UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

THE ARDIT COMPANY	:	
	:	
Respondent	:	Case No.: 9-CA-89159
	:	Case No.: 9-CA-107434
and	:	
	:	
INTERNATIONAL UNION OF BRICKLAYERS AND ALLIED CRAFT WORKERS, OHIO KENTUCKY ADMINISTRATIVE COUNCIL, LOCAL NO. 18	:	
	:	
Charging Party	:	

RESPONDENT, THE ARDIT COMPANY'S STATEMENT OF POSITION

Now comes the Respondent, The Ardit Company ("Ardit" or "Respondent") and hereby files its Statement of Position to be attached to the Joint Motion and Stipulation of Facts in the matter referenced above.

Counsel for the General Counsel has alleged that Ardit violated Section 8(a)(1) and (5) of the Act when it when it engaged in the following conduct:

> (1) unilaterally implemented new terms and conditions of employment upon the expiration of an 8(f) agreement with the Union during the period of time between the holding of a representation election and the certification of the Union as its employees' collective-bargaining representative when the new terms and conditions were announced prior to the time the Union filed its petition for representation;
>
> (2) laid employees off due to lack of work after the 8(f) agreement expired and following the representation election, but before the Union was certified as its employees' exclusive collective-bargaining representative without prior notice to or bargaining with the Union even though Ardit had never previously provided notice to the union before laying off employees; and
>
> (3) failed to respond to the Union's May 3 and May 17, 2013 information requests.

Ardit avers that its actions did not violate the Act. Ardit further avers that it was relying upon Board precedent when in it implemented new terms and conditions of employment and, therefore, cannot be found retroactively to have violated § 8(a)(1) and (5) of the Act. More importantly, Ardit would suffer manifest injustice if it is found to have retroactively violated § 8(a)(1) and (5) of the Act.

Ardit was party to various 8(f) Agreements with the union. As is its right, Ardit gave the union proper notice and lawfully terminated the 8(f) agreements. Consequently, the union filed a petition in March 2011 seeking to become the 9(a) representative of Ardit's employees. The union was subsequently certified on April 25, 2011. Nevertheless, the union refused to bargain with Ardit. Region 9 issued a Complaint and Notice of Hearing against the union on September 21, 2011. Rather than proceed to trial, the union disclaimed interest on November 15, 2011. On or about November 17, 2011 Ardit informed its employees that it had terminated the last of the 8(f) agreements with the union and, once that contract expired on August 31, 2012, it would implement new terms and conditions of employment which were announced during this meeting.

The decision to implement the announced changes was made well before Ardit was obligated to bargain with the union. Accordingly, Ardit did not violate §8(a)(5) when it subsequently implemented the changes upon the expiration of the 8(f) agreement. See, *Starcraft Aerospace, Inc.,* 346 NLRB 1228 (2006) (If Employer makes decision to implement a change before being obligated to bargain with the union, the employer does not violate § 8(a)(5) of the Act by its later implementation of that change). See also, *Consolidated Printers, Inc.,* 305 NLRB 1061, (1992) (Employer did not violate §8(a)(5) of the Act when it implemented post-election layoffs because the Employer made the decision to do so well before the election and, as such, had no obligation to bargain with the union.) The critical fact is whether the Employer's

decision to implement a change predates the election. See, *SGS Control Services, Inc.,* 334 NLRB 858, 861. Here, Ardit's November 17, 2011 decision to implement the new terms and conditions of employment not only predates the August 10, 2012 election, it also predates the June 26, 2012 petition. Accordingly, when Ardit later implemented those changes upon the expiration of the 8(f) contract, it did not violate § 8(a)(1) and (5) of the Act. *Hargrove Elec.,* 358 NLRB No. 147 (2012), is inapposite to the facts of this case. In *Hargrove Elec*., the union became certified as the 9(a) representative for the Employers employees ***prior*** to the expiration of the 8(f) Agreement.

Ardit was not obligated to bargain with the union over the layoffs due to "exigent circumstances," i.e, there was literally no job for Ardit to send its employees. Furthermore, Ardit has never previously provided the union with notice before laying off its employees.

Ardit did not respond to the union's May 3, 2013 and May 17, 2013 requests for bargaining and requests for information. Ardit is refusing to bargain with the union in order to test the union's certification in the court of appeals. Notably, these allegations were originally included in a separate charge not at issue in this matter. However, on July 8, 2013 Region 9 severed the charge and included the failure to provide requested information allegations (9-CA-107434) in this case which was scheduled for Hearing on July 25, 2013. The refusal to bargain charge is being addressed in 9-CA-106395.

Lastly, the Complaint is *ultra vires* because the Acting General Counsel of the NLRB did not lawfully hold the office of Acting General Counsel at the time he directed that the Complaint be filed and the Board does not have legal authority to render a decision in this matter as the Board does not currently contain a lawful quorum.

Dated at Dublin, Ohio this 29th day of July 2013.

Respectfully submitted,

/s/ Ronald L. Mason

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