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June 3, 2009

Electronically

Lester A. Heltzer, Executive Secretary  
Office of the Executive Secretary  
National Labor Relations Board  
1099 14th Street, N.W.  
Washington, D.C. 20570-0001

Re: **FedEx Home Delivery and International Brotherhood  
of Teamsters Local 671, 34-RC-2205**

Dear Mr. Heltzer:

Enclosed please find Petitioner's Exceptions to the Supplemental Decision on Objections by the Administrative Law Judge and Brief in Support of its Exceptions to the Supplemental Decision on Objections by the Administrative Law Judge.

Thank you.

Sincerely yours,



Gabriel O. Dumont, Jr.

**UNITED STATES OF AMERICA  
BEFORE  
THE NATIONAL LABOR RELATIONS BOARD**

FEDEX HOME DELIVERY, an operating division of  
FEDEX GROUND PACKAGE SYSTEMS, INC.,

Employer

And

34-RC-2205

INTERNATIONAL BROTHERHOOD OF TEAMSTERS,  
LOCAL UNION NO. 671

Petitioner

**PETITIONER'S EXCEPTIONS TO THE SUPPLEMENTAL DECISION ON  
OBJECTIONS BY THE ADMINISTRATIVE LAW JUDGE**

The Petitioner, International Brotherhood of Teamsters, Local 671 ("Local 671" or "Petitioner") hereby asserts the following Exceptions to the Supplemental Decision on Objections of the Administrative Law Judge:

1. The ALJ erred in concluding that employee Robert Dizinno was included in the bargaining unit as an eligible voter by the Regional Director in whole or in part because of the mailbox and/or discussions issue.
2. The ALJ erred in concluding that: "The sole basis in the DDE for finding Dizinno should be included in the unit was the mailbox and discussions issue...."
3. The ALJ erred in concluding that the mailbox and discussions issued represented "changed circumstances" after the close of the representation hearing on March 2, 2007.
4. The ALJ erred in allowing FedEx to relitigate the status of Dizinno absent the presence of changed circumstances.

5. The ALJ erred in concluding that the Employer had sustained its burden of proof on the changed circumstances issue as related to the status of Dizinno.

6. The ALJ erred in concluding that Employer had sustained, in part, its Objection No. 2.

7. The ALJ erred in concluding that, if one of the two additional challenged ballots is determined to be eligible, that ballot should be opened and counted.

WHEREFORE, based on the above-noted Exceptions and for the reasons set out in the Petitioner's accompanying Brief in Support of its Exceptions to the Supplemental Decision on Objections by the Administrative Law Judge, the Petitioner requests that the Board reject that portion of the Supplemental Decision addressing the eligibility status of employee Robert Dizinno and affirm the election results.

Respectfully submitted,  
**Teamsters Local 671,**  
By its Attorney,



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**UNITED STATES OF AMERICA  
BEFORE  
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INTERNATIONAL BROTHERHOOD OF TEAMSTERS,  
LOCAL UNION NO. 671

Petitioner

**PETITIONER'S BRIEF IN SUPPORT OF ITS EXCEPTIONS TO THE  
SUPPLEMENTAL DECISION ON OBJECTIONS  
BY THE ADMINISTRATIVE LAW JUDGE**

**INTRODUCTION**

The Petitioner, International Brotherhood of Teamsters, Local 671 ("Local 671" or "Petitioner"), submits the following brief in support of its exceptions to the Supplemental Decision on Objections (attached) of Administrative Law Judge Joel P. Biblowitz ("ALJ").

In its Decision and Order Remanding, dated September 29, 2008, the Board remanded to the ALJ two issues relating to the two objections to an election that had been submitted by FedEx Home Delivery ("FedEx" or "Employer"). In reference to Objection 2, the Board, in its remand, stated as follows:

Although the judge correctly stated that the party seeking to exclude an employee from the unit, in this case the Employer, bears the burden of proof, it was error for the judge to preclude litigation of this changed-circumstances issue and then to find that the Employer failed to meet its burden. Accordingly, we remand the Employer's Objection 2 to the judge to take evidence and make appropriate findings as to whether the challenges to the ballots of Chiappa and Dizinno would

have been sustained based on changed job circumstances, and if so, whether the Board agent's error affected the election.

A hearing on remand was held on January 20, March 13 and April 13, 2009. On May 22, 2009, the ALJ issued his Supplemental Decision on Objections. In that decision, the ALJ reaffirmed his earlier recommendation that Employer Objection No. 1 be overruled. The ALJ, however, found that the vote of Robert Dizinno should not have been counted because of changed circumstances between the close of the representation hearing on March 2, 2007, and May 11, 2007, the date of the election.

Based on this finding, the ALJ made the following recommendation concerning Employer Objection No. 2:

Based upon the above, I find that it was error for the Board agent to open count and commingle Dizinno's ballot with the other ballots, despite the Employer's continuing challenge to Dizinno's ballot. However, I have also found that changed circumstances did not affect Chiappa's inclusion in the unit and while it would have been more appropriate not to open, commingle and count his ballot, it was harmless error to do so. Because the vote was 12 for the Petitioner and 9 against the Petitioner, with 2 other challenged ballots, I cannot determine whether the Board agent's error in opening, commingling and counting Dizinno's ballot affected the election. I recommend that the Regional Director determine the eligibility of the remaining two challenged ballots. If one or both of them are found to be eligible, their ballot(s) should be opened and counted. On the other hand, if neither of them are found to be eligible then the three vote difference establishes that the error regarding Dizinno's vote could not have affected the result of the election.

Decision, p. 8, lines 19-30.

## **ARGUMENT**

In his Supplemental Decision on Objections, the ALJ concluded that: "The sole basis in the DDE for finding that Dizinno should be included in the unit was the mailbox and discussions issue, and the credible testimony of Durette and Finch establishes that those factors have changed since the hearing. I therefore find that the evidence

establishes that since the hearing, Dizinno's situation has changed sufficiently to make him an ineligible employee, and the Board agent should not have opened, commingled and counted his ballot." Decision, p. 8, lines 10-15.

As discussed below, the ALJ's ultimate conclusion as well as all of his supporting conclusions and findings on this issue, whether expressly stated or implied, are unsupported by the record and/or are contrary to established Board law.

