

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

KING'S FIRE PROTECTION, INC. AND ITS ALTER-
EGO WARRIOR SPRINKLER, LLC

and

Cases 5-CA-36094
5-CA-36312

ROAD SPRINKLER FITTERS LOCAL
UNION NO. 669, U.A., AFL-CIO

Thomas J. Murphy, Esq., and Matthew J. Turner, Esq., of Baltimore, MD,
for the Acting General Counsel.

Natalie C. Moffett, Esq., and William W. Osborne, Jr. Esq., of Washington, DC,
for the Charging Party.

Thomas R. Davies, Esq., of Lancaster, PA,
for the Respondent-Employer.

DECISION

Statement of the Case

Bruce D. Rosenstein, Administrative Law Judge. This case was tried before me on May 25, 2011, in Harrisburg, Pennsylvania, pursuant to a third amended consolidated complaint and notice of hearing (the complaint) issued by the Regional Director for Region 5 of the National Labor Relations Board (the Board). The complaint, based upon original charges and an amended charge filed on various dates in 2010,¹ by Road Sprinkler Fitters Local Union No. 669, U.A., AFL-CIO (the Charging Party or Union), alleges that King's Fire Protection, Inc., and its alter-ego Warrior Sprinkler, LLC (the Respondents, Respondent King's, or Respondent Warrior), has engaged in certain violations of Section 8(a)(1) and (5) of the National Labor Relations Act (the Act). The Respondents filed a timely answer to the complaint denying that they had committed any violations of the Act.

Issues

The complaint alleges that the Respondents violated Section 8(a)(1) and (5) of the Act when they failed and refused to apply the terms and conditions of the April 1, 2007 through March 31, collective-bargaining agreement with the Union and specifically ceased making contributions to the contractual benefit funds. Additionally, the complaint alleges that the Respondents refused to participate in the grievance and arbitration

¹ All dates are in 2010, unless otherwise indicated.

5 procedure by selecting an arbitrator, and effectively withdrew recognition from the Union
in violation of Section 8(a)(1) and (5) of the Act.

10 On the entire record, including my observation of the demeanor of the witnesses,
and after considering the briefs filed by the Acting General Counsel, ² Charging Party,
and the Respondents, I make the following

Findings of Fact

I. Jurisdiction

15 The Respondents are corporations with an office and place of business located
in Mechanicsburg, Pennsylvania and have been engaged in the construction industry as
fire sprinkler contractors. Respondents in conducting their business operations provided
services valued in excess of \$50,000 directly to customers located outside the State of
Pennsylvania. The Respondents admit and I find that they are employers engaged in
20 commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union
is a labor organization within the meaning of Section 2(5) of the Act.

II. Alleged Unfair Labor Practices

A. Background

25 On or about August 10, 2009, Respondent Warrior was established by
Respondent King's as a subordinate instrument to, and a disguised continuation of
Respondent King's and, on or about the same date, Respondent Warrior assumed part
of the fire sprinkler operation of Respondent King's.

30 At all material times Harry Smith has been the President of Respondent King's
and his son Douglas Smith held the position of Vice President of Respondent King's until
July 3, 2009. Effective August 10, 2009, D. Smith became the President of Respondent
Warrior.

35 Respondent King's was incorporated on March 23, 2001, while H. Smith was still
employed with Triangle Fire Protection, Inc. (R Exh.13). H. Smith, as the only employee,
commenced work on April 1, 2001. He hired his first employee on June 4, 2001, and
since that time to the present date Respondent King's has obtained and hired all of its
40 employees through the Union.

The Union has been the designated exclusive collective-bargaining
representative of the Unit and has been recognized as such by Respondent King's. This
recognition has been embodied by a recognition agreement dated March 23, 2001³, and

² The Motion of all parties, as set forth in footnote 1 of the Acting General Counsel's
post-hearing brief is granted. Accordingly, GC Exh. 23, 24, and 25 are admitted into
evidence.

³ The agreement states in pertinent part that: "The Employer, on the basis of
objective and reliable information, confirmed that a clear majority of the sprinkler fitters in
its employ have designated, are member of, and are represented by, Road Sprinkler
Fitters Local Union No. 669, U.A., AFL-CIO, for purposes of collective bargaining. The
Employer therefore unconditionally acknowledges and confirms that Local 669 is the

5 in an April 1, 2007-March 31 collective-bargaining agreement between the Union and the
National Fire Sprinkler Association (NFSA) (GC Exh. 21), an organization composed of
employers in the construction industry whose purpose exists in negotiating and
administering collective-bargaining agreements. Respondent King's agreed to coverage
10 under the collective-bargaining agreement that was governed by Section 9(a) of the Act,
by virtue of a 1954 Board election and "RC" certification (GC Exh. 2).

