

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
DIVISION OF JUDGES**

<b>UNITED STEEL, PAPER AND FORESTRY,</b>	)	
<b>RUBBER, MANUFACTURING, ENERGY,</b>	)	
<b>ALLIED INDUSTRIAL AND SERVICE</b>	)	
<b>WORKERS INTERNATIONAL UNION,</b>	)	
<b>AFL-CIO, CLC and its LOCAL 53G</b>	)	
	)	
<b>and</b>	)	<b>Case 06-CB-198329</b>
	)	
<b>WORLD KITCHEN, LLC</b>	)	
	)	
<b>UNITED STEEL, PAPER AND FORESTRY,</b>	)	
<b>RUBBER, MANUFACTURING, ENERGY,</b>	)	
<b>ALLIED INDUSTRIAL AND SERVICE</b>	)	
<b>WORKERS INTERNATIONAL UNION,</b>	)	
<b>LOCAL 53G, AFL-CIO, CLC</b>	)	
	)	
<b>and</b>	)	<b>Case 06-CB-199021</b>
	)	
<b>WORLD KITCHEN, LLC</b>	)	

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**BRIEF OF THE RESPONDENT UNITED STEEL, PAPER AND FORESTRY, RUBBER,  
MANUFACTURING, ENERGY, ALLIED INDUSTRIAL AND SERVICE WORKERS  
INTERNATIONAL UNION, AFL-CIO, CLC  
TO THE ADMINISTRATIVE LAW JUDGE**

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Amanda M. Fisher  
Bruce Fickman  
United Steelworkers  
60 Boulevard of the Allies  
Five Gateway Center – Suite 807  
Pittsburgh, PA 15222  
Telephone: (412) 562-2567/2540  
Fax: (412) 562-2429  
E-mail: [afisher@usw.org](mailto:afisher@usw.org)/[bfickman@usw.org](mailto:bfickman@usw.org)

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## STATEMENT OF THE CASE

This dispute arose during the course of contract negotiations between three parties – World Kitchen, Inc. (“World Kitchen” or “Company”), the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO/CLC (“USW” or “International”), and the United Steelworkers, Local 53G (“Local 53G” or “Local”) (when referred to jointly, “Unions”). The three parties reached a tentative agreement on terms and conditions of employment, but that tentative agreement was subject to ratification by the Unions’ membership as a condition precedent to finalizing the labor agreement. A ratification vote was held and the result was a tie. The Local, a necessary signatory to the labor agreement, determined that a tie was not ratification and promptly notified both the Company and the International of this position. Subsequently, the International notified the Company that because the agreement requires acceptance by the Local and because the Local determined that the tie vote did not satisfy the condition precedent to achieving agreement, there was no final labor agreement for either the Local or the International to sign. The International requested that World Kitchen return to the table to continue negotiating, but the Company refused.

The General Counsel, in the consolidated complaint, alleges that the tentative agreement constituted a final and enforceable labor agreement, and therefore, the International and the Local must sign the agreement regardless of the Local’s determination that the agreement was not ratified by the membership. As is shown below, this theory is not supported by the facts of this case. As such, the International denies the allegations and respectfully requests that the complaint issued against it be dismissed.

## STATEMENT OF FACTS

World Kitchen is engaged in the production of specialty glass and operates a manufacturing facility in Charleroi, Pennsylvania. Tr. 23, 169.<sup>1</sup> The International and Local represent the bargaining unit employees at the Charleroi facility. Tr. 25.

The Local has represented employees at the facility since at least 1969. Tr. 143. At that time, the Local was affiliated with the United Glass and Ceramic Workers of North America, AFL-CIO/CLC (“United Glass and Ceramic Workers”). *Id.* The United Glass and Ceramic Workers merged in 1982 with the Aluminum Brick and Clay Workers International Union, AFL-CIO (“ABC”) to form the Aluminum, Brick and Glass Workers International Union, AFL-CIO/CLC (“ABG”). Tr. 145; RL Ex. 1. In 1996, the ABG merged with the USWA, and at that time, the Local became an affiliate of the International.<sup>2</sup> Tr. 149-50; RL Ex. 3.

Throughout these mergers, “Glass locals,” such as Local 53G, retained the right and, in fact, the obligation to ratify proposed labor agreements through a vote by the membership. Tr. 152-53. This is unique from other USW-affiliated locals. Tr. 152. Section 20(b) of the merger agreement between the United Glass and Ceramic Workers and the ABC provided: “[t]he method of negotiation and ratification of labor agreements shall continue as heretofore.” RL Ex. 1 at 13; Tr. 146. The “method” of ratification guaranteed by that section required that a tentative agreement reached at the bargaining table be submitted to the membership for a ratification vote prior to any labor agreement becoming final and binding on the Local. Tr. 146-47, 172-73. The ABG Constitution incorporated this requirement in Article XV, stating: “The International Union

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<sup>1</sup> References to the transcript are designated as “Tr.,” with the corresponding page number. References to the exhibits of the General Counsel, Respondent International, Respondent Local, and Joint Exhibits are referred to as “GC Ex.,” “RI Ex.,” “RL Ex.,” and “Joint Ex.,” respectively, with the corresponding exhibit number.

