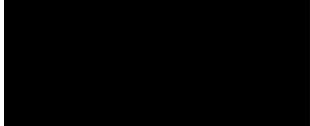


From: (b) (6), (b) (7)(C)
To: [Hooks, Ronald K.](#); [Pomerantz, Anne](#); [Dietz, Jessica](#); [Steffany, Michael](#)
Cc: [Bock, Richard](#); [Szapiro, Miriam](#); [Shorter, LaDonna](#); [Weth, Patricia](#); [Seid, David](#)
Subject: Smiths Frozen Foods, Inc., 19-CA-252581
Date: Friday, June 5, 2020 10:59:18 AM

The Region submitted this case for advice pursuant to OM 20-03 as to whether the Employer violated Section 8(a)(5) by unilaterally adding a line to its drug and alcohol policy. The new line states, “Off duty use of any substance that results in a positive drug test under the terms of this policy will subject an employee to immediate termination.” Previously, the policy subjected an employee to termination only if the employee was “under the influence of any illegal substance while on Company property.” We conclude that under the contract coverage test adopted in *MV Transportation*, the Employer’s action here is within the compass or scope of Article 17 of the parties’ current collective-bargaining agreement. Article 17 permits the Employer to “amend[]” or “revise[]” its drug and alcohol policy without bargaining. Here, the clarification to the drug and alcohol policy, made after the Employer lost an arbitration, constitutes an amendment or revision, rather than a new “work rule” that would have required the Employer to bargain upon request. In addition, because Article 17 squarely permitted the Employer’s unilateral change to its drug and alcohol policy, we do not decide whether the Management Rights clause (Article 3) that allows the Employer to establish standards of conduct and work rules would independently permit the Employer’s action, nor do we reach whether the Union, by inaction, waived a right to bargain. Accordingly, the Region should dismiss the charge absent withdrawal.

This email closes the case in Advice as of today. Please feel free to contact us with questions or concerns. Thank you.

(b) (6), (b) (7)(C)

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