

United States Government
National Labor Relations Board
OFFICE OF THE GENERAL COUNSEL

Advice Memorandum

DATE: December 7, 2017

TO: John J. Walsh, Regional Director
Region 2

FROM: Jayme Sophir, Associate General Counsel
Division of Advice

SUBJECT: Twin America LLC; CitySights NY, LLC; & 524-5034-6700
JAD Transportation, Inc. 548-6060-6700
Case Nos. 02-CA-190704 and 02-CA-196228

United Service Workers Union, Local 1212
Case Nos. 02-CB-190736 and 02-CB-199847

This case was submitted for advice on whether the Employer and Local 1212 violated the Act by agreeing to endtail, for work-assignment-bidding purposes, a group of employees formerly represented by a different union—Local 225—following the Board’s certification of Local 1212 as the bargaining representative of a new unit consisting of the former Local 225 employees and another group of employees that had already been represented by Local 1212.

We conclude that the Employer violated Sections 8(a)(1) and (3), and Local 1212 violated Sections 8(b)(1)(A) and (2), because the decision to endtail the job-bid seniority of the employees formerly represented by Local 225 was based on union-membership considerations.

FACTS

On March 17, 2009, two double-decker tour bus companies in Manhattan—International Bus Service, Inc. (“IBS”) and CitySights New York, LLC (“CitySights”)—formed a joint venture called Twin America, LLC (“Twin America”). Despite the formation of Twin America, both IBS and CitySights continued to function as independent double-decker tour bus operations, as they had before the joint venture. The tour guides, ticket agents, and customer service agents of IBS’s tour bus operation—known as Gray Line New York Tours, Inc. (“Gray Line”)—were represented by Transport Workers Union, Local 225 (“Local 225”). CitySights contracted with JAD Transportation, Inc. (“JAD”), an employee leasing company, to provide staff for its busing operations. The tour guides, ticket agents, and customer service agents that CitySights employed via JAD were represented by United Service

Workers Union, Local 1212, IUJAT (“Local 1212”). The collective-bargaining agreement covering CitySights’s employees is between Local 1212 and JAD.

During the pendency of an antitrust matter, Twin America merged the operations of Gray Line and CitySights. As of January 6, 2015, Twin America began using a single set of bus stops. On May 1, 2015, Twin America began displaying both the Gray Line and CitySights logos on all of its buses. Twin America also began employing one set of managers over each aspect of the operation, requiring all tour guides and ticket agents to report to the same location to start their day, ordering all drivers to report to a single garage location in Brooklyn, and providing all ticket agents with the same uniforms and products to sell. Despite the merger of operations, the employees continued to be represented by their respective unions in separate bargaining units.

On August 31, 2015, Local 225 filed a petition to represent all the tour guides, ticket agents, and customer service agents employed by Twin America and CitySights. Local 1212 intervened, and the results of the election were inconclusive. About one year later, on November 18, 2016, a run-off election was held. Local 1212 won the election and, on November 28, 2016, was certified as the bargaining representative of the new unit.

In December 2016, Local 1212 held a meeting at Twin America’s premises for the ticket agents formerly represented by Local 225. During the meeting, Local 1212’s Union President noted the long-running tension between Local 225 and Local 1212, advocated for the Gray Line ticket agents formerly represented by Local 225 to embrace the JAD ticket agents as brothers, and stated that he was going to try to fix their problems.

Later that month, on or around December 28, Twin America and Local 1212 began negotiating the integration of the Gray Line ticket agents with the JAD ticket agents. The two most contentious issues were seniority and commission rates. Seniority was particularly difficult to resolve because neither the expired Local 225 CBA nor the Local 1212 CBA contained provisions controlling the seniority of employees in the event of a merger, and Gray Line ticket agents had significantly lengthier tenures than their JAD counterparts. In fact, 66 out of Gray Line’s 72 ticket agents—approximately 91%—began working for Gray Line in 2012 or earlier, whereas 128 out of JAD’s 164 ticket agents—approximately 78%—joined JAD in 2014 or later. Notwithstanding the significant difference in seniority, JAD ticket agents enjoyed higher commission rates. Gray Line ticket agents earned \$11.60 or \$10.02 (depending on their Gray Line seniority) per ticket sold for the most popular tour under the expired Local 225 CBA. Under the Local 1212 CBA, however, JAD ticket agents earn \$15.87/\$15.51/\$14.39 per ticket sold for the same tour depending on their commission tier (“A,” “B” or “C,” respectively).

