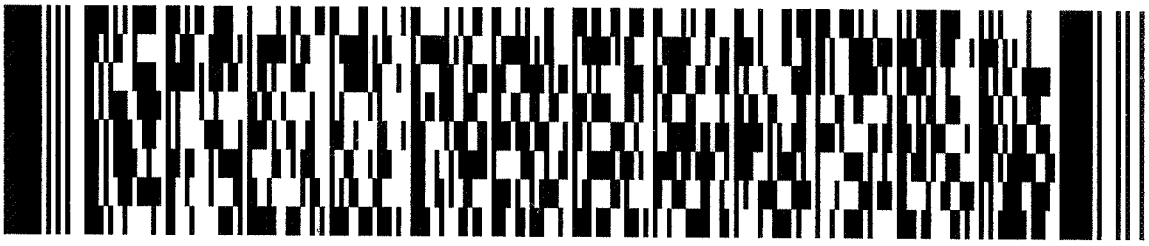

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UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION SIX

PENNSYLVANIA AMERICAN WATER COMPANY

and

UTILITY WORKERS UNION OF AMERICA, SYSTEM LOCAL NO. 537, AFL-CIO

Case 6-CA-37197, 6-CA-37198, 6-CA-37202, 6-CA-37241, and 6-CA-37243

COUNSEL FOR THE ACTING GENERAL COUNSEL'S ANSWERING BRIEF IN OPPOSITION TO RESPONDENT'S EXCEPTIONS TO THE ADMINISTRATIVE LAW JUDGE'S DECISION

Submitted by:

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Dated at Pittsburgh, Pennsylvania,

this 13th day of August, 2012

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UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION SIX

PENNSYLVANIA AMERICAN WATER COMPANY

and

Cases 6-CA-37197, 6-CA-37198, 6-CA-37202, 6-CA-37241 and 6-CA-37243

UTILITY WORKERS UNION OF AMERICA, SYSTEM LOCAL NO. 537, AFL-CIO

COUNSEL FOR THE ACTING GENERAL COUNSEL'S ANSWERING BRIEF IN OPPOSITION TO RESPONDENT'S EXCEPTIONS TO THE ADMINISTRATIVE LAW JUDGE'S DECISION

I. PRELIMINARY STATEMENT

Based on charges and various amended charges duly filed with Region Six of the National Labor Relations Board by Utility Workers Union of America, System Local No. 537, AFL-CIO (herein called "the Union" or "Local 537"), an Order Consolidating Cases, Consolidated, Complaint and Notice of Hearing issued on July 29, 2011, [GCX-(v)[1] against Pennsylvania American Water Company (herein called "Respondent" or "PAWC")].

The Consolidated Complaint alleged that Respondent violated Section 8(a)(1) of the National Labor Relations Act (herein called "the Act") by threatening employees with unspecified reprisals and discipline if they engaged in a sympathy strike, causing protected union literature to be removed from shared bulletin boards at various PAWC facilities and threatening employees with unspecified reprisals if they re-posted the aforesaid union literature.

[1] Herein GCX designates General Counsel's exhibits; RX designates Respondent's Exhibits; JTX designates Joint Exhibits; and numbers in parentheses refer to pages of the official transcript. References to the decision of the Administrative Law Judge are cited as ALJD--; references to Respondent's Exceptions are cited as Res. Ex--; references to Respondent's Brief in Support of Exceptions are cited as Resp. Br.--.

The matter was tried before Administrative Law Judge David I. Goldman in Pittsburgh, Pennsylvania, on January 24, 2012, and the Administrative Law Judge (herein referred to as "the Administrative Law Judge" or "Judge Goldman") issued his decision on May 17, 2012. In his decision, Judge Goldman found, inter alia, that Respondent had violated Section 8(a)(1) of the Act by "threatening employees with discipline for engaging in the concerted and protected activity of honoring the Union's picket lines established January 2, 2011, at the Respondent's New Castle and Ellwood City Water treatment plants", "threatening employees with unspecified 'ramifications' for engaging in the concerted and protected activity of honoring [a] Union's picket line", "removing correspondence written by the Union to the Employer that had been posted by the Union on the bulletin boards in the Respondent's facilities on which the Union regularly posts communications" and "threatening an employee that it would cause 'grief' to repost [the aforesaid correspondence]." (ALJD 25)

Respondent filed Exceptions and a Brief in Support thereof to the decision of Judge Goldman on July 30, 2012, This Answering Brief, after an extension for filing was granted to August 13, 2012, is filed in response thereto.

II. FACTS

A. Background

PAWC provides water utility services in various areas across Pennsylvania, which areas are organized into various districts. The six districts are designated as the Pittsburgh District, Outside Districts, Brownsville District, Mechanicsburg District, Milton/White Deer District and Wilkes-Barre/Scranton District. The Outside Districts is a conglomeration of 11 smaller districts located in Western Pennsylvania. (JTX 1, Stipulation 5)

The Union represents employees in six separate bargaining units in Pennsylvania, with each bargaining unit covered under a separate collective bargaining agreement (herein called "contracts" or "CBA"). (JTX 1, Stipulation 2) The Union's six bargaining units each cover/include one of the aforesaid districts and are referred to by the parties by the name of that

District—i.e., the Brownsville District and CBA (in southwestern Pennsylvania) and the Pittsburgh District and CBA (in southern Allegheny County). As noted above, the Outside Districts and CBA covers 11 smaller districts in Western Pennsylvania.

The Company and Union began separate labor negotiations for a new labor contract on each of the six CBAs in advance of the following dates, which are the stated expiration dates: Brownsville – September 30, 2009; Mechanicsburg – January 31, 2010; Milton/White Deer – April 3, 2010; Outside Districts – November 17, 2009; Pittsburgh – May 17, 2011; and Wilkes-Barre/Scranton – October 31, 2010. (JTX 1, Stipulation 6) As of January 2011, negotiations were underway for five of the parties' six CBAs, but these negotiations had not yet resulted in new contracts for any of these five districts. (JTX 1, Stipulation 8) As of January 2011, the period relevant to these matters, unlike the other five districts, the Pittsburgh District had a contract in effect by its terms. Because negotiations were ongoing as of January 2011, a labor dispute between PAWC and the Union existed in five districts, including the Brownsville District.

