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International Brotherhood of Teamsters, Local Union No. 589, affiliated with the International Brotherhood of Teamsters *and* Jennings Distribution Inc., a Division of Marine View Beverage Inc. Case 19–CB–9427

January 31, 2007

DECISION AND ORDER

BY MEMBERS LIEBMAN, SCHAUMBER, AND KIRSANOW

On September 25, 2006, Administrative Law Judge Gregory Z. Meyerson issued the attached decision. The Respondent filed exceptions and a supporting brief, the General Counsel and the Charging Party filed answering briefs, and the Respondent filed a reply brief to the General Counsel's answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs[1] and has decided to affirm the judge's rulings, findings,[2] and conclusions and to adopt the recommended Order as modified.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, International Brotherhood of Teamsters, Local Union No. 589, affiliated with the International Brotherhood of Teamsters, Bremerton, Washington, its officers, agents, and representatives, shall take the action set forth in the Order as modified.

Substitute the attached notice for that of the administrative law judge.

Dated, Washington, D.C. January 31, 2007

Wilma B. Liebman, Member

Peter C. Schaumber, Member

Peter N. Kirsanow, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain on your behalf with your employer

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to sign the written collective-bargaining agreement containing the final and binding agreement (for the employees of Jennings Distribution Inc. classified as drivers, warehousemen, salesmen, and merchandisers) reached with that employer on February 21, 2006, and presented by that employer to us for signature on or about that same date.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights set forth above.

WE WILL immediately sign the written collective-bargaining agreement containing the final and binding agreement (for the employees of Jennings Distribution Inc. classified as drivers, warehousemen, salesmen, and merchandisers) reached with that employer on February 21, 2006, and presented by that employer to us for signature on or about that same date.

WE WILL give retroactive effect to the provisions of the collective-bargaining agreement reached with Jennings Distribution, Inc., on February 21, 2006, and presented by that employer to us for signature on or about the same date.

[1] The Charging Party asserts that, while it received the Respondent's brief supporting its exceptions, it did not receive a separate exceptions document. In determining whether exceptions should be disregarded for failure to follow the Board's service requirements, the Board considers whether a party has been prejudiced by that failure. See, e.g., *La Gloria Oil & Gas Co.*, 337 NLRB 1120, 1120 fn. 1 (2002), affd. 71 Fed. Appx. 441 (5th Cir. 2003); *Medtrans*, 326 NLRB 925, 925 fn. 2 (1998); *Terpening Trucking Co.*, 271 NLRB 96, 96 fn. 1 (1984). As the Charging Party received the Respondent's supporting brief and was able to respond fully to the Respondent's arguments, it was not prejudiced by the alleged failure of service. Thus, there is no basis for disregarding the exceptions.

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

INTERNATIONAL BROTHERHOOD OF TEAMSTERS LOCAL UNION NO. 589, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS

Evan D. Chinn, Esq., and *Irene Botero, Esq.,* for the General Counsel.

James F. Wallington, Esq., of Washington, D.C., for the Respondent.

John M. Payne, Esq., of Seattle, Washington, for the Employer.

DECISION

STATEMENT OF THE CASE

GREGORY Z. MEYERSON, Administrative Law Judge. Pursuant to notice, I heard this case in Seattle, Washington, on July 25, 2006. Jennings Distribution Inc., a Division of Marine View Beverage Inc. (the Employer or Jennings), filed an unfair labor practice charge in this case on March 23, 2006. Based on that charge, the Regional Director for Region 19 of the National Labor Relations Board (the Board) issued a complaint on May 31, 2006. The complaint alleges that International Brotherhood of Teamsters, Local Union No. 589, affiliated with the International Brotherhood of Teamsters (the Respondent or the Union) violated Section 8(b)(3) of the National Labor Relations Act (the Act). The Respondent filed a timely answer to the complaint denying the commission of the alleged unfair labor practices.[1]

All parties appeared at the hearing, and I provided them with the full opportunity to participate, to introduce relevant evidence, to examine and cross-examine witnesses, and to argue orally and file briefs. Based upon the record, my consideration of the briefs filed by counsel for the General Counsel, counsel for the Respondent, and counsel for the Employer, and my observation of the demeanor to the witnesses, I now make the following.[2]

FINDINGS OF FACT

I. JURISDICTION

The complaint alleges, the answer admits, and I find that the Employer is a State of Washington corporation, with an office and place of business in Bremerton, Washington (the Employer's facility), where it has been engaged in the warehousing and delivery of beverages. Further, it is admitted and I find that the Employer has annually, in the course and conduct of its business operations, sold and shipped goods or provided services from its facilities within the State of Washington, to customers outside Washington, or sold and shipped goods or provided services to customers within Washington, which customers were themselves engaged in interstate commerce by other than indirect means, for a total value in excess of $50,000. This period is representative of all material times.

Accordingly, I conclude that the Employer is now, and all times material herein has been, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. LABOR ORGANIZATION

The complaint alleges, the answer admits, and I find that at all times material, the Respondent has been a labor organization within the meaning of Section 2(5) of the Act.

