

BEFORE THE
NATIONAL LABOR RELATIONS BOARD

IN THE MATTER OF

Dayton Heidelberg Distributing Co.
d/b/a Heidelberg Distributing Company

-and-

Teamsters Local Union No. 284

CASE No. 09-CA-156105

**ANSWERING BRIEF OF DAYTON HEIDELBERG DISTRIBUTING COMPANY
IN OPPOSITION TO EXCEPTIONS OF LOCAL 284 TO THE DECISION OF THE
ADMINISTRATIVE LAW JUDGE**

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I. INTRODUCTION

Under Section 102.46(d) of the Board's Rules and Regulations, Respondent Dayton Heidelberg Distributing Co., d/b/a Heidelberg Distributing Co. ("Heidelberg") submits this Answering Brief in Opposition to the Exceptions filed by the International Brotherhood of Teamsters Local Union No. 284 ("Local 284") on July 27, 2016, to the Decision issued by the Administrative Law Judge ("ALJ") in this matter on June 8, 2016 ("ALJD").

Local 284 filed an Exceptions Brief to the Decision of the ALJ containing 12 exceptions.

The ALJ's findings that Local 284 disputes can be fairly summarized as follows:

- Evidence did not establish that all material and substantive terms of the proposed Global Settlement were discussed and agreed upon during negotiations on May 26, only that the parties discussed underlying principles and spoke in generalities;
- The record and credible testimony of Heidelberg's witnesses established that the duration and expiration dates of the various collective bargaining agreements in Ohio were materially significant and substantial terms of the proposed Global Settlement;
- When Local 284's chief negotiator, John Doll, reviewed the first written proposal for the Global Settlement, it was apparent that the parties did not reach a "meeting of the minds" on all material and substantial terms;
- Credible evidence, including emails exchanged regarding the May 26 negotiations, showed disagreement regarding whether certain terms of the proposed Global Settlement had been agreed upon, constituting compelling evidence that there was no "meeting of the minds" on May 26;
- Credible evidence and undisputed documentary evidence established that there was no "meeting of the minds" with regard to a proposed Global Settlement on May 26 or June 19 and no document exists accurately reflecting the alleged agreement (which Heidelberg allegedly refused to execute);
- Evidence did not establish that the parties agreed on all substantive and material terms contained in the proposed Global Settlement and credible evidence did not establish that the parties intended to agree to all substantive terms reflected by a "meeting of the minds;"

- Local 284’s assertion that a “meeting of the minds” existed on May 26 was contradicted by statements and actions of Local 284’s own witnesses and not credible;
- Heidelberg’s May 28 negotiation update to employees did not evince a “meeting of the minds” and instead served as a campaign message seeking support in an impending decertification election; and
- Credible evidence did not establish that, even if the parties had a “meeting of the minds” on the Global Settlement, the terms were satisfied.

Local 284’s arguments that the parties reached a “meeting of the minds” on a Global Settlement rest solely on bargaining notes from May 26, 2016, and (discredited) testimony from Mr. Doll and Martin Jay (business representative for Local 20). However, relying on this evidence and claiming that there is no evidence to the contrary is entirely different. The testimony of Craig Brown (chief negotiator for Heidelberg), Brooke Hice (General Counsel for Heidelberg), Terry Neece (division manager for Heidelberg in Dayton), and Brian Oakes (division manager for Heidelberg in Dayton), as well as documentary evidence produced by both parties, all discredit Local 284’s claim that a “meeting of the minds” was reached on May 26 (or ever).¹ Moreover, in addition to the contradictory documentary evidence, ALJ Randazzo clearly articulated that he found Heidelberg’s witnesses, particularly Mr. Brown, to be much more credible than Mr. Doll (self-serving and forced) and Mr. Jay (evasive).

Faced with overwhelming documentary evidence and credible testimony proving that the parties never reached a “meeting of the minds,” Local 284 largely ignores the record and implores the Board to instead rely on minimalistic bargaining notes from May 26 that generally note topics of discussion without detail. Local 284 is not fazed by the fact that numerous

¹ Local 284’s complaint in this matter only alleged a “meeting of the minds” on May 26, but, because testimony identified an alternative theory that the parties reached a “meeting of the minds” on June 19, ALJ Randazzo determined that a “meeting of the minds” was not reached on either date. (ALJD pp. 22-27). Local 284’s Exceptions Brief continues to argue that a “meeting of the minds” was reached on both dates. The evidence discussed in this brief shows that no meeting of the minds was reached on either May 26 or June 19.

subsequent emails and letters between the parties, from May 29 through July 16, as well as testimony regarding verbal communications, repeatedly show that the parties continued to negotiate and never agreed to the material and substantive terms of the proposed Global Settlement. In fact, subsequent proposals written by both parties continued to show disagreement regarding the material terms up until negotiations ceased on June 19. Furthermore, Board precedent shows that when parties believe they reached an agreement, but disagree on the terms included in the subsequent written document, no “meeting of the minds” was reached and no contract was formed. *Local Union No. 3*, No. 29-CB-125701, 2015 NLRB LEXIS 311 (2015); *Cherry Valley Apartments, Inc.*, 292 NLRB 38 (1988).

Nonetheless, Local 284 clings to the hope that it can convince the Board to disregard all of this evidence and force Heidelberg to execute a Global Settlement that was never agreed upon (in fact, a version which was never memorialized) and implement a contingent collective bargaining agreement despite the fact that the various contingencies in the alleged Global Settlement were never satisfied. Such a result would represent a gross usurpation of bargaining power that would insert the Board into contract negotiations as chief negotiator – a position that contradicts the entire universe of Board precedent.

II. STATEMENT OF FACTS

The events forming the foundation for this dispute encompass over two years of bargaining negotiations, meetings, and communications. However, for purposes of the exceptions filed in this case, we can focus on a small subset of the timeline, specifically April through July, 2015. In January, 2015, negotiations between the parties resumed following the

settlement of consolidated unfair labor practice charges filed by Local 284.² Negotiations progressed slowly. In April, proposals became more serious and discussions advanced.

1. April 17 Meeting

On April 17, Local 284 made a package proposal on all outstanding issues remaining regarding a collective bargaining agreement (“CBA”) with Heidelberg in Columbus. (Tr. 563). Heidelberg’s chief negotiator, Craig Brown, acknowledged that the proposal was the most meaningful and comprehensive since January. (*Id.*). However, General Counsel for Heidelberg, Brooke Hice, was not present at negotiations that day. (Tr. 564). Thus, Mr. Brown informed Local 284 that he would provide a response at their next meeting on April 29 after discussing the proposal with Ms. Hice. (*Id.*).

2. April 29 Meeting

During the next bargaining session on April 29, the Company responded to the package proposal made by Local 284 on April 17. Because the package contained union security, which the Company was not prepared to accept, it rejected the package. (Tr. 565). Despite the rejection, Mr. Brown recognized the viability of many pieces of the package proposal and tried to accelerate the bargaining process by unbundling the package. He offered certain terms as standalone proposals in an effort to settle as many issues as possible with the goal of reducing the number of unresolved issues. (*Id.*). Local 284 accepted of a number of the unbundled proposals. (*Id.*).

Also on April 29, a small committee representing Local 284 – chief negotiator John Doll, Martin Jay (business representative for Local 20), and Randy Verst (business representative for Local 1199 and co-chair of the Ohio Conference of Teamsters Beverage Council) – requested an

² The parties settled four consolidated unfair labor practice charges entirely unrelated to this charge. The settled charges alleged violations of bargaining obligations regarding a change in work rules and operating practices, as well as two 8(a)(3) allegations. The settlement included a non-admissions clause.

off-the-record side-bar meeting with the Company. (Tr. 567-568, 785-786). Mr. Brown and Ms. Hice met with them. (Tr. 569, 785-786). Local 284 proposed that it would agree to a consent election on the pending decertification petition if the Company included union security in a CBA in Columbus.³ (Tr. 570-571, 786-787). At that time, Mr. Brown and Ms. Hice did not have the authority to agree to union security, but Ms. Hice promised to present the offer to the Company's executive leadership team at a meeting in the near future.⁴ (Tr. 571-572, 786-787).

The executive leadership team unanimously rejected the offer from Local 284. The executive leadership team would not agree to union security without resolving other issues existing throughout Ohio, such as delays in the negotiations over contracts in Toledo, Dayton, and Cleveland because of issues in Columbus; a corporate campaign against the Company; and an election dispute with Local 377 in Youngstown. (Tr. 574, 787). However, the leadership team authorized Mr. Brown to explore a settlement encompassing all of the outstanding, statewide issues. (Tr. 574-575, 788-789).

3. Phone Calls Between Brown and Doll Regarding Global Settlement

With this authority, Mr. Brown called Mr. Doll in mid-May. Mr. Brown relayed the Company's rejection of the Local 284 offer to exchange union security for a consent

³ Mr. Doll testified that the concept of a Global Settlement was raised during this meeting, but that assertion is incorrect. (Tr. 579-580, 789-790). That concept arose days later at the Company's executive leadership meeting and was first presented to Mr. Doll during a phone call with Mr. Brown in May. Despite the ALJ's findings and testimony from Respondent's witnesses Mr. Brown and Ms. Hice, Local 284 claims, against the weight of the evidence and credibility determinations, that the concept of a Global Settlement was raised weeks before it actually was. (Exception Brief, p. 8). Contrary to the Union's claims, the ALJ found that Mr. Jay's April 29 bargaining notes did not mention a Global Settlement or its terms. (ALJD p. 6). Furthermore, the ALJ credited Ms. Hice's testimony that the Global Settlement was raised by Heidelberg's executive team during a meeting in May. (ALJD p.6). Finally, the ALJ determined that documentary evidence describing emails and phone calls between Mr. Brown and Mr. Doll indicated that the idea of a Global Settlement was first discussed by the parties after the April 29 meeting on May 11 and 12. (ALJD p. 7). Mr. Brown and Ms. Hice's credible testimony and Mr. Doll's email (ALJD, R. Exh. 1) supported this conclusion in the wake of Mr. Doll and Mr. Jay's unsupported and unreliable testimony. (ALJD p. 7).

⁴ While the Company's negotiators were imbued with substantial authority on the issues, it was not unlimited and discretionary. Mr. Brown and Ms. Hice had to obtain additional authority to accept a union security proposal. Moreover, Mr. Brown, as counsel, was not authorized to bind the Company unless he had obtained Ms. Hice's authorization.

decertification election. (Tr. 576). Mr. Brown also suggested a Global Settlement encompassing all statewide issues – the first time this global concept was raised. (*Id.*). Mr. Brown identified the Global Settlement issues: Local 284 contract issues; the corporate campaign; extensions for Locals 20, 293, and 957; resolution of the dispute with Local 377 regarding counting impounded ballots; and a ratification vote in Cleveland by employees represented by Local 293. (*Id.*).

