

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

CASE NO. 16-RM-123509

ADT LLC,

EMPLOYER,

AND

COMMUNICATION WORKERS OF AMERICA, LOCAL 6215,

UNION.

**EMPLOYER'S SUPPLEMENTAL BRIEF AND REQUEST
FOR ADMINISTRATIVE NOTICE**

**OGLETREE, DEAKINS, NASH,
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DATED: MAY 22, 2015

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I. PRELIMINARY STATEMENT

By Order dated April 22, 2015, the Board granted the Request for Review filed by the Communication Workers of America, Local 6215 (“CWA” or “Union”) in this case. Both parties filed briefs, respectively, in support of and opposition to the Board’s Order granting the Request for Review.¹ Pursuant to Section 102.67(g), ADT LLC (“ADT” or “Employer”) files this supplemental brief to address a recent development with respect to the unit at issue.

First, the Employer requests the Board to take administrative notice of its own records. On May 15, 2015, an employee in the voting unit filed an “RD” petition with Region 16 seeking to decertify the CWA as their bargaining representative. The Regional Director designated this newly filed petition as Case No. 16-RD-152333. The new petition, viewed in light of other events up to this point, deserves consideration as the Board reaches a decision in this case.

Second, prior to the filing of the RD petition, employees in the bargaining unit presented ADT an employee petition signed by more than fifty percent (50% and more) of the unit employees, asking that ADT “withdraw recognition from this union immediately.” While ADT had the opportunity to withdraw recognition based on this objective evidence, it did not.

In deciding not to withdraw, ADT followed the path it has tried to take in the Dallas-Fort Worth unit for over 14 months, that is, the Board-preferred process allowing employees to “have a voice” in a fair election, notwithstanding the Union’s repeated attempts to stall, delay and foreclose that vote. Twice, ADT could have withdrawn recognition; instead, each time ADT chose not to do so. Twice, ADT chose to follow the path that permits employees to express their desire with respect to organization through an NLRB-supervised election and NOT through an employer’s unilateral withdrawal of recognition. The Board should remand this case to the

¹ ADT timely filed its Brief on May 6, 2015, with Region 16, copy attached at Exhibit A.

Regional Director for Region 16 with an order to open the ballot boxes, count the ballots, and take appropriate action thereafter.

II. SUPPLEMENTAL ARGUMENT

A. The Board Should Take Administrative Notice of Its Own Records

On May 15, 2015, employees in the bargaining unit filed an “RD” petition, Case No. 16-RD-152333 with Region 16 seeking to decertify the CWA as their bargaining representative. The Region has commenced processing of this petition; a process that one would hope would lead to a quick election on the decertification issue. A quick election, however, was obviously not to be for the current RM petition before the Board:

February 3, 2014: Integration of ADT’s Union location with ADT’s acquired company, Broadview, locations. (Tr. at 21-22.)

March 3, 2014: Faced with the Union’s demand for representation of employees at the combined ADT/Broadview offices and with objective support raising a question concerning representation (Tr. at 11), ADT files an RM petition, Case No. 16-RM-123509.²

March 10, 2014: The CWA files a ULP charge, Case No. 16-CA-124152, with which, despite ADT’s strong opposition, the Regional Director blocks the RM vote.

July 2, 2014: The Regional Director finds no merit to many of the allegations contained in the ULP charge but issues a complaint in Case No. 16-CA-124152 on the remaining allegations and will not approve a formal settlement agreement given ADT’s refusal to agree to the “mandatory default language” the Regional Director wished to impose.

² ADT earlier filed an RM petition on February 6, 2014, 16-RM-122067. Over ADT’s strong objection, the Regional Director dismissed the RM asserting a contract bar existed.

September 8, 2014: Given the Regional Director's and then the General Counsel's position on settlement, the parties go on the record for the ULP hearing. There, ADT proposes, and over the General Counsel's and Charging party's opposition, the Administrative Law Judge orders on the record what is essentially a settlement without the default language.

September 26, 2014: ADT posts the required notices as ordered by the Administrative Law Judge to comply with the settlement.

November 25, 2014: The 60-day notice period expires. ADT takes down the posting on or after this date.

January 9, 2015: The Region takes no action on the pending RM petition until this date and not until contacted first by ADT's counsel regarding the delay.

January 14, 2015: The Union files yet additional ULP charges; the Regional Director does not block the election this time.

January 15, 2015: Via correspondence on this date, the Region sets January 27, 2015, as the representation case hearing in the matter.

January 21, 2015: The Union files a Motion to Dismiss RM Petition arguing the Employer's objective considerations in support of the petition filed on March 3, 2014, more than ten (10) months prior, were insufficient.

January 26, 2015: The Regional Director denies the Motion to Dismiss RM Petition; the Union then requested the Regional Director to reconsider her denial of the Motion; the Regional Director would not.

January 27, 2015: The first representation case hearing occurs.

February 10, 2015: The Regional Director orders another hearing for February 19, 2015, citing the need for additional evidence.

February 19, 2015: The second hearing occurs, after which the parties file post-hearing briefs.

March 9, 2015: The Regional Director issues the Decision and Direction of Election, ordering a vote in the unit and setting an election for April 8, 2015.

March 20, 2015: The Union files a request for review with the Board.

April 8, 2015: The RM vote occurs; the votes are impounded.

April 22, 2015: The Board grants the Union's Request for Review.

May 15, 2015: Petition 16-RD-152333 is filed.

May 22, 2015: Employer is advised by Region 16 that the Regional Director has blocked processing of the decertification petition pending resolution of the RM petition in the instant case.

The conclusion one must draw from the above timeline is clear. The Union has attempted at every step of this proceeding to delay and avoid a secret ballot decision by employees on the majority status of the Union. Although employees finally voted, many are obviously frustrated with the repeated delays and then the impoundment of the votes; they have taken matters into their own hands with Case No. 16-RD-152333.

We also note for the Board's information that prior to filing the RD, the employee-petitioner presented ADT with a petition, signed by a majority of unit employees, stating that those employees no longer wanted Union representation and wanted ADT to withdraw recognition. Given this objective evidence, ADT could have – but did not – withdraw recognition from the Union. At the very least, ADT had an objective basis to file a new RM

based on the employee petition provided to the company. The Board should re-affirm that a withdrawal is not preferred, and processing another RD or RM is unnecessary and a waste of time. There is a valid vote from an election free of taint that has already occurred, the results of which are currently impounded. As a result, the Board should direct that the ballots (ballots now in a ballot box from a four-location election from which NO objections were filed) should be counted and the result – whatever that result may be – processed by the Regional Director. To decide otherwise is to ignore the bedrock principle of prompt, free employee choice with respect to Union representation.

B. Ordering A New Election Would Send The Wrong Message To Employers Faced With The Choice Of Filing An RM Or Withdrawing Recognition

As outlined in detail in ADT's Brief on Review of Employer, ADT contends the Regional Director's Decision and Direction of Election was proper and should be upheld on review. Moreover, part of ADT's argument relies on the seminal *Levitz Furniture Company*, 333 NLRB 717 (2001). While addressed in the Brief on Review of Employer, several of those principles bear repeating here:

1. Prior to *Levitz Furniture*, the employer's burden to support a withdrawal was one of showing that employers harbor uncertainty or even disbelief concerning the Unions' majority status.
2. Prior to *Levitz Furniture*, the employer's burden to file an RM petition a required a showing of a good-faith reasonable disbelief as to the Unions' continuing majority status.
3. *Levitz Furniture* changed the landscape, a change rooted in a policy decision by the Board.

4. This policy choice consisted of two major prongs, the first being an increase in the employer's burden to justify a withdrawal such that an employer had to show with objective evidence that the Union has actually lost the support of the majority of the bargaining unit employees.

5. Commensurate with an increased burden to withdraw, the Board reduced the employer's burden on an RM to one of demonstrating a good-faith reasonable uncertainty as to Unions' continuing majority status.

6. The net effect of this clear policy shift is to more firmly state the Board's preference for Board-supervised secret ballot elections to determine questions of representation and conversely the Board's dislike for employer withdrawals of recognition based on non-secret ballot evidence of a loss of employee support for a Union.

At every stage of this case, ADT has done nothing but attempt to take the NLRB at its word, that is, to follow clearly established Board policy. In other words, ADT has attempted to allow employees to express their preference as to union representation in a secret ballot election in lieu of taking advantage of the situation with a unilateral withdrawal of recognition. This deference to the wisdom and policy of the Board has occurred not just once in this matter, but twice – before the filing of the RM in the first instance and now with ADT's decision not to act on the objective evidence presented to it.

ADT recognizes that the doctrines of accretion and integration provide the controlling principles in this matter. However, ADT asserts, and asserts very strongly, that any decision by the Board in this matter other than to count the votes already in the ballot box from the RM vote would fly in the face of clear and rational Board policy. Indeed, any decision other than to uphold the Regional Director's decision that a question concerning representation existed in this

case would create a perverse incentive. To the point, the Board should consider the impact of its decision in this matter on future cases where employers face the very choice ADT faced, more specifically, faced twice. If the Board were to grant the Union's request to overturn the Regional Director's Decision and Direction of Election and dismiss the Petition, future employers having objective evidence of a loss of majority support for a union will choose to ignore the Board and its policy. Instead, employers very well might choose to rely more readily on the alleged objective evidence in their possession to withdraw recognition from a union rather than submit its employees to yet another shift in Board policy and the vagaries of a process that allows unions to "game" the system to avoid the very secret ballot elections the Board asserts as preferred policy. Surely, this is not a result the NLRB desires.

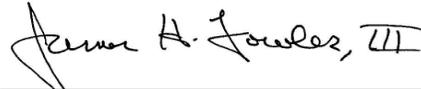
III. CONCLUSION

ADT requests that the Board take judicial notice of all that has occurred with this petition including the recently filed RD petition. In addition, ADT has followed twice the spirit of *Levitz Furniture* and the clearly established Board policy therein. Deferring to the Board's preference for secret ballot elections, ADT chose – twice – not to unilaterally withdraw. Moreover, the potential impact on employers, employees and their unions in future cases demands careful inquiry into the ramifications that will follow if the Board elects to dismiss the Petition and not count the votes in this matter. Therefore, ADT respectfully requests that the Board proceed by ordering a counting of the ballots and that the result, whatever that result may be, should be processed by the Regional Director.

