

CAREN P. SENCER, Bar No. 233488
WILLIAM T. HANLEY, Bar No. 327126
WEINBERG, ROGER & ROSENFELD
A Professional Corporation
1375 55th Street
Emeryville, CA 94608
Telephone (510) 337-1001
Fax (510) 337-1023
E-Mail: nlrbotices@unioncounsel.net
csencer@unioncounsel.net
whanley@unioncounsel.net

Attorneys for Charging Party/Petitioner

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES-SAN FRANCISCO BRANCH OFFICE**

TRACY AUTO, L.P. dba TRACY TOYOTA

Respondent,

and

MACHINISTS AND MECHANICS LODGE
NO. 2182, DISTRICT OF LODGE 190,
INTERNATIONAL ASSOCIATION OF
MACHINISTS AND AEROSPACE
WORKERS, AFL-CIO,

Charging Party/Petitioner.

No. 32-RC-260453; 32-CA-260614;
32-CA-262291

**PETITIONER'S POSITION ON
RESPONDENT'S REQUEST FOR
EXTENSION OF TIME TO SUBMIT
POST-HEARING BRIEFS**

Petitioner Machinists and Mechanics Lodge No. 2182, District Lodge 190, International Association of Machinists and Aerospace Workers, AFL-CIO (“Union”) hereby objects to the request of Tracy Auto, L.P. d/b/a Tracy Toyota (“Respondent”) for additional time to file post-hearing briefs in the above-referenced matter.

As a threshold issue, Section 15-300 of the NLRB Administrative Law Judge Bench Book specifies that parties requesting additional time to submit post-hearing briefs should “indicate whether the other parties object to the proposed extension.”¹ Section 1-200 states that “[t]he positions of the other parties regarding the extension should be obtained and set forth in the request.”² Petitioner first became aware of Respondent’s desire to request additional time via an email sent by Respondent’s counsel at 2:23 p.m. on March 25, 2021. By 4:38 p.m., about two hours later, Respondent had already filed a formal extension request with the Region. This is not a reasonable amount of time for Petitioner to develop and articulate a position on the Request.

Procedure aside, while the Union is respectful and understanding of the difficult personal matters cited by counsel for Respondent, further extension of the briefing timeline in this case is not “clearly justified.”³ The record closed in this matter on January 29, 2021. The initial deadline for briefs set by the presiding Administrative Law Judge was March 5, 2021. That deadline was then moved to April 5, 2021, pursuant to a request from the General Counsel.

There are 66 calendar days between January 29 and April 5. This is more than enough time to complete a post-hearing brief, especially in a straightforward case involving issues of supervisory status and alleged pro-Union supervisory taint. Indeed, while Respondent highlights

¹ https://www.nlr.gov/sites/default/files/attachments/basic-page/node-1727/alj_bench_book_2019.pdf, at p. 154.

² https://www.nlr.gov/sites/default/files/attachments/basic-page/node-1727/alj_bench_book_2019.pdf, at p. 2.

³ *Id.*

the voluminous transcript and large number of exhibits in its Request, the size of the record in this case is not reflective of the complexity of the issues. Instead, it is the result of Respondent's pattern and practice of delaying the proceedings as much as possible, in an effort to deny its workers the ability to certify their Union (see below).

Additionally, even assuming that counsel for Respondent is unable to continue work on this brief as of March 25—the date that this request was filed—due to personal matters, this still leaves 55 days from January 29 to March 25 in which Respondent could have completed its brief. Moreover, even if Respondent's counsel has not started their brief yet, another attorney in Respondent's counsel's office would still have 12 days between the date of this request and the April 5 deadline to complete the briefing process.

Further delay in the briefing timeline would unfairly prejudice Respondent's workers, who overwhelmingly voted to unionize in August 2020 (almost 7 months ago) but have since been denied their right to certify their bargaining unit and begin the collective bargaining process. After these workers cast their votes, Respondent filed numerous objections to the election, despite the clear majority of workers voting to unionize. Nearly all of these objections were found by the Region to be without merit. The parties then participated in an objections hearing, which *started* approximately three months after the election.

