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Monmouth Care Center and SEIU 1199 New Jersey Health Care Union

Mildord Manor Nursing and Rehabilitation Center and SEIU 1199 New Jersey Health Care Union

Pinebrook Nursing Home and Rehabilitation Center and SEIU 1199 New Jersey Health Care Union.

Cases 22-CA-27287, 22-CA-27830, 22-CA-27290, 22-CA-27291, and 22-CA-27829

November 17, 2010

DECISION AND ORDER

BY CHAIRMAN LIEBMAN AND MEMBERS BECKER AND HAYES

On April 27, 2009, the two sitting members of the Board issued a Decision and Order in this proceeding, which is reported at 354 NLRB No. 2.¹ 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 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 conclusions and to adopt the recommended Order to the extent

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.

Member Pearce is recused, and has taken no part in considering this case.

and for the reasons stated in the decision reported at 354 NLRB No. 2 (2009), which is incorporated by reference,³ except as modified below.⁴

ORDER

A. The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below, and orders that the Respondent, Monmouth Care Center, Long Branch, New Jersey, its officers, agents, successors, and assigns, shall take the action set forth in the recommended Order as modified.

Substitute the following for paragraph A,2(d).

“(e) Within 14 days after service by the Region, post at its facility in Long Branch, New Jersey, copies of the attached notice marked ‘Appendix.’¹⁸ Copies of the notice, on forms provided by the Regional Director for Region 22, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since August 31, 2002.”

B. The National Labor Relations Board orders that the Respondent, Milford Manor Nursing Home and Rehabilitation Center, West Milford, New Jersey, its officers, agents, successors, and assigns, shall take the action set forth in the recommended Order as modified.

Substitute the following for paragraph B,2(d).

³ We find it unnecessary to rely on *Area Trade Bindery Co.*, 352 NLRB 172, 172 fn. 3 (2008). Without reliance on that decision, Member Hayes agrees with the views expressed by former Member Schaumber at 354 NLRB No. 2, slip op. at 1, fn. 2, par. 4 (2009), disavowing reliance on the judge's statements indicating that impasse could not be found because both parties did not believe that they were at impasse.

⁴ We shall modify the judge's recommended Order to provide for the posting of the notices in accord with *J. Picini Flooring*, 356 NLRB No. 9 (2010). For the reasons stated in his dissenting opinion in *J. Picini Flooring*, Member Hayes would not require electronic distribution of the notices.

“(e) Within 14 days after service by the Region, post at its facility in West Milford, New Jersey, copies of the attached notice marked ‘Appendix.’¹⁸ Copies of the notice, on forms provided by the Regional Director for Region 22, after being signed by the Respondent’s authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since August 31, 2002.”

C. The National Labor Relations Board orders that the Respondent, Pinebrook Nursing Home, Englishtown, New Jersey, its officers, agents, successors, and assigns, shall take the action set forth in the recommended Order as modified.

Substitute the following for paragraph C,2(d).

“(e) Within 14 days after service by the Region, post at its facility in Englishtown, New Jersey, copies of the attached notice marked ‘Appendix.’¹⁸ Copies of the notice, on forms provided by the Regional Director for Re-

gion 22, after being signed by the Respondent’s authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since August 31, 2002.”

Dated, Washington, D.C. November 17, 2010

Wilma B. Liebman, Chairman

Craig Becker, Member

Brian E. Hayes, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD