

**UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
REGION 8**

**MIDWEST TERMINALS OF TOLEDO,
INTERNATIONAL, INC.**

and

Case 08-CA-152192

**LOCAL 1982, INTERNATIONAL LONGSHOREMEN'S
ASSOCIATION, AFL-CIO**

**RESPONSE TO RESPONDENT'S MOTION TO ENFORCE
SETTLEMENT AGREEMENT AND DISMISS COMPLAINT**

The General Counsel submits that the terms of the settlement agreement as set forth in Respondent's Motion to Enforce Settlement Agreement are not objectionable. Specifically, Respondent has agreed to rescind or revise the overly broad work rules, to notify its employees that the subject rules have been rescinded or revised, and to expunge any discipline issued to employees pursuant to the rules implemented by Respondent in 2015.

I. BACKGROUND

This matter was heard by Administrative Law Judge Eric Fine ("ALJ") on December 3 and 4, 2015 in Bowling Green, Ohio and on January 20, 2016 in Fostoria, Ohio. ALJ Fine issued his decision on September 19, 2016 JD-89-16, finding that Respondent unilaterally changed employees' terms and conditions of work by implementing policies contained in the Policy Handbook, Safety Handbook and Standing Operating Procedures without giving Local 1892, International Longshoreman's Association, AFL-CIO (Union) notice in violation of Section 8(a)(1) and (5) of the Act and maintained numerous overly broad work rules in violation of Section 8(a)(1) of the Act. After the filing of Exceptions, on October 5, 2018, the National Labor Relations

Board (Board) issued a Notice to Show Cause why this case should not be remanded for further consideration under The Boeing Co., 365 NLRB No. 154 (2017). On January 25, 2019 and on February 1, 2019, the Board issued an order remanding the entire matter to the Chief Administrative Law Judge Robert Giannasi (Chief ALJ) for assignment.

II. RESPONDENT'S PROPOSED SETTLEMENT

Respondent proposed in negotiations for a private agreement between it and the Union that it would remove language from Policy #2500 Non-Disclosure/Confidentiality Policy; Policy #2550 Confidentiality Agreement Policy; and Policy #4500 Safe Workplace Environment and give notice to its employees of the changes to the policies in the manner that it routinely communicates with employees. With regard to Policy #2500 Non-Disclosure/Confidentiality, Respondent offered to remove references to labor relations, personnel information and union-related business. In Policy #2550 Confidentiality Agreement Policy, Respondent offered to remove language referencing an expansive "all documents" as confidential, to remove language requiring the confidentiality of all personal information of any type, and to remove language providing that misuse or breach of personal information or violation of employees' expectation of privacy could result in civil and/or criminal accountability. Finally, in Policy #4500 Safe Workplace Environment, Respondent offered to remove the language that violating others' expectation of privacy would result in immediate discharge and added a specific description of the jobsite. G.C. Exh. 1. The remaining rules found by ALJ Fine to be overbroad and/or unlawful are not at issue pursuant to the Board's decision in Boeing.

The complaint alleged and ALJ Fine found that the unilateral implementation of policies and rules in 2015 violated Section 8(a)(1) and (5) of the Act. In addressing this allegation in its settlement proposal, Respondent agreed to remove the discipline issued to Prentis Hubbard on

September 22, 2017 for violations of Respondent's Camera, Cell, Digital Device Policy and work rule # 12 contained in the collective bargaining agreement and to notify Hubbard and the Union that the discipline has been rescinded.

III. GENERAL COUNSEL'S POSITION

The General Counsel does not object to the terms of Respondent's proposed settlement, specifically the agreement's covenants providing for the changes to the three unlawfully overbroad work rules, Respondent's notification to employees of those changes, and the rescission of the discipline issued to Hubbard pursuant to the unilaterally implemented rules.

While the Respondent contends that the General Counsel agreed orally to the terms of the settlement and thereafter reneged, these negotiations were in the effort to achieve a non-Board settlement between the Respondent and the Union. Any assertion that the General Counsel entered into or reneged on any agreement with the Respondent is facially untrue. The General Counsel is not a party to the settlement and made clear to the parties that the General Counsel would not join in any motion to dismiss but would not object to the Chief ALJ's approval of such a motion provided that the Union assented to the settlement.

