

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

RENAISSANCE HEALTHCARE
AND REHABILITATION LLC

Employer

and

Case 04-RC-104818

DISTRICT 1199C, NATIONAL UNION OF
HOSPITAL AND HEALTH CARE
EMPLOYEES, AFSCME, AFL-CIO

Petitioner

REPORT AND RECOMMENDATION ON OBJECTIONS TO ELECTION

Pursuant to a Stipulated Election Agreement approved by the undersigned Regional Director on May 21, 2013, an election by secret ballot was conducted on June 19, 2013, in the unit set forth in paragraph 5 of the Agreement. The Tally of Ballots, copies of which were made available to the parties at the conclusion of the election, showed the following results:

Approximate number of eligible voters.....	63
Void Ballots.....	1
Votes cast for Petitioner	33
Votes cast against participating labor organizations	19
Valid votes counted	52
Challenged Ballots	0
Valid votes counted plus challenged ballots	52

On June 25, 2013, the Employer timely filed Objections to the election. A copy of the Employer's Objections is appended as Attachment A.

Pursuant to Paragraph 12 of the Agreement and Section 102.69 of the Board's Rules and Regulations, I have considered the Objections and report as follows:

The Employer objects to the election based primarily on *Noel Canning v. NLRB*, 705 F.3d 490 (D.C. Cir. 2013) (petition for certiorari granted June 24, 2013), arguing that under that decision, the President's January 4, 2012 recess appointments to the Board were invalid.

It is not appropriate for the Board, or the Board's appointed agents, to suspend its activities in response to a claim that Presidential appointments to the Board are not valid. On

April 25, 2013, the Board filed a petition for certiorari with the United States Supreme Court seeking review of the D. C. Circuit's decision and on June 24, 2013 the Supreme Court granted the Board's petition. Furthermore, in *Belgrove Post Acute Care Center*, 359 NLRB No. 77, slip op. 1, fn.1 (Mar. 13, 2013), the Board took note that in *Noel Canning*, the D.C. Circuit Court itself recognized that its conclusions concerning the Presidential appointments had been rejected by the other circuit courts to address the issues. Compare *Noel Canning v. NLRB*, Nos. 12-1115, 12-1153, 2013 WL 276024, at *14-15, 19 (D.C. Cir. Jan. 25, 2013) with *Evans v. Stephens*, 387 F.3d 1220, 1226 (11th Cir. 2004) (en banc); *United States v. Woodley*, 751 F.2d 1008, 1012-13 (9th Cir. 1985) (en banc); *United States v. Allocco*, 305 F.2d 704, 709-15 (2d Cir. 1962). Thus in *Belgrove*, the Board concluded that because the "question [of the validity of the recess appointments] remains in litigation," until such time as it is ultimately resolved, "the Board is charged to fulfill its responsibilities under the Act."¹ This conclusion is equally applicable to the Board's appointment of me, and I reject Respondent's claim that my approval of the stipulation was invalid. See *STG Int'l Inc.*, Board Case 21-RC-097525, 2013 WL 1786666 (April 25, 2013).

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 (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.

RECOMMENDATION

Based on the foregoing, I recommend that the Objections be overruled and that Certification of Representative issue forthwith.²

¹ The Third Circuit's decision in *NLRB v. New Vista Nursing and Rehabilitation*, -- F.3d --, 2013 WL 2099742 (3d Cir. May 16, 2013), should not change this result. As noted above, there still remains a split in the circuits regarding the validity of intrasession recess appointments.

² Pursuant to the provisions of Section 102.69 of the National Labor Relations Board's Rules and Regulations, Series 8, as amended, exceptions to this Report may be filed with the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, DC 20570-0001.

Pursuant to the Board's Rules and Regulations, Sections 102.111 – 102.114, concerning the Service and Filing of Papers, the exceptions must be received by the Executive Secretary of the Board in Washington, DC by the close of business on **July 15, 2013**, at 5:00 p.m. (ET), unless filed electronically. **Consistent with the Agency's E-Government initiative, parties are encouraged to file a request for review electronically.** If the exceptions are filed electronically, the exception will be considered timely if the transmission of the entire document through the Agency's website is **accomplished by no later than 11:59 p.m. Eastern Time** on the due date. Please be advised that Section 102.114 of the Board's Rules and Regulations precludes acceptance of exceptions by facsimile transmission. Upon good cause shown, the Board may grant special permission for longer period within which to file. A copy of the exceptions must be served on each of the other parties to the proceeding, as well as on the undersigned, in accordance with the requirements of the Board's Rules and Regulations.

Dated at Philadelphia, Pennsylvania this 1st day of July, 2013.

/s/ Dennis P. Walsh

DENNIS P. WALSH

Regional Director, Fourth Region
National Labor Relations Board

A request for extension of time, which may also be filed electronically, should be submitted to the Executive Secretary in Washington, and a copy of such request for extension of time should be submitted to the Regional Director and to each of the other parties to this proceeding. A request for an extension of time must include a statement that a copy has been served on the Regional Director and on each of the other parties to this proceeding in the same manner or a faster manner as that utilized in filing the request with the Board.

Filing exceptions electronically may be accomplished by using the E-filing system on the Agency's website at www.nlr.gov. Once the website is accessed, click on File Case Documents, enter the NLRB Case Number, and follow the detailed instruction. The responsibility for the receipt of the exceptions rests exclusively with the sender. A failure to timely file the exceptions will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off line or unavailable for some other reason, absent a determination of technical failure of the site, with notice of such posted on the website.

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Petitioner

Case 4-RC-104818

Date of Mailing: July 1, 2013

**AFFIDAVIT OF SERVICE OF: REPORT AND RECOMMENDATION
ON OBJECTIONS TO ELECTION**

I, the undersigned employee of the National Labor Relations Board, being duly sworn, depose and say that on the date indicated above I served the above-entitled document by post-paid first class mail upon the following persons, addressed to them at the following addresses:

JACQUELINE Z SHULMAN, ESQUIRE OBERMAYER REBMAN MAXWELL & HIPPEL, LLP 1 PENN CENTER, 19 TH FLOOR 1617 JOHN F. KENNEDY BOULEVARD PHILADELPHIA, PA 19103-1821	LANCE GEREN, ESQUIRE FREEDMAN AND LORRY, PC 1601 MARKET STREET, 2 ND FLOOR PHILADELPHIA, PA 19103-2302
CARMELLA KANE, ADMINISTRATOR RENAISSANCE HEALTHCARE AND REHABILITATION LLC 4712 CHESTER AVENUE PHILADELPHIA, PA 19143	HENRY NICHOLAS, PRESIDENT NATIONAL UNION OF HOSPITAL & HEALTHCARE EMPLOYEES, DISTRICT 1199C 1319 LOCUST STREET PHILADELPHIA, PA 19107-5405

Subscribed and sworn to before me this 1 st day of July, 2013	Designated Agent /s/ Rita Messina NATIONAL LABOR RELATIONS BOARD
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