

**THE UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

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LOOMIS ARMORED US, INC.,

Respondent,

and

Case Nos. 32-CA-25316

TEAMSTERS LOCAL UNION NO. 439;  
TEAMSTERS LOCAL UNION NO. 315,  
TEAMSTERS LOCAL UNION NO. 853;  
TEAMSTERS LOCAL UNION NO. 150;  
TEAMSTERS, CHAUFFEURS,  
WAREHOUSEMEN  
AND HELPERS, LOCAL NO. 542;  
PACKAGE AND  
GENERAL UTILITY DRIVERS, LOCAL  
396,

32-CA-25708

32-CA-25709

32-CA-25727

Charging Party.

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**REQUEST TO FILE BRIEF, AND BRIEF OF SERVICE EMPLOYEES**  
**INTERNATIONAL UNION**  
**AS AMICUS CURIAE**

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## TABLE OF CONTENTS

I.	REQUEST TO FILE BRIEF AS <i>AMICUS CURIAE</i> .....	1
II.	SUMMARY OF ARGUMENT.....	1
III.	ARGUMENT.....	3
	A. THE BOARD SHOULD REVERSE <i>WELLS FARGO</i> TO COMPLY WITH THE SUPREME COURT’S CHEVRON TEST.....	3
	B. IN INTERPETING SECTION 9(b)(3) IN <i>WELLS FARGO</i> , THE BOARD HAS VIOLATED BASIC PRINCIPLES OF STATUTORY CONSTRUCTION.....	5
	C. IN ANY EVENT, THE LEGISLATIVE HISTORY SUPPORTS A NARROW INTERPRETATION OF SECTION 9(b)(3).....	8
	D. THE DIVIDED LOYALTY RATIONALE DOES NOT SUPPORT THE HOLDING IN <i>WELLS FARGO</i> . ....	12
IV.	CONCLUSION.....	14

## Table of Authorities

### Cases

<i>Alexandria Clinic, P.A.</i> , 339 NLRB 1262 (2003).....	6
<i>Arcadia v. Ohio Power Co.</i> , 498 U.S. 73 (U.S. 1990).....	11
<i>Auciello Iron Works, Inc. v. NLRB</i> , 517 U.S. 781 (1996) .....	7
<i>BedRoc Ltd., LLC v. United States</i> , 541 U.S. 176 (2004) .....	7
<i>Beverly Health &amp; Rehabilitative Services v. NLRB</i> , 317 F.3d 316 (2003).....	6
<i>Budd Wheel Co.</i> , 52 NLRB 666 (1943).....	8
<i>Chevron, U.S.A., Inc., v. Natural Resources Defense Council, Inc.</i> , 467 U.S. 837 (1984).....	2, 3, 4
<i>Chrysler Corp. v. Brown</i> , 441 U.S. 281 (1979).....	10
<i>General Service Employees Union, Local No. 73 (Temple Security)</i> , 230 F.3d 909 (7 <sup>th</sup> Cir. 2000) .....	1, 2, 3, 4, 5, 14
<i>Holly Farms Corp. v. NLRB</i> , 517 U.S. 392 (1996) .....	4
<i>Jones &amp; Laughlin</i> , 146 F.2d 718 (6 <sup>th</sup> Cir. 1945).....	8, 11
<i>Jones &amp; Laughlin</i> , 331 U.S. 416 (1947).....	9
<i>Lamons Gasket</i> , 357 NLRB No. 72 (2011) .....	7
<i>Lechmere, Inc. v. NLRB</i> , 502 U.S. 527 (1992) .....	4
<i>Metro. Life Ins. Co. v. Taylor</i> , 481 U.S. 58 (1987).....	10
<i>National Cable &amp; Telecommunications Assn. v. Brand X Internet Services</i> , 545 U.S. 967 (2005) .....	3, 5
<i>NLRB v. Ky. River Cmty. Care, Inc.</i> , 532 U.S. 706 (2001) .....	4, 6
<i>NLRB v. Town &amp; Country Electric, Inc.</i> , 516 U.S. 85 (1995) .....	4
<i>NLRB v. United Food &amp; Commercial Workers Union, Local 23</i> , 484 U.S. 112 (1987) .....	4, 5
<i>Temple Security II</i> , 337 NLRB 372 (2001) .....	2, 3, 12, 13
<i>UGL-UNICCO Service Co.</i> , 357 NLRB No. 76 (2011) .....	3, 7
<i>United States v. Fisher</i> , 6 U.S. 358 (1805).....	8
<i>Wells Fargo</i> , 270 NLRB 787 (1984) .....	1, 5, 7, 8, 10, 11, 12, 13, 14
<i>Wells Fargo</i> , 755 F.2d 5 (2 <sup>nd</sup> Cir. 1985).....	2, 4, 5, 8, 10
<i>Wm. J. Burns Int’l Detective Agency, Inc.</i> , 134 NLRB 451 (1961).....	11

