

Attorneys at Law

Michael S. Ferrell
t 312.499.1480
f 312.845.1998
MFerrell@ebglaw.com

February 14, 2020

VIA NLRB E-FILE

Roxanne L. Rothschild
Executive Secretary
National Labor Relations Board
1015 Half Street SE
Washington, DC 20570

Re: GEODIS LOGISTICS, Second Supplement to Request for Review,
Case Nos. 15-RD-217294 and 15-RD-231857

Dear Executive Secretary Rothschild:

On January 16, 2020 GEODIS Logistics (“GEODIS”) filed a Request for Review of the Regional Director’s January 2 Decision to Dismiss the Decertification Petitions in the above-captioned cases. Also on January 16, GEODIS and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers Union, AFL CIO-CLC (the “Union”) signed an Informal Settlement Agreement (the “Agreement”) resolving the unfair labor practice charge allegations in Case Nos. 15-CA-218543, 15-CA-226722, 15-CA-232539, 15-CA-239440, and 15-CA-239492 (collectively, the “Blocking Charges”). The Agreement included a non-admission clause and formed the basis for GEODIS’s Request for Review. The Regional Director thereafter approved the Agreement on January 22, and on January 25 GEODIS supplemented its Request for Review with a signed copy of the Agreement. (See Exhibit J).

After performance on the Agreement began, including GEODIS having tendered to the Region the agreed upon checks for back pay, front pay, interest, and tax consequences for the one alleged discriminatee, GEODIS received a February 6 letter from Region 15 stating the Union now seeks to withdraw from the Agreement. On February 13, GEODIS submitted to Region 15 a position letter opposing the Union’s request to unilaterally withdraw from the Agreement. GEODIS now seeks to further supplement its pending Request for Review with the attached copy of Region 15’s February 6 letter (Exhibit K) and GEODIS’s February 13 Position Statement opposing the same (Exhibit L).

Respectfully Submitted,

/s/ Michael S. Ferrell

Michael S. Ferrell

EXHIBIT K



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 15
600 South Maestri Place – 7th Floor
New Orleans, LA 70130-3413

Agency Website: www.nlr.gov
Telephone: (504)589-6361
Fax: (504)589-4069

February 6, 2020

VIA E-MAIL AND REGULAR MAIL

RyAnn M. Hooper
Epstein Becker &
Green, P.C.
875 Third Avenue
New York, NY 10022

✓ Michael S. Ferrell
Epstein Becker &
Green, P.C.
875 Third Avenue
New York, NY 10022

Re: GEODIS Logistics, LLC
Case 15-CA-218543
Case 15-CA-226722
Case 15-CA-232539
Case 15-CA-239440
Case 15-CA-239492
Case 15-RD-217294
Case 15-RD-231857

Dear Ms. Hooper and Mr. Ferrell:

This is in response to your January 25, 2020 Request for Reinstatement of the Petitions dismissed on January 2, 2020. See *Cablevisions Systems Corp.*, 367 NLRB No. 59 (December 2018). On February 5, 2020, the Region received a request from the Charging Party in the above referenced cases, the United Steelworkers Union (Union), to withdraw from the Settlement Agreement entered into by the Union and Geodis and approved by the Regional Director on January 22, 2020 and requesting Counsel for the General Counsel proceed to a hearing before an administrative law judge. In support of this request, the Union notes that its willingness to enter into the Settlement Agreement which included a non-admissions clause was based on the Regional Director's January 2, 2020 dismissal of the RD Petitions in the above referenced cases. However, based on Respondent's Request for Reinstatement of the Petitions, the Union asserts the settlement no longer represents a meeting of the minds.

GEODIS Logistics, LLC
Cases 15-CA-218543
15-CA-226722
15-CA-232539
15-CA-239440
15-CA-239492
15-RD-217294
15-RD-231857

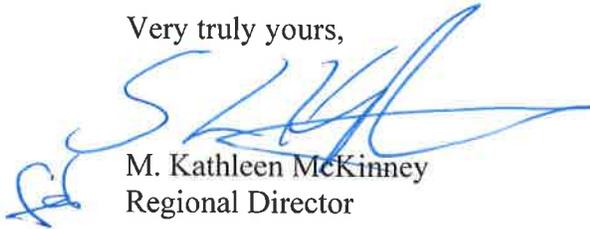
- 2 -

February 6, 2020

At this time, pursuant to the terms of the settlement, the Region has received the backpay and frontpay checks for the alleged discriminatee. However, the Region has not mailed the checks to the alleged discriminatee and the Region has not yet received a certification of compliance from Geodis that the Notice to Employees has been posted. Based on the Union's request to withdraw from the settlement, please take no further action on complying with the terms of the settlement until a decision has been made regarding the appropriateness of the Union's request to revoke the settlement.

Please submit to the Region, by no later than the close of business Thursday, February 13, 2020, Geodis' position on the Union's request to revoke the settlement.

