

**United States Government**  
**National Labor Relations Board**  
**OFFICE OF THE GENERAL COUNSEL**  
**Advice Memorandum**

DATE: July 25, 2000

TO : Victoria E. Aguayo, Regional Director  
Region 21

FROM : Barry J. Kearney, Associate General Counsel  
Division of Advice

SUBJECT: Hanson Aggregates West  
Case 21-CA-33817

530-4080-0125  
530-4080-5012-1700

This case was submitted for advice as to whether the Employer had a valid "good faith doubt" about the Union's continued majority status under Allentown Mack,<sup>1</sup> such that its withdrawal of recognition upon the termination of a contract did not violate Section 8(a)(5).

Briefly, the Employer and Union had a collective-bargaining agreement for a unit of approximately 3 employees, which expired by its terms on March 31, 2000. On about February 23, the Union received a letter from the Employer stating that it had "objective evidence, which clearly indicates that your organization no longer represents a majority of the employees" in the unit, but that the Employer would honor the contract through its termination. The Employer told the Union business agent about a week later that the majority of the employees had said that they no longer wanted the Union.

The business agent spoke with the three unit employees. One employee, Coleman, said that he wanted the Union and that while the Employer had not approached him regarding staying in the Union, employee Clay, a supervisor's brother-in-law, had. The agent then spoke with Clay, who said that he did not want the Union; Clay also said that someone, whom he would not identify, had told him that the Employer could take better care of the employees without the Union. While the business agent also

---

<sup>1</sup> Allentown Mack Sales & Service, Inc. v. NLRB, 522 U.S. 359 (1998).

spoke with the third unit employee, Wooten, Wooten did not voice his opinion on the Union. Clay and Wooten were relatively new employees, whom the business agent was not previously aware of; another former unit employee had transferred to a non-unit job. Clay was a Union member, behind in his dues; Wooten was not a Union member, despite a Union security clause in the contract. The Employer has not cooperated with the Region.

We agree with the Region that a Section 8(a)(5) complaint should issue, absent settlement, alleging that the Employer unlawfully withdrew recognition from the Union without a good faith doubt as to the Union's continuing majority support. While an employer may demonstrate its uncertainty of continuing majority status based on "reliable information" or an employee statement of "undeniable and substantial probative value,"<sup>2</sup> here there is only a bald assertion of the Employer to the business agent, with no identification of employees or what they said. In light of the Employer's repeated failure to cooperate with the Region, there has been no evidence produced of a "good faith" doubt of majority status which could privilege the Employer's withdrawal of recognition.

B.J.K.

---

<sup>2</sup> Allentown Mack, 522 U.S. at 371.