During negotiations, Local 1212 demanded that the Gray Line ticket agents be paid at the same commission rate as their JAD counterparts, based on their years of service with Gray Line, and that Twin America either maintain two separate seniority lists or base seniority on date of hire for the purposes of work assignments, layoffs, and recalls. Twin America initially rejected each of Local 1212's proposals. Twin America countered Local 1212's commission-rate proposal by offering the Gray Line employees the "B" commission tier. It further specified that it refused to maintain two seniority lists for purposes of work assignments, layoffs, and recalls, because it would be unnecessarily cumbersome, and it rejected dovetailing the seniority of Gray Line with JAD employees, because JAD's president was adamant that Gray Line employees be endtailed. According to a position statement submitted by Twin America, both JAD and Twin America believed that subjecting JAD ticket agents to a lower seniority ranking by dovetailing the two groups with absolutely nothing in return for the JAD employees would be seen by them as unfair and unreasonable. And, in a later email to Advice, Twin America's counsel also alleged that the JAD ticket agents on the bargaining committee had asserted that the combined bargaining unit would never ratify a dovetail settlement, essentially threatening a labor dispute on the issue.

After further negotiations, Twin America stated that it would be willing to pay the Gray Line employees at the higher commission rates contained in the JAD contract and dovetail them with the JAD employees for economic purposes—i.e., wages, vacations, and sick leave—based on their years of service with Gray Line. Twin America remained adamant, however, that Gray Line employees be endtailed for purposes of bidding for work assignments, layoffs, and recalls. On January 2, 2017, Local 1212 accepted Twin America's offer. According to Twin America, once it was decided that the Gray Line and JAD ticket agents would function as one integrated group with a single payroll and seniority list, Twin America's Vice President sent WARN notices to all of the Gray Line ticket agents explaining that they were being terminated but could transition to JAD with their seniority intact for purposes of wages, vacations, and sick leave.

On January 9, 2017, representatives from Twin America, JAD, and Local 1212 met to begin bargaining for a new CBA. Present on behalf of Twin America were Vice President and Executive Vice President. Present on behalf of Local 1212 were Union President and six Local 1212 representatives. Several employees, including Employee A—a former Gray Line ticket agent and former member of Local 225—were also in attendance. During the meeting, Employee A asked what would happen to the former Gray Line ticket agents' seniority if they transferred to JAD. Executive Vice President responded that they were going to be placed on the bottom of the seniority list. He further explained that this was the result of the election and that, in a prior conversation, he had forewarned Local 225's business representative that they should keep the two units separate, but the business representative would not listen.

Executive Vice President stated that this was the result that they had been trying to avoid but this was how it was going to be. Union President then stated that he had told the Gray Line employees at the first union meeting in December 2016 that no matter what happened, someone would be hurt. He also stated that if the employees transitioned to JAD, they would get a higher commission rate.

Later that week, on January 13, Charging Party called Vice President and asked him to comment on the rumors about former Gray Line ticket agents being placed at the bottom of the seniority list underneath JAD employees. Vice President explained that “you people”—i.e., Local 225—“lost the election” and “so this is what the company wants to do.” Charging Party replied that this was not right because the former Gray Line ticket agents had much more seniority than the JAD ticket agents, and if Gray Line was not shutting down why should the Gray Line employees suffer just because a new payroll is being formed. Vice President stated that the new payroll was going to include everybody—all the ticket agents. Charging Party, unsure what payroll had to do with Gray Line employees’ seniority, further pressed Vice President to explain why they were going to the bottom of the list. Vice President stated, “[Charging Party], you know what is going on.” The conversation ended shortly thereafter.

