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November 20, 2019

Roxanne Rothschild, Executive Secretary  
National Labor Relations Board  
1015 Half Street SE  
Washington, D.C. 2057-0001

Re: Kauai Veterans Express Co.  
Case 20-CA-193339, 20-CA-203829, 20-CA-204839, and 20-CA-209144

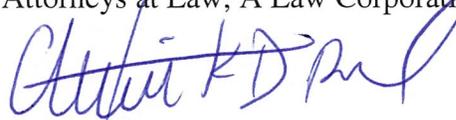
Dear Executive Secretary Rothschild:

We are in receipt of Counsel for the General Counsel Meredith Burns' November 7, 2019 letter regarding the above-referenced cases. While we appreciate Ms. Burns' effort to keep the Board informed, we object to her attempt to submit additional evidence at this time from a separate, non-Board proceeding almost two years after the hearing before Administrative Law Judge Dickie Montemayor closed.

Ms. Burns neglected to inform you there was no mention of mechanics helpers in the bargaining unit in our Joint Stipulation, and Ms. Burns conceded there was no evidence otherwise of any other employees in the bargaining unit on the dates at issue than those presented in the Joint Stipulation. *See* Enclosure (December 11, 2017 ALJ hearing transcript excerpt).

Very truly yours,

TORKILDSON KATZ  
HETHERINGTON HARRIS & KNOREK  
Attorneys at Law, A Law Corporation



Jeffrey S. Harris  
Christine K. D. Belcaid

Encl.: Transcript pages 29-35 from December 11, 2017 ALJ Hearing  
cc: Meredith A. Burns, Counsel for the General Counsel

OFFICIAL REPORT OF PROCEEDINGS

BEFORE THE

NATIONAL LABOR RELATIONS BOARD

SUBREGION 37

In the Matter of:

Operating Engineers Local	Case Nos.	20-CA-193339
Union No. 3,		20-CA-203829
Charging Party,		20-CA-204839
		20-CA-209177

and

Kauai Veterans Express Co.,

Respondent,

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Place: Lihue, Kauai, Hawaii

Dates: December 11, 2017

Pages: 1 through 145

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1           JUDGE MONTEMAYOR: Off the record parties engaged in some  
2 discussions regarding a joint stipulation and my understanding  
3 is that the parties do have a joint stipulation that they'd  
4 like to offer at this point in time. Counsel for the  
5 respondent, why don't you set forth for the record what that  
6 stipulation is.

7           MS. BELCAID: Okay. The respondent proposes the following  
8 joint stipulation. Respondent's payroll record, entitled,  
9 "current register for the pay date, February 15, 2017, covering  
10 pay and hours worked beginning January 24, 2017, ending  
11 February 8, 2017" shows the following employees working in the  
12 job classifications of truck driver, tractor trailer driver,  
13 tandem dump truck driver, freight truck driver, and/or  
14 mechanic. James K. Kanei, Palani M. Correa, Alan Jeffries,  
15 Eric Medeiros, Rysan K. Sakamoto, Jayna K. Niau, Loreto R.  
16 Bagaoisan, Jr., James D. Meyer, John Kahokuloa, Carlito Pigao,  
17 and Leonard Kanahale.

18           Not included in the payroll record called "current  
19 register" for the period I just described are two employees,  
20 who did come under one or more of the job classification I  
21 listed for that pay period, those two employees are Russell  
22 Ferndandez, Dana Kaohelaulii. Russell Ferndandez was not  
23 listed on the current register for that pay period, because he  
24 was on temporary disability insurance leave, and Dana was not  
25 listed on the payroll record because he was not working during

1 that pay period. All of the employees who I just identified  
2 constituted all of the Kauai Veterans Express employees working  
3 in the job classifications I listed, on January 27, 2017.  
4 Respondent's payroll record entitled current register for the  
5 pay date of July 14, 2017, covering hours worked beginning June  
6 24, 2017, ending July 8, 2017 shows the following employees  
7 working in the job classification of truck driver, tractor  
8 trailer driver, tandem dump truck driver, freight truck driver,  
9 and/or mechanic. Russell Fernandez, Jr. James K. Kanei, Palani  
10 M. Correa, Alan W. Jeffries, Eric J. Medeiros, Rysan K.  
11 Sakamoto, Jayna K. Niau, Dana Kaohelaulii, Loreto R. Bagaoisan,  
12 Jr. and John Kahokuloa.

