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Wellington Industries, Inc. and Local 174, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL-CIO and Independent Union Local One, Party to the Contract. Case 07-CA-061568

July 30, 2012

DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS HAYES
AND BLOCK

On January 9, 2012, Administrative Law Judge Arthur J. Amchan issued the attached decision. The Respondent filed exceptions and a supporting brief, the Acting General Counsel and the Charging Party filed answering briefs, and the Respondent filed reply briefs. The Acting General Counsel filed cross-exceptions and a supporting brief, and the Respondent filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions as modified below and to adopt the judge's recommended Order as modified and set forth in full below.¹

For the reasons that follow, we agree with the judge's determination that the Respondent violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing to allow UAW Local 174's president, John Zimmick, to assist Independent Union Local One (IULO) with grievance processing and by failing to provide requested relevant information to IULO.²

¹ We shall modify the judge's recommended Order to conform to the Board's standard remedial language.

² In light of our disposition of this case, we find it unnecessary to pass on the judge's finding that IULO is validly affiliated with UAW Local 174. See *Wellington Industries*, 357 NLRB No. 135, slip op. at 1 fn. 1 (2011).

We reject the Respondent's argument that UAW Local 174 was without standing to file the charge in this case. An unfair labor practice charge may be filed by "any person." Board's Rules and Regulations Sec. 102.9. By statutory definition and Board rule, the term "person" includes "labor organization." Id. Sec. 102.1; Sec. 2(1) of the Act; see *Public Service Electric & Gas Co.*, 323 NLRB 1182, 1188 fn. 21 (1997), enfd. 157 F.3d 222 (3d Cir. 1998).

We also reject the Respondent's argument that IULO transferred its bargaining rights to UAW Local 174. There is no evidence that IULO delegated its responsibilities as bargaining representative. See *Goald Co.*, 333 NLRB 677, 680 (2001) ("Although a certified representative may delegate its duties under a contract, it cannot delegate its responsi-

1. On June 13, 2011,³ IULO President Mark Roggero notified the Respondent's human resource manager, Gary Sievert, of IULO's selection of representatives for a unit employee's upcoming grievance hearing. At the same time, Roggero also notified Sievert that John Zimmick was requesting to attend the hearing. We find that this notification constituted IULO's designation of Zimmick as IULO's representative to assist in processing the grievance. About a week later, Sievert informed Roggero that Zimmick would not be allowed to attend the grievance hearing. Absent extraordinary circumstances, the Act imposes on employees, employers, and unions an obligation to deal with each other's chosen representatives. *United Parcel Service*, 330 NLRB 1020, 1020 fn. 1 (2000). By refusing to permit IULO's designated representative to attend the grievance hearing, the Respondent violated Section 8(a)(5) and (1) of the Act. See id.

2. On May 26, Zimmick sent the Respondent a letter requesting unit employees' attendance records, records of discipline for attendance policy violations, and records pertaining to both granted and denied requests for leave and paid absences. Zimmick renewed his request on June 3. On June 8, Zimmick sent the Respondent a letter requesting the job descriptions for eight unit classifications. Zimmick renewed that request on June 16. On July 12, Zimmick and Roggero sent the Respondent a letter, signed by both of them, requesting the same information that Zimmick had earlier requested. The parties stipulated that the Respondent did not respond to any of these letters and has not provided the requested information to IULO.

An employer's obligation to bargain in good faith under Section 8(a)(5) of the Act includes the obligation to furnish the employees' bargaining representative, upon request, with information relevant to and necessary for the performance of the union's statutory duty as the employees' bargaining representative. *Disneyland Park*, 350 NLRB 1256, 1257 (2007). Information pertaining to employees within the bargaining unit is presumptively relevant. Id. The Respondent argues that it was under no duty to furnish any of this information because UAW Local 174 is not the bargaining representative of its employees. This argument is without merit. The July 12 letter was co-signed by Roggero as president of IULO, yet the Respondent still failed to furnish the requested information. As alleged in the complaint, this failure to

ilities.") Furthermore, it is clear from the record that IULO President Mark Roggero participated in negotiating, and continues to participate in administering, the current collective-bargaining agreement.

³ All subsequent dates are in 2011, unless otherwise specified.

supply the requested information violated Section 8(a)(5) and (1) of the Act.⁴

ORDER

The National Labor Relations Board orders that the Respondent, Wellington Industries, Inc., Belleville, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain collectively with Independent Union Local One (the Union) by failing and refusing to furnish it with requested information that is relevant and necessary to the Union's performance of its functions as the collective-bargaining representative of the Respondent's unit employees.

