



UNITED STATES GOVERNMENT  
**NATIONAL LABOR RELATIONS BOARD**  
OFFICE OF THE GENERAL COUNSEL  
Washington, DC 20570

November 30, 2017

[REDACTED]  
HODGSON RUSS LLP  
140 PEARL ST STE 100  
BUFFALO, NY 14202

Re: International Brotherhood of Teamsters,  
Local 264 (Erie Logistics LLC)  
Case 03-CB-190810

Dear [REDACTED]

Your appeal from the Regional Director's refusal to issue complaint has been carefully considered. The appeal is denied substantially for the reasons in the Regional Director's letter of October 16, 2017.

The Regional Office investigation disclosed insufficient evidence to establish that the parties reached a meeting of the minds concerning the terms of the side letter that would extend the parties' collective bargaining agreement an additional three years. Since there was no meeting of the minds, the Union did not violate Section 8(b)(3) of the National Labor Relations Act by failing to execute the side letter memorializing this alleged agreement. The obligation to execute an agreement is only triggered when the employer and union have reached a meeting of the minds on all substantive issues and material terms of the agreement. *Crittenton Hosp.*, 343 NLRB 717, 718 (2004); *Sunrise Nursing Home*, 325 NLRB 380, 389 (1998). Whether the parties had a meeting of the minds is determined "not by parties' subjective inclinations, but by their intent as objectively manifested in what they said to each other." *Crittenton Hosp.*, at 718, citing *MK-Ferguson Co.*, 296 NLRB 776, 776 n. 2 (1988).

In this case, the evidence demonstrates that at the time of the parties' conference call concerning the side letter, the parties were just beginning to discuss its terms. The Employer's draft side letter sent to the Union represented a proposal, rather than an agreement memorializing the terms agreed upon during the call. Although the Union did not specifically object to the terms presented, it requested draft language concerning the Employer's proposed modification. Based on parties' conduct, we find that there was no binding agreement on the terms of the side letter. Furthermore, we find that the Union's subsequent conduct demonstrated that there was no meeting of the minds. The Employer's subsequent conduct also demonstrates that there was no meeting of the minds, as the Employer merely inquired about the status of the Union's review and willingness to sign the side letter and the Union put the Employer on notice that it was still undecided as to whether to sign the side letter. In these circumstances, we cannot conclude that

the Union violated the Act by refusing to execute the Employer's side letter. Accordingly, the appeal is denied.

Sincerely,

Peter Barr Robb  
General Counsel



By: \_\_\_\_\_

Mark E. Arbesfeld, Director  
Office of Appeals

cc: PAUL J. MURPHY  
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