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July 23, 2010

**BY FEDERAL EXPRESS**

Cynthia T. Brown, Esq.  
Chief, Section of Administration  
Office of Proceedings  
Surface Transportation Board  
395 "E" Street S.W.  
Washington, D.C. 20423-001



Re: MC-F 21035, Stage Group plc and Coach USA, Inc., et al.  
Acquisition of Control – Twin America LLC

Dear Ms. Brown:

As you know, we represent Continental Guest Services Corporation ("CGSC") in connection with the above-referenced proceeding.

We write in response to the Applicants' counsel's letter of July 21, 2010, which addressed the July 16, 2010 letter from the New York State Attorney General (the "Attorney General"), which again requests that the STB deny the Application predicated upon the additional basis of the recent decision issued by the National Labor Relations Board, dated June 28, 2010 (the "NLRB Decision"), as it relates to entities associated with the Applicants (we enclose for your convenience a copy of the NLRB Decision). For the reasons set forth below and in our prior submissions, we join with the Attorney General and again request that, *inter alia*, the STB deny the Application.

The NLRB Decision was based upon a full evidentiary record and a hearing and found – contrary to the assertions of certain of the Applicants (International Bus Services, Inc. d/b/a Gray Line New York ("IBS"), City Sights Twin, LLC d/b/a City Sights New York ("City Sights") and Twin America, LLC ("Twin") (collectively, the "Bus Company Defendants") – that "the evidence...clearly establishes" that Twin, among other things, is **not** a "fully-integrated joint venture" because "since the formation of Twin America, Gray Line and City Sights have maintained separate, distinct operations." (NLRB Decision at 10) The NLRB Decision therefore directly impacts the STB proceedings because, contrary to the Applicants' assertions, the NLRB found that as of June 28, 2010 there was no

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**merger of operations between IBS and City Sights.<sup>1</sup> (NLRB Decision at 10-12)**

CGSC relies upon the Attorney General's submission to the STB to demonstrate that the benefits of the Applicants' combination are not what they have claimed before the STB. CGSC respectfully submits that the NLRB Decision further demonstrates that after the taking of evidence, the hypothetical efficiencies claimed by the Applicants' expert, Professor Robert D. Willig ("Willig"), are fanciful and unrealized (see NLRB Decision at 6, footnote 9). In other words, it has been almost one and a half years since the merger, and Willig's efficiency assertions in support of the proposed merger simply have not taken place.

In support of the Application, the Applicants affirmatively asserted as a defense to the Attorney General's opposition that Twin is a "fully-integrated joint venture" and relied upon the case of Texaco v. Dagher, 547 U.S. 1, 126 S.Ct. 1276 (2006).<sup>2</sup> The Bus Company Defendants repeatedly took that precise position and relied on Dagher in CGSC's state monopolization action entitled Continental Guest Services Corp. v. International Bus Services, Inc., et al., Index No. 600643/10 (Sup. Ct. N.Y. Co.) (the "State Action") in seeking to have CGSC's Complaint dismissed and the Temporary Restraining Order that has already been issued vacated.<sup>3</sup>

Mark Marmurstein, the President and CEO of Twin and an officer and managing member of City Sights, asserted in his affirmation in the State Action that "all aspects of [City Sights' and Gray Line's] operations...are now under the management of a single entity, Twin America."<sup>4</sup> CGSC opposed such assertion<sup>5</sup>

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<sup>1</sup> In his letter, the Applicants' counsel attempts to obfuscate the NLRB Decision by asserting that the statements therein were "specific to union representation". However, the reason that the existing collective-bargaining agreements were a bar to an election in the matter before the NLRB was because the NLRB found that there was **not** "a sufficient merger of operations between Gray Line and City Sights". (NLRB Decision at 4)

<sup>2</sup> See Reply of Applicants to Comments of New York State Attorney General, pp. 52-53.

<sup>3</sup> See, e.g., Bus Company Defendants' Memorandum of Law in Opposition to [CGSC's] Motion for Preliminary Injunction, pp. 4, 12-14; and Memorandum of Law in support of Bus Company Defendants' Motion to Dismiss, p. 1. Such documents were previously filed with the STB.

<sup>4</sup> See Affirmation of Mark Marmurstein, dated May 18, 2010, ¶ 26.

<sup>5</sup> See CGSC's Memorandum of Law in Support of its Application for a Preliminary Injunction and in Opposition to the Motion to Dismiss, pp. 15-17. CGSC previously filed this document with the STB.

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and argued that, *inter alia*: (i) such assertion was contradicted by the facts; (ii) IBS and City Sights cannot enter into a purported "joint venture" or any agreement for that matter in order to evade liability from their antitrust violations; (iii) the Bus Company Defendants' actions were subject to the Donnelly Act; and (iv) the Bus Company Defendants' reliance on Dagher was misplaced, as the decision in Dagher only was rendered after full discovery and a trial.<sup>6</sup>

Moreover, and as pointed out by the Attorney General's July 16, 2010 letter, the NLRB agreed with CGSC and found that: (i) the evidence contradicted the Applicants' assertion that Twin is "fully integrated"; and (ii) since the time that Twin was formed (*almost one and a half years ago in March 2009*), among other things:

- Gray Line and City Sights still each "maintains its own readily-identifiable and clearly distinct tour buses" (NLRB Decision at 4);
- "Gray Line and City Sights have maintained their separate public entities....There is no evidence that the tour routes or products offered by each company have changed" (NLRB Decision at 4-5);
- "the pick-up and drop-off stops for each company are unchanged. In addition, employees of Gray Line and City Sights each wear their distinct uniforms, which are labeled with each company's insignia" (NLRB Decision at 5);
- the duties of Gray Line's and City Sights' tour guides and lecturers still have not changed (Id.);

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<sup>6</sup> The Court in Dagher framed the issue as whether it was illegal under the Sherman Act for a "lawful, economically integrated joint venture to set the prices of its products." Id., at 3, 126 S.Ct. at 1278. Indeed, the Court expressly noted that "we presume for purposes of these cases that [the joint venture] is a lawful joint venture. Its formation has been approved by federal and state regulators, and there is no contention here that it is a sham." Id., at 6, 126 S.Ct. at 1280. As such, Dagher has no application here, where the combination: (i) has not been yet been approved by the STB; (ii) is under investigation by the Attorney General as unlawful, anti-competitive, and monopolistic; (iii) is viewed by the Attorney General only to be effectuated to escape state antitrust scrutiny under the Donnelly Act; and (iv) differed from that of Dagher, where the Court noted that the parties to the joint venture "did not compete with one another in the relevant market." Id., at 5, 126 S. Ct. at 1279.

<sup>7</sup> Contrary to the assertion of the Applicants' counsel in his letter, the NLRB did not recognize that Twin "is a joint venture between two established entities", but rather stated in the introductory fact section of the NLRB Decision that Twin was formed "as a joint venture between two established entities". (NLRB Decision at 3) (Emphasis added.)

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- the job duties of the respective executives of Gray Line and City Sights did not change (NLRB Decision at 5-6);
- "Gray Line and City Sights continue to conduct their own hiring" (NLRB Decision at 6);
- Gray Line still has not changed any of its forms and has maintained separate policies from City Sights (id.);
- Gray Line's and City Sights' "unit positions and duties have not been combined. City Sights tour guides only conduct tours on City Sights buses, and Gray Line tour guides only conduct tours on Gray Line buses. Likewise, the tickets' agents' selling abilities have not changed; they are not able to sell tickets for the other tour line....In addition, bus drivers only drive the buses of their home companies. Further, each company provides separate training for their ticket agents and tour guides." (NLRB Decision at 8-9);
- "there have been few personnel changes since the inception of Twin America" (NLRB Decision at 11);
- "Significantly, both Gray Line and City Sights have maintained their management structure for the tour operations, and daily supervision of the tour operations have not changed." (id.); and
- "Noticeably, the two tour companies are held out to the public as separate entities. The image portrayed to the public is that of two separate tour companies. Buses still maintain their separate Gray Line and City Sights insignia and colors; employees continue to wear their Gray Line and City Sights uniforms;, and brochures have not changed."<sup>8</sup> (NLRB Decision at 12)

In addition, the NLRB Decision found that "verified statement of Zev Marmurstein to the [STB]" in support of the Application was not credible and given no weight by the NLRB because it was directly contradicted by the "live testimony, which was

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<sup>8</sup> The purported "efficiencies and cost savings" from the formation of Twin that were alleged by the Applicants' counsel in his letter offer the Applicants little help, as they no doubt must be the best that the Applicants can offer as examples and such limited deficiencies contradict the overwhelming evidence that IBS and City Sights are still operating as two distinct and separate entities.

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subject to cross-examination" of James Murphy, Twin's own Vice President of Operations. These findings not only demonstrate that Twin is far from "fully integrated," but explain why IBS, City Sights, and Twin refuse to produce any discovery whatsoever in the State Action in support of their assertion that Twin is a "fully integrated entity."<sup>9</sup>

In the end, the Applicants have not satisfied their burden and the Application should not be approved as it would not serve the public interest. Accordingly, for the foregoing reasons and the reasons set forth in our prior submissions, CGSC requests that the STB deny the Application or, in the alternative, that, at the very least, the STB: (i) reject the Applicants' Dagher argument; or (ii) direct that the Applicants to the Attorney General with all of their documents on the integration issue prior to issuing any ruling on the Application.

Respectfully,

  
Gabriel Levinson

Enclosure

cc: All Counsel of Record (by federal express w/ enclosure)

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<sup>9</sup> CGSC propounded the following document request on Twin:

From the date of the Joint Venture to the present day, all documents and/or communications demonstrating that Twin America is a "fully integrated entity" including, but not limited to, all financial statements, reports and documents (such as those reflecting the flow of funds between and/or among IBS, City Sights, and Twin America and other affiliates and subsidiaries), governmental filings, tax returns, corporate and organizational documents, correspondence, memoranda, marketing documents, licenses, and payment documents.

Twin responded refusing to produce any documents, with the following objection to such document request:

**Twin America objects to Document Request No. 20 on the grounds that it is overbroad, unduly burdensome, vague, not reasonably calculated to lead to the discovery of admissible evidence, not material and necessary for the prosecution or defense of this Action, and calls for the production of documents not relevant to any party's claim or defense. (Emphasis added).**

**AFFIDAVIT OF SERVICE**



STATE OF NEW YORK    )  
                                  ) ss.:  
COUNTY OF NEW YORK )

BELKIS MARTINEZ, being duly sworn, deposes and says:

1. I am over 18 years of age, am not a party to this action, and reside in New York State.

2. On the 23<sup>rd</sup> day of July, 2010, I served true copies of the within letter from, Mark A. Berman, to Cynthia T. Brown, Esq., dated July 23, 2010, with enclosure, upon:

David H. Coburn, Esq.  
Steptoe & Johnson, LLP  
1330 Connecticut Avenue NW  
Washington, DC 20036

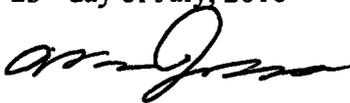
Legal Counsel  
Transport Workers Union of America  
AFL-CIO, Local 225  
10 Banta Place, Suite 108  
Hackensack, New Jersey 07601

James Yoon, Esq.  
120 Broadway  
Suite 26C  
New York, New York 10271

3. Service was effectuated by delivering same to all of the above by Federal Express courier for standard overnight delivery, Airbill Nos. 8717 8319 8848, 8717 8319 8870 and 8717 8319 8859, respectively.

  
BELKIS MARTINEZ

Sworn to before me this  
23<sup>rd</sup> day of July, 2010

  
\_\_\_\_\_  
NOTARY PUBLIC

**WILLIAM A. JASKOLA**  
Notary Public, State Of New York  
No. 02JA5081132  
Qualified In Nassau County  
Commission Expires June 30, 2011



**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 22**

**TWIN AMERICA, LLC**  
Employer  
and  
**LOCAL 225, TRANSPORT WORKERS  
UNION, AFL-CIO**  
Petitioner' **CASE 22-RC-13115**  
and  
**LOCAL 1212, UNITED SERVICE WORKERS  
UNION, IUJAT**  
Intervenor

**DECISION AND ORDER**

**I. INTRODUCTION**

The Petitioner filed a petition seeking to represent a unit of all full-time and regular part-time lecturers, tour guides, outdoor sales agents and ticket agents employed by the Employer but excluding all other employees. The Employer and the Intervenor both assert that the petition should be dismissed because it is barred by existing collective bargaining agreements with the Employer's predecessors. The Petitioner asserts that

there is no contract bar because the companies have merged, establishing a question concerning representation.

