

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SEVENTH REGION**

COMAU, INC.

Respondent Employer

and

**Cases 7-CA-52614
and 7-CA-52939**

**AUTOMATED SYSTEMS WORKERS LOCAL 1123,
affiliated with CARPENTERS INDUSTRIAL
COUNCIL, UNITED BROTHERHOOD OF
CARPENTERS AND JOINERS OF AMERICA
Charging Party**

and

**COMAU EMPLOYEES ASSOCIATION (CEA)
Party in Interest**

**COMAU EMPLOYEES ASSOCIATION (CEA)
Respondent Union**

and

Case 7-CB-16912

**AUTOMATED SYSTEMS WORKERS LOCAL 1123,
affiliated with CARPENTERS INDUSTRIAL
COUNCIL, UNITED BROTHERHOOD OF
CARPENTERS AND JOINERS OF AMERICA
Charging Party**

**RESPONDENT UNION CEA'S
MOTION FOR RESCISSION AND RECONSIDERATION**

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Respondent Union, Comau Employees Association (CEA), respectfully moves that the National Labor Relations Board rescind its January 3, 2012 Decision and Order in this matter, and reconsider its decision de novo, because of extraordinary circumstances resulting in material and prejudicial error in the consideration of this case.

Respondent CEA timely filed Exceptions to the Decision of the Administrative Law Judge, together with a Brief in Support of Exceptions. That filing, and its timeliness, is confirmed by the Board's own docketing statement as well as by the Confirmation generated by the NLRB E-Filing System, a copy of which is attached as Exhibit A. The fact of the filing and its timeliness are not in dispute.

However, the Decision and Order states at least twice that the CEA had not filed exceptions to the judge's decision. That incorrect statement is made in footnote 1 of the majority opinion, and in footnote 2 of the dissenting opinion of Member Hayes. It is clear that the Board was not made aware of the CEA's Exceptions and Brief, and reached its decision without consideration, or even awareness, of the CEA's arguments or Exceptions.

While it appears that this denial of due process was inadvertent and unintentional, it nevertheless resulted in serious prejudice to the CEA and in the denial of its appellate rights under the National Labor Relations Act. Fortunately, there is a readily-available remedy, namely to rescind the January 3, 2012 Decision and Order and to reconsider the matter de novo, this time including consideration of the CEA's exceptions and supporting brief (as well as consideration of the CEA's Answering Brief In Opposition to the Counsel for the Acting General Counsel's Cross-Exceptions, which was also timely filed but the status of which was not clear in the Decision and Order). This is the remedy for which the CEA now moves.

The CEA recognizes that the Board is already aware of this error, and further recognizes that, in the interests of justice, the Board will undoubtedly rescind its January 3 decision and resubmit the entire record, including the CEA's exceptions and briefs, to the Board for reconsideration de novo. Indeed, in a conversation with the CEA's counsel shortly after the error was discovered, the Board's Associate Executive Secretary, Henry S. Breiteneicher, indicated his expectation that the Board would do so. The error had already been brought to his attention by Region 7's Deputy Regional Attorney, Amy J. Roemer. She had been advised of it by Counsels for the General Counsel Darlene Haas Awada and Sarah Pring Karpinen, who have represented the General Counsel throughout this matter. In light of the fact that everyone connected with the Board has acted promptly and appropriately with regard to this error, the CEA is confident that the Board will do so as well.

But this case does not exist in a vacuum. The CEA is aware that there are those who object to the recess appointments of Members Block, Flynn and Griffin and who have threatened to initiate legal action challenging those appointments and, consequently, the authority of the Board to act. Despite the apparent validity of the appointments, it is impossible to predict the course of such litigation or to be certain of its effects. The CEA therefore submits this Motion, not only to ask the Board to act, but also out of an abundance of caution, in order to avoid even the smallest risk that the hypothetical litigation could impact the validity of a rescission and that the passage of time would then affect the right of the CEA to seek such relief from the Board as it may be constituted in the future.

REQUEST FOR RELIEF

For all of these reasons, the CEA respectfully requests that the National Labor Relations Board rescind its January 3, 2012 Decision and Order in this matter, and that the entire record be submitted to the Board, as currently constituted, for reconsideration de novo.

Respectfully submitted,

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Dated: January 13, 2012



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Confirmation Number: 211772

Date Submitted: 2/14/2011 5:11:07 PM (GMT-05:00) Eastern Time (US & Canada)

Office: Office of Executive Secretary

Case Information

Case Number: 07-CB-016912

Case Name: Comau Employees Association (Comau, Inc.)

Role: Charged Party / Respondent

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Attached E-File(s)

Exceptions to ALJD
 CEA Exceptions - final.pdf

Brief in Support of Exceptions
 CEA Brief in Support of Exceptions - final.pdf

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PROOF OF SERVICE

I hereby certify that on January 13, 2012 I caused to be served via electronic mail a copy of the following: **Respondent Union CEA's Motion for Rescission and Reconsideration** and this **Proof of Service** upon the following (see attached):



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