



## **Press Release**

# **National Labor Relations Board**

November 2, 2009

**Contact:**

Office of Public Affairs

202-273-1991

[publicinfo@nrlb.gov](mailto:publicinfo@nrlb.gov)

[www.nrlb.gov](http://www.nrlb.gov); @nrlb

### **Supreme Court Agrees to Hear NLRB Case**

Washington, DC – The Supreme Court today agreed to take up the question of whether the National Labor Relations Board is authorized to issue decisions while three of its five seats remain vacant, focusing on a case involving a union contract at an Indiana steel processing plant.

The NLRB is an independent federal agency that administers the primary law governing relations between unions and employers in the private sector. Three of its seats have been vacant since January 2008.

Rather than cease functioning, the two remaining members – current Chairman Wilma B. Liebman, a Democrat, and Member Peter C. Schaumber, a Republican – have continued to issue decisions in matters on which they can agree. In doing so, they drew on advice from the U.S. Department of Justice’s Office of Legal Counsel, which concluded that “if the Board delegated all of its powers to a group of three members, that group could continue to issue decisions and orders as long as a quorum of two members remained.”

The two members have issued nearly 500 decisions so far, most of which have been accepted by the parties or led to settlements. However, parties in dozens of cases have questioned the legitimacy of the two-member decisions in federal court. Decisions at the appellate court level have been split.

“Member Schaumber and I are gratified that the Supreme Court has decided to hear this case and to resolve the issue of the two-member Board’s authority,” said Chairman Liebman. “We remain convinced that continuing to issue decisions was the right course of action.”

Three nominations for the open NLRB seats are now pending before the Senate.

The response to the New Process petition for certiorari, urging the Supreme Court to grant the petition, was filed by the U.S. Solicitor General on behalf of the Board. NLRB

General Counsel Ronald Meisburg said, “I want to thank our appellate litigation lawyers for the skill and professionalism they have displayed in both representing the Board in the various Courts of Appeals, and working diligently with the Solicitor General to present the Board’s position to the Supreme Court.”

The case in question, *New Process Steel, LP v. NLRB*, involves a steel processing plant in Butler, Indiana and a dispute over a contract with the International Association of Machinists reached in the fall of 2007.

The National Labor Relations Board was created by Congress in 1935 to administer the [National Labor Relations Act](#), which guarantees the right of employees to organize and to bargain collectively with their employers, and to engage in other protected concerted activity with or without a union, or to refrain from all such activity.

###