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Rag Cumberland v. DEP: An Agency's Volte-Face Statutory Interpretation - When Do Courts Stop Deferring and Start Judicial Interpretation

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I. INTRODUCTION

Throughout the twentieth and into the twenty-first century, coal mines continue to be significantly dangerous workplaces and have been the site of over 100 thousand deaths in the past century alone.¹ In response to the inherent dangers and risks miners face upon descending into these treacherous work pits, Congress and state legislatures have passed new and amended existing mine safety statutes throughout the twentieth century, including the Federal Coal Mine Health and Safety Act of 1969, and the somewhat ambiguous Bituminous Coal Mine Act of 1961 in Pennsylvania (BCMA or the Act).² The Pennsylvania Legislature passed the BCMA to “protect the health and promote the safety of all persons employed in and about the mines;” however, problems interpreting some of the Act’s provisions have led to efficiency and safety concerns.³ The success of such legislation, even with its ambiguities, coupled with technological advances, remains obvious: in 1910, coal mining accidents caused 2821 deaths; in 1961, the year of the enactment of the BCMA, coal mine deaths dropped to 1431; and in 2005, coal mine deaths fell to twenty-two.⁴ Later regulatory acts, such as the Federal Coal Mine Health and Safety Act of 1969, brought an even greater decrease in mine deaths.⁵

As part of the BCMA, the legislature included a statutory provision calling for “pre-shift examinations” within three hours before a shift starts.⁶ These pre-shift examinations may prevent life-threatening and hazardous conditions, which, if left unchecked, could

⁴. See United States Mining Fatalities, supra note 1, at 1 (comparing mine fatalities from 1910 through 2005).
⁵. See id. (noting efficiency of regulatory acts in raising mine safety).
lead to explosions or other mining tragedies. In 2003, for example, inadequate pre-shift examinations contributed to a mine explosion, claiming the life of a twenty-one year old miner and injuring two others. Consequently, the necessity of such inspections is undisputed. Disputes did arise, however, over the timing requirements for inspections under the Act. In *RAG Cumberland Resources LP v. DEP (RAG Cumberland)*, the Environmental Hearing Board (EHB) deferred to the Department of Environmental Protection’s (DEP) interpretation of the BCMA requiring inspections each time miners entered the mine, even though such an interpretation lacked conclusive, supportive evidence.

The Pennsylvania Commonwealth Court disagreed with the EHB and concluded the EHB improperly deferred to the DEP interpretation of the Act because the DEP offered no rationale for an interpretation that differed greatly from the DEP’s prior working interpretation. The court concluded the interpretation of “shift” as a matter of time, as opposed to an activity involving workers, was contrary to the “peculiar” definition of “shift” in the mining industry. Noting the technical definition, the commonwealth court appropriately referred to the Statutory Construction Act (SCA), which assists in discerning ambiguous statutes. The court, moreover, determined the well-established industry interpretation of “shift” was appropriate and therefore denied deference to the DEP’s new interpretation, effectively reinstating the historical interpretation.

This Note examines the scope of judicial deference to agency interpretations of legislation with regard to both historical interpretations and the technical definitions of statutory terminology.

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8. See id. (noting 2003 accident due to inadequate pre-shift examinations).
10. See id. at 1068 (discussing mine operators’ appeal of DEP order).
12. See id. (noting EHB conclusions of law).
13. See id. at 1072 (refusing to give deference to DEP’s “new” interpretation of BCMA section 701-228(a)).
14. See id. (discussing multiple meanings of “shift”).
15. See id. at 1069 (noting appropriateness of SCA).
16. See *RAG Cumberland, 869 A.2d at 1072* (refusing to adopt DEP’s new definition of “shift” and holding “shift” as referring to block of time, not group of workers).
Section II of this Note provides a summary of the facts of *RAG Cumberland*. Section III provides the relevant background, case law and statutes surrounding the BCMA and the SCA. Section IV discusses the commonwealth court's analysis of the EHB's decision in *RAG Cumberland* as well as relevant statutes and case law. Section V analyzes the commonwealth court's decision, considering whether it was proper, appropriate and supported by law. Finally, Section VI of this Note evaluates the impact *RAG Cumberland* may have on agencies performing statutory interpretations, especially with regard to technical definitions.

II. FACTS

In *RAG Cumberland*, Cumberland and Emerald Mines (petitioners) operated underground bituminous coal mines in Greene County, Pennsylvania. Petitioners operated their mines seven days a week; they had three primary shifts, with pre-shift safety examinations occurring within a three-hour time period before each primary shift. Both mines had scheduled workers to enter the mine at times after the primary shift start time. There were no additional pre-shift examinations conducted prior to the entry of these later workers because the mine operators concluded the examinations conducted before the primary shift ensured the safety of these additional workers.

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18. For a discussion of the facts in *RAG Cumberland*, see infra notes 23-38 and accompanying text.
19. For a discussion of the judicial and statutory background to the BCMA and the SCA, see infra notes 39-88 and accompanying text.
20. For a narrative analysis of the commonwealth court's decision in *RAG Cumberland*, see infra notes 89-141 and accompanying text.
21. For a critical analysis of *RAG Cumberland*, see infra notes 142-62 and accompanying text.
22. For a discussion of the probable impact of *RAG Cumberland* on agency statutory interpretation and statutory construction, see infra notes 163-72 and accompanying text.
24. See id. at 1066-67 (providing shift and examination schedule). At Cumberland mine, the three primary shifts began at 7:00 a.m., 3:00 p.m. and 11:00 p.m. while additional workers entered the mines at 8:00 a.m. and 9:00 a.m. See id. At Emerald mine, the primary shifts began at 12:00 a.m., 8:00 a.m. and 4:00 p.m., with additional workers entering the mine at 6:30 a.m. and 1:30 p.m., depending on the day. See id. at 1067.
25. See id. at 1066-67 (providing shift schedule).
26. See id. at 1067 (noting treatment of additional workers).
Mining regulations promulgated in BCMA section 228(a) guided the pre-shift examinations in both mines. BCMA section 228(a) provides, in relevant part:

In a gassy mine, within three hours immediately preceding the beginning of a coal-producing shift, and before any workmen in such shift . . . enter the underground areas of such mine, certified persons . . . shall make an examination, as prescribed in this section, of such areas . . . .