I find, for the reasons described below, that the existing contracts bar an election in this matter and therefore, the petition must be dismissed.

Under Section 3(b) of the Act, I have the authority to hear and decide this matter on behalf of the National Labor Relations Board. Upon the entire record in this proceeding,<sup>1</sup> I find:

1. The hearing officer's rulings are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.<sup>2</sup>

3. The record reflects, and I find, that Local 225, Transport Workers Union, AFL-CIO, ("the Petitioner"), represents certain employees of GL Bus Lines, Inc. ("GL Bus") and is a labor organization within the meaning of Section 2(5) of the Act. The record also reflects, and I find, that United Service Workers Union, IUJAT, Local 1212 (the "Intervenor") represents certain employees of JAD Transportation, Inc. ("JAD") and is a labor organization within the meaning of Section 2(5) of the Act.<sup>3</sup>

4. No question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act, for the following reasons:

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<sup>1</sup> Briefs filed by the Petitioner, the Intervenor, the Employer, predecessor Employer GL Bus Lines, Inc., and predecessor Employer JAD Transportation, Inc. have been duly considered. No other briefs were filed.

<sup>2</sup> The record reveals that Twin America is a Delaware Limited Liability Company engaged in the provision of drivers, ticket agents and tour guides to Gray Line New York Sightseeing Tour Services and City Sights NY Sight Seeing Tour Services from its New York, NY facilities.

<sup>3</sup> The parties stipulated, and I find, that the Petitioner and the Intervenor are labor organizations within the meaning of Section 2(5) of the Act.

## II. FACTS

Twin America, LLC is a sight-seeing business that, *inter alia*, provides double-decker sight-seeing tours in New York City. Twin America was formed on March 17, 2009 as a joint venture between two established entities, International Bus Service, Inc. ("IBS") and City Sights Twin, LLC<sup>4</sup> ("City Sights"). Prior to the March 17, 2009 joint venture, City Sights operated the City Sights double decker tour bus operation, while IBS was one of several companies engaged in the operation of Gray Line New York Tours ("Gray Line").<sup>5</sup> It is undisputed that prior to the establishment of the joint venture, City Sights and Gray Line operated as independent and unrelated New York City tour bus operations.

In forming Twin America, both IBS and City Sights contributed significant equity, including their bus fleets. Pursuant to the joint venture agreement, IBS and City Sights equally share control of Twin America, while IBS receives 60% of the economic interests and City Sights receives 40%. Twin America is managed by a Board of Managers, which is comprised of six individuals, three from Gray Line and three from City Sights.

The record reveals that prior to establishment of the joint venture, both City Sights and Gray Line had become parties to separate collective-bargaining agreements for units of employees. With respect to the Gray Line operation, the Petitioner and GL Bus are parties to a collective-bargaining agreement covering a unit of Gray Line's "drivers, lecturers, outdoor sales agents and NYU drivers in all of the Employer's

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<sup>4</sup> City Sights Twin, LLC is owned by City Sights, LLC and was created for the purpose of the joint venture.  
<sup>5</sup> IBS is an operating subsidiary of Coach USA. Prior to the joint venture, IBS owned the physical assets of Gray Line and employed the drivers of Gray Line tour buses. Another Coach subsidiary, GL Bus Lines, Inc., employed the tour guides and ticket agents.

garages.” This agreement is effective from November 15, 2008 through November 14, 2011.<sup>6</sup> With respect to the City Sights operation, the Intervenor and City Sights are parties to a collective-bargaining agreement covering a unit of City Sights’ full-time and regular part-time drivers, ticket agents and tour guides.<sup>7</sup> The Intervenor has represented this unit since about May 20, 2005, and the current collective-bargaining agreement is effective from May 20, 2008 through May 19, 2011.

The Petitioner seeks to represent a combined unit of Twin America’s lecturers, tour guides, outdoor sales agents and ticket agents, but excluding the drivers and all other employees. At the hearing, the parties stipulated that the existing collective-bargaining units are presumptively appropriate and that the current contracts serve as a bar to an election, unless there was a sufficient merger of operations between Gray Line and City Sights.

Gray Line and City Sights both offer numerous types of double-decker bus tours throughout New York City. Each company maintains its own readily-identifiable and clearly distinct tour buses. Both companies stop at most of the same locations, and their bus tours are not identical, but are substantially similar. Each company’s pick-up sites are often adjacent to each other at each stop.

Since Twin America was formed, Gray Line and City Sights have maintained their separate public identities, as detailed above. There is no evidence that the tour

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<sup>6</sup> Although the unit description includes drivers, the record reveals that since at least February 1, 2005, the Gray Line drivers have been represented by International Brotherhood of Teamsters, Local 966 under a separate collective-bargaining agreement with IBS for a unit of “all full-time and part time drivers and maintenance employees” employed by IBS. This agreement is effective from February 1, 2008 through January 11, 2011. Neither IBS nor International Brotherhood of Teamsters, Local 966 participated at the hearing.

<sup>7</sup> The parties to this collective-bargaining agreement are the Intervenor and JAD Transportation, Inc. At the hearing, the parties stipulated that JAD is a New York corporation engaged in the provision of providing drivers, ticket agents and tour guides to City Sights.

routes or products offered by each company have changed, except that Gray Line has eliminated the Heritage Tour, the Staten Island Tour and the Showbiz Tour, and City Sights eliminated the multi-language tour. Although there is some evidence that the number of Gray Lines buses was reduced as a result of the joint venture, there is no evidence that this reduction in the fleet has affected the number of tours available or the hours and wages of any employees. Likewise, the pick-up and drop-off stops for each company are unchanged. In addition, employees of Gray Line and City Sights each wear their distinct uniforms, which are labeled with each company's insignia.

The record reveals that Gray Line's tour guides and City Sights' lecturers have similar duties: they conduct tours on the double-decker buses. Likewise, the outdoor sales agents at Gray Line and the ticket agents at City Sights are both outdoor ticket vendors for the tours and they are stationed at the various pick-up sights. These duties did not change after the formation of the joint venture.

James Murphy, Twin America's Vice President of Operations, oversees the operations of both Gray Line and City Sights. Mr. Murphy now reports to Mark Marmurstein, the President of Twin America. Prior to the joint venture, Mr. Murphy was the Vice President and General Manager of Gray Line. Janet West is the owner of JAD Transportation; she does not report to Mr. Murphy. Six Gray Line managers and four City Sights managers now report to Mr. Murphy, whereas prior to the joint venture, only the Gray Line managers reported to him. Gray Line and City Sights each have an operations manager, a tour guide manager, a street sales manager, and a human resources

manager.<sup>8</sup> The job duties for these positions are similar, if not identical, for each company, and those duties did not change after the formation of the joint venture.<sup>9</sup> In the past, each company had its own safety manager but, since the inception of Twin America, the companies have shared a single safety manager.

The Gray Line and City Sights accounting departments and call centers have been fully integrated. The companies have jointly purchased fuel, spare parts and insurance for the vehicles, resulting in lower overall costs. The verified statements presented by the Petitioner also document that further integration is anticipated in the future.

Since the merger, the collective-bargaining agreements have continued to govern the terms and conditions of employment of the bargaining-unit employees covered by each agreement. Assignment of work, discipline and grievance-handling are all conducted according to the separate collective-bargaining agreements. In addition, bargaining-unit members have continued to be compensated according to the guidelines that are set forth in those agreements.

Gray Line and City Sights continue to conduct their own hiring. Since the joint venture, Gray Line has not changed its tour guide and ticket seller application forms. It has also maintained separate company policies, such as its tips policy, sexual harassment policy, and workplace violence policy.

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<sup>8</sup> Gray Line has two street sales managers and City Sights has just one. Gray Line also has a maintenance manager, who reports to Mr. Murphy. The tour guide manager position was vacant at the time of the hearing and those duties were being fulfilled by the operations manager.

