

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 REPORT,  
ORDER DIRECTING HEARING,  
AND  
NOTICE OF HEARING

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:

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

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

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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."

On August 13, 2012, following an investigation of the issues raised by certain of the challenged ballots, I issued a Supplemental Decision and Order overruling the challenges to the ballots of six of the challenged voters and ordering that their ballots be counted. On August 27, 2012, the Employer filed a Request for Review of the Decision and Order with the Board.

On August 17, 2012, the Employer filed timely Post Election Objections which were duly served on the Petitioner in conformity with the Rules. On September 6, 2012, following an investigation of the issues raised by the Objections, I issued a Supplemental Decision on Objections overruling all of the Employer’s objections to the election. On September 20, 2012, the Employer filed a Request for Review of the Decision on Objections with the Board.

On October 18, 2012, the Board issued Orders denying the Employer’s Request for Review of the Supplemental Decision and Order and denying the Employer’s Request for Review of the Supplemental Decision on Objections. On October 25, 2012, the ballots of the six challenged individuals found to be eligible voters in the Supplemental Decision and Order were counted and added to the original tally of ballots. The revised 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:

	Original Tally	Challenged Ballots Counted	Final Tally
Approximate number of eligible voters.....	12		
Number of void ballots.....	0	0	0
Number of votes cast for Petitioner.....	0	4	4
Number of votes cast against participating labor organization.....	1	2	3
Number of valid votes counted.....	1		7
Number of challenged ballots.....	8		2
Number of valid votes counted plus challenged ballots.....	9		9

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 the challenged ballots was conducted under my direction and supervision and after carefully considering the results thereof, I make the following report.

#### THE CHALLENGED BALLOTS

During the election, the Employer’s election observer challenged the ballots of Keith Barnes and Thomas McAllister on the ground that they are supervisors within the meaning of Section 2(11) of the Act and are not eligible to vote in the election. The Petitioner asserts that Barnes and McAllister are not statutory supervisors but are employees eligible to vote in the election.

The Employer asserts that Barnes and McAllister are statutory supervisors because of their ability to assign work and responsibly direct the workforce. In support of its position, the Employer maintains that both Barnes and McAllister are working foremen who receive a higher hourly rate than other of its employees and whose responsibilities include “organiz[ing] the

execution of work each day of the project” and “direct[ing] the day-to-day detailed tasks of terrazzo installation.” According to the Employer, they both have authority to deal with the general contractor on the site and attend jobsite meetings on behalf of the Employer. The Employer notes that McAllister was designated by the Employer as its “daily contact person” on one of the Employer’s larger jobs. The Employer states that Barnes and McAllister can determine and make effective recommendations concerning manpower, equipment and materials needs on the jobsite and that they have the authority to send employees home which McAllister, in particular, has exercised in the past.

In support of its position that Barnes and McAllister are not statutory supervisors, the Petitioner contends that both Barnes and McAllister have been classified and paid in accordance with the parties’ most recent collective-bargaining agreement and that both are terrazzo workers/tile setters. According to the Petitioner, neither Barnes nor McAllister have the authorities, on behalf of the Employer, enumerated in Section 2(11) of the Act. The Petitioner asserts that they do not regularly attend jobsite meetings with other contractors and that the Employer’s other employees “already know the jobs they are supposed to do on jobsites without any constant direction or supervision on the jobsite.” The Petitioner further asserts that although Barnes and McAllister may have transferred employees to other jobsites and directed the mixers/finishers with respect to mix colors and where they will do the next pour, they do so only after receiving specific instructions from other acknowledged supervisors and managers.

In view of the conflicting evidence and positions of the parties, I conclude that the challenges to the ballots of Keith Barnes and Thomas McAllister raise substantial and material issues of fact and law which may best be resolved by the conduct of a hearing.

### CONCLUSIONS

For the reasons set forth above, I will direct a hearing with regard to the issues raised by the challenges to the ballots of Keith Barnes and Thomas McAllister.

### ORDER DIRECTING HEARING AND NOTICE OF HEARING

IT IS HEREBY ORDERED, pursuant to Section 102.69(d) of the Board's Rules, that a hearing be conducted before a duly designated hearing officer to resolve issues raised by the challenges to the ballots of Keith Barnes and Thomas McAllister.

IT IS FURTHER ORDERED that the hearing officer designated for the purposes of conducting the hearing shall prepare and cause to be served upon the parties a report containing resolutions of credibility of witnesses, findings of fact and recommendations to the undersigned as to the disposition of said issues.

YOU ARE HEREBY NOTIFIED that on November 13, 2012, at 10:00 a.m. (ET) and continuing on consecutive days thereafter until closed, in the Hearing Room, Region 9, National Labor Relations Board, 3003 John Weld Peck Federal Building, 550 Main Street, Cincinnati, Ohio, a hearing will be conducted before a hearing officer designated by the undersigned on the

issues raised herein, at which time and place the parties may appear in person or otherwise submit evidence and be heard on the issues.

Dated at Cincinnati, Ohio this 5<sup>th</sup> day of November 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

UNITED STATES OF AMERICA  
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REGION 9

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Date of Mailing November 5, 2012

**AFFIDAVIT OF SERVICE OF** SUPPLEMENTAL REPORT, ORDER DIRECTING HEARING AND NOTICE OF HEARING

*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  
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Mr. Ronald L. Mason  
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Mr. Ryan K. Hymore  
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<p>Subscribed and sworn to before me this <u>5th</u> day of <u>November</u>, 2012</p>	<p>Designated Agent /s/ Donna Lange <b>NATIONAL LABOR RELATIONS BOARD</b></p>
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