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

WELLINGTON INDUSTRIES, INC.,

Respondent, Case No.: 7-CA-61568

-and-

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.
_____/

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'S RESPONSE TO EXCEPTIONS OF RESPONDENT, WELLINGTON INDUSTRIES, INC.

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 its Response to Exceptions of Respondent's hereby states the following:

I. INTRODUCTION

This matter involves a bargaining unit of employees working to build a stronger union in order to obtain better terms and conditions of employment and the Respondent's drastic attempts

to thwart those efforts. Nothing more. The Independent Union Local One decided - in order to better service the members of the bargaining unit- it will affiliate with the UAW Local 174. The employer has done everything in its power to deny the benefits of the better service to the membership by refusing to deal in anyway with anybody associated with the UAW or even its own employees associated with the UAW. 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 a grievance hearing due to John Zimmick's involvement. In doing so Wellington, again, has violated the National Labor Relations Act.

Respondent does not want to recognize two well established principles. First, "the union" representing its members is Independent Union Local One affiliated with UAW Local 174. They are affiliated. Moreover, the union gets to select the person or persons that represent it for purposes of collective bargaining. On occasion, it has chosen UAW Local 174 President John Zimmick due to his experience or expertise in particular matters. Absent extraordinary circumstances, it must deal with Mr. Zimmick as the representative of Local One.

This would be true regardless of the affiliation. If a union wanted Justin Beiber to represent it for purposes of collective bargaining, for better or for worse, the employer must deal with selected representative of the union. In this regard, the affiliation is irrelevant.

Respondent stated a series of five (5) exceptions. Exceptions one through four merely refer and rely on the argument of exception five. Therefore, Charging Party similarly responds to all five exceptions uniformly and outlined below.

II. STATEMENT OF FACTS

Wellington Industries manufactures stampings for the automotive industry. (Tr. 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 UAW. (Tr. 16) Wellington and Local One are parties to a collective bargaining agreement with a term from November 14, 2010 through November 13, 2013 (Tr. 17)

After due notice, the Independent Union Local One held a local union meeting on August 8, 2010 to decide whether to affiliate with UAW Local 174. After a motion to affiliate from a member, the membership in attendance voted overwhelmingly to affiliate with UAW Local 174 via secret ballot election. Thereafter, the minority group circulated a petition to have another vote on the affiliation. The petition did not say that the membership did not want to be represented by Local One. The petition did not say that the membership did not want to be represented by UAW Local 174. The petition did not say that those signing it did not want the affiliation.

At the next local union meeting, there was a motion to have another vote on the affiliation. That motion failed.

Whether the Independent Union Local One should affiliate with UAW Local 174 has been treated as an internal union matter, which it is. The employer did not get a vote or a voice in the matter. This apparently irks the employer that they cannot control the internal operations of the union.

The employer frames this case and its refusal to follow its obligations under the NLRA is because its employees have been denied the opportunity to express their views as to which union is going to represent them. (Resp. Exc. Br. pg. 8) However, this is both not factually accurate nor does it frame the issue presented in an affiliation. First, the facts show undisputedly that the Local One membership voted once to affiliate with the UAW and then voted another time not to have a revote. What the employer wants is another vote so that it can influence the outcome. Moreover, the issue is not which union the members what to represent them. Local One is representing the membership. However, the choice is whether they want all of the benefits and resources of membership in the UAW by affiliating with UAW Local 174. The membership overwhelmingly chose to have the expertise in collective bargaining and grievance handling, the financial resources for policing their contract, the brotherhood of hundreds of thousands of other members, and other numerous benefits of membership in the UAW.

This is the third case that employer has attempted to undo the decision of its employees to affiliate with the UAW. The first was the employer's RM petition, which was dismissed by the Regional Director and affirmed by the NLRB. That case was not appealed further. The "Prior Case" (357 NLRB No. 135) also found the affiliation appropriate. That case is pending review of the D.C. Circuit Court.

At the request of Mark Roggero, President of Independent Union Local One, Mr. Zimmick sent a letter on May 26, 2011 requesting various information regarding the attendance of bargaining unit members. (GC-3) The Union received no response. On June 3, 2011, Mr. Zimmick sent another letter to the company president requesting the information again. (GC -4) The Union received no response. On June 8, 2011, Mr. Zimmick requested job descriptions for specific bargaining unit positions. (GC-5) The Union received no response. On June 16, 2011,

Mr. Zimmick sent another letter requesting the information again. (GC-6) The Union received no response.

To assuage any concerns that the employer may have about Mr. Zimmick requesting the information, on or about July 12, 2011 Mr. Roggero and Mr. Zimmick jointly sent an information request to Wellington asking for information related to the enforcement of Wellington's attendance policy and the job descriptions. (GC-7) The Union received no response.

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, on or about June 13th, 2011, Local One selected employee Gary G. and requested that John Zimmick be present for the council hearing as its advocate. (GC -14, 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 refused to provide 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 in over six months. (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).

Additionally, 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.

