

UNITED STATE OF AMERICA
NATIONAL LABOR RELATIONS BOARD

Wellington Industries, Employer

and

7-UD-568

Independent Union Local One,
an affiliate of Local 174, UAW, Union,

and

Brenda Kowalski, Petitioner

PETITIONER'S REQUEST FOR REVIEW

Pursuant to §§ 102.67 and 102.88 et alia of the Rules and Regulations of the National Labor Relations Board, Petitioner Brenda Kowalski hereby files this Request for Review of the Regional Director's May 27, 2011 Decision to refuse to hold the requested deauthorization election pending the outcome of an unrelated and irrelevant unfair labor practice charge against the employer, Wellington Industries. (A copy of the Regional Director's Decision is attached hereto as Exhibit 1).

ISSUE

This case presents a single, simple legal issue: should a deauthorization petition be indefinitely "blocked" because there is pending against the employer an unrelated and irrelevant unfair labor practice charge that has no causal nexus whatsoever to the employees' desire to stop paying union dues to the UAW and its affiliate? See Saint-Gobain Abrasives, 342 NLRB 434 (2004) (Regional Director should hold evidentiary

hearing to determine the “causal nexus” between an employer’s ULP and the employees’ decertification efforts).

The Regional Director reflexively held that the pending ULP charge against Wellington Industries “blocks” the deauthorization election indefinitely, thereby giving no weight to employees’ statutory right to deauthorize a compulsory dues clause under Section 9(e) of the Act. But in contrast, the Board has long held that Section 9(e) of the Act must be construed in a broad manner to enhance employee freedom of choice and not thwart it. Covenant Aviation Security, 349 NLRB 699 (2007); Gilchrist Timber Co., 76 NLRB 1233 (1948) (Board rejects the argument that a deauthorization election cannot be held within one year of a certification election); Monsanto Chemical Corp., 147 NLRB 49 (1964) (same); Great Atlantic & Pacific Tea Co., 100 NLRB 1494 (1952) (Board rejects the argument that a “contract bar” rule should be applied to deauthorization elections); Albertson’s/Max Food Warehouse, 329 NLRB 410 (1999) (rejecting Colorado’s arbitrary limits on employees’ statutory right to conduct a deauthorization election at a time of their choosing).

In short, the Regional Director’s decision to hold this deauthorization election in perpetual abeyance is erroneous and inimical to the principles of the Act and should be summarily reversed.

ARGUMENT

Point 1: This Request for Review should be granted because it raises important and novel questions concerning a Regional Director's discretion to nullify employees' statutory rights under Section 9(e), under the pretense that an unrelated ULP allegation against the employer necessarily taints and blocks the deauthorization election. Here, the allegations against the employer, even if true, have no "causal nexus" with employees' desire to rid themselves of an unwanted union compulsory dues clause. See Saint-Gobain Abrasives, 342 NLRB 434 (2004). (See Exhibit 2, a copy of the ALJ's decision in Wellington Industries, 7-CA-53182 (May 2, 2011)). Nothing in the ALJ's decision changes this. Nothing in the decision hints at actual coercion of the employees, or unlawful employer support of their deauthorization efforts, or even employer encouragement of their deauthorization efforts. To the contrary, this deauthorization is the result of a grass roots, home-grown, employee effort with no nexus to any ULP allegations against Wellington Industries.

The record shows, in this and related NLRB cases involving Wellington employees, that the original independent union at Wellington Industries conducted a shady and sleazy "affiliation vote" and turned Wellington employees into UAW members without their true consent. Thus, these employees have independent and justifiable reasons for disliking this union and not wanting to pay dues to it. In Wellington Industries, Case No. 6-RD-3677, the employees tried to decertify the union on October

10, 2010, but that petition was deemed to be barred by a contract bar, and the Board denied the employer's Request for Review in that case. (See Exhibit 3, Wellington's Request for Review in Case No. 6-RD-3677).

In short, there is not the slightest degree of a "causal nexus" between the current deauthorization effort and the employer's decision to not recognize the newly installed UAW union as the collective bargaining representative. The UAW was installed in a sleazy, secretive and shady manner, and that is enough to allow these employees to exercise their franchise under Section 9(e) of the Act.

Point 2: Employees enjoy a statutory right to petition for a deauthorization election under § 9(e) of the Act. That right should not be trampled by arbitrary rules or "bars" or "blocking charges" which prevent the expression of true employee free choice. Indeed, most of the Board's "bars" and "blocking charge" rules stem from discretionary Board policies (see, e.g., Section 11730 of the Casehandling Manual concerning "blocking charges"), which should be reevaluated when industrial conditions warrant. See e.g., IBM Corp., 341 NLRB 1288 (2004); Dana Corp., 351 NLRB 434 (2007). It is time for the Board to drastically alter, if not end, its "blocking charge" rules.

Employee free choice under § 7 is the paramount interest of the NLRA. See Pattern Makers League v. NLRB, 473 U.S. 95 (1985); Lechmere, Inc. v. NLRB, 502 U.S. 527, 532 (1992); Lee Lumber & Bldg. Material Corp. v. NLRB, 117 F.3d 1454, 1463 (D.C. Cir. 1997) (Sentelle, J., concurring) (employee free choice is the "core principle of

the Act”) (citations omitted). An NLRB conducted secret-ballot election is the preferred forum for employees to exercise their right of free choice. See Levitz Furniture Co., 333 NLRB 717, 725 (2001) (“We agree with the General Counsel and the unions that Board elections are the preferred means of testing employees’ support”). This right of employee free choice is being sacrificed by the Regional Director on the alter of “industrial stability” simply because the employer is alleged to have committed a ULP, even though that ULP allegation has no relationship to the employees’ desire to deauthorize.

The Regional Director’s reflexive application of the “blocking charge” policies ignores the fact that the Petitioner and her fellow employees have longstanding and principled disagreements with the union, irrespective of any employer infractions. Yet, the employees are being treated like children who cannot possibly make up their own mind. This is wrong. As Member Hurtgen has cogently stated in reviewing a similar situation of union blocking charges:

I would not deprive these employees of their statutory right to vote on the issue of union representation. The wrongs of the parent should not be visited on the children, and the violations of Overnite [the employer] should not be visited on these employees.

In re Overnite Transp. Co., 333 NLRB 1392, 1398 (2001) (Member Hurtgen dissenting).

The Board’s jurisprudence on blocking elections needs to be drastically overhauled, and Region 7 should be ordered to proceed to an immediate election without further delay. Petitioner and her colleagues are not sheep, but responsible, free-thinking individuals who should be able to make their own choice about unionization and paying

compulsory dues. Even in situations where employers commit an unfair labor practice, the Board's "blocking charge" rules are arbitrary and anti-democratic because they halt elections without regard to the desires of the employees, based upon "the sins" of the employer. Overnite Transp. Co., 333 NLRB 1392, 1398 (2001) (Member Hurtgen dissenting).

