

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

AUSTIN FIRE EQUIPMENT, LLC

Respondent

and

ROAD SPRINKLER FITTERS LOCAL

UNION NO. 669, U.A., AFL-CIO

Union

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**JD (ATL) – 32-11
Case No. 15-CA-19697**

**RESPONDENT’S CROSS-EXCEPTIONS TO THE
DECISION OF THE ADMINISTRATIVE LAW JUDGE**

Respondent Austin Fire Equipment, LLC, through undersigned counsel, hereby files Cross-Exceptions to the Decision of the Administrative Law Judge. Respondent cross-excepts to the following:

1. The failure to find that Respondent gave clear and unequivocal notice to the Union of intent to repudiate the collective bargaining agreement (“Agreement”) as to Respondent’s core employees in May 2009. (ALJD, p. 23, lines 43-45, p. 24, lines 27-28; p. 26, lines 5-7).
2. The failure to find that Respondent’s refusal to apply the Agreement to its core employees constituted a repudiation of the Agreement as to those employees. (ALJD, p. 23, lines 45-46; p. 24, lines 1-3).
3. The finding that Respondent did not unequivocally repudiate its obligations under the contract to its core employees because it continued to apply the contract to employees referred by the Union. (ALJD, p. 23, line 45-46; p. 24, line 1).
4. The failure to find that the Union knew or should have known that Respondent had repudiated the Agreement as to Respondent’s core employees.

5. The failure to find that the Union's late charge that Respondent made unilateral changes to the contract by refusing to apply the Agreement to its core employees was time-barred by Section 10(b) of the Act. (ALJD, p. 26, lines 5-7).
6. The finding that Respondent violated Section 8(a)(5) and (1) of the Act as alleged in Paragraph 11 of the complaint (ALJD, p. 22, lines 16-18).
7. The Conclusion of Law that Respondent violated Section 8(a) (5) and (1) of the Act by failing to adhere to all the terms and conditions of the Agreement until its expiration on March 31, 2010. (ALJD, p. 31, lines 1-3).
8. By ordering Respondent to cease and desist from failing or refusing to continue in effect all the terms and conditions of the Agreement that expired on March 31, 2010 (ALJD, p. 32, lines 3-5).
9. By ordering Respondent to make whole employees for losses they may have suffered as a result of Respondent's failure to continue in effect all the terms and conditions of the Agreement that expired on March 31, 2010. (ALJD, p. 32, lines 13-17).
10. By requiring the posting of a Notice. (ALJD, p. 32, lines 25-39).
11. The recommendation that the burden shifting scheme proposed by Counsel for the Acting General Counsel be adopted in the construction industry to determine the Section 8(f) or Section 9(a) status of a collective bargaining agreement, rather than recommending a "totality of the circumstances" analysis in which the burden remains upon the party asserting Section 9(a) status to prove that the agreement was not intended to be a Section 8(f) agreement.

Respectfully submitted,

CARVER, DARDEN, KORETZKY, TESSIER,
FINN. BLOSSMAN & AREAUX



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ATTORNEYS FOR RESPONDENT
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY on this 7th day of February 2012, a copy of the above and foregoing Respondent Austin Fire Equipment LLC's Cross-Exceptions to the Decision of the Administrative Law Judge has been E-filed and served via e-mail upon all counsel of record.


