

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
SAN FRANCISCO BRANCH

LATINO EXPRESS, INC.,
Respondent,

and

Case 13-CA-122006

TEAMSTERS LOCAL UNION NO. 777,
AFFILIATED WITH THE INTERNATIONAL
BROTHERHOOD OF TEAMSTERS, AFL-CIO,
Charging Party.

R. Jason Patterson, Esq., the General Counsel.
Zane D. Smith, Esq., for the Respondent.

DECISION

GERALD M. ETCHINGHAM, Administrative Law Judge. This case follows earlier cases involving an employer that provides school and charter trip transportation in the Chicagoland area. Its employees' successful effort to unionize in 2010 and 2011 resulted in numerous findings of violations of the National Labor Relations Act ¹ (the Act) against the Respondent (*Latino Express I*).² Additional unfair labor practice violations were found after a second hearing this time before Administrative Law Judge David I. Goldman, administrative law judge, in Chicago, Illinois, between October 9, 2012 and April 15, 2013. Administrative Law Judge Goldman's decision was affirmed on May 21, 2014 in *Latino Express, Inc.*, 360 NLRB No. 112 (2014) (*Latino Express II*).³

¹ 29 U.S.C. Secs. 157 and 158(a)(5) and (1).

² *Latino Express, Inc.*, 361 NLRB No. 137 (2014), a new decision affirming and incorporating by reference the rationale applied in the earlier decision of the same name at 358 NLRB No. 94 (2012), supplemented at 359 NLRB No. 44 (2012), ruled invalid as a result of the June 26, 2014 United States Supreme Court decision, *NLRB v. Noel Canning*, 134 S.Ct. 2550 (2014), holding that the challenged appointments to the Board were not valid. Thus, in view of the decision of the Supreme Court in *NLRB v. Noel Canning*, supra, the Board considered de novo the judge's decision, the record in light of the exceptions and briefs, the now-vacated earlier Decision and Order and Notice and Invitation to File Briefs, and it agreed with the rationale set forth therein. Accordingly, the Board once again affirmed the judge's rulings, findings, and conclusions and adopted the judge's recommended Order to the extent and for the reasons stated in the earlier Decision and Order and Notice and Invitation to File Briefs reported at 358 NLRB No. 94, which was incorporated herein by reference and as amended.

³ Respondent has appealed the Board's decision in *Latino Express II* and its appeal is currently pending in the United States Court of Appeals for the District of Columbia Circuit.

Specifically, the Board affirmed Administrative Law Judge Goldman’s decision and found that Respondent’s withdrawal of recognition from the Union violated Section 8(a)(5) of the Act, Respondent’s unilateral implementation of the “Driver’s Accountable Act” also violated Section 8(a)(5), and that Respondent bargained in bad faith in April 2012, again finding a violation of Section 8(a)(5). *Latino Express II*, 360 NLRB No. 112, slip. op. at 1, 3, 8–16.

STATEMENT OF THE CASE

Teamsters Local Union No. 777, affiliated with the International Brotherhood of Teamsters, AFL–CIO (Charging Party or Union) filed the charge in this case on February 3, 2014⁴, and added 3 amendments on March 31, April 2, and April 15. (GC Exhs 1(a), (c), (e), and (g).)⁵ The General Counsel issued the complaint on May 13 alleging that Respondent Latino Express, Inc. (Respondent or Employer) violated Section 8(a)(1) and (5) of the Act. Respondent filed a timely answer on May 27, admitting and denying several of the allegations of the complaint and raising several affirmative defenses.

The General Counsel specifically alleges that on January 30, the Respondent unlawfully, in violation of Section 8(a)(5) and (1) of the Act, exercised discretion by unilaterally discharging its employee, Franklin Flores (Flores), conduct which comprises a mandatory subject for the purpose of collective bargaining, without prior notice to the Union, and without affording the Union an opportunity to bargain with Respondent with respect to this conduct and/or the effects of this conduct. The complaint also alleges that the Respondent violated Section 8(a)(1) of the Act by unlawfully maintaining rules in its employee handbook which: (1) prohibit actions that jeopardizes Respondent’s contracts or loss of revenues; and (2) prohibits activity which causes harm to the operations or reputation of the Respondent. The General Counsel further alleges that each of these rules interferes with, restrains, and coerces employees in the exercise of the rights guaranteed in Section 7 of the Act. The Respondent denies that it has violated the Act in any way. I find that the Respondent has violated the Act as alleged in the complaint as discussed below.

⁴ All dates in 2014 unless otherwise indicated.

⁵ The General Counsel filed a posthearing brief and Respondent’s counsel did not. Abbreviations used in this decision are as follows: “Tr.” for transcript; “Jt. Exh.” for joint exhibit; “GC Exh.” for General Counsel’s exhibit; “R Exh.” for Respondent’s exhibit; “GC Br.” for the General Counsel’s brief. Although I have included numerous citations to the record to highlight particular testimony or exhibits, I emphasize that my findings and conclusions are based not solely on the evidence specifically cited, but rather are based my review and consideration of the entire record.

This case was tried in Chicago, Illinois, on July 23, 2014. The parties have been afforded full opportunity to appear, to introduce relevant evidence, to examine and cross-examine witnesses⁶, and to file briefs. On the entire record⁷, from my observation of the demeanor of the witnesses, and having considered the submitted posthearing brief of the parties, I make the following

Findings of Fact

I. Jurisdiction

Respondent is an Illinois corporation with an office and place of business in Chicago, Illinois, engaged in the business of providing bus transportation services for students as well as charter bus services to the general public. The parties admit, and I find, that during the calendar year preceding issuance of the complaint in this matter, Respondent, in conducting its business operations, derived gross revenues in excess of \$250,000, and purchased and received at its Chicago, Illinois facility goods and materials valued in excess of \$5000 from points outside the State of Illinois. I further find on agreement of the parties that at all material times, the Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. Based on the foregoing, I find that this dispute affects commerce and that the Board has jurisdiction of this case, pursuant to Section 10(a) of the Act. I further find, as stipulated by the parties, that, at all material times, the Charging Party has been a labor organization within the meaning of Section 2(5) of the Act. (GC Exh. 1(k).)

I further find that at the material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of Respondent within the meaning of Section 2(11) of the Act and agents of Respondent within the meaning of Section 2(13) of the Act.

Joseph Gardunio	Owner
Henry Gardunio, Sr.	Vice President
Victor Gabino	Maintenance Director
Sara Martinez	Dispatcher/ Manager

(Tr. 18-22; GC Exh. 1(i) at 2; GC Exh. 1(k) at 2.

I further find as admitted between the parties that on April 18, 2011, the Board certified the Union as the exclusive collective-bargaining representative of the unit.