On March 18, 2003, the DEP advised petitioners they were in violation of section 228(a) and issued compliance orders due to the lack of examinations within the three hours immediately preceding the entry of workers at "odd" start times. Petitioners appealed the compliance orders, and the EHB consolidated the matters.

The DEP, meanwhile, filed a motion for summary judgment. Nonetheless, the parties disputed the meaning of the term "shift" in section 228(a); the DEP interpreted it as a group of workers, and the petitioners defined it as a period of time. The EHB granted the DEP's summary judgment motion. The mine operators appealed to the Pennsylvania Commonwealth Court for review of the EHB decision to grant the motion for summary judgment.

27. See id. at 1068 (excerpting portions of statute).
28. See 52 PA. CONS. STAT. § 701-228 (2007) (providing mine inspection requirements); RAG Cumberland, 869 A.2d at 1068 (providing basis for applicability of statute).
29. See RAG Cumberland, 869 A.2d at 1067 (explaining basis of compliance orders). The compliance orders required petitioners to take one of three actions: (1) modify shift schedules to consolidate the entry of workers to the times when pre-shift examinations were then being conducted; (2) conduct additional pre-shift examinations for all shifts beginning at "odd" times or (3) compress pre-shift examinations being performed so that those examinations fell within the three-hour period preceding the entry of workers on more than one shift. See id.
30. See id. at 1068 (noting procedural history).
31. See id. (noting summary judgment motion).
32. See id. (outlining DEP and petitioners' lower court arguments).
33. See id. (noting appeal of EHB decision). The EHB stated:

We detect no ambiguity of any significance in [s]ection 228(a). The section unequivocally requires preshift examinations for coal-producing and non-coal-producing shifts. As discussed above, the effort to define shift as having two different, separate meanings is artificial. Whether one defines a shift by reference to the workers or the period of time that they work, the fact remains that separate groups of workers and/or separate blocks of time cannot be viewed as the same shift. Where a statute is clear, that [sic] is no need to engage in interpretation.


34. See RAG Cumberland, 869 A.2d at 1068 (noting petitioners' appeal).
The commonwealth court found that “shift” had a specific meaning in the mining industry, which referenced a designated block of time, and petitioners offered significant evidence to support this definition. The court found the DEP’s “new” interpretation of section 228(a) was “contrary to the peculiar and appropriate meaning of ‘shift’ that had developed in the coal[-]mining industry.” Due to the complex nature of mining and the need for flexibility for the entrance and exit of mine workers, the DEP’s interpretation was not granted superiority. The commonwealth court reversed the EHB, ruling that “shift” referred to a block of time and not to the entry of workers into a mine; therefore, the pre-shift examination conducted by petitioners sufficed, and they were not in violation of section 228(a).

III. BACKGROUND

Statutory interpretation is a multi-faceted and complex effort to ascertain both the meaning behind specific statutory language and the ultimate purpose of a statute. The goal of construing an ambiguous statutory term is to “discern and to accomplish the intent of the Legislature in enacting the statute in question.” A statute can be ambiguous when it contains terms that have both

35. See id. at 1069-70 (stating reasoning in case). Petitioners argued that the EHB erred in failing to recognize the technical definition of “shift,” as a time period rather than a group of workers and by ignoring historical administrative precedent. See id. at 1069. The DEP argued that “shift” should be defined according to its common dictionary usage as a group of people working with other groups or a scheduled period of work or duty. See id. at 1069. Further, petitioners offered extensive evidence of a historically applied definition of “shift” as to pertain to a period of time. See id. at 1069-70. The evidence included the testimony of DEP officials, mine inspectors and mine safety managers. See id. at 1070. The historical interpretation prior to 2003 was that a pre-shift examination covered the entire shift and miners could “enter the mine at any time during that shift without triggering the need for a new examination.”

36. See id. at 1072 (discussing court’s ruling on DEP’s interpretation of “shift”).

37. See id. (dismissing DEP’s view on inspections as “not sustainable”).

38. See id. (providing court’s conclusion).


technical and common definitions, but neither the statute nor the legislature have indicated which definition applies.41

The Pennsylvania Legislature recognized this possibility of confusion, and thus, through SCA section 1903, the legislature adopted an interpretation provision stating in part: “technical words and phrases and such others as have acquired a peculiar and appropriate meaning . . . shall be construed according to such . . . meaning or definition.”42 The statute construes general words according to preceding particular words and common words “according to rules of grammar and according to their common and approved usage.”43 Difficulties arise under the Act, however, when the technical and common definitions are conflicting.44

A. Plain Language and Technical Interpretations

The Pennsylvania Legislature enacted the BCMA to provide protection for Pennsylvania’s miners.45 BCMA section 228(a) establishes a duty for mine examiners to conduct pre-shift examinations within three hours prior to the beginning of each coal-producing shift.46 Prior to the 2001 decision United Mine Workers of America v. DEP and Eighty Four Mining Co. (United Mine Workers),47 the DEP interpreted and defined the term “shift” as a block of time and not as a group of workers.48


42. See 1 PA. CONS. STAT. § 1903(a) (2006) (providing rules for construction of words and phrases in Pennsylvania statutes). See also Browning-Ferris, Inc., 598 A.2d at 1060 (applying SCA section 1903(a), which adopted technical definition of terms to statute).

