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The New York Presbyterian Hospital *and* New York State Nurses Association. Case 2–CA–38512

August 26, 2010

DECISION AND ORDER

BY CHAIRMAN LIEBMAN AND MEMBERS SCHAUMBER AND HAYES

On April 29, 2009, the two sitting members of the Board issued a Decision and Order in this proceeding, which is reported at 354 NLRB No. 5.[1] Thereafter, the Respondent filed a petition for review in the United States Court of Appeals for the District of Columbia Circuit, and the General Counsel filed a cross-application for enforcement. On June 17, 2010, the United States Supreme Court issued its decision in *New Process Steel, L.P. v. NLRB*, 130 S. Ct. 2635, holding that under Section 3(b) of the Act, in order to exercise the delegated authority of the Board, a delegee group of at least three members must be maintained. Thereafter, the Board issued an order setting aside the above-referenced 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.[2]

The Board has considered the judge's decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions and to adopt the recommended Order to the extent and for the reasons stated in the decision reported at 354 NLRB No. 5, which has been set aside and which is incorporated herein by reference.[3]

Dated, Washington, D.C. August 26, 2010

Wilma B. Liebman, Chairman

Peter C. Schaumber, Member

Brian E. Hayes, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

[1] Effective midnight December 28, 2007, Members Liebman, Schaumber, Kirsanow, and Walsh delegated to Members Liebman, Schaumber, and Kirsanow, as a three-member group, all of the powers of the National Labor Relations Board in anticipation of the expiration of the terms of Members Kirsanow and Walsh on December 31, 2007. Thereafter, pursuant to this delegation, the two sitting members issued decisions and orders in unfair labor practice and representation cases.

[2] Consistent with the Board's general practice in cases remanded from the courts of appeals, and for reasons of administrative economy, the panel includes the members who participated in the original decision. Furthermore, under the Board's standard procedures applicable to all cases assigned to a panel, the Board Members not assigned to the panel had the opportunity to participate in the adjudication of this case at any time up to the issuance of this decision.

[3] Member Hayes agrees with view expressed by Member Schaumber in 354 NLRB No. 5 at slip op. 1 fn.3 that, contrary to extant Board precedent, 8(a)(5) allegations of a failure to provide requested information should be deferrable in appropriate circumstances to the parties' voluntary grievance/arbitration procedures. However, deferral would in any event be inappropriate in this case because an arbitrator has already ruled against the Union's subpoena demand for information.

In affirming the finding that the Respondent violated Sec. 8(a)(5) by failing to provide nonunit information requested by the Union, Member Hayes also notes his agreement with Member Schaumber that, contrary to extant Board precedent, a requesting union should have the contemporaneous obligation to notify an employer of the objective facts supporting a good-faith belief that the requested nonunit information is relevant. See *Hertz Corp. v. NLRB,* 105 F.3d 868, 874 (1997). In the present case, communications between the Union and Respondent about the Union's grievance were sufficient to convey the Union's objective basis for its request.