During all times relevant to the events in January 2011 involving picketing and PAWC's response to that picketing, the terms of each of the parties' six CBAs were in effect because the Union and PAWC had agreed to their indefinite extension with respect to the five districts where the contracts had expired. (JTX 1, Stipulation 9)

B. <u>Bargaining History</u>

Each of the parties' six CBAs contains a provision calling for no strikes, work stoppages or lock-outs during the time the respective contract is in effect. Significantly, the Outside Districts CBA and the Pittsburgh CBA, unlike the other four CBAs, include a no work stoppage/no lockout section (Section 2) with additional terms providing that employees shall not be disciplined or considered in violation of the contract for refusing "to enter upon any property where a lawful primary picket line is established."[2] (JTX 1, Stipulation 10)

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[2] Specifically this language in the no work stoppage article of the Pittsburgh District and Outside Districts states in its entirety: "It shall not be a violation of this Agreement and it shall not be cause for discharge

This language,[3] which allows Pittsburgh District and Outside Districts employees to engage in what is commonly called a "sympathy strike." was added to the Outside Districts contract first in response to an incident involving a meter reader. That meter reader, in the course of performing his/her job duties at customer locations, encountered a picket line set up by a union representing employees of a commercial customer. When this language was negotiated and include in the Outside Districts contract, the bargaining discussion between the parties concerning it only referenced stranger picket lines such as was the case with the situation at hand and never mentioned a picket line set up by Local 537 at a location where it represented bargaining unit employees who were covered under a different contract. Furthermore, the Union maintains, and the Company does not have information from anyone to confirm or dispute that in the 1979 negotiations the Union indicated that it wanted language placed in the Outside Districts CBA to state that "its members did not have to cross picket lines." (quoting from Stipulation 10 in JTX 1) PAWC's now deceased chief negotiator, James Matthew, Esq., proposed the specific "primary picket line" language, set forth in footnote 2 herein, that is now contained in the Outside Districts and Pittsburgh District contracts. That language was first inserted in the 1979-1982 Outside Districts contract. (JTX 1, Stipulation 10)

After the Outside Districts CBA was settled in 1980, the next CBA to expire was the Pittsburgh District CBA, which expired May 17, 1980. The parties extended the Pittsburgh District CBA until December 8, 1980. When the Pittsburgh District CBA extension expired, the Pittsburgh District employees engaged in a strike until January 17 or 18, 1981. (40-41)

During the six-week strike, on four separate occasions, employees from the Pittsburgh District picketed at the adjacent Valley District which is part of the Outside Districts bargaining

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or disciplinary action in the event an employee refuses to enter upon any property where a lawful primary picket line is established, provided, however, this clause shall not apply to picket lines established under the Free Speech Proviso of the National Labor Relations Act or to what is commonly referred to as "area standards" picketing." (JTX 2 Outside Districts CBA at Sec. 2 and JTX 3, Pittsburgh CBA at Sec. 2).

[3] Referred to by the Administrative Law Judge and herein as the "sympathy strike proviso."

unit. On December 30, 1980, two employees in the Valley District, scheduled to work in the Valley District, refused to cross a picket line, and subsequently were not paid by PAWC for the time they honored the picket line. They filed grievances seeking payment for the hours they did not work based on the provisions in the contract guaranteeing a 40 hour work week and the sympathy strike proviso. (42-43)

Pursuant to the ending of the strike, the negotiated contract covering the Pittsburgh District CBA contained the same "primary picket line" language originally formulated by PAWC's chief negotiator for inclusion in the Outside Districts contract that was already in effect. This language gave the Pittsburgh District employees the right to engage in sympathy strikes just as the Outside Districts employees were already permitted. (44)

On February 8, 1982, the arbitrator upheld the grievances over the failure of PAWC to pay the two employees who refused to cross a Local 537 picket line.[4] In the arbitration proceeding, which occurred in 1981, Respondent did not contest the Union's position that the picket line was primary or that the grievants had a right to honor the picket line.[5] (GCX 8, p.8, 43) In reaching his decision, the arbitrator further noted the following with respect to the circumstances facing the parties:

> With the separate contracts come all the attendant problems, including the possibility of one portion of the Union having a signed agreement while the other portion of the Union is striking the Employer. Therefore, even though each bargaining unit is represented by the same Union for negotiation purposes, each bargaining unit must be viewed as having a separate relationship with the Employer. The conflict that provided the background for the incidents leading to this arbitration is certainly not unusual or unexpected. The Employer and the Union recognized the separate and distinct relationship that results from the contractual relationships as they now exist. (GCX 8, p. 9)

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[4] The Western Pennsylvania Water Company referred to in the arbitration award is a predecessor employer of the Company. (JTX 1, Stipulation 3)

[5] In this regard, the arbitrator stated:

> The Union has always held that the picket line was "primary" and the Employer does not contest the position that the picket line was "primary." Nor is there any dispute of the grievants' right to honor the picket line.

On November 17, 1982, the Outside Districts contract expired, which contained the sympathy strike proviso. Notwithstanding the arbitration decision which issued only nine months earlier, the sympathy strike proviso was carried over into the successor contract unaltered and without discussion by the parties. (46)

In 1991, almost a decade later, the sympathy strike proviso came to the forefront again. At that time, an Outside Districts contract had expired, and the Outside Districts employees went on strike in November, 1991. During the strike, Outside Districts employees picketed at PAWC facilities that were part of the Pittsburgh District. The parties settled on a new Outside Districts contract in March, 1992, that included the identical sympathy strike proviso that had been in all contracts covering the Outside Districts since 1979. (46-47)

Since 1979, every CBA negotiated between the Company and the Union in the Pittsburgh District and the Outside Districts has contained the identical sympathy strike proviso. (47) In fact, it was not until the contract negotiations for the Pittsburgh District CBA in May, 2011—subsequent to the events at issue in the instant charges-- that PAWC finally proposed changing this language to limit its application solely to what are termed "stranger" picket lines. (GCX 9, 47-48) The Union's counsel, who has represented the Union for over 30 years, testified without contradiction, that it was always Respondent's position prior to January 2011, in the few instances where Respondent offered an opinion, that the sympathy strike proviso permitted the Union to act as it did in January 2011 in response to primary picketing at PAWC facilities outside the district where the labor dispute existed. (61)

C. <u>Picketing</u>

The picketing at issue in this case occurred on three occasions in January 2011, at locations where Outside Districts bargaining unit employees and Pittsburgh District bargaining unit employees worked. On each occasion, the picket signs identified a bargaining unit as the situs of the primary labor dispute which was different from the bargaining unit employed where

the picketing occurred.[6] For example, picketing in support for the Brownsville labor dispute occurred on January 2, 2011, at the New Castle and Ellwood City water treatment plants and on other dates in January 2011 at various locations. (GCX 10) On each occasion, the picket signs clearly indicated that the primary labor dispute was at the Brownsville District. (GCX 10)

There is no question that there was a primary labor dispute in each of the bargaining units referenced on the picket signs. Around the same time as the primary labor dispute picketing, the Union was also engaged in informational picketing. The Union wanted the employees to report to work if they encountered informational pickets. In order to enable employees to quickly differentiate between the two different types of picketing, the signs were different colors: informational picket signs were blue, and primary labor dispute picket signs were red. (98-99) Specifically, the Brownsville CBA had expired on September 30, 2009. (JTX 1, Stipulation 6) Thus, at the time of the January 2011 picketing, the parties had engaged in unsuccessful labor negotiations for over 15 months with respect to a Brownsville contract. (JTX 1, Stipulation 8; 54)

