

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

PENNSYLVANIA AMERICAN WATER CO.

Employer

And

**UTILITY WORKERS UNITED ASSOCIATION,
LOCAL 537**

CASE NO. 06-RC-218209

Petitioner

And

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

Intervenor

**PETITIONER'S STATEMENT IN
OPPOSITION TO INTERVENOR'S REQUEST FOR REVIEW**

AND NOW, come the Petitioners, Douglas Opalko, and the Utility Workers United Association, Local 537 (hereinafter "the Association"), and submit this Response to Intervenor's Request for Review.

STATEMENT OF FACTS

Pennsylvania American Water Company ("PAWC" or the "Employer") is a public utility which provides water service to its industrial, commercial, and residential customers in Western Pennsylvania. Various of its employees are represented for collective bargaining purposes by Utility Workers Union of America, AFL-CIO, System Local 537 ("Local 537" or the "Intervenor"). The unit that is the subject of this litigation constitutes the permanent and temporary production, maintenance, and clerical employees at PAWC's operations in the Western Pennsylvania areas outside of Pittsburgh, the areas being the Butler, Clarion,

Uniontown, Indiana, Kane, Kittanning, New Castle, Punxsutawney, Warren, McMurray and Valley, Pennsylvania locations, called the Outside Districts by the parties.

In early 2018, a separate labor organization known as the Utility Workers United Association, Local 537 (hereinafter called “the Association” or the “Petitioner”) was formed. It was formed by members of Intervenor Local 537 because many of the members of Intervenor Local 537 were clamoring to disaffiliate from Intervenor Local 537’s national body, the Utility Workers Union of America, AFL-CIO (hereinafter sometimes referred to as the “National Union”). While the formation of the Petitioner occurred as part of a process to disaffiliate from the Intervenor’s national body, as is relevant to these proceedings, the question here is whether a Decertification Petition that was filed by one of the Outside District employees and joined in by the Petitioner after its formation is barred by a collective bargaining agreement allegedly in force in the Outside Districts.

As will be discussed hereinafter, the Intervenor’s national body imposed a trusteeship on the Intervenor, and the National Union commenced litigation in the United States District Court for the Western District of Pennsylvania (“the Federal Court litigation”) to validate the trusteeship. That litigation is still pending and while the Intervenor does not raise any objection to the decision of the Regional Director that the Federal Court litigation does not bar the representation petition under discussion here, the Federal Court litigation will be touched upon to a certain extent in this response.

On April 10, 2018, a Petition for Representation was filed with the National Labor Relations Board relative to the Outside Districts unit at No. 06-RC-218209 by Douglas Opalko, an employee of PAWC employed in the Outside Districts. Mr. Opalko sought an election among the Outside District employees to determine whether they should be represented for collective

bargaining purposes by the Association or by the Intervenor. The labor agreement between PAWC and Local 537 covering the Outside Districts employees had expired on November 17, 2017 and although a meeting had been held on March 17, 2018 at which a vote to ratify the results of negotiation for a successor contract was held, and at which the employees voted to approve the proposals that were explained at that meeting, the written collective bargaining agreement that succeeded the agreement that expired on November 17, 2017 was not signed until April 16, 2018, six days after the filing of the Petition for Representation.

The negotiations for a collective bargaining agreement to replace the one that was due to expire on November 17, 2017 began sometime in October of 2017. The parties to that agreement were not able to negotiate a successor contract before November 17, 2017, and they continued their negotiations thereafter. By early March of 2018, the negotiations had gotten to the point where Local 537 was willing to put before the union membership the question of approving a new set of conditions of employment. The Employer and Local 537, during their negotiations, would revise their preceding contract (which ran from Dec. 8, 2012 to Nov. 17, 2017) electronically by having mutual access to a computer program called Sharepoint, and they would pass those revisions back and forth via e-mail. This was done so that the parties would have a working draft document that dealt with the negotiations as they proceeded. In some cases, one party would refer to their revisions as a “tentative agreement”, to which the other party would respond as “agreed” or “ok” and in other cases, their various positions would be passed back and forth, but neither party would mark the revision as “agreed” or “ok”. By March 3, 2018, the parties had finished this electronic “back and forth” and their last electronic version of the old agreement contained some revisions marked “agreed”, some marked “ok” and some, including the wages, not marked in any way.