Member Hurtgen was correct in pointing out the major flaw of most election "blocks," to wit: they visit the sins (or potential sins) of employers on the employees. But it must be remembered that it is the employees themselves whose paramount § 7 rights are at stake, and they should not be so cavalierly discarded simply because their employer committed a violation or made a mistake under the labor laws. Petitioner urges the Board to overhaul its "blocking charge" policies to protect the true touchstone of the Act – employees' paramount right of free choice under § 7. See Pattern Makers League v. NLRB, 473 U.S. 95 (1985) (paramount policy of the NLRA is "voluntary unionism"); Lechmere, Inc. v. NLRB, 502 U.S. 527, 532 (1992) ("By its plain terms, thus, the NLRA confers rights only on *employees*, not on unions or their nonemployee organizers. . . ."); International Ladies Garment Workers v. NLRB, 366 U.S. 731, 737 (1961) ("There could be no clearer abridgment of § 7 of the Act" than for a union and employer to enter a collective bargaining relationship when a majority of employees do not support union representation).

When the Board issued Saint-Gobain Abrasives, 342 NLRB 434 (2004) and

overruled cases such as Priority One Services, 331 NLRB 1527 (2000), it signaled its understanding that many of these “blocking charge” rules are arbitrary, unfair, and rely upon “speculat[ion] . . . to deny employees their fundamental Section 7 rights.” As Member Hurtgen said in his dissent in Priority One Services, 331 NLRB at 1528:

My colleagues respond that they are not establishing a conclusive presumption. They say that the conduct was "inherently likely" to cause employees to disaffect from the Union. The distinction escapes me. The bottom line is that the Employer is denied an opportunity to present counter-evidence on a critical issue.

Member Hurtgen should have also added that the employees (who have paramount § 7 rights at stake when they seek the deauthorization of a union that may well not represent a majority) are similarly denied their statutory rights under § 9(e).

Thus, the Board must create new standards that limit the use and abuse of blocking charges by NLRB Regional offices and incumbent unions bent on clinging to power. As Member Brame has stated, the Board must be mindful that “unions exist at the pleasure of the employees they represent. Unions **represent** employees; employees do not exist to ensure the survival or success of unions.” MGM Grand Hotel, Inc., 329 NLRB 464, 475 (1999) (emphasis added).

At the very least, the Board should order the Regional Director to conduct a Saint-Gobain “causation hearing,” at which the burden of proof will be upon the union, the party asserting the “blocking charge,” to prove that the employer’s alleged infraction *caused* the employee deauthorization movement. Petitioner is confident that the union will never be able to meet this burden, given the fact that the union’s own arrogance and

malfeasance in conducting a sleazy and underhanded affiliation vote is what led to the employees' efforts to deauthorize.

Point 3: The Board has long recognized that Section 9(e) of the Act must be construed broadly to protect employees' clear statutory right to hold a deauthorization election. "Section 9(e)(1) reflects Congress' intent to subject union-security arrangements to employee veto." Covenant Aviation Security, 349 NLRB 699, 700 (2007); see also Gilchrist Timber Co., 76 NLRB 1233 (1948) (Board rejects the argument that a deauthorization election cannot be held within one year of a certification election); Monsanto Chemical Corp., 147 NLRB 49 (1964) (same); Great Atlantic & Pacific Tea Co., 100 NLRB 1494 (1952) (Board rejects the argument that a "contract bar" rule should be applied to deauthorization elections); Albertson's/Max Food Warehouse, 329 NLRB 410 (1999) (rejecting Colorado's arbitrary limits on employees' statutory right to conduct a deauthorization election at a time of their choosing).

In contrast to these cases, the Regional Director's decision to hold this deauthorization election in perpetual abeyance ignores the statutory requirements of Section 9(e) and serves to nullify that statute. The Regional Director's decision makes no accounting for the harm that is occurring to employees by forcing them to financially support a union against their will, and it directly violates their rights under Section 9(e).

Indeed, the legislative history of Section 9(e) shows that Congress wanted to provide employees with a "safety valve" and veto power to rid themselves of unwanted

forced dues requirements. H.R. Rep. No. 1082, at 2-3 (1951), reprinted at 1951

U.S.C.C.A.N. 2379 (emphasis added), contains the following statement:

UNION-SHOP ELECTIONS . . . the bill continues to safeguard employees against subjection to union-shop agreements which a majority disapproves. To accomplish this it is provided that the Board **shall** conduct elections on the petition of 30 percent or more of the employees in a bargaining unit to determine whether the union's authority to enter into a union-shop arrangement shall be rescinded.

There is nothing ambiguous about the term “**shall** conduct elections,” but the Regional Director refuses to do so. In failing to hold the requested election, he has completely misread Section 9(e) of the Act.

CONCLUSION

The Regional Director’s decision to hold this deauthorization election in perpetual abeyance is inimical to the principles of the Act and should be summarily reversed.

Respectfully submitted,

/s/ Glenn M. Taubman

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Attorney for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Request for Review was E-filed with the NLRB Office of Executive Secretary, and was sent as follows to the other parties:

via E-filing with Region 7 and via e-mail to:
Stephen M. Glasser (Regional Director)
stephen.glasser@nlrb.gov

via US Mail to:

John Brodowsky
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this 1st day of July, 2011.

/s/ Glenn M. Taubman

Glenn M. Taubman

EXHIBIT 1



United States Government

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May 27, 2011

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Independent Union Local One, an affiliate of
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Automobile, Aerospace and Agricultural
Implement Workers of America (UAW), AFL-CIO
29841 Van Born Road
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Re: Wellington Industries, Inc.
Case 7-UD-568

Gentlemen:

The above case, petitioning for a deauthorization election under Section 9 of the National Labor Relations Act, has been carefully investigated and considered.

As a result of the investigation of the allegations made in Case 7-CA-53182, filed by Local 174, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL-CIO, a Complaint and Notice of Hearing issued on December 22, 2010. After the conclusion of the hearing, the Administrative Law Judge (ALJ), on February 10, 2011, issued a bench decision finding that the Employer's refusal to bargain with the Union violated Section 8(a)(5) of the Act.

Exhibit 1

Thereafter, on May 2, the ALJ issued a Bench Decision and Certification. Exceptions to the ALJ's decision are due by May 31, 2011.

I have concluded that until the alleged unlawful acts found in Case 7-CA-53182 are remedied, they could affect the free choice of employees in an election were one to be conducted.¹ Carson Pirie Scott and Company, 69 NLRB 935, 938, 939 (1946); J.C. Penney Company, (Store #134) 162 NLRB 1553, 1555, n.3 (1967); Henry Colder Company, 163 NLRB 105, 109, n.11 (1967); Big Three Industries, 201 NLRB 197 (1973). Therefore, any further proceedings in this case, including an election, are postponed pending resolution of the unfair labor practice charge in Case 7-CA-53182.

