

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 9

West Virginia American Water Co.,

Employer

and

Case No. 09-RC-219179

Utility Workers United Association, Local 537.

Petitioner,

and

Utility Workers Union of America, AFL-CIO, CLC,
and its Local 537

Intervenor.

**OPPOSITION OF PETITIONER, UTILITY WORKERS UNITED
ASSOCIATION, LOCAL 537 TO REQUESTS FOR REVIEW FILED BY
WEST VIRGINIA AMERICAN WATER COMPANY AND BY THE INTERVENOR
UTILITY WORKERS UNION OF AMERICA, AFL-CIO, CLC AND ITS LOCAL 537**

INTRODUCTION

West Virginia American Water Company (“the Employer”) is a wholly owned corporate subsidiary of the American Water Works Company. The Intervenor in this matter, Utility Workers Union of America, AFL-CIO, System Local 537 (“the Intervenor”), has represented the production and maintenance employees of the West Virginia American Water Company’s Huntington District for several years. The Intervenor also represents employees of another West Virginia American Water Company operation in Weston, West Virginia, whose employees are covered by a separate labor agreement as well as other employees of American Water subsidiaries in Pennsylvania and Maryland, who are also covered by separate agreements.

For several years, the members of the Intervenor, which is a local union of the Utility Workers Union of America, AFL-CIO, have expressed dissatisfaction with their local's affiliation with the Utility Workers Union of America, AFL-CIO. At an executive board meeting of the Intervenor held on January 20, 2018, it was decided to put the question of remaining affiliated with the Utility Workers Union of America, AFL-CIO, to a vote of the membership of the Intervenor. It was determined to hold secret ballot voting on this issue on March 19, 2018 at numerous locations where the Intervenor's members worked. These meetings were held across West Virginia, Pennsylvania and Maryland and the membership overwhelmingly voted to disaffiliate from the Utility Workers Union of America, AFL-CIO, and to affiliate with a separate labor organization, the Utility Workers United Association, Local 537 ("the Petitioner").

By action taken on Sunday evening, March 18, 2018, the Utility Workers Union of America, AFL-CIO determined to place the Intervenor under trusteeship for ostensibly interfering with the negotiation of insurance and pension benefits between American Water Works Company on behalf of its corporate subsidiaries on the one hand and the Utility Workers Union of America, AFL-CIO on behalf of its local unions, including the Intervenor, on the other hand, which negotiations had occurred on a nationwide, multi-employer, multi-unit basis for several years. The alleged interference consisted of filing unfair labor practice charges against West Virginia American Water Company, Pennsylvania American Water Company, and Maryland American Water Company to obtain a determination as to whether the Intervenor was required to continue to participate in the above described negotiations.

The Utility Workers Union of America, AFL-CIO, also filed proceedings in the United States District Court for the Western District of Pennsylvania ("the Federal Court proceedings") seeking judicial approval of the trusteeship and seeking to keep and hold the assets of the

Intervenor. That litigation named the Intervenor and its five executive officers as defendants. A consent preliminary injunction was entered prohibiting the five named defendants from interfering with the trusteeship while its validity was contested in the court proceedings. This document was introduced at the hearing as Intervenor Ex. 7 and it is attached hereto as Exhibit A.

In the meantime, the collective bargaining agreement outstanding between the Intervenor and the Employer expired on April 15, 2018. On April 18, 2018, an employee of the Employer filed a Petition for Representation with Region Nine of the National Labor Relations Board at No. 09-RC-218209 alleging that a majority of the Employer's employees now desired to be represented for collective bargaining purposes by the Petitioner. That petition was withdrawn without prejudice and re-filed on April 27, 2018 because it was not possible for all the parties to attend the hearing set under the first (withdrawn) petition. The Employer and the Intervenor contested the validity of the petition for a number of reasons, alleging the existence of a contract bar, alleging that the Petitioner is not a labor organization, alleging that the federal court proceedings and the preliminary injunction entered there by consent prohibits the National Labor Relations Board from proceeding with this Representation case, and alleging that when two Petitions for Representation were filed by employees of a sister entity, the Pennsylvania American Water Company, in Region 6 seeking an election to determine if the Petitioner would be certified as the collective bargaining representative in those two units, the Regional Director of Region 6 suspended further consideration of those petitions until she could determine what impact, if any, the federal court case might have on the representation petitions. The issue concerning the impact of the Federal Court proceedings and the issue concerning the action of the Regional Director of Region Six were raised in pre-hearing motions and the contract bar issue and the issue concerning the status of the Petitioner were raised in the Position Statements of the Employer and the Intervenor.

The Regional Director of Region Nine declined to grant the pre-hearing motions and instead he held a hearing on May 8, 2018 to determine if an election should be held to determine which entity, if any, should be the collective bargaining representative of the Employer's employees at its Huntington, West Virginia unit. Both the Employer and the Intervenor raised at the hearing the same issues that they raised in their pre-hearing motions, namely that the existence of the Federal Court proceedings barred a hearing in this case and that the Regional Director here should have taken the same action as the Regional Director in Region 6, namely suspending these proceedings. The Employer and the Intervenor also raised a contract bar issue and the issue concerning the labor organization status of the Petitioner.

ARGUMENT

The Contract Bar Issue

The Employer and the Intervenor argue that there is a contract bar in this case. The contract in this case ended on April 15, 2018. The Intervenor's trustee evidently met with the Employer and between them, they arrived at a tentative agreement on or about April 13, 2018. The very terms of that tentative agreement (introduced at the hearing as Joint Ex. 1 and attached hereto as Exhibit B) required that it be presented to the members for ratification and if it was not ratified, the tentative agreement, by its terms, was no longer in effect. These provisions were stated in Joint Exhibit 1 at the following places:

1. Page 1 of the Joint Exhibit provides that the wage increases are “. . . contingent upon ratification . . . no later than April 19.”(emphasis added);
2. The “Detailed Changes For The Terms Of The Stipulated Agreement”, which is part of Joint Exhibit 1, provides that the new agreement will become effective on the “date of ratification.”(emphasis added);
3. The complete draft of the proposed new agreement, which consisted of a copy of the prior agreement, with tentatively agreed changes marked on it, provided that “[t]his

agreement constitutes the agreement reached by the parties, subject to ratification scheduled for April 19, 2018.” (emphasis added).

The agreement was rejected by the employees on April 19, 2018. Thus, no final agreement was in effect on either the date when the initial petition for representation was filed or when the revised petition was filed. For a contract to be a bar to a representation petition, it must be signed and binding upon the employer and the certified collective bargaining representative before the representation petition was filed. See Appalachian Shale Products Co., 121 NLRB 1160 (1958). See also Triple Canopy, Inc., Case No. 04-RC-207888 (2017), reported at 2017 WL 6034113. While the absence of a requirement for ratification will not necessarily prevent an unratified tentative agreement from being a bar, Appalachian Shale Products Co., *supra*, the tentative agreement in this case contains not only a provision dealing with ratification as a prerequisite to a wage increase, it states that “This Agreement shall continue in full force and effect without alternation from . . . [date of ratification]. . . (Detailed Changes For The Terms Of The Stipulated Agreement, Jt. Ex. 1) and it also provides that the entire agreement depends on being ratified. See Item 3 above. The Employer’s position that the tentative agreement did not condition the entire agreement upon ratification (Employer Request For Review, pp. 14-15, §20) is incorrect and a blatant misstatement of what is in the tentative agreement. The two witnesses who testified on this issue stated that the voters were told that if the agreement was not ratified, it was “off the table”, Testimony of Timothy Dishman, N. T. 79-80, attached hereto as Exhibit C, and that if the agreement was not ratified, the trustee would have to go back and “tweak” the tentative agreement, Testimony of Richard Cossell, N. T. 97-98, attached hereto as Exhibit D.

At the ratification meeting, the employees in attendance moved to dispense with a review of the tentative agreement and to vote upon it. They did so and rejected it. The Employer and the

Intervenor raise the spurious objections that this was an “orchestrated” move and was an obvious “manipulation” of the ratification process. One of the employees in attendance testified that the attendees had copies of the relevant documents outlining the tentative agreement and they had time to review these documents. Dishman, N. T. 78-79, attached hereto as Exhibit E. The testimony of orchestration was the unsupported opinion of Intervenor witness Richard Cossell. The Employer’s unprofessional charge that the meeting was “manipulated” stems from Employer’s counsel’s total twisting of Petitioner’s counsel’s oral argument that the facts point to a rational conclusion that the employees wanted nothing to do with the Intervenor as a representative and voted to reject the tentative agreement to prevent a contract bar from arising. For the employees to do so was entirely proper since they obviously wanted nothing to do with the Intervenor as their collective bargaining representative.

Both the Employer and the Intervenor argue that the Federal Court proceedings should be sufficient to impose a bar to the conduct of an election and so should the suspension of representation proceedings that were filed in Region 6, which deal with a different employer and different labor agreements. While these contentions will be dealt with at greater length in a succeeding portion of this document, the arguments raised by the Intervenor and the Employer reveal their basic misunderstanding of a trusteeship versus questions concerning representation. A trusteeship is a device permitted by the LMRDA, 29 U.S.C.A., §461, et seq. that provides for a method of administering the affairs of a mismanaged local union. Trusteeships have nothing to do with questions concerning representation. Questions concerning representation are within the exclusive jurisdiction of the National Labor Relations Board, and quite the opposite of what the Intervenor and the Employer state, it is the Federal Court which has no jurisdiction to decide upon or interfere with questions concerning representation. The Employer argues that its method of

dealing with insurance and retirement benefits will be upset if this representation petition is granted. The Intervenor argues that therefore it imposed the trusteeship on Local 537. Without conceding the Petitioner's position that the Employer cannot use this as an issue to prevent the resolution of a question concerning representation, neither the Employer nor the Intervenor offered any evidence to establish that this would occur in any event. While the Intervenor raised this in the Federal Court proceedings as the ostensible reason for the trusteeship and while the Employer raises the same argument as a reason to dismiss the representation petition, the Petitioner has indicated its agreement to be bound by the present National Benefits Agreement that does not expire until July 31, 2018 and its willingness to be bound by any negotiated successor to that agreement. See N.T. 27 and Defendant's Answer and Defenses to the Federal Court proceedings, attached hereto as Exhibits F-1 and F-2.

The Labor Organization Status Of The Petitioner

The Employer and by adoption of the Employer's position, the Intervenor, contend that the Petitioner is not a valid labor organization. The evidence reveals that the Petitioner came into existence because of a strong feeling among the Intervenor's members that they should disaffiliate from the Utility Workers Union of America, AFL-CIO. To accommodate the desire of the members in that regard, the Intervenor's executive board arranged for secret ballot voting on that issue. (Petitioner Ex. 2, attached hereto as Exhibit G). Before the voting, bylaws were adopted by the Petitioner, the Petitioner obtained a separate federal employer identification number (Petitioner Ex. 4, attached hereto as Exhibit H), and it applied for recognition as a non-profit entity by the Internal Revenue Service. (Petitioner Ex. 6, attached hereto as Exhibit I). Its bylaws show that it was formed to act as a collective bargaining representative and that it met the requirements of the "labor organization" definition of the Act.

The employer and the Intervenor argue that the Petitioner is nothing more than the Intervenor under another name, citing a letter sent by the President of the Petitioner to the Employer wherein he states that “. . . ‘we are the same organization’ that represents your employees but we have disaffiliated from the Utility Workers Union of America, AFL-CIO.” (Intervenor Ex. 4, attached hereto as Exhibit J). This language was taken verbatim from the proceedings in American, Etc., Inc., d/b/a Royal Laundry, Case No. 20-RM 2868. (Petitioner Ex. 12, attached hereto as Exhibit K). In fact, what happened here and what happened in Royal Laundry, supra, is exactly what happens in many disaffiliation cases. The disaffected employees form a separate entity and vote to disaffiliate from their former representative and to move “lock, stock and barrel” to a new entity which is a mirror image of the one they just left. See also, St. Vincent Hospital v. NLRB, 621 F.2d 1054 (10th Cir. 1980) holding that a disaffiliation exactly like this one simply meant that the “new” union was a successor to the “old” union and that the bargaining relationship continued as heretofore but with a new union acting as the representative. In St. Vincent Hospital, supra, and in Royal Laundry, supra, it was held that there was not even a reason to hold an election since no question concerning representation existed. Quite honestly, that is the same situation as exists in the present case. However, the Petitioner does not oppose participating in an election.

The employer has raised a question of the interruption of the economic situation if an election occurs. That is simply a red herring. The Petitioner has stated both in its letter to the employer upon the disaffiliation vote and again in these proceedings that it will honor all contracts, arrangements and understandings that were in existence between the employer and the Intervenor. See Ex. F-1, attached hereto and Ex. J, attached hereto.

While the Petitioner certainly has no dispute with the Regional Director’s finding that the Petitioner is a labor organization, it should be pointed out that while the Regional Director stated

that “Although the record does not contain direct evidence regarding whether employees participate in Petitioner or whether the individuals who signed Petitioner’s constitution and by-laws are employees of the Employer. . . .”, the evidence in this matter does contain direct reference to these issues. The Petitioner’s constitution and by-laws are in evidence and are attached hereto as Ex H. A clear reading of this document shows that employees do in fact participate in the Petitioner. The constitution and by-laws refer to members bringing charges against other members, running for office, voting on tentative collective bargaining agreements, and paying union dues. These are all matters involving the direct participation of employees in the Petitioner’s activities and administration. While the employees who signed the Petitioner’s by-laws are not employees of the Employer (West Virginia American Water Company), there is no requirement that the individuals who created the Petitioner must be employees of the Employer for the Petitioner to be able to act as a collective bargaining representative. All that is required is that (1) the Petitioner must be a labor organization and (2) a showing of interest among the Employer’s employees for representation by the Petitioner must exist. Both have occurred in this case. The Regional Director correctly relied on East Dayton Tool and Die Co., 194 NLRB 266 (1972) in resolving this issue.

Both the Employer and the Intervenor contend that the Association is a sham and is a disguised continuance of the Intervenor and that as a result, the Regional Director should not have directed an election. This assertion borders on the absurd. In any case where a group of unionized employees desire to disaffiliate from their local union which is a part of a national organization and to be represented by an independent union which they have formed, it is obvious that the members of the “new” organization could end up being the same people who were members of the “old” organization. See American, Etc., Inc., d/b/a Royal Laundry, supra, and St. Vincent Hospital v. NLRB, supra. Evidently, the Intervenor and the Employer must be of the mind that a disaffiliation

or an election to replace a certified bargaining representative can only occur if the “new” organization has absolutely no relationship with the employees who seek the new representative. Such a position is simply untenable.

The Question Of Disaffiliation

Neither the constitution and bylaws of the Utility Workers Union of America, AFL-CIO, nor the constitution and bylaws of the Intervenor specifically deal with the question of disaffiliation. There is reference in the constitution and bylaws of the Utility Workers Union of America, AFL-CIO to disbanding but this is not a case of disbanding. The members decided to disaffiliate from the Utility Workers Union of America, AFL-CIO and to affiliate with the Petitioner. They did so via a secret ballot voting procedure that gave them advance notice of what they were voting on. Whether there were some alleged “constitutional” procedural violations are irrelevant. All that had to occur was “due process” as required by the LMRDA. See, e.g., Tile, Marble, Terrazzo, Etc. International Union v. Tile, Marble, Terrazzo Union Local 32, 896 F.2d 1404 (3rd Cir. 1990) holding that voting to disaffiliate at a union meeting is a sufficient voluntary resignation from a former union. P. 1413 of 896 F.2d. “. . . signatures on a petition explicitly providing that the member was disaffiliating from the national union. . .” and “. . . voting to disaffiliate at a union meeting. . .” clearly show separation from the former union. To the same effect is IBB v. Local Lodge D129, 910 F.2d 1056 (2nd Cir. 1990). In that case, the membership of a local union voted to disaffiliate and to join a new union that they contemporaneously formed. While the Regional Director indicated that he did not wish to visit the issue of disaffiliation, it is submitted that the members of the Intervenor did effectively disaffiliate from the Intervenor and did decide to affiliate with the Petitioner. The Petitioner, however, does not dispute the Regional Director’s decision not to deal with the disaffiliation issue since, having found that the Petitioner is a valid labor

organization and having found the existence of a showing of interest, the Regional Director has provided the Intervenor with a chance to convince the employees that they should remain with the Intervenor as their collective bargaining representative.

The Impact Of The Federal Court Proceedings

The federal court proceedings have no bearing on this case. The federal court proceedings seek to validate the imposition of a trusteeship and to recover for the Utility Workers Union of America, AFL-CIO the assets of the Intervenor. The consent injunction in that case prohibits the five named former officers of the Intervenor from engaging in any action to thwart the efforts of the trustee to perform his duties, but it does allow those five individuals to participate in that litigation and to advance their positions in that litigation. One of their positions is that a proper disaffiliation has occurred but what is most important here is that those five individuals are not involved in the instant petition. The petition was generated by a showing of interest among the employer's Huntington, West Virginia employees and while the Petitioner does take the position that a valid disaffiliation from the Intervenor has occurred, which would even eliminate the need for a representation election, all that needs to be done in this case is to conduct an election in this specific bargaining unit since the employees there have clearly indicated their desire that this be done.

Basically, both the Employer and the Intervenor have confused the concept of a trusteeship and the concept of a question of representation. A trusteeship is nothing more than a way for a national union to take over the internal affairs of one of its locals, somewhat similar to the ability of a shareholder to seek to place a corporation into receivership. While there are circumstances where a national union can place one of its locals in trusteeship, the ability to do so does not override the members of that local from disaffiliating or seeking a new collective bargaining representative.

There are numerous cases where national unions have declared trusteeships and where, in those cases, a disaffiliation has occurred. See, e.g., Tile, Marble, Terrazzo, Etc. International Union v. Tile, Marble, Terrazzo Union Local 32, supra, where the employees of a local union disaffiliated from their national organization and the national organization declared a trusteeship. All that occurred in that case was that the national union could claim title to the assets of the local that disaffiliated but the disaffiliation was not set aside.

The Employer also argues that-

“If [the Federal court] determines that Local 537 properly disaffiliated from the UWUA, then the Petition is moot as the Association is the legitimate representative of WVAW’s union workforce. Conversely, if [the Federal court] determines that Local 537 did not disaffiliate from the UWUA, then the Association and its officers . . . are judicially precluded from interfering with the collective bargaining relationship between the trustee Local 537 and WVAW.” Request For Review, Argument, II, Par. 8, p.11.

This statement again illustrates the Employer’s total misunderstanding of the difference between a trusteeship and a question concerning representation. It is true that if the disaffiliation was effective, the Association, ipso facto, is the new representative of the Employer’s employees without the need for an election. However, assuming that the disaffiliation was not done properly (a position that the Petitioner does not concede), so long as the Petitioner is a labor organization and so long as there is no contract bar and so long as there is the requisite showing of interest, neither the disaffiliation nor the trusteeship are of any moment. A national union has no right to keep employees in its bondage through one of its locals by putting the local into trusteeship-in fact, putting a local in trusteeship because it seeks to disaffiliate is itself a violation of the law. Benda v. Grand Lodge, 584 F.2d 308, fn. 6. (9th Cir. 1978). A trusteeship is merely an internal union operational device that can in no way override the legitimate exercise of Section 7 rights. For what

it is worth, the Employer may want to re-read the federal court pleadings. Those proceedings seek only to validate a trusteeship, something that the Employer has no stake in. To the extent that a bargaining relationship with the Employer is affected, there are two issues to consider. The Employer is concerned about the impact on National Benefits bargaining. That issue is resolved as the Petitioner has indicated both in these proceedings and in the federal court proceedings that it will continue to be bound by the National Benefits agreement. As far as the direct dealings on other issues are concerned, the contract between the Employer and the Intervenor is at an end so there is no interference with that relationship-the Employer will have to negotiate a new labor agreement with whatever entity is the lawful employee representative.

