

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
WASHINGTON, D.C.**

GOFFSTOWN TRUCK CENTER, INC.

and

**INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, LOCAL 633**

Case No. 1-RC-22272

March 30, 2009

**EMPLOYER'S EXCEPTIONS TO HEARING OFFICER'S REPORT
AND RECOMMENDATION ON OBJECTIONS, AND
MOTION TO REOPEN THE RECORD**

Pursuant to Section 102.69 of the National Labor Relations Board's Rules and Regulations, Goffstown Truck Center, Inc. ("Goffstown") files exceptions to the Hearing Officer's Report and Recommendation on Objections in the above referenced matter.

In addition, Goffstown moves to reopen the record in order to submit additional evidence (Attached as proposed Employer Exhibits #13 and 14) which was not available at the time of the hearings, and which would lead to a different result from the Hearing Officer's report and recommendation.

Goffstown's exceptions to the Hearing Officer's report are as follows:

1. Goffstown excepts to the Hearing Officer's recommendation to overrule Goffstown's Objections based on the erroneous conclusion that "the number of employees who did not vote in the election because of the bad weather was not determinative of the outcome of the election." (Report at 4)¹

¹ Citations to the Hearing Officer's Report and Recommendation on Objections are designated by "(Report at ___)."

2. Goffstown excepts to the Hearing Officer's assertion that "In order to prevail, the Employer had to show that seven employees failed to vote because of the bad weather." (Report at 4)

3. Goffstown excepts to the Hearing Officer's conclusion that "at most only five employees did not vote because of the bad weather." (Report at 4)

4. Goffstown excepts to the Hearing Officer's failure to find that Goffstown "was prevented from presenting record evidence concerning the remaining, unidentified eligible voter as the Region was unable to locate the *Excelsior* list used at the election, and, based on these circumstances, it should be presumed that this individual was prevented from voting due to the weather, as other voters were." (Report at 5)

5. Goffstown excepts to the Hearing Officer's failure to properly resolve the discrepancy concerning the number of eligible voters for the December 12th election. (Report at 5-6). The additional evidence, which is the subject of Goffstown's Motion to Reopen the Record, would directly pertain to resolving the question of the number of eligible voters for the December 12th election.

6. Goffstown excepts to the Hearing Officer's finding that there were actually nine employees, not ten, who did not vote in the election on December 12, 2008. (Report at 6, and 12, fn. 13) The additional evidence, which is the subject of Goffstown's Motion to Reopen the Record, would directly pertain to resolving the question of the number of eligible voters who did not vote in the December 12th election, and it would prove that ten employees did not vote.

7. Goffstown excepts to the Hearing Officer's erroneous finding that "While the approximate number of eligible voters on the tally in the instant case, Region Exhibit

5, is listed as 55, I maintain that, based on the record evidence, this number was either noted incorrectly, or more likely, as the wording of Item 1 itself indicates, it was an approximation.” (Report at 6) The additional evidence, which is the subject of Goffstown’s Motion to Reopen the Record, would directly pertain to resolving the question of the number of eligible voters for the December 12th election, and it would prove that there were 55 eligible voters.

8. Goffstown excepts to the Hearing Officer’s finding that there were 54 eligible voters, and not 55 as listed on the Tally of Ballots from the December 12th election. (Report at 6) The additional evidence, which is the subject of Goffstown’s Motion to Reopen the Record, would directly pertain to resolving the question of the number of eligible voters for the December 12th election, and it would prove that there were 55 not 54 eligible voters.

9. Goffstown excepts to the Hearing Officer’s assertion that “In order for the Employer to prevail in their argument that a determinative number of eligible voters were denied an adequate opportunity to vote because of the bad weather, all of the three disputed voters ... would have to be found to have not voted because of the weather.” (Report at 7)

10. Goffstown excepts to the Hearing Officer’s failure to find that Goffstown disagreed with proceeding with the election on December 12, 2008 because of the severe weather conditions that day. (Report at 11)

11. Goffstown excepts to the Hearing Officer’s failure to properly apply the standard in *Baker Victory Services, Inc.*, 331 NLRB 1068 (2000) and *V.I.P. Limousine*, 274 NLRB 641 (1985), that Goffstown “is not obligated to show that at least

seven of the non-voting employees expressly were prevented from voting because of the storm conditions." (Report at 12-13)

12. Goffstown excepts to the Hearing Officer's finding that Michael Roberts was not precluded from voting in the election on December 12 because of the weather, but rather because of his employment and responsibilities as a firefighter for the Town of Londonderry, New Hampshire. (Report at 13-14)

13. Goffstown excepts to the Hearing Officer's crediting of Lisa Ciano's testimony that her decision not to vote had nothing to do with the weather. (Report at 14)

14. Goffstown excepts to the Hearing Officer's rejection of Goffstown's supplemental objection, and her finding that it is outside of the objections specified in the Objections filed on December 17, 2008. (Report at 3, fn. 5, and 14-15)

15. Goffstown excepts to the Hearing Officer's recommendation that Goffstown's objections be overruled. (Report at 14, and 16)

16. Goffstown excepts to the Hearing Officer's recommendation that a Certificate of Representative on behalf of the Union be issued. (Report at 4, and 16)

For the above stated reasons, Goffstown excepts to the Hearing Officer's Report and Recommendation on Objections and requests that the National Labor Relations Board find that its objections are valid and a new election is warranted.

