

OFFICE OF THE GENERAL COUNSEL

MEMORANDUM GC 02-01

October 22, 2001

TO: All Regional Directors, Officers-in-Charge,  
and Resident Officers

FROM: Arthur F. Rosenfeld, General Counsel

SUBJECT: Guideline Memorandum Concerning Levitz

I. Introduction

In Levitz,<sup>1</sup> the Board abandoned the unitary reasonable good-faith doubt standard it had used to evaluate the lawfulness of three employer actions: unilateral withdrawals of recognition, the filing of RM petitions, and polling. The Board developed a new standard for employer withdrawals of recognition, and now requires an employer who withdraws recognition from an incumbent union to prove that the union had, in fact, lost majority status at the time of the withdrawal. The Board retained the good-faith doubt (uncertainty) standard for employer RM petitions, but left to a later case the decision of whether the current good-faith doubt (uncertainty) standard for polling should be changed.

This Guideline Memorandum provides an overview of various issues raised by Levitz. Specifically, this Memorandum provides guidance on how Regions should investigate these cases. It also discusses the procedure for processing RM petitions in light of Levitz and what evidence is required to satisfy the Board's good-faith reasonable uncertainty standard.

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<sup>1</sup> 333 NLRB No. 105 (March 29, 2001). In Levitz, the employer received a petition containing signatures from what appeared to be a majority of unit employees stating that they no longer desired representation from the incumbent union, and informed the union that it intended to withdraw recognition at the end of the contract term, slip op. at 3. Within two weeks, the union informed the employer that it had objective evidence establishing that it retained majority support and was willing to show this evidence to the employer. Ibid. The employer never examined the union's evidence and withdrew recognition from the union when the contract expired. Ibid.

All cases involving employers who withdrew recognition prior to the issuance of Levitz on March 29, 2001, should be sent to the Division of Advice pursuant to GC Memorandum 99-10.<sup>2</sup>

## II. Withdrawals of recognition

### A. General Principles

By changing the standard for employer withdrawals, the Board overruled Celanese Corp.,<sup>3</sup> which required an employer who withdrew recognition to prove that it had a reasonable, good-faith doubt as to a union's continuing majority status.<sup>4</sup> The Board had interpreted doubt as "disbelief," requiring an employer to prove its disbelief of the union's majority status when it withdrew recognition.<sup>5</sup> In 1998, however, the Supreme Court in Allentown Mack Sales & Service v. NLRB<sup>6</sup> upheld an employer's poll by interpreting

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<sup>2</sup> See, e.g., Levitz, slip op. at 12 (applying the Levitz "actual loss" standard prospectively only, stating that all pending cases involving withdrawals of recognition will be decided under the good-faith uncertainty standard).

<sup>3</sup> 95 NLRB 664 (1951).

<sup>4</sup>

[We hold that an employer may rebut the continuing presumption of an incumbent union's majority status, and unilaterally withdraw recognition, only on a showing that the union has, in fact, lost the support of a majority of the employees in the bargaining unit. We overrule Celanese and its progeny insofar as they hold that an employer may lawfully withdraw recognition on the basis of a good-faith doubt (uncertainty or disbelief) as to the union's continued majority status.

Levitz, slip op. at 8.

<sup>5</sup> See Celanese Corp., 95 NLRB at 671 (emphasis omitted) ("the answer to the question whether the Respondent violated Section 8(a)(5) of the Act [by withdrawing recognition] depends . . . upon whether the Employer in good faith believed that the Union no longer represented the majority of the employees"); U.S. Gypsum Co., 157 NLRB 652, 656 (1966) (requiring an employer filing an RM petition to demonstrate "by objective considerations that it has some reasonable grounds for believing that the union has lost its majority status since its certification").

<sup>6</sup> 522 U.S. 359 (1998).

the Board's good-faith doubt standard as requiring only an employer's "uncertainty" (rather than "disbelief") as to a union's majority status.<sup>7</sup> The Court upheld the Board's use of a unitary standard for unilateral withdrawals of recognition, RM petitions, and employer polls, but stated that the Board could adopt a more stringent standard for employer withdrawals of recognition and/or employer polls.<sup>8</sup> The Board did so in Levitz, and raised the standard for withdrawals of recognition to that of "actual loss" of majority support. Specifically, the Board held:

