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REPRESENTING UNIONS, WORKERS, AND BENEFIT PLANS

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April 3, 2014

VIA ELECTRONIC FILING

Executive Secretary Gary Shinners
National Labor Relations Board
1099 14th Street N.W.
Washington, D.C. 20570

Re: Respondents' Notice of Supplemental Authority
Int'l Longshore & Warehouse Union*, 19-CC-082533 *et al.

Dear Mr. Shinners:

On March 24, 2014, United States District Court Judge Michael H. Simon issued a ruling, *inter alia*, dismissing Charging Party ICTSI Oregon, Inc.'s ("ICTSI"), antitrust claim against Respondent ILWU and the Pacific Maritime Association ("PMA"), the multiemployer association consisting of shipping carriers, stevedores, and terminal operators who employ ILWU-represented longshore workers in West Coast ports, in legal proceedings related to the instant matter. *ILWU v. ICTSI Oregon, Inc.*, Case No. 3:12-cv-01058-SI (D. Or.), Dkt. No. 177, *available at* 2014 WL 1218116. (Attached hereto as Exhibit A is a true and correct copy of Judge Simon's March 24, 2014 ruling.) Judge Simon also presides over various related federal court actions, including the suits brought by the General Counsel under § 10(*l*) of the Act. (See, e.g., Order at 3 & n.1.)

The Court dismissed the aspects of ICTSI's antitrust claim relating to the ILWU and PMA's interpretation of the coastwise, longshore collective bargaining agreement, the Pacific Coast Longshore Contract Document ("PCLCD"), that ICTSI must assign the disputed reefer work to ILWU-represented longshore workers – the same disputed work at issue in the instant matter – on the grounds that this interpretation is protected by the nonstatutory exemption to the antitrust laws. (*Id.* at 5-8, 17.) One of the factors in determining whether the nonstatutory exemption applies is whether the labor-management "agreement concerns wages, hours, or conditions of employment that are mandatory subjects of collective bargaining." (Order at 14, quoting *Phoenix Elec. Co. v. Nat'l Elec. Contractors Ass'n*, 81 F.3d 858, 861 (9th Cir. 1996). When applying this prong of the nonstatutory exemption test, the Court determined that the ILWU and PMA's joint interpretation of the 2008 PCLCD, assigning the disputed reefer work to ILWU longshoremen, is a mandatory subject of bargaining because it constitutes a lawful work preservation agreement. (Order at 11, 19-21) Judge Simon's holding should be followed in the instant matter because the Court analyzed and applied the work preservation test under the NLRA.

This decision applies to pages 19-27 of Respondents' October 30, 2013 Exceptions Brief and to pages 3-12 of their March 20, 2014 Consolidated Reply Brief.

Very truly yours,
LEONARD CARDER, LLP

By:_____
Robert Remar
Amy Endo
Emily Maglio

RR/nb

cc: Mara-Louise Anzalone, National Labor Relations Board
Lisa J. Dunn, National Labor Relations Board
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PROOF OF SERVICE

I am employed in the County of San Francisco, State of California. I am over the age of 18 years old and not a party to the within action; my business address is 1188 Franklin Street, Suite 201, San Francisco, CA 94109. I hereby certify that on **April 3, 2014** I caused the foregoing document(s):

RESPONDENTS' LETTER OF SUPPLEMENTAL AUTHORITY

to be filed electronically with the National Labor Relations Board, and a true and correct copy of the same was served on all interested parties in this action as follows:

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☑ **BY E-MAIL:** I caused the documents to be sent to the person at the electronic notification address(es) listed above. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under the penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on **April 3, 2014**, at San Francisco, California.

Nicole Bridges