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.

ANSWERING BRIEF OF RESPONDENT, WELLINGTON INDUSTRIES, INC., TO COUNSEL FOR THE ACTING GENERAL COUNSEL'S CROSS-EXCEPTION TO THE ADMINISTRATIVE LAW JUDGE'S DECISION

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INTRODUCTION

Counsel for the Acting General Counsel has filed a Cross-Exception to the Administrative Law Judge's Decision in this matter. In essence, she has taken exception to the Administrative Law Judge's ("ALJ") conclusion at page 3, lines 40-43, of the Decision, that the Respondent violated the Act "because Independent Local Union One [*sic*] is validly affiliated with Local 174 of the UAW."

In her Cross-Exception and supporting Brief, Counsel for the Acting General Counsel indicates that, even without a finding of affiliation, Respondent violated Section 8(a)(5) of the Act. Respondent submits that Counsel for the Acting General Counsel is in error in her Cross-Exception. In this case, Independent Union Local One was not seeking to utilize John Zimmick for his purported expertise or experience but, rather, was reacting to the directives of the UAW as it attempts to supplant and replace Independent Union Local One as the certified bargaining representative of the employees, thereby making the purported affiliation a crucial factor in this case.

ARGUMENT

A review of the Exceptions filed by the Respondent in not only this case, but in what has been designated as "Wellington I" (Case No. 7-CA-53182) by Counsel for the Acting General Counsel, at page 3, footnote 1 of her Brief, will show that the issue of affiliation is the central and controlling issue in both cases. As stated in Respondent's Brief in Support of its Exceptions, a review of the Exhibits in this case, and in particular, *Exhibits GC 3, 4, 5* and *6*, which are letters from the UAW to Respondent, will clearly show that the UAW was not acting as a servicing agent, or any other type of agent for Independent Union Local One, but was instead carrying on its program of

attempting to supplant and replace Independent Union Local One. Accordingly, the issue of affiliation is central to this case, contrary to the assertion of Counsel for the Acting General Counsel.

It has long been held that an employer violates the Act if it recognizes a union that does not have the support of a majority of the employees in the bargaining unit. *Ladies' Garment Workers (ILGWU) (Bernhard-Altmann Tex. Corp.) v. NLRB*, 366 U.S. 731 (1961). Also, an employer may only bargain or deal with a union that is its employees' statutory bargaining representative. *Nevada Security Innovations, Ltd.*, 341 NLRB 953 (2004).

As the Board discussed in *Nevada Security*, a union cannot transfer its representational responsibility to another union which is not the certified representative of the employees under the guise of simply enlisting the aid of an agent or servicing representative. 341 NLRB at 955. In so holding, the Board discussed its decision in *Goad Co.*, 333 NLRB 667 (2001). Respondent submits that Mr. Zimmick is not the designated representative/agent of Independent Union Local One but, rather, is the president of UAW Local 174, the union seeking to supplant and replace Independent Union Local One. This is not only the position of the Respondent, but also of a majority of the employees in the bargaining unit who questioned the purported affiliation by the Petition they signed (*Prior Case Exhibit R 16*).[1]

It must be noted that the Charge in this matter was brought by the UAW and not by Independent Union Local One. The Charge itself clearly shows that it was filed on behalf of the UAW, and it is the UAW that is listed as the Charging Party in the Amended Complaint. The UAW is not seeking to function as a servicing representative,

[1] Prior Case Wellington I, Case No. 7-CA-53182.

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

The key Exhibits in this case are *GC 3, 4, 5* and *6.* All four of those documents are letters from the UAW to the Respondent demanding information regarding attendance records and possible skilled trades information concerning Respondent's employees. Because the UAW is a stranger to the contract and does not represent the employees in the bargaining unit, the Respondent is not required to provide the information sought by the UAW. The fact that it was the UAW and not Independent Union Local One seeking the information is demonstrated by a review of all four Exhibits. The first two letters requesting attendance information (*Exhibits GC 3* and *4*) refer to "the Union." It can be seen by reading those letters that the only union referred to is UAW Local 174. There is no reference whatsoever in the letters to Independent Union Local One.

