

**Wellington Industries, Inc. and Local 174, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL-CIO and Independent Union Local One.** Case 07-CA-053182

December 9, 2011

DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS BECKER  
AND HAYES

On May 2, 2011, Administrative Law Judge Keltner W. Locke issued the attached decision. The Respondent filed exceptions and a brief in support of the exceptions. The General Counsel and the Charging Party filed briefs in opposition and the Respondent filed a reply brief.

The National Labor Relations Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions and to adopt the recommended Order.<sup>1</sup>

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Wellington Industries, Inc., Belleville, Michigan, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

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<sup>1</sup> We agree with the judge that the Respondent violated Sec. 8(a)(5) and (1) of the Act by conditioning bargaining with Local One for a successor agreement upon the absence of UAW Local 174's president, John Zimmick, from the negotiations. Longstanding precedent establishes that "[e]mployers and unions have the right 'to choose whomever they wish to represent them in formal labor negotiations.'" *Palm Court Nursing Home*, 341 NLRB 813, 819 (2004) (quoting *General Electric Co. v. NLRB*, 412 F.2d 512, 516 (2d Cir. 1969)). Parties must deal with the chosen representatives who appear at the bargaining table except in the rare circumstance when "the presence of a particular representative . . . makes collective bargaining impossible or futile." *Fitzsimons Mfg. Co.*, 251 NLRB 375, 379 (1980). See also *R.E.C. Corp.*, 307 NLRB 330, 333 (1992). As argued by the General Counsel, there is no evidence that the presence of Zimmick at the negotiations constituted an "exceptional circumstance" that permitted the Respondent to refuse to bargain.

Accordingly, we find it unnecessary to pass on the judge's analysis of the affiliation between UAW Local 174 and Local One. The record shows that the Regional Director dismissed the Respondent's RM petition in a related proceeding where the Respondent argued that the affiliation was invalid. The Board considered the matter and denied review of that decision. Thus, the Board has already reviewed the validity of the affiliation and does not reconsider the matter here.

*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.<sup>1</sup> The conclusions of law, remedy, Order and notice provisions are set forth below.

Further Analysis

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 "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.

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.)

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.

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-

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<sup>1</sup> 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.

bargaining representative after the affiliation, the Board examined the circumstances of the 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 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.

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.

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 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."

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.

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. 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

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 NLRB 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.

475 U.S. at 206.

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.

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 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 *Goad 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.

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 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.

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.

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 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.

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.

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.

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.

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, 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

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 11 (2010).

#### 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.
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.
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.

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

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<sup>2</sup>

#### ORDER

The Respondent, Wellington Industries, Inc., Belleville, Michigan, and at all other places where notices customarily are posted, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(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.

(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.

(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.

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

(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.

(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."<sup>3</sup> Copies of the notice,

<sup>2</sup> 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.

<sup>3</sup> 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."

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 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.

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

#### APPENDIX A

#### BENCH DECISION

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

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.

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."

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

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.

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.

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.

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.

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."

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:

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.

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.

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.

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.

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.

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:

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.

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.

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.

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.”

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.

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.

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.

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.

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.

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.”

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

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.

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.

### 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.

Respondent contends that the affiliation vote was not valid.

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.

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.

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.

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

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.

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.

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.

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

APPENDIX B

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

AN AGENCY OF THE UNITED STATES GOVERNMENT

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

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.

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.

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

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 truckdrivers.

WELLINGTON INDUSTRIES, INC.