

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

THE ARDIT COMPANY

Employer

and

Case 09-RC-083978

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

Petitioner

ORDER

The Employer's Request for Review of the Regional Director's Second Supplemental Decision and Order is denied as it raises no substantial issues warranting review.¹

MARK GASTON PEARCE, CHAIRMAN

RICHARD F. GRIFFIN, JR., MEMBER

SHARON BLOCK, MEMBER

Dated, Washington, D.C., April 24, 2013

¹ The Respondent contends that the Board lacks a quorum because the President's recess appointments are constitutionally invalid. We reject this argument. We recognize that the United States Court of Appeals for the District of Columbia Circuit has concluded that the President's recess appointments were not valid. See *Noel Canning v. NLRB*, 705 F.3d 490 (D.C. Cir. 2013). However, as the court itself acknowledged, its decision conflicts with rulings of at least three other courts of appeals. See *Evans v. Stephens*, 387 F.3d 1220 (11th Cir. 2004), cert. denied, 544 U.S. 942 (2005); *U.S. v. Woodley*, 751 F.2d 1008 (9th Cir. 1985); *U.S. v. Allocco*, 305 F.2d 704 (2d Cir. 1962). This question remains in litigation, and pending a definitive resolution, the Board is charged to fulfill its responsibilities under the Act. See *Sub-Acute Rehabilitation Center at Kearny*, 359 NLRB No. 77, slip op. 1, fn.1 (2013).