<sup>2</sup> “USWA” refers to the “United Steelworkers of America;” the name of the International at the time of the merger. The International is presently abbreviated as “USW.”

shall negotiate all Labor Agreements on behalf of the Local Unions, and such agreements shall be subject to membership ratification.” Tr. 147-48; RL Ex. 2 at 36. When the ABG and the USW merged, the USW agreed to continue the ratification requirement with respect to Glass locals. Tr. 152-53. Thus, as the ABG/USW merger agreement states: “ratification of agreements with employers shall be in accordance with Article XV of the ABG Constitution . . . .” RL Ex. 3 at 5; Tr. 149-50. Further, an attachment to the merger agreement specifically states that the “USWA agrees to Section 20 of the 1982 merger agreement between Aluminum Brick and Clay Workers and United Glass and Ceramic Workers.” RL Ex. 3 at Attachment 2; Tr. 151. As a result of these protections carried forward through the mergers, and in contrast with other USW-affiliated locals, the International cannot sign and enforce collective bargaining agreements with World Kitchen and Local 53G without membership ratification. Tr. 154, 197.

The USW also cannot enter into a collective bargaining agreement with the Company concerning the bargaining unit at the Charleroi facility without separate agreement and execution by the Local. Historically, and continuing through the 2016 negotiations and to the present, the parties to the collective bargaining agreement are the employer, now, World Kitchen, the International and the Local.<sup>3</sup> Joint Ex. 1; Tr. 27-28, 171-72. The fact that this labor agreement is entered into and signed by all three parties – as opposed to the Company and the International on behalf of the Local – is also unique to this particular bargaining relationship. Tr. 155-56, 209.

The parties most recently began negotiations for a successor collective bargaining agreement in January 2016. Tr. 23. Andrew Goldberg (“Goldberg”) served as chief negotiator for World Kitchen and was accompanied at the table by Jon Hartman (“Hartman”), Vice President of Glass Operations; Louis Kartismas (“Kartismas”), Vice President of Human Resources; John

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<sup>3</sup> The Charleroi facility has previously been owned by different employers. Tr. 169.

Lackovic (“Lackovic”), Senior Plant Director; Donald Good (“Good”), Human Resources Manager; and other management representatives. Tr. 23-24. James Watt (“Watt”), International Staff Representative, served as the chief spokesman for the Unions at the bargaining table. Tr. 119-120. Also serving on the bargaining committee for the Unions were Local officers Tom Seal (“Seal”), President, and Sean Delaney (“Delaney”), Vice President, as well as members of the Local’s Industrial Relations Committee (“IRC”), Heather Price (“Price”), John Umbel (“Umbel”), Dan Niccolai (“Niccolai”), and Frank Nichols (“Nichols”). Tr. 27. The IRC is not the Local’s executive board, but rather, it is a committee of Local members responsible for participating in contract negotiations, processing grievances at the Local level, and discussing general membership concerns with management. Tr. 171. In addition, Robert McAuliffe (“McAuliffe”), USW Director of the geographic region encompassing the Charleroi facility, which is referred to by the USW as “District 10,” attended some negotiation sessions as did John Ratica (“Ratica”), a USW Sub-District Director in District 10. Tr. 25, 198-99, 207.

The parties met a number of times during the 2016 negotiations, which began in January and deteriorated in November as a result of this dispute. Tr. 28. During those months, the Unions presented three proposed labor agreements to the membership for ratification at various times. On the first two votes the membership overwhelmingly rejected the proposed agreements and the parties returned to the table and continued bargaining. Tr. 195-96. The third vote, which was held on November 10, 2016, resulted in a tie – 108-108. Tr. 39. This tie vote forms the basis for the instant dispute.

Following the second failed ratification vote, which took place in August 2016, the Unions requested to resume bargaining and the parties agreed to meet to continue negotiating on September 29 and 30. RI Ex. 3. During the September meetings, Hartman presented the Unions

with a document describing investments the Company would make in the plant – including, a new line for adding decoration to the glassware – if a contract was ratified by the membership. RL Ex. 4; Tr. 173-74. Following those meetings, the Company stressed to the Unions the need to “finalize and ratify” the labor agreement and suggested that the parties “work hard to come to an [sic] recommended tentative agreement. . . .” RI Ex. 4. Thus, the parties agreed to continue negotiations on November 1-3. *Id.* At the end of those bargaining sessions, the parties did reach tentative agreements on terms and conditions of employment and the Local’s bargaining committee agreed to recommend ratification to the membership. GC Ex. 2; RL Ex. 5.

The Company prepared a document entitled “Tentative Agreements Between [World Kitchen] and [the USW] and Local Union 53G As of September 29, 2016.” GC Ex. 2. The Company’s document included each tentatively agreed to term and condition and provided signature lines for the Unions and the Company with the description: “Tentatively agreed to, September 29, 2016” or “Tentatively agreed to, November 2, 2016.” On November 2, the parties met and signed the tentative agreements. *Id.*

Consistent with bargaining history and practices, the parties subsequently prepared to submit the tentative agreement to the membership for ratification. On November 3, the parties prepared a “Summary of the Tentative Agreement between WKI, USW and USW Local 53G,” which stated that the tentative agreement would become “[e]ffective upon ratification.” RL Ex. 5; Tr. 36. Seal scheduled informational meetings with the membership on November 7 and 8. RL Ex. 6. Seal also sought permission from the Company to use a Company-owned building for the ratification vote. Tr. 179. The ratification vote was scheduled for November 10 and Seal posted notices throughout the facility stating: “The voting by the membership will be to accept or reject the Tentative Agreement on a successor contract.” RL Ex. 7.

