

Dover Hospitality Services, Inc. a/k/a Dover Caterers, Inc. a/k/a Dover College Services, Inc. a/k/a Dover Group of New York a/k/a Dover Group a/k/a Quick Snack Foods, Inc. and Local 1102 of the Retail, Wholesale & Department Store Union, United Food & Commercial Workers Union. Case 29–CA–063398

November 5, 2014

DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS SCHIFFER
AND MISCIMARRA

On May 31, 2013, the Board issued a Decision and Order in this proceeding, which is reported at 359 NLRB 1103. Thereafter, the General Counsel filed an application for enforcement in the United States Court of Appeals for the Second 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 Courts' 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*, we have considered de novo the judge's decision and the record in light of the exceptions and brief. 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 rulings, 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 359 NLRB 1103, which is incorporated herein by reference.²

¹ In adopting the judge's finding that the Respondent unlawfully refused to supply relevant information requested by the Union, we agree that the Respondent had a duty to timely respond to the Union's information request, even if the Respondent had a justification for not ultimately providing the requested information. See *Columbia University*, 298 NLRB 941, 945 (1990) ("[A]n employer must respond to a union's request for relevant information within a reasonable time, either by complying with it or by stating its reason for noncompliance within a reasonable period of time"). We do not, however, rely on *IronTiger Logistics, Inc.*, 359 NLRB 236 (2012), cited by the judge for this proposition. See *NLRB v. Noel Canning*, above.

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

MEMBER MISCIMARRA, concurring.

I concur in this case and agree, for the reasons stated by the judge, that the Respondent violated Section 8(a)(5) and (1) of the Act when it failed and refused to furnish information the Union requested on August 3, 2011. Although the record shows that—13 months after the Union's August 3, 2011 information request—the Respondent provided some of the requested information and told the Union the remainder did not exist, I agree that Respondent's 13-month delay violated the Act in the circumstances presented here.¹ I also agree that the record does not warrant reversing the judge's denial of Respondent's petition to revoke the General Counsel's subpoena.

Although I agree with the judge's decision, I would make two additional observations consistent with my concurrence in a related case involving the same parties. See *Dover Caterers, Inc.*, 361 NLRB 682, 682 (2014) (Member Miscimarra, concurring). First, the Union's requests for financial information potentially implicated confidentiality concerns that, if timely raised, could have warranted bargaining regarding potential ways to accommodate such concerns, see, e.g., *Good Life Beverage Co.*, 312 NLRB 1060 (1993), but the Respondent's failure to timely respond to the Union's requests means that any potential confidentiality defense was not timely raised. Second, to the extent the requested documents encompassed financial information concerning locations other than the two facilities at issue in this case, the requests in this respect may have been overbroad, but here as well, Respondent's failure to timely respond means such a defense was not timely raised. For these reasons, I concur in this matter.

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

¹ See *Endo Painting Service, Inc.*, 360 NLRB 485, 486 (2014) (finding unlawful a 3-month delay in informing the union that the requested information did not exist).

Choose not to engage in any of these protected activities.

WE WILL NOT refuse to bargain collectively with Local 1102 of the Retail, Wholesale & Department Store Union, United Food & Commercial Workers Union by failing to respond in a timely manner to its requests for information or 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 appropriate unit:

All regularly employed kitchen, dining room, bar, cafeteria, kiosk and cart employees employed by us at the Suffolk County Community College Selden Campus and the grill employees employed by us at the Suffolk County Community College Brentwood Campus, excluding, however, all cooks, custodians, university students, casual employees as defined in Article 2, office and clerical employees, supervisors and guards 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 to the Union in a timely manner the information requested by the Union on August 3, 2011.

DOVER HOSPITALITY SERVICES, INC. A/K/A
DOVER CATERERS, INC. A/K/A DOVER COLLEGE
SERVICES, INC. A/K/A DOVER GROUP OF NEW
YORK A/K/A DOVER GROUP A/K/A QUICK
SNACK FOODS, INC.

The Board's decision can be found at <http://www.nlr.gov/case/29-CA-063398> or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, D.C. 20570, or by calling (202) 273-1940.