Similarly, the Outside Districts CBA had expired on November 17, 2009. (JTX 1, Stipulation 6) Therefore, at the time of the January 2011 picketing, the parties had engaged in unsuccessful labor negotiations for over 13 months. (JTX 1, Stipulation 8; 55) Picketing in support for the Outside Districts labor dispute occurred on January 29, 2011 at two locations. On each occasion, the picket signs referenced the primary labor dispute at the Outside Districts. (GCX 10)

In like fashion, the CBAs for Mechanicsburg, Milton/White Deer and Wilkes-Barre/Scranton Districts had all expired by their terms as of January 2, 2011, and unsuccessful

[6] A typical sign read "Primary Labor Dispute, Utility Workers Union of America, AFL-CIO, System Local 537, Mechanicsburg, has a labor dispute with PA American Water. We are seeking a fair contract with PA American Water Co." (78)

negotiations in each case were in progress as of that date. Primary labor dispute picketing occurred in support of these units at various locations within the Outside Districts on various dates in January 2011.

In the fall of 2010, the Union had conducted a meeting with employees in the Outside Districts and Pittsburgh District bargaining units to explain health insurance, which was being negotiated on a national level. During the meeting, there was discussion of the meaning of the sympathy strike proviso in the Outside Districts and Pittsburgh District CBAs. Union counsel explained the right of employees to honor any primary labor dispute picket line. He also explained that in 1982, an arbitrator had ordered that employees who honored such a picket line were entitled to be paid under the contractual guaranteed work week. (51-52, 218-219)

D. Violation – Oral Threat of Unspecified Reprisals by Supervisor Snyder

Kristen Snyder is employed by Respondent as a Production Supervisor overseeing the operations of the New Castle water treatment plant, a PAWC facility within the Outside Districts. Employee Mike Kachurek spoke to Snyder during a phone conversation on January 2, 2011, after he observed a primary picket line comprised of Brownsville District employees at the Ellwood City water treatment plant when he approached that facility to report for work. Snyder told Kachurek that since the Union was not on strike in the Brownsville District, Outside Districts employees were expected to cross the picket lines and report to work. Furthermore, Snyder stated that if employees did not report to work they would not be paid. Snyder also told Kachurek on the subject of pay that if he refused to cross a picket line she didn't know what to expect because she didn't know what to make of picketing without a strike. (JTX 1, Stipulation 17) Snyder also told Kachurek that there were "ramifications" or "implications" for not crossing the picket line and reporting for his shift, but she was unable to define those ramifications or implications for Kachurek. (128-129) Judge Goldman credited Kachurek's version of the conversation with Snyder which left the threat of "ramifications" undefined and not strictly limited to him not receiving pay for hours not worked due to honoring a picket line. (ALJD 8, 180-181)

E. Violation – Threat of Discipline in Dascani's letter

Daniel J. Hufton has been employed by Respondent as a Senior Director, Production at all relevant times. He is responsible for overseeing the operations of approximately 37 water treatment plants and 6 wastewater treatment plants in Pennsylvania including nine water treatment plants in the Outside Districts. (JTX 1, Stipulation 14)

On January 4, 2011, Hufton received a copy of a letter from Director Human Resources Carole Dascani to Local 537 President Kevin Booth. Hufton thereafter directed the production supervisors in charge of the various water treatment plants where employees were represented by Local 537 to post Dascani's letter at their plants. The letter was so posted and it is undisputed that employees viewed these postings. (JTX 1, Stipulation 15) Through the posting by Hufton of Dascani's letter, PAWC announced to its employees the following: (1) PAWC will not pay for time not worked; (2) the CBA provision regarding honoring primary picket lines covers only stranger picketing; and (3) employees who fail to report to work may be subject to discipline. (GCX 13)

F. Violation – Removal of Union Literature from Bulletin Boards and a Threat of Unspecified Reprisals for any Re-posting

The primary pickets typically arrived at the water treatment plants about an hour before the shift change so as to give PAWC sufficient notice for the plant operator to be relieved by management at the end of his or her shift. (73) The pickets were instructed to call the on-duty plant operator to advise the plant operator that pickets were present at the plant. The pickets were to tell the on-duty plant operator to call the supervisor on duty, and tell the supervisor that a primary picket line was set up. The pickets were to tell the plant operator to advise the supervisor that the next operator may not cross the picket line. However, the pickets were to encourage the plant operator to continue working until the end of the shift. Lastly, the pickets were to tell the plant operator that if he was not replaced, he should contact the pickets to they

could make a decision of what to do. (73-77) The Union did not tell the plant operators to say that they were too tired to stay past the end of their shifts. (112)

During the picketing, no plant operator shut down a plant and left before being relieved by supervision. (82-83) To the contrary, all plant operators remained on duty until relieved by supervision, staying beyond the end of their shifts if necessary. However, on January 8, one of the plant operators, Chris Lawrence, had an especially difficult time getting his supervisor to relieve him in a timely fashion at the Two Lick water treatment plant within the Outside Districts. Lawrence was working the 3-11 p.m. shift when he observed pickets outside the plant. Lawrence contacted his supervisor, Sherry Medivitz, and told her that pickets were at the plant, and that he did not want to stay past the end of his shift. Medivitz said that she would get dressed and be in to relieve him. (119-120) Ultimately, Medivitz did relieve Lawrence but not before several phone calls were made and after Lawrence warned management he would shut down the plant if he was not relieved within a reasonable time.

In reaction to situations such as Lawrence experienced, a January 11, 2011 memo from Hufton was posted on all of PAWC's production department workplace bulletin boards stating his view on plant shut down protocol. (JTX 1, Stipulation 16, 162) Hufton's memo states that a water treatment plant can only be shut down, without prior authorization, only if there is problem with water quality or equipment.[7] (GCX 11)

On January 13, 2012, Local 537 President Kevin Booth responded to Hufton's posted memo regarding shut downs by arranging to have posted at various water treatment plants copies of a letter he had addressed and sent to Hufton. All the CBAs contain provisions granting the Union the privilege of using a bulletin board on the Employer premises. (86) Booth's letter to Hufton poses certain relevant questions and disagrees with some of Hufton's

[7] The memo states "Unless the shutdown is required due to imminent water quality reasons or equipment failures or malfunctions, all plant shutdowns require prior approval by the plant supervisor, superintendent or production manager."

statements in his memo. Booth informed Hufton that the plant operators will attempt to make contact with the on-duty personnel, and then his/her supervisor within a reasonable amount of time. If after a reasonable amount of time, a replacement operator is not provided; the plant may be shut down, secured, and the operator may leave. (GCX 12) Thus, Booth expressed the Union's views to Hufton regarding procedures Hufton had announced to employees involving when an operator can shut down a water treatment plant. His views differed in some, but not all, respects with those of Hufton, including the key issue of whether a plant can ever be shut down no matter how long relief for an operator is not provided by management. There were no written rules in place at this time regarding when an employee can shut down a water treatment plant if he or she is not given relief in a timely manner and under defined circumstances.

