

**UNITED STATES OF AMERICA
THE NATIONAL LABOR RELATIONS BOARD
REGION 8**

INTERNATIONAL UNION OF OPERATING ENGINEERS,
LOCAL 18

Charged Party; and

NERONE & SONS, INC.
R.G. SMITH COMPANY, INC.

Case No. 08-CD-135243

Case No. 08-CD-143412

Charging Parties; and

LABORERS' INTERNATIONAL UNION OF
NORTH AMERICA, LOCAL 310

Party-in-Interest

LABORERS' INTERNATIONAL UNION OF
NORTH AMERICA, LOCAL 310

Charged Party; and

NERONE & SONS, INC.
R.G. SMITH COMPANY, INC.

Case No. 08-CD-135244

Case No. 08-CD-143415

Charging Party; and

INTERNATIONAL UNION OF OPERATING ENGINEERS,
LOCAL 18

Party-in-Interest

MOTION FOR POSTPONEMENT OF OPENING DATE OF HEARING

Now comes Charged Party, International Union of Operating Engineers, Local 18 (“Local 18”), by and through counsel, and hereby moves for an order by the Regional Director postponing the opening date of the hearing in the above-captioned matter until a later date to be determined. A Brief in Support of this Motion is attached hereto and incorporated herein by reference.

Respectfully Submitted,

/s/ Timothy R. Fadel
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BRIEF IN SUPPORT

Section 102.90 of the Board's Rules and Regulations states that Secs. 102.64 to 102.68 shall govern the proceedings in Section 10(k) matters, insofar as applicable. Secs. 102.64 to 102.68 define hearing procedures for representation proceedings. Pursuant to Section 11143.1 of the Board's Casehandling Manual for representation proceedings, a motion for postponement of the opening date of a hearing should be filed with the Regional Director and should indicate whether all parties agree, set forth cause for the request, and provide a proposed date for resetting the hearing.

Initially, Case Nos. 08-CD-135244 and 08-CD-135243 were consolidated and set for an initial hearing on January 28, 2015 ("Nerone Case"). Shortly thereafter, Charging Party Nerone & Sons, Inc. and Charged Party Laborers' International Union of North America, Local 310 jointly moved that the hearing in the Nerone Case be postponed in order to consolidate it with an anticipated Notice of Hearing in Case Nos. 08-CD-143412 and 08-CD-143415 ("R.G. Smith Co. Case"). Although Local 18 did not oppose this Motion for Postponement and Consolidation, it specifically stated that it was refraining from joining therein on the basis that the charges filed by R.G. Smith Company, Inc. had yet to be investigated and, therefore, were not yet ripe for consolidation. The Region subsequently issued an order postponing the hearing scheduled in the Nerone Case until February 9, 2015.

On January 29, 2015, Local 18 was served with the instant Order Further Consolidating Cases and Notice of Hearing. Pursuant to this Order and Notice, a hearing under Section 10(k) in the Nerone Case and the R.G. Smith Co. Case was scheduled to open on February 9, 2015. While aware of the previous Motion for Postponement and Consolidation and that a 10(k) hearing the

in Nerone Case was scheduled to open on February 9, the Region's January 29 Order Further Consolidating Cases was the nonetheless the first definitive notice to Local 18 that a 10(k) hearing would be conducted in the R.G. Smith Co. Case. As such, Local 18 has received less than two weeks' advance notice of a hearing in the R.G. Smith Case.

Moreover, in addition to consolidating the Nerone Case and R.G. Smith Co. Case, the Region's January 29 Order Further Consolidating Cases also greatly expanded the scope of the hearing anticipated by Local 18. Indeed, prior to January 29, Local 18 was completely unaware that the Region was preparing for a hearing addressing "[w]hether an area-wide award is appropriate, and if so, (1) whether it should only cover similar work done by the Employer-parties to all instant cases or whether it should cover similar work being done by all employers and (2) the geographical scope of the area-wide award." This broad description of the hearing's scope encompasses a plethora of factual and legal issues that are relatively novel in both substance and procedure. Indeed, in order to be afforded any meaningful semblance of due process, Local 18 will need sufficient time to determine not only the legal and procedural issues encompassed within the scope of the hearing, but also factual and evidentiary issues such as what constitutes "similar work" and "all employers." Counsel for Local 18 is also currently engaged in active litigation with impending February 2015 deadlines before Ohio State Courts, the Northern District of Ohio District Court, the Sixth Circuit Court of Appeals, and the National Labor Relations Board.

Counsel for all involved parties have been consulted regarding the opening date of the present hearing and Local 18's request and have definitively indicated that they do not oppose Local 18's motion to postpone the instant hearing. Unfortunately, one of the Charging Parties is currently out of the country and unavailable for consultation as to a new hearing date.

Nevertheless, all parties anticipate that a new hearing can be scheduled for March of 2015. Additionally, this motion is being made in good faith, not for the purposes of undue delay, and well in advance of the February 9, 2015 hearing. Therefore, for all the forgoing reasons, Local 18 respectfully moves for an order by the Regional Director postponing the opening date of the hearing in the above-captioned matter until a later date to be determined by the parties after consultation with the Region..

Respectfully Submitted,

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CERTIFICATE OF SERVICE

A copy of the foregoing was electronically filed with National Labor Relations Board, Region 8, and served by email to the following on this x day of January 2015:

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