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Chauffeurs, Teamsters, and Helpers Local Union No. 771, affiliated with International Brotherhood of Teamsters and its Joint Council No. 53 and Pennsy Supply, Inc., d/b/a Ready-Mixed Concrete. Case 4–CB–10482

December 31, 2011

DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS BECKER
AND HAYES

On July 27, 2011, Administrative Law Judge John T. Clark issued the attached decision. The Respondent, Chauffeurs, Teamsters, and Helpers Local Union No. 771, affiliated with International Brotherhood of Teamsters and its Joint Council No. 53, filed exceptions and a supporting brief, and the Acting General Counsel filed an answering brief.

The National Labor Relations Board has considered the decision and the record in light of the exceptions and briefs, and has decided to affirm the judge’s rulings, findings,¹ and conclusions and to adopt the recommended Order as modified and set forth in full below.²

ORDER

The National Labor Relations Board orders that the Respondent, Chauffeurs, Teamsters, and Helpers Local Union No. 771, affiliated with International Brotherhood of Teamsters and its Joint Council No. 53, Lancaster, Pennsylvania, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Failing and refusing to execute a collective-bargaining agreement and a side letter agreement reached with the Employer, Pennsy Supply, Inc., d/b/a Ready-Mixed Concrete on April 6, 2010, thereby repudiating those agreements.

(b) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

¹ The Respondent has excepted to some of the judge’s credibility findings. The Board’s established policy is not to overrule an administrative law judge’s credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), *enfd.* 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

² We shall modify the judge’s recommended Order to include the appropriate remedial language for the violation found, and we shall substitute a new notice to conform to the Order as modified.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Assist the Employer in the written preparation of, and thereafter execute, the collective-bargaining agreement and side letter agreement that were reached with the Employer on April 6, 2010, for all employees in the following appropriate bargaining unit:

Truckdrivers, helpers, mechanics, yard persons, and plant persons employed by the Employer.

(b) Give retroactive effect to the provisions of the collective-bargaining agreement and side letter agreement reached with the Employer on April 6, 2010.

(c) Within 14 days after service by the Region, post at its offices and union hall in Lancaster, Pennsylvania, copies of the attached notice marked “Appendix.”³ Copies of the notice, on forms provided by the Regional Director for Region 4, after being signed by the Respondent’s authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees and members are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its members by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(d) Within 14 days after service by the Region, deliver to the Regional Director for Region 4 signed copies of the notice in sufficient numbers for posting by the Employer at its Quarryville, Pennsylvania facility, if it wishes, in all places where notices to employees are customarily posted.

(e) Within 21 days after service by the Region, file with the Regional Director for Region 4 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. December 31, 2011

Mark Gaston Pearce,

Chairman

³ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading “Posted by Order of the National Labor Relations Board” shall read “Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.”

Craig Becker, Member

Brian E. Hayes, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf with your employer
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to execute a collective-bargaining agreement and a side letter agreement reached with the Employer, Pennsy Supply, Inc., d/b/a Ready-Mixed Concrete on April 6, 2010, and thereby repudiate those agreements.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights listed above.

WE WILL assist the Employer in the written preparation of, and thereafter execute, the collective-bargaining agreement and side letter agreement that were reached with the Employer on April 6, 2010, for all employees in the following appropriate bargaining unit:

Truckdrivers, helpers, mechanics, yard persons, and plant persons employed by the Employer.

WE WILL give retroactive effect to the provisions of the collective-bargaining agreement and side letter agreement reached with the Employer on April 6, 2010.

CHAUFFEURS, TEAMSTERS, AND HELPERS
LOCAL UNION NO. 771, AFFILIATED WITH
INTERNATIONAL BROTHERHOOD OF TEAMSTERS
AND ITS JOINT COUNCIL NO. 53

Margaret M. McGovern, Esq. and *Deena E. Kobell, Esq.* (on brief), for the Acting General Counsel.
Ira Weinstock, Esq. (*Ira Weinstock, P.C.*), of Harrisburg, Pennsylvania, for the Respondent.
Vincent Candiello, Esq. (*Post & Schell, P.C.*), of Harrisburg, Pennsylvania, for the Charging Party.