Very truly yours,



M. Kathleen McKinney
Regional Director

MKM/pal

EXHIBIT L

Attorneys at Law

Michael S. Ferrell
t 312.499.1480
f 312.845.1998
MFerrell@ebglaw.com

February 13, 2020

VIA NLRB E-FILE

M. Kathleen McKinney
Regional Director
National Labor Relation Board, Region 15
F. Edward Herbert Federal Building
600 South Maestri Place, 7th Floor
New Orleans, LA 70130-3413

Re: GEODIS LOGISTICS, Case Nos. 15-CA-218543, 15-CA-226722, 15-CA-232539,
15-CA-239440, 15-CA-239492, 15-RD-217294 and 15-RD-231857

Dear Regional Director McKinney:

We write in response to your February 6 letter requesting GEODIS's position on the Union's February 5 Request to Withdraw from the parties' Informal Settlement Agreement (the "Settlement Agreement") that resolved the above-referenced unfair labor practice cases. As described in your letter, the Union's request to unilaterally withdraw from the Settlement Agreement is without factual or legal merit. It is nothing more than buyer's remorse. It would also represent a further abuse of the Board's blocking charge policy, as the Union is effectively seeking to resurrect allegations that have been settled with a non-admission clause to block the reinstatement and processing of election petitions in accord with the Board's decisions in *Cablevisions Systems Corp.*, 367 NLRB No. 59 (2018), and *TruServ Corp.*, 349 NLRB 227 (2007).

The Union agreed to the terms of the settlement when it signed the Settlement Agreement. GEODIS timely filed and served on the Union its request for review of the Regional Director's decision to dismiss the above-referenced RD Petitions on January 16. The Regional Director then approved the Settlement Agreement on January 22, without any intervening objection or request to withdraw by the Union prior to approval. After approval, GEODIS promptly commenced compliance with the Settlement Agreement, tendering to the Region four required checks for the alleged discriminatee.

The notion described in your February 6 letter that, "based on [GEODIS's] Request for Reinstatement of the Petitions," which was submitted to the Region on January 25, "the Union asserts the settlement no longer represents a meeting of the minds" is ludicrous. The entirety of the parties' "meeting of the minds" concerning the settlement of the unfair labor practice allegations is set forth in the Settlement Agreement, which makes no mention – whatsoever – to the RD Petitions. Moreover, during the entire course of discussions regarding the Settlement Agreement, GEODIS never made any representation about intending to waive or otherwise forego

its right under Board law to seek reinstatement of the RD Petitions. As such, the Union cannot reasonably claim GEODIS's actions on January 16 or 25 seeking reinstatement of the Petitions was somehow contrary to the parties' mutual understanding of the Settlement Agreement.

To the extent the Union was simply ignorant of Board law requiring reinstatement of Petitions following a settlement subject to a non-admission clause, such is not a valid basis for permitting unilateral withdrawal from an approved Board settlement. See, e.g., *George Banta Co.*, 236 NLRB 1559 (1978) (holding that a party does not have a right to unilaterally withdraw from agreed upon settlement stipulations executed with the General Counsel as such would undermine "the continued efficacy of [the Board's] settlement procedures.").

As one ALJ noted:

Absent an effective settlement program the agency's processes would soon drown in a sea of litigation. It is, therefore, imperative that the public have confidence that the settlement commitments made by the General Counsel and his agents, the Regional Directors. Such confidence is built upon fairness in the administration of the settlement program, not only toward individuals and labor organizations but to employers large and small as well. Moreover, it is just as important to be perceived to be fair as it is to practice fairness. Central to this critical perception is a party's ability to rely, absent violation of the agreements' terms, on the steadfastness of settlement agreements...

U.S. Gypsum, 284 NLRB 4, fn. 8 (NLRB May 29, 1987)

Here, the Union's February 5 Request to Withdraw from the Settlement Agreement is nothing more than an effort to evade the post-settlement application of the Board's holdings in *Cablevisions Systems* and *TruServ*, which support GEODIS's January 16 and 25 filings seeking reinstatement of the Petitions. As the Board stated in *Cablevisions Systems*: "Simply put, *Truserv* requires that a petition be reinstated after a settlement agreement is executed 'absent a finding of a violation of the Act, or an admission by the employer of such a violation.'" 367 NLRB No. 59 at slip op. 3 (quoting *Truserv*, 349 NLRB at 228). Solely to avoid the application of this controlling Board law, the Union seeks to undermine the efficacy of the Board's settlement procedures by unilaterally withdrawing from the approved Settlement Agreement without any legal basis for doing so. Casehandling Manual Section 11730 recognizes that the blocking charge policy "is not intended to be misused by a party as a tactic to delay the resolution of a question concerning representation raised by a petition." The union's desperate attempt to withdraw from the settlement agreement is just that - a tactic to delay the resolution of a question concerning representation raised by a petition, which the Casehandling Manual expressly prohibits.

Indeed, the only potential legal basis available for granting the Union's request would be if GEODIS were in material breach of the Settlement Agreement. However, there has been no

M. Kathleen McKinney
February 13, 2020
Page 3

allegation of breach.¹ On the contrary, the only party that has so far failed to perform under the Settlement Agreement is the Region, which is withholding the back pay and front pay checks for the discriminatee that were tendered by GEODIS, and has yet to provide the Notices for posting, despite the Regional Director having approved the Settlement Agreement on January 22.

For all of the above reasons, the Union's Request is without factual or legal merit, and should be denied as contrary to both Board law and policy.

Respectfully submitted,



Michael S. Ferrell

Cc: Ben Bodzy, Esq.
RyAnn Hooper, Esq.

¹ Even if the Union could show material breach, which it cannot, in accord with GC Memorandum 18-02, the Settlement Agreement does not contain default language authorizing immediate revocation of the settlement. Instead, the Region must first provide GEODIS with notice and an opportunity to cure any compliance defect. No such notice has been provided, and the Union's dissatisfaction over potential reinstatement of the Petitions is neither a contractual defect nor a material breach of the Settlement Agreement.