

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

MV TRANSPORTATION, INC.

and

Case 28-CA-173726

**AMALGAMATED TRANSIT UNION
LOCAL #1637, AFL-CIO, CLC**

MV TRANSPORTATION, INC.'S OPENING BRIEF

INTRODUCTION

The Board should use this opportunity to change its use of the clear and unmistakable waiver standard. While work rules may be mandatory subjects of bargaining, there is no need to bargain over changes to such rules where, as here, the parties have negotiated a collective bargaining agreement that addresses how these issues will be handled. *NLRB v. United States Postal Service*, 8 F.3d 832, 833-834, 836 (D.C. Cir. 1993). In such a situation, the Union's bargaining rights regarding that subject have been fully exercised for the life of the agreement. *See Heartland Plymouth Court MI, LLC v. NLRB*, 650 Fed. App'x 11, 12-13 (D.C. Cir. May 3, 2016). "[I]f a subject is covered by the contract, then the employer generally has no ongoing obligation to bargain with its employees about that subject during the life of the agreement." *Id.* However, the Board currently disregards this well settled precedent in favor of its "clear and unmistakable waiver" analysis. The Board should change its approach and application.

In this case, the Management Rights and "Work Rules" provisions in the Parties' CBA reserves for MV Transportation the right to "**to issue, amend and revise policies, rules and regulations....**" (Jt. Ex , p. .) The actions taken by MV Transportation which are the subject of this proceeding—modifying and implementing work rules and procedures—fall squarely within

these categories of rights ceded to MV Transportation by the Union. Thus, the Union exercised its right to bargain with respect to these matters and there was no need for MV Transportation to bargain further with the Union prior to taking the action it did.

While the contract coverage standard is the correct test in this case, the outcome would not change under the Board's clear and unmistakable waiver standard. Under the waiver standard, a clear and unmistakable waiver of rights exists where the bargaining partners "unequivocally and specifically express their mutual intention to permit unilateral employer action with respect to a particular employment term." *Provena St. Joseph Medical Center*, 350 NLRB 808, 811 (2007). In assessing whether a contract expresses such intention, rights reserved for the employer in the contract's management rights provisions must be read in conjunction with one another. *Baptist Hospital of E. Tenn.*, 351 NLRB 71, 73 (2007). Here, the plain language of the Management Rights and "Work Rules" provisions agreed to by the Union authorized MV Transportation to make changes to its work rules and procedures, and, as such, amounted to a clear and unmistakable waiver of the Union's right to bargain over such changes.

Accordingly, the Board should dismiss the Complaint in its entirety.

STATEMENT OF THE CASE

A. Procedural History

On April 8, 2016, the Amalgamated Transit Union Local #1637, AFL-CIO, CLC ("Union") filed an unfair labor practice charge with the Board alleging that MV Transportation failed and refused to collectively bargain in good faith with the Union by unilaterally modifying certain work rules in violation of Sections 8(a)(1) and (5) of the Act. (Jt. Ex.) On July 9, 2016, the Union filed an Amended Charge. The Board, through its Regional Director, investigated these charges and issued a Complaint on August 10, 2016, alleging that MV Transportation had

violated Sections 8(a)(1), 8(a)(5) and 8(d) of the Act. (Jt. Ex. .) MV filed a timely answer to the Complaint on August 24, 2016. (Jt. Ex.)

B. Statement of Relevant Facts

1. MV Transportation's Operations and Bargaining History

MV Transportation is headquartered in Dallas, Texas and provides fixed route and paratransit transportation services across the United States, including in the North Las Vegas, Nevada area. Since approximately May 24, 2013, MV Transportation has recognized the Union as the exclusive collective bargaining representative of the Unit.

On or about May 24, 2013, MV Transportation and the Union executed a Memorandum of Agreement to cover some of the initial terms and conditions of employment for employees in the Unit. In early 2016, MV Transportation and the Union executed a collective bargaining agreement ("CBA") with an effective date of January 1, 2016 through August 31, 2018. (Jt. Ex. 4.)

