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Racetrack Food Services, Inc. and Casino Food Services, Inc., Single Employer and UNITE HERE, Local 274. Case 4–CA–35158

September 30, 2010

DECISION AND ORDER

BY CHAIRMAN LIEMBAN AND MEMBERS BECKER
AND HAYES

On December 31, 2008, the two sitting members of the Board issued a Decision and Order in this proceeding, which is reported at 353 NLRB 687.¹ Thereafter, the Respondent filed a petition for review in the United States Court of Appeals for the Third 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

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 conclu-

sions and to adopt the recommended Order to the extent and for the reasons stated in the decision reported at 353 NLRB 687 (2008), which is incorporated herein by reference.³

Dated, Washington, D.C. September 30, 2010

Wilma B. Liebman, Chairman

Craig Becker, Member

Brian E. Hayes, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

³ Member Hayes would join former Member Schaumber in applying *Contract Flooring Systems*, 344 NLRB 925 (2005), and *The Bohemian Club*, 351 NLRB 1065 (2007), as extant law for the purposes of deciding this case. As to the former, he shares former Member Schaumber's view that the more appropriate standard for establishing the relevance of requested nonunit information is that stated by the Third Circuit in *Hertz Corp. v. NLRB*, 105 F.3d 868, 874 (1997). As to the latter, Member Hayes questions the rationale for exempting management-rights clauses from the general rule that contractual terms on mandatory bargaining subjects survive contract expiration. He may address this issue fully when properly raised in a future case.

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 at any time up to the issuance of this decision.