UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

PG PUBLISHING CO., INC. D/B/A PITTSBURGH POST-GAZETTE	
And	
THE NEWSPAPER GUILD OF PITTSBURGH A/W COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO, CLC, AND ITS LOCAL 38061	**Case 06-CA-212627**
PITTSBURGH MAILERS UNION NO. M-22, A/W THE PRINTING, PUBLISHING, AND MEDIA WORKERS SECTOR OF THE COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO, AND ITS LOCAL 14842	**Case 06-CA-217525**
PITTSBURGH TYPOGRAPHICAL UNION NO. 7, A/W THE COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO, AND ITS LOCAL 14827	**Case 06-CA-217527**
PITTSBURGH TYPOGRAPHICAL UNION NO. 7, A/W THE COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO, AND ITS LOCAL 14827	**Case 06-CA-217529**
NEWSPAPER, NEWSPRINT, MAGAZINE AND FILM DELIVERY DRIVERS, HELPERS AND HANDLERS, A/W THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS AND ITS LOCAL UNION NO. 211 OF ALLEGHENY COUNTY	**Case 06-CA-217980**
PITTSBURGH NEWSPAPER PRINTING PRESSMEN'S/PAPER HANDLERS LOCAL UNION NO. 9N, A/W THE GRAPHIC COMMUNICATIONS CONFERENCE/INTERNATIONAL BROTHERHOOD OF TEAMSTERS AND ITS LOCAL 24M/9N	**Case 06-CA-218637, and**
INTERNATIONAL UNION OF OPERATING ENGINEERS, AFL-CIO, LOCAL 95	**Case 06-CA-220480**

EXCEPTIONS TO THE DECISION OF THE ADMINISTRATIVE LAW JUDGE

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1. To the finding of the Administrative Law Judge (ALJ) that the refusal of PG Publishing Co., Inc. d/b/a Pittsburgh Post-Gazette (Respondent) to pay the fund annual contribution for 2018 was an unfair labor practice. (ALJD 1, l. 37-39).

2. To the conclusion of the of the ALJ that Board precedent supports the above finding and does not support the Respondent's claim that its refusal to continue the annual increases and to maintain the 2017 fund contribution rate satisfied the National Labor Relations Act (Act). (ALJD 1, l. 38-40).

3. To the ALJ's finding that the Respondent's defenses were without merit. (ALJD 1, l. 41-43).

4. To the ALJ's finding that "The Union" filed a posttrial brief. (ALJD 3, l. 4).

5. To the ALJ's finding that in negotiations for successor agreements to the 2014 Agreements, common proposals are being made by the parties. (ALJD 8, l. 17-18).

6. To the ALJ's finding that in the fall of 2018 the Fund sent a memo to employer participants in the health and welfare fund notifying them of the new monthly contribution rate to be effective January 2018. (ALJD 8, l. 35).

7. To the ALJ's determination to credit the testimony of Union Attorney Joe Pass. (ALJD 11, n. 12).

8. To the ALJ's reliance upon *Daily News of Los A*ngeles, 315 NLRB 1236 (1994), enfd. 73 F.3d 406 (D.C. Cir. 1996), for the proposition that "whenever the employer by promises or by a course of conduct has made a particular benefit part of the established wage or compensation system...." (ALJD 13, l. 1-49).

9. To the ALJ's statement that the decisive issue in these cases is whether the Fund's annual contribution rate increases which were required to be paid under the terms of the 2014 Agreements were themselves terms and conditions of employment that must be continued during bargaining for a successor contract. (ALJD 14, l. 1-4).

10. To the ALJ's holding that settled precedent holds that the status quo is determined by continuing the employees' employment terms and conditions. (ALJD. 14, 9-12).

11. To the ALJ's citation to *Finley Hospital*, 362 NLRB No. 102 (2015), enf't. denied in relevant part, 827 F.3d 720 (8th Cir. 2016) for the proposition that it is a violation of the Act for an employer to refuse to continue anniversary wage increases after the expiration of the one-year collective bargaining agreement that provided for annual wage increase for each employee on their anniversary for the (one-year term of that agreement). (ALJD 14, l. 14-31).

