

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS 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 COUNCIL,  
LOCAL NO. 18

Petitioner

SUPPLEMENTAL DECISION AND ORDER

Pursuant to the provisions of a *Decision and Direction of Election* that I issued on July 13, 2012, <sup>1/</sup> an election by secret ballot was conducted on August 10, 2012 among certain employees of the Employer <sup>2/</sup> to determine whether such employees desired to be represented by the Petitioner for the purposes of collective bargaining.

Upon the conclusion of the election, a tally of ballots was made available to the parties in conformity with the Rules and Regulations of the Board, herein called the Rules, which disclosed the following results:

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|---|----|
| Approximate number of eligible voters.....                            | 12 |
| Number of void ballots.....   | 0  |
| Number of votes cast for Petitioner.....                              | 0  |
| Number of votes cast against<br>participating labor organization..... | 1  |
| Number of valid votes counted.....                                    | 1  |
| Number of challenged ballots.....                                     | 8  |
| Number of valid votes counted plus challenged ballots.....            | 9  |

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<sup>1/</sup> Thereafter, the Employer filed a request for review of the Decision with the Board. On August 9, 2012, the Board issued its Order denying the Employer's request for review.

<sup>2/</sup> The appropriate bargaining unit as set forth in the Decision is: "All tile, marble, and terrazzo installers and helpers employed by the Employer at or out of its facility in Columbus, Ohio, excluding office clerical employees and all professional employees, and guards and supervisors as defined in the Act."

The challenged ballots are sufficient in number to affect the results of the election.

Pursuant to the provisions of Section 102.69 of the Rules, an investigation of the issues raised by certain of the challenged ballots was conducted under my direction and supervision and after carefully considering the results thereof, I make the following findings and conclusions.

### THE CHALLENGED BALLOTS

During the election, the Employer's election observer challenged the ballots of the following six employees: Timothy Clemmons, Kenneth Wayne Lemasters, Greg Salabritas, Joseph D. Thompson, Guy Tolliver III and Richard Wilson. When asked by the Board Agent for the reason for each challenge, the observer replied only that he had been "directed to do so." I find, for the following reasons, that the Employer's election observer did not provide a valid reason for challenging the ballots cast by these individuals and that the Board agent conducting the election should not have permitted these ballots to be challenged. Accordingly, I am overruling the challenges to their ballots and directing that the ballots be opened and counted. <sup>3/</sup>

Following the issuance of the Decision in this matter, the Employer, in accordance with the directive contained in the Decision, provided an election eligibility list containing the names and addresses of employees employed in the unit found appropriate. The names of all six challenged employees appear on the list. The Board has long held that a voting eligibility list prepared by an employer may be presumed to be correct unless objections to individuals appearing on the list are raised by the other parties. *Fulton Bag and Products Company*, 121 NLRB 268 (1958). The Petitioner has not formally objected to the inclusion of any of these individuals on the eligibility list and did not challenge any of the employees at the election.

The Board's *Casehandling Manual, Part Two, Representation Proceedings* provides at Section 11338.2(a) that "[a]ny observer has the right to challenge a voter for cause." However, the manual also provides at Section 11338.7 that:

Persons in job classifications specifically included by the Decision and Direction of Election should be given a ballot and permitted to vote without challenge based upon classification, unless there have been changed circumstances.... Unless plausible reasons are given for the challenge, the person specifically included should be permitted to vote without casting a challenged ballot.

The Employer's election observer, in challenging individuals whose names appeared on the election eligibility list provided by the Employer, failed to advance any reason, plausible or

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<sup>3/</sup> The remaining two challenged ballots were cast by Keith Barnes and Thomas McAllister. Their ballots were challenged by the Employer on the ground that they are supervisors and are not eligible to vote in the election. In the event that their ballots remain determinative of the election results after the count of the ballots directed herein, their eligibility status will be investigated and dealt with in a later proceeding.

otherwise, as to why these employees were not eligible voters. As a result, these employees should have voted without having their ballots challenged.

In light of the above, I find that Timothy Clemmons, Kenneth Wayne Lemasters, Greg Salabritas, Joseph D. Thompson, Guy Tolliver III and Richard Wilson are eligible to vote in the election.

### CONCLUSIONS

For the reasons set forth above, I overrule the challenges to the ballots of Timothy Clemmons, Kenneth Wayne Lemasters, Greg Salabritas, Joseph D. Thompson, Guy Tolliver III and Richard Wilson and find that their ballots should be opened and counted.

