

**UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD  
REGION 1**

**INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS, LOCAL 251**

**And**

**Cases:           01-CB-219768  
                      01-CC-219536  
                      01-CC-219746**

**INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS, LOCAL 25**

**And**

**Administrative Law Judge  
Elizabeth Tafe**

**DHL EXPRESS (USA), INC.**

**LOCAL 251'S OBJECTION TO  
MOTION FOR SUMMARY JUDGMENT**

**Introduction**

This matter is before the Administrative Law Judge on a Motion for Summary Judgment filed by Charging Party DHL Express and General Counsel on the eve of trial. Respondent Local 251 avers that the Motion is untimely and without merit.

General Counsel alleges, and the parties agree, that on May 1, 2018, Local 251 established picket lines at Charging Party's facilities in Westborough and South Boston, Massachusetts. Local 251 asserts that that Charging Party was not neutral. Local 251's Affirmative Defenses, filed June 4, 2018, aver:

1.       The Complaint fails to state a claim upon which relief may be granted.
2.       DHL Express is a joint employer with DHLNH, such that any alleged concerted activity directed at DHL Express constitutes lawful, primary activity.

3. DHL Express is a franchisor to DHLNH as franchisee, such that any alleged concerted activity directed at DHL Express constitutes lawful, primary activity.

4. DHL Express is an ally to DHLNH, such that any alleged concerted activity directed at DHL Express constitutes lawful, primary activity.

In its Answer to Amended Complaint, Local 251 further averred that any misconduct was *de minimis*.

Trial was initially set for July 10, then rescheduled to July 31, 2018. On July 30, 2018, at about 5:30 p.m., Charging Party emailed a twenty-four (24) page summary judgment motion, together with 135 pages of exhibits. At about 7:30 p.m., General Counsel emailed a motion in support of charging party's motion.<sup>1</sup> Neither pleading was e-filed due to a system breakdown, so Your Honor did not receive the papers until trial the following morning. Local 251 objected to the Motion as untimely. Your Honor denied the Motion from the bench as untimely and granted in part and denied in part the Motion on the merits<sup>2</sup> and offered Local 251 this opportunity to supplement its opposition on the record.

### **Summary of Argument**

The Motion is plainly untimely. Section 102.24 of the Board's Rules and Regulations, allows a party to seek summary judgment twenty-eight (28) days prior to trial. This permits the parties a fair opportunity to respond and the Board adequate time to consider the motion. This time frame should serve as a benchmark for fundamental fairness. Filing the Motion literally on the eve of trial, after documents and witnesses have been subpoenaed, petitions to revoke filed

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<sup>1</sup> For simplicity the motions will be referred to as "the Motion" or "Charging Party's Motion."

<sup>2</sup> The Motion was granted as to the "de minimis" defense and otherwise denied.

and argued, and trial preparation completed by the parties and the Judge, wasted resources and caused unfair prejudice to Local 251.

On the merits, the Motion should be denied. The joint employer, ally and franchisor defenses challenge General Counsel's claim that Charging Party is neutral. Raising these issues as affirmative defenses is an appropriate way to 'flag' the issues for trial.

### Argument

#### **I. The Motion is Untimely.**

Filed less than twenty-four (24) hours prior to trial, the Motion is clearly untimely. The Complaint was filed May 21, 2018, and Local 251's Answer, which first raised the Affirmative Defenses, was filed June 4. The Amended Complaint adding Local 25 was filed June 26 and Local 251's Answer was filed July 5. Thus, General Counsel and Charging Party had almost two (2) months to challenge the Affirmative Defenses, but failed to do so.

At the outset, the Motion is untimely under Board Rule 102.24. At trial, Local 251 argued that Rule 102.24 allows just twenty-eight (28) days prior to trial to file a summary judgment motion. General Counsel and Charging Party responded that this Rule applies only to motions filed with the Board, and that a later section of the Rules, with no specific time limit, allows such motions to be filed with the ALJ. *But contrary to these assertions at trial, the Motion was in fact filed pursuant to Rule 102.24.* The Motion states: “[P]ursuant to Section 102.24 of the Board's Rules and Regulations, *see Boeing Co.*, 19-CA-32431, 2011 WL 2597601, n.3 (June 30, 2011), [Charging Party] moves for summary judgment on each of Local 251's affirmative defenses.” Emphasis added. Motion at 4.

It is true that another section, Rule 102.35, allows motions for summary judgment to be considered by the ALJ, that *Boeing* creates an exception to Rule 102.24, and no time limits are

specifically imposed. But certainly, that does not permit General Counsel and Charging Party to file last minute motions indiscriminately. To the contrary, dispositive motions filed on the eve of trial ought to be denied. For example, in *Mt. Sinai Hospital and 1199, National Health and Human Service Employees Union*, 331 NLRB 895, 896 (2000), Respondent filed a motion for deferral to arbitration several days before the hearing opened. At the outset of the hearing, the ALJ denied the motion as untimely to the extent it sought dismissal of the complaint and advised the parties that he would defer ruling on the deferral request in the motion until after evidence and briefs.

Finally, consideration of this Motion unfairly prejudices Local 251. Not only is its trial preparation disrupted, it must prepare a record to support an objection that should never have been required. The interim 10(l) avoidance agreement must necessarily be extended. Local 251 was unfairly presented with a Hobson's choice of either bifurcating and delaying the hearing or acceding to an incomplete record to the Board in the event of a special appeal. As a policy matter, considering this Motion virtually invites last minute filings and strategic delays. The Motion should be denied as untimely.

## **II. The Motion Should be Denied on the Merits.**

Remarkably, General Counsel and Charging Party omit any reference whatsoever to the applicable legal standard for consideration of a summary judgment motion.<sup>3</sup> The Board will not

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<sup>3</sup> Although styled as motions for summary judgment, they are more accurately motions to strike affirmative defenses, since no judgment would ensue if the motions were granted. In that respect, they should not be granted because "whether or not these defenses are legally or factually correct, it cannot be said that they are sham or otherwise improper." *Rochester Musicians Assn. Local 66*, 207 NLRB 647, 648 (1973), *enf. den. on other grounds, N.L.R.B. v. Rochester Musicians Ass'n Local 66*, (2nd Cir.1975).

grant motions for summary judgment unless there is “no genuine issue as to any material fact” and “the moving party is entitled to judgment as a matter of law.” *Security Walls, LLC*, 361 NLRB No. 29, slip op. at 1 (2014) (quoting *Conoco Chemicals Co.*, 275 NLRB 39, 40 (1985)). “Under [Board] Rules, however, a party opposing summary judgment has a *somewhat* lesser burden than under the Federal rules.” Emphasis in original. *Lhoist North America of Tennessee, Inc.*, 2015 WL 3545224, at \*1 (Miscimarra, concurring).

**A. Summary Judgment Regarding the Joint Employer Standard is Inappropriate due to the Uncertainty in Board Law.**

Summary judgment is inappropriate where there is a conflict or ambiguity in Board law. *Heuer International Trucks*, 273 NLRB 361 (1984). In *Heuer*, the Board considered summary judgment regarding a particular bargaining unit and denied the motion. The Board held:

*[I]t is well settled that a motion for summary judgment should only be granted when issues of fact and law are not in dispute. Here it cannot be disputed that there exists a conflict in Board law regarding the appropriate service department unit. In International Harvester Co., 119 NLRB 1709 (1958), the Board held that “partsmen” though working with “craftmen” were excluded from the bargaining unit since they did not exercise craft skills. The Board also applied International Harvester Co. recently in Taylor Bros., 230 NLRB 861, 870 (1977). There the Board excluded partsmen from the mechanic unit. However, in Austin Ford, 136 NLRB 1398 (1962), cited by the Respondent, the Board found that the mechanics there were not a separate appropriate unit and stated that all service and parts department employees should be included in the same bargaining unit. Similarly, as noted by the Respondent, in Graneto-Datsun, 203 NLRB 550 (1973), the Board refused to separate mechanics from the rest of the service department employees and dismissed the 8(a)(5) allegation because there had been no demand for recognition in the appropriate unit. In Gregory Chevrolet, 258 NLRB 233 (1981), the Board included parts department employees with mechanics. Therefore, as clearly indicated by the inconsistency in the cited cases, it would be highly improper to grant the Motion for Summary Judgment when we have concluded that a clarification of existing Board law on this issue is required.*

Emphasis added.

This case presents at least two legal uncertainties regarding joint employer, so summary judgment is inappropriate. First, as everyone in the case has noted, joint employer doctrine is in

flux. *Compare Browning-Ferris Industries of California, Inc.*, 362 NLRB No. 186 (2015) with *Hy-Brand Indus. Contractors, Ltd.*, 365 NLRB No. 156 (2017), reconsideration granted, order vacated, 366 NLRB No. 26; see also “NLRB Considering Rulemaking to Address Joint Employer Standard,” NLRB.gov, May 8, 2018. The dichotomy is so striking that General Counsel and Charging Party are not even on the same page. *Compare* Charging Party Motion at 18 (“Browning-Ferris was wrongly decided and does not reflect the views of the current Board.”) with General Counsel Motion at 1, n.1 (“For purposes of this Motion, the General Counsel does not join in the Charging Party’s specific assertion that [*Browning-Ferris*] was wrongly decided.”).<sup>4</sup>

Second, the Motion offers no legal support for the proposition that a joint employer defense can be waived. Local 251 will address whether its conduct amounted to a “clear and unmistakable waiver,” but *this doctrine has never been applied in the context of a secondary boycott defense*. So again, movants cannot satisfy the Board’s summary judgement requirement that the law is clear.

**B. “Joint Employer” is a Lawful Defense to 8(b)(4)(i)(B) and (ii)(B).**

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<sup>4</sup> Nor has General Counsel taken a position on the issue.

*3. Have there been charges raising joint employer issues in secondary boycott cases? If so, please describe the GC's experience with such cases.*

We do not have a report reflecting which charges alleging unlawful secondary boycott conduct (i.e., alleging violations of Sections 8(b)(4)(A), 8(b)(4)(B) or 8(e)) may have raised joint employer issues. However, none were submitted to the Division of Advice and, thus, the General Counsel has not been presented with such cases.

SUBJECT: Report on the Midwinter Meeting of the ABA Practice and Procedure Under the National Labor Relations Act Committee of the Labor and Employment Law Section, 2017 WL 1018652, at \*21–22.

Charging Party and General Counsel apparently concede there is *no legal support for their position that “joint employer” is not a viable defense*. In the Motion, movants struggle to extricate themselves from circular arguments and straw men.<sup>5</sup> But the bottom line is: *In no case has the Board held that activity directed at a joint employer is secondary; nor has it ever held that a joint employer is neutral.*

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<sup>5</sup> For example, the Motion at 3 claims the Board has not recognized “joint employer” as a defense to picketing against a party “without a duty to bargain,” but ‘duty to bargain’ is a straw man. It does not define neutral status. Movants then claim Charging Party “had no duty to bargain and, therefore, remained neutral,” but the two (2) cases cited concern 8(a)(1), (3) or (5) claims and have nothing to do with secondary boycott or neutral status. And the second case, *Goodyear Tire and Rubber Co.*, 312 NLRB 674 (1993), *contradicts* movants’ argument that joint employer status was waived in the representation proceeding. While the Board ultimately determined that respondents were not, as a factual matter, joint employers, it stated:

In general it can be said that the cases on which [respondents] rely do not quite stand for the proposition which they propose: i.e., that both the Union and the Board are bound by what the parties consent to during a representation election. It may well be they are bound if the matter has truly been litigated, particularly an issue such as unit description. However, unit description is not the issue here, but whether Goodyear and RDR can rely on what they regard as a Regional Director-approved legal conclusion that TU was the sole employer. The cases on which they rely are distinguishable in many ways and I do not regard myself bound by them.

The fact that the Regional Director adopted the TU-Teamsters stipulation in that regard is of little significance. The adoption is mainly a matter of efficient processing of representation petitions. It is only common sense that if the parties to a representation proceeding are satisfied with their agreement and if it does not clearly breach any important policy of the Act, then the Regional Director, too, will be satisfied. That is not to say that he might not reach a different conclusion if the matter is actually litigated. Of course, the stipulation for certification precluded the litigation of any issue such as joint employer.

*Goodyear Tire & Rubber Co.*, 312 NLRB at 688.