12. To the conclusion of the ALJ that the increase in contribution rates was a term and condition of the 2014 Contracts that must be continued under the Act and that such conclusion is clear from a review of terms and operations of the 2014 Agreements. (ALJD 14, l. 43-45; ALJD 15, first paragraph).

13. To the conclusion of the ALJ that, because the language and operation of the 2014 Agreements prescribed as a term and condition of employment under the contract that during the term of the contract the Respondent was required to pay the annual fund increases (up to 5%), the Respondent, by failing to meet the 2018 funding increase, violated its statutory duty to continue the status quo of funding the increase in contribution rates to pay for the Fund's health care for the employees and altered the status quo. (ALJD 15, l. 5-8).

14. To the conclusion of the ALJ that his conclusion that the Respondent altered the status quo in terms and conditions of employment was based solely on the terms and operation of

the 2014 Agreements to pay contribution rate increases and the admitted contractual obligation of the Respondent to pay those contribution rate increases during the terms of each Agreement. (ALJD 15, l. 10-12).

15. To the conclusion of the ALJ that his conclusion was forcibly buttressed by the fact that the health care coverage schedule of benefits attached to each 2014 Agreement could only be maintained with contribution rate increases. (ALJD 15, l.13-15).

16. To the conclusion of the ALJ that the benefit schedule, as amended in 2014 was part of the terms and conditions of employment when the 2014 Agreements expired (or were temporarily extended) at the end of March 2017. (ALJD 15, l. 16-18).

17. To the holding of the ALJ that the statutory duty not to change the status quo would be meaningless if the Respondent's duty to continue the contribution rate increases—contractually mandated in 2016 and 2017—was not a term and condition of employment and could be unilaterally altered. (ALJD 16, l. 2-5).

18. To the ALJ's reliance upon *Intermountain Rural Electric Association*, 305 NLRB 783 (1991). (ALJD 16, l. 8-50; ALJD 17, l. 1-8).

19. To the ALJ's conclusion is that the Respondent's position flows from a basic error as to what it means to maintain the statutory status quo. (ALJD 17, 11-13).

20. To the ALJ's formulation that the issue is not whether General Counsel can point to language in the 2014 Agreements showing that the Respondent agreed to pay the annual increases in 2018 and thereafter, but whether the Respondent can point to language showing that the parties intended to preclude the Respondent from continuing the status quo of contribution rate increases in 2018. (ALJD 17, l. 30-34).

21. To the ALJ's conclusion that unless the Respondent can show that the parties intended for it to be free of the statutory duty to maintain what he finds to be the status quo obligation, the Respondent is required to continue paying the contribution rate increases (until impasse or agreement). (ALJD 17, l. 34-36).

22. To the statement of the ALJ that, as a matter of law, standard "durational" contract language does not serve as evidence of an intent by the parties to alter the status quo after contract expiration. (ALJD 18, l. 14-16, l. 18-20).

23. To the ALJ's conflation of contractual durational language with the terms of the 2014 Agreements that provide for contribution rate increases for only 2016 and 2017. (ALJD 18-23).

24. To the ALJ's hyperbolic conclusion that while the contractual rate increase provisions were a shield for years 2016 and 2017, they cannot be turned into a sword that alchemically bars the Respondent from paying any increase to maintain the status quo after 2017. (ALJD 18, l. 25-28).

25. To the ALJ's conclusion that the Respondent's reliance upon *Hempstead Lincoln Mercury Motors Corp.,* 351 NLRB 1149 (2007) is misplaced. (ALJD 18, l. 29-30).

26. To the ALJ's rejection of the provision of the 2014 Agreements that states the Respondent is not "liable for any other payment to the Fund, other than as stated above." (ALJD 18, l. 31-32; ALJD 19, l. 1-21).

