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**Regency Heritage Nursing and Rehabilitation Center
and SEIU 1199, New Jersey Health Care Union.**
Case 22–CA–27992

August 25, 2010

DECISION AND ORDER

BY CHAIRMAN LIEBMAN AND MEMBERS SCHAUMBER
AND HAYES

On February 27, 2009, the two sitting members of the Board issued a Decision and Order in this proceeding, which is reported at 353 NLRB 1027 (2009).¹ On March 2, 2009, the Respondent filed a motion for reconsideration, which the Board denied on April 27, 2009. Thereafter, the Respondent filed a petition for review in the United States Court of Appeals for the District of Columbia Circuit, and the General Counsel filed a cross-application for enforcement. 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 Respondent has filed a motion requesting that Members Pearce and Becker recuse themselves from participating in this proceeding. Member Pearce is recused, and has taken no part in considering this case. The Respondent's motion requests that Member Becker be recused as a result of his having served as "General Counsel of the SEIU when 'Article XX' and other internal 'no raiding' issues were litigated between Local 300, UFCW, a party of interest in [*Regency Grande Nursing & Rehabilitation Center*] 22–CA–26231 and [*Regency Grande Nursing & Rehabilitation Center*] 22–CA–28331, and

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 to the extent and for the reasons stated in the decision reported at 353 NLRB 1027 *supra*, which has been set aside and which is incorporated herein by reference.³

Dated, Washington, D.C. August 25, 2010

Wilma B. Liebman, Chairman

Peter C. Schaumber, Member

Brian E. Hayes, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

SEIU Local 1199. David Gross is a principal in all of these facilities and cases." Member Becker played no role in and has no knowledge of the referenced art. XX proceedings. He served as counsel to the Service Employees International Union prior to his service on the Board, but never as general counsel to the Union. Consistent with the principles set forth in *Pomona Valley Hospital Medical Center*, 355 NLRB No. 40 (2010), the Respondent's request for Member Becker to recuse himself is denied.

³ Having carefully considered the matter, we also reaffirm the earlier decision to deny the Respondent's motion for reconsideration.