

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

**ACME BUS CORPORATION**

**and**

**Case Nos.    2-CA-38981  
                  2-CA-39422**

**INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS, LOCAL 445**

**GENERAL COUNSEL'S  
MOTION TO REMAND  
CASE TO ADMINISTRATIVE LAW JUDGE**

Pursuant to Sections 102.45 of the Board's Rules and Regulations, the above-captioned matter was transferred to the Board on February 17, 2010 upon issuance of a Decision and Recommended Order issued by Administrative Law Judge Steven Davis.

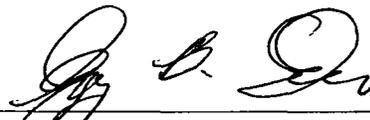
Upon receipt of the Administrative Law Judge's Decision, Counsel for the General Counsel became aware that his motion to withdraw certain provisions of the Complaint herein was not considered by the Judge. After reviewing the facts and circumstances, as set forth in the attached Stipulation of the parties, it appears that the Motion to Withdraw was not received in the Judge's Office due to a transposition in the facsimile number upon the facsimile transmission to the Judge, although all the parties received the Motion.

All parties agree that the General Counsel's Motion to Withdraw should be presented to the Judge. The parties further agree that they will not oppose General Counsel's Motion to Judge Davis, based upon excusable neglect pursuant to Rule 102.111(c)(1), that he consider and rule on the Motion to Withdraw those allegations in

the Complaint that related to the *Gissel* bargaining order and if he grants said Motion that he issue a revised Decision and Recommended Order.

For the foregoing reasons, the General Counsel respectfully requests that the Board remand the Decision and Recommended Order in the above-captioned case to Judge Davis for consideration of General Counsel's Motion to Withdraw all allegations related to the *Gissel* bargaining order as set forth in the consolidated complaint.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Gregory B. Davis', written over a horizontal line.

Gregory B. Davis  
Counsel for the General Counsel  
National Labor Relations Board  
Region 2  
26 Federal Plaza, Room 3614  
New York, New York 10278

Dated at New York, New York  
this 10<sup>th</sup> day of March 2010

**NATIONAL LABOR RELATIONS BOARD  
REGION 2  
26 FEDERAL PLAZA, ROOM 3614  
NEW YORK, NEW YORK 10278**

**ACME BUS CORPORATION**

**and**

**Case Nos. 2-CA-38981  
2-CA-39422**

**INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS, LOCAL 445**

**STIPULATION**

The undersigned counsel for the parties in the above-captioned matter agree and stipulate as follows:

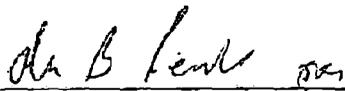
1. The above-captioned consolidated case was litigated before Administrative Law Judge Steven Davis on eleven dates between September 22, 2009 and November 2, 2009 pursuant to a Consolidated Complaint issued by the Regional Director, Region 2 on October 8, 2009.
2. On December 16, 2009, by facsimile transmission, Counsel for the General Counsel served upon John K. Diviney, Esq. and Alan B. Pearl, Esq., the counsel for the Charged Party, Acme Bus Company and Jerry Ebert, Director of Organizing for the Charging Party International Brotherhood of Teamsters, Local 445, a copy of a Motion to Withdraw the allegations of the Consolidated Complaint requesting a Gisse/ Bargaining Order as set forth in paragraphs 6, 7 and 16 of the Amended Consolidated Complaint.
3. Due to a clerical error in which the facsimile number of the New York Office of the Administrative Law Judges was transposed, the Motion to Withdraw was never received at the New York Office of the Administrative Law Judges.
4. The parties stipulate that Counsel for the General Counsel attempted to serve his Motion to Withdraw in this matter and have no objection to the

Board remanding the above-captioned case to Judge Davis for his consideration as to whether to consider and grant the General Counsel's Motion to Withdraw based upon the excusable neglect set forth in paragraph 3 above. The General Counsel agrees to file a motion with the Board requesting that the matter be remanded to the Administrative Law Judge to consider the General Counsel's Motion to Withdraw.

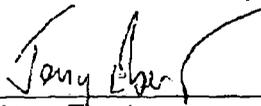
- 5. The parties hereby acknowledge that upon the Judge's approval of the Motion to Withdraw the *Gissel* allegation from the Complaint, a new decision representing the revision of the Administrative Law Judge's Decision dated February 17, 2010 to remove those paragraphs relating to the dismissal of the *Gissel* remedy will be filed by the Administrative Law Judge. Further, upon granting such motion, the *Gissel* request is withdrawn with prejudice. Any refiling of charges relating to a bargaining order as alleged in the Consolidated Complaint would be barred by Section 10(b) of the Act under any theory, including any relation back theory.
- 6. The parties agree to an extension of time to be jointly requested by the parties, to file exceptions and briefs to the Administrative Law Judge's Decision of February 17, 2010, pending the motion to the Board to request a remand and/or additional extension in the event that this matter is remanded to the ALJ pursuant to the General Counsel's motion.

  
 \_\_\_\_\_  
 John K. Diviney, Esq.  
 Counsel for the Employer

3/9/10  
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 Date

  
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 Alan B. Pearl, Esq.  
 Counsel for the Employer

3/10/10  
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 Date

  
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 Jerry Ebert,  
 Director of Organizing, IBT, Local 445

3/10/10  
 \_\_\_\_\_  
 Date

  
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 Gregory B. Davis  
 Counsel for the General Counsel

3/10/10  
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 Date