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.

RESPONDENT'S ANSWERING BRIEF TO COUNSEL FOR THE ACTING GENERAL COUNSEL'S CROSS-EXCEPTION

PLUNKETT COONEY

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INTRODUCTION

Counsel for the Acting General Counsel has filed a Cross-Exception to the Decision of the ALJ in this matter. In the Cross-Exception, Counsel for the Acting General Counsel, contends that the ALJ in his decision failed to include a Section 8(a)(5) remedy in the Remedy and Order that he set forth on page 6, lines 10 – 38 and page 7, lines 1 – 10, of his Decision of March 21, 2013. Respondent asserts that there was no reason for the ALJ to do so, in that, he was in error in his conclusion of law at page 5, lines 34 – 35 of his Decision wherein that he found that Respondent violated Section 8(a)(5) in refusing to allow John Zimmick to assist Independent Union Local One ("Local One") at a Step 3 grievance meeting.

SUMMARY OF THE CASE

Respondent has continually defended its actions based upon an improper affiliation whereby UAW Local 174 has sought to supplant and replace Local One as the certified bargaining representative of the employees in the bargaining unit. UAW Local 174 has done so under the guise of purportedly being the designated representative of Local One for purposes of collective bargaining and grievance administration. As the record not only in this case but also in Wellington #1 (357 NLRB No. 135 (2011)) and in Wellington #2 (358 NLRB No. 90 (2012)) has shown, there has been a concerted and continuous effort by the UAW Local 174 to supplant and replace Local One.

Accordingly, Respondent submits that it has been within its rights to rebuff those efforts and to refuse to deal with Mr. Zimmick. Additionally, in this case the facts have shown that Mr. Zimmick was not the designated representative of Local One on the day in question (October 2, 2012), as shown by the testimony in the hearing of the HR Director of Respondent, Gary Seivert, and that of Local One President, Corbett Crider. Accordingly,

there was no need for the Administrative Law Judge to include a Section 8(a)(5) remedy in his Decision.

ARGUMENT

The ALJ Erred In His Conclusion Of Law That Respondent Violated Section 8(A)(5). Respondent again asserts that all the efforts made by UAW Local 174 in this matter were not as a designated representative of Local One but rather a continuation of its ongoing effort and campaign to supplant and replace Local One, the certified bargaining representative of the employees in the bargaining unit. This fact is very succinctly demonstrated by the original Charge filed in this matter. Therein John Zimmick, President of UAW Local 174, declared that he was at the Respondent's at the behest of the President of Local One, Corbett Crider. As set forth in the brief filed by Respondent in its Exceptions in this case, which stands unrefutted by the Counsel for the Acting General Counsel in her Answering Brief, Mr. Crider did not seek to have Mr. Zimmick present at the meeting and, in fact, had no knowledge that Mr. Zimmick would be present on the day in question.

The ALJ credited the testimony of Gary Sievert, the HR Director of Respondent, wherein the ALJ stated at page 3, lines 42 – 44, the following:

> "The following is Gary Sievert's account of his conversation with Crider, which I credit. Sievert told Crider that he was surprised that Zimmick was going to attend the council. Either before or after this, Crider said he was surprised as well." (*Emphasis Added*).

This foregoing determination by the ALJ further demonstrates the correctness of the position of Respondent that it should not be required to deal with UAW Local 174 nor Mr. Zimmick because Mr. Zimmick was not Local One's designated representative on October 2, 2012 and because of UAW Local 174's continuous attempt to supplant and replace Local One as the bargaining representative of the employees. Thereby, a determination by the

Administrative Law Judge that the Respondent violated Section 8(a)(5) of the Act is erroneous.

CONCLUSION

Respondent submits that a remedy cannot be imposed upon it where the basis for the remedy is an erroneous decision of the ALJ. Accordingly, it submits that the Cross-Exception of Counsel for the Acting General Counsel should be denied.

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Dated: May 16, 2013

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CERTIFICATION OF SERVICE

I hereby certify that on Wednesday, May 16, 2013, a copy of the foregoing ***Respondent's Answering Brief To Counsel For The Acting General Counsel's Cross-Exception***, 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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