No. 08-1457

In The Supreme Court of the United States

NEW PROCESS STEEL, L.P.,

Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

BRIEF OF THE MICHIGAN REGIONAL COUNCIL OF CARPENTERS AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

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QUESTIONS PRESENTED

A. Does the National Labor Relations Board have authority to decide cases with only two sitting members, where 29 U.S.C. § 153(b) provides that "three members of the Board shall, at all times, constitute a quorum of the Board"?

B. Do decisions by two members improperly distort the decision-making process of the five member National Labor Relations Board created by Congress in 1947 by passage of the Taft-Hartley Act?

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INTEREST OF THE *AMICUS CURIAE*[1]

The Michigan Regional Council of Carpenters ("MRCC") is a labor organization located in the Metropolitan Detroit area of Michigan. MRCC represents approximately 18,000 carpenters and millwrights. The MRCC is party to a case currently pending in the U.S. Court of Appeals for the District of Columbia Circuit[2]. Following the D.C. Circuit's Decision in *Laurel Baye Health Care of Lake Lanier, Inc. v. NLRB*, 564 F.3d 69 (D.C. Cir. 2009), *pet. for cert. pending* (No. 09-377). Pet. App. 82-98, MRCC moved for summary reversal. The case is currently being held in abeyance by the D.C. Circuit.

MRCC challenged the Board's power and authority to issue decisions with only two sitting members. The Board Order pending before the D.C. Circuit is reported at 352 NLRB No. 119 (July 31, 2008), *Local 687, Michigan Regional Council of Carpenters (Convention & Show Services, Inc.).*

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[1] No counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amicus curiae*, its members, or its counsel made a monetary contribution to its preparation or submission. The parties have consented to the filing of this brief. Consents are being filed simultaneously with this Brief. Counsel of record for all parties received notice at least ten days prior to the due date of the *amicus curiae's* intention to file this brief.

[2] *Michigan Regional Council of Carpenters, Local 687 v. NLRB*, Nos. 1310 and 1324.

MRCC is interested in the present litigation because it seeks a full opportunity to bring to the Court's attention its position on the Board's delegation and quorum requirements. The resolution of the quorum question is likely to directly impact the disposition of MRCC's pending appeal. While the majority of cases issued by the two-member Board have involved employer respondents, the two-member Board also issued orders against a number of unions, including MRCC. The question of the Board's delegation and quorum requirements is an institutional and legal process issue, not a union or management issue

SUMMARY OF ARGUMENT

The Brief supports arguments made by New Process, L.P. and/or addresses both the plain meaning of the statutory language and the negative policy consequences resulting from two member decision-making.

The National Labor Relations Act does not authorize a two-member sub-group to issue decisions and orders. This fact is not in dispute. The NLRB, however, claims that a provision in the Act, which provides only that a group of three or more members has a quorum requirement of two members, authorizes a "two-member quorum" to exercise the powers of the NLRB. The NLRB's argument, however, fundamentally misapprehends the meaning of the quorum provision and relies on that language to the exclusion of the Act's requirement that the NLRB can only delegate its powers to groups of three or more members.

Additionally, the NLRB's longstanding decision-making process is distorted by the two-member Board. The language and legislative history, as implemented by the Board's actual decisional practices, demonstrate that the Act, as written by Congress, never intended that decisions be made by two members except in limited circumstances not present here. Moreover, decisions rendered by the two-member Board have resulted in repeated instances in which both members have taken positions contrary to their policy convictions and legal philosophy for the sake of institutional efficiency.

ARGUMENT

I. The Current Two-Member Board Is Not Permitted By Statute To Issue Decisions And Orders.

The statutory provisions implicated in this case, 29 U.S.C. §153(b), provide, in part:

> The Board is authorized to delegate to any group of three or more members any or all of the powers which it may itself exercise . . . A vacancy in the Board shall not impair the right of the remaining members to exercise all of the powers of the Board, and three members of the Board shall, at all times, constitute a quorum of the Board, except that two members shall constitute a quorum of any group

> designated pursuant to the first sentence hereof.

For ease of reference, Section 3(b) contains the following provisions:

- Board Quorum Requirement: "[T]hree members of the Board shall, at all times, constitute a quorum of the Board."

