

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

AUSTIN FIRE EQUIPMENT, LLC,

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Respondent,

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and

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Case No. 15-CA-19697

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

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Charging Party.

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**CHARGING PARTY’S ANSWERING BRIEF IN OPPOSITION
TO CROSS EXCEPTIONS BY RESPONDENT AND
THE ACTING GENERAL COUNSEL**

Charging Party Road Sprinkler Fitters Local 669, U.A., AFL-CIO (“Local 669” or “the Union”) submits this Answering Brief in Opposition to the Cross-Exceptions to the Administrative Law Judge’s decision (“ALJD”) respectively by Respondent Austin Fire Equipment, LLC (“Austin Fire” or “Respondent”) and by the Acting General Counsel (“G.C.”).

For the reasons stated below, the Respondent’s Cross Exceptions should be denied and the G.C.’s Cross Exception sustained.

1. Respondent’s Cross Exceptions

The Cross Exceptions by Respondent primarily relate to its defense to the NLRA Section 8(a)(5) violation, as found by the Administrative Law Judge --the

contention that Austin Fire unilaterally “repudiated” its collective bargaining agreement with the Union knowingly in May of 2009 and that the Union failed to file a timely unfair labor practice charge, and was therefore precluded by NLRA Section 10(b) from challenging that repudiation as a violation of Section 8(a)(5). Resp. Cross Except. Resp. Br. 15-20.

The Administrative Law Judge considered and rejected Respondent’s repudiation/Section 10(b) defense on the bases including that there was no “clear and unequivocal” repudiation, and indeed no repudiation at all (ALJD 24) and discredited the testimony of Respondent’s witnesses that the Union had been so notified. ALJD 25.

Respondent’s repudiation defense thus suffers from at least two fatal deficiencies: First, the undisputed fact that Respondent did *not* “repudiate” its collective bargaining agreement with the Union but continued to adhere to it (ALJD 24-25); and second, the credibility determinations against Respondents’ witnesses and in favor of Union Business Agent Tony Cacioppo and Organizer Donnie Irby upon which the Administrative Law Judge’s rejection of Respondent’s “repudiation” defense was premised are virtually unreviewable on appeal. *E.g.*, *Standard Dry Wall Products*, 91 NLRB 544 (1950, *enf’d* 188 F.2d 362 (3d Cir. 1951).

The other of Respondent's Cross-Exceptions relates to the Administrative Law Judge's recommendation that the Board review and modify or overrule its holding in *Central Illinois*, 335 NLRB 717 (2001), that clear and unmistakable contract language is sufficient to establish voluntary recognition under Section 9(a) of the NLRA on the basis of the D.C. Circuit's decision on *Nova Plumbing v. NLRB*, 330 F.3d 531 (D.C. Cir. 2003).

As explained more fully in the Charging Party's Briefs in Support of Exceptions (at 13-15) and in Reply to the Oppositions by Respondent and the General Counsel to its Exceptions (at 4-6), the Board cannot even consider application of *Central Illinois* to the facts of this case without also overruling numerous other settled precedents, including the Supreme Court's decision in *Local Lodge 1424 v. NLRB (Bryan Mfg.)*, 362 U.S. 411, 419 (1960), precluding a challenge to the validity of a Section 9(a) recognition beyond the six month limitation in NLRA Section 10(b) and the Board's longstanding rule that Section 9(a) shall be given the same application in construction and non-construction industry cases. *John Deklewa & Sons*, 282 NLRB 1375, 1382 n. 53 (1987), *enf'd* 843 F.2d 770 (3d Cir. 1988), *cert. den.* 488 U.S. 889 (1988).

Accordingly, *Central Illinois* is not precedent that is even relevant to the issues in this case absent a dramatic reversal of other NLRB precedent and Respondent's remaining Cross Exception should be denied.

2. The G.C.'s Cross Exception

The G.C.'s single cross-exception echoes the Charging Party's Cross Exceptions that the Board should continue to follow its decision in *Central Illinois*, and for reasons the Union has stated elsewhere that Cross Exception should be sustained. Charging Party Br. in Support of Exceptions 15-18; Charging Party Brief in Reply to the Oppositions by Respondent and the Acting General Counsel To Its Exceptions 1-9.

3. Conclusion

For the reasons stated above and previously, Respondent's Cross Exceptions should be denied and the G.C.'s Cross Exception granted.

Date: March 7, 2012

Respectfully submitted,

/s/William W. Osborne, Jr.
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Certificate of Service

I hereby certify that on March 7, 2012, I electronically filed Local 669's Answering Brief in Opposition to Cross Exceptions by Respondent and the Acting General Counsel via the e-filing portal on the NLRB's website, and also forwarded a copy by electronic mail to the Parties as listed below:

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