III. ALLEGED UNFAIR LABOR PRACTICES

A. The Dispute

The Employer and the Union have had a long history of collective bargaining. The current dispute stems from the most recent negotiations for a new contract, the gravaman of which is whether those negotiations resulted in a final agreement on the terms of a new contract that the parties are required to execute. It is the position of the General Counsel and the Employer that on February 21, 2006,[3] the parties reached complete agreement on terms and conditions of employment to be incorporated in a collective-bargaining agreement. Further, it is their position that since March 14, the Employer has requested that the Union execute a written contact embodying the agreement previously reached, and that since March 28, the Union has failed and refused to execute that contract. The complaint alleges that the Union's refusal to execute that written contract embodying the agreement previously reached between the parties constitutes a violation of Section 8(b)(3) of the Act.

The Union contends that the parties did not reach a final agreement on the terms of a new contract that it is required to execute because two conditions precedent for the execution of any contract between the parties were not met. According to the Union, the Employer was aware that before the Union could execute any contract, the terms of that contract must first be ratified by the union members in the bargaining unit, and then approved by its international union, the International Brotherhood of Teamsters (hereinafter, the International). It is the position of the Union that due to certain irregularities in the ratification vote, a majority of the union members voting on the proposed contract with the Employer did not approve the contract. Further, the Union contends that the International has never approved the proposed contract. Counsel for the Union argues that since neither of the two conditions precedent have been met, the Union is under no legal obligation to execute the proposed contract. The Union contends that the parties should return to the bargaining table for further negotiations.

[1] In his answer to the complaint, counsel for the Respondent specifically denies the allegations contained in the first two unnumbered paragraphs of the complaint. These introductory paragraphs merely allege the filing of the above-captioned charge by the Employer against the Union, and the subsequent issuance of the complaint by the Regional Director under the provisions of the Act and the Board's Rules and Regulations. Without question, the General Counsel's formal papers, admitted into evidence with no objection as GC Exh. 1(a) through (f), establish all the allegations contained in the first two unnumbered paragraphs of the complaint, and I so find.

[2] The credibility resolutions made in this decision are based on a review of the testimonial record and exhibits, with consideration given for reasonable probability and the demeanor of the witnesses. See *NLRB v. Walton Manufacturing Co.,* 369 U.S. 404, 408 (1962). Where witnesses have testified in contradiction to the findings herein, I have discredited their testimony, as either being in conflict with credited documentary or testimonial evidence, or because it was inherently incredible and unworthy of belief.

[3] All dates are in 2006, unless otherwise indicated.

Through their evidence presented at trial, the General Counsel and the Employer took the position that the Employer was aware of only one condition precedent to the Union's execution of the contract previously agreed upon, that being a ratification vote by the union members in the bargaining unit.[4] It is the General Counsel's and the Employer's contention that the Employer was in fact informed by an agent of the Union that a successful ratification vote had been taken and that the contract had been approved by the membership. The General Counsel and the Employer argue that the Union's contention that the ratification vote was flawed comes too late to prevent execution of the contract, and also that the alleged requirement of approval by the International was never mentioned before or during negotiations as a condition precedent to the execution of the contract. According to the General Counsel and the Employer, as the condition precedent of ratification by the membership has been achieved, the Union's continued refusal to execute the contract constitutes a refusal to bargain in violation of the Act.

B. The Background Facts

As will soon be readily apparent, the parties differ significantly as to the facts leading up to this dispute. In particular, the principal negotiators for the Employer and the Union disagree over what was said between them in numerous conversations occurring during and after contract negotiations. John Payne, the Employer's labor counsel, was the Employer's lead negotiator, while the Respondent's Secretary-Treasurer, Ken Troup, was the Union's lead negotiator. They attended every bargaining session.

In order to resolve the disputed facts, it is necessary for me to decide which man, Troup or Payne, is the more credible. In general, I found Payne more credible. As this decision progresses, I will give specific examples to demonstrate how I arrive at this conclusion. However, at this point suffice it to say that Payne's testimony was generally supported by the probative documentary evidence and Troup's was not. Also, based on the chronology of events and the inherent plausibility of their respective stories, Payne was more believable than Troup. Further, Troup's demeanor at trial led me to suspect that he was being less than candid. Troup left me with the impression that he was a man with something to hide. Assuming my analysis is accurate, what Troup was hiding was his failure to inform the Employer of the International's requirement that it "approve" any proposed contract before a final agreement was reached. Troup appeared to be somewhat embarrassed and reluctant to testify about the events leading up to the dispute. Since he was a seasoned union agent, I attribute his demeanor to be the result of his realization that his failure to properly inform the Employer of the International's requirement has resulted in this conflict and proceeding.

Payne's testimony was more open and encompassing. While I was somewhat troubled by the Employer's lawyer and chief negotiator also being the General Counsel's principal witness, there is nothing inherently improper about such a scenario, and, as noted, his testimony seemed credible. Accordingly, unless indicated otherwise, where the facts are disputed, I will accept Payne's version of the events, rather than Troup's.

The Employer, a beer and wine distributor, and the Union have had a long collective-bargaining relationship. The Union is an affiliate of the International, and also is a member of the Brewery and Soft Drink Workers Conference, another affiliate of the International. Further, the Union participates in an organization named the Teamsters Joint Council No. 28, which consists of local unions affiliated with the International in the State of Washington. At trial the parties stipulated that the recognized bargaining unit is comprised of drivers, warehousemen, salesmen, and merchandisers, and that during the time of the events in question, there were approximately 37 employees in the unit. The Employer and the Union have been parties to a number of collective-bargaining agreements, the most recent of which expired on July 1, 2005. (GC Exh. 3.)