2. The Parties Agreed to A Management Rights Clause And "Work Rules" Provision In Their CBA That Provides The Company With The Right To "Issue, Amend And Revise Policies, Rules And Regulations."

During their negotiations for the 2016 CBA, the Company and the Union agreed to a Management Rights clause and a "Work Rules" provision in the Discipline and Discharge Procedures to be included in the CBA. Both of those contractual provisions specifically reserve to MV Transportation, among other things, the right "**to issue, amend and revise policies, rules and regulations....**" (Jt. Ex. , p.) (emphasis added). Specifically, the relevant portions of those provisions provide:

SECTION 5—MANAGEMENT RIGHTS

5.1 Management Rights

Except to the extent expressly abridged by a provision of this Agreement, the Company reserves and retains, solely and exclusively, all of its rights to manage its business. Among those rights, and by no means a wholly inclusive list, is the right to determine staffing size, to decide and assign all schedules, work hours, work shifts, machines, tools, equipment and property to be used to increase efficiency; to hire, promote, assign, transfer, demote, discipline and discharge for just cause; and **to adopt and enforce reasonable work rules.** (Jt. Ex. 4, p. 8.)(emphasis added)

5.4 **The Company shall have the right to issue, amend and revise policies, rules and regulations** and the issuance, amending or revision of such policies, rules and regulations shall not violate the terms of this Agreement. The Company will obtain input from the Union prior to implementation of policy, rules and regulations.

Such revisions and amendments will be given to the Union not less than ten (10) business days prior to the intended implementation date and posted to the employees not less than seven (7) calendar days prior to the intended implementation date. These timeframes will be followed unless shorter notice is given by the client for implementation.

(Jt. Ex. 4, pp. 8-9.)(emphasis added)

SECTION 14—DISCIPLINE AND DISCHARGE PROCEDURES

14.5 Work Rules

The Company shall have the right to issue, amend and revise policies, rules, and regulations and the issuance, amending or revision of such policies, rules and regulations shall not violate the terms of this Agreement. Any Company rule, policy, or regulation that conflicts with the CBA—the terms of the CBA shall prevail. The Company may obtain input from the Union prior to implementation of policy, rules and regulations.

The Company at least twenty (20) business days prior to the implementation of said rule, regulation or addendum will copy each employee and the Union of any

changes to policies, rules and regulations. The twenty (20) day time limit is waived when safety concerns demand immediate address.

Disputes in relation to rules, regulations, and policies may be subject to the grievance and arbitration process should they violate the Collective Bargaining Agreement.

(Jt. Ex. 4, pp. 20-21.)(emphasis added)

3. MV Transportation's March 2016 Modification and Implementation to Work Rules and Procedures.

MV Transportation decided in early 2016 that it needed to implement several changes to certain work rules and procedures. Consistent with the terms of the CBA, the Company sought the Union's input regarding the contemplated modifications. On February 19, 2016, Heidi Heath, Assistant General Manager, sent a letter to Union President, Jose Mendoza, outlining the policies and procedures at issue and asked for the Union's input on the Company's proposed actions. (Jt. Ex. 5.) Ms. Heath also provided a draft of the proposed policies to the Union on February 19, 2016. Relevant to this matter, MV Transportation informed the Union that it was planning to implement and/or modify the following work rules and procedures:

- Procedure No. O-25: Acceptable Assignments for Employees on Temporary Modified Work Status.
- Procedure No. S-19: DriveCam Policy.
- Procedure No. S-21: Safety Policy.
- Procedure No. O-26: Schedule Adherence Policy.
- Procedure No. S-20: Security Sweep/Breach Policy.
- Procedure No. O-21: Operator Fails to Log-in to AMDT.
- Procedure No. A-38: Bereavement Pay.
- Procedure No. A-44: CDL Reimbursement Policy.
- Procedure No. O-40: Customer Service.
- Procedure No. O-41: Required Extra Assignments.

(Jt. Ex. 5.)

On February 26, 2016, the Union provided a written response to the Company's February 19, 2016 letter regarding the proposed work rules and procedures. In that letter, the Union agreed

to some of the Company's intended actions, rejected others, and proposed changes to some. (Jt. Ex. 6.) On February 29, 2016, the Company responded in writing to the Union's letter of February 19th and outlined which of the Union's proposals it was agreeable to and which proposals the Company rejected. (Jt. Ex. 7.) That same day, the Company timely notified employees via written and electronic notice about the work rules and policies it intended to implement effective March 26, 2016. (Jt. Ex. 8.)

ANALYSIS

A. MV Transportation Did Not Make Unilateral Changes In Violation Of 8(a)(1) And (5) Of The Act.

1. The Board Should Apply the Contract Coverage Standard Rather Than Its Current Use Of the Clear and Unmistakable Waiver Standard.

The Board should take this opportunity to move away from its clear and unmistakable waiver standard when analyzing these types of cases. As the D.C. Circuit Court of Appeals has explained “the proper inquiry [in such cases] is simply whether the subject that is the focus of the dispute is “covered by” the agreement. *Heartland*, 650 Fed. App'x at *12-13. If the parties addressed the subject in their collective bargaining agreement, “then the employer generally has no ongoing obligation to bargain with its employees about that subject during the life of the agreement. *Id.* (citing *U.S. Postal Serv.*, 8 F.3d at 836-37). This standard has been the established precedent of the Court of Appeals for the District of Columbia for more than two decades, *see Id.*; *S. Nuclear Operating Co. v. NLRB*, 524 F.3d 1350, 1358 (D.C. Cir. 2008); *Enloe*, 433 F.3d at 835; *U.S. Postal Serv.*, 8 F.3d at 836-37; *Dept. of Navy*, 962 F.2d at 56-57, and is followed by at least two other Circuits, *see Bath Marine Draftsmen's Ass'n v. NLRB*, 475 F. 3d 14, 25 (1st Cir. 2007); *Chicago Tribune Co. v. NLRB*, 974 F.2d 933, 936-37 (7th Cir. 1992).

As explained many times by the D.C. Court of Appeals, the Board's waiver approach is improper because it imposes "an artificially high burden" of specificity on employers and ignores the reality that collective bargaining agreements establish "principles to govern a myriad of fact patterns." *Enloe*, 433 F.3d at 835; *U.S. Postal Serv.*, 8 F.3d at 83637; *Dept. of the Navy*, 962 F.2d at 56-57. Unfortunately, it appears that neither the Region nor the GC made an attempt in this case to analyze MV Transportation's actions under the contract coverage standard.

2. The CBA Gives MV Transportation the Right to Unilaterally Modify Its Work Rules and Procedures.

Under the "contract coverage" standard, the relevant inquiry is whether the subject as to which the employer claims a right to act unilaterally is "within the compass" of the language negotiated by the parties and included in their collective bargaining agreement. *U.S. Postal Serv.*, 8 F.3d at 838. An unduly high degree of specificity, appropriate for the "clear and unmistakable waiver" standard, is not required. *Id.* (rejecting "crabbed reading of the 'waiver'/'covered by' distinction). See also *Bath Marine Draftsmen's Ass'n*, 475 F. 3d at 25 (consider whether the parties bargained over the mandatory subject at issue); *Chicago Tribune Co.*, 974 F.2d at 937 (union relinquishes bargaining rights as to "subjects comprehended by the management rights clause, by agreeing to the clause"); *Baptist Hosp. of E. Tenn.*, 351 NLRB at 72 n.7 (under contract coverage test, cannot be a refusal to bargain "where there is a contract clause that is relevant to the dispute"). Determining whether the subject of the dispute is covered by the parties' collective bargaining agreement is a matter of ordinary contract interpretation. *Enloe*, 433 F.3d at 839.

