

**United States Court of Appeals
FOR THE EIGHTH CIRCUIT**

No. 08-3291

National Labor Relations Board,	*	
	*	
Petitioner,	*	
	*	
Allied Workers International Union;	*	
Local No. 74B Glass, Molders	*	
Pottery, Plastics,	*	On Application for
	*	Enforcement of an Order of the
Intervenors,	*	National Labor Relations Board.
	*	
v.	*	[UNPUBLISHED]
	*	
Whitesell Corporation,	*	
	*	
Respondent.	*	

Submitted: June 9, 2009
Filed: June 25, 2010

Before SMITH and SHEPHERD, Circuit Judges, and LIMBAUGH,¹ District Judge.

PER CURIAM.

The National Labor Relations Board (“NLRB” or “the Board”) has applied for enforcement of its order finding that Whitesell Corporation (“Whitesell”) violated

¹The Honorable Stephen N. Limbaugh, Jr., United States District Judge for the Eastern District of Missouri, sitting by designation.

various provisions of the National Labor Relations Act (“NLRA”), 29 U.S.C. §§ 151-69, while negotiating a new collective-bargaining agreement with the Glass, Molders, Pottery, Plastics, and Allied Workers International Union, AFL-CIO. The Board’s order was entered by two members of a three-member group to which the Board delegated all its powers in December 2007 pursuant to section 3(b) of the NLRA, 29 U.S.C. § 153(b). When the order was entered on August 29, 2008, the five-member Board had only two members.

In New Process Steel, L.P. v. NLRB, 560 U.S. ____, 2010 WL 2400089 (June 17, 2010), the Supreme Court held that a two-member group may not exercise delegated authority when the total Board membership falls below three because “the delegation clause [in section 3(b)] requires that a delegee group maintain a membership of three in order to exercise the delegated authority of the Board.” Id. at *8. Accordingly, we deny the NLRB’s application for enforcement.
