

Littler Mendelson, P.C.
815 Connecticut Avenue, NW
Suite 400
Washington, DC 20006-4046

January 25, 2019

Maurice Baskin
202.772.2526 direct
202.842.3400 main
202.318.4048 fax
mbaskin@littler.com

Mark Langer
Clerk of the Court
United States Court of Appeals for the District of Columbia Circuit
333 Constitution Ave., N.W.
Washington, D.C. 20001

Re: *Pennsylvania Interscholastic Athletic Association v. NLRB*, Nos. 18-1037, 18-1043; Oral Argument held November 16, 2018

Dear Mr. Langer:

Pursuant to FRAP 28(j), Petitioner Pennsylvania Interscholastic Athletic Association (“PIAA”) submits this letter of supplemental authority to call this Court’s attention to *SuperShuttle DFW, Inc.*, 367 NLRB No. 75, issued today by the National Labor Relations Board (“NLRB”).

In *SuperShuttle DFW*, the NLRB has overruled its previous decision in *FedEx Home Delivery*, 361 NLRB 610 (2014), *enf. den. and vacated*, 849 F.3d 1123 (D.C. Cir. 2017). As argued by PIAA in its briefs and at oral argument in the present appeal, the NLRB decision under review expressly relied on the now-overruled *FedEx* decision throughout the majority opinion. The Board found in *Supershuttle DFW* that the *FedEx* decision impermissibly altered the common law test for independent contractor status. The Board’s reliance on *FedEx* here renders its decision in the present case unenforceable.

At minimum, where there has been an intervening change of law by an agency during the pendency of an appeal, as has happened here, the Court should remand the matter to the agency “to decide...whether giving the change retrospective effect will best effectuate the policies underlying the agency’s governing act.” *NLRB v. Food Store Employees Union*, 417 U.S. 1, 10 & n.10 (1974).

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Sincerely,

/s/Maurice Baskin

Maurice Baskin
Little Mendelson, P.C.
Counsel for Petitioner PIAA

cc: All counsel of record via ECF filing