

United States Court of Appeals For the First Circuit

No. 09-1344

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

v.

METRO MAYAGÜEZ, INC., d/b/a HOSPITAL PAVÍA PEREA,

Respondent.

ON PETITION TO ENFORCE AN ORDER OF THE
NATIONAL LABOR RELATIONS BOARD

Before

Torruella, Circuit Judge,
Baldock,* Senior Circuit Judge,
and Lipez, Circuit Judge.

José R. González-Noqueras, with whom Alejandro Méndez-Román
and Jiménez, Graffam & Lausell, were on brief for respondent.

Daniel A. Blitz, Attorney, National Labor Relations Board,
with whom Jill A. Griffin, Supervisory Attorney, Ronald Meisburg,
General Counsel, John E. Higgins, Jr., Deputy General Counsel, John
H. Ferguson, Associate General Counsel, and Linda Dreeben, Deputy
Associate General Counsel, were on brief for petitioner.

July 30, 2010

* Of the Tenth Circuit, sitting by designation.

Per Curiam. The National Labor Relations Board ("the NLRB") petitions for enforcement of an order it issued on April 30, 2008 against respondent, Metro Mayagüez, Inc. ("Metro Mayagüez"). The NLRB's order found that Metro Mayagüez violated the National Labor Relations Act ("the NLRA"), 29 U.S.C. §§ 151-169, by committing unfair labor practices.

In December 2007, the five-member NLRB, pursuant to section 3(b) of the NLRA, 29 U.S.C. § 153(b), delegated its powers to a three-member group. When the NLRB issued the underlying order in the instant case, the NLRB had only two members. While this appeal was pending, the Supreme Court held in New Process Steel, L.P. v. NLRB, No. 08-1457, 2010 U.S. LEXIS 4973, at *5 (June 17, 2010), that, following a delegation of the NLRB's powers to a three-member group, two members cannot continue to exercise that delegated authority once the group's (and the NLRB's) membership falls to two.¹ Accordingly, we conclude that the NLRB as constituted did not have the authority to issue the April 30, 2008 order against Metro Mayagüez. We thus deny the NLRB's petition for enforcement.

¹ See, e.g., Fola Coal Co. v. NLRB, No. 09-1938, 2010 U.S. App. LEXIS 13658, at *2 (4th Cir. July 2, 2010) (unpublished decision); NLRB v. Whitesell Corp., No. 08-3291, 2010 U.S. App. LEXIS 13045, at *2 (8th Cir. June 25, 2010) (unpublished decision); Galicks, Inc. v. NLRB, Nos. 09-1972/09-2441, 2010 U.S. App. LEXIS 12949, at *2 (6th Cir. June 24, 2010) (unpublished decision); NLRB v. Park, No. 09-2601, 2010 U.S. App. LEXIS 12857, at *2 (2d Cir. June 23, 2010) (per curiam).