- Delegation: "The Board is authorized to delegate to any group of three or more members any or all of the powers which it may itself exercise."

- Sub-Group Quorum: "[E]xcept that two members shall constitute a quorum of any group pursuant to the [Delegation provision]."

- Vacancy: "A vacancy in the Board shall not impair the right of the remaining members to exercise all of the powers of the Board."

As New Process has persuasively argued, the two-member Board consisting of Chairman Liebman and Member Schaumber, is not empowered by Section 3(b) to issue decisions and orders. The Board in December 2007, consisting at that time of four members, delegated its authority to a three-member group of Members Kirsanow, Liebman and Schaumber. The delegation was effective on December 28, 2007, three days before Member

Kirsanow's term expired. The Board delegated its power to a three-member group without any pretense that the three members would issue a single decision or order.

The Board has not argued in this case or any other that it is statutorily permitted, by operation of the Vacancy provision or otherwise, to delegate its powers to a two-member sub-group.

Yet, this is the critical question before the Court. If the Board is not authorized to delegate its powers to a two-member sub-group, then it is likewise not authorized to delegate its powers to a three-member group that it knows will become a permanent two-member sub-group within days of the delegation. Nonetheless, the NLRB attempts to leverage the Sub-Group Quorum provision of Section 3(b) to justify its disregard for the Delegation provision. Its argument, however, would render part of Section 3(b) meaningless.

The plain language of Section 3(b) establishes that the Board is permitted to place all its powers in a group of **three or more** members, pursuant to the Delegation provision. The Sub-Group Quorum language provides only that a group of **three or more** members has a quorum requirement of two members. The Sub-Group Quorum provision does not replace the Delegation provision. To assert as much does not acknowledge the plain language of the NLRB Board Quorum and Sub-Group Quorum provisions, yet this is in reality what the NLRB contends. The NLRB argues that its December 2007 procedural maneuver satisfies the Delegation

provision, solely because at the moment of delegation (and for another two days) a group of three members existed to receive the delegated powers. The NLRB's action satisfied the Delegation provision only for a brief period of time, however. Once the three-member group ceased to exist (upon the departure of Member Kirsanow), the group ceased possessing the powers delegated to it by the Section 3(b) Delegation provision. The Sub-Group Quorum provision does not imbue a permanent two-member sub-group with the powers that, under the Delegation provision, only a group of **three or more** members can exercise.

The NLRB's construction of Section 3(b) relies on the Sub-Group Quorum provision to the exclusion of all other language and consequently renders the Delegation provision meaningless. Doing so violates the "'cardinal principle of statutory construction' that 'a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant.'" *TRW Inc. v. Andrews*, 534 U.S. 19, 31, 122 S.Ct. 441, 151 L.Ed.2d 339 (2001) (*quoting Duncan v. Walker*, 533 U.S. 167, 174, 121 S.Ct. 2120, 150 L.Ed.2d 251 (2001)). Why would Congress limit the NLRB's authority to delegate powers to groups of **three or more** members in the Delegation provision, if it intended to allow a delegation to two members via an expansive interpretation of the Sub-Group Quorum provision? The answer, of course, is that Congress did not intend the Sub-Group Quorum provision to nullify the three-member minimum requirement of the Delegation provision.

Stripped down to its essence, the NLRB's contention is that because the Sub-Group Quorum provision permits two members of a three-member group to issue decisions and orders, Chairman Liebman and Member Schaumber were authorized to issue decisions. The glaring deficiency in this argument, of course, is that Chairman Liebman and Member Schaumber were not part of a three-member group. They were, at all times in 2008, a two-member sub-group. A comprehensive construction of the plain language of the Act does not permit the Delegation provision of Section 3(b) to be used to concentrate the Board's powers in only two-members.[3]

