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**SUPREME COURT
OF THE STATE OF WASHINGTON**

INTERNATIONAL UNION OF OPERATING ENGINEERS,
LOCAL 286, Petitioner,

v.

PORT OF SEATTLE, Respondent.

SUPPLEMENTAL BRIEF OF RESPONDENT

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I. INTRODUCTION

The finality of labor arbitration awards is important, but not so important as to block judicial review of an award that prevents an employer from complying with Washington's explicit, well-defined, and dominant public policy against workplace racial harassment.

Although it adopted the public policy exception to enforcement of arbitration awards in 2009, the Washington Supreme Court has not yet considered this exception in the context of workplace discrimination or harassment. In this crucial area of workplace civil rights, judicial intervention must be available to employers in the rare circumstance presented here – where an arbitration award prevents an employer from effectively implementing the specific directives of state and federal law that it must maintain a work environment free of race-based harassment. Arbitral finality cannot be allowed to trump vital public policy.

Despite an arbitrator's finding that Port of Seattle (the "Port") employee Mark Cann ("Cann") violated the Port's anti-harassment policy by hanging a noose in a prominent location in the workplace, the discipline imposed on Cann was so slight that it virtually condoned his behavior. King County Superior Court Judge Steven González correctly determined that the arbitrator's award was so lenient that it violated Washington's explicit, well-defined, and dominant public policy prohibiting discrimination in the workplace by preventing the Port from fulfilling its affirmative duty to provide a workplace free from racial

harassment and discrimination. Thus, the award was properly vacated and this Court should affirm Judge González's decision.

II. STATEMENT OF CASE

A. Cann ties and displays a noose in the workplace in violation of the Port's anti-harassment policy.

The Port and International Union of Operating Engineers, Local 286 (the "Union") were parties to a Collective Bargaining Agreement (the "CBA") that covered certain Port employees, including Cann, and prohibited discrimination by employees on the basis of race. CP 637 (citing Section 4.01 of CBA). Under the CBA, the Port may discipline or terminate the employment of any employee for just cause. CP 637 (citing Section 7.07 of the CBA).

The Port also has a written anti-harassment policy ("HR-22") that forbids harassment in the workplace. CP 638 (quoting HR-22). The Port's policy explicitly prohibits "[d]isplaying or circulating pictures, objects, or written materials . . . that are sexually suggestive or that demean or show hostility to a person because of the person's age, race, color, national origin/ancestry . . . or any other category protected by law." *Id.* The Port developed an online training program to support this policy, which Cann completed in advance of the incident for which he was disciplined. CP 646. In this program and in the language of the policy, the Port is clear that it has zero tolerance for harassment at the workplace: "A 'zero tolerance' policy is a policy of having no tolerance for transgressions under the policy. Any alleged violation of this (anti-

harassment) policy will generate an investigation and, if verified, will be considered 'gross misconduct' and can subject an employee to immediate termination." *Id.* and CP 638. Cann understood that under this policy, he would be fired if he violated HR-22. CP 223 (PERC hearing testimony).

On December 17, 2007, while on duty at the Port, Cann tied a hangman's noose in a rope and hung the noose on a rail overlooking an open, commonly used and traveled work area at the Port. CP 636 & 648. An African-American Port employee, Rafael Rivera, with whom Cann had a recent falling out, was working approximately 30 feet away from where Cann hung the noose. CP 211-212. Mr. Rivera served in the Navy, and was stationed in Jacksonville, Florida in the 1960s where he "witnessed first hand and lived daily with racism." *Id.* The sight of the hangman's noose caused Mr. Rivera to "relive a time in [his] life that was demeaning, degrading, humiliating, and de-humanizing." CP 308-309; CP 448.

Even after learning that Mr. Rivera was offended by the noose, Cann could not muster a sincere apology. CP 652. Instead, he produced a definition of "noose" from a dictionary, "apparently to counter the notion that he had tied a noose." *Id.* On February 11, 2008, the Port terminated Cann for violating HR-22. CP 35 (termination letter).

B. After a hearing, the arbitrator reinstates Cann with full back pay except for a 20-day suspension, and no other discipline.

The Union grieved on Cann's behalf, and requested arbitration of the grievance pursuant to the CBA. CP 35. Arbitrator Anthony Vivenzio

presided over a two-day hearing in October 2008, and issued his award (the “Award”) on February 2, 2009. *See* CP 633-658.