On February 7, 2017, another bargaining meeting was held between Twin America, Local 1212, and JAD. Vice President and Executive Vice President were present on behalf of Twin America. Union President, several employees, and JAD’s President were also in attendance. During the meeting, Employee A broached the issue of seniority. Executive Vice President responded that he already told them that they were going to be placed at the bottom of the seniority list. He further stated that somebody called for the election—i.e., Local 225—and that is the result. JAD’s President added that she could not allow other people to be put on top of the JAD ticket agents because they had worked very hard to put the company where it is today and that is how it is going to be. Employee A then suggested that they keep two seniority lists as they had done before. Executive Vice President rejected Employee A’s suggestion and stated that he wanted everyone on the same seniority list and on one payroll. JAD’s President asked the former Gray Line employees what they were afraid of missing by being at the bottom of the seniority list. Employee B answered that they were losing their seniority and, therefore, their locations for selling tickets. He explained that placement at the bottom of a seniority list means that they can only choose from whatever locations were not already selected, where sales typically were lower. Vice President attempted to allay these fears by stating that the former Gray Line ticket agents had been at this job for a very long time and with any bid they chose, they should still be able to make money. Employee B countered that they had

been at this job for a very long time and that is exactly why they wanted their seniority.¹

Ultimately, forty-two former Gray Line ticket agents transferred to JAD's payroll.² According to a spreadsheet provided by Twin America's counsel on November 17, 2017, the forty-two ticket agents, as a whole, have enjoyed a 10% increase in earnings thanks to the parity in commission rates that Local 1212 acquired through the negotiation process.

ACTION

We conclude that the Employer violated Sections 8(a)(1) and (3) and Local 1212 violated Sections 8(b)(1)(A) and (2), because the decision to endtail the job-bid seniority of former Gray Line employees was based on their previous membership in Local 225.

I. The Employer Violated Sections 8(a)(1) and (3) by Endtailing the Former Gray Line Employees Based on Union-Membership Considerations.

The Board has long recognized the impact that employees' seniority has on their earnings and job security.³ The legality of "endtailing"—i.e., placing a group of employees at the bottom of an employer's seniority list—depends on whether it was the result of "unit considerations" or "union considerations."⁴ Thus, a union may lawfully discriminate against newcomers to a bargaining unit and endtail them in

¹ On February 14, 2017, CitySights purchased IBS's interest in Twin America and Gray Line became a wholly-owned subsidiary of Twin America. The Region has determined that Twin America and CitySights have been a single employer, which has jointly employed ticket agents with JAD, during the relevant time period. An amended charge was filed on September 13, 2017 to reflect this finding. Also, Twin America's counsel admitted in his May 10, 2017 position statement that Twin America and JAD are joint employers of the ticket agents supplied by JAD and represented by Local 1212. Accordingly, we refer to Twin America, CitySights, and JAD, collectively, as "Employer."

² This did not include the Charging Party who, along with others, decided not to apply because of the seniority endtailing.

³ See *General Drivers & Helpers, Local 229*, 185 NLRB 631, 631, 634 (1970) (stating that seniority is considered the "lifeblood of wages").

⁴ *Reading Anthracite Co.*, 326 NLRB 1370, 1377 (1998).

order to protect the wages, tenure, and other working conditions of current bargaining unit employees.⁵ But if a decision to place employees at the bottom of the seniority list is based on union considerations—e.g., membership in a particular union or a lack of prior union membership—it violates the Act.⁶ In determining whether employees were endtailed unlawfully, the Board has considered a variety of factors, including: language in collective-bargaining agreements,⁷ the parties' statements,⁸ and whether the endtailing decision was made before or after the affected employees became part of the relevant bargaining unit.⁹

⁵ See *Ford Motor Co. v. Huffman*, 345 U.S. 330, 338-39 (1953) (discussing permissible characteristics that can be used to calculate unit seniority; including years of military service in calculation of seniority did not violate Act); *General Drivers & Helpers, Local 229*, 185 NLRB at 631 (bargaining representative has the “right to give inferior seniority to employees transferred from another unit”).

⁶ See *Teamsters Local 727 (Global Experience Specialists, Inc.)*, 360 NLRB 65, 65 n.1, 71-73 (2013) (application of CBA provision that calculated seniority based on an employee's date of membership in the union violated the Act when it caused employees who had been members of another union to be endtailed following a consolidation of facility locations); *Reading Anthracite Co.*, 326 NLRB at 1370 (union discriminatorily encouraged union membership in violation of Section 8(b)(2) by assigning seniority dates to employees based on the date they became union members).

⁷ Compare *Woodlawn Farm Dairy Co.*, 162 NLRB 48, 49-52 (1966) (concluding that parties' application of their collective-bargaining agreement, which called for dovetailing only those incoming employees who were already members of respondent union, violated Act), and *Whiting Milk Corp.*, 145 NLRB 1035, 1036-37 (1964) (same), *enforcement denied*, 342 F.2d 8 (1st Cir. 1965), with *Fleet Carrier Corp.*, 201 NLRB 227, 228 (1973) (layoff based on contractual provision denying retroactive seniority to newly-added classification of employees to bargaining unit, lawful, absent other evidence of unlawful motivation).

⁸ *Teamsters Freight Local No. 480*, 167 NLRB 920, 920 n.1, 923-24 (1967) (statements of union business representative and arguments presented by union's counsel demonstrated that otherwise permissible endtailing was unlawfully motivated by union-membership considerations), *enforced*, 409 F.2d 610 (6th Cir. 1969).

⁹ *Interstate Bakeries Corp.*, 357 NLRB 15, 17-18 (2011) (ruling that decision to endtail a previously unrepresented employee was based on unlawful union-membership considerations, rather than legitimate unit-protection considerations, because decision was made *after* bargaining units merged into one new unit and the parties

In this case, we conclude initially that the agreement to endtail the former Gray Line ticket agents for job-bidding purposes adversely affected their terms or conditions of employment and benefited the incumbent JAD ticket agents. The order in which ticket agents can bid on ticket-selling locations directly impacts their earnings, because it determines which agents obtain the more lucrative locations. As of the end of November 2016, after Local 1212 was certified as the bargaining representative for both Gray Line and JAD employees, approximately 91% of the Gray Line ticket agents had a hire date of 2012 or earlier, whereas approximately 78% of the JAD ticket agents had a hire date of 2014 or later. Accordingly, most of the forty-two former Gray Line ticket agents who transitioned to JAD's payroll have been disadvantaged. Although the Employer asserts that the former Gray Line ticket agents received a 10% increase in average earnings in 2017 due to the higher commission rates under the Local 1212 contract, their earnings would have been even greater had they been able to retain their bidding seniority and select the more lucrative locations. And the endtailing has benefited the incumbent JAD ticket agents, most of whom would have been beneath the former Gray Line ticket agents for bidding purposes had the two groups been dovetailed rather than endtailed.

We further conclude, based on comments by Employer representatives and the timing of the endtailing decision, that the endtailing decision was based on union-membership considerations. As for the Employer comments, Vice President and Executive Vice President explicitly stated, on three separate occasions, that Gray Line ticket agents were endtailed because "they," meaning Local 225, lost the election. By explicitly tying the endtailing decision to the election results, Vice President and Executive Vice President effectively conveyed that the incumbent JAD ticket agents were being favored because of their lengthier membership in the victorious union, Local 1212. These comments draw direct parallels to the Board's decision in *Teamsters Freight*, in which the Board made it clear that statements alone demonstrated that an endtailing decision was discriminatory and violated the Act.¹⁰ In that case, the employer and respondent union maintained a facially lawful provision in their collective-bargaining agreement governing when employees added

had not preserved unit seniority in either unit before the merger), *aff'd*, 488 F. App'x 280 (10th Cir. 2012); *Teamsters Local 42 (Daly, Inc.)*, 281 NLRB 974, 975-76 (1986) (endtailing recently-organized employees after their unit was consolidated with unit of long-time union-represented employees was unlawful discrimination based on length of union membership, rather than unit protection, because merger created a new bargaining unit; therefore, amount of time employees were represented in prior units was irrelevant), *enforced*, 825 F.2d 608 (1st Cir. 1987).

¹⁰ 167 NLRB at 920 n.1, 923-24.

to the unit via a merger with another company would be endtailed or dovetailed.¹¹ When the employer merged with another company whose employees had not been represented by a union, the union's business representative told a newly-absorbed employee that previously-unrepresented employees were being endtailed,¹² and the union's counsel presented arguments that further demonstrated that the newly-absorbed employees' endtailing was motivated by their lack of prior union membership.¹³

Regarding the timing of the endtailing decision, the fact that it was made *after* the two groups of ticket agents had combined to form a new bargaining unit further demonstrates that the endtailing decision was based on union membership rather than unit membership. As of November 28, 2016, Local 1212 was the exclusive bargaining representative of both the Gray Line and JAD ticket agents. From that date through January 2, 2017, the date on which the Employer and Local 1212 agreed to endtail the Gray Line employees, the newly-combined unit of ticket agents engaged in the same job duties, assignments, and work locations for the same Employer under the same bargaining representative. Therefore, any assertion that endtailing the Gray Line ticket agents was done to protect *unit* employees fails because the former Gray Line employees were already a part of the same unit that the Employer claims the parties were acting to protect.¹⁴ That leaves the Gray Line employees' former

¹¹ *Id.* at 921 (summarizing the pertinent provision regarding mergers); *see id.* at 922-23 (noting that if there were no additional factors to consider beyond the provision in the collective-bargaining agreement, the General Counsel would have not sustained his burden of demonstrating that the decision to endtail was illegally motivated).