Contrary to movants' assertion,<sup>6</sup> there are numerous cases holding that a joint employer is *not* neutral.<sup>7</sup> For example, in *Teamsters, Local 559 (Atlantic Pipe Corp.)*, 172 NLRB 268, 273–74 (1968), the Board conclusively held that joint employer status is a defense to secondary boycott. The Board held:

Thus, the concept of a joint employer appears to apply in unfair labor practice cases. Although research has revealed no case in which this concept has been applied to a secondary boycott situation, I cannot find any precedent holding that such a concept would not be so applicable.

Thus, I find that, as noted above, the interrelationship of supervision first by White Oak and then by Atlantic must be considered a major factor in evaluating the relationship between the two companies.

I find and conclude that these corporations are in fact as well as in law joint employers within the meaning of the Board precedent above cited.

Accordingly, I find and conclude that the picketing at Atlantic's yard by the Respondent Union was part of the Union's lawful primary activities directed against Atlantic as well as White Oak. Such picketing being primary in nature is not a violation of Section 8(b)(4)(i) and (ii)(B) of the Act.

*Cited with approval, Milk Drivers Local No. 471*, 209 NLRB 24, n.25 (1974). *See also Teamsters Local 557*, 338 NLRB 896, 897 n.3 (2003) (Liebman concurring) *and cases cited therein; Service Employees Intern. Union Local 525, AFL-CIO*, 329 NLRB 638, 640 (1999) (“where it is demonstrated that the targeted entity exercises substantial, actual, and active control over the working conditions of the primary's employees, that entity may be found to have

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<sup>6</sup> Movants state no “Board decision hold[s] that a “joint employer” claim is an available defense here.” Motion at 19.

<sup>7</sup> It is appropriate to raise “joint employer” as an affirmative defense. *E.g. Service Employees Intern. Union Local 525, AFL-CIO*, 329 NLRB 638, 647 (1999) (“In its second affirmative defense, Respondents submit that Lerner, as managing agent for the Washington Square building, was a joint employer.”).

relinquished its 8(b)(4)(B) protections.”);<sup>8</sup> *Chauffeurs, Teamsters and Helpers Local Union No. 776*, 313 NLRB 1148, 1153 (1994) (“Unless the evidence establishes that Drivers, Inc. and Pennsy Supply were ... joint employers, alter egos, or allies in the strike, as claimed by the Respondent as affirmative defenses, the picketing ... violated Section 8(b)(i) and (ii)(4) of the Act.”); *Teamsters Local No. 85*, 253 NLRB 632, 635 (1980); *Teamsters Local Union No. 688*, 211 NLRB 496 (1974); *Carpenters (AFL-CIO) (Levitt Corp.)*, 127 NLRB 900, 905 (1960) (“the first question to be resolved is whether Sullivan and Commonwealth are in fact subcontractors or are, as alleged by Respondents, joint employers.”).

In a particularly misleading passage, movants claim that *Browning-Ferris* of California, 362 NLRB No. 186 (2015), “made it clear that its decision did not apply to issues under 8(b)(4).” Motion at 18. Movants state that the dissent expressed concern that “neutral parties normally protected from picketing could be treated as employers” and that the majority responded that its decision was not intended to modify existing law. True as far as it goes, but not for the conclusion movants claim. What the dissent actually said was this:

More specifically, the majority *redefines and expands the test* that makes two separate and independent entities a “joint employer” of certain employees. *This change* will subject countless entities to unprecedented new joint-bargaining obligations that most do not even know they have, to potential joint liability for unfair labor practices and breaches of collective-bargaining agreements, and to economic protest activity, including what have heretofore been unlawful secondary strikes, boycotts, and picketing.

Emphasis added. *Browning-Ferris*, 2015 WL 5047768, at \*25. So, it was not *the application* of joint employer to secondary boycott (and other doctrines) that concerned the dissent, but its

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<sup>8</sup> A case cited by movants for Local 251’s burden of proof, Motion at 20, but disregarded for its discussion of the 8(b)(4)(B) defense.

*redefinition and expansion.* Contrary to movants’ assertion, the colloquy actually suggests that the dissent accepts application of joint employer doctrine – albeit more narrowly defined.

**C. “Joint Employer” Defense Cannot be Waived.**

In no case has the Board held that joint employer defense - that the alleged secondary object is not neutral by virtue of joint employer status – can be waived. Absent clear case law, there is no basis for summary judgment.

**D. Alternatively, Local 251 did not Waive this Defense.**

Charging Party and General Counsel mistakenly argue that Local 251 is foreclosed from arguing “joint employer” because the Union withdrew an earlier representation petition. Charging Party Memorandum at 14-17. But General Counsel just ten (10) months ago made clear that a Union does not waive its right to bargain with a joint employer by failing to name it in representation proceedings. *See Securitas Security Services USA, Inc., and Bechtel National, Inc., joint employers*, 2017 WL 9439265 (N.L.R.B.G.C). There, General Counsel found that the Union “was not fully aware of the relationship between the employers when it failed to name Bechtel in the representation proceedings and the Union’s conduct did not evidence a “clear and unmistakable waiver.”” This is in part because “the Union did not have the whole picture until it began representing employees” after certification. And just as here, the employers failed to provide the Union with information pertinent to their relationship.

The evidence here will show that Local 251 became fully aware of Charging Party’s joint employer status after the representation petition was filed. Charging Party and DHLNH share a seamless operational relationship, including shared work space, equipment, information, package pickup and delivery procedures, and customer data. Charging Party sets various hiring and employment standards, including pre-hire qualifications and uniforms; it receives and processes

customer complaints about employees. It reports allegations of employee misconduct and monitors and/or approves disciplinary action.

Pre-election, Charging Party's anti-Union consultant told employees that DHLNH was beholden to Charging Party; that it had to "kiss their a\*\*." He also stated that Local 251 should have filed against Charging Party. After certification, Local 251 learned in bargaining that Charging Party's rules and practices governed virtually every aspect of company operation. Charging Party and DHLNH share a seamless operational relationship, including shared work space, equipment, information, package pickup and delivery procedures, and customer data. Charging Party sets various hiring and employment standards, including pre-hire qualifications and uniforms; it receives and processes customer complaints about employees. It reports allegations of employee misconduct and monitors and/or approves disciplinary action. Often DHLNH President Palker would say that he had to take a particular action because Charging Party required it. Often, DHLNH would comment that it could not agree to a Union demand, or needed the Union to agree to its demand, because Charging Party insisted on it. For example, Palker said he could not provide Teamsters Health and Welfare because Charging Party would not pay for it. Consequently, Local 251 communicated with Charging Party through back-channels. Exhibit A (Affidavit of Mathew Taibi). Ultimately, DHLNH insisted that Charging Party retain ultimate authority over terms of employment in the Management Rights provision of the CBA. Charging Party is named in the DHLNH CBA multiple times. Exhibit B.

After certification, Local 251 began representing bargaining unit members in potential disciplinary actions. On several occasions, DHLNH insisted on a particular disciplinary action because it was required by Charging Party. As a condition of the strike settlement agreement,

DHLNH agreed to notify Charging Party of the settlement and request that it withdraw the unfair labor practice charges against Local 251. Exhibit C.

**E. Charging Party is a Franchisor**

Charging Party cites no case holding that franchisor status is irrelevant to an 8(b)(4)(B) claim, so there is certainly no basis to claim that movants are entitled to summary judgement. To the contrary, the hallmarks of franchisor status – exclusivity, common trade names, operational control – are clearly relevant.

The Board has repeatedly held that certain types of franchisor arrangements would amount to circumstances in which the franchisor is not neutral. For example, in *Teamsters Local 456 (Carvel Corp.)*, 273 NLRB 516, 519, 1984 WL 37098, at \*6, the Board examined whether Carvel franchises were protected as neutral. The Board held:

[O]ur initial inquiry herein is whether Grossman, the licensee, is a neutral party and thus subject to protection by the Act from secondary picketing. The answer to that question “can be resolved only by considering on a case-by-case basis the factual relationship which the secondary employer bears to the primary employer up against the intent of the Congress as expressed in the Act to protect employers who are 'wholly unconcerned' and not involved in the labor dispute between the primary employer and the union.” In resolving this question, the Board traditionally looks to such factors as the degree of common ownership; common control of daily activities, including labor relations policies; the extent of integration of business operations; and the dependence of one employer on the other for a substantial portion of its business. No one of these factors is, in and of itself, sufficient to either confirm or deny the alleged neutral status of a party to a dispute. Rather, *all* factors must be weighed in order to assess accurately the nature of the parties' relationship. Applying these principles to the facts of the instant case, we find that Grossman and Carvel are neutral parties in their relationship to one another.

*See also Parklane Hoisery Co.*, 203 NLRB 597, 612 (1973) (franchisor and franchisee may properly be considered sufficiently integrated to warrant their unitary treatment, for various statutory purposes.). In sum, the Board examines all the pertinent aspects of the franchisor relationship to determine whether the entities are a sufficiently integrated enterprise. While the

exclusive purchasing aspect of the relationship is not alone determinative, the remainder of the relationship may well be.

[T]he Board holds “that franchisees who purchase their stock in trade ... from their franchisor's suppliers will not, merely by virtue of their commitments in that connection, be considered functionally integrated with their franchisor.” Moreover, assuming arguendo, that the functional integration herein exceeds what might be expected from “truly separate enterprises,” this factor<sup>36</sup> “is but one of four aspects scrutinized to ascertain if a single-employer relationship exists,” and “it will not alone confer single-employer status absent overlap in at least some of the other aspects analyzed.”

Citations omitted. *Canned Foods, Inc.*, 332 NLRB 1449, 1464–65 (2000).

Franchisor status is clearly relevant to joint employer status to the extent it surpasses exclusive purchasing arrangements and (possibly) brand protection. As the dissent noted in *Browning-Ferris*, “[t]he majority's new test appears to require specific analysis of whether the franchisor shares or codetermines “the manner and method of performing the work.” 2015 WL 5047768 at 25.

For many years, the Board has generally not held franchisors to be joint employers with franchisees, regardless of the degree of indirect control retained.<sup>78</sup> The majority does not mention, much less discuss, the potential impact of its new standard on franchising relations, but it will almost certainly be momentous and hugely disruptive. Indeed, absent any discussion, we are left to ponder whether the majority even agrees with the statement of the General Counsel in his amicus brief that “[t]he Board should continue to exempt franchisors from joint employer status *to the extent that their indirect control over employee working conditions is related to their legitimate interest in protecting the quality of their product or brand.*

Emphasis added. Miscimarra and Johnson, dissenting. And dissenting in *McDonalds USA, LLC*, 2016 WL 97422, then-Member Miscimarra wrote “[s]ection 8(b)(4)(B) protects neutral employers, including franchisees, from being embroiled in a dispute *just because* they do business with a common franchisor.” Emphasis added.

## **F. Charging Party is an Ally.**

Movants seem to misunderstand ally doctrine and misstate its application to this case. The ally doctrine is a defense to an 8(b)(4)(B) charge “where the secondary employer against whom the union's pressure is directed has entangled himself in the vortex of the primary dispute.” *National Woodwork Manufacturers Association v. N.L.R.B.*, 386 U.S. 612, 627 (1967).

Famously,

Two statements by Senator Taft have been taken to summarize the legislative history of Section 8(b)(4) with respect to what constitutes a neutral employe [sic] or, as the Act now reads, “person.”

This provision makes it unlawful to resort to a secondary boycott to injure the business of a third person who is “wholly unconcerned” in the disagreement between an employer and his employees. [Emphasis supplied.] [93 Cong. Rec. 4198 (1947), reprinted in II Leg. Hist. 1106 (NLRA, 1947)].

Later, in a post-legislative reflection on the purpose of the provision, Senator Taft stated:

The secondary boycott ban is merely intended to prevent a union from injuring a third person who is not involved in any way in the dispute or strike. [I]t is not intended to apply to a case where the third party is, in effect, in cahoots with or acting as part of the primary employer. [95 Cong. Rec. 8709 (1949).]

*Carpenters (Missoula White Pine Sash)*, 301 NLRB 410, 415 (1990).

