

**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>	:	

**STATEMENT OF AMICUS  
NATIONAL LABOR RELATIONS BOARD**

Background

The National Labor Relations Board (“Board”) is an independent federal agency created by Congress to enforce and administer the National Labor Relations Act (the “Act”) [29 U.S.C. §§ 151-169], which regulates labor relations between most private-sector employers in the United States, their employees, and the authorized representatives of their employees. Section 9 of the Act empowers the Board to determine appropriate bargaining units, to conduct secret-ballot representation elections, to certify the election results, and, depending on the outcome of the election, to certify a union as the employees’ exclusive bargaining representative under the Act. 29 U.S.C. § 159. The Act additionally proscribes

certain conduct by employers and labor organizations as unfair labor practices and empowers the Board with exclusive jurisdiction to prevent and remedy the commission of such unfair labor practices. 29 U.S.C. §§ 158 and 160; *see generally Nat'l Licorice Co. v. NLRB*, 309 U.S. 350, 365 (1940); *Am. Fed'n of Labor v. NLRB*, 308 U.S. 401, 405 (1940).

Plaintiff Utility Workers United Association, Local 537 (the “Union”) is the Board-certified collective-bargaining representative of two units of employees of Defendant Pennsylvania American Water Company (“Employer”). *Util. Workers United Ass’n, Local 537 (Pa. Am. Water Co.)*, 369 NLRB No. 99 (June 8, 2020), slip op. at 1. In March 2018, those unit employees determined to disaffiliate from the similarly-named Utility Workers Union of America, AFL-CIO, Local 537 (the “Previous Union”) and affiliate with the Union. *Id.* The Union filed petitions with the Board seeking representation elections in both units. *Id.* The Board conducted the elections and, on December 7, 2018 and December 26, 2018, certified the Union as the employees’ collective-bargaining representative under Section 9(a) of the Act. 29 U.S.C. § 159(a). *Pa. Am. Water Co.*, 369 NLRB No. 99, slip op. at 1.

The Union then demanded that the Employer adhere to the terms of two collective-bargaining agreements (“CBAs”)—the Pittsburgh District CBA and the Outside Districts CBA—that had been previously entered into by the Employer and the Previous Union. The Employer took the position that these CBAs no

longer applied because of the change in representative. The Employer then filed an unfair-labor-practice charge with the Board alleging that the Union violated Section 8(b)(3) of the Act by failing and refusing to bargain for an initial contract. 29 U.S.C. § 158(b)(3). *Pa. Am. Water Co.*, 369 NLRB No. 99, slip op. at 1. The Board's General Counsel found merit to the Employer's charge, and, on September 9, 2019, issued an unfair-labor-practice complaint against the Union. *Id.*

In the subsequent proceedings before the Agency, the Union contended as an affirmative defense that it was the Previous Union's "successor" and had therefore assumed the Previous Union's rights and obligations under the previous CBAs. *Id.* The Union also contended that, by continuing to apply some of the Outside Districts CBA's terms and conditions of employment following the Union's election, the Employer waived its right to contend that the contract was void. The Employer and General Counsel then moved for partial summary judgment seeking the Board's ruling that, as a matter of law, the CBAs between the Employer and the Previous Union are no longer in effect and do not relieve the Union of its duty to bargain with the Employer for an initial agreement. *Id.*, slip op. at 1-2.

On June 8, 2020, the Board granted the Employer's and General Counsel's requests for partial summary judgment. *Id.* at 2-3. Relying on its decision in *RCA del Caribe*, 262 NLRB 963 (1962), the Board rejected the Union's successorship argument and held that the CBAs between the Employer and the Previous Union

were nullified by the election and certification of the Union. 369 NLRB No. 99, slip op. at 2. The Board also rejected the Union’s additional contention that, as to the Outside Districts CBA, by continuing to apply some of that CBA’s terms and conditions of employment following the election, the Employer had waived its right to argue that the Outside Districts contract was void. *Id.* at 2, n. 5. Therefore, the Union’s affirmative defense as to both contracts was rejected; the defunct CBAs did not relieve the Union of its statutory duty under the Act to bargain with the Employer for an initial contract. *Id.* at 1-2. The Board remanded the case to an administrative law judge for further appropriate action regarding the refusal to bargain allegation; a hearing in the unfair-labor-practice case is scheduled to resume on January 26, 2021.

In the instant suit before this Court, the Union seeks to enforce, under section 301 of the Labor-Management Relations Act (“LMRA”), 29 U.S.C. § 185, some or all of the terms of the Pittsburgh District CBA, which expired by its own terms on May 17, 2019. As stated, the Board already found that CBA (as well as the Outside Districts CBA) to be null and void. 369 NLRB No. 99, slip op. at 2. And in a lawsuit brought by the Union prior to the instant suit, the United States Court of Appeals for the Third Circuit also found both CBAs to be null and void

upon the December 2018 change in union representative.<sup>1</sup> The Union argues here that, because the Employer continued to apply some of the Pittsburgh District CBA's terms following expiration, the Employer manifested assent to be bound by an implied-in-law or implied-in-fact contract consisting of some or all of the terms of the Pittsburgh District CBA. Am. Compl. ¶¶ 11-13, ECF No. 8. On September 4, 2020, the Employer filed a motion to dismiss this suit. That motion has been fully briefed by the parties, including, most recently, a supplemental reply brief filed by the Employer on December 31, 2020, informing this Court of the Third Circuit's ruling in the Union's initial section 301 suit against the Employer. Def's Supplemental Reply Br., ECF No. 20.

