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2 **UNITED STATES COURT OF APPEALS**

3
4 **FOR THE SECOND CIRCUIT**

5
6 August Term, 2008

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9 (Submitted: July 15, 2009 Decided: June 23, 2010)

10
11 Docket No. 09-2601-ag

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14
15 NATIONAL LABOR RELATIONS BOARD,
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17 Petitioner,

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19 - v.-

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21 TALMADGE PARK,
22
23 Respondent.

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25 - - - - -x
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27 Before: JACOBS, Chief Judge, SACK, Circuit Judge,
28 and GOLDBERG, Judge.*

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30 The National Labor Relations Board petitions for
31 enforcement of an order against respondent, Talmadge Park.
32 The order issued on May 27, 2009 when the Board comprised
33 only two members, and we accordingly deny the petition on
34 the basis of New Process Steel, L.P. v. National Labor
35 Relations Board, No. 08-1457, 2010 WL 2400089 (June 17,
36 2010).

* The Honorable Richard W. Goldberg, Judge of the United States Court of International Trade, sitting by designation.

1 Linda Dreeben, Deputy Associate
2 General Counsel, National Labor
3 Relations Board, for Petitioner.

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5 William A. Ryan, Ryan & Ryan,
6 LLC, New Haven, CT, for
7 Respondent.

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9 PER CURIAM:

10 The National Labor Relations Board petitions for
11 enforcement of an order against respondent, Talmadge Park,
12 pursuant to 29 U.S.C. § 160(e). When the order issued on
13 May 27, 2009, only two of the Board's five seats were
14 filled. Though the National Labor Relations Act stipulates
15 a three-member quorum, it also permits the Board to delegate
16 its authority to a group of three or more members, any two
17 of whom may constitute a quorum of that delegate group. See
18 29 U.S.C. § 153(b). Anticipating a triple vacancy, the
19 Board in 2007 delegated its authority to a three-member
20 group that continued to exercise the Board's authority when
21 the third member of the group vacated his seat. Such was
22 the situation when the Board issued the order that is the
23 subject of this petition.

24 In Snell Island SNF LLC v. National Labor Relations
25 Board, 568 F.3d 410 (2d Cir. 2009), we held that two Board
26 members may exercise the Board's authority in such
27 circumstances as a quorum of a three-member delegate group.

1 See id. at 424. However, the Supreme Court has since
2 overridden that holding in New Process Steel, L.P. v.
3 National Labor Relations Board, No. 08-1457, 2010 WL 2400089
4 (June 17, 2010). See id. at *8. Recognizing that, on this
5 point, Snell Island yields to New Process Steel, we conclude
6 that the Board as constituted did not have the authority to
7 issue the May 27, 2009 order against Talmadge Park. The
8 Board's petition is denied.