UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
Washington, D.C.

KAISER FOUNDATION HEALTH PLAN, INC.,
KAISER FOUNDATION HOSPITALS
SOUTHERN CALIFORNIA PERMANENTE
MEDICAL GROUP; AND THE PERMANENTE
MEDICAL GROUP, INC.,

Employers, Case 32-RC-5775

and

NATIONAL UNION OF
HEALTHCARE WORKERS

Petitioner

and

SEIU-UHW (SERVICE EMPLOYEES
INTERNATIONAL UNION, UNITED
HEALTHCARE WORKERS –WEST)

Intervenor.

EMPLOYERS' OPPOSITION TO PETITIONER'S MOTION FOR RECONSIDERATION OF ORDER TO REMAND

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Kaiser Foundation Health Plan Inc., Kaiser Foundation Hospitals, Southern California Permanente Medical Group and The Permanente Medical Group (the "Employers" or "Kaiser"), Respondents in the above-referenced matter, hereby oppose the motion for reconsideration filed by Petitioner, National Union of Healthcare Workers ("Petitioner").

Petitioner's motion to reconsider is procedurally and legally flawed. This motion for reconsideration, like the earlier request for a lengthy amount of time in which to file exceptions previously sought by Petitioner and the request for hearings before the Regional Director set forth in Petitioner's letter of August 10, appears to be merely the latest step on the part of Petitioner to delay and postpone an election in this matter.[1] As shown below, the motion for reconsideration should be denied.

Under the Rules and Regulations of the National Labor Relations Board, a motion for reconsideration must show "extraordinary circumstances" and "must state with particularity the material error claimed." Section 102.65(e)(1). Here, Petitioner shows no extraordinary circumstances. And indeed none exists. Petitioner seems concerned about the conduct of the rerun election, but ignores that any issues relating to the conduct of the Employers (or any other party) in the rerun election can readily be addressed by the National Labor Relations Board's processing of unfair labor practice charges filed in connection with that election or in post-election objections.

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[1] Employers note that section 102.65(e)(3) of the National Labor Relations Board's Rules and Regulations expressly provides that the filing and pendency of a motion for reconsideration "shall not unless so ordered operate to stay the effectiveness of any action taken or directed to be taken . . ."

Therefore the filing and pendency of the motion for reconsideration should have no effect on the setting of the election by the Regional Director as ordered in the Order of the National Labor Relations Board dated August 10, 2011 in this matter.

Further, with respect to Petitioner's apparent concerns over the scope of the order under *Lufkin Rule Co.,* 147 NLRB 341 (1964), it is critical to note that at no point whether in its Objections, at the Hearing, or in its Brief to the Administrative Law Judge, did Petitioner ever seek an order of any sort under *Lufkin Rule Co.,* 147 NLRB 341 (1964). Accordingly, it cannot now claim error and seek reconsideration of an order that it never sought.

Next, there is no question that the time for the filing of exceptions in this matter has run. A motion for reconsideration, by the very terms of the Rules and Regulations of the National Labor Relations Board, cannot extend that period. Section 102.65(e)(1). ("No motion shall stay the time for filing a request for review of a decision or exceptions to a report.") There is also no question that Petitioner did not file exceptions within the allotted time. Instead, as Petitioner admits in the motion for reconsideration, it decided "to address any concerns it had concerning the rerun election to the Regional Director, and on August 12 wrote to Regional Director Baudler." Thus it did not file timely exceptions. By the very terms of the Rules and Regulations of the National Labor Relations Board Petitioner's motion for reconsideration cannot extend that now expired time. Section 102.65(e)(1). Petitioner's motion is therefore flawed. It seeks relief – the opportunity to file untimely exceptions – that cannot be obtained by way of a motion for reconsideration.

Further, and perhaps critically, Petitioner has never proffered its exceptions. Instead, Petitioner engages in rhetorical flourishes and bombast ("a vortex of circular reasoning," and "considerations of taint don't matter for this election,"), but has failed to meet its most elemental burden -- showing any merit to the now very untimely exceptions that it supposedly wants to file.

Finally, Petitioner purports to plead ignorance as to why the National Labor Relations Board and the Regional Director feel compelled to act with "haste" in connection with election related matters. Motion for reconsideration at 7. Employers submit that the National Labor Relations Board itself on June 22, 2011 expressed, perhaps most succinctly, the best response to Petitioner's professed ignorance:

> Congress intended that the Board adopt procedures that permit questions concerning representation to be resolved both quickly and fairly. As the Supreme Court has noted, "[T]he Board must adopt policies and promulgate rules and regulations in order that employees' votes may be recorded accurately, efficiently and speedily." The Board has repeatedly recognized "the Act's policy of expeditiously resolving questions concerning representation." "In * * * representation proceedings under Section 9," the Board has observed, "time is of the essence if Board processes are to be effective." Indeed, the Board's Casehandling Manual stresses that "[t]he expeditious processing of petitions filed pursuant to the Act represents one of the most significant aspects of the Agency's operations." [Footnotes and internal citations omitted.]

Representation-Case Procedures, A Proposed Rule by the National Labor Relations Board, http://www.federalregister.gov/articles/2011/06/22/2011-15307/representation-case-procedures#p-17

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CONCLUSIONS

For the foregoing reasons, the Petitioner's motion for reconsideration should be denied.

DATED: August 25, 2011

Respectfully submitted,

By: _____

MICHAEL LINDSAY

Attorneys for Employers, KAISER FOUNDATION HEALTH PLAN, INC., KAISER FOUNDATION HOSPITALS SOUTHERN CALIFORNIA PERMANENTE MEDICAL GROUP; AND THE PERMANENTE MEDICAL GROUP, INC.

STATEMENT OF SERVICE

CASE NO. Case Case 32-RC-5775

I hereby certify that a copy of **EMPLOYERS' OPPOSITION TO PETITIONER'S MOTION FOR RECONSIDERATION OF ORDER TO REMAND** was submitted for E-Filing to the National Labor Relations Board on August 25, 2011.

The following parties were served with a copy of said document by electronic mail on August 25, 2011.

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Respectfully submitted,

Michael R. Lindsay

Dated at Los Angeles, California, this 25th day of August, 2011.

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