UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

STANDARD PARKING, IMPERIAL PARKING, AMPCO SYSTEM PARKING d/b/a ABM PARKING SERVICES, LAZ PARKING, INTERPARK, individually and on behalf of CHICAGO PARKING ASSOCIATION,	)	
Respondents,	)	
and	)	CASE NO.: 13-CA-071259
TEAMSTERS LOCAL NO. 727,	)	
Charging Party	)	

RESPONDENTS' OPPOSITION TO THE CHARGING PARTY'S AND COUNSEL FOR THE GENERAL COUNSEL'S EXCEPTIONS TO THE DECISION OF THE ADMINISTRATIVE LAW JUDGE

STANDARD PARKING, IMPERIAL PARKING, LAZ PARKING, AMPCO SYSTEMS PARKING D/B/A ABM PARKING SERVICES, INTERPARK

Douglas A. Darch
Alexis S. Hawley
Baker & McKenzie
300 East Randolph Street
Suite 5000
Chicago, Illinois 60601
312-861-8000

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Pursuant to Section 102.46 of the Rules and Regulations of the National Labor Relations Board ("NLRB" or "the Board"), Respondents InterPark, Imperial Parking, Standard Parking, LAZ Parking, and ABM Parking Services (collectively "Respondents") respectfully submit the following brief in opposition to the Teamsters Local 727's ("the Union") and the Counsel for the General Counsel's (the "General Counsel") exceptions to Administrative Law Judge Geoffrey Carter's October 25, 2013 decision to dismiss the complaint.[1]

I. INTRODUCTION

Both the General Counsel and the Union primarily object to two pivotal aspects of the ALJ's decision (1) the effect of a final offer, which elicited the response "we have a tentative agreement" and (2) the ability of bargaining parties to reach a meeting of the minds on an agreement that contains patently ambiguous terms.

Regarding the former, the General Counsel and the Union both argue that when one party informs the other that a "tentative agreement" has been reached, it signals an invitation to bargain further, rather than the conclusion of bargaining. In essence, the Union and the General Counsel except to the ALJ's credibility determination that an agreement (which was tentative only because Union membership ratification was required) was reached on October 13-14, 2011.[2] They also except to the ALJ's credibility-based determination that the parties had a mutual misunderstanding as to the terms of that tentative agreement. Recognizing the daunting task their exceptions present, both the General Counsel and the Union resort to misstatements of the record and mischaracterizations of the ALJ's findings to bolster their arguments.

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[1] Citations herein will be as follows: citations to the ALJ's October 25, 2013 decision will be "JD"; citations to the hearing transcript will be "Tr."; citations to the General Counsel's trial exhibits will be "GCX"; citations to Respondents' trial exhibits will be "RX" citations to the Union's Exceptions Brief will be "Un. Br."; and citations to the General Counsel's Exceptions Brief will be "GC Br."

[2] Indeed, the Union's in-house attorney, Stephanie Brinson, referred to it as a "final agreement. GCX 16(a). Also, all dates referenced herein are 2011 unless otherwise noted.

The undisputed facts to which no exceptions were filed are:

- There was a permanent two-tier wage scale in the 2006-2011 collective bargaining agreement. Newly-hired employees were placed in the lower scale, which was permanently fixed at $2 per hour below the senior, existing employees. JD at 5, n.8.

- On October 13, the various employers submitted a final offer, which contained a $.55 per hour annual wage increase "with scales proportionate to prior [collective bargaining] agreement." JD at 9 (quoting GCX 13).

- By phrasing its offer in this fashion, Respondents meant that the wage scales in the successor agreement (the 2011-2016 agreement) would maintain the $2/hour difference for new hires established in the prior 2006-2011 agreement. JD at 9, n.20.

- On October 13, John Coli, Jr., the Union's chief spokesman responded by email and stated in relevant part "With these points understood I believe we have a Tentative Agreement that we can begin to finalize." JD at 9 (quoting G.C. Ex 14).

- On October 13, the various employers advised Coli, Jr. they were in accord with [the points raised in Coli, Jr's. October 13 email] and that "We look forward to ratification." JD at 9 (quoting GCX 15).

- On October 13, Coli, Jr. agreed that the Parking Industry Labor Management Committee should oppose the City of Chicago's proposed parking tax. JD at 24.

The ALJ concluded from these facts and others[3] that the Parties reached an agreement on October 13-14. The ALJ also concluded that through no fault of either party, the terms of that agreement were ambiguous as to the wage scales and thus precluded a meeting of the minds – and an enforceable agreement – on that particular aspect of the agreement.

II. STATEMENT OF FACTS

Respondents herein provide a brief recitation of the most salient background facts and supplement or recount additional facts found by the ALJ in the argument section of this brief.

[3] Both the General Counsel and the Union except to the ALJ's finding that on October 14, the Union posted a Bargaining Update on its website to announce it had "reached an agreement with management on a new five-year Master Parking Agreement" and had "secured annual raises at $0.55." JD 10, lines 3-5 (quoting R. Ex. 12). As established on pages 19-21, while this exception has no merit, this attack on the ALJ's finding remains mystifying given that the neither the Union nor the General Counsel except to the ALJ's finding that on October 13, Coli, Sr. and Coli, Jr. agreed to oppose the parking congestion tax. In other words, there exists other, undisputed evidence that the Union believed the parties had concluded an agreement as of October 13-14, and the Union's October 14 Bargaining Update is consistent with such evidence.

A. The Parties' Bargaining History & Historical Treatment Of Wages

For approximately thirty years, "Respondents [except LAZ] have recognized the Union as the exclusive collective-bargaining representative of their respective employees" in bargaining units consisting of employees who hold various parking garage positions. JD at 3-4. Respondents and the Union have entered into "a number of successive collective-bargaining agreements, with the most recent agreement being in effect from November 1, 2006 to October 31, 2011." JD at 4.

Neither the General Counsel nor the Union introduced the collective bargaining agreements (CBA) predating the 1996-2001 CBA. Since November 1, 1996, the parties' CBAs have included two ways by which a newly-hired employee's hourly wage increases. Employees receive raises based on their years of service immediately following their employment, which are determined by wage progression scales in the CBAs. JD at 4. Employees also receive annual raises effective on the contract anniversary date. *Id.* Employees with seniority in excess of the periods covered by the wage scales, however, only receive anniversary raises. JD at 4 n.5. [4]

1. The 1996-2001 & 2001-2006 CBAs

In both the 1996-2001 and 2001-2006 CBAs, "the parties agreed to use two wage scales or 'tiers' to establish minimum hourly wages." JD at 4. "Specifically, one tier applied to existing employees while the other wage tier applied to employees who were hired [on or] after the November 1 effective date of the collective bargaining agreement (November 1, 1996 for the 1996-2001 agreement, and November 1, 2001 for the 2001-2006 agreement)." JD at 4.

[4] In Exception No. 2, the Union objects to the ALJ's finding as to the parties' method of determining the wage scales. Union Br. at 1 (citing JD at 7 n. 15). Granted, the ALJ does not include a citation in his decision; however, as demonstrated by the discussion in this Section, the ALJ's conclusion finds ample support in the documentary evidence and testimony.

Also, in both the 1996-2001 and 2001-2006 CBAs, "the new hires were offered lower minimum hourly wages than existing employees;" however, the wage tier applicable to new hires enabled their wages to theoretically "catch-up" to the wages of the existing employees. JD at 4. The structure of the wage scales in the 1996-2001 CBA, however, differed from those in the prior CBA. Specifically, one wage scale in the 1996-2001 CBA contained a three-year (3) progression for existing employees, while the wage scale for newly-hired employees was extended and required five years (5) of service to reach the top of the progression. GCX 5. In the 2001-2006 CBA, there were two five-year progressions, one applicable to new hires and one for existing employees. GCX 6. Regardless of the length of service required, in the 1996-2001 CBA, the maximum wage rates within the two wage scales were identical – $10.90. GCX 5. Likewise, in the 2001-2006 CBA, the two wage scales "caught up" and contained identical maximum wage rates after five years of service, namely $13.40. GCX 6.

2. The 2001-2006 CBA's Rates Were Determined By Reference To The 1996-2001 CBA

As found by the ALJ, a comparison of the 1996-2001 and 2001-2006 CBAs reveals that the wage scales within the later, 2001-2006 CBA were determined by reference to the immediately preceding 1996-2001 CBA. Under the 1996-2001 CBA, a newly-hired employee could earn the following wages during the final year of that contract:[5]

Effective Date	**START**	**6 MONTHS**	**1 YEAR**	**2 YEARS**	**3 YEARS**	**4 YEARS**	**5 YEARS**
11/1/00	$7.25	$7.85	$8.45	$9.05	$9.65	$10.25	$10.90

GCX 5, Art. 7.3.

[5] As used herein, "newly-hired employee" denotes an employee with less than five (5) years of seniority who was hired during the term of an existing contract.

At the expiration of the 1996-2001 CBA, the above-cited final year's wage rates were combined with the negotiated $0.50 per hour anniversary raise (effective November 1, 2001 under the 2001-2006 CBA) and adopted as the wage rates for the first year of the new contract:

Effective Date	**START**	**6 MONTHS**	**1 YEAR**	**2 YEARS**	**3 YEARS**	**4 YEARS**	**5 YEARS**
11/1/00	$7.25 (+ $.50)	$7.85 (+ $.50)	$8.45 (+ $.50)	$9.05 (+ $.50)	$9.65 (+ $.50)	$10.25 (+ $.50)	$10.90 (+ $.50)
11/1/01	$7.75	$8.35	$8.95	$9.55	$10.15	$10.75	$11.40

GCX 6, Art. 8.2; Tr. 243-44 (JCJ). Coli Sr. admitted that this was the case on cross:

> Q: [Mr. Darch]: So you take the wage scale from the prior agreement and you add 50 cents to the numbers, and they are exactly the numbers that are in 8.2 of General Counsel's 6, correct?
>
> A. [John Coli Sr.]: They are 50 cents more than the numbers, yes.

Tr. 71-72 (JCS). Simply put, the first-year wage rates under the 2001-2006 CBA for existing employees consisted of the wage rates for new hires during the last (final) year of the prior, 1996-2001 CBA, plus the contract anniversary increase of fifty cents. *Compare* GCX 5, Art. 7.3 *to* GCX 6, Art. 8.2; Tr. 243-44 (JCJ).

3. The 2006-2011 CBA

In 2006, the parties implemented two significant changes to the wage scales. First, the 2006-2011 CBA separated the wage scales for commercial employees and residential employees. JD at 5, n.7.[6] Second, and most critically, "the parties did not continue the practice of having the wages of new hires catch up to the wages of existing employees." JD at 5; GCX 7. Rather, "the

[6] The Union incorrectly claims that "the only change in the tiered system from 1996 to the present is an added group of employees (residential employees) that were incorporated jointly into the 2006 agreement." Union Br. at 8. As explained herein at pages 3-7, the parties implemented a number of changes to the wages scales since 1996, including – most importantly – implementing a permanent, $2.00 differential in the 2006-2011 CBA. JD at 5.

parties agreed that the wage tier for newly hired employees would have minimum rates that were $2 per hour less than the wages of existing employees who worked under the contract for the same time period." JD at 5; GCX 7. Thus, the wage rate for an existing employee (one hired prior to November 1, 2006) topped out at $16.15, while the wage rate for a newly-hired employee (one hired on or after November 1, 2006) topped out at $14.15. JD at 5 n.8; GCX 7.

When the parties bargained the lower, second tier in 2006, their intention at that time was to make the $2.00 wage differential for new hires permanent. As Schwartz explained:

> When we negotiated the agreement in 2006, . . . the parties agreed to the second tier for anybody hired after November l, 2006. And at the conclusion of those negotiations, John Coli, Sr. said there will be that two dollar difference and never the two shall meet.

Tr. 788-89 (FS). Likewise, Michael Prussian (from InterPark) testified:

> [In 2006, the Union] offered up . . . the second tier that did not, for the first time, did not catch up in five years to the full . . . amount. It used to be we had second tiers that would always catch up by the fifth year. But this time it didn't catch up . . . . I was of the impression and the opinion that this was going to be a permanent tier at a lower rate . . . I thought it was going to continue going forward.

Tr. 718-19 (MP).