DECISION

STATEMENT OF THE CASE

JOHN T. CLARK, Administrative Law Judge. This case was tried in Philadelphia, Pennsylvania, on November 12 and 19, 2010. The charge was filed by Pennsy Supply, Inc., d/b/a Ready-Mixed Concrete (the Charging Party or Employer) on April 30, 2010.¹ The complaint issued on August 27. The complaint alleges that Chauffeurs, Teamsters, and Helpers Local Union No. 771, affiliated with International Brotherhood of Teamsters and its Joint Council No. 53 (the Respondent or the Union), violated Section 8(b)(3) of the National Labor Relations Act (the Act), when, on April 14, it unlawfully repudiated an agreed-upon new collective-bargaining agreement with the Charging Party. The Respondent's answer denies violating the Act in any manner.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the counsel for the Acting General Counsel, the Respondent, and the Charging Party, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Employer a Pennsylvania corporation, with a facility in Quarryville, Pennsylvania, has been engaged in the production and transport of asphalt and concrete in Lancaster County, Pennsylvania. During the 12-month period ending August 27, 2010, the Employer, in conducting its business operations above, purchased and received at its Quarryville facility goods valued in excess of \$50,000 directly from points outside the Commonwealth of Pennsylvania. The Respondent admits, and I find, that the Employer is engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Respondent is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. Background

The Employer operates numerous concrete and asphalt plants in the Commonwealth of Pennsylvania. In 2007, it purchased several facilities, including plants in Lancaster, Quarryville, and Landisville, Pennsylvania, from McMinn's Asphalt. The Landisville plant is a nonunion facility. The employees at the Lancaster and Quarryville plants were represented by the Respondent under a single collective-bargaining agreement. At the completion of the sale the Employer recognized the Respondent and assumed the collective-bargaining agreement. At the beginning of the trial the parties stipulated that the unit set

¹ All dates are in 2010, unless otherwise indicated.

forth in article 1 of the expired agreement was an appropriate unit within meaning of Section 9(b) of the Act. The unit is: truck-drivers, helpers, mechanics, yard persons, and plant persons employed by the Employer.

After the purchase and the assumption of the collective-bargaining agreement the parties bargained over some changes to the employees' terms and conditions of employment. The bargaining resulted in a letter of agreement being signed by the parties on March 7, 2008. Howard Rhinier, the Respondent's secretary-treasurer and principal officer, and James Wardrop, the Respondent's business agent signed the agreement for the Respondent. In addition to signing the letter Rhinier participated in the negotiations. Toni M. Roberson who was then the Employer's vice president of human resources signed on behalf of the Employer. (GC Exh. 3.)

In early 2009 the parties negotiated an agreement that allowed the Quarryville drivers to drive for the Landisville plant. Those negotiations were conducted by Matthew Dunn, the Employer's transportation manager, and Wardrop. Both men signed that agreement as well as Rhinier, who did not participate in the negotiations. The agreement was not dated but "ran through 2009." (GC Exh. 4.) Melissa Martin-Devitz, who was then the Employer's manager of human resources, testified without contradiction that the agreement was executed in approximately July of 2009.

On February 25, 2010, Brian Groff, the Employer's vice president of concrete, and Martin-Devitz, met with Wardrop and Tim Cunningham. Cunningham is employed by the Employer and is also a union steward at the facility. (Tr. 27.) The Employer wanted to extend the agreement allowing the Quarryville drivers to continue to drive for the Landisville facility. The Employer proposed that the agreement be continued "until the expiration of the collective-bargaining agreement which is March 31, 2010." A written agreement was not forthcoming but the following day Martin-Devitz sent a confirming letter to Wardrop. Although Wardrop did not respond it is undisputed that the status quo was continued during the negotiations for the new collective-bargaining agreement.

The collective-bargaining agreement that was assumed by the Employer was effective from April 1, 2007 until March 31, 2010, and thereafter from year to year until either party gave a 60-day termination notice. The Respondent's gave effective notice and the termination date was March 31, 2010.

B. The Collective-Bargaining Meetings

The parties met on March 25–26, 29, 31, and April 6. The Employer was represented by Robertson, its chief negotiator, Martin-Devitz, Groff, and Dunn. Dunn was not present at the April 6 meeting. Wardrop was the Respondent's chief negotiator at the meetings. He was accompanied by Cunningham and Barry Smedley. Smedley is an employee of the Employer and he is also a union steward at the facility. Smedley did not attend the April 6 meeting.

