

NOTICE: This opinion is subject to formal revision before publication in the bound volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.

**Utility Workers United Association, Local 537 and
Pennsylvania American Water Company. Case
06–CB–235968**

June 8, 2020

DECISION AND ORDER REMANDING

**BY CHAIRMAN RING AND MEMBERS KAPLAN
AND EMANUEL**

The Employer, Pennsylvania American Water Company, seeks partial summary judgment in this case on the grounds that there are no genuine issues of material fact as to certain allegations in the Respondent’s answer, and that the Board should find, as a matter of law, that the collective-bargaining agreements between the Employer and Utility Workers Union of America, AFL–CIO, System Local 537 (the previous union) are no longer in effect and do not relieve the Respondent of its duty to bargain with the Employer for an initial agreement.¹ The Employer’s motion also seeks “all other appropriate relief” following this determination.

Pursuant to a charge filed by the Employer on February 13, 2019,² and an amended charge filed on April 18, the General Counsel issued a complaint on September 9. The complaint alleges, among other things, that the Respondent violated Section 8(b)(3) of the Act by failing and refusing to bargain with the Employer for an initial contract for its Pittsburgh and Outside Districts units. The Respondent filed an answer admitting in part and denying in part the allegations of the complaint.

On October 16, the Employer filed a Motion for Partial Summary Judgment on the Effect of Respondent’s NLRB Election and Certification as Bargaining Representative and a supporting brief with exhibits attached. On October 25, the General Counsel filed a supporting motion. On November 27 and December 18, the Board issued an order and amended order (respectively) and Notice to Show Cause, transferring the proceeding to the Board and postponing indefinitely the hearing scheduled in this case.³ The Respondent filed a response opposing the Employer’s motion and a supporting brief, as well as an amended response and supporting brief reflecting the Board’s amended order. The General Counsel and Employer filed reply briefs, and the General Counsel also filed an amended reply.

¹ Neither the Employer nor the General Counsel seeks summary judgment with respect to any of the unfair labor practice allegations included in the complaint. We therefore will remand these allegations to the Administrative Law Judge for further appropriate action.

Ruling on Motion for Partial Summary Judgment

It is undisputed that, until 2018, the Employer had collective-bargaining agreements with the previous union, which represented employees in the Pittsburgh and Outside Districts units. In March 2018, employees in these units voted in an internal union election to disaffiliate from the previous union. The Respondent then filed representation petitions for Board-conducted elections in the two units, and the previous union intervened.

On December 7, 2018, following an election in Case 06–RC–218527, the Board certified the Respondent as the exclusive collective-bargaining representative of the Employer’s employees in following unit (the Pittsburgh unit):

Included: 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, executives, guards and supervisors as defined in the Act.

On December 26, 2018, following an election in Case 06–RC–218209, the Board certified the Respondent as the exclusive representative of the Employer’s employees in the following unit (the Outside Districts unit):

Included: 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. Excluded: All confidential secretaries, executives, guards and supervisors as defined in the Act.

The Respondent argues that the elections did not create a “new” union but instead reflect a change in affiliation from the previous union to the Respondent. Accordingly, the Respondent argues that it is a successor to the previous union and should have the option of accepting the previous union’s collective-bargaining agreements. In support, the Respondent explains that it has the same members, officers, and representatives, and it further contends that the Employer waived bargaining for a new contract by continuing to honor the terms of the previous union’s contracts after the election. The Respondent also claims that trusteeship proceedings between itself and the Utility Workers of America, AFL–CIO (the national union) prevented it from presenting evidence of the affiliation

² All subsequent dates are in 2019 unless otherwise indicated.

³ A hearing in this case opened on November 18 before administrative law judge David I. Goldman and was recessed indefinitely pending resolution of this motion.

change in the proceedings for the above-cited representation cases.⁴

The Employer and the General Counsel argue that there are no genuine issues of material fact and that, as a matter of law, the Board should find that the previous union's collective-bargaining agreements are no longer in effect. We agree.

In *RCA Del Caribe, Inc.*, 262 NLRB 963 (1982), the Board held that an employer does not violate the Act by continuing to bargain with an incumbent union after a rival union files a representation petition. *Id.* at 965. The Board explained that allowing employers to continue negotiations with the incumbent promotes “stability in industrial relations and . . . employee free choice” and stressed that despite a valid petition having been filed, the incumbent union “will retain its earned right to demonstrate its effectiveness as a representative at the bargaining table.” *Id.* at 965–966. But in a passage relevant to the instant dispute, the Board clarified that

[i]f 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.