A comparison of the 2001-2006 and the 2006-2011 CBAs again demonstrates that the wages for existing ("old") employees were determined by reference to the immediately preceding 2001-2006 CBA. Per Article 8.3 of the 2001-2006 CBA, a newly-hired employee could earn the following wage rates during the final year of that contract:

Effective Date	**START**	**6 MONTHS**	**1 YEAR**	**2 YEARS**	**3 YEARS**	**4 YEARS**	**5 YEARS**
11/1/05	$8.50	$9.00	$9.75	$10.50	$11.25	$12.00	$13.40

GCX 6, Art. 8.3. At the expiration of the 2001-2006 CBA, the negotiated $.55 per hour anniversary raise (effective November 1, 2006 under the 2006-2011 CBA) was added to the

above-cited rates and constituted the wage rates effective the first year of the 2006-2011 CBA for existing employees:

Effective Date	START	6 MONTHS	1 YEAR	2 YEARS	3 YEARS	4 YEARS	5 YEARS
11/1/05	$8.50 (+ $.55)	$9.00 (+ $.55)	$9.75 (+ $.55)	$10.50 (+ $.55)	$11.25 (+ $.55)	$12.00 (+ $.55)	$13.40 (+ $.55)
11/1/06	$9.05	$9.95	$10.30	$11.05	$11.80	$12.55	$13.95

GCX 7, Art. 8.2; Tr. 245-46 (JCJ). Coli Jr. admitted that this was the practice on cross:

> Q. [Mr. Darch]: [I]f we add 55 cents to each column that's in GC Exhibit 6 and refer to the corresponding column in GC Exhibit 7, we will see that the 55 cents added to the number in GC Exhibit [6] is reflected in the number that's in GC Exhibit 7, correct?
>
> A. [John Coli Jr.]: So, if you compare the last row, just so I am clear, the last row of [G.C. Exhibit 6, Article] 8.3, you add 55 cents, you get the first row of [G.C. Exhibit 7, Article] 8.2, the first chart.
>
> Q. Yes.
>
> A. Yes.

Tr. 246 (JCJ). As noted by the ALJ and as discussed below, however, the Union did not follow this formula when it developed its September 27 proposal. JD at 7 n.15.

B. The 2011-2016 CBA Negotiations

1. The September 27 Bargaining Session & The Parties' Initial Proposals

The 2006-2011 CBA expired on October 31, 2011. GCX 7. The first bargaining session between Respondents and the Union for a successor contract took place on September 27. JD at 6. At that meeting, the Union presented its initial, written proposal, which "generally included 'redlined' notations to indicate how the proposal differed from the expiring [CBA]." JD at 6. There was an exception, however. Unlike its other proposed changes, the Union's suggested

changes to the wage scales in Articles 8.2 and 8.3, including the cutoff dates in the text and the actual wage rates, were not in redline. JD at 6.

In addition to the written proposal, Coli Jr. provided an oral explanation of the Union's suggested changes. On wages, Coli, Jr. proposed that Respondents agree to $1 per hour annual wage increases. JD at 6. The Union did not explain that it was proposing that newly-hired employees be treated as old employees and, consequently, receive an immediate $2/hour wage increase. JD at 7. The sum total of Coli Jr.'s testimony was that the wage scales in the Union's proposal had been amended consistent with a $1/hour annual increase:

> Q. [Ms. Friedheim-Weis]: Please explain generally, what changes the union made in Article 8.2 in the first chart from the 2006 contract to the proposed 2011 contract.
>
> A. [Mr. Coli Jr.]: Well, these charts reflect dollar increases where the other chart reflects 55-cent increases.

Tr. 116 (JCJ). Schwartz's notes from the September 27 bargaining session also indicate that the only explanation Coli Jr. made of the Union's proposal was a $1 increase in the wage scales, stating in the margin that "changes reflect anniversary proposal [of] plus $1.00." R. Ex. 32, pg. 6.

As the ALJ found, notably absent from Coli Jr.'s explanation or the parties' discussion that day was "the fact that 'new hires' under the expiring 2006-2011 contract would become old hires under the Union's proposed contract and thus receive an immediate $2/hour raise (plus the $1/hour annual wage increase) based on the updated wage tiers." JD at 7; *see also* JD at 7 n.14 (discussing how the Union's proposal compressed the wage scales in the 2006-2011 and eliminated the $2.00 differential). Likewise, the parties did not "discuss how the Union came up

with the wages in the proposed scales." *Id.*[7] Importantly, the wage scales in the Union's September 27 proposal did not begin with the prior, 2006-2011 CBA's wage scales. JD at 7 n.15.

Respondents also presented a written proposal at the September 27 bargaining session. JD at 8. With respect to wages, Respondents proposed implementing a 3-year wage freeze and also creating a "3rd tier that would eliminate [a] wage progression and thus limit employees in that tier to only receiving annual salary increases." JD at 8.[8] Schwartz explained Respondents' proposals verbally during the session. Tr. 536 (EU).

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[7] The Union objects to this finding, claiming the ALJ improperly concluded that "the parties did not discuss the fact that 'new hires' under the expiring 2006-2011 contract would become old hires under the Union's proposed contract." Un. Br. at 2, 21 (citing JD at 7). First, this exception should be rejected because the Union presents an incomplete fragment of the ALJ's finding and fails to provide the context in which it was made. When read in its entirety, the overall purpose of the ALJ's finding becomes apparent. By virtue of this statement, the ALJ found (1) the Union did not explain at the September 27 bargaining session that new hires under the prior contract would become old hires under the new contract and, as a result, would receive an immediate $2/hour wage increase and (2) the Union did not explain how it calculated the wages within the tiers set forth in its September 27 proposal. Thus, the Union's argument that the Respondents needed "hand-hold[ing]" or otherwise required additional explication that new hires under a prior contract became old hires under a subsequent contract implicitly concedes the ALJ was correct. Un. Br. at 22.

Second, the ALJ's finding is fully supported by the record evidence. At the September 27 bargaining session, the Union distributed its initial proposal and orally explained that it sought a $1.00 per hour wage increase and that the wage scales in its proposal reflected that increase. Tr. 116 (JCJ), 484 (AD), 533 (EU), 604 (JD), 642-43 (JB), 797-98 (FS); G.C. Ex. 11. This representation is confirmed by Schwartz's notes from that bargaining session, which indicate that the Union's proposal included a $1 increase in the wage progression scales. R. Ex. 32, pg. 6. There is no evidence that the Union ever expressly proposed an immediate, $2.00 per hour increase for employees hired during the prior contract at the September 27 bargaining session or at any bargaining session thereafter. Tr. 485, 533-534, 605-606, 643, 647-648.

[8] In Exception No. 3, the Union objects to the ALJ's finding that "Respondents. . . proposed a '3rd Tier' that would eliminate the wage progression and thus limit employees in that tier to only receiving annual salary increases." Union Br. at 1-2 (citing JD at 8). The Union does not elaborate on the grounds for this exception in its brief. Nonetheless, it is clear, based on the record evidence, that Respondents did propose a third tier with no wage progression. GCX 12. Moreover, as the ALJ found, the CBAs in evidence included two avenues by which an employee's hourly wage increased: (1) "wage scales, which set minimum hourly rates based on when the employee was hired and how long the employee had been employed under the current

2. The October 7 Bargaining Session

The parties' second bargaining session occurred on October 7, where they discussed exclusively non-economic issues. JD at 8. As such, wages were not addressed. Tr. 536.

3. The October 12 Bargaining Session & The Union's Final Offer

The third bargaining session between Respondents and the Union took place on October 12. At this session, the Union verbally made an economic offer, which it "characterized… as final." JD at 8. The Union's final offer, which was oral, provided in pertinent part:

- A 6.5% increase in benefits to be allocated across the health and welfare, pension, and legal education funds at the Union's discretion;
- A $0.55 per hour annual wage increase and "maintain tiers";
- The six-month anniversary increase would be eliminated;
- Funeral leave would be authorized for grandchildren and significant others.

JD at 8; R. Ex. 16.

At the time of the October 12 bargaining session, the City of Chicago was considering implementing a new congestion tax that would increase parking taxes. JD at 9 n. 19. Parking garage employers, including Respondents, opposed the tax and wanted the Parking Industry Labor Management Committee (PILMC) to lobby against the tax. *Id.* Since the PILMC board is composed of two Employer representatives and two Union representatives, the Union was in a position to block the PILMC from taking action because a majority of the PILMC board would have to approve any lobbying effort. *Id.* Thus, after tendering its final offer, the Union also "warned the Association that it might not be willing to work with the Association in opposing a new city congestion tax if the Association did not accept the Union's offer." JD at 8-9.

[CBA]" and (2) "annual raises that are established in the [CBA]." JD at 4. Thus, it is equally clear that the ALJ correctly concluded that the elimination of a wage progression in the "3rd Tier," as proposed by Respondents on September 27, would result in employees receiving only annual contract raises.

Despite this ultimatum, Respondents did not immediately accept the Union's final offer. Rather, they informed the Union they "would consider the Union's offer and respond to the Union by email with [their] final offer." JD at 9. Notably, however, "the parties did not discuss the fact that 'new hires' under the expiring 2006-2011 CBA would become old hires under the Union's proposed contract, and thus receive an immediate $2/hour raise based on the updated tiers" at the October 12 bargaining session. JD at 9.

4. Respondents' Final Offer & The October 13-14 Tentative Agreement

On October 13, Respondents submitted their final offer. JD at 9. With respect to wages, Respondents "reiterated [their] position that the parties should eliminate the 6-month wage increase" and also proposed to amend the contract "to reflect .55 cents per hour annual increases, with scales proportionate to prior agreement." JD at 9; GCX 13(b). "In stating that the wage scales should be proportionate to the prior [CBA], Respondents meant that wage scales in the 2011-2016 contract should maintain the $2/hour difference between the wages of new hires and existing employees that was established in the 2006-2011 contract." JD at 9, n. 20.

That same day, October 13, Coli Jr. responded by e-mail with three points of clarification and stated that "with those points understood, . . . we have a Tentative Agreement." JD at 9; GCX 14. The Union's response did not address Respondents' proposal that the scales be proportionate; rather, with respect to wages, Coli Jr. merely clarified that the Union "agreed to remove the 6-month increase, [but] the proportional 1 year wage rate would remain the same. In other words, they get the same amount of total raise but not until the one-year anniversary." *Id.* After sending this e-mail, Coli Jr. "notified the PILMC's public relations firm that it could proceed with plans to oppose the new city congestion tax." JD at 9; R. Ex. 28.

The following day, on October 14, Schwartz responded via e-mail, stating, "we are in accord with [the points raised in Coli, Jr.'s October 13 email]. We look forward to ratification."

JD at 9; GCX 15. Thus, as of October 13-14, the parties had reached a tentative agreement subject to ratification. Tr. 742 (FS), 756 (FS). In fact, that very same day, the Union posted a newsletter to its website announcing that it had "reached an agreement with management on a new five-year Master Parking Agreement." JD at 10; R. Ex. 12. Regarding wages, the Union's newsletter conveyed that the Union had "secured annual raises of $0.55." *Id.* There was no mention of a $2/hour increase for employees hired during the prior five years. R. Ex. 12.

C. The Parties' Efforts To Convert The Tentative Agreement Into A Complete, Written Contract

1. Schwartz Repeatedly Requests A Redlined Draft Of The 2011-2016 CBA From The Union

On October 18, Brinson sent Schwartz a draft 2011-2016 CBA for review. JD at 10; GCX 16(a)-(b). This draft was in PDF format, but it was not redlined. JD at 10-11. Furthermore, the wage scales in the October 18 draft differed from those that appeared in the Union's September 27 proposal:

> To create [the wage scales in the October 18 draft agreement], the Union worked from the wage scales in the 2006-2011 contract. Specifically, to create the wage scales . . . for employees hired prior to November 1, 2011, the Union took the final row of the new employee wage scale in the 2006-2011 contract, and added 55 cents to each entry to account for the annual raise, plus $2 to enable employees hired under the 2006-2011 contract to "catch up" to the old employee wage scale. Wages for new hires under the Union draft 2011- 2016 contract trailed $2 per hour behind the wages for old employees. (Compare GC Exh. 7, Article 8, Section 8.2 with GC Ex. 16(b), Article 8, Section 8.2.) This formula produced different wage scales than the Union proposed on September 27 (even after taking the different annual raises into account).

JD at 10-11 n. 21. Three days later, on October 21, Brinson contacted Schwartz regarding the status of his review and forwarded the same, unredlined PDF version of the draft previously sent on October 18. JD at 11; GCX 17(a)-(b). Schwartz responded soon thereafter, stating "I didn't

open this yet, but if not in redline can you send a redlined version? It will make my review much quicker." JD at 11; GCX 35.[9]

On October 24, having received no response from Brinson, Schwartz again asked if there was a "red-lined version of the contract, as opposed to the PDF?" GCX 18(a). Brinson replied that same day and sent another, *unredlined* draft of the agreement, this time in Microsoft word format. JD at 11; GCX 18(a)-(b). Thus, on October 25, Schwartz again asked, for the third time, for a redlined copy of the agreement. JD at 11; GCX 19. Schwartz did not review any of the unredlined drafts sent between October 18 and October 24. JD at 10-11.

2. The Union Sends A Redlined Draft Without Wage Scales On October 25 And The Parties Proceed To Finalize The Tentative Agreement

Following Schwartz's third request, Brinson sent a redlined version of the draft agreement on October 25. JD at 10-11. This version did not include wage progression scales. JD at 11; GCX 20(a)-(b). Moreover, instead of using the prior, 2006-2011 CBA as the template document, Brinson used the Union's September 27 proposal as the base document and thus in effect provided Schwartz a redline of a redline on October 25. G.C. Ex 20(a)-(b); Tr. 233-34 (JCJ), 657 (JB), 743 (FS), 771 (FS). In addition, the October 25 draft contained numerous errors.

