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June 9, 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 the International Brotherhood of Teamsters, Local Union No. 671's Answering Brief in Opposition to the Employer's 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

**CASE NO.
34-RC-2205**

**INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, LOCAL UNION NO. 671**,
Petitioner

**INTERNATIONAL BROTHERHOOD OF TEAMSTERS, LOCAL UNION
NO. 671'S ANSWERING BRIEF IN OPPOSITION TO THE EMPLOYER'S
EXCEPTIONS TO THE SUPPLEMENTAL DECISION ON OBJECTIONS
BY THE ADMINISTRATIVE LAW JUDGE**

BACKGROUND

The Petitioner, International Brotherhood of Teamsters, Local 671 (“Local 671” or “Petitioner”), submits the following answering brief in opposition to FedEx Home Delivery’s Exceptions to Supplemental Decision on Objections.

As discussed below, FedEx Home Delivery (“FedEx” or “Employer”), in pressing its Exceptions to Supplemental Decision on Objections, largely, if not wholly, ignores the Board’s remand instructions and basically resubmits its arguments that were either expressly or implicitly rejected by the Board in its Decision and Order Remanding.

In its Decision and Order Remanding, the Board was very specific concerning the two issues that needed to be addressed in the remand hearing.

First, as to Objection 1, the Board, in its Decision and Order Remanding, noted that, in *Novotel New York*, 321 NLRB 624 (1996), it had “held that a union’s pre-election financing of a

lawsuit under the Fair Labor Standards Act (FLSA) to recover overtime and other wages for all unit employees was not objectionable conduct”; but that, in *Novotel*, the Board had “observed that the union in question had not ‘conditioned the continued receipt of legal representation on a favorable result in the election.’” Decision and Order Remanding at page 4.

In light of this language in *Novotel*, the Board, in its Decision and Order Remanding, stated as follows:

By limiting 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 issue, *i.e.* 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?***

...

Accordingly, we remand this objection to the judge with directions to reopen the record to admit additional evidence and make appropriate findings concerning Petitioner’s involvement in the arrangement of legal services ***and what its agents said to unit employees about those services.*** *Id.* at pages 4-5.

Accordingly, under the terms of the Board’s remand, any alleged involvement of Local 671 in the arrangement of free legal services for the unit employees is only relevant to the extent the Employer introduced evidence to establish that Local 671, through its agent(s), arranged for the provision of free legal services “contingent on a favorable outcome for the Petitioner in the election or, for that matter, on individual plaintiffs’ votes for the Petitioner.” That is why the Board, in its remand instructions, directed the ALJ to admit additional evidence and to make findings concerning “what [Petitioner’s] agents said to unit employees about those services.”

As discussed below, FedEx clearly did not establish that Local 671 arranged or took credit for the provision of free legal services and FedEx did not even proffer any evidence, let alone establish that Local 671, through its agents, ever conditioned the arrangement of free legal services on unit employees voting for Local 671. Therefore, the ALJ’s supplemental conclusions

regarding Objection 1¹ were/are clearly correct and, as such, the Employer's Exceptions to those conclusions should be rejected.

At the initial hearing on the Employer's objections held on July 2, 2007, Anthony Lepore, who, at all times material, was the Local 671 organizer responsible for the FedEx Union campaign (Tr. 228), was questioned extensively concerning any involvement that he may have had with the events leading up to the Connecticut class action lawsuit. Mr. Lepore testified that he never provided any information to potential voters regarding pending or potential lawsuits or attorneys who were representing FedEx contractors in the multi district litigation. *See generally* Tr. 31-44.

For example, the following was a specific Q & A on the subject matter of the remand on Objection 1:

Q. (By Ms. Davis) Did you play any role in putting any Hartford contractor in touch with the plaintiffs' lawyers who have filed the lawsuits?

A. (By Mr. Lepore) Absolutely not.

Q. Okay, you never forwarded or made available the contact information for Mr. Cohen or anyone else from his law firm?

A. No.

Q. Okay, and was that information distributed in any of the meetings that you've referred to?

A. I don't believe that it was.

¹ In his Supplemental Decision (at p. 5, lines 27-37), the ALJ concluded as follows:

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 contingent fee basis without any involvement of the Petitioner. The sole evidence in this 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.

