IN THE MATTER OF THE ARBITRATION BETWEEN

AMALGAMATED TRANSIT UNION
LOCAL 1342

AND

BEFORE JACQUELIN F. DRUCKER, ESQ.
ARBITRATOR

NIAGARA FRONTIER TRANSIT METRO
SYSTEM, INC.

AWARD

RE: 2000 METRO OPERATOR
PERFORMANCE IMPROVEMENT GUIDELINES
(DISCIPLINE FOR TEXTING)

APPEARANCES:

FOR THE UNION: TERRY M. SUGRUE, ESQ.
REDEN & SUGRUE, LLP
135 DELAWARE AVENUE, SUITE 410
BUFFALO, NEW YORK 14202

FOR THE EMPLOYER: WAYNE R. GRADL, ESQ.
NIAGARA FRONTIER METRO SYSTEMS, INC.
181 ELLICOTT STREET
BUFFALO, NEW YORK 14203

I. PROCEDURAL BACKGROUND

The instant arbitration proceeds pursuant to the Collective Bargaining Agreement in effect between the NFT Metro Systems, Inc. ("Employer," "NFT," or "Management") and the Amalgamated Transit Union Local 1342 ("Union" or "Local 1342"). The undersigned was appointed as Arbitrator pursuant to the processes agreed to by the parties and, by agreement, the hearing of this matter was held on December 11, 2015, at the Employer's offices located at 181 Ellicott Street, Buffalo, New York 14203. Throughout this proceeding, both parties were ably

represented by legal counsel. At the commencement of the hearing, the parties advised the Arbitrator that the Union had initiated a related improper practices charge with the Public Employment Relations Board (Case No. U-34515). Determination of the merits of that charge, however, has been deferred pending the outcome of the instant grievance.

Each party was provided a full and fair opportunity to present evidence through documents and testimony. All witnesses testified under oath and were subject to direct, cross, and redirect examination. At the conclusion of the taking of evidence, the parties agreed to submit written closing arguments. Following agreed extensions of the deadline for same, closing arguments were timely conveyed to the Arbitrator, upon receipt of which the record was closed. In reaching the conclusions and making the Award set forth herein, the Arbitrator has given full, fair, and careful consideration to all evidence of record, all arguments, and all authorities and citations offered by the parties.

II. ISSUES

The parties did not agree to the wording of the questions to be resolved by the Arbitrator, but they are in accord as to the general nature of the dispute. The Union poses the issue as follows: "Did the Company violate the parties' CBA, including Section 19-1 thereof, and/or the Performance Improvement Guidelines when it unilaterally changed the negotiated Performance Improvement Guidelines, as alleged in the grievance? If so, what shall be the remedy?" The Employer proposes the following: "Did the Company have the right under Section 19-1 of the parties' Collective Bargaining Agreement to revise or supplement the January 2000 Metro Operator Performance Improvement Guidelines in or around May of 2015 by adding to said Guidelines a Two-Step Discipline infraction for 'Texting or manual manipulation of a communication device while driving' without approval by the Union? If not, what shall be the remedy?"

III. FACTS

A. The 1980's: Disciplinary Guidelines and Rules Are Developed

At issue in this case are changes made by the Employer in May 2015 to the disciplinary approach for violations of the rule prohibiting Operators from texting while driving. The relevant history, however, begins long before mobile texting devices existed and dates back to 1983, with the development of the Guidelines for Disciplinary Action ("1983 Guidelines"). The 1983 Guidelines specified a number of grounds for immediate termination. They also identified two other groups of infractions. One group identified offenses that would be subject to a "four-step action" (progressive suspensions of one day, then two days, and three days prior to termination for infractions occurring within a "continuous 12-month period"). The other group addressed infractions subject to a seven-step progressive process (discussion/reinstruction; warning; final warning; one-day suspension; two-day suspension; three-day suspension; and then termination, also within a "continuous 12-month period").

A few years later, the Employer in 1987 created a Rule Book, which included a provision that Operators "will be subject to suspension or termination" if they committed specified infractions or "violation of rules." The current Union President, testified that the Union's approach following development of the Rule Book consistently had been that the rules were subject to change by the Employer but, when an Operator violated a rule, the Employer was bound to apply the level of discipline and to follow the progressive process referenced in the 1983 Guidelines. When Management departed from those guidelines, he said, the Union would grieve.