The arbitrator found that the Port met all of the tests for “just cause” discipline of Cann. Specifically, he found that the Port gave Cann fair notice of potential discipline for his act, that the Port conducted a thorough and fair investigation, and that it gathered substantial evidence that Cann violated the Port’s anti-harassment policy. CP 649; 652. The arbitrator not only found that Cann violated HR-22, but also that the Port applied this policy even-handedly to all employees. CP 653-54. Although the arbitrator found that the Port satisfied all of the elements of just cause for discipline, he concluded that termination was too harsh a punishment. CP 655. Therefore, he reduced Cann’s discipline to a retroactive 20-day suspension without pay, and ordered the Port to reinstate Cann to his prior position with full back pay and benefits. CP 657.

C. King County Superior Court Judge González vacates the Award.

The Port timely applied to King County Superior Court for, and was granted, a Writ of Certiorari to review the Award. CP 740-741. The Port filed a Motion to Vacate the Award on June 17, 2009. CP 726. In turn, the Union filed a Motion for Summary Judgment on the same day, requesting that the trial court enforce the Award. *Id.* King County Superior Court Judge González announced his oral ruling on August 3, 2009, and issued a written order on February 4, 2010. CP 725-727.

Judge González vacated the Award “because it violates Washington’s explicit, well-defined, and dominant public policy prohibiting discrimination in the workplace.” *Id.* He explained the rationale for his ruling as follows:

Employers have an affirmative duty to provide a workplace free from racial harassment and discrimination. Employees have a right to such a workplace. The Award undermined the well-defined, explicit and dominant public policy expressed in [the Washington Law Against Discrimination (“WLAD”)] because it was excessively lenient. Under the Award Mr. Cann was ordered back to work with back pay and without significant consequence, without training or other warning.

CP 727.

In place of the vacated order, Judge González fashioned alternate relief, which included Cann’s reinstatement. CP 726. Cann returned to work at the Port on September 22, 2009. *Id.*

D. The Court of Appeals affirms vacation of the Award.

The Union appealed Judge González’s ruling to Division I of the Court of Appeals. After considering the parties’ briefs and oral argument, the Court of Appeals unanimously affirmed the ruling that the Award should be vacated, but ruled that Judge González exceeded his authority in ordering alternate discipline. Appendix to Petition for Review, A-17. The Union seeks review of the former ruling. The Port has not sought cross review.

III. ARGUMENT

A. Standard of review.

Judge González's decision to vacate the Award involved a pure question of law, which is subject to de novo review by this Court. *Kitsap County Deputy Sheriff's Guild v. Kitsap County*, 167 Wn.2d 428, 434, 219 P.3d 675 (2009).

B. Federal and state courts support limited judicial review of an arbitration award to determine if it violates public policy.

Pursuant to clear federal and state law, including a recent decision by this Court, a court may not enforce an arbitration decision that violates public policy. *Id.* at 436. In *Kitsap County*, this Court considered vacation of an arbitration award reinstating Kitsap County Sheriff's Deputy Brian LaFrance, who had been terminated for multiple incidents of misconduct, including dishonesty to his employer. *Id.* at 431-32. The Court recognized the importance of finality of arbitration decisions, but held that Washington courts may perform limited review of arbitration decisions to determine whether they violate public policy. *Id.* at 435-36. *See also W.R. Grace & Co. v. Local Union 759, Int'l Union of United Rubber Workers*, 461 U.S. 757, 766, 103 S. Ct. 2177, 76 L. Ed. 2d. 298 (1983) (holding that if arbitrator's award violates explicit public policy, courts are obliged to refrain from enforcing it); *Virginia Mason Hosp. v. Washington State Nurses Ass'n*, 511 F.3d 908, 917 (9th Cir. 2007) (same).

This Court has not considered the vacation of an arbitration award as contrary to the public policy against racial harassment. However, in

addition to the Court of Appeals decision in this case, which is the only Washington authority considering this issue, courts in other jurisdictions have vacated awards on this ground. *See City of Hartford v. Casati*, No. CV000599086S, 2001 WL 1420512, at *5 (Conn. Super. Ct. Oct. 25, 2001) (vacating as against public policy arbitrator's award that reinstated employee who made discriminatory comments at the workplace because award "effectively undermines the City's efforts to comply with its legal duty pursuant to federal and state law . . . to take reasonable steps to eliminate racially, ethnically and sexually discriminatory language . . ."); *State v. AFSCME, Council 4, Local 387, AFL-CIO*, 747 A.2d 480 (Conn. 2000) (holding arbitration award violated public policy because it reinstated state employee whose conduct violated statute and employment regulations issued by his employer); *Nebraska v. Henderson*, 762 N.W.2d 1 (Neb. 2009) (affirming refusal to enforce arbitration award reinstating police officer who was affiliated with Ku Klux Klan).

