

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 WELLINGTON INDUSTRIES, INC. TO
ANSWERING BRIEF OF COUNSEL FOR THE ACTING GENERAL COUNSEL
TO EXCEPTIONS OF RESPONDENT, WELLINGTON INDUSTRIES, INC.**

PLUNKETT COONEY

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INTRODUCTION

In her Answering Brief, Counsel for the Acting General Counsel argues that irrespective of affiliation, the Respondent had an obligation to provide information to the UAW and to allow UAW Local 174 president, John Zimmick, to attend a grievance meeting involving an employee of Respondent. Counsel for the Acting General Counsel's argument is premised on the fact that it is her perception that Independent Union Local One, the certified bargaining representative of the employees in the bargaining unit, was seeking the aid and assistance of Mr. Zimmick and UAW Local 174. However, in fact, Independent Union Local One was not seeking such assistance, but had instead been pushed aside by UAW Local 174, which is attempting to supplant and replace Independent Union Local One as the bargaining representative for the employees of Respondent. Thereby, Respondent was fully within its rights to not provide information to or meet with Mr. Zimmick.

ARGUMENT

At page 9 of her Brief, Counsel for the Acting General Counsel states: "The record is devoid of evidence that 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." However, the Exhibits in this case clearly show the opposite to be true. Since the time of the decision in the Prior Case through July 12, 2011 in the instant case, Independent Union Local One has not provided written documentation to the Respondent asserting that John Zimmick, president of UAW Local 174, was the designated representative for Independent Union Local One. This

fact was testified to by Mark Roggero, who served as president of Independent Union Local One:

Q. Okay. Sir, up through your letter that you signed on July 12, 2011, designated General Counsel Exhibit 7, had you as President of the Independent Union Local One given any written document to the Company designating John Zimmick as Independent Union Local One's servicing representative?

A. From myself personally?

Q. Yes.

A. No.

(Tr. P. 34, L.4-11)¹

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 *Goald 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.

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. It is submitted that the UAW has no standing to bring a Charge against the Respondent because there is no legal obligation for the Respondent to

¹ References to the hearing transcript shall be designated as follows: (Tr. P. (page), L. (lines)).

recognize the UAW. Again, the UAW is not seeking to function as a servicing representative, but is instead demanding that it be treated as the certified representative of the employees in the bargaining unit, which it clearly is not. Accordingly, Respondent was within its rights to not provide information to the UAW and to not meet with Mr. Zimmick.

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

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

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 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 supplanting itself, or at least attempting to supplant itself, for the certified representative of the employees, Independent Union Local One. Under these facts and circumstances, the Respondent is not obligated to recognize nor provide information regarding employees in the bargaining unit to an entity that is neither the certified representative of the employees nor the designated agent of a union (Independent Union Local One) that does represent the employees in the bargaining unit.

We note the decision of the United States District Court for the Eastern District of California in the matter of *Garcia v. Sacramento Coca-Cola Bottling Co., Inc.*, 733 F. Supp. 2d 1201 (2010). That case involved a 10(j) injunction hearing. There is an extensive discussion by the court regarding “substantial continuity.” Specifically, the court stated:

In determining whether there is substantial continuity after an affiliation, the Board considers the totality of the circumstances, “eschewing the tendency toward a ‘mechanistic approach’ or the use of a ‘strict checklist.’” *Mike Basil Chevrolet, Inc.*, 331 N.L.R.B. 1044, 1044 (2000) (quoting *Sullivan Bros. Printers*, 317 N.L.R.B. 561, 563 (1995), *enf.* 99 F.3d 1217 (1st Cir. 1996)). Rather, the Board has held that “the critical question is whether the ‘changes are so great that a new organization has come into being.’” *Id.* at 1044-45; *May Dep’t Stores Co.*, 289 N.L.R.B. 661, 665 (1988) (“[T]he general test for determining whether the affiliation of a bargaining representative with another labor organization raised a question concerning representation is whether the affiliation produces a change that is sufficiently dramatic to alter the union’s identity.”) (emphasis in original) (internal quotations and citations omitted). 733 F. Supp at 1212.

Here, there is no substantial continuity pre- and post-affiliation. 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,

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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 Wellington Industries, Inc. to Answering Brief of Counsel for the Acting General Counsel to Exceptions of Respondent, Wellington Industries, Inc.*, 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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