

NATIONAL LABOR RELATIONS BOARD

ROAD SPRINKLER FITTERS)
LOCAL 669, U.A., AFL-CIO,)
) Case: 25-RC-267772
Petitioner,)
)
)
)
FIRE PROTECTION DESIGN &)
CONSTRUCTION, INC., d/b/a)
ALL FIRE SOLUTIONS, INC.,)
)
Employer.)

**EMPLOYER’S STATEMENT IN OPPOSITION TO PETITIONER’S
REQUEST FOR REVIEW**

Comes now, the employer, Fire Protection Design & Construction, Inc., d/b/a All Fire Solutions, Inc., by counsel and respectfully submits its Statement in Opposition to Petitioner’s Request for Review of the Acting Regional Director’s decision to reject the Petitioner’s untimely filed objections in the above captioned matter.

I. Introduction

Petitioner’s Request for Review is without merit and should be dismissed because Petitioner did not timely file objections to the election. The National Labor Relations Board’s (“NLRB” or “Board”) Rules and Regulations govern the filing of objections to an election, and they require filing objections electronically on the NLRB’s Web site (“E-filing”) within five business days after the tally of ballots has been prepared. (Section 102.5) Petitioner admits that it did not timely E-file objections to the election on the NLRB’s Web site within five days after the tally of ballots. Petitioner contends that e-mailing its objections to the Regional Director within five days after the tally of ballots met the requirements under the Rules and Regulations. However,

the Rules and Regulations expressly prohibit filing any documents by e-mail without prior approval from the receiving office. (Id.) Petitioner admits it did not request or receive prior approval from Region 25 to email its objections and offer of proof. The E-Filing rules were made part of the Board's Rules and Regulations on February 24, 2017 and became effective March 6, 2017. The strict adherence to these rules was explicitly set out in GC Memorandum 20-01, which was issued on October 21, 2019. The GC Memorandum set out a policy for all Regional Director's to follow starting January 21, 2020. The GC Memorandum reflects the Agency's policy, and it mandates the use of the E-filing system for the submission of evidence in representation proceedings. Under the Memorandum, filing by e-mail is prohibited without prior approval of from the receiving office and only in extraordinary situations. Thus, Petitioner has not established any basis under Section 102.67(d) for the Board to grant its request for review.

II. Disputed Facts

The Employer disputes certain facts alleged by Petitioner to be undisputed in the following numbered paragraphs under the heading "Chronology of Undisputed Facts," in Petitioner's Request for Review:

1. The Petitioner alleges: "The charges allege the same coercive and unlawful interference with the election process that is the subject of the objections at issue here."

The amended charge and the objection do not allege the same conduct. (compare Petitioner's Exhibit B, p. 4 and Exhibit C, p. 3) The amended charge filed by the union in Case No. 25-CA-268280 does not allege interference with the election process. (See Petitioner's Exhibit C, p.3)

2. The Petitioner alleges: “They [objections] were filed, by email directly to her [Regional Director] attention at 9:30 a.m. on January 27, the day before they were due, together with an offer of proof.”

Neither the objections nor the offer of proof was filed by e-mail because the Rules and Regulations prohibit the filing of documents by e-mail without the prior approval of the receiving office. Section 102.5(c)

5. The Petitioner alleges: “. . . the basis for the Union’s objections to the election – the repeated and extremely coercive conduct by All Fire’s owner and managers – is also the subject of unfair labor practice charges that were pending at the time of the filing of objections.”

The employer disputes that it engaged in any coercive conduct. Further, the amended charge contains vague allegations which do not allege interference with the election; the amended charge does not allege Petitioner engaged in unlawful conduct after the filing of the petition for election on October 19, 2020. (Employer’s Exhibit 1) The objections and the amended charge do not contain the same allegations.

6. The Petitioner alleges that by e-mailing its objection to the Regional Director it fulfilled its obligation under the Rules and Regulations to file its objections and offer of proof within five business days after the tally of ballots.

Petitioner did not file its objection and offer of proof because the rules do not allow for objections to be filed by e-mail. Section 102.5(c)

7. The Petitioner claims that its failure to timely E-file was a harmless clerical error. Petitioner’s failure to timely E-file its objections and offer of proof was not a harmless clerical error. The text of the Rules and Regulations make timely filing of objections and

offers of proof mandatory and expressly prohibit e-mail as an acceptable method of filing absent prior approval from the receiving office. Section 102.5(c) and 102.69(8).

8. Petitioner alleges that the Employer was served with its offer of proof on January 27th. Petitioner claims that there would be no prejudice to All-Fire if its untimely filed objections were accepted by the Board.