Sometime shortly after Booth's letter to Hufton was posted on the various bulletin boards, Respondent either removed Booth's letter from the bulletin boards, or directed employees to remove it. (RX 3) Respondent asserts that it removed Booth's response because Booth "was not authorized to give supervisory work directions." (RX 5)

Union Vice President Patricia Presnar for the New Castle District observed Booth's responsive letter to Hufton which was posted on a shared bulletin board in the lunch area at the Ellwood City water treatment plant alongside Hufton's memo. Subsequently, Presnar noticed that Hufton's memo remained posted, but that Booth's letter had been taken down. (136-137) Presnar then talked to Booth about the removal of his letter to Hufton and Booth asked Presnar to re-post his response. However he also advised her to first call Production Superintendent Jon Natale and tell him what she planned to do, and to tell Natale that Booth wanted the response to remain posted. When Presnar followed Booth's directive, Natale told her that he wished she would not re-post the letter and Natale revealed that Hufton had directed him to remove the first copy. Natale told Presnar that if Presnar re-posted the letter, it would cause "grief" for both of them. (137-138)

After talking to Natale, Presnar contacted Booth again to report what Natale had told her. Booth told Presnar to follow-up with Natale, to ask Natale to define what PAWC could do to her. (138) Accordingly, Presnar again contacted Natale and she asked Natale what he meant by "grief". Natale said he did not know. Based on Natale's comments that re-posting the response would cause unspecified "grief," Presnar decided not to re-post Booth's response to Hufton's memo. (138)

III. ARGUMENT

A. Overview of Respondent's Exceptions

The clear preponderance of the evidence supports the findings and conclusions of Judge Goldman in his well-reasoned Decision notwithstanding any assertions to the contrary proposed by Respondent. Counsel for the Acting General Counsel submits that Respondent's arguments are erroneous and/or misplaced for the reasons set forth below. Counsel for the Acting General Counsel does not concede or agree to the validity of applicability of any of the statements or arguments made by Respondent in its Exceptions and brief in support thereof.

By way of overview, Exceptions #1 and #3 are closely related and bear upon the central question in these cases of whether Union employees working in PAWC's Outside Districts and Pittsburgh District had the right to engage in a sympathy strike at various times and locations within their own districts in response to primary picketing by PAWC employees employed at other districts where labor disputes existed.

In Exception #1, Respondent argues that Judge Goldman erred in finding that Outside Districts and Pittsburgh District employees did not violate the no-strike clause of the relevant collective bargaining agreements. Accordingly, Respondent argues in its brief that the no-strike language prohibited any sympathy strike when the primary picketers are also employees of PAWC working in other districts. If Respondent is correct with respect to Exception #1, written and oral warnings given to employees of the Outside Districts and Pittsburgh District against honoring primary picketing are not in violation of the Act. Counsel for the Acting General

Counsel submits that Respondent is wrong in Exception No. 1 and explains why in part III, B of this brief.

With respect to Exception #3, which addresses the threat of discipline stated in Dascani's letter to Local 537 President Booth that was posted by Hufton, Respondent argues that even if the actions of employees in not crossing primary picket lines are contractually permissible, Dascani's letter was a lawful warning directed solely at unlawful intermittent picketing and inapplicable to general refusals to cross a primary picket line. Counsel for the Acting General Counsel contends this argument is incorrect and explains why in part III, D of this brief.

Exception #2 relates to whether Respondent can control access to jointly used bulletin boards at various facilities by prohibiting the posting of a letter from Booth to Hufton. Respondent argues that with respect this particular letter, which was Booth's response to a memo Hufton directed to employees concerning protocol involved in water treatment plant shut downs, it was within its rights to remove Booth's letter from bulletin boards and, furthermore, to prohibit any re-posting requested by the Union. The Administrative Law Judge correctly found the Respondent's actions in this respect to violate Section 8(a)(1) of the Act and Counsel for the Acting General Counsel argues in support of that finding in part III, C of this brief.

B. Exception No. 1 Regarding the Administrative Law Judge's Decision that the Work Stoppages Did Not Violate the No-Strike Language of the Contracts.

1. The Legal Principles Underlying the Administrative Law Judge's Decision and Relevant Undisputed Facts

In Exception No. 1, Respondent disputes the Administrative Law Judge's finding that the Union did not violate the no-strike provisions in the Outside Districts and Pittsburgh District contracts when its represented employees refused to cross picket lines set up by PAWC employees in separate units where a labor dispute existed. Respondent states that it relies upon "the reasonable construction of the contract language, the intent of the drafters of the contract language, . . . applicable law, and extrinsic evidence/past practice." (Resp. Ex. 1-2)

Respondent advances several arguments in its attempt to prove the Administrative Law Judge was wrong on the critical issue of whether the actions of the sympathy strikers in the Outside Districts and Pittsburgh District were protected. Counsel for the Acting General Counsel asserts that the Administrative Law Judge was correct in his conclusions and argues for the reasons given below that every argument advanced by Respondent to counter Judge Goldman's conclusions is misguided and unpersuasive.

Respondent does not seemingly dispute the foundational case law and legal principles relied upon by the Administrative Law Judge. This case law requires a brief summation before Respondent's arguments are scrutinized. In this regard, Judge Goldman stated, "Employees' decisions not to cross (or to cross) a lawful primary picket line constitute core Section 7 activity, for which they may not be disciplined by an employer *unless* that right has been waived by the Union representing them. That is, in essence, what a 'no-strike' clause in a labor agreement is: a union-sanctioned waiver of the right to strike, observe picket lines, and concertedly withdraw services." (Italics in original) (ALJD p. 13) Mastro Plastics v. NLRB, 350 U.S. 270, 356 (1956) The right to engage in a strike or work stoppage may be waived by a union, but such a waiver of a statutory right must be "clear and unmistakable." Metropolitan Edison Co. v. NLRB, 460 U.S. 693, 780 (1983) The United States Supreme Court in Metropolitan Edison Co. further stated that the waiver must be "explicitly stated." Id.

