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.	:	

LOCAL 669's REPLY TO THE GENERAL COUNSEL'S OPPOSITION TO ITS 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, submits this Reply to the Opposition by the General Counsel to the Union's Motion for Summary Judgment. As we show below, the General Counsel has not effectively challenged or undermined any of the bases for the Union's Motion, and Summary Judgment should therefore be granted.

1. The Complaint raises an issue of law that does not necessitate an evidentiary hearing before an Administrative Law Judge:

The General Counsel's Complaint attacks the authorization card

check/neutrality clause in Addendum C of the parties' 2007 -2010 national collective bargaining agreement *on its face*; the General Counsel has framed the issue to be whether or not the clause in question is "facially unlawful" under NLRA Section 8(e)(G.C. Opp. 2), specifically whether the clause 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).

Therefore, under settled NLRB principles the General Counsel has not contested or distinguished, the *only* issue in this case is a question of law: whether the authorization card check/neutrality clause in Addendum C is "clearly unlawful on its face." Heartland Industrial Partners LLC (United Steelworkers of America), 348 NLRB No. 72 (2006), Slip op. at 4; General Teamsters Local 982 (J.K. Barker Trucking Co.), 181 NLRB 515, 517 (1970), aff'd 450 F.2d 1322 (D.C. Cir. 1971). If the Board concludes that the language at issue "is not clearly unlawful on its face," the Complaint should be dismissed on the basis that the disputed clause is properly to be interpreted, in accord with its plain language (Local 669 Motion 5-6 at ¶4), "to require no more than what is allowed by law." Id.

2. Extrinsic evidence is not only unnecessary to resolve the foregoing issue of law; such evidence is extraneous and irrelevant:

The General Counsel has cited the necessity of adducing extrinsic evidence at a hearing before an Administrative Law Judge so as to present "the *full factual context*" in which the authorization card check/neutrality clause in Addendum C became a part of the parties' 2007 -2010 national collective bargaining agreement (G.C. Opp. 3, emphasis in original) and referred to "genuine issues [that] exist in this matter which require a hearing," but the

General Counsel has not contested any of the undisputed facts recited in the Union's Motion (Local 669 Motion 2-7), nor has the General Counsel identified a single dispute of material fact, in the Complaint or in its opposing memorandum, that must be resolved in order to determine whether or not the authorization card check/neutrality clause in Addendum C is "clearly unlawful on its face."

The disposition of the Complaint not only does not require the adjudication of whatever unidentified extrinsic facts the General Counsel may have in mind, but such "facts" are extraneous and irrelevant in any event. 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). See also Carpenters Local 112 (Summit Valley Industries), 217 NLRB 902, 902 n.5 (1975).

3. The necessity for a hearing is further negated by the General Counsel's miscitation of *Alessio* as the applicable precedent:

The Board has recently *rejected* the General Counsel's assertion here (G.C.Opp. 3) that anti-dual shop Section 8(e) case law, such as Allessio, is governing precedent for determining whether or not authorization card check/neutrality clauses, such as the clause at issue here, 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.

See also Id., Slip op. at 4-5 (finding substantively similar card check/neutrality clause did not embody a "cease doing business" object proscribed by NLRA Section 8(e)).

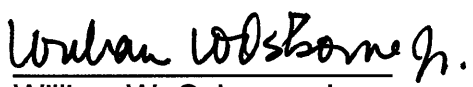
To the extent the General Counsel's case is premised upon a legal proposition that the Board has recently rejected, a hearing in this matter would be a futility.

* * *

The General Counsel has not identified a single material fact in dispute, contested the Union's submission of undisputed facts, or refuted the Union's showing that the issues raised in the Complaint are purely legal and therefore ripe for summary judgment. Given that the unfair labor practice charges in this case have been already pending *for over a year*, their expeditious resolution by summary judgment would further effectuate the purposes of the Act.

Dated: September 2, 2008

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on September 2, 2008, I filed Local 669's Reply to the General Counsel's Opposition to its 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 Reply upon each Party via UPS Overnight Delivery:

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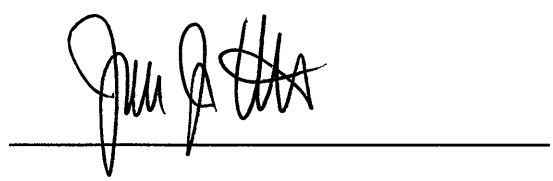

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