Local 537 held a contract ratification meeting with its members on March 17, 2018 and the terms that were presented to the membership by the union officials on that day were approved by the membership. The then president of Local 537, Kevin Booth, notified the Employer's chief negotiator, Robert Burton, that the membership ratified the presentation that was made to it. However, no wage increases were implemented or paid until April 27, 2018. (Employer Ex. 16), nor were any other terms or conditions of employment implemented before then.

On March 19, 2018, the members of Local 537 voted to disaffiliate from the National Union and to become members of the Association. On that same day, the National Union imposed its trusteeship on Local 537. From and after March 19, 2018, all the officers of Local 537 were removed from office by the National Union. On April 10, 2018, the instant RC petition was filed by Douglas Opalko, an employee of the Employer in the Outside Districts bargaining unit. On April 16, 2018, the trustee for Local 537 and an Employer representative signed a formal collective bargaining agreement to replace the one that had expired on November 17, 2017. However, other than some job bid postings for jobs that were not expected to be filled for some weeks (Employer Ex. 14), none of the terms of the signed agreement had been put in place by the time that the RC petition was filed and the job posting itself was only meant to deal with jobs that would not be in effect for some time after the filing of the Petition for Representation. The wage increases mentioned in the agreement were not put in place until April 27, 2018, which was after the signing of the document by the trustee and the Employer and after the filing of the representation petition. (Employer Ex. 16). After the date that the representation petition was filed, the trustee and the Employer were still working out the language for various matters that

had been the subject of the negotiations. Testimony also reveals that historically, a ratified contract was not considered to be in force until the formal contract document was executed.

Not long after the Representation Petition was filed, the Employer and the Intervenor filed separate Motions to Stay Deadlines, contending that the National Labor Relations Board should await the outcome of the pending federal court proceedings before deciding what to do with the Representation Petition. Both the Employer and the Intervenor also argued that there was a contract bar in the Outside Districts case. The Region required the parties to respond to an Order to Show Cause why the Region should not dismiss the representation petition, either because it was barred by the Federal Court litigation or because there was a contract bar. All parties did so, and the Region determined that a hearing should be held to develop evidence on the contract bar issue relative to the Outside Districts contract, but that the parties' responses provided enough information for the Region to decide all the other issues. A hearing was held on October 16, 2018 for the parties to present their evidence on the contract bar issue in this case. Following the conclusion of the hearing and the receipt of briefs from all parties, the Region decided in the instant case that the Federal Court litigation did not bar the representation petition and that the recently ratified contract proceedings did not result in a bar to an election. The Intervenor then filed its Petition for Review, stating that there was a contract bar in this matter. It asked the Board to either overrule decades of precedent or create a one-time exception to that precedent for the benefit of the Intervenor. It stated further that the failure of Kevin Booth, the president of the Intervenor during the Outside Districts contract negotiations, to testify should result in an inference that his testimony would be adverse to the Petitioner's case.

QUESTIONS PRESENTED

Does The Pending Federal Court Litigation Preclude A Decision On A Question Of Representation?

Is There A Contract Bar To The Outside Districts Petition/Should The Board Either Overrule Its Contract Bar Precedents Or, In The Alternative, Create An Exception To The Precedents To Accommodate The Intervenor?

Should Kevin Booth's Failure To Testify Result In An Inference That His Testimony Would Be Adverse To The Petitioner's Case?

Is The Intervenor Entitled To Extraordinary Relief?

