Pennsylvania American Water Company *and* Utility Workers Union of America, System Local No. 537, AFL–CIO. Cases 06–CA–037197, 06–CA–037198, 06–CA–037202, 06–CA–037241, and 06–CA–037243

June 28, 2013

DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS GRIFFIN AND BLOCK

On May 17, 2012, Administrative Law Judge David I. Goldman issued the attached decision. The Respondent filed exceptions and a supporting brief, and the Acting General Counsel and Charging Party Union each filed answering briefs.

The National Labor Relations Board has considered the decision and the record in light of the exceptions and briefs[1] and has decided to affirm the judge's rulings, findings,[2] and conclusions and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Pennsylvania American Water Company, locations throughout Pennsylvania, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

Dated, Washington, D.C. June 28, 2013

Mark Gaston Pearce, Chairman

Richard F. Griffin, Jr., Member

Sharon Block, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

JoAnn F. Dempler, Esq., for the Acting General Counsel.
Craig M. Brooks, Esq. and *James W. Southworth, Esq. (Houston Harbaugh, P.C.),* of Pittsburgh, Pennsylvania, for the Respondent.
Samuel J. Pasquarelli, Esq. (Sherrard, German & Kelly, P.C.), of Pittsburgh, Pennsylvania, for the Charging Party.

DECISION

DAVID I. GOLDMAN, Administrative Law Judge. This case involves two issues. The first is an employer's warnings to employees on January 2 and 4, 2011, after an incident of picketing on January 2, 2011, of possible repercussions for honoring the picket line. As explained herein, the situation is somewhat unique, but considering all of the evidence, I conclude that the January 2, 2011 observance of the picket line was protected activity, and the warnings to employees for honoring the picket line violated the National Labor Relations Act (Act).

The second issue involves the employer's removal from bulletin boards of a letter the union president sent to management on January 13, 2011. As explained herein, I find that the union president's letter fell within the ambit of the protections of the Act and the removal of the letter by the employer violated the Act, as did a warning to an employee of adverse consequences should she repost the letter.

STATEMENT OF THE CASE

On January 5, 2011, the Utility Workers Union of America, System, AFL–CIO, System Local No. 537 (Union or Local 537) filed unfair labor practice charges against Pennsylvania

[1] The Respondent has requested oral argument. The request is denied as the record, exceptions, and briefs adequately present the issues and the positions of the parties.

[2] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

The judge found that the collective-bargaining agreements covering the Respondent's employees in the Pittsburgh District and Outside Districts, respectively, do not include language waiving the employees' right to engage in sympathy strikes in support of employees in other bargaining units. In doing so, the judge relied on the functional linkage between the no-strike and grievance-arbitration clauses, and found that the contractual language evinces the parties' intent to limit application of the no-strike clauses to disputes amenable to resolution through the grievance-arbitration procedure. The judge's analysis, however, focused only on the language contained in the Outside Districts agreement. Having reviewed the record, we find that there is a similar functional linkage in the agreement covering employees in the Pittsburgh District. Specifically, that agreement's no-strike clause provides in part that the Respondent's right to discipline employees is "subject to the Union's right to present a grievance as outlined in this Contract."

There are no exceptions to the judge's findings that the Respondent violated Sec. 8(a)(1) of the Act when its supervisor, Kristen Snyder, threatened employee Mike Kachurek with unspecified "ramifications" if he refused to cross a picket line, and when its plant superintendent, John Natale, threatened employee Patty Presnar that reposting a letter from Union President Kevin Booth on one of the Respondent's bulletin boards would "cause her grief." There are also no exceptions to the judge's finding that the Respondent did not violate Sec. 8(a)(1) by stating, in a January 4, 2011 letter to the Union, that employees' repeated refusals to cross picket lines might constitute an intermittent work stoppage that could warrant discipline.

American Water Company (Pennsylvania American or Employer), docketed by Region 6 of the National Labor Relations Board (Board) as Cases 6–CA–37197, 6–CA–37198, and 6–CA–37202.[1] The Union filed further charges on February 22, 2011, docketed by the Region as Cases 6–CA–37241 and 6–CA–37243. The Union amended the charge in Case 6–CA–37241 on May 6, 2011. The Union amended the charges in Cases 6–CA–37197, 6–CA–37198, 6–CA–37202, and 6–CA–37243, on July 15, 2011.

On July 29, 2011, based on an investigation into the charges filed by the Union, the Acting General Counsel (General Counsel), by the Regional Director for Region 6 of the Board, issued an order consolidating the above-referenced cases, and issued a consolidated complaint and notice of hearing against Pennsylvania American alleging violations of Section 8(a)(1) of the Act. Pennsylvania American filed an answer denying all violations of the Act.

A trial in this case was conducted before me on January 24, 2012, in Pittsburgh, Pennsylvania. Counsel for the General Counsel, the Respondent, and the Union, filed briefs in support of their positions by April 2, 2012. On the entire record, I make the following findings, conclusions of law, and recommendations.

JURISDICTION

Pennsylvania American is a public utility engaged in the generation and distribution of water to residential and commercial customers. During the 12-month period ending December 31, 2010, Pennsylvania American, in conducting these business operations, derived gross revenues in excess of $250,000 and during this period purchased and received at its Pennsylvania facilities, products, goods, and materials valued in excess of $50,000 directly from points outside the Commonwealth of Pennsylvania. The complaint alleges and the Respondent admits that at all material times it has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that the Union has been a labor organization within the meaning of Section 2(5) of the Act.

Based on the foregoing, I find that this dispute affects commerce and that the Board has jurisdiction of this case pursuant to Section 10(a) of the Act.

UNFAIR LABOR PRACTICES

A. Background Facts

Pennsylvania American provides water utility services in areas across Pennsylvania. The Employer refers to the service areas as Districts.

Local 537 represents Pennsylvania American employees in six separate bargaining units in Pennsylvania. Each bargaining unit is covered by a separate collective-bargaining agreement between the Union and Pennsylvania American. The bargaining units and agreements cover employees employed in the Brownsville District (southwestern PA), the Mechanicsburg District (south central PA), the Milton/White Deer District (north central PA), the Pittsburgh District (southern Allegheny County), and the Wilkes-Barre/Scranton District (northeastern PA). The sixth bargaining unit and contract covers multiple districts in western Pennsylvania (i.e., Butler, Clarion, Fayette, Kane, Kittanning, Lawrence, Punxsutawney, Warren, Washington, and Valley Districts) and are referred to together as the Outside Districts.[2]

The labor agreements (each between four and five years in duration) for the six bargaining units were originally scheduled to expire on various dates between 2009 and 2011. The Brownsville District contract was set to expire on September 30, 2009; the Outside Districts contract on November 17, 2009; the Mechanicsburg District contract on January 17, 2010; the MiltonlWhite Deer District on April 3, 2010; the Wilkes-Barre/Scranton District on October 31, 2010; and the Pittsburgh District on May 17, 2011. The parties began separate negotiations for a successor agreement for each contract in advance of the scheduled expiration date.

As of January 2011, negotiations were underway for five of the six units. (All but the Pittsburgh District; its contract was not scheduled to expire until May 17, 2011.) None of the negotiations for the five contracts had resulted in a successor agreement and the original expiration date for the five contracts had come and gone. However, by agreement of the parties, each of the labor agreements—and all of their terms, including the no-strike provisions—remained in effect, subject to termination by notice of either party.

Each of the six labor agreements contain no-strike provisions, barring lockouts, strikes, work stoppages, or intentional slowdowns during the term of the agreement. All parties agree that these provisions were in effect at all contractually-covered locations during January 2011. Each of the agreements contains the following no-strike/no-lockout language, or some substantially similar variant:

> In furtherance of harmonious relations among employees, the Management and the Public, and in consideration of the adjustment procedures set forth in Section 3 of this Agreement, it is mutually agreed by the parties hereto that there shall be no lockout, strike, work stoppage or intentional slowdown during the terms of this Contract. However, there shall be no liability on the part of the Union for any strike, work stoppage, or intentional slowdown when such strike, work stoppage, or intentional slowdown is not authorized by the Union and when, in addition, duly authorized officers of the Local Union shall, within five (5) hours after notification by the Company, sign and cause to be posted in prominent places within the offices or plant of the Company, a notice that the strike, work stoppage, or intentional slowdown was not authorized by the Local Union and directing all employees to return to their respective jobs promptly or to cease any action which may adversely affect any operation of the Company. The Company shall

[1] The charge in Case 6–CA–37202 was originally filed with Region 4 of the Board and subsequently transferred to Region 6.

[2] The union-represented employees in each of these units (with some exceptions by unit) include employees from the Distribution Department (who maintain water pipe lines and repair leaking water main pipelines), the Outside Commercial Department or Meter Department (installing, reading and repairing water meters), and the Production Department or Plant Department (water treatment/ purification plants).