The employer argues 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***)

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 Mr. Zimmick and Mr. Roggero. (GC-7) The most laughable portion of Respondent's argument is its attempt to excuse its refusal to provide the information after the July 12th 2011 letter signed by the President of Local One. It argues in its Brief, "a reading of the letter shows that Mr. Roggero was not holding himself out as president of Independent Union Local One, the certified representative of the employees of the bargaining unit, but rather as "President Union Local One." (Resp Exc.Br. pg. 10-11) The employer is well aware that Mr. Roggero is the President of Independent Union Local One. Nobody testified that this created any confusion. Moreover, Independent Union Local One often referred to itself as "Local Union One" and the employer was never confused before. (See Prior case GC-26) Similarly, Respondents claim that none of the letters make any reference to Independent Union Local One is not factually accurate.

The Respondent also confuses some very simple issues. The skilled trades members at Wellington desire a journeymen card from the UAW. Pursuant to the affiliation agreement, the members of Local One are afforded all of the rights and privileges of membership in the UAW. (Prior Case GC-12) In fact, most members of the Local One bargaining unit have decided to

become members of the UAW. As a member of the UAW, the skilled trades members at Wellington could qualify for a journeyman card. However, an inspection of the workplace is necessary. The Union requested that opportunity for the betterment of the Wellington employees. The Respondent refused. (GC-5) Mr. Zimmick's letter regarding this issue stated that the UAW wanted to better represent its members at Wellington. This is not evidence of the UAW supplanting Local One. This is evidence that the UAW is abiding by the terms of the affiliation agreement with Local One.

The Respondent makes some reference that it does not have to respond to a request for information because it was sent out on the letterhead of UAW 174. This is entirely irrelevant. The testimony of Mr. Roggero is that Local One does not have letterhead or a computer or any other tangible office resources. (Tr. 35) The Respondent makes an issue that Local One does at times submit things to the employer in writing. However, these are merely scribbles on a piece of loose paper. (See for example GC-14). It is perfectly appropriate for a Union to operate at higher level of professionalism and it may do so without waiving any of its statutory rights. Moreover, an attorney will often deal with a party in a collective bargaining relationship. That attorney will issue correspondence on the law firm letterhead. Obviously, a union or employer may not refuse to conduct itself in accordance with its statutory obligations based upon the letterhead of the selected representative of the party.[1]

Lastly, the Respondent provides that when the requests for information stated "the Union." The Employer wrongly asserts that "the Union" can only be interpreted to mean Local 174, not Local One. Insofar as this is relevant, the opposite is true. The information request

[1] Just to be clear, the Union is not claiming that Mr. Moore or his law firm of Plunkett Cooney is attempting to supplant Wellington Industries merely through his affiliation and duties as bargaining representative. The Union is not so clear as to Respondent's position on the matter and any obligation that Union has to deal with the Employer's selected representative.

states, "This is the Union's official 2nd request for information in regard to enforcement of the negotiated attendance policy." (GC-4) Obviously, "the Union" refers to the Union that it negotiated an attendance policy.

Here it is undisputed that Wellington has not provided the information requested in Local One's July 12, 2011 request. (pg. 22) Moreover, Wellington not only failed to respond to Local One's request, it has completely withdrawn from the processing 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 representatives 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.

In its exceptions, Wellington does not deal with its refusal to conduct a grievance hearing after Local One indicated it wanted Mr. Zimmick present as a representative in any meaningful manner. It merely states on page 9 of its Exceptions Brief that it has no obligation to meet with Mr. Zimmick. It does not argue why it has the right to condition a grievance hearing on the presence of the selected representative of the union's choice. It does not deny that on June 13, 2011 Local One President Mark Roggero informed Mr. Sievert that John Zimmick would be attending the meeting on behalf of the union. It also does not deny that it refused to conduct that grievance hearing or to continue to process that grievance because of Mr. Zimmick's presence.

The employer states that "there has been no designation by Independent Union Local One of Mr. Zimmick as Independent Local One's servicing representative." (Resp. Exc., pg. 1) This belies all of the facts presented in the case. Mr. Sievert admitted that when the parties were negotiating the collective bargaining agreement, the union notified management that Mr. Zimmick would join the bargaining team on behalf of Local One. (Prior Hrg Tr. Pgs. 102, 105) Moreover, prior to the request for information on July 12th, 2011, the Union indicated that Mr. Zimmick would represent the Union at a grievance hearing. This notice was on or about June

13th, 2011. (GC-14) Moreover, the July 12, 2011 letter, signed both by Local One President Roggero and Local 174 President Zimmick addresses Mr. Zimmick representing "the members at every step of the grievance procedure." (GC-7) Local One has been clear and unambiguous that Mr. Zimmick represents the Local One for purposes of collective bargaining and grievance handling.

C. The Affiliation Is Not Critical to This Case.

The employer asserts 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 one 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 the National Labor Relations Board adopt the Decision and Recommended Order of the Admin and issue a make whole remedy that includes attorney fees and costs.

Respectfully submitted,

MILLER COHEN, P.L.C.

By: /s/Robert D. Fetter

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Dated: March 14, 2012

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CERTIFICATE OF SERVICE

I certify that on *March 14, 2012*, I electronically filed the foregoing with the Clerk of the Court for the U.S. National Labor Relations Board by using the E-Filing system. Participants in the case who are registered E-Filing system users will be served by the E-Filing system:

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