ORAL ARGUMENT HELD SEPTEMBER 29, 2017
NOS. 15-1344 & 15-1428

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

INTERNATIONAL LONGSHORE & WAREHOUSE UNION;
INTERNATIONAL LONGSHORE & WAREHOUSE UNION, LOCAL 8;
INTERNATIONAL LONGSHORE & WAREHOUSE UNION, LOCAL 40,

Petitioners,

v.

NATIONAL LABOR RELATIONS BOARD,

Respondent,

ICTSI OREGON, INC.,

Intervenor for Respondent.

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

MOTION FOR LEAVE TO FILE A BRIEF ON REHEARING *EN BANC* OF PACIFIC MARITIME ASSOCIATION AS *AMICUS CURIAE* IN SUPPORT OF PETITIONERS

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CERTIFICATE OF PARTIES, RULINGS UNDER REVIEW, AND RELATED CASES

Pursuant to D.C. Circuit Rule 28(a)(1), *amicus curiae* Pacific Maritime Association certifies that:

(A) Parties and *Amici*

Except for *amicus curiae* Pacific Maritime Association, all parties, intervenors, and *amici* appearing in the proceedings before the National Labor Relations Board and in this Court are listed in the Brief for Petitioners. *Amicus curiae* is not aware of other *amici* intending to file.

(B) Rulings under Review

References to the rulings at issue appear in the Brief for Petitioners.

(C) Related Cases

As stated in the Brief for Petitioners, this case was not previously before this Court. As of the date of this filing, *amicus* is aware of the following related cases pending before other courts:

1. *ILWU, et al. v. ICTSI Or., Inc.*, No. 14-35504 (9th Cir.); and
2. *ILWU, et al. v. ICTSI Or., Inc.*, 3:12-cv-01058-SI (D. Or.)

CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure and D.C. Circuit Rule 26.1, *amicus curiae* Pacific Maritime Association certifies the following: it has no outstanding shares or debt securities in the hands of the public, and does not have a parent company. Therefore, no publicly held company has a 10% or greater ownership interest in *amicus curiae*.

STATEMENT REGARDING RULE 29(c)(5)

Counsel for *amicus curiae* Pacific Maritime Association authored this brief, and no party or counsel for a party authored any part of this brief. No person other than *amicus* contributed money to fund the preparation or submission of this brief.

MOTION FOR PACIFIC MARITIME ASSOCIATION FOR LEAVE TO FILE A BRIEF *AMICUS CURIAE* IN SUPPORT OF PETITIONERS

Pursuant to Federal Rule of Appellate Procedure 29(b), *amicus curiae* Pacific Maritime Association ("PMA") respectfully moves the Court for leave to file a brief *amicus curiae* in support of rehearing *en banc* in consolidated case nos. 15-1344 and 15-1428.

PMA is a California non-profit mutual benefit corporation headquartered in San Francisco. Its member companies include approximately 70 stevedoring companies, marine terminal operators, cargo-handling equipment maintenance and repair contractors, and shipping lines or carriers that serve every significant port along the Pacific Coast of the United States. PMA is a multi-employer collective-bargaining agent; its primary purpose is to negotiate, enter into, and administer on behalf of its members' collective bargaining agreements with the International Longshore and Warehouse Union, including coast-wide, multi-employer agreements covering roughly 22,000 dockworkers at 29 ports along the Pacific Coast, from Southern California to the Pacific Northwest.

This case arises out of a dispute over whether employees represented by the ILWU or public-sector employees represented by another, rival union—the International Brotherhood of Electrical Workers—are entitled to perform certain work at a particular terminal at the Port of Portland. PMA wishes to highlight the impact of the panel's enforcement of the National Labor Relations Board's

decision on multi-employer associations' ability to negotiate collective bargaining agreements that affect major sectors of the national economy. The Board's decision is inconsistent with Supreme Court precedent on agreements that govern the preservation of work within a multi-employer bargaining unit. *See generally NLRB v. Int'l Longshoremen's Ass'n* ("*ILA I*"), *AFL-CIO*, 447 U.S. 490, 507-09 (1980); *NLRB v. Int'l Longshoremen's Ass'n* ("*ILA II*"), *AFL-CIO*, 473 U.S. 61, 76-78 (1985).

Disputes over the scope and validity of work preservation agreements are among the most difficult issues to resolve in multi-employer collective bargaining. These disputes are even more complex and sensitive when they arise because new technologies have changed or rendered obsolete certain work that is performed by employees in a multi-employer bargaining unit. Work preservation disputes in the maritime industry have resulted in strikes and slowdowns that have interrupted commerce along the Pacific Coast. Because these work stoppages are capable of crippling vital sectors of our national economy, negotiations in this industry have, at times, required the President's intervention to resolve. *See United States v. Pac. Mar. Ass'n*, 229 F. Supp. 2d 1008, 1009-10 (N.D. Cal. 2002) ("[T]he lockout at 29 ports along the West Coast and resultant work stoppage have affected a substantial part of the nation's maritime industry.").

PMA's contemporaneously filed *amicus* brief, if permitted, would provide the Court with a broader perspective on how the panel's enforcement of the Board's ruling will affect multi-employer bargaining in the maritime industry and other industries in which multi-employer bargaining exists. Though the Supreme Court has recognized the strong public importance in stable and effective multi-employer bargaining, *see, e.g.*, *Charles D. Bonanno Linen Serv., Inc. v. NLRB*, 454 U.S. 404, 409 n.3 (1982); *NLRB v. Truck Drivers Local Union No. 449* ("*Buffalo Linen*"), 353 U.S. 87, 95 (1957), the Board's decision creates uncertainty in the collective bargaining process by upsetting settled expectations as to how work preservation agreements will be interpreted and enforced. The Board's failure to adhere to decades-long precedent therefore raises a question of exceptional importance worthy of the *en banc* Court's review. Fed. R. App. P. 35(b)(1)(B).

This Court permitted *amicus* to participate before the panel, and this Court additionally granted *amicus* divided argument time; *amicus* therefore seeks leave to participate in support of this petition for rehearing *en banc* as well. Counsel for *amicus* consulted with counsel for petitioners, respondent, and intervenor-respondent before filing this motion, asking for consent to file this brief. Petitioners consented; Respondent NLRB took no position; and Intervenor-Respondent ICTSI, which is a PMA member company, refused to consent.

Dated: December 27, 2017

Respectfully submitted,

/s/ Jonathan C. Fritts

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CERTIFICATE OF SERVICE

I hereby certify, pursuant to Fed. R. App. P. 25(c) and Cir. R. 25(a), that on December 27, 2017, the foregoing Motion for Leave to File a Brief on Rehearing *En Banc* of Pacific Maritime Association as *Amicus Curiae* in Support of Petitioners was electronically filed with the Clerk of the Court using the CM/ECF system, which will send a notification to the attorneys of record in this matter who are registered with the Court's CM/ECF system.

Dated: December 27, 2017

/s/ Jonathan C. Fritts
Jonathan C. Fritts
Lead Attorney for *Amicus Curiae*
Pacific Maritime Association