Suspension Of Proceedings Pending Federal Court Decision

Both the Intervenor and the employer urge the Region to suspend the deadlines in this matter until the federal court proceedings are resolved, citing, among other reasons, the decision of Region Six to do so. However, Region Six did not suspend deadlines until the federal court matter was resolved-it suspended them until that Region could determine what impact, if any, the federal court proceedings might have on the representation petitions filed there. Region Six is evidently still considering what that impact may be.

However, it is the position of the Petitioner that there is no reason for Region Six to even consider such a suspension. There is no need to suspend deadlines due to the federal court proceedings because those proceedings do not impact any question of representation. They deal only with the imposition of a trusteeship and the impact of a trusteeship on the ownership of the Intervenor's assets. Employees have the right to express their desire for a representative irrespective of a trusteeship and it is within the sole jurisdiction of the Board to determine questions of representation.

The Employer and the Intervenor assert that uniformity among Regions requires that Region Nine should suspend these proceedings because Region Six suspended its proceedings. As its authority for this position, the Employer cites 29 C.F.R., 102.72, the Board's Case Handling Manual and Communications Workers of America, AFL-CIO, 1984 WL 47403. What the Employer fails to realize is that this particular case deals with a question of representation of a group of employees in West Virginia and that question is not affected by the fact that the UWUA has placed one of its locals in trusteeship when the employees seek to be represented by a new representative. Furthermore, all that Region Six decided to do was to suspend its proceedings until it could determine the impact of the federal court proceedings-it did not determine that the federal court proceedings forbade an ultimate election. What the Employer is asking is that Region Nine be required to defer to what Region Six has yet to decide, evidently on the assumption that Region Six will determine that the federal court proceedings bar these representation proceedings. However, Region Nine has already determined that the federal court proceedings do not bar these representation proceedings. What should occur here is that Region Six should lift its suspension of its proceedings and allow the representation proceedings there to proceed to hearing and election, to maintain consistency with what Region Nine has decided.

The Regional Director's Rulings On Pre-Hearing Motions

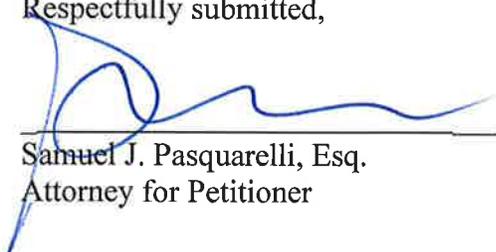
Both the Intervenor and the Employer argue that the Regional Director's pre-hearing rulings on their motions to suspend and dismiss these proceedings were incorrect and constituted a denial of due process. Those rulings were on issues of law. All parties provided detailed legal argument by way of pre-hearing motions, citations, and answers. It was totally within the right of the Regional Director to make pre-hearing motions on those legal issues. In fact, it is the feeling of the Petitioner that the Regional Director had the right to and should have ruled on the disaffiliation

issue but the Petitioner is not complaining about that matter. For the Intervenor and the Employer to argue that the denial of pre-hearing motions in this case, especially given the ad nauseam repetition of their arguments, both orally and in writing, was a denial of due process is simply not supported by the record.

Conclusion

These proceedings are nothing more than the kinds of things that one would expect to see when a labor agreement has expired and the employees are dissatisfied with their former representative. What is curious about these proceedings is that the Employer, which continually argues that it needs to know the identity of the true collective bargaining representative, has weighed in on the side of the Intervenor rather than simply filing an RM petition and asking that the Region determine who it should deal with. Neither the Employer nor the Intervenor have cited any authority that would derogate from the right of the Regional Director to direct an election in this case and the Regional Director's determination in this regard should be upheld, the election should occur as scheduled and the Requests For Review and Extraordinary Relief should be denied.

Respectfully submitted,



Samuel J. Pasquarelli, Esq.
Attorney for Petitioner

CERTIFICATE OF SERVICE

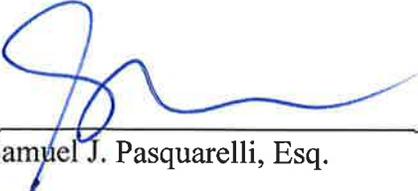
The undersigned hereby certifies that he did, on June 4, 2018, serve a true copy of the Answer To Request For Review to which this certificate is attached by first class mail, and by electronic mail, addressed as follows:

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Date: June 4, 2018



Samuel J. Pasquarelli, Esq.

A

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UTILITY WORKERS UNION OF AMERICA, AFL-
CIO,

Plaintiff,

v.

J. KEVIN BOOTH, DAVID ROWLAND,
GREGORY LANHAM, DARLA OPEL, MAREI
BURNFIELD, and UTILITY WORKERS UNION OF
AMERICA LOCAL 537,

Defendants.

CASE NO. 2:18-CV-00398-DSC

CONSENT ORDER GRANTING
PRELIMINARY INJUNCTION

This matter has been brought before the Court on motion of Plaintiff Utility Workers Union of America, AFL-CIO ("UWUA"), for a preliminary injunction. The Court enters this preliminary injunction upon consent of all parties as follows:

Defendants J. Kevin Booth, David Rowland, Gregory Lanham, Darla Opel, and Marei Burnfield, former officers of Defendant Utility Workers Union of America Local 537 ("Local 537"), and each and every other person acting at the direction of or in concert with them, shall:

- a. Deliver all funds, assets, books, records, computers, and property of any kind (including, without limitation, real property, membership lists, and social media materials) of Local 537 in their possession, custody, or control to the UWUA-appointed Trustee of Local 537, John Duffy, or his designee(s);
- b. Cease and desist from representing themselves as the authorized officers or representatives of Local 537 in any manner, or as the officers of the "Utility Workers United Association, Local 537" with authority to now act as the



- collective bargaining representative for any employees represented by Local 537, unless expressly authorized by Trustee Duffy or his designee(s);
- c. Cease and desist from interfering in any manner with the conduct of the trusteeship by Trustee Duffy and his designee(s), except for participating in this litigation and advancing their positions in this litigation;
 - d. Provide, upon request, a complete accounting of the financial condition of Local 537 to Trustee Duffy or his designee(s), along with any and all requested financial records and explanations for receipts, disbursements, and financial transactions of any kind by Local 537, its officers, representatives, employees, and agents;
 - e. Refrain from any destruction, removal, sequestration, or alteration of the funds, assets, books, papers, records or property of Local 537;
 - f. Refrain from entering any of the offices or facilities of Local 537 and refrain from acting as a collective bargaining representative at any of the worksites represented by Local 537, unless requested by Trustee Duffy or his designee(s);
 - g. Refrain from the use of any of Local 537's physical plants, buildings, computer systems, information systems, telephone systems, and databases;
 - h. Refrain from interfering with the use of Local 537's computer or electronic information networks, data, and information systems;
 - i. Refrain from interfering in any manner with the trusteeship or with Local 537's collective bargaining and grievance handling relationships with any and all employers that employ Local 537 members, except for participating in this

litigation and advancing their positions in this litigation. For these purposes, impermissible interference shall be deemed to include, without limitation, discouraging any employer from bargaining or otherwise dealing with Trustee Duffy or his designee(s) on matters affecting Local 537 members, and discouraging any Local 537 member from serving as a shop steward or otherwise working cooperatively with Trustee Duffy or his designee(s) on matters affecting Local 537 members.

This preliminary injunction shall become effective immediately upon the Plaintiff's posting of security in the amount of \$1,000. It shall remain in full force and effect until either vacated or made permanent by the Court upon completion of this litigation.

Date: April 19, 2018

s/David Stewart Cercone
David Stewart Cercone
Senior United States District Judge

Consented To:

Consented To:

/s/Andrew D. Roth
Andrew D. Roth, Esq.
Attorney For Plaintiff

/s/Samuel J. Pasquarelli
Samuel J. Pasquarelli, Esq.
Attorney For Defendants

B

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 9

West Virginia American Water Co.,
Employer

and

Case No. 09-RC-219179

Utility Workers United Association, Local 537.
Petitioner,

and

Utility Workers Union of America, AFL-CIO, CLC,
and its Local 537

Intervenor.

STIPULATION

AND NOW, come the parties to this proceeding and stipulate to the following facts:

1. On April 13, 2018 WV American Water and UWUA, Local 537, through its trustee, executed a complete tentative agreement to replace the expiring CBA, a copy of which is attached to this Stipulation.
2. On April 17, 2018, an RC petition was sent to the National Labor Relations Board and it was docketed on April 18, 2018 at Case No. 09-RC-218636.
3. UWUA, Local 537 through its trustee, submitted the TA to WV American Water employees for ratification on April 19, 2018 and the employees rejected the TA.
4. The submission for ratification and the rejection vote occurred after the docketing of the aforesaid petition at 09-RC-218636.

EXHIBIT NO.: J 1

CASE NO.: 09-RC-219179

NO. OF PGS: 37

RECEIVED: X

CASE NAME: WEST VIRGINIA AMERICAN WATER CO.

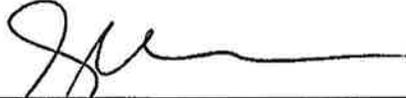
DATE: 05/08/18

REJECTED:

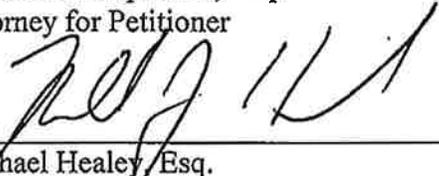
REPORTER: JB

5. The aforesaid petition was withdrawn without prejudice due to the unavailability of the Petitioner's counsel to attend a hearing set for April 27, 2018.
6. The current RC Petition was filed on April 27, 2018 and has been docketed at 09-RC-219179.

Stipulated to this 8th day of May, 2018.



Samuel J. Pasquarelli, Esq.
Attorney for Petitioner



Michael Healey, Esq.
Attorney for Intervenor



Mark J. Foley, Esq.
Attorney for Employer

TERMS OF THE STIPULATED AGREEMENT

**BETWEEN
WV AMERICAN WATER and UTILITY WORKERS UNION OF AMERICA, AFL-CIO, LOCAL 537**

Term of Agreement – 2 years, expiring 4/15/2020

Wages, contingent upon ratification no later than 4/19/2018

- Year 1 – 3%
- Year 2 – 2.4%

SECTION 18. First Aid Supplies

- **Section (18.2)** The current boot/safety shoe allowance has been increased from \$190 to \$250 annually
- **NEW Section (18.4)** Employees will be provided Prescription Safety Glasses or \$150 reimbursement for Prescription Safety Glasses every 2 years, or damaged glasses replaced as needed

ADDITIONAL Agreements:

- **Section (3.2.3)** The time allowed for filing a grievance has been increased from 5 days to 10 days
- **Section (5.1.7.1) and (5.1.7.3)** Employees will not be required or permitted to work more than sixteen (16) consecutive hours and will be given an eight (8) hour rest period after having worked sixteen (16) hours, and paid at the straight time rate for any hours where the rest period extends into the employees regularly scheduled shift.
- **Section (8.4)** The parties agreed to incorporate into the agreement, the Drug & Alcohol Practice as negotiated between the UWUA Local 537 and American Water.
- **Section (8.5)** The parties agreed that employees who deliberately and intentionally circumvent or defeat any safety device, mechanism, safeguard, etc will be discharged.
- **Section (13.1)** Only employees hired after the ratification of this agreement will be required to receive their pay via Direct Deposit.
- **Section (18.3)** The parties agreed that employees will wear Company-provided uniforms, to be worn during working hours, traveling to and from work, and for incidental stops. It was also agreed that employees will not alter their uniforms and would return those uniforms to the company at termination of employment for any reason.
- **Section (18.3)** The Company will provide employees High Quality Rain Gear
- **Section (22.17)** The period when employees may use carried over vacation has been lengthened from the current March 31st of the following year to April 30th of the following year.
- **Appendix (A2)** Employees who are in the Meter Reader Classification will be placed into the Customer Field Representative Classification and paid the higher Customer Field Representative pay rate.

PETITIONER



- **New (A2.4) Employees who were previously assigned to the Meter Reader Classification will continue to be the first assigned to those duties.**
- **The parties agreed to several clean up items clarifying:**
 - Tuesday-Saturday schedules,
 - the consolidation of the Meter Reader Classification into the Customer Field Representative Classification, and
 - the new Right to Work law requirements.
- **The parties executed a side letter agreeing to restore the Union Security language in the event that the current Right to Work law is rescinded or modified legally permitting restoration of the union security language.**

**DETAILED CHANGES FOR THE TERMS OF THE STIPULATED AGREEMENT
BETWEEN
WV AMERICAN WATER and UTILITY WORKERS UNION OF AMERICA, AFL-CIO, LOCAL 537**

SECTION 30. Duration of Contract

(30.1) This Agreement shall continue in full force and effect without alteration, from ~~March 31, 2014~~ (date of ratification), until termination by either party by giving written notice to the other of its intention to so terminate at least sixty (60) days prior to the date fixed for termination; provided, however, that such date of termination shall not be earlier than 12:01 a.m. on the 15th day of April, ~~2014~~ 2020.

APPENDIX A.1, A.2, and A.3. WAGES

Position	IN CBA as of 4/15/2016	4/15/2017 with 2.25 extention (CURRENT)	3% 4/2018	2.4% 2019
SECTION A1. DISTRIBUTION				
Utility Worker 3 (3rd Yr. Service)	\$27.80	\$28.43	\$29.28	\$29.98
Utility Worker 4 (4th yr. Service)	\$28.13	\$28.76	\$29.62	\$30.33
Utility Worker 5 (5th yr. Service)	\$28.58	\$29.22	\$30.10	\$30.82
Sr. Utility Worker	\$28.91	\$29.56	\$30.45	\$31.18
Large Dump Truck Driver	\$28.11	\$28.74	\$29.60	\$30.31
General Field Representative	\$28.87	\$29.52	\$30.41	\$31.14
Mechanic	\$28.85	\$29.50	\$30.39	\$31.12
Equipment Operator	\$28.85	\$29.50	\$30.39	\$31.12
Temporary Summer Laborer	\$14.42	\$14.74	\$15.18	\$15.54
SECTION A2. COMMERCIAL DEPARTMENT				
Customer Field Representative	\$28.75	\$29.40	\$30.28	\$31.01
Customer Field Representative (Tues - Sat)	\$28.75	\$29.40	\$30.28	\$31.01
SECTION A3.1. STATIONS				
High Service and Relief Operator	\$29.63	\$30.30	\$31.21	\$31.96
Swing Shift Operator	\$30.47	\$31.14	\$32.05	\$32.80
SECTION A3.5. Non-shift Employees, less any applicable step rates				
Maintenance Mechanic	\$29.26	\$29.92	\$30.82	\$31.56
Instrument Maint. Technician	\$29.26	\$29.92	\$30.82	\$31.56
Laborer	\$27.93	\$28.56	\$29.42	\$30.13

(18.1) First aid supplies shall be kept and maintained on work trucks and at the Treatment Plant, Operations Center, and office.

(18.2) ~~The~~ For the period from April 15, 2018 to December 31, 2018, the Company shall provide one hundred ninety dollars (\$ 190.00) for Iron Age Shoes or equivalent safety shoes ~~every twelve (12) months~~ for those employees for whom it deems the same are necessary.

Effective January 1, 2019, the Company shall provide a \$250.00 stipend per employee annually for ANSI-approved or equivalent safety shoes. The stipend will be paid within the first two (2) weeks of January each year. This payment only applies to those employees required to wear safety footwear.

(18.3) The Company shall provide uniforms for employees. The wearing of the uniform, without alteration, shall be required. Uniforms may only be worn during working hours, including travelling to and from work and incidental stops. The Company is incorporating more high visibility uniform clothing, including Class 3 type clothing, and it is required that this clothing is maintained (i.e., laundered and in good repair) to ensure it keeps its intended safety rating. Upon termination of employment for any reason, all uniforms shall be returned to the Company.

The Company shall provide one set of winter and one set of summer Carhart or equivalent coveralls, replaced on an "as needed" basis, to Relief Operators, Plant Maintenance personnel and Distribution Department employees. The Company will provide one set of Carhart coveralls to Commercial Department employees and Carhart jackets to Plant Operators, replaced on an as needed basis.

The Company will provide high quality rain gear for whom it deems the same necessary, replaced on an as needed basis.

(18.4) The Company will provide Prescription Safety Glasses to employees with valid prescription as follows:

- a) Employees may go to any provider of their choosing, and will be reimbursed a maximum of \$150.00 every two years, when a valid invoice is provided, or where practicable the company may arrange for a vendor through which glasses will be paid for in full.
- b) Safety glasses damaged in the course of performing work will be replaced as required, on a case- by-case basis.

(3.2.3) If the grievance is not settled through the normal procedure with direct contact between the employee and his/her immediate supervisor, a written grievance shall be presented to the department head within five-ten (10) working days.

(5.1.7.1) Insofar as practicable, overtime shall be distributed equitably among qualified employees in the job or jobs in which the overtime work is required. This section shall not require the calling of any employee: 1) for a job which he/she is not qualified; 2) for the taking of any employee off a job which he/she is doing and which requires overtime work of a few hours duration in order to give said overtime work to another employee unless it is for the purpose of avoiding the requiring or permitting an employee to work beyond sixteen (16) consecutive hours; or 3) where an employee is on a rest period under 5.1.7.3.

(5.1.7.2) When an error is made by supervision in the administration of overtime, and an employee is thereby denied a callout, the Company will pay the employee the same as the employee that worked for the number of hours he/she would have worked had the error not been made. The posting of over time will be on a weekly basis.

(5.1.7.3) It is the company's intent to not require or permit an employee to work more than sixteen (16) consecutive hours.

If an employee is required to work sixteen (16) consecutive hours in a twenty-four (24) hour period, he shall be entitled to an eight (8) hour rest period before being required to again report to work. To the extent that any portion of the eight (8) hour rest period extends into his regularly scheduled work day, he shall be paid for such hours at the applicable hourly rate.

In any twenty-four (24) hour period in which there has been no rest period of at least eight (8) consecutive hours, an employee who has worked sixteen (16) non-consecutive hours or more shall receive double (2) time for all hours worked in excess of sixteen (16), and shall be entitled, when

released from work, to a rest period of eight (8) hours before returning to work. If the rest period extends into the next regular scheduled hours, he/she shall be excused from duty for that portion of the scheduled hours which is covered by the rest period without loss of pay.