We therefore hold that an employer may unilaterally withdraw recognition from an incumbent union only where the union has actually lost the support of the majority of the bargaining unit employees, and we overrule Celanese and its progeny insofar as they permit withdrawal on the basis of good-faith doubt.<sup>9</sup>

"Actual loss" requires a showing that is greater than both the Board's previous "uncertainty"<sup>10</sup> standard and

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The Board asserted at argument that the word 'doubt' may mean either 'uncertainty' or 'disbelief,' and that its polling standard uses the word only in the latter sense. We cannot accept that linguistic revisionism. 'Doubt' is precisely that sort of 'disbelief' (failure to believe) which consists of an uncertainty rather than a belief in the opposite. . . . The question presented for review, therefore, is whether, on the evidence presented to the Board, a reasonable jury could have found that Allentown lacked a genuine, reasonable uncertainty about whether Local 724 enjoyed the continuing support of a majority of unit employees.

Id. at 367.

<sup>8</sup> Id. at 364, 373-74.

<sup>9</sup> Levitz, slip op at 1.

<sup>10</sup> Allentown Mack, 522 U.S. at 367; see also Scepter Ingot Castings, 331 NLRB No. 153, slip op. at 1 (August 28, 2000) (quoting Henry Bierce Co., 328 NLRB 646, 651 (1999), affd. in relevant part per curiam and remanded 234 F.3d 1268 (6<sup>th</sup> Cir. 2000)) in which the Board found that an employee's statements that she "felt" that the union had "no standing," the employees no longer wanted the union as their representative, and the union's status was a "gone issue:"

"disbelief"<sup>11</sup> standard. "Actual loss" requires a showing of an actual numerical loss of a union's majority support.<sup>12</sup> This can be established by direct evidence, such as employees' firsthand statements regarding their own personal favor or opposition to the incumbent union, or an antiunion petition signed by a majority of unit employees. If, however, an employer's showing of "actual loss" is established solely or in part by hearsay evidence, such as employees' and supervisors' statements regarding other employees' union sentiments, the case should be submitted to the Division of Advice.

B. Investigating withdrawals of recognition arising under Levitz

An employer sustains its initial burden of proof of establishing "actual loss" if it presents untainted, valid evidence, such as a petition, that establishes that a numerical majority of unit employees no longer desires representation from the incumbent union.<sup>13</sup> Rebuttal evidence may, however, be presented to show that the employer's evidence is unreliable and/or that the union had

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[did] not come even close to being objective evidence justifying a withdrawal of recognition, regardless of whether the test is phrased in terms of 'good[-]faith reasonable doubt' of the Union's majority support or 'genuine, reasonable uncertainty about whether the Union enjoyed the continuing support of a majority of unit employees.'

<sup>11</sup> See, e.g., U.S. Gypsum Co., 157 NLRB at 656; Celanese Corp., 95 NLRB at 671.

<sup>12</sup> Cf. Auciello Iron Works, 317 NLRB 364, 365 fn. 14 (1995), enfd. 60 F.3d 24 (1<sup>st</sup> Cir. 1995), affd. 517 U.S. 781 (1996) (citing NLRB v. Curtin Matheson Scientific, 494 U.S. 775, 787 fn. 8 (1990), "unlike in an actual loss of majority status case, an employer need not show an actual numerical loss of majority support to prove a good-faith doubt and may rely instead on circumstantial evidence to satisfy its burden of proof").

<sup>13</sup> In order to be valid, such a petition must contain the signatures of a majority of employees employed in the unit at the time of the withdrawal of recognition, and the employer must demonstrate that those signatures are facially authentic, usually by comparing them with employee signatures contained in the employer's business records or by witness authentication. See, e.g., NLRB Casehandling Manual (Part One) ULP, Sec. 10058.1.

majority support at the time of the employer's withdrawal. The employer then has the burden of proving "actual loss" by a preponderance of all the evidence, including the General Counsel's rebuttal evidence.<sup>14</sup>

An employer who withdraws recognition based on "actual loss" of majority status will thus violate Section 8(a)(5) if there is rebuttal evidence that shows the union's majority status at the time of the withdrawal, regardless of the employer's "good-faith" disbelief or whether the employer knew of the existence of that evidence at the time it withdrew recognition. The Board in Levitz stated, "an employer who withdraws recognition from an incumbent union, in the honest but mistaken belief that the union has lost majority support, should be found to violate Section 8(a)(5)."<sup>15</sup> An employer thus assumes the risk of a Section 8(a)(5) complaint if it withdraws recognition on evidence other than the results of an RM election, even if the employer believes in good-faith that its evidence is conclusive. Rebuttal evidence must, however, relate to circumstances as they existed at the time of the employer's withdrawal:

