

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
WASHINGTON, D. C.**

**UNITED UNION OF ROOFERS, WATERPROOFERS,  
AND ALLIED WORKERS, LOCAL 162**

**and**

**Case 28-CB-080496  
28-CB-085690**

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

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

**and**

**Case 28-CA-085434**

**UNITED UNION OF ROOFERS, WATERPROOFERS,  
AND ALLIED WORKERS, LOCAL 162**

**and**

**SHEETMETAL WORKERS INTERNATIONAL  
ASSOCIATION, AFL-CIO, LOCAL UNION NO. 88  
Party in Interest**

**JOINDER OF PARTY-IN-INTEREST TO EXCEPTIONS OF CHARGING PARTY  
TO THE DECISIONS OF THE ADMINISTRATIVE LAW JUDGE**

Party-in-interest Sheet Metal Workers Local 88 hereby joins in the exceptions and supporting brief filed by Charging Party Farrell. Local 88 further notes that the reliance of Roofers and the ALJ on Roofers' purported 9(a) status overlooks a critical fact: that such status was only obtained by virtue of Farrell's violation of its agreements with other SMWIA locals (that is, the travelers clause explained in *McKinstry v. SMWIA Local 16*, 859 F.2d 1382 (9<sup>th</sup> Cir. 1988)). Were it not for this violation, Farrell would at the outset of its Nevada operation have hired workers out of the SMW Local 88 hiring hall (who overwhelmingly support Local 88), and thus as a practical matter the Roofers could never have obtained 9(a) status in the Farrell

workforce. To allow Roofers Union to take advantage of this violation of both the Act and labor agreement to excuse their own 8(b)(3) violations would be contrary to basic principles of both justice<sup>1</sup> and federal labor law already cited by Farrell.

Dated: June 26, 2013

Respectfully submitted,

McCRACKEN, STEMERMAN & HOLSBERRY



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<sup>1</sup> Roofers cannot justly rely on the fact it was Farrell rather than themselves violating the SMWIA contracts, as courts have uniformly found it tortious since at least the 1800's for a third party to induce a breach of contract, and Roofers' lower wage rates were such an inducement. See Restatement (Second) Torts section 766 ("One who intentionally and improperly interferes with the performance of a contract (except a contract to marry) between another and a third person by inducing or otherwise causing the third person not to perform the contract, is subject to liability to the other for the pecuniary loss resulting to the other from the failure of the third person to perform the contract."); *9 to 5 Fashions, Inc. v. Spurney*, 538 So. 2d 228 (La. 1989)(until that case was decided, Louisiana was "the only American state that does not recognize the action for tortious interference with contractual relations.").

## CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing **Joinder of Party-In-Interest to Exceptions of Charging Party to the Decisions of the Administrative Law Judge** was filed June 26, 2013 electronically via E-Gov with the National Labor Relations Board, Office of the Executive Secretary and also served on June 26, 2013 by electronic mail to the following:

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Executed on June 26, 2013.



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