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**Dayton Heidelberg Distributing Co. d/b/a Heidelberg Distributing Co. and International Brotherhood of Teamsters Local Union No. 284.** Case 09–CA–156105

November 18, 2016

**DECISION AND ORDER**

BY CHAIRMAN PEARCE AND MEMBERS MISCIMARRA  
AND MCFERRAN

On June 8, 2016, Administrative Law Judge Thomas M. Randazzo issued the attached decision. The Charging Party filed exceptions and a supporting brief, the Respondent filed an answering brief, and the Charging Party filed a reply.

The National Labor Relations Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge’s rulings, findings,<sup>1</sup> and conclusions and to adopt the recommended Order.

**ORDER**

The recommended Order of the administrative law judge is adopted and the complaint is dismissed.

Dated, Washington, D.C. November 18, 2016

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Mark Gaston Pearce, Chairman

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Philip A. Miscimarra Member

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Lauren McFerran, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

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

*Jonathan D. Duffey, Esq.*, for the General Counsel.  
*John R. Doll, Esq.* and *Matthew T. Crawford, Esq.*,  
for the Charging Party.  
*Stephen J. Sferra, Esq.* and *Adam Primm, Esq.*,  
for the Respondent.

**DECISION**

**STATEMENT OF THE CASE**

THOMAS M. RANDAZZO, Administrative Law Judge. This case was tried in Columbus, Ohio, on December 7–9, 2015. The International Brotherhood of Teamsters Local Union No. 284 (the Charging Party or Union) filed a charge on July 15, 2015, and the General Counsel issued the complaint and notice of hearing in this matter on October 8, 2015.

The complaint alleges that Dayton Heidelberg Distributing Co., d/b/a Heidelberg Distributing Co. (the Respondent), violated Section 8(a)(5) and (1) of the National Labor Relations Act (the Act) by, since on or about July 13, 2015,<sup>1</sup> failing and refusing to execute a complete agreement reached on the terms and conditions of employment for the unit employees on May 26, 2015, which was incorporated in a collective-bargaining agreement. The Respondent, in its answer, denied that it violated the Act as alleged.

On the entire record,<sup>2</sup> including my observation of the demeanor of the witnesses,<sup>3</sup> and after considering the briefs filed by the General Counsel, the Union, and the Respondent, I make the following

**FINDINGS OF FACT**

**I. JURISDICTION**

The Respondent, a corporation with an office and place of business in Columbus, Ohio, has been engaged in the operation of a beverage warehouse and distribution facility. Annually, the Respondent, in conducting its business operations described above, purchased and received at its Columbus, Ohio facility goods valued in excess of \$50,000 directly from points located outside the State of Ohio.

The Respondent admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that the Union has been a labor organization within the meaning of Section 2(5) of the Act.

<sup>1</sup> All dates are 2015, unless otherwise indicated.

<sup>2</sup> Abbreviations used in this decision are as follows: “Tr.” for transcript; “GC Exh.” for General Counsel’s Exhibit; “Jt. Exh.” for Joint Exhibit; and “R. Exh.” for Respondent’s Exhibit. Stip. Exh. for Stipulated Exhibits. U. Brief for Union Brief, R. Brief for Respondent’s Brief and GC. Brief for General Counsel’s Brief.

<sup>3</sup> In making my findings regarding the credible evidence, including the credibility of the witnesses, I considered the testimonial demeanor of such witnesses, the context of the testimony, and the consistency and inherent probabilities based on the record as a whole. In addition, I have carefully considered the testimony in contradiction to my factual findings, but I have discredited such testimony.

## II. ALLEGED UNFAIR LABOR PRACTICES

### A. *The Facts*

#### 1. Background

The Respondent operates a beer and wine distribution company with multiple locations in the State of Ohio. The Respondent has 4 locations that have had existing collective-bargaining relationships with separate Teamsters Local unions for long periods of time. Teamsters Local No. 957 (“Local 957”) has represented the Dayton, Ohio facility for over 40 years with the previous collective-bargaining agreement between the Respondent and Local 957 having expired on March 1, 2015. Teamsters Local No. 20 (“Local 20”) has represented the Toledo, Ohio facility for approximately 20 years with the previous collective-bargaining agreement between the Respondent and Local 20 having expired on April 1, 2015. Teamsters Local No. 293 (“Local 293”) has represented the Cleveland, Ohio facility for approximately 20 years with the previous collective-bargaining agreement between the Respondent and Local 293 having expired on April 1, 2015. Teamsters Local No. 1199 (“Local 1199”) has represented the Cincinnati, Ohio facility for approximately 20 years with the current collective-bargaining agreement between the Respondent and Local 1199 having expired on April 1, 2016. In addition, Teamsters Local No. 377 (“Local 377”) was certified as the representative of a unit of approximately eight delivery drivers at Respondent’s Youngstown, Ohio facility on October 18, 2013. After negotiating for approximately 1 year, a decertification petition was filed and Local 377 was decertified as the bargaining representative on November 3, 2015. The previous collective-bargaining agreement between the Respondent and Local 957 expired on March 1, 2015.

In 2012, the Respondent acquired a distribution facility in Columbus, Ohio. On February 15, 2013, Teamsters Local No. 284 (“Local 284”) was certified as the collective-bargaining representative for the Respondent’s Columbus, Ohio, employees in the following appropriate unit:

All full-time and regular part-time drivers and warehouse employees employed by the Employer at its Columbus, Ohio facility, but excluding sales employees, office clerical employees, maintenance employees, managers, and all professional employees, confidential employees, technical employees, sales employees, plant clerical employees, guards, and supervisors as defined in the Act. (Jt. Exh. 1)

The Respondent and representatives from Local 284 began negotiating for an initial collective-bargaining agreement on April 3, 2013. (Jt. Exh. 1.) The parties agreed that each would have the unilateral right to add to, modify, or delete proposals throughout the course of the negotiations, subject to an overall agreement being reached. (Tr. 512–513, 777.) During the negotiations, the parties reopened executed tentative agreements (“TAs”) on certain occasions and made modifications to those TAs, such as with TAs concerning jury duty, leaves of absence, and bereavement leave. (Tr. 513.) The bargaining continued until April 2014 without an agreement being reached. In the summer of 2014, Local 284 and the International commenced a “corporate campaign” against the Respondent in Columbus that

included publicizing the dispute on a Facebook page, leafleting Respondent’s customers, the issuance of press releases, and publicizing health code violations if business with the Respondent continued. (Tr. 525–527, 780–781.)

A decertification petition was filed concerning the Columbus unit in or around August 2014, and the Respondent withdrew recognition of Local 284 around August 2014. (Tr. 530) The Union filed unfair labor practice charges in the fall of 2014 and a complaint and notice of hearing issued in that case. That matter was subsequently settled by the parties, wherein the Respondent agreed to, *inter alia*, recognize and bargain in good faith with Local 284, and if an agreement was reached, to sign a document containing that agreement. (Jt. Exh. 1; Stip. Exh. 2) That settlement was not joined by the General Counsel, but it was subsequently approved by Deputy Chief Administrative Law Judge Arthur Amchan on December 3, 2014. (Stip. Exh. 2, Tr. 533) As part of the settlement, the parties agreed that by May 1, 2015, if no agreement had been reached, the decertification petition would be unblocked and processed by the NLRB.

2. The parties resume bargaining for a Local 284 collective-bargaining agreement in January 2015 and the bargaining sessions from January 20 to April 17, 2015

Pursuant to the settlement, bargaining resumed with Local 284 on January 20, 2015. During that time period, Respondent was also bargaining with Local 377 for an initial collective-bargaining agreement in Youngstown. In addition, Local 20, Local 293, and Local 957 had collective-bargaining agreements that were due to expire in February and March 2015, and Local 1199 had a collective-bargaining agreement that was set to expire in 2016. Thus, the Respondent was simultaneously negotiating with Local 20 in Toledo, Local 293 in Cleveland, Local 377 in Youngstown, and Local 957 in Dayton.

At the time the Local 284 negotiations broke off in December 2014, the Union’s bargaining committee consisted of individuals from Local 284. However, because the negotiations for Locals 284 and 377 were not going well, and knowing that there were three collective-bargaining agreements coming up for negotiations, the Ohio Conference of Teamsters became directly involved in the negotiations for those locals, and the International Brotherhood of Teamsters (the “International” or “IBT”) was also enlisted to assist and participate in the negotiations. This was the first time the Teamsters incorporated a state-wide approach to the bargaining of the local contracts, and where representatives from the various locals were present at the bargaining sessions for Local 284 and other locations where bargaining was taking place. (Tr. 783.)

Thus, the negotiations for the Local 284 collective-bargaining agreement took on a structure that was different from the 2013 to 2014 bargaining—one which included the participation and influence of the Ohio Conference of Teamsters and the International Brotherhood of Teamsters, as well as representatives from the other locals at the sessions. (Tr. 147–149.) Specifically, Counsel John Doll became the chief negotiator for Locals 284 and 957 in January 2015. Ohio Conference of Teamsters Beverage Division Chairman and Local 1199 Secretary-Treasurer Randy Verst and Local 20 Business Trustee Martin Jay also became involved in the negotiations on

behalf of Local 284. Representatives from other locals also regularly attended the Local 284 bargaining sessions, such as Local 293 Principal Officer Max Zemla, Local 293 Recording Secretary Bruce Osborne, Local 277 Representative Steve Manzino, and Local 957 Representatives Darrell Paschal, Dan Webb, and Allen Weeks. Various representatives from other locals were also involved in separate negotiations for Local 293 in Cleveland, Local 20 in Toledo, Local 957 in Dayton, and Local 377 in Youngstown, which took place from January 2015 to the end of April 2015. (Tr. 150–152.)