On May 21, Mr. Doll and Mr. Brown again spoke on the phone regarding a possible Global Settlement. (Tr. 581-583; Resp. Exh. 3). They discussed the unresolved issues related to the CBA in Columbus. (Tr. 583-585). Mr. Doll agreed that the extension agreements, cessation of the corporate campaign, and a ratification vote in Cleveland would be acceptable. (Tr. 585-586). He also stated that he would attempt to secure the agreement of Local 377. (Tr. 585). While other contract terms with Local 284 remained, a Global Settlement appeared possible.

4. May 26 Meeting

The next bargaining meeting was on May 26. At the outset of the meeting, the Company made a package proposal for a Global Settlement. (Tr. 588). The package proposal included extension agreements with Locals 20, 293, and 957; the cessation of the corporate campaign; a vote for members of Local 293 on the TA in Cleveland; resolution of the outstanding issues with Local 377 in Youngstown to permit the counting of ballots; a consent election agreement directing a decertification election in Columbus for Local 284; union security in the CBA with Local 284; and proposed expiration dates for all the CBAs in Ohio.⁵ (Tr. 588-590; Resp. Exh. 4).

Although Local 284's reiteration of this proposal declined to include any reference to expiration dates in its Exception Brief,⁶ Mr. Brown stated at this time that the expiration dates

⁵ There were a few other items, but for purposes of this case, these were the relevant terms.

⁶ Local 284's description of the negotiations on May 26 is inexplicably silent regarding Heidelberg's discussion of expiration dates for each of the Locals, despite lengthy testimony regarding discussions related to that issue. (Tr. 591-592, 794-796; Resp. Exh. 4 & 5). Local 284's Exceptions Brief states that there was "no discussion and no

were critically important and a core objective of the Company to ensure that contracts in Columbus, Dayton, and Cincinnati were not coterminous. (Tr. 591-592, 794-796; Resp. Exh. 5). Mr. Brown acknowledged that, given their smaller size and geographically separate locations, contracts in Toledo and Cleveland could be coterminous. (*Id.*). The proposed expiration dates were as follows: Columbus in 2017, Cincinnati in 2016 and 2020, Cleveland in 2019, Toledo in 2019, and Dayton in 2018. (Tr. 593-594; Resp. Exh. 4). It should be noted that Mr. Brown's proposal included the Cincinnati contract administered by Local 1199.

The package proposal also contained a proposed contract with Local 284. (Tr. 595). Mr. Brown explained that the proposed CBA with Local 284 was contingent on the Global Settlement. (Tr. 595-596, 792).

The parties continued to exchange package proposals contingent on the agreement of all outstanding issues throughout the day. (Tr. 596-605, 797-803). Indeed, there was significant back-and-forth regarding staggered expiration dates in the context of the proposals to Local 284 – indicative of the importance of these terms and contrary to Local 284's assertion in its Exceptions Brief. While the Company initially proposed 2017 in order to keep Cincinnati, Dayton, and Columbus staggered, Local 284 countered with a November 2018, expiration. (Tr. 593, 597). The Company was forced to reject this proposal because it would cause the CBA to expire at the outset of the busy holiday season. (Tr. 597). Notably, however, the November expiration proposed by Local 284 acknowledged the Company's desire to maintain staggered expiration dates. (Tr. 597). As a compromise, the Company proposed an expiration of February 2019, which still staggered Dayton (2018), Cincinnati (2020), and Columbus, and also provided

agreement for specific expiration dates ... for Local 1199, Local 957, and Local 20." (Exceptions Brief, p. 23). As demonstrated by the testimony of Mr. Brown and Ms. Hice, which was credited by the ALJ, the Company did discuss the various expiration dates for Locals 20, 284, 293, 957, and 1199, although – as demonstrated by subsequent emails and this ongoing dispute – there was no agreement. (Tr. 588-592, 794-796; Resp. Exhs. 4 & 5).

the longer contract in Columbus that Local 284 sought. (Tr. 599-601). The proposals showed both sides' understanding of the need for staggered dates and represented the efforts they both made to achieve such staggered dates. Furthermore, the chief negotiators for Cincinnati, Columbus, and Dayton were all present on May 26 and were aware of the proposals. Therefore, the Company concluded that its objective of staggered dates was achieved and understood by all the Locals. By changing the proposed expiration date in Columbus to 2019, the Company accepted that the Toledo, Cleveland, and Columbus CBAs would have coterminous expirations, but maintained its core objective that its three largest facilities (Dayton, Cincinnati, and Columbus) not have contracts that expire in the same year. (Tr. 600, 801). At no point did the Company withdraw its proposed expiration dates regarding these Locals.

By the end of the day, only two issues remained – wages for Local 284 and the inclusion of Local 377 in the Global Settlement. (Tr. 604-605). The Company agreed to withdraw Local 377 from the Global Settlement if Local 284 accepted the Company's wage proposal. (Tr. 605). Local 284 agreed. (*Id.*). The meeting adjourned with Mr. Brown stating his intention to prepare a draft of the Global Settlement based on his understanding of the framework discussed on May 26. (Tr. 606, 608, 803-804).

No written proposals encompassing the Global Settlement or the entire CBA in Columbus were exchanged on May 26. (Tr. 362, 606-607, 802-803; ALJD pp. 8, 22-24). No agreement was reached and no TAs were signed or initialed.⁷ (Tr. 607, 804; ALJD pp. 8, 22-24). The ALJ similarly found that although the final two issues – wages and the inclusion of Local 377 – were resolved by the end of the day, the evidence *does not* establish that “all the material and substantial terms of the global settlement agreement were discussed and agreed upon.” (ALJD p. 22). Instead, the parties merely had an understanding on the principles or framework of

⁷ The Company provided written proposals on certain provisions of the proposed CBA with Local 284.

an agreement. (Tr. 606-607, 803; ALJD p. 23). Given the contentious and complex nature of these negotiations, it was important to reduce all understandings to writing to ensure the parties were in agreement. (Tr. 607-608). As Mr. Brown testified, “the devil is in the details,” so until the text was finalized, the agreement was not complete and any statement to the contrary was premature. (Tr. 608).

5. Negotiations Updates

Nonetheless, later that day, the Union announced on its Facebook page that Local 284 and the Company reached a TA on a CBA in Columbus.⁸ (Tr. 608-609; GC Exh. 7). Ms. Hice was surprised at the announcement because the proposed CBA was tied to the execution of a Global Settlement, which was complex and not written. (Tr. 804-805; ALJD p. 9). The Company, believing that there was no agreement regarding the CBA, felt it needed to clarify the status of negotiations. (Tr. 609-610, 805).

Thus two days later, the Company distributed a letter to its employees explaining why a TA was announced. (Tr. 610-611, 806; Stip. Exh. 6). The Company, knowing that a majority of its employees signed a decertification petition and did not want representation from Local 284, explained that the TA would also permit a decertification election to finally provide them the opportunity to vote on representation by Local 284. (Tr. 611-612, 806-807; ALJD p. 9).

The details of the Global Settlement were not included in the letter as much of it involved other facilities. (Tr. 612, 807; ALJD p. 9). Inclusion of the additional details would distract the employees in Columbus, and possibly alienate them if they believed their representation decision was being hijacked by other issues throughout the State. (*Id.*). Furthermore, although the

⁸ There is no evidence, other than Mr. Doll’s self-serving and illogical testimony, that the Union’s announcement was not drafted and distributed on May 26. Mr. Doll claims, without any reason to explain why he would do so, that he did not draft the announcement until May 27 or 28 yet dated it May 26. Regardless, Ms. Hice’s credited testimony reveals that she viewed the announcement on May 26, showing that it could not have been drafted and backdated. (Tr. 804-805; ALJD p. 9).

Company did not believe a TA existed, the letter used the term “TA” to describe the framework because that was the term Local 284 used and consistency made the letter easier to understand. (Tr. 613-614). Also, even though the Company knew the proposed CBA was contingent on the Global Settlement, it was optimistic they would reach a Global Settlement, rendering the distinction moot. (Tr. 614).

The ALJ found that these updates did not evince an agreement or a meeting of the minds, but rather constituted election campaign materials. (ALJD pp. 9, 25). Indeed, neither update discussed the existence of a Global Settlement, making it impossible for the updates to prove that a Global Settlement was reached. (ALJD pp. 9, 25-26). Instead, they merely campaigned for election support. (ALJD pp. 25-26).

6. Brown Emails Draft of Global Settlement Proposal to Doll

On May 29, Mr. Brown sent a draft of the Global Settlement to Mr. Doll. Mr. Brown noticed a typographical error that misidentified a Local Union and sent a corrected document on June 3. (Tr. 614-616). The Company believed these drafts reflected the objective terms discussed at the May 26 meeting. (Tr. 615, 808). For example, Mr. Brown included the International Brotherhood of Teamsters (“IBT”) as a party because he believed it was orchestrating the corporate campaign that would cease as part of the Global Settlement. (Tr. 617-619). Notably, both of these drafts, as well as every subsequent draft produced by both parties, contained language in Paragraph 1 identifying the contingent nature of the CBA with Local 284 in Columbus. Specifically, that paragraph stated, “[c]ontingent upon the complete satisfaction of all the terms of this Settlement Agreement the Company and Local 284 have entered into a tentative agreement for an initial Collective Bargaining Agreement, subject to the outcome of the decertification election in Case No. 09-RD-134933 which is currently pending[.]” (Stip. Exhs. 7 at ¶ 1 & 8 at ¶ 1). The Company included this language to be clear that the proposed CBA in

Columbus was contingent upon the complete satisfaction of every term in the Global Settlement. (Tr. 808-809). From the outset, this contingency was expressly stated and undisputed by the parties. (Tr. 230-232).

7. Brown and Doll Disagree on Terms of the Global Settlement

Soon after Mr. Brown sent the corrected draft on June 3, it became apparent that the parties had not reached an agreement. On June 3, Mr. Doll responded, disagreeing with the following terms: (1) the inclusion of Local 1199 and the IBT as part of the Global Settlement; (2) that the parties had not agreed to a date for a decertification election regarding Local 284; (3) that Local 284 and the IBT could not agree to prohibiting future corporate campaign conduct without “significant revisions;” and (4) that the parties had not agreed to specific durations or expiration dates for the contracts in Dayton or Toledo. (Tr. 620-621; Stip. Exh. 9). Mr. Doll also stated that he was still reviewing the “proposed collective bargaining agreement,” implying that it was just a proposal and not a TA.⁹ (Tr. 621; Stip. Exh. 9; ALJD p. 12).

That same day, Mr. Brown replied to Mr. Doll’s email. (Tr. 621; Stip. Exh. 10). Mr. Brown disagreed with Mr. Doll’s assertion that Local 1199 was not a party to the proposed Global Settlement because Mr. Verst was present on behalf of Local 1199 and all parties knew the Company’s stated core objective to avoid coterminous expiration dates, which necessarily implicated Local 1199 and its own CBA with the Company.¹⁰ (Tr. 205-206, 622-623; ALJD p.