The employee complement of Respondent King's has fluctuated from a high of
27 employees to around five since late 2001. The evidence establishes that on January
15 18, 2005, when an assent and interim agreement was signed by H. Smith with the Union
(GC Exh. 4)⁴, Respondent King's had 27 employees (GC Exh. 5). That number
decreased to approximately 16 employees when on November 20, 2006 it designated
NFSA to act as its collective-bargaining agent (GC Exh. 7 and 8).

20 Additionally H. Smith admitted and the parties stipulated that Respondent King's,
despite not agreeing to be bound by the April 1, 2010-March 31, 2013 collective-
bargaining agreement between NFSA and the Union (GC Exh. 22), adheres to its terms
and conditions therein and continues to remit dues (R Exh.12) and make benefit fund
contributions to the Union (GC Exh.15).

25 By letter dated December 4, 2009, the Charging Party notified Respondent
King's in accordance with Article 30 of the contract that it intended to terminate the
agreement upon its expiration and negotiate new terms and conditions of employment
for the Unit to be effective April 1(GC Exh. 9). The parties stipulated that the
Respondents on or about March 11, informed the Union that it was not interested in
30 bargaining a new collective-bargaining agreement.

B. The 8(a)(1) and (5) Allegations

1. Alter Ego Status

35 The General Counsel alleges that Respondent King's and Respondent Warrior
have had substantially identical management, officers, business purpose, operations,
equipment, customers, and supervision/management and are, and have been at all
material times, alter egos within the meaning of the Act. It further alleges that since
40 March 11, the Respondents have refused to meet and bargain with the Union, have
effectively withdrawn recognition from the Union since on or about April 1, and have
further failed and refused to adhere to the terms and conditions of the most recent
collective-bargaining agreement between the parties.

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exclusive bargaining representative of its sprinkler fitter employees pursuant to Section
9(a) of the National Labor Relations Act."

⁴ The agreement states in pertinent part that: "The Employer hereby freely and
unequivocally acknowledges that it has verified the Union's status as the exclusive
bargaining representative of its employees pursuant to Section 9(a) of the National
Labor Relations Act, as amended, for the purpose of establishing wages, hours, and
working conditions for all journeymen sprinkler fitters, apprentices and unindentured
apprentice applicants in the employ of the Employer, and that the Union has offered to
provide the Employer with confirmation of its support by a majority of such employees."

5

Facts

10 The record confirms that Respondents have common ownership, officers, management, supervisors and directors, share common premises and facilities, provide services for each other and hold themselves out to the public as a single- integrated business enterprise.⁵

Discussion

15 In determining whether two nominally separate employing entities constitute a single employer, the Board examines four factors: (1) common ownership, (2) common management, (3) interrelation of operations, and (4) common control of labor relations. No single factor is controlling, and not all need to be present. Rather, single employer status ultimately depends on all the circumstances. It is characterized by the absence of
20 an arm's length relationship among seemingly independent companies. *Mercy Hospital of Buffalo*, 336 NLRB 1282, 1283-1284 (2001) and *Dow Chemical Co.*, 326 NLRB 288 (1998).

25 With respect to the General Counsel's theory that Respondents are alter egos, the Board utilizes additional factors and a broader standard in determining whether two ostensibly distinct entities are in fact alter egos. The Board considers whether the entities in question are substantially identical, including the factors of management, business purpose, operating equipment, customers, supervision as well as common ownership. *Crawford Door Sales Co.*, 226 NLRB 1144 (1976); *Advance Electric*, 268
30 NLRB 1001, 1002 (1984).

Under these circumstances, and particularly noting that the Respondents admit in their answer that they are alter egos within the meaning of the Act, I find that the General Counsel has established this relationship as alleged in paragraph 4 of the
35 complaint.

2. Refusal to Negotiate and Withdrawal of Recognition

Facts

40 H. Smith testified, without contradiction, that on March 23, 2001, he was still employed by Triangle Fire Protection, Inc., and did not employ any bargaining unit employees until June 4, 2001. He further testified that since he did not have any employees in his employ on March 23, 2001 when he executed the recognition
45 agreement, it was impossible for a clear majority of those employees to designate the Union as their collective-bargaining representative.

