

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

COMAU, INC.

Respondent

and

Case 07-CA-073073

**WISNE AUTOMATION EMPLOYEES
ASSOCIATION**

Charging Union

**COUNSEL FOR THE ACTING GENERAL COUNSEL'S
CROSS-EXCEPTIONS**

Counsel for the Acting General Counsel, pursuant to Section 102.46(e) of the Board's Rules and Regulations, files the following cross-exceptions to the decision of Administrative Law Judge Mark Carissimi (ALJD), in the above-captioned matter which issued on December 26, 2012. Counsel for the Acting General Counsel excepts to the following:

1. The ALJ's failure to find and conclude that the Comau Automation facility, also referred by the parties as "Wisne," constitutes the Wisne Automation Employees Association (WAEA)'s home plant. (ALJD p. 2, lines 43-44)
2. The ALJ's finding and conclusion that the WAEA represents employees "who generally work at the Wisne (Comau Automation) facility." (ALJD p. 2, lines 43-44)

3. The ALJ's finding that the production and maintenance employees at Respondent's Novi facility are represented by the Novi Industries Employees Association (NIEA). (ALJD p. 3, lines 13-15)
4. The ALJ's failure to find and conclude that the Novi facilities constitute the NIEA's home plant, and that the NIEA represents employees working at and out of the Novi facilities. (ALJD p. 3, lines 13-15)
5. The ALJ's failure to find that, although employees represented by the WAEA, the NIEA, and the Comau Employees Association (CEA) worked at the Royal Oak and Warren facilities, those facilities were not home plants to any union. (ALJD p. 3, lines 19-23)
6. The ALJ's finding that all of the individuals working at Respondent's Warren facility at the time of the hearing were contractors. (ALJD p. 3, line 23).¹
7. The ALJ's failure to find and conclude that application of the "contract coverage" doctrine adopted by some courts, including the D.C. Circuit Court of Appeals, is not appropriate.
8. The ALJ's failure to find and make a conclusion of law that, even if the "contract coverage" doctrine is applied, Respondent violated Section 8(a)(5) by failing to bargain over the effects of the closure of the Comau Automation facility.

¹ Respondent also excepts to this finding. (Respondent's Exceptions, Exception 1).

9. The failure of the ALJ to find and make a conclusion of law that, even if the “contract coverage” doctrine is applied, Respondent violated Section 8(a)(5) and 8(d) by implementing the Novi rules upon the WAEA-represented employees working at the Novi and Royal Oak facilities.
10. The ALJ’s finding and conclusion that it is not appropriate to alter the unit description contained within the parties’ collective bargaining agreement. (ALJD p. 23, lines 41-43; p. 24, lines 15-19)
11. The ALJ’s finding, analysis, and conclusion that the cases cited by the Acting General Counsel, *Cencom of Missouri*, 282 NLRB 253 (1986), *ADT Security Services, Inc.*, 355 NLRB No. 223 (2010), *Comar, Inc.*, 339 NLRB 903 (2003), and *Leach Corp.*, 312 NLRB 990 (1993), in support of his position that the unit description should be altered were unpersuasive. (ALJD p. 24, lines 1-8)
12. The ALJ’s failure to alter the unit description to accurately describe the bargaining unit as: “All full-time and regular part-time production and maintenance employees, including inspectors, employed by Respondent at and out of its facility located at 42445 West 10 Mile Road, Novi, Michigan; but excluding all office clerical employees, and guards and supervisors as defined in the Act.” (ALJD p. 24, lines 15-16)
13. The ALJ’s failure to identify the appropriate unit as “All full-time and regular part-time production and maintenance employees, including inspectors, employed by Respondent at and out of its facility located at

42445 West 10 Mile Road, Novi, Michigan; but excluding all office clerical employees, and guards and supervisors as defined in the Act.”
(ALJD p. 31, lines 19-26)

14. The failure of the ALJ to order notice postings at all of Respondent’s facilities, and to order notices to be mailed to any WAEA bargaining unit employees on field service. (ALJD p. 30, lines 10-18)

The portions of the record and authority relied upon to support these cross-exceptions are contained in the accompanying supporting brief.

Counsel for the Acting General Counsel respectfully requests that the Board grant the above Cross-Exceptions and modify the Administrative Law Judge’s Decision accordingly.

Respectfully submitted this 22nd day of March 2013.

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CERTIFICATE OF SERVICE

I certify that on the 22nd day of March, 2013, I electronically served copies of Counsel for the Acting General Counsel's Cross-Exceptions and Brief in Support of Cross-Exceptions on the following parties of record:

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