

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

DLC CORP. d/b/a LIVE NATION NEW ENGLAND)	
)	
Employer)	
)	
and)	
)	
INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYEES, LOCAL 11)	Case No. 1-RC-22162
)	
Petitioner.)	
)	

CONSENT MOTION FOR LEAVE TO FILE OUT OF TIME ANSWERING BRIEF TO UNION’S EXCEPTIONS TO THE HEARING OFFICER’S DECISION & RECOMMENDATION

Pursuant to Section 102.111(c) of the Rules and Regulations of the National Labor Relations Board (“Rules”), Employer DLC Corp. (“Live Nation”) respectfully requests that the Board grant Live Nation leave to file out of time its Answering Brief to the Union’s Exceptions to the Hearing Officer’s Decision and Recommendation in the above-referenced matter.

A hearing was held on August 21 and 22 and September 3, 2008 regarding the election objections filed by Petitioner. *See* Affidavit of E. Cyr, attached as Exhibit A. The Hearing Officer issued his decision and recommendation on Monday, September 29, 2008. *Id.* The Union filed its exceptions to the Hearing Officer’s decision on Friday, October 10, 2008. *Id.* Live Nation requested and was granted a one week extension of its deadline to file an answering brief, making its brief due on Tuesday, October 28, 2008. *Id.* Counsel for Live Nation filed its brief on October 28, 2008 via e-file. *Id.* On November 6, 2008 undersigned counsel received a letter

from Richard Hardick, Associate Executive Secretary stating that Live Nation's brief was untimely as it was filed at 5:49 p.m., 49 minutes past the filing deadline. *Id.*

It appears this filing delay was caused by computer malfunctions suffered by Live Nation's counsel. *Id.* Specifically, programs installed on counsel's computer to address legislative measures that altered Daylight Savings Time have recently caused day, date, and time malfunctions. *Id.* Similar malfunctions occurred in and around the beginning of Daylight Savings Time in March. *Id.* A copy of a Microsoft update regarding problems associated with the change in Daylight Savings Time is attached as Exhibit B. While counsel thought such malfunctions had been resolved, it appears they had not. *Id.* It is unclear whether the malfunction caused the filing to be sent with an inaccurate time-stamp or if counsel was simply misled regarding the time when the filing was made. *Id.* Regardless, counsel believed that the filing was being made at 4:49 p.m., eleven minutes in advance of the 5:00 p.m. filing deadline and in full compliance with the Rules. *Id.*

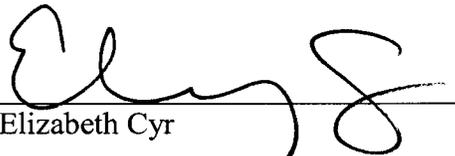
Live Nation now seeks leave to file its Answering Brief out of time. This motion was filed at the earliest possible time after learning that its filing was deemed untimely. Section 102.111(c) of the Rules states that responses to exceptions may be filed out of time "upon good cause shown based on excusable neglect and when no undue prejudice would result." According to Mr. Hardick's letter, Live Nation's filing was a mere 49 minutes late and, as described above, this delay was caused by a computer malfunction of which counsel was unaware. This was clearly excusable neglect as counsel believed she was submitting a timely filing and the delay was minor.

It is also clear that no prejudice will be suffered if this motion is granted. First, Petitioner has consented to the requested relief clearly demonstrating that the Union will not suffer any

prejudice. *Id.* Additionally, the Board will still be required to undertake a review of the Hearing Officer's decision and recommendations to resolve the Union's exceptions and thus, filing an Answering Brief at this juncture will not delay resolution of this matter. Moreover, the bargaining unit employees will not be prejudiced by the relief requested. The facility in question, the Comcast Center, is an amphitheatre and therefore has seasonal operations. *Id.* At this time, DLC has concluded its operations at the Comcast Center for the winter and will not resume operations until summer 2009. *Id.* Last, it is important to note that the Hearing Officer limited the parties' post-hearing briefs to eight pages. Live Nation will suffer significant prejudice if the Board's review is limited to the employer's eight page brief as its position in support of the Hearing Officer's decision.