ARGUMENT

Does The Pending Federal Court Litigation Preclude A Decision On A Question Of Representation?

Since the Intervenor does not raise a question relative to the Regional Director's determination that Federal Court litigation does not bar the representation petition under review, that issue will not be addressed in this Statement in Opposition. However, it is submitted that this very issue has already been dealt with by the Board in West Virginia American Water Co., 09-RC-219179 (2018), unreported, where the exact same Federal Court litigation was held not to prevent the processing of a representation petition filed there.

Is There A Contract Bar To The Outside Districts Petition/Should The Board Either Overrule Its Contract Bar Precedents Or, In The Alternative, Create An Exception To The Precedents To Accommodate The Intervenor?

An analysis of the Intervenor's Request for Review must start with the reasons that the National Labor Relations Board will consider in ruling on that request. As are germane to this case, those reasons, which are found in the Board's Rules and Regulations at 102.67(d), are the following:

- “(1) That a substantial question of law or policy is raised because of:
 - (i) The absence of; or
 - (ii) A departure from, officially reported Board precedent.
.....
- (4) That there are compelling reasons for reconsideration of an important Board rule or policy.”

As the Region correctly pointed out, not only does a party asserting the existence of a contract bar bear the heavy burden of proving the existence of the contract bar, Roosevelt Memorial Park, 187 NLRB 517 (1970), for a contract to act as a bar, the fact that it is a bar must appear within the document itself, without reference to extrinsic evidence. See, e.g., Waste Management of Maryland, 338 NLRB 1002 (2003); United Health Care Services, 326 NLRB 1379 (1998); Jet-Pak Corp., 231 NLRB 552 (1977); Union Fish Co., 156 NLRB 187 (1965).

The Intervenor candidly admits that the Regional Director's decision fully complies with over seventy years of unbroken Board precedent. See, e.g., the following statement in the Intervenor's Request for Review:

“Concededly, the Regional Director was likewise correct in ruling that the Board's precedents establish a bright-line rule that extrinsic evidence is inadmissible to show that the parties have in fact reached a full agreement on the terms of a new contract.” Request for Review, p. 6

The Intervenor then boils its position in this case down to the request that the Board should “. . . revisit this bright-line rule and recognize a limited equitable exception to that rule covering the sui generis factual circumstances presented here.” Request for Review, p. 6. Stated another way, the Intervenor realizes that the Regional Director's decision is correct in all respects, but the Intervenor would like a “pass” in this case so that it can prevail despite the unbroken line of precedent that has governed the contract bar rules for so long. In addition to the fact that the Intervenor's position is nothing more than a blatant request that this Board ignore all its past precedents just so the Intervenor can prevail here, the reasons that it cites to support its position establish the very reasons why the Board's bright-line rule is salutary and should not be altered one iota.

The Intervenor states that Employer witness Robert Burton testified (1) that the Employer and Local 537 had reached a verbal agreement and union negotiator Kevin Booth sent a text

message to Mr. Burton on February 23, 2018 supposedly confirming this, and (2) Mr. Burton testified that the union membership had ratified the red-line document and Mr. Booth sent him a text message verifying this as well. The error in this logic is multi-faceted. The Intervenor conveniently overlooks the following compelling evidence that derogates from its position.