If the union contests the withdrawal of recognition in an unfair labor practice proceeding, the employer will have to prove by a preponderance of the evidence that the union had, in fact, lost majority support at the time the employer withdrew recognition.<sup>16</sup>

#### 1. Allegations of taint

Regions should investigate the bona fides of an employer's "actual loss" showing in circumstances where the evidence points to the possibility of taint. Examples of possible taint include:

- Employer's "actual loss" evidence has been tainted by prior unremedied unfair labor practices
- The employer sponsored the petition or threatened or otherwise coerced employees into signing a petition
- Employees were misinformed as to the purpose of the

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<sup>14</sup> Levitz, slip op. at 8 fn. 49.

<sup>15</sup> Id., slip op. at 8 (emphasis omitted).

<sup>16</sup> Ibid. (emphasis added).

- petition, by, for example, being told that the petition was solely for an election rather than for an outright withdrawal of recognition, and that petition was relied on by the employer to establish "actual loss"
- Employees were misled as to what document they were signing, by, for example, signing a paper with no heading after being told that the petition was for another purpose, such as obtaining a wage increase
- Evidence of forgery of signatures, or when employees disavow antiunion statements attributed to them

Investigations of such claims would parallel the methods used to evaluate the authenticity of authorization cards when seeking a Gissel remedy.<sup>17</sup> In these circumstances, the Region may need to specifically authenticate the signatures of employees who allegedly signed the petition by affidavit testimony or the mailing of questionnaires.<sup>18</sup>

## 2. Counter evidence of majority support

Since Levitz permits an employer's evidence of "actual loss" of majority to be challenged, evidence such as prounion petitions that could establish the union's retention of majority support and that conflicts with the antiunion evidence relied on by the employer to justify its withdrawal of recognition may be relevant. Whether it is depends in part upon whether the prounion evidence existed pre- or post-withdrawal.

Pursuant to AMBAC International,<sup>19</sup> and reaffirmed in Levitz,<sup>20</sup> evidence relating to a union's majority status is

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<sup>17</sup> See NLRB v. Gissel Packing Co., 395 U.S. 575 (1969).

<sup>18</sup> ULP Casehandling Manual, Sec. 10058.3. However, in contrast to Gissel situations, in cases such as these the employer at all times bears the burden of proving "actual loss" of majority. Close questions as to whether the employer has met this burden should be submitted to the Division of Advice. Further, if the investigation reveals evidence of forgery, further case processing should be suspended pending advice from Washington. Id., Sec. 10058.5.

<sup>19</sup> 299 NLRB 505, 506 (1990).

<sup>20</sup> Levitz, slip op. at 8 (an employer must prove the union suffered an "actual loss" at the time it withdrew recognition).

evaluated as of the time of the employer's withdrawal.<sup>21</sup> Unlike the "actual loss" standard set forth in Levitz, the Board's previous good-faith doubt standard, utilized in cases such as AMBAC, prevented unions from rebutting an employer's evidence, because an employer only had the burden to prove its doubt as to a union's majority status, not a union's lack of majority status, in fact. Pronoun evidence establishing a union's majority status at the time of the withdrawal of recognition was irrelevant, because while that evidence could prove the union's actual majority status, it could not disprove the employer's doubt as to the union's majority status.

The Levitz decision marks a departure from this reasoning, because it allows a union to rebut an employer's proof of "actual loss" by presenting evidence that could establish the union's majority status at the time of the withdrawal:

An employer who presents evidence that, at the time it withdrew recognition, the union had lost majority support should ordinarily prevail in an 8(a)(5) case if the General Counsel does not come forward with evidence rebutting the employer's evidence. If the General Counsel does present such evidence, then the burden remains on the employer to establish loss of majority support by a preponderance of all the evidence.<sup>22</sup>

Thus, AMBAC and its progeny have been implicitly overruled by Levitz, to the extent that they hold that evidence of a union's majority status at the time of withdrawal is irrelevant in determining whether the employer's withdrawal was unlawful.<sup>23</sup>

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<sup>21</sup> AMBAC, 299 NLRB at 506 (an employer's good-faith doubt defense must be evaluated as of the day of its withdrawal).

<sup>22</sup> Levitz, slip op. at 8 fn. 49.