Dated this the 22nd day of May 2015.

Respectfully submitted,

OGLETREE, DEAKINS, NASH,
SMOAK & STEWART, P.C.

A handwritten signature in black ink that reads "James H. Fowles, III". The signature is written in a cursive style with a large, sweeping initial 'J'.

James H. Fowles, III

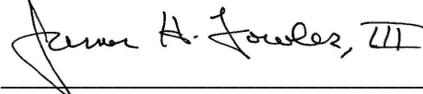
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CERTIFICATE OF SERVICE

This is to certify service of the above and foregoing **EMPLOYER'S SUPPLEMENTAL BRIEF AND REQUEST FOR ADMINISTRATIVE NOTICE** by electronic mail to the below indicated counsel of record for the Union and by electronic filing to the Regional Director for Region 16 on this the 22nd day of May 2015.

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Exhibit A

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BRIEF OF THE EMPLOYER ON REVIEW

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DATED: MAY 6, 2015

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I. STATEMENT OF THE CASE

ADT, LLC (“ADT” or the “Company” or the “Employer”) files this brief pursuant to Section 102.67(g) of the National Labor Relations Board’s (the “NLRB” or “Board”) Rules and Regulations, in response to the Board’s order granting the Union’s request for review of the Regional Director’s Decision and Direction of Election dated March 9, 2015. (*See* attached Exhibit A.) The sole basis for the Union’s request for review is its erroneous contention that the Regional Director’s decision “is a clear departure from officially recorded Board precedent, namely *Levitz Furniture Company*, 333 NLRB 717 (2001).” (*See* attached Exhibit B, p. 1.)

Contrary to the Union’s claims, the RM petition in this case is supported by more than “speculation.” As the Regional Director correctly found, an election is warranted because:

[D]ue to the Employer’s 2010 acquisition of another security systems company providing services in the Dallas/Fort Worth area, Broadview, as well as a subsequent 2014 restructuring of its facilities, locations, and employees, [. . .] the Union’s continued majority status among such unit, is no longer clear.

(*See* Exhibit A, p. 1.)

This is not a case involving ordinary employee turnover, or the mere hiring of a few new employees. The critical facts in this case are undisputed. As a result of the above-mentioned restructuring of the Company’s Dallas/Fort Worth area operations in 2014, an existing group of historically unrepresented employees has been consolidated with a smaller group of employees represented by the Union. The Union has stipulated that the consolidated group is an appropriate unit for purposes of collective bargaining. However, the Union has no basis in fact or in law for a presumption of majority status with regard to the new unit. Under the Board’s well-established accretion analysis, the Union lost majority status when the larger group of unrepresented employees merged with the smaller group of unionized employees.

In its request for review, the Union entirely ignores the Board's accretion doctrine, instead pursuing an illogical theory that the Regional Director's decision is a departure from the Board's holding in *Levitz* because there is no "objective evidence" of the Union's loss of majority status.

Notwithstanding the fact that *Levitz* did not involve an accretion and therefore does not directly control the legal analysis in this case, as explained below the Regional Director's direction of an election here is entirely consistent with the Board's reasoning and holding in *Levitz*.¹ For all of these reasons, the Board should affirm the Regional Director's Decision and Direction of Election.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. General Background and Acquisition of Broadview.

The Company installs and maintains residential and small business security systems. At issue in this case are ADT's facilities in the Dallas/Fort Worth area ("DFW"). Before the Company acquired one of its competitors (Broadview), ADT's DFW operations included two facilities: one in Carrollton and one in Haltom City. The Union represented the service technicians and installers at the Carrollton and Haltom City facilities under a collective bargaining agreement with ADT. When Tyco, ADT's former parent company,² acquired Broadview in about May 2010, ADT took over Broadview's facilities located in Mesquite, Irving, and South Loop. The service technicians and installers at the former Broadview facilities were not represented by a union either before or after the acquisition.

¹ The Regional Director's decision is also consistent with related guidance set forth in the Board's Casehandling Manual. *See* NLRB Casehandling Manual, Section 11042 ("The Regional Director should process a RM petition based on a prima facie showing of objective considerations that a union has lost its majority status[...]").

² ADT and Tyco are now separate companies.

B. February 2014 Reorganization/Integration of Offices and Consolidation of Represented and Unrepresented Employee Groups.

In February 2014, subsequent to the acquisition of Broadview, ADT reorganized its facilities in DFW. The Company closed its Mesquite, Irving, and South Loop facilities, and also closed its original Carrollton facility. The Company opened a new facility in Carrollton, as well as new facilities on Trinity Road in Ft. Worth, Texas (“Trinity”) and Tyler, Texas. The Company continued to operate its Haltom City facility in its original location.

As a result of the reorganization, the smaller group of unionized ADT employees and the larger group of non-union, former Broadview employees were combined and redistributed among the Haltom City facility and the three new facilities in Carrollton, Trinity and Tyler. Following the reorganization, ADT employed both unionized and non-union installers as well as unionized and non-unionized service technicians at Haltom City and at the new Trinity, Carrollton and Tyler facilities. The Union claimed to represent only the unionized employees at Haltom City and at the new Trinity, Carrollton and Tyler facilities. The Company has continued to apply the terms of the collective-bargaining agreement to the unionized employees.

C. The RM Petition and the Union’s Motions to Dismiss.

Shortly after completing the integration of its DFW offices, on March 3, 2014, ADT filed an RM petition based on good-faith uncertainty as to the Union’s continued majority status. ADT requested that the Board conduct an election among a unit of “[a]ll install and service technicians at ADT’s Carrollton, Tyler, Trinity, and Haltom City facilities in the Dallas/Fort Worth area.”

The Union did not stipulate that the petitioned-for unit was appropriate, but filed an unfair labor practice charge that blocked the processing of the petition. The Region dismissed

the charge allegations in part. The remaining allegations were resolved in compliance proceedings pursuant to a Board settlement agreement.

Thereafter, the NLRB held a representation hearing in this matter on January 27, 2015. Shortly before the hearing, the Union filed a motion to dismiss the RM petition based on a theory that the processing of the petition was improper under the Board's holding in *Levitz*. The Regional Director denied the Union's motion. Following the hearing and receipt of the parties' respective post hearing briefs, the Regional Director determined additional evidence was necessary to resolve the issues and reopened the hearing to receive additional evidence. The reopened hearing continued and concluded on February 19 and 20, 2015.

At the reopened hearing, the Union contended the bargaining unit should not include (1) the non-union employees formerly employed by Broadview; and (2) new employees who had been hired since the February 2014 reorganization. The Union renewed its motion to dismiss the petition, claiming the Company lacked a sufficient basis to question the Union's majority status under *Levitz*. On the final day of the hearing, the Union stipulated the petitioned-for unit is an appropriate unit. (*See Exhibit B, p. 3.*)

D. The Regional Director's Decision and Direction of Election.

On March 9, 2015 the Regional Director issued a Decision and Direction of Election (D&DE). The Regional Director denied the Union's motion to dismiss on the basis that the Company has provided sufficient evidence to support the processing of the petition. (*See Exhibit A, p. 3.*) Among other things, the Regional Director found that the petitioned-for unit is an appropriate unit because:

The overwhelming weight of the evidence supports, and the parties have in fact stipulated, that the technicians covered by the collective-bargaining agreement and the technicians to whom the Employer does not apply the terms of the agreement share a significant community of interest, including the same or similar

skills, functions, and work; common grouping and supervision within the Employer's operation; functional integration within the Employer's operation; frequent interaction and interchange; and same or similar compensation and benefits. The record evidence, in fact, reflects that aside from application of select provisions of the collective-bargaining agreement that call for different wages, overtime, and a few other provisions, there are no differences among the Employer's technicians.

(See Exhibit A, pp. 12-13.) The Regional Director ordered an election in the petitioned-for unit.

E. The Union's Request for Review and the Election.

With the issuance of the Regional Director's D&DE, an election was scheduled for April 8, 2015. Prior to the election, the Union filed a request for review of the D&DE with the NLRB in Washington, D.C. on about March 20, 2015. The election occurred as scheduled on April 8, 2015, and given the Union's pending request for review before the Board, the Regional Director impounded the ballots from the vote. The Board subsequently issued an order granting the Union's request on April 22, 2015.

III. LEGAL ARGUMENT

A. No Substantial Question Exists Regarding the Propriety of the Regional Director's Determinations and Direction of an Election.

Member Miscimarra has aptly summarized the critical facts and controlling legal analysis in this case:

Member Miscimarra would deny review in this case, which involves an RM petition filed by the Employer that acquired a new company and its employees, where a subsequent consolidation effectively eliminated the prior bargaining unit of installation and service technicians. The Union-represented employees now work in four facilities where they are greatly outnumbered by employees who have not previously been represented by the Union and to whom the collective bargaining agreement has never been applied. Member Miscimarra believes there is no substantial question regarding the Regional Director's determination that the petitioned-for unit (consisting of installation and service technicians at the four currently existing facilities) is appropriate, or regarding the appropriateness of an RM petition and election in these circumstances. *Levitz Furniture*, 333 NLRB 717, 723 (1998) (holding that "Board-conducted elections are the preferred way to resolve questions regarding employees' support for unions" and "we shall allow employers to obtain RM elections by demonstrating reasonable good-faith

uncertainty as to incumbent unions’ continued majority status”) (emphasis in original; footnote omitted).

(See Exhibit C at n. 1.)

As set forth above and below, the Regional Director’s decision is firmly grounded in the established Board precedent that applies to the incontrovertible facts of this case. The Board should affirm the Regional Director’s decision and remand the case to the Regional Director with instructions to open and count the ballots cast in the election and certify the results.

B. The Board Should Affirm the Regional Director’s Decision Because It Is Consistent with Applicable Principles of Accretion.