By letter dated March 8, 2005, the Employer, through counsel, informed the Union of its intent to terminate the contract effective July 2, 2005. (GC Exh. 2.) In an effort to reach agreement on the terms of a new contract, the parties conducted eight face to face bargaining sessions beginning on June 10, 2005, and ending on January 11, 2006. In addition to Troup and Payne, the Employer's chief executive officer, Lance Kahn, attended all bargaining sessions, and some sessions were attended by the Employer's human resources director, John Cvetich, the Union's business representative John Witte, and Shop Steward Tim Thornton. In addition to the bargaining sessions, the parties exchanged written correspondence and communicated by telephone and fax machine. No one from the International, from the Brewery and Soft Drink Workers Conference, or from Joint Council No. 28 attended any of the bargaining sessions.

During the course of negotiations, the Union requested and the Employer declined to extend the term of the contract. On January 20, 2006, Payne faxed to Troup a cover letter and a copy of a contract entitled "Last Best And Final Offer" (LBF). In his cover letter, Payne asked Troup to "[P]lease present this to the employees for a ratification vote." (GC Exh. 5.) This was not the first time that there had been some discussion of a "ratification vote." Payne's unrebutted testimony was that in December 2005, the Union had put an earlier contract proposal to the membership for a vote. According to Payne, Troup told him in advance that he was going to do so, and after the fact communicated to Payne that the membership and voted against accepting the contract.

Following the submission of the Employer's LBF offer, Troup called Payne on January 20, 2006, acknowledging receipt of the proposal. According to Troup, he mentioned that he was disappointed in receiving the Employer's proposal without further opportunity to engage in face to face negotiations. Troup alleges that he advised Payne that International Vice President Garnet Zimmerman and the Brewery and Soft

[4] In his posthearing brief, counsel for the General Counsel takes the position that ratification by the membership as a condition precedent was not conveyed by the Union to the Employer during "face to face" negotiations. However, as will be apparent later in this decision, I conclude that, in fact, during the period of these negotiations, the Employer was fully aware that ratification by the membership was a condition precedent to the Union's execution of the proposed contract.

Drink Workers Conference[5] "were interested in the negotiations. . . and [he] was probably going to have to bring them in or, at least make them aware that [he] had received a last, best, and final." In rebuttal testimony, Payne acknowledges receiving this call from Troup, but claims that the only subject discussed was Troup's receipt of the LBF offer. According to Payne, Troup did not mention Zimmerman or the Brewery and Soft Drink Workers Conference. Payne kept a set of notes he composed during negotiations regarding telephone conversations with Troup. These notes, made contemporaneously with his telephone conversations with Troup, were admitted into evidence over counsel for the Union's objection. (GC Exh. 14–15.) Payne indicated that he made no notes of this particular conversation because nothing of substance was discussed. Payne credibly testified that had Troup mentioned Zimmerman or the Conference he would have made a note of it. While I credit Payne's testimony, even had Troup mentioned that Zimmerman and the Conference "were interested in the negotiations," this in no way served as notice that International approval was required before a contract could be executed.

On February 3, 2006, Troup and Payne had another telephone conversation. Once again the two men disagree as to specifically what was discussed. According to Payne, he asked whether the Union was going to put the Employer's LBF offer to a vote of the membership. Allegedly, Troup replied that there was going to be an employees' meeting on February 16, and that, "If the men wanted me to vote it, I am going to vote it. It's their contract." Further, Payne testified Troup had some questions about the proposed contract, which the men discussed. Then, according to Payne, Troup mentioned that he had received a letter from the International saying that "they wanted to review the company's last, best, and final offer." Troup mentioned that Garnet Zimmerman "wanted to see a copy" of the Employer's LBF offer because it might have an impact on other negotiations. Allegedly, Troup reiterated that the men would be able to vote on the proposal because "it's their contract," and that he "was not going to let Zimmerman screw this thing up."

Payne's testimony is credible and, significantly, it is fully supported by a letter which Troup faxed to him on February 3, 2006, as a follow up to their telephone conversation of the same date. (GC Exh. 6.)[6] In that letter, Troup mentions receipt of the LBF offer and the Union's intention to meet with its members on February 16, for the purpose of reviewing the offer. Further, the letter indicates that he has been asked to forward the proposal to the International for its "review." It concludes with a request for certain information about the proposal, without which, according to Troup, "our members cannot make an informed decision to ratify the Company's proposal."

Troup testified that during the conversation he "tried to explain that [he] needed to have approval now from the IBT[7] before [he] could have an agreement, a contract, with Jennings." He contends that he specifically mentioned Zimmerman and the Brewery and Soft Drink Workers Conference. According to Troup, Payne indicated that the LBF offer was a good offer, did not undercut area standards, and that it was too bad that the International was now involved. Further, they discussed four individual items contained in the Employer's proposal.

