St. Barnabas Hospital *and* Committee of Interns and Residents, Local 1957, SEIU, Petitioner. Case 2–RC–23356

June 3, 2010

ORDER DENYING REVIEW

BY CHAIRMAN LIEBMAN AND MEMBERS SCHAUMBER AND BECKER

The National Labor Relations Board, by a three-member panel, has carefully considered the Employer's request for review of the Regional Director's Decision and Direction of Election. The Regional Director directed an election among the Employer's house staff. The Employer asserts, among other reasons, that the Regional Director should have considered the applicability of *Brown University*, 342 NLRB 483 (2004). We deny review.

In *Boston Medical Center*, 330 NLRB 152 (1999), the Board held that medical interns and residents, or house staff, are statutory employees with a right to organize under the Act. That decision, which remains the law, is directly on point. Accordingly, the Employer cannot meet the stringent requirements of Section 102.67(c) of our Rules and Regulations governing a grant of review.

We reject the Employer's argument that our decision in *Brown* compels us to reevaluate *Boston Medical Center*. *Boston Medical Center* has been the law for over a decade, and no court of appeals has questioned its validity. Peaceful and fruitful collective bargaining has taken place between house staffs and hospitals under both Federal labor law and State collective-bargaining laws.

In *Brown*, the Board determined that university teaching assistants (TAs) and research assistants (RAs) were not statutory employees. Yet the Board expressly declined to extend its reasoning in that case to house staffs. Id. at 483 fn. 4, 487, 490 fn. 25.

The decision in *Brown* was based on a factual analysis of what TAs and RAs actually do. It is apparent that the role of TAs and RAs at universities is different from that of house staff at medical centers.[1] We are not, however, granting review here, and it is thus not appropriate to engage in a full-dress examination of those differences or their significance.

The Employer's request for review is denied.

Dated, Washington, D.C. June 3, 2010

Wilma B. Liebman, Chairman

Craig Becker, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

MEMBER SCHAUMBER, dissenting.

I would grant review to consider the Employer's contentions regarding our decision in *Brown University*, 342 NLRB 483 (2004). The Board in *Brown*, clearly did not, as my colleagues allege "decline to extend its reasoning in that case to house staffs." Rather, the Board declined to decide in *Brown* whether residents and interns are employees under Section 2(3) of the Act, as that issue was not before it. The analytical framework articulated by the Board in *Brown* clearly does apply here and should have been analyzed by the Regional Director.

Dated, Washington, D.C. June 3, 2010

Peter C. Schaumber, Member

NATIONAL LABOR RELATIONS BOARD

[1] For example, house staffs, as the Board found in *Boston Medical Center,* work notoriously long hours providing care to patients, often without the direct supervision of an attending physician; receive annual compensation (in 1999) of between $34,000 and $44,000; receive paid vacation and sick, parental, and bereavement leave; are entitled to health, dental, and life insurance; and are covered by the employing hospital's workers compensation policy. Id. at 153–156. The Board found none of these facts in relation to TAs and RAs in *Brown*, where it expressly distinguished *Boston Medical Center* on the additional ground that the house staff in the earlier case had already received their postgraduate degrees while the TAs and RAs in the latter case were still pursuing such degrees. Id. at 487.