C. **Washington has an explicit, dominant, and well-defined public policy against harassment in the workplace.**

The public policy exception to enforcing arbitration awards is narrow. An arbitrator's award may only be vacated where it violates an "explicit, well-defined, and dominant" public policy. *Kitsap County*, 167 Wn.2d at 435-36. Washington has explicit, well-defined, and dominant laws prohibiting race-based harassment in the workplace. In enacting the WLAD, the Legislature made clear that the state would not tolerate discrimination based on race:

The legislature hereby finds and declares that practices of discrimination against any of its inhabitants because of race . . . are a matter of state concern, that such discrimination threatens not only the rights and proper privileges of its inhabitants but menaces the institutions and foundation of a free democratic state.

RCW 49.60.010. WLAD's purpose is advanced in its substantive provisions. "The right to be free from discrimination because of race . . . is recognized as and declared to be a civil right. This right shall include . . . [t]he right to obtain and hold employment without discrimination . . ." RCW 49.60.030(1). The statutory declarations in WLAD "clearly condemn[] employment discrimination as a matter of public policy." *Roberts v. Dudley*, 140 Wn.2d 58, 69-70, 993 P.2d 901 (2000).

This Court has held on numerous occasions that WLAD embodies a public policy "of the highest priority." *Antonius v. King County*, 153 Wn.2d 256, 268, 103 P.3d 729 (2004); *Xieng v. Peoples Nat'l Bank of Wash.*, 120 Wn.2d 512, 521, 844 P.2d 389 (1993); *Allison v. Housing Auth. of Seattle*, 118 Wn.2d 79, 86, 821 P.2d 34 (1991). Moreover, Washington courts have made clear that the purpose of WLAD is to deter and to eradicate discrimination in Washington. *Brown v. Scott Paper Worldwide Co.*, 143 Wn.2d 349, 361, 362, 20 P.3d 921 (2001) (holding that there is a "broad public policy to eliminate all discrimination in employment" in Washington); *Marquis v. City of Spokane*, 130 Wn.2d 97, 109, 922 P.2d 43 (1996).

Although this Court in *Kitsap County* did not directly determine whether WLAD expresses an “explicit, well-defined, and dominant” public policy that could support vacation of an arbitration award, the Court’s opinion suggests that this is the case. After finding that Kitsap County’s proffered criminal statutes did not provide an explicit, well-defined, and dominant public policy that supported vacation of the arbitrator’s award in that case, the Court pointed to examples of such policies in other states, including “the affirmative duty under federal statute [(Title VII of the Civil Rights Act of 1964)] to prevent sexual harassment by law enforcement officers.” *Kitsap County*, 167 Wn.2d at 437 (citing *City of Brooklyn Center v. Law Enforcement Labor Servs., Inc.*, 635 N.W.2d 236, 242-44 (Minn. App. 2001)). In finding a “well-defined and dominant” public policy against sexual harassment in the workplace, the court in *City of Brooklyn* noted that both Title VII and the Minnesota Human Rights Act, like WLAD, prohibit employers from engaging in harassment, and, as in Washington, that employers have an affirmative duty to prevent such harassment in the workplace. *City of Brooklyn*, 635 N.W.2d at 242-243.

Federal law includes a public policy against race-based discrimination similar to that found in WLAD. Title VII of the Civil Rights Act of 1964 prohibits racial discrimination against any individual with respect to employment. 42 U.S.C. § 2000e. Under federal law, an employer has an affirmative duty to maintain a work environment free from race-based harassment. This duty encompasses a requirement to take

positive steps to eliminate such harassment taking the form of, for example, insults in the workplace. Equal Employment Opportunity Commission (“EEOC”), Compliance Manual §§ 15-VII, 15-IX (2006).

D. Judge González performed the appropriate analysis in concluding that the Award violated Washington’s public policy.

Judge González properly followed this Court’s instructions from *Kitsap County* in vacating the Award. He evaluated the Award against the identified public policy in WLAD of deterring harassment in the workplace, and concluded that the Award violated the public policy because the Award was so lenient that it did not deter, let alone “eradicate,” future harassment by Cann or any other Port employees.

