

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

WELLINGTON INDUSTRIES, INC.,

Respondent-Employer,

Case No.: 7-CA-53182

-and-

**INDEPENDENT UNION LOCAL ONE, an
Affiliate of LOCAL 174, INTERNATIONAL
UNION, UNITED AUTOMOBILE,
AEROSPACE AND AGRICULTURAL
IMPLEMENT WORKERS OF AMERICA
(UAW), AFL-CIO,**

Charging Party-Union,

CHARGING PARTY UNION'S POST-HEARING

NOW COMES Charging Party Independent Union Local One, an affiliate of Local 174, International Union, United Automobile, Aerospace And Agricultural Implement Workers of America (UAW), AFL-CIO and for their Post-Hearing Brief states the following:

I. INTRODUCTION

The National Labor Relations Board recently held, in a matter between these exact parties (Case 7-CA-53182), that Wellington Industries violated Section 8(a)(5) and (1) National Labor Relations Act through conditioning bargaining on the absence of UAW Local 174 President John Zimmick from negotiation sessions. (See, *357 NLRB No. 135*) There, Wellington premised its refusal to bargain in the presence of Mr. Zimmick on the idea that there were representation issues that arose from Independent Local One's decision, and vote, to affiliate with UAW Local 174. Here, Wellington Industries has refused to provide information to Independent Local One

as affiliated with UAW Local 174 as well as, again, refused to participate in the grievance procedure due to John Zimmick's involvement. In doing so Wellington, again, has violated the National Labor Relations Act.

II. STATEMENT OF FACTS

Wellington Industries manufactures stampings for the automotive industry. (pg. 16) Employees that are employed in maintenance, production, and truck driving by Wellington are represented by Independent Union Local One which has affiliated with Local 174 of the United Auto Workers (pg. 16) Wellington and Local One are parties to a collective bargaining agreement with a term from November 14, 2010 through November 13, 2013 (pg. 17) On or about July 12, 2011 Local One President Mark Roggero and UAW Local 174 President John Zimmick sent an information request to Wellington asking for information related to the enforcement of Wellington's attendance policy. (pg.19) It was necessary for Local One to use UAW Local 174 and Mr. Zimmick in drafting and sending the letter because Local One does not have its own letterhead, computer, or office. (pg. 23) Mr. Roggero testified to the reasoning behind the July 12, 2011 letter:

I had called John Zimmick, and I raised some concerns that Wellington was giving time off to some individuals simultaneously, and it was my belief that they were giving them this time off to file charges against the Union because charges would show up later in that week or shortly thereafter by these individuals, and we also needed them because some employees were being wrote up for having doctors' excuses after they had called in sick, an they would come back with a written excuse and still be disciplined for it. (pg. 20)

Mr. Roggero also testified that the information requested in the July 12, 2011 request was also to be used in grievances and disciplinary actions. (pg. 20) To date, Wellington has not provided any of the information requested in the July 12, 2011 letter. (pg. 22)

In addition to its failure to even respond to Local One's information requests, Wellington also refused to allow Mr. Zimmick's presence at a grievance hearing of one of its members. A hearing occurs at the third step of the grievance procedure. (pg. 24) That step involves a grievance council that consists of three individuals; one selected by management and two selected by the bargaining unit. (pg. 24) Here, for the grievance of Local One member Shane Cook, Local One selected employee Gary G. and requested that John Zimmick be present for the council hearing. (pg. 26) Mr. Roggero did not request that Mr. Zimmick be on the employee council but merely be present in the hearing room to assist the union. (pg. 28) Mr. Roggero made this request as Wellington often has observers from Human Resources monitor and assist at council hearings. (pg. 28) Wellington never provided a written response to Local One regarding Mr. Zimmick's attendance at the hearing. Gary Sievert merely verbally informed Mr. Roggero, without explanation, that Mr. Zimmick would not be allowed to attend the hearing. (pg. 29) Despite the practice of having roughly a week or two-week period between step 2 and step 3 of the grievance procedure, as of the date of hearing, the grievance hearing has not taken place. (pg. 32)