> have authority to discipline any employee or employees engaged in any unauthorized strike, work stoppage, or intentional slowdown, subject to the Union's right to present a grievance as outlined in this Contract.

(Sec. 2 of the Outside Districts contract.)

In addition to the above language (or a substantially similar variant of it), two of the six contracts—the contracts covering the Pittsburgh District and the Outside Districts—contain a second paragraph as part of the no-strike provision that is of many years longstanding and which protects employees of the Pittsburgh and Outside Districts from discipline or discharge for refusing to "enter upon any property where a lawful primary picket line is established." This second paragraph in the Pittsburgh and Outside Districts no-strike provisions states:

> It shall not be a violation of this Agreement and it shall not be cause for discharge 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.

The foregoing language was added to the Outside Districts contract in or about 1979 after a meter reader for the (predecessor to the) Employer encountered a picket line at a customer's worksite.[3] This "stranger" picket line was the focus of the negotiators' discussions when the language was added to the Outside Districts contract. The language was added to accede to the Union's demand that its employees would not have to cross the picket lines. (A provision was included so that the exception did not apply to area standards or informational picketing confronted by employees—the employees would still be required to cross such picket lines under the no-strike provision.)

The following year, in December 1980, a dispute arose between the Union and the Employer. Two employees working under the Outside Districts contract containing the second paragraph to the no-strike clause refused to cross a picket line established at an Outside Districts facility by Pittsburgh District picketers who were on strike against the Employer.

The Union and the Employer disagreed about whether the employees, who were willing to work on other jobs, were available for work and must be paid under the guaranteed work provisions of the agreement. The dispute was submitted to arbitration. That narrow dispute is not at issue or relevant here. But what is relevant is the arbitrator's 1982 opinion which explains (GC Exh. 8 at 8) that,

> [t]he Union has always held 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.

Indeed, this was a premise for the arbitrator's ultimate ruling on whether pay was owed to the grievants who honored the picket line. The Arbitrator also explained (GC Exh. 8 at 9):

> The Employer and the Union decided that even though the former District level Unions have now merged into one system wide Union, it is in the best interest of both parties to maintain two separate contracts. 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.
>
> The only issue remaining is if the employees honor a "primary picket line" what penalty, if any, will they be facing? The Union and the Employer point to Section 2 of the Agreement as the basis for their position. Reading Section 2 leads me to the conclusion that this Article provides two different and distinct protections to the members of the Union in the event they refuse to cross a "lawful primary picket line." First, the refusal of an employee to cross a "primary picket line" is not a violation of the contract. Also, the refusal to cross a "primary picket line" shall not be cause for discharge or disciplinary action.

Subsequently, in 1991, Outside Districts strikers established a picket line at a Pittsburgh District facility which Pittsburgh District unit employees honored. The record reveals no dispute over the contractual right of the Pittsburgh District employees to honor that picket line, pursuant to the language in the Pittsburgh District contract no-strike clause protecting the observance of "lawful primary picket lines." However, the Employer refused to pay the employees who honored the picket line and the Union filed an unfair labor practice charge. The Regional Director dismissed the charge on grounds that payment of wage to employees who were not working was not required by the no-strike clause, any other provision of the agreement, or by the Act itself.

The January 2011 picketing

In January 2011, Local 537 remained in protracted contract negotiations with all of the bargaining units (except the Pittsburgh District unit, where the contract was not set to expire until May 2011). In addition to the local issue disputes, the Union was at odds with the Employer's parent company, American Water Works Company, Inc., over retirement and health and welfare benefits issues that were being negotiated on a national level coordinated with other unions representing employees within the parent employer's umbrella.

Local 537 engaged in informational picketing against Pennsylvania American at various locations during and prior to January 2011, in support of national issues. It was understood by

[3] Certain events herein occurred when the Employer's predecessor, the Western Pennsylvania Water Company, was the employing entity. Hereinafter references to the Employer include references to the predecessor and current employing entity.

the Union and employees involved that this informational picketing was not intended to cause employees to refuse to cross the picket line.

More pertinently to the issues in this case, on three dates in January 2011, the Union engaged in what it called "non-informational," "primary labor dispute" picketing at certain water treatment plants covered by the Pittsburgh or Outside Districts contracts. This non-informational picketing occurred on the following dates at the following locations:

> January 2, 2011: New Castle and Ellwood City water treatment plants (Outside Districts)
>
> January 9, 2011: Ellwood City and Indiana (2 Lick) water treatment plants (Outside Districts)
>
> January 29, 2011: Aldrich and Hays Mine water treatment plants (Pittsburgh District); Indiana (2 Lick), New Castle, and Ellwood City water treatment plant (Outside Districts); Butler water treatment plant, distribution, and commercial departments.

In each instance, union pickets from a facility other than the District at which the picket line was established, picketed an Outside Districts or a Pittsburgh District facility. For example on January 2, pickets were established outside of two Outside Districts locations and the picket signs stated that the subject of the picket was a primary labor dispute with the Brownsville District.[4]

The picketing was conducted in this manner based on the Union's position that the second paragraph contained in the Pittsburgh and Outside Districts contracts no-strike clause permitted employees to honor picketing established in support of a labor dispute between the Union and Employer at a different bargaining unit. The Union's position was that the employees in the picketed Outside Districts or Pittsburgh Districts facilities could choose to honor the picket line without fear discipline as long as the picket was established on behalf of another unit in a primary dispute with the Employer.

The Union pickets used red signs to signal to arriving Pittsburgh and Outside Districts unit employees that these were noninformational pickets that the Union hoped employees would not cross. This distinguished these pickets from the blue-signed informational picketing which disclaimed any interest in employees honoring by not going to work.

For the most part, Pittsburgh or Outside Districts employees encountering one of these red "primary labor dispute" picket lines refused to cross and used a cell phone to call the Employer's on-call supervisor to report that they would not be coming to work until the Union removed the pickets.

Union President Kevin Booth testified that the picketers attempted to show up at least an hour before the end of the on-duty plant operator's shift. The on-duty operator would be notified that there were primary labor picketers and would then call supervision to alert them and management could begin to make plans for how they would handle the prospect that at shift's end, the relief operators would not be crossing the picket lines and coming to work.

The Employer's senior director of production Daniel Hufton is responsible for overseeing the operations of the Employer's water treatment plants in Pennsylvania. Hufton testified that when the picketing began on January 2, 2011, and operators were failing to cross the picket line, he received a lot of calls from his supervisors and superintendents. It was unclear to the Employer's managers what the labor situation was at this point. Hufton and managers had been prepped for response to a strike, but in this case there was picketing, but no underlying strike. As Hufton testified, "[i]t was something quite honestly we hadn't dealt with before and hadn't really anticipated. We had people saying things like, no, they're not on strike, but the people won't cross."

On January 2, 2011, Hufton called the union president, Kevin Booth, in an effort to obtain more information. Booth told Hufton that

> there's informational picketing related to . . . national benefits" happening at I believe the Indiana office distribution and I believe the New Castle office distribution and that there was primary labor dispute picketing related to the Brownsville contract at New Castle and Ellwood plants. . . .
>
> I asked Kevin does this mean that Brownsville people are on strike, and I asked that primarily because I'm in charge of the Brownsville plant as well and I'm thinking if there's Brownsville people up at New Castle holding a sign saying, you know, primary picket, does that mean I got to figure out who's going to run my Brownsville plant when the time comes for it to be manned over the weekend. And Kevin said, no, Brownsville's not on strike.

For the very most part, the employees observed the "primary dispute" picket lines. During the picketing only one operator coming to work crossed the picket line and worked his shift. (Another initially relieved the outgoing operator but then asked to leave after being contacted by the Union and he was relieved by management.) The operators waiting to be relieved at shift's end were relieved by supervisors or managers when the scheduled relief operator refused to cross the picket line. No employee was disciplined for failing to cross the picket line.

Supervisor Kristen Snyder's January 2, 2011 Conversation with Employee Mike Kachurek

In January 2011, Mike Kachurek was working as a plant operator at the Ellwood City water treatment plant. The Ellwood City plant is covered by the Outside Districts contract. On January 2, 2011, Kachurek was scheduled to work the day shift, 7 a.m. to 3 p.m. When he reported to work he found pickets at the gate. Union President Booth approached Kachurek's car and told him that these pickets were from Brownsville District and "would appreciate any support I could give our Union by not crossing the line."

[4] The noninformational "primary labor dispute" picket signs set up at a Pittsburgh or Outside Districts location would state, for example, with regard to a sign referencing a dispute at the Brownsville operation:

> Primary Labor Dispute, Utility Workers Union of America, AFL–CIO, System Local 537, Brownsville has a labor dispute with PA American Water. We are seeking a fair contract with PA American Water Company.

Kachurek called into the plant and found out that the on-call supervisor was Kristen Snyder, who is the production supervisor for the New Castle plant. Kachurek called Snyder.