Here, there can be no dispute that the work rules and policy modifications at issue in this case fall squarely within the Management Rights and "Work Rules" language negotiated by MV

Transportation and the Union. In particular, the CBA reserves to MV Transportation the right to “solely and exclusively ... adopt and enforce reasonable work rules.” The CBA also provides that “The Company shall have the right to issue, amend and revise policies, rules, and regulations...” On its face this language accords MV Transportation the right to set and establish standards of performance and to adopt rules and regulations and policies and procedures with respect to its employees. MV Transportation’s March 2016 revisions to its work rules and procedures plainly involved “issue[ing], amend[ing] and revis[ing] policies, rules, and regulations.”

Moreover, there was nothing remarkable about MV Transportation’s exercise of its management rights in this case - rules relating to safety, customer service, and discipline are the grist of the management rights mill. The Complaint cites to no contractual language or bargaining history that would show that the parties intended to take the unusual step of carving out rules relating to safety, customer service, and discipline from the normal operation of the Management Rights clause or the “Work Rules” clause contained in the Discipline and Discharge section of the CBA.

The CBA in this case preserves MV Transportation’s specific authority to discipline, promulgate rules, regulations, policies and procedures, and institute performance standards. The grant of authority to MV Transportation is quite broad, but the scope of the grant reinforces the conclusion that MV Transportation’s actions were covered by the CBA.

The Seventh Circuit, in *Chicago Tribune*, aptly summarized the point this way:

[T]he breadth of a contractual provision need not detract from the clarity of its meaning. Indeed, a management rights clause can be drawn so broadly as to leave no doubt that a particular regulation was intended to be within its scope. Unions employ experienced contract negotiators, who do not need special rules of construction to protect them from being outwitted by company negotiators.

974 F.2d at 937 (citations omitted). Such is the case here. The work rules and policy changes at issue are clearly within the scope of the broad Management Rights clause and specific “Work Rules” provision negotiated by MV Transportation and the Union. Thus, the Union has already exercised its bargaining rights and the parties’ bargain cannot now be set aside because the Union would like to negotiate a better one.

3. Even Under the Waiver Doctrine, the CBA Clearly and Unambiguously Gave MV Transportation the Right to Make Unilateral Changes to Its Policies

Even though the contract coverage standard should apply, the outcome does not change under the Board’s waiver analysis. Under the waiver analysis, a “clear and unmistakable waiver” of rights exists where “bargaining partners ... unequivocally and specifically express their mutual intention to permit unilateral employer action with respect to a particular employment term, notwithstanding the statutory duty to bargain that would otherwise apply.” *Provena*, 350 NLRB at 811. A waiver of a bargaining right may also be inferred based on the parties’ past practice or from a combination of the express provisions of the CBA and the parties’ past practice. *American Diamond Tool, Inc.*, 306 NLRB 570, 570 (1992). Where, as here, the management rights clause grants the employer the authority to take a particular action, the Board has routinely found such language to constitute a clear and unmistakable waiver of a union’s right to bargain over that subject. See e.g., *Baptist Hosp. of E. Tenn.*, 351 NLRB at 73; *Provena*, 350 NLRB at 815; *Caraustar Mill Group*, 339 NLRB 1079, 1083 (2003); *United Technologies Corp.*, 287 NLRB 198, 198 (1987).

In the present case, the GC will undoubtedly argue that the Union had not clearly and unmistakably waived its right to bargain over changes to the work rules and policies at issue by agreeing to the Management Rights clause and “Work Rules” provision because those clauses did not specifically define the different types of rules and policies to which the management

rights clause applied. This is a “strained and constricted interpretation” of the facially clear language of the Management Rights clause and the “Work Rules” provision, and one that ignores the fundamental rule of contract construction that the parties’ mutual intent must be gleaned from the contract as a whole. *Baptist Hosp. of E. Tenn.*, 351 NLRB at 73; see also, Elkouri & Elkouri, *How Arbitration Works* § 9.3.A.viii (BNA 7th ed. 2012).