SECTION 5. Detailed Terms of Employment

- (6.1) ~~The Company shall require as a condition of employment that all present employees who are subject to this Contract shall remain members of the Union in good standing for the duration of this Agreement. All new employees shall, as a condition of employment, become members of the Union within thirty (30) days from the date of employment and remain members of the Union in good standing for the duration of this Contract.~~
- (7.4) The Union and Company agree to incorporate by reference the Drug & Alcohol Practice as negotiated between the LWUA Local 537 System and PA American Water.
- (7.5) It is understood and agreed, without limiting the Employer's rights to discharge Employees, and notwithstanding situations where mandatory removal is warranted, that the fact that an Employee deliberately and intentionally circumvents or defeats any safety device, mechanism, safeguard, etc. shall be conclusively deemed to be just and sufficient cause for dismissal of the Employee provided that nothing herein shall prevent the Employee going through the grievance procedure to determine whether or not the Employee has done those things outlined above
- (13.1) Employees shall be paid every other Friday for work done during the two week period ending at midnight of the preceding Sunday. For all employees hired on or after the effective date of this agreement, bi-weekly pay shall be via Direct Deposit to the employee's identified bank account.
- (22.17) Employees may carry over up to one week of vacation each year providing they are eligible for at least three (3) weeks of vacation or more. Carried over vacation must be taken by no later than ~~March 31st~~April 30th of the following year.

A2. Meter-Commercial Department

- (A2.1) ~~Employees in the Meter-Commercial Department engaged as Meter Readers, Customer Field Representatives, Meter Repairers, and Senior Meter Repairers shall be paid the following straight-time hourly rates, less any applicable step rates:~~

Classification	Effective 03/31/14 Current	Effective at ratification	Effective 4/15/19	Effective 4/15/16
Meter-Reader	\$26.29	\$26.82	\$28.03	\$28.59
Customer Field Representative	\$29.40	\$30.28	\$31.01	\$28.75
Customer Field Rep (Tues - Sat)	\$29.40	\$30.28	\$31.01	\$28.75
Meter-Repairer	\$26.29	\$26.82	\$28.03	\$28.59
Senior Meter-Repairer	\$26.63	\$27.06	\$28.28	\$28.86

- (A2.3) ~~The normal work week for these employees will be 40 hours per week. The normal work day shall commence at 8:00 a.m. until 4:30 p.m. with 1/2 hour for lunch period, except those reading meters will commence at that during the months of June, July, and August, the normal work day for Meter Readers will be from 7:00 a.m. until 3:30 p.m with 1/2 hour for lunch period.~~ The Tuesday through Saturday Customer Field Representative's normal work

week will be 40 hours per week, Tuesday through Saturday. The Tuesday through Saturday Customer Field Representative's normal work day shall commence at 8:00 a.m. until 4:30 p.m. with 1/2 hour for lunch period. The Tuesday through Saturday Customer Field Representative's shift would automatically revert to a Monday through Friday, 8:00 a.m. to 4:30 p.m. in any week (Sunday through Saturday) that contains a holiday as defined by Section 5 of this agreement.

(A2.4) Employees who were in the classification of Meter Reader prior to [the date of ratification of this agreement] will continue to be assigned to meter reading duties first.

HOUSEKEEPING CHANGES

Contract made and entered into as of the 4th day of March, 2016, by and between WEST VIRGINIA AMERICAN WATER COMPANY, Huntington, West Virginia and its successors in corporate existence, party of the first part, hereinafter usually referred to as the "Company" second part, and the Utility Workers Union of America (UWUA), AFL-CIO and its Local Union 537, hereinafter usually referred to as the "Union," acting for itself and as the representative of employees of the Company in the Bargaining Unit.

(1.1) The Union is hereby recognized and accepted by the Company as the sole and exclusive bargaining agency-agent for all employees of the Company, excepting employees engaged as office workers, clerical workers, management, supervisory and professional personnel, and lab technicians; and the Company agrees that it will negotiate with the accredited representatives of the Union as the representatives of the employees for the Company in the Bargaining Unit represented

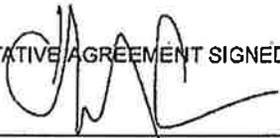
(5.1.1.1a) All hours worked on Saturday. (except for Tuesday - Saturday Customer Field Representative workers).

(5.2.2) When a holiday falls on Sunday, it will be observed on the Monday following. When a holiday falls on Saturday, it shall be observed on the preceding Friday. ~~For the Tuesday - Saturday Customer Field Representative, if a holiday falls on a Sunday, it will be observed on Saturday. If it falls on a Monday, the Tuesday - Saturday Customer Field Representative will observe the holiday on Tuesday.~~

(5.2.4) Employees in the Distribution and ~~Meter Commercial~~ Departments shall not normally be required to work on Sundays or any of the above-named holidays, but shall be paid their normal pay for the day when not required to work. When a regular shift employee is not required to work on a holiday, he shall be paid for eight (8) hours at the regular hourly rate which is construed to mean the rate applicable to the daytime shift.

(14.2) Distribution personnel may be transferred to Commercial for meter change outs and touch pad hook ups. ~~When this occurs, a like number of Meter Readers will be upgraded to Customer Field Representative pay rate for each day of such transfer even though they will continue to read meters.~~ Distribution personnel will not be used for meter change outs and touch pad hookups on Saturdays until all Commercial Department employees have been contacted under the normal means of scheduling overtime to perform this work.

TENTATIVE AGREEMENT SIGNED for West Virginia American Water:



Date: 4/13/2018

TENTATIVE AGREEMENT SIGNED for Utility Workers Union of America, AFL-CIO, Local 537



Date: 4/13/2018



AMERICAN WATER

MEMORANDUM OF AGREEMENT

The parties agree to abide by the current right to work law in West Virginia, but if that law is repealed or amended/changed in such a way as to allow for Union Security Agreements, then the Union Security provisions set forth in the parties' prior collective bargaining agreement will be reinstated as soon as practicable, subject to any modifications necessary due to the change in law.

The prior language referenced is as follows:

SECTION 6. Detailed Terms of Employment

(6.1) The Company shall require as a condition of employment that all present employees who are subject to this Contract shall remain members of the Union in good standing for the duration of this Agreement. All new employees shall, as a condition of employment, become members of the Union within thirty (30) days from the date of employment and remain members of the Union in good standing for the duration of this Contract.

Agreed by and between:

WEST VIRGINIA AMERICAN WATER
Huntington District Operations

Allen Parsley
Allen Parsley, Operations Mgr.
WV American Water

Date: 4/10/2018

Carolyn Mount
Carolyn Mount, HR Director
American Water, Mid-Atlantic Division

Date: 4/10/2018

Lee Ann Snyder
Lee Ann Snyder, HR Business Partner
WV American Water

Date: 4/10/2018

Lu-Ann J. Glaser
Lu-Ann J. Glaser, Labor Relations Mgr
American Water, Mid-Atlantic Division

Date: 4/10/2018

Utility Workers Union of America, AFL-CIO
Local 537

Bernie Labelle
Bernie Labelle, Sr. International Rep.
Utility Workers Union of America, AFL-CIO

Date: _____

By: Rich Cossell
Rich Cossell, Sr. International Rep.
Utility Workers Union of America, AFL-CIO

Date: 4-10-18

Contract made and entered into as of the 4th day of March, 2015, by and between WEST VIRGINIA AMERICAN WATER COMPANY, Huntington, West Virginia and its successors in corporate existence, party of the first part, hereinafter usually referred to as the "Company" second part, and the Utility Workers Union of America (UWUA), AFL-CIO and its Local Union 537, hereinafter usually referred to as the "Union," acting for itself and as the representative of employees of the Company in the Bargaining Unit.

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WITNESSETH:

The Company and the Union, in consideration of the obligations hereinafter set forth by each of the parties to be kept and performed, do hereby agree as follows:

SECTION 1. Recognition and Representation

(1.1) The Union is hereby recognized and accepted by the Company as the sole and exclusive bargaining agency agent for all employees of the Company, excepting employees engaged as office workers, clerical workers, management, supervisory and professional personnel, and lab technicians; and the Company agrees that it will negotiate with the accredited representatives of the Union as the representatives of the employees for the Company in the Bargaining Unit represented.

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(1.2) Management Rights – Except as specifically limited by this agreement, the Company retains and shall continue to have the sole and exclusive right to manage the facilities, operations and work force covered by this agreement. The Company shall continue to retain the supervision, direction and control of its property and operations; the right to determine how many employees it will employ or retain in various capacities and the size and composition of the work force; the right to hire, promote, demote, transfer, layoff and recall employees; the right to assign work as determined by the Company; the right to establish and amend rules pertaining to the operation of the facilities and the conduct of employees; the right to discipline, suspend or discharge employees for just cause; the right to schedule operations, shifts and hours of work, and the right to decide work processes, including and not limited to technology and the type and quality of service and the method of distributing all products and services.

SECTION 2. No Strike or Lockout

(2.1) In furtherance of harmonious relations among employees, the management, and the public, it is mutually agreed by the parties hereto that there shall be no lockout, strike, work stoppage or intentional slowdown during the term of this agreement. However, there shall be no liability on the part of the Union for any strike, work stoppage or intentional slowdown when such strike, work stoppage or intentional slowdown is not authorized by the Union, and when in addition, duly authorized officers of the Local Union shall within five (5) hours after notification by the Company, sign and cause to be posted in prominent places within the office or plant of the Water Company, a notice that the strike, work stoppage or intentional slowdown was not authorized by the Local Union and directing all employees to

return to their respective jobs promptly or to cease any action which may adversely affect any operation of the Company. The Company shall have authority to discipline any employee or employees engaged in any unauthorized strike, work stoppage or intentional slowdown, subject to the Union's right to present a grievance as outlined in this Contract.

SECTION 3. Adjustment Procedures

- (3.1) In recognition of the fact that the Company and its employees represented by the Union have mutual responsibility to the public which requires that disagreements arising between the employees and the management be settled in an orderly way without interruption to water service, it is agreed that differences which may arise between the employees and the management of the nature of those mentioned in the various paragraphs of this Section shall be adjusted in accordance with the provisions of the succeeding paragraphs of this Section.

Disagreement Arising Under Contract

- (3.2) Any dispute, disagreement, or grievance which shall arise between the Union or the employees and the Company with respect to the interpretation or application of any of the terms or provisions of this Contract shall be, during the term of this Contract, settled by the following procedure:
- (3.2.1) All written grievances shall be numbered in sequence showing a suffix which will indicate the year. (Example: 1-92, 2-92, etc.)
- (3.2.2) Any grievances shall be presented verbally to the immediate supervisor within four working days after which time is deemed a waiver of rights to said grievance.
- (3.2.3) If the grievance is not settled through the normal procedure with direct contact between the employee and his/her immediate supervisor, a written grievance shall be presented to the department head within ~~five~~ (10) working days.
- (3.2.4) The department head or the designated representative shall answer the grievance in writing within five working days. The answer shall be written on the back of the grievance.
- (3.2.5) The employee shall within five working days, accept or reject the answered grievance and so indicate in writing on the back of the grievance and present said grievance to the department head or the designated representative.
- (3.2.6) If grievance is still not settled in the above manner, then the original copy of the grievance with all written answers shall be submitted to the Western Operations lead or his designated representative within seven working days after the date of the last answer on the back of the grievance. The Union President or the designated representative will request a conference with the Western Operations Lead or his designated representative by direct contact within the seven days outlined above.

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(3.2.7) If the above procedure still does not satisfy the grievance, the matter shall, upon request of either party, be submitted to arbitration as provided in paragraph 3.2.8. below.

(3.2.8) Within thirty (30) days of receipt of the answer from the Western Operations Lead or his designated representative, either party may file a request for a panel of arbitrators with the Federal Mediation and Conciliation Service with notice to the other party. The request for a panel of arbitrators shall specify that a list of seven (7) arbitrators, all of whom are members of the National Academy of Arbitrators, shall be provided to the parties. Within ten (10) days of receipt of the list, either party may request the Federal Mediation and Conciliation Service to provide the parties a second list of arbitrators, also composed of seven (7) persons who are members of the National Academy of Arbitrators. If a second list is requested, selection of an arbitrator shall be made as hereinafter set forth from the second list. If no second list is requested, selection of an arbitrator shall be made from the initial list so provided. Selection of an arbitrator shall be made by each party alternately striking the name of one arbitrator from the list until the name of one arbitrator remains. The last arbitrator remaining shall be the arbitrator selected to hear the grievance. The parties shall take turns with respect to which party strikes the first arbitrator (e.g., the union strikes the first arbitrator in the first arbitration brought under this agreement, the company will strike first on the second arbitration filed, alternating with each arbitration filed thereafter). Nothing contained herein shall be construed to forbid the parties from mutually agreeing to the selection of an arbitrator between them, so long as the time limitations of this section are complied with or waived pursuant to Section 3.2.9.

The Arbitration Hearing shall be scheduled within 45 days from receipt of the first panel of arbitrators from FMCS and may be rescheduled only by agreement of both parties. The Arbitrator shall have no authority to add to, subtract from, alter or modify the terms of this Agreement and the expense of the Arbitrator shall be shared equally by the parties. The arbitration hearing shall be held at a mutually agreeably location and the hearing room accommodations shall be shared equally by the parties.

(3.2.9) It is expressly understood that the time limitations set forth in this Agreement are of the essence and may only be waived in writing signed by a representative of each of the parties. In the event that the Company fails to comply with any time limitations hereunder, the grievance as submitted shall be deemed to have been granted. If the Union or the employee fails to comply with any time limitations hereunder, the grievance shall be deemed to have been withdrawn.

SECTION 4. Wages and Hours

(4.1) A schedule setting forth the wage rates, hours and related items for the various classifications and occupations covered by this Agreement, is hereby accepted by the parties hereto and is marked Appendix "A" and made a part thereof.

SECTION 5. Premium Pay

(5.1a) All premium rates apply except in instances of changing schedules noted elsewhere in this agreement

(5.1) Overtime

(5.1.1) Non-Shift Employees

(5.1.1.1) One and one-half (1-1/2) times the regular hourly rate shall be paid for:

(5.1.1.1a) All hours worked on Saturday (except for Tuesday - Saturday Customer Field Representative workers). Commented [64]: TA 3/4/10/2018

(5.1.1.1b) All hours worked in excess of forty (40) in any one week.

(5.1.1.1c) All hours worked in excess of eight (8) within a twenty-four (24) hour period. This provision applies to employees transferring between non-shift and shift work.

(5.1.1.2) Two (2) times the regular hourly rate shall be paid for all hours worked on Sunday.

(5.1.2) Shift Employees

(5.1.2.1) One and one-half (1-1/2) times the regular hours rate shall be paid for:

(5.1.2.1a) All hours worked in excess of forty (40) in any one work week.

(5.1.2.1b) All hours worked in excess of eight (8) within a twenty-four (24) hour period beginning with the starting time for the last period worked at straight time. This provision applies to employees transferring between shift and non-shift work.

(5.1.2.1c) When an operator is off for 2 days or less for any reason, the filling of this position shall be considered overtime. The relief Operator can cover all shifts over two (2) days and day shift Monday thru Friday, without said time being considered overtime, unless otherwise required by the labor agreement or law.

(5.1.2.2) Two (2) times the regular hourly rate shall be paid for all hours worked on the second of an employee's regular scheduled days off in any work week and on the single day off in the scheduled six (6) day work week.

(5.1.2.3) Employees may be allowed to trade shifts by mutual agreement, subject to the approval of the Manager, and may work overtime without overtime pay when such overtime is for the convenience of the employees and not the Company, provided such arrangement shall not be in violation of any of the provisions of the Fair Labor Standards Act of 1938 as amended or other applicable legislation.

(5.1.3) No employee shall be paid both daily and weekly overtime for the same hours worked. No daily overtime shall be paid when employees are changing from one

shift to another, or when employees at their own request are working extra time in order to be excused during regular shifts.

- (5.1.4) An employee shall not be required to take time off during the scheduled working hours for overtime worked or to be worked unless, in emergencies, he/she is required to work overtime to such an extent as to be unable to obtain sufficient rest before the start of the regular working period.
- (5.1.5) Any employee covered by the provisions of this Section reporting for work upon order of the Company, either expressed or implied, who is not put to work for any reason excepting weather conditions or accident, shall receive a minimum of four (4) hours pay. If an employee is laid off after noon, he/she shall receive eight (8) hours pay for the day.
- (5.1.6) Any employees called to work after having left the premises at the completion of the regular scheduled work day, and prior to the commencement of the next regularly scheduled work day, shall be paid for a minimum of four (4) hours. Paid travel time shall be limited to no more than thirty (30) minutes on callouts.

(5.1.7) Sharing of Overtime

(5.1.7.1) Insofar as practicable, overtime shall be distributed equitably among qualified employees in the job or jobs in which the overtime work is required. This section shall not require the calling of any employee: 1) for a job which he/she is not qualified; 2) for the taking of any employee off a job which he/she is doing and which requires overtime work of a few hours duration in order to give said overtime work to another employee unless it is for the purpose of avoiding the requiring or permitting an employee to work beyond sixteen (16) consecutive hours; or 3) where an employee is on a rest period under 5.1.7.3.

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(5.1.7.2) When an error is made by supervision in the administration of overtime, and an employee is thereby denied a callout, the Company will pay the employee the same as the employee that worked for the number of hours he/she would have worked had the error not been made. The posting of overtime will be on a weekly basis.

(5.1.7.3) It is the company's intent to not require or permit an employee to work more than sixteen (16) consecutive hours.

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if an employee is required to work sixteen (16) consecutive hours in a twenty-four (24) hour period, he shall be entitled to an eight (8) hour rest period before being required to again report to work. To the extent that any portion of the eight (8) hour rest period extends into his regularly scheduled work day, he shall be paid for such hours at the applicable hourly rate.

In any twenty-four (24) hour period in which there has been no rest period of at least eight (8) consecutive hours, an employee who has worked sixteen (16) non-consecutive hours or more shall receive double (2) time for all hours worked in excess of sixteen (16), and shall be entitled, when released from work, to a rest

period of eight (8) hours before returning to work. If the rest period extends into the next regular scheduled hours, he/she shall be excused from duty for that portion of the scheduled hours which is covered by the rest period without loss of pay.

- (5.1.7.4) When the position of General Field Representative must be filled on a temporary basis due to vacation, illness, or similar absence, the position will be filled in accordance with departmental equalization of overtime by a Utility Worker 3 classification or higher.
- (5.1.7.5) Any employee who refuses to work overtime or doesn't answer a call will be charged a refusal for the overtime hours.
- (5.1.7.6) Employees will notify a supervisor of their inability to work extended overtime within one (1) hour of the beginning of their shift. The Company agrees to accommodate emergency situations.
- (5.1.7.7) The Company can assign emergency work to employees who are on the Company premises up to one (1) hour before their normal start time, with premium pay being paid for up to two-hour call out, with the understanding that no duplication of hours be paid.
- (5.1.7.8) Before anyone on vacation is called for Networking (Distribution & Commercial) overtime, all-bargaining-unit members in Networking who are currently actively working will be contacted (note this does not apply to Production employees).
- (5.1.7.9) Any employee who is called to work while on vacation will receive premium pay only for the hours they are called to work and receive the lost vacation day back for future use.
- (5.1.8) **Meal Allowance**
- (5.1.8.1) The Company agrees when an employee remains at work after completion of the regular work day, he/she shall be entitled to a meal allowance of eleven dollars twenty-five cents (\$11.25) at the following intervals:
 - One meal at the end of the first three (3) hours of overtime.
 - One meal at the end of each four (4) hour interval thereafter during such overtime work as set forth in Section (5.1.8.4).
- (5.1.8.2) Meal allowances will be included on the employee's paycheck for allowances earned during the pay period.
- (5.1.8.3) The Company agrees that when an employee is called out after leaving for the day, or is called on off days (except with prior notice), he/she shall be entitled to meal allowance at the following intervals:

One meal at the end of the first four (4) hours of call out time and at four (4) hour intervals thereafter during such overtime work after the first four (4) hours of overtime, as set forth in (5.1.8.4).

