

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

FEDEX HOME DELIVERY, A SEPARATE	:	
OPERATING DIVISION OF FEDEX	:	
GROUND PACKAGE SYSTEM, INC.	:	
	:	
Respondent,	:	
And	:	
	:	CASE NO. 34-RC-2205
TEAMSTERS UNION LOCAL 671	:	
AFFILIATED WITH IBT,	:	
	:	
Petitioner.	:	

AMENDED MOTION FOR RECONSIDERATION

On June 10, 2010, pursuant to Section 102.65(e)(1) of the Board’s Rules and Regulations, FedEx Home Delivery (“FedEx Home”) filed a Motion for Reconsideration of the Board’s decision in this case. Now, in light of the U.S. Supreme Court’s recent decision in *New Process Steel, L.P. v. NLRB*, 560 U.S. ___ (2010), FedEx Home files this Amended Motion for Reconsideration for the reasons that follow.

1. On September 29, 2008, following an objections hearing and recommendation by the Administrative Law Judge (ALJ), the then two-member Board consisting of Members Schaumber and Liebman issued a Decision and Order Remanding remanding for further proceedings. The two-member Board’s decision did not grant FedEx Home’s request that the election results be set aside, and it set forth legal conclusions as to both election objections upon which the ALJ materially subsequently relied in creating a remand hearing evidentiary record and in rendering his Supplemental Decision on Objections. *See* Decision and Order Remanding dated Sept. 29, 2008 at 1 (stating, e.g., “The Board has ... decided ... to remand this proceeding to the judge to take further evidence and to make additional findings and recommendations *consistent with this Decision and Order.*” (emphasis added)); Supplemental Decision on

Objections dated May 22, 2009 at 5 (stating, e.g., “it is important to focus on the specific issue that the [two Member] 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’”; “the Board remand also required that the provision of legal services was contingent on a union victory in the election”; and since there was no “evidence of that”, “I find no merit to this objection.” (emphasis supplied by ALJ)).

2. The ALJ’s Supplemental Decision on Objections, in which the ALJ sustained in part and overruled in part FedEx Home’s objections, and the Board’s Decision and Certification of Representative, in which the Board sustained in part and overruled in part the ALJ’s supplemental decision, indisputably rest in material part upon the two-member Board’s September 29, 2008 decision. *See supra and see* Supplemental Decision on Objections dated May 22, 2009, and Decision and Certification of Representative dated May 27, 2010 at 1-2 (finding, e.g., “[w]e adopt the judge’s recommendation to overrule Objection 1, for the reasons set forth in the judge’s supplemental decision.”).

3. On June 17, 2010, the U.S. Supreme Court ruled that the National Labor Relations Board did not have authority to issue decisions with less than a three-member Board. *New Process Steel, L.P. v. NLRB*, *supra*. Thus, the two-member Board’s September 29, 2008 decision in this case is void.

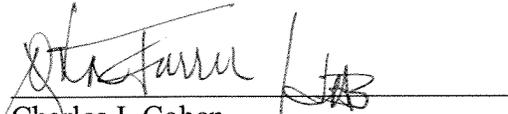
4. Based on the Supreme Court’s decision in *New Process Steel*, it follows that the Board’s Decision and Certification of Representative is invalid.¹

¹ FedEx Home previously reserved its right in this proceeding to object to the two-member Board decision. *See* FedEx Home’s Brief in Support of Exceptions to Supplemental Decision on Objections dated June 5, 2009 at 31 (“This deficiency is in addition to the two-member Board’s lack of lawful authority owing to insufficient members to constitute a statutory Board quorum, which FHD reserves its rights to assert.” *See Laurel Baye Healthcare of Lake Lanier, Inc. v. NLRB*, 186 LRRM 2417 (D.C. Cir. 2009)).

Accordingly, in addition to the reasons set forth in FedEx Home's Motion to Dismiss and Motion for Reconsideration, FedEx Home respectfully requests that the Board vacate the Certification of Representative issued in this matter and dismiss this case in its entirety.

Respectfully submitted,

Of Counsel:



Charles I. Cohen
John S. Ferrer
MORGAN, LEWIS & BOCKIUS LLP
1111 Pennsylvania Avenue, NW
Washington, DC 20004
202.739.5710/5317

Richard J. Hughes
FEDEX GROUND PACKAGE SYSTEM, INC.
1000 FedEx Drive
Moon Township, PA 15108
412.859.5806

DATED: June 23, 2010

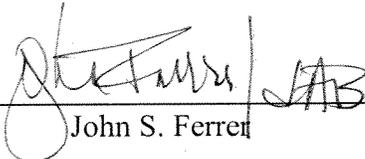
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of FedEx Home Delivery's Amended Motion for Reconsideration, which was electronically filed today using the Board's E-Filing system, was served via electronic mail on:

Jonathan Kreisberg, Regional Director
Rick Concepcion, Attorney
National Labor Relations Board, Region 34
280 Trumbull Street - 21st Floor
Hartford, CT 06103
jonathan.kreisberg@nlrb.gov
rick.concepcion@nlrb.gov

Gabriel O. Dumont, Esq.
Dumont, Morris & Burke, P.C.
14 Beacon Street, Suite 300
Boston, MA 02108
gdumont@dmbpc.net

this 23rd day of June 2010.



John S. Ferret