## I. REQUEST TO FILE BRIEF AS *AMICUS CURIAE*

Service Employees International Union (“SEIU”) respectfully requests the Board permission to file a brief as *amicus curiae* for the following reasons. SEIU is an international labor organization that represents more than two million working men and women, primarily in the industries of healthcare, public services and property services. SEIU is the largest property services union, representing members in the building cleaning and security industries, including janitors, security officers, superintendents, maintenance workers, window cleaners, and doormen and women. SEIU is also the nation’s largest security officers union, representing 35,000 private security guards. Because SEIU represents both guards and nonguards, it is a “mixed union,” and as such, SEIU is limited by Section 9(b)(3) of the Act. This case poses the question of whether the Board should overrule its decision in *Wells Fargo*, 270 NLRB 787 (1984) *enfd.* 755 F.2d 5 (2d Cir.), *cert denied* 474 U.S. 901 (1985) and instead follow the decision of the Seventh Circuit in *General Service Employees Union, Local No. 73 v. NLRB (Temple Security)*, 230 F.3d 909 (7<sup>th</sup> Cir. 2000). *Wells Fargo* held that Section 9(b)(3) implicitly permits an employer of guards to withdraw recognition from a voluntarily recognized mixed-guard union at the expiration of a collective-bargaining agreement. As this decision affects the rights of 35,000 of its members, SEIU is particularly interested in the outcome of this case.

## II. SUMMARY OF ARGUMENT

In *Wells Fargo*, the Board interpreted Section 9(b)(3) of the Act too broadly. Section 9(b)(3) contains two very specific explicit limitations on the Board’s power. It requires the Board to refrain from doing only two things: (1) finding that a unit including guards and

nonguards is appropriate; and (2) certifying mixed guard unions as representatives of guard units. There is nothing in the language of the statute to suggest that Section 9(b)(3) affects Section 8 rights. The statute prohibits the Board from certifying a mixed guard union as the representative of a guard unit, but it permits employers to voluntarily recognize a mixed union chosen by guards. By finding that an employer's bargaining obligation under Section 8(a)(5) ends at the expiration of the collective-bargaining when the relationship was formed voluntarily, the Board expanded Section 9(b)(3) beyond the plain, clear and specific language of the statute, disrupting the balance of rights provided for in the Act. The expansion of Section 9(b)(3) in *Wells Fargo* undermines labor stability in contradiction to the underlying purpose of the Act, infringes upon the Section 8 rights of mixed-guard unions, and infringes upon the Section 7 rights of guards who freely choose mixed guard unions as their representative.

The Second Circuit's decision in *Wells Fargo* is of questionable continuing validity since it failed to apply the Supreme Court's standard of review of agency action set forth in *Chevron, U.S.A., Inc., v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984), decided just a few months before *Wells Fargo* was argued in the Second Circuit. See *Wells Fargo*, 755 F.2d 5 (2<sup>nd</sup> Cir. 1985). Applying the current legal standard of review as articulated by the Supreme Court in *Chevron*, the Seventh Circuit rejected the *Wells Fargo* doctrine and held that by creating an exception to Section 8(a)(5) protections based on uncertifiability, the Board had gone beyond the plain terms of 9(b)(3). *General Service Employees Union, Local No. 73 (Temple Security)*, 230 F.3d at 916. On remand, the Board accepted the Seventh Circuit's decision as the law of the case, and Board Members Liebman and Walsh noted that for institutional reasons, they would not vote to overrule *Wells Fargo* absent a third vote to do so. *Temple Security II*, 337 NLRB 372, 372 fn. 6 (2001). Now it is time for the Board to correct the negative effects of *Wells*

*Fargo*, and follow the most recent Circuit decision on this issue, *General Service Employees Union, Local No. 73 (Temple Security)*, supra.