It is true that “when a secondary does work which but for the strike would have been done by the strikers, and that work helps the primary to avoid the strike's impact by continuing to provide goods and services to his customers in his name, the primary is using the secondary employees as strikebreakers, and the union may appeal to them as though the primary had imported them onto his premises.” *Local 245, Graphic Arts Intl. Union*, 220 NLRB 407, 411–12, 1975 WL 5973, at \*8–10. It is also true that an employer becomes an ally by redirecting work that would have been performed by the struck employer to other employers. In *Teamsters, Local*

560, 248 NLRB 1212, 1214–15 (1980), the Board examined this issue as applied to a corporate parent with multiple ‘independent’ warehouses:

In our view, CMS, insofar as its warehousing functions are concerned, exhibits “an appreciable integration of operations and management policies” indicative of a single enterprise. CMS does its national business through local branches which have substantial autonomy in day-to-day matters. But the business performed by the branches is CMS business as much as it is branch business. ... Thus it is the regular business practice of CMS to provide from other branches, where the headquarters computer shows them to be available, those items which one branch has sold but cannot ship. The sale, not the shipment, determines the branch credit for the profit made. Evidently this pattern of cross-shipping represents management policy at the corporate level. Because the warehousing operations are integrated in this manner, any branch can suffer an interruption of its warehousing operation, such as would accompany a strike, with hardly any immediate effect on its business. The branch could continue to seek and take orders as usual.

Not only are the other branches available to take up the slack in shipping; they are programmed to do so without the necessity of making any special arrangements. This insulation from the effects of a strike is not due primarily to technological advances or sophisticated inventory techniques. It derives from the virtual certainty that the other branches will perform the struck work. Should an independent contractor put itself into such an arrangement with the primary employer, it would, by performing the struck work, become an “ally” and lose its neutrality. Where, as here, the arrangement is with a commonly owned business whose performance of the struck work is dictated by existing corporate policy, we see no necessity in awaiting proof of the actual performance of struck work before concluding that the nonstruck branches are “acting as part of” CMS and are not “wholly unconcerned” with one branch's labor disputes. Moreover, in conjunction with the corporate policy of cross-shipping, the control CMS exercises over branch labor relations, though not on a day-to-day basis, is a factor which gives CMS the appearance of a single employer by way of tactical advantage in dealing with labor disputes at the local level. On these facts, we find that there was no attempt to involve a neutral in the Union's primary dispute. Accordingly, we will dismiss the complaint.

Citations omitted.

Here, the evidence shows that Charging Party was directly involved in the labor dispute as an ally. According to testimony elicited at trial on August 2, Charging Party sent its Controller, Seth Evans, and Operations Manager Laurice Bancroft to PVD station in advance of

the strike to assist DHLNH with their “operations.” DHL Express Senior Director of Labor Relations Joseph Yates attempted to pressure IBT representative Bill Hamilton to end the strike. He stated that “significant resources are being expended” to continue operations *in Providence and elsewhere* despite the strike, and that these resources could not be recouped. Yates asked Hamilton to “help curtail the unnecessary strike at PVD.” “I am available to discuss *any issues or concerns* between now and whenever matters at PVD come to resolution.” All of this occurred *before* Local 251 extended picket lines to South Boston and Westborough. Exhibit D (Yates to Hamilton April 30, 2018). Charging Party’s Field Supervisor, William Perry, re-routed air cargo bound for PVD. Exhibit E (Perry Affidavit to NLRB, par. 14,15). Charging Party’s counsel did not dispute that Charging Party performed DHLNH work the previous day. Exhibits F, G.<sup>9</sup> In the Motion, Charging Party presented no evidence supporting its claim that it did not support DHLNH during the labor dispute, asserting instead that Local 251 had an obligation to present evidence in its Answer. Motion at 23.

**G. De Minimis Picketing Violations Should be Dismissed.**

The Board has held that brief picketing, even if technical misconduct, will be considered *de minimis* and will not violate the Act. For example, in *Service Employees International Union, Local 525*, 1992 WL 1465677, the Board held:

The entire episode could not have taken more than a few minutes and was the only time that any blocking allegedly occurred. Yet, it is undisputed that the Union made no effort to prevent four or five other employees from entering the building. Thus, there is no pattern of obstructive conduct here .... Even assuming this incident qualifies as blocking, it was momentary and noncoercive, amounting to an inconsequential act of misconduct. *See, Ornamental Iron Work Co.*, 295 NLRB No. 53 (JD at 12) (June 1989). In fact, the entire incident may be considered de

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<sup>9</sup> Charging Party argues that it was not any ally because no work was being performed at the time of the picketing, but this is nonsensical. No work was performed because no one was at work to perform it.

minimis in that it was of limited duration, impact and significance. Thus, it does not warrant condemnation as a violation of Sec. 8(b)(1)(A). *See, Musicians Local 76 (Jimmy Wakely Show)*, 202 NLRB 620, 621 (1973).

The evidence will show that ten (10) minutes after Charging Party's counsel notified Local 251's counsel that DHLNH was not on-site in South Boston, the picketing ceased. Exhibit H (Email from Fisher to Gursky and reply). While it is true that picketing commenced in South Boston at about 5:00 a.m., it is also true that Local 251 understood that DHLNH had been on-site in South Boston the previous day. Charging Party's counsel was so notified and has, to this day, never denied this assertion. Exhibit G (Letter from Gursky to Fisher).

**Conclusion**

For the foregoing reasons, the Motion should be denied.

Respectfully Submitted,

Teamsters Local 251  
By their attorney,

/s/ Marc Gursky  
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**CERTIFICATE OF SERVICE**

I hereby certify that on the 7<sup>th</sup> day of August, 2018, I e-filed this document through the Agency's website, e-mailed a copy to Michael A. Feinberg, Esq. at [maf@fczlaw.com](mailto:maf@fczlaw.com), Robert Fisher, Esq. at [rfisher@seyfarth.com](mailto:rfisher@seyfarth.com) and Colleen Fleming, Esq. at [Colleen.Fleming@nlrb.gov](mailto:Colleen.Fleming@nlrb.gov) and filed a copy with the Regional Director

/s/ Jessica Marsh

# Exhibit A

**UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD  
REGION 1**

**INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS, LOCAL 251**

**And**

**Cases:       01-CB-219768  
              01-CC-219536  
              01-CC-219746**

**INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS, LOCAL 25**

**And**

**Administrative Law Judge  
Elizabeth Tafe**

**DHL EXPRESS (USA), INC.**

**AFFIDAVIT OF MATHEW TAIBI**

Being duly sworn, I hereby depose and say:

1. I am Secretary-Treasurer and Principal Officer of Teamsters Local 251, Respondent in the above matter.
2. Although the initial petition for representation was filed against both Charging Party and DHLNH, we withdrew that petition and proceeded directly against DHLNH because the Board Agent informed us the DHLNH would stipulate to an election, but Charging Party would not. At that time Local 251 had very little information about the relationship between DHLNH and Charging Party.
3. Local 251 became fully aware of Charging Party's joint employer status after the representation petition was filed. We learned Charging Party and DHLNH share a seamless operational relationship, including shared work space, equipment, information, work rules, package pickup and delivery procedures, and customer data. Charging Party sets various hiring and employment standards, including pre-hire qualifications and uniforms; it receives and

**Opposition**

processes customer complaints about employees. It reports allegations of employee misconduct and monitors and/or approves disciplinary action. For example, Charging Party's on-site Manager, Glenn Marzilli, has a direct video feed to his office showing DHLNH operations in the facility. If he sees something wrong, he directs the DHLNH Manager to correct it.

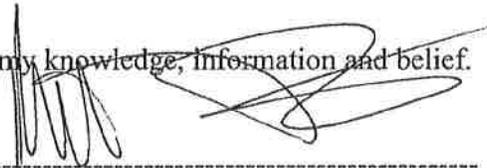
4. Pre-election, Charging Party's anti-Union consultant told employees that DHLNH was beholden to Charging Party; that it had to "kiss their a\*\*." He also stated that Local 251 should have filed its Petition against Charging Party.

5. After certification, Local 251 learned in bargaining that Charging Party's rules and practices govern many aspects of company operations. For example, Charging Party sets various hiring and employment standards, including pre-hire qualifications and uniforms; it receives and processes customer complaints about employees, it sets package delivery and pickup procedures, rates and priorities, it refers customers, and its relationship with DHLNH is exclusive in the delivery area. It reports allegations of employee misconduct and monitors and/or approves disciplinary action. Often DHLNH President Palker would say that he had to take a particular action because Charging Party required it. Palker would comment that it could not agree to a Union demand, or needed the Union to agree to its demand, because Charging Party insisted on it. For example, Palker said he could not provide Teamsters Health and Welfare because Charging Party would not pay for it. Consequently, Local 251 communicated with Charging Party through back-channels.

6. After certification, Local 251 began representing bargaining unit members in potential disciplinary actions. On several occasions, DHLNH insisted on a particular disciplinary action because it was required by Charging Party

7. After certification, DHLNH insisted that Charging Party retain ultimate authority over terms of employment. As a result, in the Management Rights provision of the CBA, which was TA'd on April 18, the parties provided that DHLNH "must at all times comply with the lawful and contractual directives of its Customer, DHL Express, and ... has the authority to do so." Charging Party is named in the DHLNH CBA multiple times. For example, it has veto power over Union apparel (Art. 5), disciplinary suspension (Art. 6(d)(1)(d)); termination (Art. 6(d)(2)(j)), and bulletin boards (Art. 8(h)).

The foregoing is true and correct to the best of my knowledge, information and belief.



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Mathew Taibi

Sworn before me this 7<sup>th</sup> Day of August, 2018.

SHARON M. FIVE  
NOTARY PUBLIC  
State of Rhode Island  
My Commission Expires  
Notary Public 29, 2021  
*Sharon M. Five*  
*Aug 29, 2021*

My commission expires:

# Exhibit B

**AGREEMENT  
BETWEEN  
TEAMSTERS' LOCAL UNION NO. 251  
AND  
DHLNH, LLC**

**EFFECTIVE FROM: JUNE 28, 2018 THROUGH MARCH 31, 2022**

## AGREEMENT

This Agreement is made and entered into this 28<sup>th</sup> day of June, 2018, by and between Teamsters' Local Union No. 251, affiliated with the International Brotherhood of Teamsters, hereinafter called the "Union", and DHLNH, LLC., hereinafter called the "Employer" or "Company".

## WITNESSETH

In consideration of the mutual promises hereinafter set forth, the parties hereto agree as follows:

### ARTICLE 1 SCOPE OF AGREEMENT

- a. This Agreement shall be binding upon the parties hereto as provided by law.
- b. The Employer shall give notice of the existence of this Agreement to any purchaser or other successor. Such notice shall be in writing with a copy to the Union not less than thirty (30) days prior to the effective date of sale or transfer unless Employer has less notice.
- c. It is understood by this Section, that the Employer shall not use any leasing device to a third party with the primary intent to evade its obligations under this Agreement.
- d. Except as provided elsewhere, bargaining unit routes, as referenced in the Seniority and Bidding Article, shall be performed exclusively by employees covered by this Agreement. Supervisors, however, shall be privileged to perform such work when bargaining unit employees are unable, unavailable, or unwilling to perform such work in accordance with DHL standards and for the purposes of training, demonstration, safety education, emergencies and by mutual agreement with a representative of the Union. Such mutual agreement need not be written. In the event a supervisor must drive a route under this Section, the Shop Steward will be notified. Supervisors may perform dock work if it does not displace the Dock Worker.
- e. It is the intention of the parties to so write the Agreement so as to define clearly the obligations and responsibilities of both, to the end that if, in the future, disputes arise between the Company and the Union, this Agreement and its provisions shall be recognized by both as the document that sets out the obligations and responsibilities of both the Company and the Union.
- f. All personal pronouns used in this Agreement shall include the other gender whether in the masculine or the feminine or the neuter gender, and the singular shall include the plural and vice versa whenever and as often as may be appropriate.

**ARTICLE 2**  
**UNION RECOGNITION AND UNION SECURITY**

- a. The Employer recognizes and acknowledges that the Union is the exclusive representative of all employees in the classifications of work covered by this Agreement as all full-time and regular part-time Couriers and Dock Worker(s) employed by the Employer at its 101 Concord Street, Pawtucket, Rhode Island facility, excluding all other employees, professional employees, guards and supervisors as defined in the Act, for the purposes of collective bargaining as provided by the Labor-Management Relations Act of 1947, as amended.
- b. All present employees who are members of the Union on the effective date of this Agreement, or on the date of execution of this Agreement, whichever is the later, shall remain members of the Union in good standing as a condition of employment. All present employees who are not members of the Union and all employees who are hired hereafter shall become and remain members in good standing of the union as a condition of employment on and after the thirty-first day following the beginning of their employment or on and after the thirty-first day following the effective date of this Agreement, whichever is the later.
- c. When the Employer needs additional workers, the Employer may give the Union equal opportunity with all other sources to provide suitable applicants, but the Employer shall not be required to hire those referred by the Union.
- d. Nothing contained in this Agreement shall be construed so as to require the Employer or employee to violate any applicable law.
- e. No provision of this Article shall apply in any state to the extent that it may be prohibited by state law. If under applicable state law additional requirements must be met before any such provision may become effective, such additional requirements shall first be met.
- f. If any provision of this Article is invalid under the law of any state wherein this contract is executed, such provision shall be modified to comply with the requirements of state law or shall be re-negotiated for the purpose of adequate replacement.

