

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

COMAU, INC.,

Respondent

Cases 7-CA-52614 and 7-CA-52939

and

**AUTOMATED SYSTEMS WORKERS LOCAL 1123,
Affiliated with CARPENTERS INDUSTRIAL COUNCIL,
UNITED BROTHERHOOD OF CARPENTERS AND
JOINERS OF AMERICA,**

Charging Party/ Incumbent Union

and

COMAU EMPLOYEES ASSOCIATION (CEA)

Party in Interest

COMAU EMPLOYEES ASSOCIATION (CEA)

Respondent

Case 7-CB-16912

and

**AUTOMATED SYSTEMS WORKERS LOCAL 1123,
Affiliated with CARPENTERS INDUSTRIAL COUNCIL,
UNITED BROTHERHOOD OF CARPENTERS AND
JOINERS OF AMERICA,**

Charging Party/ Incumbent Union

**COUNSEL FOR THE ACTING GENERAL COUNSEL'S
OPPOSITION TO COMAU, INC.'S MOTION TO DISMISS COMPLAINT**

Counsel for the Acting General Counsel opposes Respondent's motion to dismiss the complaint in the above cases for the following reasons:

1. Contrary to Respondent's claims, the complaint in this matter does not rest entirely upon the Board's decision in *Comau, Inc.*, 356 NLRB No. 21 (2010) (Case 7-CA-52106). As noted by Administrative Law Judge Geoffrey Carter (ALJ) in his December 21, 2010 decision (ALJD), Counsel for the Acting General Counsel advanced two legal theories to support allegations in the complaint concerning Comau's decision to withdraw recognition from Automated Systems Workers Local 1123 (ASW) and recognize the Comau Employees Association (CEA), and the CEA's actions in accepting recognition. The first theory was that the disaffection petition that triggered Comau's decision to withdraw recognition from the ASW was tainted by the unfair labor practices found by the Board in *Comau, Inc.*, 356 NLRB No. 21 (2010). In the alternative, Counsel for the Acting General Counsel asserted that the petition was tainted because it was circulated by individuals who did so with the apparent authority of Comau. The ALJ declined to make a ruling on this latter theory, but made findings of fact relevant to it, should the Board find that further analysis be necessary. (ALJD, p. 17, fn. 32)

2. In addition to the complaint allegations concerning Comau's decision to withdraw recognition from the ASW and recognize the CEA, and the

CEA's actions in accepting recognition, the complaint further alleges that Respondent Comau threatened employees with termination if they failed to authorize automatic dues deduction payments to the CEA, in violation of Section 8(a)(1) of the Act, and that Respondent CEA threatened employees with the loss of employment if they did not submit automatic dues deduction payments to the CEA, in violation of Section 8(b)(1)(B) of the Act.

3. The allegations concerning the coercive manner in which employees were solicited to sign automatic dues deduction authorizations are completely independent of the allegations concerning the withdrawal of recognition from the ASW and granting of recognition to the CEA.

4. In his December 21, 2010 decision in this matter, Administrative Law Judge Geoffrey Carter found that both Comau and the CEA violated the Act by engaging in conduct that reasonably could coerce employees to sign dues check-off authorization forms. (ALJD, pp. 23-26) His findings in this regard were based upon testimony at the hearing that Comau management personnel warned employees that they could be disciplined or discharged if they failed to sign automatic dues deduction check-off forms, along with testimony that a CEA committeeman engaged in conduct that had a reasonable tendency to coerce an employee to sign a dues check-off authorization form.

5. In finding that the CEA and Comau violated the Act by threatening employees with adverse consequences if they did not authorize automatic dues deduction, the ALJ did not rely upon his finding that the CEA did not represent an uncoerced majority of Comau employees, but rather upon case law stating that an employee may not be compelled by a union or employer to sign a dues check-off authorization as a condition of employment. The ALJ's decision states as follows:

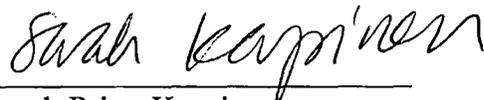
There is no dispute that under a collective-bargaining agreement that contains a valid union-security clause, an employee may be required to pay union dues as a condition of employment, and may be discharged for failing to pay the required dues. *International Longshoreman's Association, Local 1575*, 322 NLRB 727, 729 (1996). However, a union may not compel union members to execute dues check-off authorizations as a condition of their employment; nor can a union threaten to cause employees to be discharged if they fail to execute dues check-off authorizations, because the execution of a dues check-off authorization is entirely voluntary. *Id.* at 729-730... Similarly, an employer may not lead employees to believe that the dues-checkoff authorization method for fulfilling their financial obligations to their union is compulsory. *Rochester Mfg. Co.*, 323 NLRB 260, 262 (1997).

(ALJD, pp. 23-34)

6. Thus, even if the CEA was lawfully recognized by Comau, and its collective bargaining agreement contained a lawfully executed union security clause, Comau and the CEA could not lawfully compel employees to sign automatic dues check-off authorizations, and their actions in threatening employees with adverse action if they did not sign the authorizations were done in violation of Sections 8(a)(1) and 8(b)(1)(A) of the Act, respectively.

For the reasons advanced above, the undersigned respectfully requests that Respondent Comau's motion to dismiss the complaint in this matter be denied.

Dated Detroit, Michigan, this 9th day of March, 2012.



Sarah Pring Karpinen
Darlene Haas Awada
Counsel for the Acting General Counsel
National Labor Relations Board, Region 7
477 Michigan Avenue, Room 300
Detroit, MI 48226
(313) 226-3229
Sarah.Karpinen@nlrb.gov

CERTIFICATE OF SERVICE

I certify that on the 9th day of March, 2012, I electronically served copies of the Counsel for the Acting General Counsel's Opposition to Respondent Comau's Motion to Dismiss Complaint upon the following parties of record:

Thomas G. Kienbaum, Esq.
Theodore Opperwall, Esq.
Kienbaum, Opperwall, Hardy & Pelton, P.L.C.
280 North Old Woodward Avenue, Suite 400
Birmingham, MI 48009
tkienbaum@kohp.com
topperwall@kohp.com

Edward J. Pasternak, Esq.
Novara & Tesija PLLC
2000 Town Center, Suite 2370
Southfield, MI 48075
ejp@novaratesija.com

M. Catherine Farrell, Esq.
Pierce, Duke, Farrell & Tafelski PLC
2525 S. Telegraph, Suite 100
Bloomfield Hills, MI 48302
Catherine@farrellesq.com

David J. Franks, Esq.
20020 Harper Ave., #10
Harper Woods, MI 48225
dfranks@franksconnect.com



Sarah Pring Karpinen
Counsel for the General Counsel