

NOT TO BE INCLUDED  
IN BOUND VOLUMES

LPH  
Davenport, IA

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

CONTRACTOR SERVICES, INC.

and

Cases 10-CA-028856  
10-CA-029123  
10-CA-029174

INTERNATIONAL BROTHERHOOD  
OF ELECTRICAL WORKERS,  
AFL-CIO, LOCAL 347

ORDER DENYING MOTIONS FOR RECONSIDERATION

On September 27, 2007, the Board, by a three-member panel, issued a Supplemental Decision and Order in this proceeding, which is reported at 351 NLRB 33. On August 27, 2008, the two sitting members of the Board issued an unpublished Order Denying Motions for Reconsideration in this proceeding.<sup>1</sup> Thereafter, the Charging Party filed a petition for review in the United States Court of Appeals for the District of Columbia Circuit. Thereafter, the court ordered that the review proceedings be held in abeyance, and the record in this case was not filed with

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<sup>1</sup> 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.

the court. 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 dismissed the petition for review. On August 17, 2010, the Board issued an Order setting aside the above-referenced Order Denying Motions for Reconsideration and retained the case on its docket for further action as appropriate.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.<sup>2</sup>

The Board has considered the General Counsel's and the Charging Party's motions for reconsideration and the Respondent's separate replies to each motion and has decided to affirm the Order denying the motions for reconsideration to the extent and for the reasons stated<sup>3</sup> in

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<sup>2</sup> 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 denial of the motions for reconsideration. 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 Order.

<sup>3</sup> Member Hayes finds that the law of the case doctrine does not apply here for the reasons set out by then Chairman Schaumber at fn. 4 of the August 27, 2008 Order.

the unpublished August 27, 2008 Order Denying Motions for Reconsideration, which is incorporated herein by reference.<sup>4</sup>

Dated, Washington, D.C., December 20, 2010.

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Wilma B. Liebman, Chairman

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Mark Gaston Pearce, Member

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Brian E. Hayes, Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD

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<sup>4</sup> On Aug. 13, 2010, the Charging Party filed a Motion to Consolidate Cases and Solicit Briefs from Parties and interested Amici on issues raised by the Board's decision in *Toering Electric*, 351 NLRB 225 (2007); *Oil Capitol Sheet Metal, Inc.*, 349 NLRB 1348 (2007); and *Contractor Services*, 351 NLRB 33 (2007). Specifically, the Charging Party requested that this proceeding be consolidated with *KenMor Electric Co.*, 355 NLRB No. 173 (2010), and *Independent Electrical Contractors of Houston*, 355 NLRB No. 225 (2010), which were then pending before the Board, and that the briefs solicited address whether *Toering Electric*, *Oil Capitol*, and *Contractor Services* should be applied in these cases. The Charging Party moves in the alternative that the Board solicit briefing from the parties to the instant case, as well as interested amici, on the question of whether the Board should overturn its decision in *Contractor Services*, *supra*.

We deny both motions. First, the request to consolidate is moot. Second, with respect to the Charging Party's request to solicit briefs to address whether *Contractor Services* should be overruled, we have duly considered the request, but are not prepared at this time to deviate from precedent.