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**Legacy Health System and Service Employees International Union, Local 49.** Case 36–CA–10299

August 9, 2010

DECISION AND ORDER

BY CHAIRMAN LIEBMAN AND MEMBERS SCHAUMBER  
AND PEARCE

On July 13, 2009, the two sitting members of the Board issued a Decision and Order in this proceeding, which is reported at 354 NLRB No. 45.<sup>1</sup> Thereafter, the General Counsel filed an application for enforcement in the United States Court of Appeals for the Ninth Circuit. On June 17, 2010, the United States Supreme Court issued its decision in *New Process Steel, L.P. v. NLRB*, 130 S.Ct. 2635, holding that under Section 3(b) of the Act, in order to exercise the delegated authority of the Board, a delegee group of at least three members must be maintained. Thereafter, the court of appeals remanded this case for further proceedings consistent with the Supreme Court’s decision.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.<sup>2</sup>

The Board has considered the judge’s decision and the record in light of the exceptions and briefs and has decided to affirm the judge’s rulings, findings, and conclusions and to adopt the recommended Order for the rea-

<sup>1</sup> Effective midnight December 28, 2007, Members Liebman, Schaumber, Kirsanow, and Walsh delegated to Members Liebman, Schaumber, and Kirsanow, as a three-member group, all of the powers of the National Labor Relations Board in anticipation of the expiration of the terms of Members Kirsanow and Walsh on December 31, 2007. Thereafter, pursuant to this delegation, the two sitting members issued decisions and orders in unfair labor practice and representation cases.

<sup>2</sup> Consistent with the Board’s general practice in cases remanded from the courts of appeals, and for reasons of administrative economy, the panel includes the members who participated in the original decision. Furthermore, under the Board’s standard procedures applicable to all cases assigned to a panel, the Board members not assigned to the panel had the opportunity to participate in the adjudication of this case at any time up to the issuance of this decision.

sons stated in the decision reported at 354 NLRB No. 45 (2009), which is incorporated herein by reference, and as modified in fn. 3, below.<sup>3</sup>

Dated, Washington, D.C. August 9, 2010

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Wilma B. Liebman, Chairman

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Peter C. Schaumber, Member

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Mark Gaston Pearce, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

<sup>3</sup> As stated in the incorporated decision, we find, under the “comparatively slight” legal analysis set forth in the Supreme Court’s decision in *NLRB v. Great Dane Trailers*, 388 U.S. 26, 34 (1967), that the Respondent’s dual-employment policy discriminated on the basis of Sec. 7 considerations and violated Sec. 8(a)(3) and (1).

Though they find it unnecessary to pass on the theory for purposes of disposition of this case, Chairman Liebman and Member Pearce would agree with the judge, for the reasons he stated, that the Respondent’s dual-employment policy would be unlawful under the “inherently destructive” legal theory of *Great Dane*.