

UNITED STATES OF AMERICA
BEFORE
THE NATIONAL LABOR RELATIONS BOARD

ROAD SPRINKLER FITTERS UNITED :
ASSOCIATION OF JOURNEYMEN AND :
APPRENTICES OF THE PLUMBING AND :
PIPE FITTING INDUSTRY OF THE UNITED :
STATES, AND CANADA, AFL-CIO, :
LOCAL UNION NO. 669, :

and :

COSCO FIRE PROTECTION, INC., :

and :

Case No. 21-CE-374

NATIONAL FIRE SPRINKLER ASSOCIATION, :

Party in Interest, :

and :

FIRETROL PROTECTION SYSTEMS, INC., :

Party in Interest. :

.....

**RESPONDENT LOCAL 669's MOTION
FOR SUMMARY JUDGMENT**

Respondent Road Sprinkler Fitters Local Union No. 669, U.A., AFL-CIO ("Local 669" or "the Union"), by its undersigned counsel, hereby submits this Motion for Summary Judgment, pursuant to Section 102.50 of the NLRB Rules and Regulations and Rule 56(c) of the Federal Rules of Civil Procedure.

As we show below: (i) the material facts are undisputed, the issues raised are questions of law and no hearing is warranted; (ii) the General Counsel's allegation that the authorization card check/neutrality clause recently added to Addendum C of the Local 669/NFSA 2007-2010 national agreement, cited in paragraph 9(a) of the Complaint, violates Section 8(e) of the National Labor Relations Act ("NLRA" or "the Act") is clearly erroneous as a matter of law; and (iii) the Complaint should be dismissed in its entirety. See Dennison Nat'l Co., 296 NLRB 169, 169-71 (1989) (dismissing Complaint on Respondent's motion for summary judgment); Manville Forest Products Corp., 269 NLRB 390, 391 (1984) (same).

MATERIAL UNDISPUTED FACTS

1. Local 669 is a national local union representing construction workers in the fire protection industry, affiliated with the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, AFL-CIO; Local 669's territorial jurisdiction extends to 46 states and the District of Columbia, and the Union is a "labor organization" within the meaning of the Act. Complaint ¶¶8.

2. Local 669 conducts collective bargaining on a national, multi-employer basis with the National Fire Sprinkler Association ("NFSA"); the parties' most recent national agreement is the 2007-2010 national agreement ("the 2007-2010 national agreement"). Attachment 1 hereto. Complaint ¶¶ 6, 9(a). The NFSA and its employer-members are

employers engaged in commerce within the meaning of the Act.

Complaint ¶¶6(c).

Cosco Fire Protection, Inc. ("Cosco"), the Charging Party herein, is one of hundreds of fire protection contractors who are members of, and are represented by the NSFA in its national collective bargaining negotiations with Local 669, and was a member of the NFSA Negotiating Committee for the 2007-2010 national agreement. Complaint ¶¶3; Attachment 1. Cosco is an employer engaged in commerce within the meaning of the Act. Complaint ¶¶ 3.

3. For many years, prior national multi-employer collective bargaining agreements between Local 669 and the NFSA contained the following language, formerly found at Article 3 and now included as part of Addendum C:

In order to protect and preserve for the employees covered by this Agreement all work historically and traditionally performed by them, and in order to prevent any device or subterfuge to avoid the protection or preservation of such work, it is hereby agreed as follows: If and when the Employer shall perform any work of the type covered by this Agreement as a single or joint Employer (which shall be interpreted pursuant to applicable NLRB and judicial principles) within the trade and territorial jurisdiction of Local 669, under its own name or under the name of another, as a corporation, sole proprietorship, partnership or any other business entity including a joint venture, wherein the Employer (including its officers, directors, owners, partners or stockholders) exercises either directly or indirectly (such as through family members) controlling or majority ownership, management or control over such other entity, the wage and fringe benefit terms and conditions of this Agreement shall be applicable to all such work performed on or after the effective date of this Agreement. The question of single Employer status shall be determined under applicable NLRB and judicial principles, i.e., whether there exists between

the two companies an arm's length relationship as found among unintegrated companies and/or whether overall control over critical matters exists at the policy level. A joint Employer, under NLRB and judicial principles, is two independent legal entities that share, codetermine, or meaningfully affect labor relations matters.

Should the Employer establish or maintain such other entity within the meaning of the preceding paragraph, the Employer is under an affirmative obligation to notify the Union of the existence and nature of and work performed by such entity and the nature and extent of its relationship to the signatory Employer. The supplying of false, misleading, or incomplete information (in response to a request by the Union) shall not constitute compliance with this section. The union shall not unreasonably delay the filing of a grievance under this Article.

Particular disputes arising under the foregoing paragraphs shall be heard by one of four persons to be selected by the parties (alternatively depending upon their availability) as a Special Arbitrator. The arbitrator shall have the authority to order the Employer to provide appropriate and relevant information in compliance with this clause.

It is the intention of the parties hereto that this clause be enforced to the fullest extent permitted by law and that, because this conforms with the parties original intent, it shall apply to all pending and future grievances.

It is not intended that his Article be the exclusive source of rights or remedies which the parties may have under State or Federal Laws.

Attachment 2, p. 5.

The Complaint does *not* allege that the foregoing contractual provision is unlawful. To the contrary, this provision has repeatedly been upheld by the NLRB and by the Courts as lawful.¹

¹ See Virginia Sprinkler Co. v. Road Sprinkler Fitters Local 669, 868 F.2d 116, 121 (4th Cir. 1989); Road Sprinkler Fitters Local 669 v. Cosco Fire Protection, Inc., 363 F.Supp. 2d 1220, 1225-26 (C.D. Cal. 2005); Road Sprinkler Fitters Local 669 v. Northstar Fire Protection Co., 844 F.Supp.

4. The parties added new language in the 2007-2010 national agreement, in addition to the aforementioned language formerly located at Article 3, and relocated both provisions to Addendum C to the 2007-2010 national agreement. The new language, which provides, *inter alia*, for authorization card check-based recognition, is the subject of the instant charges:

In the event that the Union files, or in the past has filed, a grievance under Article 3 of this or a prior National Agreement, and the grievance has not been sustained, the Union may proceed under the following procedures with respect to the contractor involved in the grievance.

Should the Employer establish or maintain operations that are not signatory to this Agreement, under its own name or another or through another related business entity to perform work of the type covered by this Agreement within the Union's territorial jurisdiction, the terms and conditions of this Agreement shall become applicable to and binding upon such operations at such time as a majority of employees of the entity (as determined on a state-by-state, regional or facility-by-facility basis consistent with NLRB unit determination standards) designates the Union as their exclusive bargaining representative on the basis of their uncoerced execution of authorization cards, pursuant to applicable NLRB standards, or in the event of a good faith dispute over the validity of the authorization cards, pursuant to a secret ballot election under the supervision of a private independent third party to be designated by the Union and the NFSA within thirty (30) days of ratification of this Agreement. The Employer and the Union agree not to coerce employees or to otherwise interfere with employees in their decision whether or not to sign an authorization card and/or to vote in a third party election.

Particular disputes arising under the foregoing paragraphs shall be heard by one of four persons to be selected by the parties (alternatively depending upon their availability) as a Special Arbitrator. The Arbitrator shall have the authority to order the

851, 853-54 (N.D. Tex. 1986). See also Road Sprinkler Fitters Local 669 (Cosco Fire Protection, Inc.), Case No. 21-CE-370-1, Decision of the Office of Appeals, March 23, 2005. Attachment 3.

Employer to provide appropriate and relevant information in compliance with this clause. The Special Arbitrator shall also have authority to confirm that the Union has obtained an authorization card majority as provided in the preceding paragraph.

Because the practice of double-breasting is a source of strife in the sprinkler industry that endangers mutual efforts to expand market share for union members and union employers, it is the intention of the parties hereto that this clause be enforced to the fullest extent permitted by law.

Attachment 1, pp. 50-51. Complaint ¶¶ 9(a), (b).

The 2007-2010 national agreement further provides, at Article 31:

In accordance with the intent and agreement of the parties, the provisions of this Collective Bargaining Agreement shall be interpreted and construed in a manner which is consistent with all applicable Federal and State laws.

Attachment 1, p. 41.

5. On or about July 10, 2007, several months after the 2007-2010 national agreement was consummated, Cosco filed the instant unfair labor practice charges alleging that the new language negotiated in the 2007-2010 national agreement violated Sections 8(b)(1)(A) and 8(e) of the Act. Attachment 4 hereto.

6. During the course of the General Counsel's year long consideration of Cosco's charges, Local 669 repeatedly and emphatically denied that the new language in Addendum C at issue had any object or purpose, or could conceivably be enforced to cause Cosco, or any signatory employer, to "cease doing business" with any other employer. On July 15, 2008, the Union memorialized that disclaimer in a letter to the NFSA. Attachment 5 hereto.

7. On July 29, 2008, the General Counsel issued the instant Complaint alleging that the new language in the 2007-2010 national agreement violated Section 8(e) of the Act. Complaint ¶¶ 9(b), 10.

The General Counsel's central allegation is that the contractual language cited in paragraph 9(b) of the Complaint represents "an agreement in which the NFSA and its employer-members, including Cosco, have agreed not to do business with any other employer or person." Complaint ¶9(c).

The General Counsel seeks a remedy in this case "requiring Respondent to rescind Addendum C" of the 2007-10 national agreement, in its entirety, including *both* the newly negotiated language cited in the Complaint as allegedly violative of Section 8(e) of the Act *and* the preexisting contractual language that was not alleged to be unlawful in the Complaint and that, as noted above, has been consistently upheld by the Board and the Courts as lawful. Complaint, p.5.

Cosco's Section 8(b)(1)(A) charges were dismissed.

7. On August 11, 2008, the Union timely filed its Answer to the Complaint.

ARGUMENT

This case presents a question of law -- whether, under NLRA precedent, the contract language at issue is "clearly unlawful on its face" -- and the disposition of the Complaint does not necessitate or even permit the adjudication of specific facts other than those set forth above. See,

e.g., Central Pennsylvania Regional Council of Carpenters (Novinger's Inc.), 337 NLRB 1030, 1030 (2002) (where contract language is alleged to violate NLRA Section 8(e) on its face, it is unnecessary for the Board to address contextual factual issues.)

1. The Newly Negotiated Provision in Addendum C of the 2007-2010 Local 669/NFSA National Agreement Is A Lawful Card Check/Neutrality Clause Under *Heartland Industrial Partners, LLC*

A. Frame of Legal Reference

To reiterate, the new language in Addendum C is on its face a card check/neutrality clause providing a contractual process by which unrepresented sprinkler fitters can voluntarily determine for themselves, by uncoerced majority rule, whether or not they wish to be represented by the Union and covered by the terms of the national agreement. The language was modeled after clauses affirmed as lawful under longstanding non-construction industry NLRB case law and negotiated through nationwide multi-employer collective bargaining negotiations in which Cosco participated as both a member of the NFSA bargaining unit *and* as a member of the NFSA Negotiation Committee.

In the construction industry, there are at least three *different* types or categories of contract clauses each of which is governed by *different* rules of construction under Section 8(e) of the Act:

- Subcontracting clauses prohibiting or limiting a signatory employer's ability to subcontract bargaining unit work. E.g., *Woelke & Romero Framing v. NLRB*, 456 U.S. 645, 666 (1982);

- So-called “anti-dual shop” clauses governing a signatory contractor’s ongoing relationships with commonly owned/controlled non-signatory affiliates, as in Southeast Ohio District Council of Carpenters (Allesio Construction Co., Inc.), 310 NLRB 1023 (1993), and Painters District Council 51 (Manganero Corp.), 321 NLRB 158 (1996); and
- Authorization card check/neutrality clauses, which are more prevalent *outside* the construction industry, requiring authorization card recognition authorized under the Board’s decisions such as Houston Div. of Kroger Co., 219 NLRB 388 (1975), and dating back to NLRB and Supreme Court decisions in the 1960’s. E.g., Snow & Sons, 134 NLRB 709 (1961), enfd 308 F.2d 687 (9th Cir; 1962), as cited in NLRB v. Gissel Packing Co., 395 U.S. 575, 593 (1969). The Board has recently confirmed that authorization card check/neutrality clauses *do not* violate the “cease doing business” prohibition in Section 8(e) of the Act. Heartland Industrial Partners LLC (United Steelworkers of America), 348 NLRB No. 72 (2006).

These three different categories of contract clauses invoke different analyses and raise different issues under NLRA Section 8(e):

subcontracting clauses raise issues including whether they are confined to “onsite” construction work and whether they allow “self-help” enforcement, and/or are permissible under the proviso to Section 8(e) of the Act, while so-called anti-dual shop clauses are evaluated on whether the clause is unlawfully “calculated to cause [the Employer] to sever its ownership relationship with affiliated firms that seek to remain nonunion or to forebear from forming such relationships with such firms,” and such clauses are generally *not* protected by the proviso to Section 8(e), at least under current Board law. Allesio, 310 NLRB at 1025-29. Neither the subcontracting or dual shop Section 8(e) case law is applicable here.