The union did not serve its offer of proof on the Employer or Employer's counsel. Accepting the Petitioner's late filed objections would prejudice the Employer by applying the Rules and Regulations unequally between the parties, and would constitute arbitrary and capricious application and enforcement of the rules.

III. Argument in Opposition

The Petitioner admits that it failed to timely E-file its objections and offer of proof. Nevertheless, Petitioner argues in one breath, contrary to the express and mandatory language of the Rules and Regulations and without any supporting authority, that it timely filed and served its objections, and in the next breath that its failure to timely E-file its objections and offer of proof should be excused as a "harmless administrative error." The text of the Rules and Regulations make the timely E-filing of objections and offers of proof mandatory and render Petitioner's argument meritless. Section 102.69(a)(8) states in relevant part:

Within 5 business days after the tally of ballots has been prepared, any party may file with the Regional Director objections to the conduct of the election or to conduct affecting the results of the election which shall contain a short statement of the reasons therefor and a written offer of proof in the form described in Section 102.66(c) insofar as applicable, except that the Regional Director may extend the time for filing the written offer of proof in support of the election objections upon request of a party showing good cause. **Such filing(s) must be timely** whether or not the challenged ballots are sufficient in number to affect the results of the election. (emphasis added)

Section 102.5(c) states in relevant part:

Unless otherwise permitted under this section, **all documents filed in cases before the Agency must be filed electronically** (“E-filed”) on the Agency’s Web site (www.nlr.gov) by following the instructions on the Web site . . . **documents may not be filed with the Agency via email without the prior approval of the receiving office.** (emphasis added)

By selectively citing only some of the Rules and Regulations, Petitioner argued to the Regional Director that Sections 102.69(8) and 102.2(b) did not specify that objections and offers of proof have to be filed “by any specific medium.” (Petitioner’s Exhibit B) However, Petitioner cannot eliminate Section 102.5(c) from the Rules and Regulations by ignoring it or characterizing its failure to follow the Section as “a harmless clerical error.” Again, the express mandatory language of the rule belies the suggestion that following it is optional. What other rules can be discarded based on the Petitioner’s standards?

Astoundingly, Petitioner attempts to shift its responsibility onto the Regional Director by arguing that the Regional Director failed to “pick up the phone” to promptly advise Petitioner how their objections and offer of proof should be filed. Surely, the Board would not impose such a responsibility on to the Regional Director or base a decision to overturn the Acting Regional Director’s decision on Petitioner’s finger pointing at the Regional Director.

Petitioner also argues, for the first time, that filing an amended unfair labor practice charge could serve as timely filed objections. First, the case relied on by Petitioner, *Avis Rent-A-Car*, 324 NLRB 445 (1997), was decided almost ten years before the Board amended its Rules and Regulations to add the E-filing requirement, and thus, has dubious precedential value. The current Rules and Regulations, which require E-filing, essentially render *Avis Rent-A-Car* a nullity because E-filing is mandatory under the Rules and Regulations. Additionally, Section 102.69(8) requires that any party desiring to file objections must do so within 5 business days after the tally of ballots, and that objections, “**shall contain** a short statement of the reasons therefor **and** a

written offer of proof in the form described in §102.66(c).” (emphasis added). Petitioner’s amended charge did not contain a written offer of proof; therefore, the amended charge does not meet the requirements of Section 102.69(8). At the time of the *Avis Rent-A-Car* decision, the Rules and Regulations allowed a party to submit evidence in support of election objections seven days after filing objections. *Avis Rent-A-Car*, 324 NLRB at 445.

Additionally, *Avis Rent-A-Car* is entirely distinguishable from the case at hand. In *Avis Rent-A-Car*, the employer filed unfair labor practices against the union that the Board described as “clearly communicating the Employer’s contention that the Union’s agent engaged in conduct affecting the election.” In the case at hand, Petitioner filed unfair labor practices on October 29, 2020 (Employer’s Exhibit 2), prior to the Region mailing ballots to voters on December 8, 2020. The Petitioner’s unfair labor practice charge does not communicate any allegation of interference with the election, and thus does not meet the requirement of Section 102.69(8) to file, “objections to the conduct of the election or to conduct affecting the results of the election which shall contain a short statement of the reasons therefor and a written offer of proof in the form described in Section 102.66(c). . .” The Petitioner’s amended charge added the month and year of the alleged unfair labor practices but did not make allegations of interference with the election. The amended charge listed three dates without listing the day of the month the alleged unfair labor practices occurred. Two of the dates are in September 2020 prior to the filing of the Union’s petition for election on October 19, 2020. The other date listed on the amended charge is October 2020, which does not clearly communicate conduct interfering with the election. *Ideal Electric & Mfg. Co.*, 134 NLRB 1275 (1961).

