



United States Government

NATIONAL LABOR RELATIONS BOARD
1099 14th STREET NW
WASHINGTON DC 20570

January 10, 2012

Re: Grand Canyon University
Cases 28-CA-22938, et al.

Richard S. Cohen
Jackson Lewis LLP
2398 E. Camelback Road, Suite 1060
Phoenix, AZ 85016

Dear Mr. Cohen:

This will acknowledge the receipt in the Office of the Executive Secretary on January 6, 2012, by fax at 10:08 p.m. and by email at 10:54 p.m., of the Respondent's Reply Brief in Support of its Limited Cross-Exceptions to the Administrative Law Judge's decision in this matter. In the email accompanying the Respondent's Reply Brief, Karen M. Chenoweth of your firm stated that the Reply Brief also was being sent to the Board by U.S. Mail on January 6. The email also stated that "[d]ue to internet problems throughout the day within our office, I have been unable to file the attached document with the NLRB."

The answering brief to the Respondent's Cross-Exceptions in this case was due and timely filed by the Acting General Counsel on December 23, 2011. Under Section 102.46(h) of the Board's Rules and Regulations, any reply brief was required to be filed within 14 days from the last date on which an answering brief was due. Thus, any reply brief to the Acting General Counsel's answering brief in this case was due on or before January 6, 2012.

As an initial matter, emailing a document is not an acceptable means of filing with the Board under the Board's Rules and Regulations.

Under the Board's rules for Electronic Filings, the Reply Brief would have been timely had it been filed electronically by 11:59 p.m. Eastern Standard Time on January 6, 2012. To date, however, the Reply Brief has not been electronically filed with the Board. With respect to the statement in Ms. Chenoweth's email that the Brief was not electronically filed because of internet problems through the day on January 6 in your

office, the Board's rules for Electronic Filings provide that "[p]roblems with a user's telephone lines, internet service provider, hardware, or software...do not constitute a technical failure and will not excuse an untimely filing. A filer who cannot E-File a document because of any of these user problems must file conventionally and timely...If a timely, conventional filing is impossible because a user problem developed after close of business on the due date, the user should attempt to E-File using another computer with internet access, such as another computer in the office, a home computer, a computer at a public library, or a computer at a commercial business service center." Therefore, the internet problems in your office do not constitute a valid reason to excuse the failure to timely file the Reply Brief electronically.

Regarding your faxing of the Reply Brief, Section 102.114(g) of the Board's Rules and Regulations provides that facsimile transmissions of briefs will not be accepted by the Board as properly filed.

As for the mailing of the Brief, Section 102.111(b) of the Board's Rules and Regulations provides that documents or filings must be received by the Board no later than on the last day of the time limit, and "documents which are postmarked on or after the due date are untimely." Section 102.111(b) states that "'Postmarking' shall include timely depositing the document with a delivery service that will provide a record showing that the document was tendered to the delivery service in sufficient time for delivery by the due date, but in no event later than the day before the due date." Thus, the Respondent's Reply Brief was required to be postmarked or given to a delivery service no later than January 5, 2012. The Respondent's Reply Brief, however, was not sent by mail until January 6.

Accordingly, as the Respondent's Reply Brief was not timely filed with the Board in the proper manner, I cannot forward it to the Board for consideration.

Very truly yours,

/s/ Henry S. Breiteneicher
Associate Executive Secretary

cc: Parties