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**Wellington Industries, Inc. and Brenda Kowalski, Petitioner and Independent Union Local One, an affiliate of Local 174, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL-CIO, Union.** Case 07-UD-000568

November 6, 2012

ORDER DENYING REVIEW

BY CHAIRMAN PEARCE AND MEMBERS HAYES  
AND GRIFFIN

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel. We find that the Petitioner's Request for Review of the Regional Director's determination to hold the petition in abeyance pending resolution of the outstanding unfair labor practice charges raises no substantial issues warranting reversal of the Regional Director's determination. Accordingly, we deny review.

As our colleague implicitly concedes, the Regional Director properly applied existing Board precedent, which holds that representation petitions will be held in abeyance if there are concurrent unfair labor practice charges alleging conduct which, if proven, would interfere with employee free choice in an election. NLRB Casehandling Manual, Part Two, Representation Proceedings, Sec. 11730, et seq. Here, the Board found that the Employer violated Section 8(a)(5) and (1) by conditioning bargaining with the Union on the absence of UAW Local 174's president, John Zimmick.<sup>1</sup> This serious unfair labor practice, which the Employer has yet to remedy, is the type of violation that is "likely to have a lasting and negative impact on employees' support for the Union."<sup>2</sup> Accordingly, the Regional Director did not abuse his discretion by holding the petition in abeyance pending resolution of the unfair labor practice proceedings.<sup>3</sup>

Moreover, unlike our colleague, we do not think it is appropriate to reconsider the Board's longstanding blocking charge policy in the context of this request for review. In our view, the subject would be better addressed as part of the current rulemaking concerning Board representation case procedures, in which the

<sup>1</sup> *Wellington Industries*, 357 NLRB No. 135 (2011).

<sup>2</sup> *Goya Foods of Florida*, 347 NLRB 1118, 1122 (2006), enf. 525 F.3d 1117 (11th Cir. 2008).

<sup>3</sup> Pursuant to charges that were filed following the Regional Director's initial decision to hold the petition in abeyance, the Board found that the Employer violated Sec. 8(a)(5) and (1) again by failing to provide the Union with information and refusing to let Zimmick assist in grievance processing. *Wellington Industries*, 358 NLRB No. 90 (2012). The fact that these violations also remain unremedied further supports the Regional Director's decision to continue to hold the petition in abeyance.

Board specifically invited comment on whether it should change its blocking charge policy.<sup>4</sup> The rulemaking presents a more suitable vehicle for revisiting our procedures in this area in a fully-informed and comprehensive manner.

Finally, our colleague's call for a hearing pursuant to *Saint Gobain Abrasives*, 342 NLRB 434 (2004), ignores the substantial factual and legal distinctions between that case and this one. In *Saint Gobain*, which concerned a decertification petition rather than the instant deauthorization petition, the Board held that it was an error for the Regional Director to dismiss, without a hearing, the petition based on the nexus between the employer's alleged unlawful conduct and employee disaffection from the union. In so holding, the Board emphasized the specific circumstances of that case, among them that the alleged unlawful conduct consisted of a single unilateral change. Id. at 434. Unlike in *Saint Gobain*, where the charges against the employer remained unproven, the Board here has already found that the Employer committed multiple unfair labor practices, and the Employer has not complied with the Board's remedial Orders.<sup>5</sup> More significantly, the Regional Director here did not dismiss the petition outright, as in *Saint Gobain*, but decided to hold it in abeyance pending the Employer's compliance with the Board's remedial Order. Thus, this case is markedly distinct from *Saint Gobain*, and we find no basis for extending it to the circumstances presented here.<sup>6</sup>

Dated, Washington, D.C. November 6, 2012

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Mark Gaston Pearce, Chairman

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Richard F. Griffin, Jr., Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

MEMBER HAYES, dissenting.

I would grant the Petitioner's request for review. In accord with my prior dissents to the revision of the Board's representation case election procedures, I agree with the Petitioner that reconsideration and substantial limitation of the Board's general blocking charge policy

<sup>4</sup> Notice of Proposed Rulemaking – Representation-Case Procedures, 76 Fed. Reg. 36812, 36827–36828 (June 22, 2011).

<sup>5</sup> See *Matson Terminals*, 321 NLRB 879, 880 fn. 7 (1996) ("[I]t is Board policy not to hold an election until the posting period has expired, because the 60-day posting period is necessary as a means of dispelling and dissipating the unwholesome effects of a respondent's unfair labor practices.") (internal citations omitted), enf. 114 F.3d 300 (D.C. Cir. 1997).

<sup>6</sup> For the reasons set forth by then-Members Liebman and Walsh in their dissenting opinion in *Saint Gobain*, 342 NLRB at 435–436, we have substantial doubts as to whether that case was correctly decided and would consider overruling it in an appropriate case.

is warranted. In my view, an election should in most instances be held regardless of the pendency of unremedied unfair labor practices, and the ballots should be impounded. Further, in the factual circumstances of this case, I believe it would be appropriate to conduct a hearing, comparable to the one directed in *Saint Gobain Abrasives*, 342 NLRB 434, 434 (2004), to address whether there is a causal relationship between the Employer's unfair labor practices and the desire of the petitioning employees to deauthorize the Union. In my view, it seems likely that the 750-percent increase in unit employees' mandatory dues obligations, rather than any dissatisfaction resulting from the Employer's refusal to deal with a single union official, caused the deauthorization effort. If there is no causal relationship between the petition and the unlawful conduct, the petition should be processed and an election should be held.<sup>1</sup>

Dated, Washington, D.C. November 6, 2012

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Brian E. Hayes,

Member

NATIONAL LABOR RELATIONS BOARD

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<sup>1</sup> I do not contend, as my colleagues suggest, that *Saint Gobain* is directly controlling here. However, I do believe that this case raises the same concern as in *Saint Gobain*, i.e., that in the particular circumstances of the case the Employer's unfair labor practices should not be presumed to affect the free choice of employees in petitioning for an election without any evidence of a causal nexus. Absent such evidence, the *real* adverse impact on employees' free choice will be the deprivation of their immediate right to vote on their representative's continuing ability to forcibly extract dues from them.