

BEFORE THE  
NATIONAL LABOR RELATIONS BOARD

In the Matter of:

Automatic Fire Systems, Inc.,	:	
	:	
Employer,	:	
	:	
and	:	NLRB Case No. 11-RC-6757
	:	
Road Sprinkler Fitters Local	:	
Union No. 669, U.A., AFL-CIO,	:	
	:	
Petitioner.	:	
_____	:	

Exceptions to Hearing Officer’s Report and Recommendations on Objections

Pursuant to Sec. 102.69 of the Board’s Rules and Regulations, Petitioner Road Sprinkler Fitters Local Union No. 669, U.A., AFL-CIO (“Local 669” or “the Union”) hereby submits the following limited exception to the Hearing Officer’s Report and Recommendations (Hereinafter “R&R”) issued September 1, 2011.

I. Background

Local 669 filed a petition for an election on May 17, 2011. At the time of the filing of the petition, the Union had nine (9) authorization cards signed by the employees of Automatic Fire Systems, LLC (“AFS” or “the Employer”).

On June 1, 2011, the Regional Director approved a Stipulated Election Agreement reflecting the eligibility of *Steiny/Daniels* employees. R&R at p. 2. An election was held on June 23, 2010. *Id.* A total of fourteen (14) ballots were cast, with eight (8) ballots cast against the Union and zero (0) ballots cast in favor of the Union. There were five challenged ballots and one voided ballot; however, the challenges were not determinative and thus were not considered. R&R at p.2.

Local 669 filed timely Election Objections on June 30, 2010, alleging that during the critical period, the Employer, through its owner, deliberately omitted the *Steiny/Daniels* eligible employees from the *Excelsior* List. R&R at p. 2. A hearing on those objections was held on August 18, 2011. R&R at p. 3.

On September 1, 2011, the hearing officer issued a decision sustaining Objection No. 6 related to the Employer's omission of the names and addresses of the *Steiny/Daniel* eligible employees from the *Excelsior* list.

The Hearing Officer correctly found that the Employer's omission of the names and addresses of *Steiny* eligible voters on the *Excelsior* list was grounds for a re-run. Decision at p. 11. However, in the Hearing Officer's Recommendations, she left the Board with an alternative remedy to a re-run election – specifically, recommending in the alternative that the Board may remand the matter to the Region for a resolution of the challenged ballots to resolve whether the number of

*Steiny* eligible employees who did not cast ballots would be determinative.

Decision at p. 11.

The Petitioner files this limited exception to that suggested alternative remedy in the Hearing Officer's Report and Recommendation.

## II. Argument

The Hearing Officer's Report and Recommendations offers the Board an alternative remedy to a re-run election. That alternative remedy recommends that the Board remand the case to the Region for a determination of the challenged ballots in order to resolve whether the *Steiny* voters omitted from the Excelsior list would be determinative. R&R at p. 11.

The Petitioner argues that these challenged ballots should not be opened and counted as the election has already been tainted by the failure of the Employer to submit a complete list of eligible voters. The Board has noted that it does not need to inquire into the Employer's motive behind the omission to find that such an omission puts the Union at a disadvantage, forcing a re-run. *Thrifty Auto Parts, Inc.*, 295 NLRB 1118, 1118 (1989) ("Evidence of bad faith and actual prejudice is unnecessary because the rule is essentially prophylactic, *i.e.*, the potential harm from list omissions is deemed sufficiently great to warrant a strict rule that encourages conscientious efforts to comply."). The Employer's decision to omit

the names of *Steiny/Daniels* voters from the *Excelsior* list clearly put the Union at a disadvantage and in this instance should require a re-run election.

Had the Union had access to the complete *Excelsior* list, including *Steiny* voters, the results may have been completely different. Simply opening and counting the challenged ballots is not a sufficient remedy in this instance. Lack of access to the *Steiny* voters not only precludes a group of employees from voting but may indeed affect the votes of the current employees who may or may not be persuaded by discussing the benefits of the Union with former laid off employees.

Access to the *Steiny* voters in this instance may have afforded the Union access to more potential observers. Indeed the Union had no observer at the election due to the complete drop-off in support among current employees. Again, a re-run election gives the Union access to the complete pool of eligible employees for purposes of informing and educating them about the Union and to allow all eligible employees to discuss amongst themselves the benefits of the Union. Simply opening the challenged ballots to resolve whether they are outcome determinative is an insufficient remedy.

With the election tainted by the incomplete *Excelsior* list, the Union should be given another opportunity with the access to the *Steiny* voters that it was denied in the first election.

III. Conclusion

For all of the foregoing reasons, Local 669 respectfully requests that its limited exception to the Hearing Officer's recommendation be considered and that a re-run election be directed.

Dated: September 15, 2011

Respectfully submitted,

/s/ Natalie C. Moffett

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Certificate of Service

I hereby certify that on September 15, 2011, I filed Petitioner's Exceptions to the Hearing Officers Report and Recommendations on Objections with the Executive Secretary via the NLRB's e-filing portal and also forwarded a copy by electronic mail to the following:

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