

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

<b>UTILITY WORKERS UNITED</b>	:	
<b>ASSOCIATION, LOCAL 537, an</b>	:	
<b>unincorporated association, by</b>	:	
<b>Nicholas Letta, Its Trustee ad litem,</b>	:	
	:	
<b>Plaintiff,</b>	:	
	:	<b>No. 2:20-cv-00846-RJC</b>
<b>v.</b>	:	
	:	
<b>PENNSYLVANIA AMERICAN</b>	:	
<b>WATER COMPANY, a corporation,</b>	:	
	:	
<b>Defendant.</b>	:	

**MOTION OF THE NATIONAL LABOR RELATIONS BOARD FOR  
LEAVE TO FILE AMICUS CURIAE STATEMENT**

The National Labor Relations Board (the “Board”), an independent agency of the federal government, requests leave to appear as *amicus curiae* and to file the attached statement concerning the relationship between this appeal and several Board proceedings involving the parties.

In this case, Plaintiff Utility Workers United Association, Local 537 (the “Union”) seeks, under section 301 of the Labor-Management Relations Act, court enforcement of some or all of the terms of an expired collective-bargaining agreement (the “Pittsburgh District CBA”) between the similarly-named Utility Workers Union of America, AFL-CIO, Local 537 (“the Previous Union”) and

Defendant Pennsylvania American Water Company (“the Employer”). In its complaint, the Union principally seeks a declaratory judgment finding that the Union and Employer are bound by the terms of an implied agreement consisting of some or all of the terms of the Pittsburgh District CBA.

This lawsuit implicates several rulings made by the Board in completed and pending cases. First, in 2018, the Board processed representation petitions filed by the Union, ultimately certifying the Union as the new collective-bargaining representative of the Pittsburgh District unit and the Outside Districts unit of the Employer’s employees. *Pa. Am. Water Co.*, Case 06-RC-218209 (not reported in Board volumes), <https://www.nlr.gov/case/06-RC-218209>; *Pa. Am. Water Co.*, Case 06-RC-218527 (not reported in Board volumes), <https://www.nlr.gov/case/06-RC-218527>. Then, in September 2019, the Board’s General Counsel issued an unfair-labor-practice complaint alleging that the Union unlawfully refused to bargain for initial contracts with the Employer as to these two units, in violation of Section 8(b)(3) of the National Labor Relations Act (the “Act”), 29 U.S.C. § 158(b)(3). *Util. Workers United Ass’n, Local 537 (Pa. Am. Water Co.)*, 369 NLRB No. 99 (June 8, 2020), slip op. at 1.

In June 2020, the Board issued a Decision and Order granting partial summary judgment to the Employer and General Counsel, concluding that the Union was not a successor to the Previous Union and that the CBAs between the

Previous Union and the Employer were nullified as a result of the Union's election and certification. *Id.*, slip op. at 1-2. The Board also specifically rejected the Union's contention that because the Employer continued to apply some of the terms of the Outside Districts CBA following expiration, the Employer and Union were bound by the terms of that CBA. The Board remanded the unfair-labor-practice case to an administrative law judge to resume the hearing on the General Counsel's complaint. *Id.*

The Board is concerned about the inherent conflict between the relief the Union seeks in this lawsuit and the Board's representational and unfair-labor-practice-case rulings. Granting the Union's requested relief—enforcing the terms of the voided Pittsburgh District CBA—would run afoul of established labor law.

Initially, well-established Board precedent provides that when a new union is certified to replace a prior union, the prior union's CBA becomes defunct, and the parties must engage in good faith bargaining in seeking to reach a new CBA. Longstanding Board precedent also requires the employer to maintain the existing terms and conditions of employment while the parties negotiate. Here, the Union seeks in effect to leverage these precedents against one another by asserting that the employer's statutorily-required maintenance of the status quo empowers the newly-elected union to unilaterally revive the defunct CBA.

Moreover, here the Union seeks to effectively undo the contract-nullifying effects of a change in collective-bargaining representative based upon an implied-contract theory the Board expressly rejected in the pending unfair-labor-practice case. And perhaps most alarming, enforcing the defunct contract's terms would interfere with the Board's ability to issue an effective bargaining order as a remedy for the Union's alleged failure to bargain in the unfair-labor-practice case.

Accordingly, the Board respectfully requests the Court to grant the Board's motion to appear as amicus for the limited purposes of submitting the attached statement.

Respectfully submitted,

**NATIONAL LABOR RELATIONS BOARD**

WILLIAM G. MASCIOLI  
*Assistant General Counsel*

DAWN L. GOLDSTEIN  
*Deputy Assistant General Counsel*

KEVIN P. FLANAGAN  
*Supervisory Attorney*  
[Kevin.Flanagan@NLRB.gov](mailto:Kevin.Flanagan@NLRB.gov)  
(202) 273-2938

/s/ Steven Bieszczat  
STEVEN A. BIESZCZAT  
*Attorney*

[Steven.Bieszczat@NLRB.gov](mailto:Steven.Bieszczat@NLRB.gov)

(202) 273-1093

National Labor Relations Board  
Contempt, Compliance, and Special Litigation Branch  
1015 Half Street, S.E., Fourth Floor  
Washington, D.C. 20003

Dated: January 20, 2021  
Washington, D.C