**A. The "mailbox" and "discussions issue" were not the "sole basis in the DDE for finding that Dizinno should be included in the unit."**

In the DDE, the Regional Director concluded that Chiappa was not a supervisor, in general, nor the supervisor of Dizinno, in particular. The Regional Director's findings and conclusion on the supervisor issue were summarized on pages 30 & 31 of the DDE (attached) where he states as follows:

Based upon the foregoing and the record as a whole, I find that the Employer has failed to satisfy its burden of establishing that contract driver Paul Chiappa possesses and exercises supervisory authority within the meaning of Section 2(11) of the Act. In reaching this conclusion, I note the undisputed absence of any evidence that Chiappa has the authority, in the interest of the Employer, to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward or discipline other employees, or responsibility to direct them, or to adjust their grievances, or to effectively recommend any of these actions using independent judgment.

The Employer supports its claim that Chiappa is a supervisor solely on the basis that Chiappa executed the Agreement covering the Manchester route that is currently operated by Dizinno, and that Chiappa receives the settlement check from the Employer covering Dizinno's route and then remits that check in full to Dizinno.

Contrary to the Employer's contention, the evidence clearly establishes that Chiappa executed the Agreement covering Dizinno's Manchester route only as a favor to the Employer and Dizinno, and not in order to partake in any proceeds generated by that route, or to assume any responsibility for the supervision of that route. More significantly, there is no evidence that Chiappa has ever possessed or exercised any supervisory authority vis-à-vis Dizinno in the operation of the Manchester route. Indeed, the evidence shows that the employer treats Dizinno as a contract driver and not as Chiappa's employee. In this regard, from 2004

through the present, the Employer has directly supervised Dizinno in his performance of the Manchester route, has never discussed any issues related to Dizinno's route with Chiappa, and, until the second day of the instant hearing, maintained a separate contract driver's mailbox for Dizinno at the Hartford Terminal.

As is obvious from the above, the mailbox and discussions issue were noted by the Regional Director in relationship to the question of whether Chiappa was a supervisor of Dizinno. However, the ALJ specifically and correctly concluded, in his supplemental decision, that "the Employer [had] established no change in circumstances to Chiappa's job responsibilities" (Decision, p. 7, lines 20-21) during the remand hearing and that, as such, the "changed circumstances did not affect Chiappa's inclusion in the unit..." Decision, p. 8, lines 21-22.

Accordingly, the ALJ's decision to exclude Dizinno based on so-called changed circumstances had to be based on the ALJ's erroneous belief that the alleged changed circumstances, *i.e.* the mailbox and the discussions issue, somehow negated the Regional Director's determination that Dizinno shared a community of interest with the other drivers.

However, in concluding that Dizinno shared a community of interest with the other drivers, the Regional Director did not rely on, or even mention, either the mailbox or the discussions issue:

I further find, contrary to the Employer's contention, that Dizinno shares a sufficient community of interest with the petitioned-for contact drives. In this regard, in assessing the appropriateness of any proposed unit, the Board considers a variety of community of interest factors, including the amount of wages and method of payment, employee benefits, hours of work, employee skills and functions, degree of functional integration, interchangeability and contact among employees, and whether the employees have common supervision, work sites, and other terms and conditions of employment. *Kalamazoo Paper Box Corp.*, 136 NLRB 134 (1962).

Here the record unequivocally establishes that Dizinno works out of the same Hartford terminal as do all other contract drivers, performing the same function for the Employer. Dizinno reports to the same terminal management, begins his work day at that terminal at the same approximate start time as other contract drivers, and is subject to the same policies and practices as all other contract drivers, including customer service rides and driver release audits. Dizinno also undergoes the same training and receives the full settlement amount for the Manchester route that he solely operates. Based upon the foregoing and the record as a whole, I shall include Dizinno in the petitioned-for Unit. DDE at pages 31-32.

In light of the above, the ALJ's conclusion, in his Supplemental Decision on Objections, that the "sole basis in the DDE for finding that Dizinno should be included in the unit was the mailbox and discussions issue" is inexplicable and plainly wrong. Indeed, not only were the mailbox and discussions issue not the "sole basis in the DDE for finding that Dizinno should be included in the unit," they were not even a factor considered by the Regional Director in concluding that Dizinno should be included in the unit.

Given that FedEx, during the hearing on remand, did not introduce any evidence of changed circumstances that relates, in any manner, to the factors considered and relied upon by the Regional Director in determining that Dizinno shared a community of interest with the other unit drivers, the ALJ's ultimate conclusion that "the Employer has sustained [its] burden" that "the changed circumstances have been sufficient to now exclude Dizinno from the unit" (Decision, p. 8, lines 8-10) is plainly wrong.

**B. There was no evidence of "changed circumstances" relating to either the mailbox or the discussion issue.**

In reference to Objection 2, the Board, in its remand, stated as follows:

Although the judge correctly stated that the party seeking to exclude an employee from the unit, in this case the Employer, bears the burden of proof, it was error for the judge to preclude litigation of this changed-circumstances issue and then to find that the Employer failed to meet its burden. *Accordingly, we remand the*

*Employer's Objection 2 to the judge to take evidence and make appropriate findings as to whether the challenges to the ballots of Chiappa and Dizinno would have been sustained based on changed job circumstances, and if so, whether the Board agent's error affected the election.* Emphasis added.

It is well-settled that a party is not allowed to relitigate issues resolved during the representation hearing through the challenged ballot proceedings. *See, e.g., Bennett Industries, Inc.*, 313 NLRB 1363, 1363 (1994). Accordingly, in the absence of changed circumstances, arguments considered and rejected in the representation proceeding must fail. *See, e.g., Carry Companies of Illinois, Inc.*, 310 NLRB 860, 860 (1993). As detailed below, the ALJ, in his Supplemental Decision on Objections, in effect, allowed FedEx, improperly, to relitigate an issue settled in the representation proceeding through the challenged ballot/objections proceeding in the absence of any evidence of changed circumstances.

In this regard, and as discussed above, the ALJ, in his Supplemental Decision on Objections, concluded that the “sole basis in the DDE for finding that Dizinno should be included in the unit was the mailbox and discussions issue, and the credible testimony of Durette and Finch establishes that those factors have changed since the hearing.” Decision, p. 8, lines 10-12. However, the record does not support the ALJ’s conclusion/finding that either of these factors “changed” between the close of the hearing on March 2, 2007, and May 11, 2007, the date of the election.

First, as specifically noted in the Regional Director’s DDE 9 (at page 31), Dizinno’s name was removed from the mailbox on February 27, 2007, well before the close of the representation hearing. Based on this fact, the ALJ’s conclusion that Dizinno’s name being removed from the mailbox represented a changed circumstance that occurred after the close of the hearing is inexplicable; and, in fact, the ALJ never

even attempts, in his Supplemental Decision on Objections, to offer a rationale for his conclusion.