43. See 1 PA. CONS. STAT. § 1903(a) (providing usage rules for common words and definitions).

44. For a discussion of contrasting technical and common definitions, see supra note 41 and accompanying text.

45. See 52 PA. CONS. STAT. § 701-104(a) (2007) (providing purpose of BCMA).

46. See id. § 701-228(a) (providing duties of mine examiners). The Act called for an examination to be completed prior to the “beginning of a coal-producing shift,” which was defined as “a shift primarily intended for coal production rather than for purposes of construction, maintenance and housekeeping even though some coal production may be incident to such purposes.” RAG Cumberland v. DEP, 869 A.2d 1065, 1069 (Pa. Commw. Ct. 2005) (citing 52 PA. CONS. STAT. § 701-103(22)) (explaining definition of statutory language).


48. See RAG Cumberland, 869 A.2d at 1071 (establishing prior DEP interpretation of statute).
In *United Mine Workers*, defendant Eighty-Four Mining Company requested and obtained a variance under section 228(a) to allow the mine to conduct pre-shift examinations every eight hours rather than every three hours before a shift. On appeal, the EHB held the variance "would not accord equal or greater protection to personnel and property." In fact, the EHB found the variance offered less protection. The EHB did not consider the definition of "shift" within the BCMA, but nonetheless, it agreed with the DEP’s conclusion that each group of miners constitutes a shift for which an examination must be conducted.

Later cases noted that when there is an ambiguity in the meaning of the words, a reviewing court should refer to the SCA to identify possible resolutions. One such case utilizing the SCA in the interpretation of technical and common terms is *Sternlicht v. Sternlicht* (*Sternlicht*). In *Sternlicht*, a mother and father established a broker’s account for their daughter, and the father began to withdraw funds from the account for his own personal use. The father argued he was allowed to do so because the establishment of the trust fell under the common definition of “gift.” The Pennsylvania Supreme Court, however, found the statutory language was “clear and unambiguous” and would not consider the common definition of the term because statutory language clearly designated an

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49. See *United Mine Workers*, 2001 Pa. Envrn. LEXIS 73, at **4-5 (explaining basis of variance). The BCMA requires, in part, examinations to be conducted "within three hours immediately preceding the beginning of a coal-producing shift . . . ." 52 PA. CONS. STAT. § 701-228(a). The DEP, however, approved a variance that allowed defendant mine operators to "conduct pre-shift examinations within three hours preceding the beginning of any 8 hour interval during which any person is scheduled to work or travel underground and . . . [to] establish the 8 hour intervals of time subject to the examination at Mine 84." *United Mine Workers*, 2001 Pa. Envrn. LEXIS 73, at **4-5.

50. See RAG Cumberland, 869 A.2d at 1071 (explaining facts involved in *United Mine Workers*).

51. See *United Mine Workers*, 2001 Pa. Envrn. LEXIS 73, at *38 (finding such variance affords less protection than section 228(a)).

52. See RAG Cumberland, 869 A.2d at 1072 (noting *United Mine Workers* decision and its impact).


54. See id. (using SCA in its interpretation of terms).

55. See id. at 905-06 (discussing background facts). The father argued the common definition of “gift” requires donative intent, which was lacking in this situation, but the court concluded the technical statutory definition of gift applies, which does not require donative intent because transfers into the account are irrevocable. See id. at 910-11.

56. See id. at 911 (citing father’s argument).
alternative understanding. The court concluded that "[a]bsent ambiguity, the plain meaning of the statute controls."

B. Purpose of the Act

A court may consult the purpose of an act or statute in order to ascertain the meaning behind ambiguous terminology. United States v. DuPont De Nemours (DuPont) demonstrates the occasional need to interpret and consult the statutory purpose in ascertaining the correct interpretation of a statute.

In DuPont, a dispute arose over whether DuPont was responsible for paying oversight costs to the Environmental Protection Agency (EPA) for a privately funded cleanup. The Comprehensive Environmental Response, Compensation and Liability Act's (CERCLA) National Priorities List included a DuPont-operated industrial site as a potential threat to human life. The EPA developed a remedial plan for DuPont and then supervised DuPont's cleanup and recovery operations. The EPA subsequently attempted to recover the cleanup costs from DuPont; however, DuPont brought suit to preclude recovery of such costs.

The District Court for the District of Delaware barred the EPA from recovery based on precedent and prior interpretations of the statute. On appeal, the Court of Appeals for the Third Circuit analyzed the plain language and purpose of the statute and granted

57. See id. (noting conclusion). The relevant statutory language in this case stated "a transfer made pursuant to section 5309 is irrevocable . . . ." See id. at 910.
58. See Sternlicht, 876 A.2d at 910 (providing conclusion on matter). Even though the father relied on the common definition of "gift," the statutory context and construction created an alternative definition and application of the term gift that was controlling in the case before the court. See id. at 914.
59. See United States v. E.I. DuPont De Nemours & Co., 432 F.3d 161, 169 (3d Cir. 2005) (noting clear language does not necessitate inquiry into purpose; logically follows that unclear language requires inquiry into purpose).
60. 432 F.3d 161 (3d Cir. 2005).
61. See id. at 169 (expressing utility in consulting statutory objectives when determining appropriateness of agency interpretation of statute).
62. See id. at 163 (noting background facts).
63. See id. (discussing background of case).
64. See id. (explaining cleanup involvement).
65. See DuPont, 432 F.3d at 169 (noting pre-case history).
66. See id. (describing procedural background). The court noted precedent established that an administrative agency could not recover oversight costs from a cleanup operation. See id. (citing United States v. Rohm & Haas, 2 F.3d 1265 (3d Cir. 1993)). CERCLA's cost recovery provision provided that responsible parties are liable for "all costs of removal or remedial action incurred by the United States government . . . ." and "any other necessary costs of response incurred . . . ." See id. at 169-70 (emphasis added). The DuPont court held that costs associated with supervision of cleanup were thus recoverable under CERCLA's cost recovery provi-
supervisory costs despite the prior decision. The court found that not doing so would dissuade the EPA from supervising cleanups, therefore partially destroying the purpose of the statute itself. The court further commented that in considering sources to consult for interpreting statutes, "relevant legislative history, along with consideration of the statutory objectives, can be useful in illuminating [statutory] meaning."