(5.1.8.4) The employee may elect to take each meal and/or meal allowance on extended overtime or call out as provided in the Contract. When the employee elects to take the time to eat a meal, the employee shall be entitled to a subsequent meal allowance and meal period five hours from the beginning of the entitlement to the immediately preceding meal and/or meal allowance. If the employee elects to work through a meal period, the employee shall be entitled to a subsequent meal allowance and meal period four hours from the beginning of the entitlement to the immediately preceding meal and/or meal allowance. While operating the treatment plant, the operator will be required to work through meals to ensure continuity of service.

(5.2) Holidays

(5.2.1) The following holidays will be recognized for the purposes set forth in the subsequent paragraphs of this Section:

New Year's Day	Labor Day
President's Day	Veteran's Day
Good Friday	Thanksgiving Day
Memorial Day	Day after Thanksgiving
Fourth of July	Christmas Day

(5.2.2) When a holiday falls on Sunday, it will be observed on the Monday following. When a holiday falls on Saturday, it shall be observed on the preceding Friday. For the Tuesday - Saturday Customer Field Representative, if a holiday falls on a Sunday, it will be observed on Saturday. If it falls on a Monday, the Tuesday - Saturday Customer Field Representative will observe the holiday on Tuesday.

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(5.2.3) When any of the above-named holidays are declared as legal holidays on days other than the regular calendar date, such designated days will be recognized as the holiday for the purpose of this Agreement.

(5.2.4) Employees in the Distribution and Meter Commercial Departments shall not normally be required to work on Sundays or any of the above-named holidays, but shall be paid their normal pay for the day when not required to work. When a regular shift employee is not required to work on a holiday, he shall be paid for eight (8) hours at the regular hourly rate which is construed to mean the rate applicable to the daytime shift.

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(5.2.5) Each non-shift employee will normally not be required to work on any of the foregoing holidays, but when required to work on a holiday shall be paid, in addition to their normal pay for the day, at two (2) times the regular rate of pay for the hours worked on such holidays in excess of the number of hours normally worked on such days.

- (5.2.6) Each shift employee will normally be required to work on holidays, and will be paid in addition to their normal pay for such holiday, at the rate of two (2) times their regular rate of pay for all time worked during their regularly scheduled shifts, and two (2) times the regular hourly rate for all others worked on such holidays.
- (5.2.7) When a holiday falls on an employee's scheduled work day, the hours normally worked or the hours actually worked, whichever is greater, shall be used in determining eligibility for weekly overtime. When a holiday falls on a day when the employee is not scheduled to work, only the hours actually worked shall be used in determining eligibility for weekly overtime.
- (5.2.8) When a holiday occurs on a scheduled working day during a vacation period, all regular employees except High Service Operators covered by this Contract shall be allowed an extra day's vacation to be taken at such time as work requirements will permit or, at the option of the employee, shall receive an extra normal day's pay at regular hourly rates.
- (5.2.9) Each employee must work the scheduled day before and after a holiday to receive pay, unless employee has an excused absence.

SECTION 6. Detailed Terms of Employment

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- ~~(6.1) The Company shall require, as a condition of employment, that all present employees who are subject to this Contract shall remain members of the Union in good standing for the duration of this Agreement. All new employees shall, as a condition of employment, become members of the Union within thirty (30) days from the date of employment and remain members of the Union in good standing for the duration of this Contract.~~

SECTION 76. Union Dues

- (76.1) The Company agrees to withhold Union dues as authorized by the employee each month out of the wages due members of the Union under this Contract for each member of the Union who requests the Company in writing to make such deduction from his/her wages. The deduction is to be made from the first pay period for each and every month, and the Company agrees to pay monthly the amount withheld to the Financial Secretary of the Union. The Financial Secretary of the Union shall, annually or whenever a dues deduction change is necessary, notify the Company in writing of the employee and amount to be withheld by the Company.

SECTION 87. Company Rules

- ~~(87.1) The Union agrees that its officers and members will live up to Company rules and regulations in the interest of safety, economy and continuity of service to the public.~~
- (87.2) The Company agrees that there shall be no discrimination against any employee on account of service on any Employee's Committee.

(87.3) The Union and the Company will not engage in subterfuge for the purpose of defeating or evading provisions of this Contract.

(7.4) The Union and Company agree to incorporate by reference the Drug & Alcohol Practice as negotiated between the UAW Local 537 System and PA American Water.

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(7.5) It is understood and agreed, without limiting the Employer's rights to discharge Employees, and notwithstanding situations where mandatory removal is warranted, that the fact that an Employee deliberately and intentionally circumvents or defeats any safety device, mechanism, safeguard, etc. shall be conclusively deemed to be just and sufficient cause for dismissal of the Employee provided that nothing herein shall prevent the Employee going through the grievance procedure to determine whether or not the Employee has done those things outlined above.

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SECTION 98. Seniority

(98.1) It is understood and agreed that in all cases of promotion or of increase or decrease or transfer of employees within the scope of the Contract, length of continuous service and ability to perform the work to be done shall be considered. Where ability to perform the work is equal, length of continuous service shall govern.

(98.2) In cases of promotion or transfer or decrease of employees in any particular department, length of continuous service as used in this Section shall be interpreted to mean length of continuous service within the particular department.

(98.3) If a vacancy occurs in any department, any member of the Union employed within that department shall be permitted, according to his/her seniority, to fill the vacancy in that department. If the vacancy is not filled by any member of the Union employed within that department, any member of the Union shall be permitted, according to his/her seniority, to fill the vacancy in that department or position within the scope of this Contract. An employee filling a vacancy shall start at the permanent prevailing wage rate of the job in which the vacancy occurs, except as noted in Section 29, Step Rates.

(98.3.1) If classification currently existing in contract is being filled 50% of the year, it must be posted, upgrades for occupational and non-occupational sickness will not count.

(98.4) Only in the case of layoffs within any department, any member of the Union who is laid off may bump any member of the Union within that department who has less departmental seniority; the laid-off employee may bump any member of the Union in any other department with less seniority.

(98.6) When an employee bids on a vacancy or desires to bump another employee in order to avoid a layoff within that department, "length of continuous service" shall be interpreted to mean length of continuous service with the Company. In any cases arising under the above, the Company reserves the right to temporarily fill

any vacancy pending the operation of the procedure described hereinbefore, but except in emergencies, the senior qualified employee will be selected.

(98.6) Permanent employees laid off in the future will be called back according to their seniority up to two (2) years. The right of recall shall be forfeited by the employee if the employee fails to notify the Company of his/her intent to return to work within (72) hours after written notice is sent to the employee by the Company by Certified Mail (Return Receipt Requested) addressed to the employee's last known address appearing on its records. In all cases, the employee must return to work within two (2) weeks after receipt of notification of recall, unless otherwise waived by the Company.

(98.7) All provisions of this Section shall be understood to be applicable only when in conformity with all Federal, State and local laws and regulations regarding equal employment opportunity, including the Americans with Disabilities Act of 1990.

(98.8) Temporary employees hired shall have no seniority rights until permanently employed. Once permanently employed, such temporary employees shall then be entitled to full credit in determining seniority rights for the period of temporary employment.

(98.9) All new employees shall be classed as probationary employees for the first ninety (90) days of their employment. If the occasion arises that the Company would be required to hire employees to fill existing classifications in the Command, Distribution, or Production Departments who do not have prior experience, these employees will receive twenty-five cents (\$0.25) less than the established step rate during the probationary period.

SECTION 109. Application of Seniority

(109.1) Notice of a vacancy in an existing position or in a newly created position shall be posted at places accessible to employees affected and shall remain posted for a period of five (5) working days, within which time applicants eligible and desiring to fill such vacancy shall apply in writing to the official of the Company designated in the notice. Such notice shall set forth the title of the position to be filled, hours of work, days of relief, rate of pay and outline of duties. Within five (5) working days after the expiration of the posting period, the Company shall have assigned the accepted applicant to such vacancy or newly created position. The decision to apply or not to apply for promotion or transfer to an existing position or a newly created position is entirely within the employee's own option.

(109.2) Any employee assigned to a new position shall have up to sixty (60) days in which to demonstrate qualifications to perform the duties of that position. If he/she is unable to qualify within that time period, he/she may return to the position from which he/she came without loss of seniority.

(109.3) The Company reserves the right to temporarily fill any vacancy during the ten (10) day period required for the operation of the procedure described hereinbefore.

SECTION 1410. Work Performed, Various Types

- (1410.1) The chipping of concrete, tile, brick or other composition pavement, and the replacing of same for the installation of mains, services, or meters may be performed by employees engaged in the classes of work specified in "A1" and "A2" of Appendix "A".
- (1410.2) During any time when an employee is assigned to a job which consists primarily of finishing concrete, he/she shall be paid the rate stipulated in "A1" of Appendix "A" for Utility Worker 5.
- (1410.3) Employees in the classifications of Senior Utility Worker and Utility Worker 5 can shut down booster stations as necessary in the event of an emergency; however, the booster station must be started by a Production department bargaining unit person.

SECTION 1411. Driving of Vehicles

- (1411.1) Driving of trucks and automobiles shall be considered as incidental to the work of any particular class of employee, and while driving the employees shall be paid at the respective rates provided herein.

SECTION 1412. Pay Period

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- (1412.1) Employees shall be paid every other Friday for work done during the two week period ending at midnight of the preceding Sunday. For all employees hired on or after the effective date of this agreement, bi-weekly pay shall be via Direct Deposit to the employee's identified bank account.

SECTION 1413. Temporary Transfers

- (1413.1) When permanent employees who are temporarily transferred from a Department in which they are employed regularly to another department paying a lower wage, they shall suffer no reduction in wages during such temporary transfer; and when employees are temporarily transferred to any job or department paying a higher hourly rate, they shall receive such higher hourly rate while working on such job, except as noted in Section 29.
- (1413.2) Distribution personnel may be transferred to Commercial for meter change outs and touch pad hook ups. When this occurs, a like number of Meter Readers will be upgraded to Customer Field Representative pay rate for each day of such transfer even though they will continue to read meters. Distribution personnel will not be used for meter change outs and touch pad hookups on Saturdays until all Commercial Department employees have been contacted under the normal means of scheduling overtime to perform this work.

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(1413.3) Employees on light duty may be temporarily transferred to classifications paying a higher rate without being paid the higher rate unless they are performing the entire duties of that higher classification.

(1413.4) Temporary transfers shall be limited to a period of sixty (60) days except when temporary assignments are needed to replace employees on vacation, leave of absence, or sick leave.

SECTION 1414. Work Performed by Supervisors

(1414.1) Except in cases of emergency, the Company agrees that a foreman, supervisor, or executive shall not perform any work covered by this Agreement which is normally performed by the employees under his/her supervision other than to demonstrate how he/she desires the work to be done.

SECTION 1415. Contracting of Work

(1415.1) The Company shall have the right to assign or contract the following work to persons or organizations not represented by the Union: (1) all existing contracting capabilities; (2) water mains 500' or more; (3) installation and/or change over of service lines involving water main projects which are contracted out to persons or organizations not represented by the Union; (4) hydrant painting; (5) grass cutting; (6) installation of large meter pits; and (7) vehicle washing; it is understood by the Union and the Company that the Company's assignment or contracting of work to persons or organizations not represented by the Union as stated above does not result in the loss of employment to the regular employees covered by this Agreement. It is also understood by the Union and the Company that it is not the Company's intent to assign or contract work not described above to persons or organizations not represented by the Union that will directly result in the loss of employment for regular employees covered by this Agreement.

(1415.2) The Company will be allowed to contract out the grass cutting, painting, and cleaning at the plant as well as flagging on straight time only up to a maximum of 24 times per year. The Union will be notified in writing every time the contractors do flagging. In the event of a layoff, the work identified in Paragraph 14.2 will revert back to bargaining unit employees.

(15.3) Contractors performing flagging work will be certified under the State of West Virginia guidelines.

SECTION 1716. Leaves of Absences

(1716.1) Employees can be granted leaves of absence for good cause with the consent of the Company without prejudice to seniority or other rights. All leaves of absence shall be requested and issued in writing and shall state the conditions under which such leaves are granted.

SECTION 1817. First Aid Supplies

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(1817.1) First aid supplies shall be kept and maintained on work trucks and at the Treatment Plant, Operations Center, and office.

(1817.2) ~~The~~ For the period from April 15, 2018 to December 31, 2018, the Company shall provide one hundred ninety dollars (\$ 190.00) for Iron Age Shoes or equivalent safety shoes every twelve (12) months for those employees for whom it deems the same are necessary.

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Effective January 1, 2019, the Company shall provide a \$250.00 stipend per employee annually for ANSI-approved or equivalent safety shoes. The stipend will be paid within the first two (2) weeks of January each year. This payment only applies to those employees required to wear safety footwear.

(1817.3) The Company shall provide uniforms for employees. The wearing of the uniform, without alteration, shall be required. Uniforms may only be worn during working hours, including traveling to and from work and incidental stops. The Company is incorporating more high visibility uniform clothing, including Class 3 lygs clothing, and it is required that this clothing is maintained (i.e., laundered and in good repair) to ensure it keeps its intended safety rating. Upon termination of employment for any reason, all uniforms shall be returned to the Company.

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The Company shall provide one set of winter and one set of summer Carhart or equivalent coveralls, replaced on an "as needed" basis, to Relief Operators, Plant Maintenance personnel and Distribution Department employees. The Company will provide one set of Carhart coveralls to Commercial Department employees and Carhart jackets to Plant Operators, replaced on an as needed basis.

The Company will provide high quality rain gear for whom it deems the same necessary, replaced on an as needed basis.

(17.4) The Company will provide Prescription Safety Glasses to employees with valid prescription as follows:

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a) Employees may go to any provider of their choosing, and will be reimbursed a maximum of \$150.00 every two years, when a valid invoice is provided, or where practicable the company may arrange for a vendor through which glasses will be paid for in full.

b) Safety glasses damaged in the course of performing work will be replaced as required, on a case-by-case basis.

SECTION 1918. Jury Duty and Death in Family

(1918.1) The Company guarantees normal pay to employees while on jury duty by paying the difference between normal pay and the amount received as jury fees.

(1918.2) Regular employees shall be granted a maximum of four (4) days absence with pay in the event of death of their father, mother, stepfather, stepmother, stepchildren, step grandchildren, brother, sister, spouse, child, grandchild, mother-in-law or father-in-law. It is agreed, however, that where circumstances permit, employees will return to work on the day following the funeral.

(1918.3) Regular employees shall be granted a maximum of one (1) day's absence with pay for the purpose of attending the funeral of their, step-brother, step-sister, grandparent, brother-in-law, sister-in-law, aunt or uncle.

SECTION 2019. Incident Weather

(2019.1) Except in cases of emergency, employees shall not be required to work in weather so inclement as to jeopardize their health or cause extreme discomfort. It is the intent of both parties to work together in applying this rule in a reasonable manner.

EMPLOYEE BENEFITS

SECTION 2420. Personal Leave Days

(2420.1) ~~Employees will have three (3) paid personal leave days. New employees shall earn personal leave days during the first year of employment as follows:~~

Employed prior to July 1 -	3 Personal Days
Employed after June 30 and prior to October 1 -	2 Personal Days
Employed after September 30 -	1 Personal Day

SECTION 2221. Vacations

(2221.1) The vacation year shall, in all cases, be the calendar year beginning January 1 and ending December 31. No vacation may be taken until earned.

(2221.2) Only employees hired prior to September 8, 1995 who will have completed twenty-eight (28) years of continuous service by December 31 of any year shall be entitled to a vacation of six (6) weeks within that calendar year.

(2221.3) Each employee who will have completed twenty-two (22) years of continuous service by December 31 of any year shall be entitled to a vacation of five (5) weeks within that calendar year.

(2221.4) Each employee who will have completed fourteen (14) years of continuous service by December 31 of any year shall be entitled to a vacation of four (4) weeks within that calendar year.

- | (2221.5) Each employee who will have completed seven (7) years of continuous service by December 31 of any year shall be entitled to a vacation of three (3) weeks within that calendar year.
- | (2221.6) Each employee who, as of January 1 of any year, has been continuously in the service of the Company for two (2) years, shall be entitled to two (2) weeks vacation within that calendar year.
- | (2221.7) Each employee who, as of January 1 of any year, has been continuously in the service of the Company for one (1) year or more, but less than two (2) years, shall be entitled to one (1) week of vacation plus one (1) day of vacation for each additional two (2) months of service over one (1) year.
- | (2221.8) Employees who have been in the service of the Company for two (2) months or more, but less than one (1) year as of January 1 each year shall be entitled to one (1) day of vacation for each two (2) months of service. The major fraction of a month shall be counted as a full month.
- | (2221.9) For each full week of vacation to which an employee is entitled, he/she shall be paid an amount equal to the wage as determined by the regular scheduled hours of employment.
- | (2221.10) However, in the case of an employee who has been assigned to a higher rated classification than his/her own for 50% of the time worked during the twelve (12) months immediately preceding scheduled vacation, vacation pay shall be computed at the regular hourly rate and normal scheduled hours of that higher-rated classification. For vacations of less than one (1) week, the employee shall be paid for each day of such vacation an amount equal to eight (8) times the regular basic hourly rate of pay. The Company will, upon request, pay an employee in advance for the period of the vacation.
- | (2221.11) The Company agrees that the employees' wishes will be considered in setting up each year's vacation schedule; and, if possible to do so without interfering with the orderly and continuous operation of the plant, employees shall be permitted to take their vacations at times desired by them.
- | (2221.12) Vacation schedules will be posted as of the first Wednesday after March 1 each year. The most senior 1/3 of employees will have one week to post their preferred vacations in seniority order; second senior 1/3, one week; and least senior 1/3, one week. Employees failing to post their vacation selection timely will lose seniority over other less senior employee's preferences. All posting must be completed within three weeks of the date first posted each year.
- | (2221.13) Vacations of two (2) weeks or less shall, as far as can be arranged, be taken in continuous periods and may not be accumulated.
- | (2221.14) Vacations of three (3), four (4), five (5), or six (6) weeks may be required to be split on the basis of operating requirements.

- (2221.15) When an employee is scheduled to work some weeks of forty-eight (48) hours, only two (2) such weeks will be included in vacation for any year.
- (2221.16) Upon termination of service for any cause, an employee shall be paid at the time of such termination for all accrued or earned vacation then due. Employees who are retiring will be required to take all their accrued and earned vacation before retiring from the Company and not be paid out in a lump sum.
- (2221.18 a.) No vacation may be taken until earned. Vacation is earned by being paid the required number of hours in the preceding calendar year as follows.

<u>*Hours Paid</u>	<u>Vacation Pay Earned</u>
1,250+	Full Vacation
937-1249	75% Vacation
825-936	50% Vacation
Less than 825	No Vacation

*Hours paid for purposes of this Section 22.18a is defined to include hours actually worked by the Employee (i.e., including hours worked at straight time and over time), vacation hours paid, holiday hours paid, 80 hours sick leave paid and time lost due to approved Workers' Compensation claim.

