

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

**NEW VISTA NURSING AND
REHABILITATION, LLC**

and

Case 22-CA-029988

**1199 SEIU UNITED HEALTHCARE
WORKERS EAST, NJ REGION**

ORDER DENYING MOTION FOR RECONSIDERATION

On January 3, 2012, the Respondent filed a Motion for Reconsideration of the Board's December 30, 2011 Order in this proceeding. The December 30, 2011 Order denied the Respondent's September 9, 2011 Motion for Reconsideration of the Board's August 26, 2011 Decision and Order.¹

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Respondent contends that the Board's December 30, 2011 Order was improper because it issued without the participation of a quorum, as Chairman Mark Gaston Pearce, who was a member of the panel together with former Member Craig Becker and current Member Brian E. Hayes, was recused. The Respondent states that it will be unable to litigate the Board's opinion in the U.S. Court of Appeals unless it seeks reconsideration of this opinion before the Board.

At footnote 2 of the Board's December 30, 2011 Order, the Board stated:

¹ *New Vista Nursing & Rehabilitation, LLC*, 357 NLRB No. 69 (2011) (Board granted Acting General Counsel's Motion for Summary Judgment and, inter alia, ordered the Respondent, on request, to bargain with 1199 SEIU United Healthcare Workers East, NJ Region as the certified collective bargaining representative of its unit employees).

Chairman Pearce, who is recused and did not participate in the underlying decision, is a member of the present panel but did not participate in deciding the merits of this proceeding.

In *New Process Steel v. NLRB*, ___ U.S. ___, 130 S. Ct. 2635 (2010), the Supreme Court left undisturbed the Board's practice of deciding cases with a two-member quorum when one of the panel members has recused himself. Under the Court's reading of the Act, "the group quorum provision [of Sec. 3(b)] still operates to allow any panel to issue a decision by only two members if one member is disqualified." *New Process Steel*, 130 S. Ct. at 2644; see also *Correctional Medical Services*, 356 NLRB No. 48, slip op. at 1 fn. 1 (2010).

Having duly considered the matter, the Respondent's motion is denied. We find that our December 30, 2011 Order was properly issued, for the reasons stated therein.

Dated, Washington, D.C., March 15, 2012.

Brian E. Hayes, Member

Richard F. Griffin, Jr., Member

Sharon Block, Member