### ORDER

IT IS HEREBY ORDERED, that an agent of the undersigned shall, at a time and place to be determined by the undersigned, open and count the ballots of Timothy Clemmons, Kenneth Wayne Lemasters, Greg Salabritas, Joseph D. Thompson, Guy Tolliver III and Richard Wilson and thereafter immediately prepare and make available to the parties a revised tally of ballots in accordance with the Rules.

*Right to File Request for Review:* Pursuant to the provisions of Sections 102.69 and 102.67 of the National Labor Relations Board's Rules and Regulations, Series 8, as amended, you may obtain a review of this Supplemental Decision by filing a request with the Executive Secretary, National Labor Relations Board, 1099 14<sup>th</sup> Street, NW, Washington, DC 20570-0001. This request for review must contain a complete statement setting forth the facts and reasons on which it is based. Under the provisions of Section 102.69(g) of the Board's Rules, documentary evidence, including affidavits, which a party has timely submitted to the Regional Director in support of its objections or challenges and that are not included in the Supplemental Decision, is not part of the record before the Board unless appended to the exceptions or opposition thereto and that the party files with the Board. Failure to append to the submission to the Board copies of evidence timely submitted to the Regional Director and not included in the Supplemental Decision shall preclude a party from relying on that evidence in any subsequent related unfair labor practice proceeding.

*Procedures for Filing a Request for Review:* Pursuant to the Board's Rules and Regulations, Sections 102.111-102.114, concerning the Service and Filing of Papers, the request for review must be received by the Executive Secretary of the Board in Washington, DC by close of business on **August 27, 2012** at 5 p.m. (ET), unless filed electronically. **Consistent with the Agency's E-Government initiative, parties are encouraged to file a request for review electronically.** If the request for review is filed electronically, it will be considered timely if the transmission of the entire document through the Agency's website is **accomplished by no later than 11:59 p.m. Eastern Time** on the due date. Please be advised that Section 102.114 of the Board's Rules and Regulations precludes acceptance of a request for review by facsimile transmission. Upon good cause shown, the Board may grant special permission for a longer

period within which to file. <sup>4/</sup> A copy of the request for review must be served on each of the other parties to the proceeding, as well as on the undersigned, in accordance with the requirements of the Board's Rules and Regulations.

Filing exceptions electronically may be accomplished by using the E-filing system on the Agency's website at [www.nlr.gov](http://www.nlr.gov). *Once the website is accessed, click on File Case Documents, enter the NLRB Case Number, and follow the detailed instructions.* The responsibility for the receipt of the exceptions rests exclusively with the sender. A failure to timely file the exceptions will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off line or unavailable for some other reason, absent a determination of technical failure of the site, with notice of such posted on the website.

Dated at Cincinnati, Ohio this 13th day of August, 2012.

  
Gary W. Muffley, Regional Director  
Region 9, National Labor Relations Board  
3003 John Weld Peck Federal Building  
550 Main Street  
Cincinnati, Ohio 45202-3271

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<sup>4/</sup> A request for extension of time, which may also be filed electronically, should be submitted to the Executive Secretary in Washington, and a copy of such request for extension of time should be submitted to the Regional Director and to each of the other parties to this proceeding. A request for an extension of time must include a statement that a copy has been served on the Regional Director and on each of the other parties to this proceeding in the same manner or a faster manner as that utilized in filing the request with the Board.

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|--|-------------------------|

Date of Mailing August 13, 2012

AFFIDAVIT OF SERVICE OF SUPPLEMENTAL DECISION AND ORDER

*I, the undersigned employee of the National Labor Relations Board, being duly sworn, depose and say that on the date indicated above I served the above-entitled document(s) by regular mail upon the following persons, addressed to them at the following addresses:*

Ms. Michelle Johnson  
The Ardit Company  
3535 Johnny Appleseed Court  
Columbus, Ohio 43231-4985

International Union of Bricklayers and  
Allied Craftworkers, Ohio Kentucky  
Administrative District Council, Local  
Union No. 18  
5171 Hudson Drive  
Hudson, Ohio 44236-3735

Mr. Ronald L. Mason  
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Mr. Ryan K. Hymore  
Attorney at Law  
Mangano Law Offices Co. LPA  
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Cincinnati, Ohio 45242-2838

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|---|---|
| <p>Subscribed and sworn to before me this <u>13<sup>th</sup></u> day<br/>of <u>August</u>, 2013</p> | <p>Designated Agent<br/><u>[Signature]</u><br/>NATIONAL LABOR RELATIONS BOARD</p> |
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