Martin-Devitz was tasked as the note taker for the Employer. She also kept track of the status of the parties proposals as the negotiations went forward. She kept track by annotating a typed working draft. The annotations indicated "tentative agreement" or withdrawal of the proposal and the date and time

of the action. See e.g. counsel for the Acting General Counsel's Exhibit 12 at Pennsy 0060–62.

At the initial meeting Robertson observed that Rhinier was absent. She asked of his whereabouts and Wardrop said that Rhinier would not attend the negotiations. Robertson asked if Wardrop had full authority to negotiate, and agree to, a new collective-bargaining agreement. Wardrop answered in the affirmative. (Tr. 271.)

On March 31 the Employer's negotiators again had cause to question Wardrop's authority. Aside and apart from the negotiations the parties were dealing with a totally separate issue. They were attempting to determine the amount of money to distribute to employees resulting from an arbitration decision. Wardrop also represented the Respondent in these separate discussions. Frequently Wardrop would request a recess in order to confer by phone with Rhinier. Because of these consultations the Employer's negotiators wanted to make sure that Wardrop had authority to negotiate, and commit, the Respondent to a new collective-bargaining agreement.

Martin-Devitz decided to again question Wardrop's authority. She deliberately sought out Wardrop when he was alone and away from the bargaining area. Martin-Devitz told Wardrop that because she believed that the parties were close to an agreement, she wanted to make certain that Wardrop had the authority to commit the Respondent to a new collective-bargaining agreement. She posited that the Employer would not put its last proposal on the table if Wardrop did not have the authority to accept it. Martin-Devitz testified that Wardrop gave her repeated assurances that he had the authority to negotiate and to commit the Respondent to a new collective-bargaining agreement. Martin-Devitz was a creditable witness and I have no reason to doubt her veracity. Moreover, her testimony concerning this conversation was neither refuted nor addressed by Wardrop when he testified, and thus uncontested.

Three issues were unresolved when the April 6 meeting began and all were resolved when it ended, with the last being the side letter concerning the Quarryville drivers. That issue was resolved when the Respondent accepted the Employer's proposal at 1:05 p.m. (GC Exh. at Pennsy 109.) Immediately thereafter the parties stood, shook hands, and congratulated each other on a job well done. After shaking hands Wardrop and Martin-Devitz made plans that each would type a draft of the collective-bargaining agreement and then compare the drafts for accuracy.

After the handshaking and congratulations but before the parties went their separate ways some additional comments were made by Wardrop. Robertson said that Wardrop told her that that he had to get Rhinier to sign the agreement and the employees to ratify it. Martin-Devitz testified that he told her that he would sign the agreement and get Rhinier to sign it. Groff claims that Wardrop said that he needed to call the employees and "show them the contract and that was it." Wardrop admits that he shook hands and then claims that he told Robertson that they had "a tentative agreement based solely on the side agreement being signed by Howard Rhinier and ratified by the membership." (Tr. 260.) He also claims that other people were present.

On April 8 Wardrop called Martin-Devitz to request a meeting because Rhinier “had some issues” regarding the signing of the agreement. The meeting occurred on April 14 as stipulated by the parties. (Tr. 8.) Wardrop delineated numerous obstacles that he claimed prevented Rhinier from signing the side agreement, culminating with the ultimate impediment, that the Respondent was unable to enter into side agreements. Robinson responded to Wardrop’s “issues” by letter dated April 15. Robertson addressed and rejected each and every issue, specifically noting that the parties had used side agreements in the past. Because of Rhinier’s total rejection of the side agreement Robertson withdraw the agreement. Robertson closed with a demand that the Respondent execute the labor agreement consistent with the requirements of Section 8(d) of the Act. The Respondent has not signed either agreement.

