

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

WELLINGTON INDUSTRIES, INC.,

Respondent,

-and-

Case No. 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.

REPLY BRIEF OF RESPONDENT,
WELLINGTON INDUSTRIES, INC.,
TO RESPONSE OF CHARGING PARTY

PLUNKETT COONEY

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INTRODUCTION

This Brief is submitted in reply to the Response to Exceptions of WELLINGTON INDUSTRIES, INC. (“Respondent”) filed by the Charging Party. In its Response, the Charging Party attempts to refute the Exceptions filed by the Respondent. However, the Charging Party has not successfully done so. Rather, Respondent’s Exceptions stand and support its contention that the Administrative Law Judge (“ALJ”) erred in his conclusion that Respondent had violated the Act.

ARGUMENT

In its introductory paragraph, the Response states that the Charging Party is Independent Union Local One. In fact, the caption of the Charging Party’s Response and the caption of the Amended Complaint, as well as the unfair labor practice charge filed in this matter on July 22, 2011 (*Exhibit GC 1(a)*), clearly show that the Charging Party is UAW Local 174 and that Independent Union Local One did not file the unfair labor practice charge. Further, Administrative Law Judge Amchan’s Decision of January 9, 2012 identifies the Charging Party as UAW Local 174.

This fact alone shows that Respondent’s contention that UAW Local 174 is attempting to supplant and replace the certified bargaining representative, Independent Union Local One, is a correct assertion. The charge (*Exhibit GC 1(a)*) was signed by Sheila Draper, Financial Secretary of New West Side Local 174 UAW. In Section 2, “Basis of the Charge,” in each of its three paragraphs, the charge repeatedly refers to “the Union.” It does not at any time or in any instance reference Independent Union Local One. The only conclusion that can be drawn from this charge (*Exhibit GC 1(a)*) is that “the Union” referred to is the UAW and its Local 174. This in

and of itself shows that the UAW is attempting to supplant and replace Independent Union Local One as the certified bargaining representative of the employees in the bargaining unit.

Further, in Charging Party's Response, at page 3 in Section II, Statement of Facts, in the second paragraph, third sentence, it is stated: "Thereafter, the minority group circulated a petition to have another vote on the affiliation." What the Charging Party has failed to state in its Response is that the Petition was signed by a majority of the employees in the bargaining unit. See *Exhibit R-16* from the prior case (denoted by Acting General Counsel as Wellington I), Case No. 7-CA-53182. In the prior case hearing, Independent Union Local One president Mark Roggero testified that there were 128 employees in the bargaining unit at the time of the affiliation (*TR 40*).¹ The Employee Petition (*Exhibit R16*) in the prior case stated that there were 125 employees in the bargaining unit. The Respondent's Human Resource Director, Gary Sievert, testified that in reviewing the Petition, he could identify and verify the signatures of 75 employees. However, there were two marks on the first page in the left-hand column where he could not determine whether they were, in fact, signatures of individuals or not (*TR 72*). Thereby, clearly a majority of the employees in the bargaining unit signed the Petition.

The Charging Party, in its Response, also states that the issue of affiliation is not critical to this case (Charging Party's Response at page 11). If, in fact, the Charging Party is seeking to supplant and replace Independent Union Local One, Respondent submits that the issue regarding affiliation is absolutely essential to a determination in this matter. It might be one case if Independent Union Local One merely sought to

¹ References to the transcript of the hearing in the prior case will be denoted as "TR."

have a representative from UAW Local 174 assist it in certain matters. However, from a reading of the various Exhibits in this case and also the arguments regarding those Exhibits in Respondent's Brief, it is clear that this purported utilization of Mr. Zimmick from the UAW is a ruse to cover the fact that UAW Local 174 is attempting to supplant and replace Independent Union Local One and that this is not just a mere affiliation.

Finally, Charging Party, on page 12 of its Response, in Section B, seeks attorney fees and costs. In so doing, it has indicated that the Respondent has not complied with the Board Order from the first case (Wellington I, Case No. 7-CA-53182). What is not referenced at that point in the Response, although mentioned earlier in the Response at page 4, is that the Respondent has, in fact, exercised its legal right to appeal same to the D.C. Circuit Court of Appeals. Therefore, the reading Charging Party would give to its position in its Response to justify Charging Party's request for attorney fees and costs is unwarranted.

Further, it is submitted that any attorney fees and costs the Charging Party may have incurred in this matter were unnecessary. It was the Charging Party's determination to utilize legal counsel to assist it when, in fact, its rights and interests were adequately represented by Counsel for the Acting General Counsel. Thereby, any attorney fees and costs incurred by the Charging Party were unnecessary and are not the proper subject for assessment in this matter.

CONCLUSION

For all of the reasons set forth herein and in the original Brief filed by Respondent in this matter, it is submitted that the Administrative Law Judge's Decision and Order cannot stand. Respondent submits that its 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. The Respondent has not engaged in any conduct violating the Act. 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 Charge and Amended Complaint should be dismissed.

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Dated: March 28, 2012

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 Wednesday, March 28, 2012, a copy of the foregoing *Reply Brief of Respondent, Wellington Industries, Inc., to Response of Charging Party*, 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).

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