UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

SOUTHERN OCEAN MEDICAL CENTER, JERSEY SHORE UNIVERSITY MEDICAL CENTER, PALISADES MEDICAL CENTER, AND THE HARBORAGE, A DIVISION OF HMH HOSPITALS CORP.

and **Cases 22-CA-223734**
22-CA-223942

HEALTH PROFESSIONALS AND ALLIED EMPLOYEES

ORDER[1]

Respondent HMH Hospitals Corp.'s motion for partial summary judgment or partial dismissal is denied. The Respondent has failed to establish that there are no genuine issues of material fact warranting a hearing and that it is entitled to judgment as a matter of law.

Dated, Washington, D.C., January 9, 2020.

MARVIN E. KAPLAN, MEMBER

WILLIAM J. EMANUEL, MEMBER

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[1] Chairman Ring, who is recused, is a member of the panel but did not participate in this decision on the merits.

In *New Process Steel v. NLRB*, 130 S.Ct. 2635 (2010), the Supreme Court left undisturbed the Board's practice of deciding cases with a two-member quorum when one of the panel members has recused himself. Under the Court's reading of the Act, "the group quorum provision [of Sec. 3(b)] still operates to allow any panel to issue a decision by only two members if one member is disqualified," *New Process Steel*, 130 S.Ct. at 2644. See also , e.g., *D.R. Horton*, 357 NLRB 2277, 2277 n. 1 (2012), enfd. in relevant part, 737 F.3d 344, 353 (5th Cir. 2013); *NLRB v. New Vista Nursing and Rehabilitation*, 870 F.3d 113, 127-128 (3d Cir. 2017); *1621 Route 22 West Operating Company*, 357 NLRB 1866, 1866 n. 1 (2011), enfd. 725 Fed. Appx. 129, 136 n. 7 (3d Cir. 2018).