

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

AUSTIN FIRE EQUIPMENT, LLC,

Respondent,

and

**ROAD SPRINKLER FITTERS LOCAL
UNION NO. 669, U.A., AFL-CIO,**

Charging Party.

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Case No. 15-CA-19697

CHARGING PARTY LOCAL 669'S EXCEPTIONS

Charging Party Road Sprinkler Fitters Local Union No. 669, U.A., AFL-CIO ("Local 669" or "the Union"), respectfully submits these Exceptions to the Decision of the Administrative Law Judge ("ALJ") in this case, pursuant to Rule 102.46(b)(1) of the Rules and Regulations of the National Labor Relations Board.¹

1. The Union excepts to the ALJ's failure to recognize the parties' express 2008 NLRA Section 9(a) agreement as contrary to the undisputed facts of the case and well-settled NLRA precedent (ALJD 21);

¹ References to the ALJ's decision in this matter will be designated by the abbreviation "ALJD __," and will include page and line numbers where relevant. The grounds for each exception, including reference to the record and supporting legal authorities and argument, have been set forth in the supporting brief filed along with these Exceptions.

2. The Union excepts to the ALJ's attempt to distinguish the Board's decisions in *MFP Fire Protection*, 318 NLRB 840 (1995), *enf'd*, 101 F.3d 1341 (10th Cir. 1996), *Triple A Fire Protection*, 312 NLRB 1088 (1993), *enf'd*, 136 F.3d 727 (11th Cir. 1998), *cert. denied*, 544 U.S. 948 (2005), and *American Automatic Sprinkler Systems, Inc.*, 323 NLRB 920 (1997), *enf'ment denied in part*, 163 F.3d 209 (4th Cir. 1998), *cert. denied*, 528 U.S. 821 (1999), as contrary to well-settled NLRB precedent (ALJD 15-16);

3. The Union excepts to the ALJ's erroneous attempt to create an ambiguity in the parties' NLRA Section 9(a) agreement as contrary to the undisputed facts and applicable NLRA precedent (ALJD 6-18);

4. The Union excepts to the ALJ's consideration of purported extrinsic evidence as contrary to applicable NLRA precedent and as based on a misreading of the undisputed record (ALJD 18-21);

5. The Union excepts to the ALJ's conclusion that the parties entered into an NLRA Section 8(f) agreement on July 8, 2008, as contrary to the undisputed facts, applicable NLRB precedents, and the plain language of Section 8(f) itself (ALJD 21);

6. The Union excepts to the ALJ's alternative finding that this case should be determined under the United States Court of Appeals for the D.C. Circuit's decision in *NLRB v. Nova Plumbing*, 330 F.3d 531 (D.C. Cir. 2003), on

the basis that *Nova Plumbing* is contrary to well-settled NLRB precedent and that a challenge to the recognition agreement in this case would, in any event, be barred by Section 10(b), an issue not presented by *Nova Plumbing*, 330 F.3d at 538-39 (ALJD 27-29);

7. The Union excepts to the ALJ's erroneous failure to conclude that Austin Fire was barred by NLRA Section 10(b) from challenging the validity of its 2008 NLRA Section 9(a) recognition of the Union (ALJD 29-30).

Date: January 10, 2012

Respectfully submitted,

/s/William W. Osborne, Jr.
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Certificate of Service

I hereby certify that on January 10, 2012, I electronically filed Local 669's Exceptions to the Decision of the Administrative Law Judge with the Executive Secretary of the National Labor Relations Board via the e-filing portal on the NLRB's website, and also forwarded a copy by electronic mail to the Parties as listed below:

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