

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

WELLINGTON INDUSTRIES, INC.,

Respondent,

-and-

Case No. 07-CA-091271

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.

EXCEPTIONS BRIEF OF RESPONDENT,
WELLINGTON INDUSTRIES, INC.

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STATEMENT OF THE CASE

The Complaint alleges, and the Administrative Law Judge (“ALJ”) in his Decision of March 21, 2013, found that Wellington Industries, Inc. (hereinafter “Company” or “Respondent”) refused to allow John Zimmick, president of UAW Local 174 (hereinafter “UAW Local 174”), to attend a step three grievance hearing on October 2, 2012, as the servicing representative of Independent Union Local One (hereinafter “Local One”) in violation of the Act. Respondent asserts that it is not required to meet with Local One’s purported designated agent, John Zimmick.

This is the third matter to go to hearing. The first case (07-CA-05382) was decided by Judge Keltner Locke on May 21, 2011. Judge Locke held against Respondent, and his decision was taken by Respondent to the Board on exceptions. On December 9, 2011, the Board affirmed Judge Locke’s decision (357 NLRB No. 135) (**GC Exhibit 3**). The Respondent filed a Petition for Review in the Court of Appeals for the District of Columbia Circuit, and the Board filed a Cross-Petition for Enforcement (Case Nos. 12-1018 and 12-1120). The Court of Appeals has held these cases in abeyance pending further order of the Court. Please see the Order dated February 19, 2013 attached to Counsel for the Acting General Counsel’s Motion to Supplement Record.

The second case (07-CA-061568) was decided by Judge Arthur Amchan on January 9, 2012. Judge Amchan held against Respondent, and his decision was taken by Respondent to the Board on exceptions. On July 30, 2012, the Board affirmed Judge Amchan’s decision (358 NLRB No. 90). The Respondent filed a Petition for Review in the Court of Appeals for the District of Columbia Circuit, and the Board filed a Cross-Petition for Enforcement (Case Nos. 12-1396 and 12-1435). The Court of Appeals has also held these cases in abeyance pending further order of the Court (**GC Exhibit 5**).

Contrary to the assertions of Counsel for the Acting General Counsel and the determination of the ALJ, this case is not about Local One selecting a servicing representative. Rather, it is about the continued effort of UAW Local 174 to supplant and replace Local One as the bargaining representative of Respondent's employees. Accordingly, the issue to be determined in this case is whether Respondent was correct in denying John Zimmick the opportunity to participate in the step three grievance meeting on October 2, 2012. For the reasons set forth in this Brief, and based upon the arguments made in Case No. 7-CA-053182 challenging the alleged affiliation, Respondent submits that it acted within its rights in denying Mr. Zimmick said opportunity.

On October 2, 2012, John Zimmick, president of UAW Local 174, appeared at the Company's premises in an attempt to participate in a step three grievance meeting which the Company and Local One representatives refer to as an "employee council." The Company's Director of Human Resources, Gary Sievert, was informed of Mr. Zimmick's arrival at the Company by the president of Local One, Corbett Crider. Mr. Crider advised Mr. Sievert that Mr. Zimmick was in the Company's lobby and also advised Mr. Sievert that he (Mr. Crider) did not know about the scheduling of the employee council or that Mr. Zimmick would be attending. Respondent has stipulated that it did refuse to allow Mr. Zimmick to attend the employee council (see Trial Stipulation No. 19, **GC Exhibit 11**).

The original unfair labor practice charge in this matter was filed on October 15, 2012 by John Zimmick on behalf of UAW Local 174 (**GC Exhibit 1(a)**). In part, that charge provided "On October 2nd, 2012 John Zimmick arrived at the facility at approximately 3:00 PM at behest of Local Union 1 President Corbert [*sic*] Crider, committeeperson Jerry McGraw to attend a 3rd step council grievance meeting and interview the grievant, Tony Williams."

An amended charge was filed on December 17, 2012 (**GC Exhibit1(c)**), the exact same date that the Complaint issued in this matter. In the amended charge, the reference to Mr. Zimmick being at the Respondent's facility at the behest of Local One president Crider and committee person McGraw was deleted. The amended charge was also filed by Mr. Zimmick on behalf of UAW Local 174.