Right to Request Review: Pursuant to the provisions of Sections 102.67 and 102.71 of the National Labor Relations Board's Rules and Regulations, any party may obtain review of this action by filing a request with the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, DC 20570-0001. This request for review must contain a complete statement setting forth the facts and reasons on which it is based.

Procedures for Filing a Request for Review: Pursuant to the Board's Rules and Regulations, Sections 102.111 – 102.114, concerning the Service and Filing of Papers, the request for review must be received by the Executive Secretary of the Board in Washington, DC by close of business on **June 10, 2011**, at 5 p.m. (ET), unless filed electronically. **Consistent with the Agency's E-Government initiative, parties are encouraged to file a request for review electronically.** If the request for review is filed electronically, it will be considered timely if the transmission of the entire document through the Agency's website is **accomplished by no later than 11:59 p.m. Eastern Time** on the due date. Please be advised that Section 102.114 of the Board's Rules and Regulations precludes acceptance of a request for review by facsimile transmission. Upon good cause shown, the Board may grant special permission for a longer period within which to file.² A copy of the request for review must be served on each of the other parties to the proceeding, as well as on the undersigned, in accordance with the requirements of the Board's Rules and Regulations.

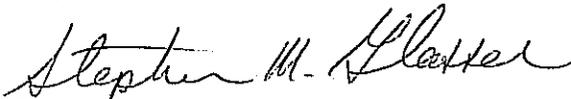
Filing a request for review electronically may be accomplished by using the E-filing system on the Agency's website at www.nlr.gov. Once the website is accessed, click on **File Case Documents**, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt of the request for review rests exclusively

¹ Section 11730 of the National Labor Relations Board's Case Handling Manual for Representational Proceedings applies to situations involving deauthorization petitions as well as representation petitions.

² A request for extension of time, which may also be filed electronically, should be submitted to the Executive Secretary in Washington, and a copy of such request for extension of time should be submitted to the Regional Director and to each of the other parties to this proceeding. A request for an extension of time must include a statement that a copy has been served on the Regional Director and on each of the other parties to this proceeding in the same manner or a faster manner as that utilized in filing the request with the Board.

with the sender. A failure to timely file the request for review will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off line or unavailable for some other reason, absent a determination of technical failure of the site, with notice of such posted on the website.

Very truly yours,



Stephen M. Glasser
Regional Director

BLJ/lid

cc:

Executive Secretary

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EXHIBIT 2

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
ATLANTA BRANCH OFFICE

WELLINGTON INDUSTRIES, INC.
Respondent

and

Case 7-CA-53182

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

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

BENCH DECISION AND CERTIFICATION

Statement of the Case

KELTNER W. LOCKE, Administrative Law Judge. I heard this case on February 7, 2011, in Detroit, Michigan. After the parties rested, I heard oral argument, and on February 10, 2011, issued a bench decision pursuant to Section 102.35(a)(10) of the Board's Rules and Regulations, setting forth findings of fact and conclusions of law. In accordance with Section 102.45 of the Rules and Regulations, I certify the accuracy of, and attach hereto as "Appendix A," the portion of the transcript containing this decision.¹ The conclusions of law, remedy, Order and notice provisions are set forth below.

¹ The Bench Decision appears in uncorrected form at pp. 167 through 180 of the transcript. The final version, after correction of oral and transcriptional errors, is attached as App. A to this Certification.

Exhibit 2

Further Analysis

5 For at least 20 years, Independent Local Union One (Local One) had been the exclusive collective-bargaining representative of a production and maintenance unit of the Respondent's employees. At a Local One membership meeting on August 8, 2010, a majority of bargaining unit members then present voted that this Union should affiliate with Local 174, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL-CIO (United Automobile Workers Local 174). As a result, Local One became a
10 "semiautonomous affiliate" of Local 174. The merged Union sought to have Local 174's president, John Zimmick, be its spokesman in negotiations with the Respondent.

15 Only a fraction of the total number of bargaining unit employees, between one-fourth and one-third, attended the August 8, 2010 meeting at which the affiliation vote occurred. Thereafter, 75 employees signed a petition protesting that the vote had been conducted with insufficient notice to the membership, and asking for a revote. After Respondent received a copy of this petition, it refused to meet and negotiate with Zimmick. (The Respondent eventually did negotiate with the Local One bargaining committee in the absence of Zimmick, and reached agreement on a new collective-bargaining agreement.)
20

The Respondent contends that the affiliation of Local One with Local 174 caused a change which raised a question concerning representation. Therefore, it argues that it was justified in refusing to bargain with the Local 174 president.

25 Before its decision in *Raymond F. Kravis Center for the Performing Arts* 351 NLRB 143 (2007), the Board applied a two-prong test to determine what effect a union's decision to affiliate with another labor organization would have on the union's status as exclusive collective-bargaining representative. In deciding whether a union remained the exclusive collective-bargaining representative after the affiliation, the Board examined the circumstances of the
30 affiliation to assess whether they were consistent with due process, and also looked to the continuity of representation.

In *Raymond F. Kravis Center for the Performing Arts*, above, the Board discontinued its practice of weighing whether the affiliation satisfied due process standards. The Board
35 concluded that this due process analysis was not consistent with the United States Supreme Court's decision in *NLRB v. Financial Institution Employees of America Local 1182 (Seattle-First)*, 475 U.S. 192 (1986), which discussed the limits of the Board's statutory authority.

40 The Supreme Court's decision focused on one key factor: The presence or absence of a question concerning representation. If the Board finds that affiliation raises a question concerning representation, it can refuse to consider the union's charge that the employer had refused to bargain. Also, if the affiliation raises a question concerning representation, the Board possesses authority to conduct a representation election.

45 However, the Supreme Court held, if the affiliation does not raise a question concerning representation, it may not condone an employer's refusal to negotiate with the employees' exclusive bargaining representative. Stated another way, the Act gives a certified bargaining representative the right to invoke the Board's assistance by filing a refusal-to-bargain charge and
50

the Board is dutybound to consider that charge so long as no circumstances exist which result in a reasonable uncertainty about the union's status as exclusive representative. Such circumstances must be legally sufficient to raise a "question concerning representation."

5 Applying that principle to the present case, Local One is the exclusive bargaining representative and the Board has a duty to take action against a refusal to bargain unless the record establishes circumstances sufficient to raise a question concerning representation. Therefore, this analysis must focus on the presence or absence of such a question.