In *Baptist Hospital of East Tennessee*, the Board found that the union had clearly and unmistakably waived its right to bargain over the employer’s unilateral changes to its holiday schedule policy by agreeing to a management rights clause that allowed the employer to “determine and change starting times, quitting times and shifts.” 351 NLRB at 74. Although there were no specific references to “schedule,” “scheduling” or “holidays” in the management rights clause, the Board found that “the language must be read, in conjunction with the other management rights to ‘assign employees’ and ‘determine or change methods and means’ of conducting operations, to also encompass the scheduling of employees and work shifts. The lesser right [of holiday scheduling] is necessarily included in the more general right granted by [the management rights clause].” *Id.* at 73.

Here, the broad rights reserved to MV Transportation - i.e., “to adopt and enforce rules and regulations and policies and procedures” - demonstrate the parties’ intent to reserve to MV Transportation a “general right” to establish rules and policies addressing any and all employee conduct, including MV Transportation’s “lesser rights” with respect to attendance and discipline. When read “in conjunction” (as the Baptist Hospital of East Tennessee Board instructs) with the other rights enumerated in the clause - “to discipline and discharge for just cause” and “to set and establish standards of performance for employees” - MV Transportation’s contractual privilege to act unilaterally with respect to its work rules, attendance policy and progressive discipline

schedule could hardly be clearer. In fact, the “Work Rules” provision is contained in the Discipline and Discharge Procedures section in the CBA. The inclusion of that provision in the Discipline section further bolsters the conclusion that the Company and the Union specifically agreed that the Company had the right to modify and implement work rules and procedures related to discipline. Notably, the alleged unlawful changes with respect to policies S-19/DriveCam, S-21/Safety Policy, O-26/Schedule Adherence, O-21/Log-In Policy, and O-40/Customer Service all deal with changes and/or additions to discipline. As noted above, the Union specifically ceded to the Company the right to adopt rules and procedures related to discipline pursuant to the “Work Rules” provision in the CBA (Section 14.5). Thus, the Company acted properly when it implemented those work rules and procedures.

This conclusion is supported the Board’s holding in *United Technologies*, 287 NLRB at 198. In *United Technologies*, the management rights clause gave the employer the “sole right and responsibility to direct the operations of the company and in this connection ... to select, hire, and demote employees, including the right to make and apply rules and regulations for production, discipline, efficiency, and safety.” *Id.* The Board found that the employer’s unilateral modification of the progressive discipline steps under its attendance policy did not violate Section 8(a)(5) of the Act because the Union had waived its rights to bargain over this change. *Id.* at 205. The “contract language plainly grant[ed] the [r]espondent the right to unilaterally make and apply rules for discipline” and there was nothing in the parties’ bargaining history to indicate that the language was “intended to mean something other than that which it plainly state[d].” *Id.* at 198.

Similarly, here, the Management Rights Clause and “Work Rules” provision reserve for MV Transportation the sole and exclusive right to, among other things, “set and establish

standards of performance.” The March 2016 changes to MV Transportation’s policies - concerning light duty assignments, discipline, security sweeps, reimbursements, customer service, and extra duty assignments - inherently involve the setting and establishing of standards of performance and there is nothing in the bargaining history to suggest that the language should mean anything other than what it says.

The Management Rights and “Work Rules” provisions in the Parties’ CBA plainly authorized MV Transportation to make the changes to its work rules, policies and procedures at issue. By agreeing to those provisions, the Union clearly and unmistakably waived its right to bargain over such changes. Accordingly, even under the Board’s waiver analysis, properly applied, MV Transportation was free to unilaterally revise and implement its work rules, policies and procedures at issue.

