

R.D. #.
Newark, NJ

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 22**

LABORATORY CORPORATION OF AMERICA HOLDINGS

Employer

and

CASE 22-RC-096952

DISTRICT 1199J, NUHHCE, AFSCME, AFL-CIO

Petitioner

DECISION AND DIRECTION OF ELECTION

The Petitioner, District 1199J, NUHHCE, AFSCME, AFL-CIO, filed a representation petition pursuant to Section 9(c) of the National Labor Relations Act. As there were no issues raised which would preclude an election in this matter, I will direct an election in the appropriate unit described below.

Pursuant to Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding,¹ the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

¹ Briefs filed by the parties have been considered.

2. The Employer is engaged in commerce within the meaning of Sections 2(2), (6), and (7) of the Act, and has been a health care institution within the meaning of Section 2(14) of the Act. It will therefore, effectuate the purposes of the Act to assert jurisdiction herein.²

3. The labor organization involved claims to represent certain employees of the Employer.³

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.⁴

5. The appropriate unit for the purpose of collective bargaining within the meaning of Section 9(b) of the Act is as follows:

All full-time and regular part-time Patient Service Technicians in Patient Service Centers, Patient Service Technicians in individual offices, and Patient Center Site Coordinators employed by the Employer in multiple facilities in the counties of Bergen, Sussex, Passaic, Essex, Union, Morris, Hudson and Upper Warren, New Jersey, but excluding all managerial employees, office clerical employees, Patient Service Technicians at the Phillipsburg, New Jersey Patient Service Center, supervisory Team Leads, professional employees, guards and supervisors as defined in the Act, and all other employees.

² The parties have stipulated and I find that the Employer, Laboratory Corporation of America Holdings, a Delaware corporation, is a healthcare institution engaged in the business of providing medical diagnostic testing at its 69 First Avenue, Reardon, New Jersey facility, with multiple facilities located throughout New Jersey, including the counties of Bergen, Sussex, Passaic, Essex, Union, Morris, Hudson, and Upper Warren, the only facilities involved herein. During the preceding 12 months, the Employer, in the course and conduct of its business operations, derived gross revenue in excess of \$250,000 from the sale of its goods and provision of its services. During the same period, the Employer purchased and caused to be delivered to its facilities in the counties of Bergen, Sussex, Passaic, Essex, Union, Morris, Hudson and Upper Warren, New Jersey food and supplies valued in excess of \$5,000 directly from suppliers located outside the State of New Jersey.

³ The parties stipulated, and I find, that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act.

⁴ The record reveals that there is no contract or other bar to an election in this matter.

THE EMPLOYER'S MOTION TO DISMISS

At the hearing, the Employer moved to dismiss the proceeding in light of the decision in *Noel Canning v. NLRB*, ---F.3d---, 2013 WL 276024. (D.C. Cir. January 25, 2013), contending that the "intrasession" recess appointments of NLRB members Sharon Block and Richard Griffin, and former NLRB member Terence Flynn were unconstitutional, thereby invalidating all actions by the Board. I deny the Employer's Motion for the following reasons.

In response to the *Noel Canning* decision, NLRB Chairman Mark Gaston Pearce issued the following statement:

The Board respectfully disagrees with today's decision and believes that the President's position in the matter will ultimately be upheld. It should be noted that this order applies to only one specific case, *Noel Canning*, and that similar questions have been raised in more than a dozen cases pending in other courts of appeals.

In the meantime, the Board has important work to do. The parties who come to us seek and expect careful consideration and resolution of their cases, and for that reason, we will continue to perform our statutory duties and issue decisions.

News Release, Statement by Chairman Pearce on Recess Appointment ruling, <http://www.nlr.gov/news/statement-chariman-pearce-recess-appointment-ruling>. (January 25, 2013).