⁹ Local 284’s Exceptions Brief tries to rewrite the facts, this time claiming that Mr. Doll believed the draft CBA was consistent with what the parties discussed on May 26 even though he had not completed his review. In fact, at subsequent meetings, Mr. Doll – while acknowledging that his review of the draft CBA was still not complete – implored the Company to add language regarding contributions to Local 284’s political action committee, D.R.I.V.E. that was not in the draft. If the draft was consistent with the May 26 discussions, there would have been no need to add any language.

¹⁰ Local 284 asserts that “there was no discussion and no agreement that Local 1199 would be a party.” (Exceptions Brief, p. 23). However, it is clear that Local 1199 and the expiration date of its CBA was discussed by Mr. Brown during negotiations. (Tr. Tr. 591-592, 794-796; Resp. Exh. 4 & 5). Moreover, the ALJ found that Mr. Brown’s belief that Local 1199 was a party as a result of this discussion was both plausible and credible. Local 284’s assertion is simply an unsupported attempt to rewrite the facts credited by the ALJ in an attempt to retry this case.

12). Mr. Brown reasonably believed Mr. Verst could act on behalf of Local 1199. (Tr. 624; ALJD p. 12). The ALJ found that Mr. Brown's asserted belief that Local 1199 was part of the Global Settlement was credible and plausible given that Mr. Verst was involved in negotiations as a representative of Local 1199 as well as the Ohio Conference of Teamsters and never informed the parties that he was not attending as a representative of Local 1199. (ALJD p. 23).

Mr. Brown's belief that the agreement included the IBT was also credible and plausible.¹¹ (ALJD p. 23). The IBT was orchestrating the corporate campaign, the cessation of which was a material term of any proposed Global Settlement. (ALJD p. 23). Moreover, the IBT had a presence at the negotiations and Mr. Brown was informed that it was the IBT and the Ohio Conference of Teamsters' intention to force the Company to accept union security for Local 284. (ALJD p. 23). It is also undisputed that the IBT, in addition to controlling the corporate campaign and negotiations for a Global Settlement, also controlled the individual local contracts as reflected by the fact that the IBT had not given approval of the tentatively agreed upon contract with Local 293, preventing a ratification vote by that Local. (ALJD p. 23). Finally, because the nature of the Global Settlement would cover a number of Locals, it is reasonable to believe that the IBT would be part of that agreement. (ALJD p. 23).

Mr. Brown also reiterated the Company's proposed expiration dates throughout Ohio, demonstrating its core objective to avoid coterminous expiration dates in Cincinnati, Columbus, and Dayton. (Tr. 625; Stip. Exh. 10; ALJD p. 12). Notably, Mr. Brown stated that his draft constituted the "Company's proposal for a 'Global Settlement'" and that differences as to language and mutual understanding could be resolved. (Stip. Exh. 10). However, he also noted that if Mr. Doll chose to completely disregard the Company's stated objectives for entering a

¹¹ Local 284 again claims that the parties did not discuss including, or agree to include, the IBT as a party. (Exceptions Brief, p. 23). While the discussion may not have been explicit, the terms discussed clearly implicated the IBT and the ALJ found Mr. Brown's belief in its inclusion to be credible and plausible.

Global Settlement and other core substantive terms as identified in his email, they would be unable to resolve the dispute in this manner.¹² (Stip. Exh. 10; ALJD pp. 12-13). The ALJ found that the record evidence proved that the future expiration dates of the contracts were “materially significant and substantial terms” of the negotiations and the “undisputed approach and intent of the global agreement” was to resolve these issues. (ALJD p. 24).

The next day, Mr. Doll responded noting his disagreement regarding Mr. Brown’s Global Settlement proposal and summary of the May 26 events. (Tr. 625; Stip. Exh. 11). Such disagreements are compelling evidence that the parties failed to reach a “meeting of the minds” on May 26. (ALJD p. 24). Indeed, subsequent events and the parties’ attempts to resolve their differences reinforce this fact.

8. June 8 Meeting

a. Proposals From Local 284

The parties did not discuss the Global Settlement further until their next bargaining meeting on June 8. This meeting was originally scheduled to negotiate the Local 957 contract in Dayton, but the discussion soon shifted to the Global Settlement proposals. (Tr. 626-627). Like the bargaining session on May 26, the parties exchanged drafts and proposals on the Global Settlement. To start the day, Messrs. Doll, Jay, and Verst met with Mr. Brown and Ms. Hice and provided a counterproposal on the Global Settlement. (Tr. 627-628, 813-814; Stip. Exh. 12; Resp. Exhs. 2 & 6). This counterproposal contained revisions to the substantive terms of the Global Settlement.¹³ (Tr. 629-633). First, Mr. Brown noted that Locals 293 and 1199 were not included as parties. (Tr. 629). The counterproposal also removed language that Local 284 would not challenge the decertification petition in Columbus. (Tr. 631-632). Mr. Doll believed this

¹² The question of whether or not the dispute could be resolved shows that there was no agreement.

¹³ Mr. Jay asserted that there were no substantive revisions to the Global Settlement proposals after May 26, but a simple review of the draft proposals that were exchanged is compelling evidence to the contrary.

language was unnecessary if Local 284 agreed to a Consent Election Agreement as directed by the Global Settlement. (Tr. 632). Mr. Brown wanted to ensure there were no loopholes to challenge the decertification election and was unsure at the time whether he could agree to the removal of that language. (*Id.*). As the decertification election was a key goal of the Company, this language was clearly substantive. Mr. Doll's proposal also removed specific expiration dates that created staggered contracts and a release that Mr. Brown had previously proposed. (Tr. 633).

In the early afternoon, Mr. Doll emailed Mr. Brown another draft of the Global Settlement, which he described as "Local 284 draft SA."¹⁴ (Tr. 635-636; Stip. Exh. 13). Mr. Doll had revised this document after his discussion that morning with Mr. Brown. (Tr. 636). Mr. Doll removed the IBT as a party, but did not add Local 293 as Mr. Brown had requested. (Tr. 638; ALJD p. 13).

Notably, Paragraph 1, which contained explicit language regarding the contingent nature of the CBA with Local 284, was unchanged. (Tr. 629, 814; Stip. Exh. 12; Resp. Exhs. 2 & 6; ALJD p. 13). Significantly, Mr. Doll and Local 284 drafted and proposed adding an Execution Clause to the Global Settlement. (Tr. 814; Stip. Exh. 12 at ¶ 8 & Stip. Ex. 13 at ¶ 7; ALJD p. 13). Local 284's proposed Execution Clause explicitly provides that the Global Settlement, "the Consent Election Agreement, the *contingent* Collective Bargaining Agreement between the Company and Local 284, the Extension Agreement between the Company and Local 20 and the Extension Agreement between the Company and Local 957 will be signed and become effective on the same date." (Stip. Exh. 13 at ¶ 7) (emphasis added). This language required and anticipated that there had to be a signed Global Settlement agreement before the terms of the CBA would become effective. (Tr. 814). This Execution Clause, modified only to add Local 293,

¹⁴ Mr. Doll's description of this document as a draft shows that there was not a "meeting of the minds" on the Global Settlement.

remained in every subsequent draft proposal of the Global Settlement. The ALJ found that these subsequent proposals serve as “unmistakable and undisputed evidence that there had been no meeting of the minds on May 26.” (ALJD p. 24).

b. Brown Inquires Into Doll’s Review of the Proposed CBA

Mr. Brown also inquired into the status of the proposed CBA with Local 284, as Mr. Doll previously represented that he had not finished his review. (Tr. 633-634). Mr. Doll still had not completed the review,¹⁵ but noted that there was no language regarding D.R.I.V.E., a Political Action Committee of the IBT, in the union security article.¹⁶ (Tr. 634; ALJD p. 13). Mr. Brown replied that the parties had not agreed to include language addressing a voluntary payroll deduction to D.R.I.V.E. (*Id.*). Mr. Doll replied that inclusion was necessary if the Company allowed other voluntary contributions to PACs. (*Id.*). Again, because this substantive language is absent (in fact, it was in dispute) there cannot be agreement on the substantive terms, which prohibits finding a meeting of the minds.¹⁷

c. Objections to Election Results in Youngstown Filed by Doll Influence Heidelberg’s Counterproposal

While he was negotiating the Global Settlement on June 8, Mr. Brown was served with objections to the decertification election in Youngstown filed by Mr. Doll on behalf of Local 377. (Tr. 642-643). Heidelberg won the election five to two with one challenged ballot. (Tr. 642). The ballots were counted on June 2 and the objections were filed on June 5. (*Id.*). The

¹⁵ Notably, in its Exceptions Brief, Local 284 twice states that the proposal Mr. Brown provided on May 29 was consistent with Mr. Doll’s understanding of the proposed CBA with Local 284. (Exceptions Brief, pp. 11, 24). However, documented evidence and testimony also showed that Mr. Doll had not completed his review of the CBA when he made these statements (Tr. 621, 633-634; Stip. Exh. 9) and his subsequent attempt to add D.R.I.V.E. language shows that either the CBA did not comport with his belief or the CBA was not final.

¹⁶ Mr. Doll inconsistently testified that the draft proposal of the CBA in Columbus he received on May 29 comported to what he believed the parties agreed even though the D.R.I.V.E. language was not included. (Tr. 235).

¹⁷ Mr. Brown later confirmed that the Company did allow such deductions, but the language in the proposed union security article was never modified to include D.R.I.V.E. as there was never an agreement on the CBA or the Global Settlement. (Tr. 721).

Company previously removed Local 377 from its proposals regarding the Global Settlement because Mr. Doll represented that he did not have authority over the outstanding ULP and pending matters related to Local 377. (Tr. 643-644). In fact, he stated he did not represent Local 377. (Tr. 644). However, now there was a new fight in Youngstown *initiated by Mr. Doll*. (Tr. 644). As it was apparent that Mr. Doll represented Local 377, the Company – consistent with its goal to include all the relevant Locals in the Global Settlement – reinserted Local 377 into a counterproposal that Mr. Brown hand-delivered to Mr. Doll at 3:30 or 4:30 p.m. (Tr. 641, 644; Resp. Exh. 9).¹⁸ The counterproposal also added Local 293 as a party and included language addressing extension agreements with Locals 20, 293, and 957. (Tr. 657).

d. Doll’s Verbal Counterproposal Includes Disagreement on Substantive Terms

Mr. Doll then provided a verbal counterproposal to Mr. Brown, which Mr. Brown noted on a copy of the proposal Mr. Brown had hand-delivered that afternoon. (Tr. 646). Local 284 proposed deleting Local 377 as a party. (Tr. 646; Resp. Exh. 9). It also deleted language requiring Local 284 (and the IBT)¹⁹ to cease any and all communications to current or potential customers and suppliers or the general public (i.e., the corporate campaign) in the context of any decertification election campaign. (Tr. 647-648; Resp. Exh. 9 at ¶ 2). The Company initially included this language to prevent Local 284 and the IBT from using the decertification election campaign as an excuse to continue the corporate campaign. (Tr. 648). The Company rejected the counterproposals. (*Id.*).