Schwartz reviewed the October 25 redlined agreement and responded on October 28 at 11:09 a.m. JD at 12; GCX 21; Tr. 773. Schwartz's response both addressed errors attributable to the Union's use of the September 27 proposal to create the draft agreement and refined aspects of the parties' October 13-14 tentative agreement. Schwartz's comments specifically addressed: (1) funeral leave (Article 13, Section 13.1); (2) vacations (Article 14, Section 14.1, 14.2, and 14.3b); (3) benefit fund contributions (Article 20, Section 20.4(a)); and (4) drug testing and background checks (Article 40, Section 40.5). JD at 12.

[9] As discussed below at pages 26-28, ethics rules would appear to require the draft to have been submitted in redline.

The Union responded at 11:54 a.m., agreeing to all but two of Schwartz's six comments. JD at 12; GCX 21. In the Union's response, Coli Jr. emphasized the "need to get [the agreement] done today in order to move [the Union's] ratification process forward." JD at 12; GCX 21; Tr. 750-52. After Schwartz replied at 12:03 p.m. that the Association accepted the Union's position as to Section 14.2, Brinson then incorporated the agreed-upon changes and sent Schwartz another draft of the agreement at 12:05 p.m. on October 28, but again did not provide wage scales. JD at 12; GCX 23(a)-(b).

Subsequently, Schwartz and Coli Jr. had a telephone discussion regarding Article 40.5 of the draft agreement. JD at 12. Following this telephone call, Schwartz e-mailed the Union a draft of the agreement at 12:57 p.m. on October 28 and stated:

> Per my conversation with John, I have made one revision to 40.5. Subject to that, ***as well as subject to the appropriate wage progression schedules to be inserted per your earlier e-mail***, we are in accord with the attached.

JD at 12; GCX 25(a)-(b) (emphasis added).

Shortly thereafter, at 1:38 p.m. on October 28, Brinson sent Schwartz another version of the agreement, this time *with* the wage scales. JD at 12-13; GCX 26(a)-(b). In her cover e-mail, Brinson noted that the Union had made one change to Article 40.5 and that this change was in redline. JD at 13; GCX 26(a). Brinson did not, however, alert Schwartz that the wage scales had been inserted into this draft of the agreement. JD at 13. Minutes later, Schwartz replied that, "We are fine with <u>that change</u>." JD at 13; see also GCX 27(a) (emphasis added). At 3:07 p.m. that same day, Brinson sent Schwartz an unredlined draft of the agreement. *Id.*

D. Respondents Discover the Union's Mistake & Revoke Their Offer Prior To Ratification

On October 28, Schwartz forwarded a copy of the draft 2011-2016 CBA to certain of the Respondents, including Erik Uhlig at Imperial Parking. JD at 13. Upon reviewing the wage

scales in the agreement the following Monday, October 31, Uhlig noticed that "employees hired between November 1, 2006 and October 31, 2011, would receive an immediate raise of $2.55 per hour on the effective date of the new contract." JD at 13-14. Uhlig immediately e-mailed the other four Respondents as well as Schwartz to apprise them of this issue. JD at 14. Tony DiPaolo (LAZ) then noticed the date on which Respondents' obligation to make pension contributions began, found in Section 20.2, also was incorrect. JD at 14 n.28; Tr. 500-02.

After receiving Uhlig's email, Schwartz sent an e-mail to the Union on November 2 in an effort to resolve the wage rate error and explained:

> The review of the wage scale indicates something that we obviously should have raised, as we believe it is a mutual mistake in drafting. Specifically, this issue is for the wage scale for those employees hired after November 1, 2006. Under the scale as drafted, effectively we take everyone that was in Tier 2 under the old contract and push them into Tier 1, which would include $2+ raises. The scale as drafted would then reset the Tier 2 deadline from 2006 to 2011, something we believe was never discussed or agreed to, particularly within the context of our agreement for .55 cent per hour wage increase

JD at 14; GCX 29. In this e-mail, Schwartz also included for the Union's review a corrected wage scale that reflected both the $0.55 increase actually agreed upon by the parties and the $2.00 differential from the prior 2006-2011 CBA. *Id.* The Union, however, refused to correct the draft 2011-2016 CBA, stating it had already been mailed for "ratification" and that "there was nothing [the Union] can do to change the document now." JD at 14; GCX 30.

The parties met on November 4 to discuss Respondents' concerns about the wage scales and to attempt to resolve the parties' disagreement. JD at 15. The November 4 meeting, however, was not successful and concluded without an agreement about the contract or how to

resolve the parties' dispute. *Id.*[10] Subsequently, on November 8, Schwartz sent the Union a letter withdrawing Respondents' offer. JD at 15; GCX 31(a)-(b). Schwartz stated that:

> In view of the parties' marked difference of opinion as to the economic terms of the parties' respective offers and the substance of the parties' tentative agreement . . . the Employers hereby withdraws [sic] their offers or, in the alternative, revokes [sic] their acceptances of Local 727's proposal, relating to the second tier wage scale.

JD at 15-16; GCX 31(a). In this letter, Schwartz also included corrected versions of the wage scales for the 2011-2016 CBA, reflecting the $0.55 increase agreed upon by the parties and preserving the $2.00 wage differential from the prior CBA. JD at 16; GCX 31(b).

The Union's version of the contract was ratified on November 15. JD at 17. Later that month, the Union sent each Respondent a copy of its version of the 2011-2016 CBA for execution. JD at 17-18; GCX 33(a)-(f). Respondents refused to sign this version of the CBA, as it contained incorrect wage scales. JD at 18. Rather, Respondents signed a version of the CBA that maintained the $2 per hour wage differential and forwarded it for the Union's signature on December 16. *Id.*; GCX 34(a)-(b). Subsequently, on December 22, the Union filed a ULP charge against Respondents, alleging their refusal to sign its version of the 2011-2016 CBA violated Sections 8(a)(5) and 8(a)(1) of the National Labor Relations Act (NLRA). JD at 18.

III. ARGUMENT

The Union and the General Counsel together filed a total of 26 exceptions to the ALJ's findings of fact and conclusions of law in this matter, certain of which overlap. Un. Br. at 1-5; GC Br. at 2. As discussed below, each of the ALJ's findings of fact is supported by the record

[10] In Exception No. 5, the Union challenges the ALJ's finding that "the wage scales were only "ultimately . . . in the October 28 final draft." Un. Br. at 2 (citing JD at 15). The ALJ found that at the November 4 meeting, "Brinson went over the various draft agreements that the Union and the Association exchanged that included the wage scales that ultimately were in the October 28 final draft." JD at 15. Nowhere does the ALJ find, as the Union contends, that "the wage scales were only 'ultimately . . . in the October 28 final draft.'" Un. Br. at 2. In fact, the ALJ accurately recounted, in substantial detail, the various drafts and communications exchanged by the parties between October 18 and October 28 in his decision. JD at 10-13. The Union's exception misstates the ALJ's finding and is without merit.

and/or is a natural and permissible inference from the record evidence. Likewise, the ALJ properly applied Board law in rendering his conclusions of law, and those conclusions find support in the testimony and documentary evidence in this case. For these reasons and for the reasons detailed below, the Union's and the General Counsel's exceptions to the ALJ's findings of fact and conclusions of law should be rejected, and the ALJ's findings should be affirmed.

A. The ALJ Properly Determined A Tentative Agreement Had Been Reached On October 13-14 (Un. Ex. No. 9; GC Ex. No. 1)

In his decision, the ALJ concluded that "the parties reached their agreement on October 13-14, when Coli, Jr. notified Schwartz that the Union would accept the Association's final offer." JD at 24. Both the Union and the General Counsel argue – albeit premised upon different theories – that no agreement arose on October 13-14 and that the actual agreement between the parties arose on October 28. Specifically, the General Counsel contends no enforceable agreement existed as of October 13-14 because the parties continued to bargain in earnest. GC Br. at 6-8. The Union, on the other hand, concedes a "tentative agreement" arose as of October 13-14,[11] but argues the terms of that agreement were superseded by the exchange of drafts between October 18 and October 28 and Respondents' purported acceptance of a final draft on October 28. Un. Br. at 25-31. As discussed below, the ALJ's finding that the Parties' agreement arose on October 13-14 was fully supported by the testimonial and documentary evidence in the record, is entirely consistent with Board law, and should be affirmed.

1. The ALJ's Finding That The Parties Reached An Agreement On October 13-14 Is Supported By The Record Evidence

The ALJ found that on October 12, at the parties' final bargaining session, the Union "reduced its proposed annual raises from $1/hour to $0.55/hour." JD at 8. As its counteroffer,

[11] Tellingly, however, in its contemporaneous communications with Schwartz, the Union's attorney described the October 13-14 agreement as a "final agreement." *See* GCX 16(a).

"the Association proposed a one-year wage freeze, and also proposed eliminating the 6-month column in the wages scales (such that no wage increase would occur when a new hire reached the 6-month mark in his or her employment)." *Id.* In response, the Union "stuck to its offer of a $0.55/hour annual raise [and to "maintain tiers"], but agreed to eliminate the six-month column in the wage scales as long as the employees still reached the same hourly rate in the 1-year column." The Union "characterized its offer as final." *Id.*

The following day, on October 13, "Schwartz sent Coli, Jr. an email with the Association's final offer, in which the Association agreed to the Union's request for $0.55/hour annual raises 'with scales proportionate to prior [collective-bargaining] agreement' and reiterated its position that the parties should eliminate the 6-month wage increase (in the wage scales) for new hires." JD at 9; *see also* G.C. Ex. 13(a)-(b). Quoting from Coli Jr's e-mail, the ALJ found:

> Later that same day, Coli, Jr. responded to Schwartz with an e-mail to clarify certain details. In pertinent part, Coli, Jr. stated as follows in his e-mail:
>
> For Wages: While we did agree that we would remove the 6th month increase, the proportional 1-year wage rate would remain the same. In other words, they get the same amount of total raise but not until the year anniversary . . .
>
> With those points understood, I believe we have a Tentative Agreement that we can being to finalize. Thanks to everyone for their time and effort in getting to this point.

JD at 9. Subsequently, on October 14, "Schwartz advised Coli, Jr. that '[w]e are in accord with [the points raised in Coli, Jr.'s October 13 email]. We look forward to ratification.'" *Id.* Thus, as the ALJ determined, the documentary evidence in this case unequivocally establishes that, as of October 13-14, the parties had reached a tentative agreement that included a $.55 per hour wage increase "with scales proportionate to prior agreement." JD at 24.

The Union also engaged in conduct that confirms it believed an agreement had been reached by virtue of the parties' October 13-14 communications. At the final bargaining session

on October 12, the Union "warned the Association that it might not be willing to work with the Association in opposing a new city congestion tax if the Association did not accept the Union's offer." JD at 8-9. On October 13, after entering into a tentative agreement, "Coli, Jr. . . . notified the PILMC's public relations firm that it could proceed with plans to oppose the new city's congestion tax." JD at 9. Similarly, on October 14, "the Union posted a 'Bargaining Update' on its website to announce it had 'reached an agreement with management on a new five-year Master Parking Agreement' that . . . 'secured annual raises of $0.55." JD at 10.[12]

With the exception of the ALJ's finding regarding the October 14 Bargaining Update and its impact, neither the Union nor the General Counsel object to any of the above findings. Based on these undisputed findings, the ALJ properly determined that the parties' entered into an agreement by virtue of their October 13-14 e-mail communications.

2. The ALJ Properly Admitted Respondents' Exhibit 12: The October 14 Bargaining Update (Un. Ex. No. 4; GC Br. at 7, n.3)

Both the Union and General Counsel claim the ALJ erred by admitting RX 12, a bargaining update that was posted to the Union's website on October 14. Un. Br. at 2, 23-25; GC Br. at 7 n.3. As an initial matter, the Union's refusal to authenticate the October 14 newsletter and its and the General Counsel's continued objection to this document only highlight its import. At the hearing, the Union and the General Counsel objected to Respondents' proffer of the newsletter, arguing that it was "potentially" a draft that had never been shared with union constituents. Tr. 392-94. The Union raised this as an issue even though it had produced a copy of the newsletter in response to Respondents' subpoena and even though a copy of the newsletter could be located on Local 727's website as of the date of trial. Tr. 552-57; R. Ex. 12. The Union's and the General Counsel's aggressive attempt to exclude this newsletter completely

[12] Later, on October 18, Brinson, the Union's attorney, sent an email describing the agreement as "final." GCX 16(a).

vitiates the Union's and General Counsel's argument that no agreement was reached on October 13-14 and that the operative agreement was concluded on October 28.

