New York Rehabilitation Care Management, LLC, d/b/a New York Center for Rehabilitation Care and New York Center for Rehabilitation Care, Inc., d/b/a New York Center for Rehabilitation Care *and* 1199, New York's Health and Human Service Employees Union, Service Employees International Union.[1] Case 29–CA–26678

January 31, 2006

ORDER DENYING MOTION

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN AND SCHAUMBER

On July 29, 2005, the National Labor Relations Board issued a Decision and Order in this case[2] granting the General Counsel's Motion for Summary Judgment. The Board found that the Respondent violated Section 8(a)(5) and (1) of the Act by refusing to recognize and bargain with the Union, 1199, New York's Health and Human Service Employees Union, Service Employees International Union, as the collective-bargaining representative of the unit employees following the Union's certification in Case 29–RC–9937.

Thereafter, by letter dated August 2, 2005, the Respondent moved for reconsideration of the Board's decision, arguing that the recent disaffiliation of the Service Employees International Union (SEIU) from the AFL–CIO raises a question of fact as to whether the Union is the representative designated by the employees in the election.[3]

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Section 102.48(d)(1) of the Board's Rules permits a party in "extraordinary circumstances" to move for reconsideration of a Board Order. There has been no showing of extraordinary circumstances here.

In *Laurel Baye Healthcare of Lake Lanier LLC*, 346 NLRB 159 (2005), the Board recently held that the disaffiliation of the United Food and Commercial Workers Union from the AFL–CIO was not, standing alone, sufficient to raise a genuine issue as to the identity of the certified labor organization. In rejecting an employer's contention that summary judgment was not warranted because of the disaffiliation, the Board applied long-standing precedent holding that a labor organization's disaffiliation from the AFL–CIO does not, without more, call into question the continuity of a certified bargaining representative.[4] The Board thus found that the contention failed to raise an issue of material fact warranting a hearing, noting that "[a]lthough the Respondent alleges generally that as a result of the disaffiliation the Charging Party 'is a materially different organization,' the Respondent fails to support its conclusory assertions with any specifics." *Laurel Baye*, supra at 1245.

Similarly, the Respondent's request for reconsideration here states only that the disaffiliation created "a question of fact as to whether the current union is the one designated by the employees in the election." Like the employer in *Laurel Baye*, the Respondent here offers no specifics that would even suggest that the Charging Party Union is a materially different organization from that which was certified as the representative of the Respondent's unit employees. In other words, the Respondent has offered nothing more than the same speculation we found insufficient to warrant a hearing in *Laurel Baye*.[5]

Moreover, as in *Laurel Baye*, the disaffiliation here occurred after the Respondent's refusal to bargain. Thus, as set forth in the underlying decision, the record shows that the Respondent has refused to bargain with the Union since September 3, 2004. The disaffiliation of the SEIU from the AFL–CIO did not take place until July 25, 2005. These facts also compel the conclusion that a hearing is not warranted, because there is "no useful purpose served by permitting the employer to defend the propriety of an earlier refusal to bargain by relying on subsequent events that had nothing to do with the refusal." *Laurel Baye,* supra at 1245, quoting *NLRB v. Springfield Hospital*, 899 F.2d 1305, 1315 (2d Cir. 1990), and *NLRB v. Fall River Dyeing & Finishing Corp.*, 775 F.2d 425, 433 (1st Cir. 1985), affd. on other grounds 482 U.S. 27 (1987).[6]

[1] We have amended the caption to reflect the disaffiliation of 1199, New York's Health and Human Service Employees Union, Service Employees International Union, from the AFL–CIO effective July 25, 2005.

[2] 344 NLRB 1243.

[3] The General Counsel and the Union filed oppositions to the Respondent's motion for reconsideration.

[4] E.g., *M & M Bakeries,* 121 NLRB 1596, 1602 (1958), enfd. 271 F.2d 602 (1st Cir. 1959); *Ace Folding Box Corp.*, 124 NLRB 23, 26–27 (1959), enfd. sub nom. *NLRB v. Weyerhauser Co.*, 276 F.2d 865 (7th Cir. 1960).

[5] Following the submission of its letter requesting reconsideration of the case, the Respondent submitted an additional letter drawing the Board's attention to *Woods Quality Cabinetry Co.*, 340 NLRB 1355 (2003). The General Counsel and the Charging Party filed responses. We have considered *Woods Quality Cabinetry* and find that it is distinguishable for substantially the same reasons discussed in *Laurel Baye*, supra, 346 NLRB at 160 fn. 5.

[6] Chairman Battista agrees with this "moreover" rationale insofar as it relates to the finding of a violation. However, a separate matter is the continuing propriety of the remedial order. That order runs to the Union as affiliated with the AFL–CIO. However, Chairman Battista does not pass on this matter because the Respondent has failed to proffer specific facts to show that the disaffiliation resulted in a substantial change in the identity of the Union.

Accordingly, we shall deny the Respondent's motion for reconsideration.

ORDER

IT IS ORDERED that the Respondent's motion for reconsideration is denied.