Local 155, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL–CIO and International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL–CIO *and* U.S. Manufacturing Corporation. Case 7–CB–15815

August 26, 2008

DECISION AND ORDER

BY CHAIRMAN SCHAUMBER AND MEMBER LIEBMAN

On April 24, 2008, Administrative Law Judge John H. West issued the attached decision. The General Counsel filed exceptions and a supporting brief.[1]

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

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondents, Local 155, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL–CIO, Warren, Michigan, and International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL–CIO, Detroit, Michigan, their officers, agents, and representatives, shall take the action set forth in the Order as modified.

1. Substitute the following for paragraph 1(a).

"(a) Failing and refusing to execute the July 31, 2007 written collective-bargaining agreement ratified by a majority of the members of the bargaining unit on August 1, 2007. The bargaining unit is:

> All full-time and regular part-time production and maintenance employees, including materials coordinators, manufacturing technicians, repair technicians, QA inspectors, QA gauge technicians, truck drivers, tool crib attendants, die assemblers, tool polishers, toolmakers, machine build workers, cutter grinders, maintenance technicians, oilers, prototype, machine techs, and prototype welders employed by the Employer at its facility located 28201 Van Dyke, Warren, Michigan, and including temp-to-hire employees employed in the above classifications jointly by the employer and various employment agencies; but excluding office clerical employees, confidential employees, professional employees, and guards and supervisors as defined in the Act."

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

APPENDIX

NOTICE TO EMPLOYEES AND 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 fail and refuse to execute the July 31, 2007 written collective-bargaining agreement ratified by a majority of the members of the bargaining unit on August 1, 2007. The bargaining unit is:

> All full-time and regular part-time production and maintenance employees, including materials coordinators, manufacturing technicians, repair technicians, QA inspectors, QA gauge technicians, truck drivers, tool crib attendants, die assemblers, tool polishers, toolmakers, machine build workers, cutter grinders, maintenance technicians, oilers, prototype, machine techs, and prototype welders employed by us at our facility located 28201 Van Dyke, Warren, Michigan, and includ-

[1] The judge found that the Respondents violated Sec. 8(b)(3) by failing to execute a contract that a majority of the unit employees had ratified. None of the parties excepts to this violation. The General Counsel excepts solely to a portion of the language in the judge's cease-and-desist order and to his failure to include an affirmative bargaining order and a unit description in his recommended Order and notice. We conclude that the judge entered the correct cease-and-desist order. We have modified the recommended Order and notice to include the unit description but the judge's failure to include an affirmative bargaining order is consistent with precedent. See *Teamsters Local 589 (Jennings Distribution)*, 349 NLRB 124, 131 (2007); *Teamsters Local 662 (W. S. Dailey & Co.)*, 339 NLRB 893, 901–902 (2003).

[2] Effective midnight December 28, 2007, Members Liebman, Schaumber, Kirsanow, and Walsh delegated to Members Liebman, Schaumber, and Kirsanow, as a three-member group, all of the Board's powers in anticipation of the expiration of the terms of Members Kirsanow and Walsh on December 31, 2007. Pursuant to this delegation, Chairman Schaumber and Member Liebman constitute a quorum of the three-member group. As a quorum, they have the authority to issue decisions and orders in unfair labor practice and representation cases. See Sec. 3(b) of the Act.

ing temp-to-hire employees employed in the above classifications jointly by the employer and various employment agencies; but excluding office clerical employees, confidential employees, professional employees, and guards and supervisors as defined in the Act.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL immediately execute the July 31, 2007 written collective-bargaining agreement ratified by a majority of the members of the bargaining unit on August 1, 2007.

WE WILL give retroactive effect to the provisions of the July 31, 2007 written collective-bargaining agreement ratified by a majority of the members of the bargaining unit on August 1, 2007.

LOCAL 155, INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW), AFL–CIO AND INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW), AFL–CIO

Kelly A. Temple, Esq., for the General Counsel.
Stephen A. Yokich, Esq. (Cornfield & Feldman), of Chicago, Illinois, for the Respondents.
Martin J. Galvin, Esq. (Dykema Gossett, PLLC), of Detroit, Michigan, for the Charging Party.

DECISION

STATEMENT OF THE CASE

JOHN H. WEST, Administrative Law Judge. This case was tried in Detroit, Michigan, on February 19, 2008. The original charge was filed on October 2, 2007,[1] by U.S. Manufacturing Corporation, an amended charge was filed on December 3, and the complaint was issued December 4. It alleges that Respondents Local 155, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL–CIO, Warren, Michigan, have been failing and refusing to bargain collectively in good faith with the Charging Party, in violation of Section 8(b)(3) of the National Labor Relations Act (the Act), by since about September 28, failing and refusing to execute a collective-bargaining agreement, which agreement was reached on July 31, subject to the condition requiring unit ratification of the tentative agreement, which tentative agreement was ratified on or about August 1, and notification of the ratification was given to the Charging Party by the Respondents, and which agreement was supposed to be executed on September 28. In their answer, dated December 18, to the complaint, Respondent International avers that when its agent informed the Charging Party of the ratification vote he specifically advised the Charging Party that issues had arisen regarding the ratification vote and the Charging Party should not put the contract into effect because there would likely be an appeal of any decision regarding the ratification vote; that Respondents had no authority to execute the collective-bargaining agreement because no valid ratification vote had occurred; and that Respondents did not violate the Act as alleged.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed on April 8, 2008,[2] by counsel for the General Counsel, the Charging Party, and Respondents, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Charging Party is a corporation with a place of business in Warren, Michigan, where it has been engaged in the manufacture, nonretail sale, and distribution of automotive parts to the automotive industry. It is admitted and I find that during 2006, a representative period, the Charging Party, in conducting its operations at its Warren facility, derived gross revenues in excess of $500,000 and during the same period purchased and caused to be shipped to its Warren facility goods and materials valued in excess of $50,000 directly from points located outside the State of Michigan. It is admitted and I find that the Charging Party is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that the Respondents are labor organizations within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

Counsel for the General Counsel and the Respondents stipulated that Greg Bauer is an agent of the International Union; that William Verdier, who is the grievance and bargaining chairman of the bargaining unit in question, is an agent of the Local with respect to the involved bargaining unit and the Employer for purposes of this case; that Clarence Presley, who is president of Local 155, is an agent of the Local Union; that John Cunningham, who is an International representative who was assigned to the involved bargaining unit since about November 2007, and who replaced Bauer, is an agent of the International; and that the Local Union has the authority to act on behalf of the International with respect to grievances at steps one and two of the grievance process.

Laura Hudson, who is the Charging Party's director of human resources, testified that it is her understanding that there is a current contract between the Employer, the International Union, and Local 155; that there has been a collective-bargaining relationship between the UAW and the Employer since 2004; that the first contract (GC Exh. 2) was effective from 2004 to 2007; and that she took part in negotiating both contracts with Respondents.

On cross-examination, Hudson, regarding the first collective-bargaining agreement, testified that the parties agreed on a tentative agreement, it went to the membership, and the membership turned it down; that a second vote of the membership

[1] All dates are in 2007, unless otherwise indicated.

[2] Counsel for the General Counsel was granted an extension from March 25 to April 8, 2008, for filing a brief.

occurred within days; and that the first contract, the 2004–2007 contract, was not effective until the membership ratified it.

