

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 7

In the Matter of:

EYM KING OF MICHIGAN, LLC,
d/b/a BURGER KING,

NLRB Case No. 07-CA-118835

Respondent,

and

MICHIGAN WORKERS ORGANIZING
COMMITTEE,

Charging Party.

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CHARGING PARTY'S MOTION FOR LEAVE TO FILE OUT OF TIME

Pursuant to Rule 102.2(d) of the Board's Rules and Regulations, Charging Party hereby requests Leave to file out of time its Response to Notice to Show Cause and In Opposition to Counsel for the General Counsel's Response to Notice to Show Cause, filed December 28, 2018, for the following reasons.

1. First, the Response should not be deemed untimely. The Board's Notice to Show Cause was directed to "any party seeking to show cause *why this case should not be remanded ...*" It was not directed to parties, such as the Charging Party, wishing to support remand, and did not specify a deadline for such a filing. Nor did the Notice specify a time for filing a response in opposition to another party's response to the Notice. Under Rule 102.2(a) of the Board's Rules and Regulations, the time for filing a responsive document begins to run from the date the preceding document was required to be filed, i.e., from the due date, even if the preceding document was filed prior to the due date. Charging Party's Response in Opposition here was filed within two business days of the due date for Counsel for the General Counsel's Response to the Order to Show Cause (which was December 26 due to the President's Executive Order declaring December 24 a federal holiday) and accordingly should be considered timely.

2. In the event the Board considers the filing, despite the fact that Charging Party supports remand and does not seek to show cause why the case should not be remanded, to have been due on December 24 (now December 26), 2018, Charging Party hereby respectfully requests leave to file out of time, pursuant to Rule 102.2(d) of the Board's Rules and Regulations. As shown by the attached Affidavit, there is good cause based on excusable neglect, the Response was filed within a reasonable time – two business days – of the original due date, and there will be no undue prejudice.

Due to a clerical error, the due date was entered into counsel's calendaring system incorrectly. Because counsel's office was closed on December 24, 2018 and he was scheduled to be on vacation and away from the office from December 24, 2018 to December 27, 2018, and due to the crush of business preceding the holiday, counsel did not notice the incorrectly calendared due date. Upon his return on December 27, he double checked the date and immediately prepared the Charging Party's Response in Opposition and filed it on December 28, 2018.

3. The response was filed within a reasonable time – two business days from the December 26, 2018 due date (as extended pursuant to Rule 102.2(a) of the Board's Rules and Regulations pursuant to the Executive Order declaring December 24 a federal holiday).

4. There is no undue prejudice, if any. As noted in paragraph 1 above, Charging Party's Response should not be considered untimely in any event. Counsel for the General Counsel ("CGC") has already filed its response, and Respondent elected not to file a response, so neither will be prejudiced. Moreover, since Charging Party's Response was filed a mere two business days after the due date, there would be no prejudice in any event, let alone undue prejudice.

For the reasons stated herein and in the attached affidavit, Charging party respectfully requests, in the event Plaintiff's Response to the Notice to Show Cause and in Opposition to CGC's Response is deemed untimely, the Board grant leave to file out of time pursuant to Rule 102.2(d).

Respectfully submitted,

McKNIGHT, CANZANO, SMITH,
RADTKE & BRAULT, P.C.

By: /s/ John R. Canzano

JOHN R CANZANO (P30417)

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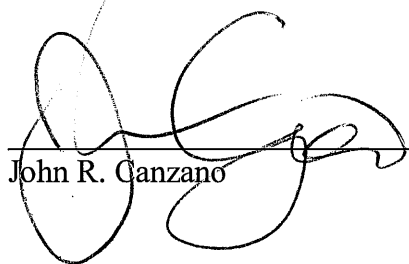
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Dated: January 2, 2019

AFFIDAVIT

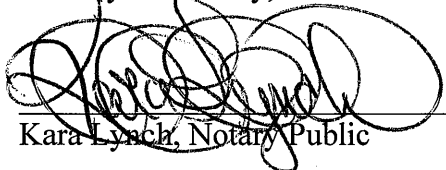
I, John R. Canzano, being duly sworn, hereby states that the following is true and correct and based on personal knowledge:

1. As Counsel for the Charging Party I had intended to file a response to the Notice to Show Cause by the extended due date of December 24, 2018 but due to a clerical error the date was incorrectly entered in my calendaring system. Our office was closed on December 24 and I was scheduled to be on vacation and away from the office from December 24 until December 27, 2018. In the week before Christmas, I was extremely busy trying to finish multiple projects before my vacation; in addition I was retained on December 19 to file exceptions in a representation case (07-RD-227662) on an emergency basis, requiring me to drop everything, review numerous pleadings and documents, and prepare a last minute extension request which was not filed until 10:25 p.m. on December 19. Due to the holiday period and the press of business just prior to the holidays I did not notice the incorrectly calendared due date. Upon my return I double checked the due date and realized that it was December 26, 2018 (as extended from December 24 pursuant to Rule 102.2(a) of the Board's Rules and Regulations and the President's Executive Order declaring Dec. 24 a holiday). I thereafter immediately prepared Charging Party's Response and filed it as soon as practicable, on December 28, 2018.



John R. Canzano

Subscribed and sworn to before me on this
2nd day of January, 2019



Kara Lynch, Notary Public

KARA LYNCH
Notary Public Macomb County
Acting in Oakland County
My Commission Expires March 20, 2020

CERTIFICATE OF SERVICE

I hereby certify that on January 2, 2019, the foregoing paper was filed with the NLRB using

the E-filing system and served upon:

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Respectfully submitted,

McKNIGHT, CANZANO, SMITH,
RADTKE & BRAULT, P.C.

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