B. The 1990's: Effort to Change Guidelines Met by IP Charge; Revisions Are Negotiated

In late 1994 and 1995, the Employer began efforts to make changes to the 1983 Guidelines. The Employer told the Union that, while it was willing to discuss the changes it intended to make, it believed that it had the right to implement such changes without the Union's agreement as long as "due notice is given to the Union." The Employer implemented revisions in April 1995, in

what it called the "Performance Improvement Guidelines" (also referred to as "PIGs"). The General Manager in a written communication to the Union described these revisions as incorporating significant changes made pursuant to Union input, but he also noted that complete agreement could not be reasonably expected.

The Union then initiated an improper practices charge with the Public Employment Relations Board ("PERB") alleging a unilateral change in mandatory terms and conditions of employment. That charge was settled on November 3, 1995, when the parties agreed to declare an impasse over the revised Guidelines and to enter into mediated negotiations. The Union and the Employer also agreed that the original 1983 Guidelines would be reinstated during the negotiations and that disciplinary actions issued as a result of grounds that were newly created under the 1995 abandoned revisions would be rescinded.

Months passed, and the parties in August 1996 began negotiations, with the Employer forwarding to the Union its proposed Guidelines for Operators. (In addition, guidelines for Maintenance personnel were proposed, but no agreement was reached regarding the Maintenance personnel, and these guidelines are not at issue in this case.) Management's proposal included language on each page that stated, "Note: These are guidelines only and may be revised or modified as necessary." The Union President testified that the Union expressed opposition to the inclusion of such language, as the Union believed that the 1995 settlement acknowledged that changes to the 1983 Guidelines were a mandatory subject of bargaining. Negotiations continued, and, in October 1997, the Employer provided to the Union a "recap" entitled "Status of Discipline Guideline Negotiations," listing what had been agreed upon and what remained open.

In June 1998, while negotiations still were underway regarding revisions to the Guidelines, the Employer produced "Rules for Bus Transportation and Maintenance Employees," to be effective June 1, 1998 ("1998 Rules"). Set forth therein was Rule 1.5.9, which prohibited the following conduct:

> [u]se of any unauthorized appliance or device including but not limited to radios, tape players, cellular telephones, scanners, compact disk players, or the wearing of earphones in buses or rail cars while on duty or in any other area where such use is prohibited.

The Union did not and does not challenge the authority of the Employer to make the changes that were put into effect with this set of Rules.

The Union President, who participated in the on-going negotiations regarding revisions to the Guidelines, testified that, as they developed the revisions, the parties would go back and forth from the draft of the revised Guidelines to the Rules to identify the appropriate penalty and progression for violation of each rule. He recalled that the Employer's lead negotiator did not want to have the Guidelines incorporated into the Collective Bargaining Agreement.

By April 1999, the negotiations were concluding, and the Employer forwarded to the Union, for review, what it described as "the final version of the Metro Operator Performance Improvement Guidelines." The draft, the Employer wrote, incorporated "the changes we agreed upon . . . ." Implementation of the Guidelines was delayed, but by letter dated January 3, 2000, the Employer informed the Union that it planned scheduled implementation for February 1, 2000

C. Negotiated 2000 Disciplinary Guidelines become Effective February 1, 2000

As planned, the newly negotiated "Metro Operator Performance Improvement Guidelines" ("2000 Guidelines") were issued to all Operators and became effective February 1, 2000.
The 2000 Guidelines list categories of offenses that lead to immediate termination and also identify categories that are subject to two-step, three-step, four-step, five-step, and seven-step disciplinary processes. Among the offenses subject to the four-step process, stated in Section 4.14, is "Operating or displaying personal entertainment or communications equipment, except during lunch."

The Guidelines note in the agreed language of the Introduction that the Operators have been "trained in the proper and professional way to perform these duties in accordance with our rules and regulations as contained in Rule Books, Procedures, and Notices." The Introduction also specifies, "No penalty may be more severe than that shown in these guidelines, but it may be lessened because of mitigating factors."

D. 2000 – 2010: Safety Concerns Grow; Efforts to Alter Disciplinary Penalties Are Made but Withdrawn

1. New York State Vehicle and Travel Law

As availability of hand-held telephonic technology advanced within the United States, concern by lawmakers grew regarding the perils of use by motor vehicle operators. In 2001, the State of New York enacted the Vehicle and Traffic Law, Section 1225-c which prohibited any person operating a motor vehicle upon a public highway from using "a mobile telephone to engage in a call when such vehicle is in motion."

