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

WELLINGTON INDUSTRIES, INC.

Respondent

and **CASE 07-CA-061568**

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

ANSWERING BRIEF OF COUNSEL FOR THE ACTING GENERAL COUNSEL TO EXCEPTIONS OF RESPONDENT

INTRODUCTION

Pursuant to a charge filed by Local 174, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL-CIO (hereafter UAW Local 174 or Charging Party), the Regional Director for the Seventh Region of the National Labor Relations Board issued an Amended Complaint on November 30, 2011, in the above case against Respondent, Wellington Industries, Inc. A hearing was conducted in this matter in Detroit, Michigan on December 5, 2011, before Administrative Law Judge Arthur J. Amchan. Thereafter, ALJ Amchan issued a Decision (or ALJD) on January 9, 2012, including Findings of Fact, Remedy, Order, and notice provisions. ALJ Amchan found that Respondent engaged in conduct violative of Section 8(a)(5) and (1) of the Act.

Specifically, the Amended Complaint alleges, and the ALJ found, that Respondent violated Section 8(a)(5) and (1) of the Act by (1) failing to furnish information to Independent Union Local One (Local One) on July 12, 2011; and (2) refusing to permit UAW Local 174 president John Zimmick to assist Local One in grievance proceedings.

SUMMARY OF THE CASE

Respondent manufactures stampings for the automotive industry at its plant in Belleville, Michigan. Respondent has recognized Local One as the exclusive

representative of its bargaining unit employees for at least 20 years, and this recognition has been embodied in successive collective-bargaining agreements. Mark Roggero has been the president of Local One for the past three years. The current collective bargaining agreement between Respondent and Local One is effective from November 14, 2010, through November 14, 2013.

In about May 2010, Respondent and Local One commenced negotiations for a successor collective-bargaining agreement. On August 8, 2010, a meeting was held by Local One and a majority of the members in attendance voted in favor of Local One affiliating with Charging Party UAW Local 174. Following the affiliation, Local One and Respondent continued to bargain for a successor agreement. At a negotiation session held on November 8, 2010, Local One requested to bring Charging Party president John Zimmick to the bargaining table to assist in bargaining on behalf of Local One. Respondent responded that it would not bargain if Zimmick attended bargaining. Local One and Respondent continued to bargain, without the addition of Zimmick, and entered into the current collective bargaining agreement to conclude the negotiations. Respondent's conduct in conditioning continued bargaining with Local One upon the absence of Charging Party president Zimmick from negotiations was found to be an unfair labor practice in violation of Section (8)(a)(5) and (1) of the Act.[1]

[1] See***, Wellington Industries Inc***., 357 NLRB No. 135 (2011) (hereafter referenced as ***Wellington I***), issued by the Board on December 9, 2011, affirming Bench Decision and Certification of Administrative Law Judge Keltner W. Locke, issued on May 2, 2011.

By letter dated July 12, 2011, from its president Roggero, co-signed by Charging Party president Zimmick, Local One requested that Respondent furnish information regarding enforcement of the parties' negotiated attendance policy, and information related to job descriptions for certain unit job classifications. Despite its necessary and relevant request, Respondent unlawfully failed and refused to provide any of the information requested by Local One.

On about June 13, 2011, Local One requested that Charging Party president Zimmick attend a contractual step-three grievance hearing regarding discipline issued to a unit employee. Since about mid-July, Respondent unlawfully failed and refused to permit Zimmick, Local One's designated representative, to attend the grievance hearing in order to assist Local One.

The facts of this case are succinctly set forth in further detail by ALJ Amchan in his January 9, 2012, Decision.