¹⁸ At this point, Mr. Brown – according to notes taken by Mr. Doll’s associate, Matt Crawford – actually told the group representing Local 284 in the sidebar that he “sensed that [they were] blowing up [the] global settlement.” (Tr. 462-463; GC. Exh. 14).

¹⁹ The note in Paragraph 4 of Respondent’s Exhibit 9 addresses Local 284’s representation that it could not direct the IBT to do anything, such as cease the corporate campaign, but could request such cessation. (Tr. 649-650, Resp. Exh. 9 at ¶ 4). Local 284 stated that such a request would be honored by the IBT. (Tr. 649-650).

The parties also disagreed as to the date through which the corporate campaign must cease – Local 284 proposed the date of the decertification election and the Company proposed the certification date of the decertification election results. (Tr. 651). Mr. Brown marked this disagreement with a star, highlighting it as a “high priority area of concern” – clearly identifying it as a substantive disagreement. (Tr. 651; Resp. Exh. 9 at ¶ 4).

A second star in that paragraph reflected Mr. Brown’s concern that Local 284’s request to add “all” and “in any way” to language regarding permitted decertification election campaign activities could be used as a loophole to otherwise continue the corporate campaign by claiming activities were related to the decertification election campaign. (Tr. 652; Resp. Exh. 9 at ¶ 4). Again, the star signified a significant substantive disagreement.

e. Heidelberg Makes the Last Proposal on June 8

The Company provided the last counterproposal of the day at 5:17 p.m. (Tr. 654, 815; Stip. Exh. 14). The proposal corrected typographical errors in the prior draft and provided Heidelberg’s response to Mr. Doll’s verbal counterproposal. (Tr. 654). The Company also added language requiring Local 284 to request that the IBT cease the corporate campaign. (Tr. 655-656; Stip. Exh. 14 at ¶ 4; ALJD p. 14). Specifically, Mr. Brown added language in Paragraph 4 regarding the cessation of the corporate campaign to not only suspend, but also refrain from initiating, all corporate campaign activities. (Tr. 649-650; Resp. Exh. 9 at ¶ 4; Stip. Exh. 14 at ¶ 4; ALJD p. 14). Heidelberg again sought to close any loophole that allowed Local 284 and the IBT to cease existing corporate campaign activities but then start new activities.²⁰ (Tr. 650). The counterproposal also shows that the Company rejected Local 284’s counterproposals regarding

²⁰ The specific terms of the cessation of the corporate campaign contained in the proposals were not addressed on May 26 when the framework of a potential Global Settlement was first discussed. (Tr. 650). In fact, because the framework was not written at that time, resolving the details of this issue would have been impossible. (*Id.*). Because ending the corporate campaign was a core objective of the Company, these proposals were clearly substantive. (*Id.*).

the “all” and “in any way” language related to the corporate campaign and the removal of Local 377 from the Global Settlement. (Tr. 656; Stip. Exh. 14; ALJD p. 14). The meeting adjourned without an agreement. (Tr. 814-815; ALJD p. 14). No TAs were signed or initialed. (ALJD p. 14). As the parties were still negotiating the terms of the Global Settlement at the end of June 8, it is apparent that both parties knew that no “meeting of the minds” was reached on May 26.

9. June 19 Meeting

a. Local 284’s Last Proposal for a Global Settlement

On June 19, the parties met again to discuss a contract with Local 957 in Dayton. Before commencing negotiations, Mr. Brown spoke to Mr. Jay and inquired about the status of the Global Settlement proposals. (Tr. 662; ALJD p. 14). The Company had not heard from Local 284 regarding the Global Settlement since its proposal on June 8 and was not sure if a Global Settlement was still possible. (Tr. 659-660, 662, 816-817; GC Exh. 9; ALJD p. 14). If not, Mr. Brown articulated the Company’s concern about a potential work stoppage beginning on June 22 with July 4th holiday business looming. (Tr. 662-663; GC Exh. 9; ALJD p. 14). Strike prevention measures, such as hiring security, could cost the Company approximately \$700,000, which could reduce the funds available in bargaining negotiations.²¹ (Tr. 399, 662-663; GC Exh. 9.). Extension agreements with Locals 20, 293, and 957, as part of the Global Settlement, would provide sufficient protection from a strike, but it appeared the Locals were stalling in order to engage in a work stoppage during Heidelberg’s busiest season. (Tr. 663-664). Rather than informing Mr. Brown that a response from Local 284 was unnecessary because a Global Settlement had already been reached, Mr. Jay responded that Mr. Brown should not “misread”

²¹ Although Mr. Jay claimed the Company did not share any concerns regarding a strike, he also testified that Mr. Brown asked him on June 19 if the Company needed to call a security company as part of strike preparations, which would cost the Company about \$700,000. (Tr. 397, 399). Mr. Jay said he did not know if it was necessary. (Tr. 399). Tellingly, Mr. Jay did not represent such expensive precautions were *not* necessary, maintaining the threat of a strike, which would have been a breach of the Global Settlement, had he truly believed there was an enforceable Global Settlement.

the Union's failure to respond because the Union wanted to complete the Global Settlement and would "turn [their] attention to it." (Tr. 663; ALJD p. 25).

Mr. Brown also emailed Mr. Doll to inquire as to the status of the Company's proposal regarding the Global Settlement. (ALJD, p. 15). Although the Union now claims that a Global Settlement was agreed to on May 26, in response to Mr. Brown's inquiries into the status of the Global Settlement *negotiations*, neither Mr. Doll nor Mr. Jay responded that such negotiating efforts were unnecessary because an agreement was already reached. (ALJD, p. 15). The ALJ found such actions further show that "no meeting of the minds" existed on May 26. (ALJD p. 24). In fact, Mr. Doll admitted that "at the time of Brown's request, a global agreement 'had not been finally agreed to.'" (ALJD p. 24 citing Tr. 266-267).

Rather than asserting that an agreement was already reached, Mr. Doll sent an email to Mr. Brown which provided an attached counterproposal on the Global Settlement. (Tr. 664; Stip. Exh. 15; Resp. Exh. 10). Mr. Doll's email was described as "Local 284 Proposal SA June 19, 2015."²² (*Id.*). The proposal from Local 284 made modifications to the last proposal from the Company, which Mr. Brown noted on his copy of the counterproposal. (Tr. 665, 671; Resp. Exh. 12). Mr. Doll proposed a July 17 date to finalize a consent election agreement regarding the decertification election for Local 284, but Mr. Brown was unsure July 17 was realistic and noted that July 31 may be more realistic. (Tr. 665, 674; Stip. Exh. 15; Resp. Exhs. 10 & 12).

In paragraphs 2 and 4, Local 284 rejected the Company's language regarding limits to, and the cessation of, the corporate campaign. (Tr. 666-667; Stip. Exh. 15; Resp. Exhs. 10 & 12). Specifically, Mr. Doll rejected (1) explicitly prohibiting campaign activities directed at current

²² This description shows that Mr. Doll and Local 284 did not believe there was a "meeting of the minds" regarding the Global Settlement at this time. They characterize the attachment as a "proposal," indicating that the offer was not yet accepted and no contract or agreement was finalized. Because the Company did not accept this (the final) proposal for a Global Settlement, no "meeting of the minds" ever existed.

and potential customers and suppliers in the context of the decertification election campaign, and (2) rejected language requiring Local 284 to “refrain” from corporate campaign activities (in addition to suspending them). (*Id.*). Mr. Doll also rejected the Company’s proposal that the corporate campaign cease until the certification of the decertification election results and again proposed that the cessation only last until the date of the decertification election. (Tr. 676; Resp. Exh. 12). Mr. Doll again added language (“all lawful conduct” and “in any way”) to broaden permissible election campaign conduct – additions the Company previously rejected because they created loopholes to continue the corporate campaign. (Tr. 667; Stip. Exh. 15; Resp. Exhs. 10 & 12). Given the importance the Company placed on the cessation of the corporate campaign – a core issue – these changes were unmistakably substantive. (Tr. 676-677).

Finally, Mr. Doll proposed extending the CBAs with Locals 20, 293, and 957 to July 17 and removed the Company’s proposed automatic seven-day extension beyond the date of a decertification election for Local 284 if the election occurred after the extensions expired. (Tr. 667-668; Stip. Exh. 15; Resp. Exhs. 10 & 12). Although the proposal added Local 293 as a party, it also removed Local 377 as a party and any reference to the withdrawal of objections in that decertification case. (Tr. 665, 668; Stip. Exh. 15; Resp. Exhs. 10 & 12).

The ALJ found Mr. Doll and Mr. Jay’s responses to Mr. Brown that morning, including this counter proposal, “implausible and inconsistent with the General Counsel’s and Union’s assertions that there was a meeting of the minds and a complete agreement on the global settlement agreement on May 26. Instead, they serve as undisputed and compelling evidence that no such meeting of the minds occurred.” (ALJD p. 25).

Mr. Brown made changes to Mr. Doll’s proposal and advised Messrs. Jay and Doll that he would have to confer with Ms. Hice (who was traveling and not at the bargaining meeting) to

review the proposal in an attempt to reach agreement on the remaining, unresolved issues.²³ (Tr. 668-669, 673, 679-680, 816; ALJD, p. 15-16). Mr. Brown received an electronic version of the proposal from Mr. Doll at 12:08 p.m. and forwarded it to Ms. Hice at 12:17 p.m. (Tr. 668, 673; Stip. Exhs. 15; Resp. Exhs. 10 & 11). Despite Mr. Doll's testimony that Mr. Brown accepted the various changes Mr. Doll proposed, the ALJ found that it was undisputed that Mr. Brown needed to confer with Ms. Hice before accepting the proposal. (ALJD p. 26-27). In fact, Mr. Jay acknowledged that no Global Settlement existed without the approval of Ms. Hice. (ALJD p. 27). Because he had not yet conferred with his client, Mr. Brown did not believe there was a "meeting of the minds" on the terms of a Global Settlement – in fact, he had again noted substantive differences on his copy of the counterproposal that were not accepted, including language regarding the corporate campaign that the Company previously rejected, but the Union reinserted. (Tr. 679-680; Resp. Exh. 12; ALJD, pp. 16, 26-27). Without approval from Ms. Hice, Mr. Brown could not approve these substantive changes. Thus, there was no "meeting of the minds." (ALJD p. 27).

b. Negotiations With Local 957

The parties' collective attention then turned to the contract with Local 957. (Tr. 680). Throughout the day's negotiations, the Company maintained its need for a 2018 expiration date in Dayton to avoid coterminous expiration agreements in Columbus, Dayton, and Cincinnati. (Tr. 681-682, 728-729, 752). Messrs. Doll and Jay maintained that Local 957 preferred a 2019 expiration date, to the point where they turned down a more lucrative CBA with a 2018

