

FedEx and UPS Battle Heats Up over Provision that would make it Easier for FedEx to be Unionized

Now, YouTube is Involved; What would be the Impact on Shippers? FedEx Rates up 20%?

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A mostly behind the scenes tussle in Washington DC went a lot more public this week, as FedEx took aggressively to new media to try to kill a provision in an upcoming bill that would make it easier for FedEx workers to unionize.

At issue is a proposal that would change the current status of FedEx vis-à-vis labor law. Unlike UPS, FedEx is currently designated as falling under the Railway Labor Act (RLA), which makes labor organizing more difficult. That resulted from some odd regulatory history and a controversial 1996 provision that codified the FedEx status into law.

As a result, per its RLA status, FedEx cannot currently be unionized on a location by location basis, but only through a company-wide vote – a much tougher mission for union organizers. The status takes on even greater impact with the potential for “card check” legislation that would enable local operations to organize without even needing a secret ballot, a bill many Democrats and president Obama seem to favor.

UPS, on the other hand, is governed under the National Labor Relations Act, which allows location-level organization.

Now, a provision to change FedEx’s status has been slipped into a largely unrelated bill reauthorizing the FAA (i.e., the Express Carrier Employee Fairness Amendment in the FAA Reauthorization Act). But that may in one sense be fair play, because the 1996 provision granting FedEx the RLA status was also put in an FAA reauthorization bill.

UPS says it has lobbied for but did not initiate the change in FedEx's status. UPS is almost completely

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unionized. FedEx has just a small number of employees under unions.

The bill has already passed in the House, and now will be voted on by the Senate.

Employing YouTube

FedEx decided to make its case with an aggressive campaign employing new media. That includes a standalone web site www.brownbailout.com that cleverly uses the ubiquitous UPS “whiteboard” series of ads to make its case, arguing that the change is a “bailout” to UPS, and that UPS is trying to use the Congress to hamper a more efficient competitor. The video has also been posted on YouTube.

UPS of course responded, saying in a press release that “The U.S. Congress is considering legislation that aims to level the playing field in the express delivery industry by placing FedEx Express’ drivers and other non-airline specific employees under the appropriate labor statute - the NLRA.”

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It added: "The amendment will appropriately provide equal treatment under labor law to employees performing the same functions at different companies, and will eliminate the special treatment currently given to FedEx Express. UPS believes the marketplace, not the unequal application of labor laws, should determine success."

The FedEx campaign is "preposterous," says **Ken Hall**, director of the Teamsters Package Division. "It doesn't pass the smell test. They're trying to play this as a bailout for their competitor because they don't have a good argument on the merits."

Impact on Shippers

"UPS drivers have significantly better pay and benefits than do FedEx drivers," says **Jerry Hemstead**, a former parcel industry executive and now president of Hemstead Consulting. "I'm sure in the highly militant parts of the country like New York City, Philadelphia, Chicago, Boston, Detroit, and New Jersey is where the organizing effort will be focused."

He says if the union can get a major market like New York or Chicago, "then they can hold FedEx hostage to get the concessions that they want - exactly what the UPS drivers have done. A carrier just can't afford to have a major market down."

"The bad news for shippers transcends a temporary service interruption. My guess is that if FedEx Express went 100% union, as UPS is, they would have to take their rates up 20 percent," Hemstead says. He believes, however,



that the change in FedEx labor status is not enough - it will take that plus card check legislation.

"Right now FedEx can legally proselytize the drivers against unionization and do a PR campaign about how bad it would be for FedEx and its employees if unions ever got in," he says. "Once one card is signed then Fed is limited to what it can and cannot say thereafter."

Another concern for shippers would be the potential for strikes, if FedEx was to become largely unionized. Today, FedEx-only shippers do not have to worry about a strike taking their carrier's service out of the market for awhile, unlike UPS-focused shippers. The FedEx shippers might also need to add UPS as a second carrier to provide some options in the event of a FedEx strike, remembering the damaging UPS Teamsters strike of 1997.

There is also some possibility that if FedEx was to organize under the Teamsters that some day in the future there could be a joint strike, paralyzing the parcel shipping industry, especially concerning with DHL's exit of the US market last year.