Respondent states five exceptions, contending with respect to each that ALJ Amchan erred in accepting the Board's finding in ***Wellington I*** that there was a valid affiliation of Local One and UAW Local 174. In ***Wellington I***, Acting General Counsel's Complaint alleged at paragraph 11 that about August 8, 2010, Local One affiliated with UAW Local 174, and ALJ Locke and the Board so found. The Board further found, as argued by the Acting General Counsel, that

the ALJ Locke's conclusions and findings as to the affiliation of Local One and UAW Local 174 was not crucial to his finding regarding the gravamen of the Complaint, that Respondent violated Section 8(a)(5) and (1) by conditioning continued bargaining with Local One upon the absence of an individual designated by Local One to be one of its negotiating representatives. In this regard, the Board noted that, regardless of affiliation, "[l]ongstanding precedent establishes that employers and unions have the right to choose whomever they wish to represent them in formal labor negotiations." ***Wellington I***, supra at fn. 1 (citations omitted).

In the instant matter, Acting General Counsel's amended complaint does not contain any allegation regarding affiliation. (GC 1(l)).[2] Thus, while Counsel for the Acting General Counsel will respond, as it did in ***Wellington I***, to Respondent's exceptions related to the affiliation issue, as set forth below, it is not necessary for the Board to consider such exceptions in order to affirm ALJ Amchan's finding that Respondent violated Section 8(a)(5) and (1) in this matter.[3]

[2] References to the General Counsel Exhibits, Respondent Exhibits, and the Transcript are referred to as GC, R, and TR, respectively. TR___ refers to a specific page of the trial transcript.
[3] Counsel for the Acting General Counsel notes that ALJ Amchan's sole reliance on the affiliation to support his findings as to Respondent's Section 8(a)(5) violations is the subject of a cross-exception simultaneously filed with this answering brief.

ARGUMENT

Regarding Respondent's five stated exceptions to the ALJD, Counsel for the Acting General Counsel answers each and urges the Board to find:

I. ALJ AMCHAN CORRECTLY FOLLOWED THE BOARD'S *Wellington I* DECISION AFFIRMING ALJ LOCKE'S CONCLUSION THAT RESPONDENT VIOLATED SECTION 8(a)(5) AND (1) OF THE ACT BY REFUSING TO NEGOTIATE WITH LOCAL ONE IF ZIMMICK WAS PRESENT AT THE COLLECTIVE BARGAINING SESSIONS.

II. ALJ AMCHAN CORRECTLY FOLLOWED THE BOARD'S DETERMINATION IN ITS *Wellington I* DECISION (at fn. 1), THAT THE BOARD HAD ALREADY REVIEWED THE VALIDITY OF THE AFFILIATION AND DECLINED TO RECONSIDER IT.

III. ALJ AMCHAN CORRECTLY FOUND THAT THE BOARD'S FEBRUARY 11, 2011, ORDER DISMISSING THE RM PETITION AND ITS WELLINGTON I DECISION ARE DISPOSITIVE OF THE INSTANT CASE.

IV. ALJ AMCHAN CORRECTLY FOUND THAT THE BOARD HAS ALREADY CONSIDERED THE VALIDITY OF THE AFFILIATION, FOUND IT VALID, AND HAS DECLINED TO RECONSIDER THE ISSUE.

V. ALJ AMCHAN CORRECTLY CONCLUDED THAT RESPONDENT VIOLATED SECTION 8(a)(5) IN REFUSING TO PROVIDE INFORMATION TO LOCAL ONE THROUGH ZIMMICK AND REFUSING TO ALLOW ZIMMICK TO ASSIST LOCAL ONE IN GRIEVANCE PROCEEDINGS INCLUDING THE SHANE COOK GRIEVANCE, BECAUSE LOCAL ONE IS VALIDLY AFFILIATED WITH LOCAL 174 UAW.[4]

Counsel for the Acting General Counsel submits that all of Respondent's exceptions pertain to its attack on the adjudicative findings regarding the validity

[4] Although, as noted in footnote 3, supra, Counsel for the General Counsel further submits in its cross-exception that the same conclusion can also be reached regardless of whether there was a valid affiliation.

of the affiliation between Local One and UAW Local 174. Accordingly, Counsel for the Acting General Counsel answers with the following unified response.