2. Employer Seeks to Change Application of 2000 Guidelines in Seat-Belt and Cell-Phone Cases; Grievances Resolved to Maintain Status Quo

On November 1, 2001, the Employer issued a new Rail System Rule Book. The Rule Book was not negotiated and did not mention the 2000 Guidelines, but it set forth an obligation to obey all rules and noted that violation of rules is cause for disciplinary action, which may include termination. The Rules at the time did not address specifically issues of cell phone use or seat belt use.

In 2001 and early 2002, however, the Employer's buses were involved in two fatal accidents, and one of the fatalities was a Bus Operator. The Operators had not been wearing seat belts, and the Acting Director of Surface Transportation wrote to the Union President, noting that if the Operators had been wearing seat belts the outcomes might have been less serious. This led the Employer to commence what it called a "proactive approach to accident prevention," notifying

the Union in February 2002 that an Operator's failure to wear a seat belt, which had been regarded as a "failure to have or use required equipment and supplies" subject to Section 7.6 of the 2000 Guidelines (providing for a seven-step disciplinary process), instead would be regarded as a "failure to obey traffic regulations" and therefore would be subject to Section 4.9 of the 2000 Guidelines and the four-step disciplinary process set forth therein.

In addition to this change regarding seat belts, the Employer notified the Union that use of a cell phone while driving, previously covered under Section 4.14 of the 2000 Guidelines ("operating or displaying personal entertainment or communications equipment, except during lunch"), also would, going forward, be considered a "failure to obey traffic regulations" under Section 4.9 of the Guidelines. This, said the Employer, was necessary "to remain consistent with current" State law. The Union President responded, addressing the seat belt policy, and noted that the 2000 Guidelines were the product of two years of negotiations. He wrote that "there is no ending date to" the 2000 Guidelines and that it therefore remained in force until both sides agreed to alter, void, or modify it.

The Employer thereafter discussed the matter within its Transportation and Executive Committees and obtained the advice of the then-General Counsel. The General Counsel in a memorandum to the Executive Committee noted that, in light of the frequency of accidents, they must question the effectiveness of applicable procedures and policies in reducing negative behavior by employees. He noted the need to address what were considered to be several shortcomings in the system, including the twelve-month cycle and the levels that could result in a given Operator having numerous offenses at various levels of the multi-step process without advancing to "meaningful penalty." The General Counsel advised, however, that"[t]he difficulty is that, since it is part of the ATU contract, it cannot be changed unilaterally." He recommended bringing the risks posed to the "attention of Union leadership as soon as possible." The Acting Director thus wrote to the Union President to discuss the issues of concern.

Later that year, an Operator was disciplined for failing to wear a seat belt, and the Employer used Section 4.9 of the 2000 Guidelines, invoking the four-step disciplinary process, rather than the

seven-step process under the previously applied Section 7.6 for failure to have or use required equipment and supplies. The Union grieved, asserting that the applicable disciplinary process was the seven-step progression set forth in Section 7.6 of the Guidelines. The Employer responded, acknowledging that the 2000 Guidelines indeed had been and remained in effect but arguing that in the past Management had applied the Guidelines inappropriately, having regarded seat-belt violations as failure to use required equipment when, in light of the Motor Vehicle and Traffic Laws, a failure to use seat belts should have been a "failure to obey traffic regulations." The Employer noted that, when it realized this error in application, it had issued a notice to all operators telling them of the change in application. The grievance progressed to arbitration and was settled when the Employer agreed to return seat-belt violations to the seven-step process under Section 7.6.

A few months later, the Union initiated another grievance alleging that the Employer breached the 2000 Guidelines by changing the application of the penalties for seat-belt and cell-phone violations. In the course of that grievance process, the Employer noted to the Union that the Public Transportation Safety Board ("PTSB") had been highly critical of the disciplinary system, viewing the contract and the 2000 Guidelines as allowing for retention of problematic employees. Particular concern had been expressed regarding the potential for an Operator who was at the latter steps of the disciplinary progression for multiple violations to still be operating buses. The Employer stressed the need for revisions of the disciplinary policy but agreed to settle the grievance by reverting to the former practice of having seat belt violations charged under the seven-step process and cell phone use under Section 4.14 ("operating or displaying personal entertainment or communications equipment").

3. New York State Bans Use of Handheld Devices while Driving

In 2009, Vehicle and Traffic Law Section 1225-d was implemented, making use of a mobile telephone or portable electronic device while driving a five-point violation. In 2013, Vehicle Traffic Law 1225-d was amended to proscribe motor carriers from allowing or requiring drivers to use handheld mobile telephones while operating commercial motor vehicles.