⁶ There are not many factual disputes in this case. To the extent necessary, credibility resolutions have been derived from a review of the entire testimonial record and exhibits, with due regard for the logic of probability, the demeanor of the witnesses, and the teachings of *NLRB v. Walton Mfg. Co.*, 369 U.S. 404, 408 (1962). As to those witnesses testifying in contradiction to the findings here, their testimony has been discredited, either as having been in conflict with credited documentary or testimonial evidence, or because it was in and of itself incredible and untrustworthy.

⁷ I hereby correct the transcript as follows: Tr. 19, l. 17: "211 and 213" should be: "2(11) and 2(13)"; Tr. 19, l. 19: "coffer" should be: "offer"; Tr. 79, l. 5: "Allen Richie" should be: "Alan Ritchey"; Tr. 79, l. 15: "885" should be "8(a)(5)"; Tr. 79, l. 19: "881" should be: "8(a)(1)"; Tr. 79, l. 21: "881" should be "8(a)(1)"; Tr. 80, l. 13: "885" should be: "8(a)(5)"; Tr. 80, l. 15: "881" should be: "8(a)(1)".

II. Procedural and Historical Background and Denied Respondent's Motion to Stay Proceeding

A. Respondent is Collaterally Estopped from Relitigating Employees' Successful Efforts to Unionize in 2010 and 2011 and Respondent's Unlawful Withdrawal of Recognition in April 2012

I find, take administrative notice, and rely on the *Latino Express II* decision for previously adjudicated facts pre-dating the factual allegations in this case because *Latino Express II* is a final administrative determination of the legal issues preceding this case, and so, make them law of the case before I decide the latest factual allegations that arose in 2014. (Tr. 37, 47.) See also *Columbia Portland Cement Co.*, 303 NLRB 880, 882 (1991), enfd. 979 F.2d 460 (6th Cir. 1992) (Board relied on its prior determination that strike was an unfair labor practice strike); see also *Great Lakes Chemical Corp.*, 300 NLRB 1024, 1025 and fns. 3 and 4 (1990), enfd. 967 F.2d 624 (D.C. Cir. 1992)(Respondent was collaterally estopped from re-litigating facts related to its duty to bargain as a successor, which were fully and fairly litigated and necessarily decided in prior proceeding involving same parties).

The issues decided by the Administrative Law Judge Goldman and affirmed by the Board were fully litigated in *Latino Express II*, and re-litigating or revisiting the same legal issues de novo, including, but not limited to, whether Respondent's withdrawal of recognition from the Union was illegal in April 2012, and that the certification period remained in effect as of January 30, 2014, in this related proceeding, would be antithetical to judicial efficiency and economy and potentially lead to inconsistent results and unnecessary delays.⁸ See *Great Lakes Chemical Corp.*, supra at 1025 and fns 3 and 4; *Wynn Las Vegas, LLC*, 358 NLRB No. 81 fn. 1 & JD. at 4-5 (2012).

B. Respondent's Denied Motion to Stay the Proceeding

Respondent's counsel also argued that the hearing in the instant case should be stayed pending issuance of the District of Columbia Circuit Court of Appeals' future ruling on Respondent's appeal of *Latino Express II* through a motion filed on June 24. Region 13 Acting Regional Director, Daniel Nelson, denied Respondent's motion to stay this proceeding. The June 30 order denying the motion to stay specifically provides:

Respondent's contentions are without merit. First, this case includes allegations that do not turn on the question of whether the Union is, in fact, still the bargaining representative of the employees. Specifically, in addition to the bad faith bargaining allegation impliedly referred to in Respondent's motion, this case also involves allegations of overly broad rules contained in Respondent's Employee Handbook. Accordingly, even a decision in Respondent's favor in the earlier case will not render the entire instant case "moot" as Respondent claims. Second, Respondent's remaining argument is squarely at odds with existing Board precedent. As Respondent correctly references in its motion, upon Respondent's

⁸ I also rejected R Exh. 1, the decertification petition, as irrelevant to the instant proceeding because of the factual findings and conclusions of law related to it as contained in *Latino Express II*. Tr. 14-18, 42-47.

refusal to comply with the Board's May 21, 2014 Order against it [*Latino Express II*], Respondent and a group of employees sought review in the D.C. Circuit and the Board cross-applied for enforcement. The court consolidated those cases and they are pending at this time. However, it is well established that collateral litigation does not suspend the duty to bargain and the Board relies on its own decisions even when they are pending review in a federal circuit court. See *Heartland Human Services*, 360 NLRB No. 47 slip op. at 2 (February 20, 2014). See also, *Horizons Hotel Corporation*, 323 NLRB 591 at fn. 4 (1997) citing *Superior Industries (II)*, 295 NLRB 320, 322 fn. 7 (1989) (despite the fact that the Board's previous determination that the union was the certified exclusive collective-bargaining representative of the unit employees was pending on appeal to the circuit court of appeals, the Board held that unless and until the court reversed the Board the union was still the exclusive collective-bargaining representative of the unit employees); *Rockwood & Co.*, 281 NLRB 862 fn. 1 (1986) (the fact that the respondent may seek review of an earlier Board decision in a circuit court of appeals does not warrant Board suspending action in the case at hand); *Maywood Do-Nut Co.*, 256 NLRB 507, 508 (1981) (the Respondent's continued refusal to bargain pending the outcome of an earlier Board case presently before the circuit court of appeals constitutes an additional violation of Sec. 8(a)(5); it is settled law that the pendency of collateral litigation does not suspend a respondent's duty to bargain). For the foregoing reasons it is not appropriate to stay further proceedings in this matter.

For these same reasons, I deny Respondent's renewal of its motion to stay at hearing before me.⁹ (Tr. 27-29.)

C. The Noel Canning Decision and the Board's Quorum or Lack Therefore Had No Affect on Either the Regional Director's Authority to Process the Decertification Proceeding in This Matter or the Earlier Complaint and Decision Preceding Latino Express II

Respondent also argued that the Region 13 Regional Director's and the administrative law judge's actions between August 27, 2011 and July 17, 2013 that led to the decision in *Latino Express II* were somehow null and void because "[w]hen the [B]oard lacks a quorum it has no authority, its agents i.e. Regional Directors, Administrative Law Judges, etc. also lack authority to act . . . the delegee committee does not act on its own behalf . . . If the Board has no authority, it follows that the committee has none' [citation omitted.]" (GC Exh. 1(r) at 1.) Respondent concluded by arguing that the complaint and the hearing before Administrative Law Judge Goldman, his resulting decision, and Region 13 Regional Director Peter Ohr's May 3, 2012 decision to postpone any proceeding in 13-RC-79228 are void as a matter of law." *Id.*

