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FedEx vs. UPS: A Showdown in Congress

How attempts by UPS to hamstring its chief competitor could harm Tennessee

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EXECUTIVE SUMMARY

Atlanta-based United Parcel Service (UPS) is waging a war in Congress against its chief competitor, Memphis-based FedEx. The two shipping giants are currently governed by different labor rules because they deliver their packages via different modes of transportation.

UPS, primarily a trucking company, is subject to the more union-friendly National Labor Relations Act. FedEx delivers the bulk of its packages via air transportation and is governed by the Railway Labor Act. As a result of having far more unionized workers, UPS has a per-employee cost that is more than double that of FedEx.

Rather than change its business model or seek to reduce the labor laws imposed on it, UPS is now lobbying heavily—with the help of the International Brotherhood of Teamsters—to bring FedEx under the purview of the National Labor Relations Act.

This move would not only inflict damage on FedEx, but it would have serious consequences for the state of Tennessee. The effort by UPS could place thousands of Tennesseans' jobs in jeopardy, and the state could potentially lose more than $8 million in annual tax revenue.

Further, the two sides have spent more than $2 million in 2009 to lobby Congress on this issue alone. This proves that the federal government is so powerful that it could literally devastate an entire company overnight at the whim of its competitors. Democrats in control of Congress are more union-friendly than their Republican predecessors, so UPS and the Teamsters union might very well succeed at forcing unionization on hundreds of thousands of FedEx workers. Not only will FedEx and its customers suffer, but the result could cost the state in terms of lost jobs and diminished tax revenue.

Introduction

FedEx and the United Parcel Service (UPS) are two colossal shipping giants, together shipping more than 23 million packages around the world every single day.[1] FedEx is based in Memphis, Tennessee, employing approximately 290,000 people and bringing in $38 billion in revenue each year. UPS, based in Atlanta, Georgia, employs 426,000 people and rakes in more than $51 billion in annual revenue.[2] A snapshot of the two companies, originally published in *Reason Magazine*, shows their respective financial breakdown.

UPS vs. FedEx		
	UPS	**FedEx**
Revenue	$51.5 billion	$38 billion
Net Income	$3.6 billion	$1.1 billion
Approximate Employee Count	426,000	290,000
Approximate Unionized Employee Count	260,000	"a small percentage"
Compensation and Benefits Cost	$31.7 billion	$8.5 billion
Amount Spent Lobbying	$5 million	$9 million
Source: "Using Unions as Weapons," FedEx 2008 Annual Report, UPS 2008 Annual Report		

A key difference between the two companies lies in the costs of their employee compensation and benefits. As of 2008, UPS had a per-employee cost that was "more than double that at FedEx."[3] In fact, given the above numbers, this cost to FedEx came in at $29,310, while UPS shelled out $74,413 per employee.[4]

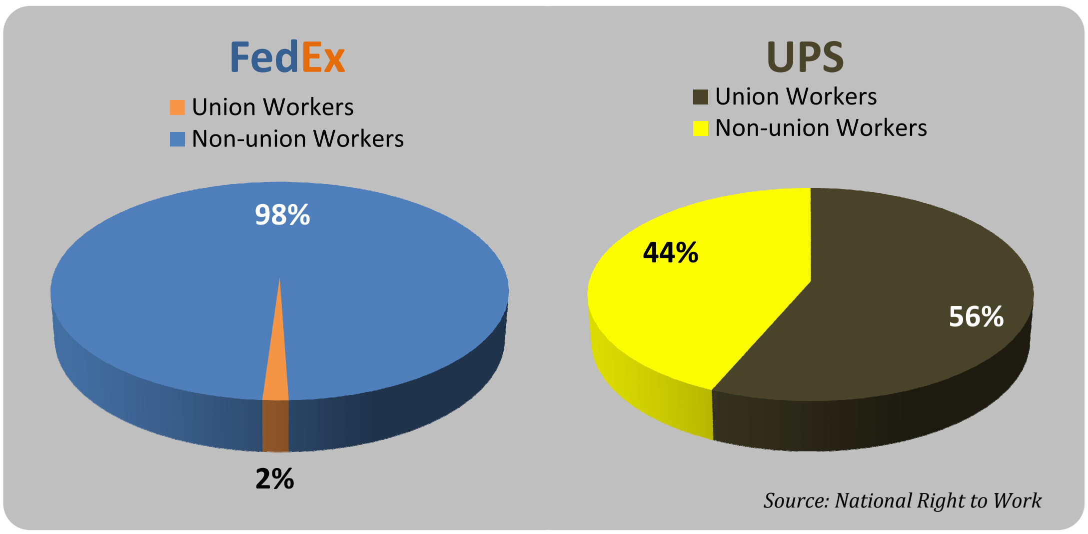
So why the $23 billion disparity in employee compensation? It lies in another distinction between the two companies. Eighty-five percent of FedEx's deliveries are made by air through its FedEx Express division. Its ground delivery divisions, FedEx Ground and FedEx Freight, make up only 15 percent of its operations. Conversely, 85 percent of UPS packages are delivered solely by ground transportation.[5]