In accordance with Chairman Pearce's statement, I strongly disagree that the Board lacks a quorum or that it is unable to perform its functions. Furthermore, litigation concerning the validity of the President's recess appointments to the Board continues to percolate, and I do not believe matters pending before the Agency should be delayed indefinitely while that litigation runs its course. Finally, there is a strong public interest in addressing representation disputes as soon as possible that are of concern to employees and

employers alike. Most representation disputes have long been resolved administratively without the necessity of court litigation. And even where, as here, there is a challenge to the authority of the Board to act, our experience in continuing to process cases during the analogous dispute leading to *New Process Steel, L.P. v. NLRB*, 130 S.Ct. 2635, 2638 (2010), was that most of the cases decided during that time helped finally resolve labor disputes because the parties either accepted the Board's decision or settled the dispute. Accordingly, I am denying the Employer's motion.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently.⁵ Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation or temporarily laid off. Employees engaged in an economic strike who have retained their status as strikers and have not been permanently replaced are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike that have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are (1) employees who have quit or have been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have

⁵ The parties disputed whether the election should be conducted by mail or manual balloting. This issue will be resolved by the Region administratively with notification sent to the parties under separate cover.

not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced. Those eligible to vote shall vote whether or not they desire to be represented for collective bargaining purposes by **DISTRICT 1199J, NUHHCE, AFSCME, AFL-CIO.**

LIST OF VOTERS

In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties in the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within seven (7) days of the date of this Decision, two (2) copies of an election eligibility list for the voting groups found appropriate above, containing the full names and addresses of all the eligible voters in each voting group, shall be filed by the Employer with the undersigned, who shall make the list available to all parties to the election. *North Macon Health Care Facility*, 315 NLRB 359 (1994). In order to be timely filed, such list must be received in the NLRB Region 22 office located at 20 Washington Place, 5th Floor, Newark, New Jersey 07102, on or before **March 5, 2013**. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

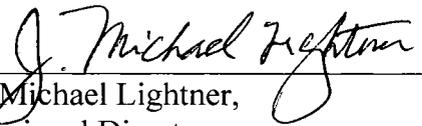
RIGHT TO REQUEST REVIEW:

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. The Board in Washington must receive this request by **March 12, 2013**.

In the Regional Office's initial correspondence, the parties were advised that the National Labor Relations Board has expanded the list of permissible documents that may be electronically filed with its offices. If a party wishes to file one of the documents which may now be filed electronically, please refer to the Attachment supplied with the Regional Office's initial correspondence for guidance in doing so. Guidance for E-filing can also be found on the National Labor Relations Board web site at www.nlr.gov. On the home page of the website, select the E-Gov tab and click on E-Filing. Then select the NLRB office for which you wish to E-File your documents. Detailed E-filing instructions explaining how to file the documents electronically will be displayed.

Signed at Newark, New Jersey this 26th day of February, 2013.

/s/ J. Michael Lightner



J. Michael Lightner,
Regional Director

NLRB Region 22

Veterans Administration Building

20 Washington Place, 5th Floor

Newark, New Jersey 07102

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AFFIDAVIT OF SERVICE OF: Decision and Direction of Election, dated February 26, 2013.

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on February 26, 2013, I served the above-entitled document(s) by **regular mail** upon the following persons, addressed to them at the following addresses:

ARNOLD SHEP COHEN, ESQ.
OXFELD COHEN, P.C.
60 PARK PLACE, 6TH FLOOR
NEWARK, NJ 07102-5511

LABCORP LABORATORY
CORPORATION OF AMERICA
69 1ST AVE
RARITAN, NJ 08869-1800

DISTRICT 1199J, NUHHCE,
AFSCME, AFL-CIO
9-25 ALLING ST
NEWARK, NJ 07102-5376

DOREEN DAVIS, ESQ.
JONES DAY
222 EAST 41ST STREET
NEW YORK, NY 10017-6727

February 26, 2013

Date

Designated Agent of NLRB

Name



Signature