

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

United States Court of Appeals
Fifth Circuit

FILED

June 22, 2010

No. 09-60034

Lyle W. Cayce
Clerk

BENTONITE PERFORMANCE MINERAL LLC, a Product Line of
Halliburton Energy Services, Inc.

Petitioner Cross-Respondent

v.

NATIONAL LABOR RELATIONS BOARD

Respondent Cross-Petitioner

Petition for Review and Cross-Application for Enforcement of an Order of the
National Labor Relations Board
27-CA-20596

Before REAVLEY, DAVIS, and STEWART, Circuit Judges.

PER CURIAM:*

In this case, we are asked to review whether the National Labor Relations Board (the Board) erred in finding that Bentonite Performance Mineral LLC (“Bentonite”) committed numerous unfair labor practices in violation of the National Labor Relations Act.

On appeal, Bentonite raised a threshold issue, arguing that under Section 3(b) of the Act, the two-member Board which issued the order in this case was

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

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without lawful authority to render a decision. While this appeal was pending, the Supreme Court decided *New Process Steel, L.P. v. National Relations Board*, 560 U.S. ____ (2010) and agreed with appellant's position that the two member board had no authority to adjudicate cases pending before the Board.

Accordingly, we vacate the Board's order and remand for further proceedings consistent with this opinion.

VACATED and REMANDED.