

## Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

**SUPREME COURT OF THE UNITED STATES**

## Syllabus

**NEW PROCESS STEEL, L. P. v. NATIONAL LABOR  
RELATIONS BOARD****CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR  
THE SEVENTH CIRCUIT**

No. 08–1457. Argued March 23, 2010—Decided June 17, 2010

The Taft-Hartley Act increased the size of the National Labor Relations Board (Board) from three members to five, see 29 U. S. C. §153(a), and amended §3(b) of the National Labor Relations Act to increase the Board’s quorum requirement from two members to three and to allow the Board to delegate its authority to groups of at least three members, see §153(b). In December 2007, the Board—finding itself with only four members and expecting two more vacancies—delegated, *inter alia*, its powers to a group of three members. On December 31, one group member’s appointment expired, but the others proceeded to issue Board decisions for the next 27 months as a two-member quorum of a three-member group. Two of those decisions sustained unfair labor practice complaints against petitioner, which sought review, challenging the two-member Board’s authority to issue orders. The Seventh Circuit ruled for the Government, concluding that the two members constituted a valid quorum of a three-member group to which the Board had legitimately delegated its powers.

*Held:* Section 3(b) requires that a delegee group maintain a membership of three in order to exercise the delegated authority of the Board. Pp. 4–14.

(a) The first sentence of §3(b), the so-called delegation clause, authorizes the Board to delegate its powers only to a “group of three or more members.” This clause is best read to require that the delegee group *maintain* a membership of three in order for the delegation to remain valid. First, that is the only way to harmonize and give meaningful effect to all of §3(b)’s provisions: (1) the delegation clause; (2) the vacancy clause, which provides that “[a] vacancy in the Board

## Syllabus

shall not impair the right of the remaining members to exercise all of the powers of the Board”; (3) the Board quorum requirement, which mandates that “three members of the Board shall, at all times, constitute a quorum of the Board”; and (4) the group quorum provision, which provides that “two members shall constitute a quorum” of any delegatee group. This reading is consonant with the Board quorum requirement of three participating members “at all times,” and it gives material effect to the delegation clause’s three-member rule. It also permits the vacancy clause to operate to provide that vacancies do not impair the Board’s ability to take action, so long as the quorum is satisfied. And it does not render inoperative the group quorum provision, which continues to authorize a properly constituted three-member delegatee group to issue a decision with only two members participating when one is disqualified from a case. The Government’s contrary reading allows two members to act as the Board *ad infinitum*, dramatically undercutting the Board quorum requirement’s significance by allowing its permanent circumvention. It also diminishes the delegation clause’s three-member requirement by permitting a *de facto* two-member delegation. By allowing the Board to include a third member in the group for only one minute before her term expires, this approach also gives no meaningful effect to the command implicit in both the delegation clause and the Board quorum requirement that the Board’s full power be vested in no fewer than three members. Second, had Congress intended to authorize two members to act on an ongoing basis, it could have used straightforward language. The Court’s interpretation is consistent with the Board’s longstanding practice of reconstituting a delegatee group when one group member’s term expired. Pp. 4–9.

(b) The Government’s several arguments against the Court’s interpretation—that the group quorum requirement and vacancy clause together permit two members of a three-member group to constitute a quorum even when there is no third member; that the vacancy clause establishes that a vacancy in the *group* has no effect; and that reading the statute to authorize the Board to act with only two members advances the congressional objective of Board efficiency—are unconvincing. Pp. 9–14.

564 F. 3d 840, reversed and remanded.

STEVENS, J., delivered the opinion of the Court, in which ROBERTS, C. J., and SCALIA, THOMAS, and ALITO, JJ., joined. KENNEDY, J., filed a dissenting opinion, in which GINSBURG, BREYER, and SOTOMAYOR, JJ., joined.