

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

COLORADO FIRE SPRINKLER INC.

and

**Case 27-CA-115977
Case 27-CA-120823**

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

**COUNSEL FOR THE GENERAL COUNSEL'S
OPPOSITION TO CHARGING PARTY'S MOTION FOR REMAND TO REGION 27
FOR THE WITHDRAWAL OF UNFAIR LABOR PRACTICE CHARGES**

Counsel for the General Counsel (General Counsel) hereby files this Opposition to the Charging Party's Motion for Remand to Region 27 for the Withdrawal of Unfair Labor Practice Charges (Motion for Remand). The General Counsel urges the National Labor Relations Board (Board) to rule on the underlying withdrawal request and deny the withdrawal for the reasons discussed below.

On July 22, 2016, the Board issued a Decision and Order in the above-captioned case finding that Colorado Fire Sprinkler Inc. (Respondent) engaged in several unfair labor practice violations. On June 8, 2018, the U.S. Circuit Court of Appeals for the D.C. Circuit granted Respondent's petition for review, denied the Board's cross-application for enforcement, vacated the Board's decision, and remanded the matter to the Board. On February 7, 2019, by letter from the Associate Executive Secretary, the Board informed the parties that it accepted the remand from the D.C. Circuit Court of Appeals, and that the parties may file statements of position with respect

to the issues raised by the remand.¹ On March 11, 2019, the Charging Party filed its Motion for Remand with the Board,² requesting that the Board remand the case to Region 27 of the Board to allow the withdrawal of the charges in this matter (presumably with and by the approval from the Regional Director of Region 27). The Charging Party asserts several grounds for its motion, including: that the alleged misconduct took place over six years ago; the relevant collective-bargaining agreement expired in 2013; this case could continue through another round of appellate court litigation consuming three years; and that the primary economic remedy originally ordered by the Board – unpaid benefit contributions – is currently being pursued in separate arbitration proceedings by the National Automatic Sprinkler Industry Funds. The Charging Party concludes that continuing these proceedings will be costly, time consuming, and likely of limited practical significance.

Pursuant to Section 102.9 of the Board’s Rules and Regulations (Rules), after a case has been transferred to the Board, a charge may be withdrawn “upon motion, with the consent of the Board.” The General Counsel submits that it is inappropriate and unnecessary at this juncture, as the matter is currently pending before the Board, to remand the case to Region 27 for a decision by the Regional Director on the Charging Party’s request to withdraw the charges. Rather, the General Counsel urges the Board to treat the Charging Party’s Motion for Remand as an effective request for consent from the Board to withdraw the charges, and to rule on the withdrawal request and reject it for the reasons discussed below.

The D.C. Circuit Court of Appeals remanded this case to the Board with instructions to resolve the significant issue as to whether the Charging Party represented employees pursuant to

¹ The current deadline for filing statements of position on the remand is March 15, 2019. The General Counsel has been informed that the Charging Party may be seeking an extension of time to that deadline, and the General Counsel does not oppose any such extension.

² The Charging Party served its Motion for Remand on the General Counsel and Respondent on March 8, 2019.

Section 9(a) of the Act, rejecting the Board's earlier determination that the Charging Party had attained Section 9(a) status based on contract language alone under the standard set forth in *Staunton Fuel*, 335 NLRB 717 (2001). Therefore, there is a significant unresolved matter to be addressed by the Board on remand. In *Lowshaw Thermal Technology, LLC*, Case 05-CA-158650, another unfair labor practice case implicating the Board's standard set forth in *Staunton Fuel*, the Board approved the charging party's request for withdrawal over the respondent's and General Counsel's objections. Therefore, the Board did not substantively review the *Staunton Fuel* precedent in that case. The General Counsel urges the Board to reject the Charging Party's withdrawal in this case, so that the underlying issue may be addressed in this matter.

The General Counsel has already expended substantial resources in litigating this case and will continue to do so in the public interest for a final Board determination on the issues. Although the Charging Party asserts that the case may no longer have practical significance to the Charging Party, the General Counsel does not pursue these matters solely for the benefit of the individual Charging Party, but in the overall public interest. The Board has previously recognized this imperative. *See, e.g., Meat Cutters (AFL-CIO) Local 150 F*, 151 NLRB 386, 387 (1965) ("When an unfair labor practice charge is filed, the General Counsel proceeds, not in the vindication of private rights, but as the representative of an Agency entrusted with the enforcement of public law and the assertion of the public interest therein. We conclude the Trial Examiner was correct in denying the request to withdraw the charges.") (citing *New York Central Transport Company*, 141 NLRB 1144, 1145 (1963)). The Charging Party also asserts that further proceedings will be costly and time consuming. However, there is no requirement that the Charging Party spend any time or money on this matter from this point forward. Thus, the Charging Party's concerns about the need to preserve its own resources are not relevant at this stage of the litigation.

Respondent has verbally informed the General Counsel that it does not oppose the Charging Party's Motion for Remand and withdrawal of the case. However, for the reasons described above, the Board should find that the Charging Party's asserted grounds for the withdrawal request are insufficient grounds at this stage of the case. Based on any and all of the circumstances described above, the General Counsel respectfully requests that the Charging Party's Motion for Remand be denied.

The General Counsel further respectfully requests that if the Board denies the Charging Party's Motion for Remand, as the General Counsel urges it should, that the Board provide the parties with a further opportunity to file statements of position with respect to the issues raised by the remand from the D.C. Circuit Court of Appeals.

Dated at Denver, Colorado, this 14th day of March 2019.



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**AFFIDAVIT OF SERVICE OF: COUNSEL FOR THE GENERAL COUNSEL'S
OPPOSITION TO CHARGING PARTY'S MOTION FOR REMAND TO REGION 27 FOR
THE WITHDRAWAL OF UNFAIR LABOR PRACTICE CHARGES**

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on **March 14, 2019**, I served the above-entitled document(s) by **e-filing and email** upon the following persons, as indicated below, addressed to them at the following addresses:

By E-Filing

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March 14, 2019

/s/ Julia M. Durkin

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