

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

SPECIALTY HOSPITAL OF WASHINGTON
---HADLEY, L.L.C.

and

Case 5-CA-33522

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

**COUNSEL FOR THE GENERAL COUNSEL'S OPPOSITION
TO RESPONDENT'S SECOND MOTION FOR RECONSIDERATION
AND MOTION TO STAY**

On December 3, 2007, Respondent filed a Motion for Summary Judgment . By an unpublished Order dated November 25, 2008, the Board denied Respondent's Motion for Summary Judgment and remanded the case for a hearing before an administrative law judge. On December 19, 2008, Respondent filed with the Board a Motion for Reconsideration. By unpublished Order, the Board, on January 26, 2009, denied Respondent's Motion for Reconsideration and Motion to Stay Hearing. Now on the eve of trial set for May 12, 2009, Respondent files a Second Motion for Reconsideration and Motion to Stay.

In its Motion, Respondent contends that the D.C. Circuit's recent decision in *Laurel Baye Healthcare of Lake Lanier, Inc., v. NLRB*, No. 08-1162 (D.C. Cir. May 1, 2009) warrants that the previous Board Orders be vacated and stay all proceedings until a properly constituted quorum has reviewed the matter.

Contrary to Respondent's Motion, the Board's actions were procedurally appropriate and well within its powers. The denials of Respondent's Motion for Summary

Judgment and its Motion for Reconsideration are not precedent-setting or appealable decisions. Further, the Board was obligated, and well within its authority, to order a hearing regarding disputed issues of fact that require a hearing. As for due process rights, the Board preserved Respondent's rights by stating in its November 25, 2008, Order that Respondent was free to renew its arguments to the administrative law judge and to the Board on any exceptions that may be filed to the judge's decision without prejudice.

Further, Respondent's Motion for Summary Judgment contested the factual issue of unit appropriateness, which resulted in the remand for a hearing. Now, Respondent wants to use the D.C. Circuit's decision in *Laurel Baye Healthcare* to postpone—again—a case that has been waiting to be litigated for 2 years. Since the Order remanding this case for hearing is not appealable, precedent-setting, and/or prejudicial to Respondent's due process rights, *Laurel Baye Healthcare* does not control nor is it relevant precedent regarding Respondent's attempt to delay its bargaining obligation.

Presently, there is a conflict in the Circuits over whether the Board had the authority with its current quorum to issue orders. The Board's prior denials of Respondent's Motions were consistent and not controlled by any Circuit Court decisions. Furthermore, until the Supreme Court rules on the quorum issue, Counsel for the General Counsel maintains that the Board is well within its authority to continue to make decisions, including the denials and remand in the instant case.

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

Dated at Baltimore, Maryland this 8th day of May 2009.

/s/ Thomas J. Murphy
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CERTIFICATE OF SERVICE

I hereby certify that on May 8th, 2009, I served via electronic mail a copy of Counsel for the General Counsel's Opposition To Respondent's Second Motion for Reconsideration and Motion to Stay upon the following:

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