

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

**ASARCO LLC and SILVER BELL MINING LLC**

**Employer/Petitioner**

**CASE 28-RM-255301**

**UNITED STEEL, PAPER AND FORESTRY, RUBBER  
MANUFACTURING, ENERGY, ALLIED INDUSTRIAL  
AND SERVICE WORKERS INTERNATIONAL  
UNION, LOCAL 937**

**Union**

**REQUEST FOR REVIEW**

ASARCO LLC and SILVER BELL MINING LLC, (“ASARCO”) the Employer/Petitioner in the above proceeding, by its attorneys, Richard A. Russo and Paul H. Burmeister of Davis & Campbell L.L.C., pursuant to Section 102.67 of the Board’s Rules, submits the following Request for Review of the March 5, 2020 decision of the Regional Director of Region 28 to dismiss the RM Petition filed by ASARCO. In support of this Request, ASARCO states: (1) that a substantial question of law or policy is raised because of (i) the absence of, or (ii) a departure from, officially reported Board precedent; and (2) that the Regional Director's decision on a substantial factual issue is clearly erroneous on the record and such error prejudicially affects ASARCO’s rights.

**I. Background Facts**

ASARCO operates a mining facility in Marana, Arizona (“Silver Bell Mine”). A bargaining unit consisting of production and maintenance employees at that location is

represented by the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, Local 937 ("Union").

On January 28, 2020, ASARCO filed the RM Petition. (Exhibit 1) Concurrent with the filing of the RM Petition, ASARCO submitted to the Regional Director evidence demonstrating that ASARCO maintained a good-faith reasonable uncertainty regarding the majority status of the Union. *Levitz Furniture Co.*, 333 NLRB 717, 727 (2001). The evidence included the following:

- The Union commenced a strike against ASARCO on October 13, 2019. Of the 144 employees currently employed by ASARCO at the Silver Bell Mine, 128 employees chose not to strike, and another three employees abandoned the strike and returned to work. Only eleven employees are currently on strike. Two employees were on a leave of absence at the time of the strike, and to date, remain inactive employees on leave. (Exhibit 2, Affidavit of Stacy Sinele, Paras. 11-12)
- Of the 144 employees, on information and belief, only 14 are members of the Union. On information and belief, 66 employees never joined the Union. Additionally, since the strike commenced on October 13, 2019, at least 29 employees have resigned their membership with the Union. Prior to the strike, another 33 had already resigned from the Union (this totals at least 62 who resigned; two other employees revoked their authorization for dues deduction, but it is unknown if they resigned from the Union.) (Exhibit 2, Affidavit of Stacy Sinele, Paras. 13-14). In resigning from the Union, each of these employees is indicating that they no longer want the Union to represent them because the revoked Union membership form specifies that the employee is

authorizing the Union to act for the employee as a collective bargaining agent in all matters pertaining to employment at the Silver Bell Mine.

- A number of employees made statements to ASARCO regarding their dissatisfaction with the Union, including but not limited to, statements regarding getting rid of the Union, the Union being useless, the workplace being better without a Union, and it being a mistake to join the Union as their loyalty is to ASARCO. (Exhibit 3 -- Affidavit of Deborah McMorrow, Paras. 13-17; Affidavit of Brad Stonehouse, Para. 5; Affidavit of Emily Schmitt, Paras. 8-9; Affidavit of Darren Steinhoff, Paras. 5-8).

These numbers are telling - 131 out of 142 (92%) active employees chose not to strike, at least 128 out of 142 (90%) employees chose not to be members of the Union, and a number of employees have made anti-Union statements and/or expressed a desire not to have a Union. Thus, ASARCO has demonstrated that it has a good-faith reasonable uncertainty as to the Union's continued majority status at the Silver Bell Mine under the *Levitz Furniture* standard.

The Regional Director apparently initially accepted the above evidence as sufficient to satisfy the *Levitz Furniture* standard, as he issued a Notice of Hearing with respect to the RM Petition, setting a representation hearing for February 5, 2020. (Exhibit 4).

However, after the RM Petition had been filed, the Union filed an unfair labor practice charge against ASARCO (28-CA-255235), and on February 4, 2020, the Regional Director issued an order stating that the RM Petition filed by ASARCO would be held in abeyance pending the investigation and disposition of the related unfair labor practice charges filed against ASARCO.<sup>1</sup>

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<sup>1</sup> On February 14, 2020, Asarco filed a Request for Review of the Regional Director's February 4, 2020 decision to hold the election in abeyance. That Request for Review remains pending.

Despite initially issuing a Notice of Hearing following the filing of the RM Petition, on February 5, 2020, the Regional Director sent a letter to ASARCO stating that the RM Petition “does establish a good-faith uncertainty as to the Union’s continued majority status” and providing ASARCO with 48 hours to present sufficient evidence or face dismissal of the RM Petition. (Exhibit 5)

By letter dated February 6, 2020, ASARCO responded to the Regional Director by emphasizing that the evidence submitted by ASARCO demonstrated ASARCO’s good-faith reasonable uncertainty as to the Union’s majority status at the Silver Bell Mine and detailing the Regional Director’s mischaracterization of the evidence and Board case law. (Exhibit 6)