WHEREFORE, the Employer respectfully requests leave to file out of time its brief in response to the Union's Exceptions to the Hearing Officer's Decision & Recommendation in this matter.

Respectfully submitted this 7th day of November, 2008.

By: 
Elizabeth Cyr

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Counsel for Live Nation

CERTIFICATE OF SERVICE

This is to certify that the undersigned caused to be served on November 7, 2008, the original and eight copies of the Consent Motion to File Out of Time its Answering Brief to the Union's Exceptions to the Hearing Officer's Decision and Recommendation via e-file and overnight delivery to the following:

Lester Heltzer
National Labor Relations Board
1099 14th Street, NW
Washington, DC 20570-0001
Executive Secretary

Further, this certifies that the undersigned caused to be served on November 7, 2008, a copy of the Consent Motion to File Out of Time its Answering Brief to the Union's Exceptions to the Hearing Officer's Decision and Recommendation via facsimile and overnight delivery to the following:

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Counsel for Live Nation

EXHIBIT

A

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

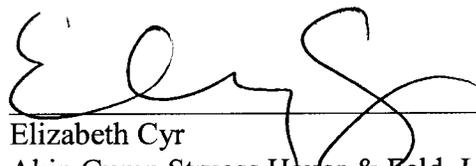
AFFIDAVIT OF ELIZABETH CYR

I, Elizabeth Cyr, being first duly sworn upon my oath, hereby state as follows:

1. I am an attorney at Akin Gump Strauss Hauer and Feld, LLC located at 1333 New Hampshire Avenue, NW Washington, DC 20036.
2. My firm represents DLC Corp. d/b/a Live Nation New England in the matter 1-RC-22162. A hearing was held on August 21 and 22 and September 3, 2008 regarding the election objections filed by Petitioner in this case. The Hearing Officer issued his decision and recommendation on Monday, September 29, 2008. The Union filed its exceptions to the Hearing Officer's decision on Friday, October 10, 2008. On Live Nation's behalf, I filed a request for a one week extension of the deadline to file an answering brief. The request was granted making Live Nation's brief due on Tuesday, October 28, 2008. I filed a brief on Live Nation's behalf on October 28, 2008 via e-file.
3. On November 6, 2008 I received a letter from Richard Hardick, Associate Executive Secretary stating that Live Nation's brief was untimely as it was filed at 5:49 p.m. and would not be transmitted to the Board for review.
4. I was unaware that any problems had occurred with my filing prior to receiving Mr. Hardick's letter. It appears this filing delay was caused by malfunctions with my computer. Specifically, programs installed on my computer to address legislative measures that altered Daylight Savings Time have recently caused day, date, and time malfunctions. Similar malfunctions occurred in and around the beginning of Daylight Savings Time in March. Microsoft had previously published information regarding potential problems associated with the changes in Daylight Savings Time.

5. At the time of the filing, I believed that the time and date malfunctions I had encountered had been resolved but they had not. At this juncture, I am not certain whether the malfunction caused the filing to be sent with an inaccurate time-stamp or if I was simply misled regarding the time when the filing was made. I have been told there is no way to determine the nature of the malfunction at this time. Whatever the nature of the malfunction, I believed that I was submitting the filing in question at 4:49 p.m., eleven minutes in advance of the 5:00 p.m. filing deadline and in full compliance with the NLRB's Rules and Regulations.
6. On November 7, 2008 I spoke to Gabriel Dumont, counsel for Petitioner, who consented to Live Nation's motion seeking leave to file its brief out of time.
7. The Live Nation facility that is the focus of this matter is a concert amphitheatre in Massachusetts. This facility has seasonal operations and is currently closed for the winter. The facility will re-open in the Summer of 2009.