10 The fact that some correspondence from the Union referred to Respondent's duty to bargain with "Local 174," rather than "Local One," does not by itself establish that there has been a change which raises a question concerning representation. No one would assert that by changing his name, a person would thereby change the legal relationships he had with others. 15 For example, such a name change would not extinguish his legal obligations or forfeit his legal claims. Similarly, a mere change in the name of a labor organization alone does not affect any duty an employer might have to recognize and bargain with the union. Indeed, the Supreme Court noted in *Seattle-First*, that

20 The fact that an affiliation is often accompanied by a formal name change does not serve to distinguish it from other organizational developments. As the Board has recognized, "an affiliation does not create a new organization, nor does it result in the dissolution of an already existing organization." *Amoco Production Co.*, 239 N. L. R. B. 1195 (1979). Rather, the union will determine "whether any administrative or organizational changes are necessary in the affiliating organization." *Ibid.* If these changes are sufficiently dramatic to alter the union's identity, affiliation may raise a question of representation, and the Board may then conduct a representation election. Otherwise, the statute gives the Board no authority to interfere in the union's affairs.

30 475 U.S. at 206.

35 Before reaching the Respondent's arguments that the affiliation did cause changes sufficiently dramatic to alter the Union's identity, I will consider the Respondent's argument that the present facts warrant an exception to the Board's holding, in *Raymond F. Kravis Center for the Performing Arts*, above, that it no longer would examine whether an affiliation vote satisfies a due process standard. The Respondent argues that although the Union had no obligation to allow its members to vote on whether to affiliate, once it undertook to have such a vote, it assumed an obligation to do so fairly, in accordance with some due process standard.

40 To accept that argument would be to ignore the Supreme Court's reasoning in *Seattle-First*, quoted above. Quite clearly, the Court held, "the statute gives the Board no authority to interfere in the union's affairs" in the absence of a question concerning representation. To accept the Respondent's argument—that the Union's decision to have an affiliation vote allows an inquiry into the way that vote was conducted—I must assume that the Union's decision to have 45 such a vote somehow confers on the Board authority beyond that conferred by the Act. Such an assumption is not warranted, so I reject the Respondent's argument.

Turning now to whether the record establishes the existence of a question concerning representation, I will first consider whether the putative affiliation was really an affiliation or rather something else. As the Supreme Court noted in the passage quoted above, an affiliation does not create a new organization, nor does it result in the dissolution of an already existing organization. However, it is necessary to look beneath the label to determine whether an action called an “affiliation” really meets that definition.

In *Goald Co.*, 333 NLRB 677 (2001), one union local purported to designate an official of another union local to be its agent. However, the facts, considered in their entirety, showed an attempt to substitute one local union, which was not the exclusive bargaining representative, for the local union which was the exclusive representative. Similarly, in *Sherwood Ford, Inc.*, 188 NLRB 131 (1971), the Board looked to the realities of the situation rather than to the labels applied.

The present record does not fall within these fact patterns. I find no attempt to substitute Local 174 for Local One. The nature of the certified bargaining representative remains essentially the same, there has been a continuity of local union officers, and the presence of a Local 174 official on the Union’s negotiating team does not rise to the level of being a de facto change in the Union’s identity. Even though Local One now is a “semiautonomous unit” of Local 174, that change did not extinguish Local One’s identity.

As discussed more fully in the bench decision, I do not conclude that the increases in union dues and fees is “sufficiently dramatic” to alter the Union’s identity. It is true that the increases were greater than those in cited cases holding that certain dues increases did not alter a union’s identity and did not raise a question concerning representation. However, the Respondent has not cited a decision in which dues and fee increases, comparable to those in the present case, did raise a question concerning representation. Considering all the facts together, I conclude that the increased dues and fees do not raise a question concerning representation in this case.

The Respondent urges that I take administrative notice of the constitution of the United Auto Workers Union, posted on the UAW’s website, and specifically, the provisions concerning initiation fees and dues. During oral argument, the Respondent’s counsel stated, in part, as follows:

[I]n Section 47 of the UAW constitution, under local union dues, in Section 2, it states the following, and I quote: “A local union or unit of an amalgamated local union is empowered to provide for the forfeiture of membership of a delinquent member for the non-payment of dues without the necessity for proceeding by the filing of charges or conducting of a trial.” We submit-end of quote. We submit that that is a dramatic difference and shows that there was not substantial continuity between Independent Union Local One pre-affiliation and Independent Union Local One affiliated with UAW Local 174 after affiliation.

As the Supreme Court observed in the portion of the *Seattle-First* decision quoted above, although the Board may determine whether a change is sufficiently dramatic to alter the identity of the exclusive bargaining representative, the Act gives the Board no authority to interfere in the

union's affairs. Even were it in evidence, the provision Respondent's counsel quoted would not, in my view, establish a change sufficiently dramatic to alter the identity of the exclusive bargaining representative.

5 Do any other factors raise a question concerning representation? As discussed in *Raymond F. Kravis Center for the Performing Arts*, above, a question concerning representation in relation to an incumbent union is presented when an employer has a good-faith reasonable uncertainty whether a majority of unit employees continues to support the union. Evidence to
10 show such uncertainty can include antiunion petitions signed by unit employees, statements by employees concerning personal opposition to the union, employees' statements regarding other unit employees' antiunion sentiments, and employees' statements expressing dissatisfaction with the union's performance as the bargaining representative.

15 The Respondent points to a petition, signed by many employees—approximately 75 in a bargaining unit of about 125—expressing dissatisfaction with how the Union conducted the affiliation vote and seeking a second vote. Based on the employees' petition, the Respondent filed an RM petition, which the Regional Director dismissed.

20 The employees' petition sought a new affiliation vote, which is quite different from expressing disaffection with the existing exclusive bargaining representative. An employee's attitude about the present bargaining representative cannot be inferred from a statement that he or she wanted a fresh opportunity to vote on that union's affiliation with another. Perhaps some of
25 the employees who signed the petition opposed Local One's affiliation with Local 174 and intended to say, in effect, "we like Local One the way it is," but such a statement would hardly be an indication of a desire to oust the exclusive bargaining representative.

30 However, trying to infer a message, other than the one actually stated on the petition itself, involves mere speculation. It would require even greater speculation to guess how many signers intended such an inexplicit message and how many signers simply wanted a new affiliation vote. Moreover, even indulging in such unwarranted speculation would not reach a conclusion that there was employee disaffection raising a question concerning representation.

35 Rather, I conclude that the signers of the employees' petition intended to say exactly what the petition stated on its face. The petition, therefore, related to an internal union matter. It certainly did not create a reasonable uncertainty as to whether a majority of unit employees continued to support the exclusive bargaining representative.

40 In other respects, the record does not support a conclusion that a question concerning representation existed. To the contrary, I conclude that it does not.

45 The parties stipulated that the Respondent and Local One conducted a bargaining session on November 8, 2010. They further stipulated that during this meeting, Local One's counsel, Robert Fetter, asked whether it was the Respondent's position that if John Zimmick attended bargaining, the Respondent would not bargain. Additionally, they stipulated that the Respondent's counsel, Stanley Moore, answered this question "yes." I so find.

In these circumstances, and for the reasons stated in the bench decision, I conclude that,

5 by conditioning continued bargaining with Local One on the absence of UAW Local 174 President Zimmick from negotiations, the Respondent deprived the exclusive bargaining representative of the right to choose its own bargaining agents, and violated Section 8(a)(5) and (1) of the Act.

REMEDY

10 Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act, including posting the notice to employees attached hereto as Appendix B, including by electronic means if the Respondent customarily communicates with its employees by such means. *J. Picini Flooring*, 356 NLRB No. 9 ((2010).

15 **CONCLUSIONS OF LAW**

1. The Respondent, Wellington Industries, Inc., is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

20 2. The Charging Party, Local 174 International Union, United Automobile, Aerospace and Agricultural Implement Workers of American (UAW), AFL-CIO, and Independent Union Local One, are labor organizations within the meaning of Section 2(5) of the Act.

25 3. The Respondent violated Section 8(a)(5) and (1) of the Act by conditioning collective bargaining with Independent Union Local Union, the exclusive bargaining representative of an appropriate unit of the Respondent's employees, upon the absence of an individual from negotiations, thereby depriving the exclusive bargaining representative of the right to choose its own bargaining agents.

30 4. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

35 5. The Respondent did not engage in the unfair labor practices alleged in the consolidated complaint not specifically found herein.

On the findings of fact and conclusions of law herein, and on the entire record in this case, I issue the following recommended:²

40 **ORDER**

45 The Respondent, Wellington Industries, Inc., Belleville, Michigan, and at all other places

² If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, these 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.

where notices customarily are posted, its officers, agents, successors, and assigns, shall

1. Cease and desist from

5 (a) Conditioning collective bargaining with Independent Union Local One, the certified exclusive collective-bargaining representative of an appropriate unit of its employees, upon the absence of any person designed by Independent Union Local One to be one of its negotiating representatives.

10 (b) In any like or related manner refusing to recognize or bargain with Independent Local Union One as the exclusive representative of its employees in the certified unit.

15 (c) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of their rights to self-organization, to form, join, or assist any labor organization, to bargain collectively through representatives of their own choosing, or to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any and all such activities.

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

25 (a) Bargain collectively and in good faith with Independent Union Local One as the exclusive representative of the employees in the following appropriate bargaining unit:

All full-time and regular part-time production and maintenance employees including truck drivers employed by Respondent at its facility located at 39555 I-94 South Service Drive, Belleville, Michigan; but excluding all office employees, clerical employees, and guards and supervisors as defined in the Act.

30 (b) Post at its facility in Belleville, Michigan, and at all other places where notices customarily are posted, copies of the attached notice marked "Appendix B."³ 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 immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees customarily are 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. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility

45 ³ If this Order is enforced by a judgment of the 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."

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 November 8, 2010.

5

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated Washington, D.C., May 2, 2011.

10

Keltner W. Locke
Administrative Law Judge

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APPENDIX A

Bench Decision

5 This decision is issued pursuant to Section 102.35(a)(10) and Section 102.45 of the Board's Rules and Regulations. Because I conclude that the independent local union's affiliation with another union, UAW Local 174, was valid, I further conclude that the Respondent violated Section 8(a)(5) and (1) by refusing to bargain with the Union if the Local 174 president participated as part of the Union's negotiating team.

Procedural History

15 This case began on September 23, 2010, when the Charging Party filed its initial charge in this proceeding. On November 9, 2010, it amended that charge.

20 On December 22, 2010, after investigation of the charge, the Regional Director for Region 7 of the National Labor Relations Board issued a Complaint and Notice of Hearing, which I will call the "Complaint." In issuing this complaint, the Regional Director acted on behalf of the General Counsel of the Board, whom I will refer to as the "General Counsel" or as the "government."

25 A hearing opened before me on February 7, 2011, in Detroit, Michigan. The parties finished their presentation of evidence on this date. On February 8, 2011, counsel presented oral argument.

Today, February 10, 2011, I am issuing this bench decision.

Admitted Allegations

30 In its Answer, Respondent admitted the allegations in Complaint paragraphs 1(a), 1(b), 2, 3, 4, 6, 7, 8, 9, 10 and 12. Based on these admissions, I find that the General Counsel has proven these allegations.

35 More specifically, I find that the charge and amended charge were filed and served as alleged. Further, I find that Respondent is a corporation with an office and place of business in Belleville, Michigan, and that at all material times it has been engaged in the manufacture, nonretail sale, and distribution of stampings for the automotive industry.

40 Based on Respondent's admissions, I further find that it falls within the Board's statutory jurisdiction and meets the Board's standards for assertion of jurisdiction. I conclude that Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

45 Respondent has admitted, and I find, that the following persons are supervisors within the meaning of Section 2(11) of the Act and its agents within the meaning of Section 2(13) of the Act: Marvin Thygem, Owner; John Brodowsky, President and Chief Executive Officer; Blaise Flack, Chief Financial Officer; and Gary Sievert, Human Resource Director.

5 Answering Complaint paragraph 5, Respondent has admitted that United Automobile Workers Local 174 and Independent Local Union One are labor organizations. I so find. For brevity, I will refer to UAW Local 174 as “Local 174” and to Independent Local Union One as “Local One.”

10 Respondent has admitted, and I find, that the following employees of Respondent, herein called the Unit, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

15 All full-time and regular part-time production and maintenance employees including truck drivers employed by Respondent at its facility located at 39555 I-94 South Service Drive, Belleville, Michigan; but excluding all office employees, clerical employees, and guards and supervisors as defined in the Act.

20 Respondent has admitted, and I find, that for at least 20 years, and at all material times, Local One has been the designated exclusive collective-bargaining representative of the Unit, and since then has been recognized as such representative by Respondent. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective November 15, 2010 through November 14, 2013.

25 Respondent also has admitted, and I find, that on August 4, 2005, Local One was certified by the Board in Case 7-RC-22845 as the exclusive collective-bargaining representative of the Unit.

30 Respondent further has admitted, and I find, that at all times since at least 20 years ago, based on Section 9(a) of the Act, Local One has been the exclusive collective-bargaining representative of the Unit.

35 Respondent’s Answer admits that during the period June through late November 2010, Respondent and Local One engaged in collective-bargaining negotiations for a successor labor agreement.

40 As already noted, the Union filed its unfair labor practice charge against Respondent on September 23, 2010. Respondent and the Union entered into a November 3, 2010 agreement, received into evidence by stipulation, which stated, in part, as follows:

45 The Company and the Bargaining Committee have agreed to return to the bargaining table and to put the issue of union recognition to the side and to allow the National Labor Relations Board (“NLRB”) to resolve the issue and to process and make determinations regarding the unfair labor practice charge. . It is the Company’s and the Union’s understanding and agreement that in so doing no party is waiving any claim, cause of action, right, and/or defense that it may have in any of these matters.

50 Respondent also stipulated, during the hearing, that the final bargaining session, at which agreement was reached between Independent Union Local One and Wellington Industries was

Friday, November 12, 2010. Representatives of Local One and the Company met on November 18, 2010 to go over the final contract language. From that date through Tuesday, November 23, 2010, Local Union One conducted a ratification process and at the conclusion of that process the 2010 to 2013 collective-bargaining agreement was ratified. I so find.

At the hearing, the parties entered into a written stipulation which resulted in the introduction of certain documents into the record. Some of these documents will be discussed later in this decision as the need arises.

The Facts

As already stated, Respondent has recognized Local One as the exclusive representative of Respondent’s bargaining unit employees for at least 20 years, and this recognition has been embodied in successive collective-bargaining agreements.

Respondent and Local One began negotiations for a new collective-bargaining agreement in late May or early June 2010. About this same time, representatives of UAW Local 174 passed out organizing leaflets in Respondent’s parking lot.

At some point, representatives of Local One and UAW Local 174 met. The record does not reflect the precise date of this meeting. Local One did not have a meeting facility at Respondent’s facility, and Local 174 offered to rent its meeting hall to Local One for two dollars per meeting.

Thereafter, representatives of Local One and Local 174 discussed an arrangement whereby Local One would become a “semiautonomous affiliate” of Local 174. Local One scheduled a membership meeting for Sunday, August 8 2010, at which time members would vote on the proposed affiliation.

Local One posted at the workplace at least four notices informing employees about the August 8, 2010 meeting, but not all these notices mentioned that there would be an affiliation vote. One of these notices, posted on August 2, 2010, stated that the purpose of the meeting was “discussing collective bargaining for the upcoming new contract.” It did not mention anything about the proposed affiliation with Local 174.

Indeed, this notice includes an explanation regarding why the meeting would be at the Local 174 hall. It stated that Local 174 had “rented us their hall for \$2.00.” It is not clear to me why the notice writer would take pains to explain that Local One had rented the meeting hall but did not mention the affiliation vote.

Another notice, also dated August 2, 2010, stated, in part, as follows:

On Sunday, August 8th, 2010, at 9:00 am we will have a meeting with our attorney for the purpose of discussing collective bargaining for the upcoming new contract. Our current contract is set to expire on November 14th, 2010. The meeting will be held at UAW Local 174 who have requested to attend our meeting and discuss the benefits and an affiliation with their organization. The

Independent Union One membership will decide if this is in their best interest.

5 Although this notice states that the Local One membership “will decide if this is in their best interest,” it does not state how this decision would be made or that there would be a vote during the August 8, 2010 meeting.

10 A handwritten notice, posted later, advises employees to see the Union bulletin board for an update on the meeting, but gives no specifics. The fourth notice, which is typed, bears no date, but from the record I infer that it was posted on Saturday, August 7, 2010. It includes this reference to an affiliation vote: “We urge all union members to participate in the ballot proposal to affiliate with the Local 174.”

15 On August 8, 2010, a majority of the members attending the meeting did vote in favor of Local One affiliating with Local 174. However, only a small fraction of Local One’s membership attended the August 8, 2010 meeting and participated in the vote.

20 On August 9, 2010, the president of Local 174, John Zimmick, sent a letter to Respondent’s president and chief executive officer, John Brodowski III. This letter stated, in pertinent part, as follows:

I am the President of UAW Local 174. At a Local Union meeting on August 8, 2010, the Independent Local Union One voted to affiliate with UAW Local 174.

25 Independent Local Union One is now a semiautonomous unit of UAW Local 174. On behalf of the unit and Local 174, the UAW hereby demands recognition.

30 It is my understanding that the Union and the Company are currently bargaining a Collective Bargaining Agreement. I do not foresee any changes to the current status of bargaining or any disruption of the bargaining or bargaining team.

If you have any questions, do not hesitate to contact me.

35 Also on August 9, 2010, Local 174 President Zimmick sent a letter to Respondent’s human resources director, Gary Sievert, informing him of the affiliation vote, describing the union dues structure and explaining how the dues should be forwarded. The increased Union dues will be discussed further later in this decision.

40 Sometime between the meeting on August 8 and August 18, 2010, some bargaining unit employees signed a petition asking for a revote. All together, about 75 employees signed this petition, which stated: “This is a petition for a revote because, we feel the vote was done unfairly. The posting we read did not say we were having a vote that day. 36 people out of 125 people is not a fair vote, because when 89 people did not know there was a vote taking place on that day. We all should have got the chance to vote and be told that’s what we are doing that day.”

45 Respondent’s President, John Brodowski III, received this petition and gave it to Respondent’s director of human resources.

5 Thereafter, Respondent took the position that it would not bargain if Mr. Zimmick were present at the negotiating table. However, as already discussed, it did enter into an agreement to conclude the negotiations and did enter into a new collective-bargaining agreement with Local One, which agreement was for the period November 14, 2010 until November 14, 2013.

10 This collective-bargaining agreement includes a union-security clause requiring employees to become members of Local One and pay dues or a service fee equivalent to dues, and a checkoff clause by which Respondent agreed to deduct and forward to Local Union the dues from employees who had executed authorizations. These clauses do not mention Local 174.

15 Discussion

The issue to be decided concerns whether Respondent lawfully could refuse to bargain if Local 174's president sat as part of the Union's negotiating committee.

20 Respondent contends that the affiliation vote was not valid.

25 Until the Board's decision in *Raymond F. Kravis Center for the Performing Arts*, 351 NLRB 143 (2007), the Board applied a two-pronged test to determine whether a the duty to bargain surveyed a union's vote to affiliate with another. The *Kravis* decision eliminated the first prong of this test, which concerned due process.

Respondent argues here that because the Union decided to have a vote, that decision imposed upon it a due process obligation it would not otherwise have. However, I must reject that argument as unsupported by Board precedent.

30 Respondent also challenges the affiliation under the second prong of the test, which remains in effect, and that concerns whether a substantial continuity exists between the old union and the newly affiliated union. However, even applying the cases Respondent cited during oral argument, I conclude that such a substantial continuity does exist.

35 Respondent argues that the Local Union's affiliation with Local 174 vastly increased the dues obligation of the individual member. However, as the Board stated in *Mike Basil Chevrolet, Inc.*, 31 NLRB 1044 (2000), "we believe it is reasonable to assume that employees who vote to affiliate and thereby attain stronger representation and better services expect that it will be more expensive." 331 NLRB at 1045.

40 Additionally, as the Board stated in another case cited by Respondent, *CPS Chemical Co., Inc.*, 324 NLRB 1018 (1997):

45 The Respondent also argues that after the affiliation took place, the Association turned over its entire treasury (as well as dues subsequently collected) to Local 8-397, and that none of the former Association officers are empowered to write checks on the Local's account. We give that factor little weight, however, because the Respondent has failed to show that any of those assets are not available to the CPS employee group. Thus, there is no showing that the CPS employees have

fewer resources that can be committed to their representational needs by Local 8-397 than were available under the Association.