Hudson testified that during the contract negotiations in June and July 2007, the Company was represented by her, John Delokla, who is the director of accounting and financing, and Tim Brownfield, who is the director of operations; that the Union was represented by Bauer, Verdier, and the members of the bargaining committee, namely: James Thompson, Ron Burton, Dan Goodin, and Tracy Wright; that while she prepared the Company's proposals and the tentative agreement, the company representatives worked as a team; that she believed that Bauer was the spokesperson for the Union during negotiations because he gave the opening talk before negotiations began and he laid out some of the preferred ground rules such as not discussing what occurred in negotiations; that Verdier presented most of the Union's proposals; that throughout the process of negotiations changes were made to the existing contract, all of the pages with the changes were initialed, and a tentative agreement (GC Exh. 3) was reached on July 31; that Bauer and the above-described members of the bargaining committee signed or initialed the tentative agreement on July 30 or 31 on page 36 thereof, which page was copied from the original collective-bargaining agreement; that General Counsel's Exhibit 3 by itself is not the whole contract since it only includes pages of the former contract on which changes were made; that she was never advised by the involved International or Local that the bargaining committee or the Local were not authorized to sign the 2004 or the 2007 collective-bargaining agreement; and that the bargaining committee members signed the 2004 contract.

On cross-examination, Hudson testified that during negotiations Bauer told her that he needed to sell this contract to his membership; that she knew that a vote needed to occur; that she knew in 2007, that the membership had to vote for there to be a deal; and that the bargaining committee wanted the first lump-sum payment called for in the agreement sooner rather than later.

Bauer testified that at the time of the trial herein he had been an International Representative for "[g]oing on two years" (Tr. 97); that he services over a dozen contracts, negotiating collective-bargaining agreements, and participating in the third step of the grievance procedure and arbitration; that the members of the bargaining committee for the Charging Party were elected by the members of Local 155 who work for the Charging Party; that the committee met with members to find out what the members wanted and they passed this information on to him; that in negotiations he was the lead, a facilitator who was taking instructions from the committee and the membership regarding what they wanted; that article 19 of the UAW constitution requires membership ratification of tentative agreements; that the constitution contains an ethical practices code which is binding on members and UAW officers; that under the constitution if a Local or an International officer makes a decision that a member disagrees with, that member can appeal to the International president's office and then to the public review board; that Local 155, which is called the independent parts sector, is an amalgamated local which has members from different corporations; that Local 155 does not get involved in the grievance procedure, it does not "get involved in anything" (Tr. 102, 103); that he, the unit, and the bargaining committee have sole discretion; that Region 1 of the International, and not Local 155, services the bargaining unit and the collective-bargaining agreement of the Charging Party; and that during negotiations he told Hudson that they were in a different situation than management because while the management representatives had to sell the agreement to their superiors, the union representatives had to sell the agreement to the a large contingency out in the plant, their membership, and that the union representatives wanted an attractive deal because the membership was going to vote, the membership ultimately decides.

According to the testimony of Hudson, after a tentative agreement was reached on July 31, midway through the day, the bargaining committee members were excused for the balance of the day to prepare for and the following day to be a part of the ratification vote on August 1 at Local 155. Hudson also testified that on July 31, with respect to a pending union proposal to remove the discipline in the files of the bargaining committee, she told the union representatives that if they got the contract ratified she was sure that the Company could do something about removing writeups from the files of the bargaining committee members.

Hudson testified that she excused members of the bargaining committee for August 1, at the behest of Bauer who told her the ratification vote was going to be held that day; that on the evening of August 1, she telephoned Bauer on his cell phone about 7 p.m. as she was getting ready to leave work; that the results were not known at the time and she asked Bauer to call her; that at about 7:45 p.m. Bauer telephoned her on her cell phone "and said that the contract had been ratified . . . it was very close and could the bargaining committee [members] be excused from work the following day because they had had a rough day." (Tr. 25); that with respect to whether Bauer ever indicated to her that there was any problem with the ratification vote, Bauer said only that the vote was close but that it was ratified and she congratulated him; that Bauer did not say anything else and he did not indicate to her that the vote was conditioned upon anything; and that there was nothing in the previous contract that stated that the contract had to be ratified as a condition of the contract becoming valid.

On cross-examination, Hudson testified that on August 1 she left work close to 7 p.m.; that she "called him [Bauer] driving home" (Tr. 69); that Bauer called her back afterwards; that the first time she knew the contract was ratified that night was when Bauer talked to her; that she did not go back to the plant that night; and that on August 1 it was reported to her that the vote was in favor of the contract.

Bauer testified that the ratification vote was held on August 1 at Local 155; that he had no involvement with setting up the voting process; that the election committee were volunteers who worked for the Charging Party and were members of Local 155; that the voting started at 10:30 a.m.; that the Charging Party has staggered shifts so they were coming in every couple of hours in groups of 15 to 25 members; and that about 5 p.m. the following happened:

> We have an anti-union segment in that shop who wears their anti-union shirts that they've had ever since the facility was organized and led by a gentleman named Tony Bowman. He walked in with his anti-union brown shirt, vote no UAW, and when that group of approximately five came in to vote, there is part of the bargaining committee a skilled trades rep named Tracy Wright, and [she] inadvertently said that, well, we're all

> done, all the people voted now, we're done. Well, at that, because I was not aware of how long we had the hall and how long this whole process went, I went by what the skilled trade rep had said. I looked at the election committee and said, okay, do what you have to do, and gave orders to the committee and myself to remove ourself [sic] from that ballot box, and we went out by the hall. The ballots were then counted. [Tr. 106.]

Bauer further testified that the ballots were tallied with 140 votes against the contract and 130 for the contract; that one of the stewards, Ron Burton, then walked into the room, asked what was going on, and said that he had about 20 second-shift employee/members who are going to come to Local 155 to vote for the contract and they should have a chance to vote; that he told the election committee to write a statement of what just occurred, to put the ballots back in the box, and lock the box; that he notified a Local officer, Vice President Bob Hector, who was on duty that night about what occurred; that 18 more of Charging Party's employees came to Local 155 at about 6:30 p.m. and voted; that at 7 p.m. the balloting was closed and the ballots were counted; that this time the outcome was 147 in favor of the agreement to 141 to turn it down; and that he telephoned Hudson after the second tally telling her:

> [T]here was good news and bad news, and that the good news was that it passed, but the bad news is there was a mix up in counting the ballots, and she was more than familiar with Tony Bowman and his antics, and I said, in front of Tony Bowman of all people this had to occur, and that he left the place hooting and hollering and he was going to go to the plant and let them know that it didn't pass, and now we're saying it is, so expect trouble; that there for sure is going to be trouble, and I wouldn't doubt if he has an appeal because I'm familiar with the process. And she stated, quote, 'That sounds like [a] union problem.' And I said, no, that's our problem. [Tr. 109.]

Bauer further testified that during this conversation he told Hudson that "it would be in my humble opinion [there] was going to be an appeal, so therefore we better sit tight because I know it's going to happen" (id.); that he wanted the Company to sit tight because there was money involved, and what he was concerned about was that the Company would go ahead and issue these lump sums and then through this process bargaining unit members would have to pay it back; and that he did not think that the bargaining unit members would be able to do that and the Company would take it out of their wages.

On cross-examination, Bauer testified that on August 1 he told Hudson that the contract was ratified 147 to 141.