I have read this statement consisting of 2 pages, including this page, I fully understand its contents, and I certify that it is true and correct to the best of my knowledge and belief.


Elizabeth Cyr
Akin Gump Struass Hauer & Feld, LLP
Counsel for Live Nation

Subscribed and sworn to before me
this 7th day of November, 2008.


Notary Public

Gail V. Smith
Notary Public, District of Columbia
My Commission Exp. 11-14-2012

EXHIBIT

B

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Preparing for daylight saving time changes in 2008

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Introduction

This article applies to users in the following regions that experienced daylight saving time (DST) and time zone (TZ) changes, particularly those in Canada and the United States:

- **U.S. and Canada (where DST is observed):** The U.S. Energy Policy Act of 2005, passed by the U.S. Congress July 2005, extended daylight saving time in the U.S. by approximately four weeks. These four weeks are referred to in this article as the "extended DST period." For more information about DST and time zone changes, visit [MSN Encarta](#) and [MSDN blogs](#). Canada chose to follow the U.S. change, in regions where DST is observed.

In much of Canada and the United States, DST begins on the second Sunday of March (this year, on March 9, 2008), several weeks earlier than in years prior to 2007. DST will end later on the first Sunday of November (November 2, 2008). This resulted in a new DST period that is approximately three to four weeks longer than in years prior to 2007.

- **Other regions:** Microsoft provided updates for several other regions or countries that enacted time zone changes, as outlined in Knowledge Base article [951072](#), "August 2008 [http://support.microsoft.com/gp/dst_topissues](#) (1 of 5)11/6/2008 6:28:30 PM

cumulative time zone update for Microsoft Windows operating systems. " For a current up to date list of current DST and TZ changes for the Windows operating system, see Microsoft Knowledge Base article 914387, "How to configure daylight saving time for Microsoft Windows operating systems."

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What the time zone changes mean for users

When time zone or day light saving time changes are made, the time zone settings for your computer's system clock may be incorrect. This may happen during the time between the new transition date and the old transition date for your time zone unless certain updates are applied to your computer. This depends on where you live and which time zone you have selected.

Generally, when your time zone settings are incorrect your clock may be off by one hour. Applications running on your Windows-based computer may not display the correct time. To address this, Microsoft provides many free updates and tools to update your system automatically.

While changes in daylight saving time may apply to a specific time zone, the change may affect customers based outside those time zones around the world. In addition, customers who interact or integrate with systems that are based in an affected time zone or who rely on the date/time calculations may be affected. Customers who live outside an affected time zone and yet are affected should follow the guidance provided by Microsoft.

Potential Customer Impact

The change in DST will have an effect on many automated and technology reliant products. Individual consumers, small to medium size businesses, and large corporations may be affected by the new change in time. Computer-system related issues include, for example:

- Calendar and scheduling applications
- Date/time calculations (current and historical)
- Transaction logging (UTC versus local time)
- Tariff billing applications

In many cases, making the necessary changes to accommodate the new DST legislation will be a relatively minor task. Users may have to manually adjust the time on their devices when the change occurs.

In other cases, more substantial efforts may be required. In some cases, systems and applications may have to be updated directly, while in others, the application may inherit or "read" the date and time information from the underlying system on which it resides so the changes need only be made to that underlying system. Given the broad range of technology that is used today, and the integration of systems between customers, vendors, and partners, business and IT managers should determine what actions should be taken to lessen the impacts of DST and TZ changes on their organizations. Customers who have purchased new hardware or devices and who have not applied existing updates may want to check their systems and make sure they have the latest updates.

As mentioned earlier, when a change in daylight saving time or a time zone is made to a specific region, the change may affect users based outside that region. For example:

- Companies or organizations with operations, customers, or vendors based in an affected time zone may be affected.
- Companies or organizations that interact or integrate with systems that are based in an affected time zone or that rely on date/time calculations may be affected.
- Users in areas affected by time zones that do not observe DST (see below), but who travel to or interact with people in locations that do follow DST will be affected and should install the Windows operating system update.