Watt was present at the ratification vote on the evening of November 10. Tr. 123. Seal was present earlier in the afternoon, but he left before the votes were tallied. Tr. 180. After the votes were counted and the result was a tie, Watt called McAuliffe and asked what a tie vote meant. Tr. 159-60. McAuliffe immediately contacted Bob Rootes (“Rootes”), an International staff person responsible for, among other things, interpreting the USW Constitution and Local Union By-Laws, and asked what happens when a ratification vote results in a tie. Tr. 208-209. McAuliffe did not tell Rootes that this situation involved Local 53G, or a Glass local in general, or that it involved a tri-party collective bargaining agreement. *Id.* Rootes told McAuliffe that a tie was interpreted as ratification. McAuliffe relayed this to Watt. *Id.* Watt did not contact Seal. Tr. 160.

On the evening of November 10, Watt called Goldberg and told him “that there was a tie vote, 108 to 108, but that the [I]nternational considered that to be a ratification . . . .” Tr. 39. Watt also called Good and left him a voicemail to the same effect. Tr. 113-14. Watt instructed IRC member Price, who was present at the vote tally, to call Good as well, and when Good asked Price what a tie vote meant she said, according to Watt, it meant the agreement was ratified. Tr. 111. Lastly, Price also called Seal and told him the vote result was a tie and that, according to the International, a tie is a valid ratification. Tr. 180-81.

On November 12, Hartman called Seal regarding the contract and the ratification vote and during that conversation Seal told Hartman “we got a problem . . . with the vote . . . it’s probably going to have to be revoted, we don’t have an agreement.” Tr. 182. On November 14, Seal spoke to Lackovic at the worksite and told him “the tentative agreement wasn’t ratified . . . we have a tie vote.” Tr. 182-83. Seal stated that he wanted to have a re-vote on the tentative agreement on December 1. Tr. 183. Seal also spoke to Good at the worksite on November 16 and

he explained to Good, “we have got a tie vote here . . . we are going to have to revote this contract.” Tr. 184. Good mentioned that Price told him there was a contract after the vote and Seal responded that Price “wasn’t authorized to speak for the local . . . .” Tr. 184-85. Also on November 16, Seal wrote to McAuliffe and stated: “The Glass Merger Agreement is clear. The labor agreement for Local 53G is subject to Membership ratification . . . . In case of a tie vote, another ratification vote shall be held.” RL Ex. 8. Seal continuously objected to the interpretation of the tie vote constituting a valid ratification to both representatives of the International and representatives of the Company. Tr. 186-89; RL Ex. 10; RL Ex. 11. Seal and the Local’s position was, and continues to be, that ratification requires a majority vote. Tr. 195. This is consistent with the history of the Local. Tr. 153-54. Former Local President, Phil Ornot (“Ornot”) testified that he recalls one prior tie vote at Local 53G and the Charleroi facility and in that circumstance the Local determined that a tie vote did not constitute ratification. *Id.*

Ornot worked at the Charleroi facility for 24 years, beginning in 1969, and he held various positions with the Local during that time. Tr. 143-45. He was involved with the formation of the ABG in 1982 and he is familiar with the merger document between the United Glass and Ceramic Workers and the ABC. Tr. 145-47. He is also familiar with the ABG Constitution as he served as a staff representative for the ABG beginning in 1993. Tr. 149. After the ABG merged with the USW, Ornot continued servicing USW local unions until he retired from the USW. Tr. 143. Sometime following the November 10 ratification vote, McAuliffe contacted Ornot and explained the issue concerning the tie vote at Local 53G. Tr. 155-57. Ornot shared with McAuliffe the relevant history concerning Local 53G, including the fact that the prior tie vote was not considered a valid ratification, and explained the significance of the two merger documents. *Id.*

On December 12, Goldberg emailed Watt, copying others, and stated that the Company prepared a “clean CBA” and attached the document the Company (and the General Counsel) purports to be the final and enforceable collective bargaining agreement. Tr. 51; GC Ex. 9; GC Ex. 10.<sup>4</sup> That document is entitled, “Collectively Bargained Agreement between World Kitchen, LLC Charleroi Plant and [USW] and [Local 53G] November 10, 2016.” GC Ex. 10. This Company-prepared document begins: “THIS AGREEMENT, Made and entered into this 10th day of November, 2016, . . .” and again lists the three parties. *Id.*

By January 2017, the International determined that it could not sign the purported collective bargaining agreement because: (1) the labor agreement with World Kitchen is a tri-party agreement requiring the signature of both the International and the Local in order to be enforceable; (2) the merger agreement between the USW and the ABG requires membership ratification of labor agreements at Glass locals; and, (3) the Local did not interpret the November 10 tie vote as constituting a valid ratification. Tr. 209. The International informed the Company that there was no enforceable collective bargaining agreement, and therefore, the International would not sign the document prepared by the Company and presented to the Unions as the contract. Tr. 204; RI Ex. 8. The International asked the Company to return to the bargaining table to continuing negotiating, but the Company refused. RI Ex. 6.

The Company filed the underlying charge on May 9, 2017. GC Ex. 1. The General Counsel issued a consolidated complaint against the International and the Local on August 31, 2017. *Id.* In the consolidated complaint, the General Counsel alleges that the “Employer and

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<sup>4</sup> Subsequently, the Company corrected one typographical error in the purported collective bargaining agreement and the document with that correction is referred to as GC Ex. 22 in the record. Tr. 73-75. Other than the one typographical correction, GC Ex. 10 and GC Ex. 22 are substantially the same. *Id.* For purposes of this brief, the International will refer to GC Ex. 10.

Respondent reached complete agreement on terms and conditions of employment” on or about November 3, 2016.<sup>5</sup> *Id.* at Complaint, ¶ 8(a).

## **ARGUMENT**

### **I. Ratification Was a Condition Precedent to Achieving a Final Labor Agreement And Ratification Did Not Occur Here**

The General Counsel’s theory of this case requires a finding that when the parties signed the tentative agreements on November 2 that constituted a final and binding act creating an enforceable labor agreement. The facts of this case do not support that theory.