Due to their respective shipping methods, the two companies are subject to entirely different labor laws. UPS must comply with the more union-friendly National Labor Relations Act. FedEx Express is treated as an airline and is subject to the Railway Labor Act, which in addition to regulating railway disputes, has governed airline labor issues since 1936.[6]

The Railway Labor Act makes it more difficult for workers to unionize, since Congress deems railway and airline transportation more "vital to interstate commerce."[7] Specifically, in order for FedEx workers to unionize, a union must receive a majority of votes from all employees—those that vote on unionization and those that do not. In contrast, UPS workers can unionize with the support of a simple majority of those who actually vote.[8] Because of this distinction, FedEx has been burdened less by unionization. On the other hand, "UPS is one of the largest unionized companies in the country."[9]

In fact, 56 percent of UPS employees are unionized, whereas less than 2 percent of FedEx workers belong to a union.[10] As a result, heavily unionized UPS faces much higher employee costs than the practically nonunionized FedEx. These extra costs are brought on by union dues, labor disputes, and other factors directly tied to unionization.

Unionization Per Company



While FedEx Ground and Freight divisions are already subject to the National Labor Relations Act, UPS is none too pleased with the different treatment FedEx Express receives. It has recently joined forces with the International Brotherhood of Teamsters to urge Congress to transfer FedEx Express employees to the National Labor Relations Act, making it easier for them to unionize.[11]

This invokes memories from the days when Baptists teamed up with bootleggers to prevent liquor sales on Sunday—motivated by different reasons to seek the same end result. The Baptists wanted to stop liquor sales on the Sabbath on religious grounds, while bootleggers wanted to be the only source of alcohol on Sunday. Here, UPS is collaborating with the party largely responsible for its labor costs to achieve a result both desire but for entirely different reasons. This move by UPS and the Teamsters could have dire consequences not only for FedEx, but indeed the entire state of Tennessee.

Lost Jobs

FedEx is one of the largest employers in Tennessee. Of its worldwide employees, 31,731 were based in Tennessee as of 2008.[12] Subjecting FedEx to the National Labor Relations Act could mean a significant reduction in the number of workers FedEx employs in the state.

According to the company's director of corporate communications, the change sought by UPS would affect roughly 100,000 FedEx employees.[13] That could bring the number of unionized FedEx workers from the current 4,700 pilots to nearly 105,000 workers company-wide.[14] In other words, the percentage of unionized FedEx employees would skyrocket from 2 percent to more than 36 percent.

The attempt by UPS to unionize FedEx workers could cost the state of Tennessee as much as $8.6 million in annual tax revenue.

In order for FedEx to retain its $8.5 billion annual compensation and benefits cost without losing any revenue, the company would be forced to eliminate 61 percent of its newly unionized workforce or 81 percent of the remaining non-union positions.[15] While it is highly likely that FedEx would absorb much of the increased costs and reduce expenditures elsewhere without job cuts of this magnitude, these percentage rates denote a worst-case scenario. Thus, to avoid an increase in overall compensation and benefits costs, FedEx would have to eliminate 60,610 unionized workers or 153,835 non-union workers, or some combination of the two.

Again, this is a worst-case analysis of the impact of UPS's lobbying efforts to unionize FedEx employees. Though it could have a much smaller impact, this could potentially mean a loss of more than 25,000 Tennessee jobs. Even a more conservative estimate could put the number of lost Tennessee jobs in the low thousands if UPS is successful.

Diminished Tax Revenue

Not only is FedEx one of the largest job-creators in Tennessee, it is also a significant contributor to the state's tax coffers. The move to unionize more FedEx workers would cost the company billions of dollars in revenue. Based on the increase in per-employee costs for compensation and benefits, this change could cost FedEx more than $4.5 billion, cutting into the company's revenue by as much as 12 percent.[16]

While individual and corporate tax records are not subject to the state's public records act, the state imposes a flat 6.5 percent excise tax on corporate income.[17] Based on this rate, FedEx pays an estimated $71.5 million in annual taxes to the state. If the company's income and tax payments declined by roughly the same 12 percent that its revenue would, this move could cost the state of Tennessee as much as $8.6 million in annual tax revenue from FedEx alone.[18]

Additionally, job cuts could cost the state even more in lost tax revenue. If FedEx is forced to terminate thousands of employees to cover its increased costs, that would lead to a reduction in Tennesseans that pay sales taxes, local property taxes, and other taxes to the state and local governments. Also, because FedEx's home of Memphis lies within a few miles of Mississippi and Arkansas, many of its laid-off employees might leave the state to find employment, leading to a reduction in the number of taxpayers living in Tennessee.

The Power of Government

The primary reason UPS and FedEx are subject to different laws is that they have entirely different business models. If UPS truly wanted to level the playing field with FedEx, it should pursue a less costly business model by increasing its use of air transportation. Accordingly, it would expose itself to fewer union-related costs. The company has chosen instead to take the issue to Congress to thrust additional costs onto its competitor.

What UPS is doing is a prime example of rent-seeking, whereby a company exploits "public power for private advantage by hindering a competitor."[19] The fact that a company can go to Congress and ask them to direct a massive wrecking ball at their competition, simply because it has the political upper hand, is disturbing.

