UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

UTILITY WORKERS UNITED ASSOCIATION, LOCAL 537	)	
	)	Case 06-CB-235968
and	)	
	)	
PENNSYLVANIA AMERICAN WATER COMPANY	)	
	)	

THE COUNSEL FOR THE GENERAL COUNSEL'S REPLY BRIEF TO RESPONSE OF RESPONDENT TO RULE TO SHOW CAUSE WHY THE CHARGING PARTY'S MOTION FOR PARTIAL SUMMARY JUDGMENT SHOULD NOT BE GRANTED.

Pursuant to Rule 102.24(c) of the Rules and Regulations of the National Labor Relations Board ("the Board"), the Counsel for the General Counsel files this Reply to the Respondent's Opposition to the Employer's Motion for Partial Summary Judgment.

On October 16, 2019, the Charging Party Employer, Pennsylvania American Water Company, filed its Motion for Partial Summary Judgment ("the Employer's Motion") with the Board in the above-captioned case, requesting that the Board enter summary judgment on the specific issue of whether the collective bargaining agreements, negotiated and executed by a previously certified labor organization, relieved the Respondent Union of its obligation to bargain with the Employer after the Respondent Union was certified as the new exclusive bargaining representative.

On October 25, 2019, the Counsel for the General Counsel filed its Motion in Support of the Employer's Motion for Partial Summary Judgment.

On November 27, 2019, the Board issued an "Order Transferring Proceeding to the Board and Notice to Show Cause" ("the Board's Order"), directing the Respondent Union to show cause, by December 11, 2019, as to why the Employer's Motion should not be granted.

On December 11, 2019,[1] the Respondent Union filed its "Response of Utility Workers United Association, Local 537 to Rule to Show Cause Why the Charging Party's Motion for Partial Summary Judgment Should Not be Granted" ("the Respondent's Opposition") and a memorandum of law in support ("the Respondent's Brief") addressing the Employer's Motion and the Board's Notice to Show Cause.

Simply put, the detailed arguments raised in the Employer's Motion are fully supported within the motion itself, and the Respondent has not established any basis for the Board to deny any portion of the Employer's Motion.

I. There Are No Issues of Genuine Material Fact Relevant to the Dispute Here.

In deciding a motion for summary judgment, the Board applies the standards set forth in Rule 56 of the Federal Rules of Civil Procedure. *Newtown Corp.*, 280 NLRB 350 (1985). Pursuant to Rule 56(a), summary judgment is appropriate if "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." In making this determination, the evidence "must be viewed in the light most favorable" to the non-moving

[1] The Respondent Union dated the Respondent's Opposition, the Respondent's Brief, and the accompanying service documents as "December 10, 2019." Additionally, the Respondent Union certified in its Affidavit of Service – signed by the Respondent's Counsel – that the Respondent's Opposition and the Respondent's Brief were served by electronic mail on December 10, 2019. However, these documents were not served upon the parties by e-mail until December 11, 2019. In fact, the Respondent Union did not even e-file these documents with the Board until December 11, 2019.

party. *Eldeco, Inc.*, 336 NLRB 899, 900 (2001); *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 157 (1970).

a. There are No Issues of Material Fact Related to the Certification of the Respondent Union as the New Exclusive Collective-Bargaining Representative in December 2018.

Here, the material facts all relate strictly to the representation proceedings conducted by Region Six of the Board. On April 10, 2018, the Respondent Union filed a petition in Case 06-RC-218209 seeking to represent the Outside Districts Unit[2] of the Employer, which was, at that time, represented by the Utility Workers of America, AFL-CIO, CLC, and its Local 537 ("the Former Union"). About a week later, on April 17, 2018, the Respondent Union then filed another petition, in Case 06-RC-218527, seeking to represent the Pittsburgh District Unit[3] of the Employer, which was, at that time, also represented by the Former Union. Despite the Respondent Union's mischaracterization in its Opposition, these petitions were not "Petitions for Decertification" filed by individual members, but instead were Certification Petitions filed by individual members, on behalf of the Respondent Union.[4]

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[2] This unit consists of: All employees, permanent and temporary, of the Employer located at the Outside Districts of Butler, Clarion, Indiana, Kane, Kittanning, McMurray, New Castle, Punxsutawney, Uniontown, Valley, and Warren, Pennsylvania.