As in ***Wellington I***, Respondent's basis for contending that it was appropriate to refuse to allow UAW Local 174 president Zimmick to attend grievance meetings in order to assist Local One, as well as refuse to provide information to Local One, through Zimmick, is related to the affiliation between Local One and UAW Local 174; specifically, that there has been a substantial and dramatic change in the pre- and post-affiliation union representative; that there has not been a continuity of representation; and that a question of representation was created based upon the purported affiliation vote. Respondent again argues that the Charging Party is attempting to supplant and replace Local One as the employees' bargaining representative. However, Acting General Counsel submits that these affiliation issues were thoroughly addressed by ALJ Locke whose findings and conclusions were affirmed by the Board in ***Wellington I***.

As noted, the Board affirmed ALJ Locke's conclusion in ***Wellington I*** that Respondent violated Section 8(a)(5) and (1) of the Act by refusing to negotiate with Local One if Charging Party president Zimmick was present at the collective bargaining sessions. ALJ Locke reached his conclusion by finding that the affiliation between Local One and Local 174 UAW was valid and a substantial continuity existed between Local One and UAW Local 174. In this regard, ALJ

Locke concluded, and the Board affirmed, that because the affiliation was valid, Respondent lawfully could not condition further bargaining on exclusion of the UAW Local 174 president from Local One's bargaining committee. In his Decision, ALJ Amchan correctly noted the Board's findings in this regard.

In affirming ALJ Locke's findings as to a Section 8(a)(5) violation, the Board also relied, separate from affiliation, on longstanding precedent establishing that employers and unions have the right to choose whomever they wish to represent them in formal labor negotiations. Accordingly, the Board found it unnecessary to pass on ALJ Locke's analysis of the affiliation between Local 174 UAW and Local One. The Board further noted that "[t]he record shows that the Regional Director dismissed the Respondent's RM petition in a related proceeding where the Respondent argued that the affiliation was invalid. The Board considered the matter and denied review of that decision. Thus, the Board has already reviewed the validity of the affiliation and does not reconsider the matter here." In his Decision, ALJ Amchan correctly noted and relied on the Board's findings in this regard.

Respondent submits that Zimmick is not the designated representative / agent of Local One but, rather is the president of UAW Local 174, the union seeking to supplant and replace Local One. In this regard, as it identically argued in ***Wellington I*** when Local One attempted to have UAW Local 174 president

Zimmick participate in contract negotiations, Respondent again argues in the instant matter that by attempting to have Zimmick participate in grievance meetings, UAW Local 174 has substituted for Local One. However, in ***Wellington I***, ALJ Locke found, and the Board affirmed, that since affiliation, the nature of the certified bargaining representative remains essentially the same and there has been a continuity of local union officers. As further found by ALJ Locke, and affirmed by the Board, the presence of a UAW Local 174 official on the Union's negotiating team does not rise to the level of being a *de facto* change in the Union's identity. Acting General Counsel submits that ALJ Amchan was correct in finding that the same is true concerning Zimmick's presence at grievance meetings in order to assist Local One.

The record is devoid of evidence that in enlisting the aid of UAW Local 174 president Zimmick at grievance meetings, Local One was in any way attempting to transfer authority to Local 174 to bargain on its behalf. This was the scenario in ***Goad Company***, 333 NLRB 677 (2001), citing ***Sherwood Ford Inc***., 188 NLRB 131 (1971) where an incumbent local union did not simply enlist the aid of an agent, but transferred its representational responsibilities to another local union. The Board found that was akin to an outright substitution of representative, not just the association of expert aides. The instant case does not come close to the scenarios set forth in ***Goad Company*** or ***Sherwood Ford***. Rather, the record evidence demonstrates, as testified to by Local One president Rogerro, that on

June 13, 2011, Local One was not attempting to delegate its collective bargaining responsibilities to UAW Local 174 or looking to substitute Local 174 as the representative of the unit employees. (TR-27-28). Rather, Local One was merely seeking assistance in collective bargaining from president Zimmick, a union agent who is skilled in grievance processing. (TR-27). Thus, ALJ Amchan correctly concluded that Respondent violated Section 8(a)(5) by refusing to allow Zimmick to assist Local One in grievance proceedings, including the Shane Cook grievance, because Local One is validly affiliated with Local 174 UAW.