On August 2, according to the testimony of Hudson, she met with the Company's payroll department because one of the things that was agreed to in a new provision of the contract was that employees would receive a lump-sum payment or either $1000 or $500 (based on the date of hire) the following week. Hudson testified that the Employer made the lump-sum payment; that within a week following the August 1 ratification vote she had a discussion with Bauer to confirm how the deductions from the lump-sum payments would be handled; and that on August 9 or 16, she telephoned Bauer and they agreed that, with respect to employees who were on approved medical leave or a leave of absence of some kind, their lump-sum payment checks would be held until they returned to work.

Hudson testified that other changes the Company started working on were (a) changing its 401(k) plan to improve eligibility, (b) changing the way holidays were paid, (c) changing the attendance program so that employees with good attendance records could call in and use a vacation day or an earned personal day without scheduling it in advance,[3] (d) started working, as agreed, with an insurance agent to identify a cost effective plan to allow additional short-term disability options for employees and arrange employee meetings to disseminate this information, (e) changed the medical coverage so that coverage for a brand name drug increased from $20 to $50, (f) changed the disciplinary process in August 2007, by adding a provision that the discipline had to occur within 7 days following the event or the Company could not issue a writeup to the employee,[4] (g) changed the procedure with respect to pay shortages so that if the employee did not receive the moneys that he or she should have and if it was a shortage of 4 hours or more, the Company would manually cut a check for the employee, (h) changed the Company option of temporarily laying off employees from 6 to 4 weeks, (i) changed Company policy so that a person would have to have not worked for 24 months before they would be separated from the Company, (j) changed the rule by expanding the area within the organization that an employee could shift bump by exercising seniority, (k) changed the rule regarding job postings so that the employee awarded a job posting is paid the rate of the new position from the first day they go into that job, (l) changed Company policy so that the bargaining/grievance committee was part of reviewing overtime postings with the understanding that they would communicate with management if there were any issues, (m) changed the holiday program so that the holiday days were deferred until the end of the year, they were treated as a bonus, and employees were allowed to collect a full week of unemployment, (n) changed the policy regarding how employees are paid if they are injured at work to ensure that the employees are getting a full 8 hours of pay and the day after a work-related injury was addressed, (o) provided a variety of buy-up options that employees as of October 2007 could purchase and have higher short-term disability weekly benefits at their cost, and (p) changed the eligibility for dental insurance so that employees had to wait 2 years for that benefit (previously, they had to wait 1 year for this benefit).

On further direct by counsel for the Charging Party, Hudson testified that as set forth in General Counsel's Exhibit 3, the tentative agreement, the parties negotiated for lump sum increases to be implemented on August 9 and the employees

[3] GC Exh. 6 is a copy of a bulletin board posting explaining the August 7 change to the attendance policy to employees. For the Union, Verdier signed the posting on August 24 as chairperson, bargaining/grievance committee.

[4] GC Exh. 5 is a grievance form dated August 8, which indicates that a writeup of an employee which was dated July 27 regarding an incident which occurred on July 19 was withdrawn "without precedence." Hudson testified that it was withdrawn at step two.

would have received the increase the following Thursday, August 16; that no one from the UAW, either Local 155 or the International, contacted her and advised her not to pay the lump sums; that the attendance program in the above-described August 27 posting signed by Verdier (GC Exh. 6), was negotiated during negotiations in June and July 2007; that Verdier did not say that he could not sign the document that was posted; that no one from the UAW, either the involved Local or the International, contacted her to tell her that the change in the attendance program was not valid and could not be implemented; and that there were no grievances filed about the change in the attendance program.

Within a couple of days after the August 1 ratification, according to the testimony of Hudson, during a telephone conversation Bauer reminded her of her July 31 statement and subsequently she did in fact remove the writeups, one each from three of the bargaining committee members' files.[5]

On cross-examination, Hudson testified that she wrote "Remove write-up 8/1/07" on the three involved writeups within a couple of days of August 1.

Respondent's Exhibit 3 is the appeal, dated August 4, of the ratification vote which was sent to Ron Gettlefinger, the UAW President. There are three pages of signatures attached to it. Bauer, who was a "CC" on the appeal, testified that the 140 signatures are of members of the bargaining unit.

Bauer testified that between August 1 and the time that the checks for the lump-sum payments which were due in August (August 16) were actually cut he had a conversation with Hudson; that Verdier asked him to look into a concern with the lump-sum payments; that he telephoned Hudson and spoke with her about the lump-sum payments; that during this conversation

> I said, Laura, our conversation about Tony Bowman has come to fruition; he has appealed it and he has gone to Ron Gettlefinger; he's got 140 signatures, and it's gone to my direct boss. So once I again I asked for everything to be put on hold, let's see where this all goes. [Tr. 114, 115.]

On cross-examination, Bauer testified that he never told the bargaining unit members not to cash the lump-sum payment since he was not "entitled" (Tr. p. 118) to do that.

In late August 2007, according to the testimony of Hudson, she gave copies of the new contract, with a cover memorandum[6] requesting that the recipients let her know if there were any changes, to Verdier to give to the bargaining committee, and she mailed a contract to Bauer.

On further direct by counsel for the Charging Party, Hudson testified that during a subsequent telephone conversation Verdier told her that everything looked okay.

On cross-examination, Hudson testified that during a telephone conversation with Verdier he said it looked good and this occurred several weeks after she gave him the new contract; that there were some typing errors in the original final draft and there was a sentence that was missing in part of it; that consequently there was a later version than the aforementioned one that was given to Verdier; that Verdier was the one who brought to her attention an issue involving the missing sentence; and that Verdier first said that the draft given to him was alright, then an issue occurred relating to overtime, and Verdier, who was looking at the new language, noticed a sentence was missing, he pointed this out, the Company agreed, and the sentence was added.

On redirect, Hudson testified that after she gave Verdier the contract it was a couple of weeks, after the Labor Day holiday, that Verdier said that it looked okay; that subsequently there was a concern that the supervisors and managers were not posting overtime for the weekend in a timely manner, and Verdier was looking at the new contract and he noticed that a sentence was missing; that the Company reinforced the importance of posting overtime on the right day; and that she believed that Verdier noticed the missing sentence after he said everything looked okay.

Hudson testified that in late August 2007, she initiated a meeting with Verdier to ascertain whether the short-term disability buy-up option provided by the Company's current provider, Hartford, would meet the requirements that the Company and the Union had agreed to during negotiations; that Verdier agreed that it sounded like a good program; that during the meeting with Verdier it was agreed that the Company would get all of the paperwork in order so that it could bring in the insurance agent and he could explain the buy-up option and the employees could enroll in the new buy-up option at the next employee meeting; and that the employee meeting occurred at the end of September 2007, and the coverage became effective October 1.

During the week of September 17, according to her testimony, Hudson spoke with Bauer and it was agreed that on September 28 the contract would be executed and a step three grievance meeting would also be held on that date.

Bauer testified that the Company and the Union attempted to set up a meeting to review a final tentative agreement; that during the summer there were availability questions, "so we never did get a firm date to do it" (Tr. 115); that during negotiations it was agreed before the agreement was to be signed, there would be a meeting between management and the Union with respect to coaching some supervisors and stewards about acting appropriately; and that they never had either meeting.

