

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 9**

SMYRNA READY MIX CONCRETE, LLC	:	CASE NO. 09-CA-251578
	:	09-CA-252487
	:	09-CA-255573
and	:	09-CA-258273
	:	
GENERAL DRIVERS, WAREHOUSEMEN AND HELPERS, LOCAL UNION NO. 89, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS	:	

**RESPONDENT’S REPLY IN SUPPORT OF ITS MOTION FOR EXTENSION OF TIME
TO FILE RESPONDENT’S EXCEPTIONS AND BRIEF IN SUPPORT OF
EXCEPTIONS DUE TO EXCUSABLE NEGLECT**

Respectfully submitted,

Stephen A. Watring (0007761)
AUMAN, MAHAN & FURRY
110 N. Main St., Suite 1000
Dayton, Ohio 45402
Ph: (937) 223-6003 / Fax: (937) 223-8550
saw@amfdayton.com

s/ Kimberly S. Veirs

Tim K. Garrett (BPR# 012083)
Robert W. Horton (BPR# 017417)
Mary Leigh Pirtle (BPR# 022659)
Kimberly S. Veirs (BPR# 034811)
BASS, BERRY & SIMS PLC
150 Third Avenue South, Suite 2800
Nashville, Tennessee 37201
Ph: (615) 742-6200 / Fax: (615) 742-2799
tgarrett@bassberry.com
rhorton@bassberry.com
mpirtle@bassberry.com
kveirs@bassberry.com

Attorneys for Respondent

I. Introduction

Respondent, Smyrna Ready Mix Concrete, LLC (“SRM” or “Respondent”) pursuant to Section 102.24(c) of the Board’s Rules and Regulations, as amended hereby submits this Reply in Support of its Motion for Extension of Time to File Respondent’s Exceptions and Brief in Support of Exceptions Due to Excusable Neglect in response to the oppositions to Respondent’s Motion that were filed by both the Union and the General Counsel on October 2, 2020.

II. Argument

Both the Union and the General Counsel filed responses opposing Respondent’s Motion which solely addressed the technical failure rule in the NLRB’s E-Filing procedures. For both parties to argue that Respondent has produced no evidence of such a technical failure is illogical. Respondent provided screenshots of the specific error messages received by four different individuals in Respondent’s office from four different computers and internet connections (See Aff. Exs. A & B), and Respondent provided internet histories and cell phone records demonstrating Respondent’s diligence in repeatedly attempting to login to the NLRB’s website and continuing to monitor the site until it came back online (Aff. Ex. C), Respondent also has provided proof that it contacted both parties via email to alert them to the issue and to preemptively serve them with the Exceptions and Brief in Support of Exceptions well before the 11:59 p.m. deadline (Aff. Ex. D) while Respondent waited for the NLRB’s E-Filing system to come back online. Respondent’s counsel even called the NLRB’s technical support number to no avail and began searching the internet regarding the NLRB’s website being down in an attempt to obtain any other information regarding the outage. (See Aff. ¶ 7, Ex. C). Respondent cannot possibly be expected to provide any additional proof that this was not a “user error.” This was clearly a technical failure on the NLRB’s E-filing system.

The Union and General Counsel addressed only the technical failure issue because they cannot show that Respondent's diligence in the face of the technical outage fails to meet the standard for excusable neglect. Neither the Union nor the General Counsel even cited the standard for excusable neglect found in Section 102.2(d) of the Board's Rules and Regulations, much less argued or distinguished the circumstances surrounding Respondent's actions in this case. Their silence speaks volumes. The Union and General Counsel's failure to address the excusable neglect standard indicates an admission that Respondent's minor one hour and thirty-nine minute delay was within a reasonable time after the deadline, had absolutely no impact on the judicial proceedings, nor did it prejudice the parties in any way. Notably, neither the Union nor the General Counsel refuted that they received the Respondent's filing prior to the deadline, and therefore they could not have been prejudiced by Respondent's less-than-2-hour late filing.

III. Conclusion

For the foregoing reasons, Respondent respectfully requests that the Board accept its Exceptions and Brief in Support of Exceptions.

Respectfully submitted,

/s/Kimberly S. Veirs

Tim K. Garrett (BPR# 012083)

Robert W. Horton (BPR# 017417)

Mary Leigh Pirtle (BPR# 022659)

Kimberly S. Veirs (BPR# 034811)

BASS, BERRY & SIMS PLC

150 Third Avenue South, Suite 2800

Nashville, Tennessee 37201

Ph: (615) 742-6200 / Fax: (615) 742-2799

tgarrett@bassberry.com

rhorton@bassberry.com

mpirtle@bassberry.com

kveirs@bassberry.com

Stephen A. Watring (0007761)
AUMAN, MAHAN & FURRY
110 N. Main St., Suite 1000
Dayton, Ohio 45402
Ph: (937) 223-6003 / Fax: (937) 223-8550
saw@amfdayton.com

Attorneys for Respondent

CERTIFICATE OF SERVICE

I hereby certify that on the 2nd day of October 2020, a copy of the foregoing was filed electronically with the NLRB and copies of same forwarded via e-mail to:

Zuzana Murarova
Counsel for General Counsel
NLRB, Region 9
Zuzana.murarova@nlrb.gov

David O'Brien Suetholz
Pamela M. Newport
davids@bsjfirm.com
pamelan@bsjfirm.com

/s/ Kimberly S. Veirs
Kimberly S. Veirs