While the National Labor Relations Act does not require a labor organization to obtain employee ratification of a contract it negotiates on their behalf, the Board recognizes two ways employee ratification can become a condition precedent to achieving a finalized labor agreement. This occurs “when the parties agree to such as a condition precedent *or* when the union states that the authority to accept a collective-bargaining agreement lies with the union membership only.” *Permanente Med. Group, Inc.*, Case 32-CA-149245, 2016 WL 1743223 (May 2, 2016) (emphasis added), *citing Sacramento Union*, 296 NLRB 477 (1989).

#### **A. The Parties Agreed to Ratification as a Condition Precedent to Achieving a Finalized Labor Agreement**

When a party “has agreed to ratification as a precondition” to establishing a final and binding contract, neither party is under an “enforceable obligation to execute the written contract prior to ratification.” *Hertz Corp.*, 304 NLRB 469 (1991). As Judge Pannier has explained, “[t]o ascertain whether or not there is actual agreement” establishing ratification as a precondition, “the Board and courts have examined a number of factors.” *United Rentals Nw., Inc.*, Case 18-CA-15482, 2000 WL 33664298 (June 9, 2000). Included in these factors is “whether or not a

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<sup>5</sup> At the hearing, Counsel for the General Counsel amended paragraph 8(a) of the consolidated complaint to change “November 3” to “November 2.” Tr. 220.

written document exists which recites that employee-ratification is required.” *Id.*, citing *Beatrice/Hunt-Wesson*, 302 NLRB 234 (1991). However, whether such a document exists does not end the inquiry. In *Hertz*, the Board upheld an “oral bilateral agreement” that ratification is a condition precedent to the formation of a binding contract. *Hertz*, 304 NLRB at 469. Thus, in addition to a written document, the Board also takes into consideration the “words exchanged by negotiators;” the “written proposals and counterproposals,” as well as “any tentative agreements;” “bargaining history: whether there has been a pattern of contracts being regarded as finalized only after tentative agreements have been ratified.” *United Rentals Nw., Inc.*, 2000 WL 33664298. Lastly, the Board considers “employer-knowledge of specific limitations imposed by employees on their bargaining representatives’ authority to reach final agreement on contracts” and “ratification-limitations imposed by a union’s constitution and bylaws.” *Id.*

In *Hertz*, the Board found that an “express oral bilateral agreement to submit the parties’ negotiated contract to a ratification vote” existed, and therefore, the employer did not violate the Act when it refused to execute an agreement absent the ratification vote. *Hertz*, 304 NLRB at 469. The evidence the administrative law judge, and ultimately the Board, based this finding on included the union representative asking at various times during the negotiations how the employer “expected [the union] to get the contract ratified,” as well as the union asking the employer if it “could provide a place for a meeting (for ratification),” which the employer then did. *Id.* at 471. Also, the employer asked the union to “recommend the contract to the employees,” which the union agreed to do. *Id.*

Similar evidence is present in this case. Company-prepared minutes from the bargaining session on November 1, 2016, reflect that during that meeting IRC member Nicolai stated that

the Company's proposal would "probably be rejected" by the membership. GC Ex. 23. The minutes also state: "[Seal] asked to keep this in mind that we have to sell this to our employees." *Id.* In addition, after the parties reached a tentative agreement in November, Seal asked Good for permission, which was granted, to use a Company-owned building to hold the ratification vote. Tr. 117, 179. Seal testified that during this conversation Good commented that he hoped "the ratification passed." Tr. 179. Thus, as in *Hertz*, the Unions' negotiating committee told the Company that "ratification would be necessary in order to enact the labor agreement." *Hertz*, 304 NLRB at 471. The Company never disputed these facts.

On the contrary, the Company agreed that ratification was a necessary condition precedent to achieving agreement. By email dated October 5, 2016, towards the end of negotiations, Goldberg wrote to Watt, stating: "[p]lease keep in mind [Hartman's] comment about the need to finalize and ratify so we can move forward with the new decorating machine." RI Ex. 4. Goldberg also suggested that the parties "work hard to come to an [sic] recommended tentative agreement . . . ." *Id.* In fact, as in *Hertz*, the Unions did agree to recommend to the membership that they ratify the November 2 tentative agreements. RL Ex. 5; Tr. 191-93. The Company and the Unions jointly prepared a summary of the tentative agreement to provide to the membership prior to the ratification vote. RL Ex. 5. The cover page of the summary document, signed "Your Local 53G Negotiating Committee," stated: "[a]lthough it is not the contract we had hoped for, we believe it is the best deal we could get." *Id.* It explains that the tentative agreement "provide[d] more money overall than the previous two Company offers that were voted down," taking into consideration wage increases and healthcare changes. *See Merico, Inc.*, 207 NLRB 101, 101 (1973) (determining that ratification must take place to create a binding

contract in light of evidence that the union’s negotiating committee pledged to recommend ratification).

Given the Board’s decision in *Hertz*, as well as the various factors the Board considers in determining whether or not there is actual agreement establishing ratification as a precondition, the record evidence here establishes that the Company and the Unions did agree that the tentative agreement must be ratified by the membership in order to be enforceable against any party.

