

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

UNITED BROTHERHOOD OF
CARPENTERS, LOCAL 43 and NEW
ENGLAND REGIONAL COUNCIL OF
CARPENTERS (McDowell Building &
Foundation, Inc.)

and

Case 34-CB-3047

KEVIN LEBOVITZ, an Individual

ORDER

On December 31, 2009, the two sitting members of the Board issued a Decision and Order in this proceeding, which is reported at 354 NLRB 122.¹ Thereafter, Respondent-Carpenters Local 43 filed a petition for review in the United States Court of Appeals for the D.C. Circuit, and the General Counsel filed a cross-application for enforcement. Thereafter, the court ordered that the review and enforcement proceedings be held in abeyance, and the record in this case was not filed with the court.

¹ Effective midnight December 28, 2007, Members Liebman, Schaumber, Kirsanow, and Walsh delegated to Members Liebman, Schaumber, and Kirsanow, as a three-member group, all of the powers of the National Labor Relations Board in anticipation of the expiration of the terms of Members Kirsanow and Walsh on December 31, 2007. Thereafter, pursuant to this delegation, the two sitting members issued decisions and orders in unfair labor practice and representation cases.

On June 17, 2010, the United States Supreme Court issued its decision in *New Process Steel, L.P. v. NLRB*, 130 S.Ct. 2635, holding that under Section 3(b) of the Act, in order to exercise the delegated authority of the Board, a delegee group of at least three members must be maintained.

Accordingly, in view of the Court's decision in *New Process Steel, L.P.*, pursuant to Section 10(d) of the National Labor Relations Act, the Board hereby sets aside the above-referenced Decision and Order.² The Board will retain this case on its docket and take further action as appropriate.

By Direction of the Board:

Lester A. Heltzer
Executive Secretary

² Section 10(d) states "[u]ntil the record in a case shall have been filed in a court, as hereinafter provided, the Board may at any time, upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it." See also *In re NLRB*, 304 U.S. 486 (1938).