According to Hudson's testimony, Bauer telephoned her on September 26, and told her (a) that he probably should not be calling her or talking to her about it, (b) the meeting for September 28 was canceled because there were problems, and (c) he hoped that she would be hearing from Presley from Local 155.

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[5] GC Exhs. 7, 8, and 9 are the writeups, disciplines, or warning notices which were removed from the files of bargaining committee members Thompson, Goodin, and Verdier, respectively.

[6] GC Exh. 10. As here pertinent, the body of the cover memorandum reads as follows:

> Attached are five (5) copies of the Final Draft for review by the Bargaining/Grievance Committee. I have mailed a copy to Greg Bauer as well. When you have completed your review of the new contract, please let me know if there are any corrections needed. We can also schedule a date for everyone to sign the contract at that time.

Hudson testified that about 9 a.m. on September 27 Presley telephoned her and he told her that he had a big problem and he needed to come to the plant and talk with her as soon as possible; that Presley came to the plant within the hour; that Presley said (a) there were big problems in that a complaint had been filed with the "Labor Board" and with the UAW, (b) everything had been dumped in his lap, (c) he was doing what the assistant director told him, (d) he was going to need a whole lot of help because there were problems with the contract and impliedly there might have to be another vote, and (e) she could make copies of a UAW document, which appeared to be a complaint filed by one of the Charging Party's employees with the UAW;[7] that she told Presley that in her opinion they had a ratified contract, she was not aware of any complaints filed with the "Labor Board," and if there was a complaint within the UAW, she could not help him with that; and that prior to this she had not heard that there was any trouble with the contract or the execution.

On further direct by counsel for the Charging Party, Hudson testified that other than what was identified as General Counsel's Exhibit 11, she has never seen any of the attachments or other documents referenced in General Counsel's Exhibit 11.

On cross-examination, Hudson testified that page 2 of General Counsel's Exhibit 11, a copy of which was given to her for the first time on September 27, indicates that members from Local 155 on August 4, filed an appeal with the UAW's president's office about the August 1 ratification vote; that the first time that she heard that the Union was having issues with the August 2007 ratification was the telephone call on September 26 from Bauer canceling their meeting and a visit the next day from Presley; that prior to this she was not aware of any sort of issues with the ratification; and that she did not hear any discussions at the plant that there were any issues with the ratification vote from employees.

Bauer testified that as shown in General Counsel's Exhibit 11, the UAW president's office ruled that the ratification vote was overturned and there would be a revote because according to article 33 of the constitution the membership had a right to do that and it was determined "that it would be in [the] best interest to have a re-vote" (Tr. 116); that this decision was issued around September 26 or 27; that he was told about the decision before it was issued; that another ratification vote was held and it was a landslide in favor of turning down the contract;[8] and that the Union never executed the contract because the Union's membership dictates, and they did not want that agreement.

On cross-examination, Bauer testified that the Union's constitution is not an agreement between the Company and the International or the Local but rather it is the Union's internal document; that he was told about the decision of the president's office a couple of days before it was issued; that he was told that he would not be handling the re-vote and Presley would be there from Local 155; that while there is no date in General Counsel's Exhibit 11 showing when it was issued, he believed that it was sometime in October; that on page 3 of General Counsel's Exhibit 11 it is indicated that the appeal was acknowledged by President Gettlefinger's administrative assistant Dave Curdon via letter dated August 16; that as indicated above, the appeal was filed on August 4; that on page 2 of General Counsel's Exhibit 11, under "*FACTS*," it is indicated that "the CBA was announced as ratified and proper notice was forwarded to the Company"; that this refers to him "saying that the count was 147 [to] 141, we have a ratified, we did successfully ratify the agreement" (Tr. p. 134); and that proper notice refers to the fact that the outcome of the ratification vote was posted at Charging Party's facility.

It is noted that, as here pertinent, the following appears on pages 3 and 4 of General Counsel's Exhibit 11:

> In a letter sent to the Local Union . . . , President Gettelfinger requested all relevant information concerning the appeal. In a letter to the President dated September 12, 2007 . . . the Local Union complied. Attached to the letter was the following statement from Region 1 Representative Greg Bauer (Exhibit E):
>
> Exhibit E
>
> At about 5:00 p.m. on August 1st, 2007, a group of approximately 25 members came into Local 155 to vote on a tentative agreement with the UAW and US Manufacturing. We (the bargaining committee) had the election set up for the hours of 10:00 a.m. until 7:00 p.m.
>
> After these approximately 25 members voted, 3 to 5 of them were standing around and one of the stewards stated "well that's all of the members." Upon hearing this, the two volunteers from the membership who were responsi-

[7] GC Exh. 11. The 9-page document is a decision of the International president's office on the appeal of Ron Teller and 148 employees of the Charging Party, all of whom are members of Local 155, alleging that the August 1 ratification voting process was flawed. Briefly, the document indicates that when it was determined on August 1 that the ballot box was prematurely opened at about 5 p.m. and the ballots were counted, the ballots were placed back in the ballot box, a number of members subsequently voted, and the ballots were again counted at the end of the polling period, namely 7 p.m. According to the document, the count made when the ballot box was prematurely opened was 130 votes for ratification and 140 votes against ratification. When the ballot box was opened the second time the count was 147 for ratification and 141 against ratification. It was decided that the ratification vote committee made a severe mistake when they opened the ballet box prior to the posted closing of the polls; that members had been told that the polls would be open until 7 p.m.; that the ballots remained in full view until they were placed back in the ballot box and the box was resealed; that no one has accused any member of the ratification vote committee of adding or removing a single ballot nor was there any evidence of any ballot tampering; that there was no evidence showing that any violation of any constitutional provision took place during the ratification process; that although there is no clear evidence that such a breach took place, the Union is also bound to review the circumstances of the appeal as it applies to the UAW's Ethical Practices Codes; that here the process was contaminated and it could be questioned as corrupt, discriminatory and/or antidemocratic; and that "[b]ased on the above and the record, the ratification is set aside and a new ratification vote is ordered. The Collective Bargaining Agreement will remain operative and undisturbed as if the ratification stands until such time the ordered [sic] ratification process is complete."

[8] Bauer believed that the vote was 203 to 38 or 230 to 48 against ratification.

> ble for counting the ballots opened the ballot box and began to count.
>
> After a short period of time, the volunteers announced that the count was 140 no votes to 130 yes votes. Upon hearing this the 3 to 5 members who were standing around began to cheer to the fact that the agreement was turned down and left I presume to go the plant and spread the so-called good news.
>
> When I returned from the lobby, I had asked what was going on and I was told the votes were counted and the contract was turned down. I stated "Why did we have the Local union 7:00 p.m.? [sic] A Steward named Ron said 'I have members who don't get their lunch until 6:00 [p.m.] and some who get theirs at 6:30 p.m. and they didn't get a chance to vote yet.'"
>
> Upon hearing this I told the volunteers to put the ballots back into the box, to lock the ballot box and to sign their names to the fact of what just happened. At no time did I or any of the bargaining committee come near the ballots of [Perhaps this is a typo and it should read or.] the ballot box.
>
> . . . .

According to her testimony, Hudson telephoned the National Labor Relations Board (the Board) and was told that no charge had been filed against the Company. Hudson testified that she telephoned Presley and told him that she checked with the Board and no charge had been filed with the Board; and that Presley said that this mess was dumped in his lap by the assistant director and he understood that she was upset.