Q. You don't believe?

A. I mean unless there was a personal conversation, it wasn't from me. Tr. 44.

Mr. Lepore was again questioned on this subject at the remand hearing and testified to the same effect. *See* Tr. 357 (Lepore referring to the February 25 and May 7, 2007 meetings with unit employees): "No, I don't. We didn't talk about lawsuits." Tr. 357. *See also* Tr. 358 (Lepore testifying in general about his contacts with potential unit voters): "My concern was to win the organizing campaign. I didn't get involved in any lawsuit, or did I give any opinion or advice to anyone." Tr. 358.

In addition, during the initial objection hearing in July 2007, David Welker, an IBT Representative, also was questioned, again extensively by the Employer's counsel, concerning any involvement that he may have had with the events leading up to the Connecticut class action lawsuit. Mr. Welker testified unequivocally that he had "never referred anybody to any of the lawsuits..." and that he had never provided or solicited plaintiffs, or potential plaintiffs, for the class action lawsuits. Tr. 57.

Mr. Welker was recalled by the Employer at the remand hearing and once again was questioned pointedly about his role in steering potential voters to become named plaintiffs:

Q: Any – well, let's focus in, cutting right to the chase, about lawsuits? About potential litigation or lawsuits against FedEx Ground?

A: I would have discussed any developments in the cases in the period of time that I hadn't seen them and I would have said that the opportunity, the option remains for them to learn more about the litigation.

Q: And how would they do that?

A: Through the website through the same references to the FedEx Drivers.com website.

Q: Okay. Did you say anything else about the lawsuits?

A: That FedEx management wasn't doing very well.

Q: All right. Did you say anything else about the contractors participating in lawsuits or contacting lawyers who would represent them in connection to these lawsuits?

A: No, and my practiced discussion included informing them that the IBT would – was not a party to any of these cases and that we were not involved in funding or any way directing the lawsuits.

Q: Okay. And then – oh, was that just for the February 25 meeting or the May 7th meeting for –

A: It would have been in every instance.

Q: Okay. Do you have any recollection, independent of what you just said, as to what you said, having anything to do with lawsuits or potential lawsuits in either the February meeting or the May meeting?

A: Other than they would have been generally informative in updates and references to how to get more information through their website. Tr. 479-80.

Robert Dizinno, an eligible voter and one of the named plaintiffs in the Connecticut lawsuit, testified at the July 2007 hearing. Dizinno identified himself as the individual who “did all the initial research on the lawsuit.” Tr. 222. That research was done on the internet. *See* Tr. 211. No one from the Teamsters directed Dizinno to the law firm (Tr. 220-21) or offered him any money or rewards for getting fellow contractors to join the lawsuit (Tr. 223) and no one from the Teamsters was ever present when Dizinno discussed the lawsuit with any of the eligible voters. Tr. 224.

During the remand hearing, FedEx also called as witnesses a number of the potential voters who had become named plaintiffs in the Connecticut lawsuit. None of these witnesses testified to any involvement on the part of Local 671 in the arrangement of free legal services nor did any of these witnesses testify to any “*quid pro quo*” offer having been made by Local 671. *See* Tr. 384 (Paul Chiappa, one of the named plaintiffs, referring to the February 25 meeting and whether there were any discussions of lawsuits at that meeting states: “Not that I recall, no.”); Tr. 385 (Chiappa referring to a March 25 meeting and whether there were any discussions of

lawsuits at that meeting states: “No, not that I recall.”); Tr. 393 (Chiappa referring to an April 23 meeting and whether there were any discussions of lawsuits at that meeting states: “No, not that I can recall.”); Tr. 395 (Chiappa referring to the May 7 meeting and whether Mr. Gardner talked about the lawsuits at that meeting states: “No, I don’t believe he did.”); Tr. 406 (Neville Edwards, one of the named plaintiffs, in response to whether anyone had spoken to him about lawsuits involving FedEx prior to Edwards going to Attorney Hayber’s office states: “No.”); Tr. 415 (Keith Ignasiak, one of the named plaintiffs, referring to a March 16, 2007 meeting at Attorney Hayber’s office, and responding to a question regarding whether the union election was discussed during this meeting states: “No, sir.”); Tr. 424 (David Trojanowski, one of the named plaintiffs, referring to the Union meetings he attended and whether the lawsuits involving FedEx were discussed at those meetings states: “No, I don’t remember these things, I didn’t hear.”); Tr. 428 (Trojanowski referring to two meetings that he attended with the attorneys and whether the union election was discussed at either of these meetings states: “Not in Hayber’s.... I don’t hear from him about the union anything.”).