Respondent Counsel Craig Brown served as the Respondent's chief negotiator from the start of the negotiations in April 2013, and Respondent's Vice President and General Counsel Brooke Hice also attended bargaining sessions on behalf of the Respondent. Prior to commencing negotiations on January 20, 2015, Brown sent Doll a letter describing the status of the negotiations that had ended in April 2014. (Tr. 544, 554.) In that letter, Brown identified some formal TAs reached by the parties and approximately seven articles upon which conceptual agreement was reached in April 2014 based on package proposals that had been exchanged. (Tr. 554–555.) Brown also identified the three unresolved issues, consisting of wages, health care, and union security. (Tr. 555.) Doll did not respond, but in the January 20 bargaining session, Doll advised Brown that the Union would not recognize the conceptual agreements because they were part of package proposals, and because the parties had not agreed on all the terms of the packages, it was permissible to revert to earlier bargaining positions. (Tr. 556–557.) With the Union's position, the unresolved issues then included wages, health care, union security, duration, management rights, grievance/arbitration, no strike/no lockout, and zipper clause. (Tr. 558–559.)

After Doll became the chief negotiator for Local 284, the bargaining sessions between the Respondent and Local 284 occurred on January 20, February 11 and 19, March 17, April 8 and 9. It is undisputed that the parties remained rigid in their positions on the larger issues such as union security, management rights, no lock out, and contract duration, and that very little progress had been made in those bargaining sessions. Brown testified that in a bargaining session on April 17, attended by President/Chairman of the Ohio Conference of Teamsters Bill Lichtenwald and Doll, Lichtenwald stated that it was the intention of the IBT and the Ohio Conference of Teamsters to force Respondent to accept union security for the Local 284 unit in Columbus. (Tr. 560.)<sup>4</sup> However, in that bargaining session on April 17, Local 284 made a proposal which Brown described as “very serious.” (Tr. 41, 145.) Jay testified that Brown stated that it was an “important package” and that the Union was working in a good direction. (Tr. 29.2) Brown informed Doll that he would review the proposal with Hice who was not present at the negotiations that day.

3. The bargaining session on April 29, 2015 and the parties' subsequent agreement to pursue a “global settlement” with regard to Respondent's Ohio bargaining units

On April 29, at a Local 284 bargaining session, Brown re-

jected the Union's proposal it had made on April 17, and he made a counter offer on issues such as duration, management rights, grievance/arbitration, no strike/no lockout, health care, wages, and a zipper clause. However, union security for the Columbus unit remained a sticking point and the parties continued to bargain without much progress. Since the large committee format had not successfully narrowed the issues, the Union suggested a change in the format of the bargaining. (Tr. 567.) Doll asked to speak with just Brown, Jay and Verst away from the bargaining table and the committees. In this “subcommittee” the four of them had an off-the-record discussion, where Doll suggested Union security in exchange for the Union proceeding with the decertification election in Columbus. (Tr. 569–571.) If the Union was voted in, they would have a collective-bargaining agreement, and if the Union was voted down, there would be no contract and the Union would be decertified.

The testimonies of Doll and Jay differed from Brown and Hice as to whether discussion of a global settlement occurred in that April 29 session. Doll and Jay testified that the discussion took place on April 29 while Brown and Hice testified that they were discussed in a subsequent telephone conversation on May 11. Jay testified that in the April 29 session, elements of a global settlement were discussed because Brown proposed different expiration dates for the various locals and he informed the Union that the Respondent did not want all the agreements to expire on the same date. Jay also testified that Brown also mentioned that Respondent wanted the corporate campaign to be suspended, Local 377 to withdraw its charges, and Local 284 to withdraw the unfair labor practice charges and let the decertification go forward. (Tr. 346–354.) Jay testified that the April 29 session ended with an understanding of the terms of a global agreement and Brown stated “he wanted to tie up loose ends prior to giving Local 284 a collective-bargaining agreement,” and the Union agreed to that approach. (Tr. 364.)

While the operative facts of this case are essentially undisputed, on occasions where the testimony of the General Counsel's witnesses differed from that of the Respondent's witnesses, such as in this instance, as the finder of fact, I must determine the credibility of these witnesses. Credibility determinations may rely on a variety of factors, including the context of the witness' testimony, the witness' demeanor, the weight of the evidence, established or admitted facts, reasonable inferences that may be drawn from the record as a whole, and the inherent probabilities of the allegations. *Double D Construction Group*, 339 NLRB 303, 305 (2003); *Daikichi Sushi*, 335 NLRB 622, 623 (2001) (citing *Shen Automotive Dealership Group*, 321 NLRB 586, 589 (1996)), enfd. 56 Fed. Appx. 516 (D.C. Cir. 2003). Credibility findings need not be all or nothing propositions. Indeed, nothing is more common than for a judge to believe some, but not all, of the testimony of a witness. *Daikichi Sushi*, 335 NLRB at 622; *Jerry Ryce Builders*, 352 NLRB 1262, 1262 fn. 2 (2008), citing *NLRB v. Universal Camera Corp.*, 179 F.2d 749, 754 (2d Cir. 1950), revd. on other grounds 340 U.S. 474 (1951). Accord: *General Fabrications Corp.*, 328 NLRB 1114, 1114 fn. 1 (1999), enfd. 222 F.3d 218 (6th Cir. 2000). See also *J. Shaw Associates, LLC*, 349 NLRB 939, 939–940 (2007).

My overall observation during the trial was that Respondent

<sup>4</sup> This testimony was not disputed.

witnesses Brown, Hice, Neece, and Oakes were very credible in their testimony and demeanor, and that they testified in a convincing, straightforward, and consistent manner in which they displayed an accurate recollection of the details of the events. Specifically, I found Brown displayed very good recall of the events and he testified about those events in a sincere and consistent manner. While I find that Brown was particularly persuasive, I further find Neece, Oakes, and Hice provided clear, detailed, and mutually corroborative testimony with regard to what transpired during the negotiations between the parties. On the other hand, General Counsel witnesses Doll, Jay, Verst, and Crawford testified in a less convincing manner. At times, Doll's testimony appeared forced and self-serving. Jay, who had to be directed to answer some questions on cross-examination (Tr. 385–386.) was evasive with regard to whether he was aware that Brown and Doll had exchanged different drafts of the global agreement between May 26 and June 8 (Tr. 375–379), and when questioned about whether the terms of the global agreement had taken effect. (Tr. 393–395.) In addition, while Verst and Crawford were not evasive in their testimony, I nevertheless find their testimony less reliable because they displayed some difficulty recalling the specifics of certain discussions that occurred between the parties. (Tr. 427–428, 433–434, 439–441.) Therefore, in those instances where the testimony of the Respondent's witnesses conflicts with that of the General Counsel's witnesses, I fully credit the testimony of the Respondent's witnesses.

Specifically, with regard to when the parties started to discuss a global settlement agreement, Jay's notes for the April 29 bargaining session made no mention of a global settlement or its elements on that date. (Tr. 367.) In addition, the evidence supports the testimony of Brown and Hice that the global settlement approach was discussed after April 29. In this connection, Hice testified that when the Union proposed on April 29 that it wanted union security in exchange for a decertification election in Columbus, she took that idea back to her "executive team" when she met with them on a date sometime thereafter, and the Respondent's executives rejected that offer. (Tr. 787.) Hice further testified it was in that meeting with the executives where they determined the Respondent was not going to make a deal only in Columbus, and that the executives determined there needed to be a "global deal" involving all the cities and including the corporate campaign and the Youngstown decertification where they "wanted everything to be resolved." (Tr. 788–789.)

Besides the fact that Hice and Brown's testimonies indicate the idea for a global agreement occurred after the April 29 meeting, the documentary evidence also supports that assertion. The record establishes that in an email from Brown to Doll on May 11, 2015, at 3:36 p.m., Brown indicated that he left Doll a voice mail message and was preparing a letter to him with the Respondent's response, but he had questions regarding the Union's proposal that may affect the Respondent's decision, and he asked for Doll to contact him to discuss it. (R. Exh. 1.) On May 12, Doll forwarded Brown's email to Local 284 Representative Paul Suffoletto (with copies to other Local 284 officials and representative of Locals 1199, 293, 20, and 957) informing them that he received the email from Brown and spoke

to him on May 11, wherein Brown rejected the April 29 proposals, but that Brown indicated "the Company would consider a 'global' proposal from all four locals on the following terms, if the Locals would make a proposal to the Company." (R. Exh. 1.) In the email, Doll mentioned some of the terms that would become the global settlement package, which included Local 284 agreeing to let the decertification proceed and the Company agreeing to union security for Local 284, Locals 20 and 957 agreeing to contract extensions to July 7, and Local 377 agreeing to withdraw challenges and objections to the decertification election in Youngstown so that the votes could be counted. Doll asked the recipients of the email to review those terms so a response could be provided to the Respondent. (R. Exh. 1.)

Thus, I find that the credible testimonies of Brown and Hice are supported by Doll's email which establishes that the idea of pursuing a global agreement was discussed in detail and forged on May 11, 2015. Regardless of when it occurred however, there is no dispute on the content of the discussions. Both parties agreed to pursue a "global settlement" in addition to the Local 284's agreement, which would be contingent upon a global agreement. (Tr. 365, 372.) Brown testified that the Respondent did not want to provide union security for Local 284 in exchange for the decertification vote in Columbus as Doll had requested, where there were other issues left unresolved with the Teamsters at its other locations. In May 2015, the collective-bargaining agreements for Local 20 in Toledo, Local 293 in Cleveland, and Local 957 in Dayton had expired and the employees were working without contracts; Local 293 actually reached a tentative agreement in Cleveland, but the International Brotherhood of Teamsters Beverage Division would not allow for the required approval of that contract before the members could vote to ratify that agreement;<sup>5</sup> Local 377 had a decertification election held and unfair labor practice charges had been filed to block the counting of the ballots; and the International was in the course of a corporate campaign against the Respondent where it was leafleting its customers and suppliers, including the February 2015 leafleting of the National Hockey League All Star game in Columbus. Brown therefore proposed that Local 377 withdraw its unfair labor practice charges and objections to the decertification election in Youngstown so that the ballots could be counted and a determination could be made on whether Local 377 would be decertified. Brown proposed that the International approve the tentative agreement with Local 293 in Cleveland so that the membership there could vote to accept that tentative contract. Brown also proposed extension agreements to the Locals 957 and 20 collective-bargaining agreements, and an end to the International "corporate campaign," which, at the request of Local 284, was being waged against Respondent to exert pressure on the Respondent by leafleting and protesting to the Respondent's customers. (Tr. 169–171.) Thus, the record establishes that the April 29 session ended without agreement, but that the parties subsequently reached agreement on or around May 11 to pursue a global settlement or package proposal, and Doll testified that ". . . from the Union's perspective, we knew that to get a deal, that was going to be a global." (Tr. 166–167.)

<sup>5</sup> Tr. 174–175.

4. The May 26, 2015 bargaining session over the Columbus collective-bargaining agreement and the global settlement

On May 26, the parties met at the Local 284 office to continue bargaining for a collective-bargaining agreement in Columbus and for a global settlement. Brown and Hice were present for the Respondent and Doll, Jay and Verst attended on behalf of Local 284. The parties discussed the global concepts and Brown talked about the Respondent's goals as far as the expiration dates for the contracts and he discussed the expiration dates for all of the local contracts. (Tr. 431.) Brown stated that Respondent's core objective was not to have coterminous contract expiration dates for Dayton, Cincinnati, and Columbus because they were significantly larger operations covering the southern half of the state. However, he stated that Cleveland and Toledo could expire in the same year. (Tr. 590–592.) Brown also stated that Respondent wanted the corporate campaign to end, and the Union agreed to request that the International stop its corporate campaign, and stated that if the request was made, the International would honor it. Brown proposed that the Teamster agree not to organize certain non-union locations, but Verst and Jay immediately replied that they would not consider that proposal. For Local 284, Brown proposed a 2-year contract, but Doll refused. (Tr. 60.) The Union proposed an expiration date of November 1, 2018, for Columbus and Respondent proposed an expiration date of February 2019. The Respondent agreed that the Union could have union security in the Columbus contract if the Union agreed to withdraw its challenges to the decertification petition and allow that election to go forward. The parties agreed to extend the contracts for Local 20, 293, and 957. The Respondent requested that Local 377 be a part of the global settlement by withdrawing its objections and unfair labor practice charges, but the Union responded that Local 377 would not be a part of it.

The bargaining notes of all the parties reflect that by the end of the day, 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. Brown testified that there was an understanding on principle or a framework, but the details of the agreement had to be drafted. (Tr. 606.) Brown agreed to memorialize the agreement in writing and no additional bargaining sessions were scheduled for Local 284.

5. The parties issue negotiation updates or letters to the employees/members

While Doll testified that the parties had an agreement on the Local 284 collective-bargaining agreement and a global settlement (Tr. 73), Brown testified that “what we had was an understanding in principle on the framework, if you will, the principle components of a global settlement agreement.” (Tr. 606.) It is undisputed that nothing that was discussed had been reduced to writing, and the parties did not sign off on or initial any tentative agreements. (Tr. 178, 362.) As Jay testified, “we had nothing in writing on the 26th” (Tr. 362). It is equally undisputed that the Local 284 collective-bargaining agreement was contingent upon the global settlement or agreement. (Tr. 178;

362.)

Following that bargaining session and prior to Doll seeing a draft of the global settlement agreement and the terms of the global agreement being reviewed and finalized by the parties, the Union issued a “Negotiation Update” dated May 26, 2015, to the unit employees stating that a tentative agreement had been reached for the Columbus bargaining unit on May 26. (Tr. 227–229; GC Exh. 7.) The Negotiation Update touted aspects of the Local 284 agreement such as guaranteed wage increases and its effective date through February 9, 2019. That document, however, essentially campaigned for the members' support in the anticipated decertification election, but made no mention of the global settlement agreement.

Brown and Hice both testified that they believed the Union Negotiation Update to employees was premature and that there was no agreement on all the terms. (Tr. 804.) Nevertheless, Hice drafted her own handout to employees, and Brown reviewed it and modified it prior to its issuance. (Tr. 611; 833–834.) That handout, dated May 28, 2015, and signed by Respondent Executive Vice President and General Manager Greg Maurer, states that he had “great news” to report that the parties reached a “Tentative Agreement” for a first contract in Columbus. (Stip. Exh. 6.) In that handout, the Respondent did not mention the global settlement agreement, nor did it discuss the details of the terms of the Local 284 agreement. Instead, like the Union, the Respondent focused the handout on its own campaign to prevail in the anticipated decertification election. In that connection, the handout explained that the tentative agreement would provide for a vote in the decertification election to decide if the Union would continue to represent them, and if the majority of the employees voted no in the decertification election, the contract negotiated with the Union would be meaningless and the Union would no longer represent them. Brown testified that the global settlement and its details were not discussed in the letter because it involved the other facilities and Hice also testified that the global settlement was not discussed because the employees did not know about it. (Tr. 612–613, 807.)

6. Brown provides Doll with a proposed Global Settlement Agreement and a draft of the Local 284 collective-bargaining agreement on May 29, and a revised Global Settlement Agreement on June 2, 2015

In an email dated May 29, 2015, Brown provided Doll with a copy of “a proposed Settlement Agreement and Release incorporating the terms negotiated on Tuesday, May 26, 2015” which had attachments consisting of the global settlement agreement and release and a draft of the Local 284 collective-bargaining agreement. (Stip. Exh. 7.) In an email from Brown to Doll on June 2 at 11:33 a.m., Brown attached a revised “proposed Settlement Agreement & Release” wherein he corrected a “mistaken reference” to “Local 20” in paragraph 6 that should have referenced “Local 957.” (Stip. Exh. 8.)

The Respondent's revised proposed Global Settlement Agreement provided to the Union on June 2, 2015, stated as follows:

### Settlement Agreement and Release

Dayton Heidelberg Distributing Co. (the "Company") and the International Brotherhood of Teamsters (the "International Union"), the International Brotherhood of Teamsters Local Union No. 284 ("Local 284"), the International Brotherhood of Teamsters Local Union No. 957 ("Local 957"), the International Brotherhood of Teamsters Local Union No. 20 ("Local 20"), the International Brotherhood of Teamsters Local Union No. 293 ("Local 293") and International Brotherhood of Teamsters Local Union No. 1199 ("Local 1199") (collectively, the "Unions") hereby enter into this Agreement and agree as follows:

1. Contingent 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 in Region 9 of the National Labor Relations Board ("Region 9") as more fully set forth below in paragraph 2 of this Settlement Agreement. A true and accurate copy of the initial contingent Collective Bargaining Agreement is attached hereto as Exhibit 1.

2. The Company, the Petitioner and Local 284 will enter into a Consent Election Agreement in Case No. 09-RD-134933 for the purpose of conducting a decertification election among a bargaining unit of drivers and warehouse employees as defined in Case No. 09-RC-095648. This Settlement Agreement is contingent upon the Regional Director for Region 9 approving the Consent Election Agreement without conducting any pre-election hearings or investigative proceedings and scheduling the decertification election to occur on or before July 3, 2015. The International Union and Local 284 further agree to waive any and all pre-election challenges, objections or charges and further agree not to challenge the decertification petition filed in Case No. 09-RD-134933 on the grounds of authenticity, sufficiency or raise any allegations of unlawful conduct by the Company or the Petitioner in support of the decertification petition or petitioners; hereby expressly agreeing that the petition is authentic and sufficient to support the decertification petition and that neither the Company nor the Petitioner engaged in any unlawful conduct in support of the petition or the petitioners.

3. Local 284 agrees to withdraw with prejudice any and all pending unfair labor practice charges and agrees not to file or re-file any unfair labor practice charges against the Company regarding any events which occurred prior to the execution of this Agreement.

4. The International Union and Local 284, Local 957, Local 20, Local 293 and Local 1199 agree they will immediately suspend any and all current corporate campaign activities directed at the Company, including any negative publicity through all media including social

media and all negative communication or approaches regarding the Company directed to the Company's current and potential customers and suppliers and further agree to refrain from engaging in any and all future corporate campaign activities directed at the Company, including any negative publicity through all media including social media and all negative communication or approaches regarding the Company directed to the Company's current and potential customers.

5. Local 20 agrees to extend its current Collective Bargaining Agreement with the Company through July 10, 2015, by entering into the Extension Agreement which is attached hereto as Exhibit 2. Further, Local 20 agrees that any new Collective Bargaining Agreement between Local 20 and the Company will expire April 1, 2019.

6. Local 957 agrees to extend its current Collective Bargaining Agreement with the Company through July 10, 2015, by entering into the Extension Agreement which is attached hereto as Exhibit 3. Further, Local 957 agrees that any new Collective Bargaining Agreement between Local 957 and the Company will expire March 1, 2018.

7. Local 293 agrees to extend its current Collective Bargaining Agreement with the Company through July 10, 2015, by entering into the Extension Agreement which is attached hereto as Exhibit 4. Further, Local 293 agrees that any new Collective Bargaining Agreement between Local 293 and the Company will expire April 1, 2019.