4. MV Transportation Had No Duty To Bargain Over Changes to Its Policies That Were Not Material, Substantial, or Significant.

Even in the absence of a waiver, it is settled law that not every unilateral change of a work rule constitutes a breach of the employer’s bargaining obligation under Section 8(a)(5). *Peerless Food Products, Inc.*, 236 NLRB 161, 161 (1978). The mere fact that a change may be to the disadvantage of certain employees does not give rise to a bargaining duty. *Berkshire Nursing Home, LLC*, 345 NLRB 220, 221 (2005). Rather, to establish a violation, the particular change must be “material, substantial and significant.” *Fresno Bee*, 339 NLRB 1214, 1215 (2003) (finding changes in payroll period and overtime assignment to be “de minimis”); *Berkshire Nursing*, 345 NLRB at 220-221 (change to parking lot policy that increased walking time from 1 minute to 3-5 minutes was not “material, substantial, or significant”). The Region’s decision to issue a Complaint completely ignores this settled point of law and the Complaint contains no allegation of whether MV Transportation’s modifications were “material, substantial, and

significant.” Instead, the Region and GC assume without any support or explanation that this is the case. This assumption is flawed.

The record evidence demonstrates many of the modifications at issue are not changes at all, but are rather clarifications of existing rules. Such changes are *de minimis* and do not require bargaining. *Ass’n of Admin. Law Judges v. FLRA*, 397 F.3d 957, 964-964 (D.C. Cir. 2005) (reassignment of four parking spaces previously reserved for ALJs was *de minimis* and did not require bargaining); *Optica Lee Borinquen, Inc.*, 307 NLRB 705, 716 (1992) (“[M]ere particularizations of, or delineations of means for carrying out, an established rule or practice” do not rise to the level requiring bargaining).

In the instant case, it can hardly be said that the small changes to work rules constitute material, substantial, and significant changes in working conditions. For example, the Complaint alleges that the Company improperly changed discipline for first incidents from a “verbal warning” to a “documented verbal warning” in policy O-21/Operator Fails to Log-in to Automated Manual Data Terminal (AMDT). There is no allegation, much less any evidence, in the record that this change materially affected any employees wages, hours, terms or conditions of employment. As such, Counsel for the General Counsel is unable to point to any evidence in the record that this change rises to the level required for the Company to be under a duty to bargain with the Union.

Additionally, the Complaint alleges that the Company added a new security sweep policy (S-20) which added new duties to bargaining duty employees. The Company added a policy formally requiring employees to check their vehicles before exiting their vehicles at the end of their shift for security purposes. However, there is no evidence in the record that this alleged “additional duty” is in any way a material, substantial and significant change in working

conditions. Indeed, there is no evidence as to how long the alleged new task takes, what extra duties are involved, or how long, if at all, it extends an employee's work day. *See Irvington Motors*, 147 NLRB 565 (1964) (direction that salespersons make five telephone sales calls each day was not so clearly beyond normal management function as to require notice to and bargaining with the union); *Litton Systems*, 300 NLRB 324 (1990), *enfd.* 949 F.2d 249 (8th Cir. 1991) (not material or substantial are a new timer system that took a couple of minutes away from the break time of some employees and the extension of afternoon breaks by 10 to 15 minutes). As such, the Company had no duty to bargain over the change with the Union.