III. DISCUSSION

A. **It is Undisputed that Wellington has Not Responded to Local One's Information Requests.**

The obligation to provide the data needed to process a grievance continues throughout the grievance-arbitration process. *Chesapeake and Potomac Telephone Co. v. N.L.R.B.*, 687 F.2d 633, 111 L.R.R.M. (BNA) 2165, 95 Lab. Cas. (CCH) ¶13777 (2d Cir. 1982) Further, the obligation does not cease when a grievance is filed. *Frank Chervan, Inc. v. N.L.R.B.*, 833 F.2d 1004, 126 L.R.R.M. (BNA) 3111 (4th Cir. 1987).An employer was also obligated to produce information relevant to a pending grievance that arose under, but was filed after, the expiration

of the applicable collective bargaining agreement. *Ground Breakers, Inc. v. N.L.R.B.*, 814 F.2d 655, 124 L.R.R.M. (BNA) 2952 (4th Cir. 1987). Additionally, the NLRB will not allow an employer to argue that since a union proceeded with the grievance without the requested information it moots the employer's failure to provide the information, as this would condone the employer's unlawful behavior and could encourage continued refusal's to provide information in the future. *In re U.S.P.S., 337 N.L.R.B. No. 130*, 2002 WL 1668029 (2002).

Additionally, contrary to any conflicting argument, the information requested by Local One is relevant. In evaluating an employer's obligation to fulfill the union's information requests, the Board and courts apply a "discovery type standard," under which the request information need only be relevant and useful to the union in fulfilling its statutory obligations in order to be subject to disclosure. *NLRB v. ACME Industrial Co.*, 385 U.S. 432, 437 87 S.Ct. 565, 568, 17 L.Ed.2d 495 (1967); *General Motors Corp. v. NLRB*, 700 F.2d 1083, 1088 (6th Cir. 1983) When information is sought regarding bargaining unit employees, there is a presumption that the information sought is relevant to the union's bargaining obligation. *E.I. Du Pont de Nemours & Co. v. NLRB*, 744 F.2d 536 (6th Cir. 1984). Here Local One, requested information that would aide in its investigation and processing of grievances. "The Union's access to adequate information concerning grievances allows it to render considered judgments and eliminate unmeritorious claims at an early stage in the proceedings. See: *NLRB v. ACME Industrial Co.*, 385 U.S. 432, 87, S.Ct. 565, 568, 17 L.Ed.2d 495 (1967); *General Motors Corp. v. NLRB*, 700 F.2d 1083 (6th Cir. 1983) Unfortunately, Wellington's unwillingness to respond to Local One's requests has hindered Charging Party's ability to make merit based decisions on the filed grievances as well as fulfill its other statutory duties imposed by the NLRA.

Here it is undisputed that Wellington has not provided the information requested in Local One's July 12, 2011 request. (pg. 22) In fact, it is undisputed that Wellington failed to respond at all to Local One's request. (pg. 23) Moreover, Wellington not only failed to respond to Local One's request, it has completely withdrawn from the process of grievances. (pg. 32)

B. It Is Undisputed That Wellington Board Law Mandates That a Union Can Designate Its Representative as It Sees Fit.

Board law states that whole a union certainly has the right to bring an official of an affiliated entity to bargaining sessions, (*Standard Oil v. NLRB*, 322 F.2d 40 (6th Cir. 1963) it may also bring a representative of an entirely unrelated union. *General Electric v. NLRB*, 412 F.2d 512 (2nd Cir. 1969), see also *Minnesota Mining and Manufacturing v. NLRB*, 415 F.2d 174 (8th Cir. 1969)

Additionally, the above cited cases stand for another relevant proposition. A union has near complete discretion as to who it may choose to participate in its bargaining. The only exception is personal ill will, threats of physical violence, or conflict of interest—union official set up competing business. The burden is high, there must be a clear and present danger. *General Electric*, 412 F.2d 512. However, these cases cite that there is nothing inherently bad about bringing in any outsider to assist in negotiations. In fact, the Act favors such an approach, “a union has an interest in using experts to bargain, whether the expertise be on technical, substantive matters or on the general are of negotiating. In filling that need, no good reason appears why it may not look to an ‘outsider’, just as the employer is free to do so.” *General Electric*, 412 F.2d at 518.