5 324 NLRB at 1024

The same principles apply in the present situation. Accordingly, I conclude that Respondent lawfully could not condition further bargaining on exclusion of the Local 174 president from the Union's bargaining committee.

10

When the transcript of this proceeding has been prepared, I will issue a Certification which attaches as an appendix the portion of the transcript reporting this bench decision. This Certification also will include provisions relating to the Findings of Fact, Conclusions of Law, Remedy, Order and Notice. When that Certification is served upon the parties, the time period for filing an appeal will begin to run.

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Throughout this proceeding, counsel displayed the highest standards of civility and professionalism, which are truly appreciated. The hearing is closed.

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APPENDIX B

NOTICE TO EMPLOYEES

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POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

10 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

15

- 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.

20

WE WILL NOT in any like or related manner refuse to recognize or bargain with independent Local Union One as the exclusive representative of its employees in the certified unit.

25

WE WILL NOT refuse to bargain collectively and in good faith with the exclusive bargaining representative of our production and maintenance employees and truck drivers by conditioning bargaining upon the absence from negotiations of any individual designated by the Union as one of its bargaining agents.

30

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

WE WILL bargain collectively and in good faith with the exclusive bargaining representative of our production and maintenance employees and truck drivers.

35

WELLINGTON INDUSTRIES, INC.
(Employer)

Dated: _____ **By:** _____
(Representative) (Title)

40

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlr.gov.

45

477 Michigan Avenue, Room 300, Detroit, MI 48226-2569
(313) 226-3200, Hours: 8:15 a.m. to 4:45 p.m.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE
THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS

50

EXHIBIT 3

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SEVENTH REGION

WELLINGTON INDUSTRIES, INC.,

Employer,

-and-

Case No. 7-RD-3677

INDEPENDENT UNION LOCAL ONE and
LOCAL 174, INTERNATIONAL UNION
UNITED AUTOMOBILE, AEROSPACE
AND AGRICULTURAL IMPLEMENT WORKERS
OF AMERICA (UAW), AFL-CIO,

Union(s),

-and-

AUDREY VOGEL, an individual,

Petitioner,

-and-

INDEPENDENT UNION LOCAL TWO,

Intervenor.

EMPLOYER'S REQUEST FOR REVIEW

The Employer, WELLINGTON INDUSTRIES, INC., by and through its counsel of record, hereby requests review of the Regional Director's Decision to Dismiss the RD Petition filed in this matter.

Statement of Facts

A Decertification Petition was filed in this matter on October 18, 2010.

Exhibit 3

Independent Union Local One was certified by the Board as the representative of the employees in the bargaining unit on August 4, 2005 in Case No. 7-RC-22845, but has represented the bargaining unit employees for approximately 20 years. As of August 18, 2010, UAW Local 174 claims an affiliation with Independent Union Local One as the basis for its assertion that it now represents the employees in the Unit. Seventy-five of the 125 employees signed a petition given to the Respondent on August 18, 2010 objecting to the affiliation and how the vote was conducted. See *Exhibit 1*. Also, at least 30% of the employees must have signed the showing of interest supporting the Decertification Petition. All of these employees dispute the UAW's assertion of an affiliation. Accordingly, the best way to resolve the issue is through an election, and the extended contract should not be a bar to the processing of the RD Petition and the conducting of an election.

The underlying collective bargaining agreement in this matter covered the period from November 14, 2005 through November 14, 2009. The collective bargaining agreement was extended by agreement between the Company and Independent Union Local One to November 14, 2010. That extension was agreed upon on September 17, 2009. See *Exhibit 2*.

It was not the intention of the Company, nor Independent Union Local One, to enter into a new agreement. Rather, both parties were extending the existing agreement. This is shown by the very document that was executed between the parties. See Exhibit 2, which has as its heading "LETTER OF UNDERSTANDING REGARDING CONTRACT CONCESSIONS TO THE CURRENT LABOR CONTRACT." That document goes on to state, as denoted at the check-mark "Contract

extended to November 14, 2010.” That language, both in the caption and in the reference to the extension, clearly expressed the intent of the parties regarding the fact that there was an extension of the current contract and not a “new” contract being entered into. This point is further emphasized where on page 2, above the signatures of the representatives of the parties, the same caption is used; to-wit: “LETTER OF UNDERSTANDING REGARDING CONCESSIONS TO THE CURRENT LABOR CONTRACT.” It is submitted that if the parties were entering into a new contract, they would have so stated.

Argument

At the time the Petition was filed on October 18, 2010, the contract bar doctrine did not apply. The contract bar doctrine covers the first three years of a contract. *General Cable Corp.*, 139 NLRB 1123 (1962). In this case, the Letter of Understanding is entitled “LETTER OF UNDERSTANDING REGARDING CONCESSIONS TO THE CURRENT LABOR CONTRACT.” It states in the first paragraph: “...the current contract will be subject to the concessions/terms listed below.” It then goes on to state “Contract extended to November 14, 2010.” Clearly, a new contract was not entered into by the parties on September 17, 2009. Accordingly, under the contract bar doctrine, this extension would be considered “premature” regarding the contract being a bar to a Decertification Petition filed after the first three years of a long-term contract. Because of the extension, the contract ran from November 14, 2005 through November 14, 2010. This is a five-year period of time. In *Coca-Cola Enterprises, Inc., Eastern Great Lakes Division*, 352 NLRB 1044, 184 LRRM 1305 (2008), the two-member Board (Chairman Schaumber and Member Liebman) determined that a

Memorandum of Understanding ("MOU") entered into after the third year of a five-year agreement but prior to a Decertification Petition being filed during the fourth year of the agreement, was not a bar to an election. That case discussed many issues, but of import in this case is the following determination by the Board: "Moreover, even if the MOU incorporated the dates of the original contract, it still would not be a bar to the petition because the original contract is for 5 years, too long to bar a petition for its full term." 352 NLRB at 1045. We believe this to be the exact situation in this case in that this "extension" turned a four-year agreement into a five-year agreement; which is, in the words of the Board, "too long to bar a petition for its full term."

Because the Petition was filed after the first three years of the agreement had run, any argument made by the Union that the extension is a bar to the Petition is erroneous. As has been recognized, it is incumbent upon the Union to sustain its burden of proving the existence of a contract bar, for it is the Union asserting that doctrine.

Further, the fact that the Company and Independent Union Local One, subsequent to the filing of the RD Petition, entered into an agreement covering the period from November 14, 2010 to November 14, 2013 does not bar an election. *RCA del Caribe*, 262 NLRB 963 (1982); *Dresser Industries*, 264 NLRB 1088 (1982); *United States Gypsum Co.*, 157 NLRB 652 (1966).