IV. CONCLUSION

For the foregoing reasons, General Counsel does not object to the terms of the settlement agreement as set forth in Respondent's Motion to Enforce Settlement Agreement and will not object to a Consent Order that contains the same provisions.

Dated at Cleveland, Ohio on the 23rd day of May 2019

Respectfully submitted,

/s/ Noah Fowle _____

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PROOF OF SERVICE

I hereby certify that I electronically filed this Response in Opposition to Respondent's Motion to Enforce Settlement Agreement and Dismiss Complaint with the Division of Judges of the National Labor Relations Board and that I served this document by electronic mail, where known, and regular mail on May 23, 2019, to the following at parties listed below:

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SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS

Charging Party Local 1982, International Longshoremen's Association, AFL-CIO ("ILA Local 1982" or "Union") and Respondent Midwest Terminals of Toledo International, Inc. ("Midwest" or Company") (collectively the "Parties"), by and through their undersigned counsel, agree to settle any and all claims the Union had or may have had against the Company, regarding the claims asserted in the matter entitled *Midwest Terminals of Toledo International, Inc. and International Longshoremen's Association, Local 1982, AFL-CIO* before the National Labor Relations Board ("NLRB") Case No. 8-CA-152192 and in NLRB Charge No. 08-CA-224202 (the "Charge") still pending before Region 8 of the NLRB and agree as follows:

RECITALS

WHEREAS, the Union filed an unfair labor practice charge (8-CA-152192) against the Company which resulted in an Administrative Law Judge issuing the decision and order in *Midwest Terminals of Toledo International Inc.*, JD-89-16 (September 19, 2016) ("ALJ Decision").

WHEREAS, on or about October 31, 2016, the Company filed an appeal of the ALJ Decision with the National Labor Relations Board.

WHEREAS, on or about October 10, 2018 the Board issued a Notice to Show Cause as to why the case should not be remanded to an Administrative Law Judge for further proceedings consistent with the Board's adoption and implementation of a different standard to determine the lawfulness of Handbook Policies/Rules as set forth in *The Boeing Co.*, 365 NLRB No. 154, slip op. (2017) ("Boeing").

WHEREAS, on or about January 25, 2019, the Board issued an Order remanding the case back to the ALJ for further proceedings.

WHEREAS, on or about February 1, 2019, the Board issued an Order remanding the case back to the ALJ for further proceedings.

WHEREAS, on or about September 22, 2017, the Company issued discipline to Prentis Hubbard for violating Policy #3100 – Camera, Cell, Digital Device Policy and CBA work rule # 12.

WHEREAS, on or about October 4, 2017 the Union filed an unfair labor practice charge (8-CA-207426) against the Company alleging the discipline was unlawful based upon §8(a)(3) and (1) and 8(a)(5) and (1) of the Act.

WHEREAS, Region 8 has not yet made a determination regarding 8-CA- 8-CA-207426.

WHEREAS, the Parties wish to avoid further litigation between them.

NOW THEREFORE, in consideration of the execution of this Agreement by each of the Parties hereto and the mutual covenants hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

TERMS AND CONDITIONS

1. The Union concedes that three of the Company's policies at issue in this litigation are lawful per the Board's criterion set forth in *Boeing*. Those policies are as follows: Policy #2500 – Non-Disclosure/Confidentiality Policy referring to photography and recording; Policy #3100 – Camera, Cell, Digital Device Policy; and Policy #1600 – Incident Reporting Policy. These policies remain in full force in effect. See, Complaint ¶¶ 6(A)(iii) and 7(A)(i-vi), attached hereto as Exhibit A.
2. The Union and Company will provide a copy of this Agreement to Region 8. Once approved by Region 8, the Union will withdraw, with prejudice, each and every remaining allegation in the Complaint not specifically addressed in this Agreement. Further, the Union will withdraw, with prejudice, ULP charge 8-CA-207426 in its entirety. This Settlement Agreement is conditioned on the Union's aforementioned withdrawals. See, Complaint and ULP charge 8-CA-207426 attached hereto as Exhibit B.
3. As part of this Settlement Agreement, the Company is not required to post a Board Notice. This Settlement Agreement is conditioned on the Region's assent to the aforementioned request and the approval of the Union's aforementioned withdrawals.
4. The Company will rescind any purported unlawful language in the following policies: Policy #2500 Non-Disclosure/Confidentiality Policy; Policy #2550 Confidentiality Agreement Policy; and Policy #4500 Safe Workplace Environment.
5. Per paragraph 4 of this Agreement, ***Policy #2500 Non-Disclosure/Confidentiality Policy*** now reads as follows:

