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6 Joint Steering Committee

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UNITED STATES OF AMERICA

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BEFORE THE NATIONAL LABOR RELATIONS BOARD

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Region 21

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12	UTILITY WORKERS UNION OF AMERICA,] CASE NO. 21-CB-14820
	AFL-CIO (UWUA); INTERNATIONAL]]
13	CHEMICAL WORKERS UNION] MOTION FOR SUMMARY JUDGMENT
	COUNCIL/UFCW (ICWUC); AND THE] OF RESPONDENTS UWUA AND JSC;
14	UWUA-ICWUC JOINT STEERING] JOINDER IN RESPONDENT ICWUC'S
	COMMITTEE,] MOTION FOR SUMMARY JUDGMENT;
15] AND DECLARATION OF GREGORY
] PAASKE
16	and]]
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	SOUTHERN CALIFORNIA GAS COMPANY]]
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24 Pursuant to Section 102.24 of the Rules and Regulations of the National Labor Relations
25 Board ("Board"), Respondents UWUA-ICWUC JOINT STEERING COMMITTEE (hereinafter
26 "JSC") and UTILITY WORKERS UNION OF AMERICA, AFL-CIO (hereinafter "UWUA"),
27 move for summary judgment and join in the in the motion for summary judgment filed by
28 Respondent INTERNATIONAL CHEMICAL WORKERS UNION COUNCIL/UFCW

1 (hereinafter "ICWUC") for the reasons set forth below:¹

2 **I. BASIS FOR MOTION:**

3 Respondents JSC and UWUA move for summary judgment on the following ground:

4 There are no material disputes of fact and dismissal of the
5 Amended Complaint is proper as a matter of law, because there
6 was no delay in execution of the operative collective bargaining
7 agreement and/or because there is no violation substantial enough
8 for a remedial order.

9 **II. THERE ARE NO DISPUTES OF MATERIAL FACT.**

10 There are no disputes about the following material facts which, although not all of the
11 facts which may ultimately be litigated in this matter, are sufficient upon which to base summary
12 judgment:

13 1. The charge and the amended charge in this matter were filed. For purposes of this
14 motion only, Respondents take the position that service and timeliness are not issues;
15 Respondents do not waive these issues, however, should the case go to a hearing.

16 2. The charging party Employer, Southern California Gas Company (hereinafter
17 "SCG") is a public utility engaged in the generation and distribution of natural gas with a
18 principal place of business located in Los Angeles, California, and with revenues and receipt of
19 goods in excess of the jurisdictional limits of the Act. SCG has at all material times been an
20 employer engaged in commerce within the meaning of §§ 2(2), (6), and (7) of the Act.

21 3. At all material times Respondents UWUA and INTERNATIONAL CHEMICAL

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23 ¹ This motion and ICWUC's motion are timely. The Amended Complaint and
24 Notice of Hearing was issued June 4, 2010, and noticed for hearing on June 28, less than the 28
25 days before the hearing prescribed in Section 102.24 of the Board's Rules. The Amended
26 Complaint supersedes the original complaint. UWUA and JSC have found no authority
27 indicating that Section 102.24 does not apply or applies any differently where the Regional
28 Director chooses to issue an amended complaint, particularly so close to the hearing. *See John
Morrell & Co.*, 304 NLRB 896, n.2 (1991) (timeliness of General Counsel's motion for summary
judgment judged in relation to date of amended complaint); *see also Alpha Associates*, 344
NLRB 782, n.3 (2005) (where, because of extensions of time granted respondent to file answer,
hearing was scheduled fewer than 28 days after date of answer, General Counsel motion filed
five days after answer was "prompt" and not untimely).

1 WORKERS UNION COUNCIL/UFCW (ICWUC) (hereinafter "ICWUC") have been labor
2 organizations within the meaning of § 2(5) of the Act.

3 4. The employees of SCG in the unit referred to in Section 2.2(A) of the collective
4 bargaining agreement constitute a unit appropriate for the purposes of collective bargaining
5 within the meaning of § 9(b) of the Act.

6 5. Since at least May 2005 and at all material times, Respondents UWUA and
7 ICWUC have been the designated joint exclusive collective bargaining representative under §
8 9(a) of the unit and have been recognized as the joint representative by SCG, and this recognition
9 has been embodied in a series of collective bargaining agreements, the most recent of which is
10 effective by its terms from March 1, 2009, through September 30, 2011.

