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**Grapetree Shores, Inc. d/b/a Divi Carina Bay Resort
and Virgin Islands Workers Union.** Cases.24–
CA–11101 and 24–RC–8566

September 28, 2010

DECISION AND NOTICE TO SHOW CAUSE

BY CHAIRMAN LIEBMAN AND MEMBERS BECKER
AND PEARCE

On April 10, 2009, the two sitting members of the Board issued a Decision and Order in this proceeding, which is reported at 353 NLRB No. 131 (not reported in Board volumes).¹ Thereafter, the General Counsel filed an application for enforcement in the United States Court of Appeals for the Third Circuit, and the Respondent filed a cross-petition for review. 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 consolidated these proceedings and delegated its authority in both proceedings to a three-member panel.²

This is a refusal-to-bargain case in which the Respondent is contesting the Union's certification as bargaining representative in the underlying representation proceeding. The Board's April 10, 2009 decision states that the Respondent is precluded from litigating any representation issues because, in relevant part, they were or could have been litigated in the prior representation proceeding. The prior proceeding, however, was also a two-member decision and we do not give it preclusive effect.

We have considered the postelection representation issues raised by the Respondent in Case 24–RC–8566.³

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 prior to the issuance of this decision.

The Board has reviewed the record in light of the exceptions and briefs and has adopted the administrative law judge's findings and recommendations to the extent and for the reasons stated in the Board's July 30, 2008 Decision, Order, and Direction, which is incorporated herein by reference.⁴

The Board's July 30, 2008 Decision, Order, and Direction directed the Regional Director for Region 24 to open and count the ballots of employees Ellen Henry, Karen Nystrom, Linda Olbermann, and Felicia Dixon and to issue a revised tally of ballots. The revised tally showed that the Virgin Island Workers Union (Union) had received a majority of the valid votes cast, and the Regional Director issued a certification of representative certifying the Union as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full time and regular part time production and maintenance employees, including food and beverage, kitchen, housekeeping, maintenance, front desk, communications, bell and guest services, gift shop, activities and grounds; employed by the Employer at its facility located in St. Croix, U.S. Virgin Islands; excluding all other employees, office, clerical employees, guards, and supervisors as defined in the Act.

Notice to Show Cause

As noted above, the Respondent has refused to bargain for the purpose of testing the validity of the certification of representative in the U.S. Courts of Appeals. Although Respondent's legal position may remain unchanged, it is possible that the Respondent has or intends to commence bargaining at this time. It is also possible that other events may have occurred during the pendency of this litigation that the parties may wish to bring to our attention.

Having duly considered the matter,

1. The Acting General Counsel is granted leave to amend the complaint on or before October 8, 2010 to conform with the current state of the evidence;

2. The Respondent's answer to the amended complaint is due on or before October 22, 2010; and

³ Case 24–RC–8566 was originally consolidated with a related unfair labor practice case, Case 24–CA–10700, which is not before us here.

⁴ In incorporating the Board's July 30, 2008 decision, we revise fn. 6 of that decision to read as follows: "In adopting the judge's recommendations to overrule the Respondent's Objections 1–4, we rely on his findings, based on his credibility rulings, that the Respondent did not establish the conduct that it alleged to be objectionable with sufficient particularity to justify overturning the election. We find it unnecessary to pass on the judge's analysis of those objections under *Cal-West Periodicals*, 330 NLRB 599 (2000)."

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3. NOTICE IS HEREBY GIVEN that cause be shown, in writing, on or before November 12, 2010 (with affidavit of service on the parties to this proceeding), as to why the Board should not grant the General Counsel's Motion for Summary Judgment. Any briefs or statements in support of the motion shall be filed by the same date.

Dated, Washington, D.C. September 28, 2010

Craig Becker, Member

Mark Gaston Pearce, Member

Wilma B. Liebman, Chairman

(SEAL) NATIONAL LABOR RELATIONS BOARD