

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

In the Matter of

FEDEX HOME DELIVERY, A SEPARATE
OPERATING DIVISION OF FEDEX
GROUND PACKAGE SYSTEM, INC.

and

TRUCK DRIVERS UNION, LOCAL #170,
a/w INTERNATIONAL BROTHERHOOD
OF TEAMSTERS

CASES 1-CA-42984
1-CA-42985
1-CA-43043
1-CA-43070
1-CA-43084

In the Matter of

FEDEX HOME DELIVERY, A SEPARATE
OPERATING DIVISION OF FEDEX
GROUND PACKAGE SYSTEM, INC.

and

STEVEN R. SWARTWOUT, An Individual

CASE 1-CA-43283

**ORDER CONSOLIDATING CASES, CONSOLIDATED
COMPLAINT AND NOTICE OF HEARING**

Truck Drivers Union, Local #170, a/w International Brotherhood of Teamsters, herein called the Union, has charged in Cases 1-CA-42984, 1-CA-42985, 1-CA-43043, 1-CA-43070, and 1-CA-43084, and Steven R. Swartwout, herein called Swartwout, has charged in Cases, 1-CA-43283, that FedEx Ground Home Delivery, herein described by its correct name, FedEx Home Delivery, A Separate Operating Division of FedEx Ground Package System, Inc., and herein called Respondent, has been engaging in unfair labor practices as set forth in the National Labor Relations Act, 29 U.S.C. Sec. 151, herein called the Act. Based thereon, and in order to avoid unnecessary costs or

delay, the General Counsel, by the undersigned, pursuant to Section 102.33 of the Rules and Regulations of the National Labor Relations Board, herein called the Board, ORDERS that these cases are consolidated.

These cases having been consolidated, the General Counsel, by the undersigned, pursuant to Section 10(b) of the Act and Section 102.15 of the Board's Rules and Regulations, issues this Order Consolidating Cases, Consolidated Complaint and Notice of Hearing and alleges as follows:

1. (a) The charge in Case 1-CA-42984 was filed by the Union on December 23, 2005, and a copy was served by regular mail on Respondent on December 27, 2005.

(b) The first amended charge in Case 1-CA-42984 was filed by the Union on January 19, 2006, and a copy was served by regular mail on Respondent on January 23, 2006.

(c) The second amended charge in Case 1-CA-42984 was filed by the Union on May 3, 2006, and a copy was served by regular mail on Respondent on May 5, 2006.

(d) The third amended charge in Case 1-CA-42984 was filed by the Union on June 6, 2006, and a copy was served by regular mail on Respondent on June 7, 2006.

(e) The fourth amended charge in Case 1-CA-42984 was filed by the Union on June 9, 2006, and a copy was served by regular mail on Respondent on June 9, 2006.

(f) The fifth amended charge in Case 1-CA-42984 was filed by the Union on March 15, 2007, and a copy was served by regular mail on Respondent on March 16, 2007.

(g) The charge in Case 1-CA-42985 was filed by the Union on December 23, 2005, and a copy was served by regular mail on Respondent on December 28, 2005.

(h) The first amended charge in Case 1-CA-42985 was filed by the Union on June 6, 2006, and a copy was served by regular mail on Respondent on June 7, 2006.

(i) The second amended charge in Case 1-CA-42985 was filed by the Union on June 9, 2006, and a copy was served by regular mail on Respondent on June 9, 2006.

(j) The third amended charge in Case 1-CA-42985 was filed by the Union on July 21, 2006, and a copy was served by regular mail on Respondent on July 21, 2006.

(k) The fourth amended charge in Case 1-CA-42985 was filed by the Union on September 15, 2006, and a copy was served by regular mail on Respondent on September 18, 2006.

(l) The fifth amended charge in Case 1-CA-42985 was filed by the Union on December 15, 2006, and a copy was served by regular mail on Respondent on December 27, 2006.

(m) The sixth amended charge in Case 1-CA-42985 was filed by the Union on March 15, 2007, and a copy was served by regular mail on Respondent on March 19, 2007

(n) The charge in Case 1-CA-43043 was filed by the Union on January 25, 2006, and a copy was served by regular mail on Respondent on January 27, 2006.

(o) The charge in Case 1-CA-43070 was filed by the Union on February 9, 2006, and a copy was served by regular mail on Respondent on February 9, 2006.

(p) The first amended charge in Case 1-CA-43070 was filed by the Union on June 6, 2006, and a copy was served by regular mail on Respondent on June 7, 2006.

(q) The second amended charge in Case 1-CA-43070 was filed by the Union on August 18, 2006, and a copy was served by regular mail on Respondent on August 18, 2006.

(r) The third amended charge in Case 1-CA-43070 was filed by the Union on August 31, 2006, and a copy was served by regular mail on Respondent on September 1, 2006.

(s) The fourth amended charge in Case 1-CA-43070 was filed by the Union on March 15, 2007, and a copy was served by regular mail on Respondent on March 16, 2007.

(t) The charge in Case 1-CA-43084 was filed by the Union on February 16, 2006, and a copy was served by regular mail on Respondent on February 16, 2006.

(u) The charge in Case 1-CA-43283 was filed by Swartwout on May 25, 2006, and a copy was served by regular mail on Respondent on May 26, 2006.

(v) The first amended charge in Case 1-CA-43283 was filed by Swartwout on June 8, 2006, and a copy was served by regular mail on Respondent on June 8, 2006.

2. At all material times, Respondent, a Delaware corporation with an office and place of business in Northboro, Massachusetts, herein called Respondent's Northboro/Worcester terminal, has been engaged in the business of interstate package pick-up and delivery services.

3. Annually, Respondent, in conducting its business operations described above in paragraph 2, purchases goods valued in excess of \$50,000 directly from points located outside the Commonwealth of Massachusetts.

4. At all material times, Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

5. At all material times, the Union has been a labor organization within the meaning of Section 2(5) of the Act.

6. (a) At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of Respondent within the meaning of Section 2(11) of the Act and agents of Respondent within the meaning of Section 2(13) of the Act:

Patrick Super	Managing Director for New England Region
Robert Newman	Managing Director Hartford Hub
Timothy Edmonds	Managing Director for Contractor Relations
Norm Hall	Terminal Manager until about August 2005
John Ciappi	Terminal Manager since September 2005
Stephanie Dumont	Service Manager for Pick-up and Delivery until about October 2005
Elizabeth Michaelis	P & D Service Manager II
Lauren Bushey	Service Manager
Victor Gilding	Pick up and Delivery Manager
Hope Horne	Pre-load Quality Initiative Manager

(b) At all material times, the following individuals held the positions set forth opposite their respective names and have been agents of Respondent within the meaning of Section 2(13) of the Act:

Earl Bostick	Security Officer
Mark Klemm	SR Specialist

7. (a) Respondent, at the Northboro/Worcester Terminal, by John Ciappi:
- (i) About early November 2005, interrogated its employees about their union membership, activities, and sympathies and the union membership, activities, and sympathies of other employees.
 - (ii) About early November 2005, informed its employees that it would be futile for them to select the Union as their bargaining representative.
 - (iii) About November 2005, interrogated its employees about whether they had attended union meetings.
 - (iv) About November 2005, and again late January 2006, pressured its employees to declare whether or not they were going to support the Union in order to ascertain union support.
 - (v) About November 26, 2005, threatened its employees with job loss for attendance and testimony on behalf of the Union at an NLRB representation case hearing.
 - (vi) About December 16, 2005, created an impression among its employees that their union activities were under surveillance by Respondent.
 - (vii) About December 16, 2005, asked employees to ascertain and disclose to Respondent the union membership, activities, and sympathies of other employees.
 - (viii) About mid-December 2005, created an impression among its employees that their union activities were under surveillance by Respondent.
 - (ix) About January 2006, solicited employees to dissuade other employees from supporting the Union.
 - (x) About late January 2006, interrogated employees regarding their union support.
 - (xi) About the last week in January 2006, coercively solicited employees to appear in an anti-union video.
 - (xii) About early February 2006, created the impression of surveillance of its employees' union activities by indicating it was closely monitoring the degree of an employee's union involvement.