### III. ARGUMENT

#### A. THE BOARD SHOULD REVERSE *WELLS FARGO* TO COMPLY WITH THE SUPREME COURT'S CHEVRON TEST.

This is not simply a matter of a split in the circuits where the Board can choose between adhering to the Second Circuit or changing policy to follow the Seventh Circuit. Rather, it is a matter of following the current application of *Chevron* established by the Supreme Court. Courts review an agency's interpretation of statutory language by applying the now well-established Chevron test:

First, always, is the question whether Congress has directly spoken to the precise question at issue. If the intent of Congress is clear, that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress. If, however, the court determines Congress has not directly addressed the precise question at issue, the court does not simply impose its own construction on the statute, as would be necessary in the absence of an administrative interpretation. Rather, if the statute is silent or ambiguous with respect to the specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute.

*Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 843 (1984).

More recently, in *National Cable & Telecommunications Assn. v. Brand X Internet Services*, 545 U.S. 967, 982 (2005), the Supreme Court clarified that "prior judicial construction of a statute trumps an agency construction otherwise entitled to Chevron deference only if the prior court decision holds that its construction follows from the unambiguous terms of the statute and thus leaves no room for agency discretion." The Board cited *National Cable & Telecommunications Assn.* for this very premise in *UGL-UNICCO Service Co.*, 357 NLRB No. 76 slip op. 6 fn. 22 (2011).

In *General Service Employees Union, Local No. 73 (Temple Security)*, the Seventh Circuit rejected the *Wells Fargo* doctrine on the basis that Section 9(b)(3) was clear and unambiguous under the first prong of *Chevron*. *Supra*, 230 F.3d at 914. The Seventh Circuit explained that by creating an exception to Section 8(a)(5) protections based on uncertifiability, the Board attributed more to the certification provision of Section 9(b)(3) than Congress provided. *Id.* at 916. In *Wells Fargo*, the Second Circuit failed to cite or apply the now well-established test from *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, *supra*. The Second Circuit issued *Wells Fargo* in 1985, only a year after the Supreme Court decided *Chevron*. *Chevron* addressed the Environmental Protection Agency's interpretation of the Clean Air Act Amendments of 1977, and two more years passed before the Supreme Court applied *Chevron* to review the National Labor Relations Board's interpretation of the NLRA. See *NLRB v. United Food & Commercial Workers Union, Local 23*, 484 U.S. 112, 123-124 (1987). The Supreme Court has applied *Chevron* to the NLRB in many cases since then.<sup>1</sup>

Notably, the Second Circuit never applied the first part of the *Chevron* test when reviewing the Board's decision in *Wells Fargo*.<sup>2</sup> Rather than first asking whether the intent of Congress was clear by looking at the statutory language, the Court went directly to the second part of test and found that "if the Board's construction of a statute is reasonably defensible, it should not be rejected merely because a court might prefer another construction." *Wells Fargo*, 755 F.2d 5, 7 citing *Ford Motor Co. v. NLRB*, 441 U.S. 488, 497 (1979). This is no longer the

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<sup>1</sup> See *NLRB v. Ky. River Cmty. Care, Inc.*, 532 U.S. 706, 713 (2001); *Holly Farms Corp. v. NLRB*, 517 U.S. 392, 398-99 (1996); *NLRB v. Town & Country Electric, Inc.*, 516 U.S. 85, 90 (1995); *Lechmere, Inc. v. NLRB*, 502 U.S. 527, 536 (1992).

<sup>2</sup> Although the dissent in *Wells Fargo* also did not expressly cite *Chevron*, it did apply the appropriate standard by finding that the majority's decision ignored "the plain language of § 9(b)(3)" and instead based its decision on "policy concerns inherent in the statute". *Wells Fargo*, at 14.

current standard that the federal courts use to determine whether the Board has exceeded its authority.

In accordance with the Supreme Court's ruling in *National Cable & Telecommunications Assn.*, supra, because the Seventh Circuit held that Section 9(b)(3) is unambiguous under *Chevron*, the Board must accept the Seventh Circuit's holding that voluntarily recognized mixed-guard unions and the employees they represent are protected by Section 8(a)(5) including after expiration of a collective-bargaining agreement. The Board is left with "no room for agency discretion" when interpreting Section 9(b)(3). On the other hand, the Second Circuit's earlier decision upholding *Wells Fargo* was based on inferences drawn from Section 9(b)(3) and not from its unambiguous terms, and thus under *National Cable & Telecommunications Assn.*, supra, it is not binding on the Board.