C. Deference to Agency Interpretation

Historically, courts defer to an agency's interpretation of a statute and its terminology so long as the interpretation is consistent with legislative intent and is not unreasonable. The reviewing court's role is to determine whether the agency's interpretation of the regulation was consistent with the statute under which the regulation was promulgated. The court must read the language to "harmoniz[e] with the subject matter and its general purpose and object. The general design and purpose of the law is to be kept in view . . . ."
Courts often apply a two-step test when reviewing an agency's interpretation of a regulation it administers. The first step is to review the agency's interpretation of statutory language, which will become controlling unless it is "plainly erroneous or inconsistent with the regulation." The second step is for the court to review whether the regulations are "consistent with the statute under which they are promulgated."

One case applying the two-step test is *United States v. Larionoff* (*Larionoff*). In *Larionoff*, seven enlisted members of the United States Navy sued the Navy to recover re-enlistment bonuses promised to them under a federal statute. The United States Supreme Court found the applicable regulations governing bonus payments contained numerous ambiguities, but the Court did not analyze the meanings of the ambiguous terms. Instead, the Court considered and effectuated the Navy's interpretation as enforcing agency. The Court opined that the Navy's reading was correct because the

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73. See *Pelton*, 523 A.2d at 1107 (explaining test to be applied to review agency interpretation).


75. See id. (quoting *Larionoff*, 431 U.S. at 872) (noting second step in analysis).


77. See id. at 865 (noting background facts). The statute that allowed for the reenlistment bonus was former Title 37, section 308(g) of the United States Code, which provided:

> Under regulations to be prescribed by the Secretary of Defense . . . a member who is designated as having a critical military skill and who is entitled to a bonus computed under subsection (a) of this section upon his first reenlistment may be paid an additional amount not more than four times the amount of that bonus. The additional amount shall be paid in equal yearly installments in each year of the reenlistment period.

*Id.* at 866. This statute was in place when plaintiff Larionoff enlisted in the Navy for four years, and he chose to enroll in a specialty that he knew would entitle him to a re-enlistment bonus. *See id.* at 866-67. After enlisting and agreeing to re-enlist, but before plaintiff began serving the re-enlistment period, plaintiff's specialty was struck from the eligible positions to receive the re-enlistment bonus, and he was denied the ability to collect a re-enlistment bonus. *See id.* at 867. The government contended that the eligibility to collect such bonuses should be applied as of the time the member completed the initial enlistment and entered into the extended agreement. *See id.* at 870-71.

78. See id. at 872 (noting ambiguities in regulations).

79. See id. (noting treatment of consistent agency interpretation). Specifically, the court noted "the ultimate criterion is the administrative interpretation, which becomes of controlling weight unless it is plainly erroneous or inconsistent with the regulation." *Id.* (quoting Bowles v. Seminole Rock Co., 325 U.S. 410, 414 (1945)).
Navy's continuous interpretation was not inconsistent with the wording of the regulation. The Court, however, did hold that the regulation itself was contrary to Congress's purposes in enacting the relevant statute.

As such, despite the usual need for deference, and even though the agency's interpretation of the regulation was consistent with prior practice and otherwise correct, the Court found the regulation itself was inconsistent with legislative intent and thus invalid. In Larionoff, the Court also provided several ground rules a court may heed when determining proper deference: (1) an agency's prior, consistent interpretation is valid so long as the interpretation is consistent with the regulation or statute; (2) a court does not question a regulation that is plainly consistent with the statute and (3) a regulation, if inconsistent with the statute it is promulgated under, will be invalid, even if the regulation is properly administered.

An agency's conclusion that a term or statute is unambiguous and clear does not eliminate a reviewing court's ability to question the agency's conclusion and interpretation. If the agency's interpretation of a statute or its language is contrary to the purpose of the statute or is "unwise or violative of legislative intent, courts [will] disregard the regulation." Both courts and agencies have found it helpful to consider the context in which a statutory term appears to decide the meaning of ambiguous terms. The defer-

80. See id. at 873 (holding agency's interpretation must be given deference so long as it is not inconsistent or plainly erroneous).
81. See Larionoff, 431 U.S. at 873 (holding regulations "were contrary to the manifest purposes of Congress in enacting [the applicable statute]").
82. See id. (noting although Navy correctly interpreted regulations, regulation was nonetheless invalid).
83. See id. (concluding issues of law in case).
ence owed to the enforcing agency must also yield to evidence that the agency’s present interpretation is a volte-face of the agency’s previous and consistent interpretation of the statute.87 In such cases, the previous interpretation will continue to be enforced, so long as it is in line with the statute and the legislature’s purpose.88

IV. NARRATIVE ANALYSIS

In RAG Cumberland, the petitioners argued the EHB incorrectly interpreted the BCMA and erroneously concluded they were in violation of the BCMA.89 Petitioners claimed the EHB erred in its interpretation of BCMA section 228(a) because the EHB failed to recognize the technical definition of “shift” in the mining industry and ignored historical administrative interpretations of the Act.90 Petitioners urged the EHB to apply the technical definition of the term “shift” and thus conclude that no violation of section 228(a) existed.91