[3] This unit consists of: All production, maintenance, and clerical employees employed by the Employer at its Bethel Distribution Center, Pittsburgh Meter Shop, Aldrich Treatment Plant, and Becks Run-Hays Mine Treatment Plant. Excluded: All confidential secretaries, supervisors, guards and executives.

[4] The Respondent Union argues in the Respondent's Opposition that:

> Prior to the withdrawal of the trusteeship case, individual members of the Charged Party filed Petitions for Decertification of [the Former Union] with Region 6 of the National Labor Relations Board. They did so because they were of the opinion that the only way to accomplish the result desired by the disaffiliation was to file said petitions, since the preliminary injunction forbade the officers of the Charged Party from taking any action

Elections were conducted for both the Outside Districts Unit and the Pittsburgh District Unit, and the Respondent Union prevailed in both. On December 7, 2018, Region Six of the Board issued a Certification of Representative certifying the Respondent Union as the exclusive collective bargaining representative of the Pittsburgh Districts Unit. Then, on December 26, 2018, Region Six of the Board issued a Certification of Representative certifying the Respondent Union as the exclusive collective bargaining representative of the Outside Districts Unit.

These facts are all established through the case filings in the representation case proceedings, and the Respondent Union does not appear to dispute any of them. These are the only facts relevant to the current, limited dispute now pending before the Board.

b. The Respondent Union Raises Issues Related to Purported Disaffiliation That Have No Bearing on the Instant Case and Would Result in Unnecessary Litigation and Waste of Resources.

The core and unavoidable obligation to respond to a summary judgment motion is that the party opposing the motion must establish that a genuine issue of fact exists for hearing or trial. *See* 29 C.F.R. § 102.24(b). That has not been done here.

While there may certainly be factual disputes related to the purported disaffiliation and the resulting federal litigation as the Respondent Union notes, those facts are not relevant to the

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> which would interfere with the trusteeship, and pressing the issue of disaffiliation would, at that time, interfere with the trusteeship.
> (*See* the Respondent's Opposition, at ¶ 8).

The Respondent Union's statement is misleading, at best. Neither of the petitions in the representation cases were decertification petitions filed by individual members. Rather, these were "RC petitions," seeking to have the Respondent Union certified as the new representative of employees in the bargaining units. Neither petition had a check-mark indicating that "the Petitioner is currently recognized as Bargaining Representative and desires certification under the Act." Lastly, it is important to note that the counsel for the Respondent Union here also served as counsel for the Petitioners in both of the representation cases.

legal question raised by the Employer's Motion. What matters instead is simply that the Respondent Union filed a petition for representation seeking to represent the Outside Districts Unit and the Pittsburgh District Unit, which had previously been represented by the Former Union, in April 2018. These petitions were not, as the Respondent Union suggests, decertification petitions, but were traditional "RC petitions." For each unit, an election was conducted, and employees had the opportunity to choose between three options for representation: (1) the Former Union; (2) the Respondent Union; or (3) Neither. The employees in both units voted to be represented by a new union – the Respondent Union.

It is not disputed that the Respondent Union was certified by Region Six of the Board as the exclusive collective bargaining representative of the Outside Districts Unit and the Pittsburgh District Unit in December 2018. From this basis of undisputed fact, the only thing remaining is a legal question: Is the Respondent Union entitled to demand that the Employer be bound, by terms of contract, to the Former Union's collective bargaining agreements?