Finally, it should be noted that even assuming that Section 9(b)(3) was ambiguous, contrary to the Seventh Circuit's decision in *Temple Security*, the Board would still have discretion to reverse *Wells Fargo*. *National Cable & Telecommunications Assn.* makes clear that such a finding of reasonableness of an agency's interpretation of a statute does not constrain an agency from changing its policy to a different reasonable interpretation where the statutory language at issue is ambiguous. *Id.* 545 U.S. at 982.

**B. IN INTERPETING SECTION 9(b)(3) IN WELLS FARGO, THE BOARD HAS VIOLATED BASIC PRINCIPLES OF STATUTORY CONSTRUCTION.**

As a matter of statutory interpretation, the Board in both *Wells Fargo* and *Temple Security* incorrectly interpreted the Act. Some sections of the National Labor Relations Act permit the Board broad discretion, while other sections are so clear that they leave no room for interpretation. For example, Section 8(a)(1) of the Act states that it is an unfair labor practice for

an employer “to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.” The Board has developed a detailed body of case law to define categories of conduct that falls within those broad terms. Without consulting Board case law, it would be difficult to determine what conduct constitutes “coercion” in violation of Section 8(a)(1) because reasonable minds could differ on the meaning of the term “coerce.” Similarly, the Supreme Court has found that the term “independent judgment” from Section 2(11), which defines supervisors under the Act, is ambiguous. See *NLRB v. Ky. River Cmty. Care, Inc.*, 532 U.S. 706, 713 (U.S. 2001) citing *NLRB v. Health Care & Retirement Corp. of America*, 511 U.S. 571, 579 (1994).

On the other hand, some sections of the Act are easily understood without Board interpretation because the terms are specific and unambiguous. Section 8(g), for instance, requires that labor organizations give health care institutions 10-days advance written notice before a strike. The Board at one time granted unions some flexibility to extend the 10-day notice, but in response to the District of Columbia Court of Appeals decision *Beverly Health & Rehabilitative Services v. NLRB*, 317 F.3d 316 (2003), the Board now literally interprets that provision. See *Alexandria Clinic, P.A.*, 339 NLRB 1262, 1263 (2003) (“[U]pon reconsideration of the relevant statutory language and decisional law...Section 8(g) must be applied as it is written.”) Another example of clear and unambiguous language is Section 10(b) requiring an unfair labor practice to be filed within 180 days.

The language in Section 9(b)(3) is specific and unambiguous and does not require the Board to interpret it based on what it determines is the underlying policies of the Act. Section 9(b)(3) contains two simple, clear and specific commands: 1) the Board may not find appropriate a unit including guards and nonguards and 2) it may not certify a mixed-guard union

as the representative of a guard unit. This statute is specific and clear about what the Board is prohibited from doing with respect to guards. Unlike some other sections of the Act, discussed above, it leaves no room for Board interpretation. If Congress also wanted to prohibit the Board from enforcing Section 8(a)(5) at the expiration of a collective-bargaining agreement between an employer and a voluntarily recognized mixed-guard union, Congress could have explicitly added that prohibition to the statute. It did not, and the Board erred in *Wells Fargo* by inferring that Congress meant to say more.

The *Wells Fargo* doctrine expanded Section 9(b)(3) in a way that disrupted the balance of other Sections of the Act. “The object of the National Labor Relations Act is industrial peace and stability, fostered by collective-bargaining agreements providing for the orderly resolution of labor disputes between workers and employers.” *Auciello Iron Works, Inc. v. NLRB*, 517 U.S. 781, 785 (1996). When striking a balance between competing interests, the Board’s first priority, provided in Section 1 of the Act, is promoting labor stability through collective bargaining. See *Lamons Gasket*, 357 NLRB No. 72 slip op. 8 (2011) (restoring the voluntary recognition bar); *UGL-UNICCO Service Co.*, 357 NLRB No. 76 slip op. 1; slip op. 4, fn. 14 (2011) (restoring successor bar doctrine). Normally under Section 8(a)(5), the duty to bargain outlives the parties’ collective-bargaining agreement, including in the context of a voluntarily recognized union. By carving out an exception to this rule for mixed-guard unions, *Wells Fargo* has undermined the primary goal of the Act. The Board in *Wells Fargo* also erred in looking to the provision’s legislative history to interpret its meaning. It is a well-established principle that when a statute is clear and unambiguous, it is unnecessary to look to the legislative history. The Supreme Court has noted “longstanding precedents that permit resort to legislative history only when necessary to interpret ambiguous statutory text.” *BedRoc Ltd., LLC v. United States*, 541 U.S. 176, 187