- (2221.17) Employees may carry over up to one week of vacation each year providing they are eligible for at least three (3) weeks of vacation or more. Carried over vacation must be taken by no later than March 31st/April 30th of the following year.

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SECTION 2322. Disability Benefits and Life Insurance

(2322.1) Leaves of Absence for Sickness or Accident Disability

- (2322.1.1) Employees will be granted leaves of absence for sickness or accident disability for the maximum periods shown below:

<u>Length of Service</u>	<u>Maximum Leave of Absence</u>
Sixty (60) days but less than six (6) months	Four (4) weeks
Six (6) months but less than two (2) years	Twenty-eight (28) weeks
Two (2) years but less than five (5) years	Two (2) years
Five (5) years and over	Three (3) years

- (2322.1.2) Upon receipt of competent medical certification that he/she is physically and mentally able to perform regular duties without jeopardy to self or others, an employee who has been disabled by occupational accident or disease incurred in

the course of employment by the Company, and who has exceeded the maximum period of leave of absence applicable to length of service at the date such disability commenced, shall be retired in accordance with accrued seniority at the time such leave of absence terminated.

(2322.2)

Payments During Leaves of Absence for Sickness or Accident Disability

Beginning January 1st, 2014 a Sick Leave Bank shall be established. Current bargaining unit employees shall have deposited in their individual bank one (1) full week of sick leave for every year of service with the Company, plus an additional two weeks (10 days) of sick leave. Employees hired on or after January 1st but before July 1st in any year during the term of this Agreement, shall receive two weeks of sick leave to be deposited in their individual Sick Leave Bank. Every employee hired after July 1st in any year during the term of this Agreement shall have one week placed in their individual Sick Leave Bank. With each successive January 1st anniversary during the term of this agreement, each individual employed within the bargaining unit shall have two weeks (10 days) sick leave deposited within their individual sick leave bank. Each employee's Sick Leave Bank shall be capped at 52 weeks maximum accrual. Once capped, the employee may once again begin to accrue time after depletion below the 52 week cap and with the beginning of the next calendar year. Sick Leave shall be paid at 100% of base pay until sick leave is exhausted.

- (1) An employee may use Sick Leave Benefits for any bona-fide sickness, illness, disability, or physician's appointment (other than a compensable Workers' Compensation Claim). As a condition to the payment or continued payment of Sick Leave benefits, the Company will require a satisfactory statement from the employee's physician or health care practitioner certifying to the employee's illness or disability. The Company reserves the right to require the employee to undergo physical examination by a physician or health care practitioner selected and paid for by the Company. The Company will not require a statement certifying absences of two days or less duration, unless the employee has within one year prior to said absence received warning or other disciplinary action for excessive or unauthorized absence.
- (2) Worker's Compensation Benefits: Employees shall not be eligible to use sick leave or short-term disability benefits in lieu of or concurrently with WV Workers' Compensation Temporary Total Disability Benefits for any leave of absence due to a work related illness or injury.
- (3) Short-Term Disability Benefits: Employees within the bargaining unit shall be entitled to utilize Short-Term Disability upon qualification. Short-Term Disability Benefits shall be in addition to and shall not be used concurrent with Sick Leave Benefits. The maximum length of sick leave and/or short-term disability shall not exceed 52 weeks for any combination thereof.

(4) Notwithstanding any provision of this article, no leave of absence, Sick Leave or Short-Term Disability payments shall continue after an employee's employment by the Company has been terminated.

(2322.3) Group Insurance Welfare Plan

Group Insurance

The American Water System GROUP INSURANCE PLAN, as described in the booklets dated January 1, 1991 and July 1, 1994 and as modified by the Memorandum of Agreement between American Water Works, Inc. and the Utility Workers Union of America dated August 2, 1995, shall be in full force and effect through July 31, 2000. The Plan may thereafter be amended, modified or terminated through negotiations between American Water Works Company, Inc. and the Utility Workers Union of America. The Company and Union agree to be bound by the results of any renegotiation of the Group Insurance Plan between the American Water Works Company, Inc. and the Utility Workers Union of America. Group Insurance issues shall not be subject to any local negotiations.

SECTION 2423. Pensions

The Pension Plan described in the booklet entitled American Water System PENSION PLAN, dated July 1, 1990, shall remain in full force and effect through July 1, 2000. The Plan may thereafter be amended, modified or terminated through negotiations between American Water Works Company, Inc. and the Utility Workers Union of America. The Company and Union agree to be bound by the results of any renegotiation of the Pension Plan between the American Water Works Company, Inc. and the Utility Workers Union of America. Pension issues shall not be subject to any local negotiations.

SECTION 2524. 401 (K) Savings Plan

The 401(k) Savings Plan, effective August 1, 1993, and as modified by the Memorandum of Agreement between American Water Works, Inc. and the Utility Workers Union of America dated August 2, 1995, shall remain in full force and effect through July 31, 2000. The Savings Plan may thereafter be amended, modified or terminated through negotiations between American Water Works Company, Inc. and the Utility Workers Union of America. The Company and the Union agree to be bound by the results of any renegotiation of the Savings Plan between the American Water Works Company, Inc. and the Utility Workers Union of America. Savings Plan issues shall not be subject to any local negotiations.

SECTION 2625. Occupational Safety and Health Act

In recognition of the requirements of the Occupational Safety and Health Act, the Company and Union agree to comply with all requirements of the Act in order to protect the health and safety of employees.

SECTION 2726. Equal Employment Opportunity

(2726.1)

It is recognized by the parties hereto that the Company is an Equal Opportunity Employer whose employment policies and personnel practices are such as to insure that all employees are treated equally and that recruiting, hiring, training, and promoting persons in all job classifications shall be done without regard to membership in the Union, race, color, religion, age, sex, national origin, status as a disabled veteran or veteran of the Vietnam era, or qualified handicap, except where sex is a bona fide occupational qualification; that decisions on employment shall be made so as to further the principle of equal employment opportunity; that decisions with regard to promotion are in accord with principles of equal employment opportunities in that they impose only valid requirements for promotional opportunities; that all personnel actions, such as compensations, benefits, transfer, layoffs, return from layoffs, Company-sponsored training, education, tuition assistance, social and recreation programs, will be administered without regard to race, color, religion, age, sex, national origin, status as a disabled veteran or veteran of the Vietnam era, or qualified disability.

(2726.2)

It is hereby agreed that nothing in this Contract shall be so construed as to prevent the Company in any way from adhering strictly to its equal opportunity obligations herein set forth.

SECTION 2827. Service in the Armed Forces

Both parties agree to abide by and comply with the applicable Federal and State laws, rules and regulations applying to the reinstatement of employees who enter the Armed Forces of the United States or the United States Merchant Marines.

SECTION 2928. Step Rates

A step rate of \$5.00 less than the regular rate per hour will apply for the first year of employment for all positions except High Service Operators, Relief Operators, Swing Shift Operators and Instrument Maint Technicians with the Company. An additional step rate of \$4.00, \$3.00, \$2.00, and \$1.00 less than the regular rate per hour will apply each subsequent year until the employee reaches the regular rate of pay. The step rate will apply to all classifications except High Service Operators, Relief Operators, Swing Shift Operators and Instrument Maint Technicians that an employee might be hired into, or bid into, if they have five years seniority or less. An employee, with five years of seniority or less who bids into another job, will receive the applicable step rate in the new position they would have had if they had been hired into that position.

SECTION 3029. Duration of Contract

(3029.1)

This Agreement shall continue in full force and effect without alteration, from March 31, 2044 [date of ratification], until termination by either party by giving written notice to the other of its intention to so terminate at least sixty (60) days

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prior to the date fixed for termination; provided, however, that such date of termination shall not be earlier than 12:01 a.m. on the 15th day of April, 2018.

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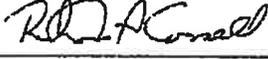
This agreement constitutes the agreement reached by the parties, subject to ratification scheduled for April 19, 2018.

TENTATIVE AGREEMENT SIGNED for West Virginia American Water:



Date: 4-13-18

TENTATIVE AGREEMENT SIGNED for Utility Workers Union of America, AFL-CIO, Local 537



Date: 4/13/2018

WEST VIRGINIA-AMERICAN WATER COMPANY

LOCAL NO. 537, UTILITY WORKERS UNION OF AMERICA, AFL-CIO

BY _____
Manager

BY _____
National Representative

BY _____
President

BY _____
President of Local

BY _____

BY _____

BY _____

APPENDIX "A"
WAGES AND HOURS

A1. Distribution Department

(A1.1) Employees in the Distribution Department engaged as Large Dump Truck Drivers, Utility Workers, Mechanic, Equipment Operators and General Field Representative shall be paid the following straight-time hourly rates, less any applicable step rates: Commented [LG21]: TAD 4/13/2018

Classification	Effective 03/31/14 Current	Effective At ratification	Effective 4/15/19	Effective 4/15/16
Utility Worker 3 (3 rd yr. Service)	\$28.43	\$29.28	\$29.98	\$27.13
Utility Worker 4 (4 th yr. Service)	\$28.76	\$29.62	\$30.33	\$27.46
Utility Worker 5 (5 th yr. Service)	\$29.22	\$30.10	\$30.82	\$27.90
Sr. Utility Worker	\$29.56	\$30.45	\$31.18	\$28.21
Large Dump Truck Driver	\$28.74	\$29.60	\$30.31	\$27.44
General Field Representative	\$29.52	\$30.41	\$31.14	\$28.17
Mechanic	\$29.50	\$30.39	\$31.12	\$28.15
Equipment Operator	\$29.50	\$30.39	\$31.12	\$28.15
Temporary Summer Laborer	\$14.74	\$15.18	\$15.54	\$14.08

- (A1.2) When employees classified as Utility Worker 3 are temporarily employed as Utility Worker 4 or 5, they shall be paid the rate provided for such latter classification while performing such work.
- (A1.3) Utility Workers who have three (3) years or more of service and who can qualify for Utility Worker 4 will be classified as Utility Worker 4.
- (A1.4) Utility Worker 4 who has four (4) or more years of service in the Utility Worker classification and who are fully qualified as Utility Worker will be classified as Utility Worker 5.
- (A1.5) Any employee who previously held the classification of Utility Worker 5 and bid to another department, may return as a Utility Worker 5 when qualified, without going through the other Utility Worker classifications.

- (A1.6) The normal work week for all employees performing the classes of work specified in this paragraph "A1" shall be forty (40) hours, commencing Monday morning and ending Friday afternoon of each week, and the normal work hours are Monday through Friday, 7:00 a.m. to 3:30 p.m.
- (A1.7) The Company agrees that all regular employees who commence work on the first day of any regular work week, as established for his/her particular job, shall be guaranteed forty (40) hours of work, provided the employee is at all times, during that week, available for work.

Changing Work Schedules

- (A1.8) Work schedules, including the starting and quitting times of Distribution employees, may be changed by the Company from time to time for the sole purpose of hydrant flushing. It is agreed these employees will be paid their normal rate of pay plus the appropriate shift differential. Crews will be scheduled on a seniority basis with at least one Utility Worker 5 in each crew.
- (A1.9) For call outs and extended overtime, there will be two (2) Utility 5s and one (1) Utility 3-5 for 8-inch or larger lines. For call outs, an extra Utility 3-5 will be called in hours of darkness for lines 6-inches or greater, and lines located in high traffic areas. For lines less than 6-inches, a senior Utility Person shall be called at management's discretion. In the situation where an extra Utility 3-5 is called, the most senior person called out in the Utility Workers classification will be the senior Utility worker. Any other classifications needed will be filled by equalization of overtime. For 6-inch line or smaller one (1) Utility 5 will not be needed.
- (A1.10) The Company shall have the ability to change work hours or schedules of Distribution employees limited to no employee being affected more than five (5) days every two (2) months. A three (3) day advance notice will be given and days and start times will be consecutive. The appropriate shift differential will be paid on all hours worked beginning at 12:00 noon or after for the full shift. On work begun prior to 12:00 noon no shift differential will be paid. Positions will be filled by volunteers, then by seniority in the classifications needed.
- (A1.11) The Company shall have the ability to change work hours or schedules of Distribution employees by assigning a three (3) person crew that would work Tuesday through Saturday, from 7:00 AM TO 3:30 pm. This crew would consist of an Equipment Operator, a Utility Worker 5 and a Utility Worker 3, and would be filled by qualified personnel first by seniority, then by volunteers, then by low seniority. The shifts would open every six (6) months. Anyone who is on the shift and elects to remain would have first choice to do so for successive six (6) month periods. The Company would retain the right to temporarily suspend this shift based on work load or available personnel with a two (2) week notice. The shift would automatically revert to a Monday through Friday, 7:00 AM to 3:30 PM in any week (Sunday through Saturday) that contains a holiday as defined by Section 5 of this agreement. In the event that a member of the Tuesday through Saturday crew notifies the Company before 3:15 pm on the work day previous to Saturday that they will be absent on Saturday, the Company will fill the absent position with another qualified candidate in the department; otherwise, it is at the Company's discretion to fill the position on Saturday.

(A1.12) The Company and the Union agree to continue to modify work schedules as needed during periods of emergencies, including but not limited to, severe winter weather.

Temporary Employees

(A1.12) Students or other persons in the Distribution Department for the summer shall be designated as temporary employees. It shall further be agreed that such temporary employees shall not be entitled to the following benefits: Holiday pay, sick leave pay, seniority rights, personal days, and the right to any job, or any overtime work. The Company reserves to itself the right to decide whether to hire such temporary employees. Temporary employees will be hired during the summer months for a continuous period not to exceed four (4) months.

(A1.13) It is the intent to use these temporary employees to perform seasonal or time-specific work including, but not limited to: grass cutting, fire hydrant and facility painting, etc. It is understood "summer months" may also incorporate those months of spring or fall.

(A1.14) Distribution Department Organization

The organization of Distribution Department crews on straight time, extended overtime and call outs (except during hours of darkness – see A1.9) are as follows:



Equipment Operators working with a Utility Worker will operate the mini-hoes and will be considered a working member of the two-person crew. These crews will be used primarily to install, replace and repair services and meter installations, and small main repair. These crews may be required to perform other work as necessary.

Small dump trucks can be driven by any Distribution employee as required, and this will not be considered a separate job classification. The large dump trucks are to be operated by the Dump Truck Driver classification. The large backhoes will be operated by the Equipment Operators, and with the large dump trucks, service the crews not equipped with mini-hoes. The crews not equipped with mini-hoes will perform other distribution work such as main repair, main and hydrant installation, and other work normally requiring a larger crew or equipment. The Senior Backhoe Operators will be assigned to the large backhoes as they are required in daily use.

An exception to this organization in instances on Saturday, Sunday, or holiday day time hours will be a two man mini-crew to be used if the work requirements are similar to those encountered during day time hours (install, replace and repair services, meter installations, and small main repair). Two-person crews working on regular time that

extend into overtime will not require the addition of a third crew member, unless the work extends into darkness (see A1.9).

(A1.15) The General Field Representative (Night Worker) will be given to fill up to nine-(9) orders per night. If the General Field Rep can't get the initial nine-(9) orders processed, he is to call the supervisor on call. The supervisor will then make a decision about getting someone in to help finish the remaining orders. The General Field Rep will also follow current PSC Rules & Regulations regarding shutoffs/collections.

A2. Meter Commercial Department

Commented [LG22]: TA's 4/10/2018

(A2.1) Employees in the Meter-Commercial Department engaged as Meter Readers, Customer Field Representatives, Meter Repairers, and Senior Meter Repairers shall be paid the following straight-time hourly rates, less any applicable step rates:

Commented [LG23]: TA's 4/11/2018

Classification	Effective 03/31/14 Current	Effective at ratification	Effective 4/15/15	Effective 4/15/16
Meter Reader	\$26.29	\$26.82	\$28.03	\$28.59
Customer Field Representative	\$29.40	\$30.28	\$31.01	\$28.75
Customer Field Rep (Tues - Sat)	\$29.40	\$30.28	\$31.01	\$28.75
Meter Repairer	\$26.29	\$26.82	\$28.03	\$28.59
Senior Meter Repairer	\$26.50	\$27.08	\$28.28	\$28.85

(A2.3) The normal work week for these employees will be 40 hours per week. The normal work day shall commence at 8:00 a.m. until 4:30 p.m. with 1/2 hour for lunch period, except those reading meters will commence at that during the months of June, July, and August, the normal work day for Meter Readers will be from 7:00 a.m. until 3:30 p.m. with 1/2 hour for lunch period. The Tuesday through Saturday Customer Field Representative's normal work week will be 40 hours per week, Tuesday through Saturday. The Tuesday through Saturday Customer Field Representative's normal work day shall commence at 8:00 a.m. until 4:30 p.m. with 1/2 hour for lunch period. The Tuesday through Saturday Customer Field Representative's shift would automatically revert to a Monday through Friday, 8:00 a.m. to 4:30 p.m. in any week (Sunday through Saturday) that contains a holiday as defined by Section 5 of this agreement.

Commented [LG24]: TA's 4/11/2018

(A2.4) Employees who were in the classification of Meter Reader prior to (the date of ratification of this agreement) will continue to be assigned to meter reading duties first.

Commented [L625]: TA'd 4/2/2018

A3. Stations

(A3.1) Employees engaged at the pump station and filter plant as operators and maintenance personnel shall be paid the following straight-time hourly rates, less any applicable step rates:

Commented [L626]: TA'd 4/13/2018

Classification	Effective 9/3/14 Current	Effective at ratification	Effective 4/15/19	Effective 4/15/16
High Service and Relief Operator	\$30.30	\$31.21	\$31.96	\$29.60
Swing Shift Operator	\$31.14	\$32.05	\$32.80	\$30.42

*Shift Differential for swing shift operator included in this table

Shift Differentials are \$.59 for second shift and \$.84 for third shift.

(A3.2) The normal work week for those employees in the Relief Operator's classification shall be forty (40) hours.

Operator's Incentive Program

(A3.3) All Production Department employees certified as Class IV Operators will receive an additional \$.75/hr. for all hours paid. This incentive is applicable only as long as the employee is working in the Production Department.

Bonus Incentives

Class III - \$100 bonus (one time only)
Class IV - \$300 bonus (one time only)

(A3.4) Recognizing the fact that the position of Plant Operator requires certification by regulatory agencies, it is agreed by the Company and Union that any employee assigned a Plant Operator's position must presently hold proper certification from the West Virginia Board of Health or meet the State's requirements for securing proper certification for plant operation in accordance with regulations which became effective July 1, 1989, i.e., at least a Class III Public Water Supply Operator's Certificate.

(A3.5) Non-shift Employees, less any applicable step rates

Commented [LG27]: TA'd 4/13/2018

Classification	Effective 3/31/11 \$29.22	Effective at reclassification	Effective 4/15/195	Effective 4/15/13
Maintenance Mechanic	\$29.22	\$30.00	\$30.00	\$29.22
Instrument Maint. Technician	\$29.22	\$30.00	\$30.50	\$29.22
Laborer	\$29.22	\$29.22	\$29.22	\$27.93

(A3.6) The normal work week for all employees performing the classes of work specified in this Section shall be forty-two (42) hours averaged over four (4) weeks, during three (3) of which the employee shall normally work forty (40) hours, and during one (1) of which the employee shall normally work forty-eight (48) hours.

