

## **Pennsylvania Conference of Teamsters**

Strength in Numbers 95,000

## LEGISLATIVE ACTION ALERT

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## NLRB REVERSES ANOTHER TRUMP-BOARD STANDARD

Continuing in its end-of-the-year issuance of key decisions, the NLRB has reverted to its pre-Trump-Board standard for determining whether a union has contractually surrendered its right to bargain over particular issues. In *MV Transportation*, the Trump Board had reversed a rule that had held for over 70 years that in order to find that a provision in a collective bargaining agreement constituted a waiver over the right to bargain over the issue, the asserted waiver must be "clear and unmistakable." In *MV Transportation*, the Board held that if a topic was covered by a term in a contract, what it termed a "contract coverage test," the union could not demand to bargain if the subject was within the "coverage or scope" of the contract. If so, an employer could enact a change unilaterally without violating the law.

On Tuesday, the National Labor Relations Board overruled *MV Transportation* and, in *Endurance Environmental Solutions*, once again stated that it would not "lightly infer a contractual waiver of the statutory right to bargain and will instead require such a waiver to be 'clear and unmistakable.'" In doing so, it held that the employer had violated its Section 9(a)(5) obligation to bargain by unilaterally installing cameras in its trucks and refusing to bargain over the decision and use of those cameras.

The significance of this decision is that a general management rights clause will, in most instances, not suffice to constitute a waiver of the right to bargain over mandatory subjects.

Like so many of the Board's decisions this year, this one is certain to be questioned by a Republican-dominated Board if that comes to pass.

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