UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

TWIN AMERICA, LLC, CITY SIGHTS NY, LLC, AND GRAY LINE NEW YORK TOURS, INC., AS A SINGLE EMPLOYER, AND JAD TRANSPORTATION, INC., AS JOINT EMPLOYERS

and **Case Nos. 02-CA-190704**
02-CA-196228
02-CA-198436

TEFE KWAMI AMEWO, an Individual

UNITED SERVICE WORKERS UNION, IUJAT, LOCAL 1212

and **Case No. 02-CB-190736**

TEFE KWAMI AMEWO, an Individual

UNITED SERVICE WORKERS UNION, IUJAT, LOCAL 1212

and **Case No. 02-CB-199847**

ARTHUR Z. SCHWARTZ, an Individual

GENERAL COUNSEL'S EXCEPTIONS TO THE DECISION OF THE ADMINISTRATIVE LAW JUDGE

Pursuant to Section 102.46 of the National Labor Relations Board's Rules and Regulation, the General Counsel, through his attorney Jamie Rucker, hereby excepts to the Decision and Recommended Order of Administrative Law Judge Jeffrey Gardner dated March 20, 2019 ("the ALJD"). In that decision, Judge Gardner dismissed nearly all the Complaint allegations, concluding that Respondents Twin America, LLC ("Twin America"), City Sights NY, LLC ("City

Sights"), Gray Line New York Tours, Inc. ("Gray Line"), as a single employer, with joint employer JAD Transportation, Inc. ("JAD") did not violate Sections 8(a)(3) and (1) of the National Labor Relations Act, as amended, ("Act"), when those Respondents:

- Laid off all the ticket agents previously represented by Local 225, Transport Workers Union of America, AFL-CIO ("Local 225") and made those workers apply for employment with JAD while permitting the ticket agents previously represented by Respondent United Service Workers Union, IUJAT, Local 1212 ("Local 1212") to continue their employment uninterrupted;
- "Endtailed" the ticket agents previously represented by Local 225 to those previously represented by Local 1212 for purposes of job-bidding, layoff, and recall; and
- Forced employees formerly represented by Local 225 to choose between employment and abandonment of their Section 7 rights.

Based on those erroneous conclusions, Judge Gardner also incorrectly determined that Local 1212 did not unlawfully acquiesce to the Respondent employers' unlawful discrimination on the basis of union membership. The General Counsel therefore respectfully submits the following exceptions to the ALJD's errors in fact and law which led to the foregoing erroneous conclusions and his consequent failure to provide appropriate remedies.

In accordance with Section 102.46(a)(1)(i)(D), counsel for the General Counsel reserves argument and citation to authority in support of the following exceptions to the accompanying brief in support.

EXCEPTIONS

1. The ALJ erred in finding that the Respondent Employers and Respondent Union negotiated the consolidation or merger of bargaining units. (ALJD 8:27–28.) The merger of two

units was accomplished by the operation of the election conducted by the National Labor Relations Board.

2. The ALJ erred in finding that legitimate business concerns drove the decision to layoff the Local 225 ticket agents.[1] (ALJD: 11:14–23.)

3. The ALJ erred in failing to explain how the Local 225 employees, who were working for the same employer as the Local 1212 ticket agents, differed relevantly from those latter workers, where all workers worked out of the same location, under the same supervision, selling the same products, and were paid through the same payroll company, with both sets of payroll records accessible equally to all the Respondent employers. (ALJD: 11:14–23.)

4. The ALJ misapplied Board law in concluding that the Respondent Employers did not unlawfully discriminate against the Local 225 workers by end-tailing them to the Local 1212 workers. (ALJD 8:30–11:10.)

5. The ALJ ignored Board law holding that discrimination on the basis of union membership is unlawful even where there is no evidence of anti-union animus. (ALJD 8:30–11:10.)

6. The ALJ erred in finding that even though "the Gray Line and City Sights operations had been fully merged,…the employees still remained employed by separate entities." (ALJD 4:37–38.)

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[1] As explained in the accompanying brief, representation of both these two groups of ticket agents was assigned to Local 1212 on November 28, 2016, when that labor organization was certified "as the collective bargaining representative of the tour guides, ticket agents, and customer service agents working for the integrated operations of Twin America, Gray Lines, and JAD Transportation in the new, combined bargaining unit." However, to avoid even clunkier phrasing, such as "formerly-Local-225-represented ticket agents," "previously-Local-1212-represented ticket agents," "ticket agents historically employed by Gray Line," or "ticket agents historically employed by City Sights and JAD together," references herein to "Local 225 ticket agents" denote that group of ticket agents who were represented by Local 225 before November 28, 2016 and references to "Local 1212 ticket agents" denote that group of ticket agents who were represented by Local 1212 before November 28, 2016.

7. The ALJ incorrectly concluded that the Respondent Employers could lawfully force the Local 225 employees to choose between continued employment and accepting adverse employment terms because of their prior union membership. (ALJD 11:12–35.)

8. The ALJ erred in finding that witnesses Sarafa Sanoussi and Rufai Mohammed incorrectly claimed to have had their earning potential harmed by being end-tailed. (ALJD 7:29–33.)

9. The ALJ erred in concluding that statements by Sarafa Sanoussi and Rufai Mohammed claiming to have had their earning potential harmed by being end-tailed impugned their credibility because those statements were in fact correct. (ALJD 7:28–34.)

10. The ALJ erred in finding that witness testimony about statements by Employer representatives that the end-tailing decision was because the Local 225 employees had lost the election was "taken out of context in discussion about why the Employer would not…maintain two seniority lists." (ALJD 7:36–41.)

11. The ALJ erred in concluding that the testimony described in the preceding paragraph impugned the credibility of Tefe Amewo and Sarafa Sanoussi because the ALJ incorrectly found that all such testimony was "taken out of context." (ALJD 7:36–41.)

Dated: May 17, 2019

/s/ Jamie Rucker

Jamie Rucker
Counsel for the General Counsel

CERTIFICATE OF SERVICE

The undersigned, an attorney for the General Counsel, hereby certifies that he caused a true and correct copy of General Counsel's Exceptions to the Decision of the Administrative Law Judge to be electronically filed with the Executive Secretary of the National Labor Relations Board on May 17, 2019 and served on the same date via electronic mail at the following addresses:

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