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[3] As Petitioner has persuasively argued, the Seventh Circuit's decision rests on a flawed interpretation of Section 3(b) similar to the misconstruction of that text by the First Circuit in *Northeastern Land Services v. National Labor Relations Board*, 560 F.3d 36 (1st Cir. 2009). The Fourth Circuit likewise misinterpreted the plain language of Section 3(b) in *Narricot Industries, L.P. v. National Labor Relations Board*, 587 F.3d 654 (4th Cir. 2009). To the contrary, the D.C. Circuit's decision in *Laurel Baye*, *supra*, correctly applied the quorum requirements of Section 3(b). The Second Circuit, and very recently the Tenth Circuit, also reached an incorrect result by invoking deference to the NLRB under *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984). *See Snell Island SNF LLC v. National Labor Relations Board*, 568 F.3d 410 (2d Cir. 2009) and *Teamsters Local Union No. 523 v. National Labor Relations Board*, Case Nos. 08-9568, 08-9577, 2009 U.S. App. LEXIS 28181 (10th Cir. Dec. 22, 2009). The two-step inquiry under *Chevron* is not applicable in these circumstances where there has never been any "interpretation" by the NLRB of Section 3(b)'s quorum requirements, and where the issue concerns the agency's power to act instead of the substantive provisions of the statute it administers. *See also*, Ronald Taylor, *On the Authority of the Two-Member NLRB: Statutory Interpretation Approaches and Judicial Choices,* U. Houston Pub. L. & Legal Theory Series 2009-A-33 (2009).

II. The NLRB's Decision-Making Process.

A. Two-Member Decision-Making Distorts The NLRB's Decisional Processes And Is Inconsistent With The Statute's Plain Language.

The failure of the two-person Board Decisions to comply with the statutory requirement that three members compose the minimum quorum of the five member Board is exacerbated because two-person Board Decisions have been released while the Board purportedly continues to follow policies which distort the decision-making process of the two-person Board in other ways.

For a substantial period of time, and at least for the 20 years subsequent to the beginning of Counsel of Record for MRCC's service as a Board Member in 1988, serving Members have adhered to a policy by which the Members have agreed not to change major or significant precedent without the presence of a full five member Board.

The problem with this convention in the two-person context is facially apparent because the scope of "major" or "significant" is clearly subject to interpretation. When this informal commitment to the non-reversal of significant precedent is coupled with Board procedures which allow a single Board member to require that any case be heard by the full Board, along with the concomitant ability of any member to hold a case in the decision process until

there is a full five-person Board, it is apparent that the attempted delegation is inconsistent with the intent of Congress in enacting the Taft-Hartley Act, which expanded the Board membership from three to five. In addition, when more than three members are serving, members of the Board who are not part of the initial panel of three, have the right to opt onto the case or to designate the case as one that should be decided by a full Board. Implemented Board processes and policies are improperly altered and distorted when only two persons purport to decide cases.

A 1995 Article in the Cornell *Industrial Labor Relations Review* accurately describes the Board's procedures for reaching a decision and highlights the complexity of this process. *See* William N. Cooke, et al*, The Determinants of NLRB Decision-making Revisited*, 48 Indus Labor Rel Rev 237, 239-240 (1995). Professor Cooke explains that appealed cases are initially assigned on a rotating basis to three-member panels of the Board, at which point one panel member is designated as the "originating board member." Each member relies heavily on his or her staff to evaluate Administrative Law Judges' recommendations and exceptions filed and to draw up recommendations.

Except on rare occasions, no hearings are held by the Board. Prior to making recommendations to members, the staff representatives assigned to a case by each member of a given panel usually meet to discuss the recommendations that each intends to make to the panel members he or she serves. These meetings are not intended for the purpose of

reaching consensus among the assigned staff. The discussion of any opposing views, nevertheless, may influence the recommendations made by staff representatives to the members they serve. Some cases are simple enough that even before the panel members' staff meet to discuss cases, staff representatives of the originating Board member prepare drafts of recommended decisions for circulation to other Board members. All five Board members receive a copy of the panel's proposed decision and proposed dissents, if any, for every case. There is no formalized step or practice in which members discuss cases with one another before rendering individual decisions; however, some Boards have engaged in informal discussions prior to making decisions. *Id*. *citing* McCulloch, Frank W., and Tim Bornstein, 1974, *The National Labor Relations Board*, New York: Praeger, pp. 90-91; Miller, Edward B., *An Administrative Appraisal of the NLRB*, University of Pennsylvania, Industrial Relations Research Unit, 1977, pp. 76-77.

