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

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
Region 21

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| UTILITY WORKERS UNION OF AMERICA, |] | CASE NO. 21-CB-14820 |
| AFL-CIO (UWUA); INTERNATIONAL |] | |
| CHEMICAL WORKERS UNION |] | |
| COUNCIL/UFCW (ICWUC); AND THE |] | |
| UWUA-ICWUC JOINT STEERING |] | MOTION OF RESPONDENTS UTILITY |
| COMMITTEE, |] | WORKERS UNION OF AMERICA, AFL- |
| |] | CIO AND UWUA-ICWUC JOINT |
| and |] | STEERING COMMITTEE TO DISMISS |
| |] | COUNSEL FOR THE ACTING GENERAL |
| |] | COUNSEL'S LIMITED EXCEPTIONS TO |
| |] | ADMINISTRATIVE LAW JUDGE'S |
| SOUTHERN CALIFORNIA GAS COMPANY |] | DECISION |
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Pursuant to Section 102.47 of the Rules and Regulations of the National Labor Relations Board, Respondents in the above-captioned matter, UTILITY WORKERS UNION OF

AMERICA, AFL-CIO ("UWUA") and UWUA-ICWUC JOINT STEERING COMMITTEE ("JSC"), hereby move to dismiss the Limited Exceptions to the Administrative Law Judge's Decision ("ALJD") filed by Counsel for the Acting General Counsel. The motion is made on the following grounds:

I. INTRODUCTION AND STATEMENT OF FACTS

On November 4, 2010, Administrative Law Judge Mary Miller Cracraft issued her Decision in this case. On the same date the proceeding was transferred to the Board. ALJ Cracraft concluded that Respondents violated Section 8(b)(3) of the Act by refusing to execute, and delaying execution of, a booklet form of a collective bargaining agreement Respondents reached with Charging Party Employer Southern California Gas Company.

The ALJ's decision was entirely fact-based, and ALJ Cracraft applied her findings of fact to settled Board law. For this and other reasons discussed below, although Respondents vigorously defended the charge before the ALJ, they did not file exceptions to the ALJD.

On December 2, 2010, Counsel for the General Counsel filed "limited exceptions," raising minor issues with the ALJ's description of the notice posting provisions in the ALJD. Specifically, Counsel for the Acting General Counsel excepted to: 1) the ALJ's failure to order electronic posting under *Picini Flooring*, 356 NLRB No. 9 (10/22/2010); 2) the ALJ's failure to order notice posting beyond Los Angeles to other of Respondents' union offices and halls; and 3) a mistake in the date of the recommended notice.

On December 7, 2010, counsel for Respondents wrote Counsel for the Acting General Counsel and the Regional Director for Region 21 and offered outright to resolve certain of the exceptions and to deal with any remaining posting issues in compliance. Specifically,

Respondents communicated their willingness to recognize the application of *Picini Flooring*, to correct the notice, and to post at union offices and halls. Respondents communicated that they were, and are, ready to comply with the ALJD. Respondents do not intend to file cross-exceptions.

Evidently not satisfied with winning, on December 9, 2010, Counsel for the Acting General Counsel wrote back *rejecting* Respondents' offer to comply with the ALJD. Acknowledging Respondents' offer to resolve the remedial issues raised in the limited exceptions, Counsel for the Acting General Counsel stated that the Region nevertheless wants the Board to review the case (even though *no party*, not even the General Counsel, has excepted to the merits of the ALJD), apparently so that the Region can have a published decision.

Respondents submit that, since there is no issue for the Board to review, the Board should dismiss the exceptions.

II. ARGUMENT

A. THIS MOTION IS PROPER.

Under Section 102.47 of the Board's Rules and Regulations, motions may be filed after transfer of an unfair labor practice case to the Board.

B. THIS CASE DOES NOT PRESENT A BASIS FOR EXCEPTIONS.

None of the circumstances in which the Board's Casehandling Manual guides counsel for the General Counsel and the Regional Office to file exceptions exists here. This case does not involve a "significant loss" to the General Counsel. Casehandling Manual, Part 1, Unfair Labor Practice Proceedings, sec. 10430.1. Indeed, it is a total win for the General Counsel. The ALJD presents no novel or complex policy questions. *Id.*, sec. 10430.2. The ALJ straightforwardly

applied her interpretation of the facts to settled law concerning refusal to execute, and delay in executing, a collective bargaining. She rejected Respondents' defenses on facts specific to the case. "Generally, exceptions should be filed when there is a reasonable possibility of success and the matter involved is of sufficient importance to the overall case." *Id.*, sec. 10438.3. These standards are inapplicable, here, where the General Counsel has prevailed entirely on the basis of settled law. The desire to see a "win" published does not fit these guidelines and is, frankly, unbecoming on the part of the Regional Office.