**ARTICLE 3**  
**MANAGEMENT RIGHTS**

- a. Except to the extent clearly and expressly abridged by a specific provision of this Agreement, the Company reserves and retains, solely and exclusively, all of its inherent rights, privileges, and prerogatives to manage the business as such rights existed prior to the election leading to the selection of the Union as the bargaining representative for employees and prior to the execution of this Agreement, without regard as to whether the Company exercised such rights in the past.
- b. The management of the Company's business and direction of the forces shall be vested exclusively in the Company. Without limiting the generality of the foregoing, and by way of illustration, but not limited in any way to the following or similarly related matters, such functions

of management include the right to plan, direct, expand, control, initiate, modify its operation; to hire, to assign, to transfer, to promote, to train; to suspend, discharge or discipline employees for just cause; to lay off employees from duty for lack of work; to introduce any new or improved methods; to determine work schedules, including the hours of work, the workday, the workweek, the number of shifts and the starting and ending time for all employees; to determine the machinery, equipment and material to be used, the type of operations, the method and source of materials, supplies and products; to establish and maintain job requirements and the standards of production, quality and inspection; to supervise the working force including the scheduling, allocation and assignment of work, and the determination of the classification and qualifications of employees; to promulgate reasonable rules, regulations and policies governing the conduct of working forces and the operations of the business; to select new hires for supervisor positions and employees for promotion to supervisor. Notwithstanding any right conveyed under this Agreement to the Union or reserved by the Company, the parties expressly understand and agree that the Company must at all times comply with the lawful and contractual directives of its Customer, DHL Express, and that the Company has the authority to do so.

#### **ARTICLE 4** **GRIEVANCE PROCEDURE**

a. For the purpose of this Agreement, the term grievance is defined as a dispute, complaint or claim arising between the Employer and the Union or any employees covered by this Agreement concerning the interpretation, application, claim of breach or violation of any specific provision of this Agreement. Any grievance arising between the Company and the Union or any employee represented by the Union shall be settled in the following manner:

Step 1: The aggrieved employee shall first attempt to resolve the grievance by speaking to his supervisor with the Shop Steward within five (5) working days of the occurrence giving rise to the grievance, or reasonable first knowledge of such grievable issue. It is recognized that the Union Business Agent/Representative may initiate a grievance at Step 1 of the grievance procedure.

Step 2: If the grievance is not resolved between the Steward, Employee and Supervisor, the Shop Steward may submit the grievance in writing to the Union Business Agent/Representative and provide a copy to the Company within ten (10) working days.

The Union Business Agent/Representative may then take the matter up with a representative of the Company with the authority to act upon such grievance. A decision shall be made by the Company within five (5) working days after the Company's receipt of the written grievance. It is recognized that the Union Business Agent/Representative may initiate a grievance at Step 2 of the grievance procedure for discharges to expedite such grievances. The grievance will be written in English and shall contain all information set forth on the Teamsters 251 Grievance Form, which is attached to this Agreement as Appendix A.

Time limits stated herein, or at any step of this procedure, may be extended by mutual agreement. Otherwise, failure to submit a grievance in writing within the time limits herein provided shall constitute waiver of all rights under this Agreement to file such grievance.

b. If the Company's answer/decision at Step 2 is unacceptable to the Union, and/or if satisfactory settlement cannot be reached, the Union may initiate arbitration for any unsettled grievance—except those issues identified in this Agreement as exempt from arbitration--within ten (10) working days by (1) notifying the Company in writing of its intent to do so and (2) filing an arbitration demand with the American Arbitration Association (AAA). The parties agree that, the selection of an arbitrator and the procedures for arbitration shall be in accordance with the AAA rules and regulations. The arbitration demand will seek an arbitration panel of seven arbitrators from the Eastern Region of the United States, and the parties will take turns striking arbitrators until only one remains. The remaining arbitrator will hear the grievance. The party demanding arbitration will strike first. In the event the entire panel is unacceptable to either the Union or the Company, the parties may order a new arbitration panel one time for each grievance.

c. Arbitrators shall not award any back pay for any employee who continued to work pending resolution of their discipline through the grievance and arbitration procedure. Any award for back pay will be reduced by any period when the employee was unwilling or unable to work and by interim earnings, unemployment payments, or any other income received whatsoever by the employee during the discharge period. Each party will be responsible for the wages and costs of its own witnesses and representatives. The Company reserves the right to reopen this Agreement for further negotiations in the event an arbitration award or the number of threatened arbitrations increases the Company's costs under this Agreement. If the Company and Union do not reach an agreement after 90 days, the parties shall mutually agree to utilize a FMCS Federal Mediator to decide between each of the parties' last best proposals. Such Mediator may recommend an alternate proposal which the parties could accept and would become binding upon agreement. If the parties do not adopt the mediator's proposal, then the mediator will resolve the matter by choosing the party proposal the mediator deems most appropriate.

d. If the Company does not give a written response within the time periods, it shall be deemed a denial of the grievance. The Union shall have the power to abandon or settle grievances, even if based upon individual claims. Should the Union and the Company reach an agreement or settlement of the grievance at any step in the grievance procedure, or after completion thereof, such agreement or settlement shall be reduced to writing and will constitute a final and binding on agreement affecting all parties including the employee and/or employees involved and the Union, and the matter shall end then and there.

e. The Arbitrator shall not have the authority to amend or modify this Agreement or establish new terms or conditions under this Agreement. The sole function of the Arbitrator shall be to determine whether there has been a failure to abide by the provisions of this Agreement. In any arbitration proceeding between the parties, the Arbitrator shall not have any authority to change, amend, modify, supplement, add to, subtract from or otherwise alter in any respect whatsoever this Agreement and/or any part hereof. The Arbitrator shall so construe this Agreement so that there will be no interference with the rights and responsibilities of either party hereto, except as expressly limited by the specific provisions of this Agreement. Furthermore, the Arbitrator shall have no

power to substitute his discretion for the Company's or the Union's discretion in areas where such discretion is reserved to the Company or the Union in this Agreement or has not been abridged by this Agreement. Any award within the above limitations shall not be retroactive to any date or prior to the date the grievance occurred.

f. The Arbitrator shall commence hearings as soon as practical. The Arbitrator shall render his award in writing at the earliest possible date after completion of such hearings. Arbitration hearings shall be held in Providence, Rhode Island or such other place as the parties may mutually agree upon. The party requesting such arbitration shall prosecute such case diligently and shall in all cases have the burden to prove to the satisfaction of the Arbitrator that a contractual violation has occurred, except in the case of a discipline, the Company shall have the burden. The Arbitrator shall conduct a hearing at which sworn testimony will be heard and render a decision concerning only such issues as are directly raised by the written grievance submitted at Step 2 of the grievance procedure. Both the Company and the Union shall be entitled to call sworn witnesses and submit written briefs if desired. It is expressly agreed and understood that the ruling and decision of said Arbitrator on a matter properly before him within the limits of his jurisdiction shall be final and binding upon all parties, including the employee, and that any dismissal of a grievance, whether on the merits or on procedural grounds, bars further action either by way of arbitration or otherwise. The Arbitrator's fees and expenses shall be shared equally by the parties.

g. Unless otherwise mutually agreed upon, only one grievance or same type of grievance, in the case of a common work group, processed through the grievance procedure to arbitration shall be subject to an arbitration hearing at any one day or time and grievances submitted to arbitration shall be in the order agreed by the parties. Nothing in this Section is to be interpreted to limit the Union's ability to process a grievance.

## **ARTICLE 5** **UNION APPAREL/PINS**

a. Any employee shall have the right to wear a Union pin or Union apparel so long as the Customer—DHL Express—does not object.

## **ARTICLE 6** **DISCIPLINE**

a. Discipline shall be for just cause, but in respect to discharge or suspension, progressive and corrective discipline shall be followed. The Union Steward or Representative will initial any warning notice to verify receipt of such notice but that does not imply that the employee or Union agrees to the action, unless such agreement is expressed in writing.

b. Prior to suspension or discharge, the Company shall give at least one (1) warning notice of the complaint against such employee to the employee, in writing, and a copy made available to the Union representative in attendance at the discipline meeting, except that no warning shall be given in cases of extreme misconduct. The warning notice as herein provided shall remain in effect for a maximum period of twelve (12) months from date the employee was first informed that a warning notice will be issued. Discipline based on unlawful harassment, unlawful discrimination,

negligence in the operation of a motor vehicle, and/or intentional customer service failure shall remain in effect for twenty-four (24) months. All disciplinary references shall be considered null and void after the above time frames, and shall not be used against an employee in the future for any reason. All investigatory and disciplinary meetings between the Employer and employee shall be with the Steward or Union Representative present, unless the employee waives such representation. Such investigatory and disciplinary meetings shall not be unreasonably delayed due to the absence of a Steward or Union Representative, and the Union will make all reasonable efforts to ensure such representative is timely provided. The Company shall issue discipline within five (5) working days of actual knowledge of alleged infraction or such discipline shall be null and void; such time frame can be mutually extended.

c. Any employee discharged must be paid in full for all wages owed him/her by the Employer, including earned vacation pay, if any, not later than the payday for the next pay period following the date of discharge.

d. Except in cases involving extreme misconduct, an employee to be discharged or suspended shall be allowed to remain on the job, without loss of pay unless and until the discharge or suspension is sustained under the grievance and arbitration procedure. The parties agree to expedite discharge cases for proper resolution. The following disciplinary actions are understood as cases of extreme misconduct:

1. Suspension for first offense; discharge for second offense within noted time frames:
  - a) Transportation of alcohol in a Company vehicle, provided such alcohol is not a customer package or a gift.
  - b) Unlawful harassment, unlawful discrimination, negligence in the operation of a motor vehicle, intentional falsification of Company records, and/or intentional customer service failure.
  - c) Handheld use of cellphone, texting, or emailing while operating a vehicle for work.
  - d) Verbal assault of another person during working hours or while representing the Company under circumstances that could result in the employee's disqualification under DHL standards.
  
2. Discharge for first offense:
  - a) Theft or robbery.
  - b) Gross insubordination (defined as refusal of work, except that refusal of reasonably unsafe and/or unlawful work directive or conditions shall be exempt).
  - c) Working or operating vehicles or equipment under the influence of alcohol and/or drugs.
  - d) Use of alcoholic beverages or drugs on or in Company property.
  - e) Possession of illegal drugs on Company property or in Company vehicles.
  - f) Physical assault of another person during work hours or while representing the Company at any time.
  - g) Intentional destruction of customer or Company property or chattel.
  - h) Possession of firearms on Company property.

- i) Unauthorized transportation of non-Company personnel in a Company vehicle.
- j) Conviction of a disqualifying offense under DHL standards.
- k) Failing a drug screen or refusal to consent to a reasonable suspicion or post-accident drug screen.

e. Excessive absenteeism and tardiness will be handled as follows:

- 1. First Offense: Documented Verbal Warning.
- 2. Second Offense: Written Warning.
- 3. Third Offense: Written Warning with one (1) day suspension without pay.
- 4. Fourth Offense: Written Warning with three (3) day suspension without pay.
- 5. Fifth Offense: Discharge.

An offense occurs if an employee calls in an unapproved absence after exhausting all available leave under the Health and Safe Families and Workplace Leave Act, unless the Employee is entitled to and has received authorization to take other leave, e.g., jury duty, bereavement, vacation, FMLA, other authorized leave, etc., in accordance with the terms of this Agreement and Company policy. Tardiness will be defined in accordance with past practice. Such absenteeism discipline is subject to the just cause provision of this Article.

**ARTICLE 7**  
**SENIORITY & BIDDING**

a. Seniority rights for employees shall prevail. Seniority for employees governed by this Agreement shall be defined as the period of employment with the Employer in the work covered by this Agreement. The Employer shall provide the Union with a current seniority list annually and when requested by the Union Business Agent.