C. Analysis and Discussion

1. Authority to reach agreement

The duty to bargain includes the obligation to appoint a negotiator with genuine authority to carry on meaningful bargaining regarding fundamental issues. *Schmitz Food*, 313 NLRB 554, 560 (1993). The law is well settled that an agent assigned to negotiate a collective-bargaining agreement is clothed with “apparent authority to bind the principle in the absence of clear notice to the contrary.” E.g., *Las Vegas Sands, Inc.*, 324 NLRB 1101, 1108 (1997), and cited cases, enfd. 172 F.3d 57 (9th Cir. 1999) Table); *University of Bridgeport*, 229 NLRB 1074, 1074 (1977). If the limitation placed on the negotiating authority is a condition precedent to a final and binding agreement the notice must be clear, unambiguous, and, disclosed to the other party before agreement is reached. *Auto Workers Local 365 (Cecilware Corp.)*, 307 NLRB 189, 193–194 (1992); *Adams Iron Works, Inc.*, 221 NLRB 71, 78 (1975), and cited cases, enfd. 556 F.2d 557 (2d Cir. 1976) (Table).

In addition to Wardrop’s “apparent authority,” I find that on at least two occasions he represented to the Employer’s negotiators that he had authority to negotiate and commit the Respondent to a new collective-bargaining agreement. On cross-examination Wardrop again admitted that he told the Employer’s negotiators that he had full authority to negotiate and to commit the Respondent’s to a new collective-bargaining agreement. Immediately after that admission counsel for the Acting General Counsel asked him if April 6th was the first time that he told the Employer’s negotiators that Rhinier had to sign the side letter. Wardrop responded, “I did make that statement a couple [of] different times. That it had to be—the side agreement had to be signed and ratified by the membership.” (Tr. 271–272.) Wardrop repeats this statement on redirect-examination when asked if the Employer knew that there had to be a ratification vote. Wardrop replies, “[i]t was mentioned through[out] contract proposals, negotiations.” When asked “what was mentioned” he answers, “[t]hat it would have to be ratified in—and the side agreement goes hand in hand with Management Rights Clause, had to be signed by the principle officer Howard Rhinier and ratified by the membership. Which all contracts do.” (Tr. 291–292.)

Wardrop spoke those words with a palpable lack of conviction. Perhaps they did not have a “ring of truth” because the

words are in direct conflict with his affidavit of June 30, 2010 which limits his announcement solely to April 6, the last day of the negotiations. Despite Wardrop’s claim that he made the statements at “different times,” “throughout negotiations,” no witness corroborates his account. Neither of the two other union negotiators were even called to testify. I find Wardrop’s statements to be self-serving and disingenuous. They are not credible.

The statement that Wardrop claims to have made on April 6, immediately after shaking hands with the other negotiators, is nearer to the truth, but I still find it is embellished and self-serving. Wardrop claims, apparently after the negotiations were favorably concluded, that he announced to all those present, “that we have a—basically have a tentative agreement based solely on the side agreement being signed by Howard Rhinier and ratified by the membership.” Thereafter, he avers that he made this statement to Robertson directly. (Tr. 260–261.) Once again no witness corroborates his statement. Cunningham, the other union negotiator who was present on April 6, was not called to testify. Wardrop admits that the Respondent’s bargaining notes for April 6 do not reflect that he made that statement. Martin-Devitz, the Employer’s note taker, testified that after the negotiations were completed Wardrop told her that he would sign the typed agreement and get Rhinier to do the same. Thereafter, the parties would set a date for the Employer to sign. She did not recall anything being said regarding ratification.

Robinson testified that Wardrop told her that he would get Rhinier to sign the agreement and the employees to ratify it. Robinson’s testimony is consistent with her affidavit and with Martin-Devitz’s testimony. Neither woman testified that Wardrop said anything about the signing of the collective-bargaining agreement being contingent on Rhinier signing the side agreement. Based on their testimony neither woman appeared to have been troubled by Wardrop’s comments. They both proceeded with a “busy as usual” attitude. Robinson specifically stated that she viewed Wardrop’s comments as relating only to an “administrative function.” (Tr. 139, 173.) In that regard she was quick to correct the Respondent’s counsel by telling him that there was no mention of Rhinier ever having to approve the collective-bargaining agreement—only that he had to sign it. (Tr. 162.) *Auto Workers Local 365 (Cecilware Corp.)*, above at 194.

I credit Robertson and Martin-Devitz’s testimony over that of Wardrop’s. Their testimony was consistent with each other and their actions after hearing Robertson’s comments were also consistent with their testimony. I was generally impressed with their testimony. They appeared to be making an earnest effort to give truthful and accurate answers under somewhat trying circumstances. Martin-Devitz testified as the Employer’s current human resources director and Robertson was no longer employed by the Employer.

