

OCTOBER 26, 1950.

HON. LESTER H. CLEE, *Chairman,*
New Jersey State Board of Mediation,
1060 Broad Street,
Newark, New Jersey.

FORMAL OPINION—1950. No. 67.

DEAR MR. CLEE:

Your letter of October 19 raises the question whether the Board of Arbitration in the matter of the New Jersey Bell Telephone Company and the Communications Workers of America, New Jersey Traffic Division 55, CIO, should be reconvened and should revise its findings, decision and order in accordance with and pursuant to the direction of the New Jersey Supreme Court in the aforesaid arbitration case. You have pointed out that subsequent to the Supreme Court's decision the parties met and negotiated a collective bargain which settled all points in dispute before the Board of Arbitration. It appears, however, that no stipulation or memorandum of settlement was filed with the Board and that there is nothing as yet in the Board's records to show that the dispute has been terminated.

In my opinion, the Board of Arbitration has no authority to proceed further in the matter, in view of the settlement of the dispute submitted to it. Under the governing statute, the Board of Arbitration is not constituted and does not function until the Governor has taken possession of the utility plant involved in the labor dispute (N. J. S. A. 34:13b-20), and when such dispute has been settled, the plant must be returned to its owners "as soon as practicable" (34:13b-13). The implication seems clear that with the cessation of the dispute the purpose of the arbitration procedure has been fulfilled, and accordingly the Board's authority and functions are at an end. This interpretation of the statute is in harmony with the general rule that if no controversy exists between the parties there can be no arbitration, 5 C. J. 27.

I conclude, therefore, that the Supreme Court's directive should be read in the light of the substantive law as above set forth and that the settlement in this case has rendered it unnecessary for the Board of Arbitration to take the steps which the Court ordered before the settlement had occurred. The fact of settlement should appear with the record of the Board's proceedings, however. The appropriate method of accomplishing this would be for the parties to file with the Chairman of the Board a stipulation or memorandum reciting the fact of settlement, together with a copy of the agreement reached. These documents should thereupon be filed by the Chairman with the Governor, the latter having previously received the findings, decision and order of the Board pursuant to the statute (34:13B-22).

Very truly yours,

THEODORE D. PARSONS,
Attorney General.

By: THOMAS P. COOK,
Deputy Attorney General.