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Coastal Insulation Corporation and Elmsford Insulation Corporation, and Sealrite Insulation of New York, a single employer and Sergio Santos. Case 22–CA–28439

August 27, 2010

DECISION AND ORDER

BY CHAIRMAN LIEBMAN AND MEMBERS SCHAUMBER
AND PEARCE

On August 31, 2009, the two sitting members of the Board issued a Decision and Order in this proceeding, which is reported at 354 NLRB No. 70.¹ Thereafter, the Respondent filed a petition for review in the United States Court of Appeals for the D.C. 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 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.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 to the extent and for the reasons stated in the decision reported at 354 NLRB No. 70, which is incorporated herein by reference.³

Dated, Washington, D.C. August 27, 2010

Wilma B. Liebman, Chairman

Peter C. Schaumber, Member

Mark Gaston Pearce, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

³ Member Pearce does not adopt the judge’s analysis of the installer employees’ concerted activity at the July 2, 2008 meeting, or the description of its purpose, but he agrees with the judge’s conclusion that their conduct was protected. Given the varying contexts in which terms and conditions of employment are established, Member Pearce does not adopt the judge’s blanket statement that “[i]t is axiomatic under Board law that an employer is entitled to set the terms and conditions of employment of its work force.”