



1001 Marina Village Parkway, Suite 200  
Alameda, California 94501  
TELEPHONE: (510) 337-1001  
FACSIMILE: (510) 337-1023  
David A. Rosenfeld  
drosefeld@unioncounsel.net

STEWART WEINBERG  
DAVID A. ROSENFELD  
WILLIAM A. SOKOL  
ANTONIO RUIZ  
MATTHEW J. GAUGER  
ASHLEY K. IKEDA  
LINDA BALDWIN JONES  
PATRICIA A. DAVIS  
ALAN G. CROWLEY  
KRISTINA L. HILLMAN  
BRUCE A. HARLAND  
CONCEPCION E. LOZANO-BATISTA  
CAREN P. SENCER  
ANNE I. YEN  
KRISTINA M. ZINNEN  
JANNAH V. MANANSALA  
MANUEL A. BOIGUES  
KERIANNE R. STEELE  
GARY P. PROVENCHER  
EZEKIEL D. GARDER  
LISL R. SOTO  
JOLENE KRAMER  
ALEJANDRO DELGADO

April 16, 2020

**VIA ELECTRONIC FILING**

Ms. Molly Dwyer  
Office of the Clerk  
Ninth Circuit Court of Appeals  
95 Seventh Street  
P.O. Box 193939  
San Francisco, CA 94119

CAROLINE N. COHEN  
XOCHITL A. LOPEZ  
CAITLIN E. GRAY  
TIFFANY CRAIN ALTAMIRANO  
DAVID W.M. FUJIMOTO  
ALEXANDER S. NAZAROV  
THOMAS GOTTHEIL (1986-2019)  
JERRY P.S. CHANG  
ANDREA C. MATSUOKA  
KATHARINE R. McDONAGH  
BENJAMIN J. FUCHS  
CHRISTINA L. ADAMS  
WILLIAM T. HANLEY  
ABEL RODRIGUEZ  
ANDREW D. WEAVER

**Re: *Heat & Frost Insulators and Allied Workers, Local 5 v. NLRB*  
Ninth Circuit Case No. 19-70585  
Citation to Supplemental Authority Pursuant to FRAP 28(j)  
*Securitas Security Services, USA*  
Case 369 NLRB No. 57 (April 14, 2020)**

**OF COUNSEL**

ROBERTA D. PERKINS  
NINA FENDEL  
TRACY L. MAINGUY  
ROBERT E. SZYKOWNY  
ANDREA K. DON  
LORI K. AQUINO  
SHARON A. SEIDENSTEN

Dear Ms. Dwyer:

In this case, the Board stated:

It is well settled that the Board may find and remedy a violation even in the absence of a specific allegation in the Complaint, if the issue is closely related to the subject matter of the Complaint and has been fully and fairly litigated.

Slip, Op. p 2.

This principle is inconsistent with the position of the Board in the case before this Court.

The Board takes the position as expressed above that a theory of a case may be decided by the Board even if not alleged in the Complaint.

In this case before the Court, the Charging Party seeks to present only legal theories limited to responding to the defense of the Respondent employer. The Board would be free under the rationale expressed above to consider and rule on any theory applicable to any respondent defense even if not raised by the General Counsel. Therefore it inconsistent to hold that the Board cannot rule on that same issue when raised by the Charging Party during the course of the proceedings before the Administrative Law Judge. Here those issues (such as whether the Federal Arbitration Act even applied) were timely raised and Respondent employer and General Counsel had a full opportunity to respond to these legal arguments which were made in response to the employer's assertion that the Federal Arbitration Act governed.

- Admitted in Hawaii
- ◆ Also admitted in Nevada
- ▼ Also admitted in Illinois
- ▶ Also admitted in New York and Alaska
- \* Also admitted in Florida
- ◆ Also admitted in Minnesota

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The position the Board takes in this case before the Court is inconsistent with its broad approach to considering complaints and the theories of violation as reflected in this recent case.

Sincerely,

*/s/ David A. Rosenfeld*

David A. Rosenfeld

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cc: Proof of Service Attached

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**CERTIFICATE OF SERVICE**

I am a citizen of the United States and an employee in the County of Alameda, State of California. I am over the age of eighteen years and not a party to the within action; my business address is 1001 Marina Village Parkway, Suite 200, Alameda, California 94501.

I hereby certify that on April 16, 2020, I electronically filed the foregoing **CITATION TO SUPPLEMENTAL AUTHORITY PURSUANT TO FRAP 28(j)** with the United States Court of Appeals for the Ninth Circuit, by using the Court's CM/ECF system.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the Notice of Electronic Filing by the Court's CM/ECF system.

I certify under penalty of perjury that the above is true and correct. Executed at Alameda, California, on April 16, 2020.

/s/ Karen Kempler  
Karen Kempler