E. 2015: Employer Proposes Change in 2000 Guidelines; Unilaterally Implements Same

As public attention to the perils of drivers' use of hand-held devices grew and focused specifically on texting violations by the Operators, the Employer and the Union met in April 2015 to discuss changing the penalty and process under the 2000 Guidelines. At the meeting, the Employer explained its position that the four-step process was no longer acceptable as applied to cell-phone violations. In a PowerPoint presentation addressing its view of the issue, the Employer outlined concerns and the risks of texting while driving, noting applicable legal prohibitions and comparisons with the manner in which the New York City MTA addresses issues of texting while driving. Also cited were various statistics regarding fatalities attributed to texting by operators/drivers, as well as a local news broadcast highlighting video that captured an NFT Operator texting while driving. The Employer stressed the need to have a course of action agreed upon that would achieve modification of this behavior by the Operators.

Addressing the *status quo* of the four-step process, the Employer emphasized that this approach had not succeeded in modifying the high-risk behavior or passing public scrutiny and required modification. The Employer thus cited two other options: zero tolerance/termination for the first offense of texting while driving or a two-step process of a 20-day suspension followed, in the event of a second offense, by termination. The latter, in the Employer's view, would involve creation of a new category in the Guidelines. The Employer asserted that it believed that a texting violation, being unlawful behavior, should be a one-step process with immediate termination but that they recognized the reasonableness of using a two-step process that would give an Operator another chance after a texting violation. The Employer also noted that the course of action selected would "remain as part" of the 2000 Guidelines.

The Union's initial response was that, because the proposed approach involved a change to the 2000 Guidelines, any such change would have to be negotiated and could not be unilaterally implemented. The Union President noted that the Employer had recognized this with consistency but that the new Management may not have been aware that the Employer has a duty

to negotiate and cannot unilaterally alter the 2000 Guidelines. The Union expressed a willingness to negotiate but explained that they were not ready on that day to address the issue, as it was at that meeting that they were first receiving the proposal and related information and thus required time to consider and respond.

On May 21, 2015, the Employer wrote to the Union to state its intent to unilaterally implement a new two-step policy for texting while driving. Soon thereafter, the Employer issued revised Metropolitan Operator Performance Improvement Guidelines (Revision of 2000 Guidelines). Section 4.14, providing for the four-step disciplinary process in instances of "operating or displaying personal entertainment or communications equipment, except during lunch"[1] remained in the Guidelines, but the Employer had added to the two-step process, previously applicable only to certain instances involving possession of a weapon, the following: "Texting or manual manipulation of a communication device while driving." This has the effect of subjecting an Operator to a 30-day suspension (rather than the 20-day suspension the Employer had suggested at the meeting) for the first offense and then termination in the event of a second offense. The Union thereafter initiated the instant grievance as well as an improper practice charge, as noted above.

[1] In 2005, the Employer and the Union agreed to an amendment of Section 4.14, exempting from the penalty for displaying cell phones the situation in which Operators merely have them attached to their belts, as long as the phones are not in use.

IV. ANALYSIS

At issue in this case are the changes the Employer made in 2015 to the negotiated 2000 Guidelines as they relate to the disciplinary penalty for violations of the rule prohibiting Operators from texting while driving. As noted above, the relevant history began long before mobile texting devices existed, with the development in 1983 of the first set of Guidelines for Disciplinary Action. This history is set forth in detail, above, but a brief summary here forms the foundation for the analysis that follows.

In 1995, the Employer attempted to revise the 1983 Guidelines with input, but without full agreement, from the Union. The Union challenged this step, which led to a settlement in which the Employer committed to negotiate regarding revisions to the 1983 Guidelines. Eventually, after extended bargaining, the Employer and the Union agreed to a revised version of the Disciplinary Guidelines, which went into effect in 2000. In 2002, however, in the wake of some serious accidents in which Operators were not wearing seat belts and also the enactment of new state laws addressing use of mobile devices while driving, the Employer again attempted, without the Union's agreement, (a) to alter application of the 2000 Disciplinary Guidelines in a discipline case involving a seat-belt violation and (b) to promulgate an amendment to the 2000 Guidelines that would move seat-belt and cell-phone violations to different disciplinary categories, reducing the progressive disciplinary steps in seat-belt violations from seven to four. The Union grieved these actions and, after the Employer had been advised by its General Counsel that the 2000 Guidelines were part of the Collective Bargaining Agreement and could not be changed unilaterally, Management abandoned those efforts and returned to the prior treatment of seat-belt and cell-phone violations under the 2000 Guidelines.