<sup>23</sup> As noted above, that portion of AMBAC holding that evidence relating to a union's majority status must be evaluated as of the time of the employer's withdrawal remains viable after Levitz. See notes 20, 21 and accompanying text. Thus, as noted infra, evidence of post-withdrawal union support, as was presented by the union in AMBAC, will not affect the lawfulness of the employer's withdrawal, even under the "actual loss" standard.

### III. Processing RM petitions in light of Levitz

The following is intended to provide procedural and operational guidance for the Regions when making decisions involving RM petitions filed pursuant to the good-faith reasonable uncertainty standard articulated in Levitz. The Board has the authority to make all final and binding decisions regarding representation matters. Thus, in the event of a conflict, it is the Board's decisional law and not this Memorandum that is controlling.

#### A. The good-faith reasonable uncertainty standard

The good-faith reasonable uncertainty (rather than disbelief) standard articulated in Levitz and defined by the Court in Allentown Mack remains unchanged.<sup>24</sup> Since the good-faith uncertainty standard articulated in Levitz is not a new standard, it applies retroactively. This section of the Memorandum is intended to provide procedural and operational guidance, in addition to the Casehandling Manuals, for investigating and processing these types of cases. Regions should look to Board law for guidance for the substantive decisions that are to be made in representation cases.

The good-faith uncertainty standard for RM petition processing is more lenient than the "actual loss" standard, and provides an employer with means of testing employees' support for an incumbent union that is preferable to unilateral action.<sup>25</sup> Because the Board rejected the stricter good-faith belief standard in this context, U.S. Gypsum Co. and its progeny, which required employers to demonstrate a belief of lost majority status in order to obtain an RM election, are no longer viable for that proposition.<sup>26</sup>

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<sup>24</sup> See Allentown Mack, note 7.

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The Board and the courts have consistently said that Board elections are the preferred method of testing employees' support for unions. And we think that processing RM petitions on a lower showing of good-faith uncertainty will provide a more attractive alternative to unilateral action.

Levitz, slip op. at 10 (footnote omitted).

<sup>26</sup> The Levitz Board stated:

[W]here we to require employers to demonstrate a higher showing of good-faith belief of lost majority support

B. Evidence required to satisfy the uncertainty standard

Evidence required to establish good-faith uncertainty should be evaluated on a case-by-case basis. The Board in Levitz has instructed Regions to take all evidence into account when evaluating an employer's evidence of uncertainty and to view that evidence in its entirety.<sup>27</sup> The evidence must be objective and provide a reliable indication of employee opposition to the incumbent union rather than mere speculation.<sup>28</sup> The burden remains on the employer to prove its good-faith reasonable uncertainty as to the union's status.<sup>29</sup> The R Casehandling Manual provides guidance in evaluating these types of cases.<sup>30</sup>

Certain evidence previously held unreliable under the good-faith doubt (disbelief) standard is now acceptable when evaluating an employer's uncertainty under the Levitz test, including employees' unverified statements regarding other employees' antiunion sentiments and employees' statements expressing dissatisfaction with the union's performance as bargaining representative.<sup>31</sup> The Board will also continue to consider direct evidence such as antiunion petitions signed by unit employees and firsthand employee

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in order to obtain an RM election, as in United States Gypsum, we might encourage some employers instead to withdraw recognition rather than seeking an election.

Ibid. (emphasis in the original).

<sup>27</sup> Id., slip op. at 11-12.

<sup>28</sup> Id., slip op. at 12.

<sup>29</sup> See id., slip op. at 11 ("[w]e turn now to the kinds of evidence that employers may present to establish good-faith reasonable uncertainty").

<sup>30</sup> It is noted that portions of the R Casehandling Manual may change as a result of Levitz. See, i.e., NLRB Casehandling Manual (Part Two) Rep. Secs. 11042-11042.8 (processing RM petitions pursuant to U.S. Gypsum).

