

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
WASHINGTON, D.C.

WELLINGTON INDUSTRIES, INC.,

Respondent,

-and-

Case No. 7-CA-53182

LOCAL 174, INTERNATIONAL UNION, UNITED
AUTOMOBILE, AEROSPACE AND AGRICULTURAL
IMPLEMENT WORKERS OF AMERICA (UAW), AFL-CIO,

Charging Party,

-and-

INDEPENDENT UNION LOCAL ONE,

Party to the Contract.

REPLY BRIEF OF RESPONDENT,
WELLINGTON INDUSTRIES, INC.

PLUNKETT COONEY

Stanley C. Moore, III (P23358)
Attorney(s) for Respondent
38505 Woodward Avenue, Suite 2000
Bloomfield Hills, MI 48304
(248) 901-4011
(248) 910-4040 (facsimile)
smoore@plunkettcooney.com

INTRODUCTION

This Brief is submitted in reply to the Response to Exceptions of Respondent, Wellington Industries, Inc., filed by the Charging Party/Union and the Answering Brief of Counsel for the Acting General Counsel. In their Response/Answering Briefs, Counsel for the Charging Party/Union and Counsel for the Acting General Counsel attempted to refute the eight exceptions filed by the Respondent. However, they have not successfully done so. Rather, Respondent's exceptions stand unrefuted and support its contention that the ALJ erred in his conclusion that there was substantial continuity between the pre- and post-affiliation union; erred in his conclusion that the affiliation of Independent Union Local One with UAW Local 174 did not create a question of representation; and erred in his conclusion that Respondent violated Sections 8(a)(5) and (1) of the Act.

In filing this Reply Brief, Respondent shall address the Response and Answering Briefs separately.

CHARGING PARTY/UNION'S RESPONSE BRIEF

In the Response Brief filed on behalf of the Charging Party/Union, it states the following on page 6:

The role of the UAW with this Bargaining Unit is assistance and guidance. There are only two differences post-affiliation. First, the resources of the UAW are available to Local One and, second, the members of the bargaining unit will eventually pay dues at the level as required under the UAW Constitution

Notwithstanding that representation in the Response Brief, Exhibits *R 13, R 14, R 15, R 18, R 21^A*, and the original unfair labor practice charge filed in this matter, clearly demonstrate that the UAW has replaced Independent Union Local One. Rather than re-state the argument here, it is requested that the reader of this Reply Brief again review Respondent's Exceptions Brief regarding Exception 3 on pages 9 through 11.

Additionally, the Response Brief of Charging Party/Union, at page 8, states:

There is no evidence that \$1 a week dues would have been the amount post-affiliation. To the contrary, the evidence suggests that dues were going up either way....

There is absolutely no support in the record for that assertion by Counsel for Charging Party/Union. Contrary to the assertion that Respondent knew there would be a change in the amount of dues based upon the negotiations for a successor contract, the removal of the stated dues amount in the prior contract (*GC 6*) from the successor contract (*GC 8*) does not indicate that dues would be increasing, but merely indicates that a stated amount was no longer in the contract. In fact, Counsel for Charging Party/Union admits in footnote 1 on page 8 of the Response Brief that negotiation regarding the \$1 per week dues was, in fact, "a non-economic item negotiated prior to the affiliation."

Finally, in response to Exception 7, in the Response Brief, Counsel for the Charging Party/Union states at page 11:

However, as stated above, it was after the dismissal of the Decertification Petitions that Respondent refused to bargain.

¹ References in this Brief such as "Tr" will refer to the page or pages of the transcript of the administrative hearing. References such as "GC ___," and "R ___" will refer to Counsel for the Acting General Counsel's exhibits and Respondent's exhibits, respectively.

This is an incorrect statement in that the alleged refusal to bargain occurred on November 8, 2010, whereas the Respondent's RM Petition (7-RM-1496) was dismissed by the Regional Director on December 30, 2010, and the Employees' Decertification Petition (7-RD-3677) was dismissed by the Regional Director on January 13, 2011.

In sum, nothing stated in the Response Brief filed by Charging Party/Union undercuts the arguments made by the Respondent in support of all eight of its exceptions. Accordingly, the decision of the ALJ must be overturned and the amended charge in this matter dismissed.

COUNSEL FOR THE ACTING GENERAL COUNSEL'S ANSWERING BRIEF

In the Answering Brief filed by Counsel for the Acting General Counsel, it states on pages 12-13, as follows:

However, Counsel for the Acting General Counsel submits that Fetter's [Counsel for the Charging Party/Union] arguably overzealous representation of his client is not relevant to a finding on the merits of affiliation.

Counsel for the Acting General Counsel again states, on page 15 of the Answering Brief:

However, as stated above, Fetter's [Counsel for the Charging Party/Union] arguably overzealous representation of his client is not relevant to a finding on the merits of affiliation.

Counsel for the Charging Party/Union (Mr. Fetter) was not engaged in "arguably overzealous representation of his client" but, rather, was stating the position of his client, UAW Local 174, that that union had supplanted and replaced Independent Union Local One. Again, a review of Exhibits *R 13*, *R 14*, *R 15*, *R 18*, *R 21*, and the original unfair labor practice charge, clearly shows this to be the true situation. This is particularly so in light of Exhibit *R 13*, the August 9, 2010 letter of John Zimmick,

President of the UAW. In that letter, Mr. Zimmick wrote to John Brodowsky, CEO of the Respondent, in the second paragraph of his letter, as follows: “On behalf of the unit and Local 174, the UAW hereby demands recognition.”