¹² *Id.* at 922-23 (union representative inaccurately told employee that the Supreme Court had recently ruled that endtailing of previously unrepresented employees was lawful).

¹³ *Id.* at 923 (highlighting that the counsel's argument—that the employees never accumulated seniority in the past because they were not a part of a union—indicated that their former lack of union membership was a factor in the endtailing decision); *see Interstate Bakeries*, 357 NLRB at 18 n.11 (noting that a manager's statement that "the parties had decided to abide by 'union seniority'" supported the Board's finding of unlawful discrimination based on union-membership considerations).

¹⁴ *Compare Interstate Bakeries*, 357 NLRB at 17-18 (clarifying that, after employer and union decided to merge all sales representatives into a new, single unit, neither of the previous units "continued to exist . . . as before"; because the parties did not preserve the seniority of either of the former units, they violated the Act by endtailing a previously-unrepresented employee), *and Teamsters Local 42 (Daly, Inc.)*, 281

membership in Local 225 (and their relatively brief time as Local 1212 members) as the sole differentiating factor between the two groups of employees.

The Employer maintains that the decision to endtail the Gray Line ticket agents was lawful because it was motivated by legitimate business interests rather than union-membership considerations. Specifically, Twin America has argued that the Gray Line ticket agents were endtailed to help the JAD ticket agents originally represented by Local 1212, because they had less seniority and would otherwise have been hurt by the merger. But, regardless of the fact that the Employer was attempting to look out for a group of employees it believed would be disadvantaged by the merger, these statements essentially are an admission that the Employer was favoring the incumbent JAD ticket agents, who were indistinguishable from the Gray Line ticket agents except for their lengthier membership in Local 1212.¹⁵

More recently, Twin America's counsel contended that the decision to endtail was also motivated by a desire for industrial peace, because JAD ticket agents, who outnumbered former Gray Line ticket agents by nearly three-to-one, had essentially threatened that a dovetailed seniority list would be met with a labor dispute. But Board law is clear that distinctions cannot be made based on union membership, regardless of the subjectively altruistic reason for making that distinction.¹⁶ Analogously, in *Teamsters Local 42 (Daly, Inc.)*,¹⁷ after two groups of employees represented by the same union had merged into a single unit, the more recently unionized group was endtailed to the benefit of the larger group, which had been

NLRB at 976 (concluding that the merger of two separate units created one new unit and the seniority that employees held in the past units was now irrelevant), *with Simon Levi Co., Ltd.*, 181 NLRB 826, 827-29 (1970) (endtailing of employees in merger permissible because the decision to endtail was made prior to the combination of the two units and there was no evidence decision was motivated by union membership considerations).

¹⁵ See *Teamsters Local 42 (Daly, Inc.)*, 281 NLRB at 976 (rejecting argument that endtailing decision following merger of two union-represented groups of employees was justified by favored group's lengthier tenure in unit, rather than tenure as union members; argument had "no factual basis because the represented employees at both locations formed one new unit" when they both moved to new location).

¹⁶ *Id.* (finding that endtailing based on union-membership considerations violated Section 8(b)(2) even though it "did not spring from hostile motives").

¹⁷ *Id.*

unionized for years.¹⁸ The ALJ noted that the union “was clearly on the horns of a dilemma: no matter what seniority system it proposed, one group of . . . employees would be adversely affected and discontented.”¹⁹ Despite this predicament, the ALJ, upheld by the Board, concluded that the union violated the Act by favoring one group—in effect, if not intent—merely because it was greater in number and consisted of longer-term union members.²⁰ Similarly, here, the Employer was cognizant of the interests of the intra-unit factions and opted to discriminate against the former Local 225 members in order to placate the desires of the more favored, or feared, majority.²¹

