

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

No. 06-1460

DANIEL S. O'SHEA,

Plaintiff-Appellant

v.

TEAMSTERS LOCAL UNION 639 and UNITED PARCEL SERVICE, INC.,

Defendants-Appellees

Appeal from a Judgment of the  
United States District Court  
for the District of Maryland

**MOTION FOR STAY OF THE ISSUANCE OF THE MANDATE**

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## **MOTION FOR STAY OF THE ISSUANCE OF THE MANDATE**

### **I. INTRODUCTION**

Appellant Daniel S. O'Shea received notice on December 18, 2006 that the Fourth Circuit Court of Appeals, case number 06-1460 had reached a disposition in an unpublished opinion stating:

We have reviewed the record and find no reversible error. Accordingly, we affirm for the reasons stated by the district court. O'Shea v. Local Union No. 639, No. 8:05-cv-00937-JFM (D. Md. Aug. 4, 2006). (Attached Fourth Circuit Court of Appeals Unpublished Disposition in Case 04-1460 citing O'Shea v. Local Union No. 639, No. 8:05-cv-00937-JFM, Fourth Circuit Court of Appeals Judgment in Case 04-1460 citing 8:05-cv-00937-JFM, Memorandum in the U.S. District Court for the District of Maryland Civil No. JFM-05-937, Order in the U.S. District Court for the District of Maryland Civil No. JFM-05-937.)

Under the Federal Rules of Appellate Procedure, O'Shea motions to stay the issuance of the mandate as he intends to file a Writ of Certiorari with the Supreme Court, substantial questions do exist and there is good cause.

### **ARGUMENT**

#### **I. O'Shea Intends To Petition The Supreme Court**

O'Shea intends to petition the Supreme Court to address at least several of the following questions:

1 - Can an employee's termination be upheld for a violation of statutory law under a collective bargaining agreement where an employer and union did not bargain or negotiate policy;

2 - Is an employee required to prove the Union breached its duty to represent to pursue a claim that the

arbitrator exceeded his authority within the CBA and ignored a portion of the CBA;

3 - Is there a right to privacy in conversations in the workplace when those communications were employment related in the private sector;

4 - Can an employee under a CBA be denied a state statutory right to pursue a retaliation claim for filing a workers compensation claim but terminated for allegedly violating a state statute;

5 - Does a federal court have jurisdiction to interpret state criminal statutes.

## **II. The Questions O'Shea Presented To The Fourth Circuit Are Substantial.**

### **A. Questions Of First Impression Substantial To National Labor Law.**

#### **1. Question of First Impression Involving A Conflict Between National Labor Policy And Criminal Statutory Law.**

In 1999 the Fourth Circuit addressed a substantial question in a published opinion as to whether an arbitrator acted within his authority:

We do not have before us conduct that compromises the performance of a safety-sensitive job. See, e.g., *Union Pac. R.R. v. United Transp. Union*, 3 F.3d 255 (8th Cir. 1993); *Delta Air Lines v. Air Line Pilots Ass'n Int'l*, 861 F.2d 665 (11th Cir. 1988). We also do not address criminal statutes prohibiting drug use, possession, and distribution in the workplace. See, e.g., *Exxon Corp. v. Esso Workers' Union*, 118 F.3d 841 (1st Cir. 1997); *Exxon Shipping Co. v. Exxon Seamen's Union*, 993 F.2d 357 (3d Cir. 1993). Such criminal misconduct may raise concerns not present here, and despite the urging of appellee, a ruling with respect to such issues must await a case presenting them. *Westvaco Corp. v. United Paperworkers International Union*, 171 F.3d 971, 160 L.R.R.M. (BNA) 2844, 79 Fair Empl.Prac.Cas. (BNA) 5 at fn2. [Emphasis added.]

O'Shea's case presented to the Fourth Circuit included such a question the court has awaited seven years for. O'Shea's case involves whether an arbitrator acted within his authority to interpret statutory law of alleged criminal misconduct and further involves the absence of a company and union's obligation to bargain (bargaining required under the Act, by applicable precedent of the NLRB and by Supreme Court precedent.)

## **2. Question of First Impression Involving An Arbitrator's Authority.**

As a result of the arbitrator's decision, O'Shea claimed the arbitrator exceeded his authority by interpreting statutory law instead of interpreting a collective bargaining agreement.

The Fourth Circuit's disposition defers to the lower court's opinion that a union member must prove that the union breached its duty of fair representation and absent such proof, a union member cannot continue on a claim that the arbitrator exceeded his authority.

However, the Fourth Circuit's deferral to the lower court's decision conflicts with what the Supreme Court allowed in *Garvey v. Major League Players Association* as addressed in both O'Shea's brief and reply brief.

O'Shea's argument is that a union's breach of its duty to represent and an arbitrator exceeding his authority (or ignoring a portion of a CBA) are not tethered to each other, or in other

words, a union can do its job exceptionally well but that does not prevent an arbitrator from exceeding a CBA or ignoring provisions of a CBA.

This question is one the Supreme Court has never had directly presented to them before and involves one of national labor policy colliding with statutory law in its rawest form.

### **3. Question of First Impression Involving The Right To Privacy In The Workplace In The Private Sector.**

The statutory law UPS and the Union relied on was quoted only in-part and involves a question of a right of privacy in the workplace in the private sector. The Fourth Circuit's disposition and deferral to the lower court decision affirms the right to privacy protections in matters related to employment that directly conflicts with Supreme Court precedent.

### **III. O'Shea's Request To Stay The Mandate Is For Good Cause**

On December 1, 2006 new amendments took effect within the Fourth Circuit with respect to unpublished opinions and dispositions.

The rule states in pertinent part:

If a party believes, nevertheless, that an unpublished disposition of this Court issued prior to January 1, 2007, has precedential value in relation to a material issue in a case and that there is no published opinion that would serve as well, such disposition may be cited if the requirements of FRAP 32.1(b) are met.

The Fourth Circuit acknowledges that they have awaited such a case with respect to criminal misconduct and an arbitrator's

interpretation. In affirming the lower court's decision, there is no published opinion that serves at all in the Fourth Circuit. The material issue in this case has sole precedential value - that an arbitrator has the authority to summarily uphold a union employee's termination on interpretations of statutory law absent collective bargaining.

The lower court does not define the extent of criminal misconduct an employee can be terminated for. With this affirmation, terminations of criminal misconduct unassociated with bargaining can be as minor as mere parking violations. Such a decision violates labor peace and national labor protections to union employees.

Such a precedent-setting decision will likely be cited constantly and consistently, not only conflicting with, but weakening employee protection rights under the NLRA, applicable NLRB precedent and precedent established by the courts.

That questions of first impression exist and that the decision conflicts with national labor policy of the Act, applicable NLRB precedent and precedent by another Court of Appeal and the Supreme Court is good cause to stay the mandate of the Fourth Circuit's disposition.

**CONCLUSION**

For aforementioned reasons, and those in appellant's Petition for Rehearing and Rehearing En Banc, O'Shea respectfully requests a stay of the mandate pending his Writ of Certiorari to the Supreme Court.

Respectfully submitted this 27th day of December, 2006.

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DANIEL S. O'SHEA  
Pro Se