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San Miguel Hospital Corp. d/b/a Alta Vista Regional Hospital and District 1199NM, National Union of Hospital and Healthcare Employees. Cases 28–CA–21896 and 28–RC–6518

September 30, 2010

DECISION, CERTIFICATION OF REPRESENTATIVE, AND NOTICE TO SHOW CAUSE

BY CHAIRMAN LIEBMAN AND MEMBERS PEARCE AND HAYES

On June 30, 2008, the two sitting members of the Board issued a Decision and Order in this proceeding, which is reported at 352 NLRB 809.¹ 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 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 June 30, 2008 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 proceedings. One prior representation proceeding, however, was

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 remaining member 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.

also a two-member decision and we do not give it preclusive effect.³

We have considered the postelection representation issues raised by the Respondent. The Board has reviewed the record in light of the exceptions and brief, and has adopted the hearing officer's findings and recommendations to the extent and for the reasons stated in the March 4, 2008 Decision and Certification of Representative, which is incorporated herein by reference.

CERTIFICATION OF REPRESENTATIVE

IT IS CERTIFIED that a majority of the valid ballots have been cast for District 1199NM, National Union of Hospital and Healthcare Employees, and that it is the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time professional employees, including registered nurses, registered nurse rotating team leaders, registered nurse case manager, licensed practical nurse case manager, cardiac catheterization laboratory supervisors, medical technologists, nuclear medicine technicians, pharmacists, registered pharmacists, occupational therapists, physical therapists, registered respiratory therapists, speech pathologists, and nonprofessional employees, including all technical employees, skilled maintenance employees, business office employees, and other nonprofessional employees, and per diem employees averaging four or more hours of work per week for the last quarter prior to the eligibility date, employed by the Employer at its hospital located in Las Vegas, New Mexico; excluding all employees employed at clinics, physicians, registered nurse permanent team leaders, house supervisors, human resource assistants, executive assistants, medical staff coordinator, staffing coordinator, confidential 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.

³ On the other hand, in an earlier proceeding in Case 28–RC–6518, the Respondent requested review of the Regional Director's Decision and Direction of Election, and a three-member Board issued an Order denying request for review on August 2, 2007. That Order has preclusive effect.

Having duly considered the matter,

1. The General Counsel is granted leave to amend the complaint on or before October 10, 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 24, 2010; and

3. NOTICE IS HEREBY GIVEN that cause be shown, in writing, on or before November 14, 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 30, 2010

Wilma B. Liebman, Chairman

Mark Gaston Pearce, Member

Brian E. Hayes, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD