a UN-brokered cease-fire and agreed to withdraw all foreign troops from the country. The military intervention under the UN banner began that same year. In July 2003 a transitional government headed by Kabila was set up in which the RCD and the Congolese Liberation Movement, another opposition group, shared top ministerial posts.