Here, Mr. Roggero testified exclusively that he requested Mr. Zimmick's presence at the hearing because “we needed his expertise and some advice” and that Mr. Zimmick would “be able to offer us advice, questions to ask, and help us process information.” (pg. 27) Certainly,

under the above cited cases, Local One's reasoning for having Mr. Zimmick at the hearing was entirely legitimate. Moreover, it was not uncommon for Wellington to have its own observers at grievance hearings. (pg. 28) Wellington's refusal to allow Mr. Zimmick to attend the hearing and subsequent withdrawal from the grievance process altogether stand as improper and as further violations of the National Labor Relations Act by Wellington.

The employer may argue that it had no obligation to permit Mr. Zimmick or respond to his information requests because he is from a separate union. This argument is out of touch with the reality of the situation. The employer is well aware that Local One believes that it has affiliated with Local 174 and desires Mr. Zimmick to be its representative. There was an entire unfair labor practice case regarding this issue. (*Exhibit 1*) Moreover, the desire to have Mr. Zimmick at the grievance meeting was communicated to the employer by the President of Local One, Mr. Roggero. Similarly, Mr. Roggero was copied on all of the requests for information sent to the employer. (GC-3, 4, 5, and 6) The employer did not respond, follow-up or communicate to Mr. Roggero or Mr. Zimmick. Lastly, the request for information on July 12, 2011 was signed by Zimmick and Roggero. (GC-7)

C. The Affiliation Is Not Relevant to This Case.

The employer may assert some issue regarding the affiliation. However, that is entirely irrelevant to the instant matter. First, the NLRB has already addressed this issue twice. First, was in the RM petition that the employer filed seeking an election. The Regional Director found and the Board affirmed that there was no question regarding representation because the affiliation was appropriate. Second, in Case 7-CA-53182 the ALJ addressed all of the employer's arguments and found the affiliation was appropriate. The Board did not address the issue of the affiliation because it found that it was not necessary for adjudication and the prior

decision on the RM petition addressed the issue. Moreover, for the reasons stated in the ALJ's decision, the affiliation was appropriate.

Even assuming that the Board has been wrong twice, the affiliation is not an issue in this matter. Even if the parties were placed into a hypothetical world where the affiliation was not appropriate, Wellington still committed an unfair labor practice here as Board Law is clear that a Union is entitled to select a bargaining representative of its choosing whether that individual is a member of the union or not.

D. Attorney Fees and Costs are Appropriate in This Case.

In this case, the employer has brazenly violated the Act. It had already lost a nearly identical case. It had no real defense in that case to excluding the Union's designated bargaining representative. The Board precedent stated above is well-established and without challenge.

Moreover, the employer did not attempt to defend itself in this case. It did not call a witness or introduce a document in evidence.

Under such circumstances, a traditional bargaining order will not suffice. See *Tildee Products Inc.*, 194 NLRB 1234 (1972). The employer's goal in this matter is to undo the employees' choice to affiliate with the UAW. The employer will not allow the UAW to service the bargaining unit. It forces the union to file and prosecute unfair labor practice charges with the Board in obvious and indefensible violations. This is a purposeful attempt to tap the resources of the union. This is the pinnacle of bad faith and frivolous behavior, which warrants attorney fees and costs. *Lake Holiday Assoc. Inc.* 325 NLRB 469 (1998).

The employer's objective is to promote disaffection between the UAW and the bargaining unit members. Therefore, a make-whole remedy must include a provision for attorney fees and costs. To date, the employer has not complied with the last Board Order

regarding this issue. The employer will undoubtedly continue to brazenly violate the Act in its attempt to succeed in its goal of undoing the employees' choice to affiliate with the UAW to gain access to greater resources for their mutual aid and protection. Without a provision for attorney fees and costs, the employer may continue with its goal of creating disaffection with the union without penalty.

IV. CONCLUSION

WHEREFORE, and for the above stated reasons Charging Party requests that Respondent be found in violation of the National Labor Relations Act and issue a make whole remedy that includes attorney fees and costs.

Respectfully submitted,

MILLER COHEN, P.L.C.

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