During the remand hearing, FedEx also called William Gardner, a member of Local 25 and a FedEx contractor from the Wilmington, Massachusetts FedEx facilities. While there is no evidence that Mr. Gardner was an agent of Local 671,² Gardner did not arrange for nor take credit for arranging free legal services and also did not offer a “*quid pro quo*.” See Tr. 325 (Gardner referring to the February 25, 2007 meeting with bargaining unit employees at the Local 671 Union Hall states: “I made them aware of the multi district litigation, Yes.”); Tr. 328 (“You said that they [referring to Connecticut drivers] were interested [in becoming class action plaintiffs]. I had no discussion with them, so I don’t know if they were or weren’t interested”);

² Apparently, in the opinion of the Employer, any person who supported the Union effort in Hartford automatically became an agent of Local 671. The Employer’s opinion obviously has no support in established Board law.

Tr. 331 (Gardner referring to the May 7, 2007 meeting at the Hampton Inn): “No, I didn’t [speak at this meeting]”); Tr. 342 (Gardner referring to pre-election telephone calls that he made to several prospective voters states: “No, that’s not correct. I don’t recall having any discussion of litigation”).

Considering all the evidence in the light most favorable to the Employer, the only person who had any involvement in arranging the provision of free legal services for unit employees was Dizinno who described himself as the person who did the initial research concerning the lawsuit and who also testified to having conversations with at least some of the bargaining unit employees regarding the possible lawsuit with bargaining unit employees. *See* Tr. 222-23. However, FedEx failed to introduce any evidence to establish that Dizinno was an agent of Local 671. *See Tyson Fresh Meats, Inc.*, 343 NLRB 1335, 1336 (2004) (“The burden of proving an agency relationship is on the party asserting its existence”).

In this regard, in *Wal-Mart Stores, Inc.*, 350 NLRB No. 71, at p. 24 (2007), the Board stated the following regarding establishing that someone is an agent of a party:

The Board applies common law agency principles to determine the existence of an agency relationship. *See, e.g., Tyson Fresh Meats, Inc.*, 343 NLRB 1335, 1336 (2004). It may, therefore, find an agency relationship between the purported agent and the principal where the agent possesses either actual or apparent authority to act on the principal's behalf:

[A]ctual authority refers to the power of an agent to act on his principal's behalf when that power is created by the principal's manifestation to him. That manifestation may be either express or implied. Apparent authority, on the other hand, results from a manifestation by a principal to a third party that another is his agent.

In the instant case, there is no evidence that Local 671 said or did anything that would have given Dizinno actual authority to act on its behalf regarding the lawsuits (or anything else for that matter). In addition, there is no evidence that Local 671 did or said anything to potential

voters that would have suggested that Dizinno was acting on Local 671's behalf when he sought out legal counsel and promoted the lawsuit among some of the bargaining unit employees.³

Accordingly, the record evidence does not support a finding that Dizinno was an agent of Local 671; and, therefore, there is no evidence that Local 671 arranged or took credit for arranging the provision of legal services.

In addition, there is absolutely no evidence that Dizinno (or anyone else) arranged for the provision of free legal services for certain of the bargaining unit employees "contingent on a favorable outcome for the Petitioner in the election or, for that matter, on individual plaintiffs' votes for the Petitioner." As such, the Employer's Exceptions to the ALJ's supplemental conclusions concerning Objection 1 should be rejected.

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.

As described below, the Employer clearly did not meet its burden of proof on its claim of "changed circumstances" as regards either Dizinno⁴ or Chiappa; and, as such, FedEx's Exceptions to the supplemental conclusions of the ALJ regarding Chiappa⁵ should also be rejected.

³ Similarly, there is no evidence in the record to find that Gardner was an agent of Local 671.

⁴ In its Exceptions and supporting brief, Local 671 has challenged the ALJ's conclusions that "changed circumstances" between the close of the hearing on March 2, 2007 and the election on May 11, 2007, supported the challenge of the Employer to the ballot of Dizinno.

⁵ In his Supplemental Decision (at p. 7, lines 20-22), the ALJ concluded as follows: "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."

