

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, Party to the Contract. Case 07-CA-061568

January 29, 2015

DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS MISCIMARRA
AND JOHNSON

On July 30, 2012, the Board issued a Decision and Order in this proceeding, which is reported at 358 NLRB 782.¹ Thereafter, the Respondent filed a petition for review in the United States Court of Appeals for the District of Columbia Circuit, and the General Counsel filed a cross-application for enforcement.

At the time of the Decision and Order, the composition of the Board included two persons whose appointments to the Board had been challenged as constitutionally infirm. On June 26, 2014, the United States Supreme Court issued its decision in *NLRB v. Noel Canning*, 134 S.Ct. 2550 (2014), holding that the challenged appointments to the Board were not valid. Thereafter, the court of appeals vacated the Board's Decision and Order and remanded this case for further proceedings consistent with the Supreme Court's decision.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

In view of the decision of the Supreme Court in *NLRB v. Noel Canning*, supra, we have considered de novo the judge's decision and the record in light of the exceptions and briefs. We have also considered the now-vacated Decision and Order, and we agree with the rationale set forth therein, as modified herein.² Accordingly, we affirm the judge's rulings, findings, and conclusions and adopt the judge's recommended Order as modified below, to the extent and for the reasons stated in the Decision and Order reported at 358 NLRB 782, which is incorporated herein by reference, as modified. The judge's recommended Order, as further modified herein, is set forth in full below.³

¹ On August 13, 2012, the Respondent filed a Motion for Reconsideration. The motion is denied as moot in light of our disposition of this case.

² Chairman Pearce adheres to the rationale of the now-vacated decision in full. Member Johnson finds, as alleged in the complaint, that since about mid-July 2011, the Respondent has unlawfully refused to permit Independent Union Local One's designated representative John Zimmick to attend a grievance hearing regarding discipline for employee Shane Cook.

³ We shall substitute a new notice in accordance with *Durham School Services*, 360 NLRB 694 (2014).

ORDER

The National Labor Relations Board orders that the Respondent, Wellington Industries, Inc., Belleville, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain collectively with Independent Union Local One (the Union) by failing and refusing to furnish it with requested information that is relevant and necessary to the Union's performance of its functions as the collective-bargaining representative of the Respondent's unit employees.

(b) Breaching its obligation to bargain in good faith with the Union concerning grievances by refusing to deal with the representative designated by the Union to assist it with grievance processing.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

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

(a) Furnish to the Union in a timely manner the information requested by the Union on July 12, 2011.

(b) Within 14 days after service by the Region, post at its Belleville, Michigan facility copies of the attached notice marked "Appendix."⁴ Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since mid-July 2011.

(c) Within 21 days after service by the Region, file with the Regional Director for Region 7 a sworn certification of a responsible official on a form provided by the

⁴ If this Order is enforced by a judgment of a 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."

Region attesting to the steps that the Respondent has taken to comply.

MEMBER MISCIMARRA, concurring.

I agree with the judge's rulings, findings, and conclusions regarding the Respondent's unlawful refusal to provide relevant information that Independent Union Local One (IULO) requested by letter dated July 12, 2011. I also agree that since about mid-July 2011, as alleged in the complaint, the Respondent has unlawfully refused to permit the president of UAW Local 174, John Zimmick, to participate in a grievance hearing regarding discipline for unit employee Shane Cook as IULO's designated representative. Accordingly, I join in the Order set forth above.

In this case, IULO represented the Respondent's bargaining unit employees. IULO members voted to affiliate with UAW Local 174, although the record indicates that relatively few unit employees (38 out of a total of 128) participated in the affiliation vote, which has prompted the Respondent to dispute the affiliation. My colleagues find it unnecessary to pass on the judge's finding that IULO is validly affiliated with UAW Local 174. I likewise do not reach it.¹

The Respondent received a letter dated July 12, 2011, signed by IULO President Mark Roggero and UAW Local 174 President John Zimmick, requesting certain attendance records, discipline documents, and job descriptions, among other relevant information. The July 12 letter also asked the Respondent to specify in writing whether Zimmick would be allowed to represent unit members at every step of the grievance procedure. It is undisputed that the Respondent failed to provide any of the requested information, and that it has refused to permit Zimmick to participate in the grievance process. I concur in finding that these actions violated Section 8(a)(5) and (1) of the Act.² I also find no merit in the Respondent's argument that UAW Local 174 was without standing to file the charge. See Board's Rules and Regulations Sec. 102.9.

¹ Separate from the issue of the validity of IULO's affiliation with UAW Local 174, my colleagues find that IULO did not transfer or delegate to Local 174 its responsibilities as bargaining representative, and I agree with that finding.

² I find it unnecessary to determine whether the Respondent also unlawfully refused in June 2011 to allow Zimmick to attend a grievance meeting as any such finding would not materially affect the remedy.

APPENDIX
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 refuse to bargain collectively with Independent Union Local One (the Union) by failing and refusing to furnish it with requested information that is relevant and necessary to the Union's performance of its functions as the collective-bargaining representative of our unit employees.

WE WILL NOT breach our obligation to bargain in good faith with the Union concerning grievances by refusing to deal with the representative designated by the Union to assist it with grievance processing.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL furnish to the Union in a timely manner the information requested by it on July 12, 2011.

WELLINGTON INDUSTRIES, INC.

The Board's decision can be found at <http://www.nlr.gov/case/07-CA-061568> or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1099 14th St., N.W., Washington, D.C. 20570, or by calling (202) 273-1940.

