

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 CRAFT WORKERS, OHIO
KENTUCKY ADMINISTRATIVE COUNCIL,
LOCAL NO. 18

Petitioner

SUPPLEMENTAL DECISION ON OBJECTIONS

Pursuant to the provisions of a *Decision and Direction of Election* that I issued on July 13, 2012, ^{1/} an election by secret ballot was conducted on August 10, 2012 among certain employees of the Employer ^{2/} 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:

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

^{1/} 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.

^{2/} 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. ^{3/}

On August 17, 2012, the Employer timely filed post-election objections, herein called the Objections and attached hereto as Exhibit A. A copy of the Objections was duly served on the Petitioner in conformity with the Rules.

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

THE OBJECTIONS

The Employer's objections allege, in substance, that the Petitioner promised employees that if they voted for the Petitioner in the election, the employees would be able to keep their current health and welfare benefits even though the Employer had previously advised employees that these benefits would be changing and that if employees did not vote for the Petitioner in the election, the Petitioner would take these benefits away from employees.

Pursuant to Rule 102.69(a), objections to an election must be filed with the Regional Director within 7 days after the tally of ballots has been prepared and within 7 days after the filing of objections or such additional time as the Regional Director may allow, the objecting party must furnish the Regional Director with evidence that establishes a prima facie case in support of the objections. See, *Park Chevrolet-Geo*, 308 NLRB 1010 (1992). Further, at a minimum, the supporting evidence must provide specific details of the alleged objectionable conduct and identify witnesses who can "provide direct relevant testimony" concerning this conduct. *Health Care and Retirement Corporation*, 313 NLRB 655 (1994); *The Holladay Corporation*, 266 NLRB 621 (1983).

By letter dated August 20, 2012, the Employer was advised that the evidence that it was relying on to support its Objections must be submitted to the Regional office by August 27, 2012. Additionally, the letter advised the Employer that:

Evidence should be in the form of affidavits, written statements or documents. If the evidence cannot be submitted in written form but is to be presented through witnesses with knowledge of the allegations contained in the objections, a list of the names, addresses and telephone numbers of all witnesses you wish to present who can substantiate such allegations, *together with a concise summary of the evidence each will provide*, must be submitted for each objection by the date due. Statements in general terms or assertions that you will have a witness testify concerning an objection are generally not sufficient to warrant further investigation and may result in the objection being overruled. Rather, the evidence must precisely indicate what the witness is expected to state if called to testify. Accordingly, the summary should be specific as to the date, time and location of the actions

^{3/} On August 13, 2012, I issued a Supplemental Decision and Order overruling the challenges made to 6 of the ballots and ordering that these ballots be opened and counted. On August 27, 2012, the Employer filed a Request for Review of this decision which is currently pending before the Board.

and incidents you allege to be objectionable, the names of all individuals who were present when the alleged misconduct took place and the names of the persons who engaged in the conduct you allege to be objectionable. ***In other words, the evidence should establish what the conduct was, when it occurred (specific dates and times), who engaged in it and who witnessed or heard about it, where the conduct took place and why you believe it to be objectionable.***

The Employer acknowledged receipt of this letter by letter dated August 24, 2012 stating that it would “submit its statement of position and all other evidence in support of its post election objections” by close of business on August 27, 2012. On August 27, 2012, the Employer filed its position statement providing its legal argument for the proposition that promises of benefit by a union during an election campaign can constitute objectionable conduct that interferes with employees’ free choice at an election. However, the position statement is devoid of any facts concerning the exact nature of the conduct allegedly engaged in by the Petitioner including when the conduct allegedly occurred, where the conduct allegedly occurred, who allegedly made the statements on behalf of the Petitioner, which employees allegedly heard the statements and the names and contact information of any witnesses to the alleged conduct. No further evidence has been submitted by the Employer in support of its Objections.

The Board has held that the time limits for the filing of evidence in support of objections shall be strictly applied. *Goody’s Family Clothing, Inc.*, 308 NLRB 181 (1992). Moreover, the Board has held that it is an abuse of discretion for a Regional Director to retroactively grant an extension of time to submit evidence where the objection party has failed to make a request for such an extension prior to the date the evidence was due. *Public Storage, Inc.*, 295 NLRB 1034 (1989). I note that in the instant case, the Employer has neither timely asked for nor been granted any extension of time to file its evidence beyond the due date. *Koons Ford of Annapolis, Inc.*, 308 NLRB 1067 (1992); *Operator Services West*, 300 NLRB 473 (1990). Accordingly, I find that the Employer’s Objections do not raise any substantial or material issues affecting the results of the election.

CONCLUSION

For the reasons set forth above, I overrule the Employer’s Objections in their entirety.

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 14th 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 **September 20, 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. ^{4/} 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. *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 6th day of September 2012.

/s/ Gary W. Muffley

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

Attachment: Exhibit A

^{4/} 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 September 6, 2012

AFFIDAVIT OF SERVICE OF SUPPLEMENTAL DECISION ON OBJECTIONS

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
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Administrative District Council, Local
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<p>Subscribed and sworn to before me this <u>6th</u> day of <u>SEPTEMBER</u>, 2012</p>	<p>Designated Agent /s/ Donna Lange NATIONAL LABOR RELATIONS BOARD</p>
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