

**UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

CATERPILLAR LOGISTICS, INC.)	
)	
Petitioner/Cross-Respondent)	
)	Nos. 15-1433
v.)	15-1611
)	
NATIONAL LABOR RELATIONS BOARD)	
)	
Respondent/Cross-Petitioner)	
)	
and)	
)	
INTERNATIONAL UNION, UNITED)	
AUTOMOBILE, AEROSPACE AND)	
AGRICULTURAL IMPLEMENT WORKERS)	
OF AMERICA, UAW)	
)	
Intervenor)	

**MOTION OF THE NATIONAL LABOR RELATIONS BOARD FOR
PUBLICATION OF AN UNPUBLISHED DECISION**

To the Honorable, the Judges of the United States
Court of Appeals for the Sixth Circuit:

On July 19, 2016, following full briefing, a panel of this Court (Chief Judge Cole and Circuit Judges Merritt and Griffin) issued an unpublished opinion in the above-captioned case. In its opinion, the Court enforced a decision by the National Labor Relations Board (“the Board”) finding that Caterpillar Logistics, Inc. (“the Company”) violated Section 8(a)(1) of the National Labor Relations Act (“the Act”), 29 U.S.C. § 158(a)(1), by interrogating employees about their union

sympathies, creating the impression of surveillance, and announcing and promising benefits in order to dissuade them from supporting the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (“the Union”), and violated Section 8(a)(3) and (1) of the Act by discharging Michael Craft because of his support for the Union. The Board, by its Deputy Associate General Counsel, respectfully moves this Court to publish that opinion. In support of its motion, the Board shows as follows:

1. The Court’s opinion primarily warrants publication because it addresses a legal and factual issue of “continuing public interest.” Sixth Cir. IOP 32.1(b)(1)(C). Specifically, in addressing Craft’s unlawful discharge, the Court appropriately applied the analytical framework set forth in *Atlantic Steel*, 245 NLRB 814 (1979), and concluded that substantial evidence supports the Board’s finding that his conduct was not so egregious as to cause him to lose the Act’s protection. Slip op. at 14-16. In so ruling, the Court agreed with the Board that Craft’s declaration of support for the Union “can reasonably be viewed in context as metaphorical speech rather than threatening speech.” Slip op. at 16 (citing *Kiewit Power Constructors Co. v. NLRB*, 652 F.3d 22, 28 (D.C. Cir. 2011)).

A published judicial opinion upholding a Board finding that an employee’s declaration of union support maintains the protections afforded by the Act, even though it “may well have been crudely stated[,]” is of considerable interest to the

public because it will assist parties in understanding their rights and obligations under the Act. To date, this Court has not published any decisions regarding the Board's analytical framework under *Atlantic Steel*. See 6th Cir. R. 32.1(b) ("Published panel opinions are binding on later panels. A published opinion is overruled only by the court en banc.") The Court's thorough opinion discusses both the facts of this case and relevant Board and court decisions, and a published opinion will serve as a useful guide to employers and employees alike in understanding the contours of conduct protected by the Act.

2. Moreover, the Court's opinion warrants publication under Sixth Circuit IOP 32.1(b)(1)(F) because it addresses a published agency decision interpreting its statute and using its entrusted power to make decisions regarding industrial policy.

3. Finally, the issues before the panel were fully briefed and argued by skilled counsel on both sides, and involved a fully developed administrative record. Cf. Alex Kozinski, *In Opposition to Proposed Federal Rule of Appellate Procedure 32.1*, 51 Federal Lawyer 36, 38 (June 2004) (noting that unpublished disposition is appropriate where the issues are "badly briefed" or have a "poorly developed record[]"). The panel's resulting opinion provides a complete recitation of the relevant facts and gives a clear and well-articulated ruling on the questions

presented. That being so, the opinion would serve as a useful precedent for this Court in addressing future cases.

WHEREFORE, the National Labor Relations Board respectfully requests that the Court grant its motion to publish its opinion in this case.

Respectfully submitted,

/s/ Linda Dreeben

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Dated at Washington, D.C.
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