UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

WELLINGTON INDUSTRIES, INC.,	)	
	)	
Petitioner/Cross-Respondent	)	
v.	)	
	)	
NATIONAL LABOR RELATIONS BOARD,	)	Nos. 14-1174, 14-1205
	)	
Respondent/Cross-Petitioner	)	
	)	

RESPONSE OF THE NATIONAL LABOR RELATIONS BOARD
TO PETITIONER'S MOTION TO HOLD CASE IN ABEYANCE

To the Honorable, the Judges of the United States
Court of Appeals for the District of Columbia Circuit:

The National Labor Relations Board ("the Board"), by its Deputy Associate General Counsel, hereby responds to petitioner's motion to hold the case in abeyance pending the outcome of a related case currently before the Board, *Wellington Industries, Inc.*, Board No. 07-CA-061568, *remanded*, D.C. Cir. Nos. 12-1396 and 12-1435 (Aug. 1, 2014).

The Board does not oppose holding this case in abeyance, but does not agree that it should held on the basis petitioner suggests. Rather, the Board submits that this case, if held in abeyance, should be held pending the Court's disposition of the lead case, *Wellington Industries, Inc. v. NLRB*, D.C. Cir. Nos. 12-1018 and 12-1120, which has been briefed and is awaiting resolution of the Board's July 3, 2014 motion to lift abeyance. The Court's resolution of that lead case should

inform the resolution of this case, given that the key issue is the same: whether substantial evidence supports the Board's finding that Wellington Industries, Inc. violated Section 8(a)(5) and (1) of the NLRA, 29 U.S.C. § 158(a)(5) and (1), by conditioning bargaining with the certified representative of its employees on the absence of union representative John Zimmick from any discussions.[1] *See Wellington Indus., Inc.*, 360 NLRB No. 14, 2013 WL 6576739, *4-5 (Dec. 13, 2013) (describing the series of three cases presenting the same theory of violation).

Respectfully submitted,

/s/ Linda Dreeben
Linda Dreeben
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National Labor Relations Board
1099 14th Street, NW
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Dated at Washington, DC
this 23rd day of October 2014

[1] The NLRA generally compels an employer to meet with a union's selected bargaining representatives. *NLRB v. Jones & Laughlin Steel Corp.*, 301 U.S. 1, 33 (1937) ("collective action [of employees] would be a mockery if representation were made futile by interference with freedom of choice," citing cases, including *Gen. Elec. Co. v. NLRB*, 412 F.2d 512, 516 (2d Cir. 1969) ("either side can choose as it sees fit and neither can control the other's selection")); *Ardsley Bus Corp.*, 357 NLRB No. 85, 2011 WL 4830121, at *3, *47 (Aug. 31, 2011) ("one party cannot legally refuse to bargain because it doesn't like who the other party has chosen as its bargaining representatives").

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	)	
Respondent/Cross-Petitioner	)	Board No. 07-CA-091271
	)	

CERTIFICATE OF SERVICE

I hereby certify that on October 23, 2014, I electronically filed the foregoing document with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit by using the CM/ECF system. I certify that the foregoing document was served on all parties or their counsel of record through the appellate CM/ECF system.

/s/ Linda Dreeben
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Dated at Washington, DC
this 23rd day of October 2014