Petitioner argument that the Regional Director could have printed the email that Petitioner alleges it sent to the Regional Director on January 27, 2021, and then declared, by fiat, that

Petitioner's objection was hand delivered or that it was "post-marked" as of the date of the email would simply write the rule against accepting filing by e-mail out of Section 102.5(c) and would essentially make the Regional Director an agent of the Petitioner. Contrary to Petitioner's claim, its failure to timely file its objections did violate the policy and rules of the NLRB, and its self-serving claim that the Employer would not suffer prejudice if its objections were accepted, ignores that following the Petitioner's path is standardless and results in arbitrary and capricious interpretation and application of the Rules and Regulations. In fact, in the case at hand, the Region, applied a strict application of the Rules and Regulations and rejected the Employer's Statement of Position on the bargaining unit because it was not timely served on Petitioner, even though it was filed timely.

Finally, Petitioner's Request for Review does not conform to the format requirements of 102.67(i). All documents filed under Section 102.67 are required to be double spaced. Petitioner's four-page letter is not double spaced.

IV. CONCLUSION

For the reasons stated above, Petitioner has not established any grounds under Section 102.67(d) to overturn the Acting Regional Director's decision to reject Petitioner's objections as untimely. Thus, Petitioner's Request for Review should be rejected.

Respectfully submitted,

GOODIN MEYER, P. C.

/s/ John D. Meyer
John D. Meyer, Attorney No. 18790-29
Attorney for Employer

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Attorney for Employer

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 19th day of February 2021 a copy of the foregoing was electronically filed with the Office of the Executive Secretary of the National Labor Relations Board via the E-filing portal on the NLRB's website. Undersigned further certifies that a copy of the foregoing has been served upon the following, by email, this 19th day of February 2021:

Patricia K. Nachand
Regional Director, Region 25
Patricia.Nachand@nlrb.gov

Joanne C. Mages
Acting Regional Director, Region 25
Joanne.Mages@nlrb.gov

William W. Osborne Jr.
Osborne Law Offices
BOsborne@osbornelaw.com

/s/ John D. Meyer

**Employer's
Exhibit 1**

FORM NLRB-502 (RC)
(2-18)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
RC PETITION

DO NOT WRITE IN THIS SPACE	
Case No. 25-RC-267772	Date Filed 10/19/20

INSTRUCTIONS: Unless e-Filed using the Agency's website, www.nlrb.gov, submit an original of this Petition to an NLRB office in the Region in which the employer concerned is located. The petition must be accompanied by both a showing of interest (see 8b below) and a certificate of service showing service on the employer and all other parties named in the petition of: (1) the petition; (2) Statement of Position form (Form NLRB-505); and (3) Description of Representation Case Procedures (Form NLRB 4812). The showing of interest should only be filed with the NLRB and should not be served on the employer or any other party.

1. PURPOSE OF THIS PETITION: RC-CERTIFICATION OF REPRESENTATIVE - A substantial number of employees wish to be represented for purposes of collective bargaining by Petitioner and Petitioner desires to be certified as representative of the employees. The Petitioner alleges that the following circumstances exist and requests that the National Labor Relations Board proceed under its proper authority pursuant to Section 9 of the National Labor Relations Act.

2a. Name of Employer: All Fire Solutions (U.S. Automatic Fire and Security)	2b. Address(es) of Establishment(s) Involved (Street and number, City, State, ZIP code): 110 S. Park Blvd., Greenwood, IN 46143
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3a. Employer Representative - Name and Title: Bruce Agan	3b. Address (if same as 2b - state same): 110 S. Park Blvd., Greenwood, IN 46143
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3c. Tel. No. (317) 883-9433	3d. Cell No.	3e. Fax No.	3f. E-Mail Address McCollumj@allfire-solutions.com
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4a. Type of Establishment (Factory, mine, wholesaler, etc.) Construction	4b. Principal Product or Service Fire Protection	5a. City and State where unit is located: Greenwood, IN
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5b. Description of Unit Involved: Included: All persons engaged in installation and service of fire protection services Excluded: Supervisors and Office Staff	6a. Number of Employees in Unit: 11	6b. Do a substantial number (30% or more) of the employees in the unit wish to be represented by the Petitioner? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
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Check One: 7a. Request for recognition as Bargaining Representative was made on (Date) _____ and Employer declined recognition on or about (Date) _____ (If no reply received, so state).
 7b. Petitioner is currently recognized as Bargaining Representative and desires certification under the Act.

