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NLRB v. Grapetree Shores Inc

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No. 19-3762

NATIONAL LABOR RELATIONS BOARD,
Petitioner

v.

GRAPETREE SHORES, INC. d/b/a
DIVI CARINA BAY RESORT

(Agency No. 24-CA-11101)

SUR PETITION FOR REHEARING

Present: RESTREPO, PORTER, and NYGAARD, Circuit Judges

The petition for rehearing filed by appellant in the above-entitled case having been submitted to the judges who participated in the decision of this Court, it is hereby ORDERED that the petition for rehearing by the panel is granted. The Court's Order entered May 1, 2020 is VACATED and the National Labor Relations Board's petition for adjudication in civil contempt is reinstated. As the panel has granted rehearing, no further action will be taken by the en banc court.

It is further ordered that the National Labor Relations Board's application for referral to a special master is GRANTED. Magistrate Judge Ruth Miller is hereby designated Special Master to take testimony and hear evidence with respect to the issues raised in the application for enforcement

In addition to the general powers set forth in Fed. R. App. P. 48, it is further ORDERED that the Special Master shall have authority, powers and duties as follows:

1. To hold such hearings as may be reasonably necessary to obtain oral or documentary evidence from witnesses made available by the parties, or under the compelling process of the Special Master. Such hearings may be held at such place or places as the Special Master may deem appropriate.

2. To engage a qualified reporter to take and transcribe the testimony adduced at such hearings. Pending further order of the Court with respect to taxation and assessment of costs, the reporters' charges, when duly billed for, shall be divided equally by the parties in the first instance.
3. In accordance with the Federal Rules of Civil Procedure to regulate all proceedings in the hearings before the Special Master and to do all acts and take all measures necessary or proper for the performance of the Special Master's duties under this order. The Special Master may conduct such proceedings as may be appropriate to consider the simplification of the issues herein, including the possibility of obtaining admissions of facts and documents, and take such other actions which may aid in the disposition of the reference, including the entertainment and disposition of motions pursuant to the rules regulating discovery and motions to amend or supplement the pleadings, in accordance with the pertinent provisions of the Federal Rules of Civil Procedure.
4. As soon after the conclusion of the hearing as practicable, the Special Master shall file with the Clerk of the Court the transcript of the proceedings and of the evidence, and the original exhibits, together with the Special Master's report thereon and recommendations as to findings of fact and conclusions of law; a copy of said report and recommendations shall at the same time be served on the parties. The Special Master may require the parties to submit, prior to the filing of this report, proposed findings, objections to proposed findings and briefs; and,

It is further ORDERED that final assessment and allocation of all costs, fees and expenses involved, including counsel fees, are reserved for further order of the Court; and,

It is further ORDERED that the Clerk will send notice to the parties when the Special Master's report and recommendation and any transcripts are filed. Any party may file an objection to the report and recommendation within twenty (20) days after such notice.

By the Court,

s/ David J. Porter
Circuit Judge

Dated: July 29, 2020

PDB/KR/cc: All Counsel of Record