Cooke further explains that when disputes appear to be especially important or complex ones, all five members normally vote. It is Board policy that any member may request that all members vote if a case is novel, if the nature of the dispute requires a new interpretation of the law, or if members of the Board seek to redefine policy or set new policy.[4] In

[4] If a member requesting review by the full Board is part of the three-member panel assigned to the case, this request may be made at any time. If the request for a full Board decision is made by a member who is not part of the panel assigned to the case, the request is made when the full Board reviews the panel's proposed decision and any dissenting opinions. *Id*.

cases involving the full Board, staff representatives of each member meet to discuss the case and jointly prepare a memorandum, which, without making recommendations, discusses the applicable facts and law and the implications of alternative resolutions. *Id.*

The current Board has utilized super panels to a greater extent than earlier Boards, but a review of the various voting steps underscores the importance of the checks and balances incorporated in the textual language that Congress used in creating the five-member Board, which also required that a quorum of the five members be three or more. The language and legislative history, as implemented by the Board's actual decisional practices, clearly demonstrate that the statute, as written by Congress, never intended that decisions be made by only two members.[5]

The Board routinely takes actions by notational voting which is permitted for multi-member governmental agencies pursuant to the Government in the Sunshine Act. 5 U.S.C. § 552b. Notational voting is a procedure employed by multi-member governmental agencies which conform to the open meeting requirements of the Sunshine Act. Notational voting allows NLRB members to act on agency matters individually, instead of deliberating and voting as a group during an open agency session.

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[5] In instances where the Member's term expired or if there was a death subsequent to the case being decided, the three person minimum requirement is complied with because, when the decision was rendered, a legal quorum existed.

See, Elken Metals Co. v. United States, 126 F. Supp. 2d 567 (Ct. Int'l Trade 2000). With its three member case panels, the Board regularly uses notational voting to decide cases. Similarly, Congress recognized that not all business of an administrative agency can be conducted entirely in the public eye. As such, informal background sessions intended to clarify issues and promote debate are also not subject to scrutiny under the Sunshine Act. *See*, S. Rep. No. 94-354, p.19 (1975); *Federal Communications Commission, et al. v. ITT World Communications, Inc.*, 466 U.S. 463, 469-470 (1984). Beginning at least as early as 1988, the Board has concluded that a meeting of three members to discuss pending adjudications would require compliance with the open meeting provisions of the Sunshine Act.[6]

The NLRB's historical interpretation of and adoption of procedures to follow the Sunshine Act indicate that the Board itself believes that a quorum of three members triggered application of the Sunshine Act. Because the NLRB has treated meetings of three-member groups as being subject to

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[6] Counsel of Record for MRCC, Dennis M. Devaney, served as a Member of the Board from 1988 to 1994. He is personally familiar with the Board's procedures pursuant to the Government in Sunshine Act dating from his service as a Board Member. For approximately two months in 1993-1994, the Board was also composed of only two members, Mr. Devaney and then-Chairman James M. Stephens. In consultation with the Solicitor of the NLRB, the two sitting members concluded that the statute required a quorum of three members to decide cases. Thus, no decisions were rendered until President Clinton's appointees were confirmed by the United States Senate.

the Sunshine Act, while two-member sub-groups have not been deemed to be subject to the Sunshine Act, the Board has, in practice, acknowledged that the Board Quorum requirement of three members at all times is consistent with the Sunshine Act's application to meetings when three members participate. The current two member Board would not be subject to the scrutiny of the Sunshine Act, even when conducting public meetings. Such a result would be inconsistent with the public policy underlying the Sunshine Act.

In the MRCC case in which we are counsel for the Petitioner, the lack of an appropriate three member panel has had significant consequences. The office of the General Counsel, after initially not objecting to certain MRCC internal disciplinary procedures, reversed its position which is lawful in light of the General Counsel's unreviewable discretion to prosecute or not prosecute unfair labor practices. However, MRCC's challenge to this change in policy was not addressed by a quorum of the Board that consisted of three members.

B. The Two-Member Board Undermines the Ability of the Serving Members to Fulfill Their Statutory Obligations.

The imbalance of the two-member Board has resulted in repeated instances in which both members have sacrificed their obligations to intrepret the law for institutional efficiency.