By letter dated September 28 (GC Exh. 12), Hudson advised Presley as follows:

> This letter is written to document our telephone conversation of today, and our meeting yesterday.
>
> U.S. Manufacturing Corporation negotiated in good faith. We reached an agreement with UAW Local 155. The Company was officially informed by Greg Bauer, UAW Region 1 International Representative, that the contract was ratified on August 1, 2007.
>
> It is the position of U.S. Manufacturing that we have a valid collective bargaining agreement with the UAW.
>
> Please contact me to reschedule a meeting to expedite the contract as soon as possible.

By letter dated October 11 (GC Exh. 13), Presley advised Hudson, as here pertinent, as follows:

> Please be advised that Tom Popa and Richard Burton will be needed out of the plant on Wednesday, Oct 17, 2007. They will be on official union business.

Hudson testified that since the two-named employees were not members of the bargaining/grievance committee, she telephoned Presley to ask him why these two individuals needed to be excused for union business and Presley told her that they would be observers during the vote; that she excused the time; and that before this she was not aware that the Union was holding another ratification vote.

By letter dated October 30 (GC Exh. 14), Bauer advised Hudson as follows:

> The Bargaining Committee for UAW Local 155 of U.S. Manufacturing is prepared to meet with your team and resume negotiations due to the fact that the contract was not ratified in accordance with UAW procedures.
>
> Please contact us with dates for negotiating.

On cross-examination, Bauer testified that between August 1 when he told Hudson that the contract was ratified and his above described October 30 letter to Hudson, he did not send Hudson any correspondence letting her know that there was any sort of problem with the ratification; that this was all done verbally; that there was nothing in writing; that he talked quite often with Hudson on the telephone; that between August 1 and September 27, he spoke with Hudson on the telephone four to six times; and that he thought that there were around six conversations.

By letter dated November 1 (GC Exh. 15), Hudson advised Bauer as follows:

> This letter is written in response to your letter dated October 30, 2007.
>
> On August 1, 2007 you informed us that we had a ratified contract.
>
> As you may or may not be aware, U.S. Manufacturing Corporation has filed an unfair labor practice with the NLRB.
>
> It is our position that we have a contract.

General Counsel's Exhibit 17 is a charge filed on November 6, by International Union UAW, and its Local 155 (the charge was signed by the same attorney who represents the Union at the trial herein) in Case 7–CA–50830 against U.S. Manufacturing Corporation alleging as follows:

> In July 2007, the Employer and the Union reached a tentative agreement on a new contract. The tentative agreement was subject to ratification by the union membership. The union membership rejected the contract.
>
> Following the rejection of the contract, the Union requested the Company to return to negotiations. The Company has refused to return to negotiations.

By letter dated December 5 (GC Exh. 18), the Regional Director for Region 7 of the Board advised the Union that after an investigation of the Union's charge in Case 7–CA–50830, he concluded that further proceedings were not warranted and he was dismissing the charge. A Summary Report of the basis for his conclusions was attached to the letter.[9] The Union was also advised of its right to appeal.

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[9] As here pertinent, the summary report indicates as follows:

> The investigation disclosed that ratification by employees was a condition precedent to a collective bargaining agreement between the parties. However, it is the Union, not the NLRB, that construes the meaning of the union's internal regulations relating to the ratification process. See *North County Motors*, 146 NLRB 671 (1964)[.]
>
> The investigation further disclosed that the International representative, a duly authorized agent of the Union, notified the Employer that the agreement was ratified. This representation was later confirmed by the International Union on appeal, which

On January 16, 2008, a grievance (GC Exh. 16), was filed by Verdier which refers to "CONTRACT PROVISION *Appendix A Lump Sum Payments $1,000.00.*" It alleges that

> Employees out of work for medical short term disability, FMLA or any other approved or unapproved absences were not paid lump sum payments as scheduled on 1/10/08. Company states there was a verbal agreement during contract negotiations. Union has no existing notes.

The "RECOMMENDED SETTLEMENT" portion of the grievance indicates *"Pay-out Lump Sum payments due to any affected employees out of work on scheduled days noted in contract."* Hudson, who sponsored this exhibit, testified that at the time of the trial herein the Company was waiting for a decision on the part of the International to either withdraw the grievance, move it to arbitration, or request to discuss it further.[10]

On further direct by counsel for the Charging Party, Hudson testified that Verdier's reference to "CONTRACT PROVISION Appendix A . . ." is a reference to the signed tentative agreement, the new contract which was received herein as General Counsel's Exhibit 3, and which references lump sum payments.

On cross-examination, Hudson testified that the grievance memorialized by General Counsel's Exhibit 16, as described above, had a third-step meeting in the beginning of February 2008; that this grievance and the other grievance described above (GC Exh. 5), are the only two grievances that have been filed under the new contract; and that the Union and the Company have not gone to arbitration since August 1.

By letter dated January 31, 2008 (GC Exh. 19), the Office of Appeals of the Office of the General Counsel of the Board in Washington, D.C. advised the Union regarding its appeal in Case 7–CA–50830 as follows:

> Your appeal from the Regional Director's refusal to issue complaint has been carefully considered.
>
> The appeal is denied substantially for the reasons set forth in the summary report attached to the Regional Director's letter of December 5, 2007. As the Regional Director noted, when the Union's agent advised the Employer the collective bargaining agreement was ratified by the membership that agreement took effect regardless of any irregularities in the election. See *Teamsters Local 662 (W. S. Darley & Co.)*, 339 NLRB 893, 899 (2003), and *Teamsters Local 589 (Jennings Distribution)*, 349 NLRB No. 15 [124] (2007). Under these circumstances, the evidence is insufficient to establish that the Employer's actions were unlawful as alleged. Accordingly, further proceedings are unwarranted.

Hudson testified that at the time of the trial herein the Company was working under the new contract.

Analysis

As noted above, the complaint alleges that Respondents have been failing and refusing to bargain collectively in good faith with the Charging Party, in violation of Section 8(b)(3) of the Act, by since about September 28, failing and refusing to execute a collective-bargaining agreement, which agreement was reached on July 31, subject to the condition requiring unit ratification of the tentative agreement, which tentative agreement was ratified on or about August 1, and notification of the ratification was given to the Charging Party by the Respondents, and which agreement was supposed to be executed on September 28.

Also, as noted above, in its answer to the complaint Respondent International avers that when its agent informed Charging Party of the ratification vote he specifically advised the Charging Party that issues had arisen regarding the ratification vote and the Charging Party should not put the contract into effect because there would likely be an appeal of any decision regarding the ratification vote.

Here what was said by the Union to the Company on August 1 regarding the August 1 ratification vote and the action of the Union in giving official notification of the ratification by posting the results on a bulletin board in the involved Company facility are determinative. What actions the Union took and did not take between August 1 and September 26, as the Company commenced taking measures to comply with the terms of the collective bargaining agreement which was ratified on August 1 corroborate Hudson's testimony.

As was pointed out by Judge Meyerson in *Teamsters Local 589 (Jennings Distribution)*, 349 NLBB 124 (2007), whose rulings, findings and conclusions were affirmed by the Board:

> [G]enerally 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

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held that the evidence did not support the finding of a violation of the Union's constitution, but only of its 'ethical provisions. When a labor organization gives notice to an employer that an agreement has been ratified, it signifies acceptance of the rights and duties arising under that agreement, and, in turn, a statutory obligation arises to execute a written contract embodying that agreement. *Teamsters Local 662 (W. S. Darley & Co.)*, 339 NLRB 893, 899 (2003).