The Post-Hearing Order contains the following two findings that confirm Judge González performed the appropriate review: the Award “is hereby vacated because it violates Washington’s explicit, well-defined, and dominant public policy prohibiting discrimination in the workplace”; and “The Award undermined the well-defined, explicit and dominant public policy expressed in WLAD because it was excessively lenient.” CP 726-27. These findings establish that the Award ran contrary to explicit, well-defined, and dominant Washington public policy, and that Judge González acted appropriately in ruling that it not be enforced.

E. The facts here support vacation of an arbitrator's award, unlike the facts in *Kitsap County*.

This Court in *Kitsap County* refused to affirm vacation of an arbitrator's award. *See Kitsap County*, 167 Wn.2d at 439. There are a number of obvious distinctions between the facts in *Kitsap County* and in this case that support a different result here.

1. In *Kitsap County*, there was no public policy placing an affirmative duty on an employer to correct or prevent an employee's acts.

In identifying a Washington public policy that the award reinstating Deputy LaFrance allegedly violated, the Kitsap County Sheriff's Office pointed to criminal statutes prohibiting anyone from knowingly making false statements to public servants, statutes prohibiting public officers from knowingly making false statements, and the Brady rule, which requires prosecutors to disclose exculpatory evidence, including evidence that an involved police officer was found to be untruthful. *Id.* at 436 and 438. This Court held that the proffered sources of public policy were not adequate to vacate the award because they did not "prohibit[] persons found to be untruthful from serving as officers or plac[e] an affirmative duty on counties to prevent police officers from ever being untruthful." *Id.* at 437. Ultimately, this Court held that "[t]he Court of Appeals erred when it vacated the arbitrator's award without explaining the explicit, well defined, and dominant public policy violated by that award." *Id.* at 439. Here, unlike in *Kitsap County*, Judge González

identified Washington's explicit, well-defined, and dominant public policy prohibiting discrimination in the workplace, which supported vacation of the Award. CP 726-727.

Moreover, as expressly recognized by Judge González in his written order, this public policy does, unlike the statutes that this Court found inadequate in *Kitsap County*, place an affirmative duty on employers to prevent acts like those perpetrated by Cann. *Id.* Washington courts have made clear that the purpose of WLAD is to deter and to eradicate discrimination in Washington. *Brown*, 143 Wn.2d at 359-360, 362; *Marquis*, 130 Wn.2d at 109.

Washington employers' duty to prevent harassment is seen in cases where employers were exposed to significant liability for failing to properly deter harassment by their employees. *See Perry v. Costco Wholesale, Inc.*, 123 Wn. App. 783, 797, 98 P.3d 1264 (2004) (award of \$500,000 against employer that transferred harasser to different shift and required sensitivity training, rather than terminating him); *Robel v. Roundup Corp.*, 148 Wn.2d 35, 48, 59 P.3d 611 (2002) (affirming award of \$52,000 and attorneys' fees against employer who terminated one, but not all, harassing employees on grounds that employer's "remedial action . . . was not of such a nature to have been reasonably calculated to end the harassment"). Judge González recognized this duty in his order ("[e]mployers have an affirmative duty to provide a workplace free from racial harassment and discrimination"), and this duty justifies his vacation of the Award. CP 727.

2. The arbitrator's award in *Kitsap County* was significantly more stringent than the Award here.

Despite finding that the Sheriff's Office should not have terminated Deputy LaFrance for his acts, the arbitrator in *Kitsap County* nonetheless issued an award that acknowledged the need for significant discipline. While the arbitrator reinstated LaFrance, his reinstatement was without back pay for the four year period from his placement on administrative leave until he was reinstated. *Kitsap County*, 167 Wn.2d at 432-33. Also, the arbitrator upheld the County's allegations of misconduct, and allowed the County to place three final written warnings in LaFrance's personnel file. *Id.*