8. Local 1199 agrees that any new Collective Bargaining Agreement between Local 1199 and the Company to replace the Collective Bargaining Agreement expiring April 16, 2016, will expire in April 2020.

9. The International Union agrees that it will approve the Tentative Agreement between the Company and Local 293 and that Local 293 will be permitted to proceed to ratification.

10. The Unions, without limitation, hereby irrevocably and unconditionally release and forever discharge the Company, its board of directors, officers, employees, representatives, shareholders, attorneys, parents, subsidiaries, affiliates, insurers, successors, and agents ("Releasees"), from any and all charges, complaints, claims, causes or action, debts, damages, and liabilities of any kind or nature whatsoever, both at law and equity, known or unknown, suspected or unsuspected, arising from conduct occurring on or before the date the Unions execute this Agreement ("Release"). The Unions further understand that through this Release, they are releasing any claim any of them may have for any relief whatsoever, including monetary, injunctive, or declaratory relief, whether direct or indirect, whether under federal law or the law of any state, whether brought by it or its own behalf, or on behalf of any other party, governmental agency or otherwise, and further agree not to institute any claim for damages, injunctive relief or any other remedy through any administrative, grievance or legal proceedings against the Company. The

Unions further understand that through this Release they are waiving and releasing any and all rights to monetary damages or other legal or injunctive relief awarded by any governmental agency related to any charge or other Claim arising out of or occurring on or before the date the Unions execute this Agreement. (Stip. Exh. 8)

The global settlement agreement then provided signature sections for the Respondent, the IBT, Local 284, Local 957, Local 20, Local 293, and Local 1199. Brown testified that he believed the drafts reflected the understandings reached in the May 26 meeting. (Tr. 615) For example, he testified that he included the IBT as a party because it was orchestrating the corporate campaign that would cease as a result of the global settlement. (Tr. 617–619.)

7. Doll takes issue with Brown's proposed Global Settlement Agreement in an email dated June 3, 2015

Doll responded to Brown with an email dated June 3 at 8:33 a.m. where he informed Brown that he was "still reviewing the proposed collective bargaining agreement" and would get back to him as soon as possible with any questions or concerns. However, Doll did inform Brown that the global settlement document that was initially sent, and the revised document that followed, did not comport to his understanding of the terms of the global settlement. Doll informed Brown that there were areas on which there had been no discussions and/or on which no agreement was reached on May 26. Specifically, Doll informed Brown that in the first (unnumbered) paragraph, Local 1199 was not to be part of any global agreement and Randy Verst participated in the negotiation sessions as Co-Chair of the Ohio Conference of Teamsters Beverage Division and not as a representative of Local 1199. For that reason, Doll stated that there was no agreement that Local 1199 should be included in paragraph 8 of the global settlement agreement. Doll stated that in paragraph 3, there was no agreement that the election on the pending petition would be conducted on or before July 3, 2015, and that there was no agreement that the IBT would be a party to the global settlement agreement. In paragraph 4, Doll asserted that there was no agreement to include the IBT and Local 1199. Doll also stated that there was no agreement on the expiration dates for the collective-bargaining agreements for Local 20 and Local 957 in paragraphs 5 and 6, respectively. Finally, Doll stated that there was no agreement that a release would be signed by "any party to the 'global' settlement proposal by the Company." Doll then asked that Brown forward a "word version" of the Company's proposed settlement agreement so he could submit a counter to Brown's document. (Stip. Exh. 9.)

8. The email communications between Brown and Doll on June 3 and 4, concerning their disagreement over what was agreed to on May 26, 2015

In an email from Brown to Doll dated June 3, 2015, at 3:55 p.m., Brown stated that he felt compelled "to respond on behalf of the Company to the serial misrepresentations and falsehoods contained in your correspondence." (Stip. Exh. 10.) Brown claimed that agreement had in fact been reached on the various matters Doll disputed in his June 3 email. Brown disagreed

with Doll's assertion that Local 1199 was not a party to the proposed global settlement agreement because Verst was present on behalf of Local 1199 and the parties knew the Respondent's stated core objective to avoid coterminous contract expiration dates, which involved Local 1199 and its contract with the Respondent. (Tr. 205–206, 622–623.) Brown therefore asserted his belief that Verst could act on behalf of Local 1199. (Tr. 624.) Brown also reiterated Respondent's proposed expiration dates for its other Ohio locations, demonstrating its core objective to avoid coterminous expiration dates in Dayton, Columbus, and Cincinnati. (Stip. Exh. 10, Tr. 625.) In his email, Brown stated that his draft constituted the Respondent's proposal for a global settlement and that differences with language and mutual understanding could be resolved. However, he also noted that if Doll chose to completely disregard the Respondent's stated objectives for entering a global settlement and other core substantive terms as identified in his email, they would be unable to resolve the dispute in that manner. (Stip. Exh. 10.)

In an email dated June 4 to Brown, Doll noted again that no agreement had been reached on May 26 for the expiration dates for the local unions other than for Local 284, and he asserted that Brown merely discussed those dates as part of Respondent's plan for negotiations with those locals. (Stip. Exh. 11.)

9. The bargaining session on June 8 in Dayton for a Local 957 contract and for the global settlement agreement

On June 8, a bargaining session was held in Dayton for the purpose of negotiating a collective-bargaining agreement for Local 957. Doll, Jay, and Verst were present for Local 957, and Brown and Hice were present for the Respondent. The smaller group actually had two meetings away from the bargaining table that day where they discussed the details of the global settlement agreement. In the first meeting, Doll again informed Brown that the IBT and Local 1199 would not be parties to the global agreement, and he explained that if Local 284 requested that the IBT stop its corporate campaign, it would stop. Doll also raised the issue that Respondent was required by law to permit voluntary payroll deductions for the IBT's political action committee in the union security clause (referred to as D.R.I.V.E.) since it permitted payroll deductions for other political action committees. Doll noted that he had not completed review of the Local 284 agreement, but noted that there was no language in the agreement regarding D.R.I.V.E. (Tr. 634.) Brown responded that the parties had not agreed to include language addressing a voluntary payroll deduction to D.R.I.V.E. Doll then stated that its inclusion was necessary if the Respondent allowed other voluntary contributions to PACs. (Tr. 634.)

Doll then sent Brown a counter proposal on the global agreement in the form of an email with an attached "Union's revised Settlement Agreement for the Company's consideration." (Stip. Exh. 13, Tr. 626.) The subject line of the email stated: "Local 284 Draft SA 6-8-15" and it included Doll's revision of Brown's global settlement draft. Doll revised this document after his discussion with Brown that morning, wherein he removed the IBT as a party to the global agreement, but declined to add Local 293 as Brown had requested. (Tr. 636–

638.) Paragraph 1, which was drafted and proposed by the Respondent, contained explicit language regarding the contingent nature of the Local 284 contract and it was unchanged by the Union. (Tr. 629, 814.) The Union proposed an “Execution Clause” that explicitly provides that the global settlement agreement, “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.) This Execution Clause was modified only to add Local 293 to it and it remained in every subsequent draft proposal of the global settlement agreement.

In the second subcommittee meeting on June 8, which occurred at 4:45 p.m., Brown raised the issue of Local 377. As mentioned above, there had been a decertification election held in Youngstown regarding Local 377. However, the ballots were impounded because there were unfair labor practice charges filed which blocked the processing of the petition. At some time between May 26 and June 8, the charges were dismissed and it became unblocked, and the ballots from the Local 377 decertification petition were opened and counted, revealing that Local 377 lost the election. In that afternoon meeting on June 8, Brown learned that Doll filed objections on behalf of Local 377 to the decertification election in Youngstown. Doll testified that Brown became very upset about the fact that he filed the objections. Brown then handed Doll a revised draft of the global agreement that was a counter to the proposal Doll had given Brown by email earlier that day. Brown also emailed that proposal to Doll at 5:17 p.m. that day, in which Brown added Local 377 as a party to the agreement. (Stip. Exh. 14.) This was the Respondent’s last counter proposal of the day, which corrected typographical errors in the prior draft and provided Respondent’s response to Doll’s counter proposal. (Tr. 654) The Respondent also added language requiring Local 284 to request that the IBT cease the corporate campaign. (Tr. 655–656, Stip. Exh. 14.) Brown specifically added the language in Paragraph 4 regarding the cessation of the corporate campaign to not only suspend it, but to also refrain from initiating all corporate campaign activities. (Tr. R. Exh. 9, Tr. 649–650.) The counter proposal also shows that Respondent rejected the Union’s counter proposal regarding the “all” and “in any way” language related to the corporate campaign and the removal of Local 377 from the global agreement. (Stip. Exh. 14, Tr. 656.) The meeting adjourned without an agreement and no TAs were initialed or signed. (Tr. 814–815) Thus, the Respondent and the Union went “back and forth” on the global agreement and exchanged drafts a couple of times that day. (Tr. 434.)

On June 9 and 18, the parties met to negotiate the Local 957 agreement in Dayton and only that agreement was discussed. There were no further scheduled meetings with Local 284 after the May 26 bargaining session in Columbus. From the time that the Union was provided Respondent’s draft proposal of the global settlement agreement on June 8 at 5:17 p.m. (Stip. Exh. 14) through the start of the day on June 19, the Union had not provided a response to Brown’s global settlement proposal.