Discussion

50 Section 8(f) of the Act permits unions and employers in the construction industry to enter into collective-bargaining agreements without the union having established that

⁵ The record shows that both Smiths (Harry and Douglas) were on Respondent King's payroll on March 18, and signed a license application for Respondent Warrior (GC Exh.16 and 19).

5 it has the support of a majority of the employees in the covered unit.⁶ The provision
 therefore creates an exception to Section 9(a)'s general rule requiring a showing of
 majority support. Section 8(f) also creates an exception to the general rule of Section
 8(a)(2) and Section 8(b)(1)(A) that an employer and a union lacking majority support of
 10 unit employees may not enter into a bargaining relationship with respect to those
 employees. However, at the expiration of an 8(f) contract, the employer can withdraw
 recognition from the union and is under no further obligation to bargain. By contrast, if
 the bargaining relationship exists under Section 9(a), the union retains its representative
 status after the expiration of the contract and the employer remains obligated to bargain,
 absent an affirmative showing that the union has lost its majority support. *Central Illinois*
 15 *Construction*, 335 NLRB 717 (2001).

In *Nova Plumbing, Inc.*, 336 NLRB 633 (2001), enf. denied 330 F. 3d 531 (D.C.
 Cir. 2003), the D.C. Circuit rejected the Board's determination that contract language
 alone can establish a Section 9(a) relationship between a union and a construction
 20 industry employer, "at least where, as [there], the record contains strong indications that
 the parties had only a Section 8(f) relationship." *Id.* at 537. The Court found that the
 Board's reliance on contract language, standing alone, to establish a 9(a) relationship
 "runs rough shod" over the principles established in *International Ladies' Garment*
Workers' Union v. NLRB (Bernhard-Altman), 366 U.S. 731 (1961). In *Bernhard-*
 25 *Altman*, the Supreme Court found that a Section 9(a) collective-bargaining agreement
 that recognizes a union as an exclusive bargaining representative must fail in its entirety
 where, at the time the agreement was signed only a minority of the employees actually
 authorized the union to represent them.

30 In the subject case, while the recognition agreement dated March 23, 2001,
 clearly states that Respondent King's recognized the Union as the Section 9(a)
 representative of its employees, the record evidence contravenes that assertion.

In this regard, based on the uncontroverted facts that Respondent King's had no
 35 employees in its employ on March 23, 2001, when the recognition agreement was
 executed nor was it even doing business, I find contrary to the General Counsel and the
 Charging Party that the bargaining relationship established on that date was governed
 by Section 9(a) of the Act. *Brannan Sand & Gravel Co.*, 289 NLRB 977, 982 (1988) (the
 Board held that it was appropriate to inquire into the establishment of construction
 40 industry bargaining relationships outside the Section 10(b) period). Indeed, on March
 23, 2001, it was impossible for employees of Respondent King's to establish that a clear
 majority designated the Union as their bargaining representative. Moreover, the
 recognition language found in the March 23, 2001, agreement does not state that
 Respondent King's recognition was based on a contemporaneous showing or offer by
 45 the Union to show, that the Union had majority support as required by *Central Illinois*.
 Accordingly, it cannot conclusively be found that the language in the recognition

⁶ Section 8(f) of the Act provides, in pertinent part: "It shall not be an unfair labor
 practice under subsection (a) and (b) of this section for an employer engaged primarily in
 the building and construction industry to make an agreement covering employees
 engaged (or who upon their employment, will be engaged) in the building and
 construction industry with a labor organization of which building and construction
 employees are members...because (1) the majority status of such labor organization
 has not been established under the provisions of Sec. 9 prior to the making of such
 agreement."

5 agreement established a Section 9(a) relationship. Rather, I find that the parties on March 23, 2001, established a Section 8(f) collective-bargaining relationship. In summary, I find only that the recognition agreement dated March 23, 2001, did not exclusively establish a Section 9(a) bargaining relationship.

10 As set forth in *Central Illinois*, the parties to an 8(f) agreement can convert their relationship to 9(a) in any one of three ways. The union can obtain a majority vote in a Board election; an employer can make an “immediate” grant of 9(a) recognition when the union proffers a showing of majority support; or the parties can rely on a third option-----
 15 agree on contract recognition language committing the employer to recognize the union as 9(a) representative if and when the union proffers a showing of majority support during the contract’s term, with the union subsequently making the required showing.

The evidence shows that on January 18, 2005, Respondent King’s voluntarily executed a Section 9(a) recognition agreement by which it “freely and unequivocally
 20 acknowledged that it had verified the Union’s status as the exclusive bargaining representative of its employees pursuant to Section 9(a) of the Act and the Union offered to provide the Employer with confirmation of its support by a majority of such employees.” That language comports with the *Central Illinois* criteria established by the Board to attain Section 9(a) status.⁷ Additionally, when Respondent King’s joined the
 25 NFSA national multi-employer bargaining unit for the purpose of negotiating the April 1, 2007-March 31 agreement, it reaffirmed its Section 9(a) relationship with the Charging Party. In this regard, the NFSA/Charging Party collective-bargaining agreement that Respondent King’s executed on April 1, 2007, was governed by Section 9(a) by virtue of the 1954 Board representation “RC” certification. Therefore, Respondent King’s merged
 30 its preexisting Section 9(a) single employer unit into the multi-employer bargaining unit and relationship. Although Respondent King’s withdrew from the multi-employer bargaining unit prior to April 2010 for purposes of bargaining the 2010-13 collective bargaining agreement, it did so as a Section 9(a) employer contractor. *Jim Kelley’s Tahoe Nugget*, 227 NLRB 357 (1976), *enfd*, 584 F. 2d 293 (9th Cir. 1978), *cert. denied*,
 35 430 U.S. 933 (1979).

Section 10(b) of the Act precludes inquiry as to the lawfulness of recognition granted under Section 9(a) of the Act outside the 10(b) period that was not challenged within the 10(b) period. *Machinists Local 1424 (Bryan Mfg. Co.) v. NLRB*, 362 U.S. 411
 40 (1960); *Strand Theatre of Shreveport Corp.*, 346 NLRB 523, 536-537 (2006), *enfd*. 493 F.3d 515 (5th Cir. 2007). Likewise, an employer that has designated a multiemployer association as its collective-bargaining representative will be bound by any agreement reached by the association, but the agreement will not be binding as anything other than
 45 an 8(f) agreement in the absence of showing that a majority of the employees in the employer’s covered work force has manifested their support for the union before the employer became bound by the agreement. *Comtel Systems Technology, Inc.*, 305 NLRB 287 (1991). Here, the evidence conclusively establishes that in 2005 and 2007, a majority of Respondents employees expressed their support for the Union.

50 The Board has also held that, the presumption of majority status flowing from the contract in a multiemployer unit survives a respondent employer’s timely withdrawal from

⁷ H. Smith knew that a majority of his employees supported the Union as their collective-bargaining representative pursuant to Respondent King’s benefit contribution report that it submitted to the Union in January 2005 (GC Exh. 5).

5 that unit In *Casale Industries*, 311 NLRB 951, 953 (1983), the Board held that:

10 Parties in nonconstruction industries, who have established and maintained a stable Section 9 relationship, are entitled to protection against a tardy attempt to disrupt their relationship. Parties in the construction industry are entitled to no less protection. Accordingly, if a construction industry employer extends 9(a) recognition to a union, and 6 months elapses without a charge or petition, the Board should not entertain a claim that majority status was lacking at the time of recognition.

15 The Board explained that a contrary rule would mean that longstanding relationships would be vulnerable to attack, and stability in labor relations would be undermined.

20 Under these circumstances, and particularly noting that Respondents have not raised a challenge to the Section 9(a) recognition of the Union in a timely manner, I find that the collective-bargaining relationship between Respondents and the Union has been since 2005, and is currently governed, by Section 9(a) of the Act.

25 Based on the above, I find that the Respondents violated Section 8(a)(1) and (5) of the Act when they withdrew recognition from the Union, repudiated the collective bargaining agreement, and ceased making contributions to the contractual benefit funds.

3. Refusal to Select an Arbitrator

30 The Acting General Counsel alleges that on or about March 25 and August 24, the Union by mail requested that Respondent King's participate in the grievance and arbitration procedure by selecting an arbitrator per the procedure in Article 25 of the parties' collective-bargaining agreement (GC Exh.10). In its answer to the complaint, Respondents admit that it did not participate in the grievance arbitration process to select an arbitrator.

Discussion

40 Based on my finding above that the parties had a Section 9(a) bargaining relationship, the obligation to negotiate continues after the contracts expiration unless and until the Union is shown to have lost majority support. *Levitz Furniture Co.*, 333 NLRB 717 (2001). Here, not only did the Respondents refuse to participate in selecting an arbitrator which it admits while the collective-bargaining agreement was still in effect, it also refused to engage in the selection process after its expiration on March 31. Moreover, as found above, the Charging Party remains the exclusive collective-bargaining representative of Respondents employees.

45 Accordingly, I find that the Respondents violated Section 8(a)(1) and (5) of the Act when it refused to participate in the selection of an arbitrator as required under Article 25 of the parties' collective-bargaining agreement. *Oliver Insulating Co.*, 309 NLRB 725 (1992); *City Cartage Co.*, 266 NLRB No. 80 (1983).

5

Conclusions of Law

1. Respondents are employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.
2. The Union is a labor organization within the meaning of Section 2(5) of the Act.
- 10 3. By failing and refusing to recognize the Union as the collective-bargaining representative of all employees in the Unit and by failing to apply their collective-bargaining agreement with the Union, the Respondents as alter-egos, violated Section 8(a)(1) and (5) of the Act.
- 15 4. By refusing to participate in the selection of an arbitrator pursuant to the parties' collective-bargaining agreement, the Respondents violated Section 8(a)(1) and (5) of the Act.

Remedy

20 Having found that the Respondents are alter egos who engaged in certain unfair labor practices, I shall order them to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

25 The Respondents shall be required to recognize and, on request, bargain with the Union as the collective-bargaining representative of all employees performing work, as set forth in the parties' most recent collective-bargaining agreement. The Respondents shall also be required to make whole the unit employees for any loss of earnings and other benefits suffered as a result of the Respondents' failure to apply the collective-bargaining agreement between the Association and the Union as prescribed in *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F. 2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB No. 8 (2010).

35 Likewise, having found that the Respondents violated Section 8(a)(1) and (5) of the Act by failing to continue in effect all the terms and conditions of their existing collective-bargaining agreement by failing, since April 1, 2010, to make the contractually required contributions to the Union's fringe benefit funds set forth in the collective-bargaining agreement, I shall order the Respondents to make all required benefit fund contributions since April 1, 2010, including any additional amounts applicable to such funds as set forth in *Merryweather Optical Co.*, 240 NLRB 1213, 1216 fn 7 (1979).⁸ In addition, the Respondents shall reimburse unit employees for any expenses resulting from the Respondent's failure to make the required contributions to the funds, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn 2 (1980), enfd. mem. 661 F. 2d 940 (9th Cir. 1981), Such amounts are to be computed in the manner set forth in *Ogle*

⁸ I note, per the parties stipulation, that between April 1 and April 1, 2011, Respondent King's continued to follow the 2010-2013 collective-bargaining agreement and made monthly payments to the Union's contractual benefit funds. Additionally, during that same period, Respondent King's remitted employee dues to the Union. Further, the parties stipulated that Respondent Warrior did not apply the 2007-2010 collective-bargaining agreement to its employees. Accordingly, under these circumstances, I will leave to compliance the amount of benefit fund contributions that are due and owing to Respondents employees.

5 *Protection Service*, supra, with interest as prescribed in *New Horizons for the Retarded*,
 supra, compounded daily as prescribed in *Kentucky River Medical Center*, supra.

On these findings of fact and conclusions of law and on the entire record, I issue
 the following recommended⁹

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ORDER

The Respondents, King’s Fire Protection, Inc. and Warrior Sprinkler, LLC,
 Mechanicsburg, Pennsylvania, its officers, agents, successors, and assigns, shall

15

1. Cease and desist from

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(a) Failing and refusing to recognize and bargain in good faith with Road
 Sprinkler Fitters Local Union No. 669, U.A., AFL-CIO, (the Union) as the
 exclusive collective-bargaining representative of its employees in the below
 described appropriate bargaining Unit:

All Journeymen Sprinkler Fitters and Apprentices

25

- (b) Failing without the Union’s consent to honor the terms of the 2007-2010
 collective-bargaining agreement between the Respondents and the Union
 prior to the expiration of the agreement.
- (c) Unilaterally changing terms and conditions of employment of employees prior
 to the expiration of the 2007-2010 agreement, without giving the Union prior
 notice and an opportunity to bargain.
- (d) Failing and refusing to participate in the grievance and arbitration procedure
 under the parties’ 2007-2010 collective-bargaining agreement.
- (e) In any like or related manner interfering with, restraining, or coercing
 employees in the exercise of the rights guaranteed them by Section 7 of the
 Act.

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2. Take the following affirmative action necessary to effectuate the policies of
 the Act.