Second, as noted by the ALJ, FedEx, during the remand hearing, introduced two Contract Discussion Notes (Employer Exhibits 15 & 16) (attached) that were dated March 28 & 29, 2007, and that reflected discussions between Chiappa and management regarding the route operated by Dizinno. The full texts of these two notes are as follows:

03/28/007

SH) Paul, what is the issue with Bobby? 6 packages were DNA'd yesterday.

PC) I have no idea.

SH) The biggest thing we offer as a company is service. 6 customers did not get serviced yesterday and that is bad for our business.

PC) I'll talk to Bobby but I really don't know.

03/29/07

SH) Paul, Bobby had 5 DNA's yesterday, did he tell you anything was wrong?

PC) I have no idea why he would have DNA's. You would have to ask him.

SH) Paul, you are the contractor and any issues with your driver must be handled through you.

PC) I don't know why he dna'd them.

However, as also noted by the ALJ, Petitioner Exhibit 3 (attached) is a similar document dated December 21, 2006, which was well before the representation case had even begun. The full text of that document is as follows:

12/22/06

I: Paul, your driver Bobby DNA'd 64 pkgs during his CSR yesterday. Do you have anything to say about that?

PC: Not really. That's what we told you would happen if we did the CSR you wanted to do.

As can be observed from the above quoted documents, there is no substantive difference between Employer Exhibits 15 & 16 and Petitioner Exhibit 3. While Petitioner 3 is inconsistent with the Regional Director's statement, in his DDE, that "the Employer ... ha[d] never discussed any issues related to Dizinno's route with Chiappa" (DDE at page 31), Petitioner 3 fatally undermines FedEx's contention that Employer Exhibits 15 & 16 represent changed circumstances that occurred after the close of the hearing on March 2, 2007 – the issue to be considered and decided on remand.

Once again, the ALJ, in his Supplemental Decision on Objections, does not even attempt to reconcile the existence of Petitioner Exhibit 3 with his conclusion that Employer Exhibits 15 & 16 establish that, in relation to the discussions issue, that factor "[had] changed since the hearing" (Decision, p. 8, line 12); and it is clear that the ALJ's conclusion is plainly wrong.

**C. The ALJ incorrectly concluded that, if one of the two additional challenged ballots is determined to be eligible, that ballot should be opened and counted.**

In its Decision and Order Remanding, the Board, in relation to Objection 2, also instructed that: "[W]e remand the Employer's Objection 2 to the judge to take evidence and make appropriate findings as to whether the challenges to the ballots of Chiappa and Dizinno would have been sustained based on changed job circumstances, *and if so, whether the Board agent's error affected the election.*" Emphasis added.

In his Supplemental Decision on Objections, the ALJ correctly notes that the "vote was 12 for the Petitioner and 9 against the Petitioner, with 2 other challenge ballots." Decision, p. 8, lines 23-24. If the ALJ's conclusion that Dizinno's vote should

not have been counted is upheld, the vote margin in favor of the Petitioner would be effectively reduced from 3 votes to 2 votes. As such, if only one of the two additional challenged ballots is deemed eligible, there would be no reason to open and count that ballot as the ballot could not be determinative.

### CONCLUSION

Based on the foregoing, IBT, Local 671, the Petitioner herein, respectfully states that its exceptions should be granted and the election results affirmed.

Respectfully submitted,  
**Teamsters Local 671,**  
By its Attorney,



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June 2, 2009

### CERTIFICATE OF SERVICE

The undersigned attorney of record hereby certifies that a copy of International Brotherhood of Teamsters, Local Union No. 671 Exceptions to the Supplemental Decision on Objections and its Brief in Support thereof, this day have been served via email on Doreen S. Davis, Esq., Morgan, Lewis & Bockius LLP, 1701 Market Street, Philadelphia, PA 19103, and via facsimile and first class mail on Peter B. Hoffman, Regional Director and on Rick Conception, Esq., both at The National Labor Relations Board, Region 34 Offices, 280 Trumbull Street, Floor 21, Hartford, CT, 06103.



June 3, 2009

Gabriel O. Dumont, Jr.

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
DIVISION OF JUDGES  
NEW YORK BRANCH OFFICE

FEDEX HOME DELIVERY, AN OPERATING DIVISION  
OF FEDEX GROUND PACKAGE SYSTEMS, INC.  
Employer

And

34-RC-2205

INTERNATIONAL BROTHERHOOD  
OF TEAMSTERS, LOCAL 671  
Petitioner

*Richard Hughes, Esq., John Ferrer, Esq. and Doreen Davis, Esq., Morgan, Lewis & Bockius, LLP, for the Employer.*

*Gabriel Dumont, Esq., Dumont, Morris & Burke, P.C., for the Petitioner.*

*Rick Concepcion, Esq., Counsel for the Regional Director.*

**SUPPLEMENTAL DECISION ON OBJECTIONS**

**Joel P. Biblowitz, Administrative Law Judge:** This hearing took place in Hartford, Connecticut on January 20, 2009 and April 13, 2009, and in Boston, Massachusetts on March 13, 2009 pursuant to a Decision and Order Remanding issued by the Board on September 29, 2008. By Decision and Direction of Election (DDE) dated April 11, 2007, the Regional Director for Region 34 found that the Employer was an employer within the meaning of the Act, that it would effectuate the purposes of the Act to assert jurisdiction, and rejected the Employer's argument that the petitioned for contract-drivers were independent contractors within the meaning of Section 2(3) of the Act and found, rather, that they were employees within the meaning of the Act. The Decision also found that Robert Dizinno shared a community of interest with the other contract drivers, and that the Employer failed to satisfy its burden that Paul Chiappa was a supervisor within the meaning of Section 2(11) of the Act.

At a secret ballot election conducted on May 11, 2007, the ballots were impounded because the Employer filed a Request for Review of the April 11, 2007 DDE. The Board denied the Employer's Request for Review by Order dated May 22, 2007 and the tally of ballots took place at the Board's regional office on June 1, 2007, with the result that 12 votes were cast for the Petitioner, 9 votes were cast against the Petitioner, and as there were 2 challenged ballots, challenges were not determinative. On June 8, 2007 the Employer filed the following Objections to Election on June 8, 2007:

1. During the critical period before the representation election on May 11, 2007, Teamster Union Local 671, Affiliated with IBT ("Union"), by and through its agents and others with whom it acted in concert, improperly conferred valuable benefits, including legal services, to eligible voters and caused two civil actions on their behalf to commence in the U.S. District Court for the District of Connecticut. The civil actions identify six (6) voters as named plaintiffs. The Union's conduct constitutes, among other things, an impermissible benefit that interfered with laboratory conditions necessary to conduct a free and fair election.
2. At the election, the Company challenged the ballots cast by Paul Chiappa and Robert Dizinno, including for the reason that certain circumstances had changed since the time

when the petition was filed. Before the Region counted the ballots, the Company notified the Board Agent that it maintained its challenge to the ballots of Chiappa and Dizinno for the reasons stated previously, and it objected to the Region opening and commingling their ballots without first (1) counting the unchallenged ballots to determine whether all  
 5 challenged ballots were outcome determinative and (2) if so, giving the Company an opportunity to present evidence in support of its challenges, conducting an investigation, and then making a determination as to Chiappa's and Dizinno's eligibility. Over the Company's objection, the Board Agent opened and counted the challenged ballots of Chiappa and Dizinno; however, he did not open and count the other two challenged  
 10 ballots (one by the Union and one by the Company). The count yielded 12 votes for the Union and 9 votes for no union. The Board Agent's conduct in prematurely opening and counting challenged ballots was improper.