Given that the Employer and Union reached agreement for a successor contract, the Employer was not obligated to return to the bargaining table. Hence, its refusal to do so did not violate the Act.

Accordingly, further proceedings are unwarranted and the charge is dismissed.

[10] On brief, counsel for the General Counsel indicates that she inadvertently failed to have this exhibit admitted; that it is a document filed by Respondent Local and its authenticity was not questioned; and that if her motion to have it admitted is not granted, there is ample undisputed testimony regarding the filing of this grievance to establish the existence of this grievance. It is noted that while there is no indication in the transcript that GC Exh. 16 was received, the court reporter included this exhibit in the exhibits received portion of the record, and on the backside of this exhibit the court reporter, who initialed the sticker, placed a check mark on the sticker indicating that GC Exh. 16 was received. Verdier did not testify to dispute or qualify the fact that this grievance was filed. In the circumstances extant here, while there may be a question as to whether this exhibit was received, it would be best to remove any doubt. Accordingly, the General Counsel's Motion is granted and GC Exh. 16 is received. It does not appear that Respondent's would be prejudiced in any way by this action.

> 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 the agreement. What is relevant is what the union tells the employer about ratification. [Footnote omitted.] 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 the 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 *Teamsters Local 589 (Jennings Distribution),* supra] . . . 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 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.

Here, the Company was aware that the Union conditioned agreement on the terms of a contract on ratification by bargaining unit employees. Indeed, the first collective-bargaining agreement between this Union and this Company required two ratification votes because the bargaining unit employees voted against ratification the first time. With respect to the contract involved herein, Hudson telephoned Bauer to ascertain the results of the ratification vote on August 1. So the Company was aware and in agreement that the contract had to be ratified by bargaining unit members.[11]

When Bauer was shown General Counsel's Exhibit 11 by counsel for the Union, Bauer did not indicate that there was any error in his written statement as described by the Office of the International President in the above-described Decision on the appeal of the August 1 ratification vote. As noted above, in pertinent part, Bauer's written statement reads as follows:

> At about 5:00 p.m. on August 1st, 2007, a group of approximately 25 members came into Local 155 to vote on a tentative agreement with the UAW and US Manufacturing. We (the bargaining committee) had the election set up for the hours of 10:00 a.m. until 7:00 p.m.
>
> After these approximately 25 members voted 3 to 5 of them were standing around and one of the stewards stated "well that's all of the members." Upon hearing this, the two volunteers from the membership who were responsible for counting the ballots opened the ballot box and began to count.
>
> After a short period of time, the volunteers announced that the count was 140 no votes to 130 yes votes. Upon hearing this, the 3 to 5 members who were standing around began to cheer to the fact that the agreement was turned down and left I presume to go the plant and spread the so-called good news.
>
> When I returned from the lobby, I had asked what was going on and I was told the votes were counted and the contract was turned down. I stated "Why did we have the Local union 7:00 p.m.? [sic] A Steward named Ron said 'I have members who don't get their lunch until 6:00 [p.m.] and some who get theirs at 6:30 p.m. and they didn't get a chance to vote yet.'"
>
> Upon hearing this I told the volunteers to put the ballots back into the box, to lock the ballot box and to sign their names to the fact of what just happened. At no time did I or any of the bargaining committee come near the ballots of [perhaps this is a typo and it should read or] the ballot box.

Compare this with the following of Bauer's above-described testimony at the trial herein:

> We have an anti-union segment in that shop who wears their anti-union shirts that they've had ever since the facility was organized and led by a gentleman named Tony Bowman. He walked in with his anti-union brown shirt, vote no UAW, and when that group of approximately five came in to vote, there is part of the bargaining committee a skilled trades rep named Tracy Wright, and [she] inadvertently said that, well, we're all done, all the people voted now, we're done. Well, at that, because I was not aware of how long we had the hall and how long this whole process went, I went by what the skilled trade rep had said. I looked at the election committee and said, okay, do what you have to do, and gave orders to the committee and myself to remove ourself [sic] from that ballot box, and we went out by the hall. The ballots were then counted. [Tr. p. 106.]

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[11] On brief, counsel for the General Counsel contends that notwithstanding the fact that above-described Regional Director's summary report attached to his December 5 letter indicates that "[t]he investigation disclosed that the ratification by the employees was a condition precedent to a collective bargaining agreement between the parties," such is not the case in that at trial Respondents failed to establish, either through testimony or admitted documents, that ratification was a condition precedent. Perhaps what Respondents did at the trial took into consideration the fact that par. 11 of the complaint in this proceeding alleged that

> On about July 31, 2007, the Charging Party and Respondents reached complete agreement on the terms and conditions of employment of the Unit to be incorporated in a successor collective bargaining agreement, *subject to the condition requiring Unit ratification* of the tentative agreement. [Emphasis added.]

In his written statement Bauer, who according to his written statement asked those who prematurely opened the ballot box "[w]hy did we have the Local union [until] 7:00 p.m.," appears to place the blame for the premature ballot count on the volunteer election committee. Indeed at page 7 in the *DISCUSSION* portion of the Decision of the Union International President's Office, it is indicated as follows:

> The voluntary Ratification Vote Committee was inexperienced at performing the task of conducting a ratification vote. Although their efforts are surely appreciated and their willingness to help [is] commendable, *they* made a severe mistake when they opened the ballot box prior to the posted closing of the polls. [Emphasis added.]

It appears from this quoted portion of the Decision of the Union International President's Office that the "severe mistake" was committed by the voluntary ratification vote committee. Yet when he subsequently testified under oath at the trial herein Bauer testified that

> [A] skilled trades rep named Tracy Wright, and [she] inadvertently said that, well, we're all done, all the people voted now, we're done. Well, at that, *because I was not aware of how long we had the hall and how long this whole process went, I went by what the skilled trade rep had said. I looked at the election committee and said, okay, do what you have to do,* and gave orders to the committee and myself to remove ourself [sic] from that ballot box, and we went out by the hall. The ballots were then counted. [Tr. p. 106 with emphasis added.]

In other words, when he testified at the trial herein Bauer, who was overseeing the ratification vote, admitted that he, in effect, told the volunteer election committee to open (prematurely) the ballot box and one of the reasons he did it was because he was not aware of how long they had the hall. As noted above, in his written statement Bauer asked those who prematurely opened the ballot box "[w]hy did we have the Local union [until] 7:00 p.m.," Bauer did not make any attempt to clear up these apparent contradictions. It is noted that Bauer was not placed in charge of the second ratification vote. Rather, Presley was placed in charge of that vote.

As noted above, on cross-examination, Bauer testified that on page 2 of General Counsel's Exhibit 11, which is the decision of the Office of the Union's International President on the appeal of the August 1 ratification, under "*FACTS*," it is indicated that "the CBA was announced as ratified and proper notice was forwarded to the Company"; that this refers to him "saying that the count was 147 [to] 141, we have a ratified, we did successfully ratify the agreement" (Tr. p. 134); and that proper notice refers to the fact that the outcome of the ratification vote was posted at the Charging Party's facility. Contrary to the Union's argument on brief, the Union clearly indicated that the contract had been ratified. Respondents did not show that they made any attempt to have this finding in the decision of the office of the International president qualified or modified in any way by filing a motion for clarification or a petition for reconsideration or an appeal to the public review board, which can reverse a decision of the office of the International president.

