

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

SPECIALTY HOSPITAL OF WASHINGTON -  
HADLEY

Petitioner

and

1199 SEIU, UNITED HEALTHCARE WORKERS  
EAST, MD/DC DIVISION

Union

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Case No. 5-CA-33522

**CHARGING PARTY'S OPPOSITION TO RESPONDENT'S MOTION FOR  
RECONSIDERATION AND MOTION TO STAY**

By order dated November 25, 2008, National Labor Relations Board Chairman Schaumber and Member Liebman denied Respondent's Motion for Summary Judgment and, by the same order, remanded this case to the Regional Director of Region Five for scheduling of a hearing on certain disputed issues of material fact. On December 19, 2008, Respondent filed a Motion for Reconsideration and Motion for Stay of this Order.

In the instant Motion, Respondent argues that Section 3 of the National Labor Relations Act ("Act") "requires that the Board have at least three Board members to properly issue decisions." And, Respondent contends that the Board's Order therefore, "was not issued by a properly constituted quorum of Board members."

Respondent's contention is however, without merit. Section 3 does not require the Board to have three members to properly issue decisions. Section 3 of the Act provides that the Board can form a "group" that can exercise all of the Board's powers, so long as it has a quorum of two members. See, DOJ Memorandum on NLRB Quorum Requirement issued March 4, 2003. And, as the Board indicated in its Order, that is

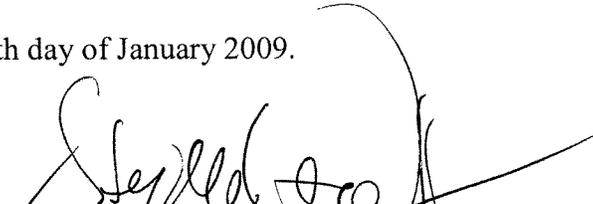
precisely how the Board has exercised its powers in the present instance. Order Denying Motion at fn 1, also see, e.g. Extendicare Homes, Inc. d/b/a Bon Harbor Nursing & Rehabilitation Center, 345 NLRB No. 55 (2004).

In its Motion for Reconsideration, Respondent also points out that in its Order the Board concluded that Respondent had raised a “successorship issue of first impression” in its Motion for Summary Judgment. Respondent contends that the Order, denying Respondent’s Motion for Summary Judgment and remanding to Region Five, is “contrary to the Board’s long standing policy of not overruling or creating new precedent when there are less than four members.”

But, this contention, too, is baseless. In its Order, the Board neither overruled nor created new precedent with respect to the issue of successorship. Indeed, the Board took pains to advise the parties that “we take no position on the resolution of the novel successorship question.”

All that the Board has done is to require a preliminary resolution of disputed issues of fact, which could either “moot the successorship question” or establish a record which ripens that question for decision. And, for the imposition of such a requirement, the Board certainly has more than ample precedent.

Respectfully submitted this 5th day of January 2009.



Stephen W. Godoff  
Counsel to Local 2094, N99  
Metropolitan District DC, NUHHCE,  
AFSCME

**CERTIFICATE OF SERVICE**

I, Stephen W. Godoff, hereby certify that on this 5<sup>th</sup> day of January 2009, a copy of Charging Party's Opposition to Respondent's Motion for Reconsideration and Motion for Stay, NLRB Case No. 5-CA-33522, was sent, via the Board's e-filing system, to:

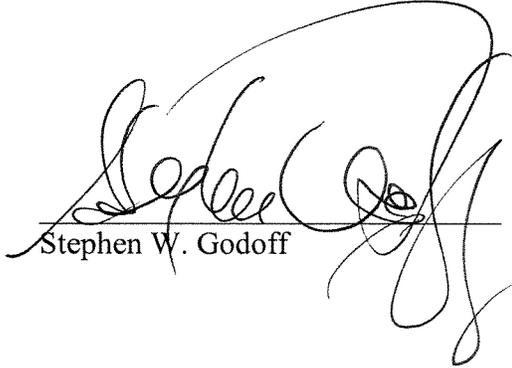
Lester A. Heltzer  
Executive Secretary  
National Labor Relations Board  
1099 14<sup>th</sup> Street, N.W.  
Washington, DC 20570-0001

and, by overnight delivery, to:

Wayne R. Gold, Esq.  
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and,

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