It is well-established that the Board does not overrule an ALJ's credibility findings unless a preponderance of the evidence establishes that such findings are incorrect. *See Standard Dry Wall Prods.*, 91 N.L.R.B. 544, 545 (1950), *enf'd* 188 F.2d 362 (3d Cir. 1951). Here, the ALJ determined that RX 12 had been sufficiently authenticated over the Union's and the General Counsel's objections after Erik Uhlig (Imperial Parking) demonstrated, step-by-step, how he was able to locate a copy of the Bargaining Update on the Union's website. *See* Tr. 555-556.

Using the method described by Uhlig, the undersigned located a copy of the October 14 Bargaining Update on the internet contemporaneously with the preparation of this brief. *See* http://teamsterslocal727.org/parkingcontract.html (last visited Dec. 19, 2013); Exhibit A. This testimony, combined with the fact that the Union produced a copy of the newsletter in response to the Respondents' subpoena, adequately authenticates it as a Union record, and neither the Union nor the General Counsel has established otherwise by a preponderance of the evidence. *See United States v. Hubbel*, 530 U.S. 27, 36 ("By producing documents in compliance with a subpoena, the witness would admit that the papers existed . . . and were authentic."); *Denison v. Swaco Geolograph Co.*, 941 F.2d 1416, 1423 (10th Cir. 1991) (noting, "documents provided during discovery, on defendant's letterhead, [are] authentic under Fed. R. Evid. 901").

Without citing any case law, the General Counsel claims that it was "inappropriate" for Uhlig to use his mobile device and demonstrate for the ALJ how he was able to locate the October 14 newsletter on the Union's website. GC Br. at 7 n.3. Again, the ALJ's admission of this evidence was based on a credibility determination and should not be disturbed by the Board. *See Standard Dry Wall*, 91 N.L.R.B. at 545. Even if the Board were inclined to sustain this

exception (which it should not), it should be noted that Respondents attempted to subpoena the Union's electronic records related to bargaining and requested that Brinson be ordered to review her electronic files for copies of the October 14 Bargaining Update after she refused to authenticate it. Their request was denied. Tr. 393-95; 759-761.

The Union and General Counsel also claim that the October 14 Bargaining Update constitutes inadmissible hearsay. Once again, their objection lacks merit. Respondents did not offer the newsletter for the truth of its contents, but rather under one of the hearsay exceptions, namely to demonstrate the Union's intent and state of mind at the time the parties concluded their October 13-14 tentative agreement. *See* FED. R. EVID. 803(3) (hearsay rule does not exclude a "statement of the declarant's then-existing state of mind (such as motive, intent, or plan)"). Here, regardless of whether the newsletter was a draft, was posted on an older iteration of the Union's website, and/or was posted only for a short period of time, the newsletter was posted to the Union's website on October 14. Thus, it unequivocally demonstrates that as of October 14, the Union believed it had "reached an agreement" with the Respondents for a $0.55 per hour wage increase and announced as much to its constituents. RX 12.

3. The General Counsel's Argument That No Agreement Was Reached On October 13-14 Is Without Merit

None of the General Counsel's several arguments that the parties failed to reach an agreement as of October 13-14 are tenable, and all should be rejected.[13] First, the General Counsel contends that the ALJ "does not and cannot pinpoint an actual date and time when the parties reached an agreement. Rather, the ALJ merely concludes that the parties reached their agreement sometime between October 13 and 14." GC Br. at 6. Even if true (which it is not),

[13] As addressed on pages 34-37, the Union takes a different approach and concedes a "tentative agreement" existed on October 13-14, but contends this agreement was not binding and was changed by virtue of an alleged succession of subsequent offers and counteroffers. Union Br. at 30.

the General Counsel cites no case authority requiring that the formation of an agreement must occur at a precisely identifiable date and time. To the contrary, the formation of a contract may be inferred – as did the ALJ – from the parties' conduct and the surrounding circumstances. *Farmingdale Ironworks, Inc.*, 249 N.L.R.B. 98, 104 (1980) (noting that "the nature of the particular acts or conduct and the surrounding circumstances are to be considered to determine whether there was in fact a contract" *citing* 17 Am. Jur. 2d, Contracts § 25, p. 360).

Moreover, even if such a requirement existed (which it does not), the parties' October 13-14 e-mail exchanges capture the exact dates and times of Respondents' final offer and the Union's acceptance thereof, thereby pinpointing the parties' agreement. The Union's and General Counsel's argument is further vitiated by their later argument that the parties' actual agreement arose not on October 13-14, but rather by virtue of e-mail exchanges between October 18 and October 28. GC Br. at 8-16; Un. Br. at 25-30, Addendum A. Simply put, they offer no explanation, as to why the purported "offers and acceptances" that occurred via e-mail could give rise to an agreement on October 28, but were insufficient to do so on October 13-14.

Second, the General Counsel argues that Coli, Jr.'s statements with respect to ratification on October 13 do not establish a contract was formed on that date. GC Br. at 6-7. Again, this argument is unpersuasive. As an initial matter, the General Counsel mischaracterizes the evidence. It was Schwartz – not Coli, Jr. – who responded on October 14 and "reciprocated" the Respondents belief that an agreement had been struck by stating Respondents "were looking 'forward to ratification.'" JD at 24. Furthermore, the General Counsel misapprehends the ALJ's findings. In support of his conclusion that on October 13-14, "Coli, Jr. made remarks that were the e-mail equivalent of shaking hands on the deal at the end of a face to face meeting," the ALJ pointed to Coli, Jr.'s statement that "he believed the parties have 'a Tentative Agreement' that

we can begin to finalize,' and then thanked 'everyone for their time and effort in getting to this point.'" JD at 24. Such statements are, as the ALJ concluded, consistent with Board law addressing the formation of a contract at the conclusion of negotiations. *See* JD at 24 (citing *Teamsters Local No. 771 (Ready-Mixed Concrete)*, 357 NLRB No. 173, slip op. at 5 (2011) (explaining that handshakes and mutual expressions of satisfaction about the successful negotiation of a contract are "hallmark indication[s] that a binding agreement has been reached at the end of negotiations"); *Windward Teachers Ass'n*, 346 NLRB at 1150-1151 (same)).

Third and finally, both the General Counsel and the Union make much of the fact that as of October 14, the parties had not exchanged formal contract drafts and still needed to "finalize" or "formalize" the tentative agreement into a full, written contract. GC Br. at 7; Un. Br. at 30. Along those same lines, the General Counsel and the Union both note that the Union had yet to publicize the contract or distribute it to its members as of October 13-14. GC Br. at 7; Un. Br. at 25. These arguments warrant little consideration. As the ALJ properly found, the Union did immediately publicize that it had "reached an agreement" for a $0.55/hour annual raise by posting a Bargaining Update to its website on October 14. JD at 10.

Likewise, common sense dictates that it would take some time for the parties to convert their tentative agreement into a final product ready for circulation among the membership and that the Union would not (indeed could not) immediately distribute copies of the contract to its membership. In fact, the Union expends considerable time and money to prepare for ratification. As Coli Jr. testified, the Union begins preparing the ratification mailing (which includes a cover letter, contract summary, ballot, stamped return envelop, and a full copy of the proposed agreement) weeks in advance in order to timely distribute the materials to its 3000 or so voting members. Tr. 166-67 (JCJ), 273 (JCJ); 275 (JCJ); GCX 36. Thus, the evidence at trial confirms

it was the Union's custom to distribute a complete, finalized contract to its members for ratification and that this process often took weeks to accomplish.

Furthermore, it is a common bargaining practice for parties to reach an agreement at the conclusion of negotiations and proceed to memorialize that agreement into a full, written contract. In other words, that an agreement has yet to be transformed into a complete, formalized CBA does not undermine the binding nature of that agreement. *See Colfax Envelop Corp. v. Local No. 458-3M*, 20 F.3d 750 (7th Cir. 1994) (the "fact that the union restated and clarified [contract terms] in the corrected agreement that it sent [the company] is not decisive . . . because it is the [prior contract] summary rather than the corrected full agreement that is the contract between these parties"). In the end, the Union's and General Counsel's argument defies both common sense and the record evidence and should be disregarded.

B. The ALJ Properly Characterized The Parties' Post-October 14 Communications As Efforts To Convert Their Agreement Into A Formal Writing (Un. Ex. Nos. 10, 11, 12; GC Ex. No. 2)

After finding that the parties' operative agreement arose on October 13-14 (following the Union's acceptance of Respondents' final offer), the ALJ proceeded to conclude that the parties' "communications between October 14 and 28 about the contract were merely communications aimed at converting their agreement into a complete written contract." JD at 24. Again, as detailed below, the ALJ's conclusion that bargaining had ceased as of October 14 and that formal contract preparation had commenced finds support in both the record and in Board law. It should be affirmed accordingly.

Both the Union and the General Counsel argue – albeit on slightly differing grounds[14] – that no enforceable agreement existed on October 13-14; rather, the parties continued to bargain

[14] To reiterate, the General Counsel contends no enforceable agreement existed as of October 13-14 because the parties continued to bargain in earnest. GC Br. at 8-16 The Union, on the other hand,

and/or exchange proposals and counterproposals after that date and subsequently reached a "meeting of the minds" on a full agreement (including the wages scales therein) as of October 28. In other words, the Union and General Counsel contend that Schwartz, by virtue of the parties' exchanges on October 28, accepted the Union's version of the wage scales in its draft agreement. As discussed more fully below, the Union and the General Counsel's argument should be rejected because (1) the parties' post October 13-14 communications did not constitute bargaining under Board law and (2) even if the parties continued to bargain past October 14 (which they did not), the undisputed evidence in this case establishes that Schwartz never expressly agreed to the wage scales prepared by the Union.

1. The Drafts Provided By The Union Between October 18 And October 24 Were Not Reviewed By Schwartz Or Respondents And Are Irrelevant

As the ALJ accurately found, following the formation of the parties' tentative agreement on October 13-14, the Union sent Schwartz three versions of a full, draft agreement between October 18 and October 24. JD at 10-11. The first two drafts, sent on October 18 and October 21, were identical and included wage scales; however, both were in PDF format and were not redlined. JD at 10-11. Schwartz did not review these drafts. *Id.* at 11. Instead, on October 21, he informed the Union "that he was traveling and would review the draft when he returned on October 24" and requested a "redlined copy of the draft because that would make his review of the draft much quicker." *Id.* On October 24, the Union sent Schwartz a copy of the October 18 draft, this time in Word format, but again unredlined. *Id.* Again, neither Schwartz nor any of the Respondents reviewed this draft because it was not in a redline format (in contravention of ethics

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concedes a "tentative agreement" arose as of October 13-14, but argues the terms of that agreement were superseded by the exchange of drafts between October 18 and October 28 and Respondents' purported acceptance of a final draft on October 28. Un. Br. at 30.

rules, *infra*). *Id.* As such, on October 25, Schwartz e-mailed Brinson to "again ask for a redlined version of the draft." *Id.* Neither the Union nor the General Counsel challenge these findings.

a. The Communications Between October 18 and October 25 Were Aimed At Creating Or Obtaining A Redlined Draft

As the above-described series of events demonstrates, it is clear that between October 18 and October 25, the parties did not discuss the substantive terms of the contract and clearly were not – as both the Union and the General Counsel contend – engaged in any form of bargaining. Rather, all communications between October 18 and October 25 were dedicated solely to obtaining a redlined version of the draft agreement so that Schwartz could conduct a review. There was no discussion whatsoever regarding the terms of the agreement.

Moreover, the Union's post-October 14 communications make clear (contrary to the position of the General Counsel and the Union) that the Union had solely undertaken the task of converting the parties' October 13-14 tentative agreement into a complete written contract. In the October 18 cover e-mail attaching the draft agreement, Brinson states she has attached "a copy of the parties' *final agreement reached at the table*," confirming that the Union purportedly memorialized the parties' October 13-14 tentative agreement in a formal contract. GCX 16(a) (emphasis added). The use of the term "final agreement" by the Union's attorney is fatal to the General Counsel's and the Union's claim that the parties were negotiating after October 14.

b. The Union Was Obligated To Highlight Material Changes In The Drafts

Relatedly, both the Union and the General Counsel argue that Schwartz was on notice of the wages scales, as they were contained in versions of the draft agreement sent between October 18 and October 24. Un. Br. at 34-35; GC Br. at 9-15. The Union and the General Counsel imply that Schwartz is at fault for not reviewing those versions and instead for persisting in requesting a redlined version (to which he was entitled). *Id.* These arguments are simply untenable.

It was neither unreasonable nor unrealistic for Schwartz to request a redlined version of the draft 2011-2016 CBA and delay his review until he received one. In fact, under the Ethics Rules published by both the Seventh Circuit and the Illinois State Bar Association, it is incumbent on the drafting attorney to both accurately capture the parties' agreement and to notify opposing counsel of any material changes. The Seventh Circuit's Standards for Professional Conduct, under the heading "Lawyers' Duties to Other Counsel," provide:

> When we reach an oral understanding on a proposed agreement or a stipulation and decide to commit it to writing, the drafter will endeavor in good faith to state the oral understanding accurately and completely. The drafter will provide the opportunity for review of the writing to other counsel. *As drafts are exchanged between or among counsel, changes from prior drafts will be identified in the draft or otherwise explicitly brought to the attention of other counsel. We will not include in a draft matters to which there has been no agreement without explicitly advising other counsel in writing of the addition.*

See Seventh Cir. Standards For Prof'l Conduct, Rule No. 4, *available at* http://www.ca7.uscourts.gov/rules/rules.htm (emphasis added).