The Union and Board Agent's conduct was improper and affected the outcome of the election, which turned on three votes (two of which should not have been counted without an investigation). For these reasons and the additional reasons that the Region and the Company might discover, the Company requests that the results of the election in the above-captioned matter be set aside.  
 15

In my Decision on Objections, I recommended that the Employer's objections be overruled and that the Regional Director issue an appropriate certification. The Board's Decision and Order Remanding found that I erred in failing to admit and consider certain evidence that is necessary and relevant in determining the merits of each objection.  
 20

#### Objection No.1 25

In my Decision on Objections, I found that the Union did not initiate or pay any part of the legal fees of the lawsuit brought by the unit employees against the Employer and therefore the Union did not confer any valuable benefits to the employees, as alleged in Objection 1, and I therefore recommended that the objection be overruled. In its Order Remanding, the Board stated, *inter alia*:  
 30

By limiting the evidence here solely to the question of whether the Union directly financed the Connecticut lawsuits, the judge failed to develop a complete record on the objectionable benefits issue, i.e., did the Petitioner arrange or take credit for the  
 35 provision of free legal services for unit employees contingent on a favorable outcome for the Petitioner in the election or, for that matter, on individual plaintiffs' votes for the Petitioner?

The Board remanded the case to me to "reopen the record to admit additional evidence and make appropriate findings concerning the Petitioner's involvement in the arrangement of legal services and what its agents said to unit employees about those services."  
 40

Pursuant to the Remand, unit and non-unit employees testified, as did Union representatives and lawyers involved in the employees' lawsuits against the Employer. I should initially note that the witnesses in this supplemental hearing about Objection No. 1 were  
 45 "reluctant witnesses" and, in some cases, more hostile than that. They had all been subpoenaed to testify by the Employer and were either plaintiffs in lawsuits against the Employer, union representatives involved in organizing the Employer's employees, or counsel in the lawsuits against the Employer. Not surprisingly, their displeasure at being subpoenaed and testifying as  
 50 witnesses for the Employer was clearly evident. Although they clearly did not go out of their way to strengthen the Employer's case, I find no other evidence, or reason, to discredit their

testimony. I also decline to find an adverse inference against the Petitioner, as argued by counsel for the Employer in its brief.

5 William Gardner, who is employed by the Employer at its Boston facility, and is a union steward for Teamsters, Local 25, attempted to assist the Petitioner in its organizing drive at the request of Steve Sullivan, the Local 25 Director of Organizing. In this regard, he attended a meeting that the Petitioner conducted on February 25, 2007 at its union hall. He testified that about five unit drivers were present at the meeting and he made the drivers "aware" of the lawsuit against the Employer. After the meeting, Gardner sent an e-mail to Anthony Lepore, 10 president and organizer for the Petitioner, saying that he had spoken to their class action attorney, presumably attorney Maydad Cohen, saying that the attorneys would like to speak by telephone to any driver who would be interested in becoming plaintiffs in the lawsuit. Gardner also attended the Petitioner's meeting just prior to the election. Between eight and fifteen unit drivers attended this meeting, but he did not speak at this meeting and cannot recall any 15 discussion of the lawsuit at this meeting. Shortly thereafter, Sullivan sent an e-mail to Gardner asking him to call twelve unit employees. Pursuant to that request, he spoke to at least two of the drivers, told them that at the election for the Boston unit the Employer tried to intimidate the employees, that they should stick together, and asked if they had any questions. He does not recall any discussion of the lawsuit against the Employer in any of these telephone 20 conversations.

Lepore testified that drivers and union representatives from the Boston unit attended two of the Petitioner's pre-election meetings, but he does not recall any discussion about the private lawsuit. Sullivan testified that Lepore asked him to have some of the Boston unit drivers contact 25 the Hartford unit drivers shortly prior to the election, and Sullivan asked Gardner and Wayne and Cathy Curran to call some of the voters to tell them that it was okay to vote for the Union. He also e-mailed Gardner and asked him to attend the meeting conducted by the Petitioner prior to the election. Sullivan testified further that Local 25 paid Gardner on three occasions after the election covering the Boston unit of the Employer. These payments were made to Gardner 30 in 2006 and 2007 because he spent a lot of time assisting him in organizing the Boston unit, and in defending the objections to the election that were filed by the Employer in that election. Sullivan was asked:

35 Judge Biblowitz: Did that have any connection at all with the Hartford election?

The Witness: Absolutely not.

40 Local 25 paid Gardner wages of \$524 in 2007. He had no recollection of when he received this money or for what period the wages were meant to cover. He received this money because: "I made myself available to the Teamsters" during that period and assisted the Teamsters in area organizing drives involving the Employer and "I basically was available for anything that they needed."

45 Chiappa testified that he attended the Petitioner's meeting on February 25, 2007. Lepore and Lucas attended for the Petitioner, but he was not certain whether Gardner, Welker or Sullivan attended. Lepore and Lucas spoke at this meeting, saying that they were trying to get the Teamsters elected and get a contract covering the Hartford drivers. He does not recall the lawsuits involving the Employer being discussed. At the next meeting on March 25, he, Dizinno, Lepore, Lucas and some other unit drivers were in attendance; he does not recall whether 50 Gardner, Welker or Sullivan attended this meeting, and does not recall any discussion regarding the Fedex lawsuit. Lepore and Lucas spoke about the upcoming election and the hope that the employees would be covered by a contract with the Employer. On April 16, 2007 Chiappa

