

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

**G & L ASSOCIATED, INC.,
d/b/a USA FIRE PROTECTION,**

Respondent,

NLRB Case No. 10-CA-38074

and

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

Charging Party.

AUSTIN FIRE EQUIPMENT, LLC,

Respondent,

NLRB Case No. 15-CA-19697

and

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

Charging Party.

**KING'S FIRE PROTECTION, INC. and its
alter ego WARRIOR SPRINKLER, LLC,**

Respondents,

and

**NLRB Case Nos. 5-CA-36094
5-CA-36312**

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

Charging Party.

**UPDATED, AMENDED MOTION BY THE CHARGING PARTY
FOR CONSOLIDATION AND RECONSIDERATION**

Pursuant to Section 102.47 of the NLRB Rules and Regulations, Charging Party Road Sprinkler Fitters Local Union No. 669, U.A., AFL-CIO (“Local 669” or “the Union”) respectfully submits this updated and amended motion for consolidation and for further consideration of the Board’s decision in *King’s Fire Protection, Inc.*, 358 NLRB No. 156 (2012), together with the two Board decisions that are the subject of the Union’s original Motion, filed on July 8, 2014 and currently pending before the Board. *G&L Associated, Inc. d/b/a USA Fire Protection*, 358 NLRB No. 162 (2012), *reconsideration denied*, 359 NLRB No. 59 (2013); *Austin Fire Equipment, LLC*, 359 NLRB No. 3 (2012), *reconsideration denied* 359 NLRB No. 60 (2013). The Union’s pending Motion is incorporated by reference herein.

While the Union’s Motion to consolidate *USA Fire* and *Austin Fire* was pending, the U.S. Court of Appeals for the Third Circuit remanded the Employer’s appeal from the Board’s decision in *King’s Fire*, pursuant to the Supreme Court’s decision in *NLRB v. Noel Canning*, No. 12-1281, 2014 WL 2882090 (June 26, 2014), as the D.C. Circuit had done in *USA Fire* and *Austin Fire*. The Board has accepted the remand in *King’s Fire* and the parties were so notified on September 18, 2014.

King’s Fire presents what is substantively the same contract language and the same important issues of construction industry labor law under Sections 8(f), 9(a) and 10(b) of the National Labor Relations Act (“NLRA”) in common with *USA Fire* and *Austin Fire*. In contrast to *USA Fire* and *Austin Fire*, however, the Board found the recognition language in *King’s Fire* to be sufficient to establish a valid NLRA Section 9(a) recognition and, as the ALJ ruled, the Employer was barred by NLRA Section 10(b) from challenging that recognition. *King’s Fire*, 358 NLRB No. 156, slip op. at 5-6.

In *King's Fire*, the Board *upheld* the following recognition language as establishing a valid Section 9(a) agreement:

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 ... and that the Union has offered to provide the Employer with confirmation of its support by a majority of such employees.

King's Fire, slip op. at 4, 5 (G.C. Exh. 4). In contrast, the Board *rejected* the following contract language in *USA Fire* and *Austin Fire* as insufficient to establish a valid Section 9(a) recognition:

The Employer executing this document below has, on the basis of objective and reliable information confirmed that a clear majority of the sprinkler fitters in its employ are members 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 Union 669 is the exclusive bargaining representative of its sprinkler fitter employees pursuant to Section 9(a) of the National Labor Relations Act.

USA Fire, slip op. at 1; *Austin Fire*, slip op. at 4.¹

While not word-for-word, the language in both of the quoted clauses plainly and unconditionally states that the recognition granted is “pursuant to Section 9(a) of the National Labor Relations Act” and, when that language is “examined in its entirety, [it] ‘conclusively notifies the parties that a 9(a) relationship is intended.’” *Madison Industries, Inc.*, 349 NLRB 1306, 1308 (2007) (citations omitted); *Staunton Fuel and Material (Central Illinois)*, 335 NLRB 717, 720 (2001) (“... although it would not be necessary for a contract provision to refer

¹ Indeed, the Employer in the *King's Fire* case had also executed an earlier Section 9(a) agreement in 2001 (G.C. Exh. 3) in language that was identical to the language in *Austin Fire* and *USA Fire* quoted above. The failure to consider the earlier recognition agreement was the basis for the Union's sole Exception in *King's Fire*.

explicitly to Sec. 9(a) ... such a reference would indicate that the parties intended a majority rather than an 8(f) relationship.”).

Likewise, the explicit Section 9(a) language at issue in *King’s Fire*, *USA Fire* and *Austin Fire* is legally indistinguishable from the Section 9(a) language the Board has sustained as valid and sufficient in prior cases. *Triple A Fire Protection*, 312 NLRB 1088, 1088-89 (1993), *enfd* 136 F.3d 727 (11th Cir. 1998), *cert. denied* 525 U.S. 1067 (1999); *MFP Fire Protection*, 318 NLRB 840, 842 (1995), *enfd* 101 F.3d 1341 (10th Cir. 1996); *American Automatic Sprinkler Systems, Inc.*, 323 NLRB 920, 920-21 (1997), *enfd* 163 F.3d 209 (4th Cir. 1998), *cert. denied* 528 U.S. 821 (1999); *Dominion Sprinkler Services, Inc.*, 319 NLRB 624, 634 (1995).

Therefore, Local 669 urges the Board to consolidate *King’s Fire* with *USA Fire* and *Austin Fire* and to address the legal issues that are dispositive of all three cases: (i) whether the explicit Section 9(a) language in the recognition clauses in the three cases, when “examined in its entirety, ‘conclusively notifies the parties that a 9(a) relationship is intended,’” *Madison Industries, Inc.*, 349 NLRB at 1308; and (ii) whether the Employers are barred from challenging those Section 9(a) recognition clauses by NLRA Section 10(b), *King’s Fire*, 358 NLRB No. 156, slip op. at 5-6; *Triple A Fire Protection*, 312 NLRB at 1088-89; *MFP Fire Protection*, 318 NLRB at 842; *American Automatic Sprinkler*, 323 NLRB at 920-21; *Dominion Sprinkler*, 319 NLRB at 625, by operation of the same Section 10(b) principles applicable to unions and employers generally. *John Deklewa & Sons*, 282 NLRB 1375, 1387 n.53 (1987), *enfd* 843 F.2d 770 (3rd Cir.), *cert. denied* 488 U.S. 889 (1988); *Reichenbach Ceiling & Partition Co.*, 337 NLRB 125, 125 (2001) (Chairman Hurtgen concurring).

Because *USA Fire*, *Austin Fire* and *King's Fire* present the same contract language and the same issues of NLRA law, these cases cannot be considered separately, in isolation from one another. Accordingly, Local 669 urges the Board to consolidate *King's Fire* with *USA Fire* and *Austin Fire*, to reconcile these decisions with the Board's prior rulings, and to formulate a single rule of law on the prerequisites for voluntary Section 9(a) recognition and the application of Section 10(b) in construction and non-construction industry cases.

Dated: September 22, 2014

Respectfully submitted,

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Certificate of Service

I hereby certify that on September 22, 2014, I electronically filed Local 669's Updated, Amended Motion for Consolidation and Reconsideration 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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