

ORAL ARGUMENT HELD SEPTEMBER 29, 2017  
No. 15-1443

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**IN THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

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International Longshore & Warehouse Union, *and*  
International Longshore & Warehouse Union, Local 8,

Petitioners/Cross-Respondents

*v.*

National Labor Relations Board

Respondent/Cross-Petitioner

*and*

ICTSI Oregon, Inc.

Intervenor

ON PETITION FOR REVIEW AND CROSS-APPLICATION  
FOR ENFORCEMENT OF AN ORDER OF  
THE NATIONAL LABOR RELATIONS BOARD

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**ILWU'S MOTION FOR STAY OF MANDATE**

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*Counsel for Petitioners ILWU and ILWU Local 8*

## ILWU'S MOTION FOR STAY OF MANDATE

Pursuant to Circuit Rule 41(a)(2), Petitioners International Longshore and Warehouse Union and its Local 8 (collectively "ILWU") hereby move for a stay of the mandate to Respondent National Labor Relations Board ("Board") in this case pending the court's resolution of ILWU's Petition for *En Banc* Rehearing, filed on December 20, 2017, in the related, lead case of *ILWU v. NLRB*, Case No. 15-1344 ("*ILWU #1*"). Good cause is shown for the following reasons:

1. This case, (herein called, "*ILWU #2*,") was coordinated by the court with the related, lead case of *ILWU #1*, Case No. 15-1344, because they involve the same parties and overlapping issues concerning review of two related Board decisions. Both appeals were argued on the same day before the same Panel, which later issued a separate judgment in each case on the same day, November 6, 2017.
2. In *ILWU #1*, the Panel's Judgment enforced the Board's decision in *ILWU (ICTSI Oregon, Inc.)*, 363 NLRB No. 12 (September 24, 2015), finding that ILWU's labor dispute was not protected by the work preservation doctrine and therefore its actions in furtherance of the dispute violated the secondary boycott provisions of § 8(b)(4)(B) of the National Labor Relations Act, 29 U.S.C. § 158(b)(4)(B).

3. In *ILWU #2*, the instant matter, the Panel's Judgment enforced the Board's decision in *ILWU (ICTSI Oregon, Inc.)*, 363 NLRB No. 47 (November 30, 2015) where the Board found that its rulings in the earlier case were binding as to the unlawful nature of the dispute, and then held that ILWU's later actions in furtherance of such unlawful dispute were likewise unlawful. *See*, 363 NLRB No. 47, 1 n.3 ("Because the Board affirmed Judge Schmidt's findings in all relevant respects on September 24, 2015, we find that Judge Wedekind properly relied on the earlier findings.")
4. On December 20, 2017, ILWU filed a Petition for *En Banc* Rehearing in *ILWU #1*, Case No. 15-1344, seeking reversal of the Panel's Judgment and vacatur of the Board's decision therein.
5. Because the Judgment in the instant case, *ILWU #2*, Case No. 15-1443, rests on the Board's findings in *ILWU #1*, Case No. 15-1344, the court's disposition of the *En Banc* Petition in *ILWU #1*, Case No. 15-1344, could well undo or change the basis for the Judgment in *ILWU #2*, Case No. 15-1443.
6. Not staying the mandate here raises the risk that compliance actions could end up becoming invalid and wasteful of resources in the event that the court grants *en banc* review and reverses, modifies or remands to the Board the findings in *ILWU #1*, Case No. 15-1344.

Accordingly, ILWU hereby requests that the court stay issuance of the mandate in the instant case pending the court's resolution of ILWU's Petition for *En Banc* Rehearing, filed on December 20, 2017, in the related, lead case of *ILWU #1*, Case No. 15-1344, and that the mandate here issue concurrently with the mandate in *ILWU #1*, Case No. 15-1344.

Respectfully submitted,

Dated: December 21, 2017

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Dated: December 21, 2017

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**CERTIFICATE OF SERVICE**

I hereby certify that on December 21, 2017, I electronically filed the foregoing document with the Clerk of the Court for the United States Court of Appeals for the District of the Columbia Circuit by using the appellate CM/ECF system.

I certify that the participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Dated: December 21, 2017

LAW OFFICE OF ROBERT REMAR

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