10. The Local 957 negotiations on June 19 in Dayton where the smaller subcommittee discussed the global agreement

On June 19 the parties met again in Dayton to bargain for the Local 957 contract. There were full committee meetings and several separate smaller group meetings with Doll, Jay, and Brown (Verst and Hice were not present). In a smaller group meeting in the beginning of that day of bargaining, Brown asked Doll for a counter proposal to Respondent’s June 8 proposal for a global agreement (Stip. Exh. 14.) Doll testified that at that time of Brown’s request, the global agreement “had not been finally agreed to.” (Tr. 266–267.) Brown spoke initially with Jay that morning and conveyed to him the need for a response to his global settlement proposal and his concern for a possible strike by the Teamsters. Brown’s message to Jay was that he hadn’t heard from him on the global agreement, and the Respondent believed the Teamsters were planning a strike for July 4 to create leverage. (Tr. 662.) Brown also conveyed that he was going to assume the Union did not want to go forward on the global agreement, and the Respondent was going to prepare to spend a lot of money on security for the strike. (Tr. 662–663.) Brown testified that Jay informed him that the Union would like to get a global settlement, and that the Union’s failure to respond should not be “misread” because the Union would like to “do this if we can” and that they would “turn [their] attention to it.” (Tr. 663.)

During a caucus, at 11:21 a.m. Brown sent an email to Doll where he conveyed that same message and his desire for the Union’s response to his global settlement proposal and his concern for an impending strike. (Tr. 267; 661–662.) In that email, Brown informed Doll:

I shared this with Martin Jay, and I am sure he told you, but without a Global Settlement very soon (early afternoon at the latest) the Company will be forced to make very expensive decisions to prepare for likely picketing next week. If that happens, settlements of any kind along the lines we have been discussing become increasingly unlikely. So, if the Union remains interested in a Global Settlement, now is almost too late to have those discussions. You have had the Company’s proposal for 10 days, and frankly, some in the Company believe the lack of response is intentional because the Union is not genuinely committed to a Global Settlement and is using the process to delay and pressure the Company. This has eroded support for a Global Settlement in some quarters within the Company. (GC Exh. 9.)

The record is devoid of any evidence that either Doll or Jay responded to Brown with the assertion that the parties had already reached an agreement on a global settlement agreement on May 26. Instead, Doll emailed a global agreement counter proposal to Brown entitled “Local 284 Proposed SA—June 19, 2015,” which Doll had prepared. (Stip. Exh. 15.) Doll’s counter proposal added in a provision from Brown’s June 8 proposal about Local 293 being permitted to vote on the tentatively agreed upon contract, but omitted reference to Local 377. (Stip. Exh. 15.) Brown, Doll and Jay discussed the Union’s counter proposal. The proposal from Local 284 made modifications to the Respondent’s last proposal of June 8. (Tr. 665, 671.) Doll proposed a July 17 date to finalize a consent election agreement

regarding the decertification election for Local 284. In paragraphs 2 and 4, the Union rejected the Respondent's proposal regarding limits to and the cessation of the corporate campaign, specifically those directed at current and potential customers and suppliers, and requiring Local 284 to refrain from corporate campaign activities (in addition to suspending them). (Tr. 666–667.) Doll also rejected the proposal that the corporate campaign cease until the certification of the decertification election results and proposed again that the cessation only last until the date of the decertification election. (R. Exh. 12, Tr. 676.) Doll again added the language: “all lawful conduct” and “in any way” to broaden permissible election campaign conduct, which the Respondent had previously rejected because it suspected they created loopholes for the Union to continue the corporate campaign. (Tr. 667.) Finally, Doll proposed extending the contracts with Local 20, Local 293, and Local 957 to July 17 and removed the Respondent's proposed automatic 7-day extension beyond the date of a decertification election for Local 284 if the election occurred after the extensions expired. (Tr. 667–668.) While Doll's 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 election. (Tr. 665–668.)

Doll testified that Brown stated “that's okay” to the various changes that Doll made to Brown's June 8 draft. (Tr. 88) However, Brown made changes to Doll's proposal and he indicated that he would run the proposal by Hice to get her approval. He indicated that he would let them know if there was a problem. (Tr. 319–321.) Brown testified that he made some minor edits to the document, but that his proposal about the Teamster's corporate campaign being suspended was a substantive change as it was a core issue for the Respondent. (Tr. 676–677.) In addition, Brown testified that he believed there was no meeting of the minds on the terms of the global agreement as he had not yet conferred with his client to approve the changes and the differences on his copy of the counter proposal had not been accepted. (Tr. 679–680.)

The parties then turned to the Local 957 contract. (Tr. 680.) Throughout the day on June 19, the Respondent had been proposing a 3-year contract for Local 957 expiring on March 1, 2018, and the Union had been proposing a 4-year contract expiring in 2019. (Tr. 89.) Respondent even offered higher wages for Local 957 unit employees if they would agree to a 3-year contract, but Local 957 rejected the additional money and insisted on having a 4-year contract.

Brown testified that he suspected the Ohio Conference of Teamsters was lining up expiration dates for the various collective-bargaining agreements for the purpose of bargaining leverage, and that the Respondent was opposed to those expiration dates. (Tr. 683) Local 957 Chief Negotiator Darrell Paschal spoke to Brown that day about the fact that he heard Brown did not believe Local 957 wanted a 4-year contract. (Tr. 685–686.) Brown told him that he doubted it because it was against Local 957's best interest. However, Paschal assured Brown that Local 957 wanted a 4-year agreement and that it had nothing to do with Columbus which tentatively had a 4-year expiration date, adding “why should [Local 957] sacrifice 1 year of labor peace for Columbus?” (685–686) The Local 957 negotiating commit-

tee also came to the room Brown was in and informed him that they wanted a 4-year agreement to 2019 for Local 957. Neece testified that the Union committee, besides stating that they wanted a 4-year contract, also stated that the Respondent should change the expiration date of another city's contract. (Tr. 732–733.)<sup>6</sup>

Brown left to talk to Hice on the phone, informing her that Local 957 had to have a 2019 contract in Dayton. Brown, Respondent Wine Operations Manager Terry Neece, and Beer Operations Manager Brian Oakes testified that when they spoke to Hice by phone that day, she conveyed that either Columbus or Dayton could have a 4-year contract, but not both of them. Hice also testified to that fact that she informed Brown that if the Teamsters wanted a contract in Dayton to 2019, then the Columbus contract would have to be changed to 2018.

Towards the end of the negotiations on June 19, Jay informed Brown that there would be no Local 957 Dayton contract if the global settlement agreement was not finalized

Brown testified that while he was in the process of putting together the Respondent's final proposal for the Dayton contract, he was in the hallway of the Local 957 offices with Neece and Oakes and he saw Jay in the hallway lounge area sitting on a couch. Jay asked Brown if he had heard anything from Hice on the Union's global settlement proposal and Brown stated that he had not. Jay then told Brown that “we have to wrap up this global settlement,” and that without a global settlement, there would be no contract in Dayton. (Tr. 692–693.) Brown responded that he understood. Both Neece and Oakes corroborated Brown's testimony in this regard, with Neece and Oakes specifically testifying that Jay told Brown that if they did not have a global settlement done, there was no contract for Dayton. (Tr. 736–738, 575–759.)

#### 12. Brown informs Local 957 of the risks for coterminous contracts

Thereafter, Brown returned to the Union committee and told them “I got you your four-year deal,” (Tr. 90, 322) and he presented the Union with a last, best and final offer for Dayton that included an expiration date of March 2, 2019. (Tr. 91, GC Exh. 10) As Brown presented the written version contract to the Union committee, he stated that he was making the proposal for a 4-year contract in Dayton knowing that the expiration date lined up with some of the other contracts, and he was taking a risk in doing this, but stated that he believed the Teamsters would operate in good faith and that Respondent would not again experience the problems that it had experienced in this round of negotiations. (Tr. 92, 448.)

Brown credibly testified that the Respondent agreed to extensions of the three collective-bargaining agreements in Dayton, Toledo, and Cleveland all expiring simultaneously in 2019, and that he may have made such a statement about risks of those contracts expiring simultaneously. Oakes credibly testi-

<sup>6</sup> This testimony was also corroborated by Oakes, who testified that the Union committee conveyed that they had a “mature bargaining relationship” where they always had a 4-year collective-bargaining agreement, and that “if somebody needs a three-year contract, give it to somebody else.” (Tr. 755.)

fied that Brown stated the Respondent was at risk lining up contracts that would be expiring at the same time, and he was specifically referring to the Dayton contract with the Cleveland and Toledo contracts. (Tr. 757–759.) In addition, Brown testified that he assumed from comments Doll made during that session that the Teamsters would agree to a Cincinnati contract which expired in 2020, and he had approval from Hice to flip the Columbus expiration date from 2019 to 2018. (Tr. 695.)

13. At the conclusion of the June 19 bargaining session, Brown revised the expiration date of the contract proposal for Local 284 in Columbus to avoid coterminous expiration dates

Thus, after presenting the Local 957 contract, Brown told Doll that he needed to talk to Doll and Jay separately and asked them to accompany him to a separate conference room. Doll and Jay were accompanied by Doll’s law associate, Matthew Crawford, and they met with Brown. Brown told them that there was an important component to the overall global agreement that concerned Local 284, and he needed to draw their attention to it. Brown informed them that since Dayton was given a 2019 contract, the Respondent modified its position on the Columbus contract by going to a 2018 expiration date. (Tr. 700.) At that time, he gave them a sheet of paper which reflected an expiration date to the tentatively agreed to Local 284 contract to February 9, 2018, which was a 3-year contract. Doll and Jay informed Brown that the parties had an agreement on the Columbus contract and that he could not change the expiration date, and Jay informed Brown that he was renegeing on their agreement. Brown became angry and slammed his hand onto the table and began cursing at the Union representatives, maintaining that the Respondent could change its proposal for the duration of the contract. Brown then pulled the Respondent’s representatives out of the bargaining and the Local 957 negotiations ended.