All new employees shall be hired on a sixty (60) calendar day trial basis and shall work under the provisions of this Agreement, within which time they may be dismissed without recourse to the Grievance Procedure by the Union. However, the Employer may not discharge, discipline or lay off employees for the purpose of evading this Agreement or discriminating against Union Members. After sixty (60) days' trial period they shall be placed on the seniority list as regular employees in accordance with their date of hire, provided however, that an employee must work a minimum of ninety-six (96) hours during his sixty (60) days' trial period.

b. Preference shall be given to employees longer in service and in the order of their seniority to the work available, provided that such employees are available at such time as the work is assigned and are qualified to perform the work required or become qualified within thirty days. "Qualified" shall be reasonably defined as willing and able to perform the work bid or assigned.

c. Employees, in the order of their seniority, provided they are qualified to perform the work required, shall have preference:

- 1. In selection of routes in accordance with Paragraph (g) below.
- 2. To work in the event of layoff for lack of work.

3. In recall to work after layoff.
4. In selection of vacations from the vacation schedule.
5. In job classification/assignment.

d. Job openings will be posted on the bulletin board for employees to bid on available jobs. Whenever there is an opening on any job, the job will be posted for seven calendar. Seniority will prevail provided the employee is qualified. If no employee bids on the job, or no employee is qualified to hold the position, the the Employer can fill the position so long as seniority is not violated.

e. Any worker not qualified on a bid job and gets the job according to seniority, the Employer shall give the employee forty-five (45) days to qualify. After forty-five (45) days, he/she will be paid the corresponding pay rate for that job while working at that job, if he/she so qualified within the forty-five (45) day period. If the employee does not qualify for the job he/she bid, he/she shall be returned to his/her former position held prior to such bid, if available. If a position is not available, the employee shall be offered the next available position within his or her former classification when a position comes open. It is understood the Company will not be required to re-post the job if the employee is unsuccessful during the 45-day qualification period, and it is further understood there will be no transferring back except as limited by the last paragraph above.

f. Except when all employees are scheduled to work, overtime on Saturday, Sunday and Holidays shall be offered by seniority.

g. Employees, in the order of their seniority and provided they are qualified for the job selected, shall have the right to select a route from the posted schedule of routes. All driver routes shall include geographical descriptions and start times. Such schedule shall be posted no later than November 1 of each year and shall remain posted for two (2) weeks. All moves from the bid must be made by the first Monday in February of the year following the bidding selection. The Company may, upon notice to the Union, have bids semi-annually - or more frequently if required by the client - in order to address operational needs.

h. When a route is permanently changed by fifty percent (50%) or more of its geographical area affected employees shall be afforded the opportunity amongst themselves to bid the routes affected in accordance with their seniority, if multiple routes are affected by the change and they are qualified for the route sought.

i. If it is necessary to lay off an employee, that employee shall be notified of a layoff at the end of his/her shift. In the event of layoff, the most junior employee shall be the first laid off and rehiring shall be in order of seniority, provided the employee is capable and qualified to perform the available work.

j. Seniority shall be lost by:

1. Discharge for just cause.
2. Voluntary Quit, or job abandonment, which shall mean an absence of three (3) consecutive work days without notice to the Company.
3. Failure to respond to a notice of recall for regular work after a layoff within seven

(7) consecutive days after the Company notifies the Union to contact affected employee(s) or receiving notice by certified mail return receipt requested at the last known mailing address of the employee.

4. If laid off for more than eighteen (18) consecutive months.
5. Unable to work for thirty-six (36) consecutive months due to injury or illness. For on-the-job injury or illness, seniority would terminate if settled earlier than thirty-six (36) months through workers' compensation, unless the employee returns to work.

k. Employees hired for temporary job openings in the Courier Classification from October 15 through the first two (2) full weeks of January will not accrue seniority during that period and such job openings shall not be posted for bid during that period. If returned to work within sixty (60) days after that period, they shall be placed on the seniority list with credit back to their employment dates, providing they have met all other requirements for seniority.

## **ARTICLE 8**

### **SHOP STEWARD & UNION ACCESS**

a. The Employer recognizes the right of the Union to designate a Shop Steward and an Alternate. The Steward shall be granted super-seniority for layoff and recall purposes.

b. The authority of the Shop Steward and Alternate so designated by the Union shall be limited to and shall not exceed, the following duties and activities:

1. The investigation and presentation of grievances in accordance with the provisions of the collective bargaining agreement.
2. The collection of dues when authorized by appropriate Local Union action.
3. The transmission of such messages and information which shall originate with, and are authorized by the Local Union or its officers, provided such messages and information does not involve work stoppages, slowdowns, refusal to handle goods, or any other interference with the employer's business.

c. The Shop Steward has no authority to take strike action, or any other action interrupting the Employer's business.

d. The Employer recognizes these limitations upon the authority of the Shop Steward, and shall not hold the Union liable for any unauthorized acts. The Employer in so recognizing such limitations shall have the authority to impose proper discipline, including discharge, in the event the Shop Steward has taken unauthorized strike action, slowdown, or work stoppage in violation of this Agreement.

e. Stewards shall be permitted to investigate, present and process grievances on or off the property of the Employer. The Steward or a representative of the Union must be present during the discussion of any grievance or discipline with representatives of the Company, which will be on-the-clock work.

f. The Union shall designate or remove the Steward at any time, in accordance with whatever

procedures utilized by the Union, for the good of the Union. The Employer may raise concerns about the Steward with the Union's Business Agent who will investigate and resolve the Employer's concerns.

g. The Union Business Agent shall have access to the Employer's establishment during working hours with escort by the Steward or the Alternate Steward, including the right to investigate working conditions, collect dues, and inspect all time cards, and other payroll records of the Employer, and for the purpose of determining whether or not the terms of this Agreement are being complied with. The Employer will make payroll records available within seven (7) days of the Union's request unless the payroll company utilized by the Employer manifests a delay.

h. The Employer shall provide suitable bulletin boards in the break room, so long as the Customer—DHL Express—does not object, upon which the Union may post notices of Union meetings, Union elections, the results of any Union election, collective bargaining related information, and notice of Union social affairs.

#### **ARTICLE 9** **JURY DUTY**

a. An employee who is called for jury duty will be granted an unpaid leave of absence while serving as a jurist under the following conditions:

b. The employee must furnish the Employer with a court statement indicating notice to appear for jury duty upon receipt. The employee will be paid his/her normal pay for eight (8) hours per day at the straight time hourly rate.

c. Jury duty pay will be granted only for those days on which the employee would have been scheduled to work. Any time off necessary beyond the above annual limit, the employee shall be allowed to use available vacation or personal time or be excused as unpaid leave, at the employee's option with proper notice. The Company will adjust employee pay based on issuance of a court stipend amount paid to employee per day, if applicable.

d. If an employee reports for jury duty on any day and is excused by the court before the end of his scheduled work shift, the employee will immediately report his availability to his supervisor and reasonably return to work upon direction by his supervisor.

#### **ARTICLE 10** **BEREAVEMENT**

a. In the event of a death in the employee's immediate family which includes spouse, father, mother, step-father, step-mother, sister, brother, mother-in-law, father-in-law, brother-in-law, sister-in-law, grandmother, grandfather and children, step children, and grandchildren the Employer will grant the employee time off with pay for up to three (3) workdays for bereavement.

b. It is agreed that in the event of the death of the employee's aunt, uncle, cousin, or spouse's grandparent; he/she shall be allowed time off without pay, or use of earned but unused PTO time.

**ARTICLE 11**  
**AGREEMENTS**

a. The Employer agrees not to enter into any agreement or contracts with its employees, individually or collectively, which in any way conflicts with the terms and provisions of this Agreement, nor shall the Employer bargain directly with employees in violation of law. Any unlawful agreements made in violation of this Article shall be null and void. Any and all Company policies implemented after Ratification relating to or affecting bargaining unit members in any way shall be reasonably bargained with the Union.

**ARTICLE 12**  
**CHECK-OFF**

a. The Employer agrees to deduct, once monthly, from the pay of all employees covered by this Agreement the dues, initiation fees and/or uniform assessments of the Local Union having jurisdiction over such employees and agrees to remit to said Local Union all such deductions prior to the 20th of each month for which the deduction is made. Where laws require written authorization by the employee, the same is to be furnished to the Company in the form required. No deduction shall be made which is prohibited by applicable law. No deduction will be made on any employee until receipt by the Company of a signed copy of a voluntary deduction authorization. The Union will submit a monthly accounting of all dues deductions to the Employer, the total amount employees have agreed to pay. The Employer shall deduct the specified amount from employee paychecks and remit to the Union in one monthly payment.

b. The Employer agrees to deduct from the paycheck of all employees who submit authorization cards and are covered by this Agreement voluntary contributions to D.R.I.V.E. D.R.I.V.E. shall notify the Employer of the amounts designated by each contributing employee that are to be deducted from his/her paycheck on a weekly basis for all weeks worked. The Employer shall transmit to:

DRIVE Accounting Department  
Int'l Brotherhood of Teamsters  
25 Louisiana Avenue, NW  
Washington DC 20001

Send on a monthly basis, in one check the total amount deducted along with the name of each employee on whose behalf a deduction is made, the employee's social security number and the amount deducted from the employee's paycheck. No such authorization shall be recognized if in violation of State and Federal law. No deductions shall be made which is prohibited by applicable law. Any official of the International and/or Local Union shall be permitted reasonable access to the Employer's premises one time per year for the purpose of discussing DRIVE participation on the premises provided such access shall not interfere with the conduct of the Employer's business. The Union will send the Employer a list of all employees who have agreed to weekly deductions and the amount of the weekly deduction of each. The Employer shall deduct the specified amount from employee paychecks and remit to the Union in one monthly payment. The International

Brotherhood of Teamsters shall reimburse the Employer annually for the Employer's actual cost for the expenses incurred in administering the weekly payroll deduction plan.

c. The Union shall indemnify and hold harmless the Company against any and all claims, damages, lawsuits, or other forms of liability that may arise out of or by reason of any action taken by the Company for the purposes of complying with this Article.

### **ARTICLE 13** **PAYROLL PERIOD**

a. The payroll period shall run from Sunday at 12 a.m. through Saturday at 11:59 p.m. inclusive. Wages shall be paid weekly. Each week, each employee shall be provided with a statement of gross earnings and an itemized statement of deductions made for any purpose.

### **ARTICLE 14** **MILITARY CLAUSE**

a. Employees enlisting or entering the military or naval service of the United States, pursuant to the provisions of the "USERRA", shall be granted all rights and privileges provided by the Act.

### **ARTICLE 15** **PICKET LINE**

a. In the event that an employee may be confronted with a primary picket line sanctioned by a union, the employee will not be required to cross such picket line. In such circumstances, the Employer may exercise all lawful rights to get the work done, including but not limited to the use of subcontractors and supervisors.

### **ARTICLE 16** **STRIKES & LOCKOUTS**

a. The Union agrees that neither the Union nor any of its members or agents shall cause or participate in any strike, slowdown, stoppage of work or other interference with the Employer's operations, regardless of the basis for such action, including, but not limited to economic, health, safety or security issues, during the term of this Agreement. Any employee who engages in any of the above conduct in violation of this provision may be subject to immediate discharge, which shall be deemed for cause. The Employer agrees that there will be no lockout of employees.

b. The parties have an affirmative duty to uphold and support the terms of this Agreement, including the obligation to discourage violations of this provision.

c. Any such strike or lockout described in (a) above, but not protected by Article 14, shall be deemed to be a violation thereof, and the aggrieved party may seek an injunction ordering cessation of the violation and full return to work, pending a final decision of a court or administrative agency for any alleged violation of this Article.

**ARTICLE 17**  
**NON-DISCRIMINATION**

- a. The Employer and the Union agree not to discriminate against any individual with respect to hiring, compensation, terms or conditions of employment in violation of any applicable federal, local, or Rhode Island law.
- b. The Company and the Union agree that there will be no discrimination by the Company or the Union against any employee because of his or her membership in the Union or because of any employee's lawful activity and/or support of the Union.

