United States Government

NATIONAL LABOR RELATIONS BOARD

OFFICE OF THE GENERAL COUNSEL

Washington, D.C. 20570

May 10, 2016

VIA ECF

Oral argument scheduled for May 17, 2016

Mark J. Langer, Esquire
Clerk, United States Court of Appeals
for the District of Columbia Circuit
E. Barrett Prettyman U.S. Courthouse
333 Constitution Avenue, N.W., Room 5423
Washington, DC 20001-2866

Re: Response to Rule 28(j) letter in *Enterprise Leasing Co. v. NLRB*, D.C. Cir. Nos. 15-1200 & 15-1255

Dear Mr. Langer:

Contrary to Enterprise's suggestion, the Court's unpublished judgment in *Heartland Plymouth v. NLRB*, No. 15-1034 (May 3, 2016), does not preclude enforcement of the Board's Order in this case. In *Heartland*, the Court, applying its contract-coverage analysis, held that "the plain language of the [contract] extinguishes the Union's right to bargain over the subject of hours—including any effects of an hourly reduction," and, therefore, denied enforcement of a Board order requiring Heartland to bargain over the effects of its decision to reduce employee hours. Slip op. at 2. The Court emphasized that the contract explicitly vested Heartland with the right to "determine and change starting times, quitting times, and shifts." *Id.*

Here, in contrast, the benefits that Enterprise unilaterally eliminated on January 1, 2010, had been provided *independent* of the parties' contract. As the Board explained (Br. 33-35), the contract covered, at most, changes to the benefit plans referenced therein, including the Vanguard short-term disability plan. However, Enterprise admittedly had earlier terminated the Vanguard plan in August 2009, and instead began providing short-term disability benefits independently, on a self-insured basis. Accordingly, Enterprise's unilateral elimination of benefits on January 1, 2010,

did not involve any plan referenced in the contract. Therefore, there is no occasion for the disagreement discussed in *Heartland* to arise in this case. *See Regal Cinemas, Inc. v. NLRB*, 317 F.3d 300, 312-14 (D.C. Cir. 2003) (affirming the Board's duty-to-bargain finding that was supported under either a waiver or contract-coverage approach).

Very truly yours,

/s/ Linda Dreeben

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