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8 UNITED STATES OF AMERICA
9
10 BEFORE THE NATIONAL LABOR RELATIONS BOARD

11 GOOD SAMARITAN HOSPITAL

12 Employer,

13
14 ALLEN V. SMITH

15 Petitioner,

16 and

17 SERVICE EMPLOYEES INTERNATIONAL
UNION

18 Union.
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**EMPLOYER'S MOTION FOR
ACCEPTANCE OF LATE FILED
ANSWERING BRIEF IN RESPONSE TO
SEIU'S EXCEPTIONS TO THE
ADMINISTRATIVE LAW JUDGE'S
SUPPLEMENTAL DECISION ON
REMAND PURSUANT TO SECTION
102.111(C)(2) OF THE BOARD'S RULES
AND REGULATIONS (EXCUSABLE
NEGLECT); DECLARATION OF BARBRA
A. ARNOLD IN SUPPORT THEREOF**

CASE NO. 31-RD-1555

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21 **EMPLOYER'S MOTION FOR ACCEPTANCE OF LATE FILED ANSWERING BRIEF IN**
22 **RESPONSE TO SEIU'S EXCEPTIONS TO THE ADMINISTRATIVE LAW JUDGE'S**
23 **SUPPLEMENTAL DECISION ON REMAND PURSUANT TO SECTION 102.111(C)(2) OF**
24 **THE BOARD'S RULES AND REGULATIONS BASED UPON EXCUSABLE NEGLECT**
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1 Good Samaritan Hospital ("Employer") respectfully requests that its Answering Brief In
2 Response To SEIU's Exceptions To The Administrative Law Judge's Supplemental Decision On
3 Remand ("Answering Brief"), filed on February 25, 2010, be accepted and forwarded to the Board
4 for consideration pursuant to Section 102.111(c)(2) of the Board's Rules And Regulations. Section
5 102.111(c) states that "the following documents may be filed within a reasonable time after the time
6 prescribed by these rules only upon good cause shown based upon excusable neglect and when no
7 prejudice would result." Section 102.111(c)(2) includes briefs filed in representation proceedings as
8 documents that may be accepted pursuant to the procedures set forth in Section 102.111(c).

9 Employer's counsel inadvertently calendared the deadline for filing the Employer's
10 Answering Brief pursuant to Section 102.46(d)(1) (instead of Section 102.69(f)) which provides
11 that answering briefs to exceptions to an ALJ's report must be filed 14 days after the deadline for
12 the exceptions. Declaration of Barbra A. Arnold ("Arnold Decl."), ¶2. Employer's counsel
13 misunderstood the scope of Section 102.46(d)(1) and interpreted it to state that the 14 day deadline
14 for answering briefs applied to all recommendations and reports by an ALJ instead of being limited
15 to Unfair labor Practice Charge cases. Arnold Decl., ¶3. Section 102.46(d)(1) states "Within 14
16 days, or such further period as the Board may allow, from the last date on which exceptions and any
17 supplemental brief may be filed, a party opposing the exceptions may file an answering brief to the
18 exceptions." As such, Employer's counsel calendared the deadline for filing Employer's answering
19 as February 26, 2010, instead of February 19, 2010. Id.

20 Despite Employer's counsel's inadvertent mistake, Employer's Answering Brief was filed 13
21 days after the deadline for the Union's exceptions and only 6 days past the deadline set by Section
22 102.69(f). Therefore, the Answering Brief was filed within a "reasonable time" after the 7 day
23 deadline had passed. Given the parallel language of Section 102.46(d)(1) which provides a 14 day
24 deadline and the short delay it caused in the filing of the Answering Brief, the Employer's delay was
25 "excusable neglect." Furthermore, this 6 day lapse cannot be argued to have prejudiced the Union
26 in any way, especially in light of the fact that the election at issue took place back on April 29 and
27 30, 2008, almost 2 years ago. In addition, the Union has not been prejudiced in the filing of any
28 responsive pleading because it is not entitled to answer an Answering Brief and even if it were,

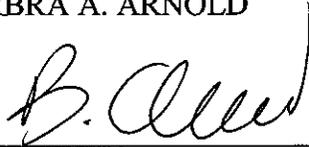
1 Section 102.111(c)(2) allows for an extension of time to for filing any responsive document until
2 after a ruling issues accepting the untimely document.

3 For the reasons stated herein and in the declaration of Barbra A. Arnold filed in support
4 hereof, the Employer respectfully requests that its Answering Brief be accepted and be forwarded to
5 the Board for consideration.

6 DATED: March 2, 2010

JEFFER, MANGELS, BUTLER & MARMARO LLP
MARTA M. FERNANDEZ
BARBRA A. ARNOLD

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By: 
BARBRA A. ARNOLD
Attorneys for Employer GOOD SAMARITAN
HOSPITAL

PROOF OF SERVICE

STATE OF CALIFORNIA, CITY AND COUNTY OF LOS ANGELES

I am employed in the City and County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is: 1900 Avenue of the Stars, 7th Floor, Los Angeles, California 90067.

On March 2, 2010 I served the document(s) described as **EMPLOYER'S MOTION FOR ACCEPTANCE OF LATE FILED ANSWERING BRIEF IN RESPONSE TO SEIU'S EXCEPTIONS TO THE ADMINISTRATIVE LAW JUDGE'S SUPPLEMENTAL DECISION ON REMAND PURSUANT TO SECTION 102.111(C)(2) OF THE BOARD'S RULES AND REGULATIONS (EXCUSABLE NEGLIGENCE); DECLARATION OF BARBRA A. ARNOLD IN SUPPORT THEREOF** in this action by placing the true copies thereof enclosed in sealed envelopes addressed as follows:

SEE ATTACHED SERVICE LIST

- (BY MAIL) I am "readily familiar" with the firm's practice for collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.
- (BY EMAIL) I caused to be transmitted each document listed herein via the email address(es) listed above.

Executed on March 2, 2010 at Los Angeles, California.


TIFFANY DAY

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