

**FOR IMMEDIATE RELEASE**

**Friday, December 28, 2007**

**R-2653**

**202/273-1991**

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**LABOR BOARD TEMPORARILY DELEGATES LITIGATION  
AUTHORITY TO GENERAL COUNSEL; WILL ISSUE DECISIONS WITH  
TWO MEMBERS AFTER MEMBERS KIRSANOW AND WALSH DEPART**

Anticipating a loss of two members when Congress adjourns in January, the National Labor Relations Board has unanimously decided to temporarily delegate to the General Counsel authority on all court litigation matters that otherwise would require Board authorization. This delegation will give the General Counsel full and final authority on behalf of the Board to initiate and prosecute injunction proceedings under Section 10(j), or Section 10(e) and (f), of the National Labor Relations Act. The Board issued a similar delegation of authority to the General Counsel in 1993 and 2001.

The sitting members are Wilma B. Liebman, Peter C. Schaumber, Peter N. Kirsanow, and Dennis P. Walsh. Former Chairman Robert J. Battista's term expired on December 16, 2007, leaving one vacancy. Members Kirsanow and Walsh are serving in recess appointments that will expire at the *sine die* adjournment of the current session of Congress.

Under these circumstances, the Board also delegated its powers to Members Liebman, Schaumber, and Kirsanow. This action will permit Members Liebman and Schaumber, as a quorum of the three-member group, to issue decisions and orders in unfair labor practice and representation cases. In 2005, a three-member Board issued a similar delegation permitting a two-member quorum to issue decisions.

The temporary delegations, decided on December 20, 2007 and announced today, will be effective as of midnight tonight. They will be revoked when the Board returns to at least three members. In announcing the delegations, the Board stated that it has "a continuing responsibility to fulfill its statutory obligations in the most effective and efficient manner possible."

The Board acted pursuant to Section 3(b) of the Act, which provides that

[t]he 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

*Cited in McDermott v. Ampersand Publishing,  
No. 08-56202 archived on March 24, 2010*

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.

In addition to the statutory language, the Board relied on the legal analysis and U. S. Circuit Court precedent set forth in the March 4, 2003 opinion issued by the Office of Legal Counsel of the U. S. Department of Justice (OLC) in response to the Board's May 16, 2002 request for OLC's opinion whether the Board may issue decisions during periods when three or more of the five seats on the Board are vacant. OLC's opinion 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 Board has historically relied on this reasoning where one member of a three-member Board is disqualified or recused from participating on the merits of a case. The Board also noted that OLC's opinion does not distinguish between decisions that were pending at the time of the delegation of authority to the three-member Board and decisions that are submitted to the Board after the delegation and the departure of the third member.

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