This case centers upon the authorization card check/neutrality

provision added to Addendum C, the only language alleged as unlawful in the Complaint. Less than two years ago, the Board in Heartland *rejected* the General Counsel’s argument that anti-dual shop Section 8(e) case law, such as Allessio and Manganero, should govern as precedent for determining whether authorization card check/neutrality clauses embody a “cease doing business” object proscribed by NLRA Section 8(e):

The Board has found that clauses that prohibit a signatory from being affiliated with a nonunion contractor violate Section 8(e). [citing Allessio]. Contrary to the argument advanced by the General Counsel, these cases are distinguishable and do not support finding a cease doing business object here. Heartland, slip op. at 3.

The Board then proceeded to hold that the authorization card check/neutrality clause in that case *did not* embody a “cease doing business” object proscribed by NLRA Section 8(e). Id., slip op. at 4-5.

B. Under *Heartland* and Its Antecedents, The Disputed Language In Addendum C Is Lawful

It is now settled Board law, under cases including Kroger and Heartland, that authorization card check/neutrality clauses are both lawful and mandatory subjects of bargaining even where, in contrast to the provision at issue here, the requirement of an affirmative authorization card majority showing among unit employees is not affirmatively and expressly stated in the contractual language and is only implied by the Board. Kroger Co., 219 NLRB at 389.

The issue in Heartland, as framed by the Board majority, was whether the authorization card check/neutrality clause in that case

“establishe[d] a prohibited cease doing business object because it operate[d] as a restriction on Heartland’s investments.” Slip op. at 3. In his dissenting opinion, former Chairman Battista framed the issue in terms of whether the contractual requirement that a company purchased by Heartland “must accept neutrality and card-check recognition” was such an “extremely onerous condition” as to constitute a “cease doing business” within the prohibition of NLRA Section 8(e). *Id.* at 6. Regardless of how the issue is formulated, the Board *rejected* the General Counsel’s argument that the clause was governed by anti-dual shop cases such as Allessio and further rejected the General Counsel’s contention that authorization card check neutrality clauses violate NLRA Section 8(e). *Id.* at 3, 5-6.

In comparison to the clause in Heartland, the authorization card check/neutrality clause at issue in this case is even more plainly lawful:

- The signatory entity in Heartland was “an investment firm that invests in manufacturing firms” (slip op. at 1), and was *not* even an employer under that Act, let alone one of hundreds of construction industry employers in the NFSA’s nationwide multi-employer bargaining unit inclusive of thousands of construction workers whose bargaining unit work was legitimately in need of “preservation.”
- The contractual language at issue here, on its face, expressly confirms the understanding of both parties to the agreement that the instant provision has an express, mutually agreed upon, and *primary* “work preservation” purpose that was *not* present in Heartland:

Because the practice of double-breasting is a source of strife in the sprinkler industry that endangers mutual efforts to expand market share for *union-members and union*

employers, it is the intention of the parties hereto that the clause be enforced to the fullest extent permitted by law. Attachment 1, p. 5 (emphasis supplied).

- Although neither the clause in Heartland nor the clause in question here “require[s] [a signatory entity] to sever its relationship” with a related business entity (Heartland, slip op at 4), the arbitrator’s potential authority in this case is even more circumscribed than was the case in Heartland: “The arbitrator shall have the authority to order the employer to prove appropriate and relevant information in compliance with this clause [and]... to confirm that the Union has obtained an authorization card majority...” Attachment 1, p. 51.

Accordingly, the Board’s recent decision in Heartland governs here and refutes the legal contentions in the General Counsel’s Complaint.

2. The Newly Negotiated Provision in Addendum C Is Not “Clearly Unlawful On Its Face”

As a general matter, under settled Section 8(e) principles, it is incumbent upon the General Counsel to demonstrate that the allegedly unlawful contractual language at issue is “*clearly* unlawful in its face.”

Heartland, supra, slip op. at 4 (emphasis in original), quoting General Teamsters Local 982 (J.K. Barker Trucking Co.), 181 NLRB 515, 517

(1970), aff’d 450 F.2d 1322 (D.C. Cir. 1971). Such a burden can not be sustained by the General Counsel here given:

- the absence of even an arguable “cease doing business” object or purpose embodied anywhere in the language of the authorization card check/neutrality clause in dispute;
- the Union’s formal, affirmative and unconditional disclaimer of such an object (Attachment 5); and
- the existence of not one but two contractual provisions, *not* present in Heartland, affirmatively requiring that the

language at issue be interpreted and applied lawfully, i.e., *only* “to the fullest extent permitted by law” (Attachment 1, pp. 50-51) and requiring that the language “shall be interpreted and construed in a manner which is consistent with all Federal and State laws.” Attachment 1, p.41.

In other words, even giving the General Counsel the benefit of the doubt, the authorization card check/neutrality clause in Addendum C “is not clearly unlawful on its face.” J.K. Barker, supra, 181 NLRB at 517, Heartland, supra, slip op. at 4. Accordingly, under settled Board law, the Complaint should be dismissed on the basis that the disputed clause is properly interpreted “to require no more than what is allowed by law.” Id.

3. The General Counsel’s Remedial Theory Violates Well Settled NLRA Principles

Rather than follow NLRB case law and conclude that the newly negotiated language in Addendum C should be interpreted as lawful and as “to require no more than what is allowed by law,” J.K. Barker, supra, 181 NLRB at 517, the General Counsel has attempted to effect a wholesale rescission of Addendum C of the 2007-10 National Agreement -- in its entirety -- including *both* the newly negotiated authorization card check/neutrality clause specifically alleged in paragraph 9(b) of the Complaint *and* the preexisting language formerly found in Article 3 of preceding national agreements and consistently upheld by the NLRB and the Courts as lawful. Complaint, p.5. See cases cited at fn 1, supra.

There is, of course, no legal basis whatever upon which the General Counsel has or could assert a viable legal challenge to the preexisting contract language and, even if the General Counsel could

establish that some subpart of the newly negotiated language could somehow be read as even arguably violative of NLRA Section 8(e), the *only* available remedy, under NLRA case law, would be a narrow and limited order requiring *only* that the parties “cease and desist from enforcing the [new] clause to the extent that the clause is illegal.” Food and Commercial Workers Local 1442 (Ralph’s Grocery), 271 NLRB 697, 700-701 (1984); Associated General Contractors of California (California Dump Truck Owners Assoc.), 280 NLRB 698, 703 (1986); Plumbers District Council 16 (Jamco Development), 277 NLRB 1281, 1284 (1985) (unlawful self-help provision does not invalidate otherwise valid clause).

Even such a narrow remedy is entirely unwarranted here, however. As shown above, there is no conceivable basis upon which the authorization card check/neutrality clause in Addendum C could be read, or enforced by an arbitrator, as embodying the *only* unlawful object even alleged in the Complaint -- as representing “an agreement in which the NFSA and its employer-members, including Cosco, have agreed not to do business with any other employer or person” (Complaint ¶19(c)) -- and Local 669 has already, in effect, adopted such a “remedy” by unconditionally disclaiming that the authorization card check/neutrality clause can or will ever be enforced to achieve any such object or result.

Attachment 5.

CONCLUSION

The Complaint should be dismissed.

Dated: August 25, 2008

Respectfully submitted

William W. Osborne Jr.

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CERTIFICATE OF SERVICE

I hereby certify that on August 25, 2008, I served Local 669's Motion for Summary Judgment with the Executive Secretary of the National Labor Relations Board via the electronic filing portal of the Board's website and, after so notifying each of the Parties listed below via telephone, served a copy of Local 669's Motion for Summary Judgment upon each Party via UPS Overnight Delivery:

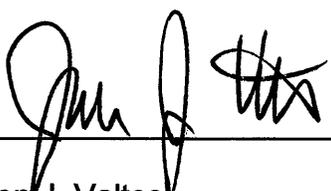
John Viniello, President
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James F. Small
Regional Director, Region 21
National Labor Relations Board
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Ninth Floor
Los Angeles, CA 90017-5449

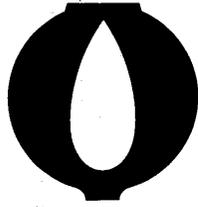
Firetrol Fire Protection
Attn: Blake Vance, Chief Financial
Officer
10725 Sandhill Road, Suite 105
Dallas, TX 75238

Alan Berkowitz
Bingham McCutchen, LLP
Three Embarcadero Center
San Francisco, CA 94111
Counsel for Cosco Fire

Pursuant to the Board's requirements for electronic filing, given that the foregoing Motion and Attachments exceeded 15 pages, the original and eight (8) copies were also served today via UPS Overnight Delivery on the Executive Secretary.



Jason J. Valtos



National Fire Sprinkler
Association, Inc.

Covering Rules, Regulations
& Working Conditions
Apprenticeship Standards



Road Sprinkler Fitters
Local Union 669

America's
Sprinkler Local

April 1, 2007

**AGREEMENT BETWEEN
NATIONAL FIRE SPRINKLER ASSOCIATION, INC.
and
ROAD SPRINKLER FITTERS LOCAL UNION NO. 669,
COLUMBIA, MARYLAND
OF THE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF
THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES
AND CANADA**

THIS AGREEMENT is made this 14th day of April, 2007 (and constituting revision of the original Agreement of April 6, 1915, and revisions and renewals thereof) between National Fire Sprinkler Association, Inc. and Road Sprinkler Fitters Local Union 669 (hereinafter referred to as "Union").

ARTICLE 1

The National Fire Sprinkler Association, Inc., a body corporate under authority from its contractor members pursuant to its By-Laws, has negotiated and signed this Agreement for and on behalf of its contractor members that have given the National Fire Sprinkler Association, Inc. written authority to negotiate this Collective Bargaining Agreement, each of whom is the "Employer" party to this contract. A list of the names of those contractor members authorizing National Fire Sprinkler Association, Inc. to negotiate and execute this Agreement and on whose behalf it is negotiated and executed is attached hereto and made a part hereof.

It is understood that the National Fire Sprinkler Association, Inc. is not responsible for the actions of individual contractor members relative to the application of and compliance with this Agreement. The National Fire Sprinkler Association, Inc. has the exclusive right to appoint employer representatives to all joint committees or trust boards that are in existence and/or come about as a result of the terms and conditions of this Collective Bargaining Agreement. The National Fire Sprinkler Association, Inc. may, at its option, with the approval of the contractor member participate in any grievance involving said contractor member who has given the National Fire Sprinkler Association, Inc. authority to negotiate this Collective Bargaining Agreement.

It is further understood and agreed that any Employer bound by the terms of this Agreement by virtue of the authority described in the above paragraph agrees that, if the contractor member withdraws his membership from National Fire Sprinkler Association, Inc. or his membership is terminated for any reason, the contractor member shall be bound by all the terms and conditions of the Agreement for the balance of the term of this Agreement. The National Fire Sprinkler Association, Inc. agrees to notify the Union when any contractor member withdraws or is terminated from the National Fire Sprinkler Association, Inc. within twenty (20) days of such action. The National Fire Sprinkler Association, Inc. shall also notify the Union of any new member joining the National Fire Sprinkler Association, Inc. within a period of twenty (20) days from receipt of application, subject to subsequent Board of Directors approval, and shall furnish the Union with a copy of the signed agreement whereby the Company authorizes the National Fire Sprinkler Association, Inc. to represent it in Collective Bargaining.

- (E) Unless a positive test result is confirmed as positive, it shall be deemed negative and reported by the laboratory as such;
- (F) The employer shall bear the costs of all testing procedures, except for retest requested by the employee that leads to a second negative result.

ARTICLE 29

DURATION AND REOPENING OF AGREEMENT: This Agreement shall be effective April 1, 2007 to March 31, 2010.

ARTICLE 30

PROVISIONS FOR RENEWAL OF AGREEMENT: Sixty (60) days prior to April 1, 2010, written notice may be given by either party requesting a conference to prepare such alterations or amendments as may be agreed to. Failing to give such written notice, this Agreement remains in force from year to year, until written notice of sixty (60) days prior to April 1 is served. Written notice shall be sent by registered mail to the National Fire Sprinkler, Association, Inc. and to the Local Union at its National Office.