The Illinois State Bar Association echoes this standard and strongly advises that a "lawyer who makes a material change in a document submitted by another lawyer for signature should disclose the change when returning the signed document; failure to do so may constitute unprofessional conduct." ISBA Op. Prof'l Conduct No. 95-10 (Jan. 1996), *available at* http://www.isba.org/sites/default/files/ethicsopinions/95-10.pdf. Thus, "fairness to opposing counsel demands that substantive changes . . . [to an agreement] be brought specifically to counsel's attention." *Id.*

By failing to provide a redlined version between October 18 and October 24 (or otherwise highlighting the changes between the draft 2011-2016 contract and the now expired 2006-2011 contract), and by failing to redline the insertion of wage scales in the October 28 draft, Brinson failed to comply with the ethical standards adopted by the Seventh Circuit and by the Illinois

State Bar. Schwartz, therefore, cannot be faulted for continuing to insist on a redlined version and ignoring unredlined drafts.

2. The Parties' October 28 Communications Did Not Constitute Bargaining

On October 25, Schwartz e-mailed Brinson to "again [for the third time] ask for a redlined version of the draft." JD at 11. That same day, Brinson sent a redlined draft, noting that this version "did not include the wage scales." *Id.* Schwartz proceeded to review the redlined, October 25 draft and three days later, on October 28 at 11:09 a.m., Schwartz "sent an initial round of comments to [the Union] about the draft agreement." JD at 12. Those comments addressed a number of errors Brinson had made covering (1) funeral leave (Article 13, Section 13.1); (2) vacations (Article 14, Section 14.1-14.2); (3) benefit fund contributions (Article 20, Section 20.4(a)); and (4) an issue regarding drug testing and background checks (Article 40, Section 40.5). JD at 12. With the exception of Article 14 (vacations), each of these provisions had been addressed by the parties' October 13-14 tentative agreement. GC Exs. 13(b), 14, 15.

Both the Union and the General Counsel repeatedly assert that despite commenting on other provisions, Schwartz never mentioned the wage scales in Article 8 or suggested changes thereto. Un. Br. at 15, 26; GC Br. at 12-13. This, however, is because (1) Article 8.1 accurately reflected the Parties agreement for $0.55/hour annual raises and (2) the October 25 redlined draft that Schwartz reviewed and commented upon **did not** contain rates with in the wage progression scales. *See* JD at 11 (describing GCX 20(b) as a "redlined version of October 18 draft, without wage scales"). Understandably then, none of Schwartz's October 28 comments addressed wages.

The Parties proceeded to exchange multiple drafts of the agreement, primarily to fine tune it and correct any deviations from the October 13-14 tentative agreement. As the ALJ detailed:

- 11:54 a.m.: "Coli, Jr. informed Schwartz that the Union agreed to all the Association's requested changes except for the proposed changes to Section 14.2 and 40.5" JD at 12;

- 12:03 p.m.: "Schwartz notified the Coli Jr. that the Association accepted the Union's position on Section 14.2." JD at 12;

- 12:05 p.m.: "Brinson sent Schwartz an updated version of the draft agreement that incorporated the agreed changes (**with no wage scales included**)" JD at 12 (emphasis added);

- Schwartz and Coli, Jr. discuss Section 40.5 via telephone. JD at 12.

- 12:57 p.m.: "Schwartz circulates a draft agreement that included updated language to Section 40.5. In the e-mail that accompanied the revised draft, Schwartz stated ''Per my conversation with [Coli, Jr.], I have made on revision to 40.5. Subject to that and **subject to the appropriate wage scales to be inserted** per your earlier e-mail, we are in accord with the attached." JD at 12 (emphasis added).

- 1:38 p.m.: "Brinson responded . . . by sending Schwartz an updated draft of the agreement that included wage scales and made another minor change to Section 40.5." JD at 12-13.

- 1:40 p.m.: "Schwartz replied that the Association was fine with the Union's changes to Section 40.5" JD at 13

- 3:07 p.m.: "Brinson sent a final draft to Schwartz." JD at 13.

Upon closer scrutiny, it becomes clear that over the course of four hours on one day (October 28), the parties engaged in a joint effort to (1) memorialize the October 13-14 tentative agreement into a formal contract, (2) correct Brinson's drafting errors,[15] (3) refine the terms of their tentative agreement, and (4) ensure that the formal, written contract accurately reflected the tentative agreement. This does not amount to bargaining under Board law and any attempt by the Union or the General Counsel to argue that these communications transformed or otherwise superseded the October 13-14 tentative agreement (or "final agreement," to use Brinson's words, GCX 16(a)) should be rejected. *See Quebecor World Buffalo, Inc.*, 353 N.L.R.B. 30, 47 (2008) (clarifications "did not constitute a new offer or a revision of the final offer" nor did they

[15] These errors included, among others, (1) incorporating significant others and grandchildren into the funeral leave provisions, when that was not a part of the parties' tentative agreement and (2) a rounding error in the pension articles. Tr. 493-94 (AD); R. Ex. 16; G.C. Ex. 2.1

"negate" or "alter the terms of the final offer").[16] And, as discussed below, despite the Union's and the General Counsel's contrary claims, Schwartz never expressly agreed to the wage scales in the Union's draft agreement.

a. The Parties' Discussions On October 28 Do Not Constitute Bargaining Under Board Law

Citing no applicable case law, both the Union and the General Counsel characterize Schwartz's comments and the parties' subsequent efforts to correct certain provisions of the contract and fine-tune others on October 28 as continued bargaining and negotiation. GC Br. at 8-16; Un. Br. at 25-30. It is clear, however, that whatever changes or corrections the parties made, they did not materially alter the terms of the parties' October 13-14 tentative agreement.

Both the Board and the Seventh Circuit recognize the parties' October 13-14 tentative agreement as controlling. The fact that on October 28, the parties corrected errors, clarified certain terms and made minor adjustments to the tentative agreement as it was reduced to writing does not revoke or otherwise rescind the October 13-14 tentative agreement. In fact, the majority of the "tweaks" made on that date focused on Article 40.5, which Coli Jr. admitted was a "minor" provision. Tr. 152 (JCJ). Simply put, subsequent clarifications to an agreement as it is memorialized in a formal, written contract do not alter the terms of the prior, operative agreement. *See Quebecor*, 353 N.L.R.B. at 47. *See also Colfax*, 20 F.3d at 754 (the "fact that the union restated and clarified [contract terms] in the corrected agreement that it sent Colfax is not decisive . . . because it is the [contract] summary rather than the corrected full agreement that is the contract between these parties"); *F.W. Means & Co. v. NLRB*, 377 F.2d 683, 687 (7th Cir. 1967) (noting that labor law does not countenance the rescission of an agreement where "differences between the written drafts and the previous agreement were . . . minimal").

[16] This case was decided by a two-member panel of the Board, and thus its validity is questionable per the Supreme Court's decision in *New Process Steel v. NLRB*, 560 U.S. 674 (2010).

b. Schwartz Never Agreed To The October 28 Wage Scales

As detailed above, on October 28, Schwartz provided comments to four provisions of the Union's draft agreement, and he and Coli, Jr. proceeded to finalize those – and only those – provisions over the next few hours. As of 12:57 p.m. on October 28, Schwartz had assented to only one draft of the 2011-2016 CBA – importantly, one that did not contain wage scales. JD at 12. His agreement, moreover, included a critical proviso: it was "subject to the insertion of the appropriate wage scales." JD at 12. Thus, the only draft, which Schwartz approved, did not contain wage scales and was explicitly conditioned upon their inclusion. Notably, the General Counsel fails to mention Schwartz's express proviso in her account of the parties' communications on October 28. GC Br. at 11-16.

The Union proceeded to insert the wage scales into a subsequent draft and send it to Schwartz at 1:38 p.m. JD at 12-13. The Union, however, did not notify Schwartz that the wage scales had been added; it only signaled to him that a revision (in redline) had been made in Section 40.5. JD at 12-13; GCX 26(a). Schwartz responded "we are fine with that change," referring to the single change in Section 40.5. JD at 13; GC Ex. 27(a). On this point and in a blatant attempt to mislead the Board, the Union mischaracterizes both the ALJ's findings and the record evidence. In its brief, the Union states "[u]pon receipt of the Union's 1:38 p.m. counteroffer, Schwartz at 1:40 p.m. accepted the counteroffer . . . by stating 'we [i.e. the CPA] are fine with the change(s). . .'." Un. Br. at 16. Schwartz did not, as the Union insinuates, agree to all the changes in the 1:38 p.m. version of the agreement. By his own words, and as the ALJ found, Schwartz agreed only to the "changes to Section 40.5." JD at 13; GC Ex. 27(a).

The Union then sent Schwartz another version of the agreement, again not in redline and with wage scales at 3:07 p.m. JD at 13. Schwartz did not respond to this version; instead, he distributed this version to certain of the Respondents. *Id.* Soon thereafter, Uhlig discovered the

errors in the wage scales and notified Schwartz and the other Respondents. JD at 13-14. DiPaolo later discovered an error in the agreement's pension provision as well. JD at 14 n. 28.

As this series of events clearly demonstrates, at no point during the draft review process did Schwartz specifically authorize or agree to the wage scales drafted by the Union. His agreement was expressly contingent on the inclusion of the "appropriate wage scales" - a condition that was never fulfilled. And to the extent the General Counsel or the Union argue that Schwartz's subsequent assent to a single change in 40.5 constitutes assent to the wage scales, that argument is wholly without merit. Consent to a specific portion or revision to an agreement, cannot be generalized to consent as to the whole. Thus, the Union's and the General Counsel's attempt to bootstrap a radically-changed agreement based on the parties' communications on October 28 into a binding agreement should be rejected.

Moreover, it is clear that the Union failed to comply with the ethical standards adopted by the Seventh Circuit and by the Illinois State Bar. *See* pages 26-28, *supra*. Thus, to the extent the General Counsel and the Union contend Schwartz, by virtue of approving a single change in Article 40.5, effectively agreed to the contract as a whole, such an argument runs afoul of ethics rules. Brinson should have alerted Schwartz not only to the single change in Article 40.5, but also to the fact that the wage scales had been inserted. This insertion undeniably constituted a substantive "change from a prior draft" that should have been "explicitly brought to the attention" of Schwartz. *See* Seventh Cir. Standards For Prof'l Conduct, Rule No. 4.

3. The General Counsel's Focus On The November 1 Cutoff Date And The Existence of Two Tiers Is Misplaced

To support the argument that Respondents agreed to the Union's version of the contract and the wage tiers therein on October 28, the General Counsel contends that "the same two tiers (one tier for those employees hired prior to November 1, 2011 and one tier for those employees

hired on or after November 1, 2011) appeared in bold and in capital letters eight (8) times in every single draft exchanged between Schwartz and the Union (including the draft Schwartz sent the Union at 12:57 on October 28)." GC Br. at 17. The General Counsel misapprehends the crux of this dispute. The parties' disagreement – and the entire basis of this dispute – centers on the *wage rates* in the two wage tiers. This argument amounts to nothing more than a red herring.

The General Counsel further misleadingly contends, "Schwartz and Respondents had multiple opportunities from September 27 through October 28 to review the wage tiers and to raise objections." *Id.* In making this point, the General Counsel points to 9 exhibits entered into the record, including the Union's September 27 proposal (GCX 11) and each version of the draft contract exchanged between October 18 and October 28. G.C. Exs. 16, 17, 18, 20, 23, 25, 26, 27. The General Counsel, however, fails to highlight several key facts.

First, as the ALJ found (and which neither the Union nor the General Counsel challenge), the wage rates that appeared in the Union's September 27 proposal differed from those that appeared in all the drafts exchanged on or after October 18:

> To create [the wage scales in the October 18 draft agreement], the Union worked from the wage scales in the 2006-2011 contract… This formula produced different wage scales than the Union proposed on September 27 (even after taking the different annual raises into account).

JD at 10-11 n. 21. *See also* JD at 7-8 n. 15 ("it is not clear what . . . formula the Union used to create the wages scales" in its September 27 proposal and that "on October 18, the Union began circulating draft contracts that contained different wage scales than the scales that the Union proposed on September 27"). Thus, there can be no valid argument that the wage scales in the Union's September 27 proposal formed part of the parties' agreement.