signed a retainer agreement with the Pyle Rome law firm, and the Hayber and Pantuso law firms. He believes that he signed it at the Hayber office together with Dizinno, and fellow employees Dave Trojanowski, Neville Edwards and Thomas Magno. Gardner, Sullivan, Lucas and Lepore were not there. He learned about Hayber and Pantuso from Dizinno. The upcoming Board election was not discussed at that meeting, and he cannot recall any communications from either of these law firms between that meeting and the election. He attended the final Union meeting prior to the election. Gardner, Sullivan and a few other Boston unit drivers were present at this meeting. Gardner did not talk about the Fedex lawsuit; all he said was that the Boston drivers had already elected the Teamsters as their bargaining representative. Edwards testified that he signed his retainer on the same day as Chiappa with the same individuals present and that he also learned about the Hayber law firm from Dizinno. Ignasiak signed his retainer agreement on March 16, 2007 with Chiappa, Dizinno, Edwards, Trojanowski, Magno and Anderson present, together with attorney Hayber and an attorney from Pyle Rome. The Board election was not discussed at this meeting, and none of the union representatives were present at the meeting. Trojanowski testified that he attended four or five union meetings prior to the election, but cannot remember the dates of the meetings. He does not remember any of the Boston drivers speaking at any of these meetings and does not know Gardner. Welker attended one or more than one meeting, but he does not remember anything that Welker said at these meetings. He signed the retainer agreement together with the other unit employees at the Hayber law firm on April 16, 2007. There were no discussions of the election at this meeting.

David Welker, had been employed by the International Brotherhood of Teamsters for three years until January 2009 as senior strategic research and campaign coordinator. In that capacity, he coordinated Teamster organizing campaigns, assisted local unions in organizing campaigns, and was in charge of the Fedex project, which was intended to publicize the Employer's operation and the MDL (Multi-District Litigation) lawsuits against Fedex. A principal aim of the Fedex Project was to publicize what the Union considered the unfairness of the Employer's labor relations policies, especially to its drivers. He testified to some limited contact with the lawyers representing the drivers in the MDL lawsuit in 2006, prior to any of the Hartford drivers joining the lawsuit, and he spoke with Maydad Cohen, an attorney involved in the lawsuit, at the initial hearing on Objections in July 2007. He prepared and distributed campaign material to the local unions to be distributed to the drivers to notify them about the lawsuits in order to encourage them to contact the attorneys handling the lawsuits. He was questioned extensively about his participation in this program and the information and e-mails that he transmitted to Local 671 and Local 25, in particular. Letters and leaflets were sent to the Petitioner as well as other Teamster local unions in 2006 and 2007. These unions were asked to distribute the leaflets and to participate in the union's "Don't sit out the fight campaign" that was directed at the Employer. An essential part of the letters and distributions was to notify the members (especially those who were employed by the Employer) of the website maintained to keep the employees notified about the lawsuits maintained against the Employer. One of the leaflets distributed to the local unions in May 2006 states, *inter alia*: "The drivers' lawsuit will end the talk and force action on truck payments, benefits, overtime and work rules. The law is clear and strong. The law is on the drivers' side. Contact the lawyers. Add your voice." On July 25, 2006, the International wrote a letter to the Petitioner stating, *inter alia*: "I'd like to ask for your participation in the next stage in our campaign to support the drivers at FedEx Ground/Home Delivery. The drivers' legal fight to end the 'contractor' classification at FedEx is reaching a critical stage. The more drivers that step forward to join in the legal fight will mean a better chance of victory in the courts."

Welker spoke at the Petitioner's meeting in December 2006 and gave the employees information about the MDL lawsuit, including a one-page handout regarding the plaintiffs' lawyers and the website referencing the lawsuit. At the February and May 2007 meetings, he

discussed developments in the lawsuit and told them to go to the website to obtain more information. He also said that the union was not a party to the lawsuit and was not involved in funding or directing the lawsuit. On June 4, 2007, Welker sent an e-mail to Gardner entitled: "BIG WIN", stating: "Definitely a big step forward. CT guys did what they said they'd do- win the election, file claims with the state govt and join the MDL..." He testified that Dizinno was the only unit employee with whom he could remember directly discussing the lawsuit. Dizinno told him that he wanted to pursue the lawsuit and Welker told him that it was up to him. In addition, at the May 7, 2007 meeting, Lepore told him that there was a positive reaction among the drivers to the lawsuit.

As stated above, most of the unit employees who agreed to participate in the lawsuit against the Employer executed retainer agreements on about April 17, 2007; the resulting lawsuit was filed on May 22, 2007. Attorney Maydad Cohen testified that sometime after the Petitioner's February meeting attended by Gardner, he received telephone calls from Dizinno, Chiappa and two or three other unit employees asking about the lawsuit. He does not know whether they got his name and telephone number from Gardner, from the lawsuit website, or from some other source. He obtained their employment information and their employment status and told them of the existence of the Massachusetts lawsuit as well as the MDL lawsuit. He also attended a meeting at Attorney Hayber's office with Dizinno, Chiappa and other unit employees where retainer agreements were either discussed or signed.

Amidst all of this testimony about union meetings, meetings between lawyers and the unit drivers, and e-mails and literature that Welker sent to the local unions in support of its campaign against the Employer, it is important to focus on the specific issue that the Board remanded to me: "did the Petitioner arrange or take credit for the provision of free legal services for unit employees contingent on a favorable outcome for the Petitioner in the election or, for that matter, on individual plaintiffs' votes for the Petitioner?" [Emphasis added] As to the first part of this Order, there is no evidence that the Petitioner arranged, or took credit, for the free legal services. The unit employees knew that the lawyers involved in the cases were handling the lawsuits on a complete contingent fee basis without any involvement of the Petitioner. The sole evidence in this regard is that both Welker and Gardner publicized (at the Petitioner's meetings and on the union websites) and made the unit employees aware of the lawsuits, and even encouraged them to contact the lawyers handling the lawsuit. However, even if the evidence had established that the Petitioner arranged for, or took credit for, the free legal services, the Board remand also required that the provision of free legal services was contingent on a union victory in the election or individual employee votes, and there was not a scintilla of evidence of that. I find no merit to this objection, and I therefore recommend that Objection No. 1 be overruled.

#### Objection No. 2

In my Decision, I recommended that Objection 2 be overruled, finding that the Employer did not satisfy its burden of establishing a change of circumstances in the job responsibilities for employees Paul Chiappa and Robert Dizinno from the close of the hearing to the date of the election on May 11, 2007, and that the region properly opened and counted their ballots on June 1, 2007. The Board, however, found that the Board agent erred by commingling the ballots cast by Chiappa and Dizinno prior to any consideration of the merits of the Employer's claim that changed circumstances justified the challenge to those ballots and remanded the hearing to me to take evidence and make appropriate findings as to whether the challenges to these ballots would have been sustained based upon changed job circumstances of Chiappa and Dizinno and if so, whether the Board agent's error affected the election.