1. The Union Does Not Enjoy a Presumption of Majority Status Because the Unionized Employees Do Not Comprise a Majority of the New Unit.

The relevant question in this case has always been whether the integration of the historically unrepresented, majority group of former Broadview employees with the minority group of unionized employees constitutes an accretion. *See Nott Company*, 345 NLRB 396, 400 (2005) (“An accretion analysis is ordinarily applied in situations involving consolidation of a represented group with an unrepresented group.”) Established NLRB precedent prohibits a finding of an accretion here because the Board will not accrete a new group of unrepresented employees into a bargaining unit if the new group is equal to or outnumbers the existing unit. *See id.*; *see also Geo. V. Hamilton, Inc.*, 289 NLRB 1335, 1339 at n. 9 (1988).

Under the undisputed facts of this case, the Union cannot claim to enjoy a presumption of majority status. The Board has held, “[W]here a new group of unrepresented employees is added wholesale to an extant unit (e.g., through a purchase of a business), and that new group is equal to or outnumber the extant group, there is a real basis for raising a question as to whether the union is the majority choice in the new unit.” *Nott Co.*, 345 NLRB at 401. (Emphasis added.)

2. A Withdrawal of Recognition Based on the Union’s Loss of Majority Status Would Not Be Unlawful.

Under applicable principles of accretion, ADT was privileged to withdraw recognition from the Union following the February 2014 integration of unrepresented former Broadview employees with ADT’s unionized employees in the DFW area, even though the Union claimed a continued representational interest in only those employees who had been represented prior to the consolidation. *See Geo. V. Hamilton*, 289 NLRB at 1339; *see also Nott Co.*, 345 NLRB at 401 (“Where there is an integration, but no accretion, an employer is not obligated to continue to bargain with the union, even as to an existing group of employees.”)

C. The Board Should Affirm the Regional Director’s Decision Because It Is Consistent with the Board’s Holding in *Levitz*.

1. An Employer May Lawfully Withdraw Recognition Where the Union No Longer Enjoys a Presumption of Majority Support.

As explained above, ADT could have lawfully withdrawn recognition from the Union in February 2014 based on the Union’s actual loss of majority status under an accretion analysis. The same result follows under the Board’s holding in *Levitz*. *See Levitz Furniture Co.*, 333 NLRB at 717 (an employer may lawfully withdraw recognition from an incumbent union “where the union has actually lost the support of the majority of the bargaining unit employees.”)

2. A Board Election Is the Preferred Method of Testing Employees’ Support for a Union.

ADT followed the Board’s preferred method for these situations. “The Board and the courts have consistently said that Board elections are the preferred method of testing employees’ support for unions.” *Levitz Furniture Co.*, 333 NLRB at 727. Given the Union’s claim that it continued to represent a subset of the fully-integrated employees (i.e., only those employees who had been represented by the Union prior to the consolidation), in accordance with *Levitz* the

Company filed an RM petition to allow employees the freedom to express their choice as to the Union's representational claims through a Board-conducted election, rather than simply withdraw recognition.

3. An Employer May Petition for an RM Election Based on a Showing of “Good Faith Uncertainty” Regarding a Union’s Majority Status.

Having concluded based on an accretion analysis that the Union lacked majority status after the February 2014 consolidation, ADT had a more than sufficient basis to satisfy the Board's minimum standard for the filing of an RM petition under *Levitz*. Once again, ADT could have elected to withdraw recognition, but instead took the path preferred by the NLRB.

The Board in *Levitz* held that employers may obtain an RM election “by demonstrating good-faith reasonable *uncertainty* (rather than *disbelief*) as to unions’ continuing majority status.” *Levitz Furniture Co.*, 333 NLRB at 717 (emphasis in original). The Board explained:

We adopt this standard to enable employers who seek to test a union’s majority status to use the Board’s election procedures—in our view the most reliable measure of union support—rather than the more disruptive process of unilateral withdrawal of recognition.

Id. The effect of the Board’s holding was to lower the showing needed to support an RM petition. Nothing in *Levitz* indicates that the Board has ever intended to bar an employer from filing an RM petition based on evidence of an actual loss of majority support, in excess of the “good faith uncertainty” required by *Levitz*.

4. An Employer May Petition for an RM Election Even With Evidence of Actual Loss of Majority Status.

The Company’s filing of an RM petition under the facts of this case is wholly consistent with the Board’s express holding that “[a]n employer with evidence of actual loss of majority status can petition for an RM election rather than withdraw recognition immediately.” *Levitz Furniture Co.*, 333 NLRB at 726. (Emphasis added.)

Under applicable principles of accretion the Union indisputably lost majority status when the unrepresented Broadview employees were integrated with the smaller group of unionized employees. Contrary to the Union's unsupported claims, *Levitz* does not require any further evidence to establish a basis for questioning the Union's status and thus supports not only ADT's actions, but the RM election path most favored by the Board.

D. The Union Misinterprets and Misapplies Board Precedent.

1. *Levitz* Does Not Strictly Limit or Prescribe the Kinds of Evidence That Will Support an RM Petition.

Relevant Board precedent plainly contradicts the Union's implicit argument that only certain forms of evidence are acceptable to support the filing of an RM petition under *Levitz*. To the contrary, the Board has directed that “[t]he regional offices should take into account all of the evidence which, viewed in its entirety, might establish uncertainty as to unions’ continued majority status.” *Levitz Furniture Co.*, 333 NLRB at 728. (Emphasis added.)

The undisputed fact that a majority group of unrepresented employees cannot be accreted to a minority group of unionized employees under longstanding Board law provides ample evidence to establish that the Union lacks majority status here. The Union's claims regarding an alleged lack of “evidence of employee opposition to the incumbent Union”³ are irrelevant and should be accorded no weight.

2. The Union's Argument That the Petition Is Supported By Mere “Speculation” About New Employees Fails Because a “Turnover” Analysis Does Not Apply Here.

The Board should reject the Union's attempts to characterize the February 2014 consolidation of ADT's unionized operations with a previously existing, larger group of unrepresented employees as mere “turnover” within an established bargaining unit.

³ (See Exhibit B, p. 1.)

“In the turnover situation, there has been normal turnover, and the Board is not willing to presume that the new employees are opposed to union representation.” *Nott Co.*, 345 NLRB at 401. As in *Nott Co.*, however, “this case does not involve a mere expansion or enlargement of existing operations requiring the hiring of new employees. Rather, it involves the addition of a new group with a history of separateness.” *Id.*

A turnover analysis is inapplicable to the undisputed facts of this case. The Union’s claim that the Company’s RM petition is based only on “a speculation that employees newly added to the bargaining unit do not support the Union,” distorts the facts and willfully ignores applicable principles of accretion under longstanding Board law. In any given bargaining unit that at some point in the past has voted for representation, the Board presumes majority support. ADT notes that it is not only logical but also consistent with principles of accretion that the converse presumption is valid—i.e., that a majority of a group of non-represented employees does not support a union. When the larger non-represented group is combined with the smaller represented group, a question concerning representation exists and an RM petition is the Board’s preferred course of action, notwithstanding the employer’s right to withdraw recognition.

3. A Current Collective-Bargaining Agreement Will Not Bar a Withdrawal of Recognition Where There Has Been a Substantial Increase in Personnel.

To the extent the Union implies that the potential existence of a collective-bargaining agreement covering unionized employees could support a dismissal of the RM petition, Board law offers no support for the Union’s theory in this regard.⁴

⁴ In its request for review, the Union alleges the parties’ collective-bargaining agreement renewed by its terms around May 2014. (*See* Exhibit B, pp. 4-5.) The issue of whether a collective-bargaining agreement renewed after the filing of the RM petition is not relevant to any material issue in the pending proceedings. Nor has the Union even claimed that the alleged renewal is relevant to any issue before the Board.

Where “the unit itself has undergone a substantial change” as a result of the consolidation of a majority group of unrepresented employees with a minority group of represented employees, and there is no showing that the union represents a majority in the new unit, “there is no obligation to recognize that union. Nor does the existence of the contract require a different result.” *Nott Co.*, 345 NLRB at 401 (“Although a contract will bar a question concerning representation (qcr) in the same unit, it will not bar a qcr in a different unit.”); *see also Renaissance Center Partnership*, 239 NLRB 1247, 1248 (1979) (“The Board, for example, will entertain a petition during the certification year when there occurs a radical fluctuation in the size of the bargaining unit within a short period of time and consequently the majority status of the certified representative can no longer reasonably be presumed.”)

E. The Board Should Disregard the Union’s Gratuitous References to Irrelevant Proceedings and Extraneous Issues.

The Union’s request for review includes multiple references to irrelevant matters and issues, including unnecessary, extensive discussion of “a breach of contract complaint filed by the Union against ADT in the U.S. District Court for the Northern District of Texas.” (*See* Exhibit B, p. 6.) The Union makes a specious claim that it merely references the pending civil action “[f]or the purpose of a document foundation” relating to objective evidence in support of the RM petition, which the Union asserts was attached to the Company’s motion to dismiss the civil complaint and not available until after the conclusion of the representation hearing. (*See id.*)

The Union claims that evidence submitted in the pending civil case:

confirmed the Union’s justifiable supposition, just as ADT had informed the Union in an email of February 5, 2014, that the submission was based solely on a headcount of employees newly integrated into the recognized scope of the bargaining unit and contained zero objective evidence that any of the newly integrated employees did not support the Union.

(See Exhibit B, pp. 6-7.) (Emphasis added.)

The Union has no legitimate basis for raising the pending civil matter in its request for review. To the extent the Union claims to present previously unavailable evidence acquired in the course of the civil proceeding, such a claim is belied by the Union's admission that the previously unavailable evidence did no more than reaffirm what the Company had already stated to the Union in an email prior to the conclusion of the representation hearing. The Board should disregard the Union's irrelevant and improper references to the pending civil litigation.