**B. The Unions Stated Ratification Was Necessary For  
Acceptance of the Tentative Agreement**

As stated above, even absent such an agreement, ratification becomes a condition precedent “when the union states that the authority to accept a collective-bargaining agreement lies with the union membership only.” *Permanente Med. Group, Inc.*, 2016 WL 1743223. As Chairman Stephens explained in his concurring opinion in *Sacramento Union*, “a number of Board precedents have held that when a bargaining agent indicates to the other party that any agreement reached must be ratified by his or her principal, such an announcement may effectively limit the agent’s authority to that of negotiating the substantive terms of a contract.” *Sacramento Union*, 296 NLRB at 478 (concurring opinion). *See also Observer-Dispatch*, 334 NLRB 1067, 1072 (2001) (“[t]he Board has, in appropriate circumstances, found ratification to be a condition precedent to the formation of a binding agreement on the basis of an express understanding that the union negotiators lacked the authority to bind the union to a contract.”). The Board’s decision in “*Sunderland’s* and its progeny allow for the Board to deduce that the union representatives did not have authority to enter into a binding contract from evidence of the parties’ awareness during negotiations that any contract proposal must be ratified.” *Sacramento Union*, 296 NLRB at 480, *citing Golden Crest*, 275 NLRB 49, 50 (1985) and *Sunderland’s, Inc.* 194 NLRB 118 (1971). In *Golden Crest*, the employer representatives were aware that employee

ratification was required, thus “the authority of the bargaining negotiators was limited to negotiations and could not, in the absence of ratification, bind the Union to a contract.”

*Sacramento Union*, 296 NLRB at fn. 10. In such a situation, “[e]ven though negotiations may be concluded by the bargaining representatives, the agreement legally remains only an offer that the ratifying party accepts on ratification.” *Id.* at 478.

The record evidence in this case establishes that the Company was aware well before the tentative agreements were signed on November 2 that any agreements tentatively reached at the bargaining table must be ratified by the membership. Prior to the November 10 ratification vote there had been two other membership votes on the proposed contract terms. Tr. 195-96. The proposed contract was rejected by the membership at both of those votes and the Company and the Unions returned to the bargaining table. *Id.* Prior to the second of those votes, Watt wrote to Goldberg, stating: “After consulting with the membership, the Union has concluded that member ratification of the Company’s current offer is extremely unlikely. We hereby request that the Company return to the negotiating table for further discussions with the aim of reaching an agreement.” RI Ex. 1. Goldberg responded to Watt’s email stating: “we reached a Tentative Agreement with the International and Local 53G. . . . We have concluded negotiations.” *Id.* Goldberg did not assert that the conclusion of negotiations required the parties to execute a final and binding collective bargaining agreement, but rather, Goldberg requested that the Unions present the tentative agreement “for a ratification vote and that the Tentative Agreement be supported as promised.” *Id.* See *Golden Crest*, 275 NLRB at 50 (“testimony show[ed] that [employer] was aware, or reasonably should have been aware, that the authority of the union negotiators was limited to negotiations and could not, in the absence of ratification, bind the [u]nion to a contract”).

Following this exchange, the Unions ultimately agreed to hold a ratification vote in August 2016. Prior to that vote, an International Resource Technician, Rob Witherell (“Witherell”), prepared a summary of the offer to present to the membership. RI Ex. 2. Witherell emailed the summary to Goldberg and asked if there were any inaccuracies in the document. *Id.* Goldberg responded that the summary was too “complicated and confusing” and would “drive people to vote no.” *Id.* Goldberg stated: “I thought the objective was to have the contract ratified. We are of concern that your document will serve an opposite purpose.” *Id.* Thus, at least in August, Goldberg was aware the necessary “objective” was ratification and regarded the summary as a tool to help achieve that goal. Goldberg also alleged that certain representatives of the Local “actively worked against obtaining a ratification of the Tentative Agreement.” RI Ex. 3. However, again, Goldberg did not contend that the August tentative agreement was an enforceable labor agreement despite the results of the ratification vote.<sup>6</sup>

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<sup>6</sup> At the hearing, Goldberg testified that “the local bargaining committee ultimately told me it was not a tentative agreement, because they did not all sign it,” referring to a dispute earlier in the negotiations concerning whether a prior proposal was tentatively agreed to or not. Tr. 82. According to Goldberg’s testimony, he included signature lines for each Local bargaining committee member in the document signed on November 2 “so that we could establish we had all five of the local committee agreeing to the deal.” Tr. 38. However, whether all five of the Local committee members’ signatures were required to establish a tentative agreement is irrelevant because there is no dispute that a *tentative* agreement was reached in November. There is no evidence to establish that either the Local or the International told the Company the signatures of all five Local committee members constituted a final and binding labor agreement regardless of ratification. Further, the evidence does not support Goldberg’s contention that he actually believed the signatures of all five Local committee members constituted a final and binding labor agreement regardless of ratification when he drafted the document signed on November 2. Given Goldberg’s concern following the August ratification vote that Local officers “broke their promise and actively worked against obtaining a ratification of the Tentative Agreement” and his suggestion that the parties “work hard to come to an [sic] recommended tentative agreement” in November, it seems more likely Goldberg included the signatures of all five Local committee members so that they could not deny their support for the *tentative* deal when it came time for the membership to vote. RI Ex. 3; RI Ex. 4.

