

Salem Hospital Corporation a/k/a The Memorial Hospital of Salem County and Health Professionals and Allied Employees (HPAE). Case 04–CA–064458

September 30, 2014

DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS HIROZAWA
AND JOHNSON

On July 31, 2012, the Board issued a Decision and Order in this proceeding, which is reported at 358 NLRB 837. Thereafter, the General Counsel filed an application for enforcement in the United States Court of Appeals for the Third Circuit.

At the time of the Decision and Order, the composition of the Board included two persons whose appointments to the Board had been challenged as constitutionally infirm. On June 26, 2014, the United States Supreme Court issued its decision in *NLRB v. Noel Canning*, 134 S.Ct. 2550 (2014), holding that the challenged appointments to the Board were not valid. Thereafter, the court of appeals vacated the Board's Decision and Order and remanded this case for further proceedings consistent with the Supreme Court's decision.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

In view of the decision of the Supreme Court in *NLRB v. Noel Canning*, supra, we have considered de novo the judge's decision and the record in light of the exceptions and briefs. We have also considered the now-vacated Decision and Order, and we agree with the rationale set forth therein.¹ Accordingly, we affirm the judge's rul-

¹ In finding that the Respondent unlawfully refused to provide the Union with requested information that is relevant and necessary to its role as collective-bargaining representative, we do not rely on *Alcan Rolled Products*, 358 NLRB 37, 40 (2012), or *Essex Valley Visiting Nurses Assn.*, 353 NLRB 1044 (2009), cited by the judge. We rely instead on the other decisions cited by the judge, including *Martin Marietta Energy Systems*, 316 NLRB 868, 868 fn. 6 (1995), as well as *NLRB v. Acme Industrial Co.*, 385 U.S. 432, 437 (1967), and *Detroit Newspaper Agency*, 317 NLRB 1071, 1072 (1995).

In adopting the judge's finding of a violation, Member Johnson does not reach the merits of the Board's decision in *Specialty Healthcare & Rehabilitation Center of Mobile*, 357 NLRB 934 (2011). Rather, for the reasons set forth in the judge's decision, he agrees that the issuance of that case, which on its face has no application to cases, such as this one, involving acute care hospitals, "does not amount to special circumstances warranting a relitigation of representation case issues here." In finding that the requests related to contract personnel were relevant to the bargaining unit, Member Johnson also notes that Union Representative Sandra Lane testified that this request went only to temporary contract personnel working in jobs that would fall within the unit, so that the Union could formulate bargaining proposals to ensure a "work preference" for bargaining unit members over such contract personnel. (Tr. at 20.)

ings, findings, and conclusions and adopt the judge's recommended Order to the extent and for the reasons stated in the Decision and Order reported at 358 NLRB 837, which is incorporated herein by reference.²

APPENDIX

**NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government**

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

- Form, join, or assist a union
- Choose representatives to bargain with us on your behalf
- Act together with other employees for your benefit and protection
- Choose not to engage in any of these protected activities.

WE WILL NOT refuse to bargain collectively with the Union, Health Professionals and Allied Employees (HPAE), by failing and refusing to furnish it with requested information that is relevant and necessary to the Union's performance of its functions as the collective-bargaining representative of our employees in the following bargaining unit:

All full-time, regular part-time and per diem Registered Nurses including Staff Nurses, Case Managers, and Charge Nurses, employed by us at the Memorial Hospital of Salem County located at Woodstown Road, Salem, New Jersey, excluding all other employees, managers, guards and supervisors as defined in the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL furnish the Union with the information it requested on August 15, 2011.

**SALEM HOSPITAL CORPORATION A/K/A THE
MEMORIAL HOSPITAL OF SALEM COUNTY**

The Board's decision can be found at www.nlr.gov/case/04-CA-064458 or by using the QR code below. Alternatively, you can obtain a copy of the

² We shall substitute a new notice in accordance with *Durham School Services*, 360 NLRB 694 (2014).

decision from the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, D.C. 20570, or by calling (202) 273-1940.

