

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 RESPONDENT INTERNATIONAL CHEMICAL  
WORKERS UNION COUNCIL-UFCW TO DISMISS AND/OR STAY 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 Respondent International Chemical Workers Union Council-UFCW (Respondent ICWUC) to dismiss and/or stay 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 be issued that accurately reflects the Board's new policies regarding electronic postings 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 before 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 on November 4, 2010, and found that Respondent ICWUC,

Respondent Utility Workers Union of America, AFL-CIO (UWUA), and Respondent UWUA-ICWUC Joint Steering Committee (JSC), (collectively 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 Acting 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 their members 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 UWUA/JSC motion), and on December 22, 2010, the General Counsel filed an opposition to that motion. On January 6, 2011, Respondents UWUA and JSC filed a reply to the General Counsel's opposition to the UWUA/JSC motion, and an opposition to the General Counsel's limited exceptions.

4. On January 6, 2011, Respondent ICWUC filed the instant motion to dismiss and/or stay the General Counsel's limited exceptions, and an opposition to the General Counsel's limited exceptions (the ICWUC's motion).

## **II. Respondent ICWUC's Motion is Improperly Filed and Contains Improper Exhibits.**

Respondent ICWUC's motion should be denied because the Board Rules contain no provision permitting the filing of that motion. Section 102.46 of the Board Rules states that "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 and/or to stay another party's

exceptions. Respondent ICWUC has cited no authority permitting the filing of its motion or permitting it to attach its post-trial brief to the motion.

It is inappropriate for Respondent ICWUC to attach its post-trial brief to its motion, particularly when its counsel writes that Respondent ICWUC is not filing cross-exceptions.<sup>1</sup> In the absence of cross-exceptions, Respondent ICWUC cannot request a review of the ALJ's decision. Accordingly, the entire post-trial brief and the five paragraphs in footnote 1 of the ICWUC's motion should be struck or disregarded by the Board. The post-hearing brief is not part of the record before the Board under the Board Rules (Section 102.45(b)), and given Respondent ICWUC's admission that it is not filing cross-exceptions, there is no reason for the Board to consider the brief or the assertions set forth in footnote 1 of the motion.

Furthermore, in her decision, the ALJ granted the General Counsel's motion to strike Appendices A, B, and C, which were attached to Respondent ICWUC's post-trial brief to the ALJ, and all arguments in the brief related to these documents. (ALJD 14: 35 – 15: 11).<sup>2</sup> Therefore, the General Counsel moves that the Board deny Respondent ICWUC's motion in its entirety, and moves to strike footnote 1 of the motion and all documents attached to the 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 their members 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).

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<sup>1</sup> The time for filing cross-exceptions has expired.

<sup>2</sup> All citations to the ALJ's decision will be referred to as "ALJD" followed by the page number, and then the line number(s).

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. In addition, in footnote 2 of its motion, Respondent ICWUC admits that it communicates with its members by electronic means on various occasions. Nevertheless, in the same footnote, Respondent ICWUC argues that it does not customarily communicate with members by e-mail.

Similar to Respondents UWUA and JSC, Respondent ICWUC suggests that the electronic-posting issue should be resolved in a compliance proceeding. As previously noted by the General Counsel in its December 22, 2010 opposition to the UWUA/JSC motion, under the current recommended order, there would be no basis for a compliance hearing on the electronic-posting issue since the recommended order fails to include an electronic-posting requirement. A Board order with an electronic-posting provision is a necessary prerequisite for Region 21 to initiate a compliance proceeding to resolve any dispute related to that issue.

Likewise, a Board order requiring Respondents to post the notice at all appropriate locations beyond Los Angeles, California, is necessary before Region 21 can initiate a compliance proceeding to resolve any disputes regarding that matter. There is no record evidence to support Respondent ICWUC's claim that certain addresses where the General Counsel is seeking to have the notice posted are private residences. But the record evidence does show that Respondents all have offices in locations outside of Los Angeles, California.<sup>3</sup> Thus, the order should require the posting of the notice at those locations as well. The appropriate

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<sup>3</sup> For example, Respondent ICWUC has its main office in Akron, Ohio; Respondent UWUA has its main office in Washington D.C.; and Respondent JSC has its main office in Whittier, California. See General Counsel's trial exhibits 1(a) -1(c), 1(e), 1(g) -1(i), and 1(k).

locations for posting can be determined during a compliance proceeding, if necessary.

Therefore, Respondent ICWUC's motion should be denied on this issue as well.

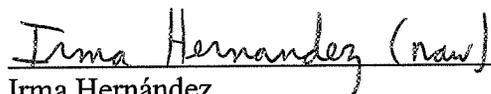
Given that a proper Board order is a prerequisite to initiating a compliance proceeding, the suggestion that the General Counsel's exceptions should be stayed pending completion of compliance is illogical, and should be rejected.

As previously mentioned, 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.

#### **IV. Conclusion**

Based on the aforementioned, the General Counsel respectfully submits that the Board's consideration of the General Counsel's limited exceptions is appropriate. Therefore, Respondent ICWUC's motion should be denied in its entirety.

Respectfully submitted,

  
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Dated at Los Angeles, California, this 20th day of January, 2011

STATEMENT OF SERVICE

I hereby certify that a copy of the Counsel for the Acting General Counsel's Opposition to the Motion of Respondent International Chemical Workers Union Council-UFCW to dismiss and/or Stay 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 January 20, 2011. The following parties were served with a copy of the same document by electronic mail.

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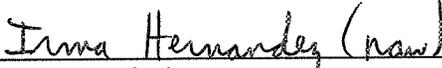
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Respectfully submitted,

  
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