The contract was voted down in August and the parties continued their negotiations at the end of September and then again at the start of November. RI Ex. 3; RI Ex. 4. After the parties reached a tentative agreement on November 2, they again prepared a summary of the tentative agreement to be shared with the membership prior to the next ratification vote. Tr. 36, 99. In contrast with his view of the August summary document, Goldberg testified at the hearing that the purpose of the November summary document was only to “educate the employees on what changes were agreed to.” Tr. 36. It’s unclear how Goldberg came to regard the summary as merely an explanation of changes that were already consummated in a final and binding agreement when he recognized that the prior summary document was intended by all parties to be a document the membership relied on in deciding whether or not to ratify the agreement. And, as explained above, the cover letter included with the summary recommends that the membership ratify the changes. RL Ex. 5. Moreover, the jointly prepared summary document expressly states that the contract term would be: “[e]ffective upon ratification with an expiration date of February 28, 2022.” *Id.* (emphasis added).<sup>7</sup>

Indeed, in addition to the summary document, the November tentative agreement itself (which is a document entirely prepared by the Company and the existence of which forms the basis of the General Counsel’s case) establishes that all parties were aware ratification was a condition precedent to finalizing a labor agreement. The cover page of this document, written by

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<sup>7</sup> Also, the preparation of the contract summary prior to the ratification vote is part of the Local’s long-standing process for ratifying collective bargaining agreements. Tr. 147, 172-73. As explained above, the merger agreement between the USW and the ABG continued certain protections enjoyed by the former ABG Glass locals, including Local 53G, including the requirement that contracts be ratified by the membership. As a result, the International cannot sign and enforce collective bargaining agreements with World Kitchen and Local 53G without a valid membership ratification. *See Sacramento Union*, 296 NLRB at 488 and *Golden Crest*, 275 NLRB at 50. *See also Teledyne Specialty Equipment Landis Machine Co.*, 327 NLRB 928, 930 (1999) (“ratification was expressly required by the Union’s constitution . . . . Employee ratification was thus a condition precedent to agreement to such proposals.”).

the Company, identifies it as “Tentative Agreements Between [World Kitchen] and [the USW] and Local Union 53G As of September 29, 2016.” GC Ex. 2. Comparing this document to the document the Company prepared after the ratification vote (which World Kitchen purports to be the collective bargaining agreement and which the General Counsel alleges the International and the Local must sign) is informative. *Compare* GC Ex. 2 and GC Ex. 10. The post-ratification document, in contrast, is entitled “Collectively Bargained Agreement Between [World Kitchen] and [the USW] and Local Union 53G November 10, 2016.” GC Ex. 10. The use of the word “tentative” prior to the ratification vote was intentional. *See Observer-Dispatch*, 334 NLRB at 1073 (“the characterization of the agreement as “tentative” becomes meaningful and not merely some verbal gloss”). Further, the date on the tentative agreement cover page is written: “As of September 29, 2016.” GC Ex. 2. The “As of” language indicates that the document is subject to change and is, therefore, not a final agreement. *Sacramento Union*, 296 NLRB at 480 (“[e]vidence that the employer said there might be change to the offer before ratification was consistent with the parties having an understanding that the agreement just negotiated remained only a pending offer, needing acceptance through employee ratification.”). Again, this is in contrast with the “Collectively Bargained Agreement,” which simply lists the date as “November 10, 2016,” or the date of the ratification vote. GC Ex. 10. In addition, prior to the signature lines on each page of the tentative agreement the Company wrote “Tentatively agreed to, September 29, 2016,” or “Tentatively agreed to, November 2, 2016.” GC Ex. 2. Lastly, the Pension Agreement included in the “Tentative Agreements” states that the agreement “shall become effective upon ratification” *Id.* at 104. Goldberg testified at the hearing that he believed there was “complete agreement” with the Unions on a contract on November 2 or 3. Tr. 36. Yet, the

document he wrote states on almost every page that the agreement was only tentative as of those first days in November.

Importantly, the purported final and binding contract document, prepared by the Company, contradicts the General Counsel's case. GC Ex. 10. This document, GC Ex. 10, asserts the contract was finalized as of November 10, the date of the failed ratification vote, not November 2, the date the tentative agreement was reached. The opening paragraph of the purported contract includes the following statement:

THIS AGREEMENT, Made and *entered into this 10<sup>th</sup> day of November*, between World Kitchen, LLC, for its plant located at Charleroi, Pennsylvania, hereinafter designated as the "Company" and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (ABG Division) AFL-CIO, CLC and Local Union 53G (USW 53G), thereof, hereinafter designated as the "Union".

GC Ex. 10 (emphasis added).

In accordance with all parties' understanding that ratification was a condition precedent to a final and binding agreement, following the tentative agreement, they prepared for the ratification vote. First, the summary was drafted, as explained above. In addition, Seal sought permission to use a Company-owned building for the ratification vote. Tr. 117, 179. Seal prepared and posted flyers in the plant, clearly visible to the Company, informing the membership of the dates and locations of both the informational meetings prior to the vote and the ratification vote itself. RL Ex. 6; RL Ex. 7. The flyer concerning the ratification vote stated: "voting by the membership will be to accept or reject the Tentative Agreement on a successor contract." RL Ex. 7.

Goldberg admitted at the hearing he knew the Unions "were going to ratify it," meaning the Unions would schedule a ratification vote. Tr. 104. However, at the hearing, he dismissed the import of this knowledge, stating he knew a ratification vote would occur "because they do that

all the time.” *Id.* First, the parties’ bargaining history is a factor for the Board to consider in determining whether ratification was a condition precedent. *United Rentals Nw., Inc.*, 2000 WL 33664298. But moreover, Goldberg’s knowledge in this circumstance was not simply based on a general knowledge of the Unions’ internal practices. Goldberg knew that the Unions would hold a ratification vote because the Company was aware that the Unions required ratification by the membership as a condition precedent to finalizing the labor agreement. The Company never disputed this and, on the contrary, the Company itself had been stressing to the Unions “the need to finalize and ratify so we can move forward with the new decorating machine.” RI Ex. 4.