1. Employer Exhibit 3 is an exchange of text messages between the Mr. Burton and Mr. Booth. Mr. Booth suggested telling employees that “We have reached a tentative agreement and details will follow pending a joint review of the documents for accuracy”. Mr. Burton replied that this “Sounds good to me”. Mr. Booth replied that “We actually will be reviewing the red line document.” Mr. Burton replied “Agree”. These exchanges occurred after the last February 23, 2018 face to face meeting. (Emphasis added).
2. Per the same exhibit, as of March 6, 2018, the parties still “. . . [needed] to discuss a couple of things.”
3. Employer Exhibit 8 is a text message exchange between Mr. Booth and Ms. Jamie Devine, the Employer representative who was making most of the Employer entries to Employer Exhibit 1. She sent the February 23, 2018 version of Employer Exhibit 1 to Mr. Booth and the text message exchanges between that date and March 14, 2018 show that changes to Employer Exhibit 1 were still being made. However, a review of Employer Exhibit 1 reveals that other than a punctuation change on March 19, 2018, and a minor wage chart adjustment made on March 3, 2018, there is not one substantive change to Employer Exhibit 1 made after February 23, 2018, even though Employer Exhibit 8 shows that there were at least three areas where inquiries were still being made.
4. Employer Exhibit 13 is an e-mail exchange that reveals that what the Employer saw as the parties’ agreement on a new pipeline inspector classification was not what the Union

presented to the membership for ratification, and the parties then discussed the impact of that issue.

5. Petitioner Exhibit 1 reveals that on March 20, 2018, which was three days after the ratification meeting of March 17, 2018, and almost a month after the parties' last face to face negotiation meeting, Mr. Booth contacted Ms. Devine on behalf of the Employer to find out when they could ". . . go over the red line version of the contract." (Emphasis added). There would be no reason for this inquiry unless finalizing the red line version was necessary to verify that the parties had in fact reached a meeting of the minds. Ms. Devine never replied to that inquiry since the trusteeship had been declared the previous day, but curiously, she never reached out to the trustee to tell him that a review of the red line document needed to occur. (N.T., p. 73). Instead, the Employer and the Trustee simply signed a document on April 16, 2018.

The instances cited above give the lie to the Intervenor's claim that there was an indisputable agreement arrived at by the parties. What was really to happen was that the parties understood that until they had a final written agreement in place, they did not have an agreement that would bar a representation petition. If nothing else shows that the Intervenor's spin on Mr. Burton's testimony is misplaced, Mr. Burton saying "Agree" to Mr. Booth's statement that "We actually will be reviewing the red line document" certainly shows why the Board has not deviated from its bright-line rule for more than 70 years.

The Intervenor argues that since there was a ratification vote following the conclusion of the Outside Districts negotiations, which vote occurred before the filing of the representation petition in that case, a valid contract was entered into which bars these representation proceedings. While the Intervenor concedes that there was no formal agreement signed until

after the representation petition was filed (N.T. p. 41, 58), the Intervenor insists that the ratification proceedings and the e-mail communications between the Employer and Local 537 both before and after the ratification meeting should form the basis of an exception to the requirements of Appalachian Shale Products Co., 121 NLRB 1160 (1958), which case requires a contract to be signed before the filing of a representation petition for the contract to serve as a bar to a representation election. There are several cases where ratification meetings were held before contracts were signed and without exception, the Board has held that the occurrence of a ratification meeting is of no moment in a contract bar issue. In Seton Medical Center, 317 NLRB 87 (1995), cited by the Regional Director, a tentative agreement was ratified but not signed before a representation petition was filed, and the Board held that the ratified but unsigned agreement was not a bar to a representation petition. In Valley Doctors Hospital, Inc., a/k/a Riverside Hospital, 222 NLRB 907 (1976) a letter signed by the employer transmitting a proposed contract, which contract was ratified by the union membership and thereafter signed by the union officers and returned to the employer, was held to be a contract that barred a representation petition filed the day after the union officers signed the contract because it was the signing by the union officers after ratification and before the filing of the representation petition that raised the bar. In the instant case, there simply was no signed agreement at the time that the ratification petition was filed.

The Intervenor also conveniently overlooks several other facts that clearly show that the Employer and the Union both contemplated a formal written agreement as the culmination of their negotiation process. Employer Exhibit 5, dated March 19, 2018, two days after ratification, is an e-mail transcript from Mr. Burton to other management individuals stating that :. . . there are a lot of changes that we made . . .that now have to be implemented. . . [We need] to be sure

we are hitting the ground running with the right procedures and practices.” Employer Exhibit 10 reveals that after the March 17 ratification meeting, Employer representatives received an e-mail from an Employer negotiator stating that now that there was a ratification, “We will work now to finalize the fully executed and signed contract.” This e-mail was sent on March 17, at least two days before Employer Exhibit 1 was produced, so the quoted language had to mean that the parties were now proceeding to prepare a final document for review and signature. If a document had to be “finalized” and reviewed, at that point, the parties did not have an agreement that both considered as binding. These facts are more than sufficient to justify the Regional Director’s decision and are also more than sufficient to ignore granting the Intervenor a “limited equitable exception” to over seventy years of fixed precedent.

The evidence produced by the Employer and binding on the Intervenor also indicates that even after the ratification, the Employer had significant questions about what had been agreed upon by the parties. Employer Exhibit 11 was an e-mail exchange between an Employer negotiator and the Employer payroll department on March 19, 2018. The wage tables being sent at that time were evidently in need of updating and possible modification. Again, this was after the ratification meeting of March 17 and the Employer offered absolutely no proof that the wage table modifications referred to in Employer Exhibit 11 were the same wages that the parties agreed upon and which were ratified on March 17. Employer Exhibit 12 shows that as of April 2, 2018, the Employer had still not verified the accuracy of the wages in the wage table and it would need at least three more weeks to do so. Clearly, if “internal processes” were needed to establish “accuracy in our payroll department”, the parties did not yet have a document that they both accepted as their agreement. Employer Exhibit 16 reveals that it was not until April 27, 2018 that the agreed-upon wage rates were paid to the employees. If the Intervenor’s position is

that as of the March 17, 2018 ratification meeting, there was a binding agreement in place that would bar a representation petition, one must wonder why it would take almost six weeks to implement the agreed-upon wage increases. While the Employer sought to establish that it took that long for the internal payroll process to be updated, the real reason is found in Employer Exhibits 11 and 12, namely, that there was still a doubt about just what had been agreed to.

There is no set of “signed” tentative agreements here. All that exists is a “red-line” document with some sections marked as “agreed” or “ok” and others not marked with any indication of agreement. See Employer Ex. 1. While there are text messages that refer to the ratification of the proposals brought back to the union membership to vote upon, there is no evidence that the ratification alone was sufficient to constitute a written, signed agreement that would constitute a contract bar. The requirement for a “signed” agreement as set forth in Appalachian Shale Products Co. supra, means exactly that—there must be actual, written signatures on a document or complete series of documents. An exchange of unsigned letters or documents, which clearly can include e-mails and text messages, does not satisfy the requirements of Appalachian Shale Products Co., supra. In its determination that an exchange of tentative agreements, letters or other communications can form a written agreement that can constitute a bar, the Board in Appalachian Shale Products Co., supra, stated that—

“The Board recognizes that on occasion contracts are not embodied in formal documents and that the parties, for reasons best known to them, execute and sign an informal document which nonetheless contains substantial terms and conditions of employment. Sometimes the agreement is arrived at by an exchange of a written proposal and a written acceptance, both signed. The rule stated above in no way diminishes the effectiveness of such contracts as a bar; it simply makes clear the necessity for signing the contracts or documents constituting the agreement of the parties.” Emphasis added.
121 NLRB, at p. 1162.

The requirement that there be documents showing mutual agreement on all points, even if all they consist of are letters back and forth between the parties, still requires that these documents must be signed. See Valley Doctors Hospital, Inc., a/k/a Riverside Hospital, supra, where the Board relied specifically on Appalachian Shale Products Co., supra, and again reinforced the necessity for signed documents. The reason for such logic is very clear—a manual signature is something that is difficult, if not impossible, to controvert, whereas oral statements, text messages and e-mail messages are not nearly as secure. The position of the Intervenor that the texts and e-mails that it relies upon constitute a contract that can bar a representation election simply does not satisfy the requirements of Appalachian Shale Products Co., supra, which holds that there is a “. . . necessity for signing the contracts or documents constituting the agreement of the parties.” 121 NLRB, at p. 1162, emphasis added. The Regional Director correctly cited Seton Medical Center, supra, to show that even after the internet/e-mail age, the complete signing requirement was still in effect. While Seton Medical Center, supra, did not deal with electronic signatures, that case makes it abundantly clear that a total signed agreement consisting either of one unitary agreement containing all elements agreed upon and signed by both parties, or several tentative agreements containing all elements agreed upon and all signed by all parties is necessary.