<sup>9</sup> Although the Petitioner presented the verified statement of Princeton University Professor Robert D. Willig, which was submitted to the Surface Transportation Board, stating that Twin America is also consolidating information technology, sales and marketing functions, which "will result in the trimming of the workforce..." there is no evidence that such consolidation has taken place or that the workforce has been reduced.

Gray Line and City Sights have maintained their separate offices and bus garages since joining forces.<sup>10</sup> Employees for each company have continued to report to work at the same locations that they reported to prior to the establishment of the joint venture.

Both Gray Line and City Sights maintain pick-up points at the South Street Seaport and Battery Park. The Brooklyn Tour for each company stops at both of these locations, with the Gray Line tours leaving every half-hour and the City Sights tours leaving every hour. Since January 2010, the companies have been "cross-honoring" each other's tickets for the Brooklyn tours, meaning that a City Sights ticket may be used on a Gray Line Brooklyn tour, and vice versa.<sup>11</sup> Therefore, at the South Street Seaport and Battery Park, Gray Line and City Sights passengers stand in a single line for the Brooklyn Tours, and the Gray Line dispatcher loads all passengers onto whichever bus is available, either Gray Line or City Sights. There is no direct evidence that Gray Line or City Sights ticket sellers, ticket agents, tour guides or lecturers have lost hours or compensation as a result of this practice.<sup>12</sup>

Cross-honoring of tickets has also been implemented in other limited circumstances. City Sights offers an inclusive package that includes a multilingual tour. The City Sights multilingual tour is given on a Gray Line motor coach that accommodates both Gray Line and City Sights passengers. Also, since the Gray Line

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<sup>10</sup> Although Zev Marmurstein, the Employer's President and Chief Executive Officer, asserted in his verified statement to the Surface Transportation Board that buses were being warehoused at common locations, Mr. Murphy's testimony contradicted this statement. I credit Mr. Murphy's live testimony, which was subject to cross-examination.

<sup>11</sup> This practice is also called "cross-ticketing", however that term is rather misleading, as the Gray Line ticket sellers and the City Sights ticket agents may only sell tickets for their company's own tours.

<sup>12</sup> Although James Muessig, a Gray Line lecturer and the Intervenor's recording secretary, testified that Gray Line ticket agents would lose wages due to this practice, his testimony was speculative and did not include any specific examples of lost wages as a result of the "cross-honoring" arrangement.

buses are equipped in compliance with the requirements of the Americans with Disabilities Act and the City Sights buses are not, all City Sights passengers in wheelchairs are allowed to ride Gray Line buses. Finally, starting at 3:00 p.m., customers in lower Manhattan are allowed to board either the Gray Line or City Sights buses regardless of which type of ticket they hold. According to Mr. Murphy, this is allowed at the end of the day because at that time most customers have completed their tours and are using the buses to return to their hotels.

Further, Mr. Murphy may direct City Sights buses to pick up Gray Line passengers at other locations when Gray Line buses were not available, and vice versa, which he did on May 22, 2010, at the pick-up site located at 46<sup>th</sup> Street and Eighth Avenue. The May 22<sup>nd</sup> occurrence did not result in any lost wages or hours for Gray Line tour guides or ticket sellers.

At the South Street Seaport, on each day of the week except Monday, both Gray Line and City Sights employ and utilize their own dispatchers, as they did before the creation of Twin America. However, since April 2010, City Sights has not maintained a dispatcher at the South Street Seaport location on Mondays. Therefore, on Mondays, the Gray Line dispatcher also dispatches for the City Sights buses.<sup>13</sup>

Despite the above changes, unit positions and duties have not been combined. City Sights tour guides only conduct tours on City Sights buses, and Gray Line tour guides only conduct tours on Gray Line buses. Likewise, the tickets agents' selling abilities have not changed; they are not able to sell tickets for the other tour line, although they are both able to sell tickets for other third-party vendors. In addition, bus drivers

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<sup>13</sup> Dispatchers are not bargaining-unit members in either the contract between the Petitioner and GL Bus or the contract between the Intervenor and JAD Transportation, Inc. and they are also not included in the bargaining unit that is sought by Petitioner

only drive the buses of their home companies. Further, each company provides separate training for their ticket agents and tour guides.<sup>14</sup>

### III. LEGAL ANALYSIS

The major objective of the Board's contract bar doctrine is to achieve a reasonable balance between the frequently conflicting aims of industrial stability and freedom of employees' choice. This doctrine is intended to afford the contracting parties and the employees a reasonable period of stability in their relationship without interruption, and at the same time, to afford the employees the opportunity, at reasonable times, to change or eliminate their bargaining representative, if they wish to do so.