ARTICLE 31

SAVINGS CLAUSE: In accordance with the intent and agreement of the parties, the provisions of this Collective Bargaining Agreement shall be interpreted and construed in a manner which is consistent with all applicable Federal and State laws. In the event, however, that any article or provision to this Agreement shall be declared invalid, inoperative or unenforceable by any competent authority of the executive, legislative, judicial, or administrative branch of the Federal or any State government, the Employer and the Union shall suspend the operation of such article or provision during the period of its invalidity and shall substitute, by mutual consent in its place and stead, an article or provision which will meet the objections to its validity and which will be in accord with the intent and purposes of the article or provision in question.

ADDENDUM C
to the
AGREEMENT BETWEEN
NATIONAL FIRE SPRINKLER ASSOCIATION, INC.
and

ROAD SPRINKLER FITTERS LOCAL UNION NO. 669, COLUMBIA, MARYLAND
OF THE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE
PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES & CANADA

PRESERVATION OF BARGAINING UNIT WORK:

In order to protect and preserve for the employees covered by this Agreement all work historically and traditionally performed by them, and in order to prevent any device or subterfuge to avoid the protection or preservation of such work, it is hereby agreed as follows: If and when the Employer shall perform any work of the type covered by this Agreement as a single or joint Employer (which shall be interpreted pursuant to applicable NLRB and judicial principles) within the trade and territorial jurisdiction of Local 669, under its own name or under the name of another, as a corporation, sole proprietorship, partnership, or any other business entity including a joint venture, wherein the Employer (including its officers, directors, owners, partners or stockholders) exercises either directly or indirectly (such as through family members) controlling or majority ownership, management or control over such other entity, the wage and fringe benefit terms and conditions of this Agreement shall be applicable to all such work performed on or after the effective date of this Agreement. The question of single Employer status shall be determined under applicable NLRB and judicial principles, i.e., whether there exists between the two companies an arm's length relationship as found among unintegrated companies and/or whether overall control over critical matters exists at the policy level. The parties hereby incorporate the standard adopted by the Court in Operating Engineers Local 627 v. NLRB, 518 F.2d 1040 (D.C. Cir. 1975) and affirmed by the Supreme Court, 425 U.S. 800 (1976), as controlling. A joint employer, under NLRB and judicial principles, is two independent legal entities that share, codetermine, or meaningfully affect labor relations matters.

Should the Employer establish or maintain such other entity within the meaning of the preceding paragraph, the Employer is under an affirmative obligation to notify the Union of the existence and nature of and work performed by such entity and the nature and extent of its relationship to the signatory Employer. The supplying of false, misleading, or incomplete information (in response to a request by the Union) shall not constitute compliance with this section. The Union shall not unreasonably delay the filing of a grievance under this Article.

In the event that the Union files, or in the past has filed, a grievance under Article 3 of this or a prior national agreement, and the grievance was not sustained, the Union may proceed under the following procedures with respect to the contractor(s) involved in the grievance:

Should the Employer establish or maintain operations that are not signatory to this Agreement, under its own name or another or through another related business entity to perform work of the type covered by this Agreement within the Union's territorial jurisdiction, the terms and conditions of this Agreement shall become applicable to and binding upon such operations at such time as

a majority of employees of the entity (as determined on a state-by-state, regional or facility-by-facility basis consistent with NLRB unit determination standards) designates the Union as their exclusive bargaining representative on the basis of their uncoerced execution of authorization cards, pursuant to applicable NLRB standards, or in the event of a good faith dispute over the validity of the authorization cards, pursuant to a secret ballot election under the supervision of a private independent third party to be designated by the Union and the NFSA within thirty (30) days of ratification of this Agreement. The Employer and the Union agree not to coerce employees or to otherwise interfere with employees in their decision whether or not to sign an authorization card and/or to vote in a third party election.

Particular disputes arising under the foregoing paragraphs shall be heard by one of four persons to be selected by the parties (alternatively depending upon their availability) as a Special Arbitrator. The Arbitrator shall have the authority to order the Employer to provide appropriate and relevant information in compliance with this clause. The Special Arbitrator shall also have authority to confirm that the Union has obtained an authorization card majority as provided in the preceding paragraph.

Because the practice of double-breasting is a source of strife in the sprinkler industry that endangers mutual efforts to expand market share for union members and union employers, it is the intention of the parties hereto that this clause be enforced to the fullest extent permitted by law.

Except as specifically provided above, it is not intended that this Article be the exclusive source of rights or remedies which the parties may have under State or Federal Laws.

If any article or provision of this Agreement shall be held invalid, inoperative or unenforceable by operation of law or by any of the above-mentioned tribunals of competent jurisdiction, the remainder of this Agreement or the application of such article or provision to persons or circumstances other than those as to which it has been held invalid, inoperative and unenforceable shall not be affected thereby.

FOR THE UNION:

Bradley M. Karbowsky
Robert W. Kuethe
John D. Bodine
Thomas W. Dumas
Michael P. Lee
Jerry D. Monk
John W. Turner, Jr.
John D. Green
John A. Laughlin
James S. Montgomery
Edward L. Zittle

FOR THE ASSOCIATION:

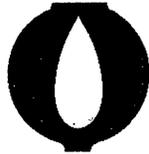
Alexander Gettler
Frederic Barall
James Lynch
Richard Ackley
Ted Angelo
Mark Clemons
Stephen A. Comunale
David Dixon
Dave Kern
Al Fox
Ryan Johnston
Kamran Malek
Ausmus Marburger
Kerry McVey
Gene Postma
Mark Tate
Steve Ulmer
Gary Willms

Covering Rules, Regulations & Working Conditions
Apprenticeship Standards

April 1, 2005



agreement between



National Fire Sprinkler
Association, Inc.



Road Sprinkler Fitters
Local Union 669

America's
Sprinkler Local

**AGREEMENT BETWEEN
NATIONAL FIRE SPRINKLER ASSOCIATION, INC.
and
ROAD SPRINKLER FITTERS LOCAL UNION NO. 669,
COLUMBIA, MARYLAND
OF THE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF
THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES
AND CANADA**

THIS AGREEMENT is made this 1st day of April, 2005 (and constituting revision of the original Agreement of April 6, 1915, and revisions and renewals thereof) and between National Fire Sprinkler Association, Inc. and Road Sprinkler Fitters Local Union 669 (hereinafter referred to as "Union").

ARTICLE 1

The National Fire Sprinkler Association, Inc., a body corporate under authority from its contractor members pursuant to its By-Laws, has negotiated and signed this Agreement for and on behalf of its contractor members that have given the National Fire Sprinkler Association, Inc. written authority to negotiate this Collective Bargaining Agreement, each of whom is the "Employer" party to this contract. A list of the names of those contractor members authorizing National Fire Sprinkler Association, Inc. to negotiate and execute this Agreement and on whose behalf it is negotiated and executed is attached hereto and made a part hereof.