²³ The ALJ credited Mr. Brown's testimony on this matter. (ALJD pp. 5-6). Nonetheless, even if the testimony of Messrs. Doll and Jay is to be believed, they testified that Mr. Brown reviewed the proposal and stated he did not see any problems, but that "he had to run it by Brooke." (Tr. 89, 320). This statement alone demonstrates beyond doubt that Ms. Hice's approval was necessary for an agreement on the Global Settlement proposal. Even Mr. Jay recognized this fact later that day when he inquired as to Ms. Hice's review and threatened the viability of the CBA with Local 957 without an agreement on the Global Settlement. (Tr. 691-693, 736, 757-758). It is undeniably clear that everyone knew Ms. Hice needed to review the proposal. Therefore, no "meeting of the minds" was reached on June 19 because Ms. Hice did not review the proposal until June 22, and she never agreed to it. (Tr. 821).

expiration date to continue fighting for a 2019 expiration. (Tr. 682). The parties continued to negotiate over the expiration date, including the Local 957 bargaining committee meeting directly with Mr. Brown to present their desire for a 2019 expiration. (Tr. 685-687, 730-732, 753-755). Mr. Brown and the Company's committee consulted with Ms. Hice via phone. (Tr. 688, 733, 756, 819-820). Ms. Hice authorized a 2019 expiration for Local 957, but stated that the expiration with Local 284 would have to be changed to 2018 to accommodate the request.²⁴ (Tr. 688, 733, 756-757, 768-769, 820-821). Given her travels, she had not been able to review the counterproposal on the Global Settlement.²⁵ (Tr. 700-701, 818-819, 821).

The Company then met with the bargaining committee for Local 957 and agreed to an expiration of 2019 for the contract in Dayton. (Tr. 689). Mr. Brown did not discuss with Local 957 the Company's position on the duration of the Columbus contract with Local 284. (Tr. 697-698). At that time, Mr. Brown was negotiating the contract with Local 957 – which was not part of the Global Settlement negotiations – and Local 957 had no authority to bind Local 284. (Tr. 697). Furthermore, Mr. Brown did not want to torpedo the negotiations with Local 957 by inserting the expiration of the Columbus contract into the discussions. In addition to the futility of introducing the term to a party with no authority to bind Local 284, Mr. Brown was concerned that Local 957 would allege that the Company bargained in bad faith by inserting a permissive subject of bargaining related to Local 284 into the Local 957 negotiations. (Tr. 697). Instead, in light of the changed circumstances regarding the expiration of the contract with Local 957, Mr. Brown decided to discuss the modified Columbus expiration with Messrs. Doll and Jay after presenting the Company's final proposal to Local 957 on its own contract. (Tr. 699-700).

²⁴ Ms. Hice did not care which agreement expired in 2018 and which expired in 2019 as long as they did not expire at the same time. (Tr. 688).

²⁵ Ms. Hice was unable to review this proposal until the following Monday, June 22. (Tr. 821).

The parties continued to discuss and resolve the details of the CBA with Local 957. (Tr. 689-690). During these discussions, Mr. Brown characterized the Company's proposal as "strike avoidance," which clearly alerted Mr. Doll and members of the Locals who were present that the Company believed a strike was realistic.²⁶ (Tr. 464). When the details were resolved, Mr. Brown then left to prepare the final proposal to Local 957. (Tr. 690).

c. Jay Threatens Viability of CBA in Dayton if Global Settlement Is Not Finalized

While Mr. Brown was preparing and printing the final proposal, Mr. Jay inquired as to the progress of the Global Settlement and whether or not Ms. Hice had had an opportunity to review the proposal. (Tr. 691-692, 736, 757-758; ALJD p. 16). Mr. Brown replied that he had not discussed it with Ms. Hice. (Tr. 693, 736, 758; ALJD p. 16). Mr. Jay then threatened that there would be no CBA with Local 957 if there was no Global Settlement.²⁷ (Tr. 693, 736, 758-759; ALJD pp. 16-17). Based on this representation by Mr. Jay, Mr. Brown feared that the CBA with Local 957 could fall apart, that the IBT was in charge of the negotiations, and that there could be a strike as soon as Monday (3 days later). (Tr. 693). At this time, the IBT still had not permitted Local 293 to vote on its own TA and the parties had not agreed to contract extensions. (Tr. 693-694).

d. Brown Explains Risks of Coterminous Contracts to Local 957

Mr. Brown met again with the bargaining committee for Local 957, reviewed the final offer, and secured the committee's unanimous recommendation for ratification. (Tr. 694-695, 704). Brown advised Local 957 that having coterminous expirations for the contracts in *Dayton*,

²⁶ Had there been a "meeting of the minds" on a Global Settlement, the contracts with Local 957, Local 20, and Local 293 would have been extended and there would be no possibility of a strike. Nobody disavowed Mr. Brown of his concern and for good reason – all the contracts had expired and a strike was a distinct possibility.

²⁷ Mr. Jay testified that he pressed Mr. Brown to finish the Global Settlement at this time even though he also testified that the Global Settlement was completed on May 26. (Tr. 392-394). This inconsistent testimony demonstrates that Mr. Jay constructed his testimony to fit an outcome in an attempt to avoid the obvious and inescapable conclusion that there was no Global Settlement on either May 26 or June 19.

Cleveland, and Toledo was risky. (ALJD p. 17). Indeed, it had led to the very risks the Company faced during the 2015 negotiations, but he attributed those risks to the disputes in Columbus and Youngstown. However, he was confident the problems in Youngstown and Columbus would be resolved by 2019. (Tr. 695, 760-761, 768). Therefore, the Company was prepared to assume the risk of having *those three contracts* expire at the same time again in 2019. (*Id.*). The ALJ credited the testimony of Mr. Brown and Dayton Operations Managers Terry Neece (wine division) and Brian Oakes (Anheuser-Busch division) regarding the explicit statement that only those three locations would be coterminous. (ALJD p. 17). Although Local 284 claims that Mr. Brown “tacitly acknowledged” that Columbus and Dayton would both be subject to four-year contracts, Messrs. Brown, Oakes, and Neece all credibly testified that when Mr. Brown “commented about that risk, he referred to the Dayton, Toledo, and Cleveland contracts.” (ALJD p. 27). Moreover, because Ms. Hice already advised Mr. Brown to change the Columbus contract to expire in 2018, it is “implausible to conclude that Brown was referring to a 2019 expiration date in Columbus.” (ALJD p. 27).

e. Brown Revises Expiration of CBA Proposal in Columbus to Avoid Coterminous Expiration Dates

Mr. Brown then met with Messrs. Jay, Doll and Matt Crawford (an associate of Mr. Doll’s) regarding the Company’s modification to its contingent, package proposal regarding the CBA in Columbus. (Tr. 699-700). As authorized by Ms. Hice, Mr. Brown modified the duration of the proposed CBA in Columbus to expire in 2018 instead of 2019 given the changed contract expiration with Local 957. (Tr. 700; Stip. Exh. 16). Mr. Brown noted that Ms. Hice was still reviewing Local 284’s counterproposal on the Global Settlement, but that they had discussed expiration dates given the demands of Local 957. (Tr. 700-701).

Messrs. Jay and Doll angrily responded that the Company could not modify the duration clause in the CBA with Local 284 because it was a TA (even though standing alone it was not signed, initialed, approved, or ratified). (Tr. 701). Mr. Jay accused Mr. Brown of renegeing.²⁸ (*Id.*). Mr. Brown reminded Messrs. Jay and Doll that the CBA with Local 284 was contingent on the Global Settlement package proposal, which was clearly not agreed to, as evidenced by Local 284's counterproposal earlier that day. (Tr. 703, 705). All of the terms of the Global Settlement, including the Local 284 contract, were contingent on one another as part of a package, which could be modified in the context of that package.²⁹ (Tr. 705). Nevertheless, Messrs. Jay and Doll maintained that the alleged TA with Local 284 was separate from the package (despite explicit language in the Global Settlement stating otherwise). (Tr. 703, 705).

f. Meeting Ends Without Agreement and With a Threat of Strike

The meeting then adjourned.³⁰ Based on Mr. Jay's earlier assertion that there was no TA with Local 957 without a Global Settlement and the IBT's prior refusal to allow Local 293 to conduct a ratification vote on its own TA, the Company believed that the IBT would continue to prevent ratification of the TAs with Locals 293 and 957. (Tr. 703-704, 708). Because the parties had not agreed to the Global Settlement, no extension agreements were in place, either. Thus, the Company was vulnerable to a strike at all locations in Ohio (except Cincinnati where a CBA was in effect). (Tr. 703-704, 708). The Company left the bargaining meeting preparing for a work stoppage. (Tr. 707, 738, 762-763). In fact, Messrs. Neece and Oakes discussed the possibility of

²⁸ This was the second time Mr. Jay made such an accusation. (Tr. 701-702). Moreover, the corporate campaign also had attacked Mr. Brown's integrity, reliability, and trustworthiness. (Tr. 702). Faced with another personal attack on his character, Mr. Brown became angry. (*Id.*).

²⁹ Significantly, Mr. Brown and Mr. Doll previously discussed the nature of package proposals in January, 2015, when *Mr. Doll took the position that package proposals could be modified and were not binding until accepted in their entirety and that parties could change positions or revert to earlier positions.* (Tr. 556-557).

³⁰ Mr. Brown returned to apologize to Messrs. Doll, Jay, and Crawford for his earlier angry outburst and there was a short discussion on the contingent nature of the CBA in Columbus on the Global Settlement and the need to speak to Ms. Hice. (Tr. 466-467, 704-705; GC Exh. 13).

an imminent strike in the parking lot with members of Local 957, including Darrell Paschal (a representative for Local 957), who asked the Company to understand that the Dayton employees did not want to go on strike but that everything was being orchestrated by the IBT. (Tr. 740, 763-764). The Company committee informed Ms. Hice of the events that evening. Ms. Hice conducted a conference call with general managers in Ohio the following day about preparations for a work stoppage on Monday, June 22. (Tr. 821-823).

Clearly, no agreements on the CBA in Columbus or the Global Settlement were reached at this meeting and no TAs on such matters were signed or initialed.