At the outset, it should be noted that nowhere in its Brief in Support of Exceptions to Supplemental Decision on Objections does FedEx point to any evidence of “changed job circumstances” in the case of Chiappa, which, of course, was the specific threshold issue to be addressed in the case of Chiappa by the ALJ according to the Board’s remand.⁶

In addition, as described below, the Employer clearly did not meet its burden of proof on its claim of “changed circumstances.” In this regard, the Employer presented testimony regarding the removal of Dizinno’s name from the mailbox at the Hartford facility. *See* Tr. 273-275. However, as noted at page 31 of the Decision and Direction of Election (“DDE”), Dizinno’s name was removed from the mailbox during the second day of the R Case hearing. The Employer, secondly, introduced two Contract Discussion Notes (Employer Exhibits 15 & 16), that were dated March 28, 2007 and March 29, 2007, and that reflected a discussion between Chiappa and management regarding the route operated by Dizinno. However, Petitioner Exhibit 3 is a similar document, dated December 21, 2006, which was well before the R Case hearing. The Employer, lastly, introduced Employer Exhibit 17 and pointed out that Addendum 3.4, with a “Print Date” of 5/1/2007, provided for a “Quarterly Premium Plus’ payment of \$750 to Scoville Hill Associates LLC. *See* Tr. 306-08. However, Employer Exhibit 19 from the R Case is the substantively identical document with a “Print Date” of 5/3/2006. *Cf.* Tr. 812 & 1090 (discussing the payment of this quarterly settlement and the fact that the settlement was shared equally by Chiappa and Dizinno).

While clearly beyond the scope of the Board’s remand, FedEx argues extensively in support of its Exceptions that Chiappa was not eligible to vote - not because of changed job

⁶ The absence of any proof of changed job circumstances is not surprising given the fact that FedEx, at the initial hearing on objections, never attempted to offer any such evidence. *See* Tr. 210 where Counsel for the Employer stated: “This is a case of the toothpaste being out of the tube and it can’t be put back in.” Tr. 210. Rather, as it continues to do so in its Exceptions taken from the ALJ’s Supplemental Decision, FedEx argues (once again) that the Board Agent’s conduct alone was sufficient to overturn the election.

circumstances but because he allegedly was a multi-route contract driver and, as such, within the express unit exclusion. Even if relevant, the Employer's argument ignores all the record evidence. In this regard, and contrary to the repeated and inaccurate assertions of FedEx, Chiappa has never been a multi-route contract driver.

Rather, Petitioner Exhibit 1 (also marked as Employer #23 from the original R Case hearing) (attached) is the Signature Page Amendment to the Chiappa Operating Agreement that was executed at that time Dizinno was hired by FedEx to operate the Manchester Route.⁷ In relevant part, the amendment to the Operating Agreement states as follows:

THIS AMENDMENT TO THE FEDEX GROUND PACKAGE SYSTEM, INC. PICK-UP AND DELIVERY/LINE HAUL CONTRACTOR OPERATING AGREEMENT ENTERED INTO ON 23 DAY OF NOVEMBER, 2004, (THE AGREEMENT) BY AND BETWEEN PAUL CHIAPPA (CONTRACTOR) AND FEDEX GROUND PACKAGE SYSTEM, INC. NOW KNOWN AS (FEDEX INC.) ***IS AMENDED AS A RESULT OF THE CHANGE OF CONTRACTOR'S IDENTITY FROM PAUL CHIAPPA, A SOLE PROPRIETOR, TO SCOVILLE HILL ASSOC. AN INCORPORATED ENTITY EFFECTIVE AS OF 08/20, 2004 (AMENDED EFFECTIVE DATE).***

BY THE EXECUTION OF THIS SIGNATURE PAGE AMENDMENT TO THE AGREEMENT, FEDEX, INC. AND CONTRACTOR EACH AGREE THAT, ***EXCEPT FOR THE CHANGE TO THE CONTRACTOR'S IDENTITY MADE A PART HEREOF***, THE AGREEMENT REMAINS IN FULL FORCE AND EFFECT, AND EACH PARTY AGREES TO CONTINUE TO BE LEGALLY BOUND BY THE TERMS OF THE AGREEMENT. EMPHASIS ADDED.