It is understood that the National Fire Sprinkler Association, Inc. is not responsible for the actions of individual contractor members relative to the application of and compliance with this Agreement. The National Fire Sprinkler Association, Inc. has the exclusive right to appoint employer representatives to all joint committees or trust boards that are in existence and/or come about as a result of the terms and conditions of this Collective Bargaining Agreement. The National Fire Sprinkler Association, Inc. may, at its option, with the approval of the contractor member participate in any grievance involving said contractor member who has given the National Fire Sprinkler Association, Inc. authority to negotiate this Collective Bargaining Agreement.

It is further understood and agreed that any Employer bound by the terms of this Agreement by virtue of the authority described in the above paragraph agrees that, if the contractor member withdraws his membership from National Fire Sprinkler Association, Inc. or his membership is terminated for any reason, the contractor member shall be bound by all the terms and conditions of the Agreement for the balance of the term of this Agreement. The National Fire Sprinkler Association, Inc. agrees to notify the Union when any contractor member withdraws or is terminated from the National Fire Sprinkler Association, Inc. within twenty (20) days of such action. The National Fire Sprinkler Association, Inc. shall also notify the Union of any new member joining the National Fire Sprinkler Association, Inc. within a

period of twenty (20) days from receipt of application, subject to subsequent Board of Directors approval, and shall furnish the Union with a copy of the signed agreement whereby the Company authorizes the National Fire Sprinkler Association, Inc. to represent it in Collective Bargaining.

The Union shall submit to National Fire Sprinkler Association, Inc. within thirty (30) days of the signing of this Agreement a list of those employers with whom the Union has signed separate agreements and shall thereafter advise National Fire Sprinkler Association, Inc. in writing within ten (10) days of any new employers with whom the Union has signed a separate agreement.

ARTICLE 2

This Agreement is entered into in good faith and the subscribers declare their entire willingness to fulfill all requirements contained herein, their acts being done with the full knowledge, consent and authority of the Employer and the Union. It is hoped and believed that this Agreement properly respected will tend to remove the causes for industrial strife and bring about a better understanding between the Employer and the Union.

STANDING COMMITTEE: Recognizing the fact that this Agreement is for two (2) years, the parties to this Agreement hereby create a Mutual Cooperation Committee which will meet on a periodic basis, every 120 days, or sooner, if the need arises, to discuss problems that are of mutual concern to the NFSA and Local Union 669.

The purpose of this Committee is to evaluate the effectiveness of this Collective Bargaining Agreement in reclaiming the market for signatory contractors and their employees and if market share continues to decline, the parties to this Agreement shall discuss possible ways and means to further prevent continued loss of market.

ARTICLE 3

RECOGNITION: The National Fire Sprinkler Association, Inc. for and on behalf of its contractor members that have given written authorization and all other employing contractors becoming signatory hereto, recognize the Union as the sole and exclusive bargaining representative for all Journeymen Sprinkler Fitters and Apprentices in the employ of said Employers, who are engaged in all work as set forth in Article 18 of this Agreement with respect to wages, hours and other conditions of employment pursuant to Section 9(a) of the National Labor Relations Act.

The Union also recognizes the National Fire Sprinkler Association, Inc. as the Collective Bargaining Agency for its contractor members who have given written authorization and for those contractors who become signatory to this Agreement.

This Agreement shall be binding upon the parties hereto, their successors, administrators, executors and assigns. It is understood that the parties hereto shall not use any sale, transfer, lease, assignment, receivership, or bankruptcy to evade the terms of this Agreement.

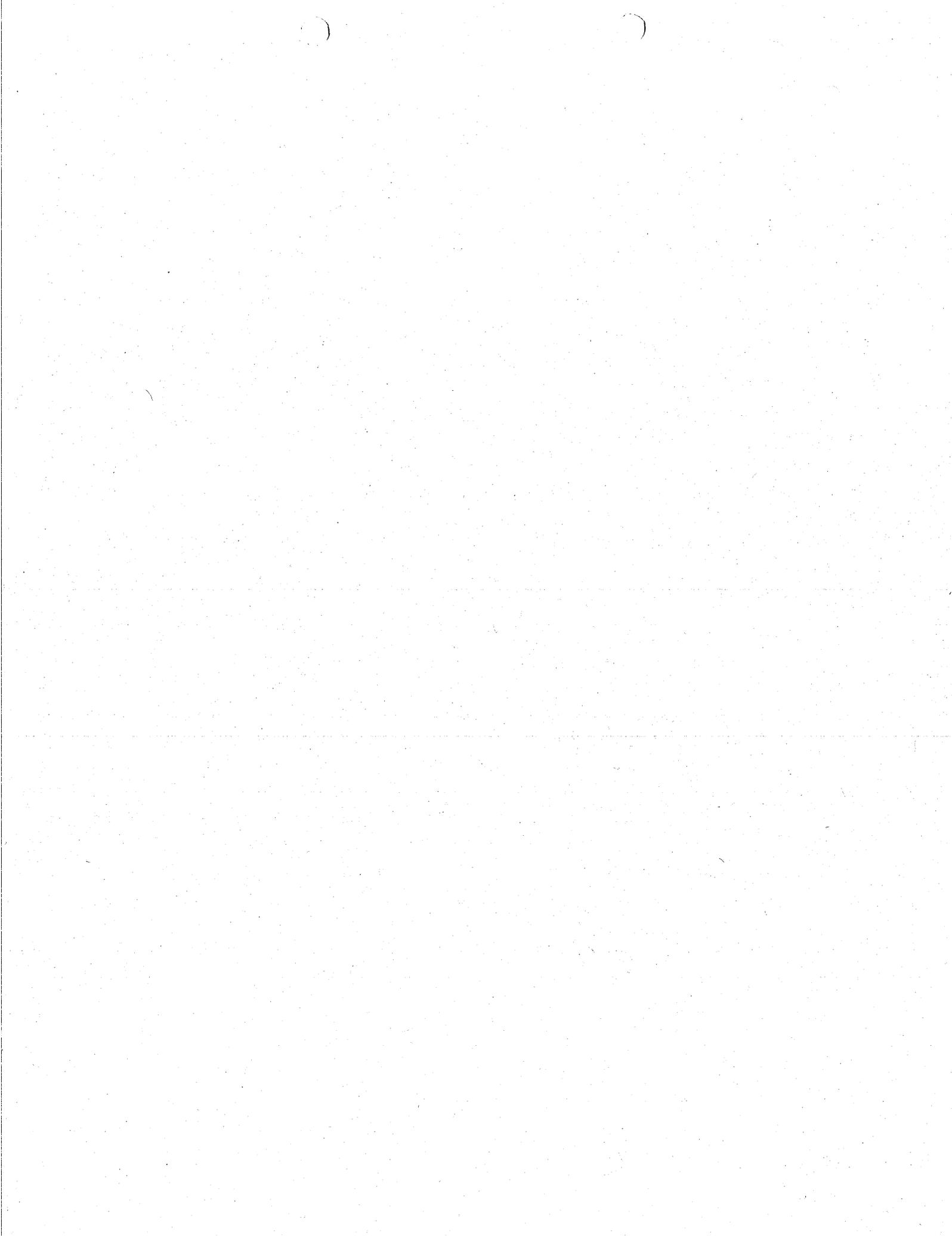
In order to protect and preserve for the employees covered by this Agreement all work historically and traditionally performed by them, and in order to prevent any device or subterfuge to avoid the protection or preservation of such work, it is hereby agreed as follows: If and when the Employer shall perform any work of the type covered by this Agreement as a single or joint Employer (which shall be interpreted pursuant to applicable NLRB and judicial principles) within the trade and territorial jurisdiction of Local 669, under its own name or under the name of another, as a corporation, sole proprietorship, partnership, or any other business entity including a joint venture, wherein the Employer (including its officers, directors, owners, partners or stockholders) exercises either directly or indirectly (such as through family members) controlling or majority ownership, management or control over such other entity, the wage and fringe benefit terms and conditions of this Agreement shall be applicable to all such work performed on or after the effective date of this Agreement. The question of single Employer status shall be determined under applicable NLRB and judicial principles, i.e., whether there exists between the two companies an arm's length relationship as found among unintegrated companies and/or whether overall control over critical matters exists at the policy level. A joint Employer, under NLRB and judicial principles, is two independent legal entities that share, codetermine, or meaningfully affect labor relations matters.