10. Post-June 19 Correspondence and Actions Inconsistent with a Settlement

Despite the breakdown in negotiations on June 19, members of Local 957 ratified the Company's final offer on June 20. (Tr. 709; Stip. Exh. 17). Mr. Brown was told there would not be a picket line the following Monday, June 22, so the Company tabled its strike preparations, which had been ongoing. (Tr. 710). Consistent with its approach to Local 293 in Cleveland, Mr. Doll notified Mr. Brown on June 22 that although the bargaining unit voted to ratify the agreement, the IBT did not approve it, thus there was no contract with Local 957. (Tr. 710; Stip. Exh. 17; ALJD p. 27). Significantly, if there had been a Global Settlement at that time, the IBT certainly would have had to approve the agreement with Local 957 as it had pledged to do with the Local 293 agreement (or at least agree to an extension until approval was obtained).³¹ (ALJD p. 27). Mr. Doll also highlighted that additional revisions were needed to complete the Global Settlement, as discussed by Messrs. Jay, Doll, and Brown on June 19. (Stip. Exh. 17).³²

³¹ Additionally, there is no evidence that the IBT *ever approved* the alleged CBA in Columbus, which, according to its internal rules, means it cannot be an enforceable or binding agreement. (Tr. 174, 549). Mr. Doll's July 13 letter to Mr. Brown merely notified him that the alleged TA was ratified by members of the bargaining unit.

³² Even Local 284's Exceptions Brief acknowledged that Mr. Doll informed Mr. Brown that the Global Settlement had to be completed, leading to the only logical conclusion – that it was not yet finalized. (Exceptions Brief, p. 15; Stip Exh. 17).

On June 22, the corporate campaign continued as well.³³ (Tr. 710, 823). Local 284 distributed leaflets in the Short North district of Columbus specifically attacking Marcella's, a restaurant maintaining a business relationship with Heidelberg. (Tr. 823-825; Resp. Exh. 8). Again, this behavior was inconsistent with the proposed terms of the Global Settlement. If an agreement existed, these actions would have violated the Global Settlement and constituted a failure to satisfy the contingencies, preventing the proposed CBA with Local 284 from becoming effective. Moreover, had Local 284 actually believed a Global Settlement existed, the corporate campaign should have ceased. (ALJD pp. 27-28). Indeed, Local 284 – knowing there was no Global Settlement – even sent Mr. Brown an email on June 22 asking the parties to “complete [the Global Settlement] based on the review [Mr. Brown, Mr. Jay, and Mr. Doll] performed on [June 19,]” acknowledging that an agreement was not reached and further review and revisions were necessary. (Stip. Exh. 17). To the contrary, if Local 284 believed a Global Settlement existed, Mr. Doll instead would have simply sent Local 284's June 19 proposal and asked Mr. Brown to sign and honor it.

Soon after the leafleting in Columbus, the IBT's corporate campaign reemerged with handbilling at the Women's World Cup in Canada on June 25. (Tr. 825-827; Resp. Exh. 13). Similar to leafleting that occurred at the NHL All-Star Game in January of 2015 (see Respondent's Post-Hearing Brief, p. 15; Tr. 527-528, 781-782), Labatt's, a Heidelberg supplier, was the target. (Tr. 827). Like the leaflets in Columbus, such conduct clearly violated the terms of the proposed Global Settlement and prevented the enforceability of the contingent CBA. The Union's actions in continuing the corporate campaign and refusing to approve the contract with Local 957 are inconsistent with its assertion that there was a “meeting of the minds” on June 19

³³ It is important to note that this activity took place before there was any communication between the Company and Local 284 or the IBT on the status of the Global Settlement following the negotiations on June 19. Clearly, Local 284 and the IBT knew on June 22 that there was no “meeting of the minds” on a Global Settlement on June 19.

(or May 26). (ALJD p. 28). Even if there was an agreement on a Global Settlement, these actions show that the Union failed to meet the requirement of “complete satisfaction of all the terms” of the Global Settlement, preventing a binding contingent contract with Local 284. (ALJD p. 28).

While this corporate campaign continued, Mr. Doll and Mr. Brown exchanged emails on June 24 and June 25 regarding the breakdown of negotiations on June 19. On June 24, Mr. Brown expressed confusion as to Mr. Doll’s characterization of the Global Settlement. (Stip. Exh. 18). Mr. Brown reiterated that Mr. Doll and the Locals were aware the Company would not agree to coterminous expiration dates and that Local 957’s insistence on a 2019 expiration constituted changed circumstances that necessarily required Local 284 to receive a 2018 expiration. (*Id.*). He also expressed disbelief at Mr. Doll’s position that package proposals were not subject to revision prior to overall acceptance, particularly in light of changed circumstances directly related to core bargaining objectives. (*Id.*). Furthermore, given the rejection of the 2018 expiration in Columbus, Mr. Brown concluded that further pursuit of a Global Settlement was futile.³⁴ (*Id.*). After Mr. Brown indicated that there was no Global Settlement because Local 284 rejected the expiration date in Columbus, Local 284 never presented the Global Settlement to Mr. Brown or the Company for signature even though they maintain it was finalized and needed to be signed. Curiously, this draft was Mr. Doll’s own proposal and was in his possession, but he never sent it to Mr. Brown requesting a signature.

³⁴ Local 284’s Exceptions Brief attempts to mischaracterize Mr. Brown’s response that he was puzzled. (Exceptions Brief, p. 15; Stip Ex. 18). Local 284 describes Mr. Brown as puzzled as to what needs to be completed because the only change was an expiration date, manipulating Mr. Brown’s response to make it appear as though the only dispute regarding the proposed Global Settlement was the expiration of the CBA with Local 284. This fits Local 284’s preferred practice of cherry-picking phrases from the transcript or exhibits – thus removing all context – and manipulating the text to mean something different. In fact, Mr. Brown’s confusion stemmed from his belief that further pursuit of a Global Settlement would be futile because of the Teamsters’ insistence on certain expiration dates – in direct conflict with the Company’s substantive goals. His “confusion” does not imply that the Global Settlement is completed other than the CBA with Local 284 as Local 284 now alludes. Instead, it describes his belief that the Global Settlement was either dead or dying.

Mr. Doll responded the next day, asserting that a TA on a CBA in Columbus was reached as early as May 26. (Stip. Exh. 19). However, Mr. Doll then discussed conversations on June 8 regarding the inclusion of Local 377 in the Global Settlement and language regarding the D.R.I.V.E. Political Action Committee in the CBA. (*Id.*). Mr. Doll further described the exchange of proposals on the Global Settlement through June 19. (*Id.*). These disagreements on objective key terms show that the parties could not have reached an agreement on the Global Settlement or the CBA in Columbus. Mr. Doll finally addressed the issue of expiration dates and – despite repeated statements from the Company that expiration dates could not be coterminous – erroneously claimed that Mr. Brown’s proposal to change the expiration in Columbus to 2018 was the first time the Company took such a position. (*Id.*). Mr. Doll also sought information regarding needed modifications to the Global Settlement stating that Mr. Brown never identified any on June 19. (*Id.*). However, Local 284’s June 19 counterproposal made substantive changes to the Company’s last proposal presented on June 8 (Tr. 665-668; 676-677; Stip. Exh. 15; Resp. Exh. 10 & 12) and Ms. Hice was not present for the June 19 meeting to review or approve the substantive changes. (Tr. 668-669, 673, 679, 816). Therefore, Mr. Brown neither accepted nor rejected the counterproposal. His silence cannot be interpreted as acceptance, particularly where so many substantive terms changed.

Mr. Brown sent a letter to Mr. Doll on July 2, again noting Mr. Doll’s illogical and inconsistent position on package proposals, specifically Mr. Doll’s prior position that he had the right to modify the April 2014, packages. (Stip. Exh. 20). Mr. Brown stated at the time that Mr. Doll’s previous position was correct, but completely opposite of his current position. (*Id.*). Mr. Brown then proceeded to discuss the bargaining history since April 29, highlighting the

contingent nature of the Columbus CBA and the Company's decision to modify the expiration date as part of the overall Global Settlement package. (*Id.*).

11. Local 284 Ratification Vote and Related Communications

Despite the contingent nature of the CBA and Mr. Brown's representations in his July 2 letter, Local 284 announced plans to hold a ratification vote on July 11 regarding the TA allegedly reached on May 26. (Stip. Exh. 21). On July 9, as soon as it learned of the planned vote, the Company sent a letter to its Columbus employees to explain that there was no TA. (Stip. Exh. 22). The letter explained that the parties thought they had negotiated an "overall settlement on a number of issues" (i.e., the Global Settlement), but that the overall settlement agreement fell apart. (*Id.*). The Company further explained that the Global Settlement included a promise from Local 284 that the employees could finally vote in a decertification election, but, at the time of their July 11 ratification vote, there was no such promise and no offer from Local 284 to agree to a consent election. (*Id.*). The Company then clarified that the TA Local 284 planned to present on July 11 was not agreed upon by the Company or even proposed by the Company (because it was cherry-picked from the package proposal). (*Id.*). Thus, even if accepted, the alleged TA would not be effective.

That same day, Mr. Brown sent another letter to Mr. Doll, essentially providing the same clarification. (Stip Exh. 23). He explained, consistent with the language of the proposals of both the Company and Local 284, that the alleged TA was contingent on the Global Settlement. (*Id.*). Because the negotiations over the Global Settlement broke down, there was no TA between the Company and Local 284 upon which to base the July 11 vote. (*Id.*). Mr. Brown then admonished Mr. Doll for attempting to misrepresent the Company's position, bargaining history, and the

status of negotiations to “craft a tentative agreement out of thin air.”³⁵ (*Id.*). Mr. Brown explained that if employees voted to ratify the improperly characterized TA, it would not form the basis of a contract and would not create a binding obligation on the Company. (*Id.*). Mr. Brown attached the Company’s April 29 proposal to Local 284, the last standalone proposal that was unencumbered by any of the contingencies contained in the Global Settlement, to clarify the Company’s position.³⁶ (*Id.*).

Despite these clarifications by the Company, Local 284 held the ratification vote anyway. Mr. Doll emailed Mr. Brown on July 13 to inform him that the bargaining unit voted to accept the mischaracterized “May 26, 2015 tentative agreement.” (Tr. 712-713; Stip. Exh. 24). He also stated that Local 284 was willing to enter into a consent election agreement on the pending decertification petition in Columbus “as soon as Heidelberg signs the agreement[.]”³⁷ (Stip. Exh. 24). Mr. Doll then attempted to coax Mr. Brown into a post hoc agreement in which Local 284 would consent to the decertification election in exchange for the Company’s agreement to not

³⁵ Of course, Local 284 continues to misrepresent the facts surrounding the tentative TA with 284 – Local 284’s Exceptions Brief completely ignores Mr. Brown’s July 9 letter that clarified that the offer was not on the table or subject to ratification. Local 284, again, attempts to ignore certain undisputed facts and manipulate the timeline in an attempt to backdoor an agreement where none existed. In this case, Local 284 entirely ignores this important communication on July 9 that showed that Local 284 knew the proposal regarding the CBA with Local 284 was not on the table at the time of the ratification vote. Thus, even if ratified, it was not a binding agreement. In *Olin Corp.*, 248 NLRB 1137, 1141 (1980), lengthy negotiations and an imminent work stoppage justified an employer’s decision to withdraw from TAs as it prepared for the work stoppage on the basis of changed circumstances regarding the bargaining relationship and the employer’s operations. In that case, an employer re-staffed its facility after failing to reach a CBA, but the new workforce expressed concern over joining the union. *Id.* To placate its new employees, the employer withdrew from a TA on union security the day before a scheduled ratification vote. *Id.* No agreement had been reached and ratification had not yet occurred. *Id.* The Board found that the withdrawal and a refusal to bargain about the withdrawal did not violate §8(a)(5). *Id.*

³⁶ Assuming Local 284 presented what it considered the TA from May 26 to the bargaining unit members, as prepared by Mr. Brown, it did not include D.R.I.V.E. language that Mr. Doll fought to include in the alleged CBA in June. (Tr. 235, 634, 721).