In 2015, faced with increased public attention and NFT embarrassment stemming from media accounts of Operators being observed texting while driving, the Employer met with the Union in an effort to address the legitimate problem it perceived in application of the Guidelines to texting violations. Specifically, pursuant to the Guidelines, an Operator who violated the prohibition

would, in the first offense, experience only a "final warning before discipline"; his or her next violation would lead to a one-day suspension; the next violation would be a two-day suspension; and only if a fourth such incident occurred within a twelve-month period would the Operator be subject to termination of employment. As the Employer has noted, until the occurrence of the fourth texting offense within twelve months, an incorrigible Operator, prone to taking such serious risks, could still be operating buses. The Employer's concerns of course were valid, which the Union has acknowledged. The Employer noted the urgency of the matter and proposed changing texting violations from a four-step to a two-step disciplinary progression. While respecting the Employer's concerns, the Union was not able to agree at that meeting, as the Union was hearing the detailed analysis and proposal for the first time. The Union was unwilling, based upon only minimal discussion with the Employer, to agree to imposition of a two-step system under the Guidelines. The Employer then implemented that change without the agreement of the Union, and the instant grievance resulted.

In defending this unilateral change of the previously negotiated 2000 Guidelines as applied to texting violations, the Employer relies heavily on its right, under Section 19 of the Collective Bargaining Agreement, to revise rules without Union agreement. That provision states as follows:

> Section 19-1
>
> It is understood and agreed that the Company shall always be privileged from time to time to revise, supplement and otherwise change its rules, provided same are not in conflict with any specific provision of this Agreement, and if in conflict or inconsistent with any such specific provision, such revised, supplemental, or changed rules or regulation shall be subject to approval of the Union which approval the Union agrees not to unreasonably withhold.

The Employer contends that the Guidelines are rules and that they are not part of the Collective Bargaining Agreement. The Union does not contest the Employer's authority to revise rules but argues that the Guidelines are part of the Collective Bargaining Agreement and, even if not part of the contract, are mandatory subjects of bargaining, as indicated by the settlement in 1995 and

the Employer's action pursuant to the explicit advice of counsel in the grievances noted above, in which the Employer acknowledged that the Guidelines could not be changed unilaterally.

Much is made by the Employer of the need for the managerial authority to develop rules, and the Employer critiques the Union's position, suggesting that the Union is reflecting what the Employer calls a semi-Marxist theory that the workers should make the rules, even though they are not responsible for the operation or consequences of noncompliance. This overstates the Union's position, as the Union throughout this proceeding and the applicable history of the labor-management relationship has acknowledged the Employer's right to make rules. The divergence in the positions of the parties thus turns on a simpler point, which is the characterization of the Employer's action as a rule change as opposed to alteration of agreed disciplinary procedures.

The Employer has acknowledged that, while it has the authority to impose discipline, it also is accountable and obligated under the Collective Bargaining Agreement to do so only for just cause. Just cause or, in this case, "justification" for discipline is a commitment that is in the Collective Bargaining Agreement and is a contractual obligation that cannot be extinguished or reduced without the agreement of the Union. The term "just cause" carries with it a set of recognized factors, and when an employer agrees to limit its disciplinary authority to instances in which it has just cause, it is agreeing to abide by employee protections that include reliance on rules that are reasonable and known, investigation to ascertain facts before imposing discipline, equal treatment of employees, and disciplinary penalties that are proportionate and, in all but the most egregious offenses, progressive and corrective. All of those principles are within the concept of just cause. In some contractual arrangements, the parties agree to specific levels of discipline for specific offenses, which further fleshes out and defines the concept of just cause. In this case, under this Collective Bargaining Agreement and the 2000 Guidelines, the parties have taken such a step and have negotiated the levels of discipline and progressions, over the course of a quarter century, with great specificity.