I have also considered the testimony of Dunn and Groff. I find that both men are creditable witnesses. I also find it evident from their testimony that they were appointed to the negotiating team for their managerial expertise and not because of any negotiating skills or knowledge. I am unaware of any significant discrepancies between their testimony and that of Rob-

ertson and Martin-Devitz. If there was I would credit the testimony of Robertson and Martin-Devitz over that of Dunn and Groff. As Dunn candidly admitted “ I [was not] sitting there paying attention to everything they said if it had nothing to do with what I was there for. (Tr. 203.)

The Respondent also argues that a letter (R. Exh. 3) drafted by Rhinier in 1999 and sent to the Charging Party’s predecessor establishes a policy that “no agreements, whether contractual, verbal, or written, can be agreed to without [Rhinier’s] approval.” According to the Respondent this policy is still in effect and it requires Wardrop to get Rhinier’s approval on all proposed agreements and also to have the agreements ratified by the membership. (R. Br. at 3.)

As the Charging Party correctly points out in brief, the letter, on its face, limits its restrictions to the “current” (1999) collective-bargaining agreement. The letter instructs that all side agreements must be approved, in writing by both James Cox, the Respondent’s then president and Rhinier. The record establishes that Cox is no longer president. (Tr. 119.) Finally, and most significantly, there is absolutely no evidence that the Employer ever saw the letter or knew of its contents. Accordingly, I find that the letter does nothing to advance the Respondent’s contention. It does show that Rhinier, when he is so inclined, is capable of inserting limitations and/or a condition precedent into collective-bargaining negotiations. That he did not do so here, is telling.

Based on the foregoing, I find that there is no credible evidence of any clear, unambiguous, and, timely notice being given to the Employer of any limitation of Wardrop’s authority or that of any of the Respondent’s negotiators. On the contrary, Wardrop’s statements and actions led the Employer to believe that he had the authority to commit the Respondent to a collective-bargaining agreement. Accordingly, I find that Wardrop had complete and full authority, at all times, to enter into a final and binding collective-bargaining agreement as well as any side agreements with the Employer.

Regarding the Respondent’s ratification argument, Board law is clear that absent an express agreement by the parties, employee ratification is not a condition precedent for the formation of a binding collective-bargaining agreement. E.g., *Valley Central Emergency Veterinary Hospital*, 349 NLRB 1126, 1132 (2007) and cited cases.

2. The repudiation of, and the refusal to execute the collective-bargaining agreement and the side letter agreement

Section 8(d) of the Act requires that the parties in a collective-bargaining relationship, once an agreement is reached, to execute that agreement at the request of either party. Section 8(b)(3) implements that obligation by making it an unfair labor practice for a union to refuse an employer’s request to sign a negotiated agreement. See *Graphic Communications Union District 2 (Riverwood International USA)*, 318 NLRB 983, 990 (1995), and cases cited. Cf. *H.J. Heinz Co. v. NLRB*, 311 U.S. 514 (1941). This obligation only arises if the parties has a “meeting of the minds” on all substantive issues and material terms of the agreement. See *Sunrise Nursing Home*, 325 NLRB 380, 389 (1998). The collective-bargaining agreement need not be reduced to writing when the “meeting of the

minds” occurs. *Carpenters Local 405*, 328 NLRB 788, 793 (1999). The Acting General Counsel has the burden of proving that an agreement was reached. *Crittenton Hospital*, 343 NLRB 717 (2004). See *Intermountain Rural Electric Assn.*, 309 NLRB 1189, 1192 (1992). Whether the parties have reached a “meeting of the minds” is determined “not by the parties’ subjective inclinations, but by their intent as objectively manifested in what they said to each other.” *MK-Ferguson Co.*, 296 NLRB 776 fn. 2 (1988). If it is determined that an agreement was reached, a party’s refusal to execute the agreement is a violation of the Act. See *H.J. Heinz Co.*, 311 U.S. at 525–526.

