

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT
Form 7. Mediation Questionnaire**

Instructions for this form: <http://www.ca9.uscourts.gov/forms/form07instructions.pdf>

9th Cir. Case Number(s)

Case Name

Counsel submitting this form

Represented party/parties

Briefly describe the dispute that gave rise to this lawsuit.

In approximately 2014, drivers working for Intermodal Bridge Transport ("Intermodal") began to engage in protected concerted activity by filing wage claims against Intermodal and by beginning a union organizing campaign. Throughout the course of this protected concerted activity, Intermodal began to commit a plethora of unfair labor practices in violation of the National Labor Relations Act (the "Act"). On approximately August 10, 2015, the International Brotherhood of Teamsters ("Teamsters") filed charges with the National Labor Relations Board ("NLRB") alleging that Intermodal had engaged in unfair labor practices.

On November 28, 2017, Administrative Law Judge Dickie Montemayor found that drivers working for Intermodal were employees under the Act. The Judge further found that Intermodal committed unfair labor practices in violation of the Act including, inter alia, expressing to employees that their union campaign was futile. Both the Temasters and Intermodal filed exceptions and supporting briefs with the NLRB.

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Briefly describe the result below and the main issues on appeal.

On March 3, 2020, the NLRB issued their decision on the exceptions to Judge Montemayor's decision. The NLRB affirmed Judge Montemayor's finding that drivers working for Intermodal are statutory employees. The NLRB also affirmed most of the unfair labor practice findings made by Judge Montemayor, except for reversing Judge Montemayor's finding that Intermodal violated the Act by expressing to employee drivers that their Union organizing campaign would be futile.

Teamsters are appealing the NLRB's reversal of Judge Montemayor's finding that Intermodal violated the Act by expressing to employees the futility of their organizing campaign. Teamsters request that the Ninth Circuit find that Intermodal's statement of futility is not protected under the Act and violates Section 8(a)(1).

Describe any proceedings remaining below or any related proceedings in other tribunals.

To-date, Intermodal has not complied with the Board's order. Although no related proceedings are currently pending, it is possible that the Board may seek enforcement of its Order and/or that Intermodal could file its own petition for review.

Signature



Date

Mar 20, 2020

(use "s/[typed name]" to sign electronically-filed documents)

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