40

- (a) Recognize and bargain in good faith with the Union as the exclusive
 collective-bargaining representative of the unit employees.
- (b) Continue in effect the terms and conditions of employment of the unit
 employees as set forth in the Respondents’ collective-bargaining agreement
 with the Union.
- (c) Make whole all bargaining unit employees and all contractually-required
 fringe benefit funds for any loss of income contributions, or benefits, and for
 any expenses incurred in connection with those benefit fund losses by those
 employees, in the manner set forth in the remedy section of this decision.
- (d) Make the unit employees whole for any loss of earnings and other benefits;
 including the various fringe benefit contributions, if any, they may have
 suffered as a result of the Respondents failure to bargain since March 11,

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⁹ If no exceptions are filed as provided by Sec. 102.46 of the Board’s Rules and
 Regulations, the findings, conclusions, and recommended Order shall, as provided in
 Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be
 deemed waived for all purposes.

- 5 2010, with interest, in the manner set forth in the remedy section of this decision.
- (e) Participate in the grievance and arbitration procedure under the parties' collective-bargaining agreement by agreeing to select an arbitrator as requested by the Union on March 25 and August 24, 2010.
- 10 (f) Preserve and within 14 days of a request or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this decision.
- 15 (g) Within 14 days after service by the Region, post at its facility in Mechanicsburg, Pennsylvania, copies of the attached notice marked "Appendix."¹⁰ Copies of the notice, on forms provided by the Regional Director for Region 5, after being signed by the Respondents authorized representative, shall be posted by the Respondents immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by e-mail, posting on an intranet or an internet site, and/or other electronic means, if the Respondents customarily communicate with their employees by such means. *Picini Flooring*, 356 NLRB No. 9 (2010). Reasonable steps shall be taken by the Respondents to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondents have gone out of business or closed the facility involved in these proceedings, the Respondents shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since March 11, 2010.
- 20 (h) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondents have taken to comply.
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- 30
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- 40

¹⁰ If this Order is enforced by a Judgment of the United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

5 IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges
violations of the Act not specifically found.

Dated, Washington, D.C. July 28, 2011

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Bruce D. Rosenstein
Administrative Law Judge

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APPENDIX

NOTICE TO EMPLOYEES
Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

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The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

15

Section 7 of the Act gives employees these rights.

- To organize
- To form, join, or assist any union
- To bargain collectively through representatives of their own choice
- To act together for other mutual aid or protection
- To choose not to engage in any of these protected concerted activities.

20

WE WILL NOT fail and refuse to bargain collectively and in good faith with Road Sprinkler Fitters Local Union No. 669, U.A., AFL-CIO, (the Union) as the exclusive collective-bargaining representative of the employees in the following unit:

25

All Journeymen Sprinkler Fitters and Apprentices

30

WE WILL NOT undermine the Union's status as the collective-bargaining representative of the employees in the above described unit and avoid a collective-bargaining obligation by creating Warrior Sprinkler, LLC.

WE WILL NOT withdraw recognition from the Union as the exclusive collective-bargaining representative of the employees in the above-described unit.

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WE WILL NOT fail and refuse to adhere to the terms and conditions set forth in the parties' expired collective-bargaining agreement without providing notice to the Union and affording the Union an opportunity to bargain.

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WE WILL NOT fail and refuse to bargain collectively and in good faith with the Union by refusing to select an arbitrator as provided in the parties' expired collective-bargaining agreement.

45

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL continue in effect the terms and conditions of employment of the unit employees as set forth in our collective-bargaining agreement with the Union.

50

WE WILL recognize and bargain in good faith with the Union as the exclusive collective-bargaining representative of the unit employees.

WE WILL make all contractually required fringe benefit contributions to the various funds that have not been made since April 1, 2010, including any additional amounts

5 applicable to such delinquent payments, with interest.

WE WILL make the unit employees whole for any loss of earnings and other benefits, including the various fringe benefit contributions they may have suffered as a result of our failure to bargain since March 11, 2010.

10

WE WILL participate in the grievance and arbitration procedures under our collective-bargaining agreement by agreeing to select an arbitrator as requested by the Union on March 25 and August 24, 2010.

King's Fire Protection, Inc. and its alter-ego Warrior
Sprinkler, LLC

(Employer)

Dated _____ By _____
(Representative) (Title)

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The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlr.gov.

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103 South Gay Street, The Appraisers Store Building, 8th Floor
Baltimore, MD 21202-4061
Hours: 8:15 a.m. to 4:45 p.m.
410-962-2822.

25

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE COMPLIANCE OFFICER, 410-962-2864.

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