³⁷ This demand reverses the proposal presented in the Execution Clause of the Global Settlement. That paragraph, when read with the contingency language in Paragraph 1, stated that the *Global Settlement* would become effective on the date it was signed. One of the terms of the Global Settlement included the Consent Election Agreement, which, according to the Execution Clause, must be signed before it became effective. Neither the Consent Election Agreement nor the Global Settlement agreement were ever finalized or signed. Thus, the contingency language of Paragraph 1 was never triggered and the CBA with Local 284 was never effective. To require the Company to sign the alleged CBA with Local 284 prior to the signing of the Consent Election Agreement or the Global Settlement obligates the Company to honor subsequent conditions prior to satisfaction of the conditions precedent in the Global Settlement. Such a result warps general principles of contract law and renders conditions precedent meaningless.

fight the viability of the allegedly “ratified” TA with Local 284. (*Id.*). Essentially, Mr. Doll re-proposed Local 284’s April 29 offer of union security in exchange for a consent agreement on a decertification election – a position the Company rejected in May.³⁸ (Tr. 713; Stip. Exh. 24).

On July 16, Mr. Brown responded to Mr. Doll’s email. (Stip. Ex. 25). Mr. Brown reiterated that there was no agreement on a TA in Columbus. (*Id.*). Without agreement on the Global Settlement, the contingent CBA could not survive. (*Id.*). He then informed Mr. Doll that he considered the July 13 email to be another proposal, separate from the Global Settlement negotiations, which he rejected. (Tr. 713; Stip. Exh. 25). Mr. Brown also stated that the Company was no longer interested in negotiating a Global Settlement or coupling a consent election agreement on the pending decertification petition with future proposals for a CBA with Local 284. (Stip. Exh. 25). Mr. Brown (again) resubmitted the Company’s proposals from April 29, 2015, prior to the commencement of Global Settlement negotiations. (*Id.*). Mr. Brown asked Mr. Doll to notify him when Local 284 would be prepared to resume those negotiations. (*Id.*). Mr. Doll never responded.

III. ARGUMENT

A. **The ALJ Determined that the Company’s Witnesses Were More Credible than Local 284’s Witnesses**

Local 284’s Exceptions and supporting argument are based on a fatally flawed understanding of the facts and applicable law and should be rejected. Local 284’s version of the negotiations regarding an alleged Global Settlement is based on Mr. Doll and Mr. Jay’s testimony and select, self-serving documents while ignoring testimony supplied by Mr. Brown,

³⁸ In fact, this rejection is what led to the beginning of the Global Settlement negotiations. Heidelberg’s executive leadership team unanimously rejected this proposal. Ms. Hice also testified that the Company would never accept that exchange. (Tr. 810). Not only did Mr. Brown lack the authority to accept this proposal, Ms. Hice, as Vice President and General Counsel for Heidelberg, was not authorized to accept union security without a Global Settlement. (Tr. 793, 810). Because the proposal was already rejected, Mr. Doll’s email can only be described as an offer and not the formation (or reminder) of a contract.

Ms. Hice, Mr. Neese, and Mr. Oakes and other documentary evidence that largely refutes Local 284's claims. Indeed, the ALJ credited Heidelberg's versions over Local 284's. (ALJD, pp. 5-7). Local 284 took no exceptions to those credibility findings. Nor could it, as the ALJ's crediting of Ms. Hice and Messrs. Brown, Neece, and Oakes is well-supported by the record evidence and his reasoning for crediting them over Messrs. Doll and Jay is sound. (ALJD, pp. 5-7).

Indeed, the ALJ's credibility determinations did not leave much room for debate. ALJ Randazzo found that Heidelberg's witnesses Mr. Brown, Ms. Hice, Mr. Neece, and Mr. Oakes were all "very credible in their testimony and demeanor, and [...] they testified in a convincing, straightforward, and consistent manner in which they displayed an accurate recollection of the details of the events." (ALJD, p. 6). ALJ Randazzo found that Mr. Brown was "particularly persuasive" and "displayed very good recall of the events and he testified about those events in a sincere and consistent manner." (ALJD p.6). ALJ Randazzo further found that Mr. Neece, Mr. Oakes, and Ms. Hice provided "clear, detailed, and mutually corroborative testimony with regard to what transpired during negotiations." (ALJD p.6).

On the other hand, ALJ Randazzo was less than impressed with the testimony of Mr. Doll and Mr. Jay.³⁹ He found Mr. Doll to be "forced and self-serving" and Mr. Jay was "evasive" regarding whether drafts of a Global Agreement were exchanged after May 26 and when questioned about whether the terms of the Global Agreement had taken effect. (ALJD p. 6). Based on the strengths and weaknesses of the various witnesses, the ALJ credited the testimony of Heidelberg's witnesses over Local 284's where the testimony conflicted. (ALJD p. 6). Under long-standing policy, the Board defers to an ALJ's credibility resolutions unless a clear preponderance of all the relevant evidence convinces the Board that the resolutions are incorrect.

³⁹ For the other Local 284 witnesses, Mr. Verst and Mr. Crawford, ALJ Randazzo determined that they were not evasive, but less than reliable due to their inability to recall details related to their testimony. (ALJD p. 6).

United States Postal Service, 301 NLRB 233, 233 n.2 (1991) (citing *Standard Dry Wall Products*, 91 NLRB 544 (1950) enfd. 188 F.2d 362 (3d Cir. 1951)). In this case, the Board will find the opposite – the overwhelming weight of the evidence supports the ALJ’s credibility resolutions. Because the factual predicate for Local 284’s Exceptions is Mr. Doll and Mr. Jay’s discredited version of the Global Settlement negotiations, the Exceptions are baseless and should be denied.

B. No Global Settlement Agreement Exists

In addition to Local 284’s extensive reliance on discredited testimony, its legal theories are incorrect. The obligation to execute a written contract arises only after a “meeting of the minds” has been reached on all substantive and material terms, provided there was in fact the intent to have a contract. *Hempstead Park Nursing Home*, 341 NLRB 321, 322 (2004); *Sunrise Nursing Home*, 325 NLRB 380, 389 (1998); *Intermountain Rural Electric Assn.*, 209 NLRB 1189, 1192 (1992); *Buschman Co.*, 334 NLRB 441, 442 (2001). It is Local 284’s burden to show that the parties not only had a “meeting of the minds” on the agreement, but also that “the document which the respondent refused to execute accurately reflected that agreement.” *Hempstead*, 341 NLRB at 332; *Windward Teachers Association*, 346 NLRB 1148, 1150 (2006).

1. There was No “Meeting of the Minds”

The Board has held that a “meeting of the minds” on all substantive issues depends on the objective terms of the written agreement rather than the subjective understandings of the terms of the parties. *Vallejo Retail Trade Bureau*. 243 NLRB 762, 767 (1979), enfd. 626 F.2d 119 (9th Cir. 1980); *Hempstead*, 341 NLRB at 323. The issue is one of intention, and thus the question is whether the parties intended to have a contract as evidenced by a “meeting of the minds.” *Vallejo*, 243 NLRB at 767. To prove a meeting of the minds, Local 284 must prove that the parties’ objectively manifested intent, as demonstrated by their communications with each other,

shows that they agreed on all substantive issues and material terms contained in the alleged agreements. *Crittenton Hospital*, 343 NLRB 717, 718 (2004). Thus, Local 284 must prove that the parties intended to agree to all of the substantive terms in the contract reflected by the alleged meeting of the minds. *Sanitation Salvage Corp.*, 342 NLRB 449, 455 (2004).

Where an alleged agreement is reduced to writing,⁴⁰ it is the Local 284's burden to show that the written agreement accurately reflects the parties' alleged meeting of the minds. *Windward Teachers*, 346 NLRB at 1150; *Crittenton*, 343 NLRB at 718. If the terms of the document are unambiguous, the parties' "meeting of the minds" is based on the objective terms of the contract rather than the subjective understandings (or misunderstandings) of the terms by the parties. *Hempstead*, 341 NLRB at 322-323; *Vallejo*, 243 NLRB at 767. If the terms are ambiguous and the parties attach different meanings, a "meeting of the minds" is not established. *Hempstead*, 341 NLRB at 322-323.

As mentioned above, Local 284 bears the burden of showing that the parties' "objectively manifested intent" evidences an agreement and that intent is shown through their communications. The Company's witnesses provided testimony describing their proposals – evidence of the objective terms they proposed. The parties also exchanged emails discussing, and attaching proposals articulating, these objective terms. Communications, including testimony of negotiation discussions and emails exchanged, discussing the terms proposed constitute evidence of the Company's "objectively manifested intent" regarding the proposal Global Settlement. *Crittenton*, 343 NLRB at 718 (considering testimony of bargaining proposals and exchanged

⁴⁰ As the ALJ notes repeatedly in his decision, the parties never exchanged a written draft or agreement on May 26. (ALJD pp. 8, 22-24). Thus, there were no written objective terms on that date and a "meeting of the minds" could not have been reached. Mr. Brown emailed Mr. Doll a draft of the Global Settlement based on the framework discussed on May 26, but Mr. Doll disagreed with the terms that were included. Therefore, the subsequently drafted document that attempted to memorialize a possible Global Settlement agreement also does not prove a "meeting of the minds."

written proposals when applying the “objective standard” to determine if the parties reached a “meeting of the minds”). Here, the communications clearly identify the terms encompassing the Company’s “objectively manifested intent” – staggered expiration dates, cessation of the corporate campaign, inclusion of Local 1199 and the IBT as parties, and extension agreements for the various Locals’ CBAs. Nonetheless, Local 284 improperly characterizes the verbal communications and the emails as *subjective* understandings of the agreement instead of objective proposals despite the NLRB’s precedent in *Crittenton*.

Local 284 attempts to avoid the facts of this case and the Board’s precedent by arguing that the Company and the ALJ focused on the *subjective* views of the alleged Global Settlement. This argument grossly manipulates and misrepresents the Company’s position and legal precedent. The Union argues that the Company’s “subjective understanding of what was to be included in the ‘global agreement’ is not the standard followed by the Board.” (Exceptions Brief p. 25). This statement shows that the Union either misunderstands or disregards the standard followed by the Board.