The protection of confidential business information and trade secrets is vital to the interests and success of MWTTI and MWTT. Photography and all types of recording are restricted on all company property and cannot take place without prior written permission from the Director of Operations. All images and recordings taken by clients, contractors, employees and/or visitors remain solely the property of MWTTI or MWTT, including any image or recording taken with a personally owned cell phone camera or other digital imaging device.

Employees who improperly use or disclose trade secrets or confidential business information, ~~to include information regarding labor relations,~~ will be subject to disciplinary action, including termination of employment and legal action, even if they do not actually benefit from the disclosed information.

Marketing documents specific to a customer (~~including~~ all contact information and all accounting data) ~~all personnel information, and union related business~~ are considered confidential business information and should be guarded as such. Password--protect and lock your computers when not in use, safe guard files, and keep good accountability of all electronic media (e.g. CD, DVD, and memory sticks), photographs and recordings.

Employees who violate this policy will be subject to disciplinary action, up to and including employment termination.

Employees are required to sign in acknowledgement that they have read and understand this policy and the potential disciplinary consequences of violating it.

This policy will be reviewed periodically, and enforced at all times.

6. Per paragraph 4 of this Agreement, ***Policy #2550 Confidentiality Agreement Policy*** now reads as follows:

Use of Confidential Information by Employees

I, _____, as an Employee of Midwest Terminals of Toledo International, Inc. (MWTTI) or Midwest Terminals of Toledo, Inc. (MWTT) I do hereby acknowledge that I must comply with a number of State and Federal Laws that regulate the handling of confidential and personal information regarding both customers/clients of this company and its other employees. These laws may include but not be limited to FACTA, HIPAA, GINA, The Economic Espionage Act, The Privacy Act, Gramm/Leach/Bliley ID Theft Laws (where applicable), Trade Secrets Protections, and Implied Contract Breach.

I understand that I must maintain the confidentiality of ~~ALL documents,~~ ~~customer/client~~ credit card information, ~~and personal information of any type~~ and that such information may only be used for the intended business purpose. Any other use of said information is strictly prohibited and is cause for immediate dismissal. Additionally, should I misuse or breach, ~~any personal information or~~ the expectation of privacy of said customers/clients ~~and/or employees~~; I understand that I will be held fully accountable both civilly and criminally, which may include, but not limited to, Federal and State fines, criminal terms, real or implied financial damages incurred by the client, employee, or this company.

I further agree to follow the rules and regulations this company has in place as regards to the handling of confidential information so as to protect the privacy of all involved.

7. Per paragraph 4 of this Agreement, ***Policy #4500 Safe Workplace Environment*** now reads as follows:

Teamwork, safe work behaviors and cooperation from all employees will help provide a safe and efficient work environment. Any employee who refuses or fails to follow the standards set forth herein will be subject to disciplinary action up to and including discharge. In cases not specifically mentioned, employees are expected to use good judgment and refer any questions to a supervisor.

Employees found participating in any of the following activities on any jobsite will be subject to immediate discharge (firing).

- Fighting or attempting a willful act to cause bodily injury upon another person – which constitutes Violence in the Workplace.
- Insubordination, threatening, or intimidating a supervisor, another employee or other site personnel – which constitutes Violence in the Workplace.
- Possession and/or use at any time of a prohibited weapon on Company property, in any facility maintained by the Company, and/or in Company-supplied vehicles or in personal vehicles while on Company property. Exceptions to this policy must have prior approval from the Company President.
 - Prohibited weapons include any form of weapon and any form of explosive restricted under local, state, or federal regulation. This includes all firearms, or other weapons covered by the law, regardless of whether the person is licensed to possess and/or use a weapon or not.
- Refusing to submit to a search when requested by management in accordance with this policy.
 - Upon reasonable suspicion, the Company reserves the right to conduct searches of any person, vehicle, or object on Company property at any time. Pursuant to this provision, the Company or its agent, is authorized to search lockers, desks, purses, briefcases, baggage, toolboxes, lunch sacks, clothing, vehicles parked on Company property, and any other personal effect or item in which a weapon may be hidden.
- ~~Violating others' expectation of privacy.~~
- Failing or refusing to cooperate with any investigation relating to a possible violation of this Safe Workplace Environment Policy