Once the hearing began, the parties met for 17 hearing dates over a period of *two calendar months*. This delay was almost exclusively due to Respondent's counsel's myriad calendar conflicts. Permitting Respondent to delay this process even further, and deny its workers the peace of mind of knowing whether their votes to join the Union will stand, contradicts well-established Board law, and would be inconsistent with the spirit of the National Labor Relations Act. *See, e.g., Trustees of Columbia University in the City of New York*, 364

NLRB No. 90, at *142 (Aug. 23, 2016) (noting the Board’s consistent “commitment to resolve representation cases as quickly as possible”).

For the foregoing reasons, Petitioner respectfully asks that the Region decline the Request of Respondent to extend the deadline for filing post-hearing briefs.

Dated: March 26, 2021

WEINBERG, ROGER & ROSENFELD
A PROFESSIONAL CORPORATION

/s/ WILLIAM T. HANLEY

CAREN P. SENCER
WILLIAM T. HANLEY

Attorneys for Charging Party/Petitioner

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Confirmation Number	1047305234
Date Submitted	Thursday, March 25, 2021 7:28 PM (UTC-05:00) Eastern Time (US & Canada)
Case Name	Tracy Auto, L.P. dba Tracy Toyota
Case Number	32-CA-260614
Filing Party	Employer
Name	John P Boggs
Email	jboggs@employerlawyers.com
Address	80 Stone Pine Road Suite 210 Half Moon Bay CA 94019
Telephone	6507128908
Fax	
Original Due Date	4/5/2021
Date Requested	4/19/2021
Reason for Extension of Time	Counsel for the Employer respectfully requests a two-week extension of time to file post-hearing briefs in this matter. The attorney for the Employer primarily handling the post-hearing briefing on this matter was called out of state to a remote area of Northern Wisconsin to care for his elderly father who suffered a broken hip and concussion in a fall. The attorney has had limited computer access for the past week and will likely not fully return for another week. The other attorney for the Employer familiar with this matter is out of the country until April 4, 2021 and cannot fill in on the briefing in time. The hearing spanned a two-month period and has almost 3000 pages of transcript and well over a hundred exhibits, so another attorney cannot adequately take over the briefing at this time. This is the first request for an extension of time by the Employer, although General Counsel previously requested an extension which was granted. Employer's Counsel has informed opposing counsel of this request and sought their input, but has not yet received a response.
What Document is Due	Post-Hearing Brief to ALJ

Parties Served	William T Hanley, 1375 55th Street, Emeryville, CA 94608; whanley@unioncounsel.net Jason Wong, NLRB - Region 20, San Francisco, CA 94103; jason.wong@nlrb.gov
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**PROOF OF SERVICE
(CCP §1013)**

I am a citizen of the United States and resident of the State of California. I am employed in the County of Alameda, State of California, in the office of a member of the bar of this Court, at whose direction the service was made. I am over the age of eighteen years and not a party to the within action.

On March 26, 2021, I served the following documents in the manner described below:

**PETITIONER'S POSITION ON RESPONDENT'S REQUEST FOR EXTENSION
OF TIME TO SUBMIT POST-HEARING BRIEFS**

- X BY ELECTRONIC SERVICE: By electronically mailing a true and correct copy through Weinberg, Roger & Rosenfeld's electronic mail system from rfortier-bourne@unioncounsel.net to the email addresses set forth below.

On the following part(ies) in this action:

Mr. John P. Boggs
Fine, Boggs & Perkins LLP
16870 W. Bernardo Drive, Suite 360
San Diego, CA 92127
jboggs@employerlawyers.com
kcherry@employerlawyers.com

Ms. Valerie Hardy-Mahoney
Regional Director
National Labor Relations Board, Region 32
1301 Clay Street, Suite 300N
Oakland, CA 94612-5224
Valerie.Hardy-Mahoney@nlrb.gov

Mr. Jason P. Wong
National Labor Relations Board, Region 20
901 Market Street, Suite 400
San Francisco, CA 94103-1738
Jason.wong@nlrb.gov

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on March 26, 2021, at Alameda, California.

/s/ Rhonda Fortier-Bourne

Rhonda Fortier-Bourne