

**Bluefield Hospital Company, LLC, d/b/a Bluefield Regional Medical Center and National Nurses Organizing Committee, AFL-CIO (NNOC)**

**Greenbrier VMC, LLC, d/b/a Greenbrier Valley Medical Center and National Nurses Organizing Committee, AFL-CIO (NNOC).** Cases 10-CA-093042 and 10-CA-093065

June 20, 2013

ORDER DENYING MOTION  
AND REMANDING

BY CHAIRMAN PEARCE AND MEMBERS GRIFFIN  
AND BLOCK

The Acting General Counsel filed a motion for summary judgment in this proceeding, seeking a finding that the Respondents have violated Section 8(a)(5) and (1) by failing and refusing to bargain with the Union as the certified exclusive collective-bargaining representative of their unit employees. On December 21, 2012, the Board issued a Notice to Show Cause why the motion should not be granted. The Respondents filed a response to the Notice to Show Cause, and on the same day, filed a second amended answer to the consolidated complaint, in which they assert a new affirmative defense alleging that the identity of the bargaining representative has changed as a result of an affiliation with another labor organization. Thereafter, the Acting General Counsel filed a motion seeking a partial remand of this proceeding. The Charging Party filed an opposition, and the Respondents filed a reply.

We grant the Acting General Counsel's motion to remand this proceeding to the Region for investigation of the Respondents' affirmative defense relating to the Union's affiliation with another labor organization.<sup>1</sup> If the

<sup>1</sup> Accordingly, we deny the Motion for Summary Judgment.

In their second amended answer to the consolidated complaint, the Respondents contend that the Certification of Representative is invalid and unenforceable inasmuch as it issued when the Board lacked a valid quorum under *Noel Canning v. NLRB*, 705 F.3d 490 (D.C. Cir. 2013), pet. for cert. pending, No. 12-1281 (filed Apr. 25, 2013) and, further,

Region's investigation reveals that genuine issues of material fact exist warranting a hearing, we find that the Respondents are precluded from relitigating at a hearing those matters that were or could have been litigated in the underlying representation proceedings.<sup>2</sup>

Further, if after investigating the union affiliation issue the Regional Director determines that a hearing is not warranted, the Acting General Counsel may file another Motion for Summary Judgment at that time.

ORDER

IT IS ORDERED that the Acting General Counsel's Motion for Summary Judgment is denied without prejudice and these proceedings are remanded to the Regional Director for Region 10 for further appropriate action.

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that the Acting General Counsel and Regional Director thereby lacked the authority to prosecute the consolidated complaint. The Respondents further contend that the Acting General Counsel's appointment was unlawful. Although by remanding this proceeding we are not passing on the merits of the second amended consolidated complaint at this time, we observe that such arguments have been rejected by the Board for the reasons stated in *Bloomingtondale's, Inc.*, 359 NLRB 1010 (2013), and *Post Acute Care Center*, 359 NLRB 621, 621 (2013).

<sup>2</sup> Such matters include the Respondents' contention in their answer that the bargaining units were constituted in violation of Sec. 9(c)(5).

The Respondents' response to the Notice to Show Cause asserts that they entered into an "Election Procedure Agreement" (also described in their answer as an "oral 'ad hoc' agreement") with the Union, which provided that any election objections would be ruled on by a private arbitrator, and that this agreement prevented the Respondents from submitting evidence in support of their election objections to the Region. The Respondents further contend that the Union did not honor its agreement with the Respondents and that its failure to do so prevented the Respondents from litigating their objections in the representation proceeding, despite the Regional Director's initial determination that the objections warranted a hearing. However, the consent election agreement entered into by the Respondents provides that "[t]he method of investigation of objections and challenges, including whether to hold a hearing, shall be determined by the Regional Director, whose decision shall be final" and further provides that "[a]ll rulings and determinations made by the Regional Director will be final, with the same force and effect in that case as if issued by the Board." Therefore, the Respondents have waived their right to have the Board review the Regional Director's actions in the representation proceeding.