

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 5

SPECIALTY HOSPITAL OF WASHINGTON –
HADLEY, LLC

and

Case 5-CA-33522

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

**COUNSEL FOR THE GENERAL COUNSEL'S
OPPOSITION TO RESPONDENT'S MOTION TO VACATE**

On July 13, 2010,¹ Respondent filed a motion with the National Labor Relations Board (“the Board”), seeking to vacate the decisions and orders it had previously issued in this matter along with the decision of Administrative Law Judge Eric Fine, as well as the Board’s Order in Case 5-RM-1019, denying the Employer’s request for review of the Acting Regional Director’s administrative dismissal of the petition. Respondent contends that the Board is required to vacate all these prior administrative actions by operation of the Supreme Court’s decision in *New Process Steel v. NLRB*. Respondent asserts that that the two-member Board was without legal authority to deny its prior motion for summary judgment and its subsequent motions for reconsideration, and therefore the hearing was held improperly and Judge Fine’s consequent decision must be vacated. Counsel for the General Counsel opposes Respondent’s motion.

¹ Respondent’s motion is mistakenly dated July 13, 2009, with a certificate of service also mistakenly dated on the same date. Counsel for the General Counsel stipulates that Respondent’s motion was filed and served on July 13, 2010.

Respondent cites no authority for its position because no such authority exists.

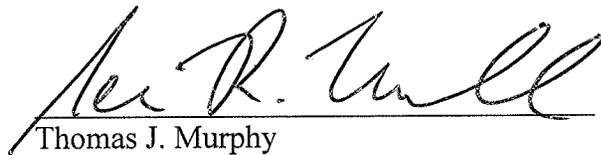
Respondent was in no way prejudiced or denied due process by the Board's orders. The complaint in this case was validly issued and set a hearing date—facts that Respondent does not dispute, nor challenge the propriety of. In order to avoid that hearing, Respondent moved for summary judgment, asking the Board to decide the case on certain uncontested facts. The Board declined, concluding the General Counsel's theory of a violation was an issue of first impression, and, in order to decide that issue, the Board had to decide the appropriateness of the unit, which required a hearing and the development of a factual record. The Board further granted Respondent the right to renew its argument to the Administrative Law Judge and to the Board on exceptions, without prejudice. Finally, in noting the history of Respondent's motions to the Board, Judge Fine stated that he conducted the hearing based on his own views as a judge as to what was appropriate as if no motion for summary judgment had been filed. *Specialty Hospital of Washington—Hadley, LLC*, 2009 WL 2767339 at slip op. 3-5 (NLRB Div. of Judges, August 26, 2009)(describing procedural history). Thus, it is clear that the orders issued by the two-member Board in the above-captioned matter had no effect on how the hearing was conducted, nor has Respondent been prejudiced in any meaningful way or denied due process.

As for Case 5-RM-1019, Respondent is similarly not prejudiced. A two-member Board denied Respondent's request for review of the Acting Regional Director's administrative dismissal of Respondent's RM petition. The administrative dismissal was based upon the pendency of the complaint in the above-captioned matter. The Acting Regional Director concluded that Respondent's RM petition did not involve an initial demand for recognition in a heretofore unrepresented bargaining unit—the same conclusion that the Region reached in rejecting a defense of Respondent's in the above-captioned matter. Rather, the Acting Regional

Director concluded that the matter involved an incumbent union representative of Respondent's employees that Respondent was unlawfully failing to recognize—the same theory involved in the instant case. However, the Acting Regional Director indicated that, upon final disposition of the above-captioned case, Respondent's RM petition would be subject to reinstatement, upon application by Respondent. With the administrative actions regarding the RM petition so dependent on the above-captioned matter, Petitioner has not been prejudiced or denied due process by the two-member Board affirmation of the Acting Regional Director's dismissal of the RM petition. Indeed, at the very most, even were the Board's Order denying review deemed improper, the result would be that the request for review would remain pending. Inasmuch as the pendency or even the grant of a request for review does not stay the effectiveness of a regional director's action, absent specific direction from the Board (see Sec. 102.67 (b) and (g) of the Board's Rules), Respondent again has not been prejudiced in any meaningful way or denied due process.

Accordingly, Counsel for the General Counsel maintains that, for the reasons stated above, Respondent's Motion to Vacate should be denied.

Dated at Baltimore, MD this 23rd day of July, 2010.



Thomas J. Murphy
Sean R. Marshall
Counsel for the General Counsel
Region 5
103 South Gay Street—8th Floor
Baltimore, Maryland 21202