As I have indicated, I do not credit Troup's version of the conversation of February 3. His contention that he mentioned a requirement that the International "approve" any contract before it was executed is simply not supported by the letter faxed on February 3, which mentions only a need for the International to "review" the LBF offer. Throughout his testimony, Troup consistently claims that he informed Payne of the need for the International to "approve" the contract. However, not a singe document sent by Troup to Payne before this charge was filed supports that contention. There is a fundamental difference between a "review" by the International and its "approval" of the contract prior to execution. I am convinced that for whatever reason, Troup did not alert Payne of the need to have the International "approve" the contract prior to execution.

Having found Payne's version of the conversation inherently plausible and supported by the documentary evidence, I conclude that he was informed by Troup that the union members employed at Jennings would be voting on whether to ratify the Employer's LBF offer on February 16. Further, I find that he was told by Troup that the International wanted to "review" the proposal, but not that the International needed to "approve" the offer as a condition precedent to execution.

On February 16, 2006, the Union's members who were employed at Jennings met as scheduled. Troup testified that he had not intended to have the members actually vote on the Employer's LBF offer. However, he had been out of town when the notice of the union meeting was posted at the Employer's facility, and that notice had indicated that a ratification vote would be taken on the Employer's proposal. In any event, the meeting was held and besides the union members, also present were Troup, Zimmerman, Scott Sullivan, a representative of Teamsters Joint Council No. 28, and the Union's business representative, John Witte. Troup, Zimmerman, and Sullivan all spoke and recommended that the members reject the Employer's LBF offer, essentially because it allegedly undercut area standards. Thereafter, the members voted to accept the Employer's proposal. The ballots of two absent members were voted by proxy, cast by the shop steward, Tim Thornton, who had been informed by the two members that they wanted to vote in favor of the proposal. The members in attendance at the meeting had approved the casting of the two proxy votes, and during the meeting none of the Union or International officials in attendance raised any objection to counting the proxy votes. According to Troup, twice during the meeting, both before and after the vote, he informed the members that the International still had to "approve" the proposal, and that until that happened there was no contract.

[5] It is undisputed that the Brewery and Soft Drink Workers Conference of the International has as one of its purposes assistance to Teamsters Local Unions in coordinating collective bargaining with employers in the industry.

[6] It should be noted that while the fax cover sheet is dated February 3, and the fax machine date stamp on each page of the document reflects that same date, the letter itself is dated the day before, namely February 2. This is obviously an inadvertent error by Troup in dating the letter.

[7] IBT is, of course, a shorthand reference for the International.

Lance Kahn's unrebutted testimony was that on the following day, February 17, he was approached at work by a number of bargaining unit employees, including Thornton, who informed him that the employees had voted in favor of the Employer's proposal and that they had a "contract." He was also informed that some union "big shots" had been at the meeting. Kahn passed this information on to Payne, who phoned Troup to verify that the parties had an agreement.

Payne and Troup finally spoke by phone on February 21. Not surprisingly, they testified at great variance as to what was said during this conversation. According to Payne, he told Troup that he had heard that the parties had an agreement, and that Troup confirmed that it was so. They then discussed the need to update certain dates appearing in the Employer's LBF offer. Troup volunteered that he, Sullivan, and Zimmerman had recommended against the proposal, but that "when Zimmerman let it get voted, it was a done deal." Troup remarked that Bremerton was a small town and the fact that the union officials spoke against the proposal may have had the opposite effect on the employees. In any event, Troup reiterated that the proposal had "been voted and ratified . . . , it's done . . . ," and the parties had "a final agreement." Payne asked Troup to send him a letter indicating that the parties had a final agreement, and Troup agreed to do so.

Once again, I find Payne's testimony inherently plausible, and supported by the documentary evidence. Troup sent Payne a letter dated February 21, 2006, by fax, which letter was entitled "Contract Ratification." That letter states that "This is to notify you that our members working at Jennings Distribution ratified the Company's last offer on Thursday, February 16, 2006." Further, the cover page of the fax asks Payne to, "Please send contract for signature. We need 3 originals." (GC Exh. 8.)[8] It appears to me that the plain, logical meaning of the words on these documents is that as the employees had ratified the Employer's LBF offer, the parties had an agreement, and that if the Employer would send 3 copies of the contract, the Union would sign them. There is no other logical meaning for the words used by Troup, and certainly no indication that International "approval" was still needed.

Nevertheless, in his testimony Troup contends that while he informed Payne that the members had "ratified the proposal," he also said that he "regretted the fact that [the parties] did not have a contract," and "lamented" that this was "because the International was involved in it." Frankly, this testimony is preposterous. It is total contradicted by the letter dated February 21, confirming the earlier telephone conversation. (GC Exh. 8.) Even more absurd is Troup's explanation that in the cover page he asked for 3 original copies of the contract for signature "just in case the International ended up approving the contract or approving parts of it." Troup's testimony is incredible. Obviously, the only reason for asking for copies of the contract for signature was because Troup felt that upon employee ratification the parties had a final collective-bargaining agreement, which he needed to execute. It was perfectly reasonable for Payne to reach the same conclusion based on Troup's statements and action.

The following day, Payne sent the requested copies of the contract. However, nothing was returned by Troup. So, on February 28, Payne called Troup, who confirmed that he would review and sign the contract by Friday of that week. When nothing was forthcoming, Payne called Troup again around March 5–7, and asked him, "Where's my labor agreement?" According to Payne, Troup responded by saying, "John, you're too worried. You'll get your signed agreement. Don't worry about it." When he still had received nothing from Troup, Payne called a third time and left a message. He followed it up with a letter dated March 14, in which Payne outlined his efforts since February 22, to have the contract signed, and informed Troup of his intention to file an unfair labor practice charge with the Board if a signed contract was not returned to him by March 22. (GC Exh. 10.) The following day, Troup responded by telephone, telling Payne that he had been instructed by several representatives of the International that he could not sign the contract. It was a brief conversation, which Payne followed up by filing this current charge with the Board on March 23.

Following the filing of the charge, Payne received a letter from Troup dated Mach 28. (GC Exh. 11.) In this letter, Troup indicates that "the ratification vote held on February 16, 2006, was been challenged." Allegedly, this challenge is based on the Union's having counted the votes of two "members who were not present at the meeting." Further, Troup states that the proposal is under "review" by the International, which is concerned that it "may undercut" area standards. According to the letter, Troup informed Payne of this issue during "various phone conversations." Troup concludes the letter by saying that he has been "directed not to sign the proposal until [the International's] review is complete."

Counsel for the Respondent argues in his post-hearing brief that this letter from Troup dated March 28 is evidence that the Union put the Employer on notice of two contingencies that existed and needed to be satisfied before a final agreement could be reached. Contingency number one was ratification of the Employer's LBF offer, the issue of which was whether the union members in the bargaining unit had properly ratified that proposal. Of course, this issue was only brought to the Employer's attention in Troup's letter of March 28, approximately 5 weeks after Troup had informed Payne that the employees had ratified the proposal and that the parties had a contract. Contingency number two was the alleged requirement that the International "approve" any agreement prior to execution. It is obviously the position of the General Counsel and the Employer that no such condition precedent existed as the Employer was never notified by the Union of such a requirement until the letter of March 28, long after negotiations had ended.

C. Legal Analysis and Conclusions

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 incor-

[8] Again, Troup has apparently inadvertently misdated a document, as the cover page of the fax is dated "12-22-06." The fax machine date stamp and the letter itself refer to the correct date, namely February 21, 2006.

porates all the terms of their agreement.[9] *Auto Workers Local 365 (Cecilware Corp.),* 307 NLRB 189, 193–194 (1992) (citing *Teamsters Local 287,* 193 NLRB 1078, 1086 (1971); other cited cases omitted).

However, generally speaking, a union can condition agreement on the terms of a contract on ratification by the bargaining unit employees, as long as the employer is aware before or during negotiations of such a condition precedent, and has expressly agreed to it. *Observer-Dispatch,* 334 NLRB 1067, 1072 (2001). Whether actual ratification occurs, or whether the ratification process is fair and proper, is not relevant to the question of the existence of an agreement. What is relevant is what the union tells the employer about ratification.[10] In *Teamsters Local 662 (W.S. Darley & Co.),* 339 NLRB 893, 899 (2003), the Board held that "whenever a labor organization gives notice to an employer that their agreement has been ratified by the employees, that notice signifies acceptance of the rights and duties arising under that agreement and, in turn, the statutory obligation arises to execute a written contract embodying that agreement." Not only are employers not permitted to challenge the results or procedures of those elections, but the Board has concluded that "[t]he same considerations warrant the conclusion that once they give notice to employers that ratification has occurred, labor organizations may not, under the Act, brandish deficiencies in ratification elections as escape mechanisms for refusals to execute contracts embodying their agreements." Id.

In the matter before me, there is no dispute that during negotiations the Employer's principal negotiator, Payne, was aware from conversations with the Union's principal negotiator, Troup, that before any agreement between the parties could be considered final by the Union, it had to be approved by a ratification vote of the membership. After all, it was in a telephone conversation between the two men on February 3, 2006, during which Payne asked Troup whether he was going to put the Employer's LBF offer to a membership vote.[11] Not only did Troup reply that the members were meeting on February 16, to discuss the proposal and that "if they wanted to vote it, he would put it to a vote," but he confirmed the scheduled meeting for the union members in the bargaining unit in a letter faxed to Payne on February 3. (GC Exh. 6.)

It is undisputed that the day following the membership meeting, February 17, a number of employees, including Shop Steward Tim Thornton approached the Employer's president, Lance Kahn, with the news that the employees had voted in favor of the contract and that the parties had "an agreement." While I do not believe this constituted "official notice" of the ratification, certainly the parties' next communication did so. On February 21, in a telephone conversation Troup informed Payne that the proposal had "been voted and ratified. . . , it's done. . . ," and the parties had "a final agreement." Troup went so far as to tell Payne that the employees had ratified the contract despite a recommendation against the proposal from Zimmerman, Sullivan, and Troup. At Payne's request, Troup confirmed the conversation by letter dated February 21, faxed the following day, which specifically said that, "This is to notify you that our members working at Jennings Distribution ratified the Company's last offer on Thursday, February 16, 2006." (GC Exh. 6.)

I believe that the evidence is perfectly clear that as of February 21, the Union "officially informed" the Employer that the employees had ratified the contract. Once that occurred, it made no difference what the Union subsequently decided about the correctness of the ratification process. It is a long standing principle that a union, not the employer with whom it is dealing, construes the meaning of the union's internal regulations relating to ratification. *North County Motors, Ltd.,* 146 NLRB 671 (1964). However, that does not alter the fact that once the union notifies the employer that ratification has occurred, the union cannot, thereafter, lawfully change its position and refuse to execute the contract on the basis that the ratification was for some reason allegedly improper. *Teamsters Local 662 (W.S. Darley & Co.),* supra. Yet, that is precisely what the Union in the case before me is attempting to do.

It is fairly obvious that the Union has raised this "eleventh hour" contention that the ratification vote was flawed in an effort to keep from executing the contract, which its members agreed to. It is important to note that there were at least two high ranking officials of the International present at the time of the ratification vote on February 16, namely Zimmerman and Sullivan. Also present was the Union's secretary-treasurer, Troup. The issue of the two proxy votes was openly discussed at the meeting, with the members of the bargaining unit voting to include the two proxy votes in the ratification count. Neither Zimmerman, Sullivan, nor Troup raised any complaint about the counting of the proxy votes. To the contrary, they allowed the proxy votes to be counted, and, thereafter, acknowledged that the employees had voted in favor of ratification.

Of ultimate significance, Troup subsequently informed Payne on February 21, that the employees had voted to ratify the proposal and the parties had a contract. The Union's "change of heart," as reflected in the correspondence of March 28 from Troup to Payne (GC Exh. 11.) is, in my opinion, nothing more than a transparent attempt to find an excuse not to the ratify the contract that the employees had agreed upon. This subsequent effort on the part of the Union, which comes 5 weeks after the Employer was informed that the parties had an agreement, must be rejected as meritless.[12] I conclude that the condition precedent of a successful ratification vote by the un-

[9] Of course, Sec. 8(d) of the Act states as part of the obligation to bargain collectively "the execution of a written contract incorporating any agreement reached if requested by either party. . . ."

[10] However, in certain circumstances a union, which deceives an employer about its efforts to fairly and timely conduct a ratification vote, may breach an implied covenant of good faith and fair dealing, and be in violation of Sec. 8(b)(3) of the Act. *Teamsters Local 287 (Granite Rock Co.),* 347 NLRB No. 32 (2006).

[11] While the Employer never acknowledges having expressly agreed to employee ratification as a condition precedent, based on Payne's actions during the negotiations, it appears that he did so.

[12] The letter dated March 27, 2006, from the International's president, James P. Hoffa, to Troup, regarding an alleged investigation into the ratification vote is irrelevant to the issues before me as it constitutes nothing more than an internal union communication, having no bearing on the relationship between the Union and the Employer. (R. Exh. 8.)

ion members in the bargaining unit was satisfied when on February 21 Troup informed Payne that the employees had voted to accept the Employer's LBF offer and that the parties had a contract.

The second contingency to the execution of an agreement, which the Union contends existed, was approval of the proposal by the International. It is accurate that a union may establish approval by its international union as a condition precedent for final acceptance of a contract. However, just as when a condition precedent of member ratification exists, the existence of a condition precedent of international union approval must be premised upon knowledge of such a condition precedent by the employer before or during negotiations. See *Hiney Printing Co.,* 262 NLRB 157, 164–165 (1982) (where approval by the international was a long standing practice); *Standard Oil Co.,* 137 NLRB 690 (1962). Both the General Counsel and the Employer take the position that in the matter before me, the Union never informed the Employer of any condition precedent to the execution of the contract based on approval by the International or any of its affiliates, until after the employees ratified the agreement. They further argue that the Employer was simply unaware of such a requirement. I agree.

During trial, counsel for the Union spent much time offering evidence to establish the importance to the International and its affiliated Brewery and Soft Drink Workers Conference and Teamsters Joint Council No. 28 of maintaining area standards and coordination in collective bargaining with employers in the beverage distribution industry. I have no reason to doubt that such was very important to the International. However, that is all only marginally relevant at best. What is of paramount importance in deciding the issue before me is what knowledge the Employer had prior to or during negotiations about any alleged requirement of International approval of a proposed contract before said contract could be executed.

It is well established Board law that an agent, such as Troup, appointed to negotiate a collective-bargaining contract is deemed to have full authority to bind his principal, in this case the Union, in the absence of notice to the contrary. *University of Bridgeport,* 229 NLRB 1074, 1074 (1977). Any such notice to the contrary must be affirmative, clear, and timely. Id. at 1082. Specifically, the Board has held that "where one party asserts that approval by another party or another individual of a collective bargaining agreement reached by the negotiators is a condition precedent to a final and binding agreement, such a requirement must be conveyed to the other party by clear and unambiguous notice." *United Automobile, Aerospace, and Agricultural Workers Local 365 (Cecilware Corp.),* 307 NLRB 189, 194 (1992) (citing *Induction Service,* 292 NLRB 865 (1989); *Metro Products,* 289 NLRB 76 (1988); other cited cases omitted).

Having credited Payne over Troup, for the reasons previously expressed, I conclude that Troup never informed Payne in a "clear and unambiguous" way during negotiations that "approval" by the International of any contract proposal must be secured before the Union could agree to its terms. Troup did mention on a number of occasions that the International or one of its affiliates was "interested" in the negotiations or that there would be a "review" of the Employer's LBF offer, but these are obviously different words with different meanings than the word "approve," which was never used by Troup in this context.

As noted above, following the last face to face bargaining session, Troup called Payne on January 20, 2006, to acknowledge receipt of the Employer's LBF offer. Troup testified that during that conversation he advised Payne that International Vice President Garnet Zimmerman and the Brewery and Soft Drink Workers Conference "were interested in the negotiations . . . and [he] was probably going to have to bring them in or, at least make them aware that [he] had received a last, best, and final." Payne denied that any such reference to Zimmerman or the Conference was made during this conversation, and, for the reasons expressed earlier in this decision, I credit Payne. However, even had Troup mentioned that Zimmerman and the Conference "were interested in the negotiations," this in no way served as sufficient notice to the Employer that International "approval" was required before a contract could be executed.

In a subsequent phone conversation on February 3, the two men discussed the membership meeting scheduled for February 16, where a ratification vote was to be taken on the Employer's LBF offer. Payne acknowledges that during that conversation Troup mentioned that he had received a letter from the International saying that "they wanted to review the company's last, best, and final offer." Troup also said that Garnet Zimmerman "wanted to see a copy" of the Employer's LBF offer because it might have an impact on other negotiations. However, Troup reiterated that the men would be able to vote on the proposal because "it's their contract," and said that he "was not going to let Zimmerman screw this thing up." This version of the conversation, from Payne's testimony, which I fully credit, is supported by the contents of Troup's letter to Payne faxed on February 3 (GC Exh. 6), which letter indicates that Troup has been asked to forward the contract proposal to the International for its "review." Once again, I see nothing in this correspondence as would constitute "clear and unambiguous notice" that the International's "approval" of the contract proposal was necessary before the Union could agree to its terms.

On February 16, the union members in the bargaining unit voted to ratify the Employer's LBF offer. Troup emphasizes in his testimony that he informed the membership on two occasions during that meeting that no contract was final until the International had approved it. Assuming Troup made such statements, it is irrelevant to the issue before me. It simply does not matter what he the told the membership. What is critical is what Troup told the Employer. There is no credible, probative evidence that any such information was conveyed to Payne or any representative of the Employer.

It was in the telephone conversation of February 21, that Troup told Payne that the members had ratified the Employer's LBF offer. Earlier in this decision, I noted at length my reasons for crediting Payne's version of this conversation over that of Troup. It is unnecessary to repeat that rational, and it is sufficient to note simply that the correspondence of February 21, fully supports Payne. (GC Exh. 8.) In the conversation, Troup stated that as the members had voted to approve the proposal, the parties had a "final agreement." In his letter, Troup reiterated that the members had ratified the contract, and on its fax

cover sheet asked that three copies of the contract be sent to him for signature. While Payne acknowledges in his testimony that during the conversation Troup mentioned Zimmerman, it was in the context of Zimmerman's objection to the proposal not having prevented the members from voting their approval, and that the agreement was now "a done deal."

I have concluded, based on the weight of the credible, probative evidence, that throughout the course of these negotiations, Troup led Payne to logically conclude that he had the full authority to present contract proposals to the membership for a ratification vote, as the final step in the process. Never during the course of negotiations did Troup ever, by anything approaching "clear and unambiguous" notice, inform the Employer that International approval was necessary prior to contract execution. While there was mention of International review, as I have said, there is a fundamental difference between "review" and "approval." "Approval" denotes a final authority, while "review" indicates something less, as in advisory.

The entire objective of Troup's testimony appeared to be an attempt to correct what he had failed to do during negotiations, which was to show that approval by the International was a condition precedent to a final agreement. In fact, I have concluded that Troup failed to make such a point to the Employer until his letter to Payne dated March 28. It was in this letter that Troup mentions "area standards" being "undercut" and disingenuously claims that such concerns were previous expressed to Payne during "various phone conversations." He final states with clarity that he has been "directed not to sign the proposal until [the International's] review is complete." (GC Exh. 11.)

Of course, Troup's letter of March 28, comes much too late to serve as notice to the Employer. It was received some 5 weeks after the conversation of February 21, when Troup informed Payne that the parties had a final collective-bargaining agreement. It appears to have been sent in response to the Employer's filing of the unfair labor practice charge in this case on March 23. As such, it certainly does not constitute "clear and unambiguous notice" before or during contract negotiations of the International's approval as a condition precedent to the execution of a contract. *Auto Workers Local 365,* 307 NLRB 189, 194 (1992).

I find particularly meritless the Respondent's contention that knowledge of the alleged condition precedent of International approval should somehow be imputed to the Employer through the affairs of its attorney, Payne, learned away from the negotiations between these parties. To begin with, Payne credibly testified that he was unaware of any contention on the part of the Union regarding such a condition precedent, until after the employees had ratified the Employer's LBF offer. Counsel for the Respondent appeared to argue at the trial that the International's constitution and/or the by-laws of the Union should have put Payne on notice of the requirement of International approval. However, I know of no case standing for the proposition that an employer's chief negotiator must be knowledgeable about the constitution or by-laws of its union counterpart. Further, counsel seems to contend that Payne's experiences representing other employer's in negotiations with other locals affiliated with the International should have placed him on notice of the alleged condition precedent. Again, counsel offers no case authority for the proposition that knowledge gained by Payne in representing other employers in negotiations with other unions can somehow be imputed to this Employer. In any event, I find Payne's denial of any such knowledge credible. Again, I reach the conclusion that the Union failed to notify the Employer in anything approaching a "clear and unambiguous" manner of an alleged condition precedent of International approval.

It is undisputed that the burden of proof is on the party alleging the existence of a contract. *Cherry Valley Apartments,* 292 NLRB 38 (1988). Based on the above facts and analysis, I am of the view that the General Counsel has met his burden of proof by a preponderance of the evidence. As such, I conclude that on February 21, 2006, with the Employer being informed that the union members in the bargaining unit had ratified the Employer's LBF offer, the parties had reached complete agreement on the terms and conditions of a contract. Further, I conclude that since March 14, 2006, the Employer has requested that the Union execute a written contract embodying that agreement; and that since March 28, 2006, the Union has failed and refused to execute said agreement. Accordingly, I find that by its action the Respondent has refused to bargain collectively in violation of Section 8(b)(3) of the Act, as alleged in paragraphs 6 and 7 of the complaint.

CONCLUSIONS OF LAW

1. The Employer, Jennings Distribution Inc., a Division of Marine View Beverages Inc., is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Respondent, International Brotherhood of Teamsters, Local Union No. 589, affiliated with the International Brotherhood of Teamsters (the Union), is a labor organization within the meaning of Section 2(5) of the Act.

3. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act: Drivers, warehousemen, salesmen, and merchandisers.

4. At all times material, the Union has been the exclusive collective-bargaining representative of the employees in the unit described above within the meaning of Section (9)(a) of the Act.

5. By the following acts and conduct the Respondent has violated Section 8(b)(3) of the Act:

(a) Failing and refusing since March 28, 2006, to execute the written collective-bargaining agreement embodying the final and binding agreement (encompassing the employees in the above unit) reached with the Employer on February 21, 2006, and presented by the Employer to the Respondent for signature on or about that same date.

6. The above unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

Remedy

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

The Respondent shall cease and desist from failing and refusing to execute the written collective-bargaining agreement embodying the final and binding agreement (encompassing the employees in the above unit) reached with the Employer on February 21, 2006, and presented by the Employer to the Respondent for signature on or about that same date. Further, the Respondent shall forthwith execute said written collective-bargaining agreement; and shall give retroactive effect to the provisions of said collective-bargaining agreement reached with the Employer on February 21, 2006.

The Respondent shall further be required to post a notice that assures its members and the Employer's employees that it will respect their rights under the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[13]

ORDER

The Respondent, International Brotherhood of Teamsters, Local Union No. 589, Bremerton, Washington, affiliated with the International Brotherhood of Teamsters (the Union), its officers, agents, and representatives, shall

1. Cease and desist from

(a) Failing and refusing to execute the written collective-bargaining agreement embodying the final and binding agreement (encompassing the employees in the above unit) reached with the Employer on February 21, 2006, and presented by the Employer to the Respondent for signature on or about that same date.

(b) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed to them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Execute forthwith the written collective-bargaining agreement embodying the final and binding agreement (encompassing the employees in the above unit) reached with the Employer on February 21, 2006, and presented by the Employer to the Respondent for signature on or about that same date.

(b) Give retroactive effect to the provisions of the collective-bargaining agreement reached with the Employer on February 21, 2006, and presented by the Employer to the Respondent for signature on or about that same date.

(c) Within 14 days after service by the Region, post at its Bremerton, Washington union office/hall copies of the attached notice marked "Appendix."[14] Copies of the notice, on forms provided by the Regional Director for Region 19, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to members and employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material;

(d) Sign and return to the Regional Director sufficient copies of the notice for posting by Jennings Distribution Inc., a Division of Marine View Beverage Inc., if willing, at all places where notices to employees are customarily posted; and

(e) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated at Washington, D.C. September 25, 2006.

APPENDIX

NOTICE TO MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union.

Choose representatives to bargain on your behalf with your employer.

Act together with other employees for your benefit and protection.

Choose not to engage in any of these protected activities.

WE WILL NOT in any manner interfere with your exercise of these rights. Specifically:

WE WILL NOT fail and refuse to sign the written collective-bargaining agreement containing the final and binding agreement (for the employees of Jennings Distribution Inc. classified as drivers, warehousemen, salesmen, and merchandisers) reached with that employer on February 21, 2006, and presented by that employer to us for signature on or about that same date.

WE WILL immediately sign the written collective-bargaining agreement containing the final and binding agreement (for the employees of Jennings Distribution Inc. classified as drivers, warehousemen, salesmen, and merchandisers) reached with that employer on February 21, 2006, and presented by that employer to us for signature on or about that same date.

WE WILL give retroactive effect to the provisions of the collective-bargaining agreement reached with Jennings Distribution Inc. on February 21, 2006, and presented by that employer to us for signature on or about the same date.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS,
LOCAL UNION NO. 589

[13] If no exceptions are filed as provided by Section 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Section 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[14] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."