However, a question concerning representation will arise, and a contract will not bar a petition, where an employer has sufficiently merged two groups of employees. *Manna Pro Partners, LP*, 304 NLRB 782, 782 (1991); *Martin Marietta*, 270 NLRB 821 (1984); *Boston Gas Co.*; 221 NLRB 628 (1975). The Board has found that such a merger is accomplished where a new operation is created, in which the employees have been combined into a single group and can no longer be considered separate units. *The Denver Publishing Co.*, 238 NLRB 207, 208 (1978); *General Electric Co.*, 170 NLRB 1272, 1273 (1968); *Westinghouse Electric Corp.*, 144 NLRB 455, 458-59 (1963); *General Extrusion Co., Inc.*, 121 NLRB 1165, 1167-68 (1958) ("[A] contract does not bar an election if changes have occurred in the nature as distinguished from the size of the operations between the execution of the contract and the filing of the petition, involving ... a merger of two or more operations resulting in creation of an entirely new operation with major personnel changes...")

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<sup>14</sup> Zev Marmurstein stated in his verified statement that "having a single dispatcher allows Twin America to better coordinate the location of its buses and reduce traffic congestion." There was no testimony at the hearing to explain this statement or to explain the role of the dispatcher referred to by Mr. Marmurstein.

Factors that lead to such a finding include the physical consolidation of the operation, common management and administration, centralized control of labor relations, and interchange of employees in the new operation. *Martin Marietta Co.*, 270 NLRB 821, 822 (1984). In *Martin Marietta*, the Board found that a question concerning representation existed after the employer consolidated the operations of two adjacent lime quarries. 270 NLRB at 822. Prior to the merger, the employees at each quarry were represented by two separate unions. *Id.* In combining the operations, the employer physically joined the quarries, creating an extensive interchange of employees. *Id.* The employer also created a central administration and combined all labor relations. *Id.* "These changed circumstances have obliterated the previous separate identities of the two units which existed when each group worked for different employers at two distinct facilities." *Id.*

Similar circumstances led to the finding of a question concerning representation in *Boston Gas Co.*, 221 NLRB 628 (1975), where the employer acquired two separate gas companies whose customer service employees were represented by two separate unions. After the acquisition, the employer consolidated the customer inquiry centers at a single location. Although performing similar duties as in the past, after the merger the employees worked side-by-side under common supervision, applying the new employer's customer relations policies as distinguished from those of their previous companies. The Board concluded that these changes had created a new operation.

Unlike the *Martin Marietta* and *Boston Gas* decisions relied upon by the Petitioner in its brief, the evidence here clearly establishes that since the formation of Twin America, Gray Line and City Sights have maintained separate, distinct operations.

Bargaining unit employees' jobs have not changed in any manner since the merger. Their job duties have remained the same, their hours have remained the same, and their terms and conditions of employment have remained the same.

There have been few personnel changes since the inception of Twin America. The job classifications at each operation have been retained and there has been no significant change in the number of employees at each operation. Although the respective operations have a common overarching management, there is no evidence that this additional oversight has resulted in a further integration of the Gray Line and City Sights units. Significantly, both Gray Line and City Sights have maintained their management structure for the tour operations, and daily supervision of the tour operations has not changed.

Labor relations have not been centralized since the creation of the joint venture. The Petitioner asserts that Mr. Murphy's overall responsibility for operations of the Gray Line and City Sights operations is proof of a centralized control of labor relations. Rather, the evidence shows that labor relations continue to be controlled separately by Gray Line and City Sights. Each company has maintained its own Human Resources managers, and each company conducts its own hiring. The collective-bargaining agreements continue to govern the terms and conditions of employment and, since the joint venture, there have been no changes in the administration of these agreements. In fact, grievances continue to be filed and processed according to the procedures set forth in the agreements.

