



United States Government
NATIONAL LABOR RELATIONS BOARD
REGION 6

William S. Moorhead Federal Building

1000 Liberty Avenue, Room 904

Pittsburgh, PA 15222-4111

Telephone: (412) 395-4400

Fax: (412) 395-5986

Website: www.nlr.gov

July 19, 2011

Re: Utility Workers Union of America System
Local 537, AFL-CIO
(Pennsylvania American Water Company)
Case 6-CB-011730

[REDACTED]
Houston Harbaugh, PC
Three Gateway Center
401 Liberty Avenue, 22nd Floor
Pittsburgh, PA 15222-1005

Dear Messrs. [REDACTED]

The Region has carefully investigated and considered the charge against Utility Workers Union of America, System Local 537, AFL-CIO alleging violations under Section 8 of the National Labor Relations Act.

Decision to Partially Dismiss: Based on that investigation, I have concluded that further proceedings are not warranted with respect to certain aspects of the charge, and I am refusing to issue complaint and dismissing the charge as to those allegations for the following reasons:

The charge alleges, among other things, that the Union established unprotected picket lines, that it required members to honor those lines, and that it threatened members if they refused to honor those lines. There is no legal basis, however, for the Employer's claim that the Union caused an unprotected strike. There was not a clear and unmistakable waiver of employee rights to engage in a sympathy strike at the Pittsburgh District and Outside Districts bargaining unit locations. Here, the collective-bargaining agreements for the Pittsburgh District and Outside Districts specifically reserved the employees' rights to honor primary picket lines. Moreover, as evidenced by an almost 30-year-old arbitration decision resolving a dispute between the Union and Employer involving the identical sympathy strike provision at issue, the parties have long interpreted the contractual sympathy strike rights as applicable to both primary pickets by "stranger" unions and pickets relating to primary labor disputes involving the same Union at the Employer's other bargaining unit locations.

Further, bargaining unit employees at the Pittsburgh District and Outside Districts did not lose the protection of the Act because of the intermittent nature of the underlying primary pickets. There is no Board precedent finding that employees lose their rights to engage in sympathy strikes simply because they intermittently encounter another bargaining unit's lawful picket line. Indeed, sympathy strikes are frequently irregular by nature, e.g., delivery drivers routinely refuse to cross picket lines at customer facilities while continuing to make other deliveries. Thus, I conclude that the Pittsburgh District and Outside Districts bargaining unit employees did not lose the protection of the Act.

The remaining allegations of the charge that the Union threatened an employee, who had resigned his union membership, with discipline if he failed to honor a picket line, are being retained for further processing.

Your Right to Appeal: The National Labor Relations Board Rules and Regulations permit you to obtain a review of this action by filing an appeal with the ACTING GENERAL COUNSEL of the National Labor Relations Board. Use of the Appeal Form (Form NLRB-4767) will satisfy this requirement. However, you are encouraged to submit a complete statement setting forth the facts and reasons why you believe that the decision to dismiss your charge was incorrect.

Means of Filing: An appeal may be filed electronically, by mail, or by delivery service. Filing an appeal electronically is preferred but not required. The appeal **MAY NOT** be filed by fax. To file an appeal electronically, go to the Agency's website at www.nlr.gov, click on **File Case Documents**, enter the NLRB Case Number, and follow the detailed instructions. To file an appeal by mail or delivery service, address the appeal to the Acting General Counsel at the National Labor Relations Board, Attn: Office of Appeals, 1099 14th Street, N.W., Washington D.C. 20570-0001. Unless filed electronically, a copy of the appeal should also be sent to me.

Appeal Due Date and Time: The appeal is due on **August 2, 2011**. If you file the appeal electronically, it will be considered timely filed if the transmission of the entire document through the Agency's website is accomplished **no later than 11:59 p.m. Eastern Time** on the due date. If you mail the appeal or send it by a delivery service, it must be received by the Acting General Counsel in Washington, D.C. by the close of business at **5:00 p.m. Eastern Time** or be postmarked or given to the delivery service no later than one day before the due date set forth above.

Extension of Time to File Appeal: Upon good cause shown, the Acting General Counsel may grant an extension of time to file the appeal. A request for an extension of time may be filed electronically, by fax, by mail, or by delivery service. To file electronically, go to www.nlr.gov, click on **File Case Documents**, enter the NLRB Case Number, and follow the detailed instructions. The fax number is (202) 273-4283. A request for an extension of time to file an appeal **must be received on or before the original appeal due date**. A request for an extension of time that is mailed or given to the delivery service and is postmarked or delivered to the service before the appeal due date but received after the appeal due date will be rejected as untimely. Unless filed electronically, a copy of any request for extension of time should be sent to me.

Confidentiality/Privilege: Please be advised that we cannot accept any limitations on the use of any appeal statement or evidence in support thereof provided to the Agency. Thus, any claim of confidentiality or privilege cannot be honored, except as provided by the FOIA, 5 U.S.C. 552, and any appeal statement may be subject to discretionary disclosure to a party upon request

during the processing of the appeal. In the event the appeal is sustained, any statement or material submitted may be subject to introduction as evidence at any hearing that may be held before an administrative law judge. Because we are required by the Federal Records Act to keep copies of documents used in our case handling for some period of years after a case closes, we may be required by the FOIA to disclose such records upon request, absent some applicable exemption such as those that protect confidential source, commercial/financial information or personal privacy interests (e.g., FOIA Exemptions 4, 6, 7(C) and 7(d), 5 U.S.C. § 552(b)(4), (6), (7)(C), and (7)(D)). Accordingly, we will not honor any requests to place limitations on our use of appeal statements or supporting evidence beyond those prescribed by the foregoing laws, regulations, and policies.

Notice to Other Parties of Appeal: You should notify the other party(ies) to the case that an appeal has been filed. Therefore, at the time the appeal is sent to the Acting General Counsel, please complete the enclosed Appeal Form (NLRB-4767) and send one copy of the form to all parties whose names and addresses are set forth in this letter.

Very truly yours,

Robert W. Chester
Regional Director

Enclosure(s)

cc:

Lafe Solomon, Acting General Counsel
National Labor Relations Board
Office of Appeals, Room 8820
1099 – 14th Street, NW
Washington, DC 20570-0001

Pennsylvania America Water Company
300 Galley Road
McMurray, PA 15317


Sherrard, German & Kelly, PC
28th Floor, Two PNC Plaza
620 Liberty Avenue
Pittsburgh, PA 15222-2705

Utility Workers Union of America,
System Local 537, AFL-CIO
Washington Trades and Labor Building
One South College Street
Washington, PA 15301

dm

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

APPEAL FORM

To: Acting General Counsel
Attn.: Office of Appeals
National Labor Relations Board
Room 8820, 1099 14th Street, N.W.
Washington, D.C. 20570

Date:

Please be advised that an appeal is hereby taken to the Acting General Counsel of the National Labor Relations Board from the Regional Director in refusing to issue a complaint on the charge in

Case Name(s)

Case No(s). *(If more than one case number, include all case numbers in which appeal is taken.)*

(Signature)

United States of America
National Labor Relations Board
PROCEDURES FOR FILING AN APPEAL

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Appeal Due Date and Time: The appeal is due on [**14 days from issuance**]. If you file the appeal electronically it will be considered timely filed if the transmission of the entire document through the Agency's website is accomplished **no later than 11:59 p.m. Eastern Time** on the due date. If you mail the appeal or send it by a delivery service it must be received by the Acting General Counsel in Washington, D.C. by the close of business at **5:00 p.m. Eastern Time** or be postmarked or given to the delivery service no later than [DATE one day before the due date].

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