An examination of the evidence clearly reveals that neither the Employer nor the Intervenor came anywhere near sustaining their burdens of proof. Instead, the evidence shows that the parties conditioned the finality of the agreement upon its formal signing. A “red-line” version of the 2012-2016 Outside Districts agreement was proffered to establish the existence of a document constituting a contract that would bar an election. (Employer Ex. 1). In some cases, the Employer representative who was making entries on this document would denominate some

of the entries as a “Tentative Agreement”, and in some cases, the Union representative would respond that he “agreed” (see, e.g., Employer Ex. 1, page 30), in other cases he would respond with “okay” (see, e.g., Employer Ex. 1, page 32) and in other cases, he would not respond at all (see, e.g., Employer Ex. 1, page 27). The lack of his response is especially apparent in the wage tables (see, e.g., Employer Ex. 1, pages 52, 55, 56). The Intervenor, candidly stating that it agrees that all the outstanding authority indicates that what transpired in this case does not establish a contract bar, seeks a “limited equitable exception” so that in this specific case, it can prevail.

The requirements of Appalachian Shale Products Co., supra, set forth the salutary rule that--

“ . . . [for] a contract to constitute a bar [it] must be signed by all the parties before a petition is filed and that unless a contract signed by all the parties precedes a petition, it will not bar a petition even though the parties consider it properly concluded and put into effect some or all of its provisions.”
121 NLRB, at p. 1162, emphasis added.

This rule was adopted to prevent the very thing that the Intervenor asks the Board to do, namely embark on an analysis of back and forth testimony and combating text and e-mail messages that can be interpreted in different ways. All the granting of a “limited equitable exception” to the Intervenor will do will be to give rise to requests for innumerable limited equitable exceptions hereafter. The evidence that the Intervenor cites as clearly establishing the existence of an agreement is clearly subject to dual interpretation. The very person that the Intervenor relies upon to establish its case, Mr. Burton, also “agreed” that “We actually will be reviewing the red line document” and “. . . details will follow pending a joint review of the documents for accuracy” “Sounds good to me” (Employer Ex. 3). In addition to showing that the ratification of the red-line document comes nowhere near the requirement of a signed agreement as required by

Appalachian Shale Products Co., supra, this testimony shows the utter folly of granting a “limited equitable exception”. The Region correctly decided that “. . . the parties’ written document does not bar the election because it was not sufficiently complete and there is no signed document specifying the overall terms of the contract at the time that the petition was filed. (Amended Decision and Direction of Election, p. 6). The Intervenor’s request for a “limited equitable exception” is nothing more than a desperate attempt to salvage its case despite decades of well settled law. One could hardly imagine a worse case from which to craft either an exception to the well settled contract bar rules or a revision of those rules.

Should Kevin Booth’s Failure To Testify Result In An Inference That His Testimony Would Be Adverse To The Petitioner’s Case?

The Employer and the Intervenor state that neither Mr. Booth nor anyone else testified on behalf of the Association. This statement is untrue. Douglas Opalko testified on behalf of the Association. Mr. Booth was subpoenaed by the Association to testify on its behalf, but the record reveals that due to a personal family emergency, he was unable to attend. His absence should not result in any adverse inference, since he was not an unknown, surprise witness, and the Employer or the Intervenor could have subpoenaed him if either of them thought that his testimony was necessary. Of greatest import, however, is the fact that the drawing of an adverse inference due to the absence of a witness is within the sole purview of the Regional Director as the finder of fact, and the Regional Director’s failure to make such an inference was totally within her discretion.