8a. Name of Recognized or Certified Bargaining Agent (if none, so state) None	8b. Address:
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8c. Tel. No.	8d. Cell No.	8e. Fax No.	8f. E-Mail Address
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8g. Affiliation, if any:	8h. Date of Recognition or Certification	8i. Expiration Date of Current or Most Recent Contract, if any (Month, Day, Year)
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9. Is there now a strike or picketing at the Employer's establishment(s) involved? No Yes. If so, approximately how many employees are participating? _____ (Name of Labor Organization) _____, has picketed the Employer since (Month, Day, Year) _____.

10. Organizations or individuals other than Petitioner and those named in Items 8 and 9, which have claimed recognition as representatives and other organizations and individuals known to have a representative interest in any employees in the unit described in Item 5b above. (If none, so state)

10a. Name	10b. Address	10c. Tel. No.	10d. Cell No.
		10e. Fax No.	10f. E-Mail Address

11. Election Details: If the NLRB conducts an election in this matter, state your position with respect to any such election: Manual Mail Mixed Manual/Mail

11b. Election Date(s):	11c. Election Time(s):	11d. Election Location(s):
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12a. Full Name of Petitioner (including local name and number): Road Sprinkler Fitters Local Union No. 669, U.A., AFL-CIO	12b. Address (street and number, city, State and ZIP code): 7050 Oakland Mills Road, Suite 200, Columbia, MD 21046
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12c. Full name of national or international labor organization of which Petitioner is an affiliate or constituent (if none, so state):
Road Sprinkler Fitters Local Union No. 669, U.A., AFL-CIO

12d. Tel. No. (410) 381-4300	12e. Cell No.	12f. Fax No. (301) 621-8045	12g. E-Mail Address
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13a. Name and Title: William W. Osborne, Jr.	13b. Address (street and number, city, State and ZIP code): 1130 Connecticut Avenue, Suite 950, Washington DC 20036
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13c. Tel. No. (202) 243-3200	13d. Cell No.	13e. Fax No. (202) 243-3207	13f. E-Mail Address b.osborne@osbornelaw.com
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I declare that I have read the above petition and that the statements are true to the best of my knowledge and belief.

Name (Print) WILLIAM W. OSBORNE, JR.	Signature William Osborne	Title Counsel	Date 10/15/20
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WILLFUL FALSE STATEMENTS ON THIS PETITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)
PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information may cause the NLRB to decline to invoke its processes.

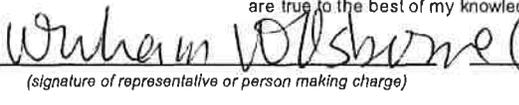
**Employer's
Exhibit 2**

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST EMPLOYER

DO NOT WRITE IN THIS SPACE	
Case 25-CA-268280	Date Filed 10/29/20

INSTRUCTIONS:

File an original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT	
a. Name of Employer All Fire Solutions (U.S. Automatic Fire and Security)	
b. Tel. No. (317) 883-9433	
c. Cell No.	
f. Fax No.	
g. e-mail McCollumj@allfire-solutions.com	
h. Number of workers employed 11	
d. Address (Street, city, state, and ZIP code) 110 S. Park Blvd Greenwood, IN 46143	e. Employer Representative Bruce Agan
i. Type of Establishment (factory, mine, wholesaler, etc.) Construction	j. Identify principal product or service Fire Protection
The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (11st subsections) 8(a)(1), 8(a)(3) of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.	
2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices) All Fire interrogated employees regarding their Union affiliation and unlawfully refused to hire Brad Wagner, a former employee and current Union member, because of his Union membership.	
3. Full name of party filing charge (if labor organization, give full name, including local name and number) Road Sprinkler Fitters Local Union No. 669, U.A., ALF-CIO	
4a. Address (Street and number, city, state, and ZIP code) 7050 Oakland Mills Road Suite 200 Columbia MD 21046	
4b. Tel. No. (410) 381-4300	
4c. Cell No.	
4d. Fax No. (301) 621-8045	
4e. e-mail	
5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization) United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the US/Canada	
6. DECLARATION I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.  (signature of representative or person making charge)	
William W. Osborne, Jr., Counsel (Print/Type name and title or office, if any)	
Tel. No. (202) 243-3200	
Office, if any, Cell No.	
Fax No. (202) 243-3207	
e-mail b.osborne@osbornejlaw.com	
1130 Connecticut Ave., NW, Ste. 950, Washington, DC Address <u>20036</u> Date <u>October 29, 2020</u>	

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)
PRIVACY ACT STATEMENT

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