As referenced above, the full Board affirmed Judge Goldman's decision in *Latino Express II* on May 21, 2014, and I adopt and I remain bound by his factual findings and conclusions of law during the questioned time periods. Moreover, to the extent that the Respondent questions the technical aspects of Administrative Law Judge Goldman's authority to conduct the hearing on October 9 and 10, 2012 and April 15, 2013, when the Board lacked a quorum, it should be noted that the Board previously issued an order contingently delegating

⁹ Respondent has either not attempted or was unsuccessful in obtaining a stay of this proceeding from the U.S. Court of Appeals for the District of Columbia Circuit.

certain authorities to other NLRB officials.¹⁰ Moreover, a valid Board quorum is unnecessary and does not affect the Board's longstanding delegation of authority to administrative law judges (ALJs). ALJs have possessed the authority to hold hearings on the Board's behalf since 1936. See General Rules and Regulations, 1 Fed. Reg. 207, 209 (Apr. 18, 1936) (designating trial examiners (now called ALJs) as agents responsible for hearings); Secs. 102.34-35, Board's Rules and Regulations (designating ALJs as agents responsible for hearings).

Moreover, as to Regional Director Ohr's actions, in the absence of a Board quorum, the Regional Director's handling of the decertification proceedings also remains unaffected. See *National SSC Mystic Operating Co. LLC*, 360 NLRB No. 68, slip op. at 1, n. 1 (March 31, 2014) (The Board has delegated decisional authority in representation cases to Regional Directors, 26 Fed. Reg. 3911 (1961), pursuant to the 1959 amendment of Sec. 3(b) of the National Labor Relations Act expressly authorizing the delegation, Pub. L. 86-257, 86th Cong., 1st Sess., § 701(b), 73 Stat. 519, 542); see also *Magnesium Casting Co. v. NLRB*, 401 U.S. 137, 142 (1971) (by Sec. 3(d) Congress allowed the Board to make a delegation of its authority over representation elections to the regional director). Pursuant to this delegation, NLRB Regional Directors remain vested with the authority to conduct elections and certify their results, regardless of the Board's composition at any given moment. *Id.* Thus the Regional Director had the authority to process the decertification petition under the Board's 1961 delegation of its decisional making authority in representation cases. That delegation has never been withdrawn.

Accordingly, I reject the Respondent's *Noel Canning* arguments and conclude that the Region 13 Regional Director's and the Administrative Law Judge Goldman's actions between August 27, 2011 and July 17, 2013 that led to the decision in *Latino Express II*, as well as the May 13, 2014, issuance of the complaint in this case, are valid.

III. Alleged Unfair Labor Practices

A. Respondent's Rules 7 and 9 Violate the Act Because they Are Overly Broad and Interfere with its Employees' Rights Under Section 7 of the Act

1. Facts

Since at least July 19, 2012, Respondent maintained the following rules in its Employee Handbook under:

34. CAUSES FOR DISCIPLINARY ACTION":

It is the policy of Latino Express Bus Company that all employees are employed at the will of the Company and may be terminated by the Company at any time, for any reason, and with or without notice. Nonetheless, the following offenses will constitute reasons for disciplinary actions up to and including suspension or immediate dismissal:

¹⁰ See Order Contingently Delegating Authority to the Chairman, the General Counsel, and the Chief Administrative Law Judge, 76 Fed. Reg. 73719 (Nov. 29, 2011).

7. Any action that jeopardizes company contracts or loss of revenues....
 9. Any activity which causes harm to the operations or reputation of Latino Express Bus Company [Respondent]. ...
 22. Violation of school bus Rules of the Road or failure to perform duties adequately, as directed by management.....

5
 (Jt Exh. 1 at 25-27; GC Exh. at 37¹¹.)

10 It is stipulated and I find that Rules 7 and 9 were removed from Respondent’s Employee Handbook as of April 16, 2014 by Respondent’s vice president, Henry Gardunio Sr. (Tr. 22, 112–116; Jt. Exh. 2 at 1.) At this time, Respondent distributed the amended handbook to its employees and posted the amended language in the employee break room on a bulletin board. (Tr. 116-117; GC Exh. 2 at 132.)

15 2. Analysis

The General Counsel alleges in paragraphs VI, VIII, and X of the complaint and I further find that, since at least July 19, 2012 through April 16, 2014, Respondent maintained its rules 7 and 9 in its Employee Handbook under “34. CAUSES FOR DISCIPLINARY ACTION” to interfere with, restrain, and coerce its employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act. (GC Exh. 1(i) at 2-3; GC Exh. 2 at 37.)

25 Respondent argues that once the rules at issue were brought to the attention of Respondent, they were immediately withdrawn through the handbook amendment. (Tr. 81—82; Jt. Exh. 2.)

30 When evaluating whether a rule violates Section 8(a)(1), the Board applies the test set forth in *Lutheran Heritage Village-Livonia*, 343 NLRB 646 (2004). Under *Lutheran Heritage*, the first inquiry is whether the rule explicitly restricts activities protected by Section 7. If it does, the rule is unlawful. If it does not, “the violation is dependent upon a showing of one of the following: (1) employees would reasonably construe the language to prohibit Section 7 activity; (2) the rule was promulgated in response to union activity; or (3) the rule has been applied to restrict the exercise of Section 7 rights.” *Lutheran Heritage* at 647.

35 The Board’s approach in this area has been approved by the U.S. Court of Appeals for the District of Columbia Circuit. See *Cintas Corp. v. NLRB*, 482 F.3d 463, 467–470 (D.C. Cir. 2007) (enforcing Board decision that found unlawful employer rule requiring employees to maintain “confidentiality of any information concerning the company, its business plans, its partners, new business efforts, customers, accounting and financial matters”); see also *Brockton Hospital v. NLRB*, 294 F.3d 100, 106 (D.C. Cir. 2002) (enforcing Board decision that found unlawful employer rule prohibiting discussion of information concerning patients, associates, or hospital operations . . . except strictly in connection with hospital business”).

¹¹ Respondent produced a version of its employee handbook dated July 19, 2012, that contains the questioned rules 7 and 9. GC Exh. 2 at 37.

As stated above under *Lutheran Heritage Village-Livonia*, 343 NLRB at 646, “an employer violates Section 8(a)(1) when it maintains a work rule that reasonably tends to chill employees in the exercise of their Section 7 rights.” Respondent maintained its rules 7 and 9 that provided cause for disciplinary action for any: (1) action by an employee that jeopardizes company contracts or loss of revenues; and (2) activity by an employee which causes harm to the Respondent’s operation or reputation without an exemption for activity protected by the Act. (Jt. Exh. 1 at 25.)

Here, the Respondent’s rules 7 and 9 do not explicitly reference Section 7 activity. However, by its terms, the broad prohibition against “any activity that causes harm to Respondent’s operation or reputation” or “any action that jeopardizes company contracts or loss of revenues” clearly encompasses concerted communications protesting the Respondent’s treatment of its employees. Indeed, there is nothing in either rule that even arguably suggests that protected communications are excluded from the broad parameters of each rule. In these circumstances, employees would reasonably conclude that each of these rules requires them to refrain from engaging in certain protected communications (i.e., those that are critical of the Respondent or its agents). See *Hills & Dales General Hospital*, 360 NLRB No. 70, slip. op. at 1–2 (2014)(Board found as overly broad and ambiguous, a requirement that employees represent the employer “in the community in a positive and professional manner in every opportunity” and that this rule violated Section 8(a)(1) of the Act and could “discourage employees from engaging in protected public protests of unfair labor practices, or from making statements to third parties protesting their terms and conditions of employment —activity that may not be ‘positive’ towards the employer but is clearly protected by Section 7); see also *Southern Maryland Hospital*, 293NLRB 1209, 1222 (1989), enfd. in relevant part 916 F.2d 932, 940 (4th Cir. 1990) (rule prohibiting “derogatory attacks on . . . hospital representative[s]” found unlawful); *Claremont Resort & Spa*, 344 NLRB 832 (2005) (rule prohibiting “negative conversations about associates and/or managers” found unlawful).¹²

The same things can be said of Respondent’s questioned rules in this case requiring that employees not participate in “[a]ny activity which causes harm to the [Respondent’s] operation or reputation [or else be subject to disciplinary action]” or “any action that jeopardizes company contracts or loss of revenue [or else be subject to disciplinary action]” as an employee could reasonably believe that participating in protected concerted activity such as a work strike or complaining on social media to other employees about wages would be viewed by management as causing harm to its operation or reputation or that participating in union activities that lead to a negotiated collective bargaining agreement might be viewed by Respondent as having a negative effect on its existing contracts or revenues. I find that Respondent’s Rules 7 and 9 reasonably discourage its employees from participating in protected concerted activities for fear that those activities will lead to disciplinary action under both Rule 7 and Rule 9.

¹² As the General Counsel’s posthearing brief suggests, I am adopting the legal rationale of the Board here from three of its decisions invalidated by U.S. Supreme Court’s decision in *NLRB v. Noel Canning*, 134 S.Ct. 2550 (2014), holding that the challenged appointments to the Board were not valid and, as a result, all decisions issued by the invalid Board are now void with no precedential value including *Karl Knauz Motor, Inc.*, 358 NLRB No. 164 (2012), *Flex Frac Logistics, LLC*, 358 NLRB No. 127 (2012), and *Costco Wholesale Corp.*, 358 NLRB No. 106 (2012). See GC Br. at 11–14. Despite their lack of precedential value, I find the legal analyses of these voided decisions to be persuasive and I incorporate the rationale of each case to my analysis here.

Moreover, I further find that Rules 7 and 9 are each unlawful because employees would reasonably construe their broad prohibition against “[a]ny activity which causes harm to the [Respondent’s] operation or reputation” or “any action that jeopardizes company contracts or loss of revenue” as encompassing additional Section 7 activity, such as employees’ protected statements—whether to coworkers, supervisors, managers, or third parties who deal with the Respondent—that object to their working conditions and seek the support of others in improving them or communications that are critical of the Respondent’s treatment of its employees.

Again, stated differently, there is nothing in the rules, or anywhere else in the employee handbook, that would reasonably suggest to employees that employee communications protected by Section 7 of the Act are excluded from the two rules’ broad reach or that Respondent’s two rules prohibitions are limited in any way.¹³ “[E]mployees should not have to decide at their own peril what information is not lawfully subject to such a prohibition.” *Hyundai America Shipping*, supra, slip op. at 12. Here, as in *Cintas*, supra, the employer “has made no effort in its rule[s] to distinguish [S]ection 7 protected behavior from violations of company policy.” 482 F.3d at 469.

Secondly, an employee reading each questioned rule would reasonably assume that the Respondent would regard statements of protest or criticism as an “action that jeopardizes company contracts or loss of revenues” or an “activity which causes harm to the Respondent’s operation or reputation.” Cf. *NLRB v. Gissel Packing Co.*, 395 U.S. 575 (1969) (in evaluating employer statements alleged to violate Sec. 8(a)(1), “assessment of the precise scope of employer expression . . . must be made in the context of its labor relations setting” and “must take into account the economic dependence of the employees on their employers”).

Once again, Board law is settled that ambiguous employer rules – rules that reasonably could be read to have a coercive meaning – are construed against the employer. *Lafayette Park Hotel*, 326 NLRB 824, 828 (1998), *enfd.* 203 F.3d 52 (D.C. Cir. 1999); see also *2 Sisters Food Group*, 357 NLRB No. 168, slip op. at 3 (2011). Reasonable employees would believe that even courteous, polite, and friendly expressions of disagreement with the Respondent’s employment practices or terms and conditions of employment risk being deemed to be either an “activity which causes harm to the [Respondent’s] operation or reputation” or an “action that jeopardizes company contracts or loss of revenue.” Thus, language of each rule proscribes not a manner of speaking, but the content of employee speech—content that would damage the Respondent’s operation or reputation or jeopardize company contracts or revenue. For example, here I am finding that the Respondent unlawfully coerced its employees by promulgating its rules 7 and 9 that restrict employees’ ability to communicate about their terms and conditions of employment. Presumably, even if employees shared with third parties information about my findings of the Respondent’s unlawful conduct in the most polite and courteous manner, such sharing would be injurious to the Respondent’s operation or reputation or jeopardize company contracts or loss of revenue. A reasonable employee, consequently, would believe that such a communication would expose him or her to discipline under Respondent’s rule 7 or rule 9.

¹³ Respondent could have easily avoided a violation by simply including a caveat that its rules 7 and 9 do not apply to conduct protected by the Act.

For these reasons, I further find that Respondent's facially over broad and ambiguous rules 7 and 9 would reasonably tend to chill employees in the exercise of their Section 7 rights and that an employee would reasonably construe the language of each rule to prohibit Section 7 activity. Consequently, I find that rules 7 and 9 thus has a reasonable tendency to inhibit employees' protected activity and, as such, each rule violates Section 8(a)(1) of the Act.

In addition, Respondent does not argue that the two rules at issue are necessary in any way to protect a valid business need of any kind. Instead, by removing the rules on April 16, 2014, once a related charge questioning the legality of each rule had been filed, Respondent practically admits that each rule is unlawfully overbroad and vague under the Act by its action removing them from the employee handbook. Respondent argues that by immediately withdrawing the unlawful rules, it has not violated the Act – essentially, no harm- no foul. (Tr. 115; Jt. Exh. 2.)