The Union has previously cited cases involving racial epithets to support its position that vacation of the Award was improper. As in *Kitsap County*, the rulings in these cases relied upon significantly more corrective arbitration awards than the Award here. *See, e.g., Way Bakery v. Truck Drivers Local No. 164*, 363 F.3d 590, 592, 595-96 (6th Cir. 2004) (affirming arbitrator's reinstatement of employee, but noting that award subjecting employee to six-month loss of pay and five-year probation period did not "condone or fail to discourage hostile behavior in the workplace."); *Gits Mfg. Co. v. Local 281 International Union*, 261 F. Supp. 2d 1089, 1092, 1100 (S.D. Iowa 2003) (same, regarding award reinstating employee with six month loss of pay); *Eastern Associated Coal Corp. v. United Mine Workers of Am., Dist. 17*, 531 U.S. 57, 65-66, 121 S. Ct. 462, 148 L. Ed. 2d 354 (2000) (noting that arbitrator's award did not

condone employee's conduct or ignore potential consequences: "Rather, the award punishes Smith by suspending him for three months, thereby depriving him of nearly \$9,000 in lost wages; it requires him to pay the arbitration costs of both sides; it insists upon further substance-abuse treatment and testing; and it makes clear (by requiring Smith to provide a signed letter of resignation) that one more failed test means discharge."); *Stead Motors of Walnut Creek v. Auto. Machinists Lodge No. 1173*, 886 F.2d 1200, 1203 (9th Cir. 1989) (affirming award stating that employee's "reckless conduct on October 14, 1985 [] warrants severe discipline . . . reinstatement with a one-hundred and twenty (120) day suspension should serve as an object lesson and impress upon [him] that he is required to follow instructions and perform his job duties fully and carefully."); *New York State Elec. and Gas Corp. v. System Counsel U-7 of the Int'l Bhd. of Elec. Workers*, 328 F. Supp. 2d 313, 315 (N.D.N.Y. 2004) (affirming award of reinstatement without back pay or benefits, on a last-chance basis).

The Award did not contain any of the significant present and future-looking penalties found in the cases cited above, including *Kitsap County*. In these cases, employees lost meaningful amounts of wages through long suspensions or de minimis back pay awards. Beyond the financial deterrent, the employees were further deterred from repeating their offenses through probation or last-chance agreements.

In contrast, the Award, with its negligible 20-day suspension, no probation or other forward-looking disciplinary measure, and full back pay

to Cann upon reinstatement, effectively condoned Cann's actions and prevented the Port from fulfilling its duty to eliminate discrimination in the workplace, as required by WLAD. If the arbitrator's penalty for Cann's behavior were more in line with the seriousness of his offense, then the Port may not have challenged the Award. But because the Award had virtually no deterrent effect, the Port had no choice but to seek judicial review. Washington's public policy against discrimination specifically militates against the negligible discipline meted out in the Award, and Judge González did not err by vacating the Award on that ground.

F. **An overly restrictive interpretation of the public policy exception would effectively abolish it when workplace harassment is at issue.**

The Union and Amicus Washington State Labor Council ("WSLC") previously argued that Judge González erred in vacating the Award because no Washington statute, regulation, or case law outlines the specific discipline that must be imposed on an employee who violates his employer's anti-harassment policy. But *Kitsap County* does not support such a narrow public policy exception.

Under the Union's and WSLC's suggested interpretation, in order for the public policy exception ever to be applicable in a workplace harassment situation, there would have to be a statute, a regulation, or case law that contained an exhaustive listing of all the ways in which an employee might violate his employer's anti-harassment policy and the corresponding mandatory discipline for each theoretical violation.

Literally, a statute, regulation, or case(s) would need to specify, for example, that the punishment for a single racially offensive remark heard by one co-worker is a three-day unpaid suspension; the punishment for displaying a racially offensive cartoon in an open part of the work area is a thirty-day unpaid suspension and one-year probation; and so on, for countless potential acts related to each of the protected classes articulated in WLAD.

Although the Union and WSLC may wish for such a preposterous interpretation of the public policy exception in order to support their current goal of absolute finality of labor arbitration decisions, there is no authority, including this Court's decision in *Kitsap County*, that supports such a result. The Port acknowledges that the review of arbitration awards in Washington is narrow, but it is not so narrow that the public policy exception adopted by this Court in *Kitsap County* could never apply absent a law specifying the severity of discipline for each specific WLAD violation.

The Port is unaware of any Washington or federal authority that contains the theoretical exhaustive chart of potential acts of workplace harassment and the corresponding required punishment for engaging in the listed behavior. Thus, under WSLC's and the Union's interpretation, the public policy exception would *never* be applicable in a case involving workplace harassment or discrimination. Such a result is inconsistent with Washington's strong public policy to deter and eradicate discrimination.

G. The fact that application of the public policy exemption requires judicial analysis is not a reason to reject it here.