27. To the ALJ's conclusion that absent impasse or agreement and as a matter of statute, not contract, the Respondent must pay the Fund annual contribution rate increases just as it did in each successive year of the contract, and that when in failed to do so in January 2018, it altered the status quo of the employment conditions. (ALJD 19, l. 22-25).

28. To the ALJ's conclusion that there was no need to consider a "traditional past practice" analysis. (ALJD 19).

29. To the ALJ's rejection of the Respondent's contract coverage defense. (ALJD19, l. 27-36; ALJD 20, l. 1-38).

30. To the ALJ's characterization of Respondent's Brief to the Administrative Law Judge as "calumnious." (ALJD 22, n. 22).

31. To the ALJ's denial of the Respondent's request for costs, attorneys' fees or other sanctions. (ALJD 22, n.22).

32. To the ALJ's conclusions that the omission of the title from GC. Ex. 2(b) was an inadvertent copying error and that because it was corrected at the hearing by the Respondent, there is no concern. (ALJD 22, n. 22).

33. To the ALJ's conclusion that the Respondent's Section 302 dispute is simply with the Board's application of the status quo doctrine. (ALJD 24, l. 4-5).

34. To the ALJ's conclusion that this case—including the Respondent's Section 302 defense—rises or falls on the determination of the amount of the Respondent's status quo obligations under Section 8(a)(5) and if the status quo is correctly applied to find that the contribution increase is an employment condition under the terms of the expired contracts, then the Respondent's Section 302 argument disappears. (ALJD 24, l. 7-11).

35. To the ALJ's conclusion that the Respondent's status quo obligations are based on the written terms of the Expired Contracts, which satisfies Section 302. (ALJD 24, l. 24-26).

36. To the ALJ's Conclusion of Law 9, that the Respondent violated Section 8(a)(5) and (1) of the Act, beginning January 1, 2018, by unilaterally discontinuing to pay up to a 5% annual increase in contribution rates to the Western Pennsylvania Teamsters and Employers

Welfare Fund, for health care coverage for employees in the 7 bargaining units, resulting in a reduction in health care coverage for employees commencing April 1, 2018. (ALJD 28, l. 33-37).

37. To the ALJ's proposed Remedy that the Respondent be ordered to cease and desist from certain unfair labor practices and take certain affirmative action. (ALJD 29, l.3-5).

38. To the ALJ's proposed Remedy that the Respondent rescind "the unilateral change" and before implementing changes in wages, hours, or other terms and conditions of unit employees, notify and on request bargain with the Unions to a lawful impasse." (ALJD 29, l. 8-10).

39. To the ALJ's proposed Remedy that the Respondent shall reinstitute payments of annual increases to the Fund, to make the Fund and employees whole by making all delinquent Fund contributions on behalf of those employees, and to reimburse unit employees for any expenses ensuing from its failure to continue to pay the increased annual contributions to the Fund, including all expenses that were not covered by the Fund's health care plan as a result of the Fund's reduction in benefits attributable to the Respondent's failure to pay the required contributions. (ALJD 29, l. 12-29).

40. To the ALJ's proposed Remedy that the Respondent post and electronically distribute an appropriate informational notice. (ALJD. 29, l. 31-42).

41. To the ALJ's recommended Order that the Respondent cease and desist from unilaterally changing the terms and conditions of employment of its unit employees by discontinuing to pay up to a 5% annual increase in contribution rates to the Fund for health care coverage for unit employees, without providing the employee's collective bargaining representatives notice and an opportunity to bargain to a lawful impasse. (ALJD 30, l. 10-17).

42. To the ALJ's recommended Order that the Respondent, before implementing any changes in wages, hours, or other terms and conditions of employment, notify and on request bargain with the Newspaper Guild of Pittsburgh a/w Communications Workers of America, AFL-CIO and its Local 38061 to a lawful impasse as the exclusive collective bargaining representative of the employees in the bargaining unit. (ALJD 30, l. 25-29).