Addressing Respondent's withdrawal of its unlawful rules, no harm-no foul argument, I fully reject it as Respondent did not properly repudiate its unlawful rules and properly remedy the situation with its employees. See *Passavant Medical Area Hospital*, 237 NLRB 138, 138–139 (1978)(Board finds employer's repudiation insufficient because it was untimely, failed to admit any wrongdoing, and did not assure employees that the employer would not interfere with the exercise of Sec. 7 rights in the future). Similarly here, I find that Respondent's attempt to disavow its unlawful rules 7 and 9 was insufficient under the requirements of *Passavant* as Respondent's rules 7 and 9 were in place at least from July 2012 through April 16, 2014—almost 2 years, and that maintaining unlawful rules for almost 2 years makes their silent withdrawal untimely. Furthermore, with respect to Respondent's withdrawal of its unlawful rules, I find that Respondent made no assurances to employees that it will not interfere with the exercise of their Section 7 rights under the Act in the future and that at no time did Respondent expressly admit that these rules were unlawful. Consequently, Respondent cannot escape liability for maintaining rules 7 and 9 despite its silent withdrawal of them almost 2 years later.

By maintaining rules 7 and 9 as described above and in paragraphs VI, VII and X of the complaint, Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1).

B. The Respondent Violated the Act by Exercising Discretion in Terminating Employee Franklin Flores Without Affording the Union with Notice and an Opportunity to Bargain

1. Facts

On October 30, 2013, Administrative Law Judge David I. Goldman found, and the Board later affirmed, that the Charging Party Union remained unchanged continuously since April 18, 2011, as the certified collective-bargaining representative of the following appropriate unit of the Respondent's employees:

All full-time and regular part-time drivers employed by the Employer at its facility presently located at 3230 West 38th Street, Chicago, Illinois; excluding mechanics, dispatchers, trainers, charter directors, payroll people, payroll assistants, public

relations people, maintenance directors, office personnel, professional employees, managerial employees, guards, and supervisors as defined in the Act (the unit).

5 *Latino Express II* at 16. Administrative Law Judge Goldman also found and I follow that the certification period extended beyond the October 30, 2013 date of his decision for a reasonable period of time of at least 6 months from October 30, 2013. *Latino Express II*, supra at 16-19, fn 21.

10 On March 15, 2012, Flores was hired by Respondent as a school bus driver and he also was a unit member through January 30, 2014. (Tr. 91; GC Exh. 2 at 10.)

15 Respondent admits that in or about September 2013, Dispatcher-Manager Sara Martinez (Martinez) at Respondent received a phone call from an anonymous caller who stated that bus #74 which was the school bus driven by Flores at the time, was traveling down Kedzie Avenue and did not stop at the railroad crossing near 31st and Kedzie. Manager Martinez spoke with Flores when he returned to base and explained to him about the caller who informed Manager Martinez that Flores had not stopped at the railroad crossing at 31st and Kedzie. Flores told Manager Martinez that the railroad crossing was “inactive” and no trains cross there so he did not need to stop. Manager Martinez informed Flores that whether or not he considered the
20 railroad crossing “inactive” there was still railroad signs posted at the crossing so all buses needed to stop at that crossing. (GC Exh. 4.)

25 On January 30, 2014, Respondent discharged unit employee Flores. (GC Exh. 1(i) at 3; GC Exh. 1(k) at 2.) Respondent alleges that it terminated Flores for failing to stop the bus he was driving at a railroad crossing. (GC Exh. 2 at 59.)

30 Respondent denies that it exercised discretion in terminating Flores. (GC Exh. 1(k) at 2.) As explained below, I find, however, that the record evidence supports a finding that Respondent exercised discretion in imposing the discipline terminating Flores.

35 No representative from Respondent communicated to Union President James Glimco (Glimco), the local Union’s president and negotiating agent, regarding either its intent to terminate Flores before the termination occurred on January 30, 2014, or that Flores had been terminated. (Tr. 87-88, 92-93.) In addition, no representative from Respondent contacted Glimco to bargain any effects of Flores’ termination or contact Glimco’s office regarding Flores’ termination. (Tr. 93.)

40 On or after January 30, 2014, Union business agent and local organizer for the local Union, Elizabeth Gonzalez (Gonzalez) was contacted by Flores who told her that he had been terminated by Respondent. (Tr. 97.) Specifically, Gonzalez helped organize the unit employees at Respondent and she sat in at bargaining sessions for the Union and unit employees trying to negotiate a collective-bargaining agreement with Respondent’s representative. (Tr. 95-96.)

45 Gonzalez knew that Flores was one of Respondent’s bus drivers and a member of the bargaining unit at Respondent before he was terminated by Respondent. (Tr. 96-97.) Gonzalez, as the Union’s business agent, negotiates collective-bargaining agreements on behalf of unit

employees for the Union and also acts as an organizer helping workers become part of the local and national Union. (Tr. 95.)

5 No representative from Respondent communicated to Union Business Agent Gonzalez or Glimco regarding either its intent to terminate Flores before the termination occurred on January 30, 2014, or that Flores had been terminated. (Tr. 97.) In addition, no representative from Respondent contacted Gonzalez or Glimco to bargain any effects of Flores' termination or contact Gonzalez' office regarding Flores' termination. (Tr. 98.) Respondent admits that it did not contact the Union prior to its termination of Flores on January 30, 2014. (Tr. 124.)

10 2. Analysis

15 Complaint paragraphs VII, IX, and X allege that on January 30, the Respondent exercised discretion when it discharged unit employee Flores and bypassed its bargaining obligations without giving notice to the Union, in violation of Section 8(a)(5) and (1) of the Act.

20 Section 8(a)(5) of the Act provides that it is an unfair labor practice for an employer to refuse to bargain collectively with the representatives of its employees. It is well settled that an employer violates Section 8(a)(5) and (1) when it unilaterally makes substantial and material changes without bargaining to impasse on matters that involve mandatory subjects of bargaining, i.e., when it fails to provide prior notice and the opportunity to bargain over the changes. *NLRB v. Katz*, 369 U.S. 736, 743, 747 (1962); see *Litton Financial Printing Division v. NLRB*, 501 U.S. 190, 198 (1991). Termination of employment and reassignment of employees are clearly such mandatory subjects. *N. K. Parker Transport, Inc.*, 332 NLRB 547, 551 (2000) citing *Ryder Distribution Resources*, 302 NLRB 76, 90 (1991).