Snyder told him that "there was no strike, that I could go into work." Kachurek told Snyder that the picket signs "specifically say primary labor dispute on them, that my understanding was that I would not be required to cross a picket line." Snyder repeated that there was no strike and that the operator at the New Castle plant (also an Outside Districts facility) had gone into work. Kachurek repeated that his understanding was that he was not required to cross a primary labor dispute picket line. They repeated this colloquy at least once, maybe several times. In her testimony Snyder confirmed that this discussion repeated itself, attributing it to Kachurek seeming unsure about the situation. Snyder also testified that she made clear that because there was no strike, and the contract was in effect, "we expected" Kachurek and the other employees to work."

According to Kachurek, Snyder then said, "well, there's ramifications to not going in." Kachurek asked, "what are the ramifications," and Snyder denied using the word ramifications, saying she thought she said, "implications." Kachurek asked, "what are the implications of this?" Snyder said she did not know. Kachurek gave Snyder his cell phone number and told her to call him if there was more news. Snyder had been laughing at various times in this conversation and Kachurek asked her about it, and asked if she would like to speak to one of the pickets. Snyder hung up.

In her testimony Snyder admitted she raised with Kachurek the possibility of "ramifications" for his decision not to cross the picket line but claimed it was specifically stated "in regard [to] his pay if he did not work." Snyder attributed the laughing to Kachurek saying he would be available to take her calls unless he took a bathroom break. She said she hung up because she was getting another call and that she told Kachurek she had to go.

The only potentially material dispute in their essentially consistent accounts of the conversation involve whether the "ramifications," or perhaps, "implications" referenced by Snyder were stated in terms of pay ramifications as opposed to a more general reference to ramifications. I found Snyder to be a well spoken witness, and an intelligent person. But I believe that Kachurek, who testified with certainty and seriousness, was more reliable on this point. He did not recall any limiting language to Snyder's remark, which makes sense as it was offered with a spontaneous quality. It is also the most plausible conclusion because Snyder professed that at the time she made the remark she was unaware of what the ramifications would be for failing to cross the picket line, not only with regard to pay, but also as to discipline or anything else. There was no reason she would limit her comments on January 2 to ramifications for pay, as she did not know at the time if an employee could or would be disciplined for failing to come to work. And this must considered in light of her testimony that she made clear to Kachurek that the Employer "expected" him to come to work. In her testimony Snyder was committed, consistent with the Respondent's legal position, to stating that her comment was related only to pay, but I don't believe she stated it in such limited fashion. I credit Kachurek and discredit Snyder on this point.

After talking to Snyder, Kachurek parked his car down the lane where he could observe the gates and see if the pickets left. Around 10:45 to 11 a.m., the pickets appeared to be leaving. At that point Kachurek drove into the plant, seemingly with the approval of the pickets who were leaving. He then reported to work and stayed through his shift end time of 3 p.m.

Carole Dascani's January 4, 2011 Letter to the Union

In response to the January 2, 2011 picketing, the Employer's human resources director, Carole Dascani, wrote Union President Booth a letter regarding the picketing. The letter stated,

> On November 19, 2010 and January 2, 2011, members of Local 537 engaged in informational picketing at several Pennsylvania American Water facilities. In addition, on January 2, 2011, Local 537 engaged in what it characterized as "primary labor dispute" pickets at the Company's Ellwood and New Castle locations.

The letter continued with the statement that the Employer "reserves judgment on the characterization of certain pickets" and advised the Union of rules it expected the pickets to follow with regard to picket line conduct. The letter then stated,

> In addition to the above, I would like to clarify the Company's position regarding employees who do not cross picket lines. It appears that several employees may have been advised by the Union that they will be paid if they report to the facility but do not cross these lines. Please be advised this is not the case, and the Company will not pay for time not worked.
>
> Lastly, the Union appears to be characterizing some of its pickets as "primary" in an attempt to avail itself of the protections afforded in the "No Strike or Lockout" clause of some of our collective bargaining agreements. Without agreeing that pickets such as those that occurred on January 2 are, indeed, primary pickets, be advised that, in the Company's view, this language is intended to protect employees from discipline in situations where they refuse to cross, or are prevented from crossing, primary pickets established by stranger unions. It would be disingenuous for the Union to suggest that this clause should protect employees who are members of the same Union that is "preventing" the employees from working. Whether such employees are working under an active agreement (such as in Pittsburgh) or under the terms and conditions of an expired agreement (such as in all other PAWC—Local 537 agreements, per correspondence from Mr. Pasquarelli), such refusal would violate the "No Strike or Lockout" provisions of those agreements. In addition, if Local 537 employees repeatedly refuse to cross picket lines manned by Local 537 members, such refusal may constitute an intermittent work stoppage. The Company is, therefore, 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.

Senior Director of Production Hufton directed that Dascani's letter to Booth be posted at the various water treatment plants where the union-represented employees work.

Hufton's January 11, 2011 Memorandum to Employees

Most of the Employer's water treatment plants, including the ones picketed in January 2011, operate three shifts, 24 hours a day. When an operator coming to work honored the picket line, the operator already working inside the plant was left without a replacement to take over at shift's end. During the picketing on January 2, and thereafter, on-duty operators notified management of the picketing and asked for supervisory personnel to relieve them at shift's end. For the most part, the issue was addressed in this way without incident. However, in a few cases, there was delay in a supervisor taking over the work and the operator made repeated calls to supervisors or managers asking for someone to relieve them. During the course of the picketing, management received "feedback that the operators were saying . . . essentially, if you can't get here soon enough, I'm going to shut the plant down and leave."

The firsthand record evidence of this occurring involved a January 8 incident involving plant operator Christopher Lawrence, who worked at the Two Lick water treatment plant in Indiana, Pennsylvania (part of the Outside Districts unit). Lawrence was working the second shift (3 to 11 p.m.) on Saturday January 8, 2011, when picketers showed up at the plant gates at approximately 9:45 pm. Lawrence observed the pickets on the monitor in his workstation. Lawrence called his Supervisor Sherry Medivitz and told her that there were picketers and that he did not want to stay past the end of his shift at 11 p.m. Medivitz told Lawrence that she would get dressed and be in to relieve him. However, a few minutes before 11 pm., Medivitz had not arrived at the plant and so Lawrence called her again. This time Medivitz told Lawrence that she was not going to come in until the next shift operator, Heather McAnulty, told Medivitz that she was not going to cross the picket line. Lawrence said that he was tired and did not want to stay beyond his shift's end. McAnulty came to the gates, but did not cross the picket line, and, therefore, was not in the plant to relieve Lawrence. Lawrence unsuccessfully tried to contact Medivitz again, and left her voicemail messages when he failed to reach her. After several attempts, Lawrence called Medivitz's direct supervisor, John Natale, but Lawrence did not reach him. Lawrence then attempted to contact Bill Smith, the distribution supervisor. Lawrence told Smith that "if no one was coming in that I was going to take steps to start shutting the plant down because it had been an extended period of time that no one had shown up to relieve me." Smith told Lawrence, "just hang on. Don't do anything, and I'll . . . see what I can figure out." Soon thereafter, Medivitz called and said that she would be in. Medivitz reported to work to relieve Lawrence at approximately 11:45 pm.

The report of an operator suggesting that he would begin shutdown procedures concerned Dan Hufton, the Employer's senior director of production, who oversees the operations of the water treatment plants. Hufton, and numerous employer witnesses testified, convincingly, that the "unwritten" but longstanding practice was that an operator who needed to leave during his or her shift, or whose relief did not arrive at the end of the shift, was to stay, no matter the cause for the relief employee's failure to show, until a replacement arrived. However, the testimony was also clear that if necessary a supervisory employee would cover the shift, and would come in to relieve an employee who needed to leave. As Hufton put it, "The expectation is that they will stay there until they're relieved either by the incoming operator or, if needed, a supervisor." The record also leads me to conclude that it is the employees' expectation—and the typical practice of management—that reasonable efforts will be made to have a supervisor relieve an operator when necessary. In testimony the parties recalled a few exceptions to this, where an employee had to stay because no relief (supervisor or employee) was found, but the prevalent practice is to find a replacement, including a supervisor.

The impetus for the practice of finding a replacement—and the expectation that the employee would remain at work until one arrived—was the desire of management to avoid an unplanned shutdown of the water treatment plant. While shutdowns were conducted on a planned basis, and occasionally conducted on an emergency basis to deal with mechanical issues, there was widespread agreement by all parties that shutdowns were to be avoided and that the plants should not operate unattended. Although Union President Booth took the position that an operator who realized that a picket line had been established "had the right to leave immediately and not have to work behind a picket line, we encouraged them to stay and finish their shift because it is a water treatment plant." Long-time union attorney Sam Pasquarelli testified that in past instances of picketing, operators were instructed not to leave their posts, but rather to "[c]ontact supervision. Wait a reasonable amount of time for relief. If relief doesn't come, don't leave. Make some more calls. Do everything that you can to avoid shutting down of a plant. If it gets too far down the road, call a Union official, and we'll let you know where to go from there."