Furthermore, the General Counsel fails to mention – as the ALJ found – that Schwartz did not review any of the drafts tendered by the Union between October 18 and October 24. JD at

10-11; G.C. Ex. 16, 17, 18. This is because those drafts were not in redline. Thus, the only agreement that Schwartz substantively reviewed was the October 25 redlined draft, which did not include rates within the wage scales. JD at 11-12. Understandably then, his comments to that draft did not address wages. JD at 12; GCX 21. After the Union incorporated Schwartz's comments and an additional version was exchanged (GCX 23(a)-(b)), Schwartz did assent to a draft of the 2011-2016 CBA, albeit one that did not contain wage scales. JD at 12. Schwartz also explicitly conditioned his agreement upon the insertion of the "appropriate wage scales." JD at 12; GCX 25(a)-(b). As detailed above, the Union did insert the wage scales into subsequent drafts, but failed to alert Schwartz of this change in contravention of Illinois and Seventh Circuit ethics rules. JD at 12-13. In any event, nothing in the record suggests Schwartz at any point on October 28 expressly agreed to the wage scales inserted by the Union. JD at 13.

Finally, in a completely illogical and totally unfounded argument, the General Counsel avers that Respondents' decision to terminate Schwartz in November 2011 somehow establishes that he entered into a binding contract as of October 28. GC Br. at 18. The Respondents' decision to replace Schwartz has absolutely no bearing on when the parties' agreement was formed in this matter or on whether Schwartz's communications with the Union on October 28 gave rise to a contract under the law. This argument should be resoundingly rejected.

4. The Union's Counteroffer Argument Is Unworkable And Runs Afoul Of Board Law (Un. Ex. Nos. 8, 11)

The Union concedes that a "tentative agreement" was reached by virtue of the parties' communications on October 13-14. Un. Br. at 12-13, 30. Nonetheless, the Union appears to suggest – without any legal foundation – that a "tentative agreement" does not constitute an enforceable agreement and that its terms may be changed or varied upon formalization of the contract. Thus, according to the Union, its subsequent tender of a complete, written contract on

October 18 constituted an "offer" that triggered a series of counteroffers and culminated in a final agreement on October 28. Un. Br. at 29, Addendum A. The Union's argument, however, does not withstand scrutiny.

First, the Union's characterization of its October 18 e-mail (to which it attached a complete draft of the 2011-2016 CBA) as an "offer" is belied by the terms of the e-mail itself. In the cover e-mail attaching the draft agreement, Brinson states she has attached "a copy of the parties' ***final*** *agreement reached at the table*." GCX 16(a) (emphasis added). Nothing in the Union's October 18 e-mail suggests it is tendering another offer. Rather, the import of the e-mail is plain: the Union reduced the agreement struck by the parties during bargaining to a complete, formal writing. The Union's argument is nothing more a post-hoc and ultimately unavailing attempt to transform the parties' efforts to memorialize their October 13-14 tentative agreement into continued bargaining. *Cf. Quebecor*, 353 N.L.R.B. at 47.

Second and more critically, a binding agreement was clearly reached on October 13-14. As the ALJ found, Respondents submitted their final offer on October 13, and the Union unequivocally accepted that offer that same day subject to minor clarifications. JD at 9-10, 24. As discussed at pages 17-24, this finding is fully supported by Board law and the record in this case and should be sustained. Nonetheless, the Union places a slight spin on the parties' October 13-14 communications. The Union argues that after Respondents submitted their final offer on October 13, the Union's response thereto constituted not an acceptance, but a counteroffer because it contained clarifications to Respondents' final offer. Un. Br. at 25-31, 35-36.[17]

The Union's hyper-technical application of contract law is misplaced. It is well-established that the "technical rules of contract law do not necessarily control the formation of a

[17] Not only is this argument wrong as a matter of Board law, it is irrelevant given Brinson's characterization of the parties' October 13-14 exchange as being a "final agreement." GCX 16(a).

collective bargaining agreement" and that "an offer made by one party remains subject to being accepted by the other party, even if the accepting party has . . . made a counterproposal unless the offeror expressly withdraws the offer or unless circumstances arise which would lead the parties to believe that the offer has been withdrawn." *See Transit Serv. Corp.*, 312 N.L.R.B. 477, 481-82 (1993); *Auciello Iron Works, Inc.*, 303 NLRB 562, 566 (1991). Thus, the Union's acceptance of the Respondents' final offer, even with clarifications to its terms, was sufficient to form a contract under Board law.[18] Accordingly, and as a matter of law, no subsequent "offers" or "counteroffers" could occur because a contract existed as of October 13-14, and any subsequent corrections or "tweaks" the parties agreed to on October 28 in no way operated to revoke or alter terms of the Respondents' original October 13 offer or the Union's acceptance thereof. *See Quebecor*, 353 N.L.R.B. at 47;. *Colfax*, 20 F.3d at 754; *F.W. Means*, 377 at 687.

Likewise, the Union's suggestion that the parties' October 13-14 "tentative agreement" does not constitute an enforceable agreement or that its terms may be varied if certain terms were later refined or corrected is contrary to Board law. Un. Br. at 25-31, 35-36. As the Board has noted, the phrase "tentative agreement" has legal effect. In *Y.W.C.A. of W. Massachusetts*, 349 N.L.R.B. 762, 772 n.12 (2007), the Board observed that "[i]n collective-bargaining parlance, a 'tentative agreement' refers to an agreement that (1) has been accepted by the parties subject to ratification or other approval mechanism or (2) is an agreement on a particular issue that is subject to becoming binding if and when the parties reach agreement on all other issues."

Here, the former definition (*i.e.* a tentative agreement means one subject to ratification) is clearly applicable, as the parties had reached an agreement on all material issues as of October

[18] Even if the Board credited the Union's characterization of this exchange (which it should not), it does not alter the fact that a binding, tentative agreement was formed that day. This is because Schwartz responded on October 14 accepting the Union's clarifications. *See* JD at 9; GCX 15. Thus, regardless of which party made the offer or effected the acceptance, an enforceable agreement existed as of October 14.

14. Tr. 756. In fact, Coli, Jr. stated on at least three occasions that any agreement reached by the parties would be subject to ratification. JD at 5 n.9, 8 n.18, 12; G.C. Exs. 8, 21. Thus, his use of the phrase "tentative agreement" undoubtedly referred to the ratification requirement. The latter definition, moreover, is inapplicable. It is clear that as of October 13-14, Respondents' final offer has been accepted in its entirety, and the parties had concluded an agreement. Any subsequent "tweaks" that occurred during one day, on October 28, were admittedly minor (Tr. 152) and were aimed solely at reducing the October 13-14 tentative agreement to writing, correcting the Union's drafting errors, and fine-tuning aspects of the tentative agreement.

In the end, the Union's tortured argument that the drafting process between October 18 and October 28 in fact represented a series of offers and counteroffers fails. Its strict application of common law contract principles is contrary to Board policy and should be rejected.

C. The ALJ Properly Determined That The Parties' October 13-14 Tentative Agreement Was Ambiguous With Respect To The Wage Scales And Resulted In No Meeting Of The Minds (Un. Ex. Nos. 15, 18, 19; GC Ex. No. 3)

In his decision, the ALJ concluded that "the terms of the parties' [October 13-14] agreement were ambiguous regarding the wage scales for employees" and that because both parties assigned "equally plausible, but different, understandings of the ambiguous agreement to have wage scales 'proportionate to the prior agreement,' this is a classic case of misunderstanding that can be traced to an ambiguity for which neither party is to blame." JD at 25. The ALJ further determined that "[u]nder such circumstances, the result is that the parties' 'seeming agreement will create no contract.'" *Id.*

1. The ALJ's Conclusion That The Parties Failed To Achieve A Meeting Of The Minds Regarding The Wage Scales Should Be Upheld

As discussed above at pages 17-24, the ALJ properly determined that the parties reached a tentative agreement on October 13-14. Based on the terms of that agreement, the ALJ correctly

surmised that the "only information the parties' October 13-14 agreement provided about wage scales . . . was that they should 'reflect [55] cents per hour annual increases' and be 'proportionate to [the] prior agreement.'" JD at 24.

The facts in evidence fully support the ALJ's conclusions that (1) the parties' agreement regarding "scales proportionate to prior agreement" was objectively ambiguous and (2) that both parties, unbeknownst to one another, assigned different meanings to this phrase. JD at 24-26. The ALJ found the parties did not specifically discuss the wage scales during bargaining or that they reached any express agreement on the rates to be included in the wage scales. To wit:

> The parties did not discuss the wage scales in any detail before October 13- 14, much less how those scales would need to be adjusted to account for the fact that the expiring 2006-2011 contract was unique insofar as new hires ended the contract term with wages that lagged $2 per hour behind old employees (instead of catching up, as was the case with previous contracts). Because those questions were left unresolved, and the agreement to have wage scales "proportionate to the prior agreement" was left undefined, Respondents were not on notice that the Union understood those issues differently than Respondents as of October 13-14.

JD at 25 n. 41; see also JD at 7, 9 (finding that the parties did not discuss at either the September 27 or October 12 bargaining sessions that new hires under the 2006-2011 CBA would receive an immediate $2.00/hour raise upon becoming "old" hires under the 2011-2016 CBA).

The ALJ also correctly determined, based on the record, that both parties assigned wholly different, but entirely reasonable, interpretations to the phrase "scales proportionate to prior agreement" at the time of their October 13-14 agreement. The ALJ credited Respondents' testimony that they understood "scales proportionate to prior agreement" to mean "that wage scales in the 2011-2016 contract should maintain the $2/hour difference between the wages of new hires and existing employees that was established in the 2006-2011 contract." JD at 9 n.20; Tr. 551-52, 654; JD at 25 ("Respondents took the view that 'proportionate' scales would . . . look like a continuation of the expiring wage scales, augmented by the annual 55-cent-per-hour wage

increases"). By contrast, the ALJ found (based on the wage scales within the Union's nearly contemporaneous, October 18 draft), that the Union "decided that 'proportionate' wage scales would have a $2 differential between 'old' employees hired before November 1, 2011 and 'new' employees hired on or after November 1, 2011." JD at 25. Such credibility determinations should not be disturbed by the Board. *See Standard Dry Wall,* 91 N.L.R.B. at 545.

As this evidence clearly demonstrates, the parties assigned conflicting and wholly incompatible meanings to a fundamental, but ultimately ambiguous term of their October 14 tentative agreement. Specifically, Respondents focused on the actual (existing) wage rates within the tiers and sought to ensure the scales preserved the existing, $2.00 wage rate differential applicable to new hires under the prior 2006-2011 agreement. By contrast, the Union focused on the wage scales' cut-off dates and fashioned entirely new wage tiers separated by $2.00. Thus, the Union's understanding of the phrase "scales proportionate to prior agreement" clearly diverged from that of Respondents', and the record contains no evidence that one party is more at fault than the other for this misunderstanding.

Based on these facts (which neither the Union nor the General Counsel challenge), the ALJ correctly applied Board law and determined that "this is a case in which the parties' apparent agreement itself included ambiguous language that precluded a meeting of the minds, and thus resulted in there being no contract." JD at 26.

2. The General Counsel's Exceptions To The ALJ's Meeting Of The Minds Analysis Are Not Well-Taken

The General Counsel excepts to the ALJ's conclusion that the parties' failed to reach a meeting of the minds as to the wage scales on October 13-14, thereby precluding an agreement on that issue. GC Br. at 16-31. According to the General Counsel, the parties' October 13-14 agreement was clear and unambiguous, and a meeting of the minds existed as to the meaning of

"scales proportionate to prior agreement." *Id.* at 19-29. The General Counsel's arguments, however, are unavailing and should be rejected.

a. Neither the Parties' Bargaining History Nor The 2011 Negotiations Establish That A Meeting Of The Minds Existed On The Wage Scales

According to the General Counsel, the parties reached a clear and unambiguous agreement on the wage scales as of October 13-14 based on (1) the parties' "long-standing" practice of utilizing two-tier wage scales and (2) the parties' bargaining sessions and the proposals exchanged between September 27 and October 14. GC Br. at 19-29. The General Counsel, however, omits key facts from her recitation and mischaracterizes the evidence.[19] Ultimately, the General Counsel's contention that the parties' agreement on the wages scales was "clear as of October 13-14" finds no support in the evidence or the law. GC Br. at 28.

(1) The Parties' Bargaining History Reveals The Parties Negotiated Changes To The Wage Scales Each Contract

The General Counsel contends that the parties entered the 2011 negotiations with a "long-standing two-tier wage system firmly entrenched with the November 1 cutoff" date. GC Br. at 23. In reality, the evidence establishes that although a 30-year bargaining relationship has existed between the Union and the Association, the parties have utilized a two-tier wage system for only three CBAs. The General Counsel introduced three prior contracts between the Union and Respondents into evidence: one for the 1996-2001 time period; one for the 2001-2006 time period, and one for the 2006-2011 time period. JD at 4-5; G.C. Exs. 5, 6, 7. The 1996-2001 and 2001-2006 contracts contained two wage tiers separated by a November 1 cut-off, with one tier

[19] In determining the correctness of an ALJ's decision, the NLRB must examine all evidence, not just evidence supporting the General Counsel's arguments. *See Wego Cleaning Specialists, Inc.*, 308 N.L.R.B. 310, 310 n.4 (2003) ("when Board reviews an ALJ's decision . . . [it] should be able to examine the entire record . . .").

applicable to existing employees and one tier applicable to new hires (i.e. those hired after the contract's effective date). JD at 4.

