

United Food and Commercial Workers, Local No. 1996 and Visiting Nurse Health System, Inc.
Case 10–CC–1335

April 30, 2003

SUPPLEMENTAL ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN,
SCHAUMBER, WALSH, AND ACOSTA

The Motion for Reconsideration filed by Charging Party VNHS, formerly known as Visiting Nurse Associations of Metropolitan Atlanta, Inc., on January 23, 2003, is denied. The motion, filed more than 15 months after the Board issued its September 28, 2001 Decision and Order (336 NLRB 421), is untimely pursuant to Section 102.48(d)(2) of the Board’s Rules and Regulations, which requires the filing of such motion within 28 days after service of the Board’s decision. Section 102.48(d) also provides that the Board, in its discretion, may extend the 28-day period. In the instant case, the Charging Party has failed to make a showing of excusable neglect and lack of prejudice to support the filing of a motion for reconsideration beyond the 28-day period, much less a showing as to why that period should be extended 14 months beyond the 28 days. Accordingly, the Board will not accept the motion.¹ In any case, the Charging Party

¹ The Charging Party’s citations of *Laborers Local 840 (C.A. Blinne Construction Co.)*, 135 NLRB 1153 (1962); *Hotel & Restaurant Em-*

has cited no “extraordinary circumstances” within the meaning of Section 102.48(d)(2) that would support its motion, even if it has been timely made. Insofar as Charging Party cites changes in the composition of the Board since the issuance of the decision, it relies on an inappropriate ground for reconsideration. See *Iron Workers Local 471 (Wagner Iron Works)*, 108 NLRB 1237, 1239 (1954).

IT IS ORDERED that the Motion for Full Board Reconsideration is denied.

ployees Local 681 (Crown Cafeteria), 135 NLRB 1183 (1962); *Hotel & Restaurant Employees Local 89 (Stork Restaurant)*, 135 NLRB 1173 (1962), are misplaced as those decisions predate Sec. 102.48(d)(1), (2), and (3), which became effective on August 1, 1963. The Board based reconsideration in those cases on the “inadequate consideration” and “lack of clarity” that arguably were reflected in its original decisions, given their divergent rationales. This case does not present a similar situation. Notably, the dissenting Board members in *Laborers Local 840*, supra, took the position that reconsideration was inappropriate absent “extraordinary circumstances,” e.g., an intervening Supreme Court decision or newly discovered evidence, 135 NLRB at 1168 fn. 31 (separate opinion by Members Rodgers and Leedom). Their view ultimately was embodied in the Board’s rule on reconsideration.

Although Chairman Battista agrees with this disposition, he has grave doubts about the legal correctness of the Board’s decision in the underlying case. If an appropriate case is brought before the Board, he would reconsider that decision.

Members Schaumber and Acosta did not participate in the underlying case and they express no view regarding the merits of the Board’s decision.