It is undisputed that at no time during the January 2011 picketing did any employee shut down a water treatment facility. Rather, all operators remained at their posts until they were relieved by another employee or by a supervisor.

On January 11, 2011, Hufton issued a memorandum to "All production employees," which was posted on all of the Employer's production department workplace bulletin boards. Hufton sent his memorandum to emphasize the Employer's view that operators must remain at their posts until relieved by another employee or a supervisor, regardless of the reason the operator needs to leave or that the scheduled relief fails to arrive. Hufton's memo stated:

> This memo is to remind all production employees of Pennsylvania American Water's workplace rule regarding shutdowns of our water and wastewater treatment plants. 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.
>
> If the shutdown is required due to imminent water quality reasons or equipment failures or malfunctions, and the operator is unable to obtain prior approval of the shutdown,

> the operator must notify the plant supervisor, superintendent or production manager as soon as possible after the shutdown, and must remain at the plant until relieved by another operator, maintenance person, plant supervisor, superintendent or production manager.

Union President Booth's January 13, 2011 Response's to Hufton's Memorandum

Union President Booth responded to Hufton's letter in correspondence to Hufton dated January 13, 2011. Booth's letter stated, in reference to Hufton's letter "reminding" employees of the rule regarding staying at work to avoid a plant shutdown that "I am not familiar with this 'rule.'" Booth asked for documentation of the rule. Booth asked for a list of possible water quality reasons that would require a plant shutdown, asked who employees should contact in a situation, described by Booth, where "in my opinion, production supervision deliberately ignored repeated attempts to contact them." Booth asked for the procedure the Employer uses "when an operator is too fatigued to safely continue beyond his/her shift, and supervision cannot be reached," as well as the Employer's emergency response plans.

Booth's letter also referenced an incident from January 8, presumably the incident involving Christopher Lawrence, discussed above:

> Please be advised that there are no mandatory overtime provisions in any of the contracts between Local 537 and Pennsylvania-American Water Company, and Union personnel may refuse overtime for urgent personal reasons. Once notified, management is responsible for obtaining the replacement(s) you reference in your memorandum. In the event that occurred on the night of 1/8/2011, the Company was given repeated notice and over two (2) hours lead time prior to the plant being readied for shutdown. The Operator that evening, in my opinion, was not required to be as generous as he was under the circumstances, and has the legal and contractual right to do as he did. This letter puts you on notice that in the event a similar situation may occur; the Operator will attempt to make contact with the on-duty personnel, and then his/her supervisor with[in] 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. I expect you should respond as outlined in your local [Emergency Response Plan].

Booth arranged for his letter to be posted on bulletin boards in the Employer's facilities. By contractual agreement, and practice, the Union posted communications on bulletin boards in the Employer's facilities that it shared with the Employer. In the Ellwood City facility, there are two main bulletin boards, both in the lunch area. The bulletin boards are used by both union and management. Booth's response was posted alongside Hufton's letter. The letter was also posted in numerous other facilities on jointly-used bulletin boards.

Hufton ordered that Booth's letter be removed from the bulletin boards. On or about January 20, 2011, the Employer's production supervisor in the MiltonlWhite Deer District, Ed Russell, directed the Union's vice president for the Milton District to remove Booth's letter from the bulletin board at the Milton and White Deer water plants and from the Milton office.

In explaining his action, Hufton testified that "the immediate thought I had is this would be very confusing for an employee to see my instructions and then this is basically right next to it. Because . . . it's basically . . . contradicting the expectation that I laid out in the memo, and I wanted it to be very clear to our operators and our supervisors . . . what the work practice should be." In a January 14, 2011 email sent to production supervisors ordering the removal of Booth's letter, Hufton told the supervisors that "[i]f you receive questions from your plant operators, please advise them that the work practices outlined in my memo are in effect, regardless of what Kevin's letter states." Hufton also advised the supervisors that "[d]uring a picketing situation at your plant, if you receive a request from your operator to shut down and leave the plant at the end of their shift, before a relieving operator has successfully made it into the plant, please deny the request."

Employee Presnar's Effort to Repost the Booth Letter

Sometime in January 2011, Patty Presnar, a plant operator at the Ellwood City water treatment plant, and New Castle District union vice-president, noticed Booth's letter was gone and mentioned it to Booth the next time she spoke with him. Booth told Presnar to repost his letter. Booth told Presnar to call John Natale, plant superintendent, and tell him that she was reposting the letter and that Booth wanted it "to stay reposted." When Presnar obtained a copy of the letter she contacted Natale as requested by Booth. Natale told Presnar that he wished she would not repost the letter "because it would cause grief for both of us," presumably because Hufton had instructed that Booth's letter be removed. Presnar consulted with Booth, asking him what Natale "can do to me." Booth said he did not know, and told Presnar to call Natale back and ask him. She did, asking him "what he meant by "grief." Natale said he did not know. Based on this conversation, Presnar did not repost the Booth letter.[5]

ANALYSIS

INTRODUCTION

Section 8(a)(1) of the Act provides that "[i]t shall be an unfair labor practice for an employer . . . to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7 [of the Act]." The rights guaranteed by Section 7 include the rights of employees to "to form, join, or assist labor organizations . . . and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection. . . ."

The General Counsel and the Union contend that the Employer violated Section 8(a)(1) of the Act in two distinct ways.

First, they contend that the Employer—through Snyder's

[5] Presnar's account of her exchange with Natale was uncontradicted. Natale did not testify. I credit Presnar's account. Presnar did not specify the dates on which it occurred. It is reasonable to conclude that it happened in January, sometime between the posting of Booth's letter on or about January 13, and the removal of his letter some days later.

January 2 admonition to Kachurek of "ramifications" for honoring the picket line and through Dascane's posted January 4 letter reserving the right to discipline employees for honoring the picket lines—unlawfully threatened employees with retaliation for honoring the Union's picket line.

Second the General Counsel and the Union contend that the removal of Booth's letter from the bulletin Board violated the Act. And further, they contend that Natale's warning to Presnar that reposting the Booth letter would bring her "grief" constituted an unlawful threat of retaliation if she engaged in protected activity.

I consider each of these claims in turn.

I. THREATS OF ADVERSE CONSEQUENCES FOR HONORING THE PICKET LINE

The General Counsel contends that the Employer violated Section 8(a)(1) of the Act on January 2 and 4, by threatening the employees with discipline for crossing the picket line set up by the Union on January 2 at Outside Districts locations. The alleged threats are contained in (1) Dascani's January 4 letter sent to the Union and posted for employees to read and (2) Snyder's January 2 statement to Kachurek that there would be ramifications for failing to cross the picket line.

The Employer's chief defense is that the picket line's observance by employees was not protected. It contends, primarily, that the right to honor this picket line was waived by the Union through the no-strike clause of the relevant agreement.

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. See, Mastro Plastics v. NLRB, 350 U.S. 270, 356 (1956) ("On the premise of fair representation, collective-bargaining contracts frequently have included certain waivers of the employees' right to strike and of the employers' right to lockout to enforce their respective economic demands during the term of those contracts"). It is well-settled, however, that the waiver of a statutory right must be "clear and unmistakable." Metropolitan Edison Co. v. NLRB, 460 U.S. 693, 708 (1983) ("we will not infer from a general contractual provision that the parties intended to waive a statutorily protected right unless the undertaking is 'explicitly stated.' More succinctly, the **waiver** must be clear and unmistakable").

In considering the scope of the rights waived by a contractual no-strike clause the Board gives the parties' intent controlling weight and looks to the wording of the contract as well as extrinsic evidence that may shed light on the inquiry. *Indianapolis Power & Light Co.*, 291 NLRB 1039 (1988), enfd. 898 F.2d 524 (7th Cir. 1990).

In this case, the "No Strike No Lockout" provision of the Outside Districts contract that governs the terms and conditions of the employees contains the first and second paragraphs, discussed above. The first paragraph is the general no-strike clause. The second paragraph, I will refer to as the proviso.[6]

In the first paragraph of the Outside Districts contract's no-strike provision, as a general matter, the Union waived the employees' right to strike, and did so "in consideration of the adjustment procedures set forth in [the grievance and arbitration] Section 3 of this Agreement." Nevertheless, the second paragraph proviso specifically provides there is not a violation of the Agreement, nor a cause for discipline "in the event an employee refuses to enter upon any property where a lawful primary picket line is established."