Is The Intervenor Entitled To Extraordinary Relief?

A party is entitled to extraordinary relief such as a stay only where the requesting party can provide a clear showing that relief is necessary under the particular circumstances of the case. Rule/Regulation 102.67(j)(2). The instant case is one that deals with the usual situation of

a direction of election where a contract bar has been interposed by the Employer as a defense and rejected by the Regional Director. There is nothing unique about such a situation and it is probably one of the usual types of cases that may reach the Board by way of a Request for Review. In addition, the Region set forth all the germane and well settled precedents applicable in this matter and followed them. It is respectfully submitted that there has been no showing, much less a “clear” showing, that extraordinary relief is necessary in this matter.

CONCLUSION

In conclusion, the Intervenor admits that the Regional Director’s decision is well founded and is based on decades of precedent. The Intervenor’s entire case here is bottomed on the thin thread of a request that this Board unravel all this precedent simply because the Intervenor and the Employer never got around to signing an agreement before the representation petition was filed. Furthermore, the evidence cited by the Intervenor as compelling the exception that it seeks not only does not prove what the Intervenor asserts, there is additional evidence overlooked by the Intervenor that shows that a final written agreement to be signed by the parties is what they contemplated before their deal was done. The Regional Director’s decision is well grounded in fact and is supported by ample evidence. She made no mistakes of fact or law and her decision was fully in accordance with long-settled Board precedent. The Intervenor is asking the Board to do the very thing that the Board’s long line of precedents counsel against, namely allowing extrinsic evidence to be used to obviate the need for a signed contract to be a bar to the representation proceedings. If the exception sought by the Intervenor were to be adopted, in the future, there would be no way to determine if a collective bargaining agreement is a bar since one could imagine the numerous reasons that parties could conjure to deviate from the clear requirement that to be a bar, a contract must be signed. The Board adopted the “signing”

requirement to eliminate the very types of arguments and requests that the Intervenor is making here. There was no departure from officially reported Board precedent by the Region in its decision in this case and there are no compelling reasons to reconsider the precedents that the Region relied upon or to grant any exceptions to them. For all the reasons set forth herein, the Intervenor's Request for Review should be denied.

Respectfully submitted,



Samuel J. Pasquarelli, Esq.
PA ID No. 00906
Sherrard, German & Kelly, PC
535 Smithfield Street
Suite 300
Pittsburgh, PA 15222-2319
412-355-0200
sjp@sgkpc.com

Attorneys for Douglas Opalko
And Utility Workers United
Association, Local 537

CERTIFICATE OF SERVICE

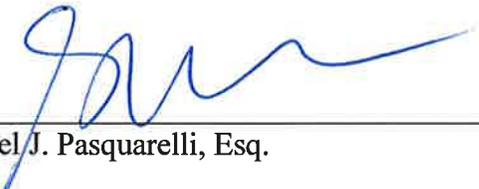
The undersigned hereby certifies that he did, on November 27, 2018, serve a true copy of the document to which this certificate is attached by e-mail, as follows:

Ms. Nancy Wilson, Regional Director
National Labor Relations Board Region 6
1000 Liberty Avenue, Room 904
Pittsburgh, PA 15222
Nancy.Wilson@nlrb.gov

Mark J. Foley, Esq.
Drinker Biddle & Reath LLP
One Logan Square, Suite 2000
Philadelphia, PA 19103-6996
Mark.Foley@dbr.com

Michael J. Healey, Esq.
Healey & Hornack, PC
247 Fort Pitt Blvd., 4th Floor
Pittsburgh, PA 15222
mike@unionlawyers.net

Date: November 27, 2018



Samuel J. Pasquarelli, Esq.