30 Respondent argues that the decision not to bargain with the Union concerning the termination of Flores was made on a good-faith belief that the Union had lost the enjoyment and support of the majority of the employees of the bargaining unit. (Tr. 80-81.) Moreover, Respondent's refusal to provide notice to the Union or an opportunity to bargain before termination Flores was based on Respondent's review of the decertification petition and the signatures contained therein which comprise signatures from over 66 percent of the bargaining unit employees. *Id.*

35 Well-settled law provides that an employer may not change the terms and conditions of employment of represented employees without providing their representative with prior notice and an opportunity to bargain over such changes. See *NLRB v. Katz*, 369 U.S. 736, 747 (1962). Once the union is established as the represented employees' representative, the union then enjoys a presumption of majority support. If an employer withdraws recognition in an honest but mistaken belief that the union has lost majority support, it violates Section 8(a)(5). *Id.* at 725. Thus, an employer acts at its peril when it withdraws recognition based on objective evidence such as a petition signed by a majority of employees in the unit. *Id.* The presumption of continued majority prevails if an employer fails to prove by a preponderance of the evidence that the union has lost majority support at the time of its withdrawal. *Id.*

As stated above, before the Respondent unilaterally terminated Flores without notice to or an opportunity to bargain with the Union, it had already been determined by ALJ Goldman on October 30, 2013, that the Respondent had unlawfully withdrawn recognition of the Union in violation of Section 8(a)(5). See *Latino Express, Inc.* 360 NLRB No. 112, slip op. at 1 (2014).

5 Thus, Respondent was acting at its own peril when it decided to exercise discretion and unilaterally discharge Flores on January 30 without first giving notice or an opportunity to bargain with the Union to try and resolve the matter before it discharged Flores. The Respondent terminated Flores during the period of the Union's extended certification year for the Union's exclusive bargaining right with the Respondent - a reasonable period of at least 6 months from
10 October 30, 2013. *Latino Express II*, supra at slip. op. at 16-19, fn 21.

As a result, I find that on January 30, the Respondent discharged Flores. As explained immediately below, I further find that the discharge was within the Respondent's discretion; where during the extended certification year when the Respondent and Union had not arrived at a
15 first contract or an interim grievance procedure; where a discharge from employment is clearly such a mandatory subject of bargaining; and, the discharge was accomplished without notice to the Union or for allowing an opportunity to bargain about the discharge. As a result, I further find that the Respondent's actions, as just described above, establish it has failed and refused to bargain collectively and in good faith with the Union as the exclusive collective-bargaining
20 representative of the unit within the meaning of Section 8(d) of the Act in violation of Section 8(a)(5) and (1) of the Act.

a. Respondent Exercised Discretion in Terminating Flores

25 As stated above, Respondent's Employee Handbook provides:

34. CAUSES FOR DISCIPLINARY ACTION":

*It is the policy of Latino Express Bus Company that all employees are employed at the will of the Company and **may be terminated** by the Company at any time, for any reason, and with or without notice. Nonetheless, the following offenses will constitute reasons for disciplinary actions up to and including suspension or immediate dismissal:*

35 22. *Violation of school bus Rules of the Road or failure to perform duties adequately, as directed by management.....*

35. PROGRESSIVE DISCIPLINE

40 1. *First (write-up)- verbal warning (written)*
2. *Second write-up – (written) – 1 day suspension without pay (depending on reason of write-up).*
3. *Third write-up – (written warning) – 3 days suspension without pay. (Depending on reason for write-up).*

45 *If four or more write-ups [are] given, the employee will be subject to immediate termination. ...*

(Tr. 113; Jt Exh. 1 at 25-27.) (Emphasis added.)

5 As stated above, Flores was terminated by Respondent for “violation of railroad crossing
 regulations.” (GC Exh. 2 at 59.) Unlike some of the rules in the handbook that involve no
 discretion from Respondent and expressly state that an employee *will be discharged* for a
 specific rule violation, i.e., see employee handbook, section 8.5 for testing positive for drugs or
 alcohol, or section 9.4 for a third chargeable accident in 12 months or less (GC Exh. 2 at 23 and
 26), Flores was disciplined pursuant to section 34 of Respondent’s employee handbook which, as
 10 stated above, contains discretionary language that the violator *may* be subject to disciplinary
 actions which *may* (not *will*) include suspension or immediate dismissal. (Jt. Exh. 1 at 25–
 27.)(emphasis added.)

15 Moreover, Respondent’s counsel, in response to the General Counsel’s investigatory
 inquiry as to whether Respondent exercised discretion in terminating Flores, admitted that “as
 stated in the [Respondent’s] employee handbook, violation of the school bus rules of the road or
 failure to perform duties as adequately as directed by management *can be* grounds for discipline
 including termination.” (GC Exh. 3 at 1.) (Emphasis added.) I find this assertion by Respondent’s
 20 counsel to be an admission that the Respondent exercised discretion when it determined to
 terminate Flores on January 30, 2014. See *McKenzie Engineering Co.*, 326 NLRB 473, 485 fn. 6
 (1998)(Assertions made by a party’s attorney in a position statement submitted to the Board
 during the investigation of a case can be received in the trial of the case as an admission of that
 party if those assertions are in conflict with the party’s current litigation position or the testimony
 of the party’s witness.).

25 In this case, I further find that despite Respondent’s answer to the complaint denying that
 it had discretion to terminate Flores under the circumstances, the overwhelming evidence shows
 that Respondent had a variety of disciplinary actions at its discretion including a written warning,
 a suspension, or termination and that Respondent was not under any means required to terminate
 30 Flores for his alleged Rule of the Road violation. Thus, I find that pursuant to its own employee
 handbook rules, Respondent exercised its discretion when it terminated Flores on
 January 30, 2014.

35 *b. Respondent violated Section 8(5) and (1) of the Act by terminating Flores without
 giving notice to the Union or bargaining with the Union beforehand*

40 The General Counsel contended at hearing and in its post-trial brief that the Board’s
 rationale in *Alan Ritchey, Inc.* 359 NLRB No. 40 (2012) is sound and should be adopted here,
 namely, that an employer whose employees are represented by a union, but at a time when the
 parties have not arrived at a first contract or an interim grievance procedure, it must bargain with
 the union before imposing discretionary discipline on a unit employee. (Tr. 79; GC Br. At 2–6, 8–
 10.) The Board explained this pre-imposition duty to bargain will usually only arise during the
 period after the Union has become the employees’ bargaining representative, but before the
 parties have agreed upon a first contract, or interim grievance procedure.