What is clear under this language? Not a lot, but let us start with what, if not clear, is undisputed: it is undisputed by any party that if, during the term of the contract, the Union establishes a picket line in protest of a grievable dispute under the Outside Districts contract, and authorizes employees to refuse to go to work, the Union has violated its no-strike pledge and that the employees may be disciplined or threatened with it. Their work stoppage would be unprotected. Neither the Union nor the General Counsel disputes this interpretation. The second paragraph of the no-strike clause—although as a literal matter fully applicable to such a situation—does not protect a primary strike against the Employer during the term of the contract. If it did, it would be fair to say that the first paragraph's ban on strikes would be meaningless.[7]

However, the Union and the General Counsel point out that the situation here is a different one: here the picket line, and the employees' refusal to cross it, is in support of another bargaining unit's labor dispute. That situation, the General Counsel and the Union contend, is precisely what is permitted by the

[6] For convenience both are reprinted here:

> In furtherance of harmonious relations among employees, the Management and the Public, and in consideration of the adjustment procedures set forth in Section 3 of this Agreement, it is mutually agreed by the parties hereto that there shall be no lockout, strike, work stoppage or intentional slowdown during the terms of this Contract. However, there shall be no liability on the part of the Union for any strike, work stoppage, or intentional slowdown when such strike, work stoppage, or intentional slowdown is not authorized by the Union and when, in addition, duly authorized officers of the Local Union shall, within five (5) hours after notification by the Company, sign and cause to be posted in prominent places within the offices or plant of the Company, a notice that the strike, work stoppage, or intentional slowdown was not authorized by the Local Union and directing all employees to return to their respective jobs promptly or to cease any action which may adversely affect any operation of the Company. The Company shall have authority to discipline any employee or employees engaged in any unauthorized strike, work stoppage, or intentional slowdown, subject to the Union's right to present a grievance as outlined in this Contract.
>
> It shall not be a violation of this Agreement and it shall not be cause for discharge or disciplinary action in the event an employee refuses to enter upon any property where a lawful primary picket line is established.

[7] It is literally applicable because in that situation the employees are choosing to refuse to enter the work site where a lawful primary picket has been established. In such a case, the picket line is the method of authorizing a strike—and, therefore, I assume it is a violation of the contract—but the picketing is not in violation of any law and is obviously primary.

second paragraph notwithstanding the first paragraph's prohibition on strikes. This interpretation has the virtue of giving meaning to both paragraphs of the no-strike clause: the general prohibition on strikes—granted in consideration of the grievance and arbitration procedure—and the proviso permitting employees to honor a primary picket line. The difficulty with this contention is that it permits the Union—the same one that is barred from authorizing a strike during the term of the agreement—to orchestrate the strike as long as it is on behalf of other employees. This is a counterintuitive proposition to be sure, but one the General Counsel and the Union hang their case on.

It is worth pointing out here that the Union and the General Counsel reach this result with different approaches. The Union's position on this matter goes further than the evidence and our credulity will take it: the Union contends that there was no strike of any kind here. According to the Union (U. Br. at 19–21):

> [t]here is also no evidence that Local 537 adopted any policy or strategy of trying to engage in a work stoppage. . . . In this case, Local 537 established a primary picket line to advertise disputes it had relative to expired contracts with [the Employer]. . . . Local 537 did not do anything affirmatively or by negative implication to induce a strike or work stoppage—all it did was advertise a primary labor dispute to an audience which had the right to withhold labor if members of the audience desired to do so.

This is simply not a credible argument. Contrary to the Union's protestations, the evidence is clear that the employees' observance of the picket line was undertaken with the authorization, encouragement, and at the instigation of the Union. Local 537 established the picket line. Local 537 actively encouraged employees to honor the picket line, referencing the union-bylaws and "internal discipline" when necessary,[8] and it changed the picketing signage from the blue informational pickets with language disclaiming an interest in employees crossing the line to the red signage without such a disclaimer. This was not a stranger picket line. This was the Union's picket line. Employees did not merely come to the Union seeking advice on what to do in the face of a stranger picket line. The Union set it up and asked people not to cross it. This was a Local 537-authorized work stoppage.[9]

The General Counsel takes a position that more closely aligns the argument with the facts of the matter. He alleges in the complaint and argues on brief, that what we have here is a strike: a sympathy strike in support of the Brownsville unit employees. According to the General Counsel, the second paragraph of the no-strike clause should be understood to authorize just such a strike, and must serve as an exception to the more general prohibition in the first paragraph of the no-strike clause which prohibits any strikes.

The Employer takes the position that the no-strike provision—in the first paragraph of the no-strike clause—is ironclad and prohibits the Union from instigating any type of work stoppage at an Outside Districts facility during the term of the agreement.

There is, however, some textual basis for distinguishing a prohibited strike on behalf of the bargaining unit from a permitted strike undertaken on behalf of another unit's dispute. The first paragraph of the no-strike clause explicitly recites that the no-strike/no-lockout pledge was given "in consideration" for the pledge to resolve contractual disputes pursuant to the "adjustment procedures" in the contract. Similarly, the "adjustment procedures" provision of the contract (Section 3) explicitly recites that "in consideration of the covenants of the parties as are contained in the first paragraph of Section 2 [the no-strike provision], it is agreed that differences [between the parties] of the nature of those mentioned in [the grievance-arbitration provision] shall be adjusted in accordance with [the grievance-arbitration procedures]." The grievance-arbitration provision states—under a heading titled "Disagreements Arising Under Contract—that it applies to disagreements, disputes, or grievances arising "with respect to the interpretation or application of any of the terms or provisions of this Contract."

This "functional linkage" between the no-strike clause and the grievance-arbitration clause provides textual evidence of an intention to treat the no-strike clause as having application coextensive with that of the grievance-arbitration procedure. See *Electrical Workers Local Union 1395 v. NLRB*, 797 F.2d 1027, 1034 (D.C. Cir. 1986) ("In some situations, it will be apparent from the language and structure of an agreement that its no-strike and arbitration clauses are functionally linked") (remanding *Indianapolis Power & Light Co.*, 273 NLRB 1715 (1985)). A sympathy strike in support of issues raised by another bargaining unit's labor dispute is not a dispute "with respect to the interpretation or application" of the terms of the Outside Districts contract, and therefore, not covered by the no-strike clause. *Gary Hobart Water Corp. v. NLRB*, 511 F.2d 284, 288 (7th Cir. 1975).

The Respondent argues (R. Br. at 13), that to interpret the no-strike clause to permit Union picketing on behalf of a different unit "renders the no work stoppage provision useless [and] is an absurdity" and allows "the language that permits employees to decide whether to cross a lawful primary picket line [to] swallow up and eliminate the main purpose of the no-strike/no-work stoppage provision." This is an overstatement. To be sure, a no-strike clause that allows sympathy actions for other units is less of a prophylactic against work stoppages than a complete ban would be, but it hardly renders the clause useless or eliminates its main purpose. The main purpose of the no-strike clause—to prevent the Union and employees from striking over grievable issues—which was the explicit "considera

[8] According to the Union's casual account (U. Br. at 18) of the interaction with one employee:

> "Mr. Shrontz was only told that the union's constitution and bylaws provided for internal discipline against members who did cross, and the president indicated that if a member preferred those charges, Mr. Shrontz may have to defend against them."

[9] The Union's argument (U. Br. at 18) that "each individual employee made his/her own choice to cross or not to cross" the picket line is the case in every strike and, therefore, without more, can hardly be evidence that this is not a strike authorized by the Union.

tion" for the no-strike clause—remains intact under such an interpretation.[10]

But even if paragraphs one and two of the no-strike clause provision are best reconciled by an understanding that sympathy strikes are permitted, this does not demonstrate that the proviso also applies to Local 537-called sympathy strikes, and not just "stranger" picket lines. After all, the no-strike prohibition of the first paragraph is directed squarely at prohibiting this Union from authorizing strikes, and the second paragraph proviso does not mention the Union. In other words, even if employees have the right to honor a stranger picket line, this does not suggest that they are free to honor a picket line established by the very entity—the Union—to which the no-strike clause provision is directed.[11]

There is facial appeal to understanding the no-strike provision to protect observance of only "stranger" picket lines by employees. Indeed, the issue of "stranger" picket lines was the original problem that prompted negotiation of the second paragraph of the Outside Districts no-strike provision. As referenced above, the second paragraph was added in or about 1979 after a meter reader encountered a picket line at a customer's worksite and this "stranger" picket line was the focus of the negotiators' discussions when the language was added to the Outside Districts contract.

However, it is notable that while Dascani's January 4 letter drew the distinction between stranger and Local 537-authorized pickets, on brief the Employer does not stress this as the relevant distinction. It cannot, because it is constrained to acknowledge that events since 1979 suggest exactly what the General Counsel proposes: i.e., that the parties accepted that pursuant to this language the Union is entitled to establish a picket line—on behalf of another Employer bargaining unit—and that employees who honor the picket line are protected from discipline for honoring that picket line.

The evidence for this cannot easily be dismissed. As discussed above, this very contract language was at issue in the 1982 arbitration decision involving a picket line established by the Union on behalf of the Pittsburgh District at an Outside Districts location. Although the issue in dispute at the 1982 arbitration was something not at issue here—whether the contract required the Employer to pay lost time to employees who honored the picket line—the premise of the arbitrator's ruling, unchallenged by the Respondent, was that the Outside Districts employees were free to observe the picket line without reprisal. According to the arbitrator: "The Union has always held 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."

