

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

<b>MIDWEST TERMINALS OF TOLEDO</b>	)	
<b>INTERNATIONAL, INC.</b>	)	
	)	
<b>Petitioner</b>	)	<b>Nos. 17-1238 &amp; 18-1094</b>
	)	
<b>v.</b>	)	<b>Board Case Nos.</b>
	)	<b>08-CA-119493</b>
<b>NATIONAL LABOR RELATIONS BOARD</b>	)	<b>08-CA-119535</b>
	)	
<b>Respondent/Cross-Petitioner</b>	)	

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<b>MIDWEST TERMINALS OF TOLEDO</b>	)	
<b>INTERNATIONAL, INC.</b>	)	
	)	
<b>Petitioner</b>	)	<b>Nos. 17-1239 &amp; 18-1093</b>
	)	
<b>v.</b>	)	<b>Board Case Nos.</b>
	)	<b>08-CA-135971</b>
<b>NATIONAL LABOR RELATIONS BOARD</b>	)	<b>08-CA-136613</b>
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<b>Respondent/Cross-Petitioner</b>	)	

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<b>MIDWEST TERMINALS OF TOLEDO</b>	)	
<b>INTERNATIONAL, INC.</b>	)	
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<b>Petitioner/Cross-Respondent</b>	)	<b>Nos. 18-1017 &amp; 18-1049</b>
	)	
<b>v.</b>	)	<b>Board Case Nos.</b>
	)	<b>08-CA-038092, et al.</b>
<b>NATIONAL LABOR RELATIONS BOARD</b>	)	
	)	
<b>Respondent/Cross-Petitioner</b>	)	

**MOTION OF THE NATIONAL LABOR RELATIONS BOARD FOR  
RECONSIDERATION AND CLARIFICATION OF COURT’S ORDER  
REGARDING ORAL ARGUMENT**

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

The National Labor Relations Board (“the Board”), by its Deputy Associate General Counsel, respectfully moves this Court for reconsideration of the limitation to two Board counsel, as stated in the Court’s November 2, 2018 order allocating oral argument time, and instead, to best assist the Court, permit the three Board attorneys who filed the three distinct briefs in these cases to argue sequentially and evenly split the allotted 30 minutes. The Board further requests clarification of the Court’s expectations of the scope of Board counsel’s presentations. In support of its motion, the Board shows as follows:

1. The above-captioned cases were briefed separately by three Board attorneys: Milakshmi Rajapakse (Case Nos. 18-1017 & 18-1049, “*Midwest I*”), Heather Beard (Case Nos. 17-1238 & 18-1094, “*Midwest II*”), and Rebecca Johnston (Case Nos. 17-1239 & 18-1093, “*Midwest III*”). The cases involve various unfair labor practices committed by Midwest Terminals of Toledo, Inc. (“the Company”). Although the cases involve some of the same players, the three cases involve different facts and distinct legal issues with separate administrative records.

2. Oral argument has been scheduled for November 16 before Circuit Judge Millett and Senior Circuit Judges Sentelle and Randolph.

3. On November 2, the Court issued an order regarding the procedure to be followed at argument, providing in pertinent part:

No more than 2 counsel per side will be permitted to argue and each side will be expected to present all issues in these cases in the 30 minutes allotted for argument. While it is anticipated that argument will proceed in the sequence that mirrors the chronological order of the events at issue in: *Midwest I* (Nos. 18-1017, 18-1049); *Midwest II* (Nos. 17-1238, 18-1094); and *Midwest III* (Nos. 17-1239, 18-1093), counsel should be prepared to discuss any questions that arise in the course of the argument even if they do not follow the order of the statement of issues presented in the parties' letter filed October 30, 2018.

4. The Board respectfully requests that the Court permit the Board's three attorneys who briefed the three distinct cases and issues on different records to present argument in their own respective case, as well as answer any questions from the Court regarding the relationship and interaction with the other two cases. The Board submits that it will be best able to assist the Court by having the attorneys most familiar with the respective cases available to answer the Court's questions while staying within the total time allotted by the Court. The Board anticipates that, if its three attorneys are permitted to argue, it would be appropriate to split the time evenly with each arguing for 10 minutes, starting with Ms. Rajapakse, then Ms. Beard, and finally Ms. Johnston.

5. Further, the Board seeks clarification because it is unclear whether the panel anticipates each arguing attorney to answer any question about any of the three cases, rather than primarily answering questions about the case she actually briefed and its relationship to the other two cases. The Board believes that its counsel can better assist the Court if each arguing attorney could provide answers to questions pertaining to the case that she personally briefed. In the alternative, should the Court maintain the November 2 order's limitation that only two Board counsel argue, the Board requests that Ms. Rajapakse present the Board's case in *Midwest I*, and Ms. Beard argue in *Midwest II* and *III*, with each attorney being able to respond to questions regarding any relationship among the three cases. In that instance, the Board submits that it would be appropriate for Ms. Rajapakse to argue for 10 minutes and Ms. Beard for 20 minutes.

WHEREFORE, the Board respectfully requests that the Court grant this motion permitting its three attorneys to argue their own respective cases sequentially as well as discuss any relationship among the three cases while staying within the allotted 30-minute block. Further, the Board requests clarification of the Court's expectations regarding the scope of the arguments each Board counsel will present.

Respectfully submitted,

/s/ Linda Dreeben  
Linda Dreeben  
Deputy Associate General Counsel  
National Labor Relations Board  
1015 Half Street SE  
Washington, DC 20570  
(202) 273-2960

Dated at Washington, DC  
this 5<sup>th</sup> day of November 2018

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v.	)	<b>Board Case Nos.</b>
	)	<b>08-CA-119493</b>
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v.	)	<b>Board Case Nos.</b>
	)	<b>08-CA-135971</b>
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<b>Petitioner/Cross-Respondent</b>	)	<b>Nos. 18-1017 &amp; 18-1049</b>
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v.	)	<b>Board Case Nos.</b>
	)	<b>08-CA-038092, et al.</b>
<b>NATIONAL LABOR RELATIONS BOARD</b>	)	
	)	
<b>Respondent/Cross-Petitioner</b>	)	

## CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 32(g)(1), the Board certifies that the foregoing Motion contains 665 words of proportionally-spaced, 14-point type, and the word processing system used was Microsoft Word 2016.

/s/ Linda Dreeben

Linda Dreeben  
Deputy Associate General Counsel  
National Labor Relations Board  
1015 Half Street, SE  
Washington, D.C. 20570  
(202) 273-2960

Dated at Washington, D.C.  
this 5th day of November 2018

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## CERTIFICATE OF SERVICE

I hereby certify that on November 5, 2018, I electronically filed the foregoing Motion with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit by using the appellate CM/ECF system.

I further certify that all parties or their counsel of record are CM/ECF users and will be served through the CM/ECF system.

/s/ Linda Dreeben

Linda Dreeben

Deputy Associate General Counsel

National Labor Relations Board

1015 Half Street, SE

Washington, D.C. 20570

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Dated at Washington, D.C.  
this 5th day of November 2018