



United States Government

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

April 24, 2012

William Mabry III
National Labor Relations Board
Region 28
2600 North Central Avenue, Suite 1400
Phoenix, AZ 85004

Mark G. Kisicki
Elizabeth M. Townsend
Ogletree, Deakins, Nash, Smoak &
Stewart
Esplanade Center III, Suite 800
2415 East Camelback Road
Phoenix, AZ 85016

Re: Banner Estrella Medical Center
Case 28-CA-023438

Dear Counsels:

This will acknowledge receipt of the Acting General Counsel's Reply Brief and Motion to Strike Respondent's Answering Brief and Reply Brief filed with the Board on January 4, 2012. This will also acknowledge receipt of the Respondent's Opposition to the Acting General Counsel's Motion to Strike Respondent's Answering Brief and Reply Brief filed on January 5, 2012.

With respect to the motion to strike, the AGC requests that the Board reject the Respondent's answering brief and reply brief because, in contravention of Section 102.114 of the Board's Rules and Regulations, Respondent did not serve the AGC in the same manner that it served the Board, i.e., electronic service. The Respondent claims that it inadvertently failed to electronically serve the AGC on the same days that it electronically filed the briefs with the Board, but that it did mail the briefs to the AGC by first-class mail on the same days that the briefs were electronically filed. In addition, the Respondent avers that the AGC has not demonstrated any prejudice as a result of the mail service.

Section 102.114(a) of the Board's Rules requires that parties serve other parties with documents in the same manner that the document is filed with the Board or in a more expeditious manner. Further, under Section 102.114(c)(1), "rejection of the document" may result from "failure to comply with the requirements of this section relating to timeliness of service on other parties." The Board, however, generally will not strike or reject a document on these grounds unless prejudice can be shown or the mis-serving party has a record of flaunting or abusing the Board's Rules. See *Century Parking*, 327 NLRB 21, 21 fn. 7 (1998).

Here, the AGC has failed to show that it suffered any prejudice as a result of the incorrect service. Despite the fact that the AGC allegedly received the Respondent's answering brief six days after it was filed, the AGC did not request an extension of time to file its reply brief, and in fact timely filed the reply brief with the Board.

Based on the foregoing, it would not be appropriate to reject the Respondent's answering brief and reply brief, and thus those filings, as well as the AGC's reply brief, have been transmitted to the Board for consideration.

Very truly yours,

/s/ Farah Z. Qureshi
Associate Executive Secretary

cc: Parties