In applying the legal principles determining intent and waiver, the Administrative Law Judge relied principally on the Board's Decision in Indianapolis Power & Light Co., 291 NLRB 1039 (1983), enfd. 898 F.2d 524 (7th Cir. 1990). This is a case where the contractual right to engage in a sympathy strike was the core issue. The Board stated in Indianapolis Power & Light Co., "In deciding the issue whether sympathy strikes fall within a no-strike provision's scope, the parties' actual intent is to be given controlling weight and extrinsic evidence should be considered as an integral part of the analysis." Id. at 1041.

Respondent does not dispute that the aforesaid legal principles should be applied to the facts in the instant cases. However, it takes exception to how the Administrative Law Judge applied those legal principles to the facts in these cases that involve the actual intent of the contracting parties and when and how extrinsic evidence should be considered. Counsel for the Acting General Counsel asserts that the Administrative Law Judge made the correct findings based on the standard set by the Board in Indianapolis Power & Light Co. and other relevant case law.

In addition to the aforesaid agreements between Respondent and Counsel for the Acting General Counsel on the legal principles applicable to these charges, it should be noted at the outset that there is apparent agreement on many salient facts. Respondent either explicitly or tacitly admits to these facts in its brief. They are as follows: (1) the picket lines at the Ellwood City and New Castle water treatment plants were primary picket lines; (2) the employees who manned the primary picket lines were not on strike against PAWC; (3) the primary picketing did not violate the Brownsville District contract or any other contract; (4) the second paragraph in the "no-strike or lockout" section of the Pittsburgh District and Outside Districts contracts does not permit the Union to engage in a primary strike, but does allow for sympathy strikes/work stoppages; (5) the second paragraph in Section 2 of the relevant contracts, the sympathy strike proviso, was negotiated following a 1979 incident involving a meter reader and the parties have stipulated to certain facts in that regard;[8] (6) an arbitrator issued a decision in 1982 granting back pay to Pittsburgh District employees who refused to cross a primary picket line of PAWC employees from another district;[9] and (7) the meaning of the second paragraph was not raised by either PAWC or the Union during negotiations for any contract covering the Outside Districts

[8] The content of that stipulation (JTX 1, Stipulation 10) is analyzed in detail in part III, B, 3 of this brief.

[9] Counsel for the Acting General Counsel recognizes that Respondent asserts that the 1982 aribitrator's decision should have no bearing in determining the intent of the parties.

and Pittsburgh District after its initial inclusion in those contracts in 1979 and 1981, respectively, until it did so subsequent to January 2011.

2. Respondent Incorrectly Disputes the Administrative Law Judge's Finding that the Intent of the Parties is Unclear from the Contract Language.

As previously indicated, Respondent urges the Board to reject the Administrative Law Judge's conclusion that the work stoppage by Pittsburgh District and Outside Districts personnel were protected activities based, in part, upon the "reasonable construction of the contract language." Regarding the language of the "No Strike or Lockout" sections of the relevant contracts, as Judge Goldman noted, a plain reading of the language therein arguably affords the Union and its represented employees the right to refuse to cross a primary picket lines such as those set up at the various locations within their districts during January 2011. The language on its face cannot reasonably be construed to mean the Union waived its statutory right to engage in sympathy strikes regardless of what entity set up the primary picket line. Notwithstanding this fact, as discussed in detail in parts III, B, 3 and 4 of this brief, Judge Goldman decided that an examination of extrinsic evidence is necessary.

Respondent fails to recognize the Administrative Law Judge's conclusion that the language in both paragraph 1 and 2 of the "No Strike or Lockout" section of the relevant contracts must be read as one entity defining the limits of the Union's waiver of statutory rights. Analysis of the two integrated paragraphs reveal they address the following matters in the following order: (1) the purpose for the "No Strike or Lockout" provision (the first sentence of paragraph 2); (2) obligations of the Union if an unauthorized strike or work stoppage occurs (the second, lengthy, sentence of paragraph 1); (3) action PAWC can take against employees if they engage in an unauthorized strike or work stoppage (the last sentence of paragraph 1); and, (4) those circumstances during the life of the contract when employees may engage in a work stoppage (paragraph 2).

In focusing on the part of paragraph 2 addressing sympathy strikes, it is crucial to recognize that the precise language was proposed by PAWC's attorney and this exception to the general strike waiver the Union agreed to in paragraph 1 was included in the contract because of the Union's concern that its members ought not to be forced to cross a primary picket line. The language proposed by PAWC and placed in the contract—and all succeeding contracts covering the Pittsburgh District and Outside Districts--stated that no employee would be disciplined if he or she "refused to enter upon any property where a lawful Primary picket line is established." (GCX 2, Section 2 and GCX 3, Section 2) Thus, on its face, the language allowing for sympathy strikes covers "any property" where any "lawful primary picket line is established." There is no stated limitation on whose primary picket line can be honored.

While it might be argued that the language itself settles the matter in favor of the Union's position that the work stoppages in January 2011 were not in violation of the contracts, the Administrative Law Judge, confronted with the admittedly unusual circumstances in these cases, understandably and properly looked at extrinsic evidence to determine the intent of the parties and, ultimately, whether the Union gave a waiver. He based his analysis on the Board's standard set forth in Indianapolis Power & Light Co. that the parties' actual intent has controlling weight, but extrinsic evidence may "shed light on the inquiry." (ALJD 13)

3. Respondent Incorrectly Disputes the Administrative Law Judge's Refusal to Determine the Parties' Intent Through Stipulated Facts Regarding the Origin of the Sympathy Strike Proviso.

Regarding the origin of the sympathy strike proviso and how that relates to the intent of the parties, Respondent relies upon a stipulation entered into by all parties to these proceedings. (JX-1, p.10) Respondent argues that this stipulation forecloses any possibility that the intent of the parties is uncertain. However, reliance on that stipulation to establish the intent of the parties is misplaced as careful examination of the content of the stipulation reveals.

The stipulation states that an incident involving a meter reader motivated the Union to seek language in the next contract "to state that its members did not have to cross picket

lines." (JTX 1, Stipulation 10) A meter reader had encountered a stranger picket line at a PAWC customer. The stipulation further states that the bargaining discussions that occurred "only referenced stranger picket lines such as this and never mentioned a picket line set up by the Union here (UWU 537) at a location where the bargaining unit employees represented by this Union worked." (JTX 1, Stipulation 10) The stipulation also states that the chief negotiator for PAWC, an attorney, proposed the precise language that the Union agreed to and which was placed in the Outside Districts 1979-1982 contract and later in the Pittsburgh District contract negotiated in 1981.

The Administrative Law Judge correctly ascertained what the stipulation says and what it does not say. In this regard, the content of the stipulation clearly reveals the origin of the sympathy strike proviso, the focus of the negotiations over the eventual contract language and the author of the contractual language. The Stipulation does not, however, determine the intent of the parties with respect to the right to honor primary picket lines set up by employees from other PAWC districts where a labor dispute exists. Accordingly, the Administrative Law Judge necessarily turned to key extrinsic evidence to provide answers on that issue, which is discussed below in part III, B, 4 of this brief.