Conclusion

By his determination to dismiss the RD Petition filed in this matter, the Regional Director has, in effect, "re-written" the agreement of the parties wherein he states, on page 2 of his Determination: "The extension incorporations portions of the

prior agreement and changes other portions. The extension meets the requirements of a new contract ...”.

If, in fact, the parties wished to enter into a new contract and not merely extend their existing contract, they were capable of determining that fact for themselves and so stating in any written agreement they entered into. They did not do so. Rather, to the contrary, they expressly stated that they were extending the current labor contract. Thereby, it is submitted that the employees in this matter are entitled to an election as a result of the Decertification Petition they filed. Accordingly, it is submitted that the Regional Director’s determination regarding dismissal of the Decertification Petition should be reviewed and reversed. The Petition should be processed and an election scheduled.

Respectfully submitted,

PLUNKETT COONEY

By: /s/Stanley C. Moore, III
Stanley C. Moore, III (P23358)
Attorney(s) for the Employer
38505 Woodward Avenue, Ste. 2000
Bloomfield Hills, MI 48304
(248) 901-4011
smoore@plunkettcooney.com

Dated: January 27, 2011

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SEVENTH REGION

WELLINGTON INDUSTRIES, INC.,

Employer,

~~-and-~~

Case No. 7-RD-3677

INDEPENDENT UNION LOCAL ONE,
AN AFFILIATE OF LOCAL 174, INTERNATIONAL
UNION, UNITED AUTOMOBILE, AEROSPACE
AND AGRICULTURAL IMPLEMENT WORKERS
OF AMERICA (UAW), AFL-CIO,

Union,

~~-and-~~

AUDREY VOGEL, an individual,

Petitioner,

~~-and-~~

INDEPENDENT UNION LOCAL TWO,

Intervenor.

CERTIFICATE OF SERVICE

I hereby certify that on Thursday, January 27, 2011, a copy of the foregoing *Employer's Request for Review*, together with a copy of this *Certificate of Service*, were served upon the following parties/attorney(s) of record via U.S. Mail at their stated business address(es), with first-class postage thereupon being fully pre-paid.

Audrey M. Vogel
36765 Huron River Drive
New Boston, MI 48164

Robert D. Fetter, Esq.
Miller Cohen PLC
600 W. Lafayette Boulevard
Detroit, MI 48226

EXHIBIT 1

8/18/10

This is a petition for a revote because, we feel the vote was done unfairly.

The posting we read did not say we were having a vote that day.

36 people out of 125 people is not a fair vote, because when 89 people

did not know there was a vote taking place on that day. We all should

have got the chance to vote and be told that's what we are doing that day.

Alan R. Scola
 Sue Bosman
 Chris Anderson
 Shee Baktrussen
 B. Peter Kelly
 Nathaniel Soudis
 AG
 Eric Scola
 LANCE KABA
 Kenneth Phil
 Evelyn Nalea
 James Kelly
 Susan Elwart
 Curtis C. Cudde
~~_____~~
~~_____~~
 Nathan R. Roof
 M. Keller
 EDWARD DAVIS
 A

Billy J. Conroy
 Kimberly Krattner
 Margaret Meyer
 Kelly M. Miller
 Joyce Stubbs
 Pam Bryson
 Lynn Jackson
 Willie Crockett
 Brian Thum
 BAKO Jappa
 James Lane
 Dany Hedberg
 Hope Bala
 Charles Clinton
 Joyce Smith
 Victoria Lee
 Vickie Morgan
 James Lee
 Ann and Ron Davis

Monty Thompson Jr.
 Carlos Smith
 Audrey Vogel
 Christina Baker
~~_____~~
 Anne Tidwell
 Bht 1st
 Stanley Dowell
 David Rutke
 James Bennett
 Justin
~~_____~~
 Marissa Erby

 Brian Hillis
 Brian
 Robert Campbell
 Mike Santamaria

Billy Stum
Mehdi Mohammad

Mark Peter
Joe P. Zini

Robert H. Oliver J.
M. d. Sill

Bruce Powell

Mark Wrayson
Carol M. de
Debbie Nelson
Doug Smith

Brenda Burgess

Dan Robinson

~~Robert~~

Charles Hope

Lee Vined Lawson

Ed Cross

Deanna Thompson

Jacal Jones

Peter Bacik

~~John~~
Steve Harris

EXHIBIT 2

Letter of Understanding
Between
Independent Union Local One
And
Wellington Industries, Inc.

**LETTER OF UNDERSTANDING REGARDING CONCESSIONS TO THE
CURRENT LABOR CONTRACT**

Upon ratification by a majority of eligible employees present and voting, the current contract will be subject to the concessions/terms listed below.

<u>Action</u>	<u>Effective Date</u>
5 Paid 5 Unpaid Holidays (See list below)	9/07/09
1.5% Wage Reduction	9/07/09
No Pay Increases	9/07/09
2 unpaid vacation days	Anniversary Date
Prescription Co-Pay from 10/40 to 15/50	11/1/09
1 sick day as unpaid from bank	11/14/09
Eliminate 401k match	9/07/09
Increase Employee Contribution to 25% for Dental	11/1/09
Medical Opt. out decrease from \$1,500.00-\$1,100	9/07/09
Wages, Vacation pay, Holiday pay and Absenteeism	Pay Return to Current Levels on October 1, 2010
Contract extended to November 14, 2010	

List of holidays impacted

Paid

Thanksgiving
Friday After Thanksgiving
Good Friday
Labor Day
Memorial Day

Unpaid

Christmas Eve
Christmas Day
New Years Eve
New Years Day
July 4th

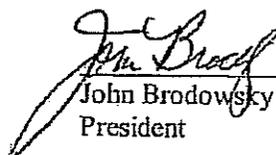
Initials:

Letter of Understanding
Between
Independent Union Local One
And
Wellington Industries, Inc.

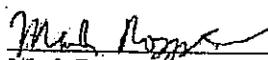
**LETTER OF UNDERSTANDING REGARDING CONCESSIONS TO THE
CURRENT LABOR CONTRACT**

Wellington Industries, Inc.
Agreed:

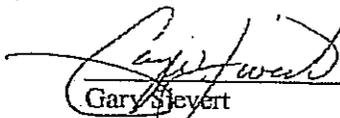
Employee Bargaining Committee
Agreed:


John Brodowsky
President

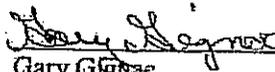
9.17.09
Date


Mark Roggero

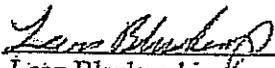
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Gary Slevert
Director, Human Resources

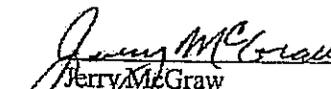
9/17/09
Date


Gary Gignac

9-17-09
Date


Leon Blankenship

9-17-09
Date


Jerry McGraw

9-18-09
Date


Addy Burd

9-17-09
Date