The facts surrounding the “meeting of the minds” are not in dispute. As of April 6 three issues remained. Two were part of the collective-bargaining agreement and the third was the side letter agreement regarding the Quarryville drivers. All the issues were resolved by 1:05 p.m. on April 6. The last issue to be resolved was the side letter agreement. Wardrop was given the typed side letter agreement, marked “tentative” at 12:20 p.m. and agreed to it at 1:05 p.m. Wardrop was shown a copy of the agreement (GC Exh. 12 at Pennsy 0109), and testified that it was the document that he agreed to on April 6. Immediately thereafter the parties stood and shook hands all around. There was an overall mood of celebration and well-being for the accomplishment of their joint goal—drafting a new collective-bargaining agreement and side letter agreement.

There was no question regarding the finality of the agreements. The parties discussed the remaining ministerial matters. Wardrop told Robertson that he would get Rhinier to sign the agreement and the employees to ratify it. He and Martin-Devitz discussed proofreading the final draft and choosing a date to have it signed by the Employer.

I find that the counsel for the Acting General Counsel has established that the parties reached a “meeting of the minds” on the terms of the collective-bargaining agreement, including the side letter agreement. It is obvious from the parties’ words and actions that their “tone and temperament” on April 6 signaled their belief that they had reached a complete agreement on a successor collective-bargaining agreement and side letter agreement. *Brooks, Inc., v Ladies’ Garment Workers*, 835 F.2d 1164, 1169 (6th Cir. 1987). They concluded the meeting with handshakes and mutual expressions of satisfaction on the successful outcome of their endeavor. Such conduct is a hallmark indication that a binding agreement has been reached at the end of negotiations. E.g. *Graphic Communications District 2*, above. Of even greater import is Wardrop’s admission that he approved the side letter agreement as written, without the need for any additional modifications. Moreover, he and Martin-Devitz were scheduling the remaining ministerial items.

Having found that the “meeting of the minds” occurred I also find that at the same instant all the tentatively accepted proposals morphed into the terms of a binding collective-bargaining agreement and side letter agreement. One consequence of this change in the nature of the documents, is that the Employer could not later withdraw its side letter proposal. The proposal had been replaced with a final binding agreement. “Once the Union had accepted the [Employer’s] last offer, there was no longer an open offer for the [Employer] to withdraw, whether

lawfully or unlawfully.” *Valley Central Emergency* above at 1127 fn. 6 and cited cases.

It was at the April 14 meeting, that the Employer first learned from Wardrop of the numerous problems Rhinier had with the agreements and that he refused to sign any side letter agreement. By letter dated April 15 Robinson rejected all of the points raised by Wardrop and she demanded that Rhinier sign the agreement. In light of Rhinier’s adamant refusal to sign any side letter agreement Robertson withdrew the agreement. As explained above the withdrawal of the side letter agreement is a nullity. On April 30 Robertson sent Wardrop a revised side letter agreement. (GC Exh. 13.) The Respondent did not respond. Both the parties’ requests for changes may be viewed as offers to modify binding, enforceable, agreements. The Respondent’s list of issues was discussed and rejected by the Employer on April 14 and 15. The Employer’s revised side letter agreement was never responded to by the Respondent. The rejection of both requests by the opposite party does not alter the fact that the agreements are still binding and enforceable documents. At this point neither party is under any duty to entertain any modifications of the terms already agreed on, and the mere fact that they did and rejected them in no way changes the fact that the agreements are still binding and enforceable contracts. See *Mack Trucks, Inc. v. Auto Workers*, 856 F.2d 579 (3d Cir. 1988) (quoting *Granite State Distributors*, 266 NLRB 457, 461 (1983) (“Subsequent efforts to modify terms are ‘in no way inconsistent with the existence of the previously arrived-at agreement. It is not unusual for parties to an agreement to discuss its terms, or even to seek modification thereof, after the agreement has been arrived at.’”))

To the extent that the Respondent argues that the side letter had to be signed by Rhinier and that it was a condition precedent for a collective-bargaining agreement I reject those arguments. Based on the foregoing I find that Respondent never put forth a condition precedent at any time during the negotiations.

On the basis of the above I find that the parties entered into a final and binding collective-bargaining agreement and side letter agreement on April 6, 2010. As set forth above it is settled law that when an employer and a union have reached agreement on terms and conditions of employment, it is unlawful for one of the parties to refuse to sign a contract embodying the terms of that agreement. *H.J. Heinz Co. v. NLRB*, 311 U.S. 514, 526 (1941). Accordingly, as alleged in the complaint I find that on April 14, 2010 the Respondent repudiated both the recently agreed to collective-bargaining agreement as well as the side letter agreement and thereby violated Section 8(b)(3) of the Act.

