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

Utility Workers United Association, Local 537, Plaintiff, v. Pennsylvania American Water Company, Defendant.	Docket No. 20-cv-00846-RJC

DEFENDANT'S SUPPLEMENTAL REPLY BRIEF ON MOTION TO DISMISS, REGARDING RECENT THIRD CIRCUIT RULING IN PARALLEL CASE BETWEEN THE PARTIES

Pennsylvania American Water Company ("Defendant"), by and through its undersigned counsel, supplements its Reply Brief in support of its Motion to Dismiss (ECF No. 19) by adding to the record the U.S. Third Circuit Court's December 18, 2020 decision in favor of Defendant in a parallel case between the parties ("Third Circuit Opinion").

Defendant's initial Brief in support of its pending Motion to Dismiss in this action discusses a parallel LMRA § 301 contract breach lawsuit, U.S.D.C. W.D. Pa. 19-cv-580-CB-LPL, filed by the Plaintiff Union against the Defendant Employer (see Doc. 15, Defendant's Motion to Dismiss Brief, at pages 15-16). The District Court (in a decision attached to Defendant's Motion to Dismiss—see Docs. 14-2 & 14-3, Exhibits B & C there) dismissed that LMRA § 301 Complaint

on the basis that it concerned labor law issues that were being and should be handled by the NLRB. Plaintiff appealed that dismissal and the Third Circuit has now issued its Opinion and Judgment affirming the dismissal (U.S. Ct. App. 3d Cir. #20-1461, Doc. 44) (Not Precedential). A copy of this Third Circuit Opinion is attached here as Exhibit "1".

Defendant, as here, presented several grounds for its dismissal motion in that related case, such as (a) the labor law issues involved were already being addressed by and should be left to the NLRB—which was the basis upon which the District Court granted dismissal—and (b) federal labor law is clear that, as occurred with the Plaintiff, a NLRB representation election and certification of election results by which one union replaces another as the collective bargaining representative operates as a matter of law to void and nullify the contractual obligations between the prior union and the employer.[1] The recent Third Circuit Opinion between the

[1] As discussed in Defendant's initial Reply Brief to Plaintiff's Brief in Opposition to the Motion to Dismiss (Doc. 19), while the NLRB certification change nullifies the contractual commitments between the prior union and employer, a statutory duty follows the certification change by which the employer is required to maintain the status quo terms and conditions of employment that were in effect with the prior union at the time of the certification change, as defined by NLRB case law, until reaching either agreement on terms with the new union or impasse in negotiations, as determined by the NLRB. A federal district court lacks jurisdiction to hear such a statutory claim as the applicable statute, the National Labor Relations Act, assigns such issues to the NLRB. LMRA § 301 jurisdiction does not apply to status quo matters as they do not arise by contract.

parties affirmed dismissal on this second basis—that following a NLRB certification change labor law precedent voids contracts between the prior union and the employer such that the terms of those prior contracts are not enforceable in a LMRA § 301 action by the new union (see Exhibit "1", at pp. 5-6).

This Third Circuit Opinion supports and requires dismissal here too. It determined that the NLRB certification of the Plaintiff as a new collective bargaining representative voided the contracts with the prior union. Thus, the present suit, in which the Plaintiff claims an implied rather than express contract on the basis of the terms of employment between the prior union and the Defendant employer that Defendant continued in effect after the NLRB certification change is similarly unavailing. When contractual terms between a prior union and employer are rendered null and void, there is no basis to assert a breach of those terms by the new union, i.e., the Plaintiff here. Any other ruling would frustrate the Third Circuit's ruling between the parties, as well as longstanding labor law precedent, by permitting any new union to claim nullified contract terms somehow survive as continuing contract terms merely by being labeled implied rather than express obligations. As the Third Circuit stated, "[Defendant] cannot breach a contract that is null and void." (Third Cir. Opinion at p. 6, Doc. 44 in Third Circ. case 20-1461) (Not Precedential). Continuation, after

the NLRB certification change, of the status quo terms of employment as were in existence with the prior union does not create a contract (express or implied) or provide LMRA § 301 contract breach jurisdiction because this duty arises by statute, not by contract.

Neither the Third Circuit's Opinion nor labor law precedent regarding a NLRB certification change makes a distinction between express or implied contracts. There is no logical basis for such a distinction. How a contract is formed does not speak to whether, once in existence, it can be enforced. Enforcement is no longer available for claims arising after the nullification date, which is what Plaintiff seeks. Further, the new union (e.g., the Plaintiff) was/is not a party to the prior union's contracts.

Plaintiff's arguments improperly conflate and confuse a statutory duty with a contractual obligation by attempting to imply a contract out of the statutory status quo maintenance obligation that exists, by definition, prior to the time, as here, that the parties' reach a meeting of the minds on contractual commitments. Conduct mandated by statute, which is all that is involved here, does not imply or create a meeting of the minds (i.e., a contractual commitment). A LMRA § 301 cause of action, the basis of the subject Complaint, only exists to assert a claimed breach of a contractual obligation not of a statutory duty.

Conclusion

Dismissal is due here because, as the Third Circuit recent opinion confirms, the NLRB process by which the Plaintiff came to become the collective bargaining representative voids the claimed contractual terms and requires dismissal of a LMRA § 301 cause of action based on those terms, as a matter of law.

Respectfully submitted,

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December 31, 2020

CERTIFICATE OF SERVICE

I hereby certify that on December 31, 2020 a true and correct copy of the foregoing Defendant Pennsylvania American Water Company's Supplemental Reply Brief in Support of Motion to Dismiss was filed via the Electronic Case Filing (ECF) System which will forward notification of this filing to the following counsel of record:

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