(U.S. 2004). "Where a law is plain and unambiguous, whether it be expressed in general or limited terms, the legislature should be intended to mean what they have plainly expressed, and consequently no room is left for construction." *United States v. Fisher*, 6 U.S. 358, 399 (1805).

By looking to the legislative history of Section 9(b)(3) to interpret its simple and unambiguous language, the Board and the Second Circuit in *Wells Fargo* violated this basic principle of statutory interpretation.

**C. IN ANY EVENT, THE LEGISLATIVE HISTORY SUPPORTS A NARROW INTERPRETATION OF SECTION 9(b)(3).**

Even if it were permissible for the Board to look at the legislative history to interpret Section 9(b)(3), the legislative history does not support the Board's interpretation in *Wells Fargo* of that provision. A court or agency should not cherry-pick the legislative history to find support for its policy preferences. Prior to the Taft-Hartley amendments of 1947, the Board considered guards to be employees under the Act. See *Budd Wheel Co.*, 52 NLRB 666 (1943) and cases cited therein. In *Jones & Laughlin*, the Sixth Circuit reversed the Board's order directing the employer to bargain with a newly certified unit of guards represented by a union that also represented a separate unit of production employees at the same facility. 146 F.2d 718 (6<sup>th</sup> Cir. 1945) (reversing 53 NLRB 1046 (1943)). The Sixth Circuit found that the Board failed to acknowledge that the country was at war, and that the employer was engaged in the production of war material. 146 F.2d at 721. The court found that the guards "might in an effort to discharge their duty to their employer find themselves in conflict with other members of their Union over enforcement of some rule or regulation they were hired to enforce..." which would be "detrimental to the public interest and to the free flow of commerce." *Id.* at 722-723 (1945).

The Supreme Court reversed the 6<sup>th</sup> Circuit in *Jones & Laughlin* and found the Board's policy of certifying unions with both production/maintenance employees and guards was reasonable as long as the guards were placed in a separate bargaining unit. 331 U.S. 416 (1947). In concluding that the Board's policy was reasonable, the Supreme Court stated: "But to prevent them from choosing a union which also represents production and maintenance employees is to make the collective bargaining rights of the guards distinctly second-class. . . . The guards might thus be deprived of effective bargaining rights if they are denied the right to choose such a union." *Id.* 331 U.S. at 426.

In reaction to the *Jones & Laughlin* decision, Congress drafted Section 9(b)(3) as part of the Taft-Hartley Amendments in 1947. This means Congress decided to change the law to take away certain rights from guards that the Supreme Court found they had under the NLRA prior to the Taft-Hartley amendments. Of course, Congress has the authority to change laws, and Congress did so lawfully by drafting Section 9(b)(3). Section 9(b)(3) created an exception to the law as it existed prior to 1947, and because it was an exception, it should not be construed more broadly than what Congress specified in that provision.

More importantly, Section 9(b)(3) was a compromise between the House bill that completely excluded guards from the Act and the Senate bill that included guards. The legislative history explains the agreement:

The conference agreement, in section 9(b), contains one further provision covering a particular classification of employees who were dealt with in the House bill in the definition of "supervisor". Under that definition individuals employed for police duties came within the definition of "supervisor". The conference agreement represents a compromise on this matter.

House Conference Rept. No. 510 on H.R. 3020, 47-48 (1947), reprinted in 1 NLRB, Legislative History of the Labor Management Relations Act, 551-52.

When considering the legislative history of Section 9(b)(3), it is significant that it was a compromise struck between two opposite views – one that excluded guards completely under the definition of “supervisor”, and the other that treated guards the same as other employees covered by the Act. The Conference Report is a reliable source of information for determining legislative intent. See *Metro. Life Ins. Co. v. Taylor*, 481 U.S. 58, 65 (1987) (relying on a Conference Report as a legitimate source for legislative intent). However, “[t]he remarks of a single legislator, even the sponsor, are not controlling in analyzing legislative history.” *Chrysler Corp. v. Brown*, 441 U.S. 281, 311 (1979).