David Durette, who is employed by the Employer as a senior manager at its Manchester, New Hampshire terminal, and Ray Finch, who is employed by the Employer as senior manager, contractor relations for the northeast and New England areas, testified for the Employer regarding Objection No. 2. Durette, whose jurisdiction includes the Hartford terminal involved herein, testified that in early February 2007, prior to the representation hearing herein, he had a conversation with Scott Hagar, the senior manager for the Hartford facility. It came about because, while at the facility, he observed that Chiappa, who was the contractor who had contracted with the Employer, had a mailbox at the facility (which was appropriate), but that Dizinno, who was the contractor retained driver who was retained by Chiappa to assist him with his routes, also had his own mailbox with his name on it (which Durette testified was not appropriate), and he told Hagar that names on the mailboxes needed to be corrected to reflect the contractor's name only, whether an individual or a corporation. When Durette next visited the facility he observed that Dizinno's name was no longer on the mailbox. He testified that during his employment with the Employer, a contractor retained driver was never allowed to have his name on a mailbox at the facility where he/she was employed. Durette further testified that senior managers or contractor relations managers sometimes have "business discussions" with the contractors to discuss their operation, either positive or negative, or to discuss concerns about their operation. At the same time that he told Hagar about the mailboxes, he also told him that these business discussions are to be between him and the contractor, not the contractor retained driver. He spoke to Hagar about this because he learned that Hagar had a business discussion with Dizinno.

Finch, also testified that only contractors are allowed to have mailboxes at the Employer's facilities; contractor retained drivers are not permitted their own mailboxes and to his knowledge, none have had mailboxes of their own. He further testified that the terminal managers would generally have business discussions only with the contractor. However, daily package coordination issues do not rise to the level of business discussions and in those situations the terminal manager could have discussions with the driver. The Employer introduced into evidence two Contract Discussion Notes dated March 28 and March 29 between Hagar and Chiappa. In each, Hagar complained to Chiappa that there were DNAs (apparently, a failure to deliver) on Dizinno's route on the prior day and Chiappa responded that he had no idea what happened. Hagar told Chiappa that it looks bad for the Employer when that occurs and that Chiappa was responsible for correcting it.

In its remand of Objection No. 2, the Board stated:

Absent evidence about the alleged pre-election change in the job circumstances for Chiappa and Dizinno, we cannot determine whether the opening of the ballots improperly affected the election results...it was error for the judge to preclude litigation of this changed-circumstances issue and then to find that the Employer failed to meet its burden.

The party seeking to exclude an employee from the unit, in this case the Employer, bears the burden of proving that the employee(s) should not be permitted to vote. *NLRB v. Kentucky River Community Care, Inc.*, 532 U.S. 706 (2001); *Nurses United for Improved Patient Healthcare*, 338 NLRB 837 (2003). It follows that it is the Employer's burden to establish that changed circumstances in the employees' jobs from the hearing to the date of the election support its argument that they should no longer be included in the unit. The sole evidence produced by the Employer to support this burden was the testimony of Durette and Finch that in early February 2007, they told Hagar that only direct employees such as Chiappa, could have their names on mailboxes at the facility, and that since Dizinno was a contractor retained driver, he could not have his name on a mailbox, and Hagar complied with this order. They also told

Hagar that major business discussions should only be between the supervisor and the directly employed driver, not with contractor retained drivers.

5 In order to determine whether the Employer has satisfied its burden of a sufficient  
change in job circumstances of Chiappa and Dizinno so that they should be excluded from the  
unit, thereby making the commingling of their ballots objectionable conduct, it is necessary to  
determine the basis of the Regional Director's DDE to determine why he included Chiappa and  
10 Dizinno in the unit. As regards Chiappa, although the DDE excludes multiple route contract  
drivers, and Chiappa executed an agreement covering Dizinno's Manchester route, he was  
included in the unit, apparently because it was found that he was not a traditional multi route  
contract driver. Rather, he agreed to the second route because Dizinno, a friend of his, was  
about to be hired by the Employer as a contract driver, but was unable to purchase a delivery  
vehicle because of poor credit. At the suggestion of the terminal's manager, and "as a favor to  
15 the Employer" Chiappa executed the agreement allowing Dizinno to cover what became his  
Manchester route. There was a further understanding "that any supervisory issues that arose  
would be strictly between Rogers [the manager of the facility] and Dizinno." The only further  
discussion of Chiappa in the DDE, is the finding that there is no evidence that he possessed or  
exercised any supervisory authority toward Dizinno and therefore the Employer had failed to  
20 satisfy its burden of establishing that he was a supervisor within the meaning of Section 2(11) of  
the Act, and he was therefore included in the unit. As the Employer has established no change  
in circumstances to Chiappa's job responsibilities, I find that it remains the same, and that he  
was, and is, an eligible voter.

25 As regards Dizinno, the Employer alleges that the testimony of Durette and Finch  
regarding removing Dizinno's name from his mailbox and that business discussions should be  
with Chiappa, rather than Dizinno, represent a sufficient change of circumstances to remove  
Dizinno from the unit. Like the situation with Chiappa, this determination demands a close  
reading of the DDE to determine why Dizinno was included in the unit. The Employer, in his  
30 brief, alleges that Dizinno was included in the unit because at one point prior to the election, his  
name was on a mailbox at the facility, and also prior to the election, the Employer had business  
discussions with him, rather than Chiappa, about delivery problems on his route. As stated by  
counsel for the Employer, the DDE discusses the mailbox and business discussions under the  
classification: "Supervisory Status of Paul Chiappa and Unit Status of Robert Dizinno." The  
35 concluding paragraph of this subject states:

Beyond the dynamics of the business relationship between Chiappa and Dizinno, it  
appears that the Employer treats Dizinno as a contract driver in his own right. In this  
regard, unlike its treatment of other drivers hired by and working for contract drivers, the  
Employer conducts all discussions regarding the Manchester route directly with Dizinno,  
40 not with Chiappa. Such discussions include customer service issues and the amounts  
that are due to temporary and supplemental drivers used by Dizinno for the Manchester  
route during the peak season. In addition, at its Hartford Terminal, the Employer  
maintains mailboxes for all its contract drivers, but not for other drivers, so that contract  
drivers can receive direct Employer communications regarding a number of route-related  
45 matters. From November 2004 through February 2007, the Employer maintained  
separate mailboxes for Chiappa and Dizinno. On February 27, 2007, the second day of  
the hearing in the instant matter, Dizinno's name was removed from his mailbox without  
explanation.

