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Stagehands Referral Service, LLC and Stephen Foti

International Alliance of Theatrical & Stage Employees & Motion Picture Technicians of the United States & Canada, Local 84, AFL-CIO (Meadows Music Theatre) and Stephen Foti. Cases 34-CA-10971 and 34-CB-2774

May 3, 2011

SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN LIEBMAN AND MEMBERS BECKER
AND HAYES

On April 29, 2009, the two sitting members of the Board issued a Supplemental Decision and Order in this proceeding, which is reported at 354 NLRB No. 7.¹ Thereafter, the Respondents 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, 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

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 Member 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.

The Board has considered the judge's supplemental 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 supplemental Order for the reasons set forth below.

Although the Respondents' exceptions refer to their posthearing brief, the Respondents did not submit a supporting brief or refile their posthearing brief as a supporting document. The posthearing brief is not itself part of the record before the Board as defined in Section 102.45(b) of the Board's Rules and Regulations. See *CPS Chemical Co.*, 324 NLRB 1018, 1018 fn. 2 (1997). On March 7, 2011, almost 2 years after the Board's decision reported at 354 NLRB No. 7, and almost 10 months after the Supreme Court's decision in *New Process Steel*, supra, the Respondents moved to supplement the record by including their posthearing brief. The Respondents provided no explanation or justification for their substantial delay in making this motion. Accordingly, we deny the motion as untimely. See Board's Rules and Regulations Section 102.46(a).

Therefore, our review of the Respondents' arguments is limited to the exceptions document and any citation of authorities and supporting argument contained therein. See Board's Rules and Regulations Section 102.46(b)(1). These exceptions fail to demonstrate a basis for overturning the judge's findings. Moreover, specifically with regard to the Respondents' exceptions 2, 3, and 4, we find that the grounds for the exceptions are not stated with sufficient particularity to give fair notice to the General Counsel and the Charging Party, or to permit review by the Board. We therefore adopt the judge's decision. See *James Troutman & Associates*, 299 NLRB 120 (1990), affd. mem. 935 F.2d 275 (9th Cir. 1991).

ORDER

The National Labor Relations Board adopts the recommended supplemental Order of the administrative law

DECISIONS OF THE NATIONAL LABOR RELATIONS BOARD

judge and orders that the Respondents, International Alliance of Theatrical & Stage Employees & Motion Picture Technicians of the United States & Canada, Local 84, AFL-CIO, its officers, agents, and representatives; and Stage Hands Referral Service, LLC, Hartford, Connecticut, its officers, agents, successors, and assigns, jointly and severally, shall make Stephen Foti whole by paying to him the total backpay amount of \$77,455, plus interest computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), accrued

to the date of payment, minus tax withholdings required by Federal and State law.

Dated, Washington, D.C. May 3, 2011

Wilma B. Liebman, Chairman

Craig Becker, Member

Brian E. Hayes, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD