UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION SIX

UNITED STEEL, PAPER AND FORESTRY, RUBBER MANUFACTURING, ENERGY, ALLIED INDUSTRIAL AND SERVICE WORKERS INTERNATIONAL UNION, LOCAL 53G, AFL-CIO-CLC (World Kitchen, LLC) Union, and WORLD KITCHEN, LLC, Employer.	Case Nos. 6-CB-198329 6-CB-199021

POST HEARING BRIEF OF WORLD KITCHEN, LLC, GREENCASTLE

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TABLE OF CONTENTS

Page

I. INTRODUCTION 1

II. ISSUE 1

III. FACTUAL HISTORY 2

A. The Bargaining History 2

B. The Bargaining Committee Members 2

1. Watt Was The Chief Negotiator And Spokesperson For Both The International And The Local 2

C. The Negotiations 3

D. The November 2 Agreement 4

E. The November 10 Ratification Vote 6

F. Ratification Was Not A Condition Precedent To Reaching An Agreement 8

G. The International Repeatedly Indicated There Was An Enforceable Agreement 9

H. The International And Local Failed To Execute The Agreement 11

I. The Decorating Line 11

J. The International's and Local's Internal Rules Are Not Relevant 12

IV. LAW AND ARGUMENT 12

A. Requiring Employee Ratification Of An Agreement Runs Contrary To the Principals Of The Act 13

B. The International And Local Violated The Act By Refusing To Sign And Execute The Agreement 14

C. Employee Ratification Was Not Required For The Agreement To Be Binding 15

D. The Agreement Was Ratified When Watt Communicated To World Kitchen That The Vote Resulted In Ratification 17

E. The Internal Machinations Of The International And The Local Are Not Relevant 19

V. CONCLUSION 20

TABLE OF AUTHORITIES

Page

Cases

Aptos Seascape Corporation, 194 NLRB 540 (December 14, 1971) 18

Chauffeurs, Teamsters, and Helpers, Local Union No. 771 and Ready-Mixed Concrete, 357 NLRB 2203 (December 31, 2011)..... 14

General Teamsters Union, Local 662 and W.S. Darley & Company, 339 NLRB 893 (July 31, 2003) 16, 17, 19, 20

Houchens Market of Elizabethtown, Inc. and Amalgamated Meat Cutters and Butcher Workmen of North America, Local 227, AFL-CIO 155 NLRB 729, 734 (November 12, 1965) 15, 17

International Brotherhood of Teamsters, Local No. 589 and Jennings Distribution, Inc., 349 NLRB 124 (January 31, 2007)..... 14, 15, 18, 19

Newtown Corporation and Teamsters Local Union *651*, 280 N.L.R.B. 350 (June 16, 1986) 19

Personal Optics and Laborers International Asbestos & Toxic Abatement, Local 882, 342 NLRB 958 (August 31, 2004)..... 16

Retlaw Broad. Co. v. NLRB, 172 F.3d 660, 665 (9th Cir. 1999)..... 13

United Rentals Northwest, Inc. 2000 NLRB 345 (June 9, 2000) 13, 15, 17

University of Bridgeport, 229 NLRB 1074 (July 1, 1977) 18

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I. INTRODUCTION

The hearing in this matter, involving the above-captioned Charges, was held on February 5, 2018, at the National Labor Relations Board's Regional Office in Pittsburgh, Pennsylvania, before Administrative Law Judge Thomas Randazzo. Post Hearing Briefs in this matter are due on April 16, 2018.

II. ISSUE

The issue is whether or not the United Steel, Paper and Forestry, Rubber Manufacturing, Energy, Allied Industrial and Service Workers International Union (the "International") and the United Steel, Paper and Forestry, Rubber Manufacturing, Energy, Allied Industrial and Service Workers Local 53G Union (the "Local") each violated Section 8(b)(3) of the National Labor Relations Act (the "Act") when they each refused to execute a collective bargaining agreement with World Kitchen, LLC ("World Kitchen).

III. FACTUAL HISTORY

A. The Bargaining History

The International, the Local and World Kitchen have been parties to a three-party collective bargaining agreement for a number of years. (Tr. 28; L. 1)[1] Negotiations on the contract at issue began in January 2016 and continued until November 2, 2016, when an agreement on all pending issues was reached (the "Agreement"). In total, there were 43 individual bargaining sessions between January 2016 and November 2, 2016. (Tr. 23; L. 25; Tr. 28; L. 21) During the course of bargaining, the previous contract expired and had been extended twice. The second extension was set to expire on February 2, 2017. (Tr. 28, L. 8-16)

B. The Bargaining Committee Members

During the bargaining sessions, the Local was represented by members of the Industrial Relations Committee (the "IRC"), which was comprised of six employees who worked at World Kitchen's plant located in Charleroi, Pennsylvania, one of the IRC members was Tom Seal (Seal), the Local President. (Tr. 171, L. 14-22) Jim Watt (Watt), an International Staff Representative, was the chief negotiator and spokesperson for both unions. (Tr. 25 L. 13) World Kitchen was represented by certain managerial staff and its attorney, Andrew Goldberg (Goldberg), who acted as its chief negotiator. (Tr. 23-24, L. 1-22)

1. Watt Was The Chief Negotiator And Spokesperson For Both The International And The Local

Despite attempting to downplay his role at the Hearing, Watt ultimately admitted that he was the chief negotiator and spokesperson for both the Local and the International. (Tr. 120 L. 16-22) At Hearing, Goldberg testified that Watt identified himself as the chief negotiator of both

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[1] References will be made throughout this Post-Hearing Brief to the Transcript, Lines (Tr. _____, L. ___); General Counsel Exhibits (GC Ex.____); the International Union's Exhibits (IU Ex. _____); and the Local Union Exhibit (LU Ex.__).

unions on the first day of negotiations and repeatedly did so throughout the negotiations. (Tr. 26; L. 18-23) Watt himself testified that he represented the International and Local at the bargaining sessions, and was the chief spokesperson for both the International and the Local. (Tr. 120, L. 16-22) No one at any of the 43 bargaining sessions ever said or in any way indicated that Watt did not have the authority to negotiate on behalf of both the International and the Local. (Tr. 105, L. 11-15) At Hearing, Watt testified that he did not remember if he ever told Goldberg that his role was different for the International than it was for the Local and testified he represented both the Local and the International. (Tr. 120, L. 16-22; Tr. 134, L. 1) The Local did tell Goldberg that for a proposal to be considered agreed upon, it needed to be signed off by all members of the IRC. (Tr. 103, L. 14-21) There were no other documents introduced nor was any testimony elicited that indicated there was any applicable rule or document that conditioned any agreement on employee ratification. (Tr. 38-39, L. 1-25, 1-20)

C. The Negotiations

Throughout the negotiations, proposals were noted as tentatively agreed on by the parties as such agreements were reached. In June 2016, Goldberg was negotiating with Seal and another IRC member telephonically and believed that the parties had reached a tentative agreement on all outstanding proposals. (Tr. 80-83) However, Dan Nicolai, (Nicolai), a member of the IRC, informed Goldberg these proposals did not amount to a tentative agreement because all members of the IRC needed to sign off on a proposal before it would be considered tentatively agreed upon. (Tr. 103, L. 14-21; Tr. 172, L. 12-19; Tr. 81, L. 19-25; Tr. 82, L. 3-9) In August 2016, Goldberg wanted the Local and International to present the proposals that were agreed upon in June 2016 to the employees for ratification vote, even if not everyone on the IRC had signed off on the agreements. (Tr. 103, L. 22-25) Because of Nicolai's comments, Goldberg understood that these proposals did not amount to a "meeting of the minds," but hoped that if the employees

ratified the proposals, the rest of the IRC would sign the proposals. (Tr. 104, L. 1-5) (*See also,* IU-1, a series of emails between Goldberg and Watt, where Goldberg was requesting the International and Local to submit the proposals that were agreed upon by some of the IRC to an employee ratification vote.) The Last, Best Final Offer referenced in Goldberg's email was voted down by the Local bargaining unit members in August 2016 and negotiations continued. (LU-5)

On October 5, 2016, during the course of negotiations, Goldberg drafted an email to Watt expressing an interest in finalizing an agreement, writing that "we suggest both parties work hard to come to a recommended tentative agreement by COB on the 2nd." (Tr. 84, L. 8-10) (RI-4) When questioned at Hearing regarding what two parties he was referring to, Goldberg testified that when he wrote "both parties" he was referring to World Kitchen and the unions. (Tr. 84, L. 17) Goldberg explained that he viewed the Local and the International as one entity because they were both being represented by the same chief spokesperson, Watt. (Tr. 84, L. 21-25)

On November 2, 2016, World Kitchen, the International and the Local reached agreement on all outstanding issues raised during negotiations. (GC-2) (Tr. 32, L. 23-25) The word "tentative" in the title refers to the fact that the parties have agreed in principal to everything, but that the contract was in redline fashion and needed to be finalized. (Tr. 87, L. 17-19; Tr. 29-30, L. 25) The proof of the need to finalize the Agreement is evidenced by the fact that several drafts of the "clean" version were needed before all of the terms in the final version, which was sent to John Ratica on January 19, 2017, matched the final Agreement. (*Compare* GC-10 to GC-22) (Tr. 70, L. 1-22)

D. The November 2 Agreement

The parties reduced the agreements to writing and put them into a document consisting of over 100 pages. (Tr. 32, L. 23-25; Tr. 33, L. 1-4) (GC-2) Some of the pages reflected agreements

reached, or at least put in signature form, in September and some reflected agreements reached, or put in signature form in November. (Tr. 33, L. 19-25) Each page of the over 100 pages reflected an agreed upon term or terms of a collective bargaining agreement. Collectively, the document reflected an agreement on all terms. The Agreement was signed by Local and International representatives, including Watt, Seal, and all members of the IRC. (Tr. 30, L. 11; Tr. 30, L. 12-25; Tr. 31, L. 14-25; Tr. 32, L. 1-13) This was the first time in negotiations that all of the members of the IRC had agreed to all of the outstanding proposals. Goldberg made sure all proposals were signed by all IRC members because he had been told that this was necessary to have an agreement. (Tr. 38, L. 5-15) At the November 2, 2016 bargaining session, everyone believed that all outstanding issues had been resolved and no person indicated that there needed to be any further negotiations. (Tr. 38, L. 22-25).

Inadvertently, there were a few proposals that World Kitchen representatives failed to sign. (Tr. 32, L. 1-25) (GC-2, page 103) Though these proposals were not signed, they were part of the Agreement reached by the parties and were signed by the International and the Local representatives. (Tr. 33, L. 11-18) As a consequence of all parties signing the Agreement, negotiations were done. In Goldberg's mind, there was a fully signed executed Agreement that just needed to be put in final form. (Tr. 104, L. 2-15)

Watt confirmed that on November 2, 2016, World Kitchen and the International and the Local reached tentative agreements on all open issues presented during the negotiations and all tentative agreements had been signed off on by everyone representing the parties. (Tr. 121, L. 1-13) Watt testified that, in November 2016, he believed the parties had negotiated a six-year contract that was binding from 2016 to 2022. (Tr. 127, L. 9-13, 19-22; Tr. 128, L. 3-7)

The parties met on November 3, 2016 to conclude miscellaneous administrative matters. (Tr. 37, L. 1-4) Goldberg sent a copy of all signed pages to Watt on November 7, 2016. (Tr. 35, L. 15-17) (GC-3)

Again, Goldberg knew that the Local would hold a ratification vote because the Local the bargaining unit members had previously voted on a Last, Best Final Offer in August 2016. (LU-5) The Last, Best Final Offer in August 2016 was not "tentatively agreed" because only two of the IRC members had agreed to the terms. (Tr. 99, L. 13) (*See* IU-1, in which Goldberg requests the Local and International submit the offer for a ratification vote. *See also,* LU-5, which references the previous vote that had occurred in August 2016.) However, no one testified that ratification was ever agreed as necessary to reach a contract. Indeed, Watt did not testify that he told World Kitchen or Goldberg that the contract was conditioned on a ratification vote. Seal also did not claim that he told World Kitchen or Goldberg that the Agreement was conditioned on a ratification vote. (Tr. 192, L. 5-7) No one testified that Goldberg agreed to ratification as a condition precedent to reaching an agreement.

E. The November 10 Ratification Vote

On November 10, 2016, the Local bargaining members voted on whether to ratify the Agreement. (Tr. 110-11) (*See* LU-6; LU-7) The result of the vote was a tie, 108 for, and 108 against ratification of the Agreement. (Tr. 39, L. 19-20) Upon learning that there was a tie, Watt called his supervisor, Robert McAuliffe (Director McAuliffe), the District Regional Director for the International and told him of the situation. (Tr. 126, L. 15-25) Director McAuliffe told Watt that he would look into what occurs when a ratification vote results in a tie and would call Watt back. *Id.*

Director McAuliffe called Bob Roots (Roots), an employee of the International who interprets the International's constitution, the bylaws for local unions, and the election manual

for local union elections, and asked what the result is when a ratification vote results in a tie. (Tr. 208, L. 11-21) Roots communicated to Director McAuliffe that "a tie vote is not a rejection, it is a ratification." (Tr. 209, L. 2-3) Director McAuliffe then contacted Watt and told him that the result of the tie vote was a ratification of an Agreement. (Tr. 209, L. 12-13; Tr. 129; L. 7-10)

Watt told Heather Price (Price), a member of the Local and the IRC, that the tie vote resulted in ratification of the Agreement. (Tr. 129, L. 7-10) Price, called Donald Good (Good), the Senior Manager of Human Resources for World Kitchen, and a member of the World Kitchen bargaining team, and told him that the ratification vote resulted in a tie of 108 to 108. (Tr. 110-11, L. 15-25, 1-11) When Good asked Price what the effect of a tie was, Price told Good that she had talked to Watt and a tie vote resulted in a ratification of the Agreement. (Tr. 111, L. 12-14)

In addition to Price calling Good, Watt also called Good and left a voice message. (Tr. 11, L. 19-25) The voice message consisted of Watt stating, "Hey, Don, it's Jim, we have a contract. Thanks. Talk to you later. Bye." (Tr. 114, L. 2-5) On November 10, 2016, Watt also called Goldberg to tell him that the ratification vote had resulted in a tie vote and that this was considered to be a ratification of the Agreement and the Agreement was ratified. (Tr. 39, L. 10-23) Goldberg then contacted World Kitchen representatives and told them that there was a contract in place. (Tr. 39, L. 24) (GC-4) At Hearing, it was adduced that there was no controlling document that defined what constituted a successful ratification nor what the effect of a tie vote was. (Tr. 194, L. 19-20) Phil Ornot, a former World Kitchen employee, who worked at the Charleroi Plant for 24 years, testified at the Hearing that nowhere in any of the documents that controlled the processes for ratifying agreements did it state that a successful ratification

meant 50 percent plus 1 of the membership voted in favor of ratifying an agreement. (Tr. 157, L. 13-16)

Logically, Goldberg concluded that when Watt told him that the Agreement was ratified, Goldberg took him at his word that the Agreement was ratified. (Tr. 105, L. 16-19) Watt even testified that it was reasonable for Goldberg to rely on Watt's assertion that the Agreement was ratified. (Tr. 140, L. 1-10) Watt agreed with the fact that he left messages for Good and Goldberg as discussed. (Tr. 128, L. 11-23; Tr. 139, L. 24) Watt even admitted that he signed the Agreement. (Tr. 133, L. 4) However, Watt did not provide a signed copy of the Agreement to Goldberg or anyone at the Company.

F. Ratification Was Not A Condition Precedent To Reaching An Agreement

It is not in dispute that the various parties knew the Agreement was going to be voted on by members. (Tr. 197, L. 5-7) At the conclusion of negotiations, Good told Watt that he hoped that employees ratified the Agreement. (Tr. 179, L. 15-18) However, at no time during the negotiations did any party indicate that reaching an agreement was conditioned upon ratification. Seal testified that it was known from day one that ratification was requisite to reaching an Agreement; but he did not claim that anyone said so and he failed to produce any proposal or identify any day where the parties actually agreed that ratification was a prerequisite to reaching an agreement. (Tr. 192, L. 5-7) Further, neither John Ratica (Ratica), the sub-District Regional Director for the International, nor Director McAuliffe testified that ratification was a prerequisite to reaching the Agreement. To the contrary, the record is devoid of any evidence that any party proposed conditioning a contract upon successful ratification of the tentative agreements. Goldberg testified that there was no document that showed parties' intention to condition an agreement upon employee ratification. (Tr. 38-39, L. 1-25, 1-20)

G. The International Repeatedly Indicated There Was An Enforceable Agreement

On November 16, 2016, Goldberg was informed that the Local planned on scheduling another ratification vote for December 1, 2016. (LU-7) (IU-7) Goldberg drafted an email to Ratica, asking him to direct Seal not to have a second vote because there was an agreement in place. (GC-5) (Tr. 43, L. 9-16) Ratica called Goldberg and told him that the International would uphold the November 10th ratification of the Agreement and there would not be another vote. (Tr. 219, L. 72) In the ensuing weeks, multiple representatives of the International repeatedly conveyed to World Kitchen that the Agreement was ratified and the Local was incorrect in its position. For example:

- On November 16, 2016, Director McAuliffe emailed Goldberg a letter drafted by International counsel Nathan Kilbert, which was to be sent to Seal, the letter informed Seal that the Local needed to sign the Agreement and that the Agreement was ratified. (Tr. 48, L. 12-20) (GC-6)
- On November 22, 2016, Director McAuliffe emailed Goldberg telling him that it was the International's intention to "maintain the ratification of the collective bargaining agreement." (GC-8)
- On December 12, 2016, Watt left a voicemail for Goldberg wishing him "Merry Christmas" and telling him that he had signed the CBA, and that the contract was going to be executed. (Tr. 54, L. 16-23) At Hearing, Watt testified that he agreed with Goldberg's testimony regarding the December 12, 2016, voicemail Watt had left saying he said he signed the collective bargaining agreement. (Tr. 139, L. 16-24)

- On December 20, 2016, Watt called Goldberg and told him that he had signed the Agreement and the International was placing the Local under administratorship and that once the Local was placed under administratorship, Watt was going to sign on behalf of the Local. (Tr. 55, L. 10-16) Watt explained to Goldberg that once a local has signed off on a tentative agreement and arranged a ratification vote, the International was in charge and the Local has no say. (Tr. 55, L. 18-25) Watt explained that he was the person responsible for the ratification process, which was why Goldberg should trust that the Local was wrong and that there was an Agreement. (Tr. 56, L. 1-4) At Hearing, Watt testified that Goldberg's testimony was accurate regarding the International having the authority to control the process and to require the Local to sign the contract. (Tr. 140, L. 22-25; Tr. 141, L. 1-2) On December 15, 2016, the Local was put into administratorship by the International and Watt was placed in charge of the Local. (Tr. 137, L. 15-25) (GC-21)

On December 12, Goldberg sent an email to Watt, copying Ratica, Director McAuliffe, Good, and others, which contained a redlined and clean copy of the collective bargaining agreement along with signature pages. (GC-9; GC-10; GC-11) (Tr. 51, L. 9-25) At that time, no one indicated to Goldberg that there was anything missing from or wrong with the finalized Agreement. (Tr. 56, L. 15-19) (GC-10) It was later discovered that the final Agreement was missing information to which the parties had agreed upon. (Tr. 70, L. 7-16) On January 19, 2017, a corrected copy containing the missing information was sent to Ratica.. (Tr. 73, L. 18-21) (GC-22)

In January 2017, Ratica informed Goldberg that he had been instructed by Leo Gerard, the President of the International, not to sign the Agreement. (Tr. 90, L. 1-16)

H. The International And Local Failed To Execute The Agreement

Despite the many assertions made by the International that the Agreement was ratified, and despite Watt telling Goldberg that he signed the Agreement on behalf of the International, and despite the fact that Local was put under administratorship and Watt was put in charge of the Local, the International and Local failed to execute the Agreement.

Instead, on January 6, 2017, Seal and the Local filed a Charge with the National Labor Relations Board (the "NLRB"), through which they alleged that World Kitchen failed to bargain in good faith when it refused to meet with the Local or the International to continue negotiating, and when pursuant to the Agreement, it unilaterally changed the monthly contribution rates for future retirees. (Tr. 58, L. 1-10) (GC-12)

The NLRB Charge was investigated and World Kitchen asserted that it had a right to change the rates for future retirees pursuant to the Agreement reached on November 2, 2016. (Tr. 58, L. 16-21) On April 27, 2017, the Regional Office of the NLRB dismissed the Charge against World Kitchen because it found, *inter alia*, an agreement was in place because employee ratification was not a condition precedent for reaching an agreement and because World Kitchen was acting pursuant to the terms of the agreement that was reached. (Tr. 59, L. 12-17) (GC-13) The Local appealed the regional office's decision to the Office of the General Counsel of the NLRB. On August 24, 2012, the Office of the General Counsel denied the appeal. (Tr. 60, L. 22-24) (GC-14)

I. The Decorating Line

Ratica and Seal testified that the Company agreed to install a new decorating line at the Charleroi Plant if an agreement was reached. (Tr. 213, L. 1-27) (*See,* LU-4) Goldberg told the

International and the Local that World Kitchen would not agree in writing or otherwise on any specific project. (IU-5) Goldberg noted that the International and Local then asked if the Company would commit in writing to invest in the plant if an agreement was reached. Goldberg agreed to such because the Company had to "invest" in the plant to keep it running. (IU-4) (IU-5) World Kitchen initially took steps to secure financing to build the new decorating line after the Agreement was reached. (Tr. 104, L. 22-25) The decorating line that was discussed was eventually installed in a different Company facility located in Corning New York, which is also a USW represented facility. The decorating line was installed there because the Local and International refused to sign the Agreement. (Tr. 67, L. 12-24)

J. The International's and Local's Internal Rules Are Not Relevant

On numerous instances, the Local and International introduced exhibits and adduced testimony at Hearing regarding their constitution, bylaws and merger agreements. *See generally,* Tr. 142-169. As discussed below, this material is not relevant and has no bearing on the issue at hand.

IV. LAW AND ARGUMENT

On November 2, 2016, the International, the Local and World Kitchen agreed to all outstanding issues and an enforceable Agreement was reached. Requiring employee ratification of an agreement runs contrary to the Act because it is a form of direct dealing. As of November 2, 2016, an Agreement existed that all three parties were required to sign and execute. Employee ratification of the Agreement was not required in order for the Agreement to be binding. Even had the parties agreed that ratification was a necessary condition to reaching an agreement, which they had not, the condition was satisfied when the Agreement was ratified via the tie vote on November 10, 2016. Watt, the agent for both the International and the Local, bound his principals when he communicated to World Kitchen that the Agreement was ratified. The

merger agreements between the Local and the International are not relevant because they are internal union matters and, as such, cannot affect a binding collective bargaining agreement. For the reasons stated below, there was an Agreement between the Local, International and World Kitchen on November 2, 2016 and the Local and the International are in violation of the Act for refusing to sign and execute the Agreement.

A. Requiring Employee Ratification Of An Agreement Runs Contrary To the Principals Of The Act

Employee ratification of a collective bargaining agreement runs contrary to the principals of the Act. Employee ratification is a form of direct bargaining and it "is 'inherently divisive' and has the effect of 'undermining the authority of the ...bargaining representative.'" *United Rentals Northwest, Inc.* 2000 NLRB 345 (June 9, 2000) (internal citations omitted). "'This reflects that Act's preference for channeling disagreements over these core topics [wages, hours, and other terms and conditions of employment] into collective bargaining to promote 'industrial peace' and minimize the economic impact of labor strife on interstate commerce.'" *Id.* (internal citations omitted) The Act's purpose is to promote labor peace and empower employees' chosen bargaining agents. *Retlaw Broad. Co. v. NLRB*, 172 F.3d 660, 665 (9th Cir. 1999).

This case represents the precise reason that conditioning an agreement on employee ratification is so disfavored and discouraged by the Act. The International's and Local's agents clearly came to a binding agreement with World Kitchen on November 2, 2016. The International and the Local are now attempting to divest the authority they granted their bargaining agents after the agents have bound their respective parties. The International and Local are actively fomenting labor strife and their arguments run contrary the NLRA's purpose.

B. The International And Local Violated The Act By Refusing To Sign And Execute The Agreement

The International and Local violated the Act by refusing to sign and execute the Agreement reached with World Kitchen. "It is well settled Board law that a union refuses to bargain collectively with an employer in violation of Section 8(b)(3) of the Act when it refuses to execute a written collective bargaining agreement reached with that employer, which incorporates all the terms of their agreement." *International Brotherhood of Teamsters, Local No. 589 and Jennings Distribution, Inc.*, 349 NLRB 124 (January 31, 2007). "Section 8(d) of the Act requires that the parties in a collective bargaining relationship, once an agreement is reached, to execute that agreement at the request of either party." *Chauffeurs, Teamsters, and Helpers, Local Union No. 771 and Ready-Mixed Concrete*, 357 NLRB 2203 (December 31, 2011).

In *Ready-Mixed Concrete*, a union business agent negotiated a collective bargaining agreement on behalf of the union and at the conclusion of the last bargaining session a document was prepared that showed all issues as tentatively agreed. *Id.* at 2207. The employer agent and the union agent shook hands and there "was an overall mood of celebration and well-being for the accomplishment of their joint goal---drafting a new collective bargaining agreement." *Id.* The union refused to execute the document because the union's business agent's superior objected to the terms. *Id.* at 2204-2207. The Board found that a "'meeting of the minds' had occurred [at the final bargaining meeting and] at the same instant all the tentatively accepted proposals morphed into the terms of a binding collective bargaining agreement." *Id.* at 2207. As such, it was unlawful for the union to refuse to sign the agreement. *Id.*

It is undisputed that as of November 2, 2016, the parties had agreed to all outstanding issues. Just as in *Ready-Mixed Concrete,* when all of the remaining issues were tentatively agreed to, those tentative agreements morphed into a binding agreement at that moment. At no

point after November 2, 2016, did the Local or International ever claim that an open issue remained. While there was a provision missing from the first draft of the formal agreement sent on December 12, 2016, this was remedied when the missing provision was included in the revised formal Agreement sent on January 19, 2017. (*Compare* GC-10 and GC-22) The missing provision was a drafting issue. Regardless, all of the evidence adduced at the Hearing indicates that all pending issues were agreed to on November 2, 2016. As discussed below, ratification was not necessary in order for the Agreement to have effect. As such, the Local and the International are in clear violation of the Act for failing to sign and execute the Agreement reached on November 2, 2016.

C. Employee Ratification Was Not Required For The Agreement To Be Binding

Employee ratification was not a condition precedent to forming the Agreement. In order for the Board to find employee ratification to be a condition precedent for the formation of an agreement, the employer must be "aware before or during negotiations of such a condition precedent, and **[have] expressly agreed to it.**" *International Brotherhood of Teamsters, Local No. 589 and Jennings Distribution, Inc.*, 349 NLRB 124 (January 31, 2007) (emphasis added); *see also, United Rentals Northwest, Inc.* 2000 NLRB 345 (June 9, 2000) (holding that the foremost factor that the Board considers in determining whether ratification was required "is whether or not a *written document exists* which recites that employee-ratification is required.") (emphasis added). *See also, Houchens Market of Elizabethtown, Inc. and Amalgamated Meat Cutters and Butcher Workmen of North America, Local 227, AFL-CIO* 155 NLRB 729, 734 (November 12, 1965) (holding that for there to be an agreement to condition a labor agreement on ratification there needs to be a meeting of the minds between the parties and finding there was not a meeting of the minds where one party proposed conditioning the agreement upon ratification and the other party failed to respond to the proposal.) It is undisputed that the

Company did not expressly or otherwise agree to condition an agreement on ratification of the agreements reached by the parties. While Goldberg requested a ratification vote in August 2016, the parties had not yet reached an agreement. He requested a ratification vote in hope that a vote in favor of World Kitchen's offer would trigger the Local's internal mechanisms which could require the bargaining agents to agree to World Kitchen's proposals.

In *General Teamsters Union, Local 662 and W.S. Darley & Company*, 339 NLRB 893 (July 31, 2003), the union argued that it was not required to sign an agreement because the agreement was still tentative and not binding until ratification had occurred. *Id.* at 899. The Board found that there was no evidence that ratification was required. *Id.* The Board found that "[s]tanding alone, [a] self-imposed requirement [of ratification] does not create a condition precedent for formation of an agreement under the Act." *Id.* Despite the fact that there is no evidence that ratification was a condition precedent for reaching the Agreement, the International and Local are claiming that a self-imposed requirement that all agreements must be ratified, prevented them from reaching an agreement. It is clear from *Teamsters Local 662*, that the International's and Local's position is unsupported by the law.

In *Personal Optics and Laborers International Asbestos & Toxic Abatement, Local 882*, 342 NLRB 958 (August 31, 2004), the employer refused to sign an agreement that had been agreed to by the union bargaining committee and the employer, but had not been ratified by the union membership. The employer argued that it was not required to sign the agreement because throughout the negotiations, the union stated it intended to have the agreement ratified and used this as leverage to win concessions from the employer. *Id.* at 22. The Board held "[e]mployee ratification is an internal union procedure; unless the parties expressly make ratification a condition precedent to reaching a contract, it is not obligatory" and a party "may not refuse to

sign an otherwise agreed-upon contract because of non-ratification." The Board found that the agreement between the union and the employer was in effect "when the negotiating committee unanimously accepted it." In order to find a labor agreement conditioned upon ratification, a party must do more than schedule a vote or to raise a ratification vote as an issue. *See Houchens Market* at 1734.

Here, there was no express agreement to condition the Agreement upon ratification. At most, World Kitchen arranged space for a ratification vote and Good expressed a desire to have employees vote in favor to what had been agreed upon. (Tr. 179; L. 15-19) Good was simply expressing his hope that the workforce would be happy with the agreement that had been reached. While Seal alleges that it was "understood" from day one that ratification of an agreement would be necessary, Seal did not claim that he ever said so or that the Company ever agreed to such a condition. Both the International and Local failed to introduce any document or adduce any testimony whatsoever that ratification was discussed, much less that it has been an agreed precondition to reaching a binding agreement. It is clear from the case law that any agreement to condition a labor agreement on ratification must be clear and expressly agreed to. *See generally United Rentals.* A self-imposed requirement of ratification does not create a condition precedent. *See, Teamsters Local 662.* From the evidence adduced at Hearing, it is readily evident that no such agreement existed. Contrary to Seal's self-serving testimony, it is clear from the record that successful ratification was not a condition precedent for reaching an enforceable agreement.

D. The Agreement Was Ratified When Watt Communicated To World Kitchen That The Vote Resulted In Ratification

In addition to the parties reaching a binding agreement on November 2, 2016, the Agreement was ratified. Watt's assertion that the vote resulted in ratification of the Agreement

was binding on both the International and the Local. "It is well established Board law that an agent...appointed to negotiate a collective-bargaining agreement contract is deemed to have full authority to bind his principal...in the absence to the contrary. *International Brotherhood of Teamsters, Local Union No. 589 and Jennings Distribution, Inc.* 349 NLRB 124 (January 31, 2007). *See also, Aptos Seascape* Corporation, 194 NLRB 540 (December 14, 1971) (holding that "an agent appointed to negotiate a collective-bargaining contract is deemed to have apparent authority to bind his principal in the absence of notice to the contrary."); *University of Bridgeport*, 229 NLRB 1074 (July 1, 1977) (holding "the law is clear that when an agent is appointed to negotiate a collective bargaining agreement that agent is deemed to have apparent authority to bind his principal in the absence of clear notice to the contrary.")

In *Jennings Distribution,* the union's chief negotiator told the employer that an agreement had been voted on and ratified and "the parties had 'a final agreement.'" The union then refused to sign the agreement claiming that the ratification vote was flawed. *Id.* at 129. The Board held that once the chief negotiator told the employer that a final agreement had been reached "it made no difference what the Union subsequently decided about the correctness of the ratification process...the union cannot...lawfully change its position and refuse to execute the contract on the basis that the ratification was for some reason allegedly improper." *Id.*

Goldberg's undisputed testimony, which Watt confirmed, clearly establishes that Watt was the chief spokesperson and agent for both the Local and the International. (Tr. 25, L. 13) Watt testified that he identified himself as speaking for both the Local and the International. (Tr. 139, L. 1) It is undisputed that Watt informed multiple representatives of Work Kitchen that an Agreement was in place. *See generally*, Section III.E. and III.F. Under the basic principles of agency and NLRB law, Watt was the agent for both the Local and the International. As

discussed above, an agent appointed to negotiate a collective bargaining agreement is presumed to have authority to bind the agent's principal, *absent clear notice to the contrary. See e.g. Jennings Distribution.* Watt failed to disavow this presumption because he gave no notice that he did not have the authority to bind both the International and the Local. Watt even testified that he failed to make any distinction between his role with the Local and role with the International. (Tr. 120, L. 16-22) Therefore, when Watt communicated to World Kitchen that the Agreement was ratified, his assertion was binding on both the Local and the International and any ratification prerequisite was satisfied.

E. The Internal Machinations Of The International And The Local Are Not Relevant

The internal bylaws, machinations and agreements between the Local and the International are not relevant. Internal union matters relating to a union's constitution and bylaws cannot affect the validity of a collective bargaining agreement. *Newtown Corporation and Teamsters Local* Union *651*, 280 N.L.R.B. 350 (June 16, 1986) (holding that the argument "that the Union's constitution and bylaws prohibit [the party] from executing an agreement absent a majority vote is incorrect as a matter of law.")

In *General Teamsters Union Local 662 and W.S. Darley Company,* 339 NLRB 893 (July 31, 2003) the union refused to execute an agreement because it claimed it violated its own ratification process. Specifically, there were provisions missing from the Agreement that was voted on that related to how four striking workers would be treated. *Id.* The Board found that the internal procedures were not relevant and that the union was "statutorily-obliged to execute a written contract embodying that final and binding agreement." *Id.* at 900.

Here, the Local spent considerable time going through the history of the Local's organization and its relationship to the International. The Local went into great detail what rights

the Local retained when it merged with the International. However, the law is clear that these agreements have no relevance on the present matter because they are internal to the Local and the International. Just like in *Teamsters Local 662,* the internal procedures do not relieve the parties' obligation to sign and execute the Agreement.

V. CONCLUSION

Based on all of the facts and Board law, an Agreement between the International, Local and World Kitchen was reached on November 2, 2016. There was no agreement to condition reaching an Agreement on employee ratification. Further, the agreement was ratified when Watt told Goldberg and Good that the employee vote resulted in ratification of the Agreement. Based on all the evidence, it is clear that the International and Local violated Section 8(b)(3) of the National Labor Relations Act when they failed to sign and execute the Agreement with World Kitchen. World Kitchen requests that the Administrative Law Judge adopt the Remedy and Proposed Order contained in the National Labor Relations Board's General Counsel's Post-Hearing Brief.

Respectfully submitted,

WORLD KITCHEN, LLC

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