(b) Breaching its obligation to bargain in good faith with the Union concerning grievances by refusing to deal with the representative designated by the Union to assist it with grievance processing.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

(2) Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Furnish to the Union in a timely manner the information requested by the Union on July 12, 2011.

(b) Within 14 days after service by the Region, post at its Belleville, Michigan facility copies of the attached notice marked "Appendix."⁵ Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means.⁶ Reasonable steps shall be taken by the Respondent to

⁴ The amended complaint alleges that the Respondent violated the Act by failing to furnish the information requested by IULO by letter dated July 12, and that is the violation we find. We disavow any implication in the judge's decision that the Respondent's failure to respond to Zimmick's May and June letters violated the Act, because that issue is not before us.

⁵ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

⁶ For the reasons stated in his dissenting opinion in *J. Picini Flooring*, 356 NLRB No. 9 (2010), Member Hayes would not require electronic distribution of the notice.

ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since June 20, 2011.

(c) Within 21 days after service by the Region, file with the Regional Director for Region 7 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. July 30, 2012

Mark Gaston Pearce, Chairman

Brian E. Hayes, Member

Sharon Block, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD
APPENDIX
NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities.

WE WILL NOT refuse to bargain collectively with Independent Union Local One (the Union) by failing and refusing to furnish it with requested information that is relevant and necessary to the Union's performance of its functions as the collective-bargaining representative of our unit employees.

WE WILL NOT breach our obligation to bargain in good faith with the Union concerning grievances by refusing

to deal with the representative designated by the Union to assist it with grievance processing.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL furnish to the Union in a timely manner the information requested by it on July 12, 2011.

WELLINGTON INDUSTRIES, INC.

Mary Beth Foy, Esq., for the General Counsel.
Stanley C. Moore III, Esq. (Plunkett Cooney), of Bloomfield Hills, Michigan, for the Respondent.
Robert D. Fetter, Esq. (Miller, Cohen, P.L.C.), of Detroit, Michigan, for the Charging Party.

DECISION

STATEMENT OF THE CASE

ARTHUR J. AMCHAN, Administrative Law Judge. This case was tried in Detroit, Michigan, on December 5, 2011. The Charging Party, UAW Local 174, filed the charge on July 22, 2011.¹ The General Counsel issued the complaint on September 11, 2011. This case is closely related to one heard by Judge Keltner Locke in February 2011. The Board affirmed Judge Locke's May 2, 2011 decision in the prior case on December 9, 2011, a few days after the trial in this instant proceeding, 357 NLRB No. 135.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and Respondent, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent, Wellington Industries, a corporation, manufactures stampings for the auto industry at its facility in Belleville, Michigan, where it annually sells and ships goods valued in excess of \$50,000 to points outside of the State of Michigan. Respondent admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that Independent Union Local One is a labor organization within the meaning of Section 2(5) of the Act. There is no dispute that UAW Local 174 is also a labor organization. Respondent merely contests the proposition that UAW Local 174 represents any of its employees.

II. ALLEGED UNFAIR LABOR PRACTICES

As stated in Judge Locke's decision, as affirmed by the Board, Independent Local Union One has represented production and maintenance employees at Respondent's Belleville, Michigan facility for over 20 years. On August 8, 2010, 38 bargaining unit members out of approximately 128 attended a meeting regarding affiliation with UAW Local 174. Those attending this meeting voted to affiliate with Local 174 by a vote of 30 to 6, with 2 abstentions. Sometime afterwards, 75

employees signed a petition calling for another vote regarding affiliation. The petition alleged that there was insufficient notice with regard to the August 8, 2010 affiliation vote. Respondent has relied on this petition in refusing to recognize the affiliation of Local One with the UAW or to meet or have any dealings with UAW personnel, and more specifically UAW Local 174 President John Zimmick.

On September 28, 2010, Respondent filed a petition with the Board challenging the affiliation of Local Union One with UAW Local 174, Case 7-RM-1496. The Regional Director dismissed this petition administratively. He also dismissed a RM decertification petition. The Board affirmed the Regional Director's dismissal of the RM petition on February 11, 2011 in an unpublished order. There is no indication in this record that the Board's dismissal of the RM petition or the Regional Director's dismissal of the RD petition have been appealed.

Local Union One began negotiations for a successor collective-bargaining agreement with Respondent in May 2010. On December 2, 2010, the parties signed the agreement. Shortly before the contract was agreed upon, Local One proposed to have Zimmick attend bargaining sessions. On November 8, 2010, Respondent refused to attend any bargaining session at which Zimmick was present.

On December 9, 2011, the Board affirmed Judge Locke's conclusion that Respondent violated Section 8(a)(5) and (1) of the Act by refusing to negotiate with Local Union One if Zimmick was present at the collective-bargaining sessions, 357 NLRB No. 135. In a footnote, the Board noted that it had already reviewed the validity of the affiliation and declined to reconsider it.