Id. at 966. The holding in *RCA Del Caribe* is controlling here. If a contract under negotiation with an incumbent union during the pendency of a rival union's petition is nullified if the rival prevails, so, too, is a contract with a former incumbent after employees choose a rival union.

The Respondent contends that in *More Truck Lines*, 336 NLRB 772, 773 (2001), *enfd.* 324 F.3d 735 (D.C. Cir. 2003), the Board interpreted *RCA Del Caribe* to suggest that a newly certified union could either avail itself of the opportunity to bargain for an initial contract or simply accept the previous union's contract without bargaining. However, the Board's holding in *More Truck Lines* is clear:

[I]f 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

⁴ The Respondent agreed to a consent order granting a preliminary injunction in the trusteeship action, approved by the court on April 19, 2018. *Utility Workers Union of America, AFL-CIO v. Booth et al.*, No. 2:18-CV-00398-DSC (W.D. Pa. 2018). According to the Respondent, the national union dismissed the trusteeship action on March 6, 2019.

⁵ We are not persuaded by the Respondent's further assertion that, by honoring unspecified provisions of the Outside Districts contract following the elections, the Employer waived its argument that the Outside Districts contract was no longer in effect. The Employer responds that it acted consistently with the rule that an employer faced with a newly certified union “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.” *More Truck Lines*, 336 NLRB at 773. The

as it reaches an agreement with the new union or a lawful impasse occurs.

Id. at 773 (emphasis in original). *More Truck Lines* does not present a newly certified union with the choice between negotiating for an initial contract or retaining the previous union's contract. Instead, the decision reiterates well-settled law requiring employers to maintain the status quo while negotiating for an initial contract. Thus, consistent with both *RCA Del Caribe* and *More Truck Lines*, once the Respondent prevailed in the elections and was certified by the Board, the previous union's collective-bargaining agreements became null and void.⁵

The Respondent attempts to characterize the elections in Cases 06-RC-218209 and 06-RC-218527 as votes to disaffiliate from the previous union and reorganize as a successor. However, the Respondent did not file AC petitions to amend its certifications to reflect such disaffiliation. Rather, it filed RC petitions seeking elections and certification as a new bargaining representative. The Regional Director in those cases found that a question concerning representation existed (despite the then-pending trusteeship litigation), and the Respondent did not seek review of that finding.⁶ Although the Respondent may not have intended to nullify the previous union's collective-bargaining agreements, Board precedent on this point is clear, and those agreements are no longer in effect.

We therefore find that the collective-bargaining agreements between the Employer and the previous union are no longer in effect and do not relieve the Respondent of its duty to bargain for an initial agreement. Accordingly, we grant the Employer's Motion for Partial Summary Judgment and remand the unfair labor practice allegations to the administrative law judge for further appropriate action.

ORDER

IT IS ORDERED that the Employer and General Counsel's Motion for Partial Summary Judgment is granted with respect to whether the previous union's collective-bargaining agreements are in effect and relieve the Respondent of its duty to bargain for an initial agreement.

“then existing terms and conditions of employment” would normally be those established in the now-nullified collective-bargaining agreements with the previous union, and the Respondent has not shown that the Employer's conduct went beyond what *More Truck Lines* requires.

⁶ We note that the Respondent also raised the disaffiliation issue in Cases 06-CA-239176 and 06-CA-239135, alleging that the Employer unlawfully failed to deduct dues from employees' pay following the new certifications. Those charges were dismissed on the merits, with the Office of Appeals explaining in a September 11, 2019 letter that the Respondent was a new labor organization bargaining for an initial contract, and that the Employer was under no obligation to check off dues while bargaining.

IT IS FURTHER ORDERED that this proceeding is remanded to Administrative Law Judge David I. Goldman for further appropriate action as set forth above.

Dated, Washington, D.C. June 8, 2020

John F. Ring, Chairman

Marvin E. Kaplan, Member

William J. Emanuel Member

(SEAL) NATIONAL LABOR RELATIONS BOARD