It is the Respondent's contention that the UAW continues to attempt to supplant and replace Local One as the certified bargaining representative of the employees in the bargaining unit at Respondent's facility. Additionally, based upon the specific facts of this case, Respondent asserts that Mr. Zimmick was not, in fact, at the step three employee council meeting on October 2, 2012 as the designated servicing representative of Local One.

There is one other factor in this case that was not present in the two previous cases in that Counsel for the Acting General Counsel, in the prayer for relief in the Complaint, in paragraph 2(c) (**GC Exhibit 1(e)**), is seeking an Order requiring Respondent to reimburse the Board and Local One for all costs and expenses incurred in the investigation, preparation and conduct of this case before the Board and the courts. Respondent asserts that costs and expenses are not appropriate in this case.

JURISDICTIONAL ISSUE

Respondent is in the awkward position of having to file these Exceptions with the Board at a time when the composition of the Board is under challenge given the determination of the United States Court of Appeals for the District of Columbia Circuit as a result of its decision in *Noel Canning v NLRB*, 705 F.3d 490 (2013). Therein, the Court determined that because of the improper recess appointments by the President of the United States, the Board does not have a validly-constituted quorum in order to allow the

Board to function under the provisions of the Act. Notwithstanding the fact that Respondent has filed these Exceptions, doing so is not to be considered acquiescence to the Board's jurisdiction in this matter. Rather, same is done due to the Respondent's obligation to follow the procedures of the Board in order to challenge, through Exceptions, the determination of the ALJ.

QUESTIONS INVOLVED

- (1) ***Notwithstanding the fact that he credited, in all aspect, the testimony of Respondent's Human Resource Director, Gary Sievert, did the ALJ err in his finding that Respondent violated the Act in refusing to allow UAW Local 174 president, John Zimmick, to attend the October 2, 2012 grievance meeting?***

Respondent submits that the ALJ did err and relies on its Exceptions and its Exceptions Brief.

- (2) ***Did the ALJ err in his determination that Respondent's defense was frivolous as opposed to debatable and, based upon that determination, recommend an Order requiring Respondent to pay the Board's and Independent Union Local One's costs and expenses involved in this case?***

Respondent submits that the ALJ did err and relies on its Exceptions and its Exceptions Brief.

SUMMARY OF ARGUMENT

The Respondent contends that Respondent was within its right to deny UAW Local 174 president, John Zimmick, the opportunity to attend the Step 3 grievance meeting (employee council stage) on October 2, 2012. Respondent submits that this effort by Mr. Zimmick was simply another example of UAW Local 174 attempting to supplant and replace Independent Union Local One as the employees' bargaining representative. Accordingly, Respondent asserts that it was appropriate for it to refuse to allow Mr. Zimmick to attend the Step 3 grievance meeting.

Additionally, regarding the ALJ's determination to award reimbursement of costs and expenses, Respondent submits that the defenses it raised were "debatable" rather than "frivolous," as found by the ALJ. Accordingly, his recommendation to allow such costs is inappropriate. The ALJ determined that there were no credibility determinations adverse to Respondent in this Decision. That is because the ALJ in fact credited the Company's witness regarding the events that occurred on October 2. This crediting of the Respondent's Human Resource Director should not be a basis for the allowance of an award of costs.

ARGUMENT

Exception 1

On October 2, 2012, John Zimmick was Not Local One's Designated Representative

Throughout the two previous cases, Respondent has contended that the alleged affiliation did create a question concerning representation because there was a lack of continuity of representation after the alleged affiliation. See *Raymond F. Kravis Center for the Performing Arts, Inc.*, 351 NLRB 143 (2007), petition denied, 550 F.3d 1183 (D.C. Cir. (2008)). That question concerning representation has not as yet been decided by the Court of Appeals and remains outstanding. Nevertheless, the Respondent asserts, given the evidence in this case, clearly UAW Local 174 continues to attempt to supplant and replace Local One. A review of both the original unfair labor practice charge (***GC Exhibit 1(a)***) and the amended charge (***GC Exhibit 1(c)***) clearly indicates that this matter is being driven by UAW Local 174 and not by Local One. A review of both the charge and the amended charge will show that same were signed by John Zimmick, as president of UAW Local 174. Neither the charge nor the amended charge indicates that either was filed on behalf of Local One, the certified bargaining representative of the employees in the bargaining unit. It is submitted that on this basis alone, the instant Complaint should be dismissed given the

unwarranted conduct of UAW Local 174 in attempting to usurp the position of Local One as the certified bargaining representative of the employees in the bargaining unit.