13 Not included in that list is Carlito Pigao, Sr. who was on  
14 leave due to an industrial accident for that payroll period  
15 beginning June 24, 2017, ending July 8, 2017. It is  
16 respondent's understanding that Loreto Bagaoisan and John  
17 Kahokuloa are not included in the Operating Engineers Local  
18 Union No. 3, Kauai Veterans Express Bargaining Unit, because  
19 they are freight drivers as per an understanding between  
20 respondent and the union.

21 MS. BURNS: Thank you. General counsel agrees to the  
22 stipulation, or stipulates, regarding the individuals in the  
23 job classifications that were just identified by respondent's  
24 counsel. General counsel disputes, or there's a dispute as to  
25 whether or not certain individuals are not in the unit.

1 Because it is general counsel's position that these are all  
2 drivers and they all belong in the unit, all of the individuals  
3 named.

4 MS. BELCAID: Respondent would like to add one additional  
5 fact to the joint stipulation, which is that for the period  
6 covering June 24, 2107 through July 8, 2017 there are no other  
7 employees working in the classifications truck driver, tractor  
8 trailer driver, tandem dump truck driver, freight truck driver,  
9 and/or mechanic, than what I previously listed.

10 MS. BURNS: General counsel has no evidence otherwise.

11 JUDGE MONTEMAYOR: Does general counsel accept that as  
12 part of the stipulation?

13 MS. BURNS: General counsel can't accept that as part of  
14 the stipulation since they haven't -- I will say the first part  
15 of the stipulation I can accept, the second part I don't know  
16 otherwise, I have no other evidence. It's all I can say.

17 JUDGE MONTEMAYOR: So, respondent has offered a  
18 stipulation, a joint stipulation, it appears that there's some  
19 disagreement, there's some disagreement about a couple of items  
20 within that proposed stipulation, so let's just clarify for the  
21 record what general counsel agrees to and what general counsel  
22 does not agree to as part of the joint stipulation, and then  
23 we'll return to respondent and ask whether respondent agrees to  
24 the proposed stipulation of the general counsel. Counsel.

25 MS. BURNS: Yes. General counsel agrees that the

1 employees listed by respondent's counsel for the pay periods  
2 listed all were within the job classifications of truck driver,  
3 tractor trailer driver, tandem dump truck driver, freight truck  
4 driver, and/or mechanic during the time periods listed.

5 However, the parties dispute -- there is a dispute as to the  
6 unit and who is included in the unit. General counsel's  
7 position is these are all drivers, they're all included in the  
8 unit. The respondent has said some are freight drivers and  
9 respondent believes they are not included.

10 JUDGE MONTEMAYOR: Okay, just so it's clear for the  
11 record, do I understand general counsel to say that general  
12 counsel has accepted the proposed joint stipulation as it  
13 relates to everything except those two items?

14 MS. BURNS: I believe that is so. Although, may we go off  
15 the record for just one minute? I'm sorry, I don't want to  
16 burden the record.

17 JUDGE MONTEMAYOR: Can we go off the record for one second  
18 to give you some time to collect your thoughts?

19 MS. BURNS: I'm sorry. No, I know what I'd like to say, I  
20 just don't want to have restate everything Ms. Belcaid said.

21 (Off the record at 10:58 a.m.)

22 JUDGE MONTEMAYOR: Off the record there was some  
23 discussion regarding the joint stipulation, the parties'  
24 attempts to clarify what exactly that covers. Counsel for the  
25 general counsel, why don't you set forth for the record,

1 regarding the joint stipulation?

