

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATION BOARD  
REGION 9

In the Matter of

THE ARDIT COMPANY

Employer

and

Case 9-RC-083978

INTERNATIONAL UNION OF BRICKLAYERS AND  
ALLIED CRAFTWORKERS, OHIO KENTUCKY  
ADMINISTRATIVE DISTRICT COUNCIL,  
LOCAL UNION NO. 18

Petitioner

ORDER DENYING EMPLOYER'S MOTION  
FOR AN EXTENSION OF TIME TO FILE ITS POST-HEARING  
BRIEF AND REJECTION OF EMPLOYER'S POST-HEARING BRIEF

On July 5, 2012, a pre-election hearing was held in the above-captioned case. At the close of the hearing, the hearing officer informed the parties that post-hearing briefs were due by close of business on July 12, 2012. On July 13, 2012, the Employer filed its Motion with the Regional Director to grant the Employer a 1-day extension of time to file its post-hearing brief. The Motion and brief were filed electronically after the close of business. The Decision and Direction of Election had already issued earlier that same day. As discussed below, the Employer's Motion is hereby denied and its post-hearing brief is rejected.

The Employer's counsel asserts in the Motion that counsel mistakenly believed the hearing took place on July 6, 2012 instead of July 5, and thus mistakenly believed the post-hearing brief was due on July 13 instead of July 12. The Employer's counsel contends he correctly calculated the filing date, i.e., 7 days after the hearing, but was mistaken concerning when the hearing took place as a result of a June 29, 2012 power outage in Columbus, Ohio and the July 4<sup>th</sup> holiday. Additionally, on July 13, counsel for the Employer attempted to contact the Petitioner's attorney several times via e-mail and telephone to seek a 1-day extension to file the Employer's post-hearing brief, but the Petitioner's attorney never responded.

In *Unitec Elevator Services Company*, 337 NLRB 426, 428 (2002), the Board stated that "[t]he Board's Rules, at Section 102.111, describe in specific detail how to count or compute the days in establishing the due date. Henceforth, a late document will not be excused when the reason for the tardiness is solely a miscalculation of the filing date." In the instant matter, the

Employer's counsel submitted its post-hearing brief and its Motion for an extension of time to file its post-hearing brief after hours and 1 day after post-hearing briefs were due. In addition, the Employer's counsel was unsuccessful in securing the Petitioner's agreement to allow the Employer to submit its post-hearing brief 1 day late. Although counsel contends he did not miscalculate the number of days after the hearing in which the brief must be filed, but merely was mistaken as to what date the hearing took place, the consequence of that mistake is that the Employer's post-hearing brief was submitted after the deadline. Thus, the sole reason for the late filing was that the Employer miscalculated the date on which its post-hearing brief was due.

Accordingly, it appearing to the undersigned that the Employer has not shown that good cause exists for granting the extension of time,

IT IS HEREBY ORDERED that the Employer's Motion to file its post-hearing brief 1 day late is denied. Additionally, IT IS HEREBY ORDERED that the Employer's post-hearing brief is rejected.

Dated at Cincinnati, Ohio this 16<sup>th</sup> day of July 2012.

/s/ Carol L. Shore

Carol L. Shore, Acting Regional Director  
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