In 1991, during a subsequent strike, the issue of pay for employees honoring the picket line came up, this time in the context of an unfair labor practice charge filed by the Union with the Board. The Regional Director dismissed the Union's charge, rejecting the contention that the Pittsburgh District employees who honored a picket line set up by Outside Districts employees at a Pittsburgh District facility, were owed pay for not working. However, once again, the unchallenged premise of the charge was that the Pittsburgh District employees had the right under the contract to honor the picket line established by another Employer bargaining unit at the nonstriking Pittsburgh District facility.

In the wake of the arbitrator's ruling, the relevant language of the Outside Districts contract has remained the same since 1982 until today, over 30 years later. Of course, since the seminal Steelworkers Trilogy cases in the Supreme Court, the importance of and deference accorded the arbitrator in interpreting collective-bargaining agreements has been firmly established as a matter of Federal labor policy: "the question of interpretation of the collective bargaining agreement is a question for the arbitrator. It is the arbitrator's construction which was bargained for." *Steelworkers v. Enterprise Wheel & Car Corp.*, 363 U.S. 593, 599 (1960); *Olin Corp.*, 268 NLRB 573, 576 (1984) ("An arbitrator's **interpretation of the contract** is what the parties here have bargained for and, we might add, what national labor policy promotes"). Indeed, the arbitrator's interpretation is the parties' agreement. As the Supreme Court explained in *Eastern Associated Coal Corp. v. United Mine Workers*, 531 U.S. 57, 62 (2000):

[10] The Respondent relies upon the Board's decision in *Teamsters Local Union 688 (Frito Lay, Inc.*), 345 NLRB 1150, 1151 (2005), but that case does more to advance the General Counsel's case. In *Teamsters Local Union 688*, a Board majority rejected the claim that contractual language permitting employees to honor a picket line was an exception to the no-strike clause. But in reaching that conclusion the Board specifically relied upon the fact that the language permitting the honoring of a primary picket was *not* included in the contract's no-strike provision. In that case, the no-strike article of the contract listed certain exceptions (the "only exceptions") to the no-strike clause, but did not list as an exception the *different* article of the contract permitting employees to honor a picket line. In the instant case, in direct contrast, the "added contractual protection" for employees' honoring the primary picket line is included in and part of the no-strike provision and thus, must be read as a constituent part of an analysis of the prohibitions contained in the clause. Thus, the very distinction drawn by the Board majority in *Local Union 688*, and the main point on which the decision rests, is not only absent here, but reversed.

The facts of this case fall squarely within the reasoning and precedent of *Machinists, Oakland Lodge 284 (Morton Salt Co.)*, 190 NLRB 208 (1971), enfd. in relevant part 472 F.2d 416 (9th Cir. 1972), judgment vacated and remanded on other grounds 414 U.S. 807 (1972). In that case (like *Teamsters Local Union 688*), the union was alleged to have violated Section 8(b)(1)(a) by fining employees for refusing to participate in a work stoppage in violation of the no-strike clause. However, the Board dismissed the complaint, recognizing that the language in the no-strike clause stated that "It shall not be considered a violation of this Agreement if employees [honor a picket line]." The Board concluded that this demonstrated that the union's conduct in encouraging observance of the picket line did not violate the labor agreement.

[11] The General Counsel points out that the proviso does not explicitly limit its application to observance of stranger pickets, or exclude Local 537 picket lines from its scope. But this is not very helpful. After all, the explicit language of the proviso is untenably broad and does not even prohibit the observance of Union picket lines established to protest grievable disputes arising under the Outside Districts contract. And all parties concede that the observance of such a picket line during the life of the contract would be a violation of the contract and unprotected. The proviso's meaning cannot be understood in isolation from the rest of the contract or from the extrinsic evidence.

> we must assume that the collective-bargaining agreement itself calls for Smith's reinstatement [as found by the arbitrator]. That is because both employer and union have granted to the arbitrator the authority to interpret the meaning of their contract's language. . . . See *Steelworkers v. Enterprise Wheel & Car Corp.*, 363 U.S. 593, 599 (1960). They have "bargained for" the "arbitrator's construction" of their agreement. . . . Hence we must treat the arbitrator's award as if it represented an agreement between Eastern and the union as to the proper meaning of the contract's words . . . . See *St. Antoine*, Judicial Review of Labor Arbitration Awards: A Second Look at Enterprise Wheel and Its Progeny, 75 Mich. L. Rev. 1137, 1155 (1977). For present purposes, the award is not distinguishable from the contractual agreement. [parallel citations omitted].

Accord: *Electrical Workers Local Union 1395 v. NLRB*, 797 F.2d 1027, 1035 fn. 8 (D.C. Cir. 1986) ("the arbitrator's interpretation is an integral part of the agreement itself, in way that a public tribunal's interpretation never could be") (remanding *Indianapolis Power & Light Co.*, 273 NLRB 1715 (1985)).

In this case, we have an interpretation of the labor agreement that is premised on the view that the agreement permits observance of the picket line set up by the Union on behalf of another Union-represented bargaining unit employed by the Employer. It is an interpretation that the Employer had every reason to dispute at the arbitration hearing, but did not. According to the undisputed testimony of union counsel, neither party made any proposals to change this language in negotiations occurring later the same year after the arbitrator issued his ruling in 1982. During the next strike, in 1991, there was similar picketing and, again, no changes were made to the language in question, and no question raised about the contractual right of employees to honor the picket lines.

This is extrinsic evidence of the parties' intent that weighs in the General Counsel's favor. I accept the Respondent's argument that the narrow issue at stake in the arbitration decision and the 1991 unfair labor practice charge—whether employees who honored the picket line must be paid—is a different issue. That does render the arbitration decision and dismissal of the unfair labor practice charge something less than definitive. Yet, it is also not accurate to argue that this extrinsic evidence is without force. 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. This demonstrates, at a minimum, that the acceptance of the observance of these types of picket lines, based on this contract language, is a practice of longstanding. It weighs in favor of the General Counsel's case. Particularly when one considers that this exercise in contract interpretation is intended to resolve a question of waiver the outcome is even clearer. Given the language, and given the extrinsic evidence, one would be hard-pressed to conclude that the Union's right to engage in this picketing, and encourage these work stoppages, "was fully discussed by the parties and that the party alleged to have waived its rights consciously yielded its interest in the matter." *Allison Corp.*, 330 NLRB 1363, 1365 (2000).

The Employer argues that the January 2011 picketing is distinguishable from historical instances of Union picketing because in the past instances of picketing at the Outside (or Pittsburgh) Districts on behalf of other bargaining units, those other bargaining units have been on strike against the Employer. It essentially rests on this distinction, arguing that the presence of the underlying strike in the other bargaining units somehow made the picket lines set up at the Outside (or Pittsburgh) Districts facilities "lawful," while the January 2011 picket lines were not lawful because there was no ongoing strike at the units on whose behalf the picket line was established. (See R. Br. at 16–20.)

The problem for the Employer's argument is that the existence of a strike—or not—in, for instance, Brownsville unit, cannot matter to the analysis. In January 2011, the Brownsville unit's no-strike clause was in effect, but it is not transgressed by activity occurring at another nonunit facility such as an Outside Districts facility.[12]

The absence of a strike at Brownsville does not change the analysis of whether the no-strike clause at the Outside Districts units has been violated. Nothing at all in the language of the Outside Districts no-strike clause supports a contention that it is permissible for the Union to picket the Outside Districts on behalf of another unit such as Brownsville when the Brownsville unit is on strike but impermissible if the Brownsville unit is not on strike.

It is obvious how the Union's use of this picketing tactic could prove frustrating to an employer: it is true that the no-strike clause, with its provision permitting the honoring of picket lines, provides the Union with a method of putting economic pressure on the Employer (at the Pittsburgh or Outside Districts) over disputes at other facilities even without striking those facilities. But the answer to that is to renegotiate, not reinterpret the agreement. And in fact, that is what the Employer sought to do in the wake of the January 2011 picketing. After 30 years it introduced a proposal in May 2011 negotiations to alter the language at issue so that it clearly and explicitly applied only to stranger pickets set up on property involving

[12] No party asserts that the picketing and strike violated the Brownsville agreement's no-strike clause. The Brownsville labor agreement sets forth the Union and Employer's agreement that "there shall be no lockout, strike, work stoppage, or intentional slowdown during the terms of this Agreement"—a no-strike clause similar to the first paragraph of the Outside Districts contract. Picketing, by itself, is not proscribed—although many no-strike clauses do. See e.g. *Indianapolis Power & Light*, 291 NLRB at 1040 ("any strike, picketing, sit-down, stay-in, slow-down, or other curtailment of work or interference with the operation of the Company's business"). In any event, the Union's picketing did not cause and was not intended to cause a work stoppage by Brownsville employees against the Employer. The Brownsville contract, including its no-strike no-lockout clause, must be understood to apply to and prohibit lockouts and strikes only against Brownsville. If it were read to prohibit strikes and lockouts at other facilities of the employer then the Employer would be barred by the Brownsville unit contract from locking out other union-represented units, even after their contracts expired, and the Union would be barred from striking other units, even after those contracts expired. That would be an untenable reading of the parties' intent (and no party endorses it).