Additionally, as shown in Exhibit *R 14*, also dated August 9, 2010, in a letter to Gary Sievert, the Human Resource Director of the Respondent, regarding union dues, the UAW Local 174 Financial Secretary/Treasurer stated in a portion of the first sentence of that letter, as follows:

In accordance with the provisions of the labor agreement between Wellington Industries and UAW New Local 174, all employees covered under the agreement are required to pay monthly dues and/or Initiation Fees/Reinstatement Fees as provided for in the International Union UAW's Constitution and illustrated in the following examples. (Emphasis added.)

It is submitted that counsel for the Charging Party/Union, in Exhibits *R 15*, *R 18*, *R 21* and in the original unfair labor practice charge, clearly and unequivocally stated that UAW Local 174 had supplanted and replaced Independent Union Local One.

On page 13 of Counsel for the General Counsel's Answering Brief, it is stated that members of Local One have not been required to pay any dues or fees to UAW Local 174. Counsel for the Acting General Counsel goes on to state that it is “pure speculation” that “dues will eventually be higher and that the workforce is upset by the specter of a future increase.” Counsel for the General Counsel is wrong. There is no “speculation” in this matter. The affiliation occurred on August 8, 2010. On August 9, 2010, the Financial Secretary/Treasurer of the UAW sent a letter to Respondent stating what the dues would increase to (*R 14*). Additionally, it is submitted that the dues increase was delayed to set the stage for this unfair labor practice trial. The hearing in

this matter was held on February 7, 2011. The Respondent and Independent Union Local One reached a successor contract (*GC 8*) to replace the expiring contract (*GC 6*), which contract had been extended to 2010 (*GC 7*). That successor contract was tentatively agreed to on November 12, 2010. The successor contract was ratified by the union membership on November 23, 2010 (*Tr 93*). Previously, on October 4, 2010, Independent Union Local One had determined that union dues would not be reinstated (they had been held in abeyance during the extension of the contract) “until a collective bargaining agreement is ratified with Wellington Industries” (*R 30*). That Memo from the Chairperson of Independent Union Local One, Mark Roggero, given to Human Resource Director Gary Sievert, is dated October 4, 2010. Mr. Sievert testified that since the date of ratification of the agreement (November 23, 2010), the Respondent had not been approached regarding reinstatement of dues check-off (*Tr 115*).

The Complaint in this matter issued on December 22, 2010, with a Notice of Hearing for February 7, 2011. It is submitted that the Charging Party/Union withheld the institution of the new dues structure to bolster its case. If that were not true, given that the new successor contract was ratified as of November 23 (*Tr 93*), the dues increase should have immediately followed the ratification pursuant to Independent Union Local One’s Memo as set forth in Exhibit *R 30*.

In sum, nothing stated in the Answering Brief filed by Counsel for the Acting General Counsel undercuts the arguments made by the Respondent in support of all eight of its exceptions. Accordingly, the decision of the ALJ must be overturned and the amended charge in this matter dismissed.

CONCLUSION

Respondent submits the above Exceptions to the Decision of the Administrative Law Judge clearly show that he erred in his findings of fact, conclusions of law, and decision to sustain the unfair labor practice charge.

For these reasons, Respondent submits to the Board that the Administrative Law Judge erred in his Decision, that his Decision should be reversed, and that the Amended Complaint should be dismissed.

PLUNKETT COONEY

By: /s/ Stanley C. Moore, III
Stanley C. Moore, III (P23358)
Attorney(s) for Respondent
38505 Woodward Avenue, Suite 2000
Bloomfield Hills, MI 48304
(248) 901-4011
(248) 901-4040 (facsimile)
smoore@plunkettcooney.com

Dated: June 28, 2011

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
WASHINGTON, D.C.

WELLINGTON INDUSTRIES, INC.,

Respondent,

-and-

Case No. 7-CA-53182

LOCAL 174, INTERNATIONAL UNION, UNITED
AUTOMOBILE, AEROSPACE AND AGRICULTURAL
IMPLEMENT WORKERS OF AMERICA (UAW), AFL-CIO,

Charging Party,

-and-

INDEPENDENT UNION LOCAL ONE,

Party to the Contract.

CERTIFICATION OF SERVICE

I hereby certify that on Tuesday, June 28, 2011, a copy of the foregoing *Reply Brief of Respondent, Wellington Industries, Inc.*, together with a copy of this *Certification of Service*, were served upon the following parties/attorney(s) of record by "E-Filing," electronic mail (where applicable), and/or regular U.S. mail at their stated business address(es).

<p>Mary Beth Foy, Esq. Counsel for the Acting General Counsel National Labor Relations Board Region 7 477 Michigan Avenue, Room 300 Detroit, MI 48226 marybeth.foy@nlrb.gov</p>	<p>Robert D. Fetter, Esq. Counsel for the Charging Party Miller Cohen PLC 600 W. Lafayette Boulevard, Fl 4 Detroit, MI 48226 rfetter@millercohen.com</p>
---	--

<p>John Zimmick, President Local 174, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL-CIO 29841 Van Born Road Romulus, MI 48174 john@uawlocal174.com</p>	<p>Mark Roggero, President Independent Union Local One 33542 Kathryn Garden City, MI 48135 Mark30nitcoup@sbcglobal.net</p>
--	--

PLUNKETT COONEY

By: /s/ Stanley C. Moore, III
Stanley C. Moore, III (P23358)
Attorney(s) for Respondent
38505 Woodward Avenue, Suite 2000
Bloomfield Hills, MI 48304
(248) 901-4011
(248) 901-4040 (facsimile)
smoore@plunkettcooney.com

Open.18001.50776.11004300-1