Similarly, the change to the discipline associated with schedule non-adherence (O-26), which added a "rolling six month" period as opposed to an indefinite time period and a one-day suspension, as opposed to a suspension of unlimited duration, is not material, substantial, and significant. First, these changes are clearly not material on their face, and there is no evidence that they even represent a departure from past practice. Second, there is no evidence in the record that these changes impacted or would impact any employee in the bargaining unit in any material, substantial or significant way (or at all). The Company's decision to offer more specificity and clarity in its work rules is a necessary and proper "day-to-day operating decision" that does not give rise to a bargaining obligation. The same can be said for adding a potential light duty assignment for employees, adding the non-disciplinary step of retraining following DriveCam (S-19) events, and adding a time limit for reimbursement requests. All of these alleged changes are related to the normal operational decisions that must be made in order for the business to run properly. Without any evidence in the record that these alleged changes have had, or would have, any impact on any unit employees, it is clear that these cannot comprise material, substantial and significant changes to the CBA.

B. MV Transportation Did Not Make Midterm Modifications To The CBA In Violation of 8(d) of the Act.

The claim that the Company failed to continue in effect the terms of the collective-bargaining agreement within the meaning of Section 8(d) (and thereby violated Section 8(a)(5) and (1) of the Act) is without merit. With respect to the Bereavement Policy (A-38), the Company did not make any changes to the terms of the CBA. Specifically, the CBA provides that employee “may” be granted three (3) days of bereavement day for the death of a member of the employee’s immediate family. (Jt. Ex. 4, p. 14, Section 10.12). As such, the CBA does not guarantee the employee any specific right to bereavement pay and leaves that issue to the discretion of the Company. Policy A-38 does not make any changes to the CBA. Instead, pursuant to its rights under the Management Rights clause, the Company established a procedure for processing claims under the bereavement leave pay provision of the CBA.

Similarly, the Company did not make a modification of the CBA with respect to the Company’s reimbursement of CDL licenses for employees (O-40). The CBA (Section 26) is silent as to the procedure for processing CDL reimbursements for employees. Policy O-40 simply clarifies the reimbursement process and does not place any restrictions on the employees’ right to obtain reimbursement for the cost of the CDL license.

The Company’s Required Extra Assignments (O-41) policy is not an unlawful mid-term modification of the CBA. Section 31.14 of the CBA specifically provides that employees must provide a “compelling” reason to the Company to be excused from extra work. Policy O-41 does not change that requirement. Instead, the policy simply provides a form for employees to complete to provide information related to the “compelling” reason. As such, the policy is not an unlawful change to the CBA.

Finally, as discussed above, policies O-21 (Log-In procedures) and O-40 (Customer Service) are not improper changes to the CBA. Specifically, the Complaint alleges that those policies improperly changed the discipline levels related to violations of those policies. However, the CBA specifically provides the Company the authority under Section 14.5—Work Rules—to set policies and procedures related to discipline. Accordingly, the Company implemented those rules under the authority granted to it under the CBA.

CONCLUSION

Based upon the forgoing and the record in this case, the Company respectfully requests that the Complaint be dismissed in its entirety.

RESPECTFULLY SUBMITTED this 4th day of May 2017.

OGLETREE DEAKINS, NASH, SMOAK & STEWART P.C.

By: s/Kerry S. Martin
Kerry S. Martin
Esplanade Center III
2415 East Camelback Road, Suite 800
Phoenix, AZ 85016
(602) 778-3715
kerry.martin@ogletreedeakins.com

CERTIFICATE OF SERVICE

I hereby certify that MV Transportation, Inc.'s Unopposed Motion for Extension of Time was served on this 4th day of May 2017, as follows:

Via E-Gov, E-Filing:

National Labor Relations Board
Office of the Executive Secretary
1015 Half Street SE
Washington, D.C. 20570-0001

Via E-mail:

Larry A. "Tony" Smith, Counsel for the General Counsel
National Labor Relations Board, Region 28
300 Las Vegas Boulevard South, Suite 2-901
Las Vegas, Nevada 89101
Email: larry.smith@nlrb.gov

Benjamin Lunch, Counsel for the Union
Neyhart, Anderson, Flynn & Grosboll
369 Pine Street, Suite 800
San Francisco, CA 94104-3323
Email: blunch@neyhartlaw.com

Kathleen M. Hubert

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