The DEP, on the other hand, argued that “shift,” as defined in the common dictionary, refers to a group of workers and not a block of time and is the common and approved definition in the mining industry.92 The Pennsylvania Commonwealth Court concluded the purpose of the statute is to guarantee the safe yet efficient operation of Pennsylvania’s mines.93 The Pennsylvania Commonwealth Court refused to give deference to such an interpretation due to the EHB’s departure from the industry’s interpre-

88. See id. (discussing appropriateness of agency interpretations). In RAG Cumberland, the shift in interpretation can be attributed to the decision in United Mine Workers, after which the DEP believed that each miner is a “shift” for which an examination of the entire mine must be completed. See id. See also Larionoff, 431 U.S. at 872-73 (noting consistently applied interpretation can be treated as binding, so long as is consistent with statute being interpreted); Winslow-Quattlebaum v. Maryland Ins. Co., 752 A.2d 878, 881 (Pa. 2000) (noting Pennsylvania courts will defer to administrative agency’s interpretation “absent fraud, bad faith, abuse of discretion or clearly arbitrary action”).
89. See RAG Cumberland, 869 A.2d at 1069 (noting petitioners’ argument that EHB incorrectly interpreted requirements in BCMA section 228(a)).
90. See id. (presenting petitioners’ arguments on appeal).
91. See id. (restating petitioners’ arguments on appeal).
92. See id. (presenting respondent’s arguments on appeal).
93. See id. at 1072 (stating purpose of section 228(a) is to provide safety and ensure efficiency).
AN AGENCY'S VOLTE-FACE STATUTORY INTERPRETATION

2007

A. The Technical, Historical Definition of "Shift" in the Mining Industry

The commonwealth court immediately addressed the crux of the DEP's (respondent) argument that the common definition of "shift" should be applied when terms are ambiguous. The court reversed the EHB's holding that the common usage of "shift," as a group of workers, should apply in this situation. The court received little help from the dictionary definition of "shift," as it listed contradictory entries that supported both parties' arguments. Instead, the commonwealth court looked to the BCMA and rules of statutory construction for guidance.

The court found the BCMA lacked a definition for "shift," which added to the confusion and ambiguity of the Act. Applying the rules of statutory construction, the court also consulted the context in which "shift" appeared. In doing so, the court noted the language of section 228(a) refers to "workmen in such shift" and to a "person on a non-coal producing shift," which supported the meaning of shift being a period of time and not a group of workers. The court found the EHB failed to consult tools of stat-

94. See RAG Cumberland, 869 A.2d at 1072 (refusing to give deference to United Mine Workers' holding concerning requirements under section 228(a)).
95. See id. at 1074 (Flaherty, S.J., dissenting) (arguing for extreme deference to agency in conflicting interpretation scenario).
96. See id. at 1069 (majority opinion) (addressing statutory construction argument).
97. See id. (disagreeing with DEP's conclusions).
98. See id. (quoting Webster's Third New International Dictionary 2095 (Merriam-Webster, Inc. 2002)) (emphasis omitted) (noting dictionary definition of shift). According to the definition in the dictionary, the term "shift" refers to "a group of people who work or occupy themselves in turn with other groups . . . a change of one group of people (as workers or students) for another in regular alternation[;] a scheduled period of work or duty." Webster's Third New International Dictionary 2095 (Merriam-Webster, Inc. 2002).
99. See RAG Cumberland, 869 A.2d at 1069 (referencing BCMA and SCA).
100. See id. (noting conflict in defining "shift"). The court found that although "coal-producing shift" was defined, the statute lacked a definition of the term "shift," which indicated that section 228(a) was not "clear and free from all ambiguity." See id. (citing 1 Pa. Cons. Stat. § 1921(b)).
101. See id. (consulting context of "shift").
102. See id. at 1069 (addressing contextual arguments).
utory construction and instead, only gave deference to the common usage definition of the term “shift.”

The court specifically observed that once the EHB concluded the statute was unambiguous, the EHB then failed to give proper consideration to the petitioners’ substantial evidence, including important testimony and depositions, indicating an alternate technical definition of “shift.” The court recognized the definition of “shift” changed since the EHB’s decision in United Mine Workers. The commonwealth court, however, distinguished United Mine Workers on factual and legal grounds as the case did not consider the definition of “shift” and did not alter the previously accepted technical definition.

The commonwealth court decided the definition of “shift” in United Mine Workers was contrary to both the historical DEP interpretation and the contextual statutory interpretation. According to the clear language of the SCA, a court should use a technical definition when one exists. In the mining industry, the term “shift” technically and historically refers to a block of time and not a group of workers; therefore, under this meaning, the Act did not require new examinations to occur for workers who entered the mine after the initial shift start time.

Relying on the testimony of mine officials, the commonwealth court noted it would be physically impossible for an entire shift of workers to enter the mine at the same time because of structural

103. See id. (noting EHB only consulted common definition).
104. See RAG Cumberland, 869 A.2d at 1069-70 (recognizing evidence provided to EHB was “virtually ignored”). Evidence proffered included depositions of mine safety managers, DEP mine safety officials and state mine inspectors. See id. The court concluded that this evidence supported petitioners’ position. See id. at 1070.
105. See id. at 1071 (noting that United Mine Workers created new interpretation of “shift”).
106. See id. at 1071-72 (distinguishing United Mine Workers and concluding its holding did not affect industry definition of “shift”).
107. See id. at 1072 (concluding on matters).
108. See 1 PA. CONS. STAT. § 1903(a) (2006) (stating technical words should be construed according to their peculiar meaning). The applicable technical definition here is found in the DICTIONARY OF MINING, MINERAL AND RELATED TERMS, Department of the Interior (1968), which defines “shift” as “[t]he number of hours or the part of any day worked. Also called ‘tour’ or ‘[t]he gang of men working for the period; as the day shift or the night shift.” See RAG Cumberland, 869 A.2d at 1069 (quoting WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY 2095 (Merriam-Webster, Inc. 2002)) (emphasis omitted).
109. See RAG Cumberland, 869 A.2d at 1069 (concluding pre-shift examinations conducted prior to primary shifts sufficiently covers miners who later enter mines during primary shifts).
The court also reasoned the application of the EHB’s interpretation would lead to “absurd results,” including the perpetuation of never-ending shift inspections. The commonwealth court concluded the testimony represented a reliable historical interpretation because such accounts reflected that it was standard industry practice for pre-shift examinations to be “effective for the entire shift and that miners could enter the mine at any time during that shift without triggering the need for a new examination.”

