

NOT INCLUDED
IN BOUND VOLUMES

LS
Warwick, NY

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

BON SECOURS CHARITY HEALTH SYSTEMS,
WARWICK HEALTHCARE CAMPUS
Employer

and

Case 2-RC-23303

1199 SEIU, UNITED HEALTHCARE WORKERS EAST
Petitioner

DECISION AND DIRECTION

The National Labor Relations Board¹ has considered determinative challenges in an election held October 30, 2008, and the administrative law judge's decision recommending disposition of them.² The election was conducted pursuant to a

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 Board's powers in anticipation of the expiration of the terms of Members Kirsanow and Walsh on December 31, 2007. Pursuant to this delegation, Chairman Liebman and Member Schaumber constitute a quorum of the three-member group. As a quorum, they have the authority to issue decisions and orders in unfair labor practice and representation cases. See Sec. 3(b) of the Act. See *Narricot Industries, L.P. v. NLRB*, ___ F.3d ___, 2009 WL 4016113 (4th Cir. Nov. 20, 2009); *Snell Island SNF LLC v. NLRB*, 568 F.3d 410 (2d Cir. 2009), petition for cert. filed 78 U.S.L.W. 3130 (U.S. Sept. 11, 2009) (No. 09-328); *New Process Steel v. NLRB*, 564 F.3d 840 (7th Cir. 2009), cert. granted ___ S.Ct. ___, 2009 WL 1468482 (U.S. Nov. 2, 2009); *Northeastern Land Services v. NLRB*, 560 F.3d 36 (1st Cir. 2009), petition for cert. filed 78 U.S.L.W. 3098 (U.S. Aug. 18, 2009) (No. 09-213); *Teamsters Local Union No. 523 v. NLRB*, ___ F.3d ___, 2009 WL 4912300 (10th Cir. Dec. 22, 2009). But see *Laurel Baye Healthcare of Lake Lanier, Inc. v. NLRB*, 564 F.3d 469 (D.C. Cir. 2009), petition for cert. filed 78 U.S.L.W. 3185 (U.S. Sept. 29, 2009) (No. 09-377).

² The Petitioner filed timely objections to the election. Pursuant to a motion by the Employer, the judge issued an order bifurcating post-election proceedings. The objections were held in abeyance pending resolution of the challenges.

Stipulated Election Agreement. The tally of ballots shows 121 votes for and 118 against the Petitioner, with 11 challenged ballots, a sufficient number to affect the results.

The Board has reviewed the record in light of the exceptions³ and briefs, and has adopted the administrative law judge's findings⁴ and recommendations.

DIRECTION

It is directed that the Regional Director for Region 2 shall, within 14 days from the date of this Decision and Direction, open and count the ballots of Margarita Cortes, Ruth DeMouth, Anita Hanley, Pura Palma, and Diane Scott. If, after counting these ballots, the Petitioner has obtained a majority of the valid votes counted, the Regional Director shall then serve on the parties a revised tally of ballots and issue a certification of representative. If the Petitioner has not obtained a majority of the valid votes counted, the Region shall then hold a hearing on the Petitioner's objections.

Dated, Washington, D.C., **December 23, 2009.**

Wilma B. Liebman, Chairman

Peter C. Schaumber, Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD

³ The Employer's Motion to File Untimely Exceptions and Supporting Brief is denied. The reasons cited for the lateness do not rise to the level of excusable neglect under extant Board law. See *Elevator Constructors Local 2 (Unitec Elevator Services)*, 337 NLRB 426, 427 (2002). Consequently, we adopt pro forma the judge's recommendation to sustain challenges to ballots cast by 6 maintenance mechanics.

Assuming arguendo that he were to reach the substance of the Employer's exceptions, which he does not, Member Schaumber would agree with the judge on the merits.

⁴ The judge was sitting as a hearing officer in this representation proceeding. The Petitioner has excepted to some of the hearing officer's credibility findings. The Board's established policy is not to overrule a hearing officer's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Stretch-Tex Co.*, 118 NLRB 1359, 1361 (1957). We have carefully examined the record and find no basis for reversing the findings.