

Austin Fire Equipment, LLC and Road Sprinkler Fitters Local 669, U.A. AFL-CIO. Case 15-CA-019697

October 24, 2014

DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS HIROZAWA
AND JOHNSON

On September 28, 2012, the Board issued a Decision and Order in this proceeding, which is reported at 359 NLRB 37, and on February 7, 2013, the Board issued an Order Denying Motion for Reconsideration, which is reported at 359 NLRB 576. Thereafter, the Charging Party filed a petition for review in the United States Court of Appeals for the District of Columbia Circuit.

At the time of the Decision and Order and the Order Denying Motion for Reconsideration, the composition of the Board included two persons whose appointments to the Board had been challenged as constitutionally infirm. On June 26, 2014, the United States Supreme Court issued its decision in *NLRB v. Noel Canning*, 134 S.Ct. 2550 (2014), holding that the challenged appointments to the Board were not valid. Thereafter, the Board issued an order setting aside the Decision and Order and the Order Denying Motion for Reconsideration, and retained this case on its docket for further action as appropriate.¹

On July 8, 2014, the Charging Party filed a motion for consolidation and reconsideration.² On July 15, 2014, the Respondent filed a brief in opposition to the Charging Party's motion. On September 22, 2014, the Charging Party filed an amended motion for consolidation and reconsideration. On September 30, 2014, the Respondent filed a brief in opposition to the amended motion. On October 6, 2014, the Charging Party filed a reply to the Respondent's opposition.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

In view of the decision of the Supreme Court in *NLRB v. Noel Canning*, supra, we have considered *de novo* the

judge's decision and the record in light of the exceptions and briefs. We have also considered the now-vacated Decision and Order and Order Denying Motion for Reconsideration, and we agree with the rationale set forth therein.³ Accordingly, we affirm the judge's rulings, findings, and conclusions and adopt the judge's recommended Order to the extent and for the reasons stated in the Decision and Order reported at 359 NLRB 37 and as modified below,⁴ and the Order Denying Motion for Reconsideration reported at 359 NLRB 576, which are incorporated herein by reference.

ORDER

The National Labor Relations Board affirms the Order included in its Decision and Order reported at 359 NLRB 37za as modified below and orders that the Respondent, Austin Fire Equipment, LLC, Prairieville, Louisiana, its officers, agents, successors, and assigns, shall take the action in the Order as modified.

1. Insert the following as paragraph 2(b) and reletter the subsequent paragraphs.

“(b) Compensate affected employees for the adverse tax consequences, if any, of receiving any lump-sum backpay awards, and file a report with the Social Security Administration allocating the backpay awards to the appropriate calendar quarters for each employee.”

2. Substitute the attached notice for that included in the above-cited Decision and Order.

³ Inasmuch as the result in this case would be the same under either the three-part test set forth in *Staunton Fuel & Material (Central Illinois)*, 335 NLRB 717 (2011), or the standard articulated by the court in *Nova Plumbing, Inc. v. NLRB*, 330 F.3d 531, 536 (D.C. Cir 2003), Member Johnson finds no need to express his view here as to whether the Board should adopt the court's analysis.

⁴ We amend the remedy and modify the Order in the Decision and Order to provide that the Respondent will compensate unit employees for the adverse tax consequences, if any, of receiving any lump-sum backpay awards, and file a report with the Social Security Administration allocating the backpay awards to the appropriate calendar quarters for each employee. *Don Chavas LLC d/b/a, Tortillas Don Chavas*, 361 NLRB 101 (2014). We shall also substitute a new notice to conform to the Order as modified and in accordance with our decision in *Durham School Services*, 360 NLRB 694 (2014).

¹ On June 25, 2014, the Board issued a Supplemental Decision and Order, reported at 360 NLRB 1176, denying the Respondent's application for fees and expenses under the Equal Access to Justice Act (EAJA). After setting aside the Decision and Order and the Order Denying Motion for Reconsideration, the Board also set aside the Supplemental Decision and Order on August 11, 2014.

² In its initial motion, the Charging Party sought to consolidate this case with *USA Fire Protection*, vacated decisions at 358 NLRB 1722 (2012), and 359 NLRB 1722 (2013). The Charging Party additionally requested that the Board permit additional briefing on the legal issues presented. The amended motion sought to consolidate this case with both *USA Fire Protection* and *King's Fire Protection, Inc.*, vacated decision at 358 NLRB 1539 (2012). We agree with the Respondent that the requested actions are not warranted, and we deny the Charging Party's motion.

APPENDIX
 NOTICE TO EMPLOYEES
 POSTED BY ORDER OF THE
 NATIONAL LABOR RELATIONS BOARD
 An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

- Form, join, or assist a union
- Choose representatives to bargain with us on your behalf
- Act together with other employees for your benefit and protection
- Choose not to engage in any of these protected activities.

WE WILL NOT fail or refuse to continue in effect all the terms and conditions of the agreement between the National Fire Sprinkler Association, Inc. and the Road Sprinkler Fitters Local 669, U.A., AFL-CIO until its expiration on March 31, 2010.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL make employees whole for any loss of earnings and other benefits resulting from our failure to continue in effect all the terms of the collective-bargaining agreement between the National Fire Sprinkler Association and the Road Sprinkler Fitters Local 669, U.A.,

AFL-CIO until its expiration on March 31, 2010, with interest.

WE WILL compensate affected employees for the adverse tax consequences, if any, of receiving any lump-sum backpay awards, and WE WILL file a report with the Social Security Administration allocating the backpay awards to the appropriate calendar quarters for each employee.

WE WILL make employees whole by making all required contributions to the contractual fringe benefit funds that were not made from February 4, 2010, until the expiration of the parties' agreement and WE WILL reimburse unit employees for any expenses resulting from our failure to make the required payments.

AUSTIN FIRE EQUIPMENT, LLC

The Board's decision can be found at www.nlrb.gov/case/15-CA-019697 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, D.C. 20570, or by calling (292) 273-1940.