11 6. On or about January 31, 2009, the Employer and Respondents reached complete
12 agreement on terms and conditions of employment of the unit.

13 7. That agreement was embodied in a written agreement executed by Respondents
14 and the Employer on January 31, 2009.

15 8. The written terms of the agreement reached and executed on January 31, 2009,
16 together with the collective bargaining agreement between Respondents and the Employer
17 effective January 1, 2005, constituted a complete successor agreement to the 2005 agreement,
18 which was effective March 1, 2009, through September 30, 2011.

19 9. The 2009-2011 agreement was ratified by members of the unit by a mail ballot
20 counted on or about February 25, 2009.

21 10. Upon ratification, the 2009-2011 agreement was effective as of March 1, 2009;
22 was implemented as of March 1, 2009; and has been followed by the bargaining parties from
23 March 1, 2009, forward.

24 11. In a bulletin which SCG distributed to unit employees dated November 30, 2009,
25 SCG stated, "The new contract has been in effect since March 1 of this year. The Company and
26 the Union have both been adhering to the new contract even though printing is still pending."

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1 **III. RESPONDENTS ARE ENTITLED TO SUMMARY JUDGMENT OF DISMISSAL**
2 **OF THE AMENDED COMPLAINT.**

3 **A. RESPONDENTS EXECUTED A COMPLETE, WRITTEN, BINDING**
4 **SUCCESSOR COLLECTIVE BARGAINING AGREEMENT ON**
5 **JANUARY 31, 2009, WHICH WAS PROMPTLY RATIFIED,**
6 **IMPLEMENTED, AND EFFECTIVE AT ALL MATERIAL TIMES.**

7 It is undisputed that the Employer and Respondent Unions executed a written agreement
8 on January 31, 2009. The General Counsel alleges that the agreement reached by SCG and
9 Respondent Unions was "complete." Am. Cmplt., ¶ 9(a). To the extent the General Counsel
10 alleges that this written agreement was not embodied in a written contract, the General Counsel
11 nonetheless does not dispute, and affirmatively alleges, that the agreement reached on January
12 31, 2009, was sufficiently complete to be able to be embodied in a written contract. *Id.*, ¶ 9(b).

13 It is undisputed that, upon ratification, the 2009-2011 agreement was effective as of
14 March 1, 2009; was implemented as of March 1, 2009; and was followed by the parties from
15 March 1, 2009, forward. It is undisputed that, even after the events which gave rise to the
16 General Counsel's complaint, charging party SCG agreed, and informed unit employees, that the
17 2009-2011 agreement had been in effect since March 1, 2009, and that SCG and Respondent
18 Unions were adhering to the 2009-2011 contract while printing of a booklet was pending.

19 It is Respondent UWUA's and JSC's position that, given the undisputed absence of any
20 delay in SCG's and Respondent Unions' parties' implementing and following the 2009-2011
21 agreement, it is immaterial whether the embodiment of that agreement is the January 31, 2009,
22 executed, complete Tentative Agreement together with the 2005 agreement which it modified, or
23 is the later printed booklet which was also executed, or is both.²

24 The Supreme Court in *H.J. Heinz Co. v. NLRB*, 311 U.S. 514, 523 (1941) specified that
25 the obligation to execute adheres to an agreement as to wages, hours, and working conditions
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27 ² As set out in detail in ICWUC's motion for summary judgment, at best the dispute
28 which arose between the parties was one of contract interpretation which was, and is properly
being, handled in an arbitration, to which the Board should defer.

1 "evidenced by a signed contract *or statement* in writing, which serves both as recognition of the
2 union with which the agreement is reached and a permanent memorial of its terms," "an authentic
3 record of its terms which could be exhibited to employees," "the signed agreement . . . regarded
4 as the effective instrument . . ." Emphasis added. In a variety of contexts, the Board has
5 recognized that the requirement of a written, executed agreement may be fulfilled in different
6 ways and by different forms of signed agreements, *e.g.*, memoranda agreements together with
7 agreements they amend, short form agreements binding parties to other agreements, "me too"
8 agreements, etc. The January 31, 2009, executed, complete Tentative Agreement together with
9 the 2005 agreement which it modified *and* the later printed booklet which was also executed,
10 particularly in view of the 2009-2011 agreement's unimpeded implementation, *both* fulfilled the
11 *H.J. Heinz* descriptions.