<sup>31</sup> Levitz, slip op. at 11. The Board previously considered such types of evidence to be unreliable evidence of opposition to the union. Ibid. (citing Allentown Mack Sales, 316 NLRB 1199, 1206, 1208 (1995), enfd. 83 F.3d 1483 (D.C. Cir. 1996), revd. 522 U.S. 359 (1998)).

statements indicating a desire to no longer be represented by the incumbent union.<sup>32</sup> Additionally, the Board cited the evidence relied on by the Supreme Court in Allentown Mack as reliable evidence establishing an employer's good-faith uncertainty.<sup>33</sup>

Some evidence, however, is considered too unreliable to establish an employer's uncertainty as to a union's majority status. The Board in Levitz noted two cases, Henry Bierce Co.<sup>34</sup> and Scepter Ingot Castings,<sup>35</sup> as examples of cases in which the employer's evidence of doubt was insufficient to prove its doubt of majority support, even under the Allentown Mack "uncertainty" standard.<sup>36</sup> In Henry Bierce Co.,<sup>37</sup> an employee's arguably antiunion statement,

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<sup>32</sup> Levitz, slip op. at 11.

<sup>33</sup> The evidence in Allentown Mack included firsthand statements by 7 of 32 employees of union opposition, one employee's statement indicating dissatisfaction with the representation he was receiving, an employee's statement that the entire night shift opposed the union and a union steward's statement that he felt the employees no longer wanted the union and that the union would lose if a vote was taken. Levitz, slip op. at 12; Allentown Mack, 522 U.S. at 368-71. See also Alcon Fabricators, 334 NLRB No. 85, slip op. at 2 (July 18, 2001) (employer had a good-faith uncertainty where 5 of 14-15 unit employees stated they did not wish to be represented by the union, a decertification petition was filed, and two employees stated that in their view, a majority of employees no longer supported the union).

<sup>34</sup> 328 NLRB 646 (1999), affd. in relevant part per curiam and remanded 234 F.3d 1268 (6<sup>th</sup> Cir. 2000).

<sup>35</sup> 331 NLRB No. 153 (August 28, 2000).

<sup>36</sup> Levitz, slip op. at 12.

<sup>37</sup> In Henry Bierce Co., 328 NLRB at 646-47, the arguably antiunion statement was made in response to an employee who said that employees would have uniforms if they had a union. The employee who responded said, "[y]ou go ahead and ruin a good thing between the - the relationship between the drivers and the company." The Board in Henry Bierce noted that unlike in Allentown Mack, it was not rejecting any employee statement used to prove the employer's good-faith doubt, but that the ambiguous statement described above was the only employee statement asserted to show union disaffection, and was insufficient to prove the employer's doubt since the Board rejected the

the failure of new hires to join the union, some employees' failure to authorize dues checkoff, and union inaction (failure to appoint a steward, submit a tentative agreement to employees for ratification, and file grievances) was insufficient to establish the employer's good-faith doubt.<sup>38</sup> In Scepter Ingot Castings, an employee's statements that she "felt" that the union had "no standing," the employees no longer wanted the union to represent them, and that the union's status was a "gone issue" were too vague to establish the employer's "uncertainty."<sup>39</sup> Finally, the Board in Levitz noted with regard to employee turnover:

One factor that we shall continue to disregard, however, is turnover among employees in the bargaining unit. We adhere to the established presumption that newly hired employees support the union in the same proportion as the employees they have replaced.<sup>40</sup>

The Board in Levitz did not answer the question of whether direct evidence from a numerical minority of employees alone, in the absence of other evidence of employee disaffection, could establish an employer's good-faith reasonable uncertainty. On one hand, the Board stated that while good-faith uncertainty must be determined on a case-by-case basis, an employer's evidence must nonetheless "reliably indicate[] employee opposition to incumbent unions - i.e., evidence that is not merely speculative."<sup>41</sup> Because evidence solely from a numerical minority of employees is by its nature "merely speculative" as to the union sentiments of the majority, direct evidence from less than a majority of employees, in the absence of any other evidence of disaffection, may be found insufficient to rebut the presumption of the union's continuing majority status and to establish reasonable good-faith uncertainty.

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employer's additional evidence, including the employer's own contract violations and the union's inaction in opposing them. Id. at 651.

<sup>38</sup> Levitz, slip op. at 12; see generally Henry Bierce Co., 328 NLRB at 649-51.

<sup>39</sup> Levitz, slip op. at 12; Scepter Ingot Castings, slip op. at 1.

<sup>40</sup> Levitz, slip op. at 11 fn. 60, citing NLRB v. Curtin Matheson Scientific, 494 U.S. at 779; see also Levitz, slip op. at 12, citing Scepter Ingot Castings, slip op. at 1.

<sup>41</sup> Levitz, slip op. at 12.

