

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 32**

**AMERICAN BAPTIST HOMES OF THE WEST
d/b/a PIEDMONT GARDENS**

and

Case 32-CA-063475

**THE SERVICE EMPLOYEES INTERNATIONAL
UNION, UNITED HEALTHCARE WORKERS—WEST**

**COUNSEL FOR THE ACTING GENERAL
COUNSEL'S OPPOSITION TO RESPONDENT'S REPLY
BRIEF IN SUPPORT OF LIMITED CROSS EXCEPTIONS**

I. PRELIMINARY STATEMENT

On January 31, 2012,¹ Administrative Law Judge Gerald M. Etchingham, herein called the Judge, issued his decision in the above-captioned case. Pursuant to the Board's Rules and Regulations, Series 8, as amended, Section 102.46(a), Counsel for the Acting General Counsel filed limited exceptions, and brief in support thereof, to part of the Judge's decision on May 11. On May 25, Respondent filed limited cross exceptions to the Judge's decision and recommended order, and a brief in support thereof. Pursuant to the Board's Rules and Regulations, Series 8, as amended, Section 102.46(d), Counsel for the Acting General Counsel filed an answering brief to Respondent's limited cross exceptions on June 7. In response to the Acting General Counsel's answering brief, Respondent filed a reply brief in support of its limited cross exceptions on June 25, 2012. Counsel for the Acting General Counsel now files this opposition to Respondent's reply brief.

¹ All dates herein occurred in 2012 unless otherwise noted.

II. PURSUANT TO SECTION 102.46(h) OF THE BOARD'S RULES AND REGULATIONS, RESPONDENT'S REPLY BRIEF IS UNTIMELY

Pursuant to the Board's Rules and Regulations,

Within 14 days from the last date on which an answering brief may be filed . . . any party may file a reply brief to any such answering brief No extensions of time shall be granted for the filing of reply briefs.

Rules and Regulations of the National Labor Relations Board, Series 8, § 102.46(h).

On May 25, Respondent filed limited cross exceptions to the Judge's decision. Pursuant to the Board's Rules and Regulations, Counsel for the Acting General Counsel had 14 days to file its answering brief, which it timely filed one day early, on June 7. *See Id.* at § 102.46(d)(1). Respondent's reply brief was then due on June 22 (14 days from June 8). *See Id.* at § 102.46(h). However, Respondent did not file its reply brief until June 25.² Therefore, Respondent's brief is untimely under the Board's Rules and Regulations.

While Respondent did not offer any excuse or reason as to why it filed its brief late, even if Respondent attempts to offer an excuse after the fact, the Board's Rules and Regulations specifically state that "[n]o extensions of time shall be granted" when filing a reply brief. *Id.* at § 102.46(h).

Since Respondent's reply brief was due on June 22, Respondent did not file its reply brief until June 25, Respondent did not request an extension of time, and the Board does not grant extensions of time for the filing of reply briefs, Counsel for the Acting General Counsel requests that the Board dismiss Respondent's reply brief as untimely.

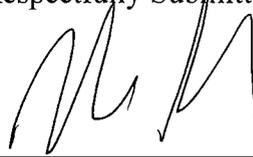
² Attached as Exhibit 1 is a copy of the affidavit of service, dated June 25, from Respondent's reply brief.

III. CONCLUSION

For the reasons set forth above, it is respectfully requested that the Board dismiss Respondent's reply brief, and any arguments that Respondent proffered therein, since Respondent untimely filed its brief under the Board's Rule and Regulations, Series 8, Section 102.46(h).

Dated: June 27, 2012

Respectfully Submitted



Noah J. Garber
Counsel for the Acting General Counsel
National Labor Relations Board, Region 32
1301 Clay Street, Suite 300N
Oakland, CA 94612-5211

PROOF OF SERVICE

1
2 1. I am over eighteen years of age and not a party to this action. I am employed in the County
3 of San Francisco , State of California. My business address is 3 Embarcadero Center, 7th
Floor, San Francisco, CA 94111.

4 2. On June 25, 2012, I served the following document(s):

5 **RESPONDENT'S REPLY BRIEF IN SUPPORT OF ITS LIMITED CROSS**
6 **EXCEPTIONS TO THE DECISION AND RECOMMENDED ORDER OF THE**
ADMINISTRATIVE LAW JUDGE

7 The document(s) served are included in the attached List of Documents.

8 3. I served the document(s) on the following person(s):

9 Noah J. Garber
10 William A. Baudler
National Labor Relations Board - General Counsel
11 1301 Clay Street, Suite 300N
Oakland, CA 94612
noah.garber@nlrb.gov
12 william.baudler@nlrb.gov

13 Yuri Y. Gottesman
14 Manuel A. Boigues
Weinberg, Roger & Rosenfeld
15 1001 Marina Village Parkway, Suite 200
Alameda, CA 94501
ygottesman@unioncounsel.net
16 mboigues@unioncounsel.net

17 The names, addresses, and other applicable information about the persons served is
18 included in the attached Service List.

19 4. The documents were served by the following means:

20 **By U.S. mail.** I enclosed the document(s) in a sealed envelope or package addressed to the
21 person(s) at the address(es) in Item 3 and (**check one**):

22 deposited the sealed envelope with the United States Postal Service, with the postage
fully prepaid.

23 placed the envelope for collection and mailing, following our ordinary business
24 practices. I am readily familiar with this business' practice for collecting and processing
correspondence for mailing. On the same day the correspondence is placed for collection
25 and mailing, it is deposited in the ordinary course of business with the United States Postal
Service, in a sealed envelope with postage fully prepaid.