The Board should also disregard the Union's gratuitous and irrelevant references to the Company's alleged failure to apply the collective-bargaining agreement to employees other than the unionized employees post-consolidation; as well as the Union's irrelevant references to an unfair labor practice charge based on the Union's theory of an alleged unlawful "withdrawal of recognition" during the pendency of these representation proceedings. (See Exhibit B, p. 9.) The Union makes no claim that these allegations have any bearing on the sole issue before the Board on review; namely, whether the Regional Director properly determined there is sufficient evidence to support the processing of the RM petition.

F. The Board Should Affirm the D&DE and Remand the Case to the Regional Director with Instructions to Count the Ballots and Certify the Election Results.

The Union's illogical arguments demonstrate that it knows it lacks majority status among the new unit of combined employees. The Union admits it never claimed to represent the former Broadview employees in DFW prior to their consolidation with the unionized employees. (See Exhibit B, p. 8.) Even in the instant representation proceeding, the Union has contended that the bargaining unit should include neither "those employees whom the Employer has been hiring since early 2014," nor "the employees who previously were employed by a business entity or organization known as Broadview." (See Exhibit D, p. 8.) It was not until almost one (1) full

year after the petition was filed, on the third day of the representation hearing in February 2015, that the Union ceased its apparent efforts to engage in selective representation of only the previously-unionized service technicians and installers within the integrated group, and finally stipulated that the petitioned-for unit of all DFW service technicians and installers is an appropriate unit. (*See* Exhibit E, p. 253.)

The Union now asks the Board to ignore the fact that a majority of the stipulated appropriate unit are employees who have never been represented by the Union. The Union contends no election should have been held here—and therefore the impounded ballots should not be counted—because there is no “objective evidence” that the Union does not have the support of a majority of employees in the consolidated group. Yet the Board through its well-settled principles of accretion has recognized that union representation cannot be forced upon a majority group of historically unrepresented employees in violation of the Act, because “in such circumstances, the numbers cannot be ignored.” *See Nott Co.*, 345 NLRB at 401. (Emphasis added.)

The absurdity of the Union’s position is evident when one considers the fact that the impounded election ballots comprise the very “objective evidence” the Union claims does not exist. A tally of the votes from the recent NLRB election will definitively show whether a majority of employees in the integrated group support the Union. Yet, the Union does not want to examine the direct evidence that would prove (or refute) its claim of majority status. On the basis of a factually and legally unsupported claim of majority status, the Union requests that the Board order the Region to refrain from confirming whether it has majority status. The Union’s position is not only irrational; it is destructive to the very foundation of the Act—employee choice. The Board has held that “although industrial stability is an important policy goal, it can

be trumped by the statutory policy of employee free choice. That policy is *expressly* in the Act, and indeed lies at the heart of the Act.” *Nott Co.*, 345 NLRB at 401. (Emphasis in original.)

No harm can result from a ballot count. If the Union does enjoy majority status despite “the numbers,” a ballot count will reinstate that presumption. If the Union does not have the support of a majority of employees, a ballot count will vindicate the statutory right of free choice. The Board should affirm the Regional Director’s D&DE and order that the employees’ votes must be opened and tallied, and the results of the election certified.

IV. CONCLUSION

Contrary to all applicable NLRB authority including *Levitz*, the Union would have the Board find that it has somehow retained majority status such that the RM petition should be dismissed. In essence, the Union urges the Board to ignore longstanding precedent to find that a majority group of historically unrepresented employees has been accreted to a minority group of unionized employees. The Union’s position completely ignores facts that at a minimum raise a question concerning representation and fully warrant ADT’s thoughtful adoption of the Board’s preferred course of action – an RM petition and associated vote. The Board should thus decline the Union’s invitation to disregard the existence and application of the Board’s accretion doctrine, and reject the Union’s mischaracterization of *Levitz*. Accordingly, ADT respectfully requests that the Board affirm the Regional Director’s decision and direct an election among all employees in the petitioned-for unit.

Dated this the 6th day of May 2015.

Respectfully submitted,

OGLETREE, DEAKINS, NASH,
SMOAK & STEWART, P.C.

A handwritten signature in black ink that reads "James H. Fowles, III". The signature is written in a cursive style with a large, sweeping initial 'J'.

James H. Fowles, III

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CERTIFICATE OF SERVICE

This is to certify service of the above and foregoing **BRIEF OF THE EMPLOYER ON REVIEW** by electronic mail to the below indicated counsel of record for the Union and by electronic filing to the Regional Director for Region 16 on this the 6th day of May 2015.

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EXHIBIT A

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 16**

ADT, LLC

Employer/Petitioner

and

Case 16-RM-123509

**COMMUNICATION WORKERS OF AMERICA,
LOCAL 6215**

Union

DECISION AND DIRECTION OF ELECTION

The Employer/Petitioner, ADT, LLC (Employer), sells, installs, and services residential and commercial security systems in the Dallas/Fort Worth metropolitan area through facilities located in Carrollton, Haltom City, Trinity, and Tyler, Texas. The Union, Communication Workers of America, Local 6215 (Union), has been the exclusive bargaining representative of a unit of employees that includes some of the Employer's installation and service technicians in the Dallas/Fort Worth area. However, due to the Employer's 2010 acquisition of another security systems company providing services in the Dallas/Fort Worth area, Broadview, as well as a subsequent 2014 restructuring of its facilities, locations, and employees, the scope of the existing bargaining unit, and the Union's continued majority status among such unit, is no longer clear.

On March 3, 2014, the Employer filed a petition under Section 9(c) of the National Labor Relations Act (Act) alleging that the continued majority status of the union was in question and seeking an election among a petitioned-for unit of all installation and service technicians at the Employer's facilities in Carrollton, Haltom City, Trinity, and Tyler (the

Dallas/Fort Worth area), a total of approximately 130 employees, excluding all other employees, sales employees, clerical employees, guards, and supervisors as defined in the Act.

The Union contends that: (1) the Petition should be dismissed because there is an insufficient basis for the Employer to question the Union's majority status; and (2) the petitioned-for bargaining unit is not an appropriate unit because the Employer's installation and service technicians hired through and since its acquisition of Broadview, to whom the Employer has not applied the terms of the existing collective-bargaining agreement, lack a sufficient community of interest with the existing covered employees.

On January 27, 2015, a hearing officer of the National Labor Relations Board (Board) conducted a hearing, and both parties filed briefs with me. However, the record from that hearing and the parties' respective post-hearing briefs raised issues warranting the need for additional evidence necessary to fully address and resolve the issues in this case. As a result, on February 10, 2015, I issued an Order to reopen the hearing in this matter for additional evidence. That hearing was held on February 19 and 20, 2015, and the parties waived their respective rights to file additional post-hearing briefs.

1. ISSUES

This case presents the primary issue of whether the Employer's existing installation and service technicians at its Carrollton, Haltom City, Trinity, and Tyler facilities, covered by a collective-bargaining agreement with the Union, constitute an appropriate unit, or whether all of the Employer's installation and service technicians at its Carrollton, Haltom City, Trinity, and Tyler facilities, including those to whom the Employer has not applied the terms of the collective-bargaining agreement, share an overwhelming community of interest such

that all installation and service technicians at these four facilities must be included in the petitioned-for unit. An additional issue is whether the petition should be dismissed based on the Union's contention that the Employer has failed to proffer a sufficient basis to question the Union's continued majority status.

2. DETERMINATION

I have considered the evidence and arguments presented by both parties. As discussed below, I find that the petitioned-for unit is an appropriate unit because all of the Employer's installation and service technicians employed at the Employer's Dallas/Fort Worth facilities (Carrollton, Haltom City, Trinity, and Tyler) share a community of interest. Accordingly, I shall direct an election in the petitioned-for unit of installation and service technicians. Further, as noted in my February 10, 2015 Order Reopening Record and Notice of Representation Hearing, I previously determined, pursuant to Sections 11021 and 11042 of the Board's Casehandling Manual, that the Employer has met the threshold showing necessary for the processing of the Petition in this case, and that it is not appropriate for that administrative determination to be litigated in a hearing on a question concerning representation. Thus, the Union's renewed motion at hearing that the Petition in this case should be dismissed because the Employer has failed to provide sufficient evidence to establish a good faith uncertainty as to the Union's majority status is denied.

3. FACTS

A. EMPLOYER'S OPERATIONS AND ORGANIZATIONAL STRUCTURE

The Employer is a Delaware limited liability company engaged in the business of sales, installation, and service of residential and commercial security systems and has facilities located in the Dallas/Fort Worth area. The parties have had a collective bargaining

relationship since 1978. At that time, the Union was certified as the exclusive collective-bargaining representative of a unit of servicemen employed by the Employer at its facilities located in Dallas and Fort Worth, Texas, excluding operators, office clerical employees, salesmen, confidential employees, alarm service investigators, supervisors, relief service supervisors and guards as defined in the Act. In about May 2010, the Employer acquired Broadview, another security systems company providing services in the Dallas/Fort Worth area, and hired those employees as its own. It did not, however, apply the terms of the collective-bargaining agreement to those employees, nor has it applied the terms of the collective-bargaining agreement to any new employees hired or transferred from other facilities since the time of the acquisition.¹

At the time of the acquisition, the Employer had offices in Carrollton (on Wallace Drive) and Haltom City. Broadview had offices in Mesquite, Irving, and Fort Worth, and a call center and corporate office in Irving. From the time of the Broadview acquisition in May 2010 until February 2014, the Employer continued to operate all of these offices, with installation and service technicians covered by the collective-bargaining agreement working from the Carrollton and Haltom City locations, and installation and service technicians to whom it did not apply the collective-bargaining agreement terms working from the Mesquite, Irving, and Fort Worth locations.