There has not been any significant physical consolidation of operations. The Petitioner argues that the contribution of buses to the joint venture is evidence of such a consolidation. Although the buses were contributed to the formation of Twin America,

those buses are being used separately and independently by each company. They are also being housed separately, as Gray Line and City Sights have retained their separate bus depots. Other factors also show that physical consolidation has not taken place. Both companies have retained their separate offices and employees continue to report to the same work locations. Neither company has changed any of its tour routes, nor have any routes been combined. While some aspects of the operations have combined, such as the accounting department and call center, those functions are ancillary and removed from the tour operations. Certainly, the minor consolidation that has occurred to date is not significant enough to establish a new operation.

Noticeably, the two tour companies are held out to the public as separate entities. The image portrayed to the public is that of two separate tour companies. Buses still maintain their separate Gray Line and City Sights insignia and colors; employees continue to wear their Gray Line and City Sights uniforms, and brochures have not changed.

In addition, there has been no interchange of Gray Line and City Sights tour guides, lecturers, ticket agents and ticket sellers since the formation of Twin America. Even though one company's buses might be used by the other company if necessary, this has been a limited practice thus far, and it has not resulted in the interchange of employees. It also has not resulted in any change in the terms and conditions of employment for bargaining unit employees, such as a loss in wages or hours. Although "cross-honoring" of tickets has occurred in limited circumstances, to date it has resulted in the comingling of customers rather than employees. There is no evidence that this

practice has affected the terms and conditions of any bargaining unit employees for either Gray Line or City Sights.

To serve as a bar to an election, a contract must meet certain basic requirements, which are set forth in the Board's decision in *Appalachian Shale Products Co.*, 121 NLRB 1160 (1958). The contract must be written, signed by the parties, cover substantial terms and conditions of employment for the petitioned-for unit, be of definite duration, and not exceed three years. *Id.* The parties stipulated, and I find, that the contracts between Petitioner and Gray Line and between the Intervenor and City Sights would serve to bar the election sought herein if I fail to find a merger sufficient to create a question concerning representation.

Based on the above and the record as a whole, I find that the joint venture between Gray Line and City Sights to create Twin America has not resulted in the creation of a new operation sufficient to result in a question concerning representation. Consequently, I find that the respective collective-bargaining agreements between the Petitioner and Gray Line and between the Intervenor and City Sights create a bar to an election in this matter.

#### **IV. ORDER**

**IT IS HEREBY ORDERED** that the petition filed in Case 22-RC-13066 herein be, and it hereby is, dismissed.

#### **V. RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14<sup>th</sup> Street, N.W., Washington, D.C. 20570-

0001. The Board in Washington must receive this request by **July 12, 2010**. The request may be filed electronically through E-Gov on the Agency's website, [www.nlr.gov](http://www.nlr.gov), but may not be filed by facsimile.<sup>15</sup>

Signed at Newark, New Jersey this 28th day of June, 2010.

  
J. Michael Lightner, Regional Director  
National Labor Relations Board  
Region 22  
20 Washington Place, Fifth Floor  
Newark, New Jersey 07102

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<sup>15</sup> To file the request for review electronically, go to [www.nlr.gov](http://www.nlr.gov) and select the E-Gov tab. Then click on the E-Filing link on the menu and follow the detailed instructions. Guidance for E-filing is contained in the attachment supplied with the Regional Office's initial correspondence on this matter and is also located under "E-Gov" on the Agency's website, [www.nlr.gov](http://www.nlr.gov).

**CERTIFICATE OF SERVICE**

I certify that I have this 8th day of July 2010 served a copy of the foregoing Letter of Applicants by Federal Express on the parties of record listed below and on counsel for Continental Guest Services Corporation:

U.S. Department of Transportation  
Federal Motor Carrier Safety Administration  
1200 New Jersey Avenue, S.E.  
Washington, DC 20590

U.S. Department of Justice  
Antitrust Division  
950 Pennsylvania Avenue, N.W.  
Washington, DC 20530

U.S. Department of Transportation  
Office of the General Counsel  
1200 New Jersey Avenue, S.E.  
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