(A3.7) Changing Work Schedules

The Company shall have the ability to change the hours of work or schedule for Production Maintenance employees limited to no more than two maintenance employees on changed hours or shifts at any one time. In addition, no employee shall have his or her hours of work or schedule changed for more than ten (10) days per month. A three (3) day advance notice will be given and days and start times will be consecutive. The appropriate shift differential will be paid on all hours worked on a changed shift outside the employee's normal work hours and schedule. Provisions of this section can be altered by mutual consent of the Company and the employees involved.

(A3.8) The Company and the Union agree to continue to modify work schedules as needed during periods of emergencies, including but not limited to, severe winter weather.

(A4.1) With regard to obtaining continuing education credits necessary to maintain Operator certifications and/or 1-D (or equivalent) licenses, or meeting the requirements to acquire Operator certifications and/or 1-D (or equivalent) licenses, the Company will pay for approved certification courses as well as wages for the time spent in class. The Company will make computer-based programs available, and taking the computer-based programs will not interfere with the employee's normal job duties and responsibilities.

As set forth above, schedules may be adjusted to accommodate employee attendance at classes required to earn, renew existing certification, or obtain higher level of certification. The Company will pay for the above.

C

1 A. It was whatever they had negotiated there.

2 Q. Okay. And after everyone appeared at the
3 meeting, can you tell me briefly how the meeting
4 proceeded? In other words, what happened? What
5 explanations, if any, were given? Was there any voting?
6 That kind of thing.

7 A. Motions were made that we would have our
8 representatives there to count the votes, that was
9 carried. Another motion was made that we wanted no
10 introductions, no discussion on this contract at that
11 time. We just wanted to vote. That's all it was. The
12 motion was made. It was carried.

13 At that point Mr. Duffy wanted to know why
14 there was no discussion.

15 Q. And who was Mr. Duffy from what you know?

16 A. From what I know he 's our vice president of
17 the national union.

18 Q. Okay. Who was the trustee in this case?

19 A. Yes.

20 Q. And I'm sorry, I didn't mean to interrupt
21 you. What did Mr. Duffy say?

22 A. He more or less stated and I can't -- his
23 exact words I don't really remember, but I do know that
24 he said if this was not accepted, it's off the table.
25 And what we took as "off the table" as this contract that

1 they had negotiated was off the table for us.

2 Q. In other words, if it was rejected, it wasn't
3 going to be in place?

4 A. That 's what we took.

5 Q. And did voting occur there?

6 A. Yes, sir.

7 Q. All right. Did you stay until the voting was
8 finished?

9 A. Yes, sir.

10 Q. Was any announcement made by Mr. Duffy or
11 anybody else as to whether or not the contract was
12 accepted or rejected?

13 A. His words were "You got your way. It's
14 unanimous," and it was rejected.

15 Q. Okay. And at that point did the meeting
16 finish or was there any further discussion?

17 A. No more discussion. They existed the
18 building.

19 Q. I think you said in your testimony that
20 Mr. Duffy said that if it's rejected, that if the
21 tentative agreement is rejected, it's off the table?

22 A. Off the table.

23 Q. Did you hear him say that?

24 A. I heard him say "of f the table." That's
25 exactly what I heard.

D

1 paper, plus the wages? Including the wages, I'm sorry?

2 A. Yes.

3 Q. And if they didn't, they wouldn't get the
4 wages but everything else would be in place?

5 A. Some of these changes were housekeeping in
6 nature. They weren't necessarily advancements in the
7 contract. I cannot say that -- how do I say it? Some of
8 these things were already in practice and accepted by the
9 local prior to this. They were memorialized in the
10 contract as opposed to being in an MOU or a side letter.

11 Q. And other things weren't in practice, they
12 were new negotiated items; isn't that correct?

13 A. Some of these were, yes.

14 Q. Okay. And when you met with the company
15 before you brought this to ratification, am I correct in
16 saying that -- well, let me go back.

17 Were you part of the negotiating committee?

18 A. Yes, I was.

19 Q. Was Mr. Duffy?

20 A. No. Myself and senior rep Ernie LaBelle.

21 Q. Ernie LaBelle, okay.

22 Am I correct in saying that when you
23 negotiated with the company, your understanding with them
24 was not, hey, company, if they ratify it, they get
25 everything on this page including the wages. If they

1 don't, their wages stay the same, but they get everything
2 else is in place? That was not your deal, was it?

3 A. It was never discussed in that way. That's
4 not typically how negotiations work.

5 Q. Oh, I know. I've been doing it for 40 years.
6 You're correct, it's not the way negotiations work. It's
7 all or nothing kind of situation, isn't it?

8 A. If it's ratified, yes. If it's not ratified,
9 then you go back and try to tweak. However, because they
10 don't even want an explanation as to what's in the
11 agreement, we don't that opportunity here.

12 Q. Okay. But you're correct. In the normal
13 sense, if it's ratified, it's all a done deal. If it's
14 not ratified, you go back, you sit down, try to work it
15 out, tweak some issues, whatever happens; correct?

16 A. Yes.

17 Q. Now, I think you said the notice was posted
18 because the union representatives, yourself and
19 Mr. LaBelle asked the company to post the notice?

20 A. We asked them if they would put it up for us
21 because all of the stewards resigned. We had nobody
22 there on the ground that we could ask to do it.

23 Q. And who made the arrangement that the meeting
24 would be on company property and during company time?

25 A. I did.

E

1 A. Yes.

2 Q. Where did you get whatever the documentation
3 was?

4 A. As we walked through the door into the room
5 they were handing it out.

6 Q. And who was handing it out?

7 A. LaBelle, I do believe his last name was.

8 Q. Mr. LaBelle?

9 A. Yes.

10 Q. Do you recognize the gentleman sitting at the
11 table next to Mr. Healey as someone that was at the
12 meeting that day?

13 A. He was there, yes.

14 Q. Okay. Did you and, from what you could see,
15 the other employees who were standing or sitting around
16 have time to look through this document that was being
17 handed to you as you walked through the door?

18 A. Absolutely.

19 Q. How many pages was it, roughly?

20 A. I think it was four pages. You had a cover
21 sheet and then three of the contract possibly.

22 Q. And basically -- I'm not asking you to
23 remember every word written in the document, but what did
24 that document deal with? What did it have on it or what
25 did it talk about?

1 A. It was whatever they had negotiated there.

2 Q. Okay. And after everyone appeared at the
3 meeting, can you tell me briefly how the meeting
4 proceeded? In other words, what happened? What
5 explanations, if any, were given? Was there any voting?
6 That kind of thing.

7 A. Motions were made that we would have our
8 representatives there to count the votes, that was
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F-1

**OFFICIAL REPORT OF PROCEEDINGS
BEFORE THE
NATIONAL LABOR RELATIONS BOARD**

In the Matter of:

Case No.: 09-RC-219179

**WEST VIRGINIA AMERICAN WATER CO.
Employer**

And

**UTILITY WORKERS UNITED ASSOCIATION
LOCAL 537
Petitioner**

And

**UTILITY WORKERS UNION OF AMERICA,
AFL-CIO, CLC AND ITS LOCAL 537
Intervenor**

**Place: St. Albans, WV
Date: 05/08/18
Pages: 1-148
Volume: 1**

OFFICIAL REPORTERS

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1 HEARING OFFICER: Do you care to make a response
2 before I make a ruling?

3 MR. FOLEY: It's clearly relevant to our motion and
4 it's -- and I think the motion is -- I've been told is
5 eligible to be renewed. I've renewed it.

6 I think it's relevant to the motion.

7 MR. PASQUARELLI: And perhaps I can say one other
8 thing that might save Mr. Foley and you and the regional
9 director time.

10 The issue that Mr. Foley is presenting with
11 the exhibit you just had and the one coming up in a few
12 seconds is the fact that there's what we call national
13 benefits bargaining involving this group and all of the
14 other American Water subsidiaries. As I said in our
15 conference call last week, the petitioner does not object
16 to being bound by the national benefits agreement that's
17 in place now and will not object to any new national
18 benefits agreement that's negotiated hereafter, if it
19 becomes the bargaining agent for this group.

20 So I don't think national benefits is an
21 issue, at least anymore, because the petitioner is
22 willing to agree that if it's certified, it will be bound
23 by the national benefits agreement that exists and any
24 renewal of it. That's why I think the whole thing is
25 irrelevant, but -- even if I didn't --

F-2

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UTILITY WORKERS UNION OF AMERICA,)
AFL-CIO,)

Plaintiff)

v.)

J. KEVIN BOOTH, DAVID ROWLAND,)
GREGORY LANHAM, DARLA OPEL, MAREI)
BURNFIELD and UTILITY WORKERS UNION)
OF AMERICA, LOCAL 537,)

Defendants)

2:18-cv-00398-DSC

Hon. David S. Cercone,
District Judge

**ANSWER AND DEFENSES OF DEFENDANTS J. KEVIN BOOTH,
DAVID ROWLAND, GREGORY LANHAM, DARLA OPEL, MAREI
BURNFIELD and UTILITY WORKERS UNION OF AMERICA, LOCAL 537**

AND NOW, come the Defendants, J. Kevin Booth, David Rowland, Gregory Lanham, Darla Opel, Marei Burnfield and Utility Workers Union of America, Local 537 and file the within Answer and Defenses to Plaintiff's Complaint, averring in response thereto the following:

1. Paragraph 1 of the Complaint is admitted in part and denied in part. It is admitted that this action seeks a preliminary and permanent injunction and the other relief asserted in the Complaint. For the reasons hereinafter set forth, which are incorporated herein by reference, it is denied that the trusteeship referred to in the Complaint was lawfully imposed or effective, it is denied that the terms of the UWUA Constitution or applicable law were followed in attempting to impose the trusteeship, and it is denied that there was any need to assure the performance of any collective bargaining agreements or other duties of a collective bargaining representative or to carry out any legitimate objectives of the National Union.

ELEVENTH DEFENSE

Neither the Plaintiff's Constitution and Bylaws nor any duly adopted directive of the Plaintiff requires any of the Plaintiff's local unions to continue to either be bound in futuro by the results of National Benefits bargaining or to continue to appoint the Plaintiff as the representative of its local unions for the purposes of negotiating the benefits contained in the National Benefits agreement.

TWELFTH DEFENSE

The Defendants never sought to undermine any collective bargaining arrangement. Rather, they only sought determinations from the National Labor Relations Board regarding the legality of their desire to negotiate issues concerning insurance and retirement benefits on their own behalf rather than having the UWUA negotiate those benefits as the Defendants' representative.

THIRTEENTH DEFENSE

The Defendants never disavowed any existing collective bargaining agreement entered into by the Defendant, Local 537 or entered into by the Plaintiff. Rather, they only sought determinations from the National Labor Relations Board regarding the legality of their desire to negotiate issues concerning insurance and retirement benefits on their own behalf rather than having the UWUA negotiate those benefits as the Defendants' representative.

 **FOURTEENTH DEFENSE**

On or about April 20, 2018 and again at a hearing of the National Labor Relations Board on May 8, 2018 the Defendants and the Association, through their counsel, advised the attorney for the Plaintiff, and the attorney for the Pennsylvania American Water Company, the West Virginia American Water Company, the Maryland American Water Company, the American

Water Works Company and the American Water Works Service Company that the Association was agreeable to being bound by the current National Benefits Agreement and by the successor agreement to the current National Benefits Agreement that the Plaintiff and the other labor organizations participating in those negotiations might negotiate, and that it would execute that successor agreement on behalf of those of its members employed by subsidiaries of the American Water Works Company who are or who will be represented by the Association for the purpose of collective bargaining. As a result, the reason for the trusteeship is now moot.

FIFTEENTH DEFENSE

The imposition of the trusteeship described in Plaintiff's complaint is unlawful and ineffective because the Plaintiff failed to conduct a "fair hearing" relative to the imposition or ratification of the trusteeship as required by the Plaintiff's Constitution and Bylaws and by the terms of the LMDRA.

SIXTEENTH DEFENSE

The imposition of the trusteeship described in Plaintiff's complaint is barred by the doctrine of laches since the Plaintiff has known since October 31, 2014 that it was and is the position of the Defendants that Local 537 is able to withdraw the Plaintiff's appointment as its agent for the negotiation of the benefits encompassed by the National Benefits agreement and to negotiate such benefits on its own.

SEVENTEENTH DEFENSE

The alleged imposition of the trusteeship described in Plaintiff's complaint occurred after the commencement of the process of disaffiliation of Local 537 as the bargaining agent of the production, maintenance and clerical employees of the Pennsylvania American Water Company, the West Virginia American Water Company, and the Maryland American Water Company.

G

Utility Workers Union of America, AFL-CIO
System Local 537

Marei Burnfield, Recording Secretary
UWUA, AFL-CIO, Local 537
Washington Trades and Labor Building
1 South College Street
Washington, PA 15301



Phone: (724) 222-2043

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Representing Members In Pennsylvania, Maryland, and West Virginia

Executive Board Meeting Minutes

January 20, 2018

President Booth called the meeting to order at 9:00 am.

The members saluted the flag.

Roll call was taken by Secretary, Marei Burnfield.

In attendance:

President Booth	James Barnette	Marei Burnfield
Matt Collins	Jason DeCarlo	George Geist
Nick Hlasnick	Robert Hutcheson	Ryan Irwin
Mike Kennedy	Michael Kiss	Gregory Lanham
Chris Lawrence	Nick Letta	Ken Myers
Michael Olek	Doug Opalko	Darla Opel
Dave Rowland	Justin Rudish	Tony Scalise
Carol Wagner	Jeffrey Zamosky	Tom Zimmerman

Bob Boyle, New Castle District, arrived at meeting after roll call was taken (9:08 am).

Attorney Sam Pasquarelli was in attendance.

New Presidents:

Uniontown – Nick Hlasnick was welcomed and sworn in by Treasurer, Darla Opel.

Previous Minutes:

All previous Board members received and reviewed minutes from the October 21, 2017 Executive Board Meeting. A motion was made by Carol Wagner to accept the minutes. Justin Rudish supported the motion and all were in favor.

Treasurer's Report:

Darla Opel reviewed the finances with Board members. Bob Hutcheson motioned to approve the Treasurer's report. Doug Opalko supported the motion and all were in favor.

PET. EX. 2

Wage Reimbursements:

Jason DeCarlo made a motion to ratify, confirm and approve all payments made from Union funds to officers and union officials for salaries, lost and non-lost wage reimbursement since the last executive board approval of these payments, and to ratify, confirm and approve all expenditures for payments made from Union funds to officers and union officials for lost wage reimbursement reflected in the treasurer's current financial report. Ryan Irwin supported the motion and all were in favor. President Booth noted that "salaries" were added based on a recommendation from the audit/review conducted by the National union in June of 2017.

VP Reports:

Dave Rowland – Nothing to report.

Greg Lanham – Nothing to report.

Secretary's Report:

Marei Burnfield mentioned that updated officer checklists found in the new member packets are available. Also reminded members to use the new post office box number when sending any correspondence to the union office. The mailing address is now PO Box 251, Washington, PA 15301

Old Business:

Health & Pension 2018 Opt Out:

President Booth reported that the Company is still refusing to bargain with us and we will be forced to file ULP charges if we want to see if we are legally allowed to bargain with the Company. Attorney Pasquarelli explained that 3 charges will be filed this coming week. We are still awaiting a decision on the FRCC charge we filed, and he recently received a phone call from the Regional Director in Philadelphia, and noted that our charge was sent to the DC office for advice from their legal department. He explained that the plan was to wait for this decision and that we have 6 months to file charges.

Regular Rate of Pay Settlement:

President Booth explained that this settlement only affected the Pittsburgh District monetarily. It has been a complex three-year battle. The paychecks that were spot checked were correct. The Company will agree to run payroll twice to check. The Company has agreed to the settlement in concept, but not on paper. President Booth is still waiting for the agreement from New Jersey. He added the Company is in the process of revising the paystubs.

Unused Social Funds:

Treasurer, Darla Opel, asked that the dormant/inactive accounts be used/spent. She again explained the protocol to deplete the funds. If you are not sure, please refer to the by-laws booklet.

#112 Butler
#113 Clarion
#114 Indiana
#115 Kane
#116 Mechanicsburg
#120 Uniontown

TravCare West Virginia/Pittsburgh:

President Booth reports that they are still using TravCare in WVA, it hasn't made it to PA, and if it does, it will get beat up bad! President Booth is creating and sending a cheat sheet/script to Gregg Lanham and James Barnette for injured members to refer to during the TravCare phone call. He added that all questions they are asking during the initial phone call do not need answered. Discussion followed on which questions should and should not be answered to comply. President Booth requested that Attorney Pasquarelli prepare a list of questions that must be answered when filing a Workers' Comp claim in WVA.

While on this subject, President Booth discussed an issue in the Pittsburgh District that resulted in over 20 Code of Ethics complaints being phoned in. Joe Tackett had an employee take his shirt off, photographed him, and manipulated his shoulder over the phone with Derrick Bracken attempting to diagnose the injury. This similar scenario happened with an employee who suffered a foot injury. This investigation is ongoing.

Prescription Safety Glasses:

President Booth recapped that In PA they agreed to a pair of safety glasses every 2 years or a replacement pair if damaged. Slate Belt is the vendor in Eastern PA with no complaints being received. Eagle Eyewear is the vendor in Western PA and it has been a disaster. President Booth took his pair to Lenscrafters to have them checked, and was informed it was an incorrect prescription and may damage vision if worn all day. The bifocals seem to be the problem. Eagle Eyewear should have performed a fitting before and after receiving the glasses. John Ihli is aware that the safety glasses are not safe. The Company is looking for an alternative vendor such as a brick and mortar store. All Presidents should ask their members if they are noticing any vision problems while wearing their prescription safety eyewear.

HRA DOL Complaint:

President Booth reported that this is still an ongoing issue. The Department of Labor is still working on the complaint that was filed, they are investigating the National's plan and have recently contacted President Booth requesting some documentation. As a reminder, this is the Health account for when you retire.

FRCC ULP Charge:

This subject already covered during Health & Pension Opt Out discussion.

New Business:

Outside Districts Contract:

President Booth summarized the status of the contract negotiations. We met recently at the request of the Company, we were not happy with the offer they submitted, we have requested a mediator and dates to meet again. Three dates are scheduled in February and the "no disclosure" to members has been agreed upon by Outside Districts Presidents.

National Union Audit:

President Booth referred each Board member present to the six-page document inserted in their meeting agenda booklet that contains a one-page response letter dated January 10, 2018 from Michael Coleman, and a five-page review letter dated December 17, 2017 from James C. Kokolas. President Booth reported that our local did, in fact, respond and offered to meet with the National union on Friday, January 19, 2018. The System Officers met with Attorney Sam Pasquarelli and CPA Carlyn Belczyk on January 19, 2018 and discussed all findings/recommendations detailed by the National Treasurer and auditing firm hired by them. Attorney Pasquarelli and President Booth proceeded to review with Board members each item listed on the six-page document, and our initial position and thoughts on our response to the National. Attorney Pasquarelli and CPA Carlyn Belczyk will work together to draft a response to the National. Attorney Pasquarelli reminded members that two auditors spent three days going over records as an attempt by the National to find a smoking gun.

Member Issue:

It was brought up that many members have told different Executive Board members that they are dissatisfied with the way that the National Union has been handling things that affect Local 537 and that the National Union does nothing to help Local 537 or its members. They also said that these members don't feel that they are getting anything for the per capita dues and that Local 537 should quit the National Union.