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Microsoft products affected by DST and TZ changes

Microsoft Product Updates

Microsoft is dedicated to helping customers in making these transitions as seamless as possible for companies and for organizations affected by new DST rules and time zone changes. Microsoft is further committed to working with others in the industry to address the broader challenges presented by these changes, and to provide various updates and tools to customers to address DST and TZ changes.

As noted in this article, Microsoft product teams are moving to a regular cadence for publishing updates that reflect newly legislated DST rules and time zone changes. This effort follows the established regular update cadence for the Windows operating system. These regular "Cumulative DST and Time Zone Updates" are scheduled for release annually in November/December (to the Download Center and Windows Update, respectively) for the following calendar year. As needed, Microsoft will also provide a semi-annual update in the July/August timeframe to accommodate late-breaking changes that may occur in the second half of the calendar year.

Several Microsoft products are affected by DST

For Microsoft products that are affected by DST and TZ changes, the most recent versions will not require an update. However, earlier versions will. For more information, see the section on Supporting the DST changes on Windows operating systems.

Some of the Microsoft products that are affected by DST changes

- Microsoft Windows
- Microsoft Windows Mobile
- Microsoft Windows SharePoint Services
- Microsoft Exchange Server
- Microsoft Office Outlook
- Microsoft Office Live Meeting
- Microsoft Dynamics CRM
- Microsoft SQL Server Notification Services
- Microsoft Commerce Server

Depending on the particular product or scenario, these updates will be released through Microsoft Customer Support Services (CSS), hotfixes incorporated in Knowledge Base articles, Windows Update, Microsoft Update, Windows Server Update Services (WSUS), and the Microsoft Download Center. For more information about products that are affected by the DST changes and that may require action, see the Microsoft products affected by DST section.

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What users can do to ease the transition to a new DST rule or TZ change

All people who use Microsoft products that are affected by the time change should give extra attention to meetings and appointments that are scheduled between the extended DST periods for a given time zone. (In this article, the terms "meetings" and "appointments" will be used interchangeably.) Users should view all appointments between these date ranges as suspect until they communicate with all meeting invitees to make sure that the item shows up correctly on everyone's calendar, both internally and externally. To minimize confusion during the affected date ranges, it is best to:

- Include the time of the meeting in the e-mail request so that invitees can double-check the correct meeting time (such as, "Project brainstorming - 11:00 A.M. Central Time").
- Use caution with the appointments and meetings in the extended DST period. When in doubt, verify the correct time with the organizer.
- Consider printing your weekly calendars during the extended DST period. Print before you apply the Windows update and run the Outlook or Exchange Time Zone Data Update tools. This will help you keep track of which meetings were scheduled before and after you run the update. Note that the update contains the updated time zone definitions.

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Microsoft IT deployment guidance

The following links provide information that Microsoft learned in the enterprise during the changes that occurred in 2007 in the U.S. This information may help your organization in preparing for changes.

XPS format:

To view these documents on computers that do not have Vista or Internet Explorer 7 installed, visit the following Web site to download and install the free XPS viewer:

<http://www.microsoft.com/whdc/xps/viewxps.mspx>

- MSIT DST Assessment Checklist
- MSIT DST Enterprise Response Plan
- MSIT DST Patching Overview
- MSIT DST Exchange TZ Update Tool Guidance
- MSIT DST Outlook TZ Update Package Guidance
- MSIT DST Administrative Assistant and Receptionist Awareness Communication
- MSIT DST Exchange Calendar Update Tool Awareness Communication
- MSIT DST Outlook Time Zone Data Update Tool Awareness Communication
- MSIT DST Windows Mobile Smartphone or Pocket PC user Awareness Communication

PDF format:

To view these documents on computers that do not have the Adobe reader software installed, visit the following Web site to download and install the free PDF viewer:

