

Austin Fire Equipment, LLC and Road Sprinkler Fitters Local Union No. 669, U.A., AFL-CIO.
Case 15-CA-019697

February 7, 2013

ORDER DENYING MOTION FOR
RECONSIDERATION

BY CHAIRMAN PEARCE AND MEMBERS GRIFFIN
AND BLOCK

On September 28, 2012, the National Labor Relations Board, by a three-member panel, issued a Decision and Order in this proceeding adopting the judge's conclusions that the parties' bargaining relationship was governed by Section 8(f) of the Act and that the Respondent violated Section 8(a)(5) and (1) by failing and refusing to continue in effect all the terms and conditions of the agreement between the National Fire Sprinkler Association, Inc. and the Union until the agreement's expiration.¹ On November 9, 2012, the Union filed a motion for reconsideration.² The Respondent filed a memorandum in opposition to the motion for reconsideration, and the Union filed a reply to the Respondent's opposition.

In seeking reconsideration, the Union argues that the Board erred in determining that the "Acknowledgement of Representative Status" (Acknowledgement) executed by the parties did not establish that their relationship was governed by Section 9(a). The Board found that the Acknowledgement failed to satisfy the three-part test for establishing 9(a) status based on a written recognition agreement, as set forth in *Staunton Fuel & Material, Inc.*, 335 NLRB 717 (2001). Specifically, the Board found that the Acknowledgement lacked the required confirmation that the Respondent's recognition of the Union was based on the support or authorization of a majority of unit employees. Rather, that document stated only that "[t]he Employer . . . has, on the basis of objective and reliable information, confirmed that a clear majority of the [employees] are members of, and represented by [the Union]," a statement that could equally apply to an 8(f) relationship.

The Union further contends that no party asserted the rationale relied on by the Board. However, the Union argued in its exceptions that, contrary to the judge's finding, the Acknowledgement satisfied the *Staunton Fuel* test. The Union specifically asserted that the judge misread the Acknowledgement when she found that the doc-

ument failed to demonstrate that the recognition was based on a showing of or offer to show majority support. The Union's exception thus required the Board to determine whether the Acknowledgement was sufficient to establish that the Respondent's recognition was based on majority support. Therefore, the Union's argument lacks merit.

The Union further maintains that the Acknowledgement's express reference to Section 9(a) establishes the parties' intent to form a 9(a) relationship. The second sentence of the Acknowledgement stated that "[t]he Employer therefore unconditionally acknowledges and confirms that Local Union 669 is the exclusive bargaining representative of [the employees] pursuant to Section 9(a) of the [Act]." As the Union points out, the Board noted in *Staunton* that although recognition language need not mention Section 9(a) explicitly, "such a reference would indicate that the parties intended to establish a majority rather than an 8(f) relationship." 335 NLRB at 720. Contrary to the Union's assertion, however, *Staunton* does not suggest that the inclusion of such a reference is conclusive and obviates the need to apply the prescribed three-part test. In fact, *Staunton* adopted the standard of the Tenth Circuit in *NLRB v. Triple C Maintenance, Inc.*,³ and *NLRB v. Oklahoma Installation Co.*⁴ In *Triple C*, the court, after finding that the employer expressly granted recognition under Section 9(a), further stated, "Significantly, the agreement also represents that '[t]he Employer agrees that this recognition is predicated on a clear showing of majority support for [the Union] indicated by bargaining unit employees.'" 219 F.3d at 1155. If, as the Union here contends, the reference to Section 9(a) were sufficient to establish a relationship under that section of the Act, the court's additional finding would have been superfluous rather than significant. In *Oklahoma Installation Co.*, by contrast, the Tenth Circuit found that the parties' relationship was governed by Section 8(f) because, among other things, their recognition agreement stating that the union represented a majority of unit employees failed to confirm that the union had shown or offered to show majority support.

Finally, the Union argues that the Board's decision is inconsistent with Board and court precedent. We disagree. Contrary to the Union's contention, we find that this case is distinguishable from the Board's earlier deci-

¹ 359 NLRB 7.

² The Union's motion also seeks reconsideration of our decision in *USA Fire Protection*, 358 NLRB 1722 (2012). We have denied that request in a separate Order issued today.

³ 219 F.3d 1147 (2000), enfg. 327 NLRB 42 (1998).

⁴ 219 F.3d 1160 (2000), denying enf. 325 NLRB 741 (1998).

sions in *Triple A Fire Protection, Inc.*⁵ and *MFP Fire Protection, Inc.*⁶ As we stated in the Decision and Order in this proceeding, the Union has materially revised the language of its form recognition agreement since those cases arose. 359 NLRB 37, 37 fn. 5. Moreover, as dis-

⁵ 312 NLRB 1088 (1993), enfd. 136 F.3d 727 (11th Cir. 1998), cert. denied 525 U.S. 1067 (1999).

⁶ 318 NLRB 840 (1995), enfd. on other grounds 101 F.3d 1341 (10th Cir. 1996).

cussed above, the Board's decision comports with court precedent, including *Triple C Maintenance* and *Oklahoma Installation Co.*

Accordingly, having duly considered the matter, the Board finds that the Union has not raised any extraordinary circumstances warranting reconsideration of the Board's decision under Section 102.48(d)(1) of the Board's Rules and Regulations.

IT IS ORDERED, therefore, that the Union's motion for reconsideration is denied.