The General Counsel, moreover, fails to disclose the fact that the wage progression scales have evolved since 1996. The 1996-2001 CBA contained two wage scales, one for a three-year period for existing employees and one for a five-year period for new hires. GCX 5. In the 2001-2006 CBA, the parties lengthened the wage progressions and adopted two, five-year scales for existing employees and new hires. *Compare* GCX 5, Articles 8.2 & 8.3 *to* GCX 6, Articles 8.2 & 8.3. Likewise, for the 2006-2011 CBA, the parties implemented two significant changes with respect to the wage scales. First, the 2006-2011 CBA separated the wage progression scales for commercial employees and residential employees. See JD at 5 n.7; GCX 7. Second, and most critically, the wage rates set forth in the scales contained in the 2006-2011 CBA did not "catch up." JD at 5; GCX 7. Rather, for the first time, there was a permanent, $2.00 per hour wage differential between the wage rates for existing employees hired prior to the start of the contract as compared to new employees hired during the term of the contract. *Id.* As the ALJ found, for the 2006-2011 CBA, "the parties did not continue the practice of having the wages of new hires catch up to the wages of existing employees . . . Instead, . . . the parties agreed that the wage tier for newly-hired employees would have minimum rates that were $2 per hour less than the wages of existing employees who worked under the contract for the same time period." JD at 5. Thus, under the 2006-2011 CBA, the wage rate for an existing employee topped out at $16.15, while the wage rate for a newly-hired employee topped out at $14.15. JD at 5 n.8; GCX 7.

The record evidence clearly demonstrates that while the November 1 cutoff date may have remained constant since the 1996-2001 contract, the format, structure, and actual rates within the wage scales changed from contract to contract. Thus, the General Counsel's argument

that the structure of the wage scales within the parties' prior agreements (meaning the existence of two tiers and a November 1 cutoff date) were static and that, therefore, on October 13-14, the parties achieved a meeting of the minds as to the actual wage progression scales and/or to the meaning of "scales proportionate to prior agreement" fails. It is simply contrary to fact.

Indeed, the ALJ expressly rejected the Union's and the General Counsel's argument that their interpretation of the wages scales (i.e., scales that used two tiers separated by the contract effective date – traditionally November 1st) was the only reasonable approach. JD at 25 n.41. According to the ALJ, this argument "miss[ed] the mark" because there was no evidence that Respondents would have known at as of October 13-14 that the Union would interpret the ambiguity within the parties' tentative agreement in such a manner. *Id.* As the ALJ properly found, "the parties did not discuss the wage scales in any detail before October 13-14, much less how those scales would need to be adjusted to account for the fact that the expiring 2006-2011 contract was unique insofar as new hires ended the contract term with wages that lagged $2 per hour behind old employees (instead of catching up, as was the case with previous contracts)." *Id.*

(2) The General Counsel Improperly Relies On The Union's September 27 Proposal

The General Counsel contends that a meeting of the minds arose as to the wage scales and as to the rates therein on October 13-14 by virtue of the Union's September 27 proposal. GC Br. at 28. Any such notion is flatly contradicted by the record evidence and the ALJ's findings.

To begin, the General Counsel omits key facts from her account of the parties' September 27 bargaining session. While the General Counsel does point out that the Union presented a full contract proposal that included rates in the wage scales on September 27 (GC Br. at 23), there is no mention of the fact that the parties did not discuss the wage scales on that date:

> The parties did not discuss [at the September 27 bargaining session] the fact that "new hires" under the expiring 2006-2011 contract would become old hires

> under the Union's proposed contract, and thus receive an immediate $2/hour raise (plus the $1/hour annual wage increase) based on the updated wage tiers. Nor did the parties discuss how the Union came up with the wages in the proposed scales.

JD at 7. Rather, as both the ALJ found (and as the General Counsel concedes), the only discussion pertaining to wages at the September 27 bargaining session was Coli Jr.'s oral explanation that the Union sought a $1.00 / hour annual wage increase. JD at 6; GC Br. at 25. This is corroborated by Schwartz's notes from that bargaining session, which indicate that the Union's proposal included a $1 increase in the wage progression scales. R. Ex. 32, pg. 6.

Furthermore, in a futile effort to demonstrate that the parties' October 13-14 agreement was clear and unambiguous as to the wage scales, the General Counsel argues that "as early as the first bargaining session on September 27, the Union provided Respondents with the clear two-tier wage structure, the actual rates for employees under both tiers, and the November 1 cutoff date." GC Br. at 28. The General Counsel proceeds to disingenuously assert that Respondents never bargained over the wage scales between September 27 and October 14. The General Counsel is wrong.

At the October 12 bargaining session, the Union's final economic offer consisted of a $0.55 annual increase and to "maintain the tiers." JD at 8. Likewise, Respondents' final offer expressly proposed a $0.55 per hour annual increase "with scales proportionate to [the] prior agreement." JD at 9. Thus, to the extent the General Counsel contends that the inexplicable wage scales within the Union's September 27 proposal remained viable, that argument should be rejected. The record is clear that both the Union's September 27 initial proposal and the Union's October 12 final offer were rejected and subsequently superseded by the Union's acceptance of Respondents' October 13 final offer and the formation of the parties' October 13-14 tentative agreement. JD at 9-10, 24; G.C. Exs. 13(a)-(b), 14, 15. Neither Respondents' final offer nor the

parties' tentative agreement incorporated the wage scales as initially proposed by the Union on September 27; as such, these proposals were not binding. Simply put, the Union's September 27 proposal has no bearing on the actual terms of the parties' October 13-14 tentative agreement, except as evidence of the Union's confusion as to the method of calculating the wage scales.

Second, any argument by the General Counsel or the Union that the scales within the parties' September 27 proposal became part of the October 13-14 tentative agreement is contradicted by the draft agreement prepared by the Union on October 18. As the ALJ found, the wage scales in the Union's September 27 proposal differed significantly from the wage scales included in the Union's October 18 draft. Specifically, the ALJ determined:

> With previous contracts, the parties created the wage scales for "existing employees" by referring to the expiring contract and adding the agreed-upon annual wage increase to the wages shown in the final year (row) of the wage scales for new hires. … *The wage scales in the Union's September 27 proposal, however, did not follow that formula, and it is not clear what alternative formula the Union used to create the wage scales in that proposal.*

JD at 7-8, n. 15 (emphasis added).[20] By contrast, the ALJ found with respect to the wage scales in the Union's October 18 draft agreement:

> To create [the wage scales in the October 18 draft agreement], the Union worked from the wage scales in the 2006-2011 contract. … *This formula produced different wage scales than the Union proposed on September 27 (even after taking the different annual raises into account).*

JD at 10-11 n. 21 (emphasis added).[21] Thus, it is clear that even the Union did not consider the wage scales in its September 27 proposal to be part of the parties' October 13-14 tentative

[20] Notably, neither the Union nor the General Counsel filed an exception to the ALJ's findings (i) that the September 27 proposal did not follow this formula or (ii) that it was unclear what alternative formula the Union used.

[21] Significantly, neither the Union nor the General Counsel filed an exception the ALJ's finding that this formula produced different wage scales than the Union proposed on September 27.

agreement, as those scales (and the rates therein) drastically changed once the Union purported to memorialize the parties' October 13-14 tentative agreement into a full, written contract.

(3) The General Counsel Mischaracterizes Respondents' October 13 Final Offer

Again, in a misdirected attempt to show that a meeting of the minds arose on October 13-14 as to the wage scales, the General Counsel misleadingly describes the terms of Respondents' October 13 final offer. Specifically, the General Counsel asserts that "Schwartz did not make any reference to changing the two tiers or the November 1, 2011 cutoff date for these wage progressions. In fact the only mention of Article 8.2 Wages was to remove the 6-month wage increase." GC Br. at 27. In her account, the General Counsel conspicuously omits key language from Respondents' October 13 final offer, namely to "amend [the wage provisions] to reflect .55 cents per hour annual increases, with scales proportionate to prior agreement." JD at 9. Thus, contrary to the General Counsel's argument, Respondents did address the wage progression scales, and their October 13 final offer reflects as much.

The General Counsel further claims that as of October 13-14, "the wages, two-tier wage structure, and November 1, 2011 cutoff date for the tiers were all fully defined, bargained, and agreed." GC Br. at 29. This was simply not the case, and the General Counsel's own argument confirms as much. As the General Counsel recounts, it is undisputed that as of October 13-14, the parties agreed to $0.55/hour annual raises as well as to eliminate the 6-month wage increase and that a meeting of the minds existed as of October 13-14 on these issues. GC Br. at 28. Indeed, these changes were agreed to, in writing, on that date. *Id.*

In stark contrast to the parties' clear and unambiguous agreement on these issues, there is no evidence to suggest the parties reached any such clear agreement or a meeting of the minds as to the wage scales on October 13-14. This is because, as the ALJ properly found, (1) the parties

neglected to discuss, in detail, the actual wage scales and rates therein during bargaining and (2) the parties included patently ambiguous language covering the wage scales in their October 13-14 tentative agreement – i.e., "scales proportionate to prior agreement." JD at 24-26.

b. The ALJ Did Not Improperly Rely On The Parties' Subjective Understandings (Un. Ex. Nos. 7, 15)

The General Counsel argues the ALJ erred in his credibility determination that Respondents construed their October 13 offer of "scales proportionate to prior agreement" to mean preserving the two-dollar differential applicable to "new hires" under the prior, 2006-2011 contract. GC Br. at 30-31 (citing JD at 9 n. 20). The General Counsel faults the ALJ "for relying on the Respondents' subjective . . . interpretation" of their October 13 final offer and argues that a "meeting of the minds" analysis should not factor in a party's subjective interpretation of the terms of an agreement. GC Br. at 30-31.

The General Counsel, however, misapprehends Board law. This is not a case in which the bargaining parties assigned different meanings to objectively clear and unambiguous language in an agreement. Rather, the actual agreement between the parties contained patently ambiguous language, which each party interpreted from wholly contradictory, but entirely plausible standpoints. *Cf. Hempstead Park Nursing Home*, 341 N.L.R.B. 321, 322 (2004) ("subjective understandings (or misunderstandings) of the meaning of terms that have been agreed to are irrelevant, *provided that the terms themselves are unambiguous*") (emphasis added).

The parties' October 13-14 tentative agreement was not – as the General Counsel strives in vain to establish – objectively clear and unambiguous. To the contrary, the language to which the parties agreed on October 13-14 – that the wages scales be "proportionate to [the] prior agreement" – is objectively vague and ambiguous. Thus, the ALJ properly concluded (1) that each party attached vastly different meanings to this phrase and (2) that under such

circumstances, no meeting of the minds existed as to the wage scales and, consequently, no contract could arise. *See* JD at 25 (citing *Hempstead*, 341 NLRB at 322-323; *Vallero Retail Trade Bureau*, 243 NLRB 762, 767 (1979) (finding that there was no contract because of an ambiguity in the parties' letter of understanding), *enfd.* 626 F.2d 119 (9th Cir. 1980); *OCAW, Local 7-507*, 212 NLRB 98, 107-108 (1974) (same, where the parties' apparent agreement included a material ambiguity about wage rates for which neither party was to blame)).

3. The ALJ Correctly Applied *Windward* (Un. Ex. No. 6; GC Br. at 18-19).

Both the Union and the General Counsel claim that the ALJ misapplied the Board's decision in *Windward Teachers Association*, 346 N.L.R.B. 1148 (2006), and that this decision in fact compels the conclusion that Respondents are obligated to sign the October 28 version of the 2011-2016 CBA. Un. Br. at 37-41; GC Br. at 18-19. Contrary to General Counsel's and the Union's arguments, the ALJ did not erroneously apply the Board's decision in *Windward*.

In his decision, the ALJ provided an accurate summary and reasoned analysis of the *Windward* decision and correctly highlights the distinctions between *Windward* and the instant case. JD at 27. In *Windward*, the parties signed a clear and unambiguous agreement regarding the payment of bonuses, which provided that "[t]he School has the right to pay bonuses without Union approval." 346 N.L.R.B. at 1149. In this case, no such clear and unambiguous agreement existed. Rather, the terms of the parties' agreement – i.e. a $0.55/hour raise "with scales proportionate to prior agreement" – was facially ambiguous. As such, the ALJ's conclusion that the October 13-14 agreement "was a nullity because it included ambiguous language about wage scales" comports with *Windward*. JD at 27.

In fact, the Board noted in *Windward* that "there was no mutual mistake as to the terms of the agreement because the wording of the bonus clause in the successor agreement submitted by the School for the Respondent's signature was identical to [an earlier proposal] by the School."