Shortly thereafter, Brown returned to talk to Doll and Jay, and he apologized for his outburst, but he informed them that the duration for Local 284 could not be a 4-year deal. (Tr. 328.) Jay testified that Brown told them that Local 957 could have a 4-year contract if Local 284 took a 3-year deal, but Jay’s response was “no, it’s 4 years for both. (Tr. 329, 705.)

14. The events following June 19, 2015

Following the June 19 bargaining session, the Teamsters handbilled Respondent’s customers on June 22. In addition, on June 22, Doll emailed Brown and informed him that Local 957 had ratified the collective-bargaining agreement and that the global settlement agreement needed to be completed and he requested that Brown forward the document to he and Jay. (Stip. Exh. 17.)

In an email dated June 24, Brown replied to Doll’s email stating that there was not a global settlement since Local 284 had not agreed to change the expiration date of its collective-bargaining agreement as proposed on June 19. (Stip. Exh. 18.) Brown noted that the Respondent had withdrawn provisions in the global settlement which would have staggered the expiration dates for the various locals in lieu of a strategy to bargain staggered expiration dates with the various locals, and Brown stated that it appeared the parties “may be at impasse.” (Stip. Exh. 18.)

In an email dated June 25, Doll responded to Brown, recounting his version of the events of May 26 and June 19. (Stip. Exh. 19.) In an email dated July 2, Brown responded to Doll by recounting his version of events. (Stip. Exh. 20) Brown agreed that the parties left the May 26 meeting with “an understanding that they had negotiated a conceptual Global Settlement.” (Stip. Exh. 20, p. 6.) On page 3 of his email, Brown recounts that when he proposed a 2-year contract for Local 284, he pointed out the need to stagger the expiration dates in Columbus, Cincinnati, and Dayton and expressly listed “the anticipated expiration dates [for Cincinnati, Dayton, Cleveland and Toledo].” Brown then expressed that Respondent had no interest in entering into a global settlement if Local 284 was rejecting its new proposal for a 3-year contract in Columbus. (Stip. Exh. 20, p. 9.)

On July 11, Local 284 voted to ratify the contract for the Columbus bargaining unit. Brown informed Doll that he should not submit that agreement for ratification because it had been withdrawn. (Tr. 283.) On July 13, Doll advised Brown in writing that the agreement had been ratified and that the Union was prepared to enter into a stipulated election agreement on the decertification petition as soon as Respondent signed the agreement. (Stip. Exh. 24.) The global settlement agreement was never presented to the Respondent for signature, and it was never signed. (Tr. 711.) In addition, the Respondent never signed the ratified Columbus contract, and Respondent reverted to its position on April 29, 2015, prior to its discussions of a global agreement. (Stip. Exh. 23 and Stip. Exh. 25.)

#### *B. The Contentions of the Parties*

The General Counsel and the Union allege that on May 26, the parties reached a meeting of the minds on the terms of a collective-bargaining agreement for Local 284 as well as for a global agreement. The General Counsel argues that the testimony and bargaining notes of all those involved demonstrate that by the end of the day, the only remaining issues were the wage schedule and whether Local 377 would be a party to the agreement. Those issues were then resolved when the Union agreed to the Respondent’s proposal on wages and the Respondent agreed to go forward without Local 377, and no additional bargaining sessions were scheduled for Local 284.

The General Counsel further argues that even though Brown and Hice testified that they were dismayed that the Union issued its negotiation update prematurely, the Respondent’s update to the employees did not caution employees that the agreements had not been finalized. Likewise, the Union argues that Respondent’s update to employees shows that Respondent was “advising the bargaining unit employees that a ‘meeting of the minds’ had been reached on the ‘global settlement’ that incorporated the agreement between Respondent and Local 284 that a decertification election would be held without any further delay caused by the pending unfair labor practice charges.” (U. Brief at p. 17.)

In addition, the General Counsel and Union assert that when Brown reduced the agreements to writing, his draft of the Local 284 contract was exactly as the parties agreed. However, they argue that in his draft of the global settlement agreement and release, he added items that were “never discussed or agreed

to” in the May 26 bargaining session, specifically setting forth the expiration dates for the contracts of Local 957, 293 and 1199, adding the IBT as a party, adding Local 1199 as a party, setting a deadline for the decertification election, and adding a “release.” (GC Br. p. 13; U Br. p. 17.) Therefore, the General Counsel and the Union allege, as plead in the complaint, that the parties reached agreements on both the Local 284 contract and the global settlement agreement on May 26, and the Respondent thereafter never executed such agreements in violation of Section 8(a)(5) and (1) of the Act.

The General Counsel further argues that on June 19 the negotiations were “back on track” and Doll presented his proposal for the global which added in Local 293 as a party, provided that Local 293’s tentative agreement would be approved by the IBT for a ratification vote, and added a deadline for a decertification election for Local 284. The General Counsel alleges that Brown expressed agreement with the terms of the Union’s proposal, expressing a desire to make minor, non-substantive changes to the agreement and to run it by Hice for approval. However, the General Counsel asserts that just because minor terms were discussed by the parties and language modified after May 26 does not suggest that a meeting of the minds did not occur. Furthermore, the General Counsel asserts that when Brown proposed the 4-year Dayton contract and commented about the risk of agreeing to 4-year contracts at multiple locations, he “tacitly acknowledged that if the Dayton proposal were to be accepted, Respondent would be subject to 4-year contracts in both Dayton and Columbus.” (GC Brief p. 15) Thus, even though not plead in the complaint, the General Counsel and the Union argue that there was also a meeting of the minds on June 19 and the Respondent violated the Act by failing to sign that agreement.

The Respondent alleges that there was no meeting of the minds on the two alleged agreements, and even if there was a meeting of the minds on both documents, the explicit conditions were not satisfied to create a binding collective-bargaining agreement with Local 284. Furthermore, the Respondent alleges that even if the alleged collective-bargaining agreement could be considered independent from the proposed global settlement agreement, the Respondent lawfully withdrew its proposal on the agreement before it was accepted, approved and ratified. (R. Brief p. 1.) Based on these arguments, the Respondent argues that the General Counsel has not met the burden of showing that the Respondent refused to sign a contract reflecting the parties’ meeting of the minds, and that the complaint should be dismissed.

### C. The Law and Analysis

It is well established that the obligation to bargain collectively under Section 8(d) of the Act requires either party, upon the request of the other, to execute a written contract incorporating an agreement reached during negotiations. *H. J. Heinz Co. v. NLRB*, 311 U.S. 514 (1941). The Board has held however, that the obligation to execute a written contract arises only after a “meeting of the minds” has been reached on all substantive issues 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.*, 309 NLRB 1189, 1192 (1992); *Buschman Co.*, 334 NLRB 441, 442 (2001). The Board has also determined that it is the General Counsel’s burden of showing that the parties not only had the requisite “meeting of the minds” on the agreement reached, but also that “the document which the respondent refused to execute accurately reflected that agreement.” *Hempstead Park Nursing Home*, supra at 332; *Windward Teachers Assn.*, 346 NLRB 1148, 1150 (2006).

The Board has held that a “meeting of the minds” on all substantive issues depends upon the objective terms of the collective-bargaining 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). The Board has found that 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.” Id. In determining whether an agreement has been reached by the parties, the Board has held that it is not strictly bound to “the technical rules of contract law but is free to use general contract principles adapted to the collective-bargaining context.” *New Orleans Stevedoring Co.*, 308 NLRB 1076, 1081 (1992); citing *NLRB v. Electra-Food Machinery*, 621 F.2d 956, 958 (9th Cir. 1980). To prove a meeting of the minds, the General Counsel 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, it must be proven by the General Counsel 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).

In situations where the alleged agreement is reduced to writing, it is the General Counsel’s burden to show that the written agreement accurately reflects the parties’ alleged meeting of the minds. *Crittenton*, supra at 718; *Windward Teachers*, supra at 1150. The Board has held that in situations where there is reliance on a document to prove intent, the principles of contract law are applied to determine whether the parties reached a “meeting of the minds.” If the terms of the document are unambiguous, the parties’ “meeting of the minds” is based on objective terms of the contract rather than subjective understanding (or misunderstandings) of the terms by the parties. *Hempstead Park Nursing Home*, supra at 322–323. However, if the document contains terms that are ambiguous and the parties attach different meanings, a “meeting of the minds” is not established. In addition, if as a result of the ambiguity the misunderstanding is neither party’s fault or both parties are to blame, there is no “meeting of the minds” and that seeming agreement will not create a contract. Id. at 322–323.

I find that, for the reasons set forth below, the credible evidence and the undisputed documentary evidence establish that there was not a meeting of the minds with regard to the proposed global settlement agreement at issue in this case.

1. The parties chose to pursue a global agreement structure wherein the Local 284 agreement was contingent upon a global settlement agreement that involved local unions at other Re-

spondent locations in Ohio

In this case, to determine whether the parties had a “meeting of the minds” on the alleged agreements, both for the Local 284 contract and the global settlement agreement, the structure of the negotiations has to be taken into consideration. It is undisputed that when the Local 284 bargaining resumed in January 2015, the Union changed the structure of the negotiations for the Local 284 contract, as well as for the Local 293 contract in Cleveland, the Local 20 contract in Toledo, and the Local 957 contract in Dayton, the three other Respondent locations that were involved in negotiations with the Teamsters. It is also undisputed that, at that time, President/Chairman of the Ohio Conference of Teamsters Bill Lichtenwald informed the Respondent that it was the intention of the IBT and the Ohio Conference of Teamsters to force the Respondent to accept union security for the Local 284 unit in Columbus. Thereafter, the bargaining for the Local 284 agreement changed from involving only the participation of Local 284 officials, as had been the practice for the previous negotiations, to bargaining which included the participation and influence of the Ohio Conference of Teamsters and the International Brotherhood of Teamsters, as well as representatives from the other local unions that represented employees at Respondent’s other locations.