Respondent advances a novel argument related to the fact that the sympathy strike proviso had its origin in an incident involving an employee, as the stipulation so states. Respondent first argues that whatever rights existed under the sympathy strike proviso rested only with the employees and do not apply to the Union itself. (Resp. Br. 14-16) Arguing for such a dichotomy of rights—a distinction not supported by the contract language-- is unwarranted. The rights of the Union and those of the employees it represents are coterminous in this situation where the Union sought the proviso language to establish its own freedom to be involved in a sympathy strike and the freedom of its members to choose how to respond when confronted with primary picket lines during the course of their duties. Moreover, nothing in the proviso language handcuffs the Union from taking a position on whether employees can refuse

to cross any primary picket line or communicating to its members any wishes it has in that regard.

Regarding this argument that the rights inured to only the employees, it is critical to recognize that while Dascani's warning letter was sent to Union President Booth, the threats of discipline and other adverse action were directed at both the Union and the employees. Dascani's letter reads, in part: "[PAWC] reserves the right to take appropriate action, including but not limited to discipline and available legal remedies, against individual employees as well against Local 537." (GCX-13; ALJD 9) Thus, Dascani did not differentiate between Union rights and employee rights under the sympathy strike proviso. The Administrative Law Judge was correct when he likewise did not differentiate.[10]

4. Respondent Incorrectly Argues that the Administrative Law Judge Should Not Have Relied Upon the 1982 Arbitration Decision and a 1991 Unfair Labor Practice Charge to Find that Extrinsic Evidence Proves the Parties Intended the January 2011 Work Stoppages to Fall Under the Sympathy Strike Proviso.

The Administrative Law Judge analyzed the evidentiary value of a 1982 arbitrator's decision and a 1991 unfair labor practice charge filed by the Union against PAWC to determine the intent of the parties with respect to the sympathy strike proviso. The exact issue in the arbitration proceedings was whether PAWC employees from Outside Districts should be paid when they refused to cross a primary picket line established at an Outside Districts facility by striking Pittsburgh District employees.[11] However, the Administrative Law Judge relied upon several statements in the arbitrator's decision that clearly indicated that Outside Districts

[10] Respondent argues that the Board's decision in Teamsters Local Union No. 688 (Frito Lay, Inc.), 345 NLRB 1150 (2005) supports its position. In that case, employee rights were distinguished from union rights. However, the administrative law judge correctly concluded that Frito Lay should not be applied to the instant cases where the sympathy strike proviso is incorporated into a single integrated no-strike provision unlike the situation in the case cited where employee rights were distinguished from those held by the Union through being set forth in an entirely different part of the collective bargaining agreement. (ALJD 16, fn. 10)

[11] The incident that occurred in 1991 that gave rise to an unfair labor practice charge saw the reverse situation—Pittsburgh District employees honored a primary picket line at a Pittsburgh District facility established by Outside Districts employees who were on strike. The Administrative Law Judge relied on the proceedings in the unfair labor practice charge as additional extrinsic evidence of the intent of the parties.

employees were understood by both PAWC and the Union to have the right to refuse to cross the primary picket line of Pittsburgh District employees. The several relevant statements from the arbitrator's decision are set forth in the Facts section of this brief. Perhaps most telling, however, the arbitrator stated, "The Union has always held that the picket line was "primary" and the Employer does not contest the position that the picket line was "primary." *Nor is there any dispute of the grievants' right to honor the picket line."* (emphasis added) (GCX- 8, p.8; ALJD 18) Moreover, as the Administrative Law Judge correctly noted with respect to the relationship between contracts and arbitrator rulings, "the question of interpretation of the collective-bargaining agreement is a question for the arbitrator. It's the arbitrator's construction which was bargained for." Steelworkers v. Enterprise Wheel & Car Corp., 363 U.S. 593, 599 (1960); See also Olin Corp., 268 NLRB 573, 576 (1984) Ultimately, Judge Goldman accurately reached the following conclusion with respect to the impact of the 1982 arbitration decision: "clearly, the right of employees to honor the picket line was an explicit premise of the arbitration dispute, and clearly it was not challenged there, or by all evidence, with regard to the 1991 unfair labor practice charge." (ALJD 19)

Based on the 1982 arbitration proceedings and the decision that resulted, the only reasonable conclusion is that PAWC and the Union had not intended to prohibit the Outside Districts and Pittsburgh District employees from honoring primary picket lines set up by PAWC employees working in another district where a labor dispute existed. Thus, the key question of whether the Union waived its statutory right to engage in a sympathy strike in response to the primary picketing such as occurred in 1981, 1991 and 2011, must be answered in the negative.

Respondent tries to escape the clear implication of the arbitrator's decision by advancing several arguments, none of which effectively counter the findings of the Administrative Law Judge. First, as noted above, Respondent correctly points out that the precise issue decided by the arbitrator was whether employees who refused to cross the primary picket line should be paid for the resultant hours lost. In making this argument, Respondent misses the obvious point

that in deciding the pay issue the arbitrator necessarily had to decide the underlying question of whether the honoring of the primary picketing was permissible under the contract. Accordingly, Respondent fails by advancing this argument to weaken in any sense the evidentiary value of the arbitrator's decision.

Secondly, Respondent argues that because the Pittsburgh District employees were on strike when they established the primary picket line in 1981 at Outside Districts facilities this somehow invalidates honoring primary picket lines where a strike is not in progress. The Administrative Law Judge correctly rejected this argument as having no basis in the facts whatsoever. There is no evidence that either party ever raised during the 1981 arbitration proceedings, or at any other time, the claim that the sympathy strike proviso applied only when the primary pickets were on strike. It is true that in 1980 and 1991 the primary pickets were on strike and the primary pickets were not on strike in January 2011, but these facts do not alter Judge Goldman's conclusions with respect to the intent of the parties regarding the meaning of the sympathy strike proviso.

A third argument advanced by Respondent is that extrinsic evidence to "explain" intent is sometimes acceptable in a waiver analysis, but extrinsic evidence cannot "create" an ambiguity as to intent. (Resp. Br. 19-21) The initial response to this argument is simply that the intent of the parties, while certainly controlling, is not clear for the ample reasons discussed in detail above in part III, B, 3 of this brief. Whatever theoretical merit exists for Respondent's argument for distinguishing between "explaining" and "creating" in some other context, it is irrelevant to the facts in these cases where intent is clear. In the instant cases, the Administrative Law Judge correctly concluded that the 1982 arbitration proceedings explain the intent of the parties.

