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UNITED STATES OF AMERICA

NATIONAL LABOR RELATIONS BOARD

REGION 28

UNITED UNION OF ROOFERS, WATERPROOFERS, AND ALLIED WORKERS, LOCAL 162 and A.W. FARRELL & SON, INC. and SHEET METAL WORKERS INTERNATIONAL ASSOCIATION, AFL-CIO, LOCAL UNION NO. 88	Case Nos.: 28-CA-023502; 28-CA-060627; 28-CA-062301
SHEET METAL WORKERS INTERNATIONAL ASSOCIATION, AFL-CIO, LOCAL UNION NO. 88 and A.W. FARRELL & SON, INC., and UNITED UNION OF ROOFERS AND WATERPROOFERS, LOCAL 162.	Case Nos.: 28-CA-085434; 28-CB-080496; 28-CB-085690

SHEET METAL WORKERS INTERNATIONAL ASSOCIATION, AFL-CIO, LOCAL UNION NO. 88 And A.W. FARRELL & SON, INC., And UNITED UNION OF ROOFERS AND WATERPROOFERS, LOCAL 162	Case No.: 28-CD-096857

MOTION FOR CONSOLIDATION AND RECALL OF DECISION

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The three captioned cases are all intertwined and relate to the same series of events. They should be consolidated or coordinated for Decision by the Board.

These cases involve a simple chronology. In 2007, Farrell signed an agreement with Roofers Local 162 covering its employees. It signed a second successor agreement the same year covering the same employees, which agreement expired on June 30, 2010.

Roofers Local 162 was involved in coordinated negotiations in 2010. Roofers Local 162 contends an agreement was reached. Farrell claims that no agreement was reached. The other contractors involved in those negotiations signed the agreement, and there is no dispute with them.

In March of 2011, Farrell withdrew recognition from Local 162, contending that the bargaining relationship was governed by Section 8(f). It signed an agreement with Sheet Metal Workers Local 88 covering the same bargaining unit. Local 162 filed a charge in Region 28. Complaint issued, and the case was tried to ALJ Lana Parke in the fall of 2011 (28-CA-023502).

The Charging Party suggests that the Board should recall its decision. As noted, the employer is challenging this decision on the *Noel Canning* theory. This will only delay the decision in this case and delay a decision in all of these cases potentially for a year or more. Roofers Local 162 believes that a prompt resolution of all these cases is in the parties' best interest. The Board has the power to recall this case because the record has not been filed. It would be appropriate to do so, and Local 162 urges the Board to recall that decision and to consolidate these cases and issue one consolidated decision.

Judge Parke in the first case found that the withdrawal of recognition was unlawful because Roofers Local 162 and Farrell had established a bargaining relationship under Section 9(a) of the Act. She ordered Farrell to bargain with Local 162.

Local 162 took exception on the ground that Farrell and the Union had reached an agreement for the period July 1, 2010, through June 30, 2012. As noted all the other contractors involved in those negotiations had reached agreement and signed off on the agreement with the Union. The Board reversed Judge Parke and issued its decision. See case 359 NLRB No. 154 (2013).

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A.W. Farrell thereafter filed a Petition for Review in the D.C. Circuit. That Petition has been stayed by that Court as is its practice whenever there is a potential *Noel Canning* issue.

In the meantime, Local 162 has filed a motion for reconsideration before the Board in this case. Sheet Metal Workers Local 88, which was not a party to that matter, has filed a Memorandum in that case. A.W. Farrell has filed an Opposition to that Motion for Reconsideration and filed a "cross-Motion for Reconsideration."

The record has not been filed in the D.C. Circuit case.

The second case (28-CA-062301 and 085434) arose because in July 2012 it became clear to Local 162 that Farrell not only had withdrawn recognition but had recognized the Sheet Metal Workers for exactly the same unit of employees: all of Farrell's employees. The recognition of Local 88 for the same unit Judge Parke found to be represented by Local 162 rendered any bargaining useless since there was no unit where Farrell recognized Local 162. The Region issued complaint against Farrell, and that matter was tried to Administrative Law Judge Ringler. The Region sought additional remedies against Farrell in light of its effective evisceration of the unit.

Judge Ringler agreed that Farrell had unlawfully withdrawn recognition, agreed that Farrell had to bargain with Local 162, and further agreed that Farrell had to withdraw recognition from the Sheet Metal Workers in order to comply with its bargaining obligation arising from Judge Parke's decision. He, however, dismissed the allegation against Farrell on a theory of collateral estoppel. Roofers Local 162 has now filed exception from that Decision. This is the second case.

With respect to the CB cases, the Administrative Law Judge found that Local 162 had delayed in providing information to Farrell. The Union has filed exceptions to that finding, asserting, among other things, that because there was a collective bargaining agreement in effect, it had no duty to bargain until July 2012, when the agreement expired. Local 162 furthermore has pointed out that Farrell's requests for information were a sham because there was no bargaining unit, and Farrell could not bargain in good faith over an existing unit. Those exceptions are

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pending. There are related CB cases that Judge Ringler heard. See case 28-CB-080496 and 085690.

Farrell itself has filed Cross-Exceptions with respect to the Judge's Decision with respect to the Charge against Local 162. Farrell, in essence, claims that the Judge should have ordered Local 162 to bargain in good faith. Bargaining in good faith, of course, is impossible because Farrell has eviscerated, as Judge Ringler put it, the bargaining unit because it no longer exists.

The third case involves the 10(k) hearing. That case is simply a repeat of the above claims. Local 88 triggered that dispute by threatening to picket if the work was assigned to members of Local 162. This is a representational dispute, because Roofers Local 162 claims it represents all of the Farrell employees. Sheet Metal Workers Local 88 claims it represents all of the employees. Farrell is attempting to change that dispute into a jurisdictional dispute when it is plainly a representational dispute between the two unions. Neither union seeks the reassignment of the work. Each union seeks to represent the same group of Farrell employees who perform the same work. That representation question was, in Local 162's view, resolved by the Board's Decision. Farrell acquiesced in that finding. It was further resolved by Judge Ringler's Decision.

The Board should consolidate these matters and issue either one decision or consistent decisions. The cases should be coordinated to insure a consistent result. This motion is particularly timely because the record has not been filed in the case in the DC Circuit and the Board still has the power to recall that case and issue a decision.

For these reasons, these cases should be consolidated or otherwise treated as one series of cases in which decision should issue simultaneously.

Respectfully submitted,

Dated: August 22, 2013

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A Professional Corporation

/S/ *DAVID A. ROSENFELD*

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PROOF OF SERVICE
(CCP §1013)

I am a citizen of the United States and resident of the State of California. I am employed in the County of Alameda, State of California, in the office of a member of the bar of this Court, at whose direction the service was made. I am over the age of eighteen years and not a party to the within action.

On August 22, 2013, I served the following documents in the manner described below:

MOTION FOR CONSOLIDATION OR FOR COORDINATION

☑ (BY FACSIMILE) I am personally and readily familiar with the business practice of Weinberg, Roger & Rosenfeld for collection and processing of document(s) to be transmitted by facsimile and I caused such document(s) on this date to be transmitted by facsimile to the offices of addressee(s) at the numbers listed below.

☑ (BY ELECTRONIC SERVICE) By electronically mailing a true and correct copy through Weinberg, Roger & Rosenfeld's electronic mail system from kshaw@unioncounsel.net to the email addresses set forth below.

On the following part(ies) in this action:

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For the Acting General Counsel

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on August 22, 2013, at Alameda, California.

/s/ Katrina Shaw
Katrina Shaw

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