There are reasons, in addition to Bauer contradicting himself—without explanation, why I find that Bauer is not a credible witness. First, Bauer testified that on August 1 that he told Hudson "that it would be in my humble opinion [there] was going to be an appeal, so therefore we better sit tight because I know it's going to happen." (Tr. p. 109.) Hudson testified that Bauer said only that the vote was close but it was ratified, and that she was not aware of any issue with the August 1 ratification until Bauer telephoned her on September 26. Bauer did not specifically deny Hudson's testimony that within a couple of days after the August 1 ratification, he reminded Hudson during one of his four to six post-August 1 telephone conversations with her, that she had agreed to remove writeups from three of the bargaining committee members files. As noted above, Hudson also testified that on July 31, with respect to a pending union proposal to remove the discipline in the files of the bargaining committee, she told the union representatives that if they got the contract ratified she was sure that the Company could do something about removing write-ups from the files of the bargaining committee members. Hudson's testimony is credited. Bauer did get Hudson to remove the three writeups. Bauer did not tell Hudson to "sit tight." If he had told Hudson to "sit tight," Bauer would not have had any justification for asking and he would not have asked Hudson to remove the disciplines from the bargaining committee members' files.

Second, Bauer testified that the reason that he wanted Hudson to "sit tight" was because there was money involved, he was concerned that the Company would go ahead and issue the lump sums, and when the bargaining unit members had to pay it back, they would not be able to and the Company would take it out of their wages. Yet, Bauer did not specifically deny Hudson's testimony that that within a week following the August 1 ratification vote she had a discussion with him to confirm how the deductions from the lump-sum payments would be handled; and that on August 9 or 16, she telephoned Bauer and they agreed that, with respect to employees who were on approved medical leave or a leave of absence of some kind, their lump sum payment checks would be held until they returned to work. Bauer did testify that between August 1 and when the lump-sum checks were actually cut, at the behest of Verdier, he spoke with Hudson about lump-sum payments telling her that the appeal had been filed and "[s]o once I, again I asked for everything to be put on hold, let's see where this all goes." (Tr. pp. 114, 115.) But the problem with Bauer's testimony is that he did not tell Hudson on August 1 to sit tight. And with all that was occurring, if Hudson was told to put everything on hold and she did not, then one has to wonder if Bauer was very concerned about the lump sum payment, albeit he believed that he was not "entitled" to tell the bargaining unit members not to cash the lump sum payments, why didn't he send Hudson something in writing. According to Bauer's testimony he verbalized to Hudson that there was an appeal pending. So according to Bauer it was not a secret. That being the case, why didn't he put it in writing to Hudson? Bauer did not tell Hudson that there was an issue with the ratification vote until September 26.

Third, Bauer admits that during the summer of 2007 the Company and the Union attempted to set up a meeting. Bauer

testified that the meeting was to review a final tentative agreement. Why would there be a meeting to review a final tentative agreement after agreement was reached on July 31, and ratified on August 1? The only thing left was to sign the agreement after all typos were corrected, which would include the omission of a sentence in the final draft of a sentence which was in the contract agreed to on July 31. Bauer was not being candid about the purpose of the meeting which was to be held in the summer of 2007. Bauer then asserts that during negotiations it was agreed before the agreement was to be signed, there would be a meeting between management and the Union with respect to coaching some supervisors and stewards about acting appropriately; and that they never had this meeting. Such a meeting would not be a mandatory subject of bargaining, it is not referred to in the agreement that was reached on July 31, and ratified on August 1, and the failure to hold such a meeting, even if there was an agreement to hold such a meeting, would not change the fact that the contract was ratified on August 1, and the Union verbally and by posting notified the Company of this fact, without qualifying it in any way. Such notification signified acceptance of the rights and duties arising under the agreement, and, in turn, a statutory obligation arose to execute a written contract embodying that agreement.

Fourth, Bauer did not specifically deny Hudson's testimony that during the week of September 17, he agreed that on September 28, the contract would be executed and a step three grievance meeting would also be held on that date. Hudson's testimony is credited.

Fifth, with respect to timing, Bauer, as noted above, gave a written statement to the Office of the International president regarding what occurred with respect to the ratification vote on August 1. See General Counsel's Exhibit 11. Also, as noted above, on page 2 of the decision of the office of the International president, General Counsel's Exhibit 11, under **"*FACTS,*"** it is indicated that "the CBA was announced as ratified and proper notice was forwarded to the Company. Bauer testified that this refers to him "saying that the count was 147 [to] 141, we have a ratified, we did successfully ratify the agreement" (Tr. p. 134); and that proper notice refers to the fact that the outcome of the ratification vote was posted at Charging Party's facility. As noted, it has not been shown that Bauer attempted in any way to have the decision of the office of the president regarding whether proper notice was given to the Company modified to show that, as he asserts, he qualified his notification to the Company by explaining to the Company that there was a mix up in counting the ballots, he did not doubt that there was going to be an appeal, and that the Company should "sit tight." It appears that Bauer's assertion that he in any way qualified his notice to the Company regarding the August 1 ratification vote first surfaced after December 5 when the Regional Director of Region 7 of the Board advised the Union, after an investigation of the Union's charge in Case 7–CA–50830, that the Union's charge was being dismissed because an International Representative (Bauer), who is a duly authorized agent of the Union, notified the Employer that the agreement was ratified and "[w]hen a labor organization gives notice to an employer that an agreement has been ratified it signifies acceptance of the rights and duties arising under the agreement, and, in turn, a statutory obligation arises to execute a written contract embodying that agreement, *Teamsters Local 662 (W. S. Darley & Co.),* 339 NLRB 893, 899 (2003)." (See GC Exh. 18.) The Union did not allege in its November 6 charge that there was no ratification because Bauer allegedly told Hudson to "sit tight" and "everything . . . [should] be put on hold, let's see where this all goes." The Regional Director does not indicate in his summary report that the investigation disclosed that the ratification was assertedly qualified. And the Office of Appeals January 31, 2008 letter makes no mention of such an assertion on the part of the Union.

Other things demonstrate that the Union did not notify the Company to "sit tight" (Tr. p. 109) or request of Hudson that "everything to be put on hold, let's see where this all goes." (Tr. pp. 114, 115.) As indicated above, after August 1, the Union filed two grievances relying on changes made in the agreement which was ratified on August 1.[12] Verdier signed a posting regarding the new attendance policy in the agreement which was ratified on August 1. Also, Verdier did not testify at the trial herein so he did not deny that he told Hudson that everything in the final draft of the collective-bargaining agreement

