

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 10, NASHVILLE RESIDENT OFFICE**

JOHNSTON FIRE SERVICES, LLC	:	
and	:	10-CA-175681
	:	10-CA-177542
ROAD SPRINKLER FITTERS	:	10-RC-177308
LOCAL UNION 669	:	
	:	

**CHARGING PARTY’S OPPOSITION TO RESPONDENT’S MOTION FOR
PERMISSION TO FILE UNTIMELY ANSWERING BRIEF TO CHARGING
PARTY’S EXCEPTIONS**

Charging Party, Road Sprinkler Fitters Local Union 669, hereby submits its opposition to Respondent’s Motion for Permission to file an untimely answering brief to Charging Party’ Exceptions to the Administrative Law Judge’s decision in the above-captioned case.¹

Respondent’s request does not meet the criteria set forth in Section 102.2(d) of the Board’s Rules and Regulations that it be filed within a “reasonable time after the time prescribed by these Rules” and “upon good cause shown based on excusable neglect and when no undue prejudice would result.” The Board has held that “miscalculation of a filing date, absent a showing of extenuating circumstances, does not constitute ‘excusable neglect’” under the Board’s Rules. *Unitec Elevator Services Co.*, 337 NLRB 426, 426 (2002). While Charging Party understands the pressures of a full workload, this does not excuse Respondent’s Counsel’s failure to meet the deadline to file the Response.

¹ Respondent’s proposed Answering Brief was filed with its Motion. It is referred to herein as “Response.”

In addition, Respondent's Counsel argues that no undue prejudice would result if it is permitted to file its untimely Response. However, while prejudice, length of delay, and good faith are all factors to be considered, "the reason-for-delay factor will always be critical to the inquiry. . . . At the end of the day, the focus must be upon the nature of the neglect." *Hospital del Maestro v. NLRB*, 263 F.3d 173, 175 (2001), citing *Lowry v. McDonnell Douglas Corp.*, 211 F.3d 457, 463 (8th Cir. 2000). See also, *Pioneer Investment Services Co. v. Brunswick Associates Ltd. Partnership*, 507 U.S. 380 (1993). The time limits for response briefs are clearly laid out in the Board's Rules and Regulations. In addition, once the Exceptions were filed, Counsel for Respondent undoubtedly knew that it had the option of filing a Response. Counsel's failure to look up the deadline in the Board's Rules and Regulations or to enter any ticklers in its system is not the type of "excusable neglect" under the Rules that would necessitate accepting the proposed Response. Respondent has offered no explanation that would "justify, or even plausibly explain, its misreading of the rules." See *Hospital del Maestro*, 263 F.3d at 175.

For the foregoing reasons, Charging Party requests that the Board deny Respondent's Motion and reject its Response.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on May 18, 2017, I filed a copy of the foregoing electronically via the National Labor Relations Board's website, at www.nlr.gov. I further certify that a copy of the foregoing was served electronically on all parties at the following addresses:

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