To the extent the exceptions raise remedy issues, where, as here, Respondents have offered to resolve the bases of the exceptions outright or in compliance proceedings if necessary, there is no basis for the Regional Office to conclude that exceptions "should" be pursued. *See id.*, sec. 10430, 3rd para. Accordingly, "compliance efforts should be promptly initiated." *See id.*, sec. 10434. There are no issues raised in the Limited Exceptions that cannot be dealt with in compliance.

**C. THE BOARD'S RULES AND PROCEDURES ENCOURAGE
RESOLUTION OF CHARGES AND DO NOT PROVIDE FOR GENERAL
COUNSEL OR REGIONAL OFFICE REJECTION OF COMPLIANCE
OFFERS.**

Section 102.45 of the Rules and Regulations defines the remedial aspects of an administrative law judge's decision as "a recommendation for such affirmative action by the respondent as will effectuate the policies of the Act." While the ALJD is, generally, a recommendation to the Board, the Board's Rules and Regulations and Casehandling Manuals encourage settlement and informal resolution throughout the proceedings.

Section 102.51 of the Board's Rules and Regulations, concerning post-ALJ decision procedure before the Board, states that "[a]t any stage of a proceeding [on exceptions] prior to hearing, where time, the nature of the proceeding, and the public interest permit, all interested parties shall have opportunity to submit to the Regional Director, with whom the charge was filed, for consideration, facts, arguments, offers of settlement, or proposals of adjustment." The Casehandling Manual, Part 1, Unfair Labor Practice Proceedings, encourages counsel for the General Counsel to remain aware of circumstances affecting the remedy, including encouraging the charged party who has remedial rights to raise changed circumstances and potential remedy issues with the Regional Director. *See gen.* Sec. 10407. Regional Offices are similarly encouraged, "especially where such actions will: . . . Enhance the likelihood of obtaining meaningful compliance results more promptly." Sec. 10407.6(b). The Casehandling Manual, Part 3, Compliance Proceedings, likewise emphasizes compliance as a means "of achieving prompt and complete remedies for violations of the Act." *See e.g., id.*, 10504.1. Nowhere do the Board's Rules and Regulations or Casehandling Manuals guide Regional Offices to reject charged parties' or respondents' efforts to comply with an ALJ's decision in favor of cementing a "win" into a published Board decision.¹

D. REFUSING COMPLIANCE VIOLATES RESPONDENTS' DUE PROCESS RIGHTS.

Respondents have a due process right to have charges against them promptly resolved. This case involved collective bargaining in 2008 to succeed a 2005-2008 collective bargaining

¹ Presumably, both the Region and the Board have enough actually contested matters before them.

agreement, which culminated in a Tentative Agreement October 18, 2008. The October 2008 tentative agreement was rejected by the membership. A second Tentative Agreement was reached and signed on January 31, 2009, and later ratified. The ALJ found that Respondents failed to execute the printed booklet containing this agreement on November 12, 2009, and delayed executing the booklet until March 23, 2010. There was no dispute that the parties implemented and complied with the Tentative Agreement from the date it was ratified, notwithstanding the absence of a printed booklet.

The contract at issue in this case expires in less than a year, on September 30, 2011. Respondent Unions would like to go into negotiations having put this case to rest.

Moreover, by the filing of unnecessary exceptions, Counsel for the Acting General Counsel and the Regional Director have caused Respondents unnecessarily to expend resources dealing with the exceptions.

Respondents believe they have a due process right to submit to the ALJD in this case and that the Regional Office's proper focus and interest is, instead, in expeditious handling of this case, achieving a remedy here through settlement and compliance, and in that way effectuating the policies of the Act. Respondents submit that Counsel for the Acting General Counsel and the Regional Director do not effectuate the policies of the Act by pursuing publication here at the expense of offered compliance with a decision in which the General Counsel prevailed.

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III. CONCLUSION

Respondents respectfully request that the Board dismiss the Limited Exceptions filed by Counsel for the Acting General Counsel.