Ignoring the more reliable Conference Report, the Board in *Wells Fargo* relied on the remarks on the floor of the Senate of a single Senator, Senator Taft, who commented that “conferees on both sides . . . have been impressed with the reasoning of the Circuit Court of Appeals in the *Jones & Laughlin* case.” See *Wells Fargo*, 270 NLRB at 788-789, citing 93 Cong. Rec. S6444 (1947) (remarks of Sen. Taft), reprinted in 2 NLRB, Legislative History of the Labor Management Relations Act, Congressional Record, Senate – June 6, 1947, 1541. Of course, had the Senate been so impressed with the Sixth Circuit’s decision denying enforcement of the Board’s order for an employer to bargain with a union representing guards and nonguards at the same facility, the Senate Bill would not have included guards as employees under the Act without restriction.

Indeed, the comments from the legislative history of 9(b)(3) have been criticized as ambiguous and even contradictory.<sup>3</sup> The fact of the matter is that the Sixth Circuit’s *Jones &*

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<sup>3</sup> The Second Circuit’s decision in *Wells Fargo* acknowledged comments in the legislative history from Senator Murray who disagreed with the Sixth Circuit and favored the Supreme Court’s ruling in *Jones & Laughlin*, in sharp contrast to Taft’s comments in support of the Sixth Circuit. *Wells Fargo*. Supra, 755 F.2d 5, 9, citing 93 Cong. Rec. 6444, reprinted in II NLRB, Legislative History of the Labor Management Relations Act, 1947, at 1572 (1948). See also Lawrence D. Grewach, Comment, *The Guards Trilogy: The NLRB Lowers the Guard on Employee Rights*, 35 Am. U.L. Rev. 175, 207 (1985) (describing the legislative history of Section 9(b)(3) as “an inadequate indication of what Congress intended...” citing contradictions within Senator Taft’s comments alone.

*Laughlin* decision addressed a very different conflict of interest than what the *Wells Fargo* decision did. In *Jones & Laughlin*, the court's concern was with a conflict that might arise when *militarized* guards and nonguards working in the same facility are represented by the same union. *Wells Fargo*, on the other hand addresses the more common situation of non-militarized guards. *Jones & Laughlin* sheds no light whatsoever on the narrow issue of whether the Board can enforce a bargaining order after expiration of a collective-bargaining agreement with a voluntarily recognized mixed-guard union.

Congress wished to discourage guards from joining unions that also represented nonguards only by prohibiting certification, no more, no less. Congress left the door open for guards to choose representation by mixed-guard unions, but only through voluntary recognition. This was not by mistake, for Congress was well aware that unions could gain representation either through certification or voluntary recognition. The statutory language makes this clear:

Congress could readily have declared a guard unit inappropriate if the representative of that unit admitted nonguards to membership or was a direct or indirect affiliate of the labor organization which did so. Congress did not so declare, and the preceding statutory language covering the 'mixed guard unit' compels the conclusion that this omission in the latter situation was deliberate. It follows, in our view, that a contract unit comprised exclusively of guards is not invalidated merely because the representative of that unit admits to membership, or is affiliated with an organization which admits to membership nonguard employees.

*Wm. J. Burns Int'l Detective Agency, Inc.*, 134 NLRB 451, 463 (1961).

In *Wells Fargo*, the Board went beyond the intent of Congress and decided to discourage guards from joining mixed guard unions in a new way - by taking away rights under Section 8(a)(5) that exist for all other voluntarily recognized unions. That decision left guards who chose to be represented by a mixed guard union with no way to maintain their representation at the

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Where legislative history contained statements by conferees in contradiction to the statutory language, "the legislative history is overborne by the text". See *Arcadia v. Ohio Power Co.*, 498 U.S. 73, 81 fn. 2 (U.S. 1990).

expiration of the collective-bargaining agreement, something Congress never intended and that was contrary to the fundamental principles that underlie the Act.