Petitioner Exhibit 2 (also marked as Employer #10 from the original R Case hearing) (attached) are the Articles of Organization for Scoville Hill Associates, L.L.C. which show that Chiappa and Dizinno are both "Member Manager[s]" of the corporation. Accordingly, there simply is no record evidence to support FedEx's repeated claim that Chiappa, rather than Scoville Hill Associates, was the Contractor and the Employer's associated claim that Chiappa should have been denied the right to vote because he was a multi-route contractor.

⁷ The circumstances surrounding the execution of the Signature Page Amendment and the subsequent relationship between Chiappa and Dizinno are described, at some length, in the DDE (at pages 21-23). FedEx has never challenged this factual recitation set out in the DDE.

CONCLUSION

For the reasons set forth above, Local 671 respectfully requests that the Board reject the Exceptions of FedEx; and for these reasons and for the reasons set out in the Petitioner's Brief in Support of its Exceptions that the Board certify the results of the election.

Respectfully submitted,
Teamsters Local 671,
By its Attorney,



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Boston, MA 02108
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June 9, 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 on Richard Hughes, Esq., also via email 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 9, 2009

Gabriel O. Dumont, Jr.

SIGNATURE PAGE AMENDMENT

Retention-1
E#23
SET010

SUBMITTED BY Bruce Rogers

TERMINAL NAME QHAR

TERMINAL NUMBER 3061

GROUND CANADA FHD

DO NOT SUBMIT-SIGNATURE REQUIRED
SEND BY HARD COPY TO SETTLEMENT

**SIGNATURE PAGE AMENDMENT
TO
FEDEX GROUND PACKAGE SYSTEM, INC./LTD/FHD
PICK-UP AND DELIVERY/LINEHAUL CONTRACTOR OPERATING
AGREEMENT**

THIS AMENDMENT TO THE FEDEX GROUND PACKAGE SYSTEM, INC. PICK-UP AND DELIVERY/LINEHAUL CONTRACTOR OPERATING AGREEMENT ENTERED INTO ON 23 DAY OF November, 2004, (THE AGREEMENT) BY AND BETWEEN Paul Chiappa (CONTRACTOR) AND FEDEX GROUND PACKAGE SYSTEM, INC. NOW KNOWN AS (FEDEX, INC.) IS AMENDED AS A RESULT OF THE CHANGE OF CONTRACTOR'S IDENTITY FROM Paul Chiappa, A SOLE PROPRIETOR, TO Scoville Hill Assoc. AN INCORPORATED ENTITY EFFECTIVE AS OF 08/20, 2004 (AMENDED EFFECTIVE DATE).

BY THE EXECUTION OF THIS SIGNATURE PAGE AMENDMENT TO THE AGREEMENT, FEDEX, INC. AND CONTRACTOR EACH AGREE THAT, EXCEPT FOR THE CHANGE OF CONTRACTOR'S IDENTITY MADE A PART HEREOF, THE AGREEMENT REMAINS IN FULL FORCE AND EFFECT, AND EACH PARTY AGREES TO CONTINUE TO BE LEGALLY BOUND BY THE TERMS OF THE AGREEMENT..

IN WITNESS WHEREOF, CONTRACTOR OF FEDEX, INC. HAVE CAUSED THIS SIGNATURE PAGE AMENDMENT TO BE EXECUTED UPON THE DATE FIRST ABOVE WRITTEN.

Due to incorporation, indicate if you want your current direct deposit to stay with your existing bank account.
___ Yes ___ No. (If yes, please note that you will receive a check for 2 - 3 weeks after incorporation set up while in the prenote verification process)
If going to a new account attach the SET035 and a voided check.

FEDEX GROUND PACKAGE SYSTEM, INC./LTD/FHD

**CONTRACTOR/
CORPORATION**

SIGNATURE: 

TYPED/PRINTED NAME: Bruce Rogers

TITLE: SR. MGR.

WITNESSED SIGNATURE: 

SIGNATURE: 

TYPED/PRINTED NAME: PAUL CHIAPPA

CONTRACTOR SSN: 644-42-8685

CONTRACTOR TAX ID #: 81-0655507

TITLE: Managing Member

WITNESSED SIGNATURE: 

TYPED/PRINTED NAME: Leon Marchese

VEHICLE NUMBER: 704988 + 706898

SIGNED BUSINESS NAME: Scoville Hill Associates, LLC

ARTICLES OF ORGANIZATION

DOMESTIC LIMITED LIABILITY COMPANY

Office of the Secretary of the State

30 Trinity Street / P.O. Box 15470 / Hartford, CT 06115-0470 / Rev. 10/10/2002

See reverse for instructions

E #10
Return
#2

Space For

FILING #0002782619 PG 01 OF 01 VOL B-00685
FILED 08/16/2004 01:44 PM PAGE 00704
SECRETARY OF THE STATE
CONNECTICUT SECRETARY OF THE STATE

1. NAME OF THE LIMITED LIABILITY COMPANY

Scoville Hill Associates, L.L.C.

