

1 DAVID A. ROSENFELD, Bar No. 058163
WEINBERG, ROGER & ROSENFELD
2 A Professional Corporation
1001 Marina Village Parkway, Suite 200
3 Alameda, California 94501
Telephone (510) 337-1001
4 Fax (510) 337-1023
E-Mail: drosenfeld@unioncounsel.net

5 Attorneys for Charging Party

6
7
8 UNITED STATES OF AMERICA
9 BEFORE THE NATIONAL LABOR RELATIONS BOARD

10 UNITED UNION OF ROOFERS,
11 WATERPROOFERS, AND ALLIED
12 WORKERS, LOCAL 162,

13 SHEET METAL WORKERS
14 INTERNATIONAL ASSOCIATION,
AFL-CIO, LOCAL UNION NO. 88

15 Party –in-Interest

16 Charging Party,

17 and

18 A.W. FARRELL & SON, INC. ,

19 Respondent.
20
21

Nos. 28-CA-023502;
28-CA-060627;
28-CA-062301

**EXCEPTIONS TO THE DECISION OF
THE ADMINISTRATIVE LAW JUDGE**

22 Charging Party hereby takes the following exceptions to the Decision of the Administrative Law
23 Judge (ALJ):

24 Exception 1 P. 1 The failure of the ALJ to note that the Party in Interest was
25 served with a copy of the complaint but did not appear.

26 Exception 2 P. 3:39-43 To the suggestion that the contractor has an option to execute
27 an agreement resulting from the coordinated bargaining after
the agreement has been fully negotiated by the parties to the
coordinated bargaining.
28

1	Exception 3	<i>Passim</i>	To the reference to coordinated bargaining as convenience bargaining.
2			
3	Exception 4	P. 3:44-50	To the suggestion that “Landrum told union representatives that Farrell had to approve any final agreement.” The quoted email was sent by Mr. Landrum to Mr. McKellar. It was never sent to the Union and the union was never advised of this position.
4			
5	Exception 5	P. 4:4-6	To the suggestion that the successor agreement was “proposed.” The agreement had been negotiated and agreed to by the contractors participating in the coordinated bargaining including Farrell. Additionally, Landrum told the Union after the conclusion of bargaining that he was going to send it to his corporate office but never suggested or stated that it required that it be “approved” by Farrell in New York. To the erroneous suggestion that Farrell would sign it “if Farrell approved.” No such statement was ever made.
6			
7			
8			
9			
10	Exception 6	P. 4:4-6	The failure of the ALJ to note that Mr. Landrum never said that Mr. Farrell would sign it but that as noted in the ALJ’s decision that Mr. Landrum “would sign it.”
11			
12	Exception 7	P.4:6-7	To the suggestion Mr. Farrell did not actually approve the successor agreement. There is no evidence that Farrell did not approve the agreement, only that he did not sign it.
13			
14	Exception 8	P. 4:9-11	To the failure of the ALJ to note that the issues had only to do with harassment by Sheet Metal workers, no issues were ever raised as to the contents of the agreement. Thus the ALJ failed to find that Farrell had no substantive objection to the Agreement
15			
16			
17	Exception 9	P. 4:9-12	To the failure of the ALJ to emphasize that Mr. Farrell told Mr. Gaxiola that Mr. Landrum would contact Mr. Gaxiola suggesting therefore that Mr. Landrum had the authority to sign the agreement.
18			
19			
20	Exception 10	P. 4	The failure of the ALJ to note that when the employer terminated the agreement, it did so in language suggesting that it had agreed to be bound by the agreement.
21			
22	Exception 11	P. 4:24-34	To the failure of the ALJ to completely quote the request of July 29 since it ignores the second paragraph requesting additional items.
23			
24	Exception 12	P. 7:14-18	To the failure of the ALJ to find that the union established majority status through its proof that the majority of the employees had joined the union voluntarily in a right to shirk state and that the employer had knowledge of that majority support.
25			
26			
27			
28			