In addition, Goffstown files this Motion to Reopen the Record, and it seeks to submit email correspondence, dated December 10, 2008, between Michael Kennedy, Chief Operating Officer of Goffstown, and Patricia Umile, the Board Agent who conducted the election on December 12, 2008. The email from Kennedy to Umile

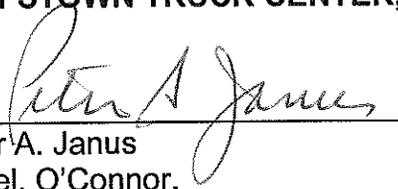
(proposed Employer Exhibit #13) indicates that on December 10th Goffstown submitted an updated *Excelsior* list to the Board's Regional Office based on questions from Umile over certain omissions of names to the list. The attached *Excelsior* list (proposed Employer Exhibit #14) to that email reflects the total of 55 eligible voters. This is the number that Goffstown argued was the correct figure of eligible voters and that this number resulted in a tenth unidentified eligible voter, who was prevented from voting in the election due to the weather conditions. This evidence would require a different result from that reached by the Hearing officer in her report. (See, exceptions #4, 5, 6, 7, and 8) At the time of the February 2-3, 2009 hearing, Michael Kennedy had forgotten about this correspondence between himself and Umile. He only remembered its existence on March 23, 2009 when he brought it to the attention of Goffstown's legal counsel. (See, proposed Employer Exhibit #13)

For the above stated reasons, which are in accordance with provisions of Section 102.48(d)(1) of the Board's Rules and Regulations, Goffstown requests that its Motion to Reopen the Record be granted and Exhibits #13 and 14 be added to the record evidence in this case.

Respectfully submitted,

GOFFSTOWN TRUCK CENTER, INC.

By: _____


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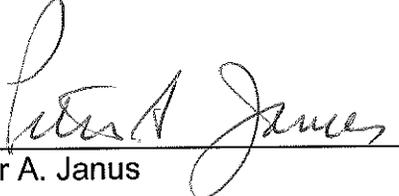
CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Employer's Exceptions to the Hearing Officer's Report and Recommendation on Objections and Motion to Reopen the Record has been electronically delivered this 30th day of March, 2009, to the following:

Rosemary Pye
Regional Director, Region 1
National Labor Relations Board
Thomas P. O'Neill, Jr. Federal Building
10 Causeway Street, Sixth Floor
Boston, MA 02222
Rosemary.pye@nrlrb.gov

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National Labor Relations Board
Region 1
Thomas P. O'Neill, Jr. Federal Building
10 Causeway Street, Sixth Floor
Boston, MA 02222
Kevin.murray@nrlrb.gov


Peter A. Janus

**Peter Janus**

From: Mike Kennedy [mkennedy@ridesta.com]
Sent: Monday, March 23, 2009 4:05 PM
To: Peter Janus
Subject: FW: Updated Londonderry Excelsior List
Attachments: Londonderry Excelsior List 2008-12-10.xls

Peter,
Here is the Excelsior List, emailed directly to the NLRB's Patricia Umile two days before the election. The list contains 55 names.

Mike

Michael J. Kennedy
Chief Operating Officer - Atlantic Region
Student Transportation of America, Inc.
6 Ledgerock Way, Suite 3
Acton, MA 01720
(978) 263-1776 Fax (978) 263-1866

From: Mike Kennedy
Sent: Wednesday, December 10, 2008 3:23 PM
To: 'Patricia.Umile@nlrb.gov'
Cc: Tracey Macumber; Jerry Sirois; Rhonda Kelley
Subject: FW: Updated Londonderry Excelsior List

Patty,
Attached is an updated Excelsior List for Londonderry. You were correct in that Sheldon and Stonestreet should have been on the list-- actually Stonestreet was on the list already, but the other wasn't. In addition, several people have been dropped off who are no longer employed and were not employed on the cut-off date, but mistakenly remained active on the central payroll records. Therefore, referring to the corrected list, there are 55 drivers properly eligible to vote on Friday, and I would like your sign-off on this amended list, so we don't have to contend with votes taken under protest and so forth on Friday. This information has been checked and rechecked, and we assure you it is accurate, as shown on the attached. Thank you.