45

Although *Alan Ritchey* has no precedential value because the Board's decision in that case became invalid due to constitutional considerations in the *Noel Canning*, 134 S.Ct. 2550 (2014), decision, I, nonetheless, adopt the Board's *Alan Ritchey* rationale, as I find it independently persuasive and incorporate the following legal analysis used by my colleague, the Honorable William Nelson Cates, in his recent decision styled *South Lexington Management Corp.*, JD(Atl)-02-15 (January 29, 2015) at pp. 10-13):

The Board in *Alan Ritchey* noted it had held in a variety of other contexts that once employees choose to be represented, an employer may not continue to act unilaterally with respect to terms and conditions of employment, even where it has previously done so routinely or at regularly scheduled intervals. The Board further notes, the Supreme Court in *NLRB v. Katz*, 369 U.S. 736 (1962) approved its determination that an employer violates Section 8(a)(5) of the Act by making unilateral changes to represented employees' terms and condition of employment. Such a unilateral change is a circumvention of the duty to negotiate which frustrates the objectives of Section 8(a)(5) just as a flat refusal to bargain does. The Board, citing *Oneita Knitting Mills*, 205 NLRB 500 (1973), pointed out that if an employer has exercised and continues to exercise discretion in regard to a unilateral change such as the amount of an annual wage increase, it must first bargain with the union over the discretionary aspect. The Board's *Alan Ritchey* rationale, relying on *Toledo Blade Co.* 343 NLRB 385, 387 (2004), does not require notice and bargaining before every unilateral change but rather those changes that have a material, substantial, and significant impact on employees' terms and conditions of employment such as termination. The Board opined that requiring notice and bargaining before imposing discretionary discipline is appropriate because of the immediate impact on the employees and because of the harm caused to the union's effectiveness as the employees' representative if bargaining is postponed. The Board in *Alan Ritchey* went on to explain it has long recognized that an employer's obligation to maintain the status quo sometimes entails an obligation to make changes in terms and conditions of employment, even when those changes are an established part of the status quo. The Board in *Oneita Knitting Mills* 205 NLRB 500 (1973) held an employer violated Section 8(a)(5) by unilaterally granting merit wage increases to represented employees, even though it had a past practice of granting such increases. The Board in *Oneita Knitting Mills* explained:

An employer with a past history of a merit increase program neither may discontinue that program (as we found in *Southeastern Michigan* [supra]) nor may he any longer continue to unilaterally exercise his discretion with respect to such increases, once an exclusive bargaining agent is selected. *N.L.R.B. v. Katz*, 3[69] 25 U.S. 736 (1962). What is required is a maintenance of preexisting practices, i.e., the general outline of the program, however the implementation of that program (to the extent that discretion has existed in determining the amounts or timing of the increases), becomes a matter as to which the bargaining agent is entitled to be consulted
Id. At 500.

The Board in explaining its rationale in *Alan Ritchey* noted *NLRB v. Katz*, 369 U.S. at 746, involved an employer's grant of merit increases that were "in no sense automatic,

but were informed by a large measure of discretion.” The Board also noted in its *Alan Ritchey* rationale that in the decades since *NLRB v. Katz* and *Oneita Knitting Mills*, where considering various terms and conditions of employment, it had applied the principle that even regular and recurring changes by an employer constitute unilateral actions where an employer maintains discretion in relation to the nature and/or extend of the charges.

The Board in its *Alan Ritchey* rationale noted that in *Washoe Medical Center, Inc.* 337 NLRB 202 (2001), an employer’s “substantial degree of discretion” in placing newly hired employees into one of four wage ranges based on subjective judgments, required the employer to bargain with the union prior to implementing the wage rates. Further noting it held in *Eugene Iovine*, 328 NLRB 294 (1999), an employer’s recurring unilateral reductions in employees’ hours of work were discretionary and therefore required prior bargaining because there was no reasonable certainty as to the timing and/or criteria for the reduction in employee hours but rather the employer’s discretion to decide whether and when to reduce employee hours appeared unlimited. The Board noted that in *Adair Standish Corp.*, 292 NLRB 890 fn. 1 (1989), enf. in relevant part 912 F.2d 854 (6th Cir. (1990), it required an employer to bargain regarding economically motivated layoffs, when the owner selected the employees to be laid off based, not on seniority, but on his own judgment of the employees abilities.

Under this large umbrella of cases (and others) the Board articulated its rationale for concluding that an employer whose employees are represented by a union, and at a time when the parties have not arrived at a first contract or an interim grievance procedure, must bargain with the union before imposing discretionary discipline, (a mandatory subject of bargaining) on unit employees.

Like my colleague Judge Cates in his *South Lexington Management* case, I find that the instant case falls squarely under the Board’s articulated *Alan Ritchey* rationale. In that regard it is admitted that the Respondent terminated unit employee Flores on January 30; as explained in section III.B.2.a. above, I find that the Flores’ discharge was within the Respondent’s discretion; was a mandatory subject of bargaining; and, the discharge was accomplished without providing the Union notice or an opportunity to bargain. It is established the Respondent is an employer with an obligation to bargain with the Union for the unit employees—which bargaining the Union specifically requested. It is established there was no collective-bargaining agreement in effect and no grievance procedure established at the time of the discharges. I adopt the Board’s *Alan Ritchey* rationale and conclude the Respondent had an obligation to provide notice to and an opportunity to bargain with the Union prior to imposing the discretionary discipline (termination) of Flores, its unit employee and as such the Respondent violated Section 8(a)(5) and (1) of the Act, and I so find.

Here, the same as Judge Cates, I also reject any contention that the *Fresno Bee*, 337 NLRB 1161 (2002), decision is somehow controlling and rather adopt and incorporate the Board’s *Alan Ritchey* rationale that an employer has a pre-imposition obligation to bargain over discretionary discipline at a time, like here, when the parties have not arrived at a first contract or

an interim grievance procedure and the concerns involve mandatory subjects of bargaining. See *South Lexington Management Corp.*, supra. at 12-13.

By the conduct described above in paragraphs VII(a)-(d), IX, and X of the complaint, Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSIONS OF LAW

1. The Respondent Latino Express, Inc. is an employer engaged in commerce within the meaning of Sections 2(2), (6), and (7) of the Act.

2. At all material times, the Charging Party Teamsters Local Union No. 777, affiliated with the International Brotherhood of Teamsters, AFL-CIO (the "Union") has been, and continues to be, the exclusive collective-bargaining representative of the employees comprised of all full-time and regular part-time drivers employed by the Employer at its facility presently located at 3230 West 38th Street, Chicago, Illinois; excluding mechanics, dispatchers, trainers, charter directors, payroll people, payroll assistants, public relations people, maintenance directors, office personnel, professional employees, managerial employees, guards, and supervisors as defined in the Act, for the purpose of collective bargaining within the meaning of Section 9(a) of the Act.

3. The Union is a labor organization within the meaning of Section 2(5) of the Act.

4. Respondent engaged in conduct in violation of Section 8(a)(1) of the Act by maintaining in its unlawful employee handbook Rules 7 and 9 that preclude employees from any action that jeopardizes company contracts or loss of revenues or any activity which causes harm to the operations or reputation of Respondent.