On the other hand, the Supreme Court in Allentown Mack noted in dicta:<sup>42</sup>

The Board did not specify how many express disavowals would have been enough to establish reasonable doubt, but the number must presumably be less than 16 (half of the bargaining unit), since that would establish reasonable certainty. Still, we would not say that 20% first-hand-confirmed opposition (even with no countering evidence of union support) is alone enough to require a conclusion of reasonable doubt.<sup>43</sup>

However, the Court's implied proposition that direct evidence from a numerical minority of the bargaining unit could satisfy the good-faith uncertainty standard is arguably inconsistent with the presumption that a union retains the support of the employees it represents.<sup>44</sup> An employer who relies only on direct evidence from a numerical minority of employees, without additional evidence of employee disaffection, may be unable to rebut the presumption of continued majority support, since the employer does not know the actual union sentiments of a majority of employees in the unit. Ultimately, the Board will have to decide this issue.

Because Levitz has only clarified the standard used to process RM petitions, the R Casehandling Manual remains a viable investigatory tool.<sup>45</sup> It appears that Regional

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<sup>42</sup> On the facts in Allentown Mack, this analysis was not necessary to the result because the evidence showed at least indirect evidence that a majority did not support the union. See, e.g., note 33.

<sup>43</sup> Allentown Mack, 522 U.S. at 368-69 (emphasis in the original). See also Hospital Metropolitano, 334 NLRB No. 75, slip op. at 3 (July 16, 2001) (decertification petition alone could not support a withdrawal of recognition under the good-faith reasonable uncertainty standard because such petitions require the support of only 30% of unit employees, citing Dresser Industries, 264 NLRB 1088, 1088 (1982)); Heritage Container, 334 NLRB No. 65, slip op. at 1 (July 6, 2001) (employer could not establish its good-faith reasonable uncertainty by showing that only 35% of the unit signed an antiunion petition, even if the petition were untainted).

<sup>44</sup> See generally Auciello Iron Works v. NLRB, 517 U.S. 781, 785-86 (1996).

<sup>45</sup> See R Casehandling Manual, Secs. 11042-11042.8 (describing the procedure for processing RM petitions). Although, as noted above, U.S. Gypsum is no longer the standard used for

Directors should continue to exercise their discretion in processing RM petitions pursuant to the "uncertainty" standard, and should allow such cases to proceed through the normal appeals process.<sup>46</sup>

IV. 8(a)(2) and the good-faith reasonable uncertainty standard

Levitz holds that an employer will not violate Section 8(a)(2) by continuing to recognize an incumbent union while its RM petition is pending despite the fact that the employer has evidence of "actual loss,"<sup>47</sup> overruling cases to the contrary,<sup>48</sup> such as Maramont Corp.<sup>49</sup> and Hart Motor Express.<sup>50</sup> It follows that an employer will not violate Section 8(a)(2) if it reaches an agreement through continued bargaining, and abides by that agreement during the pendency of the petition, since any agreement will be null and void should the union subsequently lose the RM election.<sup>51</sup>

Regions should submit to the Division of Advice cases in which an employer attempts to cure a potentially unlawful withdrawal of recognition by re-establishing recognition and filing an RM petition when, for example, it is presented with conflicting evidence tending to prove that the union held majority status at the time of the withdrawal. The determination of an 8(a)(5) blocking charge attacking the withdrawal of recognition will ultimately resolve the question of whether to process the RM petition.

V. POLLING

The Board in Levitz stated with respect to employer polling, "we shall leave to a later case whether the

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processing RM petitions, the procedures outlined in the R Casehandling Manual remain viable.

<sup>46</sup> See, i.e., Board's Rules and Regulations, Sec. 102.71 (grounds for which a request for review of a petition's dismissal may be sought).

<sup>47</sup> Levitz, slip op. at 8.

<sup>48</sup> Id., slip op. at 9-10 fn. 52.

<sup>49</sup> 317 NLRB 1035 (1995).

<sup>50</sup> 164 NLRB 382 (1967).

<sup>51</sup> Levitz, slip op. at 9 fn. 52, citing cf. RCA del Caribe, 262 NLRB 963 (1982).

current good-faith doubt (uncertainty) standard for polling should be changed."<sup>52</sup> Cases involving polling should be submitted to the Division of Advice.

In addition, unfair labor practice cases that present issues not resolved by this Memorandum should be submitted to the Division of Advice.

/s/  
A.F.R.

cc: NLRBU

Release to the Public

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<sup>52</sup> Levitz, slip op. at 7.