In February 2014, the Employer restructured its operations and consolidated facilities and employees. The restructuring involved closing existing locations, opening new locations, restructuring team managers to even out teams of technicians, reassigning team managers

¹ The parties did not provide evidence at the hearing as to why the Employer has not applied the terms of the collective-bargaining agreement to former Broadview employees or to subsequently-hired employees, and I agree with the Hearing Officer's determination at the hearing that such evidence is irrelevant to the issues presented by this petition.

among locations, and shifting technician assignments to better account for geographic efficiency. Since then, the Employer has operated facilities in Carrollton (on Keller Springs Road), Haltom City, Trinity, and Tyler. The Employer applied the parties' collective-bargaining agreement to all installation and service technicians at these four facilities who were in the bargaining unit prior to the acquisition of Broadview, but not to former Broadview employees or employees hired after the acquisition of Broadview. The Carrollton, Trinity, and Tyler facilities are overseen by Area General Manager Jonah Serie, whose office is located in Carrollton. The Haltom City facility is overseen by Area General Manager Cory Turner. Both Serie and Turner report to Regional Director Bob Raymond, whose office is located in Carrollton and who is responsible for overseeing the Employer's South Central region.

Caroline Vassey is the Human Resources Manager for all four facilities; her office is located at the Trinity facility. Vassey is responsible for payroll, receiving requests for information from the Union, human resources functions, and labor relations. Managers handling human resources and labor relations functions have responsibility for both technicians covered by the agreement and those to whom the Employer does not apply the agreement without distinction, and all managers are responsible in some form or another for administration of the collective-bargaining agreement. Grievances arising under the parties' collective-bargaining agreement are handled at Step 2 by Serie and Vassey². When grievances are escalated to the next level, they are handled by Raymond. Collective-bargaining is handled by the Employer's Director of Labor Relations, Jim Nixdorf.

Installation technicians, or installers, are responsible for installing the Employer's alarm systems and equipment for new residential and small business customers, relocation

² Although the record is not clear, presumably Serie's counterpart, Turner, handles technician grievances at the Tyler facility.

customers (existing customers who move to new homes), and existing customers who want to add equipment or convert their systems. Service technicians are responsible for servicing the Employer's existing customers, including repairing installation problems or broken systems and equipment. Each of the Employer's four facilities in the Dallas/Fort Worth area employs both installation technicians and service technicians.

The Carrollton facility employs 55 technicians, 29 who are installation technicians and 26 who are service technicians. The installation technicians report to Install Team Managers Jason Vandiver and Dearl Davidson. Vandiver supervises 15 installation technicians, consisting of three technicians covered by the collective-bargaining agreement and 12 technicians to whom the Employer does not apply the terms of the collective-bargaining agreement (who are an even mix of former Broadview employees and direct hires by the Employer since the Broadview acquisition). Davidson supervises the remaining 14 installation technicians; his team consists of nine technicians covered by the collective-bargaining agreement and five technicians to whom the Employer does not apply the agreement. Andy Shedd is the Service Team Manager for 12 of the Carrollton service technicians; four are covered by the collective-bargaining agreement, two are former Broadview employees (to whom the Employer does not apply the agreement), and six are direct hires by the Employer since the Broadview acquisition (to whom the Employer does not apply the agreement). The remaining 14 service technicians in Carrollton report to Service Team Manager Kenny Arceneaux; his team consists of seven technicians covered by the agreement and seven technicians to whom the Employer does not apply the agreement.

The Haltom City facility employs 28 installation technicians and 20 service technicians. The record reflects that approximately one-third of the technicians employed at

the Haltom City facility are covered by the parties' collective-bargaining agreement.

The Trinity facility employs 28 installation technicians, five of which are covered by the agreement and 23 to whom the Employer does apply the agreement. The installation technicians are divided into two teams, which report to Install Team Managers Derrick Miller and Jesse Soria. There are also 12 service technicians in Trinity, who report to Service Team Manager Steve Sellers. Sellers' team consists of nine technicians covered by the agreement and three to whom the Employer does not apply the agreement.

The Tyler facility employs only one manager, Cory Falgout, referred to as a Matrix Team Manager, who supervises a team of nine installation and service technicians, as well as subcontractors.³ Falgout's team in Tyler includes seven technicians covered by the agreement and two technicians to whom the Employer does not apply the agreement.

B. EMPLOYMENT TERMS AND CONDITIONS APPLICABLE TO ALL TECHNICIANS

Although technicians are generally assigned to teams consisting of either installation technicians or service technicians, in the case of the Tyler facility, installation and service technicians are part of a single team under the supervision of one manager. The record establishes, and the parties have stipulated, that all of the Employer's installation technicians perform the same or similar types of work, and all of the Employer's service technicians perform the same or similar types of work, as described above. The record further establishes, and the parties have stipulated, that all of the Employer's technicians receive the same 401(k) plan, disability benefits, death benefits, group hospitalization, surgical benefits, and dental benefits. With the exception of minor differences discussed below, most additional benefits are similar. In addition, all technicians wear the same uniform (which is provided by

³ The parties have stipulated that subcontractors should be excluded from any unit in this case.

the Employer), receive the same safety equipment allowance (for boots or safety glasses), use the same equipment, have the same cell phones, and drive the same company vehicle.⁴ All technicians receive the same seven fixed holidays each year, floating holidays, sick days, personal days, bereavement leave, jury duty leave, leave without pay, and rest time benefits.

The record reflects that there is no difference in how job assignments are made to technicians among or within the four facilities; jobs are assigned by productivity specialists located in New York through a computer system which assigns work to technicians based on evaluation of various parameters, including technicians' taskings and skill sets, availability, and drive time. Although technicians are classified at various levels (I through V) depending on skills, training, and experience, there is no difference among the work performed by installation technicians and the work performed by service technicians, and all technicians are required by the Employer to maintain a fire alarm license. Nearly all of the Employer's technicians work the same schedule each day, 8:00 a.m. to 5:00 p.m., although a small handful work an 11:00 a.m. to 8:00 p.m. schedule.⁵

Training for technicians is conducted in various ways. At all four facilities, managers are expected to conduct biweekly meetings with their respective teams, during which they cover training on ethical and toolbox (safety) issues. In addition, the Employer schedules training sessions based on the needs and interests of its technicians, and those sessions are often held at a central location and open to technicians from other facilities to participate. For example, the Employer recently held a training session on Broadview panels (which are the systems previously installed and serviced by Broadview) at its Trinity office, and the training

⁴ All technicians have the option to drive their company vehicle home each night, in which case they are responsible for 45 minutes of commute time at the beginning and end of each work day, or to park the company vehicle at their assigned facility, in which case they are paid for all travel time to customer sites.

⁵ Those technicians working an alternate schedule do not appear to be distinguished based on whether they are or are not covered by the collective-bargaining agreement.

included technicians from Carrollton. In addition to a number of technicians transferring to other facilities as a result of the February 2014 reorganization, technicians commonly receive assignments to work on jobs that are generally covered by another facility. In other words, particularly during the busy summer months, technicians may be shifted from one facility to another on a temporary basis in order to assist with higher workloads as frequently as twice a week; similar interchange occurs between Trinity and Carrollton on an almost daily basis. In addition, technicians from different facilities (such as Trinity and Carrollton) may be assigned to the same job as frequently as weekly.

Most of the Employer's technicians drive a company vehicle home each night and drive straight to their first jobsite the following morning, although all technicians are provided the opportunity to do so. Technicians generally spend between 4 to 5 ½ hours at customer locations each day, although that can vary for technicians performing work in areas such as East Texas that require more driving time. Technicians spend anywhere from 1 to 3 ½ hours weekly at the Employer's facilities, to pick up parts and equipment and for training purposes. All technicians, whether covered by the agreement or not, are entitled to receive 24 hours advance notice of any changes to their schedule. The record also reflects that all technicians receive the same compensation and benefits (travel day bonus and per diem/stipend for food and lodging) when they are required to perform work out of town, and all technicians receive the same overtime pay benefits when taking emergency calls at home. Although generally technicians earn an annual median salary in the range of \$55,000 to \$75,000, compensation among technicians differs depending on whether the terms of the collective-bargaining agreement are applied, as discussed in greater detail below.

C. DIFFERENCES IN COMPENSATION AMONG TECHNICIANS

As noted above, with minor exceptions, compensation among technicians is similar without regard to whether the technician is covered under the collective-bargaining agreement. Installation technicians covered by the collective-bargaining agreement are paid either under a piece-rate plan (in all locations except Tyler) or on an hourly plan. Service technicians covered by the collective-bargaining agreement are paid on an hourly plan. Those plans, which have a starting pay rate of \$12.80 per hour and a maximum pay rate of \$22.18 after 48 months, are outlined in detail in the parties' collective-bargaining agreement. All other technicians, to whom the Employer has not applied the agreement (former Broadview technicians and subsequently hired technicians), are on a compensation plan (referred to as the "BV Comp Plan") that consists of a combination of hourly wages and a point system.⁶ Generally, new hires begin at a starting hourly pay rate of between \$14.00 to \$17.00. Raises for technicians covered by the agreement are provided every six months; for other technicians, raises are based on merit and performance and are available on an annual basis.

In addition, the record reflects that technicians covered by the agreement receive overtime pay after eight hours of work in a single day; all other technicians receive overtime pay after 40 hours of work in a week. Generally, technicians receive the same vacation allowance; however, the collective-bargaining agreement provides an additional floating day to technicians covered by the collective-bargaining agreement (referred to as the "CBA day") that is not provided to other technicians. The collective-bargaining agreement provisions regarding standby pay and pay for taking phone calls at home do not apply to technicians to

⁶ Points are assigned for different jobs and tasks, and in addition to earning an hourly wage, technicians may accumulate points on a weekly basis to earn bonuses; 45 points weekly is the equivalent of a \$25 bonus, and each additional point is the equivalent of \$4.

whom the Employer does not apply the agreement. Conversely, those technicians receive pay for office closures due to inclement weather that the technicians covered by the agreement do not receive.

4. ANALYSIS

The Employer, questioning the Union's continued majority status, seeks an election in a unit of the Employer's installation and service technicians employed at its Carrollton, Haltom City, Trinity, and Tyler facilities. I find that the petitioned-for unit is an appropriate unit because the installation and service technicians not presently covered by the parties' collective-bargaining agreement share an overwhelming community of interest with the technicians covered by that agreement.

