

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
Washington D.C.

UTILITY WORKERS UNION OF AMERICA,  
AFL-CIO (UWUA); INTERNATIONAL CHEMICAL  
WORKERS UNION COUNCIL-UFCW (ICWUC); AND  
THE UWUA-ICWUC JOINT STEERING COMMITTEE

and

Case 21-CB-14820

SOUTHERN CALIFORNIA GAS COMPANY

COUNSEL FOR THE ACTING GENERAL COUNSEL'S OPPOSITION TO  
THE 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

Counsel for the Acting General Counsel (General Counsel) moves that the Board deny the motion of Respondents Utility Workers Union of America, AFL-CIO (UWUA) and UWUA-ICWUC Joint Steering Committee (JSC) to dismiss the General Counsel's limited exceptions, because the Rules and Regulations of the National Labor Relations Board, Series 8, as amended (Board Rules), contain no provision permitting the filing of that motion. In addition, a Board order should issue that accurately reflects the Board's new policies regarding electronic postings, as set forth in J. Picini Flooring, 356 NLRB No. 9 (October 22, 2010), and that correctly designates the proper locations for the notice posting.

## **I. Procedural Background.**

1. This case was heard by Administrative Law Judge Mary Miller Cracraft (ALJ) pursuant to an Amended Complaint and Notice of Hearing dated June 4, 2010. The ALJ issued her Decision and recommended order on November 4, 2010, and found that Respondents violated Section 8(b)(3) of the Act, by failing and refusing to sign the collective-bargaining agreement submitted to them on November 12, 2009, and by delaying, until March 23, 2010, the signing of the collective-bargaining agreement submitted to them on November 12, 2009.

2. On December 2, 2010, the General Counsel timely filed limited exceptions and a brief in support of limited exceptions. The limited exceptions address, in part, the ALJ's failure to order Respondents to distribute notices electronically if Respondents communicate with employees by such means, and the ALJ's failure to require Respondents to post the notice at their offices and union halls beyond those located in Los Angeles, California.

3. On December 16, 2010, Respondents UWUA and JSC filed a motion to dismiss the General Counsel's limited exceptions (the motion to dismiss).

## **II. The Motion to Dismiss is Improperly Filed.**

The General Counsel moves that the Board deny the motion to dismiss because the Board Rules contain no provision permitting the filing of that motion. Section 102.46 of the Board Rules allow the filing of exceptions with the Board, and "a party opposing the exceptions may file an answering brief to the exceptions." The Board Rules contain no provision for the filing of a motion to dismiss another party's exceptions. And Respondents UWUA and JSC have cited no authority permitting the filing of their motion.

**III. A Board Order Requiring Respondents to Distribute Notices Electronically is Proper Under J. Picini Flooring.**

The ALJ's recommended order fails to include a requirement that Respondents distribute notices electronically if Respondents communicate with employees by such means. Contrary to Respondents' assertions, the General Counsel's limited exceptions are necessary and important in light of the Board's new policy concerning electronic posting of notices set forth in J. Picini Flooring, 356 NLRB No. 9 (October 22, 2010).

Respondents represent a unit of about 5,600 employees at the Employer. (ALJD 3:5-8). The size of the unit and other record evidence, including the number of local unions involved in the JSC, suggest that it is likely that Respondents communicate with represented employees by electronic means. However, in a letter dated December 14, 2010, and addressed to the Regional Director of Region 21, Respondents state that remaining issues such as "showing that Respondents do not communicate with their membership by electronic means . . . must be dealt with in compliance."<sup>1</sup> In their motion to dismiss, Respondents also express their desire to resolve the electronic-posting issue through compliance proceedings.

But, under the current recommended order, there would be no basis for a compliance hearing on the electronic-posting issue because the recommended order does not include an electronic-posting requirement. A Board order containing an electronic-posting provision is a necessary prerequisite for Region 21 to initiate a compliance proceeding to resolve any dispute relating to that issue. Likewise, a Board order requiring Respondents to post the notice at locations beyond Los Angeles, California, is necessary before the Regional Director of Region 21 can initiate a compliance proceeding to resolve any disputes regarding that matter.

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<sup>1</sup> A copy of this letter is attached as Exhibit A.

Since the posting requirement is the primary obligation for Respondents under the recommended order, these issues should be properly addressed now in a Board decision and order. Further, a proper Board order will likely obviate the need for any subsequent compliance proceeding. Therefore, Respondents' motion to dismiss should be denied.