**ARTICLE 18**  
**EQUIPMENT. SAFETY, DRIVING AND TESTING**

- a. No employee shall be required to drive or to operate or work upon any vehicle or equipment that is not equipped with a functioning seatbelt, brake lights, headlights, wipers and tires with at least 1/32 tread life remaining and proper basic running of the vehicle. The employee shall notify management upon discovering such vehicle/equipment deficiencies. No employee shall be subject to disciplinary action for refusing to operate such vehicle/equipment.
- b. The employee shall report all defects of equipment that he is assigned to operate, to the Employer on such forms or in such manner as the Employer may require. All equipment that is refused under Paragraph (a), shall be appropriately tagged so that it cannot be used by any other drivers until the equipment is repaired.
- c. Employees shall not be held responsible for vehicles not properly equipped to comply with State Motor Vehicle Laws, and shall be compensated due to no fault of their own for fines and time lost if summoned to court, etc., because of the same. The employee shall not be compensated for lost time if the employee failed to conduct a pre-trip inspection and/or failed to report defects as required by Company procedure.
- d. Any employee involved in any accident or incident shall as soon as reasonably possible, report said accident or incident and any physical injury sustained to their supervisor. When required by his Employer, the employee before going off duty, and before starting his/her next shift, shall make out an accident/incident report, in writing, on forms furnished by the Employer, and shall turn in all available names and addresses of witnesses to the accident/incident. Such report shall be made out on the Company time.
- e. When an employee is injured on the job, he/she shall be paid for the time that they spend receiving treatment on the day of the injury, up to the end of their shift. Employees who fraudulently report an on-the-job injury shall be subject to discipline, up to and including discharge.
- f. The Employer agrees to abide by federal, state and local safety laws in respect to its vehicles, machinery, break areas, washrooms, bathrooms and working conditions. The employees

agree to abide by the Employer's safety requirements. Should the Employer require the use of any safety equipment or wear, it shall be provided and maintained without cost to the employees. The Employer shall be privileged to develop and maintain safety rules and a safety program in order to comply with this paragraph, Department of Transportation regulations, and the Occupational Safety and Health Act.

g. All examinations of employees—excluding pre-employment examinations—when required by the Employer and performed under such direction (including DOT physicals) shall be paid for by the Employer. Employees shall be paid for all time required to take all such required examinations.

h. All washrooms and restrooms shall be accessible and sanitary. Separate male and female washrooms, restrooms and locker rooms, where applicable, shall be provided.

i. The Employer and the Union may meet at a mutually agreeable time to discuss any health or safety concerns associated with changes in law or operating conditions.

j. Couriers may talk on a cellphone while operating a vehicle so long as the employee is not distracted and is using a hands-free device.

k. In the event an employee shall suffer a suspension or revocation of the right to drive the Employer's equipment for any reason, the employee must notify the Employer before their next report to work. If such suspension or revocation comes as a result of the employee complying with the Employer's instruction, the Employer shall provide employment to such employee if there is other available work for which the employee is qualified. If the employee receives other available work, the employee shall receive the appropriate rate of pay for the job performed based on his/her seniority, for a period not to exceed two (2) years. If there is no job available, the employee will be subject to the layoff procedure and may seek reemployment when a position for which he is qualified becomes available or when he becomes qualified to return to his former position. If an employee loses the right to drive or operate Company equipment for a reason not directed by the Employer, the employee shall be subject to the layoff procedure and may seek reinstatement when qualified; provided all time frames are adhered to.

l. All alcohol and/or controlled substance testing shall be in accordance with federal and state law. The provisions of Article 23 Section C will apply to all employees requesting enrollment in a rehabilitation program following a positive drug and/or alcohol test.

m. The Employer may, upon reasonable cause, require an employee to be tested for the use of alcohol and/or controlled substances. Reasonable cause is defined as an employee's observable action, appearance, or conduct that clearly indicate the need for a fitness-for-duty medical evaluation. The employee's conduct must be witnessed by at least two (2) supervisors. The witnesses must have received training in observing a person's behavior to determine if a medical evaluation is required. When the supervisor(s) confronts an employee, a Union representative must be made available pursuant to Article 7 of this Agreement. If no steward is available, the employee may select another bargaining unit employee for representation.

n. It is agreed that an employee will have rehabilitation opportunities for drug and/or alcohol abuse as outlined in Article 23, Paragraph (c).

**ARTICLE 19**  
**COURT APPEARANCES**

a. Employees required, and appropriately documented, to appear in court or other legal proceedings, other than jury duty, shall notify the Employer on their next workday after receiving notice requiring their attendance in court or other legal proceedings. If the employee provides such notice, the employee shall be permitted, at the employee's option, to utilize available vacation or personal days to remain in pay status for the day(s) of the witness appearance (provided the Employer is given reasonable advance notice). If the Employer requires the employee to appear in a legal proceeding or arbitration arising out of his/her work at any proceeding, he/she shall be paid for such time spent attending the legal proceeding or arbitration until dismissed by the Employer.

**ARTICLE 20**  
**UNIFORMS & APPEARANCE**

- a. Any required uniforms are to be provided to the employees by the Company at Company expense annually.
- b. Rain coat and hat are to be supplied to each employee working outdoors. Employer is to pay full cost of same.
- c. If the Employer requires the employees to carry company identification, the cost of such company identification shall be borne by the Employer.

**ARTICLE 21**  
**HOURS & OVERTIME**

- a. Five (5) consecutive days Monday through Friday shall constitute a normal week's work for all employees. In the event DHL adds weekend deliveries, there shall be a rebid to allow employees to choose their schedule based on their seniority.
- b. Employees must clock in and clock out at the beginning and ending of each shift and for each break in excess of 20 minutes.
- c. Employees will be allowed one afternoon paid fifteen (15) minute coffee breaks per shift. Employees working a 12-hour shift will be entitled to a second fifteen (15) minute paid break after ten (10) hours of on duty time. Employees will be allowed one unpaid thirty (30) minute lunch break.

d. Employees ordered to report for work before their starting time shall not be penalized for reporting early by having their hours cut for the purpose of avoiding overtime. Starting time shall be defined as the time period up to thirty minutes before or 90 minutes after the posted scheduled start time. Provided a courier reports as scheduled, couriers may request a delivery cut off of 9:00 p.m. except on Mondays and October 15 through the second week of January.

e. The parties agree that the jobs at DHLNH are full time jobs and the Employer intends to maintain such jobs as full time jobs, but this provision does not guarantee a minimum workweek. Any employee who reports and works as scheduled shall be guaranteed a minimum of four (4) hours work or pay per regular workday. Any employee who is called in or ordered to report for work outside their regularly scheduled work hours shall be guaranteed a minimum of four (4) hours work or pay.

f. Overtime: The rate of time and one half the straight time rate shall apply for time worked over forty (40) hours in any one (1) workweek. Unless specifically agreed in this Agreement, all pay for time not worked shall be compensated at an employee's straight time rate. Overtime shall not be compounded or pyramided.

g. Unless regularly scheduled to work Saturdays, Employees required to report for work on Saturday shall be guaranteed a minimum of four (4) hours work at time and one-half of their regular rate.

h. Except as otherwise provided in the Article, Working time for all employees shall start when they are instructed to report and actually punch in at the Employer's facility and shall continue until relieved from duty at same regardless of occupation. Notwithstanding the foregoing, employees shall be compensated for all time worked.

i. Employer shall provide advance notice of not less than seven (7) calendar days before requiring any employee to permanently change his starting time.

## ARTICLE 22 SUNDAYS & HOLIDAYS

a. The following shall be recognized as paid holidays and all employees shall be paid eight (8) hours straight time pay therefor if it falls on a day an employee is normally scheduled to work: New Year's Day, Memorial Day, Independence Day, Victory Day, Labor Day, Columbus Day, Veteran's Day, Thanksgiving Day, and Christmas Day. To be entitled to holiday pay, employees must work their last scheduled workday before the holiday and the first scheduled workday following the Holiday. Holiday Pay will be authorized for an employee who has earned and unused PTO, and uses PTO preceding/follow a contract holiday provided the employee can provide physician documentation upon request to validate such use.

b. Employees who work on Sundays shall be paid double time for all hours worked and shall be guaranteed four hours work or pay at double time for reporting.

c. Employees who work on a Holiday will be paid time and one half for all hours worked (in

addition to the holiday pay if working on any holiday set forth in Paragraph (a) of this Article).

d. If any of the above-named holidays occurs when an employee is on vacation, he/she shall be given the option of receiving the holiday pay at straight rate in addition to the vacation day or receive the holiday pay at straight rate and reserve the vacation day for later use.

e. Holidays will fall on the day designated by the State of Rhode Island.

**ARTICLE 23**  
**VACATIONS, SICK DAYS & PERSONAL DAYS**

a. Vacations:

(1) Employees shall receive the following paid vacations:

- After one (1) full year - five (5) days (40 hours)
- From 2 to 8 years - ten (10) days (80 hours)
- From 8-15 years – fifteen (15) days (120 hours)
- 15 years and more – twenty (20) days (160 hours)

(2) All employees who have been in the employ of the Employer shall be eligible for paid vacation in accordance with the above schedule with the length of an employee's service being calculated from the anniversary date of hire.

(3) Vacation pay shall be calculated at an employee's regular straight time pay at eight (8) hours per day or forty (40) hours per week. Vacations must be taken in minimums of one-day increments.

(4) Employees must give notice and get approval for vacation at least 14 days before the start of the requested vacation.

(5) On each anniversary of service, Employees receive two (2) personal days per year applied the same as vacation days.

b. Health and Safe Families and Workplace Leave

(1) The Company will be authorized to implement this Article in accordance with the Rhode Island Health and Safe Families and Workplace Act and its implementing regulations. Starting in 2018, Employees shall accrue 24 hours of sick and safe family leave each calendar year. In 2019, employees shall accrue 32 hours of sick and safe family leave. In 2020, employees will accrue 40 hours of sick and safe family leave.

(2) New employees, upon being added to the seniority list, shall accrue this benefit on a pro-rated basis during the employee's first year of employment, and shall have access to the sick and family leave time starting on the 91<sup>st</sup> day of employment.

(3) Leave under this Section shall be paid at the employee's current hourly rate. Leave under this Section may be taken in increments of four (4) hours or more for the purposes

set forth in the Rhode Island Health and Safe Families and Workplace Act and its implementing regulations.

(4) When leave is foreseeable, employees must give as much notice of needed leave under this Section as possible. After 24 hours—which is three days—of consecutive absences, the Employer may require a doctor’s note verifying the basis for the absence. The employer may also require a doctor’s note if leave under this Section is taken within the last two weeks of the individual’s employment.

(5) Earned and unused hours will be rolled over into the next calendar year with a maximum accrual of 56 hours.

(6) Use of leave days under this Section will not automatically count towards disciplinary action. Each employee's record will be reviewed individually.

#### **ARTICLE 24** **LEAVE OF ABSENCE**

a. Employees may take medical leaves of absences, under the same terms and conditions provided under the Family and Medical Leave Act and the Rhode Island Parental and Medical Leave Act without loss of seniority, which includes continued accrual of vacation, sick and personal time.

b. Employees elected or appointed to serve the Union as a representative may apply for an unpaid leave of absence without loss of seniority. Such absences shall not exceed five days in any one year. The Employer agrees to grant the necessary time off, without discrimination or loss of seniority rights and without pay, to any employee designated by the Union to attend a labor convention or serve in any capacity or other official Union business, provided two (2) weeks written notice is given to the Employer by the Union, specifying length of time off and the Employer can cover all work without loss of efficiency or incurring additional costs through overtime, temporary workers, or subcontractors.

c. An Employee shall be permitted to take a leave of absence for the purpose of undergoing treatment in an approved program for alcoholism or substance abuse in accordance with paragraph (a) of this Article. While on such leave, the employee shall receive the applicable benefits provided in this agreement including continued accrual of seniority.

d. Employees with at least six (6) months of continuous service, at their request and with the approval of the Company, may be granted a leave of absence not to exceed thirty (30) days per year for good cause other than where required under Section (a) of this Article. A special written application must be submitted two weeks in advance. Emergency situations will be reviewed and are subject to approval on an individual basis. Any employee who remains on leave beyond the period thereof shall lose his status as an employee, unless special permission for extension thereof has been granted by the Company. Any employee who works elsewhere while on leave shall lose his status as an employee.

**ARTICLE 25**  
**WAGES**

a. The minimum straight time hourly wage rates for the employees and job classifications covered herein shall be in accordance with "Schedule A" of this Agreement as attached herein.

**ARTICLE 26**  
**COMPANY BENEFITS**

a. Insurance. Employees shall be eligible to participate in the Company's benefits plans, which currently include medical, dental, and 401K. Employees and the Company will have shared contributions as specified by the Company annually.

b. The Company reserves the right during the term of this Agreement to change medical providers and benefits. The parties recognize that due to the frequency with which medical benefits change, it may not be possible to duplicate the exact same benefits or at the same costs. Accordingly, it shall not be deemed a violation of this Agreement if the Company is not able to obtain the same benefits or costs.

c. The Company will reduce an employee's health care premium for Employee-Only coverage by 10 percent for each completed year of service, up to 5 years (or 50 percent).

d. Medical Benefit Claim Disputes. No dispute over benefits arising under or relating to this Article shall be submitted for consideration under the grievance provisions of this Agreement. Benefit claims must be submitted according to the claims procedure for the applicable benefit plan.

e. The Company will contribute \$100 per week to an HRA for each employee who works in excess of 35 hours per week and enrolls in a Company health plan that contains an HRA component.