Pursuant to Section 9(b) of the Act, it is necessary for me to determine whether the bargaining unit described in the Employer's petition is appropriate. As the Board has often stated, "[t]here is nothing in the statute which requires that the unit for bargaining be the only appropriate unit, or the ultimate unit, or the most appropriate unit; the Act only requires that the unit be 'appropriate.'" *Overnite Transportation Co.*, 322 NLRB 723, 723 (1996) (emphasis in original), reaffirmed in *Specialty Healthcare & Rehabilitation Center of Mobile*, 357 NLRB No. 83 (2011). "[T]he Board looks first to the unit sought by the petitioner, and if it is an appropriate unit, the Board's inquiry ends." *Wheeling Island Gaming, Inc.*, 355 NLRB No. 127 (2010); see also *CCI Constr. Co., Inc.*, 326 NLRB 1319, 1322 (1998).

"The cornerstone of the Board's policies on appropriateness of bargaining units is the community-of-interest doctrine which operates to group together only employees who have substantial mutual interests in wages, hours, and other conditions of employment." *In re Met Elec. Testing Co., Inc.*, 331 NLRB 872, 876 (2000). In determining whether the requisite

community of interest among employees exists, the Board looks to factors including a common interest in wages, hours, and other working conditions; common supervision; degree of skill and common functions; frequency of contact and interchange with other employees; and functional integration. See *Franklin Mint Corp.*, 254 NLRB 714, 716 (1981).

In applying the relevant case law to the facts, the record establishes that the petitioned-for unit is an appropriate bargaining unit. The overwhelming weight of the evidence supports, and the parties have in fact stipulated, that the technicians covered by the collective-bargaining agreement and the technicians to whom the Employer does not apply the terms of the agreement share a significant community of interest, including the same or similar skills, functions, and work; common grouping and supervision within the Employer's operation; functional integration within the Employer's operation; frequent interaction and interchange; and same or similar compensation and benefits. The record evidence, in fact, reflects that aside from application of select provisions of the collective-bargaining agreement that call for different wages, overtime, and a few other provisions, there are no differences among the Employer's technicians. Further, even applying different wage scales and compensation, all of the Employer's technicians earn similar wages and fall within similar hourly pay ranges. Any disparities among technicians' wages and compensation may be attributed to productivity and other factors that are wholly unrelated to the issue of whether they are or are not covered by the parties' collective-bargaining agreement.⁷

Area General Manager Cory Turner, who oversees the Haltom City facility, was unable to identify, simply by name and job title, whether specific technicians employed at that facility were or were not covered by the collective-bargaining agreement. That is because all

⁷ For example, the record reflects technicians both covered and not covered by the collective-bargaining agreement earning in excess of \$100,000.00 annually.

of the technicians, whether covered by the agreement or not, perform the same work, receive assignments in the same manner, work side-by-side with one another, share common supervision (interspersed within the same work team), wear the same uniform, use the same equipment and tools, and have the same skills and functions. Accordingly, based on the foregoing and the record as a whole, (including the parties' stipulation) I find that the employees in the petitioned-for unit share similar skills and job functions, wear the same uniforms, use the same equipment, frequently interact and interchange with other employees in the petitioned-for unit, and enjoy similar compensation and benefits. Accordingly, I find that the employees in the petitioned-for voting group share a community of interest such that the petitioned-for bargaining unit constitutes an appropriate bargaining unit. As such, I direct an election be conducted to determine whether the petitioned-for unit of installation and service technicians wishes to be represented by the Union.

CONCLUSIONS AND FINDINGS

Based upon the entire record in this matter and in accordance with the above-referenced discussion, I conclude and find as follows:

1. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are affirmed.
2. The Union's motion to dismiss the petition based on an insufficient basis for the Employer to question the Union's majority status is denied.
3. The Employer is a Delaware limited liability company engaged in the business of sales, installation, and service of residential and commercial security systems and has facilities located in the Dallas/Fort Worth. During the 12-month period preceding the filing of this petition, the Employer has purchased

and received products, goods, and materials valued in excess of \$50,000 directly from points outside the State of Texas. Based on the foregoing, I find that the Employer is engaged in commerce within the meaning of Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.

4. The Union claims to represent certain employees of the Employer, and the Employer has provided sufficient evidence to establish a good faith uncertainty as to the Union's majority status.
5. The Union is a labor organization within the meaning of Section 2(5) of the Act.
6. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
7. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

INCLUDED: All installation and service technicians employed by the Employer in the Dallas/Fort Worth area at its Carrollton, Haltom City, Trinity, and Tyler facilities.

EXCLUDED: All other employees, sales employees, subcontractors, clerical employees, guards and supervisors as defined in the Act.

DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the petitioned-for unit found appropriate above. The employees will vote whether they wish to be represented for purposes of collective bargaining by Communication Workers of America, Local 6215.

The date, time, and place of the election will be specified in the Notice of Election that the Board's Regional Office will issue subsequent to this Decision.

A. Voting Eligibility

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election.

B. Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within seven (7) days of the date of this

Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, 819 Taylor Street – Room 8A24, Fort Worth, Texas 76102, on or before March 16, 2015. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at 817-978-2928. Since the list will be made available to all parties to the election, please furnish a total of **two** copies, unless the list is submitted by facsimile, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

C. Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices of Election provided by the Board in areas conspicuous to potential voters for a minimum of three (3) working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least five (5) full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops

employers from filing objections based on the failing to post the election notice.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision and Direction of Election may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570-0001. This request must be received by the Board in Washington by 5:00 p.m., EDT, on March 23, 2015. The request may be filed electronically through the Agency's website, www.nlr.gov⁸, but may not be filed by facsimile.

DATED at Fort Worth, Texas, this 9th day of March, 2015.

/s/Martha Kinard

Martha E. Kinard, Regional Director
National Labor Relations Board
Region 16
819 Taylor Street – Room 8A24
Fort Worth, Texas 76102

⁸ To file the request for review electronically, go to www.nlr.gov, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions. Guidance for electronic filing is contained in the attachment supplied with the Regional Office's initial correspondence on this matter and is also located on the Agency's website, www.nlr.gov.

EXHIBIT B

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

ADT LLC

Employer/Petitioner

and

**COMMUNICATIONS WORKERS
OF AMERICA, LOCAL 6215**

Union

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Case 16-RM-123509

REQUEST FOR REVIEW

The Communications Workers of America, the incumbent Union herein (“Union”), hereby requests review, pursuant to Section 102.67(c)(1)(ii) of the Board’s Rules and Regulations, of the Regional Director’s decision of March 9, 2015, directing an election on the basis of the employer’s (“ADT”) RM petition, because the Regional Director’s decision is a clear departure from officially recorded Board precedent, namely *Levitz Furniture Company*, 333 NLRB 717 (2001); in that ADT’s asserted basis for the RM petition is based purely on a speculation that employees newly added to the bargaining unit do not support the Union, with no evidence of employee opposition to the incumbent Union.

1.

Course of Proceedings Below

The RM petition in issue was filed on March 3, 2014. (Attachment A). On March 10, 2014 the Union filed unfair labor practice charges in Case No. 16-CA-124152 alleging, among other things, that ADT had unlawfully promulgated a rule prohibiting employees from talking with each other and had unlawfully interrogated and polled employees about their Union sympathies. We make reference to this history only for the purpose of identifying the time line leading up to the RM hearing. The Regional Director ordered the RM petition blocked per the Board's blocking charge policy. A complaint was issued against ADT over these allegations.¹ The complaint was settled in front of the Administrative Law Judge. The settlement required ADT to post notices relating to the allegations of the complaint. After the 60-day compliance period, the Regional Director resumed processing the RM petition.

On January 21, 2015, the Union submitted to the Regional Director a motion to dismiss the RM petition (Att. B), arguing that the employer's basis for filing the petition was not valid under *Levitz Furniture Company, supra*. For reasons set

¹ The complaint erroneously refers to the filing dates of the charge and first amended charge as March 10, and April 30, 2013. The Board's records will reflect the correct dates were March 10 and April 30, 2014.

forth in the motion to dismiss, the Union justifiably concluded that the considerations submitted by ADT to support the RM petition contained no evidence of employee non-support of the Union, but rather consisted purely of speculation or assumption that a majority of employees did not support the Union due to a reorganization of ADT's facilities. Meanwhile the Regional Director had set the RM case for a hearing on January 27, 2015. The day before the hearing the Regional Director denied the motion to dismiss with no discussion of the *Levitz Furniture Company* issues. (Att. C). At the beginning of the hearing on January 27, the Union stated on the record that it continued to stand on the arguments raised in its motion to dismiss, that the RM petition was inappropriate for the reasons stated in the motion to dismiss, and that it reserved the right to pursue those arguments in the appropriate manner, time, and place. (See Att. D, Jan. 27 hearing transcript excerpt, p. 7, ll. 8-11; p. 8, ll. 5-9.) The hearing continued on February 19-20, 2015. On February 19 the Union again stated on the record that it did not relinquish its contention that the RM petition was improper under *Levitz Furniture Company*, and reserved the right to take the issue up with the Board through request for review. (See Att. E, Feb. 19 hearing transcript excerpt, p. 81, ll. 3-9). On the third day of the hearing, February 20, the parties stipulated that the petitioned-for unit was an appropriate unit. (See Att. F, Feb. 20 transcript excerpt, p. 253, ll. 3-25). The Union stated on the record that its stipulation to the unit was

without prejudice to its right to file this request for review. (Att. F, p. 255, l. 25, p. 256, ll. 1-12). The hearing officer stated that the Union had renewed its motion to dismiss and stated that she was referring the motion to the Regional Director. (Att. F, p. 254, ll. 20-25). In the Regional Director's decision and direction of election issued on March 9, 2015, the Regional Director referred to the fact that the Union contended the petition should be dismissed because there is an insufficient basis for the employer to question the Union's majority status; then the Regional Director held that ADT had met the threshold showing for entertaining the RM petition, again without discussion of the *Levitz Furniture Company* issues. (See excerpt from decision and direction of election, Att. G, pp. 2, 3.)

2.