The evidence of what occurred after the ratification vote also illustrates that the General Counsel’s theory that the parties finalized an agreement on November 2, and therefore, the result of the ratification is irrelevant, is without merit. This was never the argument the Company was making. Rather, the Company continuously asserted that the Unions were required to sign a collective bargaining agreement because they “had a valid ratification” (which was not true). GC Ex. 5. On November 10, Goldberg wrote to Company representatives and reported “that the bargaining committee ratified the tentative agreement today. It was a tie vote . . . [h]owever, we have been assured by the USW . . . a tie is a ratification.” GC Ex. 4. On November 16, Goldberg wrote to USW Sub-District Director Ratica requesting that he tell Seal “we have a valid ratification.” GC Ex. 5. On December 20, the Company posted a notice to employees in the plant which stated the “Contract was ratified on November 10, 2016.” GC Ex. 18. By email dated January 26, 2017, Goldberg wrote to McAuliffe urging the International to sign the purported labor agreement, referring to it as the “ratified CBA” and stating that “the CBA has been ratified.” RI Ex. 5. On May 2, Goldberg wrote to Ratica and asked whether the International and the Local would sign the “ratified collective bargaining agreement.” GC Ex. 16. The Company

was aware that ratification was required to form a finalized labor agreement. The dispute, then, is whether a valid ratification occurred.

### **C. No Valid Ratification Occurred on November 10, 2016**

The determination of whether an agreement has been validly ratified is a “purely an internal union matter.” *Int’l Longshoreman’s Ass’n, Local 1575*, 332 NLRB 1336, 1336 (2000). Importantly, even when ratification is a condition precedent to a binding contract, “it is for the union, not the employer, to construe and apply its internal regulations relating to what would be sufficient to amount to ratification.” *New Process Steel*, 353 NLRB 111, 117 (2008), quoting *Childers Products Co.*, 276 NLRB 709, 711 (1985). See also *Valley Central Emergency Veterinary Hospital*, 349 NLRB 1126, 1127 (2007). (“even if such ratification were a condition precedent, Board law is clear that the Respondent does not have standing to challenge the Union’s ratification process.”). The Local determined, consistent with its own bargaining history, a tie vote was not a majority vote by the membership, and therefore, it did not constitute a valid ratification. It is not for the Company or the Board (or, as explained further below, the International) to adjudicate the propriety of Local 53G’s determination.

### **II. The International Did Not Have the Authority to Bind the Local to a Labor Agreement or to Interpret the Tie Ratification Vote on the Local’s Behalf**

The International does not dispute that Watt and other USW representatives told the Company that the International deemed the tie vote to be a valid ratification. As Goldberg testified, Watt contacted him on the evening of the vote and stated: “there was a tie vote, 108 to 108, but that the [I]nternational considered that to be a ratification . . . .” Tr. 39 (emphasis added). The Company, in its opening statement at the hearing, claimed: “neither the [I]nternational union, nor the [L]ocal union, provided any notice . . . that the [I]nternational union did not have authority to negotiate a collective bargaining agreement on behalf of the

[L]ocal union.” Tr. 14. However, since at least 2000, the collective bargaining agreement at the Charleroi facility has been a three-party agreement between the employer, World Kitchen, the International and the Local. Joint Ex. 1; Tr. 27-28, 171-72. Thus, the International does not have the authority to enter into a labor agreement “on behalf of” the Local. The Company is well-aware of this fact. Indeed, the tentative agreement prepared by the Company identifies the parties as World Kitchen, the International, and the Local, as does the Company’s purported contract. GC Ex. 2; GC Ex. 10.

Goldberg testified at the hearing: “I was never told anything other than that Jim Watt was the chief negotiator.” Tr. 25. While Watt was the chief spokesman for the Unions’ bargaining committee during the 2016 negotiations, he did not have authority to bind the Local to any contractual agreement or to determine the results of the ratification vote on behalf of the Local.

In determining whether an agent has apparent authority to undertake actions on behalf of another, the Board applies common law principles of agency. *Allegany Aggregates, Inc.*, 311 NLRB 1165 (1993); *see also Dentech Corp.*, 294 NLRB 924, 926 (1989). The burden of establishing apparent authority rests with the party asserting an agency relationship. *Pan-Oston Co.*, 335 NLRB 305, 306 (2001). Apparent authority exists when a principal’s actions supply a “reasonable basis” for a third party to believe that “the principal has authorized the alleged agent to do the acts in question.” *Id.* “[E]ither the principal must intend to cause the third person to believe that the agent is authorized to act for him, or he should realize that his conduct is likely to create such belief.” *Wometco-Lathrop Co.*, 225 NLRB 686, 688 (1976). “Two conditions, therefore, must be satisfied before apparent authority is deemed created: (1) there must be some manifestation by the principal to a third party, and (2) the third party must believe that the extent

of the authority granted to the agent encompasses the contemplated activity.” *West Bay Bldg. Maint.*, 291 NLRB 82, 83 (1988).

There is no evidence to suggest there was any reasonable basis to believe the International could finalize an agreement on behalf of the Local when the labor agreement explicitly states the Local must be a separate signatory to any such agreement. Indeed, Goldberg testified at the hearing that he believed he needed the signatures of the Local committee members to have a deal. Tr. 38, 82.

Moreover, within two days of the ratification vote, Seal clearly expressed to the Company (and the International) that the Local did not consider a tie vote to be ratification. *See Haynes Indus., Inc.*, 232 NLRB 1092, 1099 (1977) (the Board considers whether the principal subsequently ratified the actions of the alleged agent); *Wometco-Lathrop Co.*, 225 NLRB at 688 (finding that the employer had not ratified the unauthorized acts of its managers because the president told union representatives 19 days later that the acts were unauthorized); *West Bay Bldg. Maint.*, 291 NLRB at 83 (“ratification is defined as the affirmance by a person of a prior act that did not bind him but which was done or professedly done on his account whereby the act, as to some or all persons, is given effect as if originally authorized by him.”).