A motion was made and supported to hold a secret ballot vote to let the members decide if Local 537 should continue to be affiliated with the Utility Workers Union of America or should be a separate and independent association of its own. All were in favor.

It was then decided to hold a meeting on March 19, 2018 in each district to explain about disaffiliation and to have the members vote by secret ballot at these meetings. Notices of this union meeting are to be given in the usual way for each district.

New Address:

President Booth informed members that all correspondence being sent to the union office should be addressed as follows:

UWUA Local 537
PO Box 251
Washington, PA 15301

Treasurer, Darla Opel, reminded members that they can submit their expense vouchers via email/online, to the new union post office box address, or to her home address as follows:

Darla Opel
UWUA Local 537 Treasurer
104 Valleyview Dr.
Belle Vernon, PA 15012

Arbitration Report Decisions:

#2039 – Valley – Unjust Discipline – Settled as letter removed from personnel file by the Company, but two days off remained as discipline. President Booth noted that complainant failed to appear for the Arbitration hearing, this being a first for the union.

Arbitration Report Pending:

#2831 – New Castle – Unjust Termination – Rescheduled per Company request for March 2018.

Arbitration Report Grievances to Vote:

#2817 – Pittsburgh – Unjust Discipline – Tony Scalise presented the facts for this grievance. A motion was made by Greg Lanham to take this grievance to arbitration, Doug Opalko supported the motion and all were in favor. #2817 to be scheduled for arbitration.

#2580 – Pittsburgh – Unjust Discipline – Tony Scalise presented the facts for this grievance. A motion was made by Mike Olek to take this grievance to arbitration, Ryan Irwin supported the motion and all were in favor. #2580 to be scheduled for arbitration.

Open Grievances:

President Booth mentioned that although the agenda indicates 17 open grievances, since the printing of the book, additional grievances have been filed and received. He reminded Presidents to please send the YELLOW copy of the grievance to the Union Post Office Box address ASAP after filing, then go online and submit the grievance fact worksheet. He asked that each President review grievance list to be sure all are included. Jason DeCarlo had questions and discussion about two grievances (#2776 & #2777) filed in Bel Air. He has had all meetings until final step, and complainant has retired, but does not want to withdraw in the event the situation happens again. President Booth is to send a letter regarding this issue.

District Discussions:

Bel Air	Jason DeCarlo reported that a co-worker recently committed suicide and they are in need of workers. He questioned the qualification period.
Brownsville	Bob Hutcheson had nothing to report.
Butler	Matt Collins had nothing to report.

Clarion	Rodney Hannold – ABSENT
Economy	Jason Cercone – ABSENT
Huntington	Greg Lanham had nothing to report.
Indiana	Chris Lawrence described for all, an investigator that was sent as a result of a code of ethics complaint and warned he is not a low- level security guy and his appearance my fool you. His name is Jared.
Kane	Andrew Johnson – ABSENT
Kittanning	Justin Rudish had nothing to report.
Kittanning Sub.	Scott Kijowski – ABSENT
Manor	Ian Ferguson – ABSENT
McMurray	Nick Letta had nothing to report.
Mechanicsburg	Mike Kennedy had nothing to report.
Monroeville	Mike Kiss reports all good, all quiet.
New Castle	Bob Boyle has no news to report.
North Strabane	Darla Opel has nothing to report.
Northern Districts	James Barnette has nothing to report.
North Versailles	Jeff Zamosky has nothing to report.
Pittsburgh	Tony Scalise shared some observations about Joe Tackett early on and how the climate has changed for the worse at Pittsburgh District.
Punxsutawney	Tom Zimmerman had nothing to report.
Saxonburg	George Geist had nothing to report.
Scranton FRCC	Mike Turano – ABSENT
Uniontown	Nick Hlasnick mentioned an open grievance for a member who failed to sign the relief leak detection bid, and reminded all no forced overtime.
Valley	Doug Opalko discussed a Workers' Comp issue,

with Jamie Devine involved, and whether injured party is entitled to a % of OT based on previous earnings, that he is unable to earn due to injury. President Booth reminded him to offer injured worker Jim Welker 's contact information.

W.A.C.M.A. Carol Wagner had nothing to report.

Warren Ryan Irwin had nothing to report in Warren but shared an accident involving 2 employees from Kane who used torch to open a frozen vault and an explosion occurred due to methane gas build up. Employees received large hospital bills and Company is claiming they are not responsible for payment.

WEWJA Ken Myers had nothing to report.

Wilkes/Scranton Mike Olek reports a FSR involved in a physical altercation while changing a meter at a business, a police report was filed and she is asking if there is anything the Union can do for her. President Booth and VP Rowland are willing to discuss the situation at upcoming grievance meeting this Thursday in Wilkes/Scranton. If she is injured, it is a Workers' Comp case now. Mike also mentioned a district in Susquehanna has expressed an interest in joining our Local. He inquired about the FRCC contract that was implemented. President Booth responded that we do not sign implemented contracts, they are referred to as Terms and Conditions and we are still awaiting decision from the charges we filed.
Mike asked Treasurer, Darla Opel, what the mileage rate was for 2018. Darla reported 2018 mileage rate is 54.5.

Reminders:

Mileage rate for 2018 is 54.5.

Adjournment:

A motion was made by Bob Hutcheson to adjourn the meeting. Mike Olek supported the motion and all were in favor. The meeting adjourned at 12:27 pm.

Respectfully submitted by:

Marei Burnfield
Recording Secretary

H



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
CINCINNATI OH 45999-0023

Date of this notice: 01-24-2018

Employer Identification Number:
82-4137000

Form: SS-4

Number of this notice: CP 575 E

UTILITY WORKERS UNITED ASSOCIATION
SYSTEM LOCAL 537
% KEVIN BOOTH
1 S COLLEGE ST
WASHINGTON, PA 15301

For assistance you may call us at:
1-800-829-4933

IF YOU WRITE, ATTACH THE
STUB AT THE END OF THIS NOTICE.

WE ASSIGNED YOU AN EMPLOYER IDENTIFICATION NUMBER

Thank you for applying for an Employer Identification Number (EIN). We assigned you EIN 82-4137000. This EIN will identify you, your business accounts, tax returns, and documents, even if you have no employees. Please keep this notice in your permanent records.

When filing tax documents, payments, and related correspondence, it is very important that you use your EIN and complete name and address exactly as shown above. Any variation may cause a delay in processing, result in incorrect information in your account, or even cause you to be assigned more than one EIN. If the information is not correct as shown above, please make the correction using the attached tear-off stub and return it to us.

When you submitted your application for an EIN, you checked the box indicating you are a non-profit organization. Assigning an EIN does not grant tax-exempt status to non-profit organizations. Publication 557, Tax-Exempt Status for Your Organization, has details on the application process, as well as information on returns you may need to file. To apply for recognition of tax-exempt status under Internal Revenue Code Section 501(c)(3), organizations must complete a Form 1023-series application for recognition. All other entities should file Form 1024 if they want to request recognition under Section 501(a).

Nearly all organizations claiming tax-exempt status must file a Form 990-series annual information return (Form 990, 990-EZ, or 990-PF) or notice (Form 990-N) beginning with the year they legally form, even if they have not yet applied for or received recognition of tax-exempt status.

Unless a filing exception applies to you (search www.irs.gov for Annual Exempt Organization Return: Who Must File), you will lose your tax-exempt status if you fail to file a required return or notice for three consecutive years. We start calculating this three-year period from the tax year we assigned the EIN to you. If that first tax year isn't a full twelve months, you're still responsible for submitting a return for that year. If you didn't legally form in the same tax year in which you obtained your EIN, contact us at the phone number or address listed at the top of this letter.

For the most current information on your filing requirements and other important information, visit www.irs.gov/charities.

PET EXF

I

**Application for Recognition of Exemption
Under Section 501(a)**

If exempt status is approved,
this application will be open
for public inspection.

► Go to www.irs.gov/Form1024 for instructions and the latest information.

Read the instructions for each Part carefully. **A User Fee must be attached to this application.**
If the required information and appropriate documents are not submitted along with Form 8718 (with payment of the appropriate user fee), the application may be returned to the organization.
Complete the Procedural Checklist that follows the form.

Part I. Identification of Applicant Must be completed by all applicants; also complete appropriate schedule.
Submit only the schedule that applies to your organization. Do not submit blank schedules.

Check the appropriate box below to indicate the section under which the organization is applying:

- a Section 501(c)(2)—Title holding corporations (Schedule A)
- b Reserved for future use
- c Section 501(c)(5)—Labor, agricultural, or horticultural organizations (Schedule C)
- d Section 501(c)(6)—Business leagues, chambers of commerce, etc. (Schedule C)
- e Section 501(c)(7)—Social clubs (Schedule D)
- f Section 501(c)(8)—Fraternal beneficiary societies, etc., providing life, sick, accident, or other benefits to members (Schedule E)
- g Section 501(c)(9)—Voluntary employees' beneficiary associations (Parts I through IV and Schedule F)
- h Section 501(c)(10)—Domestic fraternal societies, orders, etc., not providing life, sick, accident, or other benefits (Schedule E)
- i Section 501(c)(12)—Benevolent life insurance associations, mutual ditch or irrigation companies, mutual or cooperative telephone companies, or like organizations (Schedule G)
- j Section 501(c)(13)—Cemeteries, crematoria, and like corporations (Schedule H)
- k Section 501(c)(15)—Mutual insurance companies or associations, other than life or marine (Schedule I)
- l Section 501(c)(17)—Trusts providing for the payment of supplemental unemployment compensation benefits (Parts I through IV and Schedule J)
- m Section 501(c)(19)—A post, organization, auxiliary unit, etc., of past or present members of the Armed Forces of the United States (Schedule K)
- n Section 501(c)(25)—Title holding corporations or trusts (Schedule A)

1a Full name of organization (as shown in organizing document) Utility Workers United Association, System Local 537		2 Employer identification number (EIN) (if none, see Specific Instructions) 8 2 4 1 3 7 0 0 0
1b c/o Name (if applicable)		3 Name and telephone number of person to be contacted if additional information is needed Samuel J. Pasquarelli (412) 355-0200
1c Address (number and street) 1 South College Street	Room/Suite	
1d City, town or post office, state, and ZIP + 4. If you have a foreign address, see Specific Instructions for Part I. Washington, PA 15301		
1e Web site address	4 Month the annual accounting period ends December	5 Date incorporated or formed Jan. 20, 2018

6 Did the organization previously apply for recognition of exemption under this Code section or under any other section of the Code? Yes No
If "Yes," attach an explanation.

7 Has the organization filed Federal income tax returns or exempt organization information returns? Yes No
If "Yes," state the form numbers, years filed, and Internal Revenue office where filed.

8 Check the box for the type of organization. ATTACH A CONFORMED COPY OF THE CORRESPONDING ORGANIZING DOCUMENTS TO THE APPLICATION BEFORE MAILING.

- a Corporation— Attach a copy of the Articles of Incorporation (including amendments and restatements) showing approval by the appropriate state official; also attach a copy of the bylaws.
- b Trust— Attach a copy of the Trust Indenture or Agreement, including all appropriate signatures and dates.
- c Association— Attach a copy of the Articles of Association, Constitution, or other creating document, with a declaration (see instructions) or other evidence that the organization was formed by adoption of the document by more than one person. Also include a copy of the bylaws.

If this is a corporation or an unincorporated association that has not yet adopted bylaws, check here

I declare under the penalties of perjury that I am authorized to sign this application on behalf of the above organization, and that I have examined this application, including the accompanying schedules and attachments, and to the best of my knowledge it is true, correct, and complete.

PLEASE
SIGN
HERE


(Signature)

Samuel J. Pasquarelli, Attorney
(Type or print name and title or authority of signer)

Feb. 1, 2018
(Date)

PET-EX-6

Part II. Activities and Operational Information (Must be completed by all applicants)

- 1** Provide a detailed narrative description of all the activities of the organization—past, present, and planned. Do not merely refer to or repeat the language in the organizational document. List each activity separately in the order of importance based on the relative time and other resources devoted to the activity. Indicate the percentage of time for each activity. Each description should include, as a minimum, the following: **(a)** a detailed description of the activity including its purpose and how each activity furthers your exempt purpose; **(b)** when the activity was or will be initiated; and **(c)** where and by whom the activity will be conducted.

The applicant is a labor organization comprised of an association of workers who have combined to protect and promote the interests of its members by bargaining collectively with their employers to secure better working conditions, wages, benefits and terms and conditions of employment and to deal with the members' employers regarding grievances, labor disputes, wages, rates of pay, hours of work and other working conditions.

- 2** List the organization's present and future sources of financial support, beginning with the largest source first.

The applicant was just recently formed and it has no present sources of income. Its future source of income will be monthly dues paid to it by its members, which is expected to begin in March, 2018. No changes in sources or amounts of income are expected in the foreseeable future.

Part II. Activities and Operational Information (continued)

3 Give the following information about the organization's governing body:

a Names, addresses, and titles of officers, directors, trustees, etc.	b Annual compensation
J. Kevin Booth, System President, 121 Zediker Station Road, Washington, PA 15301	
Gregory Lanham-System Vice President, 9800 Saunders Creek Road, Milton, WV 25541	\$ 10,440.00
	\$ 6,000.00
David Rowland, System Vice President, 311 Vine Street, Jefferson Hills, PA 15025	\$6,600.00
Marei Burnfield, System Recording Secretary, PO Box 105, 550 Webster Hollow Road, Webster, PA 15087	\$7,200.00
Darla Opel, System Financial Secretary, 104 Valley View Drive, Belle Vernon, PA 15012	\$9,240.00

4 If the organization is the outgrowth or continuation of any form of predecessor, state the name of each predecessor, the period during which it was in existence, and the reasons for its termination. Submit copies of all papers by which any transfer of assets was effected.

N/A

5 If the applicant organization is now, or plans to be, connected in any way with any other organization, describe the other organization and explain the relationship (for example, financial support on a continuing basis; shared facilities or employees; same officers, directors, or trustees).

None

6 If the organization has capital stock issued and outstanding, state: (1) class or classes of the stock; (2) number and par value of the shares; (3) consideration for which they were issued; and (4) if any dividends have been paid or whether your organization's creating instrument authorizes dividend payments on any class of capital stock.

N/A

7 State the qualifications necessary for membership in the organization; the classes of membership (with the number of members in each class); and the voting rights and privileges received. If any group or class of persons is required to join, describe the requirement and explain the relationship between those members and members who join voluntarily. Submit copies of any membership solicitation material. Attach sample copies of all types of membership certificates issued.

There are no classes of membership. Membership will be composed of all dues paying production, maintenance and clerical employees employed in Pennsylvania, Maryland and West Virginia.

8 Explain how your organization's assets will be distributed on dissolution.

Upon dissolution, all assets will be distributed to dues-paying members in proportion to the dues that they paid.

Part II. Activities and Operational Information (continued)

9 Has the organization made or does it plan to make any distribution of its property or surplus funds to shareholders or members? Yes No

If "Yes," state the full details, including: (1) amounts or value; (2) source of funds or property distributed or to be distributed; and (3) basis of, and authority for, distribution or planned distribution.

10 Does, or will, any part of your organization's receipts represent payments for services performed or to be performed? Yes No

If "Yes," state in detail the amount received and the character of the services performed or to be performed.

11 Has the organization made, or does it plan to make, any payments to members or shareholders for services performed or to be performed? Yes No

If "Yes," state in detail the amount paid, the character of the services, and to whom the payments have been, or will be, made.

12 Does the organization have any arrangement to provide insurance for members, their dependents, or others (including provisions for the payment of sick or death benefits, pensions, or annuities)? Yes No

If "Yes," describe and explain the arrangement's eligibility rules and attach a sample copy of each plan document and each type of policy issued.

13 Is the organization under the supervisory jurisdiction of any public regulatory body, such as a social welfare agency, etc.? Yes No

If "Yes," submit copies of all administrative opinions or court decisions regarding this supervision, as well as copies of applications or requests for the opinions or decisions.

14 Does the organization now lease or does it plan to lease any property? Yes No

If "Yes," explain in detail. Include the amount of rent, a description of the property, and any relationship between the applicant organization and the other party. Also, attach a copy of any rental or lease agreement. (If the organization is a party, as a lessor, to multiple leases of rental real property under similar lease agreements, please attach a single representative copy of the leases.)

The organization does not now lease property. It plans to lease office space beginning in March, 2018 at the rental rate not to exceed \$300 per month. This office space will be used solely for the organization's exempt purposes. The property will be a single room office location. There will be no relationship between the applicant organization and the other party. No current lease agreement is in place since the applicant organization is still in the process of locating suitable office space.

15 Has the organization spent or does it plan to spend any money attempting to influence the selection, nomination, election, or appointment of any person to any federal, state, or local public office or to an office in a political organization? Yes No

If "Yes," explain in detail and list the amounts spent or to be spent in each case.

16 Does the organization publish pamphlets, brochures, newsletters, journals, or similar printed material? Yes No

If "Yes," attach a recent copy of each.

Part III. Financial Data (Must be completed by all applicants)

Complete the financial statements for the current year and for each of the 3 years immediately before it. If in existence less than 4 years, complete the statements for each year in existence. If in existence less than 1 year, also provide proposed budgets for the 2 years following the current year.

A. Statement of Revenue and Expenses

Revenue	(a) Current Tax Year	3 Prior Tax Years or Proposed Budget for Next 2 Years			(e) Total
	From N/A To N/A	(b) 2019	(c) 2020	(d)	
1 Gross dues and assessments of members		600,000.00	600,000.00		
2 Gross contributions, gifts, etc.					
3 Gross amounts derived from activities related to the organization's exempt purpose (attach schedule) (Include related cost of sales on line 9.)					
4 Gross amounts from unrelated business activities (attach schedule)					
5 Gain from sale of assets, excluding inventory items (attach schedule)					
6 Investment income (see instructions)					
7 Other revenue (attach schedule)					
8 Total revenue (add lines 1 through 7)		600,000.00	600,000.00		
Expenses					
9 Expenses attributable to activities related to the organization's exempt purposes		282,375.00	282,375.00		
10 Expenses attributable to unrelated business activities					
11 Contributions, gifts, grants, and similar amounts paid (attach schedule)					
12 Disbursements to or for the benefit of members (attach schedule)					
13 Compensation of officers, directors, and trustees (attach schedule)		39,480.00	39,480.00		
14 Other salaries and wages		57,395.00	57,395.00		
15 Interest					
16 Occupancy		3,600.00	3,600.00		
17 Depreciation and depletion					
18 Other expenses (attach schedule)		24,300.00	24,300.00		
19 Total expenses (add lines 9 through 18)		407,150.00	407,150.00		
20 Excess of revenue over expenses (line 8 minus line 19)		192,850.00	192,850.00		

B. Balance Sheet (at the end of the period shown)

Assets		Current Tax Year as of N/A
1 Cash		192,850.00
2 Accounts receivable, net		0
3 Inventories		0
4 Bonds and notes receivable (attach schedule)		0
5 Corporate stocks (attach schedule)		0
6 Mortgage loans (attach schedule)		0
7 Other investments (attach schedule)		0
8 Depreciable and depletable assets (attach schedule)		0
9 Land		0
10 Other assets (attach schedule)		0
11 Total assets		0
Liabilities		
12 Accounts payable		0
13 Contributions, gifts, grants, etc., payable		0
14 Mortgages and notes payable (attach schedule)		0
15 Other liabilities (attach schedule)		0
16 Total liabilities		0
Fund Balances or Net Assets		
17 Total fund balances or net assets		192,850.00
18 Total liabilities and fund balances or net assets (add line 16 and line 17)		192,850.00

If there has been any substantial change in any aspect of the organization's financial activities since the end of the period shown above, check the box and attach a detailed explanation

Schedule C Organizations described in section 501(c)(5) (Labor, agricultural, including fishermen's organizations, or horticultural organizations) or section 501(c)(6) (business leagues, chambers of commerce, etc.)