Moreover, as stated in its cross-exception, Acting General Counsel submits that the same conclusion, that Respondent violated Section 8(a)(5) of the Act by refusing to allow Zimmick to be present at the grievance hearing, can be reached herein regardless of whether there was a valid affiliation, based on longstanding Board precedent establishing that employers and unions have the right to choose whomever they wish to represent them in formal labor negotiations, and parties must deal with the chosen representatives who appear at the bargaining table except in the rare circumstance when the presence of a particular representative makes collective bargaining impossible or futile. The two seminal cases are ***Fitzsimons Manufacturing Company***, 251 NLRB 375, 379 (1980) and ***General Electric Co. v. NLRB***, 412 F.2d 512, 516 (2d Cir. 1969), both recently cited in ***Palm Court Nursing Home***, 341 NLRB 813, 819 (2004) and ***Atrium at Princeton***, 353 NLRB 540, 566 (2008).

It is undisputed that about June 13, Local One requested that Charging Party president Zimmick attend a contractual step three grievance hearing regarding discipline issued to unit employee Shane Cook. (GC 1(l), 1(o)). It is further undisputed that since about mid-July 2011, Respondent has failed and refused to permit Zimmick, Local One's designated representative, to attend this grievance hearing. (GC 1(l), 1(o)). This case does not present an exceptional circumstance that would permit Respondent to refuse to deal with a particular union representative and continue bargaining. Rather, in those exceptional cases, the conduct of the representative at issue was generally violent, threatening, or of a similar egregious nature, factors not present in the instant case. See, ***Fitzsimons Manufacturing Company***, supra at 379 (Board found employer did not violate Section 8(a)(5) in refusing to meet with designated union representative who previously physically assaulted employer representative during a grievance meeting). By Respondent's conduct, it has deprived Local One of its right, as the exclusive collective-bargaining representative of the unit employees, to choose its bargaining representatives. This conduct alone constitutes an unlawful refusal to bargain and warrants a finding of a Section 8(a)(5) and (1) violation.

Regarding ALJ Amchan's finding that Respondent violated Section 8(a)(5) by failing to furnish information to Local One, Respondent argues that it was within its rights to not provide information to the Charging Party Local 174 UAW based on its position that the Charging Party is not seeking to function as a

servicing representative, but instead is demanding that it be treated as the certified representative of the employees in the bargaining unit, which it clearly is not.

Counsel for the Acting General Counsel submits that Respondent disingenuously argues that through the July 12, 2011, operative date of the request there had been no designation of Charging Party president Zimmick as the servicing or other representative of Local One. A hearing was held before ALJ Locke in February 2011 regarding allegations that Local One affiliated with Charging Party Local 174 UAW and that Respondent unlawfully conditioned continued bargaining with Local One upon the absence of Charging Party president Zimmick from negotiations. ALJ Locke ruled in May, finding Respondent in violation of Section 8(a)(5) and (1). Thus, as of July 12, 2011, there was no doubt that Local One desired Zimmick to assist it in collective bargaining matters, including the requesting of information. Yet, Respondent admittedly did not provide any of the information requested by Local One on July 12, nor did it provide any response to the letter, including any request for clarification from Local One as to the relevance or necessity of the information requested. See, ***Pacific Physicians Services, Inc.***, 315 NLRB 108 fn. 4 (1994); ***Streicher Mobile Fueling, Inc.***, 340 NLRB 994, 996 (2003) (A party that receives an ambiguous or overbroad information request must seek clarification or comply to the extent that the request encompasses necessary and relevant information.)

That Local One's July 12 letter requesting information was also signed, and mailed, by Zimmick does not render it the Charging Party's, rather than Local One's request. Rather, Local One was clear in its July 12 letter that "the Union", i.e, Local One, was requesting the information. (TR-18, GC 7). Additionally, that requests for information were previously made by Charging Party president Zimmick, at the request of Local One, in letters dated May 26, June 3, June 8, and June 16, do not affect Local One's July 12 information request, or in any way render the July 12 request by Local One defective. (TR-20-22). Thus, ALJ Amchan correctly concluded that Respondent violated Section 8(a)(5) in refusing to provide information to Local One through Zimmick, because Local One is validly affiliated with Local 174 UAW.

