

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.

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**MOTION FOR PARTIAL RECONSIDERATION OF RESPONDENT,  
WELLINGTON INDUSTRIES, INC.**

Wellington Industries, Inc., through its attorneys, Kerr, Russell and Weber, PLC (who substituted in as counsel on January 10, 2014), and for its Motion for Partial Reconsideration, filed pursuant to Rules and Regulations §102.48(d)(1), 29 CFR 102.48(d)(1), states as follows:

1. That on December 13, 2013, a three-member panel of the National Labor Relations Board (the "Board") issued a Decision and Order in this matter.
2. That the Board's December 13, 2013 Decision and Order affirmed the Administrative Law Judge's rulings, findings, and conclusions except that the Board found unwarranted the judge's award of litigation expenses and attorneys' fee to the General Counsel and Independent Union Local One ("IULO") specifically stating that:

[g]iven the circumstances of this case, the Board finds unwarranted the judge's award of litigation expenses and attorneys' fees to the General Counsel and Independent Union Local One. Members Miscimarra and Johnson do not reach whether the Board has the authority to award such fees and expenses.

3. That the Decision and Order of the Board, including the remedies Ordered by the Board, but excluding footnote 2 of the Board's decision, constitute a material error due to the Board's failure to pass on the administrative judge's finding that IULO is validly affiliated with UAW Local 174.

4. That the Board failed to address the issue of whether IULO is validly affiliated with UAW Local 174 in its Decision and Order.

5. That the Board has previously declined to evaluate the issue of whether IULO is validly affiliated with UAW Local 174 in the two previous cases, stating in *Wellington II*, 358 NLRB No. 90 (2012):

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).

6. That for all the reasons set forth in the Exceptions and Supporting Brief filed on behalf of Respondent in this case and the two prior cases (*Wellington I*, 357 NLRB No. 135 (2011); *Wellington II*, 358 NLRB No. 90 (2012)), the Board should have made a determination that the affiliation between Independent Union Local One and UAW Local 174 was invalid.

7. That the Board's failure to consider ("pass on") the affiliation issue is an error in need of correction.

8. That the method for correcting such error is for the Board to fully consider all of the evidence and arguments submitted on behalf of Respondent in this case and in the prior two cases and to ultimately make a determination that there was no valid affiliation and that the

purported affiliation is an attempt by UAW Local 174 to supplant and replace the certified bargaining representative of the employees, Independent Union Local One (IULO).

9. That the Board's rejection of Respondent's argument is an error in need of correction.

10. That the method for correcting such error is for the Board to fully consider all of the evidence and arguments submitted on behalf of Respondent in this case in the prior two cases (*Wellington I*, 357 NLRB No. 135 (2011); *Wellington II*, 358 NLRB No. 90 (2012)) and to ultimately make a determination that there was no valid affiliation and that the filing of the unfair labor practice charge was a further attempt by UAW Local 174 to supplant and replace the certified bargaining representative of the employees, Independent Union Local One.

11. That the Board committed material error in its portion of the Order which stated:

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 deal with John Zimmick or any other designated representative of Independent Union Local One in any part of the grievance process.

(b) 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) Permit John Zimmick or any other designated representative of Independent Union Local One to participate in all aspects of the grievance process.

(b) Within 14 days after service by the Region, post at its Belleville, Michigan facility copies of the attached notice marked "Appendix." n3 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. Reasonable steps shall be taken by the Respondent to 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 Respondent at any time since October 2012.

(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.

12. That the portion of the Board's decision cited in ¶11 constituted material error because the Board Ordered Respondent to cease and desist from certain actions and to take affirmative corrective actions without first making a determination as to the validity of the affiliation between IULO and UAW Local 174 which is essential to any order requiring Respondent to deal with representatives of UAW Local 174.

13. That the method for correcting such error is for the Board to fully consider all of the evidence and arguments submitted on behalf of Respondent in this case in the prior two cases (*Wellington I*, 357 NLRB No. 135 (2011); *Wellington II*, 358 NLRB No. 90 (2012)) and to ultimately make a determination that there was no valid affiliation and that the filing of the unfair labor practice charge was a further attempt by UAW Local 174 to supplant and replace the certified bargaining representative of the employees, IULO.

WHEREFORE, based upon the foregoing, it is submitted that the Board should reconsider its Decision and Order in this matter in light of the Exceptions and Supporting Briefs filed in this case and in the two prior cases (*Wellington I*, 357 NLRB No. 135 (2011); *Wellington II*, 358 NLRB No. 90 (2012)) and should correct those errors and reverse its Decision and Order, including the remedies Ordered by the Board, but excluding footnote 2 of the Board's decision, and dismiss the unfair labor practice charge.

Respectfully submitted,

**KERR, RUSSELL AND WEBER, PLC**

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Dated: January 10, 2014

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**CERTIFICATION OF SERVICE**

I hereby certify that on Friday, January 10, 2014, a copy of the foregoing *Motion for Partial Reconsideration 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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| <p><b>Mary Beth Foy, Esq.</b><br/>Counsel for the Acting General Counsel<br/>National Labor Relations Board — Region 7<br/>477 Michigan Avenue, Room 300<br/>Detroit, MI 48226<br/>marybeth.foy@nlrb.gov</p> | <p><b>Blair K. Simmons, Esq.</b><br/>Counsel for the Charging Party<br/>International Union UAW<br/>8000 E. Jefferson Avenue<br/>Detroit, MI 48214<br/>bsimmons@uaw.net</p> |
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**KERR, RUSSELL AND WEBER, PLC**

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Dated: January 10, 2014