1	Exception 13	P.7:35-39	To the failure of the ALJ to find that the employer did repudiate the terms of the 2007 to 2010 agreement after withdrawing recognition.
2			
3	Exception 14	P.7:41-45	To the finding that “Landrum clearly and unambiguously notified the Union that only Farrell could agree to the final terms of the 2010-2012 agreement.” Landrum notified Mr., McKellar not the Union.
4			
5	Exception 15	P.7:41-45	To the finding of the ALJ that that the refusal to sign the 2010-2012 agreement was lawful.
6			
7	Exception 16	P.8:27-28	To the failure of the ALJ to find that the refusal to provide the information also violates Section 8(a)(5) and (1).
8			
9	Exception 17	P.9:25-29	To the remedy in that is inadequate.
10	Exception 18	P.9:30-34	To the order in that it is inadequate.
11	Exception 19	P.9:30-34	To the failure of the ALJ to require that the employer provide all the information requested by way of the July 29 information request.
12			
13	Exception 20	P.9	To the failure of the ALJ to recommend that the employer be required to comply with all information requests seeking information which is necessary and relevant to bargaining or administration of the contract.
14			
15	Exception 21	P.9	To the failure of the ALJ to require that the employer sign the 2010-2012 agreement and to apply it retroactively in all regards.
16			
17	Exception 22	P.9	To the failure of the ALJ to require that the employer make employees whole for any violations for the 2010-2012 agreement.
18			
19	Exception 23	P.9	To the failure of the ALJ to recommend that any agreement reached with any other union be voided and rescinded to the extent that it is inconsistent with or otherwise interferes with the recognition of the charging party and or the 2010-2012 agreement.
20			
21			
22	Exception 24	P.10:28-30	To the failure of the ALJ to recommend that the notice be mailed to all employees who have worked for the period 2010 through the present. Further the notice should be mailed by UPS and not FedEx which is anti-union and a law breaker.
23			
24	Exception 25		To the notice which refers to section 7 rights to refrain. There is no issue of any employee’s right to refrain.
25			
26	Exception 26	P. 9 and to the Order	To the failure of the ALJ to recommend that the union be made whole for any dues which were not deducted and that Farrell should bear the cost of such a remedy without deducting those amounts from any employee.
27			
28			

- 1 Exception 27 P.11:1-2 To the suggestion that there is any allegation in the complaint
which has not been found.
- 2
- 3 Exception 28 To the failure of the ALJ to recommend that the notice be
posted for at least the period between when the violations
4 occurred and when notice posting begins or at least 120 days.
It is time that the Board requires a longer posting period.
- 5 Exception 29 To the notice to the extent that it would contain language
6 suggesting that the employees have the right to “choose not to
engage in any of these protected activities.” That is
7 unnecessary in a situation where the employer has violated the
Act.
- 8 Exception 30 To the failure of the notice to refer to the additional violations
which should be found.
- 9
- 10 Exception 31 To the failure of the ALJ to find that the employer’s challenge
11 to the section 9(a) recognition is time barred by section 10(b).
See Diponio Construction Company, Inc., 357 NLRB No. 99
12 (2011).
- 13
- 14

15 Dated: January 25, 2012

Respectfully submitted

WEINBERG, ROGER & ROSENFELD
A Professional Corporation

/S/ David A. Rosenfeld
DAVID A. ROSENFELD
Attorneys for Charging Party

21 128024/651448

22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I am a citizen of the United States and an employee in the County of Alameda, State of California. I am over the age of eighteen years and not a party to the withing action; my business address is 1001 Marina Village Parkway, Suite 200, Alameda, California 94501. I certify that on January 25, 2012, the was served on all parties or their counsel of record as listed below.

Served Via Facsimile

Served Via E-Filing

Julie Pace
The Cavanagh Law Firm
1850 N. Central Avenue, Suite 2400
Phoenix, AZ 85004
fax (602) 322-4100

Chief Administrative Law Judge
National Labor Relations
Division of Judges
www.nlr.gov

Pablo Godoy
NLRB, Region 28
600 Las Vegas Boulevard South,
Suite 400
Las Vegas, NV 89101
Fax: (702) 388-6248

I certify under penalty of perjury that the above is true and correct.
Executed at Alameda, California, on January 25, 2012 .

/s/Katrina Shaw
Katrina Shaw