G&L Associated, Inc. d/b/a USA Fire Protection *and* Road Sprinkler Fitters Local Union No. 669, United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL–CIO. Case 10–CA–038074

February 7, 2013

ORDER DENYING MOTION FOR RECONSIDERATION

BY CHAIRMAN PEARCE AND MEMBERS GRIFFIN AND BLOCK

On September 28, 2012, the National Labor Relations Board, by a three-member panel, issued a Decision and Order in this proceeding adopting the judge's conclusions that the parties' bargaining relationship was governed by Section 8(f) of the Act and that the Respondent violated Section 8(a)(5) and (1) by withdrawing recognition from the Union and failing and refusing to bargain with the Union as the exclusive collective-bargaining representative of unit employees during the term of the parties' agreement.[1] On November 9, 2012, the Union filed a motion for reconsideration.[2]

The Union argues that the Board erred in determining, contrary to the judge, that the "Acknowledgement of Representative Status" (Acknowledgement) executed by the parties did not establish that their relationship was governed by Section 9(a).[3] The Board found that the Acknowledgement failed to satisfy the three-part test for establishing 9(a) status based on a written recognition agreement, as set forth in *Staunton Fuel & Material, Inc.,* 335 NLRB 717 (2001). Specifically, the Board found that the Acknowledgement lacked the required confirmation that the Respondent's recognition of the Union was based on the support or authorization of a majority of unit employees. Rather, that document stated only that "[t]he Employer . . . has, on the basis of objective and reliable information, confirmed that a clear majority of the [employees] are members of, and represented by [the Union]," a statement that could equally apply to an 8(f) relationship.

The Union, in seeking reconsideration, contends that no party asserted the rationale relied on by the Board. However, in cross-exceptions to the judge's decision, the Respondent argued that the Acknowledgement failed to satisfy the *Staunton Fuel* test, including the requirement that the document state that the recognition was based on majority support. The Union's argument therefore lacks merit.

The Union further maintains that the Acknowledgement's express reference to Section 9(a) establishes the parties' intent to form a 9(a) relationship. The second sentence of the Acknowledgement stated that "[t]he Employer therefore unconditionally acknowledges and confirms that Local Union 669 is the exclusive bargaining representative of [the employees] pursuant to Section 9(a) of the [Act]." As the Union points out, the Board noted in *Staunton* that although recognition language need not mention Section 9(a) explicitly, "such a reference would indicate that the parties intended to establish a majority rather than an 8(f) relationship." 335 NLRB at 720. Contrary to the Union's assertion, however, *Staunton* does not suggest that the inclusion of such a reference is conclusive and obviates the need to apply the prescribed three-part test. In fact, *Staunton* adopted the standard of the Tenth Circuit in *NLRB v. Triple C Maintenance, Inc.*[4] and *NLRB v. Oklahoma Installation Co.*[5] In *Triple C*, the court, after finding that the employer expressly granted recognition under Section 9(a), further stated, "Significantly, the agreement also represents that '[t]he Employer agrees that this recognition is predicated on a clear showing of majority support for [the Union] indicated by bargaining unit employees.'" 219 F.3d at 1155. If, as the Union here contends, the reference to Section 9(a) were sufficient to establish a relationship under that section of the Act, the court's additional finding would have been superfluous rather than significant. In *Oklahoma Installation Co*., by contrast, the Tenth Circuit found that the parties' relationship was governed by Section 8(f) because, among other things, their recognition agreement stating that the union represented a majority of unit employees failed to confirm that the union had shown or offered to show majority support.

Finally, the Union argues that the Board's decision is inconsistent with Board and court precedent. We disagree. Contrary to the Union's contention, we find that this case is distinguishable from the Board's earlier decisions in *Triple A Fire Protection, Inc.*[6] and *MFP Fire*

[1] 358 NLRB No. 162.

[2] The Union's motion also seeks reconsideration of our decision in *Austin Fire Equipment, LLC,* 359 NLRB No. 3 (2012). We have denied that request in a separate Order issued today.

[3] Although the judge found that the Acknowledgement language would have supported 9(a) status, he determined that the parties' agreement, in its entirety, failed to demonstrate conclusively that they intended to establish a 9(a) relationship.

[4] 219 F.3d 1147 (2000), enfg. 327 NLRB 42 (1998).

[5] 219 F.3d 1160 (2000), denying enf. 325 NLRB 741 (1998).

[6] 312 NLRB 1088 (1993), enfd. 136 F.3d 727 (11th Cir. 1998), cert. denied 525 U.S. 1067 (1999).

Protection, Inc.,[7] because since those cases arose, the Union has materially revised the language of its form recognition agreement. See *Austin Fire Equipment*, supra, 359 NLRB No. 3, slip op. at 1 fn. 5. Moreover, as discussed above, the Board's decision comports with court precedent, including *Triple C Maintenance* and *Oklahoma Installation Co.*

Accordingly, having duly considered the matter, the Board finds that the Union has not raised any extraordinary circumstances warranting reconsideration of the Board's decision under Section 102.48(d)(1) of the Board's Rules and Regulations.

IT IS ORDERED, therefore, that the Union's motion for reconsideration is denied.

Dated, Washington, D.C. February 7, 2013

Mark Gaston Pearce,	Chairman
Richard F. Griffin, Jr.,	Member
Sharon Block,	Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

[7] 318 NLRB 840 (1995), enfd. on other grounds 101 F.3d 1341 (10th Cir. 1996).