Should the Employer establish or maintain such other entity within the meaning of the preceding paragraph, the Employer is under an affirmative obligation to notify the Union of the existence and nature of and work performed by such entity and the nature and extent of its relationship to the signatory Employer. The supplying of false, misleading, or incomplete information (in response to a request by the Union) shall not constitute compliance with this section. The Union shall not unreasonably delay the filing of a grievance under this Article.

Particular disputes arising under the foregoing paragraphs shall be heard by one of four persons to be selected by the parties (alternatively depending upon their availability) as a Special Arbitrator. The Arbitrator shall have the authority to order the Employer to provide appropriate and relevant information in compliance with this clause.

It is the intention of the parties hereto that this clause be enforced to the fullest extent permitted by law and that, because this conforms with the parties' original intent, it shall apply to all pending and future grievances.

It is not intended that this Article be the exclusive source of rights or remedies which the parties may have under State or Federal Laws.





**UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
OFFICE OF THE GENERAL COUNSEL
Washington, D.C. 20570**

March 23, 2005

Re: Road Sprinkler Fitter, Local 669
(Cosco Fire Protection, Inc.)
Case No. 21-CE-370-1

Daniel A. Feldstein, Esq.
Bingham & McCutchen, LLP
Three Embarcadero Center
San Francisco, CA 94111-4067

Dear Mr. Feldstein:

Your appeal from the Regional Director's refusal to issue complaint has been carefully considered. The appeal is denied substantially for the reasons set forth in the Regional Director's letter of January 21, 2005. The evidence indicated that the Union filed a grievance seeking to enforce a facially valid contractual work preservation clause. The Union has never sought to represent the employees of Firetrol and it stipulated during unit clarification proceedings that there was no accretion of Firetrol employees into the bargaining unit. In these, and all the circumstances, there is insufficient evidence to find the Union had a secondary objective when it filed its grievance asserting a contract violation.

The Employer also asserts in its appeal the Union is seeking to claim work done by other entities, specifically Firetrol, that is not "fairly claimable." The investigation did not disclose sufficient evidence to support this claim. The evidence indicated that the Union is seeking to enforce the work preservation provision of the collective bargaining agreement, pursuant to which the Union has nationwide jurisdiction, with regard to entities that are under the control of the Employer. There is insufficient evidence the Union is seeking to replace Firetrol employees or otherwise claim work done by Firetrol.

Accordingly, further proceedings are unwarranted.

Sincerely,

Arthur F. Rosenfeld
General Counsel

By Yvonne T. Dixon
Yvonne T. Dixon, Director
Office of Appeals

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST LABOR ORGANIZATIONS
OR ITS AGENTS

DO NOT WRITE IN THIS SPACE	
Case 21-CB-14353	Date Filed 7-10-07

INSTRUCTIONS: File an original together with four copies and a copy for each additional charged party named in item 1 with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. LABOR ORGANIZATION OR ITS AGENTS AGAINST WHICH CHARGE IS BROUGHT

a. Name Road Sprinkler Fitters, Local 669, U.A.		b. Union Representative to contact Bradley M. Karbowski Business Manager	
c. Telephone No. (410) 381-4300 Fax No. (301) 621-8045	d. Address (Street, city, state, and ZIP code) 7050 Oakland Mills Road, Suite 200 Columbia, Maryland 21046		
e. The above-named organization(s) or its agents has (have) engaged in and is (are) engaging in unfair labor practices within the meaning of section 8(b) subsection(s) (list subsections) (1)(A) practices are unfair practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.			

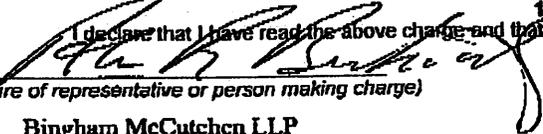
2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)

Within the past six months, the Union has entered into a new contract agreement containing an unlawful "anti-double breasting" provision which requires non-signatory business entities to engage in pre-recognitional bargaining in violation Section 8(b)(1)(A) of the Act.