Additionally, Mr. Zimmick was not at the Company on October 2 at the “behest” of Mr. Crider. Regarding what Mr. Sievert was told by Mr. Crider about Mr. Zimmick coming to the Company on October 2, Mr. Sievert testified at the hearing as follows:

- Q.** Okay. When you made that statement, did Mr. Crider say anything to you, sir?
- A.** He told me that I was, to be [*sic*] best of my recollection, that all’s I needed to do was go next door and tell Mr. Zimmick that he wasn’t to be in the building, and Mr. Zimmick would leave at that time.
- Q.** Okay. At that point, sir, did you and Mr. Crider discuss anything else?
- A.** Mr. Crider informed – he – yes, I would like to – excuse me. I’d like to go back and say that when Mr. Crider first approached me, he said he had, he himself had no knowledge that Mr. Zimmick was going to be part of it; that it – this was the first he had learned of it, or maybe fifteen minutes prior to talking to me, and he also told me at that time that Mr. Zimmick had said to him that after reviewing the information regarding Mr. Williams, that it seemed to be an open and shut case and that the UAW – if the employee council upheld my termination or my decision on terminating Mr. Williams, that the UAW would not pursue going any further with the matter. (*Tr. page 51, lines 3-22*)

In that the Respondent, through the trial stipulations, has admitted that it denied access to Mr. Zimmick, there is no reason for Mr. Sievert to have made up stories regarding what he was told by Mr. Crider. The initial charge was filed on October 15, 2012, and a Position Statement was filed on behalf of the Respondent on November 27, 2012. That Position Statement set forth the same information that Mr. Sievert testified to at the hearing. That Position Statement challenged the contention of Mr. Zimmick in the charge that he was at the Company at the behest of Mr. Crider. It was subsequent to the filing of that Position Statement that the amended charge was filed, and the Complaint was issued; both occurred on December 17, 2012. We can only speculate as to why Mr. Crider has changed his story and testified differently than what he told Mr. Sievert on the day of the incident. It was

submitted that Mr. Sievert is to be believed in this matter, and the ALJ so found.

ALJ Decision, page 3, line 42. Because Mr. Zimmick was not at the Respondent's premises at the behest of Mr. Crider, as he declared in his initial charge, it was appropriate for the Respondent to take the action it did in denying Mr. Zimmick access to its facility on October 2, 2012.

The question must be asked why Mr. Zimmick would file a charge attesting to his assertion that he was at Respondent's facility at the "behest" of Local One's President (**Exhibit 16**) when, in fact, he was not. Respondent asserts that the sole purpose of Mr. Zimmick's presence at Respondent's facility on October 2, 2012 was to take one more step in the process of UAW Local 174 supplanting and replacing Local One. Accordingly, Respondent was correct in refusing to allow Mr. Zimmick to attend the Step 3 grievance meeting.

Exception 2

The Awarding of Costs and Expenses is Inappropriate in this Case

In paragraph 2(c) of the prayer for relief in the Complaint, Counsel for the Acting General Counsel sought an order requiring Respondent to reimburse the Board and Local One for all costs and expenses incurred in the investigation, preparation and conduct of this case before the Board and the Courts. The ALJ recommends that the prayer be granted. ALJ Decision, page 6, lines 1-4, and page 7, lines 8-10. Respondent asserts that there should be no such award in this matter.

Initially, Respondent asserts that, given the original charge (**GC Exhibit 1(a)**) and the change in theory in the amended charge (**GC Exhibit 1(c)**), there is no basis for any such order for costs and expenses in this matter. Under the declaration section of the original charge (**GC Exhibit 1(a)**), Mr. Zimmick affirmed that he had read the charge and

that the statements were true to the best of his knowledge and belief. Therein, he specifically stated that he was at the step three meeting on Respondent's premises on October 2 at approximately 3:00 p.m. at the "behest of Local Union 1 President Corbert [sic] Crider." Mr. Crider testified that he did not even know that the employee council was being held that day and that, in fact, he was slightly annoyed that he had not been told about the council. Mr. Crider testified that he had gone and met with Mr. Sievert to advise Mr. Sievert that Mr. Zimmick was on the premises. Regarding the conversation he had with Mr. Sievert, Mr. Crider testified as follows:

- A.** I asked the question of "We're having an employee council today?"
- Q.** Okay, now, why would you ask that question?
- A.** Because I was slightly annoyed.
- Q.** About what?
- A.** That I had been at work all day long and there was a Council that I knew was being worked out. We were going to have one, and no one found it in their heart to tell me the day of it. (*Tr. page 24, lines 1-9*)

In that Mr. Crider did not even know the council was being held that day, how could Mr. Zimmick have been at the Company at the "behest" of Mr. Crider?