Employees found participating in any of the activities listed below are subject to disciplinary actions up to and including discharge:

- Violations of safety rules or OSHA standards;
- Harassment (of any form), horseplay, pranks, malicious mischief, or immoral conduct or other conduct affecting the right of others, or which violates the common decency of fellow associates;
- Failure to comply with TWIC/gate admittance procedures;
- Loitering or presence on the jobsite without authorization before or after assigned shift is completed. **The jobsite is defined as the areas of Facility 1 inside the gates.**

- Failing or refusing to report a known violation of this Safe Workplace Environment Policy.

This Safe Workplace Environment Policy does not constitute a contractual undertaking by the Company and the Company does not through this Policy, assume or offer to assume any obligations beyond that which may be imposed by applicable law. The Company reserves the right to alter, amend, or discontinue any Policy or program included in the Safe Workplace Environment Policy without notice at its sole discretion. The failure of the Company to exercise any function in any particular way shall not be considered a waiver of the Company's right to exercise such function or preclude the Company from exercising that prerogative in some other way.

The Safe Workplace Environment Policy establishes clear guidelines that address prohibiting weapons, fighting, harassment and violence in the workplace to ensure a safe work environment.

I do hereby certify and acknowledge that I have received and read the Safe Workplace Environment Policy. I understand that engaging in prohibited behavior under the policy may result in discipline, up to and including removal from Midwest Terminals of Toledo International, Inc. (MWTTI) and/or Midwest Terminals of Toledo, Inc. (MWTT) premises, termination and legal action. I agree to uphold the Safe Workplace Environment Policy.

I release and agree to hold harmless MWTTI and MWTT, and its directors and associates for any action taken by the Company in compliance with the provisions of this policy.

A photocopy/facsimile of this authorization and release shall have the same force and effect as the original.

8. Within 14 days of the execution of this Agreement, the Company will notify the Union, in writing, of the affirmative actions noted in paragraphs' 5, 6 and 7 of this Agreement.
9. Within 14 days of the execution of this Agreement, the Company will expunge from Prentis Hubbard's personnel file the September 22, 2017 discipline for violating Policy #3100 – Camera, Cell, Digital Device Policy and CBA work rule # 12 and notify both the union and Prentis Hubbard of said action.
10. The Union, within 7 days of receiving notice of the actions described in paragraphs' 8 and 9 noted immediately above, will withdraw, with prejudice, each and every remaining allegation set forth in 8-CA-152192 and withdraw, with prejudice, 8-CA-207426 in its entirety.
11. This Agreement constitutes an integration of the entire understanding and agreement of the Parties with respect to the subject matter hereof. Any representations, warranties, promises, or conditions, whether written or oral, not specifically and expressly incorporated in this Agreement, shall not be binding on any of the Parties, and each of the Parties acknowledges that they have not relied, in entering into this Agreement, on any representation, warranty, promise or condition, not specifically and expressly set forth in this Agreement. All prior

discussions and writings have been, and are, merged and integrated into, and are superseded by, this Agreement.

- 12. This Agreement may be executed in multiple counterparts, each of which, when solely executed, shall be deemed an original, but all such counterparts together shall constitute one and the same instrument.
- 13. The Parties understand and agree that entering into this Agreement and carrying out of any of the terms of this Agreement shall not constitute an admission of any violation of any law or breach of any duty by the Company, nor does it constitute an admission of any allegation of wrongdoing or illegal conduct on the part of Company. The Parties recognize that Midwest specifically denies each one of the allegations of wrongdoing and illegal conduct made by the Union. The Company denies liability for any claim alleged by the Union by the Union and is resolving this dispute in order to avoid the inconvenience of further controversy and for no other reason.

Dated: March __, 2019

Dated: March __, 2019

**LOCAL 1982, INTERNATIONAL MIDWEST TERMINALS OF TOLEDO
LONGSHOREMEN'S ASSOCIATION, INTERNATIONAL, INC.
AFL-CIO**

By : _____

By : _____

Title: _____

Title: _____