As very little progress was being made in the Local 284 negotiations, in late April 2015 Doll proposed a different approach which consisted of what Brown described as a “very serious” proposal of union security for Local 284 in exchange for proceeding with the pending decertification petition. While the Respondent was understandably intrigued by that offer, it decided it would not be enough to resolve the Local 284 bargaining situation while there were other issues and uncertainty with regard to the bargaining relationships at its other locations. Thereafter, it is undisputed that the parties agreed to a “global” approach to resolving not only the issues with the Local 284 negotiations, but issues at the other locations that existed in their bargaining relationships. Such issues or complication included another decertification petition, a corporate campaign aimed at the Respondent’s customers and the public to exert pressure on the Respondent, a local contract that had been ratified but not approved by the IBT, and the duration and expiration dates for the various local contracts which had the implication of additional pressure on the Respondent by virtue of possible coordinated strikes by the Teamsters at the locations where the contracts were to expire at the same time.

It is also undisputed that the parties agreed that the proposed Local 284 contract in Columbus would be contingent upon, and therefore only effective, if a global settlement agreement was reached and the terms of the global settlement agreement were satisfied. Paragraph 1 of the proposed global agreement is unambiguous and clearly sets forth the parties’ understanding that: “[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[.]” That contingent contract was then identified as an exhibit to the global agreement to avoid any uncertainty as to which proposed contract this paragraph referenced.

Thus, in determining whether there was a “meeting of the minds” by the parties in this case, the Local 284 collective-bargaining agreement and its bargaining cannot be analyzed in a vacuum. The “global” structure chosen by the parties requires a determination as to whether the parties had a meeting of the minds on the global settlement agreement, that very agreement the parties determined the Local 284 contract would be contingent upon, and if so, then whether there was a meeting of the minds on the Local 284 contract. That global settlement agreement unambiguously required satisfaction of the terms of the global agreement in order for the contingent Local 284 collective-bargaining agreement to be effective. In other words, given the agreed-upon contingent nature of the alleged Local 284 contract and the global settlement agreement package proposal, a meeting of the minds on the terms of the Local 284 contract would not mandate a binding contract without a corresponding meeting of the minds on the global settlement agreement. In addition, pursuant to the structure chosen by the parties and the terms of the global settlement agreement, the Local 284 contract would not be effective unless and until the terms of the global settlement agreement were “satisfied.” As set forth below, the credible evidence does not establish that the parties had a “meeting of the minds” on the global settlement agreement, nor does it establish that the terms of the global settlement agreement were satisfied.

2. The credible evidence establishes that there was no “meeting of the minds” by the parties on May 26, 2015 regarding the terms of the global settlement agreement

In the May 26, bargaining session the parties met to continue bargaining for a collective-bargaining agreement in Columbus and for a global settlement agreement. It is undisputed that much was accomplished in that session. The parties discussed the global concepts that were agreed upon after the April 29 meeting, such as the Respondent’s goals as far as the expiration dates for the contracts, and the expiration dates for all of the local contracts. Brown credibly testified that he discussed that one of Respondent’s core objectives was not to have coterminous contract expiration dates for Dayton, Cincinnati, and Columbus because they were significantly larger operations covering the southern half of the state. The Union agreed to request that the International stop its corporate campaign, and stated that if the request was made, the International would honor it. For Local 284, the Union proposed an expiration date of November 1, 2018 and Respondent proposed an expiration date of February 2019. The Respondent agreed that the Union could have union security in the Columbus contract if the Union agreed to withdraw its challenges to the decertification petition and allow that election to go forward. The parties agreed to extend the contracts for Local 20, 293 and 957. In addition, the Respondent requested that Local 377 be a part of the global settlement by withdrawing its objections and unfair labor practice charges, but the Union responded that Local 377 would not be a part of it.

While the bargaining notes of the parties reflect that by the end of the day, they believed there were two remaining issues—wages and whether Local 377 would be a party to the global agreement (which were shortly thereafter agreed to), the

evidence does not establish that all the material and substantial terms of the global settlement agreement were discussed and agreed upon. At that time, no written proposals encompassing the global settlement agreement or the entire Local 284 contract were exchanged and no TAs were initialed or signed. Instead, the parties discussed the underlying principles of a global agreement and spoke in generalities. As Brown credibly testified, there was an understanding on principle or a framework for a global agreement, and Brown was to set forth those terms in a draft agreement.

When Doll reviewed that draft, it became apparent that the parties did not have a “meeting of the minds” on all of the material and substantial terms of the global settlement agreement. Doll expressed that the parties did not have an agreement on the inclusion of the IBT and Local 1199 as being a part of the global agreement; that there was no agreement on a date for the decertification election regarding Local 284; that Local 284 and the IBT could not agree to prohibit future corporate campaign conduct; and the parties had not agreed to specific durations or expiration dates for the contracts in Dayton and Toledo.

That same day, Brown replied to Doll, expressing his disagreement with Doll’s assertions. In particular, Brown disagreed with Doll’s contention that Local 1199 was not a party to the proposed global agreement. Brown explained that Verst had been present on behalf of Local 1199 at the negotiations and the parties knew Respondent’s core objective was to avoid coterminous expiration dates, which logically implicated the Local 1199 collective-bargaining agreement. Brown’s assertion that he believed there was an understanding that Local 1199 was part of the global agreement is not only credible, it is also plausible when considering the facts and the structure of the negotiations which were aimed at resolution of not only the Local 284 issues, but also the issues at the other locations which included the duration and expiration dates of other local contracts, such as Local 1199. It is also entirely plausible that Verst, the president of Local 1199, was involved in the negotiations as a representative of Local 1199 as well as the Ohio Conference of Teamsters. The record does not reveal that Verst, at any time during the negotiations, informed the parties that he was there only in his capacity as vice president of the Ohio Conference of Teamsters, or that he was not there as a representative of Local 1199.

Brown also testified that he believed there was an understanding among the parties that the IBT would be part of the global settlement agreement because he believed the IBT was orchestrating the Teamsters’ corporate campaign that was to cease as part of the settlement. As mentioned above, Brown’s belief that there was agreement on the IBT’s inclusion was credible and plausible. The IBT had a presence at the negotiations and Brown was informed by a representative of the Teamsters that it was the IBT’s and Ohio Conference of Teamsters’ intention to force Respondent to accept union security for the Local 284 unit in Columbus. In addition, it is undisputed that the IBT was the moving force behind the corporate campaign and that it had some degree of control over the negotiations of the global agreement and the individual local contracts as reflected by the fact that the IBT had not given its approval of the tentatively agreed upon Local 293 Cleveland contract. Fur-

thermore, the fact that the parties chose a “global” approach to the negotiations and its structure would lead one to believe that the International would be part of that agreement since it involved a number of its local unions that represented employees of the Respondent. Therefore, I find it plausible and believable that the Respondent would have believed that the IBT would be a part of the global settlement agreement.

Furthermore, as the General Counsel would argue that those terms in dispute were somehow minor, insignificant, or non-substantive, that argument is without merit and is not supported by the record evidence. The record and credible testimony of the Respondent’s witnesses revealed that the terms of which entities and locals were to be part of the global agreement, and what the durations and expirations of the contracts were going to be, were materially significant and substantial terms of the global agreement. The undisputed approach and intent of the global agreement to resolve the collective-bargaining issues not only for Local 284, but for the other locals that represented the Respondent’s employees, supports finding that such terms were material and substantial.

Contrary to the General Counsel’s and the Union’s assertions in this case, the credible evidence does not support that there was a meeting of the minds on May 26. No terms of the global agreement were initialed or signed by the parties indicating their approval. No written proposals containing the terms of the global agreement were exchanged on May 26. Instead, the parties exchanged emails explaining their disagreement as to whether the terms of the global agreement had been agreed upon. Such undisputed facts constitute compelling evidence that there was no meeting of the minds on those important aspects of the global agreement.

In addition, after May 26 in the bargaining session for Local 957’s contract, the parties continued to bargain over the terms of the global settlement agreement. On June 8, Doll sent an email to Brown with a counter proposal on the global agreement describing it as the “Union’s revised Settlement Agreement for the Company’s consideration.” In that proposal, the Union proposed changes to substantial terms of the agreement, such as removing the IBT as a party and adding an “Execution Clause” that explicitly provided that the global settlement agreement, “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.” On that same day, Brown provided the Union with a counter to Doll’s proposal in which he added Local 377 as a party to the agreement, and added language requiring Local 284 to request that the IBT cease its corporate campaign, which also constituted significant terms of the global agreement. I find that the exchanges of additional proposals by the parties serves as unmistakable and undisputed evidence that there had been no meeting of the minds on May 26.

I further find that the General Counsel’s and the Union’s assertions that there was a meeting of the minds on May 26 are simply not credible as such assertions were contradicted by the statements and actions of the General Counsel’s own witnesses. In the June 19 negotiations for the Local 957 contract, after the

alleged meeting of the minds on May 26, Brown asked Doll for a counter proposal to the Respondent's June 8 proposal for a global settlement agreement. If in fact there had been a meeting of the minds on May 26 as the General Counsel and Union allege, it is reasonable to believe that Doll would have responded to that request with a statement indicating that no counter proposals were necessary because there had already been a meeting of the minds on May 26 and a complete agreement reached. However, Doll failed to issue such a response. Instead, Doll presented Brown with a counter proposal. Critically, the record further establishes that Doll admitted that, at the time of Brown's request, a global agreement "had not been finally agreed to." (Tr. 266–267.)