The answer to this purely legal question is "no." Importantly, though, there is no need to develop any further facts to reach a conclusion – either in the affirmative or the negative – to this legal question about the continuing contractual validity of a former union's collective bargaining agreement after a different union is certified. There is no need to develop a record about any purported disaffiliation. There is no need to develop any record about any trusteeship or protracted federal litigation surrounding that issue.

II. Without Any Issues of Genuine Material Fact, the Employer's Motion Should be Granted.

As previously discussed in the Employer's Motion and the Counsel for the General Counsel's Motion in Support, the Board has made clear that, once a "new" labor organization is

certified by the Board, then the collective bargaining agreement executed by the "old" labor organization become "null and void." Specifically, the Board has stated: "if the incumbent prevails in the election held, any contract executed with the incumbent will be valid and binding. If the challenging union prevails, however, any contract executed with the incumbent will be null and void" *More Truck Lines, Inc*., 336 NLRB 772, 773 (2001) (*quoting RCA Del Caribe, Inc*., 262 NLRB 963 (1982)); *see also American Medical Response of Connecticut, Inc*., 356 NLRB 1222, 1247 (2011).

The Respondent Union's reliance on the Board's language in *More Truck Lines* to somehow support its proposition that a "new" union has the *option* to choose to either keep an "old" union's contract or render it void is entirely misplaced. Specifically, the Respondent Union quotes the following passage:

> In agreement with the judge, we are convinced that the Board in *RCA Del Caribe* only intended the phrase 'null and void' to mean that a successful intervening union must be afforded an opportunity to negotiate a new contract, rather than be saddled with the one entered into by the defeated incumbent. …
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> 336 NLRB at 773 (internal citations omitted).

Context here is crucial, though. The Board in *More Truck Lines* is *not* discussing the validity of the "old" union's collective bargaining agreement as a matter of contract. Instead, the Board was citing to, among other cases, *NLRB v. Katz*, 369 U.S. 736 (1962). The "*Katz* Rule" is a well-established principle of Board law prohibiting an employer from unilaterally changing a term or condition of employment, without first bargaining to impasse, while negotiations are sought or are in progress. This is a matter of statutory – not contractual – duty.

In *More Truck Lines*, the Board was evaluating the lawfulness of an employer's statement that it would not grant a wage increase, which had been provided under the "old" union's

contract, because the contract was "null and void." Specifically, the Board was determining whether this was a lawful recitation of the applicable Board law. The Board, applying the *Katz* rule, found that this was stretching the "null and void" phrase too far because it would imply that the employer would not need to maintain the statutory status quo. However, it was clear that the terms of the statutory status quo would be informed by both past practice and the terms of the "old" union's contract. It is equally clear that this discussion in no way supports, or even suggests, that the "old" union's collective bargaining agreement remains valid and binding as a contract.

In fact, the Board made this point explicit in the very next sentence following the language quoted above by the Respondent Union. In fact, the Board went on to state:

> Thus, if a challenging union is certified, then the *contract* between the employer and the incumbent becomes void, but, as usual, the employer must abide by the then existing terms and conditions of employment until such time as it reaches an agreement with the new union or a lawful impasse occurs. *See NLRB v. Katz, supra*; *R.E.C. Corp*., 296 NLRB 1293 (1989).
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> *More Truck Lines*, 336 NLRB at 773 (emphasis in the original).

The Respondent Union used a simple ellipsis to omit this vital language from its brief. This sentence not only directly contradicts the exact proposition the Respondent Union was attempting to make, but undermines its entire argument.

As the Board has previously maintained, when a new labor organization is certified as the collective bargaining representative, the collective bargaining agreements executed by the predecessor union become null and void as a matter of contract. Accordingly, the Board should grant the Employer's Motion and award partial summary judgment on this purely legal question.

III. Conclusion

Since there are no relevant, genuine issues of material fact, the Employer's Motion should be granted.

Dated: December 17, 2019

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on December 17, 2019, I electronically filed The Counsel for the General Counsel's Reply Brief with the National Labor Relations Board's Office of the Executive Secretary, and served a copy of such by electronic mail to the parties listed below:

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