In another argument, Respondent attempts to negate the clear implication of Respondent's acquiescence to the 1982 arbitrator's decision by pointing to the ally doctrine. (Resp. Br. 22-24) Respondent speculates that perhaps the existence of this labor law doctrine somehow prevented it from opposing the underlying assumption in the arbitration proceedings

that honoring a primary picket line of PAWC employees from another district is permissible under the sympathy strike proviso. In response to this argument, Counsel for the Acting General Counsel submits that nothing in the record in this case or in the arbitrator's decision proves that the ally doctrine influenced the position Respondent took during the arbitration. Thus, this argument amounts to mere self-serving speculation. Obviously, it would have been entirely unwarranted for the Administrative Law Judge to conclude based upon any such rank speculation that the actions of the Respondent during the arbitration proceedings and the content of the arbitrator's decision have no evidentiary value in determining the intent of the parties with respect to the sympathy strike proviso.

Counsel for the Acting General Counsel submits that the 1982 arbitration decision firmly established the meaning and breadth of the sympathy strike proviso which permitted the Union and the employees to act as they did in January 2011. The Administrative Law Judge also correctly relied on Respondent's actions in response to the unfair labor practice charge filed in 1991 to determine the intent of the parties. However, perhaps the most convincing affirmation of Respondent's actual position regarding intent occurred each time Respondent negotiated a new contract covering either the Pittsburgh District or Outside Districts from 1981 through 2011. There is no evidence in the record that Respondent ever objected to the crystal clear implications of the 1982 arbitration decision or the 1991 NLRB charge by even attempting to negotiate revised no-strike language that would exclude from the meaning of the sympathy strike proviso any work stoppage where the primary pickets were employees from another district covered under a separate contract. Every time Respondent sat down with the Union in negotiations for succeeding contracts covering the Pittsburgh District and Outside Districts after 1982 it reaffirmed, through its failure to attempt to negotiate new language, what had become the clear meaning of the sympathy strike proviso for both parties.

If Judge Goldman had turned a blind eye to the conduct of Respondent in these matters he would have been utterly remiss in following the Board's standard for determining whether a

union had waived its statutory right to strike. Indianapolis Power & Light, supra. Judge Goldman's finding that the Union did not waive its right is based on the facts and the case law applicable to analyzing intent and waiver. Accordingly, Respondent's Exception No. 1 should be rejected by the Board.

C. Exception No. 2 Regarding the Removal of the Union President's Letter from Company Bulletin Boards

In its Exception No. 2, Respondent disputes the finding of the Administrative Law Judge that it violated Section 8(a)(1) of the Act by removing a letter sent to Hufton by Local 537 President Booth from bulletin boards jointly used by the Company and the Union. Booth's letter was written and sent to Hufton in response to a memo Hufton had posted on various PAWC bulletin boards. In Booth's letter he asked Hufton certain questions concerning shut downs and essentially disputed Hufton's stated conclusions regarding whether, and under what circumstances, employees could leave their duty station at water treatment plants before relief arrived. Counsel for the Acting General Counsel asserts that the Administrative Law Judge cogently analyzed the issue and was correct in his finding that Respondent had committed a violation in this regard.[12]

Respondent does not contest the fact that unless a posting on the bulletin boards falls under an exception to the union's right to post material, the company has no right to censor it. Exceptions to the rule would include material that is extreme and egregious in some manner whereby it loses protected status or is a clarion call to disobey legitimate company rules. Container Corporation of America, 244 NLRB 318 (1979), enfd. in rel. part, 649 F.2d, 1213 (6th Cir. 1981); DaimlerChrysler, 344 NLRB 1324 (2005); Illinois Bell Telephone Company, 255 NLRB 380 (1981). Respondent asserts that Booth's letter to Hufton is not protected under the Act because it was aimed at employees and, in conjunction with that aim, amounted to a "call to

[12] Respondent does not explicitly except to the finding of the Administrative Law Judge that PAWC violated Section 8(a)(1) of the Act by threatening an employee with "grief" if she re-posted Booth's letter to Hufton after PAWC had it removed from the bulletin boards.

disobedience." Counsel for the Acting General Counsel freely admits that Booth knew employees would read the letter, posted in the manner it was, and the Administrative Law Judge did not shy away from this fact. (ALJD 23) However, the letter from beginning to end consists of statements directed by Booth to Hufton and not to any employees.

Respondent asserts that the Administrative Law Judge incorrectly relied on the Board's decision in Cleveland Pneumatic, 271 NLRB 425 (1984) enfd. 777 F.2d 339 (6th Cir. 1985) in arriving at his conclusion that the Union did not call for employees to be disobedient. In reaching this conclusion, Judge Goldman relied on that Board decision because it has strong similarities to the facts in the instant case. In both cases, a union official clearly voiced a difference of opinion with management regarding a condition of employment rather than issuing a "clarion call" to disobedience-- to use a phrase the Board has found useful. Illinois Bell Telephone Company, 255 NLRB 380 (1981). Booth did not call for any employee to take any action, but instead merely stated the Union's position that "if after a reasonable amount of time, a replacement operator is not provided; the plant may be shut down, secured and the operator may leave." (emphasis added)

Respondent argues that the Administrative Law Judge should have found the removal of Booth's letter to be lawful based upon the Board's decision in DaimlerChrysler Corp., 344 NLRB 1324 (2005). The facts in that case, however, are much different than those present in the instant case and, therefore, any reliance on DaimlerChrysler to decide the instant case is inapposite. In DaimlerChrysler, the Board found the e-mails of a union steward to be unprotected because those e-mails called for employee disobedience. The Board found that the steward was advocating an improper work slowdown and his communications were "an attempt to frustrate and interfere with operations in order to modify a current contract or to obtain leverage in some future negotiations." Id. at 1325. Unlike the steward in DaimlerChrysler, Booth's words indicated absolutely no desire to shut down any water treatment plant or obtain some kind of leverage or advantage in contract negotiations. All Booth sought

was to address and protect the rights of employees who might not be relieved within a reasonable length of time when he voiced the Union's position in such matters to Hufton.

Instead of amounting to a thinly disguised communication to employees countenancing disobedience, as Respondent argues, Booth's letter to Hufton simply raises specific questions for Hufton to answer which were understandably prompted by Hufton's statements to employees. Booth also told Hufton about the defensible position the Union was assuming on the key issue brought to the forefront by Hufton of whether an employee can ever depart a water treatment plant without first being relieved. In this regard, Booth supported his position by recounting details regarding a particular incident involving employee Christopher Lawrence on January 8, 2011, which supported the Union's position that no hard and fast rule on shut downs existed. Counsel for the Acting General Counsel contends that the rule was not established and certainly not in its application to the newly arisen circumstances where employees were not crossing a picket line to report for work and management was shown, through its handling of the problems Lawrence faced, to be less than expeditious in fulfilling its duties.

