UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
WASHINGTON, D.C.

DAYTON HEIDELBERG DISTRIBUTING CO. d/b/a HEIDELBERG DISTRIBUTING CO.	:	
Respondent,	:	**CASE NO. 09-CA-156105**
and	:	
INTERNATIONAL BROTHERHOOD OF TEAMSTERS LOCAL UNION NO. 284	:	
Charging Party	:	

THE REPLY BRIEF OF TEAMSTERS LOCAL UNION NO. 284 IN SUPPORT OF EXCEPTIONS TO THE DECISION OF THE ADMINISTRATIVE LAW JUDGE

INTRODUCTION

Charging Party Teamsters Local Union No. 284, affiliated with the International Brotherhood of Teamsters ("Local 284" or "Union"), pursuant to Section 102.46(h) of the Rules and Regulations of the National Labor Relations Board ("Board"), hereby submits its Reply Brief in Support of its Exceptions to the Decision of the Administrative Law Judge Thomas M. Randazzo, ("ALJ"), which issued in the above-captioned case on June 8, 2016 ("Decision"). Charging Party filed its Exceptions to the Decision of the ALJ and its Brief in Support of Exceptions on July 27, 2016. Respondent filed its Answering Brief on August 10, 2016. [1]

[1] Citations to Joint exhibits, Stipulated exhibits, General Counsel exhibits, or Respondent's exhibits are referenced parenthetically as JX ____, SX ____, GCX ____ and RX _____, respectively. Citations to the Transcript pages are referenced parenthetically as T. ____.

In its Answering Brief, (Resp. A.B.), Respondent spent a great deal of time ignoring the unquestionable agreement reached by the parties on May 26, 2015. Instead, in its Answering Brief, Respondent focused on events which occurred after May 26, 2015 when Respondent attempted to persuade the Charging Party to accept modifications to the agreement reached on May 26, 2015 on terms that were never even proposed by the Respondent on May 26. Respondent also wants the Board to ignore the "meeting of the minds" that was unequivocally reached on May 26 when the last two open issues, the agreement by the Union to accept Respondent's last wage proposal and Respondent's agreement not to include Local 377 in the "global agreement," were agreed to and resolved. (GCX 6, RX 4 and RX 5) In reviewing the ALJD, the Board only needs to examine the agreement reached on May 26, as found by the ALJ to exist (ALJD 8:29-33), based on the documents introduced during the hearing. (GCX 6, RX 4 and RX 5). The documents entered into evidence, not the contradictory testimony of witnesses, clearly set forth the "meeting of the minds" on May 26 from which the Charging Party never deviated.

Respondent's Attempts To Modify The Agreements Reached On May 26

By email dated May 29, 2015 Respondent, through Mr. Brown, forwarded to Local 284 its draft of the collective bargaining agreement between Local 284 and Respondent and its draft of the "global agreement" entitled Settlement Agreement and Release. (SX 7 and SX 8) While review of the draft collective bargaining agreement did not reveal any serious or material questions or concerns, the Settlement Agreement and Release (SAR) contained many provisions that were not part of any of the proposals submitted by the Respondent on May 26 including, but not limited to, the inclusion of the International Brotherhood of Teamsters as a party to the "global agreement," the inclusion of Local 1199 as a party to the "global agreement," the

inclusion of a specific expiration date to be included in the negotiated collective bargaining agreement for Local 1199, Local 957 and Local 20 to be included in the "global agreement," the inclusion of a "release" in the "global agreement," and the inclusion in the "global agreement" of a specific election date for the pending decertification petition. The undisputed documentary evidence clearly demonstrates that Respondent made no proposals to include the items set forth above in the "global agreement" on May 26. (GCX 6, RX 4, and RX 5)

In its June 3 response to the Union's objections to the modifications of the "global agreement" set forth in the Respondent's SAR, Respondent used comments such as "[W]hy would the Company ever enter into a 'Global Agreement' that is not global in scope", and "I think that it is reasonably clear from the document and entirely consistent with the Company's proposal in what we thought was our agreement." Not one time in the Respondent's June 3, 2015 response to the Union's objections to the Respondent's SAR did Respondent state that Respondent's modifications to the "global agreement," as agreed to by the parties on May 26, were actually proposed by either party and/or agreed to by the parties on May 26. As set forth above, what the Respondent and Local 284 agreed to include in the "global agreement" was specifically proposed, discussed and agreed to on May 26. The bargaining notes of the parties clearly and unambiguously set forth the agreement the parties reached on the collective bargaining agreement between Respondent and Local 284 and the "global agreement." (RX4, RX 5 and GCX6)

The ALJ agreed in his Decision that "[T]he bargaining notes of all of the parties reflect that by the end of the day (May 26), there were two remaining issues – wages and whether Local 377 would be a party to the global agreement. At the conclusion of that bargaining session, the Union accepted the Respondent's proposal on wages and the Respondent agreed that Local 377

would not be a part of the global settlement agreement." (ALJD 8:29-33) The Respondent's SAR (SX 8) was inconsistent with the agreement reached by the parties on the "global agreement" on May 26 and inconsistent with the finding made by the ALJ that on May 26 the parties had reached an agreement on both the collective bargaining agreement between Local 284 and Respondent and on the "global settlement agreement." (ALJD 8:29-33)

After receipt of the Union's draft settlement agreement ("global agreement") on June 8, 2015 (SX 13) Respondent submitted a new draft of the settlement agreement (SX 14) that no longer included the International Brotherhood of Teamsters as a party to the "global agreement," that no longer included Local 1199 as a party to the "global agreement," that no longer included a specific expiration date to be included in the collective bargaining agreements for Local 957 and Local 20 (which contracts were still being negotiated), did not include a specific expiration date to be included in the collective bargaining agreement for Local 1199 (a collective bargaining agreement which did not expire by its terms until the Spring of 2016 and was not yet open for negotiations), and did not include a "release" as part of the "global agreement."

Obviously, the above listed items, which were included in Respondent's SAR of May 29, were not substantive issues and material terms of the "global agreement" since Respondent was so willing to exclude them from further discussion. When the Respondent added in its June 8, 2015 draft of the "global agreement" (SX 14) the inclusion of Local 377 as a party, with an obligation for Local 377 to withdrawal its Objections to the Conduct of the Election in Case No. 08-RD-140375, Respondent was attempting to obtain a goal it abandoned on May 26. The inclusion of Local 377 as a party was specifically contrary to the agreement reached on May 26, 2015.

Respondent and Local 284 had a "Meeting of the Minds" on all Substantive Issues and Material Terms of the Agreement on May 26

Applying the Board's reasonable objective standard in determining whether a "meeting of the minds" has occurred, as set forth in Vallejo Retail Trade Bureau, 243 NLRB 762-767 (1979), the Union submits that the objective evidence in this case, including the negotiation notes taken on May 26 and the draft "global agreement" prepared by the Union on June 19 supports the Union's position that there was a "meeting of the minds" on May 26 on all substantive issues and material terms of the agreement reached by the parties on that date. (GCX 6, RX 4, RX 5, SX 13 and SX 15) The specific date on which the decertification election was going to be held and the manner in which the corporate campaign was going to end were not material terms of the "global agreement" as neither one of those issues were brought up for discussion on May 26.

While Respondent's witnesses labeled the agreement reached on May 26 as a "framework" (T. 606 and 804), the documents entered into evidence support the conclusion that the parties reached an agreement on all substantive issues and material terms on May 26. (ALJD 8:29-33) The agreement reached by the parties on May 26 was incorporated into the collective bargaining agreement submitted by Respondent to the Union in the May 29, 2015 email from Mr. Brown. (SX 7) That collective bargaining agreement was ratified by the bargaining unit members of Local 284 and submitted to Respondent for execution. (SX 24) The material terms on the substantive issues agreed upon to be part of the "global agreement" were submitted to the Respondent on June 19, 2015. (SX 15) These two documents embodied the material terms on all of the substantive issues agreed to by the parties on May 26 as the objective evidence set forth in the aforementioned documents demonstrate.

