

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

FIRETROL PROTECTION SYSTEMS,  
INC.,

Charging Party,

and

COSCO FIRE PROTECTION, INC.,

MX HOLDINGS, INC.,

and

CFP FIRE PROTECTION, INC.,

Parties in Interest.

.....:

**MOTION TO STRIKE FIRETROL’S “REPLY” BRIEF AND  
EXHIBITS ATTACHED THERETO**

Pursuant to Section 102.24(a) of the Board’s Rules and Regulations,  
Respondent Road Sprinkler Fitters Local Union No. 669, U.A., AFL-CIO (“Local  
669” or “the Union”) respectfully submits this Motion to Strike the pleading  
submitted by Charging Party Firetrol Protection Systems, Inc. (“Firetrol”)

captioned as “Firetrol’s Reply to Respondent’s Opposition to Firetrol’s Cross Exception to the Administrative Law Judge’s Decision” (“Firetrol ‘Reply’”) because Firetrol has submitted what, at pages 2-5, is in substance a surreply brief rearguing the merits of the case rather than addressing the Union’s arguments in opposition to its Cross-Exceptions, in violation of Board procedure and the Board’s Rules and Regulations. The Union also asks the Board to strike three (3) exhibits that Firetrol has submitted as an improper attempt to reopen and supplement the record in this case.

1. Firetrol filed nine (9) “limited and contingent” cross-exceptions to the ALJ’s decision addressing the ALJ’s failure to give any weight to an email from the Regional Office (G.C. Exh. 1(f)(6)) (Exception 1); to the ALJ’s rejection of an arbitration decision (Exception 2); to the ALJ’s failure to consider the Union’s response to G.C. Exhs. 24 and 25(Exception 3); to the ALJ’s failure to address the issue of what remedy the Union sought in its pending grievance (Exception 4); to the ALJ’s failure to give any weight to a decision of the District Court (Exception 5); and to the ALJ’s recommended remedy. Exceptions 6-9. The Union then filed its Brief in Opposition to Firetrol’s Cross-Exceptions addressing each of Firetrol’s specific contentions in turn.

Firetrol has now filed what it has captioned as its “Reply” but that submission is a thinly disguised surreply brief primarily consisting of a re-

argument of the merits of the case and not addressed to the arguments made by the Union in opposition to its Cross Exceptions. Although the caption to Firetrol’s argument purports to address the earlier arbitration award, that is a subterfuge as the arbitration decision is mentioned only once in the last sentence of Firetrol’s three-page re-argument of the merits of the case. *See* Firetrol “Reply” at 2-5.

Reply briefs are to be “limited to matters raised in the brief to which it is replying...” and surreply briefs are not permitted under Board law without special leave of the Board -- leave that was not requested let alone obtained. *See* Section 102.46 (h), NLRB Rules and Regulations; *D.L. Baker, Inc.*, 330 NLRB 521, 521 n.4 (2000). A submission that is in substance an improper surreply brief will be stricken regardless of how it may be captioned. *E.g.*, *Strategic Technology Institute, Inc.*, NLRB Case No. 15-CA-094893 (April 5, 2013) (unpublished Order).

2. In addition to attempting to submit an improper surreply brief, Firetrol has attempted to supplement the record by attaching portions of the Union’s website to support its cross-exceptions regarding remedy. *See* Firetrol “Reply” at 5-6 and Exhibits A, B and C. Firetrol failed to submit these materials in support of an argument for an enhanced remedy at the hearing and they should therefore be stricken. *Utility Workers Union of America (Southern California Gas Co.)*, 356

NLRB No. 158 (2011), slip op. at 1, n. 3, citing Section 102.45(b), NLRB Rules and Regulations.

Wherefore, Local 669 respectfully requests that the Board strike the portions of Firetrol's "Reply" which are in substance a surreply brief and not "limited to matters raised in the brief to which it is replying..." and reject the Exhibits belatedly submitted therewith.

Respectfully submitted,

/s/ William W. Osborne, Jr.

William W. Osborne, Jr.

Natalie C. Moffett

Sarah L. Nash

Osborne Law Offices, P.C.

4301 Connecticut Avenue, N.W., Suite 108

Washington, D.C. 20008

Telephone: (202) 243-3200

Facsimile: (202) 243-3207

Counsel for Respondent

Road Sprinkler Fitters Local

Union 669, U.A., AFL-CIO

### **CERTIFICATE OF SERVICE**

I hereby certify that on February 3, 2014, I filed Local 669's Brief in Opposition to Firetrol's Cross-Exceptions to the ALJ's Decision with the Executive Secretary via the NLRB's e-filing portal and also forwarded a copy by electronic mail to the following:

Wanda Pate Jones, Regional Director  
Region 27, National Labor Relations Board

600 17th Street  
7th Floor-North Tower  
Denver, CO 80202-5433

[wanda.jones@nlrb.com](mailto:wanda.jones@nlrb.com)

(By Electronic Mail)

Kristyn Myers, Counsel for the Acting General Counsel  
Region 27, National Labor Relations Board

600 17th Street

7th Floor-North Tower

Denver, CO 80202-5433

[kristyn.meyers@nlrb.com](mailto:kristyn.meyers@nlrb.com)

(By Electronic Mail)

Micky Devitt, Counsel for the Acting General Counsel  
Region 27, National Labor Relations Board

600 17th Street

7th Floor-North Tower

Denver, CO 80202-5433

[michelle.devitt@nlrb.gov](mailto:michelle.devitt@nlrb.gov)

(By Electronic Mail)

Mark Ross

Jackson Lewis LLP

199 Fremont Street

10th Floor

San Francisco, CA 94105

[mark.ross@jacksonlewis.com](mailto:mark.ross@jacksonlewis.com)

Counsel for Charging Party Firetrol

(By Electronic Mail)

James Severson

Bingham McCutchen, LLP

Three Embarcadero Center

San Francisco, CA 94111-4067

[james.severson@bingham.com](mailto:james.severson@bingham.com)

Counsel for Parties in Interest Cosco, Consolidated and CFP  
(By Electronic Mail)

/s/ William W. Osborne, Jr.

William W. Osborne, Jr.