



United States Government

NATIONAL LABOR RELATIONS BOARD

OFFICE OF THE GENERAL COUNSEL

Washington, D.C. 20570

August 23, 2018

Mark Langer
Clerk, United States Court of Appeals
for the District of Columbia Circuit
E. Barrett Prettyman U.S. Courthouse
333 Constitution Avenue, NW
Washington, DC 20001

Re: *Midwest Terminals of Toledo International, Inc.*,
D.C. Cir. Nos. 18-1017 & 18-1049

Dear Mr. Langer:

Under FRAP Rule 28(j), the National Labor Relations Board (“the Board”) responds to Petitioner Midwest’s citation of a supplemental “authority,” which consists of a settlement stipulation that is currently pending Board review and that is ineffective, by its terms, unless and until the Board approves it. (Stipulation p. 4.) Preliminarily, the stipulation addresses subsequent events outside the record, and therefore it does not affect the Board’s entitlement to enforcement of the Order on review. Indeed, the stipulation itself indicates that it attempts to resolve only certain enumerated unfair labor practices that occurred in 2017, and that “[i]t does not preclude . . . the Board and the courts from finding violations with respect to matters which precede the date of the approval.” (Stipulation p. 3.) Thus, contrary to Midwest’s suggestion, the stipulation does not undercut the Board’s finding that in 2013, Midwest unlawfully refused to abide by a Memorandum of Understanding (“MOU”) executed with the International Longshoremen’s Association, Local 1982 (“the Union”). Board Brief pp. 41-47.

Moreover, Midwest errs in asserting that the stipulation has “clear” implications for this case. The stipulation recites that, “[s]ince at least December 31, 2012, there has been no collective-bargaining agreement in effect” and “no binding union security provision” requiring Midwest’s employees to maintain

union membership as a condition of employment. (Stipulation p. 4.) The stipulation says nothing, however, about Midwest's distinct and prior commitment, in the separate MOU, to "make appropriate payroll deductions for each employee who furnishes [Midwest] formal written authorization for check-off . . . deductions" of union dues, "[u]ntil ILA Local 1982 and Midwest [] ratify a new local collective bargaining agreement." Board Brief pp. 14-15. Accordingly, the settlement stipulation has no bearing on the Board's finding that Midwest unlawfully departed from the MOU that is at issue in this case. And because the stipulation does not address the MOU at all, it also does not even remotely establish, as Midwest claims, that Midwest "lawfully terminated . . . the MOU effective December 31, 2012," or that the Board improperly relied on the MOU to find a violation here.

Very truly yours,

/s/ Linda Dreeben

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