

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

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**COLORADO FIRE SPRINKLER, INC.,**

**Respondent,**

**and**

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

**Charging Party.**

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\* **Case Nos. 27-CA-115977,**  
\* **27-CA-120823**  
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**REPLY TO GENERAL COUNSEL’S OPPOSITION TO CHARGING PARTY’S  
MOTION FOR REMAND TO REGION 27 FOR THE WITHDRAWAL OF UNFAIR  
LABOR PRACTICE CHARGES**

Pursuant to §102.24(c) of the NLRB Rules & Regulations, Charging Party Road Sprinkler Fitters Local 669, U.A., AFL-CIO (“Local 669” or “the Union”) respectfully submits this Memorandum in Reply to the General Counsel’s Opposition (“G.C. Opp.”) to the Union’s Motion for Remand for Withdrawal of the unfair labor practice charges in this case:

The basis for Local 669’s motion to remand for purposes of dismissing the unfair labor practice charges is that an alternative process for remedying the alleged unilateral change unfair labor practice exists and is in progress in another forum. Neither the General Counsel nor, notably, the Respondent Colorado Fire Sprinkler, Inc. (“Respondent” or “Colorado Fire”), disputes that basis.

Significantly, neither does Respondent oppose the Union’s motion. Thus, the parties to the labor dispute underlying the continuing NLRB litigation are in agreement that remand and/or dismissal are appropriate.

The General Counsel's Opposition is in error on two grounds:

1. Contrary to the General Counsel's misreading of the panel's decision as including specific instructions to the NLRB on remand (G.C. Opp. at 2-3), the decision does not contain a single word of "instruction" to the Board. *Colorado Fire Sprinkler, Inc. v. NLRB*, 891 F.3d 1031, 1041 (D.C. Cir. 2018); and

2. Whatever may have been at issue in *Loshaw Thermal Technology LLC*, cited by the General Counsel (G.C. Opp. at 3), after the D.C. Circuit decision, this case is not a *Staunton Fuel*-like case and does not present the issue in *Staunton Fuel*: "... what must be stated in a written recognition agreement or contract clause in order for a union to attain 9(a) status solely on the basis of such an agreement." *Staunton Fuel & Material, Inc.*, 335 NLRB 717, 719 (2001).<sup>1</sup>

The D.C. Circuit panel's opinion was not based upon the language of the parties' agreements, as in *Staunton Fuel*, but instead upon its view of the lack of employees at the time of one of those 9(a) agreements, 891 F.2d at 1040, which if true would have been a violation of NLRA Sections 8(a)(2) and 8(b)(1)(A) and therefore subject to the Section 10(b) six-month limitation period. And, the Administrative Law Judge properly rejected Colorado Fire's untimely challenge to the Union's Section 9(a) status. *Colorado Fire Sprinkler, Inc.*, 364 NLRB No. 55 (2016), slip op. at 11-12.

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<sup>1</sup> In contrast to the ambiguous contract language at issue in *Staunton Fuel*, each of the numerous 9(a) recognition agreements voluntarily signed by Respondent in this case over two decades was clear and explicit as to the parties' 9(a) intention and in conformance with applicable NLRB caselaw. See, e.g., *King's Fire Protection*, 358 NLRB 1548, 1552-53 (2012), reaffirmed 362 NLRB No. 129 (2015); *American Automatic Sprinkler Systems*, 323 NLRB 920, 920 (1997), enforcement denied in part 163 F.3d 209 (4<sup>th</sup> Cir. 1997); *Dominion Sprinkler Serv.*, 319 NLRB 624, 625 (1995); *Triple A Fire Protection*, 312 NLRB 1088 (1993), *enf'd* 136 F.3d 727 (11<sup>th</sup> Cir. 1998), *cert. denied* 525 U.S. 1067 (1999); *MFP Fire Protection*, 318 NLRB 840, 842 (1995), *enf'd* 101 F.3d 1341 (10<sup>th</sup> Cir. 1996); *Excel Fire Protection*, 308 NLRB 241, 243 (1992).

In sum, not only are the parties directly affected by the Union's request for dismissal in agreement that the Motion should be granted, but the General Counsel's opposition to dismissal is based on a misreading of the D.C. Circuit panel decision and is clearly mistaken.

Dated: March 20, 2019

Respectfully submitted,

/s/William W. Osborne, Jr.

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**CERTIFICATE OF SERVICE**

I hereby certify that on March 20, 2019, I electronically filed the foregoing document with the Executive Secretary via the e-filing portal on the NLRB's website, and also forwarded a copy by electronic mail to:

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