The inquiry mandated by this Court in *Kitsap County* necessarily requires judicial analysis as to whether a proffered public policy is sufficiently explicit, well-defined, and dominant to support vacation of an arbitration decision. And, if the policy meets that standard, whether the arbitration award violates the policy. However, the necessity of this analysis by courts does not mean that the narrow public policy exception should be effectively abolished.

As the Court of Appeals noted in its opinion, “[t]he judicially created public policy exception to labor arbitration awards is a fact-specific, contextually sensitive doctrine and therefore well suited to development through the common law mode of adjudication.” A-17. The mere fact that a court must engage in analysis to determine whether an arbitration award should be vacated, rather than being specifically directed how to rule by a statute, does not mean that the process is improper. Courts engage in such analysis on a regular basis, including this Court in deciding *Kitsap County*. See *Kitsap County*, 167 Wn.2d at 436-439. Moreover, regarding the specific analysis at issue in this case, Washington courts are experienced and adept at considering employment discrimination issues related to termination and discipline. See, e.g., *Clarke v. State Attorney General’s Office*, 133 Wn. App. 767, 138 P.3d 144 (2006) (affirming trial court summary judgment dismissal of disciplined employee’s hostile work environment and disparate treatment

claims based on race); *Anica v. Wal-Mart Stores, Inc.*, 120 Wn. App. 481, 84 P.3d 1231 (2004) (affirming summary judgment dismissal of disability discrimination and retaliation claims after employee was terminated).

H. Affirming Judge González's order would not invite trial court judges to second-guess the factual findings of labor arbitrators.

The Union has argued that affirming Judge González's order vacating the Award would encourage trial judges to second-guess factual findings of labor arbitrators, and thereby undermine the arbitration process. But this Court has already expressly prohibited judges considering whether to vacate an arbitration award from disturbing the arbitrator's findings of fact. *Kitsap County*, 167 Wn.2d at 434-435. And Judge González followed this instruction. He accepted the factual findings of the arbitrator from the existing arbitration record. Judge González's order vacating the Award was entirely consistent with this Court's holdings in *Kitsap County*.

I. Limited review of labor arbitration awards is an important safety valve for employers and employees to use in the rare circumstance when awards violate public policy.

As evidenced by its zero tolerance anti-harassment policy and its pursuit of relief in this case, the Port is serious about complying with the public policies expressed in WLAD. The Port and other similarly situated employers must be permitted to effectively enforce their anti-discrimination policies even when they have unionized workforces. In the exceedingly rare circumstance where a labor arbitrator's decision violates

Washington's public policy prohibiting racial harassment in the workplace, employers must be able to rely on the narrow public policy exception to the finality of arbitration decisions adopted by this Court in *Kitsap County*.

Although the Union challenges vacation of the Award in this case, it is important to note that employers are not the only parties that seek vacation of arbitration awards on public policy grounds. Employees and unions have also sought relief from courts when they believe an arbitration award is illegal. *See, e.g., Raiola v. Union Bank of Switz.*, 230 F. Supp. 2d 355 (S.D.N.Y. 2002) (employee seeking to vacate on public policy and other grounds arbitration award denying employment claims); *American Fed'n. of State, County, and Municipal Employees, Council 93 v. City of Portland*, 675 A.2d 100 (Maine 1996) (union seeking to vacate on public policy grounds arbitration award finding just cause for termination.)

It is entirely possible, if not likely, that the Union will find itself on the other side of this issue if a labor arbitrator determines, in violation of public policy, that there was just cause for a represented employee's termination. And in that hypothetical case, as here, it is important that limited, narrow judicial review of that award is available.

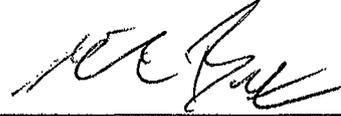
IV. CONCLUSION

The Port respectfully requests that this Court affirm Judge González's order vacating the Award.

DATED this 26th day of April, 2012.

GARVEY SCHUBERT BARER

By



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CERTIFICATE OF SERVICE

I, Greta A. Nelson, certify under penalty of perjury of the laws of the State of Washington that on April 26, 2012, I caused a copy of the document to which this is attached to be served on the following individual(s) via Legal Messenger:

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Supreme Court
Temple of Justice
Olympia, WA

Re: Electronic Filing of Supplemental Brief of Respondent

Case Name: *International Union of Operating Engineers, Local 286 v. Port of Seattle*

Supreme Court Case Number: 86739-9

Attorneys electronically filing the attached Supplemental Brief of Respondent: Diana S. Shukis, WSBA No. 29716;
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