50 The Employer argues that these two factors relied upon by the Regional Director have  
been nullified by the March 28 and March 29, 2007 Contract Discussion Notes and by the  
removal of Dizinno's name from his mailbox, as directed by Durette and Finch. Counsel for the

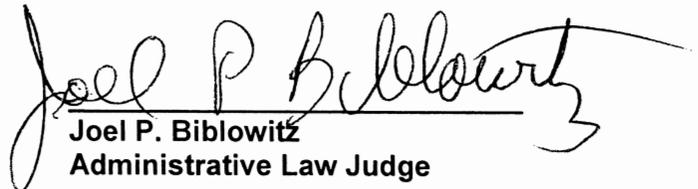
Petitioner counters that, as stated in the DDE, his name was removed from the mailbox during the hearing, and the Contract Discussion Notes introduced by the Employer are neutralized by a similar note from Hagar to Chiappa, dated December 22, 2006, complaining about some packages that Dizinno apparently did not deliver on his route. In addition, Finch testified that on some less important issues, such as daily package coordination, the terminal manager could have discussions directly with the driver.

The ultimate question is whether the Employer has satisfied its burden that the changed circumstances have been sufficient to now exclude Dizinno from the unit. Reluctantly<sup>1</sup> I find that the Employer has sustained that burden as to Dizinno. The sole basis in the DDE for finding that Dizinno should be included in the unit was the mailbox and discussions issue, and the credible testimony of Durette and Finch establishes that those factors have changed since the hearing. I therefore find that the evidence establishes that since the hearing, Dizinno's situation has changed sufficiently to make him an ineligible employee, and the Board agent should not have opened, commingled and counted his ballot.

### Conclusions

Based upon the above, I find that it was error for the Board agent to open, count and commingle Dizinno's ballot with the other ballots, despite the Employer's continuing challenge to Dizinno's ballot. However, I have also found that changed circumstances did not affect Chiappa's inclusion in the unit and while it would have been more appropriate not to open, commingle and count his ballot, it was harmless error to do so. Because the vote was 12 for the Petitioner and 9 against the Petitioner, with 2 other challenged ballots, I cannot determine whether the Board agent's error in opening, commingling and counting Dizinno's ballot affected the election. I recommend that the Regional Director determine the eligibility of the remaining two challenged ballots. If one or both of them are found to be eligible, their ballot(s) should be opened and counted. On the other hand, if neither of them are found to be eligible then the three vote difference establishes that the error regarding Dizinno's vote could not have affected the result of the election.<sup>2</sup>

**Dated, Washington, D.C. May 22, 2009**

  
**Joel P. Biblowitz**  
**Administrative Law Judge**

<sup>1</sup> I say reluctantly because the election took place two years ago.

<sup>2</sup> Under the provisions of Sec. 102.69 of the Board's Rules and Regulations, exceptions to this Report may be filed with the Board in Washington, DC within 14 days from the date of issuance of this Report and Recommendations. Exceptions must be received by the Board in Washington by June 5, 2009.

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 34

FEDEX HOME DELIVERY, AN OPERATING  
DIVISION OF FEDEX GROUND PACKAGE  
SYSTEMS, INC.<sup>1</sup>

Employer

and

INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS, LOCAL UNION NO. 671

Petitioner

Case No. 34-RC-2205

**DECISION AND DIRECTION OF ELECTION**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a Hearing Officer of the National Labor Relations Board. Pursuant to Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned. Upon the entire record in this proceeding,<sup>2</sup> I find that: the Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction; the labor organization involved claims to represent certain employees of the Employer; and a question affecting commerce exists concerning the representation of certain employees of the Employer.

I further find that the Hearing Officer's rulings are free from prejudicial error and are affirmed. In this regard, in its post-hearing brief, the Employer requested a hearing *de novo* claiming that the Hearing Officer: 1) wrongly denied the Employer's attempt to introduce certain tax information in support of its claim that disputed driver Paul Chiappa is a supervisor; 2) made "inappropriate off-the-record statements" regarding counsel for the Employer's direct examination of a witness; and 3) "verbally confronted a prospective witness with a provocative attack on his credibility." With regard to the first of these claims, I find that the Hearing Officer correctly excluded the tax information at

<sup>1</sup> The Employer's name appears as corrected at the hearing.

<sup>2</sup> I am receiving into evidence as Board Exhibit 2, a letter dated March 2, 2007 from the undersigned to the Employer's counsel, copies of which were previously served upon the parties.

name of the owner-operators' companies, rather than the employer's name. Although not required to display the employer's advertising on their trucks, many owner-operators did so, in exchange for a fee. Owner-operators were not required to wear employer uniforms, and many had their own company uniforms. There was no guaranteed minimum compensation to minimize the owner-operators' risks, and there was evidence that some owner-operators had negotiated changes in delivery rates with the employer. None of the above-described facts are present in the instant case.

In *Argix Direct*, the Board similarly found owner-operators who delivered the employer's product to be independent contractors. Unlike the instant case, however, the employer in *Argix Direct* did not require that the owner-operator's trucks be of any particular make, model, or color, and required only a small DOT-required sign with the employer's name. The employer also placed no restriction on the use of vehicles for other purposes, owner-operators were free to elect not to accept routes on specific days, and some curtailed their services for the employer one day a week in order to work elsewhere. The owner-operators were not assigned specific routes, and the employer did not guarantee that the owner-operators would receive work each day. The number of routes varied from day to day, so that owner-operators drove for the employer fewer than five days a week most of the year. Owner-operators received no guaranteed income. Moreover, it was common for contractors to operate multiple routes, as five of the contractors owned 20 of the 63 trucks.

Accordingly, based upon the foregoing and the record as a whole, I find that the Employer has failed to satisfy its burden of establishing that contract drivers are independent contractors within the meaning of Section 2(3) of the Act, and I shall include them in the petitioned-for unit.

**B. The supervisory status of Chiappa and the unit status of Dizinno**

It is well established that the burden of proving supervisory status is on the party asserting it. *Kentucky River Community Care v. NLRB*, 532 U.S. 706 (2001); *Oakwood Healthcare, Inc.*, 348 NLRB No. 37, slip op. at 9 (Sept. 29, 2006). Based upon the foregoing and the record as a whole, I find that the Employer has failed to satisfy its burden of establishing that contract driver Paul Chiappa possesses and exercises supervisory authority within the meaning of Section 2(11) of the Act. In reaching this conclusion, I note the undisputed absence of any evidence that Chiappa has the authority, in the interest of the Employer, to hire, transfer, suspend, layoff, recall,

promote, discharge, assign, reward or discipline other employees, or responsibly to direct them, or to adjust their grievances, or to effectively recommend any of these actions using independent judgment.

The Employer supports its claim that Chiappa is a supervisor solely on the basis that Chiappa executed the Agreement covering the Manchester route that is currently operated by Dizinno, and that Chiappa receives the settlement check from the Employer covering Dizinno's route and then remits that check in full to Dizinno.