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<sup>1</sup> The instant suit is the second of two related section 301 suits filed in this Court by the Union against the Employer. In the first suit, the Union sought to enforce the Pittsburgh and the Outside Districts CBAs based on a theory of union successorship. *Util. Workers United Ass'n, Local 537 ex rel. Booth v. Pa. Am. Water Co.*, No. 19-580, 2019 WL 7900076, slip op. at \*2-4 (W.D. Pa. Dec. 19, 2019), *report and recommendation adopted sub nom. Util. Workers United Ass'n, Local 537 v. Pa. Am. Water Co.*, No. 19-580, 2020 WL 673068, slip op. at \*1 (W.D. Pa. Feb. 11, 2020).

This Court dismissed the first suit, and, on December 18, 2020, the Third Circuit affirmed. *Util. Workers United Ass'n, Local 537 v. Pa. Am. Water Co.*, No. 20-1461, 2020 WL 7421678, at \*3 (3d Cir. Dec. 18, 2020). In its opinion, the Third Circuit concluded, like the Board, that the representation election and certification rendered the Pittsburgh and Outside District CBAs null and void. *Id.*, slip op. at \*2, 2 n.6.

### Argument

By way of this lawsuit, the Union impermissibly seeks to revive the terms of a contract that both the Board and the Third Circuit have declared null and void. Both the Board and the Court of Appeals applied the same Board precedent to independently conclude that the Pittsburgh District CBA was nullified by the change in bargaining representative that occurred upon the Union's certification. Although the Act nonetheless required the Employer to maintain most of the terms and conditions of employment previously established by the Pittsburgh District CBA until reaching an initial agreement with the Union, the source of the Employer's obligation to maintain the status quo was statutory, not contractual. *See More Truck Lines, Inc.*, 336 NLRB 772, 773 (2001) (noting that the statutory duty to bargain over changes in terms and conditions of employment requires 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") (citing *NLBR v. Katz*, 369 U.S. 736, 747 (1962)).

In the instant litigation, the Union seeks to upend decades of settled labor law by stretching implied contract theories far beyond their breaking point. Indeed, the Board rejected a strikingly similar implied-contract argument raised by the Union in the pending unfair-labor-practice case. As explained above, in opposing

partial summary judgment, the Union claimed that the Employer had waived its argument contesting the effectiveness of the Outside Districts CBA simply “by honoring unspecified provisions of the Outside Districts contract following the elections.” *Pa. Am. Water Co.*, 369 NLRB No. 99, slip op. at 2, n. 5. The Board was “not persuaded” by this argument, which attempted to bootstrap the Employer’s legal duty to maintain the status quo while negotiating with the Union for an initial contract into an option for the Union to unilaterally revive the then-defunct Outside Districts CBA. *Id.*

In the instant suit, the Union is merely rehashing the same argument, but this time as to the Pittsburgh District CBA. Implied contracts between employers and unions can certainly come into existence, even in situations where—as here—a newly-certified union replaces a previous union that had executed a CBA. But the statutory duty to maintain the status quo while bargaining cannot, on its own, give rise to an implied contract in a section 301 case. *See Newspaper, Newsprint, Magazine & Film Delivery Drivers, Int’l Bhd. of Teamsters, Local Union No. 211 v. Pittsburgh Post-Gazette*, 804 F. App’x 174, 183 (3d Cir. 2020) (finding that an employer’s continued adherence to a contractual provision after expiration of the CBA “is not sufficient to find, by itself,” that an implied-in-fact contract existed).<sup>2</sup>

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<sup>2</sup> Furthermore, in light of the pending unfair-labor-practice case, which was commenced by the Employer’s filing of a charge contesting the Union’s refusal to

Otherwise, section 301 would effectively abrogate the principle—applied by the Board in its partial-summary-judgment decision in the pending unfair-labor-practice case and by the Third Circuit in its dismissal of the Union’s first section 301 suit—that CBAs negotiated by a supplanted union are null and void.

In addition, the relief the Union seeks here would significantly hamper the Board’s ability to remedy the Union’s alleged unlawful refusal to bargain for an initial contract with the Employer in the case still pending before the Agency. If this Court were to bind the parties to a revived version of the Pittsburgh District CBA, then the Union can continue to assert—as it already has before the Board, though without success—that the existence of an implied contract absolves it of unfair-labor-practice liability for refusing to bargain. The consequences of such an outcome would significantly complicate or limit the scope of available remedies in the unfair-labor-practice case. Accordingly, judgment in the Union’s favor on the claims it raises in the Amended Complaint would substantially impair the Board’s power to prevent and remedy unfair labor practices under Section 10 of the Act.

29 U.S.C. § 160(a).

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bargain an initial contract, it is difficult for the Union to plausibly contend that the Employer nevertheless intended to be bound by the terms of the defunct Pittsburgh District CBA.

Conclusion

Because the Union seeks relief that would conflict with the Board's longstanding precedents, recent rulings in cases involving these same parties, and potential remedies in the pending unfair-labor-practice case, as well as the Third Circuit's decision in the Union's first section 301 suit, the Court should grant the Employer's motion to dismiss the Amended Complaint.

Respectfully submitted,  
**NATIONAL LABOR RELATIONS BOARD**

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