12 Respondents can find no authority for the legal proposition, raised by the Amended
13 Complaint which is limited to a claim of delay and the undisputed fact that there was no delay in
14 implementation of the agreement, that an alleged delay in executing a collective bargaining
15 agreement which did not delay the agreement going into effect constitutes a violation of §§
16 8(a)(1) and (5).

17 **B. EVEN IF THE PRINTED BOOKLET WERE CONSIDERED TO BE THE**
18 **WRITTEN AGREEMENT REQUIRED TO BE EXECUTED, THERE WAS**
19 **NO MEANINGFUL VIOLATION OF THE ACT.**

20 The violation of §§ 8(a)(5) and (1) for undue delay in executing a written collective
21 bargaining agreement, and consequent remedy, where it occurs, lie in the loss of earnings and
22 other benefits unit employees may have suffered as a result of the undue delay. *See Pabst*
23 *Theater Foundation, Inc.*, 355 NLRB No. 32, sl.op. at 3 (2010). Here, because the collective
24 bargaining agreement was concededly in effect, any delay in signing the printed booklet, even if
25 it occurred, caused no loss.

26 The Board does not spend its "limited resources on matters which have little or no
27 meaning in effectuating the policies of the Act." *Bellinger Shipyards, Inc.*, 227 NLRB 620
28 (1976). In *Bellinger Shipyards*, the respondent voluntarily remedied the unfair labor practice

1 charged and "there was no showing that the employees were adversely affected" by the alleged
2 unlawful no-solicitation rule prior to its correction. The Board held that,

3 "in this insubstantial case, we would find that the conduct involved, although it
4 may have been in technical contravention of the statute as interpreted by the
5 Board, was nevertheless so insignificant and so largely remedied and rendered
6 meaningless by the Respondent's subsequent conduct that we will not utilize it as
7 a basis for either finding a violation or issuing a remedial order."

8 The Board earlier, in *American Federation of Musicians, Local 76 (Jimmy Wakely Show)*, 202
9 NLRB 620, 622 (1973), used identical language to dismiss a complaint, after an ALJ's decision,
10 where the Board described the violation as "so minimal and . . . so substantially remedied by the
11 Respondent's subsequent conduct that the entire situation is one of little significance and there is
12 no real need for Board remedy," and "even if not entirely moot, . . . of such obviously limited
13 impact and significance that we ought not to find that it rises to the level of constituting a
14 violation of our Act." *Id.*, at 621.

15 The General Counsel weeds out insubstantial charges even before complaint. *See*
16 *Bricklayers and Allied Craftsmen Int'l. Union No. 1 (Paul Clements Masonry, Inc.)*, 1989 WL
17 241618 (NLRB GC) (opining that it would not effectuate the policies of the Act to litigate a §
18 8(a)(5) case in which the Union had ceased insisting on and striking in support of an unlawful
19 double-breasting clause, the parties had signed a new contract which did not contain the clause,
20 and the only available remedy was a cease-and-desist order); *Curran Roofing Co.*, 1988 WL
21 228492 (NLRB GC) (despite conclusion that § 8(a)(5) violation occurred in bargaining, it would
22 not effectuate the policies of the Act to issue a complaint where employer rescinded unilateral
23 change – indeed, for its own reasons – and employees lost no wages).

24 Moreover, the Board has applied this policy where deferral principles apply. *Alpha Beta*
25 *Company*, 273 NLRB 1546, n.2 (1985) (where Board deferred to arbitration settlement, single
26 tangential violation held de minimis and not requiring a notice posting). As ICWUC's motion
27 makes clear, at most the dispute over the import of the at-will language – which did not impede
28 the parties' performance of the agreement – was a contract interpretation dispute, which the

1 Company initiated at an arbitration and which remains properly before the arbitrator in the
2 proceeding in which the Company raised it. Instead of treating the dispute as a refusal to execute
3 or a delay in executing a contract which no one disputes was fully in effect, the Board should
4 have, at most, deferred the charge.

5 **IV. CONCLUSION**

6 For the foregoing reasons and the reasons stated in the ICWUC's motion, Respondents
7 UWUA and JSC respectfully submit that the Amended Complaint should be dismissed in its
8 entirety against all Respondents.