Vallejo does not discuss what a party subjectively believes the terms of an agreement were; it discusses the *objective* terms that were actually included in a written document and disregards the parties’ *subjective* understandings of what those written, *objective* terms mean. *Vallejo*, 243 NLRB at 767. In *Vallejo*, the Board determined that the “subjective understanding (or misunderstandings) as to the meaning of the terms which have been assented to are irrelevant, provided that the terms themselves are unambiguous.” *Id.* The Board concluded that “all parties point to the same [written] instrument by which formal ‘assent’ was manifested ... yet, each party urges ... that the same terms have different meanings.” *Id.* The union maintained that the agreement provided for “across-the-board” wage increases while the company argued that the

“across-the-board” language was qualified by past practice and a written exception clause to provide only pro-rata increases for employees with less than one-year experience. *Id.* Because the parties agreed to the written, objective terms addressing this issue, the parties’ subjective understandings of those terms were irrelevant.⁴¹ *Id.* Written words are objective – their existence cannot be disputed. The subjective interpretations as to their meaning do not change the facts that those words were actually written and either proposed or agreed upon.

Thus, Local 284’s interpretation of *Vallejo* is incorrect. The Board did not examine whether the parties believed certain terms were part of the written document or whether such terms were actually included in the document – it merely found that the parties’ subjective interpretations of the written terms included in the agreement would not be considered in determining if there was a “meeting of the minds.” Instead, the objective terms speak for themselves.

However, Local 284 argues that it reached a “meeting of the minds” on a Global Settlement with Heidelberg despite the Company’s inclusion of certain terms – namely the IBT and Local 1199 as parties, a specific date for the decertification election, and expiration dates for the various Locals – to which Local 284 did not agree. Local 284 incorrectly describes the inclusion of these terms as the Company’s “subjective understanding of what was to be included in the ‘global agreement’” and incorrectly concludes that *Vallejo* prevents the ALJ or the Board from considering the terms. To the contrary, the written terms are objective and the proposal and subsequent communications show that the parties never reached a “meeting of the minds” on the written, objective terms.

⁴¹ Moreover, the Board found ambiguity in the written language. *Id.* That ambiguity further prevented the parties from reaching a full agreement on all terms for a new contract. *Id.* Therefore, the Board found that the company did not violate the Act by refusing to execute the union’s proposed agreement that ignored the pro-rata aspect of the wage increase. *Id.*

In addition to its misinterpretation of *Vallejo*, Local 284 is incorrect that a party's belief or understanding of which actual terms were included in a contract should not be considered by the Board. In *Local Union No. 3, IBEW*, No. 29-CB-125701, 2015 NLRB LEXIS 311 (2015), the Board explored a similar issue. In that case, it was undisputed that the parties agreed during collective bargaining in March, 2013 to a Memorandum of Agreement ("MOA"), which both parties believed represented an agreement to execute a successor contract. *Id.* at *52. The MOA was ratified, the parties shook hands, and the union began implementing the terms of the MOA. *Id.* However, the union refused to execute the contracts presented by the employer in July and December, 2013, because the alleged agreements did not include certain riders that it believed should have been included. *Id.* at *52-53. The employer believed that the riders were eliminated from the subsequent contract because they were not in the MOA. *Id.* at *53. The union disagreed and thought the riders remained part of the contract because the MOA did not expressly delete them. *Id.* The Board concluded that there was no "meeting of the minds" on all the terms of the successor agreement in March, 2013, despite the signed MOA, and that the proposed agreements did not incorporate the full agreement of the parties. *Id.* at *61-62. Instead, the Board found that the parties had "plausible but different *understandings and beliefs* as to [the terms of the contract], and therefore there was no meeting of the minds and no contract." *Id.* at *62 (emphasis added).

Similarly, in *Cherry Valley Apartments*, 292 NLRB 38, 40 (1988), the Board found that uncertainty regarding the terms of a contract prevented finding a "meeting of the minds," thus, an employer did not violate Section 8(a)(5) by refusing to sign a proposed contract. In *Cherry Valley*, the parties both negotiated based on a proposed contract. *Id.* at 39. However, because a series of proposed agreements and communications were sent between the parties with differing

terms, the parties became confused about which proposal was the operative agreement to which they agreed.⁴² *Id.* at 39-40. As a result, the “parties were operating under the illusion that they were agreeing, or had agreed, to the terms of an agreement – each with a separate, different understanding of certain of its terms.” *Id.* at 40. In the absence of firm evidence describing the agreement item-by-item, the Board found it could not rule out the possibility that the parties negotiated from different versions of the contract or that they referred to a contract different from the one that was intended. *Id.* Despite the parties’ belief that they agreed to a contract, the Board found that the evidence failed to establish a “meeting of the minds” with respect to all the terms of the contract. *Id.*

Local Union No. 3 and *Cherry Valley* are similar to this case. The parties believed they had agreed to the objective framework of a Global Settlement, but, after the terms were memorialized, realized that they did not agree to all the substantive and material terms. Despite Local 284’s argument that an agreement nonetheless exists (of course, encompassing only the terms they sought and ignoring Heidelberg’s key terms), Board precedent disagrees. Based on *Local Union No. 3* and *Cherry Valley*, the parties could not have reached a “meeting of the minds” because they possessed different *understandings and beliefs* as to the objective terms included in the proposed Global Settlement, a conclusion supported by the overwhelming weight of the evidence including the credited testimony of Mr. Brown and Ms. Hice and virtually all the proposals and communications that existed from May 29 through July 16.

Despite Local 284’s assertions, it is undisputed that Heidelberg and Mr. Brown proposed language regarding the various expiration dates during negotiations on May 26. (Tr. 588-601, 794-796; Resp. Exhs. 4 & 5). Moreover, the ALJ found that Mr. Brown credibly testified that he

⁴² Both parties believed an agreement existed, but pointed to different proposals encompassing different effective dates, labels for one classification of worker, and wage rates. *Cherry Valley*, 292 NLRB at 39-40.

believed the May 26 negotiations encompassed both the IBT and Local 1199, as both entities participated in the negotiations and were entwined in the various substantive terms – particularly cessation of the corporate campaign being directed by the IBT and the expiration dates of the local contracts, including Local 1199’s. (ALJD pp. 12-13, 23-24). Thus, Local 284’s claims that the Company never discussed the expiration dates or the inclusion of those entities as parties is blatantly false and intentionally misleading. (Exceptions Brief, p. 23).

Regardless, Local 284’s reliance on this false “fact” is irrelevant. The parties agreed that Mr. Brown would memorialize the framework of the Global Settlement into a written proposal. When he did, that proposal included the IBT and Local 1199 as parties and included the various expiration dates he proposed for each Local. Local 284 rejected the inclusion of those terms. This disagreement is clear evidence that the parties did not reach a “meeting of the minds” under *Local Union No. 3* and *Cherry Valley*.

Furthermore, the terms Mr. Brown included in his draft were objective terms, not subjective understandings, and his understanding of the objective terms to be included is relevant to whether or not there was a “meeting of the minds” under *Vallejo* and *Crittenton*. Once memorialized, either the proposal was ambiguous and prevented a “meeting of the minds” – which appears likely given that Local 284 disagreed with the terms – or the proposal accurately and unambiguously reflected the agreed-upon terms and the parties’ subjective understandings of the terms are irrelevant. Under the first scenario, there is no “meeting of the minds” because the parties never agreed to the actual terms. Under the second scenario, there was a “meeting of the minds” reflected by the objective terms in the written proposal prepared by Mr. Brown, but it included the IBT, Local 1199, and the proposed expiration dates – all terms Local 284 disputed. Facing defeat either way, Local 284 incorrectly combines these two standards to argue that there

was an unambiguous “meeting of the minds,” but the written proposal did not accurately reflect that “meeting of the minds.” It then proceeds to claim – against the weight of the evidence – that the meeting of the minds includes some of the written terms but not others. As explained above, this argument must fail.

2. No Written Document Was Exchanged Reflecting the Alleged Global Settlement Agreement

The ALJ repeatedly noted that no written document was exchanged representing a Global Settlement. (ALJD, pp. 8, 22-24). Without a written document detailing the agreement, term-by-term, it is increasingly difficult to establish a “meeting of the minds.” *Cherry Valley*, 292 NLRB at 40. In fact, even now, there is no written proposal that reflects the Global Settlement terms Local 284 claims were agreed upon. Moreover, there is no written proposal for a CBA with Local 284 that reflects the alleged agreement Local 284 claims was reached.⁴³

Even if Local 284 argues that the subsequent written proposals that were exchanged by the parties between May 29 and June 19 represent written evidence of a “meeting of the minds,” its argument still fails. As discussed above, the parties never agreed to the *objective* terms of an agreement in those proposals. *See Local Union No. 3* and *Cherry Valley*. Indeed, as the ALJ found, both parties continued to revise the material and substantive terms of the proposed Global Settlement through June 19, with Local 284 making the final proposal. That proposal again changed the substantive terms of the agreement, specifically reinserting previously rejected language regarding the cessation of the corporate campaign – a key provision for Heidelberg. Moreover, it is undisputed that Ms. Hice would have to approve any Global Settlement and she was not available to view Local 284’s final proposal on June 19. Thus, she could not have accepted those terms. Again, there can be no “meeting of the minds.”

⁴³ No written CBA proposal included D.R.I.V.E. language.

IV. CONCLUSION

The overwhelming documentary evidence and credited testimony shows that the parties did not reach a “meeting of the minds” regarding a Global Settlement agreement on May 26, 2015, June 19, 2015, or at any time. Local 284’s argument to the contrary relies exclusively on the testimony of Messrs. Doll and Jay, both of whom were discredited by the ALJ, and limited bargaining notes from May 26. The evidence Local 284 cites to prove the existence of a “meeting of the minds” is out-of-context, incomplete, and buried by contrary evidence showing no such “meeting of the minds” occurred. Furthermore, Local 284 misinterprets Board precedent in *Vallejo*, 243 NLRB 762, to try to convince the Board to disregard that overwhelming evidence. However, Local 284 misunderstands *Vallejo* and similar cases (*Local Union No. 3* and *Cherry Valley*) that applied similar evidence to find that a “meeting of the minds” did not exist in similar disputes. Thus, the overwhelming evidence and Board precedent require upholding the Decision of ALJ Randazzo that found that no “meeting of the minds” existed on a Global Settlement agreement and, by extension, a contingent CBA between Heidelberg and Local 284. The Complaint should be dismissed in its entirety.

Respectfully submitted,



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CERTIFICATE OF SERVICE

A copy of the foregoing *Answering Brief of Dayton Heidelberg Distributing Company in Opposition to Exceptions of Local 284 to the Decision of the Administrative Law Judge* has been electronically filed via the Board's electronic filing system. A copy of same was served via electronic mail this 10th day of August, 2016 upon:

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