

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

DATE: July 2, 2013

TO: Dennis P. Walsh, Regional Director
Region 4

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

SUBJECT: Martin Dealerships
Case 4-CA-094599

530-4080-5012

This *Levitz*¹ case was submitted for advice as to whether the Employer was privileged to withdraw recognition from the Union based on a petition titled, “We wish to longer have Union representation at Martin Dealership,” that arguably did not unambiguously demonstrate a loss of employee majority support. We conclude, in agreement with the Region, that any ambiguity in the petition was clarified by objective evidence demonstrating an actual loss of majority status. Accordingly, absent withdrawal, the charge should be dismissed.

In *Levitz*, the Board held that that an employer may unilaterally withdraw recognition from a union only if it can show actual, numerical loss of majority support for the union based on objective evidence.² Anti-union statements signed by a majority of the employees constitute objective evidence of a loss of majority if the “basic thrust of the group message is the repudiation of the union as the bargaining representative.”³ To determine a signer’s intent, the Board looks at circumstances surrounding the signing of the petition, including what signers were told regarding the petition’s purpose⁴ and the signer’s stated reasons for signing a petition.⁵

¹ *Levitz Furniture Co. of the Pacific*, 333 NLRB 717 (2001).

² *Id.* at 717.

³ *See id.* at 725; *see also Industrial Waste Service*, 268 NLRB 1180, 1186 (1984) (petition stating, “We don’t want the Union” was sufficient to give employer a good-faith doubt as to union’s majority status).

⁴ *See, e.g., Highlands Regional Medical Center*, 347 NLRB 1404, 1406–07 (2006) (employer violated Section 8(a)(5) by withdrawing recognition based on petition because employees were told the petition’s purpose was to obtain a decertification

Notwithstanding the employer's burden to demonstrate actual loss of majority support under *Levitz*, the General Counsel's longstanding policy has been to decline to issue complaint when the General Counsel has sufficient objective evidence that the union has lost majority support, even if the employer has no such evidence.⁶

Here, the undisputed evidence establishes that the Union had, in fact, lost majority support at the time the Employer withdrew recognition. The statement at the top of the petition — “We wish to longer have Union representation at Martin Dealership” — arguably does not clearly evince the intent of the 15 flat-rate unit employees who signed the petition.⁷ Nevertheless, the employee who solicited the signatures testified that he told all of the employees who signed the petition that its purpose was to get rid of the Union. This testimony was corroborated by three of the employees who signed the petition; none of these employees could even recall whether there was a typed statement at the top of the petition or whether they had read anything before they signed it. Thus, regardless of any ambiguity in the petition's language, the employees understood that they were expressing a desire not to be represented by the Union when they signed the petition.

In addition, the circumstances surrounding the signing of the petition show that some months earlier the employees had unanimously rejected the Employer's best contract offer, despite the Union's recommendation that the contract be ratified. Indeed, one of the employees who signed the petition was a member of the Union's negotiating committee.⁸ Consequently, the handwritten word “no” added to the typed

election), *enf'd sub nom. Highlands Hosp. Corp., Inc. v. NLRB*, 508 F.3d 28 (D.C. Cir. 2007).

⁵ See *Citywide Mobile Response Corp.*, Case 2-CA-037321 *et al.*, Advice Memorandum at 10 (July 19, 2007).

⁶ See GC Memorandum 09-04, *Guideline Memorandum Concerning Withdrawal of Recognition Based on Loss of Majority Support* at 2 (Nov. 26, 2008); see also *Famsa, Inc.*, Case 21-CA-037667, Advice Memorandum at 2-3 (Sept. 21, 2007); *Christy Webber Landscapes, Inc.*, Case 13-CA-041300, Advice Memorandum at 3 (Dec. 29, 2003).

⁷ The flat-rate unit included a total of 30 employees when the Employer withdrew recognition.

⁸ Another member of the Union's negotiating committee who was in a separate unit also signed the petition. *Cf. Allentown Mack v. NLRB*, 522 U.S. 359 (1998) and other pre-*Levitz* cases where the Board has accorded greater weight to statements by union representatives, who are likely to be knowledgeable about employee attitudes toward the union and not biased against the union.

statement at the top of the petition *after* the employees signed it served only to correctly reflect their actual sentiments.

The Union has not provided any contrary evidence or demonstrated that it had the support of a majority of the flat-rate unit employees at the time that the Employer withdrew recognition. Accordingly, since the undisputed evidence establishes that the Union suffered an actual loss of majority support, we conclude that the Region should dismiss the charge, absent withdrawal.⁹

/s/
B.J.K.

⁹ See *Famsa, Inc.*, Advice Memorandum at 1-2 (finding that a document stating unambiguously that employees wished to get rid of the union was sufficient to clarify a facially ambiguous petition, even though no employees signed the explanatory letter, where the same employee who initially circulated the petition also wrote the explanatory letter and provided undisputed testimony that he showed the letter to the petition signers); *Pacific Eco Solutions*, Case 19-CA-29078, Advice Memorandum at 3-4 (Apr. 23, 2004) (employer lawfully withdrew recognition where it relied on shop steward's statements to employer that a majority of employees no longer supported the union in light of objective, extrinsic evidence that corroborated the circumstances under which the shop steward polled employees and the poll question was whether employees wanted to repudiate the union).