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October 16, 2020

Via Electronic Filing

Clerk, Court of Appeals
District of Columbia Circuit
333 Constitution Avenue, N.W.
Washington, DC 20001-2866

Re: American Federation of Government Employees, Local 1929 v. Federal Labor Relations Authority, 961 F.3d 452 (D.C. Cir. 2020)

Circus Circus Casinos, Inc. v. NLRB, 961 F.3d 469 (D.C. Cir. 2020)

International Longshore & Warehouse Union v. NLRB, 971 F.3d 356 (D.C. Cir. 2020)

Kiewit Power Constructors Co. v. Secretary of Labor, U.S. Department of Labor, 959 F.3d 381 (D.C. 2020)

Rule 28(j) Letter

Dear Clerk of the Court:

Petitioner cites the above cases to this Court because they concern the scope of a review of the decision of administrative agencies. In each of those cases, this Court rejected the decision making because it was contrary to the statute or lacked reasoned decision making.

These cases support the Petitioner's position in this case that the Board's action is contrary to the statute and lacks reasoned decision making.

These case all support Petitioner's argument that the Board's decision to allow the employer to escape the consequences of refusing to bargain, violates the statute which set up a binary system: The employer could refuse to bargain to test certification but the consequences were that its refusal to bargain was an unfair labor practice and subject to an unfair labor practice strike. Subsequent cases made it clear that there is no right to engage in piece meal bargaining and this decision sanctions piece meal bargaining by postponing bargaining over an issue until a later date. Moreover the Board has failed to explain how this decision is consistent with the obligation of an employer to bargain over every other

decision affecting wages, hours and other conditions of employment including any change in working conditions.

Sincerely,

A handwritten signature in blue ink that reads "David A. Rosenfeld". The signature is written in a cursive, flowing style.

David A. Rosenfeld

DAR:kts/lda/kts
opeiu 29 afl-cio(1)

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**CERTIFICATE OF COMPLIANCE PURSUANT TO F.R.A.P. 15(d) and
27(d)(2)(A))**

I hereby certify pursuant to Federal Rule of Appellate Procedure 15(d) and 27(d)(2)(A) that this **CITATION TO SUPPLEMENTAL AUTHORITY PURSUANT TO FRAP 28(j)** complies with the type-volume limitation of Federal Rule of Appellate Procedure 27(d)(2)(A) because it contains 201 words. This **CITATION TO SUPPLEMENTAL AUTHORITY PURSUANT TO FRAP 28(j)** with the typeface requirements of Federal Rule of Appellate Procedure and the typestyle requirements of Federal Rule of Appellate Procedure because it has been prepared with Microsoft Word 2010 in in Times New Roman font.

CERTIFICATE OF SERVICE

I am a citizen of the United States and an employee in the County of Alameda, State of California. I am over the age of eighteen years and not a party to the within action; my business address is 1001 Marina Village Parkway, Suite 200, Alameda, California 94501.

I hereby certify that on October 16, 2020, I electronically filed the foregoing **Citation to Supplemental Authority Pursuant to F.R.A.P. Rule 28(j)** with the United States Court of Appeals for the Ninth Circuit, by using the Court's CM/ECF system.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the Notice of Electronic Filing by the Court's CM/ECF system.

I certify under penalty of perjury that the above is true and correct. Executed at Alameda, California, on October 16, 2020.

/s/ Katrina Shaw
Katrina Shaw