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10 DATED: June 23, 2010

ELLEN GREENSTONE
ROTHNER, SEGALL & GREENSTONE

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By 
ELLEN GREENSTONE

14

Attorneys for Respondents Utility Workers Union
of America, AFL-CIO and UWUA-ICWUC
Joint Steering Committee

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DECLARATION OF GREGORY PAASKE

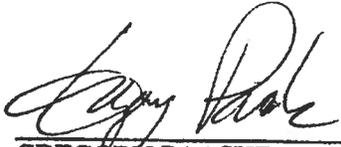
I, Gregory Paaske, hereby declare that, if called as a witness, I would and could competently testify to the following of my own personal knowledge:

1. I am employed by Southern California Gas Company as an Energy Technician-Residential. I have worked for Southern California Gas Company since 1976. I am also a shop steward for Utility Workers Union of America, Local 132, AFL-CIO ("Local 132"). I have been a shop steward for Local 132 since about 2002. Local 132 is one of the local unions that represents employees of Southern California Gas Company.

2. The current collective bargaining agreement between Southern California Gas Company and the Utility Workers Union of America, AFL-CIO and International Chemical Workers Union Council, UFCW, effective from 2009 to 2011, was ratified by union members who work under the agreement by a mail ballot which was counted on or about February 25, 2009.

3. A true and correct copy of a Southern California Gas Company Labor Relations Bulletin dated November 30, 2009, is attached to this declaration as Exhibit 1. This bulletin is typical of bulletins that Southern California Gas Company distributes to its employees. I received this bulletin on or shortly after the date on it.

I declare under penalty of perjury that the foregoing is true and correct. Executed at Whittier, California, on June 23, 2010.



GREGORY PAASKE



Labor Relations **Bulletin**

For employees of Southern California Gas Company

Status of Printing New Union Contract

November 30, 2009 – The Company has become aware that the Union is communicating misinformation regarding the status of printing the new Union contract. Here are the facts:

- The new contract has been in effect since March 1 of this year. The Company and the Union have both been adhering to the new contract even though printing is still pending.
- Preparing the contract for printing involves developing and agreeing on specific contract language. Contract language was written and agreed to during negotiations, for all aspects of the Agreement except the new sick time benefits. Last minute changes, on the eve of reaching a Tentative Agreement in January, prevented the parties from finalizing contract language for that particular item.
- The Company and the Union have met several times since the Tentative Agreement was ratified, in order to jointly develop contract language for the new sick time benefits. In developing contract language, there has been disagreement over whether or not an employee needs to obtain approval from his/her supervisor in order to use Company-paid sick time for medical appointments without it counting as an absenteeism occurrence. That issue has been resolved; employees must obtain approval.
- After completing multiple iterations of proofreading the entire contract, the Union indicated it was ready to sign the Agreement on November 12 so that it could go to the printer.
- At the November 12 signing meeting, the Union reversed its commitment and refused to sign the contract. The Union indicated it now wants to modify a provision in the contract pertaining to the “at will” status of part-time employees.
- The “at will” provision for part-time employees has been in the contract for decades. During negotiations, the Union proposed to eliminate the “at will” provision; however, the Company rejected the Union’s proposal. Ultimately, the Union agreed to the Company’s counter proposal (and accompanying contract language) which reaffirmed the “at will” provision. The Union’s renewed attempt to alter the “at will” provision is contrary to the parties’ agreement.
- The Union’s refusal to sign the contract, unless the Company agrees to modify what was agreed to, coincides with an arbitration case that is currently underway regarding a part-time employee.
- The Company is very disappointed in the Union’s arbitration strategy and believes the Union is acting in bad faith in so far as contract printing is concerned. We have filed an unfair labor practice charge with the National Labor Relations Board (NLRB) seeking, among other remedies, a requirement that the Union sign the new contract so that it can be printed.

We will continue to adhere to the new contract even though it has not been printed yet and will keep you apprised of the status. In the meantime, feel free to contact your supervisor or Labor Relations Advisor if you have any questions.

CERTIFICATE OF SERVICE

I hereby Certify that on the 23rd day of June, 2010, a copy of the foregoing MOTION FOR SUMMARY JUDGMENT OF RESPONDENTS UWUA AND JSC; JOINDER IN RESPONDENT ICWUC'S MOTION FOR SUMMARY JUDGMENT; AND DECLARATION OF GREGORY PAASKE was sent by email and by regular U.S. Mail to the following persons and was filed electronically with the Board's Washington, D.C. office:

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