Seal told Hartman, a Company representative, on November 12 that the Local did not regard the contract as having been ratified. Tr. 182. On November 14, Seal told another Company representative, Lackovic: “the tentative agreement wasn’t ratified . . . we have a tie vote.” Tr. 183. Seal stated that he wanted to have a re-vote on the tentative agreement on December 1. Tr. 183. Seal relayed the same position to Good on November 16. Tr. 184. Goldberg was aware of the Local’s position by at least November 16 when he emailed Ratica and stated: “Tom Seal is telling plant management (Don and John) that . . . he is proceeding with

a second vote on December 1.” GC Ex. 5. Seal continued to object to the Company’s assertions that the agreement had been ratified. In December, in response to a Company posting to the membership concerning the contract, Seal wrote to Company representatives, stating: “Local 53G still maintains the contract has not been ratified by the majority of the membership. To remedy this, a revote must occur, as we still maintain a tri-party collective bargaining agreement and due to past practice as per the glass merger agreement.” RL Ex. 9. Seal posted a similar statement to the membership in the plant. RL Ex. 10. Also in December, Seal refused to sign the Company’s notice of the January 2017 wage increases based on the Local’s continued position that the tentatively agreed to wage increases, along with the other terms and conditions, were never ratified by the membership. RL Ex. 11.

Lastly, during his conversation with Seal, Good mentioned that IRC member Price stated the contract was ratified and Seal responded that Price “wasn’t authorized to speak for the local . . .” Tr. 184-85. At the hearing, Good testified that when Price called him after the vote and told him it was a tie he asked her what that meant and she responded: “we talked to the [I]nternational union rep, and we have a contract.” Tr. 111. Thus, at the behest of Watt, Price was communicating the position of the International, not the Local. Moreover, Price is not a member of the Local’s executive board and she is not an officer of the Local.

The Local, a separate and distinct party to the contract, determined that the tie vote did not satisfy the condition precedent to achieving agreement, and therefore, there is no enforceable labor agreement for either the Local or the International to sign.

### **III. The Company Demanded the International and Local 53G Execute a Purported “Contract” Document that Does Not Reflect the Parties’ Entire Agreement**

The document which World Kitchen has demanded the USW and Local 53G sign does not memorialize the entirety of the parties’ agreement. In cases such as this one, “[t]he General

Counsel bears the burden of showing . . . that the document which the respondent refused to execute accurately reflected that agreement.” *Polycon Indus., Inc.*, 363 NLRB No. 31, slip op. at 7 (2015). This principle is well-established law. *See, e.g., Windward Teachers’ Ass’n*, 346 NLRB 1148, 1150 (2006); *Kelly’s Private Car Serv.*, 289 NLRB 30, 39-40 (1988).

The parties agreed that if the USW and Local 53G accepted the contract terms offered by the Company, World Kitchen would make certain investments in the facility, including installing a new decorating line which would bring additional production capacity to the plant. RL Ex. 4; Tr. 173-74. Goldberg acknowledged that the parties had reached this agreement in his email sent to the USW on January 26, 2017: “In return for the ratified CBA, we made promises on capital projects for the plant. These projects included a tank rebuild and a decorating machine.” RI Ex. 5. Crucially, the document Goldberg demanded the USW and Local 53G execute did not include the Company’s commitment to make these investments. GC Ex. 10. The Company is not entitled to demand the USW execute only portions of the purported agreement.

## CONCLUSION

For the reasons stated above, the International respectfully submits that the General Counsel's consolidated complaint must be dismissed in its entirety.

Dated at Pittsburgh, Pennsylvania this 16th day of April, 2018.

Respectfully submitted,

s/ Amanda M. Fisher

Amanda M. Fisher  
Assistant General Counsel  
United Steelworkers  
60 Boulevard of the Allies  
Five Gateway Center – Suite 807  
Pittsburgh, PA 15222  
Phone: 412.562.2567  
Email: afisher@usw.org

Bruce Fickman  
Associate General Counsel  
United Steelworkers  
60 Boulevard of the Allies  
Five Gateway Center – Suite 807  
Pittsburgh, PA 15222  
Phone: 412.562.2540  
Email: bfickman@usw.org

*Counsel for the International*

## CERTIFICATE OF SERVICE

I hereby certify that on April 16, 2018, a copy of Respondent United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO, CLC's Brief to the Administrative Law Judge was electronically filed via NLRB e-filing system with the Division of Judges.

Thomas Randazzo  
Administrative Law Judge  
Division of Judges  
1015 Half Street, SE  
Washington, DC 20570-0001

I further certify that on April 16, 2018, a copy of Respondent United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO, CLC's Brief to the Administrative Law Judge was served by e-mail and first class mail on the following:

David L. Shepley  
National Labor Relations Board, Region 6  
1000 Liberty Avenue, Room 904  
Pittsburgh, Pennsylvania 15222  
David.Shepley@nrlrb.gov

Michael J. Healey  
Healey & Hornak, P.C.  
247 Fort Pitt Boulevard, 4th Floor  
Pittsburgh, Pennsylvania 15222  
mike@unionlawyers.net

Robert T. Bernstein  
Laner Muchin, Ltd.  
515 North State Street, Suite 2800  
Chicago, Illinois 60654-4688  
rbernstein@lanermuchin.com

April 16, 2018

s/ Amanda M. Fisher