The Collective Bargaining Agreement and History

The current collective bargaining agreement ("CBA") went into effect on May 29, 2011. (See Att. H, Union Exhibit 2 in RM hearing, cover page and Article 27, p. 18). The unit was initially certified by the Board in 1978 and has enjoyed an unbroken collective bargaining history since that time. (Att. D, pp. 9-10; Att. H, Article 1, p. 2). Pursuant to Article 27, the CBA automatically renewed from May 28, 2014 for another year unless prior notice in writing was given by either party to the other of its termination or any changes desired 60 days prior to

May 28, 2014. There is no evidence that either party gave the other notice of termination or of any changes desired 60 days before May 28, 2014. The Union hereby requests the Board to take administrative notice of the affidavits presented to the Board by the Union in pending unfair labor practice Case 16-CA-144548, containing competent evidence that no such notice was given by either party and accordingly that the CBA automatically renewed for another term to May 28, 2015, if the Board finds such issue relevant to its treatment of this Request for Review.

The bargaining unit certified by the Board in 1978 and adopted in the contractual recognition article included “all servicemen employed by the employer at its facilities located in Dallas and Fort Worth, Texas”. (Att. H, Art. 1, p. 2). The unit employees include installation technicians and service technicians. (See Att. H, Art. 6, Sec. 1(a), p. 5 [“The work week for installation shall be ...”] and Sec. 1(b) [“The work week for service shall be ...”]). See also Art. 15, p. 11; Art. 16, p. 12 and Schedules A and B, pp. 19-20, Att. H.

3.

The Purported Objective Considerations

After the hearings in this case, ADT knowingly and consciously waived any claim of confidentiality to the “objective considerations” it had presented to the

Regional Director in support of the RM petition, by openly providing that submission to the Union in the course of pending federal Section 301 litigation between the parties.

For the purpose of a document foundation, Attachment I hereto is a copy of a breach of contract complaint filed by the Union against ADT in the U.S. District Court for the Northern District of Texas in Civil Action No. 3:14-CV-04205-D, in which the Union claims that ADT is in breach of a collectively bargained neutrality agreement made between the parties in 2011 and providing the Union an opportunity at a time of its choosing to call for a private non-Board secret ballot election for self-determination by the former employees of a previously separate company named Broadview. (See Attachments J and J-1 hereto). ADT filed a motion to dismiss the complaint, which is currently pending before the Court. ADT attached as Ex. C to its motion to dismiss its March 3, 2014 submission to the Regional Director setting forth the purported objective considerations for its alleged reasonable uncertainty as to the Union's continued majority status. (See Atts. J and J-2). The Union's receipt of this document as part of ADT's publicly filed motion to dismiss in Civil Action No. 3-14-CV-04205-D confirmed the Union's justifiable supposition, just as ADT had informed the Union in an email of February 5, 2014 (see ADT's Attachment A to the March 3, 2014 letter, Att. J-2 hereto), that the submission was based solely on a headcount of employees newly

integrated into the recognized scope of the bargaining unit and contained zero objective evidence that any of the newly integrated employees did not support the Union. This evidence was not available to the Union until after the close of the RM hearing. (Att. J).

4.

Why the RM Petition Is Clearly Inappropriate under Established Board Precedent

As seen above, the scope of the recognized bargaining unit applies to the employer's facilities in Dallas and Fort Worth, Texas. In May 2010, ADT acquired a company referred to as Broadview. (See Att. E, p 141, ll. 23-25). At that time the former employees of Broadview became ADT employees. (Att. E, p. 142, ll. 1-5). The Broadview employees had not been represented by a union in collective bargaining. Nearly four years after ADT's acquisition of Broadview, on or about February 3, 2014, ADT consolidated the bargaining unit employees and the former Broadview employees into four facilities, identified as Carrollton, Tyler, Trinity, and Haltom City. The municipality of Carrollton is a suburb of Dallas, Texas (see Ex. E-4 in the RM hearing record, approximately 10th and 11th pages, "Tech Assignments" and "Tech Assignments"); before the February 2014 facilities consolidation, a previous Carrollton facility was recognized as within the scope of the Dallas-Fort Worth bargaining unit. (Att. D, p. 22, ll. 8-10 and p. 23, ll. 13-24; see also Att. J-2, second page of March 3, 2014 letter: "With respect to the

[previously existing] Carrollton facility and one of the Fort Worth facilities, the Union had represented the technicians in those locations in a single bargaining unit.”) One of the two Fort Worth facilities that had been a Broadview facility before the 2010 acquisition, the “South Loop” facility, which continued after acquisition as an ADT facility, was treated as non-unit before the February 2014 consolidation because the employees were from Broadview. (Att. D, p. 22, ll. 17-21; p. 31, ll. 14-17). The record in this proceeding does not contain any evidence reflecting why the Union did not claim to represent the employees of the separate former Broadview facilities between the May 2010 acquisition and the February 2014 consolidation; though the non-Board neutrality and election agreement that is the subject of the pending Section 301 lawsuit arguably was a negotiated resolution of any such issue². Haltom City was and is treated as part of Fort Worth and a location where bargaining unit employees work, both before and after the February 2014 consolidation. (Att. J-2 and Att. D, p. 22, ll. 8-10).

On or about February 3, 2014 as described in its March 3, 2014 submission, ADT consolidated the bargaining unit employees and the previously unrepresented former Broadview employees into four offices, two of which are in Fort Worth, one of which is in Carrollton, and one of which is in Tyler, Texas, the latter treated

²Resolution of any issue as to the purpose of the 2011 neutrality and election agreement is not before the Board in this proceeding.

as a satellite of the Carrollton facility. (Att. J-2, March 3, 2014 letter; and see the hearing record in this case: Att. D, pp. 21-25). The employer refuses to apply the CBA to employees hired into these four facilities since February 2014 (Att. D, p. 34, ll. 1-4), but does apply the CBA to the pre-existing bargaining unit employees who are located at these four facilities (Att. E, p. 85, ll. 6-12). During the hearing, the Union's attorney attempted to ask an ADT management official on cross-examination why ADT has not applied the CBA to employees hired since the consolidation, but the hearing officer sustained the employer's objection to the question. (Att. E, p. 144, ll. 1-14 and p. 145, ll. 9-25). In pending unfair labor practice Case 16-CA-144548, the Union claims that ADT's refusal to apply the CBA to installation and service technicians hired into these four facilities since in or about August 2014 constitutes an unlawful withdrawal of recognition of the Union with respect to such newly hired employees. (See Att. K hereto and, if necessary, the Board's investigative record in Case 16-CA-144548).³

As seen in Att. J-2, ADT's asserted basis for the RM petition is purely and solely an assumption that the former Broadview installation and service technicians reassigned into four facilities that indisputably fall within the geographic scope of the certified and recognized bargaining unit, where they are intermingled with bargaining unit employees, do not support the Union merely

³ Referenced in the interest of context and background.

because they were not represented by a union in their previous workplaces. In *Levitz Furniture Company*, 333 NLRB 717 (2001), the Board squarely held that the reasonable uncertainty necessary to support an RM petition must be based on “evidence that is objective and that reliably indicates employee opposition to incumbent unions—i.e. evidence that is not merely speculative”. *Levitz Furniture Company*, *supra* at 729. Here, in stark contrast, ADT presented zero objective evidence of employee opposition to the incumbent Union, but solely speculation that all former Broadview employees newly added to the recognized bargaining unit scope did not support the Union merely because they were not union-represented in their previous workplaces.

Levitz Furniture Company lists illustrative examples of the types of evidence that will be held to support an RM petition, such as the contradiction presented by evidence of an employee petition showing majority non-support of the union at the same time as evidence indicating majority support for the union, *Levitz Furniture Company*, *supra* at 727-28; or “antiunion petitions signed by unit employees”, “firsthand statements by employees concerning personal opposition to an incumbent union”, “statements of personal dissatisfaction with the union”, “dissatis[faction] with the representation [an employee is] getting from the union”, and “[an] employee told the employer that he felt the employees did not want a

union and that if a vote was taken, the union would lose”, *Levitz Furniture Company, supra*, at 728.

In similar vein, the Board in *Levitz Furniture Company* illustrates the types of evidence that will not support an RM petition, such as: “newly hired employees’ failure to join the union”, “some employees’ failure to authorize dues checkoff”, and “employee turnover”. *Id.*

The Board decisively held in *Levitz Furniture Company* that turnover among employees in the bargaining unit will not support an RM petition; but instead, new employees are presumed to support the union in the same proportion as pre-existing bargaining unit employees. *Levitz Furniture Company, supra* at 728 n. 60. In February 2014, nearly four years after its acquisition of Broadview, ADT reassigned former employees of Broadview who performed the same work as the pre-existing bargaining unit employees to facilities clearly within the geographic scope of the bargaining unit and where bargaining unit employees also worked. As seen above, the employer has stipulated that all these employees share a community of interest. At that time the Union enjoyed a conclusive presumption of majority status. *Auciello Iron Works v. NLRB*, 517 US 781, 786 (1996); *Young Women’s Christian Association of Western Massachusetts*, 459 NLRB No. 78 (2007); *Levitz Furniture Company, supra* at 730, n. 70. Thus it should have been presumed that a majority of the former Broadview employees supported the Union

because a majority of the pre-existing unit employees conclusively supported the Union. In any event, ADT's speculation that 100% of the former Broadview employees did not support the Union merely because they were not union-represented in their previous workplaces clearly is not supportable as a basis for an RM petition under the established Board precedent of *Levitz Furniture Company*.

The following passage from *Levitz Furniture Company* is instructive:

We reject, however, the argument that, absent serious unremedied unfair labor practices, there should be no showing necessary to obtain RM elections. Such a rule would enable even an employer who had no doubt whatsoever of his employees' support for an incumbent union to force the union to prove its majority repeatedly as often as once a year. It would have the anomalous effect of allowing employers to obtain elections when the employees themselves could not, because of an insufficient showing of interest. It is well to bear in mind, that after all, it is the *employees'* Section 7 right to choose their bargaining representatives that is at issue here. Strictly speaking, employers' only statutory interest is in insuring that they do not violate Section 8(a)(2) by recognizing minority unions.

Levitz Furniture Company, supra at 728.

