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

Advice Memorandum

DATE: October 10, 2000

TO : Paul Eggert, Regional Director
Region 19

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

SUBJECT: Matanuska Electric Association, Inc.
19-CA-26829 530-4080-0125

This Section 8(a)(5) case was submitted for advice on whether the Employer had sufficient objective considerations to support a good faith doubt of the Union's majority status sufficient to justify a polling of employee sentiment for the Union under Allentown Mack[1].

We conclude, in agreement with the Region, that the Employer's poll was unlawful for two reasons. First, the Employer possessed an antiunion petition signed by only seven employees in a total unit of 23 employees. The Employer asserts that it was also aware that three additional employees were "disgruntled", "displeased", or "sick of" the Union. These statements, however, are mere expressions of dissatisfaction with the Union's performance, do not rise to the level of rejection of union representation, and are otherwise entitled to little probative weight.[2]

The Employer asserts that one additional employee told the Employer that he would vote against the Union. This employee denies making that statement. Even if this

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[1] Allentown Mack Sales & Serv., Inc. v. NLRB, 118 S. Ct. 818, 157 L.R.R.M. 2257 (1998).

[2] Wagon Wheel Bowl, Inc. v. NLRB, 47 F.3d 332, 148 LRRM 2385, 2387-2388 (9th Cir. 1995): "mere expressions of dissatisfaction with the quality of representations" [emphasis in original] are not expressions of a withdrawal of support. See also Destilerin Serralles, 298 NLRB 51 (1988) (employee dissatisfaction with past union performance not indicative of current desire to be rid of union.) We note in addition that these three employees also advised the Region that in fact they were prounion, and that two of them had honored the Union's picket line.

employee were also counted as antiunion, however, the Employer has then demonstrated that only 8 of 23 unit employees, or 35 percent of the unit, no longer desire Union representation. Since that percentage alone is insufficient to demonstrate a good faith doubt of the Union's majority, and there is little other circumstantial evidence of loss of majority, the Employer's poll was unlawful for that reason.[3]

We note that the Employer also failed to provide the Union with advance notice of the time and place of its poll. For that additional reason, the poll was unlawful.[4]

B.J.K.

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[3] See Barrington Mfg. Corp., Case 17-CA-19532, Advice Memorandum dated September 25, 1998 (insufficient objective considerations where 33 percent of the unit directly disavowed union support with minimal other circumstantial evidence of loss, i.e., a stale employee antiunion petition, and the union's mere failure to request bargaining for six months); Beverly Farm Foundation, Inc., Case 14-CA-25621, et al, Advice Memorandum dated September 1 (1999) (insufficient objective considerations where 42 percent of the unit directly disavowed the union and there was an absence of other probative circumstantial evidence of loss of majority support).

[4] See Texas Petrochemicals Corp., 296 NLRB 1057 (1989). [*FOIA Exemption 5*

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