The distinction between disciplinary procedures and rules -- and rule-making authority, which is not challenged by the Union here -- is solidly recognized in New York law. It is well established, as held in *New York City Transit Authority v. New York State Public Employment Relations Board,* 147 A.D. 2d 574 (2d Dept. 1989), that "disciplinary penalties" form a mandatory subject of negotiation. Just as the employer in *State of New York (Office of Mental Health – Central New York Psychiatric Center*, 31 PERB 3051 (1998), was found have been entitled to promulgate smoking restrictions without union agreement, the Employer here was free, as specified in Section 19 of the Collective Bargaining Agreement, to establish the very reasonable and essential rule that prohibits the use of mobile devices while operating a vehicle. Such a prohibition, as noted by the Board in State of New York (Office of Mental Health – Central New York Psychiatric Center), however, can "exist independently from an enforcement mechanism which relies upon employee discipline." Thus, as the Board found in that case, the Employer here is not free to unilaterally alter "the system through which discipline is administered," for that is a mandatorily negotiable subject. Indeed, the independent existence of this system through which discipline is administered is seen in the very text of the parties' agreed 2000 Guidelines. The 2000 Guidelines themselves recognize the distinction between the Employer's rule and the disciplinary system; the Guidelines make reference to the training that Operators receive and also cite the expectation that Operators will perform their duties in compliance with "rules and regulations as contained in Rule Books, Procedures and Notices."

The Employer argues that the Guidelines are not and were never part of the parties' Collective Bargaining Agreement and were never executed as a separate agreement. The record establishes that the Employer's representative in bargaining for the 2000 Guidelines did not want them to be explicitly incorporated into the contract and did not feel it necessary to execute an agreement adopting them. As indicated by the Employer's General Counsel in 2002, however, the Employer regarded the 2000 Guidelines as part of the contract. The Employer argues that the then-General Counsel had not participated in the negotiations, which is accurate, but the legal opinion offered in this regard and the Employer's adherence to it in returning to adherence to the terms of the 2000 Guidelines are indicative of the Employer's acceptance of that analysis.

Further, the Union notes that, under Civil Service Law Section 201(12), an agreement is simply "the result of the exchange of mutual promises between the chief executive officer of a public employer and an employee organization which becomes a binding contract for the period set forth therein." (The statute also creates an exception for those matters that require approval of the legislative body, but it has not been shown that this is an item that would require such approval.) There also is no requirement that the terms of the agreement be signed by the parties. Execution of a written agreement is required under Civil Service Law Section 204(3) only if requested by either party, and nothing in the record indicates that such a request was made at any point in the development of the Guidelines. As indicated in *City of Middleton*, "a collectively negotiated agreement need not be embodied in a formal written document signed and executed by the parties to be binding." *City of Middletown*, 11 PERB 4586 (1978). In any event, the Employer itself repeatedly recognized the binding and mandatorily negotiable nature of the Guidelines with the settlement in 1995, the negotiations that led to the 2000 Guidelines, correspondence relating to the finalization of the 2000 Guidelines, the resolution of grievances in 2002, and the initiation of discussions in 2015.

There is no doubt that the Employer's actions in this case were motivated by a sincere and urgent goal of guarding against the profound hazards posed by Operators texting while driving. Further, the Employer was attempting to deter any sense Operators may have that they may with relative impunity occasionally violate the rule against texting while driving. The *bona fides* of the Employer and its concern for public safety and the safety of the Operators are not and have never been in doubt in this regard. In moving toward these goals, the Employer began with a significant informative effort to persuade the Union that a two-step disciplinary process was essential, but actual negotiations did not take place. The Union does not challenge the basis for the Employer's goals, and it is clear that the Union shares the Employer's concern for safe operations. It is not known what specific approach would have been taken or what proposals would have been advanced by the Union in response to the Employer's presentation in this regard, however, for this exchange of approaches was foreclosed inappropriately when the Employer unilaterally implemented the change in the disciplinary structure that had been negotiated and embodied in the 2000 Guidelines. It was that action that breached the parties'

agreement and the Employer's obligation to negotiate. Accordingly, the Union's grievance is found to be meritorious. The revisions that the Employer made and communicated to the bargaining unit must be rescinded and any changes in the provisions of the 2000 Guidelines must be negotiated with and agreed to by the Union.

For these reasons, the grievance is sustained.

AWARD

For the reasons stated and upon careful consideration of all evidence of record and all arguments presented, the Arbitrator determines that the Employer breached the Collective Bargaining Agreement and its duty to negotiate by unilaterally changing the terms of the 2000 Guidelines regarding the disciplinary approach to violations of the prohibition against texting while driving. Accordingly, the grievance is sustained. The revisions that the Employer made to the 2000 Guidelines and communicated to the bargaining unit in May 2015 must be rescinded. Changes in the provisions of the 2000 Guidelines must be negotiated with and agreed to by the Union.

Dated: March 21, 2017

Jacquelin F. Drucker, Esq.
Arbitrator