Brown also spoke with Jay that morning of June 19 and conveyed to him the need for a response to Respondent's global settlement proposal and his concern for a possible strike by the Teamsters. Brown also conveyed that he was going to assume the Union did not want to go forward on the global agreement, and the Respondent was going to prepare to spend a lot of money on security for the strike. Like the discussion Doll had with Brown that same day, it is reasonable to believe that had a complete agreement been reached on May 26 as the Union alleges, Jay would have informed Brown in no uncertain terms that the parties had already reached agreement on a global settlement and therefore no response was needed. To the contrary, in response Jay informed Brown that the Union would like to get a global settlement, and that the Union's failure to respond should not be "misread" because the Union would like to "do this if we can" and that they would "turn [their] attention to it." (Tr. 663.)

Further evidence that there was no meeting of the minds on May 26 is found in an email that Brown sent to Doll during a caucus on June 19 at 11:21 a.m. In that email, Brown conveyed to Doll his desire for a response to his global settlement proposal and concern for a pending strike. Doll responded by emailing a global agreement counter proposal to Brown entitled "Local 284 Proposed SA—June 19, 2015," which Doll had prepared and which made modifications to Brown's last counter proposal. There is no evidence that either Doll or Jay responded to Brown asserting that the parties had already reached an agreement on a global agreement on May 26. I find these responses by Doll and Jay are simply 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.

Therefore, the evidence does not establish that the parties agreed on all the substantive issues and material terms contained in the alleged agreements. *Crittenton Hospital*, 343 NLRB 717, 718 (2004). In addition, the credible evidence fails to establish 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).

3. The General Counsel's and Union's arguments that there was a "meeting of the minds" are not plausible or credible, and are without merit

In arguing that there was a meeting of the minds on May 26, the General Counsel and Union rely on Respondent's update issued to employees and the fact that it did not caution employees that the agreements had not been finalized, and that it somehow advised the employees that agreement had been reached on a global agreement that incorporated the Local 284 decertification election. I find this argument unavailing.

The Respondent's update, like the negotiation update issued by the Union, made little mention of the terms of the global settlement agreement, with the exception of the focus on proceeding to the decertification election which was one of the major items of importance to the parties and the Columbus employees. The Union's update essentially campaigned for the members' support in the anticipated decertification election, but made no other mention of the terms of the global settlement agreement. Likewise, Respondent's update, while reporting "great news" of a "Tentative Agreement" for a first contract in Columbus, did not discuss the details of the terms of the Local 284 agreement, and it also did not discuss the terms of the global settlement agreement beyond the decertification election. Instead, like the Union, the Respondent focused the handout on its own campaign to prevail in the anticipated decertification election. The handout explained that the tentative agreement would provide for a vote in the decertification election to decide if the Union would continue to represent them, and if the majority of the employees voted no in the decertification election, the contract negotiated with the Union would be meaningless and the Union would no longer represent them. Thus, I find that the Respondent's update did not evince a meeting of the minds on all the substantive terms of the global agreement, but instead served as a vehicle to campaign for the employees' support in the decertification election. In addition, Brown credibly testified that the global settlement and its details were not discussed in the letter because it involved the other facilities, and Hice also credibly testified that the global agreement was not discussed because the employees did not know about it.

4. The credible evidence further establishes that there was no "meeting of the minds" by the parties on June 19, 2015

While not alleged in the complaint, the General Counsel and the Union nevertheless allege that the parties also had a meeting of the minds on the global settlement agreement on June 19.<sup>7</sup> I find that assertion equally lacks merit and that the credible evidence also failed to establish that there was a meeting of the minds and a complete agreement on either the global settlement agreement or the contingent Local 284 agreement on June 19.

The final proposal from Local 284 on the global settlement agreement on June 19 made modifications to the Respondent's last proposal of June 8. The Union proposed a July 17 date to

<sup>7</sup> The General Counsel failed to amend the complaint to include the allegation that the parties reached agreement on the global settlement agreement on June 19, and that the Respondent's failure to execute that agreement violated the Act.

finalize a consent election agreement regarding the decertification election for Local 284. In paragraphs 2 and 4, the Union rejected the Respondent's proposal regarding limits to and the cessation of the Teamsters' corporate campaign, specifically those directed at current and potential customers and suppliers, and requiring Local 284 to refrain from corporate campaign activities. Doll rejected the proposal that the corporate campaign cease until the certification of the decertification election results and proposed that cessation only last until the date of the decertification election. Doll again added the language: "all lawful conduct" and "in any way" to broaden permissible election campaign conduct, which the Respondent had previously rejected because it suspected they created loopholes for the Union to continue the corporate campaign. Finally, Doll proposed extending the contracts with Local 20, Local 293, and Local 957 to July 17 and removed the Respondent's proposed automatic 7-day extension beyond the date of a decertification election for Local 284 if the election occurred after the extensions expired. (Tr. 667-668.) While Doll's 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 election.

Even though Doll testified that Brown stated "that's okay" to the various changes Doll proposed, it is undisputed that Brown made changes to Doll's proposal and that he indicated he had to run the proposal by Hice to get her approval. He further indicated that he would let them know if there was a problem. Brown testified that he made some minor edits to the document, but that his proposal about the Teamster's corporate campaign being suspended was a substantive change as it was a core issue for the Respondent. Brown's testimony is supported by the record that established that ceasing the corporate campaign was a core issue for the Respondent and I find that change was a substantive change to the agreement that required a meeting of the minds to establish a complete agreement among the parties. In addition, I find that there was no meeting of the minds on the terms of the global agreement as Brown had not yet conferred with his client to approve the changes, and the differences on his copy of the counter proposal had never been accepted by Hice.

The Union's assertion that the parties had a meeting of the minds on June 19, while not supported by the credible record evidence, was also belied by Jay's testimony when he acknowledged that there was no agreement on the global agreement without Hice's approval. In this regard, towards the end of the bargaining session on June 19, while Brown was in the process of putting together Respondent's final proposal for the Dayton contract, he saw Jay who inquired as to whether Hice had approved Union's global settlement proposal, and Jay specifically stated that "we have to wrap up this global settlement," and that without a global settlement, there would be no contract in Dayton.

The General Counsel asserts that when Brown proposed the 4-year Dayton contract and commented about the risk of agreeing to 4-year contracts at multiple locations, he "tacitly acknowledged" that if the Dayton proposal were to be accepted, Respondent would be subject to 4-year contracts in both Dayton and Columbus. I find this argument is baseless. Brown,

Neece, and Oakes all credibly testified that when Brown commented about that risk, he referred to the Dayton, Toledo, and Cleveland contracts. Furthermore, that assertion by the Respondent is plausible as Hice had already advised Brown to change the Columbus contract expiration date to 2018, and it is simply implausible to conclude that Brown was referring to a 2019 expiration date in Columbus.

In addition, since there was no meeting of the minds and complete agreement on the global settlement agreement, and therefore, the contingent Local 284 agreement at the conclusion of the June 19 bargaining session, Brown was free to change the date of the Columbus contract's expiration date to 2019. As such, I find that the General Counsel failed to carry its burden of showing that the parties had the requisite "meeting of the minds" on May 26 or June 19 for the agreements, and also that there was a document which the respondent refused to execute that accurately reflected those agreements. *Hempstead Park Nursing Home*, supra at 332; *Windward Teachers Assn.*, 346 NLRB 1148, 1150 (2006).

5. Even if there was a "meeting of the minds" on both documents, the explicit conditions were not satisfied to create a binding collective-bargaining agreement with Local 284

Finally, I find that even if there was a meeting of the minds on the global agreement and the Local 284 agreement, the terms and conditions of the agreement were never satisfied so as to create a binding collective-bargaining agreement with Local 284. In this connection, on June 22 Doll notified Brown that although the bargaining unit voted to ratify the Local 957 contract, the IBT did not approve it and therefore, there was no binding contract with Local 957. Significantly, if there had in fact been a global settlement agreement in place at that time, the IBT would have had to approve the Local 957 contract as it would have been required to do with the Local 293 agreement. In addition, on June 22 the Teamsters' corporate campaign continued as well, wherein Local 284 distributed leaflets in Columbus at locations including Marcella's, a restaurant that was a customer of the Respondent's, and at the Women's World Cup in Canada on June 25. I find that these actions are inconsistent with the General Counsel's and Union's assertion that there was a meeting of the minds on the global agreement as of June 19, and it constitutes evidence that even if there was a meeting of the minds on the agreements, there was not the agreed upon requirement of "complete satisfaction of all the terms" of the global settlement agreement, and therefore there was no binding Local 284 contract on the parties.

Based on the record evidence in this case, and the well-established Board law discussed above, I find that the General Counsel failed to meet its burden of showing that the Union and the Respondent had the requisite "meeting of the minds" on a global settlement agreement or on a contingent Local 284 collective-bargaining agreement. Accordingly, I find that the Respondent has not violated Section 8(a)(5) and (1) of the Act as alleged.

#### CONCLUSIONS OF LAW

1. The Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.
2. The International Brotherhood of Teamsters Local Union

No. 284 (the Union) is a labor organization within the meaning of Section 2(5) of the Act.

3. The Respondent has not violated Section 8(a)(5) and (1) of the Act as alleged in the complaint.

On these findings of fact and conclusions of law, and on the entire record, I issue the following recommended<sup>8</sup>

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<sup>8</sup> If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recom-

#### ORDER

The complaint is dismissed.

Dated, Washington, D.C. June 8, 2016

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mended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.