Some cases include arguments opposing this industry standard argument on the theory that the statutory purpose must override any countervailing or contradictory interpretations given to the statute. The courts in these cases gave great deference to the DEP’s perceived statutory purpose and attempted to reconcile textual definitions with such a purpose. The commonwealth court, however, did not accept these arguments in RAG Cumberland and instead held that the DEP’s interpretation does not apply.

B. Purpose of the Act

The commonwealth court found petitioners’ interpretation of “shift” consistent with the purposes of the BCMA. A portion of the title of the BCMA suggests one of its purposes: “providing for the health and safety of persons employed in and about the bitumi-

110. See id. at 1070 (citing Gallick Aff. 21, Bohach Aff. 21; R.R. 113a, 119a) (noting impossibility of immediate entrance of all workers). As a result of this physical impossibility, “petitioners and other mine operators have historically scheduled maintenance workers and some coal-production personnel to start work at times other than the designated starting time of the coal-producing shift.” See id. at 1070 (citing Gallick Aff. 18-19; R.R. 112a).

111. See id. at 1072 (noting results from continuous mine inspections are unnecessary, impractical and unintended by legislature).

112. See id. at 1070 (noting petitioners have not conducted pre-shift examinations based on this historical interpretation).


114. For a discussion of some accommodations provided to technical definitions of terms when construing statutory purpose, see supra note 113 and accompanying text.


116. See id. (noting purpose observed by petitioners’ interpretation).
In ascertaining legislative intent, the SCA provides it is valid to presume that “the General Assembly does not intend a result that is absurd, impossible of execution or unreasonable.” Accordingly, although the purpose of the BCMA was to provide for the health and safety of mine examiners, one may reasonably infer there was a corollary legislative intent to efficiently run mines for private and public welfare.

The commonwealth court further noted that the DEP failed to produce any evidence demonstrating an increase in safety from the new interpretation’s proposed enhanced safety protocols. The DEP responded that, although groups that come later in the shift will trigger the pre-shift examination requirement, an emergency crew or worker showing up late will not trigger the same requirement. As a result, the EHB concluded the requirement is sensitive to and accommodates the irregular shift circumstances in the mines. The EHB noted that any administrative difficulties regarding the EHB’s understanding of the statute as necessitating multiple examinations per time block were issues for the legislature to resolve and not the courts.

C. Deference to Agency Interpretations

Although the commonwealth court recognized that reviewing courts ordinarily defer to an agency’s interpretation of statutory language, the court held the DEP’s new interpretation was contrary to the historical understanding of “shift” in the industry and was unsupported by evidence showing that such an interpretation would improve safety in the mines and created absurd results, and


119. See RAG Cumberland, 869 A.2d at 1072 (noting legislative intent to safely, yet efficiently run mines).

120. See id. (noting lack of information regarding increased safety possibilities).


122. See id. (emphasizing adaptability of BCMA to varieties in work schedules).

123. See id. at 10 (reaching conclusion concerning difficulties presented by multiple pre-shift examinations).
thus, was undeserving of deference. The court thus concluded that giving deference to this new interpretation would severely alter the previous interpretation followed for decades and would create intolerable inconsistencies. The commonwealth court, therefore, concluded "shift" had a technical meaning intended by the legislature, used prior to United Mine Workers, which defines "shift" as a block of time, not a group of workers.

The commonwealth court, moreover, seemed to criticize the EHB for accepting the DEP's argument that more inspections would ensure enhanced safety because the EHB had no evidence on record demonstrating enhanced safety measures were needed. The court pointed out the legislature would not have intended to "transform the very purpose of a coal mine from coal production to mine inspection." The pre-shift examinations, already being conducted effectively, ensured the safety of workers who entered the mine later during the shift.

D. Holding

The commonwealth court adopted the petitioners' arguments on appeal. It found the EHB erred both in dismissing petitioners' appeal and in giving deference to the DEP's new interpretation of section 228(a) and determined the inspections as executed satisfied the requirements of section 228(a). The commonwealth court further held "shift" refers to a block of time and is not tied to the entry of workers into a mine. As such, the court reversed the

124. See RAG Cumberland, 869 A.2d at 1072 (noting that deference not always applicable). The court noted that under normal circumstances, where statutory language is clear and unambiguous, an agency's interpretation will usually be given deference. See id. at 1072 n.11 (citing DEP v. N. Am. Refractories Co., 791 A.2d 461, 464 (Pa. Commw. Ct. 2002)).


126. See id. (concluding that definition of "shift" in BCMA referred to block of time).

127. See id. (noting lack of evidence of improved safety with additional pre-shift examinations for odd start times).

128. See id. (noting that statutory purpose was not to eradicate efficiency and production of mine, but rather to increase safety).