(at least one) unrelated company and established by at least one union unrelated to this Union. The Employer maintained in its proposal that it was only seeking to clarify the language to conform to its existing meaning. I accept that qualification, and do not rely on the new proposal as evidence of the meaning of the existing provision. However, the need to make this clarification, at a minimum, undercuts the contention that the 30-year existing provision clearly and unmistakably waived the rights at issues.

In short, I think this is a case where the extrinsic evidence—the history of the parties' conduct—weighs heavily in interpreting the parties' agreement. In *Indianapolis Power & Light Co.*, 291 NLRB 1039 (1988), enfd. 898 F.2d 524 (7th Cir. 1990), the Board made clear that such evidence must be considered in considering the scope of the rights waived by a contractual no-strike clause. Based on the totality of the evidence, I find that the honoring of the picket line by employees at Ellwood City and New Castle on January 2, 2011, was protected activity, not waived by the no-strike clause.

In light of this, I must consider the lawfulness of Dascani's January 4 letter and Snyder's January 2 comment to Kachurek.

Dascani's letter was, essentially, a statement of the Respondent's position on the picketing and employees' observance of it. In her letter, Dascani wrote that employees who do not cross the picket lines will not be paid. The General Counsel does not allege that this was an unlawful threat of retaliation, apparently accepting it as an action the Respondent was entitled to take.

However, Dascani's letter also explains that "in the Company's view," the protection from discipline for employees observing picket lines that is contained in the Pittsburgh and Outside Districts agreements "is intended to protect employees from discipline in situations where they refuse to cross, or are prevented from crossing, primary picket lines established by stranger unions." Her letter calls it "disingenuous" for the Union to suggest that the language protects from discipline employees who are members of the union establishing the picket, and the letter declares that the refusal to cross a union picket line—such as the one established January 2—"would violate the 'No Strike or Lockout' provisions of those agreements." Dascani added that if employees "repeatedly refuse to cross picket lines manned by Local 537 members, such refusal may constitute an intermittent work stoppage." Dascani concluded by stating: "The Company is, therefore, 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."

Thus, Dascani's letter conveys to employees the Employer's position that observance of the picket line on January 2, 2011 violated the agreement and was conduct for which the Employer reserved the right to discipline employees. This condemnation of protected activity that, I have found, was not in violation of the agreement, constitutes an unlawful interference with employee rights in violation of Section 8(a)(1).

I add that I do not find that the statement in Dascani's letter concerning an intermittent work stoppage to be violative of the Act. ("In addition, if Local 537 employees repeatedly refuse to cross picket lines manned by Local 537 members, such refusal may constitute an intermittent work stoppage."). That is an accurate statement, one the union might consider. I do not accept the General Counsel's contention that sympathy strikers are immune from losing the protections of the Act for engaging in "hit and run" work stoppages. See *Pacific Telephone & Telegraph Co.*, 107 NLRB 1547 (1954) (applying intermittent strike doctrine to sympathy strikers and finding their work stoppage unprotected).

By the same token, the Employer's contention on brief that the series of picketing events later in January rendered the employees' honoring of the picket line unprotected, because it was intermittent, has no merit as a defense to Dascani's January 4 threat of discipline. Dascani's letter warned of intermittent picketing, but also asserted that any observance of the picket line violated the contract. ("It would be disingenuous for the Union to suggest that this clause [in the contract permitting observance of picket lines] should protect employees who are members of the same Union that is 'preventing' the employees from working. . . . [S]uch refusal [to cross the picket line] would violate the 'No Strike or Lockout' provision of those agreements.") The threat of discipline in her letter was not limited to a threat of discipline if the picketing continued and was deemed unprotected as intermittent. Dascani's warning, issued January 4, before any repeat of the January 2 picketing that could render the picketing "intermittent," violated the Act.[13]

As discussed above, I have found that Snyder's admonition that there would be "ramifications" for failing to cross the picket line was not expressly limited to ramifications regarding a loss of pay. Rather, the unstated "ramifications" for failing to cross the picket line would reasonably be understood to be a threat of retaliation or punishment for choosing to honor the picket line. This is particularly true given Snyder's concurrent notice to Kachurek that the Employer "expected" employees to cross the picket line and come to work. The threat of unstated "ramifications" for honoring the picket line, and contravening the stated "expectations" of the Employer, is a clear-cut threat of reprisal violation of Section 8(a)(1).

Finally, the Employer points out on brief that there was confusion on the part of supervisors when confronted with the picketing on January 2, and that Snyder's statement, in particular, reflected this confusion and not an unlawful threat. Even presuming a good faith but mistaken belief that the Employer was entitled—or might be entitled—to impose "ramifications" on employees who observed the picket line, the threat to do so,

[13] I note that the Employer's suggestion that a Union's January 2 picketing was an unprotected partial strike because it targeted only the water treatment departments is without support and must be rejected. In order for a work stoppage to be lawful, there is no requirement that union seek to stop the work of every portion of the facility or all bargaining unit employees. In any event, unit employees choose for themselves whether or not to participate in a work stoppage. The protected nature of a work stoppage does not turn on whether, for example, a unit's production, but not maintenance, employees decide to participate in the work stoppage. I note that an employer is, of course, similarly free to lock out only a portion of a bargaining unit, as long as it acts without discrimination. *American Ship Building Co. v. NLRB*, 380 U.S. 300, 304 (1965); *Bali Blinds Midwest*, 292 NLRB 243, 246 (1989).

as an objective matter, would reasonably tend to interfere with the free exercise of employee rights. Of course, it is well-settled that in evaluating the remarks, the Board does not consider either the motivation behind the remarks or their actual effect. *Miller Electric Pump & Plumbing*, 334 NLRB 824, 825 (2001); *Joy Recovery Technology Corp.*, 320 NLRB 356, 365 (1995), enfd. 134 F.2d 1307 (7th Cir. 1998).

II. REMOVAL OF UNION POSTING FROM BULLETIN BOARDS

The General Counsel and Union allege that the Respondent unlawfully removed Booth's letter from the bulletin boards shared by the Union with the Respondent.

The General Counsel and Union further allege that the Respondent, through Natale, violated the Act when Natale told Presnar that reposting would "cause grief" for her.

In this case, the Employer has consented to the Union's use of the bulletin board for communicating with union members, and its agreement to do so is set forth in each of the collective-bargaining agreements. Having established, by practice and contract that the Union may use the bulletin board to communicate with employees, the Employer is not free to pick and choose which union communications the Union posts. It is "well established" that,

> when an employer permits, by formal rule or otherwise, employees and a union to post personal and official union notices on its bulletin boards, the employees' and union's right to use the bulletin board receives the protection of the Act to the extent that the employer may not remove notices, or discriminate against an employee who posts notices, which meet the employer's rule or standard but which the employer finds distasteful.

Container Corp. of America, 244 NLRB 318 fn. 2 (1979), enfd. in relevant part 649 F.2d 1213 (6th Cir. 1981).

The exception to the foregoing rule is for communications so extreme or egregious that they lose the protection of the Act. Here, as a general matter, the Employer does not challenge the right of the Union to use the bulletin board. However, the Employer contends that Booth's memorandum was in "direct contradiction" to a longstanding rule requiring operators to remain on-duty until relieved, and instructed employees to disregard Hufton's directive to employees to this effect. Accordingly, it contends that it had a right to remove the posting and, presumably (although it is not expressly treated with on brief) to warn Presnar that she would get "grief" if she reposted Booth's letter.

While I assume that, as the Respondent contends, it is unprotected conduct for an employee to directly urge employees to engage in a partial strike or to disregard a direct (and lawful) management order, and while Booth certainly did not have "supervisory authority to instruct employees to disregard" the Employer's directives (R. Br. at 32), I do not read Booth's letter or his dispute with management that way.

Booth's letter is hardly an exhortation to employees to refuse to stay at their posts and shut down the plant in defiance of a management directive. In the first place, Booth's letter was written to Hufton. It was not a directive to employees. It did not urge, exhort, or even address employees. Of course, it was posted for employees to read, and I do not suggest that a directive to engage in unprotected conduct can be insulated if it is cleverly styled as a letter to management. But Booth's letter was a letter to management: an explanation of the Union's position on disputed issues and a request for documentation of Hufton's claims about the rule. The letter raised questions about what should happen if an operator was unduly fatigued and supervision was unresponsive, and raised concerns that during recent events supervision had "deliberately ignored repeated attempts to contact them." The letter argued that there are no mandatory overtime provisions, suggesting that there are outer limits to how long an employee should have to remain after the end of his/her shift. The fact that the Union's opinion disputing management's views was shown to employees via the bulletin board does not convert it into a call for unprotected action or violation of a management directive.