Twin America’s counsel also has argued that, when it negotiated the endtail agreement, the Employer anticipated that the significant increase in Gray Line ticket agents’ commission rates would offset any reduction in sales due to the loss of job-bid seniority. But discrimination in regard to any term or condition of employment to encourage or discourage union membership is unlawful. And, even assuming that the former Gray Line ticket agents earned more in 2017 due to the higher commission rates under the Local 1212 contract, their earnings clearly would have been even greater had they been able to retain their bidding seniority and select the more lucrative locations. Moreover, the endtailing strongly favored the incumbent JAD ticket agents, the majority of whom had less Employer seniority than the former Gray Line ticket agents and would have been in a much worse economic position had the two groups been dovetailed. Therefore, the endtailing impermissibly was based on union-membership considerations.

¹⁸ *Id.* at 974-75.

¹⁹ *Id.* at 976 (citing *Barton Brands, Ltd., v. NLRB*, 529 F.2d 793, 798-99 (7th Cir. 1976) (“While recognizing that a union may make seniority decisions within a wide range of reasonableness, the court stated that ‘such decisions may not be solely for the benefit of a stronger, more politically favored group over a minority group.’”)).

²⁰ *Id.*

²¹ *See Barton Brands*, 529 F.2d at 799 (unlawful discrimination based on union considerations includes discrimination between “union members and non-members or between ‘good’ members and ‘bad or indifferent’ members,” as well as discrimination “on the basis of any invidious or arbitrary classification”).

II. In Agreeing to Endtail the Former Gray Line Ticket Agents, Local 1212 Violated Sections 8(b)(1)(A) and (2) Notwithstanding the Absence of Evidence of Unlawful Motive.

In most endtailing cases, the union is the party that aggressively advocates for its original members' seniority and demands that the new employees be endtailed. And, when the employer agrees to endtail employees at the behest of the union, the employer violates Section 8(a)(3), even though only the union had an unlawful motive.²² Here, during the negotiations over how to integrate the two groups of ticket agents, the Employer—not Local 1212—advocated for endtailing the Gray Line ticket agents. Moreover, there is only evidence that Employer representatives made subsequent statements attributing the endtailing decision to Local 225's election loss.²³ Although the instant case presents the inverse of the typical fact pattern, we conclude that Local 1212 violated Section 8(b)(2) and, derivatively, 8(b)(1)(A), by agreeing to discriminate against the former Gray Line employees based on union-membership considerations.²⁴

²² *Interstate Bakeries*, 357 NLRB at 16, 18 (concluding that the employer violated Section 8(a)(3) by agreeing to endtail a previously non-union employee, even though employer argued that the employee, one of its best, should be dovetailed because it did not want to lose him).

²³ Although Union President was present when these statements were made and did not disavow them, it would be difficult to argue that Local 1212 thereby endorsed them. (b) (5)

(b) (5)

²⁴ In some cases, the legality of endtailing has been analyzed through both discrimination and duty of fair representation lenses. *See Reading Anthracite Co.*, 326 NLRB at 1370 (ruling that union discriminatorily encouraged union membership in violation of Section 8(b)(2) and violated its duty of fair representation by assigning seniority dates to employees based on date they became union members; affected employees were already in the unit and, where their job duties and terms of employment did not change, there was no other apparent basis for the loss of seniority). *Cf. Riser Foods*, 309 NLRB 635, 635-36 (1992) (concluding that the union did not breach its duty of fair representation by endtailing employee because, at the time that it refused to dovetail him, he was not a member of the unit; no allegation of unlawful discrimination). Here, the Region should not allege that Local 1212

CONCLUSION

Accordingly, based on the foregoing, the Region should issue complaint, absent settlement, alleging that the Employer violated Sections 8(a)(1) and (3), and Local 1212 violated Sections 8(b)(1)(A) and (2), based on the decision to entail the former Gray Line ticket agents regarding bidding for work assignments.

/s/
J.L.S.

ADV.02-CA-190704.Response.TwinAmerica. (b) (6), (b) (7)

breached its duty of fair representation. First, the duty of fair representation gives unions significant leeway in negotiating on behalf of represented employees. Second, during negotiations over how to integrate the two groups of employees, Local 1212 advocated for the Gray Line ticket agents' seniority rights, secured higher commission rates for those employees, and secured their retention of seniority for purposes of commission rates. Third, it was Employer representatives, rather than Local 1212 representatives, who made the statements evincing an unlawful motive.