The instant complaint alleges that Respondent violated Section 8(a)(5) and (1) by failing to provide information requested by Local Union One on July 12, 2011, and refusing to allow John Zimmick to attend a grievance hearing regarding discipline issued to unit member Shane Cook.

On May 26, 2011, Zimmick sent Respondent a letter on UAW Local 174 letterhead² requesting attendance records for unit employees since November 15, 2010; discipline records for attendance policy violations; paid absent days, leaves that had been granted and those that had been denied with a statement of the reasons for Respondent's decisions on leave requests. Mark Roggero, a unit employee who is president of Local Union One and UAW chairperson, was sent a courtesy copy of this letter.

Zimmick sent an almost identical second request to Respondent on June 3, 2011, on UAW Local letterhead with a cc to Roggero. On June 8, he sent a request, also on UAW letterhead, for detailed job descriptions for eight job classifications, stating that this information was needed to determine which, if any, employees would qualify for UAW journeyman cards. He repeated this request on June 16.

On July 12, Zimmick sent another letter on Local 174 letterhead to Respondent attaching the first four letters and renewing its information requests. It also asked that Respondent specify in writing whether Zimmick would be allowed to represent unit members at every step of the grievance procedure. The most

¹ The charge names "New West Side Local 174" as the charging party. It is signed by Sheila Draper, financial secretary of Local 174.

² Independent Union Local One does not have an office or computer and apparently has no letterhead either.

significant difference between this letter and the earlier letters is that it is cosigned by Mark Roggero in his capacity as president of Local One.

On June 13, 2011, Mark Roggero handed Respondent's human resources manager, Gary Sievert, a slip of paper notifying Respondent that John Zimmick wanted to attend a grievance hearing regarding disciplinary action taken against unit member Shane Cook. About a week later, Sievert informed Roggero that Respondent would not allow Zimmick to attend this hearing.

Respondent concedes that it has not provided any of the information requested to the Union. It also does not dispute that it has refused to permit John Zimmick or any other representative of UAW Local 174 to participate in the grievance process generally or specifically in the Shane Cook hearing. Its sole defense to the allegations in this case is that the affiliation of Independent Union Local One with UAW Local 174 is invalid and that therefore it has no obligation to bargain with or deal in any manner with representatives of UAW Local 174.

The Board's February 11, 2011 Order dismissing the RM petition and its December 9, 2011 decision are dispositive of the instant case. The Board has already considered the validity of the affiliation, found it valid and has declined to reconsider this issue.

Thus I conclude that Respondent violated Section 8(a)(5) in refusing to provide information to Local Union One through John Zimmick and refusing to allow John Zimmick to assist Local One in grievance proceedings including the Shane Cook grievance, because Independent Local Union One is validly affiliated with Local 174 of the UAW.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I shall order it to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended³

ORDER

The Respondent, Wellington Industries, Inc., Belleville, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to provide Local Union One information through John Zimmick or any other representative of UAW Local 174.

(b) Refusing to permit John Zimmick or any other representative of UAW Local 174 from assisting Independent Local Union One, an affiliate of UAW Local 174, in any part of the grievance process.

(c) In any like or related manner refusing to recognize or bargain with Independent Local Union One, as an affiliate of

³ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

UAW Local 174, as the exclusive representative of its employees in the certified unit.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Provide to the Union, through John Zimmick, the information previously requested as set forth in the complaint.

(b) Permit John Zimmick and any other representative of UAW Local 174 to participate in any part of the grievance process.

(c) Within 14 days after service by the Region, post at its Belleville, Michigan facility copies of the attached notice marked "Appendix."⁴ Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since June 20, 2011.

(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. January 9, 2012

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
AN AGENCY OF THE UNITED STATES GOVERNMENT

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

- Form, join, or assist a union
- Choose representatives to bargain with us on your behalf
- Act together with other employees for your benefit and protection
- Choose not to engage in any of these protected activities.

⁴ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

WE WILL NOT refuse to provide Independent Union Local One information that it requests concerning information relevant to its representational duties, including information requested through Local 174 of the UAW, with which Local One is legally affiliated.

WE WILL NOT refuse to allow Independent Union Local One to obtain assistance from Local 174 of the UAW, with which Local One is legally affiliated, in any part of the grievance process, including attendance at grievance hearings and arbitrations.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL provide to the Independent Union Local One the information previously requested through UAW Local 174. WE WILL provide that information to representatives of UAW Local 174 if requested to do so.

WE WILL permit representatives of UAW Local 174 to assist Independent Union Local One in any part of the grievance process, including attendance at hearings and arbitrations.

WELLINGTON INDUSTRIES, INC.