The rule Respondent assumes to exist and views as so important was not incorporated into any CBA or otherwise place into writing. Moreover, the uncertainty of the supposed "rule" is accentuated by the context in which it is announced by Hufton—primary picketing which may not have occurred for 20 years and the application of the sympathy strike proviso to that picketing. To summarize, PAWC and the Union had a genuine difference of opinion on an important issue that affected employees. Thus, when Respondent states that Booth's response to Hufton's memo had no right to remain posted, it is claiming that the Union was required to keep secret from the employees it represents its defensible position on an important issue. Surely this cannot be the case, as the Administrative Law Judge's decision would imply.

Judge Goldman's finding that the removal of Booth's letter to Hufton from bulletin boards constituted a violation of Section 8(a)(1) of the Act is based on the facts and case law deciding similar situations. Accordingly, Respondent's Exception No. 2 should be rejected by the Board.

D. Exception No. 3 Regarding Dascani's Letter and its Reference to Intermittent Picketing.

As is the case with Exception No. 1, Respondent's Exception No. 3 asserts that the Administrative Law Judge incorrectly found an unlawful threat in Dascani's letter to employees. However, in Exception No. 3, Respondent turns the focus on the content of Dascani's letter rather than the assertion that no unlawful threat was possible since the sympathy strikers were supposedly violating the no strike provision of the relevant contract. In this regard, Respondent argues that the actual words used by Dascani in her letter were solely aimed at the conduct of engaging in illegal intermittent striking. Counsel for the Acting General Counsel contends that the Administrative Law Judge was correct in his finding of a violation through Dascani's letter. Respondent's rather tortured analysis of the content of that letter is misplaced.

In making its argument in Exception No. 3, Respondent correctly points to the Administrative Law Judge's recognition that intermittent work stoppages can be violative of the Act and that intermittent work stoppages can be in the form of sympathy strikes. Pacific Telephone & Telegraph Co., 107 NLRB 1547 (1954). In Exception No. 3, Respondent fashions an argument based on a semantic analysis of Dascani's letter. Counsel for the Acting General Counsel submits that Respondent's argument in this regard is perhaps fodder for a final exam in an advanced course in semantics, but totally misguided when applied to the issue at hand of whether employee rights under Section 7 of the Act were violated.

Without repeating here Respondent's reasoning and attempted application of the principle of "expressio unius est exclusio alterius" to the content of Dascani's letter, Counsel for the Acting General Counsel submits that both a correct semantic interpretation of Dascani's words and an objective analysis of how employees would interpret her words leads to the conclusion that the Act was violated through her unlawful threat. The principle of "expressio unius est excusio alterius" is not applicable where, as here, a logical reading of the words directs the threat of discipline at not just intermittent picketing, but at any refusal to cross the

primary picket lines at the facilities. The letter Initially states that any refusal to cross the picket lines violates the no-strike provision in the relevant contract. Dascani's then interjects an additional comment concerning some hypothetical future intermittent work stoppage. However, she then concludes her letter by stating, "therefore [the company is] putting the Union on notice that it reserves the right to take appropriate action, including but not limited to discipline and available legal remedies, against individual employees as well as against Local 537." Any logical and objective reading of Dascani's words would warrant the conclusion there were two threats and they were aimed at both individual employees and Local 537. One threat was directed at any refusal to cross primary picket lines and the other involved future hypothetical illegal intermittent picketing. The former was an unlawful threat for all the reasons stated by the Administrative Law Judge and argued herein, while the latter is perhaps defensible, but irrelevant to the finding of a violation herein.

Even if a student of semantics could somehow apply the principle of "expressio unius est excusio alterius" to Dascani's letter, and make the threat apply solely to illegal intermittent work stoppages, the employees reading the letter would never reach that conclusion. The audience for Dascani's letter would universally and reasonably conclude that PAWC was threatening them with discipline if they refused to cross the primary picket lines set up by PAWC employees from separate units covered by separate contracts. Thus, Respondent's invalid and unusual semantic argument in Exception No. 3 does not counter the well-reasoned conclusions of the Administrative Law Judge that Dascani's letter constitutes an unlawful interference with employee rights under Section 8(a)(1).[13]

Judge Goldman's finding that Dascani's letter amounted to an unlawful threat, notwithstanding her tangential reference to intermittent work stoppages, is solidly grounded on

[13] It should be noted that the oral threat made by supervisor Snyder to employee Kachurek regarding his contractual right to honor the picket line at the Ellwood City water treatment plant is not specifically contested by Respondent other than through Exception No. 1.

the evidence in the record. Accordingly, Respondent's Exception No. 3 should be rejected by the Board.

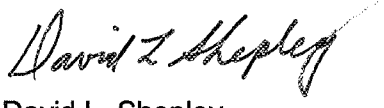
IV. CONCLUSION AND REQUESTED REMEDY

Based on the above and the record as a whole, Counsel for the Acting General Counsel submits that the record herein, as set forth and argued above, fully supports the findings and conclusions and recommended remedy of the Administrative Law Judge that Respondent has violated Sections 8(a)(1) and (3) of the Act, as alleged in the Complaint by threatening employees with discipline for engaging in the protected activity of engaging in a sympathy strike at Respondent's Ellwood City and New Castle water treatment plants, removing Union correspondence from various bulletin boards and threatening an employee with "grief" if she reposted the aforesaid Union correspondence.

It is submitted that the findings of fact and conclusions of law of the Administrative Law Judge are amply supported by the record evidence. Respondent's arguments and authorities have previously been cogently considered and correctly rejected by the Administrative Law Judge in an opinion which carefully analyzes and applies appropriate precedent to the facts of this case. Accordingly, Counsel for the Acting General Counsel respectfully requests that the Board deny all of Respondent's Exceptions and adopt the recommended Decision and Order of the Administrative Law Judge in its entirety.

Dated at Pittsburgh, Pennsylvania, this 13th day of August 2012.

Respectfully submitted,



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UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

PENNSYLVANIA AMERICAN WATER COMPANY Charged Party and **UTILITY WORKERS UNION OF AMERICA, SYSTEM LOCAL NO. 537, AFL-CIO** Charging Party	**Cases 6-CA-037197, 6-CA-37198 6-CA-37202, 6-CA-37241 and 6-CA-37243**

AFFIDAVIT OF SERVICE OF COUNSEL FOR THE ACTING GENERAL COUNSEL'S ANSWERING BRIEF IN OPPOSITION TO RESPONDENT'S EXCEPTIONS TO THE ADMINISTRATIVE LAW JUDGE'S DECISION

I, the undersigned employee of the National Labor Relations Board, state under oath that on August 13, 2012, I served the above-entitled document(s) by post-paid regular mail upon the following persons, addressed to them at the following addresses:

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