The NLRB is a quasi-judicial body that is largely free from the constraints of stare decisis. A member's obligation is to intepret the Act as he or she believes it applies to facts presented in a particular case.[7] As a consequence, Board law changes from time to time. It is common that regulatory agencies seek to be both faithful to the regulatory policies enacted by prior Congresses and responsive to the legal, economic and political changes that have altered the nature of their

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[7] [I]f a Member honestly believes that a prior precedent no longer makes sense, and that a change would be more in keeping with the fundamental principles described above, he/she can – and may feel obligated to – vote to change the law . . . prudently exercised, change is proper and, indeed, was envisaged by Congress. *See The National Labor Relations Board: Recent Decisions and Their Impact on Workers' Rights: Hearing Before the Senate Subcomm. on Employment and Workplace Safety, and House Subcomm. on Health, Employment, Labor and Pensions*, 110th Cong., 1st Sess. (December 13, 2007) (testimony by Robert J. Battista, Chairman, NLRB).

regulated marketplaces. As a result, agencies may well engage in a process of updating statutory meaning as part of their policymaking role and construe statutory text dynamically. James J. Brudney, *Isolated and Politicized: The NLRB's Uncertain Future*, 26 Comp. Lab. L. & Pol'y J. 221, 224 (2005).[8]

It is generally understood that NLRB decision-making is influenced by the particular philosophy and background of the individual Board members. That is to say, Board members bring a political and policy framework to deciding ULP cases before them. William N. Cooke, et al*, The Determinants of NLRB Decision-making Revisited*, *supra* at 255-256 (1995). As the Board's make-up changes with administrations, it can be expected to reverse its previous interpretation of the law, especially in its decisions on cases that are important or precedent-setting. It has been argued that, through the election of new Presidents, the public expresses desired changes in the direction taken by regulatory agencies, including the NLRB. Because the Act leaves wide latitude for intrepeting what is an unfair labor practice, the shift in public sentiment represents legitimate guidance to Board members. Therefore, a Board member's reflection in his or her decision-making of the President's

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[8] Brudney argues that the NLRB's autonomy in this respect "has lately been associated not with making the NLRA effective or adaptable to changed circumstances but rather with the Act's diminished relevance or applicability to the modern American workplace." *Id*.

preferences serves the useful purpose of making the Board responsive to public sentiment. *Id*.

In this context, a member of the Board has an obligation to decide cases based on his or her view of the law, not to avoid stalemates or "institutional" problems. The doctrine of stare decisis does not restrict a Board member from deciding cases based on what the law ought to be as opposed to whether a wrongly decided issue is settled. If, for example, a Board member views a decision as wrongly decided, at a minimum the member may issue a dissenting opinion. Member (now Chairman) Liebman has issued countless dissents in recent years. Because the NLRB has no direct enforcement powers, decisions and orders of the Board are ultimately subject to approval, modification or rejection by the courts. As a result, dissenting opinions are expressed forcefully to persuade the courts to consider that viewpoint seriously. Cooke, *supra*.

The two-member Board has, by necessity, modified its practices in light of its decision to issue decisions without a three-member group. Liebman stated that the two-member Board's "primary objective is to try to operate as close to normal operations as possible."[9] She stated further that she would "acquiesce in the fact that there is new law which was just created that I don't like and there's old law, or new law, that Member Schaumber doesn't

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[9] Susan J. McGolrick, *NLRB Enters New Year With Three Vacancies, Two Members Issuing Decisions*, Daily Lab. Rep. (BNA) at S-9 (January 30, 2008).

like and might otherwise have changed but acknowledges is the law." *Id.*

Schaumber admits that the two-member Board can be viewed as "stymied and dysfunctional."[10] He acknowledged that the current Board is unable to reverse precedent because the Board traditionally does not do so unless at least a three-member majority agrees. He stated further that "this aspect of the board's paralysis deprives us of the ability to fulfill our statutory role, it undermines government in general in my view and the board in particular in the eyes of those who we are charged with protecting and regulating." *Id.*

The two-member Board has openly departed from long-standing Board decision-making norms for the sake of institutional convenience. In over a dozen cases in 2008, for example, Schaumber or Liebman set aside their policy positions for "institutional reasons." This has resulted in parties being denied an effective remedy or defense because of the Board's desire to avoid a tie-vote stalemate.