CONCLUSIONS OF LAW

1. The Employer, Pennsy Supply, Inc., d/b/a Ready-Mixed Concrete, is an employer engaged commerce within the meaning of Section 2(2), 2(6) and (7) of the Act.

2. The Respondent, Chauffeurs, Teamsters, and Helpers Local Union No. 771, affiliated with International Brotherhood of Teamsters and its Joint Council No. 53, is a labor organization within the meaning of Section 2(5) of the Act.

3. By repudiating the collective-bargaining agreement and side letter agreement that the parties agreed to on April 6 2010,

the Respondent has been, and is engaging in, unfair labor practices within the meaning of Section 8(b)(3) of the Act.

4. The unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in unfair labor practices within the meaning of Section 8(b)(3) of the Act, I shall order it to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act. Specifically I shall direct the Respondent to assist the Employer in the preparation of a complete written copy of the collective-bargaining agreement and the side letter agreement entered into by the parties on April 6, 2010.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended²

ORDER

The Respondent, Chauffeurs, Teamsters, and Helpers Local Union No. 771, affiliated with International Brotherhood of Teamsters and its Joint Council No. 53, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Repudiating the collective-bargaining agreement and side letter agreement that the Union agreed to on April 6 2010.

(b) Failing and refusing to bargain collectively with Pennsy Supply, Inc., d/b/a Ready-Mixed Concrete by failing and refusing to sign the collective-bargaining agreement and side letter agreement that the Union agreed to on April 6, 2010.

(c) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Adhere to our collective-bargaining agreement and side letter agreement with the Employer during their terms and any renewals thereof. The bargaining unit is: truckdrivers, helpers, mechanics, yard persons, and plant persons employed by the Employer.

(b) Assist the Employer in the preparation of a complete written copy of the collective-bargaining agreement and the side letter agreement that we entered into with the Employer on April 6, 2010.

(c) Once complete written copies of those agreements are prepared for signature we will sign and abide by them.

(d) Within 14 days after service by the Region, post at their union office in Lancaster, Pennsylvania copies of the attached notice marked “Appendix.”³ Copies of the notice, on forms

² If no exceptions are filed as provided by Sec. 102.46 of the Board’s Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

³ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading “Posted by Order of the National Labor Relations Board” shall read “Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.”

provided by the Regional Director for Region 3, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees and members are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees and members by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Sign and return to the Regional Director sufficient copies of the notice for physical and/or electronic posting by Pennsy Supply, Inc., d/b/a Ready-Mixed Concrete, if willing, at all places or in the same manner as notices to employees are customarily posted.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. July 27, 2011

APPENDIX

NOTICE TO EMPLOYEES AND MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

- Form, join, or assist a union
- Choose representatives to bargain on your behalf with your employer
- Act together with other employees for your benefit and protection
- Choose not to engage in any of these protected activities.

WE WILL NOT repudiate the collective-bargaining agreement and side letter agreement that we entered into with Pennsy Supply, Inc., d/b/a Ready-Mixed Concrete on April 6 2010.

The bargaining unit is: truckdrivers, helpers, mechanics, yard persons, and plant persons employed by the Employer.

WE WILL NOT any like or related manner restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL assist Pennsy Supply, Inc., d/b/a Ready-Mixed Concrete in the preparation of a complete written copy of the collective-bargaining agreement and the side letter agreement we entered into with Pennsy Supply, Inc., d/b/a Ready-Mixed Concrete on April 6, 2010.

WE WILL, after the complete written copies of the collective-bargaining agreement and the side letter agreement are prepared for signature, WE WILL sign and abide by those agreements that we entered into with Pennsy Supply, Inc., d/b/a Ready-Mixed Concrete on April 6, 2010.

CHAUFFEURS, TEAMSTERS, AND HELPERS LOCAL UNION NO. 771, AFFILIATED WITH INTERNATIONAL BROTHERHOOD OF TEAMSTERS AND ITS JOINT COUNCIL NO. 53