(xiii) About early February 2006, created an impression among its employees that their union activities were under surveillance by Respondent.

(xiv) About early May 2006, solicited employees to sign an anti-union petition and offered employees a reward if they did so.

(xv) About June 24, 2006, impliedly threatened its employees for engaging in Union activities.

(xvi) About June 27, 2007, told its employees that protected union activity would not be allowed at the Terminal and solicited employees to report protected union activity, thereby creating the impression that their union activities were under surveillance by Respondent.

(xvii) About September 6, 2006, threatened its employees with termination in retaliation for having engaged in union activities and overloaded union supporters' routes to harass them into quitting.

(b) Respondent at the Northboro/Worcester Terminal, by Earl Bostick and Mark Klemm:

(i) About November 16, 2005, harassed and intimidated employees because of their union membership, activities, and sympathies.

(ii) About December 7, 2005, harassed, intimidated, and threatened employees because of their union membership, activities, and sympathies.

(c) About January 26, 2006, Respondent at the Northboro/Worcester Terminal, by Mark Klemm harassed, intimidated, and interrogated employees because of their union membership, activities, and sympathies.

(d) About January 29, 2006, Respondent at the Northboro/Worcester Terminal, by security officers whose names are presently unknown to the General Counsel, harassed, intimidated, and interrogated employees because of their union membership, activities, and sympathies.

(e) Respondent, at the Northboro/Worcester Terminal, by Elizabeth Michaelis:

(i) About December 2005, interrogated its employees about their union membership, activities, and sympathies.

(ii) About December 2005, impliedly threatened its employees with loss of their routes if in the course of interrogation they did not renounce union activities and sympathies.

(iii) About February 11, 2006, coercively solicited employees to appear in an anti-union video.

(f) Respondent, at the Northboro/Worcester Terminal, by Timothy Edmonds:

(i) About December 2005, on multiple occasions, informed its employees that it would be futile for them to select the Union as their bargaining representative.

(ii) About December 2005, on multiple occasions, threatened employees with terminal closure and job loss if they selected the Union to represent them.

(g) Respondent, at the Northboro/Worcester Terminal, by Lauren Bushey:

(i) About December 29, 2005, threatened its employees with discharge to cover up the fact that other employees who had engaged in similar conduct had been discharged in retaliation for their union membership and activities.

(ii) About December 30, 2005, harassed and intimidated its employees by telling them that they were being singled out for more onerous working conditions because of their union membership, activities, and sympathies.

(h) Respondent, at the Northboro/Worcester Terminal, by Hope Horne:

(i) About late January 2006, threatened its employees with unspecified reprisals because of their union membership, activities, and sympathies.

(ii) About February 2, 2006, interrogated its employees regarding their union activities and created the impression that their union activities were under surveillance by Respondent.

(iii) About February 2, 2006, threatened its employees with onerous working conditions and job loss if employees brought in the Union at the Terminal.

(i) About early February, 2006, Respondent, at the Northboro/Worcester Terminal, by Robert Newman told its employees that Rosita Claudio had been discharged because of her union membership, activities, and sympathies.

(j) Respondent, from about December 9, 2005 through December 14, 2005, hired a substantial number of permanent employees in order to “pack the unit” and thereby dilute the Union’s strength in any upcoming Board-conducted election.