[12] On brief the Union argues that the filing of the two grievances, GC Exhs. 5 and 16, does not undermine Respondents' position in that as the grievance procedure was unchanged by the expiration of the contract; the Union still has a right to file and process grievances under the provisions of the grievance procedure. Respondents' argument is not on point and it is disingenuous. The point is not that the Union had a right to file a grievance. The point is the subject matter of the grievance or the basis for filing these two grievances. Both of the involved grievances are based on a new benefit or right which did not exist prior to collective-bargaining agreement which was reached by the parties on July 31, and ratified by the members of the involved bargaining unit on August 1. The Respondents next argue that by not asking for these two grievances to be submitted to arbitration, they have not acted inconsistently with their belief that no contract currently exists between Respondents and the Charging Party because arbitration does not exist post-expiration. The problem with this argument regarding the grievance received as GC Exh. 5 is that there was no reason to go to arbitration in that the Union won; the involved document was withdrawn at step two. While the "RECOMMENDED SETTLEMENT" portion of this grievance indicates "[r]emove write-up/ PayOEE, Make Whole," Hudson on voir dire testified that she did not know if the employee received any time off for the writeup. Verdier, along with the involved employee, signed the grievance. Neither Verdier nor the involved employee was called to testify. It has not been shown that the withdrawal of the writeup did not satisfactorily resolve this grievance. As Hudson testified, the withdrawal occurred at step two. It has not been shown that there was a step three. It has not been shown that the basis had been established for even considering the possibility, let alone the necessity, of going to arbitration on this grievance. The problem with this argument regarding the grievance received as GC Exh. 16 is that the step-three meeting, according to the unrefuted testimony of Hudson, was held about a week before she testified at the trial and the Company was waiting for a decision on the part of the International to either withdraw the grievance, move it to arbitration, or request to discuss it further. What eventually transpired is not a matter of record. And obviously, if the Union decided—regarding that grievance—not to take it to arbitration, the possibility of further undermining the position taken by Respondents in this case would undoubtedly have been a consideration. Respondents' argument regarding not taking these two grievances to arbitration has no merit.

submitted to him after August 1 looked okay; and that the changes being made pursuant to the contract ratified on August 1 in the short-term disability program sounded good. Finally, there is the fact that neither Respondents nor members of the involved bargaining unit at the time challenged those August 1–September 26 changes made by the Company pursuant to the July 31 collective-bargaining agreement.[13]

I do not find Bauer to be a credible witness. I do find Hudson to be a credible witness. To the extent that there is a conflict in the testimony of Hudson versus the testimony of Bauer, I credit the testimony of Hudson. Since no one but Bauer testified for the Respondents, Hudson's testimony about Verdier is not denied. Hudson's testimony regarding what Verdier said and did is credited.[14]

CONCLUSION OF LAW

By since about September 28 failing and refusing to execute the July 31 collective-bargaining agreement which was ratified by a majority of the members of the involved bargaining unit on August 1, the Respondents have engaged in unfair labor practices affecting commerce within the meaning of Section 8(b)(3) and Section 2(6) and (7) of the Act.

REMEDY

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

Respondents shall forthwith execute the collective-bargaining agreement reached with the Employer on July 31, 2007, and ratified by a majority of the members of the involved bargaining unit on August 1, 2007; and shall give retroactive effect to the provisions of the collective-bargaining agreement from August 1, 2007.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[15]

ORDER

The Respondents, Local 155, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL–CIO, Warren, Michigan, and International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL–CIO, Detroit, Michigan, their officers, agents, and representatives, shall

1. Cease and desist from

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[13] At the end of their brief the Respondents argue as follows:

> Finally, the GC will rely on the fact that the Company implemented the new attendance and disability policies in the new contract without protest from the Union. Both these policies favored Union members. The Union's acquiescence to the implementation, therefore, cannot permit the inference that the Union has agreed to a contract in violation of its International Constitution.

Actually, Respondents and members of the involved bargaining unit not only did not protest these policy changes which benefited them but, as noted above, they did not reject the lump-sum payments, they did not protest the removal of writeups from the files of three of the bargaining committee members and, by filing grievances, GC Exhs. 5 and 16, they asserted rights which they believed were given to them in the contract reached July 31, which was ratified by a majority of the members in the involved bargaining unit on August 1. Respondents are apparently arguing that they and members of the bargaining unit are only too happy to accept the benefits granted by the collective-bargaining agreement reached July 31, which was ratified August 1 by a majority of the members of the involved unit, but they do not want to be bound by the terms of the agreement. It appears that the Respondents are arguing that they should not be held responsible for the consequences of their actions. This argument of the Respondents also has no merit.

[14] Similarly, since Presley did not testify at the trial herein, Hudson's testimony regarding his role is not denied. Hudson's testimony regarding what Presley said and did is credited. It is noted that on brief the Charging Party requests that an adverse inference be drawn, namely that Respondents' failure to call Verdier and Presley should lead to an adverse inference that, had they testified, their testimony would have been detrimental to the Union's case. More specifically, the Charging Party argues that it should be inferred that had Verdier and Presley testified regarding the events in which they were directly involved, they would have further contradicted the unsupported testimony of Bauer. The focus of this decision is what the Union told the Company on August 1 about the ratification and the fact that the Union posted the August 1 ratification vote results on a bulletin board in the Company plant. Neither Verdier nor Presley participated in the final August 1 telephone conversation between Hudson and Bauer (No one is asserting that It was a conference call.) when Bauer told Hudson that the contract had been ratified. So, in this regard, their testimony would not have shed any additional light on what was said by Bauer during this telephone conversation. Additionally, as noted above, since they did not testify herein, Hudson's testimony about what Verdier and Presley said and did was not denied. Hudson's uncontradicted testimony about Verdier and Presley has been credited. It is not necessary to rely in any way on an adverse inference; it is not needed to reach the determinations I have reached herein. Nonetheless, someone posted the ratification notice in the plant. If it was Verdier, what he might have been told by Bauer with respect to the notification given to the Company would have been relevant. Also, since Verdier discussed problems regarding the lump sum payment with Bauer, what was said during this conversation or during these conversations would have been relevant. To the extent that Charging Party seeks an adverse inference regarding Verdier, I agree. When a party fails to call a witness who may reasonably be assumed to be favorably disposed to the party, an adverse inference may be drawn regarding any factual question on which the witness is likely to have knowledge. It may be inferred that the witness, if called, would have testified adversely to the party on that issue. While an adverse inference is unwarranted when both parties could have confidence in an available witness' objectivity, it is warranted where, as here, it is stipulated that the missing witness, Verdier, is an agent of Local 155 with respect to the involved bargaining unit and the Employer, and for purposes of this case. *International Automated Machines*, 285 NLRB 1122 (1987). To the extent that the Charging Party seeks an adverse inference regarding Presley, I do not agree. It appears that Presley's involvement commenced only after the office of the international president decided that there was going to be a second ratification vote and Bauer would not oversee that ratification process. It has not been shown that Presley was involved in the August 1 ratification process or in what occurred between August 1 and September 26. As Presley told Hudson on September 27, everything had been dumped in his lap and he was doing what the Assistant Director told him.

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

(a) Failing and refusing to execute the above-described July 31, 2007, written collective-bargaining agreement which was ratified by a majority of the members of the involved bargaining unit on August 1, 2007.

(b) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed 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 reached with the Employer on July 31, 2007, and ratified by a majority of the members of the involved bargaining unit on August 1, 2007.

(b) Give retroactive effect to the provisions of the collective bargaining agreement reached with the Employer on July 31, 2007, and ratified by a majority of the members of the involved bargaining unit on August 1, 2007.

(c) Within 14 days after service by the Region, post at its Local 155 union office in Warren, Michigan, copies of the attached notice marked "Appendix."[16] Copies of the notice, on forms provided by the Regional Director for Region 7, 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 employees and members are customarily posted. Reasonable steps shall be taken by the Respondents 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 U.S. Manufacturing Corporation at all places where notices to employees are customarily posted.

(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 Respondents have taken to comply.

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[16] 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."