3. Name of Employer Cosco Fire Protection, Inc.		4. Telephone No. (714) 974-8770	
		Fax No. (714) 637-7517	
5. Location of plant involved (street, city, state and ZIP code) 2244 North Pacific Street, Orange, CA, 92865		6. Employer representative to contact Dave Kern	
7. Type of establishment (factory, mine, wholesaler, etc.) Installation and repair of automatic fire sprinkler system	8. Identify principal product or service Fire Protection	9. Number of workers employed 650+	
10. Full name of party filing charge Alan R. Berkowitz			
11. Address of party filing charge (street, city, state and ZIP code.) Bingham McCutchen LLP Three Embarcadero Center, San Francisco, CA 94111		12. Telephone No. (415) 393-2636 Fax No. (415) 393-2286	

13. DECLARATION

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

By  **Alan R. Berkowitz, Esq.**
(signature of representative or person making charge) (Printed name and title or office, if any)

Bingham McCutchen LLP
Address **Three Embarcadero Center, San Francisco, CA 94111**

REC'D
(Fax) **415-393-2286**
(415) 393-2636 **7/9/07**
(Telephone No.) (date)

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

LU 669

CHARGE ALLEGING UNFAIR LABOR PRACTICE UNDER SECTION 8(e) OF THE NLRA

INSTRUCTIONS: File an original together with four copies and a copy for each additional charged party named in item 1 with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

CASE NUMBER 21 - CE - 374	DATE FILED 11 7-24-08	1. CHARGE FILED AGAINST		
		Employer and Labor Organization <input type="checkbox"/>	Employer <input type="checkbox"/>	Labor Organization <input checked="" type="checkbox"/>
Name of Labor Organization (Give full name, including local name and number) Road Sprinkler Fitters, Local 669, U.A.		b. Union Representative to Contact Bradley Karbowski		c. Telephone Number (410) 381-4300
d. Address (Street and number, city, State, and ZIP Code) 7050 Oakland Mills Road, Suite 200, Columbia Maryland 21046				
e. Name of Employer Cosco Fire Protection, Inc.		f. Employer Representative to Contact Dave Kern		g. Telephone No. (714) 974-8770
h. Location of Plant Involved (Street, city, State, and ZIP Code) 2244 North Pacific Street, Orange, CA 92865				
i. Type of Establishment (Factory, mine, wholesaler, etc.) Installation and repair of automatic fire sprinkler systems		j. Identify Principle Product or Service Fire Protection		k. No. of Workers Employed 650+

The above-named labor organization or its agents, and/or employer has (have) engaged in and is (are) engaging in unfair labor practices within the meaning of section 8(e) of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the Act.

2. Basis of the Charge (Be Specific as to facts, names, plants involved, dates, places, etc.)

Within the past six months, the Union has entered into a new contract agreement containing an "anti-double breasting" provision which is facially unlawful under Section 8(e) of the Act because it seeks to regulate the labor relations of separate and independent business entities.

The Employer requests that the Board seek injunctive relief under Section 10(l) of the Act.

3. Full Name of Party Filing Charge (If labor organization, give full name, including local name and number)
Cosco Fire Protection, Inc.

a. Address (Street and number, city, State, and ZIP Code) 2244 North Pacific Street, Orange, CA 92865	b. Telephone Number (714) 974-8770
---	--

4. Full Name of National or International Labor Organization of Which It Is an Affiliate or Constituent Unit (To be filled in when charge is filed by a labor organization)

5. DECLARATION

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

By Alan R. Berkowitz Alan R. Berkowitz, Attorney for Cosco Fire Protection
(signature of representative or person making charge) (Print/type name and title or office, if any)

Address Bingham McCutchen, 3 Embarcadero Center, San Francisco, CA (Fax) 415-262-9223
(415)-393-2636 7/24/08
(Telephone No.) (date)

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.



John D. Bodine, Sr.
Business Manager

She Broadrick
Financial Secretary-Treasurer

James E. Tucker
President-Organizer

RECEIVED
OSBORNE LAW OFFICES

JUL 16 2008

July 15, 2008

PC.

Mr. Alexander E. Gettler, Vice President
National Fire Sprinkler Association, Inc.
40 Jon Barrett Road
Patterson, New York 12563

**SENT VIA FAX AND
REGULAR MAIL**

Re: Road Sprinkler Fitters Local 669, U.A., AFL-CIO
(Cosco Fire Protection, Inc.), Case No. 21-CE-374

Dear Al:

As you may or may not be aware, Local 669 has been involved in an extended disagreement with the National Labor Relations Board regarding the purpose and propriety of the new language the parties added in Addendum C (formerly Article 3) in the current 2007-2010 Local 669/N.F.S.A. National Agreement, a disagreement that was precipitated by unfair labor practice charges filed by a member of your Negotiating Committee, Cosco Fire Protection, Inc. ("Cosco"). These charges were filed on July 9, 2007, over a year ago, and are still pending at the present time.

It is apparently Cosco's contention that the contractual language in question has the following improper purposes or objects: prohibiting our signatory contractors from forming a business relationship with an affiliated non-signatory company; requiring a signatory contractor to otherwise "cease doing business" with an affiliated non-signatory company; and/or to authorize an arbitrator to order a signatory contractor to "cease doing business" with an affiliated non-signatory company.

We have advised the NLRB (i) that the Union has never had any such object or purpose in mind; (ii) that the new contractual language in Addendum C is not susceptible to such an interpretation; and (iii) that the language does not even arguably provide an arbitrator with authority to require a signatory contractor to "cease doing business" with any other organization. To the contrary, the purpose of the new language is to "remove a source of strife in the sprinkler industry that endangers mutual efforts to expand market share for

Road Sprinkler Fitters Local Union No. 669
7050 Oakland Mills Road • Suite 200 • Columbia, Maryland 21046
(410) 381-4300 • fax: (301) 621-8045 • www.sprinklerfitters669.org

Attachment 5



Page Two
July 15, 2008
National Fire Sprinkler Association

union members and union employers," by affording the employees of an affiliated non-signatory organization with the opportunity to decide for themselves whether or not to be represented by the Union on the basis of authorization cards "pursuant to applicable NLRB standards."

I am writing this letter simply to confirm the Union's position on Addendum C for the record, and to state, unconditionally, that the foregoing is and will remain the Union's position with respect to the language in question, and that, as the party which would initiate any grievance, the Union will not advance any different or contrary interpretation, for the duration of the current agreement. The Union emphatically disclaims that the new contractual language can or will be used for any of the purposes alleged by Cosco.

We are not soliciting a response from the NFSA or attempting to involve your office in this disagreement, but only wanted to memorialize our position so as to remove any possible doubt regarding the proper interpretation and application of the clause in question.

Sincerely,

John D. Bodine, Sr.
Business Manager
Local Union 669

JDB:dsv

cc: Shawn Broadrick
James Tucker
Osborne Law Offices