129. See RAG Cumberland, 869 A.2d at 1072 (noting effectiveness of pre-shift examinations in place at time of dispute).

130. See id. (noting commonwealth court's holding).

131. See id. (reaching conclusion on case issues).

132. See id. (providing holding of commonwealth court).
EHB's orders because petitioners were not in violation of the BCMA.133

E. The Dissent

In his dissenting opinion, Senior Judge Flaherty suggested the only question before the court was one of law — whether there was a violation of section 228(a).134 Noting the complexities associated with the statutory interpretation of “shift,” Judge Flaherty concluded when there is room for multiple interpretations, the court must give great deference to the agency’s interpretation.135 Judge Flaherty further opined that this case involved an especially serious situation, which merited agency deference because the DEP is in charge of enforcing health and safety standards for mine workers in a dangerous workplace.136 Citing the SCA, Judge Flaherty noted that the statute’s words were clear and unambiguous and that the DEP correctly applied its interpretation.137 Judge Flaherty argued that the new interpretation of “shift” required inspections to be held when workers entered the mine at later times because under the statutory interpretation that would be a new “shift.”138

Judge Flaherty agreed with the EHB and found it did not err in concluding petitioner violated section 228(a) when petitioners did not perform pre-shift examinations for workers entering later in the shift.139 Judge Flaherty also noted that although adherence to section 228(a) under this interpretation may be burdensome, this is for the legislature, and not the court, to remedy.140 His dissenting opinion concluded that even if the meaning of the term “shift” was unclear, the court should have given deference to the DEP’s inter-

133. See id. at 1073 (expanding on commonwealth court holding).
134. See RAG Cumberland, 869 A.2d at 1073 (Flaherty, S.J., dissenting) (opining only relevant inquiry was whether there had been violation, not inquiry into statutory construction and interpretation).
136. See id. (Flaherty, S.J., dissenting) (noting dangerousness of mining atmosphere and need for agency deference).
137. See id. (Flaherty, S.J., dissenting) (citing 1 Pa. CONS. STAT. § 1921(b)) (asserting it is not court’s role to interpret language in situation at issue because language is unambiguous).
138. See id. (Flaherty, S.J., dissenting) (positing there is requirement for additional pre-shift examinations for workers entering later in mine).
139. See RAG Cumberland, 869 A.2d at 1074 (Flaherty, S.J., dissenting) (evaluating EHB doctrinal arguments).
140. See id. (Flaherty, S.J., dissenting) (opining legislature has duty of remediying burdensome or oppressive statutes, not reviewing court).
pretation of the term because the DEP was charged with enforcement of the statute.141

V. CRITICAL ANALYSIS

In evaluating the definition of “shift,” the commonwealth court had a substantial basis for finding the technical definition applied.142 The commonwealth court found the definition of “shift” in United Mine Workers to be contrary to both historical DEP interpretation and statutory contextual interpretation.143 The historically administered interpretation, as well as the appropriate technical definition were central to the court’s reasoning.144

“Shift,” as commonly used, refers to “a group of people who work or occupy themselves in turn with other groups . . . [a] change of one group of people (as workers or students) for another in regular alternation; or a scheduled period of work or duty.”145 Adhering to the clear language in the SCA, if and when there is a technical definition, the court shall use the technical definition.146 The technical, historical interpretation of “shift” in the mining industry interprets “shift” as a block of time, not a group of workers, and there is no requirement for new examinations to take place prior to the entrance of workers at irregular shift start times.147 The commonwealth court reviewed evidence the petitioners proffered in order to demonstrate that the DEP and mine operators prior to 2003 referred to the technical meaning and the United Mine Workers decision should thus be applied here.148

The commonwealth court awarded no deference to an interpretation of “shift” that followed from the flawed reasoning of the EHB, which failed to consider the definition of “shift” in United

141. See id. (Flaherty, S.J., dissenting) (concluding on DEP deference).
142. See id. at 1072 (majority opinion) (providing case’s holding).
143. See id. (concluding matters).
144. See RAG Cumberland, 869 A.2d at 1072 (discussing historical interpretation and technical definition of “shift”).
145. See id. at 1069 (quoting WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY 2095 (Merriam-Webster, Inc. 2002)) (emphasis omitted) (noting DEP’s impression of common usage of “shift”).
146. See 1 PA. CONS. STAT. § 1903(a) (2006) (stating technical words should be construed according to their peculiar meaning).
147. See RAG Cumberland, 869 A.2d at 1072 (concluding that pre-shift examinations conducted prior to primary shifts sufficiently covers miners who later enter mines during primary shifts).
148. See id. (noting that new interpretation arose from decision in United Mine Workers, yet United Mine Workers did not address definition of shift).
A casual reading of the statutory language in section 228(a) and the historical interpretation and precedent support the commonwealth court’s analysis. Deference to an agency’s interpretation is only appropriate if and when the agency’s interpretation is consistent with legislative intent, and the statute’s wording is ambiguous, so as to require further interpretation. Here, section 228(a)’s wording was ambiguous, yet the agency’s interpretation of the statute was at odds with the statute’s intended purpose.

The commonwealth court accurately adopted the petitioners’ contextual argument, pointing out the probable legislative intent. SCA section 1903(b) mandates words of a statute must be restricted by words that precede them. The commonwealth court followed this language when it analyzed the words surrounding “shift” in the Act: “workmen in a shift” and “person on a non-coal producing shift.” The court concluded the concept of “shift” appeared in the statute as an activity and not as inherently containing workers. The commonwealth court thus had statutory support, supportive precedent and testimony suggesting the

149. See id. at 1071 (citing United Mine Workers of Am. v. DEP and Eighty-Four Mining Co., EHB Docket No. 2001-081-K, 2001 Pa. Envrn. LEXIS 73, at *2 (issued Dec. 5, 2001)) (distinguishing facts from United Mine Workers). Specifically, in United Mine Workers, a mine workers’ union convinced the EHB that safety examinations conducted every eight hours were insufficient. See id. (citing United Mine Workers, 2001 Pa. Envrn. LEXIS 73, at *2). The commonwealth court noted that this is unlike RAG Cumberland, where safety examinations were conducted before shifts every eight hours, not in the midst of longer ten to twelve hour shifts. See id. (citing United Mine Workers, 2001 Pa. Envrn. LEXIS 73, at *2). Further, the EHB in United Mine Workers did not consider the definition of “shift” and, thus, did not alter the definition of “shift” as the industry previously interpreted it. See id. (citing United Mine Workers, 2001 Pa. Envrn. LEXIS 73, at *2).

