

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

MANOR AT ST. LUKE VILLAGE FACILITY
OPERATIONS, LLC d/b/a THE MANOR AT ST.
LUKE VILLAGE and THE PAVILION AT ST.
LUKE VILLAGE FACILITY OPERATIONS LLC
d/b/a THE PAVILION AT ST. LUKE VILLAGE
Employer

and

Case 04-RC-101711

AFSCME, DISTRICT COUNCIL 87
Petitioner

ORDER

The Employer's Request for Review of the Regional Director's Decision and Direction of Election is denied as it raises no substantial issues warranting review.¹ The Employer's request to dismiss or stay this proceeding is also denied.

MARK GASTON PEARCE,	CHAIRMAN
RICHARD F. GRIFFIN, JR.,	MEMBER
SHARON BLOCK,	MEMBER

Dated, Washington, D.C., June 13, 2013.

¹ The Employer contends that the Board does not have a valid quorum under *Noel Canning v. NLRB*, 705 F.3d 490 (D.C. Cir. 2013) and *NLRB v. New Vista Nursing & Rehabilitation*, 2013 WL 2099742, -- F.3d -- (3d Cir. May 16, 2013), and therefore the entirety of the case, from the filing of the petition, was invalid. The Employer further contends that, due to the Board's alleged lack of a quorum, the Regional Director's appointment was invalid, and so the Regional Director's Decision and Direction of Election was likewise invalid. For the reasons stated in *Bloomington's, Inc.*, 359 NLRB No. 113 (2013), these arguments are rejected.

We likewise reject the Employer's related contention that the Regional Director would lack authority to process representation petitions if the Board lacked a quorum. The Board's delegation of its decisional authority in representation cases to Regional Directors dates back to 1961 and has never been withdrawn. See 26 Fed. Reg. 3889 (May 4, 1961). Consistent with the 1961 Delegation, NLRB Regional Directors remain vested with the authority to conduct elections and certify their results, regardless of the Board's composition at any given moment. Furthermore, in *New Process Steel*, the Supreme Court expressly stated that such delegations were not affected by its decision, and, following that decision, no fewer than three courts of appeals have upheld the principle that Board delegations of authority to non-members remain valid during a loss of quorum by the Board. See *New Process Steel L.P. v. NLRB*, 130 S.Ct. 2635, 2643 n.4 (2010); *Frankl v. HTH Corp.*, 650 F.3d 1334, 1354 (9th Cir. 2011); *Osthus v. Whitesell Corp.*, 639 F.3d 841, 844 (8th Cir. 2011); *Overstreet v. El Paso Disposal, LP*, 625 F.3d 844, 853 (5th Cir. 2010).