



## MEMORANDUM IN SUPPORT

### **I. THE REGIONAL DIRECTOR'S SUPPLEMENTAL DECISION AND ORDER IS ERRONEOUS**

During the election the Employer's observer challenged the ballots of multiple voters. As noted in *Fulton Bag and Product Company*, 121 NLRB 268, 270 at fn 5 (1958), any observer may insist upon the right to challenge, even when the challenged voter appears on the list. Specifically, the Board stated:

When, as here, the eligibility list has been prepared by the employer and approved by the representatives of the other party or parties to the election, it may be presumed that the list is correct. If an observer for any party then challenges a voter appearing at the polls, it is not improper for the Board agent to ascertain the reason for the challenge and to call the observer's attention to the fact that the name of the challenged voter appears on the list. Such conduct by the Board agent serves to prevent groundless challenges and unnecessary delay in the certification of results and it is essential to the orderly conduct of the election. Any observer may, for good cause, insist upon the right to challenge and the Board agent is obliged to accept the challenge. In the instant case, it does not appear that the observer for the Employer continued to claim the right to challenge after examination of the list disclosed the voter's name.

Id. The Regional Director makes much of the fact that the challenged voters were on the eligibility list prepared by the employer and, as such, is presumed correct. Here, the Employer's observer insisted on the challenge and the Board Agents correctly accepted the challenge. Moreover, when the votes were being tallied the Board Agents inquired as to whether the Employer wanted to withdraw its challenges and the Employer indicated it did not. Moreover, had the Employer excluded the names of "presumed" eligible voters and won the election, the Regional could set aside the results of the election.

Notwithstanding, the Regional Director conducted an "investigation of issues" without seeking evidence and/or a statement of position from the Employer. Instead, the Regional



**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on August 27, 2012, an electronic original of The Ardit Company, Inc's Request for Review was transmitted the National Labor Relations Board, office of the Executive Secretary, via the Department Of Labor, National Labor Relations Board electronic filing system and, further, that copies of the foregoing Answer were transmitted to the following individuals by electronic mail:

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