UNITED STATES OF AMERICA
BEFORE
THE NATIONAL LABOR RELATIONS BOARD

ROAD SPRINKLER FITTERS LOCAL UNION NO. 669, U. A., AFL-CIO,	:	
Respondent,	:	NLRB Case No. 27-CC-091349
and	:	
FIRETROL PROTECTION SYSTEMS, INC.,	:	
Charging Party,	:	
and	:	
COSCO FIRE PROTECTION, INC.,	:	
MX HOLDINGS, INC.,	:	
and	:	
CFP FIRE PROTECTION, INC.,	:	
Parties in Interest.	:	
……	:	

<u>LOCAL 669'S EXCEPTIONS TO THE DECISION OF THE ADMINISTRATIVE LAW JUDGE</u>

Respondent Road Sprinkler Fitters Local Union No. 669, U.A., AFL-CIO ("Local 669" or "the Union"), by its undersigned counsel, respectfully submits the following Exceptions to the Decision and Order of the Administrative Law Judge ("ALJD"). The Union excepts to the following:

1. To the ALJ's conclusion that the Union's grievance and suit to compel arbitration were not protected by the First Amendment or by the National Labor Relations Act ("NLRA") contrary to NLRB precedent and to the determination by the federal district court in denying NLRA Section 10(l) relief.

2. To the ALJ's decision purporting to address and resolve the merits of the Union's pending grievance, and to preempt arbitration of that grievance, contrary to the longstanding policies of the NLRB and the Supreme Court that the merits of the grievance are for the arbitrator to determine and deferring to the parties' private arbitration processes. ALJD p. 2, line 19 - p. 3, line 20.

3. To the ALJ's decision purporting to determine the factual relationships between Cosco Fire Protection, Inc. ("Cosco"), Firetrol Protection Systems, Inc, ("Firetrol"), MX Holdings US, Inc. ("MX") and CFP Fire Protection, Inc. ("CFP"), issues within the jurisdiction of an arbitrator in the pending grievance, and doing so on the basis of a self-serving and incomplete record presented by those entities. ALJD p. 2, line 19 – p. 3, line 20.

4. To the ALJ's erroneous finding that Consolidated Fire Protection no longer exists. ALJD p. 4, line 1 and fn. 10.

5. To the ALJ's determination that Cosco, Firetrol, MX and CFP are not a

"single employer" under the NLRA when the "single employer" question is not even an issue before the NLRB or the arbitrator, and on the basis of a self-serving and incomplete record presented by those entities. ALJD p. 5, lines 20 - 40.

6. To the ALJ's failure to apply the NLRB's decision in *Road Sprinkler Fitters Local 669 (Cosco Fire Protection)* holding that the clause under which the grievance was filed was lawful, primary and enforceable, to be interpreted by an arbitrator "to require no more than is permitted by law." 357 NLRB No. 176, slip op. at 3, 4-5 (2011). ALJD p. 6, line 5 – p. 7, line 10.

7. To the ALJ's conclusion that there is no evidence that Cosco, CFP, and/or MX have control over Firetrol, an issue within the jurisdiction of an arbitrator in the pending grievance, and on the basis of a self-serving and incomplete record presented by those entities. ALJD p. 7, lines 1 – 5.

8. To the ALJ's conclusion that the Union is seeking to "acquire work" from Firetrol. ALJD p. 7, lines 5-10.

9. To the ALJ's conclusions that the Union's grievance and suit to compel arbitration have unlawful "cease doing business" and "representation" objects in violation of NLRA Section 8(b)(4)(B). ALJD p. 7, lines 15-30.

10. To the ALJ's finding that the Union's grievance and lawsuit are predicated on a reading of Addendum C that converts it to a prohibited 8(e) agreement. ALJD p. 7, line 35.

11.To the ALJ's imposition of the burden of proof upon the Union to prove that its grievance and suit to compel arbitration were arguably meritorious, rather than upon the General Counsel to prove that the Union's grievance and suit to compel arbitration were not reasonably based, as required by NLRB precedent and by the District Court in denying Section 10(l) relief to the General Counsel. ALJD p. 8, lines 1-10.

12. To the ALJ's incomplete analysis of the two exceptions under BE&K as they apply to the facts of this case. ALJD p. 8, lines 5-10.

13. To the ALJ's conclusions of law that the Union's grievance and suit to compel arbitration constitutes conduct in violation of NLRA Sections 8(b)(4)(ii)(A) and (B). ALJD p. 8, lines 10-21.

14. To the ALJ's remedy requiring the Union to withdraw its pending grievance and suit to compel arbitration. ALJD p. 8, lines 24-32.

15. To the ALJ's remedy requiring the Union to reimburse Firetrol, Cosco, MX and CFP for their legal fees and expenses incurred in defending the grievance and lawsuit. ALJD p. 8, lines 24-32.

16. To the ALJ's proposed Order in its entirety as finding any violation of law or imposing any remedial requirements upon the Union. ALJD p. 8, line 38 – p. 9, line 26.

Dated: November 1, 2013

Respectfully submitted,

/s/ William W. Osborne, Jr.

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CERTIFICATE OF SERVICE

I hereby certify that on November 1, 2013, I electronically filed Local 669's Exceptions to the Decision of the Administrative Law Judge 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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