150. See id. at 1072 n.11 (discussing historical interpretation). Among the evidence considered in rejecting the DEP’s “new” interpretation was the DEP’s own expert’s testimony (presumably demonstrative of the industry’s interpretation of the requirements imposed by section 228(a)), precedent and historical interpretations. See id.


152. See id. at 1069 (noting statutory construction as viable source in considering legislative intent). Specifically, the commonwealth court concluded the statutory construction indicated “shift” embodied an activity, rather than a slot of time, or at the very least, that “shift” and “workmen” are separate concepts. See id.


154. See RAG Cumberland, 869 A.2d at 1072 (concluding “shift” has specific meaning in coal industry).
need for a distinction between the new DEP interpretation and the established interpretation, and therefore, the commonwealth court properly refused to give deference to the new interpretation. 157

The dissent, however, convincingly noted that where ambiguities surround a statute, the court must rely on the guidance and especially the expertise of the agency in charge of its administration. 158 Judge Flaherty considered the administrative difficulties in following section 228(a) an insufficient reason to decrease the number of mine inspections and thus put miners’ lives in peril. 159 Judge Flaherty was well grounded in positing the following: the DEP correctly interpreted “shift” in the context of section 228(a); statutory clarity is a goal of all legislatures; and the DEP’s interpretation of “shift” would increase the number of inspections, perhaps increasing the safety of the mines, even though this supposition has flaws. 160 Although there has been a drastic reduction in the number of coal-mining deaths, which is likely due to increased safety measures, 161 overzealous ambition towards the goal of optimal safety may, in fact, halt or crush the mining industry itself. 162

VI. IMPACT

Agencies generally receive great deference from courts when they are charged with the authority to interpret a certain statutory scheme. 163 The SCA, with the decision in RAG Cumberland, clarifies that the interpretation must “harmonize with the subject matter” and purpose of the statute and cannot be an unsupported view. 164 Although agencies receive significant deference in interpreting statutes, the technical definitions, context and legislative intent can

157. See id. (concluding and refusing to defer to DEP interpretation, instead relying on former interpretation).
158. See id. at 1074 (Flaherty, S.J., dissenting) (opining need for extraordinary deference to agency interpretation).
159. See id. (Flaherty, S.J., dissenting) (positing lax enforcement of statutory regulations will increase risk to miners).
160. See id. (Flaherty, S.J., dissenting) (agreeing with DEP interpretation of section 228(a)).
161. For a discussion of mine death statistics throughout the 1900s, see supra note 1 and accompanying text.
162. See RAG Cumberland, 869 A.2d at 1072 (noting ultimate purpose of statute was to ensure safe mining, not eliminate mining).
164. See RAG Cumberland, 869 A.2d at 1072 (noting agency deference guidelines). See also Swartley v. Harris, 40 A.2d 409, 411 (Pa. 1944) (noting statutory interpretation guidelines).
override a significantly distinct and non-uniform agency interpretation.\textsuperscript{165}

The \textit{RAG Cumberland} decision supports the notion that an agency's interpretation of a statute cannot be unsupported unless it is consistent with legislative intent or has been administered for long periods of time without opposition.\textsuperscript{166} This rationale will only apply when the statute is ambiguous and unclear.\textsuperscript{167} If the statute is unambiguous then the agency interpretation will prevail as long as it is consistent with legislative intent and purpose.\textsuperscript{168} In other words, after the commonwealth court's decision in \textit{RAG Cumberland}, an agency is not guaranteed unfettered and unreviewable discretion in interpreting statutes, but instead is required to have some rational basis aligned with legislative intent and the general purpose of the relevant statute or act in its interpretation.\textsuperscript{169}

The decision in \textit{RAG Cumberland} reaffirms the application of technical terms in dealing with statutory interpretation.\textsuperscript{170} When a technical definition exists, it must be considered; if the technical definition presents an ambiguity, the court must resolve the issue if the legislature does not address this ambiguity.\textsuperscript{171} If an agency's interpretation of a statute leads to absurd or impracticable results, the fact that the interpretation stems from an agency decision is not sufficient to uphold such an interpretation.\textsuperscript{172} \textit{RAG Cumberland} will remind a reviewing court of the need to balance the practicality and purpose of the relevant statute with legislative intent when interpreting ambiguous terms or statutes.

\textbf{Dennis C. Lumia}


\textsuperscript{166} \textit{See RAG Cumberland}, 869 A.2d at 1072 (reaching conclusion on issue of deference to agency).

\textsuperscript{167} \textit{See id.} (explaining limited applicability of deference, such as when inconsistent with traditional interpretation or definition).

\textsuperscript{168} \textit{See Bethenergy Mines, Inc.}, 676 A.2d at 715 (noting deference policies).

\textsuperscript{169} \textit{See RAG Cumberland}, 869 A.2d at 1072 (describing requirements for deference to agency interpretation).

\textsuperscript{170} \textit{See id.} at 1069-70 (explaining technical terms shall be construed according to technical definition).

\textsuperscript{171} \textit{See id.} (noting technical definition of statutory term and influence on statutory interpretation).

\textsuperscript{172} \textit{See id.} (noting impracticability of agency's interpretation).