UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SAN FRANCISCO DIVISION OF JUDGES

UHS-CORONA, INC. d/b/a CORONA REGIONAL MEDICAL CENTER, Employer

and **Case No. 21-RC-094258**

UNITED NURSES ASSOCIATIONS OF CALIFORNIA/UNION OF HEALTH CARE PROFESSIONALS, NUHHCE, AFSCME, AFL-CIO, Petitioner

ORDER DENYING PETITION TO REVOKE SUBPOENA A-963225

On December 5, 2012, United Nurses Associations of California/Union of Health Care Professionals, NUHHCE, AFSCME, AFL-CIO (the Petitioner)[1] filed a petition for representation of a unit of nursing employees at UHS-Corona, Inc. d/b/a Corona Regional Medical Center (the Employer). The election was conducted on January 3 and 4, 2013.[2] The tally of ballots showed that of approximately 306 eligible voters, 155 cast ballots for and 116 against the Petitioner. The Employer timely filed objections to the election. On February 8, the Regional Director for Region 21 of the NLRB issued a Report on Objections and Order Directing Hearing (the Report). Hearing in this matter commenced on March 25 and adjourned indefinitely on April 2 pending subpoena enforcement proceedings in federal court.

In the meantime, on April 2 the Employer petitioned to revoke subpoena ad testificandum A-963225 served by the Petitioner on Kevan Metcalfe, CEO of the Employer, on March 25. As grounds, the Employer asserts attorney-client privilege, third-party privacy rights, lack of specificity in the hearing date, burdensomeness, relevance, and harassment. None of these grounds warrants quashing the subpoena. Any issues of attorney-client privilege, third-party privacy rights, or relevance are more appropriately addressed to specific questions propounded to this witness at the hearing. Burdensomeness and harassment is more appropriately addressed between the parties in order that they might reach stipulations which would obviate the necessity of calling Mr. Metcalfe. The hearing date specified on the subpoena is March 25 or any adjourned or rescheduled date. I find that this is sufficiently specific and I will rely on the parties to make Mr. Metcalfe aware of the exact date and time of his testimony.

The Employer also asserts that the Board lacks jurisdiction in this matter pursuant to *Noel Canning v. NLRB,* 705 F.3d 490 (DC Cir. 2013), holding, inter alia, that the President's recess appointments to the NLRB were not valid. However, as the panel of the D. C. Circuit acknowledged, their decision is in conflict with at least three other courts of appeals. *See Evans v. Stephens,* 387 F.2d 1220 (11th Cir. 2004), cert. denied, 544 U.S. 942 (2005); *U.S. v. Woodley,* 751 F.2d 1008 (9th Cir. 1985); *U.S. v. Allocco,* 305 F.2d 704 (2d Cir. 1962). This

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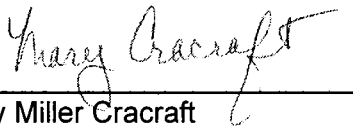
[1] The name of the Petitioner appears as agreed upon at the hearing.
[2] All further dates are in 2013 unless otherwise referenced.

question remains in litigation[3] and until it is ultimately resolved, the Board is charged to fulfill its responsibilities under the Act.

Having fully considered the Employer's petition to revoke subpoena ad testificandum A-963225, it is hereby denied.

SO ORDERED

Dated: April 8, 2013
San Francisco, CA



Mary Miller Cracraft
Administrative Law Judge

Served by facsimile:

Jonathan A. Siegel	949.885.1380
Richa Amar	909.599.8655
Ryan Spillars	323.937.9139
Bruce Hill	213.894.2778

[3] In a news release dated May 12, the NLRB announced that after consultation with the Department of Justice regarding the D.C. Circuit panel decision in *Noel Canning*, the NLRB intends to seek certiorari with the United States Supreme Court before the April 25 deadline. See also, *Big Ridge, Inc. v. NLRB,* Nos. 12-1320, 12-3258 pending in the Seventh Circuit; *NLRB v. Enterprise Leasing Company, Southeast,* No. 12-1514 pending in the Fourth Circuit; *NLRB v. New Vista Nursing and Rehabilitation,* Nos. 11-3440, 12-1027, and 12-1936 pending in the Third Circuit.

NLRB-SAN FRANCISCO

JOB #485

	DATE	TIME	TO/FROM	MODE	MIN/SEC	PGS	STATUS
001	4/08	13:32	919498851380	EC--S	00' 22"	002	OK
002		13:33	919095998655	EC--S	00' 24"	002	OK
003		13:34	913239379139	EC--S	01' 18"	002	OK
004		13:36	912138942778	EC--S	00' 26"	002	OK

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