2 MS. BURNS: General counsel stipulates that all of the  
3 individuals listed in the job classifications truck driver,  
4 tractor trailer driver, tandem dump truck driver, freight truck  
5 driver, and/or mechanic, by respondent's counsel, for the time  
6 periods identified by respondent's counsel -- are the  
7 individuals and those job classifications for those time  
8 periods. Their names have already been listed for the record,  
9 so I will not state them again. We do have another dispute,  
10 but right now we're just stipulating to those are the  
11 individuals in the job classification for the time periods  
12 identified previously by respondent's counsel.

13 MS. BELCAID: Respondent's counsel.

14 JUDGE MONTEMAYOR: For the respondent is that -- the offer  
15 to stipulate what has been set forth counsel, by general  
16 counsel, is that a stipulation respondent accepts?

17 MS. BELCAID: Yes, respondent accepts it and would just  
18 like to further note that the employees who are previously  
19 listed in this conversation about the stipulation are the only  
20 employees who were in those job classifications for those time  
21 periods.

22 JUDGE MONTEMAYOR: Okay. Counsel for the general counsel,  
23 is that another -- will call that sort of a second stipulation.  
24 The respondent's offering as a second stipulation that, that  
25 constitutes all of the individuals, is that a stipulation you

1 would accept at this point in time, or is that an issue of  
2 dispute?

3 MS. BURNS: I do not believe it is an issue in dispute.

4 JUDGE MONTEMAYOR: Do you accept the stipulation?

5 MS. BURNS: Yes. However, I do not accept the stipulation  
6 at this time. Your Honor, I would like to introduce General  
7 Counsel's Exhibit 3.

8 **(General Counsel Exhibit Number 3 Marked for Identification)**

9 JUDGE MONTEMAYOR: Okay, why don't you set forth for the  
10 record what that is so that it's clear.

11 MS. BURNS: General Counsel Exhibit 3, these are documents  
12 provided today, by respondent's counsel, they are the current  
13 register for Kauai Veterans Express Company, Ltd. The pay date  
14 is -- there are two pay dates, one is February 15, 2017, the  
15 other is July 14, 2017. And, they state the names of  
16 individuals listed by respondent's counsel, with the exception  
17 of the three that are not included, Mr. Russell Fernandez, Jr.,  
18 Dana, whose last name begins with a K and is very long. And  
19 Carlito Pigao. So, I would like to please introduce this.

20 JUDGE MONTEMAYOR: Just so that it's clear for the record,  
21 this document that's being offered, it's not being offered as a  
22 joint exhibit, but my understanding is that this is a document  
23 upon which the stipulation that parties entered into is based.  
24 Is that fair characterization for the record?

25 MS. BURNS: Yes.

1 JUDGE MONTEMAYOR: From respondent's perspective?

2 MS. BELCAID: Yes.

3 JUDGE MONTEMAYOR: And for the general counsel's  
4 perspective?

5 MS. BURNS: Yes, Your Honor. That is true. Any  
6 objection, to --

7 MS. BELCAID: No objection.

8 JUDGE MONTEMAYOR: Three will be admitted.

9 **(General Counsel Exhibit Number 3 Received into Evidence)**

10 MS. BURNS: Thank you.

11 MS. BELCAID: For the record I would just like to make  
12 clear that respondent does accept the general counsel's  
13 stipulation.

14 JUDGE MONTEMAYOR: Anything further regarding the joint  
15 stipulation?

16 MS. BURNS: No, Your Honor.

17 JUDGE MONTEMAYOR: Okay. Shall we proceed with opening  
18 statements?

19 MR. HARRIS: Excuse me, could we excuse the witness that  
20 the stipulation eliminated?

21 JUDGE MONTEMAYOR: Okay, yes, we can. Thank you for the  
22 reminder. From the general counsel's perspective, any  
23 objection to excusing the witness?

24 MS. BURNS: No, Your Honor, there's no objection.

25 JUDGE MONTEMAYOR: Okay, will go off the record just