Mike Kennedy

Michael J. Kennedy
Chief Operating Officer - Atlantic Region
Student Transportation of America, Inc.
6 Ledgerock Way, Suite 3
Acton, MA 01720
(978) 263-1776 Fax (978) 263-1866

From: Tracey Macumber
Sent: Wednesday, December 10, 2008 2:16 PM
To: Mike Kennedy

3/30/2009

Subject: Updated Londonderry Excelsior List

Mike, here's the list you requested. Please note that Patricia Umile would like to be notified, either by telephone or by email, that we've added Sheldon & Stonestreet to the list, and if we add any more names to notify her of those as well. Let me know if you'd like me to take care of that.

Tracey Macumber

Payroll Supervisor, Atlantic Region
Student Transportation of America
6 Ledge Rock Way, Unit 3
Acton, MA 01720
978-263-1776

NAME	STREETLINE1	STREETLIN	CITY	STATI	ZIPCODE
Ashman, Crystal	4 Beech Hill Dr		Londonder	NH	03053
Bannister, George	7 Pine Street		Londonder	NH	03053
Bellegarde, Allison	5 Gardner Circle		Londonder	NH	03053
Binder, Rebecca	86 Winterwood Dr		Londonder	NH	03053
Boivin, Alina	23 Miltimore Rd		Derry	NH	03038
Buyck, Ann	16 Buckthorn St.		Londonder	NH	03053
Buyck, Kristy	16 Buckthorn St		Londonder	NH	03053
Carnevale, Mary	13 Bradford Street		Derry	NH	03038
Cashin, Cheryl	21 Davis Drive		Londonder	NH	03053
Cavanaugh, Tina	43 Charleston Ave		Londonder	NH	03053
Ciano, Lisa	35 Gordon Drive		Londonder	NH	03053
Clery, Valery	20 Sheldon Rd		Derry	NH	03045
Degryse, Yvonne T	4 Loop Rd		Londonder	NH	03053
Dispensa, Jennifer	206 Brent Street		Mancheste	NH	03103
Doe, Suzanne	7 King Phillip Dr		Londonder	NH	03053
Eastman, Kenneth	20 Kitt Lane		Londonder	NH	03053
Escott, Christine	17 Westminster Drive		Londonder	NH	03053
Evarts, Karen	9 Morton Street		Mancheste	NH	03104
Fortin, Tanya	33 Mid Ridge Circle		Londonder	NH	03053
Fredette, Deborah	49 Chase Road		Londonder	NH	03053
Fudala, James C.	23 Noyes Road		Londonder	NH	03053
Gallant, Donna	12 Mountain Home Rd		Londonder	NH	03053
Gallinaro, Jean	66 Cobblestone Lane		Mancheste	NH	03109
Gerardi, Joyce	13 Sandy Brook Lane		Londonder	NH	03053
Giegerich, Robert A	9 Noonan Dr		Londonder	NH	03053
Goodwin, Cindy	168 Litchfield Road		Londonder	NH	03053
Gramstorff, Kerrie	87 Fieldstone Dr		Londonder	NH	03053
Grant, Cassie	166 Beech Hill Dr		Mancheste	NH	03103
Hooley, Kimberly	24 West Yellowstone		Londonder	NH	03053
Hopkins, Elizabeth	7 Spring Road		Londonder	NH	03053
Jacobs, Tammy	5 Hunter Blvd		Londonder	NH	03053
Jaskal, Sandra	9 A Susan Dr		Derry	NH	03038
Kelly, Susan	34a Emerald Drive		Derry	NH	03038
Kiriakoutsos, Candi	39 Beech Hill Ave.		Mancheste	NH	03103
Lafrance, Joseph	35 Tenney Rd		Pelham	NH	03076
Leach, Kara	73 Fieldstone Dr		Londonder	NH	03053
Leach, Kristy	5b Reed Street		Londonder	NH	03053
Lewis, James	192 Bypass 28		Derry	NH	03038
Love, David	4 Maple St	Apt 3	Derry	NH	03038
Marron, James	33 Stonehenge Rd.		Londonder	NH	03053
McMillan, Melissa	75 South Road Apt 7		Londonder	NH	03053
Morin, Sandy	327 Island Pond Road		Derry	NH	03038
Morshead, Jennifer	12 Stokes Rd		Londonder	NH	03053
Pelletier, Richard	5 Reo Lane		Londonder	NH	03038
Peterson, Susan	24 Parmenter Road		Londonder	NH	03053
Roberts, Michael	3 Lilac Circle		Londonder	NH	03053
Rodham, Shannon	12 Robinhood Dr		Londonder	NH	03053
Roe, Jonathan	14 A Mercury Ln		Pelham	NH	03076
Roussel, Kim	93 Fieldstone Drive		Londonder	NH	03053
Santos, Erin	25 Fairview Ave		Derry	NH	03038
Sheldon, Deanna	4 Homestead Ln		Londonder	NH	03053
Stonestreet, Kimbe	42 Winding Pond Rd		Londonder	NH	03053
Troiano, Elaine	5 Justin Circle		Londonder	NH	03053
Vine, Debra	67 Hovey Road		Londonder	NH	03053

White, Pamela	1 Wyandot Circle		Londonderry	NH	03053	
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