346 N.L.R.B. at 1152. Here, no such continuity existed among the parties' October 13-14 tentative agreement and the Union's subsequent written memorialization of that agreement. This is because the parties never achieved a mutual understanding of the clearly ambiguous phrase "scales proportionate to prior agreement." This is further highlighted by the fact that the wage scales proposed by the Union on September 27 – which both the Union and the General Counsel claim were incorporated into the parties' tentative agreement – were entirely different from those included in the Union's October 18 draft agreement. Simply put, there is absolutely no evidence that the October 18 or 28 versions of the contract in any way reflected – or could have reflected – the parties' October 13-14 agreement on the wage scales.

Finally, the General Counsel points to the Board's statement in *Windward* that "it is well settled that where parties have reached agreement on the specific terms of a contract, subsequent disagreement over the meaning of those terms does not excuse a refusal to execute the agreement." 346 N.L.R.B. at 1152; GC Br. at 19. The General Counsel overlooks that this rule applies only when the terms in dispute are specific and unambiguous, which is not the case in this matter. Indeed, the decisions cited by the Board in *Windward* to support this proposition confirm at much. *See Graphic Commc'ns District 2,* 318 N.L.R.B. 983, 992 n.42 (1995) (noting that ''subjective understanding (or misunderstandings) as to the meaning of [an agreement's] terms which have been assented to are irrelevant, provided that the terms themselves are unambiguous'" and finding that "no party argues that any term of . . . the draft agreement . . . is ambiguous"); *Teamsters Local 617,* 308 N.L.R.B. 601, 602 (1992) (requiring union to execute a full and complete CBA that "reflected accurately" a prior memorandum of agreement entered into by the parties and noting that the memorandum of agreement itself "correctly reflected the parties' agreement" reached at the bargaining table).

4. The Union's Exceptions Regarding The ALJ's Finding That No Meeting Of The Minds Occurred Lack Merit (Un. Ex. Nos. 17, 18, 19)

In arguing the ALJ erred in finding no meeting of the minds arose, the Union reiterates its counteroffer theory and argues that even if the parties reached an agreement on October 13-14, the Union reduced its understanding of "scales proportionate to prior agreement" to writing and, on October 18, submitted those scales to Respondents as an offer, which Respondents accepted on October 28. Un. Br. at 35-37. Thus, per the Union, any "alleged ambiguity [in the October 13-14 agreement] was resolved between October 18-28." Un. Br. at 35.

As discussed above at pages 31-37 and incorporated herein, the Union's argument falls flat because (1) the Union's counteroffer theory is contrary to Board law and (2) even if adopted, there is no evidence that Schwartz ever expressly approved or accepted the wage scales in the Union's October 28 draft. In the end, the Union's counteroffer theory can neither negate the binding nature of the parties' October 13-14 agreement nor undermine the ALJ's conclusion that no meeting of the minds occurred on those dates. It should be rejected accordingly.

Finally, citing *North Hills Office Services*, 344 N.L.R.B. 523 (2005), the Union argues the ALJ improperly dismissed the complaint based on a "unilateral mistake" by Respondents. Un Br. at 32-35. The Union's argument misses the mark. In *North Hills*, during the course of bargaining, the employer unambiguously offered to implement a $0.35 per hour across the board raise, and the Union agreed. Later, as the parties continued to bargain, the employer notified the union that it had mistakenly conveyed a $0.35 across the Board wage increase. Instead, the employer had intended to grant $.35/hour to full-time employees, but only $.15/hour for part-time employees. Applying unilateral mistake principles, the Board held that the employer was bound by the parties' agreement on wages because the union had no way of knowing that the employer's $0.35 across-the-board offer was a mistake. The Board found a meeting of the minds

occurred because the employer "made an *unequivocal* offer to increase wages [by $0.35] for all employees . . . and the Union accepted that offer." *Id.* at 526 (emphasis added).

The Board's decision in *North Hills* is clearly distinguishable. Here, there is no evidence that Respondents were mistaken in their offer of $0.55/hour "with scales proportionate to prior agreement." Respondents fully intended to convey this offer; however, a mutual mistake occurred because both parties interpreted this phrase in entirely reasonable, but completely incompatible ways. Thus, unlike in *North Hills*, Respondents' offer (which the Union accepted) was not "unequivocal" or unambiguous; rather, it was open to multiple interpretations.

IV. CONCLUSION

For all of the foregoing reasons, Respondents respectfully request that the Board find that the Exceptions filed by the Union and the General Counsel lack merit. Respondents further request that the Board affirm the decision and findings of the Administrative Law Judge that Respondents' refusal to sign the Union's October 28 version of the agreement did not violate Section (8)(a)(5) or 8(a)(1) of the NLRA.

Dated: December 20, 2013

Respectfully submitted

INTERPARK, STANDARD PARKING, IMPERIAL PARKING, ABM PARKING, & LAZ PARKING

By: /s/ Douglas A. Darch
One of its attorneys

Alexis S. Hawley
Baker & McKenzie
300 E. Randolph, Suite 5000
Chicago, IL 60601
Phone: 312-861-2530
Fax: 312-698-2384
Alexis.Hawley@bakermckenzie.com

Douglas A Darch
Baker & McKenzie
300 E. Randolph, Suite 5000
Chicago, IL 60601
Phone: 312-861-8933
Fax: 312-698-2965
Email: Douglas.Darch@bakermckenzie.com

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that on December 20, 2013, he caused the foregoing document to be filed electronically via the National Labor Relations Board's electronic filing system. All parties below will be served via e-mail and U.S. Mail.

Lisa Friedheim-Weis
Board Attorney
National Labor Relations Board - Region 13
209 South LaSalle Street, Suite 900
Chicago, IL 60604
(312) 353-7611
lisa.friedheim-weis@nlrb.gov

Stephanie K. Brinson, Esq.
General Counsel
Teamsters Local No. 727
1300 Higgins Road
Suite 111
Park Ridge, IL 60068
sbrinson727@gmail.com

/s/ Douglas A. Darch
Douglas A. Darch

EXHIBIT A

MASTER PARKING AGREEMENT

TEAMSTERS LOCAL 727

Nov. 21, 2011

Local 727 Secures Five-Year Parking Agreement for More Than 3,000 Members

Parking industry workers comprising nearly half of Teamsters Local 727's membership secured annual raises and no health insurance co-pays for the next five years after they voted this month to ratify a new contract. MORE

>> BARGAINING UPDATES

Nov. 1, 2011

Local 727 Fights for New Five-Year Contract With Annual Raises, No Health Insurance Co-Pays

Teamsters Local 727 representatives negotiated with Chicago-area parking companies on a new five-year Master Parking Agreement with yearly wage increases and no insurance co-pays for more than 3,000 parking industry members. "The parking companies were demanding wage freezes, reduced paid time off, health insurance co-pays and the elimination of the Legal and Educational Assistance benefit. In the end, the union was able to secure annual raises, more paid time off and an improved Educational Assistance benefit while also fighting off co-pays," said John T. Coli, Secretary-Treasurer of Local 727. "We stood in solidarity with our parking members and fought hard to ensure this contract is even stronger than the last one." DOWNLOAD CONTRACT SUMMARY

Oct. 14, 2011

Union Representatives Secure Raises, Fight Off Co-Pays

Teamsters Local 727 representatives this week secured annual raises and fought off proposed health insurance co-pays for their 3,000 parking industry members as they reached an agreement with management on a new five-year Master Parking Agreement. "Before negotiations even began, the union vowed to ensure our members would not have health insurance co-pays, and we followed through on that promise," said John T. Coli, Secretary-Treasurer of Local 727.

ABOUT US

More than half of Teamsters Local 727's total membership comes from workers in the parking industry. Whether at a downtown Chicago condominum or the economy lots at Midway and O'Hare airports, Local 727 members are there, serving as car washers, greasers, parking lot attendants, hikers, polishers, wash rack attendants and other miscellaneous garage positions.

TEAMSTERS LOCAL 727

John T. Coli,
Secretary-Treasurer
1300 W. Higgins Road
Suite 111
Park Ridge, IL 60068
(847) 696-7500 office
(847) 720-4984 fax
Contact us

LINKS

Local 727 home
Local 727 parking members

PARKING NEWSLETTERS

Fall 2010

DOWNLOAD BARGAINING UPDATE

Oct. 10, 2011

Local 727 Provides Proof That Union Health Care Saves Parking Companies Money

Chicago-area parking companies save millions of dollars each year because more than 3,000 of their Teamsters Local 727-represented employees use union health care. U.S. employers' average health-care cost per employee is expected to climb above $10,000 next year, according to a report from Chicago-based insurance brokerage and consulting firm Aon Corp. The union health-care cost per employee per year is about 15 percent less than that. DOWNLOAD BARGAINING UPDATE

Sept. 27, 2011

Parking Companies Demand Severe Cuts

Parking employers are demanding wage freezes, decreased paid time off and a reduction in benefits for their Teamsters Local 727-represented employees. "The union will not even begin to entertain the thought of concessions unless the employers can provide concrete proof that their companies are not profitable," said John Coli Jr., President of Local 727. DOWNLOAD BARGAINING UPDATE

Sept. 20, 2011

Union Health Insurance Saves Parking Employers Millions

Teamsters Local 727 representatives remain committed to ensuring its more than 3,000 parking industry employees continue to enjoy the union's health and welfare benefits as they have for years. "Management has been spreading rumors that members will be forced to contribute to their health insurance. The union absolutely will not agree to that," said John Coli Jr., Local 727 President. DOWNLOAD BARGAINING UPDATE

April 1, 2011

Local 727 Prepared to Fight for 3,000 Members During Parking Contract Negotiations

Teamsters Local 727 representatives are prepared to fight on behalf of about 3,000 parking industry members for wage increases, maintenance of zero-cost insurance benefits and working condition improvements. DOWNLOAD BARGAINING UPDATE

>> LATEST NEWS

Oct. 7, 2011

Parking Employees, Valets at Downtown Locations Join Local 727

About 30 valets and parking workers joined Teamsters Local 727 in September when sister companies Capital Parking and BLK & WHT Valet LLC signed agreements with the union. MORE

July 29, 2011

Parking Meter Enforcement Officers Join Local 727

Parking meter enforcement officers at MSC Chicago became Teamsters Local 727 members this month after the company signed the union's Master Parking Agreement. MORE

May 24, 2011

Courtesy Valet Signs Contracts With Union

Courtesy Valet Inc. signed contracts with Teamsters Local 727 on behalf of 40 valets and shuttle bus drivers working at NorthShore University HealthSystem hospitals. MORE

May 13, 2011

Workers at State Parking One, GP Parking One, Safe Parking Join Local 727

Sister companies State Parking One, GP Parking One and Safe Parking have agreed they are bound to the Master Parking Agreement with Teamsters Local 727. MORE

April 1, 2011

Local 727 Prepared to Fight for 3,000 Members During Contract Negotiations

Teamsters Local 727 representatives are prepared to fight on behalf of about 3,000 parking industry members for wage increases, maintenance of zero-cost insurance benefits and working condition improvements. MORE

Nov. 8, 2010

Union Looks Ahead to 2011 Contract Negotiations

Teamsters Local 727 representatives already have begun making preparations for next fall's contract negotiations on behalf of more than 3,000 members in the parking industry. MORE

TEAMSTERS LOCAL 727 HOME

TEAMSTERS LOCAL 727

PARKING MEMBER NEWS

BARGAINING UPDATE

Oct. 14, 2011

Union Representatives Secure Raises, Fight Off Co-Pays

Teamsters Local 727 representatives this week secured annual raises and fought off proposed health insurance co-pays for their 3,000 parking industry members as they reached an agreement with management on a new five-year Master Parking Agreement.

"Before negotiations even began, the union vowed to ensure our members would not have health insurance co-pays, and we followed through on that promise," said John T. Coli, Secretary-Treasurer of Local 727. "Our parking members stood strong alongside their Teamster brothers and sisters. That display of solidarity empowered the union to stand its ground and fight off management's unreasonable proposals."

Management had initially proposed a $30 per week co-pay for health insurance, as well as a three-year wage freeze and a reduction in paid time off for all Local 727-represented employees.

The new five-year contract, which would expire on Oct. 31, 2016, now goes to a mail-in member vote. A complete contract summary and ballot will be forthcoming.

> **"Before negotiations even began, the union vowed to ensure our members would not have health insurance co-pays, and we followed through on that promise."**
>
> — John T. Coli, Secretary-Treasurer of Teamsters Local 727

In addition to fighting off health insurance co-pays, union representatives secured annual raises of $0.55 and an additional day of paid time off for all members.

"The new contract builds on what was already an extremely strong Master Parking Agreement," Coli said. "We listened to the members and fought for what was most important to them."

If you have any questions, contact your Local 727 business representative at (847) 696-7500.

TEAMSTERS LOCAL 727 | John T. Coli, Secretary-Treasurer | John Coli Jr., President

1300 W. Higgins Rd., Suite 111 | Park Ridge, IL 60068 | (847) 696-7500 office | (847) 720-4984 fax | TeamstersLocal727.org