

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

**River City Fire Equipment d/b/a Fire Safe,
Employer,**

and

Case No. 20-RC-085547

**Road Sprinkler Fitters Local Union No. 669,
U.A., AFL-CIO**

Petitioner.

**Petitioner's Answering Brief in Opposition to Employer's Exceptions to the
Regional Director's Report and Recommendations Regarding Challenged
Ballots**

Pursuant to Sec. 102.69(c)(2) of the NLRB Rules and Regulations, Petitioner submits this Answering Brief in Opposition to the Employer's Exceptions to the Regional Director's Report and Recommendation Regarding Challenged Ballots in the above-referenced case.

For the following reasons, the Union submits that the Regional Director's Report and Recommendation correctly determined that the Employer's challenges should be overruled, the ballots opened, and a certification of results issued.

1. **The Regional Director Correctly Found that the Parties' Stipulation was Final and Binding**

The Employer continues to conveniently ignore the fact that it agreed to a *Norris Thermador* list as part of the Stipulated Election Agreement approved by the Regional Director on July 30, 2012. Such an agreement is final and binding unless contrary to the Act. *Norris Thermador Corp.*, 119 N.L.R.B. 1301, 1302 (1958). As the Regional Director found, the Employer waived its right to challenge the ballots of Darroch and Mott where it had entered into a binding stipulation as to their eligibility. Regional Director's Report at 6-7, 11.

The Employer has disclosed no new evidence regarding either of its two employees that it was not aware of when it signed the Stipulation. Therefore, it

should not be permitted to challenge the votes of the two employees it previously stipulated and agreed were in the unit. *Grancare Inc. d/b/a Premiere Living Center*, 331 NLRB 123 (2000).

2. The Regional Director Correctly Found that Janell Darroch is Not a Supervisor Under the Act

The Region correctly determined that Darroch's job duties did not rise to the level of a supervisor.

Not only were there no changed circumstances between the time the Stipulation was entered and the date of the election with regard to Ms. Darroch's job duties, but the evidentiary support the Employer did provide to support its contention failed to establish that she had any supervisory authority. Indeed what the Employer described as Darroch's inspection and oversight of Mott's work was more along the lines of what can be described as "quality control" by a more senior person and more collaborative in nature as opposed to any supervisory duties. See *Byers Engineering Corp.*, 324 NLRB 740 (1997). Regional Director's Report at 8-9.

Darroch's duties were more consistent with those of a "working foreman" as described in *John Cuneo of Oklahoma, Inc.*, where the Board held that sprinkler fitters who, *inter alia*, assigned work to other employees based on instructions given to them by the Company's superintendent, recorded hours on (and signed) other employees' timesheets, and were able to purchase supplies on behalf of the employer were *not* statutory supervisors. 238 NLRB 1438, 1439 (1978). The Board reasoned "that when installer-fitters act as foremen, they do so as leadmen rather than supervisors within the meaning of the Act." *Id.* The Regional Director concurred that supervisory duties do not include duties more consistent with those of lead men. Regional Director's Report at 7.

3. The Regional Director Correctly Found that Mott was Eligible to Vote Pursuant to the Employer's Stipulation

The Employer's accusation that the Region condoned a one-main unit by allowing Mott to vote is equally specious. The Petitioner concurs with the Regional Director that there were no changed circumstances from the time the Employer *stipulated* as to Mott's eligibility to vote to the day the vote was challenged. See Regional Director's Report at 10-11. At the time the Employer signed the *Norris Thermador* list, on July 27, 2012, the Employer knew they had lost the prison job and had already laid off Jon Mott, however they still stipulated to his eligibility.

The Employer has therefore waived its right to challenge Mott and ignore the Stipulation where there have been no changes to the unit since the signing of the agreement. The Employer's challenges are nothing more than a belated attempt to renege on its agreement with the union regarding eligible voters.

Even without the parties' Stipulation, the Region found correctly that Mott would be eligible to vote under the *Daniels/Steiny* formula, the default formula for eligibility in the construction industry. Regional Director's Report at 11-12.

For the foregoing reasons, Petitioner submits that the Employer's Exceptions should be overruled on all points and the Regional Director's Report and Recommendations on the challenged ballots should be affirmed and implemented.

Dated: November 30, 2012

Respectfully submitted,

/s/ Natalie C. Moffett

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Certificate of Service

I hereby certify that on November 30, 2012, I electronically filed Local 669's Answering Brief in Opposition to Employer's Exceptions to the Regional Director's Report and Recommendations Regarding Challenged Ballots 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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