Interestingly, the charge was amended the day the Complaint was issued, deleting the reference to the reason why Mr. Zimmick was at the Company's premises as it related to Mr. Crider. Additionally, Mr. Sievert testified that he had been informed of certain information by both Mr. Crider and Mr. McGraw. At the hearing, however, these individuals denied that they had informed Mr. Sievert that John Zimmick had said that the step three employee council could proceed, that UAW Local 174 would not take any further action regarding the council meeting, and that it looked like an open and shut case. The ALJ credited Mr. Sievert's testimony. ALJ Decision, page 3, line 42, and page 5, lines 26-27. Accordingly, at the time of the hearing, the Respondent was well within its rights to

challenge the Complaint in this matter based upon information known to the Respondent as provided to Mr. Sievert by both Mr. Crider and Mr. McGraw at the time of the incident. It is also interesting to note that Mr. Zimmick was not called to testify, either by Counsel for the Acting General Counsel or by counsel for the Charging Party.

The Board, in *Retlaw Broadcasting Co.*, 324 NLRB 1148 (1997), set forth the standard regarding assessment of costs and expenses. In doing so, it stated as follows:

It is well settled that the assessment of costs against a respondent is an extraordinary remedy not ordinarily imposed. *Heck's, Inc.*, 215 NLRB 765 (1974); *Tiidee Products*, 194 NLRB 1234 (1972), enf. As modified 502 F.2d 349 (D.C. Cir. 1974), cert. denied 421 U.S. 791 (1975). As long as the defenses raised by the respondent are 'debatable' rather than 'frivolous,' this remedy is inappropriate, even where the Respondent has engaged in 'clearly aggravated and pervasive misconduct' or a 'flagrant repetition of conduct previously found unlawful.' *Mt. Airy Psychiatric Center*, 230 NLRB 668, 681 (1977). Under this standard, we find that extraordinary remedies are not warranted in this case. (324 NLRB at 1148)

See also *Diponio Construction Company, Inc.*, 357 NLRB No. 99, footnote 4 (2011). (meritless defense does not warrant extraordinary remedy of reimbursement of litigation costs); *Waterbury Hotel Management LLC*, 333 NLRB 482, footnote 4 (2001) (defenses, although generally meritless, where debatable rather than frivolous, do not warrant extraordinary remedy of reimbursement of litigation expenses).

Further, In *Frontier Hotel & Casino*, 318 NLRB 857 (1995), enf. denied in part sub nom. *Unbelievable, Inc. v. NLRB*, 118 F.3d 795 (D.C. Cir. 1997), the Board stated:

Under the current standard as articulated in *Heck's*, the Board will order reimbursement of a Charging Party's litigation expenses only when the defense is raised by the respondent are 'frivolous' rather than 'debatable'. (318 NLRB at 860)

The Board went on to state:

In *Heck's*, where the defenses presented were found not frivolous, the Board had cited, *inter alia*, the principles that Board orders must be remedial rather than punitive, and that the public interest in allowing the Charging Party to recover its litigation costs does not override the principle that litigation costs are ordinarily not recoverable. (318 NLRB at 860)

The Board further stated:

Consistent with the interest expressed in *Heck's*, the Board has found that most cases do not meet the restrictive standard prescribed there. *Heck's* indicates, for example, that a respondent's defenses will be considered debatable if they turn on issues of credibility, reasoning that parties should not be discouraged from seeking access to the Board process 'where the credibility of witnesses leaves an unfair labor practice issue in doubt.' (318 NLRB at 860)

Finally, the Board stated:

We agree with the principle in *Heck's* that the necessity for evaluating the credibility of witnesses ordinarily renders a respondent's response defense debatable rather than frivolous ... therefore, the Board expressed the view that until the credibility resolutions were made by the judge, the existence of an unfair labor practice charge would remain 'in doubt.'" (318 NLRB at 861)

