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

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 669

and

Case 21-CE-374

COSCO FIRE PROTECTION, INC.

and

NATIONAL FIRE SPRINKLER ASSOCIATION, INC.

Party in Interest

and

FIRETROL PROTECTION SYSTEMS, INC.

Party in Interest

COUNSEL FOR THE GENERAL COUNSEL'S EXCEPTIONS TO THE ADMINISTRATIVE LAW JUDGE'S DECISION

Submitted by
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On November 3, 2008, Administrative Law Judge William G. Kocol (herein, ALJ) issued his Decision in the above-entitled matter. Pursuant to Board Rules and Regulations, Series 8, as amended, Section 102.46, Counsel for the General Counsel of the National Labor Relations Board hereby files the following exceptions:

To the ALJ's findings and conclusions that:

Exception No.

1. "The charge and first amended charge were filed by Cosco Fire Protection, Inc., ("Cosco") on July 10 and July 24, 2007, and the complaint was issued on July 29, [2007]."(ALJD 1: 3-4).[1]

2. "The first portion of that [Addendum C] language is conceded by the General Counsel to be a lawful work preservation provision...." (ALJD 2: 39-40).

3. ""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 (1975), as controlling."" (ALJD: 3: 9-11).

4. "Applying these cases to the agreement at issue, I first conclude that the language is designed apply to business entities that perform unit work. The language "to perform work of the type covered by this agreement within the Union's territorial jurisdiction" is almost identical to the language in *Manganaro* that the Board found was directed at unit work. It follows that the agreement has a work preservation objective." (ALJD 5: 11-15).

5. "Next, the agreement on its face applies only when a signatory employer establishes or maintains operations that perform unit work. On its face, this language can clearly be read to satisfy the "right to control" test." (ALJD 5: 15-17).

[1] All citations to the ALJ's decision will be referred to as "ALJD," followed by the appropriate page and line numbers(s). The Transcript will be referred to as "Tr.," followed by the appropriate page number(s). General Counsel's exhibits will be referred to as "GCX," followed by the appropriate exhibit and page number(s). Respondent's exhibits will be referred to as "RX," followed by the appropriate exhibit and page number(s). Charging Party's exhibits will be referred to as "CPX," followed by the appropriate exhibit and page number(s).

6. "The General Counsel points to the fact that the Union can use the disputed agreement only after it has filed and lost a grievance under the other section of the collective-bargaining agreement I have described above. From this the General Counsel argues that the agreement must therefore violate Section 8(e). I disagree; the language simply reflects an ordering of the grievances to be filed." (ALJD 5: 42-46).

7. "I conclude that on its face the agreement is a lawful work preservation agreement." (ALJD 5: 46-47).

8. "*Alessio* is readily distinguishable from this case. The contested provision here only applies to entities that "perform work of the type covered by this agreement." Again, this means it applies only to unit work, so it is primary in purpose, as it does not seek to acquire a type of work not covered by the contract." (ALJD 6: 1-5).

9. "In light of my decision that the agreement has a lawful work preservation objective, I find it unnecessary to decide whether the agreement would nonetheless be lawful under the construction industry proviso to Section 8(e) even if it had unlawful objective." (ALJD 6: 26-28).

<u>To the ALJ's failure to find and conclude that:</u>

Exception No.

10. The previous version of the contractual language which is now Addendum C, prior to the 2007-2010 collective-bargaining agreement, was located in Article 3 of the 2000-2005 collective bargaining agreement. (GCX 3, GCX 5, CPX 1, CPX 2, Tr. 37-38)

11. The grievance that the Union filed against Cosco on September 4, 2004, was a grievance filed under Article 3 of the 2000-2005 collective-bargaining agreement. (GCX 4, Tr. 21)

12. The language added to Addendum C (formerly located in Article 3) was added into the current collective-bargaining agreement less than one year after Arbitrator Ira Jaffe's award in the grievance noted above. (GCX 4, GCX 5, Tr. 37-38)

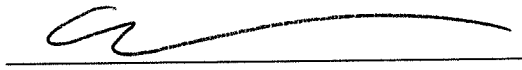
13. Cosco is the only employer known to have prevailed in an Article 3 grievance filed by the Union. (Tr. 31).

14. By entering into and maintaining Addendum C, the Respondent has entered into and maintained an agreement in which the NFSA and its employer-members, including Cosco, have agreed not to do business with any other employer or person, in violation of Section 8(e) of the Act.

15. As a remedy for the above-mentioned violation of Section 8(e), the Board should order that the Respondent rescind and give no effect to Addendum C of the 2007-2010 collective-bargaining agreement.

DATED AT Los Angeles, California, this 19th day of December, 2008.

Respectfully submitted,



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