In *AM Property Holding Corp.*, 352 NLRB No. 44 (March 27, 2008), the two-member Board reconsidered the dismissal of an unlawful-recognition allegation by a prior three-member panel of Chairman Battista and Members Liebman and Kirsanow. The two-member Board granted the motion for reconsideration and found that the employer had

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[10] Susan J. McGolrick, *Schaumber, Liebman Discuss Dynamics Of Two-Member Board; 'Bush Board' Legacy*, Daily Lab. Rep. (BNA) at C-1 (September 18, 2008).

violated the Act. The union sought special remedies against the employer, who had violated the Act four times in similar circumstances. In the underlying case, Member Liebman dissented in part, stating that she would grant the special remedies. However, she denied the request in this case: "In her view, the additional violation found here would further support granting those remedies. However, for institutional reasons, she concurs with Chairman Schaumber in denying the motion." *Id.*, fn. 9.

In *Northeastern Land Services*, 352 NLRB No. 89 (June 27, 2008), the two-member Board found that the employer violated the Act by maintaining an overbroad employee confidentiality policy. The Board further found that an employee who was disciplined pursuant to the policy was "necessarily unlawful." Chairman Schaumber disagreed with the doctrine supporting the Section 8(a)(3) violation, but nevertheless found a violation. He noted that he

> questions the theory that an employer's imposition of discipline pursuant to an unlawfully overbroad rule is necessarily unlawful, such as in situations where the discipline imposed is for a lawful reason albeit under an overly broad, unlawful rule. Nonetheless, he applies precedent for institutional reasons for the purpose of deciding this case.

Id., fn. 9. The employer in this case appealed to the First Circuit Court of Appeals, challenging the authority of the two-member delegation. The First Circuit, however, rejected the challenge.

Northeastern Land Services v. National Labor Relations Board, 560 F.3d 36 (1st Cir. 2009).

In the following cases, either Schaumber or Liebman disregarded his or her view of what the Act requires for "institutional reasons" of issuing a two-person decision: *Essex Valley Visiting Nurses*, 352 NLRB No. 61 (April 30, 2008); *The Lorge School*, 352 NLRB No. 17 (February 19, 2008); *Medco Health Solutions*, 352 NLRB No. 78 (May 30, 2008); *Magic Beans, LLC*, 352 NLRB No. 107 (July 18, 2008); *Local One-L, Amalgamated Lithographers*, 352 NLRB No. 114 (July 31, 2008); *Alcoa, Inc.*, 352 NLRB No. 141 (August 29, 2008); *Mashantucket Pequot Gaming Enterprise*, 353 NLRB No. 32 (September 30, 2008); *Atrium at Princeton, LLC*, 353 NLRB No. 60 (December 5, 2008); *Hamilton Sundstrand*, 352 NLRB No. 65 (May 19, 2008); *McBurney Corp.*, 352 NLRB No. 112 (July 23, 2008); *Fluor Daniel, Inc.*, 353 NLRB No. 15 (September 25, 2008); *Kingsbridge Heights Rehab.*, 353 NLRB No. 69 (December 24, 2008).

Had these cases been held in abeyance until the Board had a properly-constituted and statutorily-authorized quorum of three or more members, the views of each member of that group might have coalesced into a decision reaching a different result. Perhaps a ruling would have issued that departs from what is considered extant Board law. In all of these cases, the parties were deprived of that process. In case after case, Liebman and Schaumber were forced by circumstance to put aside their policy positions for "institutional reasons."

It is clear that two-person decision making compromises the stated views of what Board law requires in order to move cases out the door. Many parties who came before the two-member Board witnessed their dispute resolved not by principle, but rather by institutional expediency. The reason for this outcome was the perhaps well-intentioned, but fatally-flawed, decision by the Board to attempt to delegate its powers to a two-person group which concedes that avoiding stalemate and not informed analysis is the paramount consideration. The primary adjucatory function of the Board, thus, gave way in many instances to the expediency of avoiding "delay." This result is anathema to the fundamental mission of the Board.

CONCLUSION

For the reasons set forth above, *Amicus Curiae*, Michigan Regional Council of Carpenters, Local 687, respectfully requests that the judgment of the Court of Appeals be reversed.

Respectfully submitted,

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