Further, when reviewing *Exhibits GC 5* and *6*, it is readily apparent that the demand was being made on behalf of the UAW alone and not on behalf of Independent Union Local One. Specifically, in both letters, Mr. Zimmick stated as follows:

> The following information is vital so that **the UAW** can better represent **its membership** and provide all services available to them.
> (*Emphasis added.*)

It is clear from this language that it is the UAW and not Independent Union Local One that has sought this information. Mr. Zimmick's own words demonstrate what is really going on in this matter. That is, the UAW is looking to assert itself as the bargaining representative of the employees in the bargaining unit and is not merely acting in the role of a "designated representative."

UAW Local 174 continues to attempt to supplant and replace Independent Union Local One as the representative of Respondent's employees and not just function as a representative for Independent Union Local One. The UAW's letters *(Exhibits GC 3, 4, 5* and *6*) show that this is the real intent of the UAW. Frankly, those letters follow in line with the UAW's initial demand of August 9, 2010 to be recognized as the employees' union representative.[2] Mr. Zimmick wrote: "On behalf of the unit and Local 174, **the UAW hereby demands recognition**. (*Emphasis added.*) *Prior Case Exhibit R-13*. These are not the words or actions of a mere servicing representative. Rather, they the words and actions of a union that believes it has replaced Independent Union Local One as the representative of the Respondent's employees.

Counsel for the Acting General Counsel also relies on the testimony of Mr. Roggero that the references in *Exhibits GC 3, 4, 5, 6* and *7*, when referring to "the Union," mean Independent Union Local One (Tr. P. 18, L. 14-23). However, in his testimony, Mr. Roggero made it clear that "the Union" is the UAW. He stated as follows:

> **Q**. Now, referring you to General Counsel's Exhibits 5 and 6, the June 8th, 2011 and June 16th, 2011 letters attached to, which you've testified were attached to the July 12th information request, which requests information related to job descriptions, what was the purpose of you requesting that information on July 12th?
>
> **A**. We had needed that information to determine if the skilled trades, semi-skilled and skilled trades, would be able to get a journeyman's card, and we needed that information to make that determination because they would not allow the UAW to do a walk-through.
>
> **Q**. And explain how that request came about?
>
> **A**. There was individuals that had asked about acquiring a journeyman's card. **We had gone to the Union** seeking that information. **The Union had generated a letter**, I believe it was in April, requesting that they do

[2] This letter was sent the day after the purported affiliation on August 8, 2010.

> a walk-through, and I had hand-delivered a letter to the Company requesting to do that. (*Emphasis added*.)

What Mr. Roggero is really stating is that he was not asking for the aid of an agent (Mr. Zimmick as a servicing representative) but, rather, was transferring representational rights to the UAW as "the Union." This is simply not permissible, even under the guise of a purported affiliation. *Goad Co.*, 333 NLRB 667 (2001); *Nevada Security Innovations, Ltd.*, 341 NLRB 953 (2004). The testimony of Mr. Roggero clearly shows he considers "the Union" to be UAW Local 174.

This Charge and the Amended Complaint are not about the failure of the Respondent to acknowledge Mr. Zimmick as the designated representative of Independent Union Local One but, rather, have at their core the fact that the post-affiliation union is so substantially different that a question of representation does, in fact, exist. What we have in this case is the UAW attempting to supplant and replace the certified representative of the employees, Independent Union Local One. Under these facts and circumstances, the Respondent is not obligated to recognize or provide information regarding employees in the bargaining unit to an entity that is neither the certified representative of the employees or the designated agent of a union (Independent Union Local One) that does represent the employees in the bargaining unit. In its decision in *Raymond A. Kravis Center for the Performing Arts*, 351 NLRB 143 (2007), the Board has made it clear that if there is a lack of continuity pre- and post-affiliation, the affiliation is to be questioned. Here, there is no substantial continuity pre- and post-affiliation. Rather, the facts in this case show a continuing effort by UAW Local 174 to supplant and replace Independent Union Local One; to, in effect, become "the Union."

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 ***Answering Brief of Respondent, Wellington Industries, Inc., to Counsel for the Acting General Counsel's Cross-Exception to the Administrative Law Judge's Decision,*** 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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