

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 12**

**ADVANCED MASONRY ASSOCIATES, LLC  
d/b/a ADVANCED MASONRY SYSTEMS**

**and**

**Case Nos.: 12-RC-175179  
12-CA-176715**

**BRICKLAYERS AND ALLIED CRAFTWORKERS,  
LOCAL 8 SOUTHEAST**

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**RESPONDENT'S REPLY TO THE UNION'S RESPONSE TO RESPONDENT'S  
EXCEPTIONS TO THE DECISION OF THE ADMINISTRATIVE LAW JUDGE**

Respondent, ADVANCED MASONRY ASSOCIATES, LLC d/b/a ADVANCED MASONRY SYSTEMS ("Respondent"), pursuant to 29 C.F.R. § 102.46(b), hereby replies to the Response of BRICKLAYERS AND ALLIED CRAFTWORKERS, LOCAL 8 SOUTHEAST (the "Union") to Respondent's Exceptions to the May 10, 2017, Decision of the Administrative Law Judge. Respondent wishes to address a single point in the Union's Response, pertaining to the Union's successful efforts to convince Region 12 of the National Labor Relations Board to send ballots to various individuals not on the Excelsior list, including individuals allegedly wrongly excluded from the list by Respondent.

**LEGAL ARGUMENT**

**The ALJ Improperly Failed to Find that the Union, Too, Modified Respondent's Initial Excelsior List; Erred in Finding that the Election Was Conducted Based Only on the Initial List; and Erred in Conditionally Directing a New Election (Respondent's Exceptions ## 41, 63-64, 66).**

As more fully set forth in Respondent's Exceptions and Brief, both parties, not just Respondent, attempted through communications with Region 12 of the Board to amend the initial Excelsior list to conform to the Steiny-Daniel eligibility criteria. The ALJ found that Respondent's

attempts violated the Act, but failed to mention the Union's several concurrent attempts, documented in the record (see CPx.7; CPx.8; Cpx.9). The Union sought to add voters, and its efforts were successful. The Region did not challenge the Union's claim of eligibility, and instead unquestioningly sent ballots to the individuals who the Union identified, four of whom the ALJ later expressly found were ineligible (ALJD 20:40-44; 21:21-24). Respondent objected at the vote count to the ballots from Union-added employees. Fruitlessly, so did the Board agent tallying the votes. Importantly, regardless of whether Respondent wrongfully excluded any Union-added employees from its Excelsior list, the undeniable presence of the cast ballots showed that many of such individuals voted, among them at least three individuals—Raymond Pearson, George Reed, and David Wrench—whose alleged illegal exclusion from the initial list formed a basis for the ALJ's conditional decision to overturn the election in the event the Union did not prevail upon the count of certain challenged ballots. If the employees voted, it is difficult to understand how their initial exclusion affected the election sufficient to direct a new one.

The Union claims that Respondent waived its corresponding Exceptions by its failure to file timely objections to the election. Union Answering Brief, at 31. But the Exceptions identified above are not a claim that the Union violated the Act; rather, Respondent is arguing that its amendment of the Excelsior list is not, by itself, a violation of law, as demonstrated by the Union's like conduct, accepted absolutely and without question by the Region. The Union additionally tries a deflection, claiming that "it has no control over the voter eligibility list" and has no responsibility to double-check the list. Id. While true, the fact remains that the Region accepted the Union's input. The point of the Exceptions is that the Order accurately reflect the facts of the election, and not delineate a remedy that was mooted. The ALJ improperly failed to find that the

Union modified Respondent's initial Excelsior List; erred in finding that the election was conducted based only on the initial list; and erred in conditionally directing a new election.

**CONCLUSION**

WHEREFORE, for all the foregoing reasons, and those set forth in its Exceptions and Brief in Support, the Board should sustain Respondent's exceptions to the May 10, 2017, Order of the Administrative Law Judge, dismissing the Amended Complaint and granting Respondent such other and further relief as the Board finds just and proper.

DATED: July 5, 2017.

Respectfully submitted,

*/s/Charles J. Thomas*

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been filed electronically with the National Labor Relations Board, and by via email to the individuals below, on this 5<sup>th</sup> day of July 2017, to the following:

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