<http://www.adobe.com/products/acrobat/readstep2.html>

- MSIT DST Assessment Checklist
- MSIT DST Enterprise Response Plan
- MSIT DST Patching Overview
- MSIT DST Exchange TZ Update Tool Guidance
- MSIT DST Outlook TZ Update Package Guidance
- MSIT DST Administrative Assistant and Receptionist Awareness Communication
- MSIT DST Exchange Calendar Update Tool Awareness Communication
- MSIT DST Outlook Time Zone Data Update Tool Awareness Communication
- Updating resource mailboxes for daylight saving time 2007

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General sequence of update actions and special considerations

Because many calendar environments have an interconnected system of applications, each environment must be adjusted to accommodate the new DST rules.

Recommended sequence of DST update actions

Note Please note that KB articles may be superseded. Please review the documentation carefully before you apply any updates.

To update your computer, follow this sequence.

For IT administrators who are running Microsoft Exchange Server

1. Apply updates to Windows operating systems on individual workstations. Windows Server KB article 951072 (as of August 2008)

2.	Apply updates to Windows operating systems on Windows Servers.	Windows Server KB article 951072.	
3.	Apply the Exchange Server DST update.	Exchange Server 2003 KB article 956398. For other versions of Exchange Server see the List of products affected by daylight saving time.	
4.	<p>The IT administrator has one of four alternatives (pros and cons of each alternative are described later in this article):</p> <ul style="list-style-type: none"> • Push out the Outlook Time Zone Data Update tool to the clients and let the users update their own mailboxes. • Run the Exchange Calendar Update tool against all affected users, servers, or both. • Do not run the Exchange Calendar Update tool or the Outlook Time Zone Data Update tool. Ask users to examine their calendars and rebook as necessary. • Run the Exchange Calendar Update tool against all affected users, servers, or both, but only modify recurring appointments. Then ask users to rebook single instance appointments that fall into the extended DST period or ask them to run the Outlook Time Zone Data Update tool. 	<p>IT administrators are strongly advised to refer to the Exchange Calendar Update tool (941018) and consider all potential effects on their IT environments and user base of those alternatives before they run the Exchange Calendar Update tool.</p>	<p>Exchange Time Zone Data Update tool 941018.</p> <p>Outlook Time Zone Data Update tool 931667.</p> <p>Utilizing Time Zone Data Update Tool for Microsoft Office Outlook V3.0 functionality in the Exchange Calendar Update Configuration Tool V 2.0 (blog post)</p>
For small business, home, or consumer computer users running Windows and Outlook but not Exchange Server			
1.	Apply updates to Windows operating systems on individual computers.	Windows operating systems KB article 951072 (as of August 2008).	
2.	Run the Outlook Time Zone Data Update tool. Note Run the tool as soon as possible after you apply the updates to help ensure consistent application of DST rules.	Outlook Time Zone Data Update tool - KB 931667.	
For mobile device users running Windows Mobile or Windows CE			
1.	Apply updates to Windows operating systems on individual computers.	Windows operating systems KB article 951072 (as of August 2008).	
2.	Run the Outlook Time Zone Data Update tool. Note Run the tool as soon as possible after you apply the updates to ensure consistent application of DST rules.	Outlook Time Zone Data Update tool - KB 931667.	
3.	Apply updates to Windows Mobile.	Windows Mobile KB article 950885 (March 2008).	

The following items should be noted to help ensure maximum accuracy of calendar updates:

- Rapid succession of steps is important:** As mentioned earlier, it is better to run the Outlook or Exchange Time Zone Data Update tool as soon as possible after the time that the Windows operating system time zone updates are applied to all computers. If calendar items in the extended DST period are scheduled after the operating system updates are applied but before the tool is run, they will incorrectly be moved one hour earlier. To correct such calendar items, organizers should manually update such items to help make sure that they are scheduled accurately for themselves and all invitees.
- All connected devices must be updated:** Even if you correctly update your computer, when