Contrary to the Employer's contention, the evidence clearly establishes that Chiappa executed the Agreement covering Dizinno's Manchester route only as a favor to the Employer and Dizinno, and not in order to partake in any proceeds generated by that route, or to assume any responsibility for the supervision of that route. More significantly, there is no evidence that Chiappa has ever possessed or exercised any supervisory authority vis-à-vis Dizinno in the operation of the Manchester route. Indeed, the evidence shows that the Employer treats Dizinno as a contract driver and not as Chiappa's employee. In this regard, from 2004 through the present, the Employer has directly supervised Dizinno in his performance of the Manchester route, has never discussed any issues related to Dizinno's route with Chiappa, and, until the second day of the instant hearing, maintained a separate contract driver's mailbox for Dizinno at the Hartford Terminal.

Accordingly, based upon the foregoing and the record as a whole, I find that the Employer has failed to satisfy its burden of establishing that Chiappa is a supervisor within the meaning of Section 2(11) of the Act.

I further find, contrary to the Employer's contention, that Dizinno shares a sufficient community of interest with the other petitioned-for contract drivers. In this regard, in assessing the appropriateness of any proposed unit, the Board considers a variety of community of interest factors, including the amount of wages and method of payment, employee benefits, hours of work, employee skills and functions, degree of functional integration, interchangeability and contact among employees, and whether the employees have common supervision, work sites, and other terms and conditions of employment. Kalamazoo Paper Box Corp., 136 NLRB 134 (1962).

Here, the record unequivocally establishes that Dizinno works out of the same Hartford terminal as do all other contract drivers, performing the same function for the Employer. Dizinno reports to the same terminal management, begins his work day at

that terminal at the same approximate start time as other contract drivers, and is subject to the same policies and practices as all other contract drivers, including customer service rides and driver release audits. Dizinno also undergoes the same training and periodic DOT testing as other contract drivers, and, similar to other contract drivers, receives the full settlement amount for the Manchester route that he solely operates. Based upon the foregoing and the record as a whole, I shall include Dizinno in the petitioned-for Unit.

Accordingly, I find that the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All contract drivers employed by the Employer at its Hartford Terminal; but excluding drivers and helpers hired by contract drivers, temporary drivers, supplemental drivers, multiple-route contract drivers, package handlers, office clerical employees, and guards, professional employees and supervisors as defined in the Act.

#### **DIRECTION OF ELECTION**

An election by secret ballot shall be conducted among the employees in the unit found appropriate herein at the time and place set forth in the notices of election to be issued subsequently.

**Eligible to vote:** those employees in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were in the military services of the United States, ill, on vacation, or temporarily laid off; and employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period, and their replacements.

**Ineligible to vote:** employees who have quit or been discharged for cause since the designated payroll period; employees engaged in a strike who have been discharged for cause since the strike's commencement and who have not been rehired or reinstated before the election date; and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced.

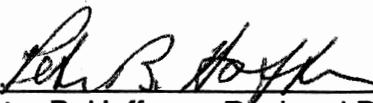
The eligible employees shall vote whether or not they desire to be represented for collective bargaining purposes by International Brotherhood of Teamsters, Local Union No. 671.

To ensure that all eligible employees have the opportunity to be informed of the issues in the exercise of their statutory rights to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within seven (7) days of the date of this Decision and Direction of Election, the Employer shall file with the undersigned, an eligibility list containing the *full* names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359 (1994). The undersigned shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the Regional office, 280 Trumbull Street, 21st Floor, Hartford, Connecticut 06103, on or before April 18, 2007. No extension of time to file these lists shall be granted except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

#### **Right to Request Review**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision on Remand may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570, or electronically pursuant to the guidance that can be found at the Agency's Website at [www.nlr.gov](http://www.nlr.gov). Select the **E-Gov** tab and click on **E-Filing**, then select the type of document you wish to file electronically and you will navigate to detailed instructions on how to file the document. This request must be received by the Board in Washington by April 25, 2007.

Dated at Hartford, Connecticut this 11th day of April, 2007.

  
Peter B. Hoffman, Regional Director  
National Labor Relations Board  
Region 34

Employee 15

OP-147  
8/02

## CONTRACT DISCUSSION NOTES

CONTRACTOR: Scoville Hill Associates – Paul Chiappa

SENIOR MANAGER: Scott Hagar

DATE: 3/28/07

SUBJECT: Service Failures

FOLLOW-UP DATE:

### OBJECTIVE:

(Brief summary of purpose of discussion)

NOTES: (Include facts that pertain to the discussion; what was said by both the manager and contractor, and exactly what was agreed to by both parties; continue on reverse side if necessary, and attach all supporting statements, records or other material.)

SH) Paul, what is the issue with Bobby? 6 packages were DNA'd yesterday.

PC) I have no idea.

SH) The biggest thing we offer as a company is service. 6 customers did not get serviced yesterday and that is bad for our business.

PC) I'll talk to Bobby but I really don't know.

Employee 16

OP-147  
8/02

## CONTRACT DISCUSSION NOTES

CONTRACTOR: Scoville Hill Associates – Paul Chiappa  
SENIOR MANAGER: Scott Hagar  
DATE: 3/29/07  
SUBJECT: Service Failures  
FOLLOW-UP DATE:

### OBJECTIVE:

(Brief summary of purpose of discussion)

NOTES: (Include facts that pertain to the discussion; what was said by both the manager and contractor, and exactly what was agreed to by both parties; continue on reverse side if necessary, and attach all supporting statements, records or other material.)

SH) Paul, Bobby had 5 DNA's yesterday, did he tell you anything was wrong?

PC) I have no idea why he would have DNA's. You would have to ask him.

SH) Paul, you are the contractor and any issues with your driver must be handled through you.

PC) I don't know why he dna'd them.

Let's see 3

OP-147  
8/02

## CONTRACT DISCUSSION NOTES

CONTRACTOR: Scoville Hill Associate (Chiappa)

SERVICE MANAGER: Scott Hagar

DATE: 12/22/2006

SUBJECT: CSR 12/21/06  
DNA's

FOLLOW-UP DATE:

**OBJECTIVE:**

(Brief summary of purpose of discussion)

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**NOTES:** (Include facts that pertain to the discussion; what was said by both the manager and contractor, and exactly what was agreed to by both parties; continue on reverse side if necessary, and attach all supporting statements, records or other material.)

I: Paul, your driver Bobby DNA'd 64 pkgs during his CSR yesterday. Do you have anything to say about that?

PC: Not really. That's what we told you would happen if we did the CSR you wanted to do.