**ARTICLE 27**  
**ENTIRE AGREEMENT**

a. This Agreement constitutes the entire Agreement between the parties, and the Employer shall not be bound by any past practice, stipulation, or understanding, or by any memoranda or bulletins prior to execution of this Agreement, which is not specifically stated in this Agreement.

b. No right or obligation created by this Agreement or arising thereunder shall survive the termination of this Agreement, except as required by law.

c. There will be no change in the written terms of this Agreement unless the change of any clause therein is adopted in writing between the parties to change the specific terms or intent of the written Agreement; and the formal amendment is signed by authorized representatives of the parties. For purposes of this clause, the President of the Company is the authorized representative of the Company and the Secretary-Treasurer is the authorized representative of the Union.

**ARTICLE 28**  
**SEPARABILITY**

a. If any provision of this Agreement shall be held invalid or in conflict with any state or federal law, it shall be immediately void. The remainder of the Agreement shall not be affected.

**ARTICLE 29**  
**TERMINATION**

a. This Agreement shall take effect on and all changes with respect to wages and conditions shall be effective from the 28<sup>th</sup> day of June, 2018, and shall remain in full force and effect through March 31, 2022, at midnight and shall then and thereafter renew itself from year to year unless either hereto gives written notice to the other party, not less than sixty (60) days prior to the date of expiration of a desire to change or amend the terms and conditions hereof.

For DHLNH, LLC

For Teamsters Local Union No. 251:

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Canaan Palker  
President

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Matthew Taibi  
Secretary-Treasurer



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Matthew Maini  
Business Agent

**SCHEDULE "A" WAGES**

Effective	Ratification Date	5/1/2019	5/1/2020	5/1/2021
Courier	\$15.25	\$15.75	\$16.00	\$16.25
Dock Worker	\$12.75	\$13.00	\$13.25	\$13.50

- Newly hired employees shall receive \$1.50 less per hour starting at date of hire; \$1.25 per hour less upon completing their probationary period; \$1.00 per hour less after six months of employment; and full rate after one year of employment.
  
- Couriers and Dockworkers will receive an hourly certification premium when they qualify for and perform work requiring the following:
  - Forklift Certification 25¢ per hour
  - Medical Card \$1.00 per hour
  
- Unless expressly agreed by the parties, no employee shall suffer any reduction of his or her hourly rate because of the adoption or through the operation of this Agreement.
  
- Current employees whose current rates exceed the scheduled hourly rate shall retain their current rate until their pay and years of service align with the rate schedule.

# Exhibit C

**STRIKE SETTLEMENT AGREEMENT**

BETWEEN

DHLNH, LLC (“Company”)

AND

INTERNATIONAL BROTHERHOOD OF TEAMSTERS,  
LOCAL 251 (“Union”)

hereby agree as follows:

1. The terms of this Strike Settlement Agreement and the Collective Bargaining Agreement, attached as Exhibit A, shall become effective on and as of the date both agreements are signed by the Company and the Union.

2. The Strike Settlement Agreement and the Collective Bargaining Agreement, when executed, are in full settlement of all of the heretofore unresolved disputes and bargaining issues between the parties.

3. The strike will terminate and all picketing will cease on the effective date of both agreements.

4. (a) The parties agree that the three (3) employees hired as permanent strike replacements during the period April 30, 2018 through the termination of the strike will retain their employment status, and the Union will initiate no action or request that will in any way challenge the permanency of their hire and/or job classification. Furthermore, the Union agrees that neither it nor any bargaining unit employee will unlawfully discriminate or retaliate against any individual hired as permanent replacement.

(b) No grievance which, in any way, challenges the permanency of employment and/or job classification(s) of any person who actively worked for the Company from April 30, 2018 through the termination of the strike, shall be subject to the procedures set forth in Article 4, Grievance Procedure of the Collective Bargaining Agreement.

**Opposition**

5. Striking employees who have not been discharged by the Company will be recalled to available vacancies, using the following procedure:

(a) Available vacancies which the Company wishes to fill shall be filled in seniority order by recall of the striking employee qualified to perform the position. If this Agreement and the Collective Bargaining Agreement are executed on or before June 28, 2018, employees will first be eligible to return to work on July 2, 2018.

(b) Those employees who are not immediately reinstated shall be placed on a preferential hiring list and they shall be recalled on a seniority and qualification basis when vacancies for which they are qualified become available and the Company wishes to fill such vacancies. Said list will be maintained and shall be effective until all striking employees have been offered reinstatement. Periodically, the Company may, during the effective period of the list, ask employees to demonstrate their desire to remain on said list.

(c) An employee to be reinstated in accordance with (a) or (b) above, will have three days from receipt of the Company's notice to report for work, or s/he will be regarded as a quit. The Company will send by registered or certified mail, or email, to the employee's address last appearing on the Company's records a notice advising the employee of an available vacancy for which he is qualified under (a) or (b) above, with a copy to the Union.

(d) Once employees are recalled and report to work, they shall be subject to all provisions of the Collective Bargaining Agreement.

6. Neither the Company, its officers and supervisors, nor the Union, its officers, committeemen or stewards will institute or maintain any action of any nature (legal, equitable, or administrative) against each other, following execution of this Settlement, with the exception of the Unemployment claims, for incidents relating to the strike or any period before the strike, and both parties agree to withdraw any actions filed prior to the date of this agreement relating to the

strike. The Union specifically agrees to withdraw NLRB Charge Nos. 01-CA-220719 and 01-CA-219828, and the Company agrees to withdraw NLRB Charge No. 01-CB-220415 and dismiss with prejudice DHLNH, LLC International Broth. of Teamsters, Local 251, et al., PC-2018-3630 and DHLNH, LLC International Broth. of Teamsters, Local 251, et al., 1:18-CV-00281. In addition, the Company shall inform DHL Express of this agreement and suggest the withdrawal of 1-CB-219768 and 1-CC-219536.

7. In the interest of expediting the return to normal operations as soon as possible, the Company may utilize nonbargaining unit personnel to perform what would normally be bargaining unit work or duties, during the first four weeks commencing with the effective date of the new Collective Bargaining Agreement, provided that the purpose of such action is not for the sole purpose of impeding or delaying reinstatement pursuant to Paragraph 5.

8. By entering this agreement, neither party surrenders any right or remedy related to the decisions issued by Rhode Island Department of Labor and Training Central Adjudication Unit regarding the striking employees' entitlement to unemployment benefits.

9. The parties recognize that the Company proposed the discharge of five employees for alleged misconduct during the strike. As such, these employees are not entitled to immediate reinstatement under paragraphs 5(a) or (b) above. Each employee may either accept a severance agreement that terminates their employment or challenge the discharge by filing a ULP charge with the National Labor Relations Board.

(a) Employees who choose the severance agreement must sign a settlement agreement and release prepared by the Company. Each person who chooses this option shall be entitled to severance pay that equals 160 hours multiplied by the hourly rate he was receiving on April 30, 2018. Each employee who chooses this option shall be deemed to have resigned from the Company. The severance is the full amount of relief to

which the employee is entitled from the Company; there shall be no entitlement to back pay.

IN WITNESS WHEREOF, the parties hereto have caused their signatures to be affixed hereto through their duly authorized representatives at Providence, Rhode Island this \_\_\_\_ day of June, 2018.

INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS, LOCAL 251

DHLNH, LLC

By \_\_\_\_\_

By \_\_\_\_\_

# **Exhibit D**



VIA EMAIL

April 30<sup>th</sup>, 2018

Dear Bill --

I am writing regarding the strike that Local 251 orchestrated among our Service Partner's couriers in Providence, RI, at 7:30 this morning. I understand that you are tied up in scheduled meetings today. Following up on our previous conversations and my discussion with Chris Buschmeier today, I wanted to confirm and expand on DHL Express (USA), Inc.'s position.

As of this past Friday afternoon, Local 251 advised our Service Partner that the Union intended delay a strike authorization vote until after the parties could meet today to attempt to make progress toward a collective bargaining agreement. Despite these assurances, Local 251 called a strike among the Service Partner's employees at the PVD station in the middle of the morning sort operation. The couriers are currently picketing outside of the PVD station. Our Service Partner is conducting operations with alternative resources, and we understand that Local 251 may be engaging in some degree of ambulatory picketing and following of replacement driver vehicles. Further, it appears that one of the two full-time office clerical agents employed by DHL Express at PVD has elected not to work today, while the other reported as scheduled and is performing her normal duties. As an aside, we have secured Local 251's agreement to begin bargaining in the clerical unit tomorrow at noon. I understand that John Murphy from Local 25 will be in attendance, and we hope that Local 251 will make good on their commitment to meet and negotiate in good faith.

Inasmuch as Local 251 concedes that it has no basis to conduct a strike among our employees -- and in fact has not (as far as we are aware) called a strike among any DHL Express employees, today's strike is based solely and exclusively on a labor dispute between the Local Union and our Service Partner at PVD. In other words, there is currently no labor dispute between Local 251 and DHL Express that would give rise to any right to picket at any DHL Express location other than PVD.

If Local 251 tries either to set up picket lines at DHL Express facilities other than at PVD or to otherwise induce any DHL Express employees at any location other than PVD to honor such picket lines or withhold their services in concert with striking employees of the Service Partner, such action would constitute unlawful secondary activity, and DHL Express will take every action at its disposal to prevent harm arising from such illegal activity. We are prepared to proceed both in court and before the NLRB on a moment's notice, and we will do so as soon as we become aware of any unlawful activity on the part of local 251 that could potentially harm DHL Express.

**Opposition**



Moreover, I want to make sure you are aware that DHL Express employees represented by Local 25 or any other Local Union party to collective bargaining agreements with DHL Express do not have any right to honor an unlawful Local 251 picket line. First, I understand that TDHLNNC would not sanction such a picket line at locations other than PVD. More importantly, the Protection of Rights language in the National Agreement only grants employees rights in the case of primary labor disputes and primary picket lines. Thus, even if TDHLNNC were to sanction an improper secondary picket line at BOS or elsewhere, employees who refused to cross or work behind such a picket line would do so at their own peril and would be subject to discipline ranging from a thirty day suspension to discharge.

Hopefully, cooler heads will soon prevail and Local 251 will encourage its members to return to work in the very near future. Already, significant resources are being expended to ensure that operations at PVD and elsewhere can continue despite any job action among the Service Partner's courier workforce. Those expenditures cannot be recouped, and are therefore not available for more productive purposes, and that is in itself a shame.

In closing, I want to thank you in advance for your efforts to help curtail the unnecessary strike at PVD, as well as your expressed intention not to sanction any strike among the Service Partner's employees at any other location. Ultimately, no one wins a strike, and the short term damage can take years to heal. I commit that I will keep you updated on developments as we learn of them, and I respectfully request that you do that same. I am available to discuss any issues or concerns between now and whenever matters at PVD come to resolution.

Sincerely,

A handwritten signature in cursive script that reads 'Joseph Yates'.

Joseph Yates

# Exhibit E

**AFFIDAVIT OF WILFRED J. PERRY, Jr.**

I, Wilfred J. Perry, Jr., being first duly sworn upon my oath, hereby says:

1. I am currently employed by DHL Express as a Field Service Supervisor at the DHL Express location at 420 E Street, Boston, MA 02127 in East Boston.
2. There are approximately 3 other companies working out of the building at 420 E Street. There is no other company affiliated with DHL based out of this location. I have been employed by DHL Express for approximately 15 years, in multiple positions.
3. I have held my current position for approximately 2 years. International Brotherhood of Teamsters, Local 25, the "Local 25," represents drivers and clerical employees working at this location. Local 25 also represents drivers and clerical employees at DHL Express in Westborough. There was a collective bargaining agreement in effect between the Teamsters and DHL Express.
4. On Tuesday, May 1, 2018, I arrived to work at approximately 4:40 a.m. When I arrived I saw John Murphy, Business Agent of Teamsters Local 25, with five men holding and wearing picket signs. The picket signs were all the same and said "ON STRIKE AGAINST DHL NH Good Healthcare Quality Retirement Teamsters Local 251." A number of the men who were present were wearing red and yellow DHL jackets. They were milling about at the time I arrived. I knew it was John Murphy because I recognized him, I have met him before. They were standing around in front of the customer entrance to the facility, on DHL property when I arrived. When I drove in I parked my car, and from my car I called my Field Service manager Anthony Baglio. I told Baglio there was a picket line in front of our building.

5. I have notes of the events of that morning to keep track of what happened. A copy of the notes I made with times is attached as Exhibit A.
6. After speaking with Baglio I went inside and called 911 to request a police officer on duty. I then went back outside, and approached John Murphy. I believe this was around 5:00 a.m. I asked him what was going on. He said he was here to support the drivers in PVD. John said he wasn't going to allow the JFK truck to back onto our facility. I didn't respond, but walked away.
7. The JFK truck had arrived to drop off a load and was stopped on E street waiting to back up to one of our loading docks.
8. While I was outside at this time I took a head count and saw that there were four DHL Express employees standing at the ramp of the parking lot. They weren't standing with the picketers but off to the side. They had not gone in to work yet, they were scheduled to begin work at 5:00 a.m. I asked them if they were coming to work today. They didn't respond.
9. I then went back inside to wait for the police officer to arrive.
10. The JFK truck is a truck that arrives each day usually around 5:00 a.m. each day from JFK International Airport to drop off up to 5 Unit Load Devices, which are large air cargo canisters. The driver of the JFK truck is not an employee of DHL Express, but of another employer, possibly Cargo Transport.
11. At approximately 5:15 a.m. I went back outside and took a couple of additional pictures. I saw one of the men I had seen with the picketers standing at the JFK truck driver's door. The man was there for a couple of minutes at least. I was not close enough to hear what this person was saying to the driver. John Murphy was standing close to the truck as well.

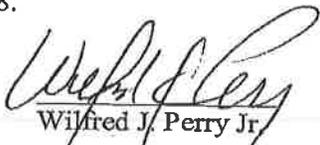
12. I walked past the picketers and approached the JFK truck driver who was now standing just outside of his truck. He knew who I was. The driver said he wanted to go because he wasn't getting paid. I told him to sit tight he'd be hearing from his company.
13. At approximately 5:25 a.m. the police arrived. I told the officer what was going on, that they weren't allowing the truck to back on to our facility. The officer then went over to the picketers. The police officer then guided the truck to back onto our property. The picketers did not block the truck from backing up to the dock. ||
14. After the JFK truck docked, I went back inside to make a call to NCG Linehaul, which is a department within DHL which coordinates air cargo deliveries. Since I didn't have any employees who had crossed the picket line to report to work I needed to get the ULD's that would have gone to Logan International Airport en route to Manchester and Providence. We ended up having to hold the freight destined for Manchester NH for a day, which incurred a one day service delay for all of the freight.
15. In between 5:30 a.m. and 6:00 a.m. Anthony Baglio arrived and we had several phone conversations and conference calls trying to arrange how to ensure the work we needed to do that day got done even though the employees who would have been performing the work didn't cross the picket line.
16. At 6:30 a.m. 9 additional DHL Express employees were scheduled to report to work, but they did not report to work at their start time.
17. At approximately 7:00 a.m. the picketers began parading in front of the entrance to the employee parking lot of the DHL Express building. The picketers were marching in a large circle in front of the entrance. There were still approximately 5 picketers at this

time, and the Union representative John Murphy was standing nearby. The picketers were not yelling or chanting anything. //

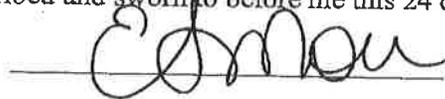
18. When I saw the picketers in front of the employee parking lot entrance I went outside to speak with the police officer who was parked on the other side of the entrance. I told the officer to make sure they didn't block the employees from entering.
19. We decided to try and send four managers to the airport to unload freight.
20. Between approximately 7:30 a.m. and 7:45 a.m. I went out to my vehicle and attempted to leave through the employee parking gate. The police officer had left at this point because it was the end of his shift. I waited in my vehicle for approximately 10 minutes but the picketers would not move to allow me to leave. I didn't honk my horn or say anything to the picketers. It was clear I wanted to leave the facility and they did not move to allow me to exit. One vehicle containing other supervisors left through a different door at one of the loading bays and were able to get out. //
21. After waiting about 10 minutes to get out of the lot, I drove my car back and parked, and called the police department again to request additional police presence. I then tried to take another vehicle and leave through one of the bay doors further away from the entrance where the picketers were marching. However when I tried to leave through that door two of the picketers saw me and came running down and stood in front of my vehicle, again blocking my egress from the facility.
22. At around 8:10 a.m. the other police officers arrived and approached my vehicle where I was waiting. I explained to them I was trying to leave and the picketers wouldn't move. The officers then escorted the picketers away from the front of my vehicle and I was allowed to leave.

23. I did not see any DHL Express employees engaging in picketing. d
24. At approximately 10:00 a.m. that morning I received a telephone call from my Manager Anthony Baglio who told me the employees were back to work, and he was sending employees down to the airport to finish the unloading of the aircraft. Baglio told me the picketing had stopped.
25. The picketers have not returned since that morning.
26. I have heard from several employees that the Union planned to continue these picket lines in the upcoming weeks until the subcontractor agreed to terms with Teamsters Local 251.
27. DHLNH in Providence, Rhode Island is a subsidiary of North East Freightways. It is my understanding DHLNH is a contractor of DHL Express. DHLNH drops off freight at the DHL Express facility in Westborough, Massachusetts, 5 days a week at night. ||

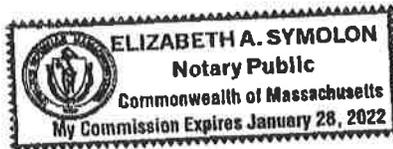
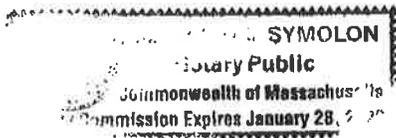
I declare under penalty of perjury that the foregoing is true and correct. Executed on July 24, 2018.

  
Wilfred J. Perry Jr.

Subscribed and sworn to before me this 24 day of July, 2018



Notary Public



# Standing to  
side  
↑

- 4:40 - Picket Live 5 PVD; ~~4~~-DHL
- 4:50 - Called BAGLIO to notify
- 5:00 - Called 911, Murphy informed me that JFK Truck (Air Cargo) would not be allowed to BACK onto DHL Facility
- 5:25 ~~2~~ Police arrived, escorted JFK truck onto dock for unload.
- 5:35 Notified NCG Linehaul to route JFK truck onto MHT & PVD.  
NCG Approved PVD, Held MHT Volume in BOS.
- 6:10 FBO notified (Swissport) to cover flight - No Staffing Available until 12:00
- 7:00 Notified Police officer on duty to clear gates to allow access for all employees.
- 8:00 Police officer left property at end of shift. Police Department notified that additional officers would be needed.
- 8:10. Picketers blocked management from existing Building. Police removed picketers from property.

# Exhibit F

Writer's direct phone  
(617) 946-4996  
  
Writer's e-mail  
rfisher@seyfarth.com

Seyfarth Shaw LLP  
Seaport East  
Two Seaport Lane, Suite 300  
Boston, MA 02210-2028  
(617) 946-4800  
fax (617) 946-4801  
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May 1, 2018

Marc Gursky, Esq.  
Gursky Wiens  
1130 Ten Rod Road  
Suite C207  
North Kingstown, RI 02852

Re: Unlawful Picketing at DHL Express

Dear Marc:

As you know, this Firm represents DHL Express ("DHL"), and I write regarding Teamsters Local 251's ("Local 251"), unlawful secondary picketing at DHL locations in South Boston and Westborough, Massachusetts today. DHL demands that Local 251 cease and desist from any unlawful picketing at DHL locations going forward.

A few minutes prior to 5 a.m. this morning, members of Local 251 set up a picket line at BOS station, DHL's South Boston facility. They later set up another picket at MXG station in Westborough. The primary employer in Local 251's labor dispute is DHLNH, LLC ("the Service Partner"). The Service Partner was not present at BOS or at MXG. Indeed, your email this morning confirmed that Local 251 understood that the Service Partner was not present at BOS. Thus, Local 251 had no lawful basis to establish a picket line at either facility under these circumstances. We also understand that this unlawful conduct was a coordinated effort with Teamsters Local 25, which was designed to disrupt and delay DHL's operations at those locations and which had its intended effect.

This afternoon, DHL filed a charge of unfair labor practices against Local 251 with the National Labor Relations Board in connection with this morning's unlawful picket lines. Further, DHL reserves its right to pursue a claim for damages against Local 251 in connection with the unlawful picketing at BOS and MXG. Should Local 251 attempt to repeat its unlawful picketing at BOS, MXG or any other DHL location, DHL will take all steps necessary to stop such conduct and to protect its business and property.

Very truly yours,

SEYFARTH SHAW LLP

  
Robert A. Fisher

RAF

**Opposition**

# Exhibit G

GURSKY | WIENS  
ATTORNEYS AT LAW, LTD

VIA EMAIL ONLY

May 2, 2018

Rob Fisher, Esq.  
Seyfarth Shaw, LLP  
Seaport East  
Two Seaport Lane, Suite300  
Boston, MA 02210-2028  
[rfisher@seyfarth.com](mailto:rfisher@seyfarth.com)

Re: IBT 251/DHL

Dear Rob:

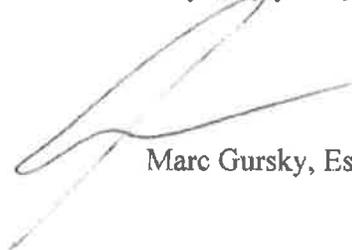
I have your letter of May 1. This office represents Teamsters Local 251. Kindly direct any future communications to my office.

Local 251 denies that it engaged in unlawful picketing at DHL.

Local 251 suspended picketing at DHL at about 10:00 a.m. yesterday (Tuesday). As you and I agree, DHLNH was on-site Monday. My email makes no representation as to presence on-site Tuesday, as a more careful reading would certainly confirm.

In any event, your letter presumes that DHL is a "neutral." I disagree. Should you pursue an unfair labor practice charge against Local 251, we believe we will establish that DHL is enmeshed in the dispute as a joint employer, franchisor and or/ally.

Very truly yours,



Marc Gursky, Esq.

MBG/jd

CC: Matt Taibi

# **Exhibit H**

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## Marc B. Gursky

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**From:** Fisher, Robert A <RFisher@seyfarth.com>  
**Sent:** Tuesday, May 1, 2018 5:23 PM  
**To:** Marc B. Gursky  
**Cc:** Harper, Skelly  
**Subject:** RE: DHL Express  
**Attachments:** Unlawful Picketing at DHL Express - 2018-05-01 17.05.43.pdf

Marc: Please see the attached letter.

Best,

Rob

**Robert A Fisher** | Partner | Seyfarth Shaw LLP  
Seaport East | Two Seaport Lane, Suite 300 | Boston, Massachusetts 02210-2028  
Direct: +1-617-946-4996 | Mobile: +1-617-970-8284 | Fax: +1-617-790-5311  
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**From:** Marc B. Gursky <MGursky@rilaborlaw.com>  
**Sent:** Tuesday, May 01, 2018 9:31 AM  
**To:** Fisher, Robert A <RFisher@seyfarth.com>  
**Cc:** Harper, Skelly <NHarper@seyfarth.com>  
**Subject:** Re: DHL Express

Rob. You misunderstood. South Boston was apparently shut down this morning. Dhl nh was there yesterday. Per my message, for unrelated reasons, picketing there is suspended indefinitely.

Marc

On May 1, 2018, at 9:21 AM, Fisher, Robert A <[RFisher@seyfarth.com](mailto:RFisher@seyfarth.com)> wrote:

Marc: As requested, this email is to confirm our discussion this morning. Local 251 has established an unlawful picket at the DHL Express BOS station. The primary employer in Local 251's labor dispute is DHLNH, LCC, and that entity is not present at BOS station. During our call, you incredibly suggested that Local 251 believed that DHLNH, LLC was present this morning at BOS station (despite the fact that Local 25 BA John Murphy and several DHL Express employees were present on the picket line and could have easily set the record straight). That is not the case, and the picket line must be removed immediately from BOS

station. If Local 251 does not take down the picket line immediately, DHL must take all necessary actions to stop the illegal picketing and protect its business.

Regards,

Rob

**Robert A Fisher** | Partner | Seyfarth Shaw LLP  
Seaport East | Two Seaport Lane, Suite 300 | Boston, Massachusetts 02210-2028  
Direct: +1-617-946-4996 | Mobile: +1-617-970-8284 | Fax: +1-617-790-5311  
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