

**Heartland-Plymouth Court MI, LLC d/b/a Heartland
Health Care Center-Plymouth Court and SEIU
Healthcare Michigan. Case 07-CA-070626**

January 29, 2015

DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS HIROZAWA
AND MCFERRAN

On July 15, 2013, the Board issued a Decision and Order in this proceeding, which is reported at 359 NLRB 1518. Thereafter, the Respondent filed a petition for review 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, holding that the challenged appointments to the Board were not valid. 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 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 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 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 1518, which is incorporated herein by reference.²

¹ We agree with the judge that deferral to the arbitral award is not appropriate in this case under the standard articulated in *Spielberg Mfg. Co.*, 112 NLRB 1080 (1955), and *Olin Corp.*, 268 NLRB 573 (1984). We do not apply our current deferral standard here because this case was pending as of the date we prospectively adopted that standard. See *Babcock & Wilcox Construction Co.*, 361 NLRB 1127, 1139-1140 (2014).

² In affirming the remedial provisions regarding adverse tax consequences and Social Security reporting requirements in the Decision and Order, we rely on *Don Chavas, LLC d/b/a Tortillas Don Chavas*, 361 NLRB 101 (2014). We shall also substitute a new notice in accordance with our decision in *Durham School Services*, 360 NLRB 694 (2014).

We also correct a typographical error in the judge's recommended Order as appended to the Decision and Order. Par. 1(a) is corrected to read: "Failing to provide the Union with prior notice and an opportunity to bargain over the effects of its decision to reduce the hours of full-time employees in the dietary department starting in about September 2011." 359 NLRB 1518, 1525 (2013).

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 fail or refuse to provide SEIU Healthcare Michigan (the Union) with prior notice and an opportunity to bargain over the effects of our decision to reduce the scheduled hours of full-time employees in the dietary department.

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 pay Khadijah Anderson, Clondia Finley, Eartha Finley, Laura Gonzalez, Dion Luckett, Stacey Miller, John Ross, Felicia Slater, Angela Valentez, and Joanne Wood the difference between their regular weekly wages and their weekly wages after the September 2011 reduction in their scheduled hours for at least a 2-week period, with interest.

WE WILL on request, bargain collectively with the Union as the exclusive representative of the employees in the following appropriate unit concerning the effects of our decision to reduce the scheduled hours of dietary department employees in September 2011.

All full-time and regular part-time nurses aides, house-keeping employees, dietary employees, laundry employees, maintenance employees, and cooks employed by Respondent at its facility located at 105 Haggerty Road, Plymouth, Michigan; but excluding registered nurses, licensed practical nurses, administrators, office clerical employees, guards and supervisors as defined in the Act, and all other employees.

HEARTLAND-PLYMOUTH COURT MI, LLC D/B/A
HEARTLAND HEALTH CARE CENTER-
PLYMOUTH COURT

The Board's decision can be found at www.nlr.gov/case/07-CA-070626 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.

