

**UNITED STATE OF AMERICA  
NATIONAL LABOR RELATIONS BOARD  
Region 8**

<b>EDIFICE RESTORATION CONTRACTORS, INC.</b>	:	
	:	
	:	
<b>Respondent,</b>	:	
	:	
<b>and</b>	:	<b>Case No. 08-CA-090945</b>
	:	
<b>MIKE R. PELFREY, JR</b>	:	
	:	<b><u>RESPONDENT'S</u></b>
	:	<b><u>MOTION IN OPPOSITION</u></b>
<b>Charging Party.</b>	:	<b><u>TO EXTENSION OF TIME</u></b>
	:	<b><u>TO FILE EXCEPTIONS</u></b>

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**EDIFICE RESTORATION CONTRACTORS, INC.** (“Edifice”) respectfully moves the Board to deny General Counsel’s Motion for an Extension of Time to file its Exceptions to the ALJ’s Decision and its Memorandum in Support of such Exceptions. The basis for the request is detailed in the attached Memorandum.

Respectfully submitted by:

/s/ James Allen  
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*Representative for Respondent*

## **MEMORANDUM IN SUPPORT**

The Complaint in this case alleged one main issue. That is, whether Edifice Restoration Contractors, Inc. (“Edifice”) interfered with, restrained, or coerced employees in the exercise of the rights guaranteed in Section 7 of the Act through violation of Section 8(a)(1) of the Act. Specifically, the issue is whether Edifice violated Section 8(a)(1) of the Act when it failed to recall/terminated Mike Pelfrey (“Pelfrey”).

The nature of such a claim is such that the Employer would be held liable for back wages and benefits from the time of the alleged discrimination until final resolution of the matter. This is the remedy most commonly ordered by the Board, and no unique facts exist in the instant case, which would distinguish it from the norm.

## **PROCEDURAL POSTURE**

Mike R. Pelfrey, Jr. (“Pelfrey”) filed an Unfair Labor Practice Charge in this matter with Region 8 of the National Labor Relations Board on or about October 10, 2012. Pelfrey alleged *inter alia* that the Employer violated the NLRA by (1) interfering with, restraining, or coercing its employees through its officers, agents, and representatives, (2) instructing Pelfrey to not discuss his pay rate with co-workers, (3) writing “please keep your pay rate to yourself on Pelfrey’s paycheck, (4) terminating Pelfrey after he complained about Edifice’s failure to pay Pelfrey and co-workers prevailing rate of wages, and (5) that such termination was retaliation for Pelfrey’s complaint on behalf of himself and co-workers and for Pelfrey’s participation in other protected concerted activity .

The Board asked Edifice to respond in writing and by affidavit to the charges. Edifice submitted a position statement and later amended its position statement to respond to additional allegations. Following this investigation the Board filed a Complaint, and a hearing was held on

March 20, 2013 at the Toledo Municipal Court in front of an Administrative Law Judge, the Honorable David Goldman. At the completion of the hearing, Judge Goldman requested post-hearing briefs from the parties.

Judge Goldman issued his Decision on or about May 20, 2013. The Decision, in short, found Edifice violated the Act with regard to requesting Pelfrey not discuss his wages, but found no violation with regards to termination/failure to recall Pelfrey.

### **THE EMPLOYER'S OPPOSITION TO EXTENSION OF TIME**

Edifice opposes the General Counsel's filed Motion for Extension of Time to File Exceptions. The General Counsel cited as reason for the extension a change in her employment status to part-time due to medical reasons.

Edifice is sympathetic to the General Counsel's medical situation; however, due to the potentially large increase in liability such an extension may bring, Edifice must vigorously express its opposition.

As detailed above, the instant case was filed on or about October 10, 2012. The date of the alleged discriminatory failure to recall occurred on or about that date, but potentially as early as September 6, 2012. The date such alleged discrimination began would certainly be an item of contention necessarily determined during the compliance phase of the Board's proceedings.

Edifice is confident that Judge Goldman's decision and conduct of the hearing will withstand any challenge brought through the Exception process. Having stated such, it is incumbent upon Edifice to protect its rights under all possible contingencies.

Should the General Counsel prevail in its Exceptions Edifice's liability regarding the alleged failure to recall could potentially, and most likely, be reinstated by the Board as its prescribed remedy. Under that scenario, should the Board grant the General Counsel's request

for extension of time, Edifice would become liable for an additional 30 days of wages and benefits to Pelfrey. This result would be inequitable and unjust.

A filing of Exceptions to ALJD is not a complex and complicated procedure, especially for someone of the experience of the General Counsel. The options for available exceptions are narrowly defined and revolve around (1) interpretation or application of the Act, (2) the conduct of the hearing including rulings on objections and evidence, and (3) credibility decisions made by the ALJ during witness testimony. By the time a case reaches hearing, counsel for all parties should be intimately familiar with all the facts, applicable provisions of law, and case theories necessary for their party to prevail. Finally, the Decision issued by Judge Goldman in this case is not extensive or of onerous length. As detailed above, the issues were limited and the ruling necessarily was as well consisting of only 19 pages. Based on the foregoing, the task of preparing and filing Exceptions, even for someone whose employment is part-time, can easily be accomplished.

### **EQUITABLE CONSIDERATION**

Edifice respectfully requests that if General Counsel's extension of time is granted that such grant include an order tolling any potential remedy that may arise from the delay. Edifice requests this tolling be permitted only for the actual length of the delay. This request is founded in principles of equity, long established and implemented by the courts and tribunals of all jurisdictions in the United States.

### **SUMMARY**

Edifice Restoration Contractors opposes any extension of time to file exceptions to the ALJ's decision on the basis that there is no demonstrated need for such extension. The issues are narrow and the task is not so complex that it is unable to be performed by General Counsel, even

in light of her part-time status. Under the principles of equity, Edifice requests first, that the motion for extension of time be denied because of the increased liability that may result, and second, that should such extension be granted it include a tolling order for any potential remedy matching the length of the delay.

Respectfully submitted:

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**CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing has been made on the Office of the Executive Secretary of the National Labor Relations Board via the Agency's e-filing portal, and courtesy copies have been electronically served on June 4, 2013 to the following parties:

Hon. David Goldman  
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