In this case ADT had no reasonable ground to claim the risk of an 8(a)(2) complaint for recognizing the Union as the representative of the former Broadview employees upon their reassigned integration with bargaining unit employees in facilities within the scope of a geographically defined bargaining unit. *Levitz Furniture Company* discredits any such concern, holding in affirmation of prior caselaw that "... an employer violates Section 8(a)(2) only by continuing to recognize a union that it knows has actually lost majority support,

not one whose majority status is merely in doubt”. *Levitz Furniture Company, supra* at 724. In the case at hand the employer clearly was not faced with a situation in which it knew that the Union had actually lost majority support; as seen above ADT had no more than speculation or ill-founded assumption that the former Broadview employees did not support the Union, with no objective evidence of non-support. Such speculation or assumption, as seen above, does not rise to the level of reasonable uncertainty to support an RM petition, much less constituting knowledge of actual loss of majority support to justify a claimed 8(a)(2) concern. ADT’s claim of risk of violating 8(a)(2) is exceptionally hollow.

The assertion by Union official Bonnie Mathias that the Union “had bargained for employees” in the consolidated facilities in February 2014 in nowise created objective considerations supporting an RM petition. ADT had no objective evidence contradicting Ms. Mathias’ claim that there were bargained-for employees in the newly integrated facilities. Again, ADT had no more than speculation about non-support of the Union among the former Broadview employees. Ms. Mathias’ statement did not present ADT with contradictory evidence because ADT had no evidence contradicting her statement. (“Under the standard we adopt today, employers who are faced with such contradictory evidence will be able to obtain elections.” *Levitz Furniture Company, supra* at 728, emphasis added.)

5.

Conclusion

Our diligent search of NLRB decisions since *Levitz Furniture Company* has unearthed no decision overruling or modifying the holdings in *Levitz Furniture Company* defining the considerations that will support an RM petition. *Levitz Furniture Company* is established Board precedent and the Regional Director's decision to direct an election on the basis of the employer's speculation without any objective evidence of non-support of the Union is a clear departure from definitive Board precedent on a substantial question of law under the Act. We respectfully urge the National Labor Relations Board to grant this request for review and dismiss the RM petition as clearly insupportable under established Board precedent.

Respectfully submitted,



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COUNSEL FOR COMMUNICATIONS
WORKERS OF AMERICA, AFL-CIO

CERTIFICATE OF SERVICE

This is to certify service of the above and foregoing Request for Review by electronic means and United Parcel Service delivery to the below indicated counsel of record for ADT on the 20th day of March 2015, and to Martha Kinard, Regional Director, as indicated below.

Jeremy C. Moritz, Esq.
Ogletree, Deakins, Nash, Smoak & Stewart, P.C.
155 N. Wacker Drive
Suite 4300
Chicago, Illinois 60606
jeremy.moritz@ogletreedeakins.com

Martha E. Kinard, Regional Director
National Labor Relations Board
Region 16
819 Taylor Street, Room 8A24
Fort Worth, Texas 76102



David Van Os

EXHIBIT C

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

ADT, LLC

Employer-Petitioner

and

Case 16-RM-123509

COMMUNICATION WORKERS
OF AMERICA, LOCAL 6215
Union

ORDER

Union's Request for Review of the Regional Director's Decision and Direction of Election is granted as it raises substantial issues warranting review.¹

MARK GASTON PEARCE, CHAIRMAN

PHILIP A. MISCIMARRA, MEMBER

LAUREN McFERRAN, MEMBER

Dated, Washington, D.C., April 22, 2015.

¹ Member Miscimarra would deny review in this case, which involves an RM petition filed by the Employer that acquired a new company and its employees, where a subsequent consolidation effectively eliminated the prior bargaining unit of installation and service technicians. The Union-represented employees now work in four facilities where they are greatly outnumbered by employees who have not previously been represented by the Union and to whom the collective bargaining agreement has never been applied. Member Miscimarra believes there is no substantial question regarding the Regional Director's determination that the petitioned-for unit (consisting of installation and service technicians at the four currently existing facilities) is appropriate, or regarding the appropriateness of an RM petition and election in these circumstances. *Levitz Furniture*, 333 NLRB 717, 723 (1998) (holding that "Board-conducted elections are the preferred way to resolve questions regarding employees' support for unions" and "we shall allow employers to obtain RM elections by demonstrating reasonable good-faith *uncertainty* as to incumbent unions' continued majority status") (emphasis in original; footnote omitted).

EXHIBIT D

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BEFORE THE
NATIONAL LABOR RELATIONS BOARD
REGION 16

ADT, LLC,)	
Employer,)	Case No. 16-RM-123509
and)	
Communication Workers of)	
America, Local 6215,)	
Union.)	

The above-entitled matter came on for hearing pursuant to notice, before Hearing Officer Emily Maas, at the National Labor Relations Board offices, 819 Taylor Street, Room 8A24, Fort Worth, Texas 76102, on Tuesday, January 27, 2015, at 9:00 a.m.

1 A P P E A R A N C E S

2 On Behalf of the Employer:

3 **Jeremy C. Moritz, Esq.**
4 OGLETREE DEAKINS
5 155 N. Wacker Drive
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9 (Fax) 312-807-3619
10 jeremy.moritz@ogletreedeakins.com

11 On Behalf of the Union:

12 **David Van Os, Esq.**
13 DAVID VAN OS & ASSOCIATES, P.C.
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17 (Phone) 512-452-8683
18 (Fax) 512-452-7070
19 dvo@vanoslaw.com

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1 stipulated to commerce.

2 Okay. Will the parties please identify the issues for the
3 hearing and their positions on each issue? Mr. Van Os, I'm
4 going to let you go first on that one.

5 MR. VAN OS: For the record, the Union urges that
6 proceeding with this RM petition is inappropriate for the
7 reasons previously stated in our written motion to dismiss, and
8 we reserve the right to pursue those arguments in an appropriate
9 manner, in the appropriate time and place.

10 HEARING OFFICER MAAS: So --

11 MR. VAN OS: With respect to the issues for the hearing,
12 the Union urges that the Employer -- the Union urges that the
13 bargaining unit, for the purposes of the RM petition, excludes
14 those employees whom the Employer has been hiring since early
15 2014, and has not applied and extended the terms and conditions
16 of employment represented in the collective bargaining agreement
17 to those employees.

18 The record -- the Union also takes the position that the
19 bargaining unit, for the purposes of this petition, excludes the
20 employees who previously were employed by a business entity or
21 organization known as Broadview, and to whom the Employer has
22 not been applying the terms and conditions of the agreement.

23 The -- further, the Union takes the position that there are
24 material and essential and material differences in the
25 compensation and terms of -- terms and conditions of employment

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C E R T I F I C A T I O N

This is to certify that the attached proceedings before the National Labor Relations Board (NLRB), Region 16, ADT, LLC and Communications Workers of America, Local 6215, Case Number 16-RM-123509 at National Labor Relations Board offices, 819 Taylor Street, Room 8A24, Fort Worth, Texas 76102, on Tuesday, January 27, 2015, at 9:00 a.m., was held according to the record, and that this is the original, complete, and true and accurate transcript that has been compared to the recording, at the hearing, that the exhibits are complete and no exhibits received in evidence or in the rejected exhibit files are missing.

Dated this 28th day of January, 2015.



Kimberly C. McCright
Official Reporter

EXHIBIT E

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BEFORE THE
NATIONAL LABOR RELATIONS BOARD
REGION 16

ADT, LLC,
Employer,
and
Communication Workers of
America, Local 6215,
Union.

Case No. 16-RM-123509

The above-entitled matter came on for hearing pursuant to notice, before Hearing Officer Emily Maas, at the National Labor Relations Board offices, 819 Taylor Street, Room 8A24, Fort Worth, Texas 76102, on Friday, February 20, 2015, at 8:00 a.m.

Verbatim Reporting & Transcription LLC

2 E. Congress, Suite 900 * Tucson, Arizona 85701

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1 A P P E A R A N C E S

2 On Behalf of the Employer:

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11 On Behalf of the Union:

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P R O C E E D I N G S

1
2 (Proceedings commence at 9:45 a.m.)

3 HEARING OFFICER MAAS: All right. Let's go back on the
4 record, please. All right. In an off-the-record discussion
5 this morning, the parties have agreed to stipulated to the
6 bargaining unit, and we're going to go ahead and read that
7 stipulation into the record.

8 The parties stipulate and agree that the bargaining unit
9 listed -- the bargaining unit described below -- or let's put it
10 this way. The bargaining unit described in the following
11 statement is an appropriate unit as it meets the need -- the
12 Board's standards for community of interest, including that the
13 employees in the inclusions share common supervision and/or
14 management, labor relations, benefits, training, and work duties
15 and skills.

16 Included in this unit will be all installation and service
17 technicians employed by the Employer in the Dallas/Fort Worth
18 areas, with current facilities referred to as Carrollton, Tyler,
19 Trinity, and Haltom City. Excluded will be all other employees,
20 including sales employees, subcontractors, clerical employees,
21 guards, and supervisors, as defined in the act.

22 Do you so stipulate, Mr. Moritz, for the Employer?

23 MR. MORITZ: Yes, sir.

24 HEARING OFFICER MAAS: Mr. Van Os, for the Union?

25 MR. VAN OS: Yes, so stipulated.

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C E R T I F I C A T I O N

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2 This is to certify that the attached proceedings before the
3 National Labor Relations Board (NLRB), Region 16, ADT, LLC and
4 Communications Workers of America, Local 6215, Case Number 16-
5 RM-123509 at National Labor Relations Board offices, 819 Taylor
6 Street, Room 8A24, Fort Worth, Texas 76102, on Friday, February
7 20, 2015, at 8:00 a.m., was held according to the record, and
8 that this is the original, complete, and true and accurate
9 transcript that has been compared to the recording, at the
10 hearing, that the exhibits are complete and no exhibits received
11 in evidence or in the rejected exhibit files are missing.

12 Dated this 23rd day of February, 2015.

13
14
15 

16 _____
17 Kimberly C. McCright
18 Official Reporter
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