8. (a) About the dates set forth opposite their names, Respondent discharged the employees named below:

Steven Swartwout	December 10, 2005
Robert Williams	December 21, 2005
Rosita Claudio	January 27, 2006
Kenneth Flynn	February 10, 2006

(b) About November 16, 2005, Respondent discriminated against its employee Rosita Claudio by subjecting her to a security investigation.

(c) About December 7 or 8, 2005, Respondent fabricated evidence of a forgery wrongdoing by its employee Steven Swartwout in the course of a security interview.

(d) About December 14, 2005, Respondent imposed more onerous conditions on its employee Robert Williams in regard to securing route coverage and by letter dated December 14, 2005 threatened contract loss.

(e) About January 26, 2006, Respondent fabricated evidence of a forgery and admission of wrongdoing by its employee Rosita Claudio based on a November 16, 2005 interview.

(f) About January 20, 2006, Respondent took away its employee Richard Lacina's route proprietary zip code.

(g) Since about February 1, 2006, Respondent has been applying more onerous conditions to union supporters regarding the standards for securing route coverage.

(h) Since about February 1, 2006, Respondent has been segregating known union supporters from other employees in parking assignments.

(i) About late March, 2006, Respondent cancelled the direct deposit of checks payable to Donna Eickhorst.

9. (a) Respondent engaged in the conduct described above in paragraph 8 because the named employees of Respondent formed, joined, or assisted the Union and engaged in concerted activities, and to discourage employees from engaging in these activities.

(b) Respondent discharged its employee Robert Williams as described above in subparagraph 8(a) and engaged in the conduct described above in subparagraph 8(d) for the further

reason that its employee Robert Williams testified at a representation hearing before the Board in Case 1-RC-21966.

10. By the conduct described above in paragraph 7, Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.

11. By the conduct described above in paragraph 8 and subparagraph 9(a), Respondent has been discriminating in regard to the hire or tenure or terms or conditions of employment of its employees, thereby discouraging membership in a labor organization in violation of Section 8(a)(1) and (3) of the Act.

12. By discharging its employee Robert Williams and the conduct described above in subparagraphs 8(d) and 9(b), Respondent has been discriminating against employees for giving testimony under the Act in violation of Section 8(a)(1) and (4) of the Act.

13. The unfair labor practices of Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

ANSWER REQUIREMENT

Respondent is notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, it must file an answer to the Consolidated Complaint. The answer must be received by this office on or before April 13, 2007, or postmarked on or before April 12, 2007. Respondent should file an original and four copies of the answer with this office and serve a copy of the answer on each of the other parties.

An answer may also be filed electronically by using the E-Filing system on the Agency's website. In order to file an answer electronically, access the Agency's website at <http://www.nlr.gov>, click on **E-Gov**, then click on the **E-Filing** link on the pull-down menu. Click on the "File Documents" button under "Regional, Subregional and Resident Offices" and then follow the directions. The responsibility for the receipt and usability of the answer rests exclusively

upon the sender. A failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. When an answer is filed electronically, an original and four paper copies must be sent to this office so that it is received no later than three business days after the date of electronic filing. Service of the answer on each of the other parties must still be accomplished by means allowed under the Board's Rules and Regulations. The answer may not be filed by facsimile transmission. If no answer is filed, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the Consolidated Complaint are true.

NOTICE OF HEARING

PLEASE TAKE NOTICE THAT on June 18, 2007, at 11:00 AM at 10 Causeway Street Boston Massachusetts, and on consecutive days thereafter until concluded, a hearing will be conducted before an administrative law judge of the National Labor Relations Board. At the hearing, Respondent and any other party to this proceeding have the right to appear and present testimony regarding the allegations in the Consolidated Complaint. The procedures to be followed at the hearing are described in the attached Form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

Dated at Boston, Massachusetts this 30th day of March, 2007.

Rosemary Pye, Regional Director
National Labor Relations Board
First Region
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10 Causeway Street, Sixth Floor
Boston, Massachusetts 02222-1072