

Stamford Plaza Hotel & Conference Center and Stamford Plaza, LP, a joint and/or single employer and United Food and Commercial Workers Union, Local 371. Cases 01–CA–098145 and 34–RC–081443

November 26, 2014

DECISION, CERTIFICATION OF REPRESENTATIVE, AND NOTICE TO SHOW CAUSE

BY CHAIRMAN PEARCE AND MEMBERS HIROZAWA AND SCHIFFER

On May 9, 2013, the Board issued a Decision and Order in this proceeding, which is reported at 359 NLRB No. 119 (not reported in Board volumes). Thereafter, an application for enforcement was filed in the United States Court of Appeals for the District of Columbia 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). Thereafter, the Board issued an order setting aside the Decision and Order, and retained this case on its docket for further action as appropriate.

The National Labor Relations Board has consolidated the underlying representation proceeding with this unfair labor practice proceeding and delegated its authority in both proceedings to a three-member panel.

This is a refusal-to-bargain case in which the Respondent is contesting the Union's certification as bargaining representative in the underlying representation proceeding. The Board's May 9, 2013 decision states that the Respondent is precluded from litigating any representation issues because, in relevant part, they were or could have been litigated in the prior representation proceeding. The prior proceeding, however, also occurred at a time when the composition of the Board included two persons whose appointments to the Board had been challenged as constitutionally infirm, and we do not give it preclusive effect. Accordingly, we consider below the representation issues that the Respondent has raised in this proceeding.

In its response to the Notice to Show Cause, the Respondent states that it "reasserts all of the issues raised in the representation case."¹ In this regard, the Respondent

¹ The Respondent also argues that it should be allowed to challenge the appropriateness of the stipulated unit because the Board had no valid quorum when it issued its decision in *Specialty Healthcare*, 357 NLRB 934 (2011), and therefore the certified unit is improper. We reject this argument. First, the Respondent offers no justification for its

filed three objections to the election in Case 34–RC–081443. In Objection 1, the Respondent alleges that there were "threats of, and actual, violence that created an atmosphere of intimidation and actually intimidated voters who wanted to vote against the Petitioner." Objection 2 alleges that "the election was affected by having the election held where there was pending a "Type II Unfair Labor Practice Charge." Objection 3 refers to "all issues raised in the representation hearing." On July 13, 2012, the Regional Director issued his Report on Objections in which he recommended that all of the Respondent's objections be overruled. On July 18, 2012, the Respondent filed exceptions to the Regional Director's Report on Objections which addressed only Objection 1.

In view of the decision of the Supreme Court in *NLRB v. Noel Canning*, supra, we have considered de novo the Respondent's objections to the election held June 22, 2012, and the Regional Director's report recommending disposition of them. The election was conducted pursuant to a Stipulated Election Agreement. The tally of ballots shows 5 votes for and 1 against the Petitioner, with no challenged ballots.

The Board has reviewed the record in light of the exceptions and briefs, and has adopted the Regional Director's findings and recommendations,² and finds that a certification of representative should be issued.

CERTIFICATION OF REPRESENTATIVE

IT IS CERTIFIED that a majority of the valid ballots have been cast for United Food and Commercial Workers International Union, Local 371, and that it is the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full time and regular part time banquet housemen employed by Stamford Hospitality, LP d/b/a Stamford Plaza Hotel and Conference Center, LP and Stamford Plaza, LP, joint employers, at the Stamford, Connecticut facility; but excluding office clerical employees, all other employees, and guards, professional employees and supervisors as defined in the Act.

failure to assert this argument in a timely fashion prior to the election. Rather, the Respondent entered into a Stipulated Election Agreement in this case in which it waived the right to a hearing and expressly agreed to the conduct of a secret ballot election. See *ManorCare of Kingston, PA, LLC*, 361 NLRB 186, 186 fn. 1 (2014). In any event, the Board issued its *Specialty Healthcare* decision on August 26, 2011, a time when the Board unquestionably had a quorum. See *NLRB v. Noel Canning*, supra; see also *Matthew Enterprise, Inc. d/b/a Stevens Creek Chrysler Jeep Dodge v. NLRB*, No. 11–1310 (D.C. Cir., Nov. 7, 2014) (finding Member Becker's recess appointment constitutional under *Noel Canning*).

² In the absence of exceptions, we adopt pro forma the Regional Director's recommendation to overrule the Respondent's Objections 2 and 3.

NOTICE TO SHOW CAUSE

As noted above, the Respondent has refused to bargain for the purpose of testing the validity of the certification of representative in the U.S. Courts of Appeals. Although Respondent's legal position may remain unchanged, it is possible that the Respondent has or intends to commence bargaining at this time. It is also possible that other events may have occurred during the pendency of this litigation that the parties may wish to bring to our attention.

Having duly considered the matter,

1. The General Counsel is granted leave to amend the complaint on or before December 8, 2014, to conform with the current state of the evidence.

2. The Respondent's answer to the amended complaint is due on or before December 22, 2014.

3. NOTICE IS HEREBY GIVEN that cause be shown, in writing, on or before January 12, 2015 (with affidavit of service on the parties to this proceeding), as to why the Board should not grant the General Counsel's motion for summary judgment. Any briefs or statements in support of the motion shall be filed by the same date.