Mr. Sievert's testimony concerning what he was told by Mr. Crider on October 2 is set forth on pages 4 and 5 of this Brief. Mr. Corbett Crider testified as follows:

- Q.** Okay. And who was present when you met with Mr. Zimmick?
- A.** Myself, Jerry McGraw, and Mr. Zimmick.
- Q.** Okay. And did Mr. Zimmick in that parking lot meeting tell you anything about the Tony Williams case being open and shut?
- A.** No, he did not.
- Q.** Okay. When you met with Mr. Sievert, Mr. McGraw, Mr. Zimmick, and Mr. Williams, did Mr. Zimmick say this case was open and shut?
- A.** No, he did not.
- Q.** When you met with Mr. Zimmick in the parking lot, had he told you he had reviewed the facts of the case regarding Mr. Williams' termination?
- A.** No, he did not.
- Q.** When you met with Mr. Zimmick, Mr. McGraw, Mr. Williams, and Mr. Sievert, did Mr. Zimmick state that he had reviewed the facts of Mr. William's case?
- A.** No, he did not. (*Tr. pages 28-29, lines 8-25; line 1*)

Mr. Crider then went on to testify:

- Q.** Okay. Did you escort, or did you walk with Mr. Sievert from his office to the lobby where he met with Mr. Zimmick?
- A.** Yes, I did.
- Q.** During that time period, did you tell Mr. Sievert – Sievert, excuse me, that John Zimmick just wanted to hear Gary Sievert that he, John Zimmick, had to leave?
- A.** No.
- Q.** Did you, during that conversation when walking with Mr. Sievert or when you initially met with him in his office, tell him that once – tell Mr. Sievert that once Mr. Zimmick was told to leave, that the UAW would allow the council to proceed?
- A.** Not that the UAW would allow it to proceed, no.
- Q.** What did you say to Mr. Sievert?
- A.** I said that – I told Mr. Sievert that the council would proceed.
- Q.** Okay. At that time when you told Mr. Sievert by your recollection that the council would proceed, did you tell Mr. Sievert that neither John Zimmick nor the UAW would contest the outcome of the employee council, if it upheld the termination?
- A.** Absolutely not. (*Tr. pages 29-30, lines 16-25; lines 1-12*)

Regarding the credibility resolution between the testimony of Mr. Sievert and Mr. Crider, it was submitted that Mr. Sievert is to be believed. Our assertion is based upon the additional testimony of Mr. Crider where he stated:

- Q.** BY MR. MOORE: Sir, when you met in the parking lot with Mr. Zimmick and Mr. McGraw, did John Zimmick tell you to proceed with the council meeting?
- A.** We had already determined we were going to proceed with the council meeting.
- Q.** Okay. My question is did Mr. Zimmick tell you or tell Mr. McGraw to proceed with the council meeting?
- A.** You know, I don't recall, but I'm sure he would have. (*Tr. page 32, lines 4-11*)

Mr. Crider testified that he didn't recall, but he is sure that Mr. Zimmick would have told him to proceed with the employee council. We submit that this admission by Mr. Crider supports the testimony of Mr. Sievert.

Additionally, Mr. Sievert testified regarding discussions with Mr. McGraw as follows:

- Q.** Okay. Did Mr. McGraw have any discussion with you once he met you in that employee council meeting?
- A.** Well, if I could back up, he did – prior to entering the room, I had taken Tony Williams down to the lunchroom, I believe, and then I went back and met Mr. McGraw, and Mr. McGraw told me that Mr. Zimmick had told him to proceed with the employee council, because obviously I was interested in what we were going to do at that point, and Mr. McGraw told me to proceed with the council and that the UAW would not contest what the findings were of the employee council, if they had indeed upheld my termination of Mr. Williams. (*Tr. pages 53 and 54, lines 20-25; lines 1-5*)

On cross-examination, Mr. McGraw testified as follows:

- Q.** BY MR. MOORE: Okay. Did you make any statements to Mr. Sievert after Mr. Zimmick left the Company's building?
- A.** That we would proceed with the step three.
- Q.** Did you, at that point when you said you would proceed with step three, tell Mr. Sievert that Mr. Zimmick had said that the UAW would consider the matter closed?
- A.** No, I did not. (*Tr. page 47, lines 7-13*)

Again, we submitted that Mr. Sievert is to be believed in his testimony regarding the discussions that took place on October 2, 2012, and the ALJ agreed. ALJ Decision, page 3, line 42, and page 5, lines 26-27.