26 I am employed in the county where the mailing occurred. The envelope or package was
27 placed in the mail at San Francisco, California.

28 **By Overnight Delivery/Express Mail.** I enclosed the documents and an unsigned copy of
this declaration in a sealed envelope or package designated by
[name of delivery company or U.S. Postal Service for Express Mail] addressed to the

1 persons at the address(es) listed in Item 3, with
2 **[Express Mail postage or, if not Express Mail, delivery fees]** prepaid or provided for. I
3 placed the sealed envelope or package for collection and delivery, following our ordinary
4 business practices. I am readily familiar with this business' practice for collecting and
5 processing correspondence for express delivery. On the same day the correspondence is
6 collected for delivery, it is placed for collection in the ordinary course of business in a box
7 regularly maintained by
8 **[name of delivery company or U.S. Postal Service for Express Mail]** or delivered to a
9 courier or driver authorized by **[name of delivery company]** to receive documents.

10 **By Messenger Service.** I served the documents by placing them in an envelope or package
11 addressed to the persons at the address(es) listed in Item 3 and providing them to a
12 professional messenger service for service. (See Declaration of Messenger below.)

13 **By Facsimile Transmission.** Based on an agreement between the parties to accept service
14 by facsimile transmission, which was confirmed in writing, I faxed the document(s) and an
15 unsigned copy of this declaration to the person(s) at the facsimile numbers listed in Item 3
16 on [type date], at [type time]. The transmission was reported as complete without error by a
17 transmission report issued by the facsimile machine that I used immediately following the
18 transmission. A true and correct copy of the facsimile transmission report, which I printed
19 out, is attached hereto.

20 **By Electronic Service (E-mail).** Based on a court order or an agreement of the parties to
21 accept service by electronic transmission, I transmitted the document(s) and an unsigned
22 copy of this declaration to the person(s) at the electronic notification address(es) listed in
23 Item 3 on May 25, 2012 before 5:00 p.m. PST.

24 The transmission of the document was reported as complete and without error by
25 electronic receipt of a delivery confirmation, a true and correct copy of which is attached
26 hereto.

27 I did not receive, within a reasonable time after the transmission, any electronic
28 message or other indication that the transmission was unsuccessful.

29 **Via Court Notice of Electronic Filing.** The document(s) will be served by the court via
30 NEF and hyperlink to the document. On [type date], I checked the CM/ECF docket for this
31 case or adversary proceeding and determined that the person(s) listed in Item 3 are on the
32 Electronic Mail Notice List to receive NEF transmission at the email addresses indicated in
33 Item 3 [or on the attached service list, if applicable].

34 **STATE:** I declare under penalty of perjury under the laws of the State of California that the
35 foregoing is true and correct.

36 **FEDERAL:** I declare that I am employed in the office of a member of the bar of this court
37 at whose direction the service was made.

38 Dated: 6/25/12

Signature: 

Type or Print Name: Jill Hernandez

DECLARATION OF MESSENGER

39 **By personal service.** I personally delivered the envelope or package received from the
40 declarant above to the persons at the addresses listed in Item 3. (1) For a party represented
41 by an attorney, delivery was made to the attorney or at the attorney's office by leaving the
42 documents in an envelope or package, which was clearly labeled to identify the attorney
43 being served, with a receptionist or an individual in charge of the office or in a conspicuous

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

place in the office, between the hours of nine in the morning and five in the evening.
(2) For a party, delivery was made to the party or by leaving the documents at the party's residence with some person not younger than 18 years of age between the hours of eight in the morning and six in the evening. At the time of service, I was over 18 years of age. I am not a party to the above-referenced legal proceeding. I served the envelope or package, as stated above, on **[type date]**.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: _____ Signature: _____

Type or Print Name:

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 32

AMERICAN BAPTIST HOMES OF THE
WEST d/b/a PIEDMONT GARDENS

and

THE SERVICE EMPLOYEES INTERNATIONAL
UNION, UNITED HEALTHCARE
WORKERS - WEST

Case 32-CA-063475

**AFFIDAVIT OF SERVICE OF COUNSEL FOR THE ACTING GENERAL COUNSEL'S
OPPOSITION TO RESPONDENT'S REPLY BRIEF IN SUPPORT OF
LIMITED CROSS EXCEPTIONS**

I, the undersigned employee of the National Labor Relations Board, state under oath that on **June 27, 2012**, I served the above-entitled document(s) *electronically* upon the following persons, addressed to them at the following addresses:

David S. Durham, Esq.
Arnold & Porter LLP
7th Floor, Three Embarcadero Center
San Francisco, CA 94111-4024
VIA E-MAIL: david.durham@aporter.com

Gilbert J. Tsai, Esq.
Arnold & Porter LLP
7th Floor, Three Embarcadero Center
San Francisco, CA 94111-4024
VIA E-MAIL: gilbert.tsai@aporter.com

Manuel A. Boigues, Attorney
Weinberg, Roger, & Rosenfeld
1001 Marina Village Pkwy, Ste 200
Alameda, CA 94501-6430
VIA E-MAIL: mboigues@unioncounsel.net

Les Heltzer
Executive Secretary
1099 14th Street, N.W., Suite 11610
Washington, DC 20005
VIA E-FILE

June 27, 2012

Date

Frances Hayden, Designated Agent of NLRB

Name



Signature