43. To the ALJ's recommended Order that the Respondent, before implementing any changes in wages, hours, or other terms and conditions of employment, notify and on request bargain with the Pittsburgh Mailers Union No. M-22, a/w the Printing, Publishing and Media Workers Sector of the Communications Workers of America and its Local 14842 to a lawful impasse as the exclusive collective bargaining representative of the employees in the bargaining unit. (ALJD 31, l. 1-6).

44. To the ALJ's recommended Order that the Respondent, before implementing any changes in wages, hours, or other terms and conditions of employment, notify and on request bargain with the Pittsburgh Typographical Union No. 7, a/w the Communications Workers of America, AFL-CIO, and its Local 14827 to a lawful impasse as the exclusive collective bargaining representative of the employees in the Advertising and Finance bargaining units. (ALJD 31, l. 19-24).

45. To the ALJ's recommended Order that the Respondent, before implementing any changes in wages, hours, or other terms and conditions of employment, notify and on request bargain with the Newspaper, Newsprint, Magazine and Film Delivery Drivers, Helpers and Handlers a/w the International Brotherhood of Teamsters and its Local Union No. 211 of Allegheny County to a lawful impasse as the exclusive collective bargaining representative of the employees in the bargaining unit. (ALJD 32, l. 20-25).

46. To the ALJ's recommended Order that the Respondent, before implementing any changes in wages, hours, or other terms and conditions of employment, notify and on request bargain with the Pittsburgh Newspaper Printing Pressmen's/Paper Handlers Local Union No. 9N, a/w the Graphic Communications Conference/International Brotherhood of Teamsters and its Local 24M/9N to a lawful impasse as the exclusive collective bargaining representative of the employees in the bargaining unit. (ALJD 32, l. 33-39).

47. To the ALJ's recommended Order that the Respondent, before implementing any changes in wages, hours, or other terms and conditions of employment, notify and on request bargain with the International Union of Operating Engineers, AFL-CIO, Local 95 to a lawful impasse as the exclusive collective bargaining representative of the employees in the bargaining unit. (ALJD 33, l. 1-5).

48. To the ALJ's recommended Order that the Respondent rescind the change in terms and conditions for its unit employees that was unilaterally implemented on January 1, 2018, when the Respondent discontinued paying up to a 5% annual increase in contribution rates to the Fund for health care coverage for employees in each of the 7 bargaining units. (ALJD 33, l. 14-17).

49. To the ALJ's recommended Order that the Respondent make all annual increases in contributions to the Fund that it failed to make, including any additional amounts due to the Fund on behalf of unit employees and to continue to make the annual increase in contributions under the Respondent bargains with the Unions in good faith to an impasse or to an agreement. (ALJD 33, l. 19-23).

50. To the ALJ's recommended Order that the Respondent reimburse unit employees for any expenses resulting from the failure to pay the annual increase in Fund contributions up to 5%. (ALJD 33, l. 25-27).

51. To the ALJ's recommended Order that the Respondent post and distribute a Notice to Employees and to each of the terms of the proposed Notice to Employees. (ALJD 33, l. 49-42; ALJD 34, l. 1-2; ALJD Appendix).

52. To the ALJ's finding that R. Ex. 5 projected annual Fund contribution rates and increases to be paid by Respondent for the years 2015, 2016, 2017 and 2018. (ALJD 7, l. 20-24).

53. To the ALJ's conclusion that the payment of annual Fund contribution increases was established as a term and condition of employment through the 2014 Agreements and was part of the status quo and subject to the rule on impasse. (ALJD 23, n. 23).

Dated this 13th day of November 2018.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned, as attorney for Respondent, hereby certifies that a true and exact copy of the foregoing Exceptions to the Decision of the Administrative Law Judge was electronically filed via the NLRB E-Filing System with the National Labor Relations Board and served on the parties listed below via email and first-class mail, postage prepaid:

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This 13th day of November 2018.

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