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Akal Security, Inc. and United Government Security Officers of America, Local 118. Cases 19–CA–30891, 19–CA–30892, and 19–CA–30950

August 23, 2010

DECISION AND ORDER

BY CHAIRMAN LIEBMAN AND MEMBERS SCHAUMBER
AND BECKER

On April 30, 2009, the two sitting members of the Board issued a Decision and Order in this proceeding, which is reported at 354 NLRB No. 11.¹ Thereafter, the Charging Party filed a petition for review in the United States Court of Appeals for the District of Columbia 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 Board issued an order setting aside the above-referenced decision and order, and retained this case on its docket for further action as appropriate.

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

¹ 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.

² 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.

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 only to the extent stated in the decision reported at 354 NLRB No. 11, which has been set aside and which is incorporated herein by reference.³ For the reasons stated in that decision, we reverse the judge and dismiss the allegation that the Respondent violated Section 8(a)(1) by discharging employees Lee Ryan and Stephen Winther for convening a meeting with other employees on working time to confront fellow employee Bill Lopez about his performance.⁴

Dated, Washington, D.C. August 23, 2010

Wilma B. Liebman, Chairman

Peter C. Schaumber, Member

Craig Becker, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

³ For the reasons stated in the Board's prior decision, we disregard the Respondent's exceptions to the judge's findings that Lead Court Security Officer Denny Scieszinski is a supervisor and agent under Sec. 2(11) and (13) of the Act. See 354 NLRB No. 11, slip op. at 1 fn. 1. In doing so, however, we no longer rely on *GFC Crane Consultants, Inc.*, 352 NLRB 1236, 1236 fn. 3 (2008), a case decided when the Board had only two sitting members.

⁴ In addition, we observe that the General Counsel did not contend that the period during which the meeting occurred was a protected work stoppage. In fact, in his answering brief to the Respondent's exceptions, the General Counsel expressly argued that it was not a work stoppage.