2. NATURE OF BUSINESS TO BE TRANSACTED OR THE PURPOSES TO BE PROMOTED:

To engage in any lawful activity for which Limited Liability Companies may be for under Connecticut Law.

3. PRINCIPAL OFFICE ADDRESS (See instructions for further details.)

106 Scoville Hill Road
Harwinton, CT 06791

4. APPOINTMENT OF STATUTORY AGENT FOR SERVICE OF PROCESS

Name of agent

Paul R. Chiappa

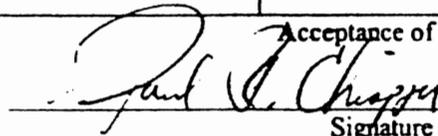
Business address (P.O. Box is not acceptable)

106 Scoville Hill Road
Harwinton, CT 06791

Residence address (P.O. Box is not acceptable)

106 Scoville Hill Road
Harwinton, CT 06791

Acceptance of appointment



Signature of agent

5. MANAGEMENT

(Place a check mark next to the following statement only if it applies)

The management of the limited liability company shall be vested in one or more managers.

6. MANAGER(S) OR MEMBER(S) INFORMATION

| Name | Title | Business Address | Residence Address |
|-------------------|-------------------|---|---|
| Paul R. Chiappa | Member Manager | 106 Scoville Hill Road Harwinton, CT 06791 | 106 Scoville Hill Road Harwinton, CT 06791 |
| Robert J. Dizinno | Member Manager | 106 Scoville Hill Road Harwinton, CT 06791 | 288 Riverside Street Oakville, CT 06779 |

7. EXECUTION

Paul R. Chiappa

Print or type name of organizer



Signature

Reference an 8 1/2 x 11 attachment if additional space is required

INTERIM NOTICE OF CHANGE OF MEMBER/MANAGER DOMESTIC AND FOREIGN LIMITED LIABILITY COMPANIES

Office of the Secretary of the State
30 Trinity Street / P.O. Box 150470 / Hartford, CT 06115-0470 / Rev. 10/01/2001

See
s FILING #0002806950 PG 01 OF 01 VOL B-00697
FILED 09/29/2004 08:30 AM PAGE 03614
SECRETARY OF THE STATE
CONNECTICUT SECRETARY OF THE STATE

1. Name of Limited Liability Company:

SCOVILLE HILL ASSOCIATES, L.L.C.

2. New member(s)/manager(s) information:
(street address required - P.O. Box is not acceptable)

| Name | Title | Residence Address | Business Address |
|--------------------------|-----------------------|--|--|
| <i>STEPHANIE CHIAPPA</i> | <i>MEMBER MANAGER</i> | <i>106 SCOVILLE HILL RD HARTWINTON, CT 06791</i> | <i>106 SCOVILLE HILL ROAD HARTWINTON, CT 06791</i> |
| | | | |
| | | | |
| | | | |

3. Member(s)/manager(s) who have ceased to be member(s)/manager(s):

| Name | Title | Name | Title |
|-------------|-------|------|-------|
| <i>NONE</i> | | | |
| <i>NONE</i> | | | |

Note: If additional space is needed, please reference an 8 1/2 x 11 attachment

4. EXECUTION:

Dated this *21st* day of *September*, 20 *04*.

| | | |
|---------------------------------|-----------------------|--|
| <i>PAUL R. CHIAPPA</i> | <i>MEMBER-MANAGER</i> |  |
| Print or type name of Signatory | Capacity of Signatory | Signature |

STATE OF CONNECTICUT }
OFFICE OF THE SECRETARY OF THE STATE } SS. HARTFORD

I hereby certify that this is a true copy of record
in this Office

In Testimony whereof, I have hereunto set my hand,
and affixed my seal, at Hartford,

this 15th day of November A.D. 2001

Susan Dymally SD
SECRETARY OF THE STATE