UPS's enemy-turned-accomplice, the Teamsters union, gave Democrats $2.4 million in 2008.[20] The pair is now reminding the Democrats that control Congress of that support as it attempts to subject FedEx to increasingly irrelevant unionism.

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Lobbyists have now descended upon Washington in full force. In just the first three quarters of 2009, FedEx, UPS, and the Teamsters have spent more than $2 million to lobby on this single issue. The amount spent by either side is nearly identical, as the Teamsters and UPS have jointly spent $1,027,000 in favor of the change, while FedEx has spent about $3,000 more than that to defeat it.[21]

The concerted effort by UPS and the Teamsters is a slap in the face to FedEx, especially given its track record. When UPS began shipping by air in the 1980s, it soon thereafter implored Congress to subject its workers to the Railway Labor Act to reduce unionization efforts.[22] According to George Will, a columnist with the *Washington Post*, "FedEx *supported* UPS's efforts, even though the vast majority of UPS parcels never go on an airplane, whereas FedEx's trucking operations exist to feed its air fleet and distribute what it carries."[23] Nonetheless, UPS failed in its attempt to deregulate its own employee affairs, and it now seeks to hinder FedEx by imposing the more stringent rules upon the rival shipping company.

While this type of protectionism is nothing new to Washington, a win for UPS could set a dangerous precedent for other companies. It will send a signal that it is acceptable—and effective—to lobby Congress solely to devastate competing businesses. As this approach continues to gain appeal, no longer is the relationship between corporate America and Congress a tug-of-war between regulation and deregulation, but one where companies seek to use government power as a blunt instrument of force against their competitors.

Conclusion

If UPS is successful, the state of Tennessee could suffer the consequences right along with FedEx. The state is already facing a serious budget shortfall, so millions of dollars in lost revenue could very well lead to additional cuts in government services and state employee layoffs, or lead to tax increases on other taxpayers.

Further, in such a bleak economic climate, forcing a company to lay off employees for no reason but to benefit a competitor is unacceptable. Because of the negative impact this could have, Congress should handily reject UPS's efforts to hamstring its rival. Rather, UPS should seek to change the labor laws to which it is subject or adapt its business model to mitigate their negative impact. It should not succeed in obtaining legislation to harm FedEx and Tennessee purely for its own benefit.

About the Author

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[1] "UPS Fact Sheet," UPS Pressroom, <http://www.pressroom.ups.com/Fact+Sheets/UPS+Fact+Sheet> (accessed November 16, 2009); The Associated Press, "FedEx projects increased package count in December," Charleston Daily Mail, November 10, 2009, <http://dailymail.com/Business/200911100928> (accessed November 16, 2009).

[2] Veronique de Rugy, "Using Unions as Weapons," *Reason Magazine*, October 2009, <http://reason.com/archives/2009/09/28/using-unions-as-weapons> (accessed November 16, 2009).

[3] *Ibid.*

[4] *Ibid.*

[5] Rugy, "Using Unions as Weapons."

[6] *Ibid.*

[7] *Ibid.*

[8] *Ibid.*

[9] *Ibid.*

[10] Anthony Riedel, "Big Labor and Big Government May Be the Only Winners in UPS - FedEx War," Freedom @ Work Blog, National Right to Work Foundation, <http://www.nrtw.org/en/blog/workers-lose-big-labor-and-big-gov-win-in-ups-fedex-war-11102009> (accessed November 19, 2009).

[11] Rugy, "Using Unions as Weapons."

[12] "100 Best Companies to Work For (2008)," FORTUNE 500, CNNMoney.com, <http://money.cnn.com/magazines/fortune/bestcompanies/2008/states/TN.html> (accessed November 17, 2009).

[13] Heather Clark, "UPS and FedEx spar over labor bill in Congress," ABC News, October 27, 2009, <http://abcnews.go.com/Business/wireStory?id=8931247> (accessed November 16, 2009).

[14] *Ibid.*

[15] Based on applying the $74,413 per-employee rate of UPS to 100,000 FedEx workers, retaining the current $29,310 rate for the remainder of FedEx's workforce. In order for FedEx to retain the $8.5 billion employee compensation and benefits cost, it would be forced to eliminate 60,610 of the newly-unionized employees or 153,835 non-union employees.

[16] Based on applying the $45,103 difference between the per-employee cost of UPS and FedEx, multiplied by 100,000 newly-unionized employees.

[17] "Franchise and Excise Taxes," Tennessee Department of Revenue, <http://www.tennessee.gov/revenue/tntaxes/fae.htm> (accessed November 16, 2009).

[18] Based on a 12 percent reduction in FedEx's annual $1.1 billion annual income and applying the 6.5 percent tax rate to that reduced income.

[19] George F. Will, "Labor in the driver's seat," *Washington Post*, July 15, 2009.

[20] Rugy, "Using Unions as Weapons."

[21] Congressional Lobbying Reports for FedEx Corporation, United Parcel Service, and the International Brotherhood of Teamsters (First, Second, and Third Quarter 2009).

[22] Will, "Labor in the driver's seat."

[23] *Ibid.*