Moreover, as stated in its cross-exception, Counsel for the Acting General Counsel submits that the same conclusion, that Respondent's failure and refusal to furnish information to Local One violated Section 8(a)(5) of the Act, can be reached herein regardless of whether there was a valid affiliation. Section 8(a)(5) of the Act provides that it is an unfair labor practice for an employer "to refuse to bargain collectively with the representatives of its employees." An employer has the duty to supply requested information to a union which is the collective-bargaining representative of employees if the requested information is relevant and reasonably necessary to the union's performance of its responsibilities, including contract negotiations and administration. ***A-1 Door & Building Solutions***, 356

NLRB No. 76, slip op. at 2 (2011); ***New Surfside Nursing Home***, 322 NLRB 531, 534 (1996). The standard for determining relevance of requested information is a liberal one, and it is necessary only to establish a probability that desired information is relevant, and that it would be of use to the union in carrying out its statutory duties and responsibilities. See, ***NLRB v. Acme Industrial Co***., 385 U.S. 432, 437 (1967); ***NLRB v. Truitt Mfg. Co***., 351 U.S. 149, 151-154 (1956).

Information pertaining to employees within the bargaining unit is presumptively relevant to a union's representational duties, including that necessary to decide whether to proceed with a grievance. Employee personnel information, job descriptions, pay-related data, employee benefits, and policies that relate thereto are all presumptively relevant. Bargaining representatives are not required to make a specific showing of the relevance of requested information unless the employer has rebutted the presumption. Presumptively relevant information must be furnished on request to employees' collective-bargaining representatives unless the employer establishes legitimate affirmative defenses to the production of the information. ***Ralphs Grocery, Co***., 352 NLRB 128, 134 (2008), reaffirmed and incorporated by reference, 355 NLRB No. 210 (2010); ***Disneyland Park***, 350 NLRB 1256, 1257 (2007) ("Where the union's request is for information pertaining to employees in the bargaining unit, that information is presumptively relevant and the respondent must provide the information.").

By letter dated July 12, 2011, Local One, the admitted Section 9(a) exclusive collective-bargaining representative of the unit employees, requested information from Respondent, including information regarding enforcement of the parties' negotiated attendance policy, and information regarding detailed job descriptions for certain unit job classifications. (TR-18-19, GC 1(l), 1(o), 7). Local One's request for information regarding enforcement of the parties' negotiated attendance policy was based on its concerns about the manner in which Respondent was allowing employees to take time off. Additionally, Local One was concerned that Respondent was improperly disciplining employees regarding sick leave. (TR-20). This information was also useful in connection with a grievance filed by Local One in May 2011 concerning the attendance policy. (TR-31). Since Local One's July 12 request, this information requested has also become necessary in order for Local One to process a grievance concerning discipline issued to an employee regarding use of sick leave. (TR-20-21). Local One requested information regarding detailed job descriptions for certain unit job classifications in order to determine which unit employees would be eligible to obtain UAW journeyman cards, and to ensure that employees possessing the listed classifications were being paid under the proper pay scale. (TR-21-22). Since Local One's July 12 request, this information requested has also become necessary in order for Local One to process a grievance concerning an employee pay disparity in the transfer tech classification. (TR-22, 34).

The information requested by Local One on July 12 clearly meets the Board's standards cited above as being relevant and reasonably necessary to Local One's performance of its responsibilities as collective-bargaining representative of the unit employees. Additionally, the information requested regarding job descriptions for certain unit job classifications is presumptively relevant information that should have been provided to Local One, upon its request, without any further demonstration of relevance.

CONCLUSION

For all of the above reasons, Counsel for the Acting General Counsel requests that the National Labor Relations Board affirm the Decision and Order of the Administrative Law Judge finding that Respondent violated Section 8(a)(5) and (1) of the Act, and grant all of the recommended relief.

Respectfully submitted this 12th day of March, 2012.

/s/ Mary Beth Foy
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