5. The Respondent has violated Section 8(a)(5) and (1) of the Act, since on or about January 30, 2014, by failing to provide the Union with notice or an opportunity to bargain concerning the proposed termination of unit employee Franklin Flores, which termination was within the discretion of the Respondent, and at a time when the parties had not arrived at a first contract or an interim grievance procedure, and, which termination was a mandatory subject of bargaining.

6. The unfair labor practices committed by Respondent affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist from engaging in such conduct in the future and to take certain affirmative action designed to effectuate the policies of the Act.

Respondent should be ordered to rescind both unlawful handbook provisions. In addition, Respondent should be ordered to either republish its employee handbook without the unlawful provision; or 2) supply the employees with either a handbook insert stating that the unlawful rule

has been rescinded, or with a new and lawfully worded rule on adhesive backing that will cover the unlawfully broad rule, until it republishes the handbook either without the unlawful provision or with a lawfully-worded rule in its stead. Any copies of the handbook that are printed with the unlawful rule must include the insert before being distributed to employees. See *Hitachi Capital America Corp.*, 361 NLRB No. 19, slip op. at 4 (2014).

Having found the Respondent unlawfully refused to recognize and bargain with the Union, I recommend the Respondent be ordered to, forthwith, recognize and bargain with Teamsters Local 777, as the exclusive collective-bargaining representative of the employees in the appropriate unit described elsewhere here, concerning terms and conditions of employment, and, if an understanding is reached, embody the understanding in a signed agreement. I specifically recommend the Respondent be ordered to bargain with the Union regarding the discharge of unit employee Franklin Flores. I decline to recommend any additional remedies (such as reinstatement and/or backpay) as the Board, in its null and void *Alan Ritchey* decision, applied its holdings prospectively.

Respondent shall post an appropriate informational notice, as described in the attached Appendix "A." This notice shall be posted in Respondent's facility or wherever the notices to employees are regularly posted for 60 days without anything covering it up or defacing its contents. When the notice is issued to Respondent, it shall sign it or otherwise notify Region 13 of the Board what action it will take with respect to this decision. In the event that, during the pendency of these proceedings, Respondent has gone out of business or closed the facility involved in these proceedings, Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by Respondent at any time since July 19, 2012.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended.¹⁴

ORDER

The Respondent, Latino Express, Inc., in Chicago, Illinois, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Maintaining in its employee handbook unlawful rules that preclude employees from: (1) any action that jeopardizes company contracts or loss of revenues; or (2) any activity which causes harm to the operations or reputation of Respondent.

(b) Failing and refusing to recognize and bargain collectively with, the Teamsters Local Union No. 777 (the Union) continuously on and after April 2012, as the exclusive collective-bargaining representative of its unit employees.

¹⁴ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(c) Failing to give notice to and to bargain with the Union concerning the termination of unit employee Franklin Flores on January 30, 2014.

5 (d) In any other manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

10 (a) Within 14 days of the Board’s Order, to the extent it has not already done so, rescind any rules in its employee handbook that preclude employees from any activity that jeopardizes company contracts or loss of revenues and any activity which causes harm to the operation or reputation of Latino Express Bus Company.

15 (b) Recognize and bargain with Teamsters Local Union No. 777 (the Union), as the exclusive collective-bargaining representative of the employees in the appropriate unit described elsewhere here.

20 (c) Bargain with the Union regarding the termination of unit employees Franklin Flores.

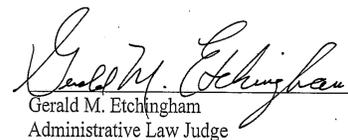
(d) Within 14 days after service by the Region, post copies of the attached notice marked Appendix “A” at its Chicago facility.¹⁵ Copies of the notices, on forms provided by the Regional Director for Region 13, after being signed by the Respondent’s authorized
 25 representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps
 30 shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facilities where posting is required, the Respondent shall duplicate and mail, at its own expense, a copy of the notices to all current employees and former employees employed at those facilities at any time since July 19, 2012.

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¹⁵ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading “Posted by Order of the National Labor Relations Board” shall read “Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.”

(e) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

5 Dated, Washington, D.C. March 17, 2015


Gerald M. Eitchingham
Administrative Law Judge

10

APPENDIX

NOTICE TO EMPLOYEES
Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO:

- Form, join, or assist a union;
- Choose a representative to bargain with us on your behalf;
- Act together with other employees for your benefit and protection;
- Choose not to engage in any of these protected activities.

WE WILL NOT unilaterally impose discretionary discipline including suspensions, discharges, demotions or other types of discipline which have an immediate impact on employees' tenure, status or earnings without timely notifying the Union and allowing the Union to request and engage in bargaining prior to our imposing such discipline on employees.

WE WILL NOT refuse to bargain in good faith with **Teamsters Local 777** (the Union) as the exclusive collective-bargaining representative of our employees in the following appropriate unit:

All full-time and regular part-time drivers employed by us at our facility presently located at 3230 West 38th Street, Chicago, Illinois, excluding mechanics, dispatchers, trainers, charter directors, payroll people, payroll assistants, public relations people, maintenance directors, office personnel, professional employees, managerial employees, guards and supervisors as defined in the Act.

WE WILL NOT maintain or enforce the following unlawful rules that had been contained in our employee handbook under "Causes for Disciplinary Action":

- (7) Any activity that jeopardizes company contracts or loss of revenues.
- (9) Any activity which causes harm to the operation or reputation of Latino Express Bus Company.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in any way with respect to your rights under Section 7 of the Act.

WE WILL, upon request, bargain in good faith to agreement or impasse with Teamsters Local Union No. 777 regarding the termination of unit employee Franklin Flores.

WE WILL, before issuing discretionary discipline which would have an immediate impact on employees' tenure, status or earnings, notify and, on request, bargain with the Union as the exclusive collective-bargaining representative of our employees in the bargaining unit described above.

WE WILL, furnish you with inserts for the current employee handbook that (1) advise that the unlawful rule has been rescinded, or (2) provide the language of a lawful rule; or publish and distribute revised handbooks that (1) do not contain the unlawful rule, or (2) provide the language of a lawful rule.

Latino Express, Inc.

(Employer)

Dated: _____ **By:** _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below or you may call the Board's toll-free number 1-866-667-NLRB (1-866-667-6572). Hearing impaired persons may contact the Agency's TTY service at 1-866-315-NLRB. You may also obtain information from the Board's website: www.nlr.gov.

The Rookery Building, 209 South LaSalle Street, Suite 900, Chicago, IL 60604-1443
(312) 353-7570, Hours: 8:30 a.m. to 5 p.m.

The Administrative Law Judge's decision can be found at www.nlr.gov/case/13-CA-122006 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, D.C. 20570, or by calling (202) 273-1940.



THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the above regional office's compliance officer, (312) 353-7170.