Booth asserted that management has a responsibility to obtain replacements when notified that one is needed and expressed the view that in the January 8 incident (presumably involving Christopher Lawrence), the operator would have been within his rights to leave at some point if no replacement appeared. Finally, in the penultimate sentences, that are the nub of the Respondent's objection, Booth wrote:

> This letter puts you on notice that in the event a similar situation may occur; the Operator will attempt to make contact with the on-duty personnel, and then his/her supervisor with 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. I expect you should respond as outlined in your local [Emergency Response Plan].

This "notice" from Booth clearly angered the Employer. The Employer does not agree that an employee may ever, under any circumstances, shut down a plant because relief has failed to show up. And it does not agree that Lawrence would have been within his rights to initiate a shutdown if he was not relieved.

Yet "the Board has long held that in the context of protected concerted activity by employees, a certain degree of leeway is allowed in terms of the manner in which they conduct themselves." *Health Care & Retirement Corp.*, 306 NLRB 63, 65 (1992), enforcement denied on other grounds 987 F.2d 1256 (6th Cir. 1993), affirmed 511 U.S. 571 (1994). "The turbulence inherent in union activity arises from rivalry and division likely to provoke even the docile to petulant behavior. . . . [E]motional excess manifested by employees in resisting management is not committed under this law to the absolute judgment of employers. Indeed, congressional guarantees embodied in Section 7 of the Act would be jeopardized if every act of disrespect or insubordination emerging from a protected dispute which divides management from its workforce, renders the employee involved as fair game for discipline." *F.W. Woolworth Co.*, 251 NLRB 1111, 1114 (1980), enfd. 655 F.2d 151 (8th Cir. 1981), cert. denied 455 U.S. 989 (1982).

Under this standard, Booth's declaration is not an unprotected assertion. An employee reading the exchange of letters would understand that this is a disputed issue. Booth's letter challenges the Employer's view, to be sure. The essence of the

message was to urge the Employer not to delay in providing relief for operators who have completed their shift and are ready to leave work. It was not a call to employees to violate an employer directive and to shut down the plant in defiance of management orders. In context, Booth's letter engaged the Respondent in a debate.

In this regard, the Board's decision in *Cleveland Pneumatic Co.*, 271 NLRB 425 (1984), enfd. 777 F.2d 339 (6th Cir. 1985) is instructive. In that case the employer prepared and (per the usual practice) had the union steward Williams post lists of employees designated to work overtime. Williams posted the notices but, because the lists were not prepared sufficiently in advance to meet contractual requirements, he wrote on each list "Union does not authorize this overtime" along with his initials. In response, the employees on the list did not work the overtime. The employer threatened the steward with discipline if he ever did it again, contending that the steward's note "amounted to a request that the scheduled employees engage in a strike by refusing the overtime work assignments." 271 NLRB at 426. The Board rejected the employer's defense and found a violation. As the judge explained, in reasoning adopted by the Board:

> When Williams informed the employees that the Union had not "authorized" those notices, all he was saying is it had not agreed to a departure from the contract terms. He was doing no more than publicizing his correct reading of the contract. There was nothing in his language that told the employees what they were supposed to do. At the hearing Williams said: "I was giving the employees an opportunity to decide themselves whether they wanted to work or they did not want to work."

See also *Illinois Bell Telephone*, 255 NLRB 380, 381 (1981) (in context of whole communication, union officials protest over forced overtime in which they announced to employees that "overtime is voluntary" and that employees refusing orders to work overtime "are right" is not reasonably understood as "a clarion call" for future refusals to work overtime and is protected: "The January 5 leaflet basically protested Respondent's alleged change in overtime policy as contrary to past practice and the contract. Whether or not the protesters were correct in their opinion is not relevant; the activity is protected").

In the instant case too, Booth's memorandum did not purport to instruct employees, and there is no record evidence that any employee ignored management instructions and left the operation unattended or initiated shutdown procedures. Booth's memorandum made clear to the Employer and to employees the Union's disagreement with the Employer's position that an existing rule—admittedly unwritten, and therefore even more susceptible to disputed interpretation—required an employee to remain at his or her post until relieved, no matter what, and no matter how long. Booth's letter, as was the case with the union communications to employees in Cleveland Pneumatic Co., supra and Illinois Bell Telephone, supra, does not assume supervisory authority and does not instruct employees to disregard management.

Booth's letter and its posting by the Union constituted protected activity. Having agreed to the Union's use of the bulletin board, the Respondent cannot assume the prerogative to remove communications on grounds that the communication challenges the Respondent's positions. I find that the Respondent violated the Act by ordering the removal of Booth's letter.[14]

Similarly, Natale's suggestion to Presnar that it would cause her grief (in a form he could not explain when Presnar made a follow up call to ask what he meant) should she repost the letter, is also violative of the Act, as it threatens adverse consequences for engaging in protected conduct: the posting of union literature on a bulletin board designated for that purpose (among others).

CONCLUSIONS OF LAW

Respondent Pennsylvania American Water Company (Respondent) is an employer within the meaning of Section 2(2), (6), and (7) of the Act.

1. The Charging Party Utility Workers Union of America, System, AFL–CIO, System Local No. 537 (Union) is a labor organization within the meaning of Section 2(5) of the Act.
2. At all material times the Union has been the recognized exclusive collective-bargaining representative of six bargaining units of the Respondent's bargaining unit employees.
3. On January 4, 2011, the Respondent 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.
4. On January 2, 2011, the Respondent violated Section 8(a)(1) of the Act by threatening an employee with unspecified "ramifications" for engaging in the concerted and protected activity of honoring the Union's picket line, established January 2, 2011, at the Respondent's Ellwood City water treatment plant.
5. In January, 2011, the Respondent violated Section 8(a)(1) of the Act by 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.
6. In January 2011, the Respondent violated Section 8(a)(1) of the Act by threatening an employee that it would cause her "grief" to repost a union letter on the bulletin board in the Respondent's Ellwood City facility on which the Union regularly posts communications.
7. The unfair labor practices committed by Respondent affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

[14] I do not reach the separate question, raised by the Union and the General Counsel, as to whether a rule, such as that advanced by the Employer, that compels employees to remain at work beyond their shift, and therefore precludes them from supporting a picket line that they would otherwise have the right to observe, is violative of the Act.

At the Union's request, the Respondent shall repost the January 13, 2011 letter from Union President Booth to Senior Production Manager Hufton on all bulletin boards from which it was removed by the Respondent.

The Respondent shall further be ordered to refrain from in any like or related manner abridging any of the rights guaranteed to employees by Section 7 of the Act.

The Respondent shall post an appropriate informational notice, as described in the attached appendix. This notice shall be posted in the Employer's facilities or wherever the notices to employees are regularly posted for 60 days without anything covering it up or defacing its contents. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed any facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since January 2, 2011. When the notice is issued to the Employer, it shall sign it or otherwise notify Region 6 of the Board what action it will take with respect to this decision.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[15]

ORDER

The Respondent Pennsylvania American Water Company, with locations throughout Pennsylvania, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Threatening employees with discipline or other adverse consequences for engaging in the protected and concerted activity of honoring a picket line protesting a dispute with the Respondent, where honoring the picket line is not in violation of the contractual no-strike clause.

(b) Removing union literature from the bulletin board in the Respondent's facilities on which Union communications are typically posted.

(c) Threatening employees with adverse consequences in retaliation for posting union literature on the bulletin boards in the Respondent's facilities on which Union communications are typically posted.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Upon the request of the Union, repost Union President Kevin Booth's January 13, 2011 letter to the Respondent's Senior Director of Production Daniel Hufton on all bulletin boards from which the Respondent had it removed.

(b) Within 14 days after service by the Region, post at its Pennsylvania facilities the attached notice marked "Appendix."[16] Copies of the notice, on forms provided by the Regional Director for Region 6, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to the physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondents to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed any facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since January 2, 2011.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. May 17, 2012

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT threaten employees with discipline or adverse consequences for honoring a picket line that is not in violation of a contractual no-strike clause in the labor agreement.

WE WILL NOT remove union communications from the bulletin board in our facilities on which union communications are typically posted.

WE WILL NOT threaten employees with adverse consequences for posting union communications on bulletin board space in our facilities on which union communications are typically

[15] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[16] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

posted.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of rights guaranteed you by Section 7 of the Act.

WE WILL, upon request of the Union, repost the January 13, 2011 letter from Union President Kevin Booth to Production Supervisor Dan Hufton on all bulletin boards from which we removed the letter.

PENNSYLVANIA AMERICAN WATER COMPANY