

RUAN TRANSPORT CORP.

and

CASE 13-CA-46555

**TEAMSTERS LOCAL 705, AFFILIATED
WITH THE INTERNATIONAL
BROTHERHOOD OF TEAMSTERS**

**COUNSEL FOR THE ACTING GENERAL COUNSEL'S RESPONSE TO
RESPONDENT'S MOTION TO SUPPLEMENT THE RECORD AND TO
RESPONDENT'S RESPONSE TO NOTICE TO SHOW CAUSE**

Pursuant to Sections 102.24 of the Rules and Regulations of the National Labor Relations Board (NLRB), Counsel for the Acting General Counsel hereby responds to Respondent Ruan Transport Corporation's Motion to Supplement the Record filed on March 14, 2011, and to Respondent's Response to Notice to Show Cause. In support thereof, Counsel for the Acting General Counsel states the following:

I. The Acting General Counsel does not object to Respondent's motion to add documents which were part of the underlying representation case in 13-RC-21909 to the Record on Summary Judgment

The Counsel for the Acting General Counsel does not object to the Respondent's addition of Exhibits 1-6, included in Respondent's Motion to Supplement the Record, to the Record on Summary Judgment.

II. Respondent's request to introduce the original challenged ballot into the Record on Summary Judgment should be denied

Respondent also moves to introduce the original challenged ballot in the underlying representation case, 13-RC-21909, and essentially argues that the adequacy of the Board's decision depends on whether the Board reviewed the original or a copy of the ballot. Accordingly, the purpose of this motion is not to correct or supplement the

record. Rather, Respondent clearly wants the Board to re-litigate the previously litigated challenged ballot issues, which is improper because the Board has already decided this issue and it does not re-litigate matters that were raised or could have been raised in the underlying representation proceeding.

Fedex Home Delivery is instructive in the instant case. *See* 356 NLRB No. 10 (2010). In Fedex Home Delivery, the Acting General Counsel issued a complaint against the employer for violating 8(a)(5) and (1) of the National Labor Relations Act, as the employer refused the union's request to bargain following its certification as exclusive bargaining representative. *Id.* In response to the Acting General Counsel's subsequent motion for summary judgment, the employer admitted its refusal to bargain, but contested the validity of the certification.

The Board in Fedex Home Delivery found that all of the representation issues raised by the Respondent were, or could have been, litigated in the prior representation case. *Id.* Since the employer neither offered any newly discovered and previously unavailable evidence, nor alleged any special circumstances that would require the Board to reexamine the decision made in the representation proceeding, the Board found that the employer did not raise any representation issue that was properly litigable in the unfair labor practice proceeding, and thus granted the Acting General Counsel's motion for summary judgment.

The instant case is on-point with Fedex Home Delivery, and the same result should issue. Here, the Respondent has refused to bargain with Teamsters Local 705, which the Board certified as exclusive bargaining representative of a specific unit of

Respondent's employees, which caused Teamsters Local 705 to file 8(a)(5) and (1) charges against Respondent. The Acting General Counsel filed a complaint against Respondent for its refusal to bargain with the union, as well as a subsequent motion for summary judgment.

Similar to the employer in Fedex Home Delivery, the Respondent has neither offered any newly discovered and previously unavailable evidence, nor alleged any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. All of the representation issues raised by the Respondent were, or could have been, litigated in the prior representation case, and should not be re-litigated now. Therefore, the Board should hold that Respondent has not raised any representation issue that is properly litigable in the unfair labor practice proceeding, and thus grant the Acting General Counsel's motion for summary judgment.

DATED at Chicago, Illinois, this 21st day of March, 2011.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that true and correct copies of the foregoing Counsel for the Acting General Counsel's Response to Respondent's Motion to Supplement the Record and to Respondent's Response to Notice to Show Cause have been served in the manner indicated upon the following parties on the 21st day of March 2011,

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