UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

DECO-AKAL JV

and **Case 28-CA-21082**

JUAN J. VIELMA, an Individual

INTERNATIONAL UNION SECURITY, POLICE, AND FIRE PROFESSIONALS OF AMERICA (SPFPA)

and **Case 28-CB-6508**

JUAN J. VIELMA, an Individual

COUNSEL FOR THE GENERAL COUNSEL'S OPPOSITION TO RESPONDENT UNION'S MOTION TO REOPEN RECORD OR FOR LEAVE TO ADDUCE ADDITIONAL EVIDENCE

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Pursuant to Section 102.46 of the Rules and Regulations of the National Labor Relations Board (Board), Counsel for the General Counsel opposes the Motion to Reopen Record or for Leave to Adduce Additional Evidence filed by Respondent International Union Security, Police, and Fire Professionals of America (Respondent Union), because the additional evidence Respondent Union seeks to adduce would add absolutely nothing to the record. More specifically, Respondent Union asks the Board to reopen the record to "consider" the fact that the Texas State Attorney General is now seeking to enjoin its conduct, and has proffered petitions filed by the Texas State Attorney General on July 23 and August 10, 2007. This so-called "evidence" is immaterial, and Respondent Union's Motion constitutes a waste of the Board's time and resources.

I. PROCEDURAL BACKGROUND

The facts in this case are conceded: Respondent Union caused the termination of Charging Party Juan J. Vielma for his failure to tender union dues pursuant to a union security provision contained in a collective-bargaining agreement with his employer. Administrative Law Judge Gregory Z. Meyerson (ALJ) issued his decision on June 13, 2007, finding that Vielma's discharge violated Sections 8(a)(1) and (3), 8(b)(1)(A), and 8(b)(2) of the Act. *Deco-AKAL JV*, JD(SF)-19-08.

Respondent Union filed exceptions arguing, inter alia, that the ALJ erred in finding that the Board and the State of Texas share concurrent jurisdiction with respect to the enforcement of two sections of the Texas Labor Code: Sections 101.111 (which prohibits agency fee agreements), and 101.301 (which prohibits threatening an individual's right-to-work based on membership or nonmembership in a labor union) (the Texas Statutes). See Tex. Lab. Code Ann. § 101.111, 101.201 (Vernon 2006).

II. LEGAL ARGUMENT

The Board should not consider untimely submitted evidence such as that offered here. *Exchange Bank*, 264 NLRB 822 (1982) (granting General Counsel's motion to strike untimely submitted evidence and disregarding it in deliberations) (citing *John Grissom, Mikos Doka-Suna, David Springer, and Richard Baker a General Partnership d/b/a* Natural Heating Systems, 252 NLRB 1082, n.1 (1980). This is because the "evidence" Respondent Union seeks to adduce – the fact that the State of Texas may enforce its laws – is not "newly discovered" or "previously unavailable" and, moreover, would add literally nothing to the record in this case. See *Washington Street Brass & Iron Foundry, Inc.* 268 NLRB 338 (1983)

(denying motion to remand and reopen record where evidence would not affect the result and was not shown to be newly discovered or previously unavailable).

Respondent Union suggests that the "content" of the Attorney General's petitions for injunctive relief must be considered by the Board in order to properly assess whether it has jurisdiction over these cases. However, Respondent Union fails to identify what portion of the petitions actually constitutes this "newly discovered evidence." Moreover, Respondent Union has failed to show that the petitions' import, i.e., the fact that Texas asserts jurisdiction over its own statutes, was previously unavailable or only recently discovered.

In any event, Respondent Union simply cannot demonstrate that anything contained in the petitions would affect the result in these cases. In the face of dispositive Supreme Court and Board authority, Respondent Union argues for a bizarre form of "anti-preemption" under which *only* a Texas court may hear this dispute. See *Retail Clerks Local 1625 v. Schemerhorn*, 375 U.S. 96 (1963); *Algoma Plywood and Veneer Co. v. Wisconsin Employment Relations Board*, 336 U.S. 301 (1949). But nothing in the petitions even remotely bears on this issue. Indeed, the ALJ found *as a matter of law* that both Texas and Board have jurisdiction to hear this dispute. JD(SF)-19-08 at 11, ll. 31-34. Thus, even assuming that the "new" evidence contained in the petitions is the fact that they have in fact been filed, this is simply of no moment in this proceeding.

III. CONCLUSION

Based upon the foregoing, it is respectfully submitted that the Board should dismiss Respondent Union's Motion to Reopen Record or for Leave to Adduce Additional Evidence, and should affirm the ALJ's Findings and Conclusions.

Dated at Phoenix, Arizona, this 24th day of August 2007.

Respectfully submitted,

/s/Mara-Louise Anzalone

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CERTIFICATE OF SERVICE

I hereby certify that a copy of COUNSEL FOR THE GENERAL COUNSEL'S OPPOSITION TO RESPONDENT UNION'S MOTION TO REOPEN RECORD OR FOR LEAVE TO ADDUCE ADDITIONAL EVIDENCE, in DECO-AKAL JV, Cases 28-CA-21082 et al., was served by E-Gov E-Filing and facsimile (with permission) on this 24th day of August 2007:

Via E-Gov E-Filing:

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