

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

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No. 09-1194

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National Labor Relations Board,	*	
	*	
Petitioner,	*	
	*	
International Brotherhood of Electrical	*	
Workers,	*	Application for Enforcement
	*	of an Order of the National
Intervenor,	*	Labor Relations Board.
	*	
v.	*	[UNPUBLISHED]
	*	
American Directional Boring, Inc.,	*	
	*	
Respondent.	*	

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Submitted: December 17, 2009  
Filed: June 24, 2010

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Before LOKEN, Chief Judge, \* BENTON, Circuit Judge, and VIKEN, \*\* District Judge.

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PER CURIAM.

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\*The Honorable James B. Loken stepped down as Chief Judge of the United States Court of Appeals for the Eighth Circuit at the close of business on March 31, 2010. He has been succeeded by the Honorable William Jay Riley.

\*\*The Honorable Jeffrey L. Viken, United States District Judge for the District of South Dakota, sitting by designation.

The National Labor Relations Board (the Board) has applied for enforcement of its Supplemental Decision and Order directing American Directional Boring, Inc. (ADB), to bargain with the International Brotherhood of Electrical Workers, Local No. 2, and granting other relief to remedy numerous unfair labor practices the Board found were committed by ADB in response to a union organizing effort. See 29 U.S.C. § 160(e). The Order was entered by two members of a three-member group to which the Board delegated all its powers in December 2007 pursuant to § 3(b) of the National Labor Relations Act, 29 U.S.C. § 153(b). When the Order was entered on September 30, 2008, the five-member Board had only two members.

In New Process Steel, L.P. v. NLRB, 560 U.S. \_\_\_, 2010 WL 2400089, at \*8 (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 § 3(b)] requires that a delegee group maintain a membership of three in order to exercise the delegated authority of the Board.” Accordingly, we deny the application for enforcement.

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