In light of the divisiveness that existed in Congress at the time Section 9(b)(3) was drafted, and the general principle that legislative history is not necessary to understand an unambiguous statute, the only proper course for the Board is to accept the plain language of Section 9(b)(3), as the Seventh Circuit has done. Where Congress has struck a compromise that is expressed in unambiguous terms, as was the case here, an agency is bound by that compromise as expressed in the statutory language and cannot rework that compromise just because it has a different view of what the law should be. By looking beyond the actual language of the Act, the Board in *Wells Fargo* ignored this carefully negotiated compromise by Congress and improperly inferred that the statute should go beyond issues of certifiability despite the fact that there was no support for this in the clear statutory language of Section 9(b)(3).

#### **D. THE DIVIDED LOYALTY RATIONALE DOES NOT SUPPORT THE HOLDING IN WELLS FARGO.**

Although the rationale that guards represented by mixed units have a potential divided loyalty may have some superficial appeal, when one digs deeper, it is clear that that rationale does not justify the *Wells Fargo* holding. Initially, it should be noted that divided loyalty had absolutely nothing to do with what the facts were in *Wells Fargo*, *Temple Security* or this case. In *Wells Fargo*, the employer, after recognizing the mixed union for 30 years, withdrew recognition for economic reasons. In fact, the guards in *Wells Fargo* didn't even protect any plant or other facility. They were armed carriers and thus had no potential conflict because they did not protect the property of an owner who might employ their fellow union members.

In *Temple*, the employer withdrew recognition after eight years of recognizing the union because it preferred to deal with another union. In this case, the employer withdrew recognition in 2010 from six separate bargaining units after periods of voluntary recognition ranging from 10 years to 48 years because of Board precedent that permits withdrawal of recognition of a mixed-guard union at the expiration of the collective-bargaining agreement.<sup>4</sup> In the stipulation of facts, the Respondent does not contend a good faith impasse was reached, nor is there any evidence of a loss of majority support or a conflict of interest whereby Respondent could no longer rely upon the faithful performance of its guard employees' duties.

*Wells Fargo* falls way short of dealing with potential conflicts of interest. It does nothing to protect property owners when a non-mixed union goes out on a sympathy strike. It does nothing to protect a property owner when the guards represented by a mixed union go out on a sympathy strike mid contract (assuming that is permitted by the no-strike clause). At the same time, *Wells Fargo* strips guards represented by mixed unions of rights under the Act when no potential of divided loyalty exists, such as where there is no other union employees on the site, where the other union employees are legally barred from striking (e.g., government employers) or where the property owner's employees are represented by another union.

Ironically, the surest and best way to deal with a potential divided loyalty problem is to have a strong no-strike clause in the guard union's (mixed or not) collective bargaining agreement which carries significant penalties if a guard breaches his/her duty of loyalty in the event of a strike by other employees at the site. Such clauses routinely exist in SEIU security contracts.

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<sup>4</sup> The length of the bargaining relationships with respect to the units involved in this case are as follows: 20 years (Stockton unit); 15 years (Richmond unit); 10 years (Milipitas unit); 45 years (Sacramento unit); 48 years (San Diego unit); and 30 years (Los Angeles unit).

In addition to being unjustified by the statutory language of Section 9(b)(3) or its legislative history, *Wells Fargo* simply misses the target at which it was aimed. The only real effect of *Wells Fargo* is to make guards who wish to be represented by a mixed union second-class citizens under the Act. There is simply no support in the statutory language or the legislative history that that was the intent of Section 9(b)(3).

#### IV. CONCLUSION

For the reasons stated above, the amicus SEIU respectfully requests that the Board overrule *Wells Fargo*, follow the ruling of the Seventh Circuit in *Temple Security* and reverse the decision of the Administrative Law Judge in this case and thereby providing guards represented by mixed unions under the Act with all the rights and protections afforded to other employees under the Act.

Respectfully Submitted,

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May 8, 2012

**THE UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

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**CERTIFICATE OF SERVICE OF REQUEST TO FILE BRIEF, AND BRIEF OF  
SERVICE EMPLOYEES INTERNATIONAL UNION  
AS AMICUS CURIAE**

I hereby certify that on the 8th day of May, 2012, the foregoing document Request to File Brief and Brief of Service Employees International Union as Amicus Curiae was sent via email to the following:

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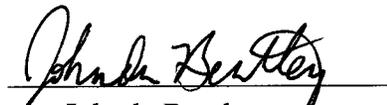
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