- 1 Describe any services the organization performs for members or others. (If the description of the services is contained in Part II of the application, enter the page and item number here.)

The organization does not and will not perform services for anyone except its members and any other individuals who it is required to represent as the exclusive collective bargaining representative of a group of employees of an employer where the organization has been lawfully selected as the exclusive collective bargaining representative of those employees. The services performed will be those that are described on Page 2, Item No. 1, Part II of this application.

- 2 Fishermen's organizations only.—What kinds of aquatic resources (not including mineral) are cultivated or harvested by those eligible for membership in the organization?

N/A

- 3 Labor organizations only.—Is the organization organized under the terms of a collective bargaining agreement? Yes No

If "Yes," attach a copy of the latest agreement.

**UTILITY WORKERS UNITED ASSOCIATION, SYSTEM LOCAL 537
1 SOUTH COLLEGE STREET
WASHINGTON, PA 15301
EIN 82-4137000
FORM 1024, PART III, SECTION A
EXPLANATION OF EXPENSES, LINE 18**

Payroll taxes	\$	17,400.00
Bibles, flowers upon death of members		1,625.00
Clothing expense		2,425.00
Insurance		<u>2,850.00</u>
TOTAL	\$	24,300.00

**UTILITY WORKERS UNITED ASSOCIATION, SYSTEM LOCAL 537
1 SOUTH COLLEGE STREET
WASHINGTON, PA 15301
EIN 82-4137000**

**FORM 1024, PART III, SECTION A
EXPLANATION OF EXPENSES, LINE 13**

		<u>Average Weekly Hours Spent</u>
Annual Salary, System President (J. Kevin Booth)*	\$ 10,440.00	30
Annual Salary, System Vice President (Gregory Lanham)*	6,000.00	18
Annual Salary, System Vice President (David Rowland)*	6,600.00	20
Annual Salary, System Recording Secretary (Marei Burnfield)*	7,200.00	24
Annual Salary, System Financial Secretary (Darla Opel)*	9,240.00	28
TOTAL	\$ 39,480.00	

*Current incumbent office holder

J



Office of the President

J. Kevin Booth

kbooth@local537.com

(412) 551-1294

Representing members in Pennsylvania, West Virginia, and Maryland.

March 19, 2018

Mr. Brian Bruce, President
West Virginia American Water
1600 Pennsylvania Avenue
Charleston, WV 25302

Utility Workers United Association, Local 537 (UWUA, Local 537) (West Virginia)

Dear Mr. Bruce-

Over the last few months, many members of Utility Workers Union of America, AFL-CIO, System Local 537 indicated a strong desire to disaffiliate from the Utility Workers Union of America (National Union) and to instead become members of an independent association and to have that independent association act as the collective bargaining representative for each of the contracts entered into by the Utility Workers Union of America, AFL-CIO, System Local 537. On January 20, 2018, Utility Workers Union of America, AFL-CIO, Local 537's Executive Board unanimously endorsed a motion to allow the members to vote on whether or not to disaffiliate from the Utility Workers Union of America, (National Union), and join an independent association known as the Utility Workers United Association. That triggered a vote amongst the membership at large. Those members are employed by multiple employers, and you are an employer of some of those employees.

On March 19, 2018, a number of meetings took place in multiple locations throughout Pennsylvania, West Virginia, and Maryland. At those meetings, the membership at large cast votes and overwhelmingly determined to disaffiliate from the Utility Workers Union of America, AFL-CIO, System Local 537 and the membership at large ratified membership in the Utility Workers United Association. The Executive Board, Officers and leaders of the Utility Workers United Association are the same Board Members, Officers and leaders as were in place with the Utility Workers Union of America, AFL-CIO, System Local 537.

The reason for this letter is to advise you of the aforementioned, as well as advise you that the Executive Board, Officers, and Union leaders will continue all of their activities as bargaining representative for the employees, including receiving dues deducted by the Employer from the wages of its employees and representing bargaining unit employees for grievances and negotiations. The Utility Workers United Association will honor the contracts that the Utility Workers Union of America, AFL-CIO, System Local 537 previously entered into with you exactly as those contracts are written. The shop stewards with whom you have dealt with in the past will continue to deal with you in the future, and their duties will continue as

Utility Workers United Association, Local 537

EXHIBIT

tabbles

57

et//PO Box 251 / Washington, PA 15301

2018

3/19/2018

Mr. Brian Bruce, President

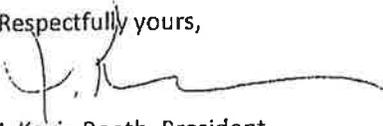
Utility Workers United Association, Local 537 (UWUA, Local 537) (West Virginia)

before. They will be assisted by the same System Officers, and the same Executive Board members who have represented your employees in the past. We are the same organization which you have recognized and with which you dealt in the past with the exact same dues structure, the only difference being that, as a result of this membership vote, we are no longer associated with the Utility Workers Union of America, AFL-CIO (National Union), and we have simply changed our name.

This transition will not disrupt your business, and will in fact be business as usual.

If you should have any questions, please do not hesitate to contact me.

Respectfully yours,



J. Kevin Booth, President

Utility Workers United Association, Local 537

cc: G. Lanham, L. Glaser, C. Mount

K



NATIONAL LABOR RELATIONS BOARD
Region 20

901 Market Street, Suite 400
San Francisco, California 94103-
1735

Telephone: 415/356-5130
FAX: 415/356-5156
Website: www.nlr.gov

June 12, 2009

American Etc. Inc. d/b/a Royal Laundry
1140 San Mateo Avenue
South San Francisco, CA 94080

Robert S. Giolito
Spivak Lipton LLP
11755 Wilshire Boulevard, Suite 2160
Los Angeles, CA 90025

John W. Wilhelm
UNITE HERE!
1775 K Street, NW, Suite 620
Washington, DC 20006

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Re: American Etc. Inc. d/b/a Royal Laundry
Case 20-RM-2868

Gentlepersons:

The Employer filed the instant Petition asserting that two labor organizations, Western States Regional Joint Board (WSRJB) and UNITE HERE!, had presented a claim to be recognized as representative of its employees. The Regional Director issued an Order to Show Cause (OSC) reciting information that the Region's administrative investigation into the matter had generated up to that point, and posing the question why he should not dismiss the Petition. On the bases of the parties' responses¹ to that Order and additional investigation conducted by the Region to resolve issues raised by those responses, I have concluded for the reasons that follow that no question concerning representation (QCR) exists, and hereby dismiss the Petition.

¹ The Employer, UNITE HERE!, and WSRJB "and its affiliated Local 75" responded to the OSC.

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Background

As noted in the OSC, the Board certified Local 75 as the exclusive bargaining representative of the unit employees in 1993.² In about 2004, Local 75 affiliated with WSRJB, an entity that had been associated with UNITE, and at about the same time, UNITE and HERE merged. Both Local 75 and WSRJB thus became affiliates of UNITE HERE!. The most recent collective-bargaining agreement covering unit employees, effective September 1, 2005 – December 31, 2008, was “By and between American etc. d/b/a Royal Laundry and UNITE-HERE Local # 75,” and was executed on behalf of Local 75 by an agent of WSRJB and two unit employees. The Employer and Local 75 negotiated over terms for a successor contract³ but had not reached an agreement when they last met on February 6.⁴

On February 28, Local 75's executive board unanimously endorsed a petition to disaffiliate from UNITE HERE! and to join other former UNITE HERE! affiliates to form a new union. The petition explicitly expressed a desire that WSRJB continue to serve as Local 75's agent for collective-bargaining.⁵ On March 7, WSRJB's elected delegates likewise voted unanimously to sever its ties with, and to strike references in its constitution to, UNITE HERE! On March 12, WSRJB Regional Manager Cristina Vazquez informed the Employer that WSRJB and its affiliated locals had voted to end their relationship with UNITE HERE! and to form an independent union. She added:

The Joint Board and its affiliated locals will continue all of their activities as bargaining representative for the employees, including receiving dues deducted by the Employer from the wages of its employees and representing bargaining unit employees for grievances and negotiations. The shop stewards with whom you have dealt in the past will continue to deal with you in the future, and their duties will continue as before. They will be assisted by the same Joint Board staff representatives who have represented your employees in the past. We are the same organization which you have recognized and with which you dealt in the past.

² In 20-RC-16961, the petition identified American Linen in South San Francisco as employer and International Textile Processors Union, Local 75 as petitioner. Apparently the Employer is a successor or assumed a new name. Prior to the attempted disaffiliation addressed below, the identity of Local 75's international affiliate changed as a result of mergers, first becoming UNITE and subsequently UNITE-HERE!

³ Local 75's bargaining team was led by WSJRB Regional Secretary Barbara Mejia and included unit employees.

⁴ All dates refer to 2009 unless otherwise specified.

⁵ WSRJB is affiliated with numerous local unions in half a dozen Western States. Its constitution requires that affiliates submit to it all dues they collect, and invests it with exclusive authority, among other things, to enter into collective-bargaining agreements, call strikes, and adjust grievances on behalf of employees represented by the affiliated local unions.

After the Employer brought WSRJB's communication to the attention of UNITE HERE!, by letter dated March 25 UNITE HERE! Local 2 President Mike Casey suggested that the Employer should remit dues that it withheld from employees directly to UNITE HERE! headquarters in New York. By letter to the Employer dated March 26, UNITE HERE! President/Hospitality Industry John Wilhelm asserted that the Employer's collective-bargaining relationship was with UNITE HERE!, that the International's constitution constrained affiliates from seceding, and that, "In other words, you should continue recognizing the UNITE HERE affiliates that represent your employees." The Employer had already responded to WSRJB by letter dated March 19 addressed to WSRJB Regional Secretary-Treasurer Mejia. The Employer claimed to perceive a question concerning representation because the current recognized representative was "UNITE HERE Local 75," and both UNITE HERE! and WSRJB claimed Local 75 as an affiliate. The Employer thereupon canceled the bargaining session scheduled for March 25 and, on March 30, filed the instant RM petition on the purported basis of uncertainty as to the identity of its employees' bargaining representative.

Analysis

I note first of all that the Employer does not base its Petition on objective considerations that give it a good faith doubt about Local 75's majority status. There is no evidence that such considerations exist. Rather, the Employer asserts that it seeks an election to establish whether it should recognize UNITE HERE! or WSRJB as its employees' statutory representative. I believe that the correct answer can be provided without an election, and is neither.

Following the Supreme Court's decision in *NLRB v. Financial Institution Employees of America Local 1182 (Seattle-First)* 475 U.S.192 (1986), the Board revisited the question as to the circumstances in which a union affiliation or merger may relieve an employer of its obligation to recognize and bargain with an incumbent union. In *Raymond F. Kravis Center for the Performing Arts*, 351 NLRB 143 (2007), the Board explicitly abandoned the "due process" component of the two-prong test that it had applied in the past, and decided that henceforth, the sole criterion would be "substantial continuity." The Board observed (*id.* at page 147),

[I]f it is determined that the postaffiliation union lacks substantial continuity with the preaffiliation union, a question concerning representation is thereby raised and the employer's obligation to recognize the union ceases.

* * * * *

In cases in which there is substantial continuity between the preaffiliation and post affiliation union, the postaffiliation union is largely unchanged from the preaffiliation entity – i.e., nothing has happened to the union

that would lead one reasonably to think that the employees no longer support it.

To assess the existence of substantial continuity, the Board considers whether the change is "sufficiently dramatic" to alter the union's identity (*May Department Stores*, 289 NLRB 661, 665 (1988), enf'd. 897 F.2d 221 (7th Cir. 1990) in the context of the totality of the circumstances (*Mike Basil Chevrolet*, 331 NLRB 1044 [2000]). Logically, the same standard would apply to disaffiliation in pursuit of independence from an international union, as that is merely the flip side of the affiliation coin.

Analyzed within this framework, it appears that Local 75's decision to try to disaffiliate from UNITE HERE!, WSRJB's decision to do the same, and Local 75 and WSRJB's mutual decision to maintain their relationship, do not raise a QCR. As noted above, when WSRJB informed the Employer by letter dated March 12 that it and its affiliated locals had ended their ties to UNITE HERE!, it also stated that the locals would continue "all of their activities as bargaining representative for the employees." It appears that Local 75's action to disaffiliate from the International(s) resulted in no changes whatsoever in the identity of its shop stewards, and because of its continued affiliation with WSRJB, neither did it cause any change in the identity of the WSRJB staff representatives or principal officers who dealt with the Employer on behalf of Local 75. These circumstances point to continuity rather than change that is "sufficiently dramatic" to create a QCR.

UNITE HERE! contends that its affiliates are not free to cut their affiliation bonds, and has initiated litigation to seek to compel restoration of the ties. The NLRB has no authority or need to assess the merits of UNITE HERE!'s contention, or to concern itself with the outcome of such litigation, unless and until the conflict creates a discontinuity sufficient to raise a QCR. As is evident from the preceding facts, the moves by Local 75 and WSRJB to disaffiliate, and UNITE HERE!'s suit to counter those moves, have not done so.

UNITE HERE! also has asserted that disaffiliation may cripple various seceding entities' financial ability to fulfill their representational responsibilities. One supposes that time will tell whether such speculation is warranted, but for the present, there is no evidence that alleged financial straits have compromised Local 75's capacity to represent employees, or WSRJB's capacity to fulfill the duties that Local 75 has entrusted to WSRJB.

The essential fact is that Local 75 is the collective-bargaining representative of employees, regardless of the decision that it made to disaffiliate from UNITE HERE!, and whatever the ultimate outcome of that attempt to sever ties. Local 75's decision to continue its relationship with WSRJB contributed mightily to continuity, again regardless of WSRJB's decision to disaffiliate from UNITE HERE! or the ultimate outcome of that attempt.

The Employer posited "that the Board's schism cases do not discuss much the less resolve the dilemma of which union should be considered the incumbent." In my opinion, the Employer's plaint in that regard is inapposite because schism simply does not apply to this situation. While the fracture between UNITE and HERE! may well constitute a schism, occurring as it did at the highest level of the International, that is of no matter. The decision by the executive board of Local 75, at a much lower level of the hierarchy, to disaffiliate from UNITE HERE! and to become an "independent union" does not meet the criteria that the Board has established for schism.⁶

Conclusion

As noted above, Local 75 has represented the Employer's bargaining unit employees since at least 1993. A local union has extensive liberty to designate a spokesperson, liaison, or representative. Since about 2004, Local 75 has tapped WSRJB to fulfill such a role, and as noted above in footnote 5, WSRJB's charge has been nearly all-encompassing.⁷ Local 75 has continued to operate as it did prior to its move to disaffiliate, and because it maintained its longstanding relationship with WSRJB, its interface with the employees whom it represents, and with the Employer, changed not at all. Local 75's attempt to discontinue its relationship with UNITE HERE! may or may not endure, but that move has neither disturbed the reality that Local 75 is the certified bargaining representative of the Employer's employees, nor, save for the Employer's response, affected Local 75's day-to-day representation of employees. In these circumstances, no QCR exists, and the Petition must be dismissed.

⁶ The Board has emphasized that a conflict between a single local and its parent international, no matter how heated and vitriolic, does not present the basic intra-union conflict at the highest level required for the "schism" exception. *Swift & Co.*, 145 NLRB 756, 762 (1963) ("a [mere] disaffiliation movement with [the Local] born out of a policy conflict between that local and its international" does not satisfy the requirements for a schism). *Accord, Georgia Kaolin Company*, 287 NLRB 485, 488 (1987) ("Disaffection among members of a local with action taken by an international does not constitute schism," even when that dissatisfaction involves the events surrounding a convention—the highest governing body of the international); *Yates Industries, Inc.*, 264 NLRB 1237, 1249 (1982) (no schism when there exists "only a disagreement between a local and its international"); *Standard Brands, Inc.*, 214 NLRB 72, 73 (1974) (no schism when "certain members [of a local] were dissatisfied of a proper and legitimate action taken by its international," since that dissatisfaction does not create a "basic intra-union conflict over policy at the highest level of the international").

⁷ In mid-2007, WSRJB engaged the Workers' Resource and Action Center (WRAC) to serve as an initial contact point for employees who had questions or issues about contract enforcement. WRAC's role was to discuss the matter with the employee and, as warranted, file a grievance at the first step, request information, and refer it to a union representative. The grievance would then pass to WSRJB for further processing. The arrangement proved cumbersome, and in May 2008, the staffs of Local 75 and WSRJB decided to end the relationship. WSRJB advised WRAC about the termination insofar as employees represented by Local 75 were concerned, and instructed WRAC to turn over to WSRJB all information about grievances that involved such employees. Likewise, those employees were informed that, as had been the case prior to mid-2007, they should contact union representatives directly about contractual questions or issues.

Right to Request Review: Pursuant to the provisions of Section 102.67 of the National Labor Relations Board's Rules and Regulations, Series 8, as amended, you may obtain review of this action by filing a request with the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, DC 20570-0001. This request for review must contain a complete statement setting forth the facts and reasons on which it is based.

Procedures for Filing a Request for Review: Pursuant to the Board's Rules and Regulations, Sections 102.111 – 102.114, concerning the Service and Filing of Papers, the request for review must be received by the Executive Secretary of the Board in Washington, DC by close of business on **June 26, 2009**, at 5 p.m. (ET), unless filed electronically. **Consistent with the Agency's E-Government initiative, parties are encouraged to file a request for review electronically.** If the request for review is filed electronically, it will be considered timely if the transmission of the entire document through the Agency's website is **accomplished by no later than 11:59 p.m. Eastern Time** on the due date. Please be advised that Section 102.114 of the Board's Rules and Regulations precludes acceptance of a request for review by facsimile transmission. Upon good cause shown, the Board may grant special permission for a longer period within which to file.⁸ A copy of the request for review must be served on each of the other parties to the proceeding, as well as on the undersigned, in accordance with the requirements of the Board's Rules and Regulations.

Filing a request for review electronically may be accomplished by using the E-filing system on the Agency's website at www.nlr.gov. Once the website is accessed, select the E-Gov tab and then click on E-filing link on the pull down menu. Click on the "File Documents" button under Board/Office of the Executive Secretary and then follow the directions. The responsibility for the receipt of the request for review rests exclusively with the sender. A failure to timely file the request for review will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off line or unavailable for some other reason, absent a determination of technical failure of the site, with notice of such posted on the website.

Very truly yours,



Tim Peck
Acting Regional Director

⁸ A request for extension of time, which may also be filed electronically, should be submitted to the Executive Secretary in Washington, and a copy of such request for extension of time should be submitted to the Regional Director and to each of the other parties to this proceeding. A request for an extension of time must include a statement that a copy has been served on the Regional Director and on each of the other parties to this proceeding in the same manner or a faster manner as that utilized in filing the request with the Board.