

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SUBREGION 17**

BETHANY COLLEGE)		
)		
and)	Case No.	14-CA-201546
)	and	14-CA-210584
THOMAS JORSCH, an Individual)		
)		
and)		
)		
LISA GUINN, an Individual)		

**RESPONDENT BETHANY COLLEGE’S MOTION TO FILE ITS ANSWERING BRIEF
TO CHARGING PARTIES’ CROSS-EXCEPTIONS TO THE DECISION OF THE
ADMINISTRATIVE LAW JUDGE UNTIMELY**

COMES NOW Respondent Bethany College and pursuant to Section 102.2 and 102.46 of the Rules and Regulations of the National Labor Relations Board (“NLRB”), 29 C.F.R. §§ 102.2 and 102.46, hereby respectfully requests leave to file its Answering Brief to Charging Parties’ Cross-Exceptions to the Administrative Law Judge’s Decision (JD-72-18) untimely. In support of this request, the Respondent states as follows:

1. On December 6, 2017, Administrative Law Judge Christine E. Dribble (the “ALJ”) heard the above-captioned matter in Lindsborg, Kansas.
2. On October 31, 2018, the ALJ issued her Decision (JD-72-18), which was served on the parties via electronic mail.
3. On December 12, 2018, after receiving one extension of time, the Respondent timely filed its Exceptions to the ALJ’s Decision and Suggestions in Support.
4. On February 6, 2019, after receiving one extension of time, General Counsel timely filed its Response to Respondent’s Exceptions to the Decision of the ALJ.

5. Also on February 6, 2019, after retaining private counsel and receiving one extension of time, Charging Parties filed their Answering Brief to Respondent's Exceptions and their Cross-Exceptions to the Decision of the Administrative Law Judge.

6. Pursuant to Section 102.2 and 102.46 of the Rules and Regulations of the NLRB, Respondent's (1) Reply to General Counsel's Response to Respondent's Exceptions, (2) Reply to Charging Parties' Answering Brief to Respondent's Exceptions, and (3) Answering Brief to Charging Parties' Cross-Exceptions to the Decision of the Administrative Law Judge were all due on February 20, 2019.

7. On February 20, 2019, Respondent timely filed its (1) Reply to General Counsel's Response to Respondent's Exceptions, and (2) Reply to Charging Parties' Answering Brief to Respondent's Exceptions.

8. Also on February 20, 2019, Respondent timely sought an extension of time of an additional two weeks, or until March 6, 2019, for its Answering Brief to Charging Parties' Cross-Exceptions to the Decision of the Administrative Law Judge. Request for Extension of Time to File Answering Brief to Cross-Exceptions, attached hereto as Exhibit A.

9. Respondent provided the following as the stated reason for its Request: "Counsel for Respondent has been involved in heavy briefing and discovery in other matters, some of which have arisen unexpectedly and were not reasonably foreseeable in advance. For these reasons, counsel for Respondent has been unable to fully evaluate Charging Parties' cross exceptions of the decision of the ALJ and complete its answering brief. Respondent has made no prior requests for an extension of this deadline. Counsel for Respondent has conferred with counsel for Charging Parties who has no objection to this request. No party will be prejudiced by the granting of this extension." See Exhibit A.

10. Counsel for Charging Party did not object to this Request. See Affidavit of Robert L. Turner, attached hereto as Exhibit B, at ¶ 14.

11. On February 25, 2019, Respondent received the Board's denial of its Request for Extension of Time to File Answering Brief to Cross-Exceptions. Letter from Associate Secretary Denying Request for Extension of Time, attached hereto as Exhibit C.

12. The stated reason for denial of Respondent's Request for Extension of Time was that it was filed within three days of the due date, and the Office was unable to evaluate the exact circumstances based upon which the need for an extension was not reasonably foreseeable. See Exhibit C.

13. Counsel for Respondent was unable to complete all three briefs that were due to the Board on February 6, 2019 due to heavy briefing and discovery in other matters, some of which arose unexpectedly and were not reasonably foreseeable in advance. See Exhibit B.

14. More specifically, counsel for Respondent were engaged in out of town depositions the week of February 11th through the 15th, along with heavy briefing, depositions and discovery and other unforeseen circumstances during the original time for response. See Exhibit B at ¶ 8-11.

15. Pursuant to Section 102.2(d) of the Rules and Regulations of the NLRB, briefs may be filed "within a reasonable time after the time prescribed by these Rules only upon good cause shown based upon excusable neglect and when no prejudice would result." 29 C.F.R. § 102.111(c).

16. A determination of excusable neglect is based on several factors, including "the danger of prejudice [to the opposing side], the length of the delay and its potential impact on judicial proceedings, the reason for the delay, including whether it was within the reasonable

control of the movant, and whether the movant acted in good faith.” Pioneer Investment Services Co. v. Brunswick Assoc., 507 U.S. 380, 395 (1993). The most important of these factors is the untimely party’s reason for delay. Thompson v. E.I. DuPont de Nemours & Co., 76 F.3d 530, 534 (4th Cir. 1996).

17. Further, Section 102.2(d)(2) of the Rules and Regulations of the NLRB provides that a party seeking to file a brief beyond the time prescribed must file a motion that states the grounds relied on for requesting permission to file untimely, including any affidavit(s).

18. As soon as it did become apparent that all three briefs to be filed on February 20, 2019 could not be completed, Respondent timely sought and requested an extension of time for its Answering Brief to Charging Parties’ Cross-Exceptions to the Decision of the Administrative Law Judge. See Exhibit B at ¶ 13-15. The Board’s Rules and Regulations, Section 102.46, do not permit extensions of time on replies, which were the other two briefs due for Respondent on the same date.

19. Respondent’s request would have resulted in only a two-week delay in the filing of its Answering Brief which would not have significantly impacted these proceedings which are at the post-hearing stage. Ultimately, the delay will be less than a week where Respondent seeks to file its Answering Brief the same day that its request for extension of time was denied—five days after it was requested on the original due date.

20. The request for extension of time was made in good faith and not for the purpose of undue delay. See Exhibit B at ¶ 16.

21. This Request and the Respondent’s Answering Brief are filed within a reasonable time after the time prescribed by the Rules.

22. Respondent respectfully requests that it be permitted to file its Answering Brief to Charging Parties' Cross-Exceptions to the Decision of the Administrative Law Judge untimely, based upon the showing of excusable neglect and further explanation of the reasons for the previously requested extension of time made herein. A copy of Respondent's Answering Brief which is seeks to file as untimely is attached hereto as Exhibit D.

23. Granting of this request would not cause undue prejudice where Charging Parties previously consented to the requested extension, and this filing is made within the time requested of Charging Parties for the extension.

WHEREFORE, the Respondent respectfully requests that it be permitted to file its Answering Brief to Charging Parties' Cross-Exceptions to the Decision of the Administrative Law Judge untimely.

Respectfully submitted,

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Attorneys for Respondent

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was filed using the National Labor Relations Board E-file system on this 25th day of February, 2019 with:

Roxanne L. Rothschild
Acting Executive Secretary
Office of the Executive Secretary
National Labor Relations Board
1015 Half Street SE
Washington, D.C. 20570

and that I served the same upon the following representatives via electronic mail on the same date:

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