Dated: December 16, 2010

ELLEN GREENSTONE
ROTHNER, SEGALL & GREENSTONE

By *Ellen Greenstone /dm*
ELLEN GREENSTONE

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

ATTACHMENT A

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December 7, 2010

By E-mail and U.S. Mail

James F. Small, Regional Director
Irma Hernandez, Counsel for the Acting General Counsel
National Labor Relations Board
Region 21
888 South Figueroa Street, 9th Floor
Los Angeles, California 90017

Re: Utility Workers Union of America, AFL-CIO (UWUA); International Chemical Workers Union Council/UFCW (ICWUC); and the UWUA-ICWUC Joint Steering Committee (Southern California Gas Company)
Case No. 21-CB-14820

Dear Regional Director Small and Ms. Hernandez:

I write on behalf of Respondents Utility Workers Union of America, AFL-CIO (UWUA), International Chemical Workers Union Council/UFCW (ICWUC) and the UWUA-ICWUC Joint Steering Committee (JSC) in the above-referenced matter, concerning the Limited Exceptions to the Administrative Law Judge's Decision filed by Counsel for the Acting General Counsel.

As you are aware by now, Respondents have not filed exceptions to the ALJD. Respondents were, and are, prepared to comply with the Decision and Order.

With respect to the specific exceptions filed by Counsel for the General Counsel:

1) Respondents understand the holding of *Picini Flooring*, 356 NLRB No. 9 (2010). However, given the decision's express application to all pending cases (which would include this one) and the decision's recognition that posting is an issue for the compliance stage, we do not understand why an exception on this basis is necessary.

2) Respondents do not understand your exception based on the claimed failure of the ALJ to order posting at Respondents' offices and union halls, since, in fact, the ALJ ordered just that. Respondents agree that the Washington, D.C., Akron, Ohio, and Whittier, California,



December 7, 2010

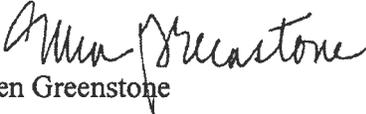
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addresses are Respondents' offices and union halls. Respondents submit that additional sites of offices and union halls would be a matter of compliance. I am informed that the remaining addresses you list in your exceptions are the private residence addresses of former and current officials of Respondents' small local unions, which do not have actual offices. I have never heard of the Board requiring posting in private homes, but, again, the Region's desire to require such posting would be a compliance issue.

3) Respondents do not object and will agree to correction of the date in the Notice in compliance.

Accordingly, if you would like to withdraw the exceptions and move directly to compliance, Respondents are ready.

Very truly yours,


Ellen Greenstone

EG/dm

cc: Randall Vehar
Art Frias
Sam Weinstein
John Lewis

ATTACHMENT B



**United States Government
NATIONAL LABOR RELATIONS BOARD**

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888 South Figueroa Street, Ninth Floor

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December 9, 2010

Sent by E-mail and U.S. Mail

Ellen Greenstone, Attorney at Law

Rothner, Segall & Greenstone

510 South Marengo Avenue

Pasadena, CA 91101-3115

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Re: Utility Workers Union of America,
AFL-CIO et al.
21-CB-14820

Dear Ms. Greenstone:

The Region has received your letter of December 7, 2010, regarding the Administrative Law Judge's decision in the above-captioned case. We have considered your proposals, but are declining to withdraw the limited exceptions filed with the Board. Beyond the remedial issues and the date correction raised in the limited exceptions, the Region believes that there are important precedent-setting issues in the case, making it worthy of review and publication by the Board.

If you have any questions concerning this matter, please contact me at (213) 894-5236.

Very truly yours,

Irma Hernández

Counsel for the Acting General Counsel

CC: Sent by Email Only

A. Randall Vehar, Attorney at Law

International Chemical Workers Union Council/

United Food and Commercial Workers

Email: rvehar@icwuc.org; rvehar@ufcw.org

CERTIFICATE OF SERVICE

I hereby certify that on the 16th day of December, 2010, a copy of the foregoing MOTION OF RESPONDENTS UTILITY WORKERS UNION OF AMERICA, AFL-CIO AND UWUA-ICWUC JOINT STEERING COMMITTEE TO DISMISS COUNSEL FOR THE ACTING GENERAL COUNSEL'S LIMITED EXCEPTIONS TO ADMINISTRATIVE LAW JUDGE'S DECISION was sent by email and by regular U.S. Mail to the following persons and was filed electronically with the Board's San Francisco Office of the Division of Judges:

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