**IV. Conclusion.**

Based on the foregoing, the General Counsel submits that the Board's consideration of the General Counsel's limited exceptions is appropriate. Therefore, Respondents' motion to dismiss should be denied in its entirety.

Respectfully submitted,



Irma Hernández, Counsel for the Acting General Counsel  
National Labor Relations Board, Region 21  
888 South Figueroa Street, Ninth Floor  
Los Angeles, CA 90017

Dated at Los Angeles, California, this 22nd day of December, 2010.

## STATEMENT OF SERVICE

I hereby certify that a copy of the Counsel for the Acting General Counsel's Opposition to the 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 in Case 21-CB-14820 was submitted by E-Filing to the Office of the Executive Secretary of the National Labor Relations Board, on December 22, 2010. The following parties were served with a copy of the same document by electronic mail.

Randall Vehar, Assistant General Counsel  
International Chemical Workers Union Council-UFCW  
[rvehar@icwuc.org](mailto:rvehar@icwuc.org); [vehar@ufcw.org](mailto:vehar@ufcw.org)

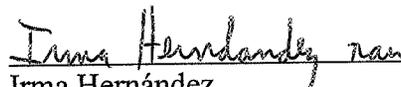
Robert W. Lowrey, Attorney at Law  
International Chemical Workers Union Council-UFCW  
[rwl2168@ufcw.org](mailto:rwl2168@ufcw.org)

Ellen Greenstone, Attorney at Law  
Rothner, Segall & Greenstone  
[egreenstone@rsgllabor.com](mailto:egreenstone@rsgllabor.com)

Christopher Bissonnette, Senior Counsel  
Southern California Gas Company  
[cbissonnette@sempra.com](mailto:cbissonnette@sempra.com)

Linda Van Winkle Deacon, Attorney at Law  
Bate, Peterson, Deacon, Zinn & Young LLP  
[ldeacon@bpdzylaw.com](mailto:ldeacon@bpdzylaw.com)

Respectfully submitted,

  
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Irma Hernández  
Counsel for the Acting General Counsel  
National Labor Relations Board, Region 21

# **EXHIBIT A**

**ROTHNER, SEGALL & GREENSTONE**  
**ATTORNEYS**

510 SOUTH MARENGO AVENUE  
PASADENA, CALIFORNIA 91101-3115

GLENN ROTHNER  
ANTHONY R. SEGALL  
ELLEN GREENSTONE  
JEAN SHIN

MICHELE S. ANCHETA  
RICHAR AMAR  
JONATHAN COHEN  
JOSHUA ADAMS  
MARIA KEEGAN MYERS

TELEPHONE:  
(626) 796-7555

FACSIMILE:  
(626) 577-0124

WEBSITE:  
WWW.RSGLABOR.COM

December 14, 2010

**By E-mail and U.S. Mail**

James F. Small, Regional Director  
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:

Thank you for your letter yesterday. I'm not sure I quite understand it. We believe that, Respondents having agreed to correct the Notice, having agreed that electronic posting according to the Board's decision in *Picini Flooring* is now part of the normal remedy, and having agreed to post in union offices and halls outside of Los Angeles, *not* pursuing exceptions would serve the interest in administrative expediency and would conserve the Agency's limited resources.

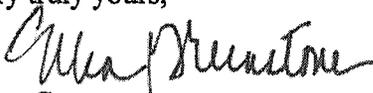
Presently, we plan to file a motion to dismiss the limited exceptions on behalf of our clients on the ground that, given Respondents' offer, there is nothing for the Board to decide. Any issues remaining, *i.e.*, posting in individual homes and showing that Respondents do not communicate with their membership by electronic means, must in our view be dealt with in compliance because there is no record on these factual matters in the case itself. The motion will further be based on the grounds that the Board's Rules and Regulations and Casehandling Manuals encourage settlement and informal resolution at the Regional level even after cases have been transferred to the Board and that, given Respondents' own interest in conserving resources and in putting this case behind them before bargaining begins for yet a new agreement in a few months, not allowing compliance now with the ALJ's Decision infringes Respondents' due process rights. For these reasons, we again request that the limited exceptions be withdrawn.



December 14, 2010  
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Thank you for your attention to this.

Very truly yours,

  
Ellen Greenstone

EG/dm

cc: Randall Vehar  
Art Frias  
Sam Weinstein  
John Lewis  
Sam McKnight