Based upon the original charge in this matter where Mr. Zimmick declared that he was at the step three employee council at the "behest of...Corbert [*sic*] Crider," the statement of Mr. Crider to Mr. Sievert which is contrary to the declaration of Mr. Zimmick, the fact that the charge was amended such that said allegation was deleted, and given the necessary credibility resolutions between the testimony of Mr. Sievert and the testimony of

Mr. Crider and Mr. McGraw, it is clear that the Respondent's defense in this matter is not frivolous but, at worst, debatable under the standard set by the District Court of Appeals in its decision in *Unbelievable, Inc. v. NLRB*, 118 F.3d 795 (1997).

Additionally, it must be remembered in this matter that petitions for review have been filed in both the original case and in the second case, and that both have yet to be determined by the Court of Appeals given that the matters are being held in abeyance at this time. Accordingly, it is clear that there is no basis upon which to make a determination regarding the payment of costs and expenses to the Board and/or to Local One.

The Board's decision in *Unbelievable* was taken to the United States District Court of Appeals for the District of Columbia Circuit (118 F.3d 795 (1997)). One of the issues in the case was that of expenses and fees. The Court made a particularly cogent statement when it declared the following:

Moreover, the mechanics of an action to enforce the NLRA suggest that the requirement that the authority to award attorney's fees be express applies a fortiori to this statute. The reason is simply this: the charging party's participation in the litigation is strictly voluntary. The union, employee, or employer filing a charge with the Board need not play any role in the proceedings beyond serving the respondent with a copy of the charge. 29 C.F.R. §§ 101.2, 101.4. Although the charging party may, if the General Counsel issues a complaint, participate in the hearing, 29 C.F.R. § 101.10, nothing in the Act or in the Board's regulations requires it to do so. If the General Counsel calls the charging party as a witness, as he called certain union officials in this case, then the General Counsel must pay the witness a fee for his time. 29 C.F.R. § 102.32. In short, a charging party need not incur any litigation expense. Of course, the charging party may (and often does) intervene in the proceedings before the Board, but it does so as a volunteer, not a party haled into litigation willy-nilly. We think it would be passing strange for the court to hold that, although a statute authorizing an individual to bring a court case at his own expense will not be read to authorize an award of attorney's fees absent clear Congressional intent, a statute that provides a federal agency to prosecute a case on behalf of a charging party will be read to authorize the agency to award that party—should it choose to intervene—its attorney's fees based solely upon the agency's general remedial authority "to take such affirmative action as will effectuate the policies" of the Act. 29 U.S.C. § 160(c). (118 F.3d at 803)

In this particular case, there was no need for Local One to incur any expenses. It is interesting to note that Local One itself filed neither the original charge nor the amended charge (***GC Exhibits 1(a) and 1(c)***). Rather, the charges were filed by UAW Local 174. Accordingly, there is no basis for determining that litigation expenses would be attributable to Local One when, in fact, this charge was brought by UAW Local 174 and as it was in-house counsel for the UAW who attended the hearing on behalf of the Charging Party, UAW Local 174. It is finally noted that in paragraph 2(c) of the prayer for relief in the Complaint, no costs or expenses are sought on behalf of UAW Local 174, but only on behalf of Local One. The ALJ was required to make credibility resolutions, and he did. ALJ Decision, page 3, line 42. Just because there were no credibility determinations adverse to Respondent in the ALJ's decision (page 5, lines 26-27) is no basis upon which to recommend the awarding of costs and expenses.

CONCLUSION

It is submitted that given that the UAW and its Local 174 continue to attempt to supplant and replace Independent Union Local One as the bargaining representative of the employees in the bargaining unit, Respondent was appropriate in its actions in denying Mr. Zimmick the opportunity to attend the October 2, 2012 grievance meeting. Further, notwithstanding the determination of the ALJ, the Respondent's defenses were, in fact, "debatable" rather than "frivolous." Therefore, the awarding of costs and expenses is not appropriate in this matter. For these Respondent submits to the Board that the

Administrative Law Judge erred in his Decision, that his Decision should be reversed, and that the Charge should be dismissed.

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Dated: April 18, 2013

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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 Thursday, April 18, 2013, a copy of the foregoing ***Exceptions Brief 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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