UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

In the Matter of : Case Nos. 9-CA-89159
9-CA-107434

THE ARDIT COMPANY

and

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

UNION'S BRIEF TO THE BOARD

The Union incorporates the Counsel for the General Counsel's brief in its entirety. The Union, however, would like to specify additional, appropriate remedies under the Act. The Respondent, given the Union's certification, must comply with the *status quo ante*, which here is the expired Union agreement, i.e., the September 1, 2010 through August 31, 2012 Tile Layers, Terrazzo Workers, Marble Masons and Finishers Collective Bargaining Agreement ("Local 18 Agreement"). (Jt. Mot. & Stip. Facts, at Jt. Ex. L.) The Local 18 Agreement expired on August 31, 2012, three weeks *after* the date of the election. (*Id.*) Although ballots were impounded pending numerous challenges and objections, rulings thereon, and four requests for review, the Union was finally certified as bargaining representative on May 13, 2013. (Jt. Mot. & Stip. Facts, at ¶¶ 9, 11, 13, 14.) As such, the Local 18 Agreement, a Section 8(f) agreement, converted into a Section 9(a) agreement, requiring the Respondent to provide the Union with notice and an opportunity to bargain before implementing new terms and conditions of employment. *E.g., Hargrove Elec. Co., Inc.*, 358 NLRB No. 147, slip op. at 1 fn.1 (2012). Because the Respondent failed to do so, it,

like the employer in *Hargrove Electric*, violated Section 8(a)(5) and (1) of the Act by not maintaining the *status quo ante* and providing the Union with notice and an opportunity to bargain prior to implementing new terms and conditions of employment.

The Respondent has failed to make various fringe benefit contributions under the Agreement (as well as at least one other local agreement, i.e., the Local 55 agreement, pursuant to the traveling contractors' clause in the Local 18 Agreement). (Jt. Mot. & Stip. Facts, at ¶¶ 4, 10.) In addition to the remedies requested by Counsel for the General Counsel, the Union requests the following specific remedies:

> 1. The Respondent shall maintain the *status quo ante* by honoring and abiding by the terms and conditions of employment provided in the September 1, 2010 through August 31, 2012 Tile Layers, Terrazzo Workers, Marble Masons and Finishers Collective Bargaining Agreement until a new collective bargaining agreement is reached.
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> 2. The Respondent shall make whole all bargaining unit members for any loss of pay and other benefits that they suffered as a result of the Respondent's refusal to maintain the *status quo ante* and to continue in effect the terms and conditions of the September 1, 2010 through August 31, 2012 Tile Layers, Terrazzo Workers, Marble Masons and Finishers Collective Bargaining Agreement until a new collective bargaining agreement is reached.
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> 3. The Respondent shall submit to an audit and pay all contractually required fringe benefit fund contributions, liquidated damages thereon, interest, and attorney's fees and costs that have not been paid from September 1, 2012 until the date the Respondent rescinds its unilateral changes and begins honoring and abiding by the September 1, 2010 through August 31, 2012 Tile Layers, Terrazzo Workers, Marble Masons and Finishers Collective Bargaining Agreement and shall make the trustees of the fringe benefit funds and bargaining unit employees whole

> for any expenses resulting from the Respondent's failure to make such contributions.

E.g., Merryweather Optical Company, 240 NLRB 1213 (1979). *See also Energy Services International, Inc.*, 343 NLRB No. 6, 2004 NLRB LEXIS 577 (2004); *Electrical Associates, Inc.*, 318 NLRB No. 33, 1995 NLRB LEXIS 772 , at *7 (1995); *Centaur Electric*, 303 NLRB 1047 (1991); *Shen-Mar Food Products, Inc.*, 221 NLRB 1329 (1976); *Pan American Grain Co., Inc.*, 343 NLRB No. 32 (2004); *Cherry Hill Textiles, Inc.*, 309 NLRB 268, 269 (1992); *Hall Industries*, 293 NLRB 785, 792 (1989).

Dated this 17th day of March 2014 at Cincinnati, Ohio.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing paper was electronically filed and served this 17th day of March 2014 upon the Board via electronic filing and by email upon the following:

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and

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s/Ryan K. Hymore

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