The Respondent's reliance on Local Union No. 3, IBEW, Case No. 29-CB-125701, 2015 NLRB LEXIS 311 (2015) and Cherry Valley Apartments, 292 NLRB 38, 40 (1988) is misplaced. In the instant case there is no dispute between the parties about riders that the employer in Local Union No. 3, IBEW believed were eliminated and the union believed should have been included. Additionally, in the instant case, unlike in Cherry Valley, there was no confusion about the proposals to which the parties had agreed on May 26. There was no ambiguity in the terms of the collective bargaining agreement reached on May 26. The collective bargaining agreement presented by Respondent on May 29 was the exact document ratified by the bargaining unit members of Local 284 and presented to Respondent for signature.

In the "global agreement" there was no ambiguity that Local 284 was going to enter into a consent election agreement waiving any and all of its pre-election challenges, objections and charges related to the decertification petition filed in Case No. 09-RD-134933, there was no ambiguity that the corporate campaign was going to "stand down" as requested by Respondent, there was no ambiguity that Local 20, Local 957 and Local 293 would extend their collective bargaining agreements to a date agreed to by the parties (initially July 10, 2015 and later July 17, 2015). On all of the material terms and substantive issues discussed by the parties on May 26 there was an unambiguous agreement as clearly reflected in the bargaining notes of both parties. (GCX 6, RX 4 and RX 5) The agreement of the parties on the material terms on all of the substantive issues agreed to on May 26 on the "global agreement" was presented to Respondent for signature on June 19, 2015.

The only event that prohibited Respondent from signing the collective bargaining agreement ratified by the bargaining unit members and the "global agreement" as presented on June 19, 2016 was the decision of Respondent, after reaching an agreement with Local 957, to

modify the duration of the Local 284 collective bargaining agreement from a four year agreement, to a three year agreement, expiring in February 2018 rather than February 2019 as agreed upon on May 26.

Contrary to the Decision by the ALJ, Local 284 respectfully submits that applying the reasonable objective standard in determining whether a "meeting of the minds" has occurred the only conclusion that could be reached, based on the objective evidence presented at the hearing, was a "meeting of the minds" had been reached on May 26, that the collective bargaining agreement ratified by the bargaining unit members as submitted to Respondent accurately reflected that "meeting of the minds" reached by the parties on May 26 as to the collective bargaining agreement. Additionally, based on the same reasonable objective standard, Local 284 submits that a "meeting of the minds" was reached on May 26 as to the "global agreement" as set forth in the June 19, 2015 Settlement Agreement submitted to the Respondent on that date. (SX 15) The ALJ's reliance on what Respondent reasonably believed was agreed to on May 26 or what was plausible on May 26 simply does not satisfy the Board's reasonable objective standard in determining whether there has been a "meeting of the minds."

CONCLUSION

Based upon the foregoing arguments, citations of authority, the argument set forth in Charging Party's Brief in Support of Exceptions to the ALJ Decision, Charging Party submits that the proper application of the Board's reasonable objective standard in determining whether a "meeting of the minds" has occurred clearly supports the position of Charging Party that the ALJ's decision should be overturned in its entirety and that the Board should conclude that the parties had a "meeting of the minds" on May 26 on all substantive issues and material terms of the collective bargaining agreement ratified by the bargaining unit employees and on the "global

agreement." The objective evidence introduced at the hearing fully supports Charging Party's position and is contrary to the subjective understandings of Respondent. Based on all of the objective evidence introduced at the hearing and the Board precedent, the ALJ decision must be overturned in its entirety. Additionally, the Board should determine that Respondent violated Section 8(a)(1) and Section 8(a)(5) of the Act by failing to execute the agreement reached by the parties on May 26 for the collective bargaining agreement ratified by the bargaining unit members and on the "global agreement" reached on May 26 as set forth in the June 19, 2015 Settlement Agreement. (SX 15)

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing document was served upon Counsel for the General Counsel, Jonathan D. Duffey, Esq. (jonathan.duffey@nlrb.gov) and Counsel for the Respondent, Stephen J. Sferra, Esq. (ssferra@littler.com) and Craig M. Brown, (cmbrown@littler.com), by electronic mail on this 24th day of August, 2016.