

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

DAYCON PRODUCTS COMPANY, INC.

and

Case No: 5-CA-35043

DRIVERS, CHAUFFEURS AND HELPERS LOCAL
UNION NO. 639 a/w INTERNATIONAL
BROTHERHOOD OF TEAMSTERS

**TEAMSTERS LOCAL NO. 639'S
OPPOSITION TO RESPONDENT'S MOTION FOR RECONSIDERATION**

Pursuant to the Rules and Regulations of the National Labor Relations Board (“NLRB” or “Board”), Charging Party, Drivers, Chauffeurs and Helpers Local Union No. 639, affiliated with the International Brotherhood of Teamsters (“the Union” or “Local 639”), by its attorneys, Mooney, Green, Saindon, Murphy & Welch, P.C., hereby submits its Opposition to the Motion for Reconsideration and/or Clarification filed by Respondent Daycon Products Company, Inc.

In its motion, Respondent makes a variety of claims each of which fails to satisfy the basic requirements of Section 102.48(d)(1) of the Rules and Regulations of the National Labor Relations Board. This Section permits a party to move for reconsideration of a Board decision only under the most "extraordinary circumstances." *See Proper Steel Directors, Inc.*, 352 NLRB 892 (2008). In order to satisfy this exacting standard, the moving party must submit something significant such as "an intervening Supreme Court decision or newly discovered evidence." *UFCW Local 1996*, 338 NLRB 1074, n.1 (2003). Even the most favorable reading of Daycon's motion reveals that it falls far short of carrying this heavy burden.

Putting aside its claims of denial of due process, which are plainly meritless, Daycon suggests that Local 639 did not rely on the then extant wage schedule during the bargaining for the 2007 collective-bargaining agreement. This position ignores the fact that the Union's

knowledge of the wage rates stemmed the Employer's response to its request for information needed to conduct contract negotiations. *See GCX 4*. In response to the Union's request, Daycon provided Local 639 with a Wage Scale Document on January 17, 2007. *See GCX 5*. The Union's initial proposals were premised on the information provided by Daycon and that information provided the platform from which the parties bargained for the 2007 contract. Any assertion that the Union did not use, or rely upon, the information provided by Daycon to proceed with collective-bargaining simply blinks reality. Not only did the Board's ruling not contain a material factual error as required by the applicable Rules and Regulations, it does not reflect any factual error at all.

Similarly, Daycon's convoluted contention that the contract negotiated between the parties in 2007 does not reflect a discernible wage structure is one that more than defies reality. The product of the 2007 negotiations was sufficiently clear and undisputed that Daycon actually complied with the parties' agreement for two years. There was no mystical intervention that informed Daycon's payroll administrators as to how to calculate employee compensation. Everyone knew the established rates as well as the negotiated increases. Within that framework, employees were paid regularly in 2007, 2008 and into 2009. Once again, Daycon has not only failed to satisfy its burden of demonstrating a material factual error, it has failed to demonstrate that there was any error whatsoever.

Finally, Daycon offers no legal argument or authority warranting any revision or reconsideration of the Board's ruling or remedy. The Employer clearly disagrees with the ruling and the imposed remedy but that hardly warrants reconsideration or clarification. There has been no intervening change in the decisional case law that warrants reviewing the ruling. The Board should deny the motion as expeditiously as possible.

For the reasons set forth above, Local 639 respectfully requests that the motion be denied.

Respectfully submitted,

/s/

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Dated: September 19, 2011

CERTIFICATE OF SERVICE

I hereby certify that on the 19th day of September, 2011, I caused a true and correct copy of the Charging Party's Opposition to Motion for Reconsideration to be served via electronic mail upon the following:

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