On March 5, 2020 -- more than five weeks after the filing of the RM petition, more than four weeks after determining to hold the election in abeyance, and more than four weeks after purportedly providing ASARCO with 48 hours to stave off dismissal of the RM Petition -- the Regional Director issued a Decision to Dismiss the RM Petition. The professed reason for dismissal was that ASARCO failed to establish good-faith reasonable uncertainty as to the Union’s majority status. (Exhibit 7)

**II. The Dismissal Order Should be Reversed As a Substantial Question of Law or Policy is Raised Because of the Absence of, or a Departure from, Officially Reported Board Precedent.**

**A. The Regional Director Failed to Apply the Proper Legal Standard Under Supreme Court and Board Precedent.**

The Regional Director failed to apply the proper legal standard when determining whether the evidence submitted by ASARCO satisfied the “good-faith reasonable uncertainty” standard established under *Allentown Mack Sales & Service, Inc. v. NLRB*, which the Board is required to

follow as precedent. 522 U.S. 359, 118 S.Ct. 818, 139 L.Ed.2d 797 (1998). The Board in *Levitz Furniture* expressly adopted the “good-faith reasonable uncertainty” standard for RM petitions.

Given our ruling above regarding withdrawals of recognition, we think it appropriate to reconsider the showing that we shall require for holding employer-requested elections. After careful consideration of all the options, we have decided to adopt the lower—uncertainty—standard. The Board and the courts have consistently said that Board elections are the preferred method of testing employees' support for unions. And we think that processing RM petitions on a lower showing of good-faith uncertainty will provide a more attractive alternative to unilateral action. By contrast, were we to require employers to demonstrate a higher showing of good-faith *belief* of lost majority support in order to obtain an RM election, as in *United States Gypsum*, we might encourage some employers instead to withdraw recognition rather than seeking an election. An employer who has enough evidence to establish a good-faith belief, though not necessarily enough to show loss of majority status, may be tempted to withdraw recognition in the hope of being able to make that showing in an unfair labor practice proceeding (and, in any event, ousting the union while the proceeding is pending). Thus, by liberalizing the standard for holding RM elections, we are promoting both employee free choice (by making it easier to ascertain employees' support for unions via Board elections) and stability in collective-bargaining relationships (which remain intact during representation proceedings).

*Levitz Furniture*, 333 NLRB at 727.

In the Decision to Dismiss, the Regional Director stated that the evidence submitted by ASARCO “does not necessarily” indicate that the employees no longer want to be represented by their union. (Exhibit 7, page 2). However, the appropriate standard is not whether the evidence “necessarily” supports the proposition – the standard is whether the evidence “could” support that proposition.

This is the key principle of *Allentown Mack*, which interpreted the applicable “reasonable doubt” standard to require “uncertainty” not “disbelief.” At issue in *Allentown* was an employee’s statement that, “he was not being represented for the \$35 he was paying.” The ALJ in the underlying case (whose findings were adopted by the Board) disregarded this evidence as

support for the reasonable doubt standard, stating this statement “seems like more an expression for better representation than one for no representation at all.” The Supreme Court rejected that analysis, stating:

It seems to us that it is, more accurately, simply an expression of dissatisfaction with the union’s performance- which *could* reflect the speaker’s desire that the union represent him more effectively, but *could also* reflect the speaker’s desire to save his \$35 and get rid of the union. The statement would assuredly engender an uncertainty whether the speaker supported the union, and so could not be entirely ignored.

*Allentown Mack*, 522 U.S. at 369 (emphasis in original).

This important principle has been noted by the federal appellate courts subsequent to *Allentown Mack*.

In *Tri-State Health Services, Inc. v. NLRB*, 374 F.3d 347 (5th Cir. 2004), the employer refused to bargain with an incumbent union. In the context of an unfair labor practice proceeding, the Board evaluated the refusal to bargain under the pre-*Levitz Furniture* good faith reasonable doubt standard requiring disbelief. Some of the evidence relied upon by the employer consisted of employee cancellations of dues checkoff authorizations. The Board rejected this evidence, stating the cancellations of dues check-off authorizations, “may be attributable to many other factors other than opposition to the union.” *Id.* at 353. Rejecting the Board’s analysis, the federal court relied upon *Allentown Mack*, stating:

To claim validly that it possesses a good faith doubt regarding the union’s majority status, an employer need not prove that it has a sincere belief that the union in fact lacks majority support. *Allentown Mack*, 522 U.S. at 367, 118 S.Ct. 818. Rather, it must only substantiate uncertainty on that score. *Id.* It is therefore unreasonable for the Board to disregard evidence that would tend to support the inference that workers do not support the union, even if the same evidence is capable of supporting other, more neutral inferences.

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Thus, in evaluating an employer’s claim of uncertainty, the Board is not free to choose between two reasonable interpretations of the evidence and prescribe the

one that the employer should have adopted. So long as the employer's interpretation is reasonable, and the evidence so interpreted tends to engender uncertainty as to whether the union still commands majority support, the evidence is probative and must be considered.

*Id.* at 353-54

In *Tri-State*, the court found that the Board's "may be attributable" analysis was inconsistent with the *Allentown Mack* analysis that certain evidence "could" also support the reasonable doubt standard. ASARCO submits that in the instant case, the Regional Director's "does not necessarily show" analysis is identical to the "may be attributable" analysis found improper in *Tri-State*. See also, *McDonald Partners, Inc. v. NLRB*, 331 F.3d 1002, 1006-07 (D.C. Cir. 2003), addressed more fully below.

**B. The Regional Director Disregarded Evidence Regarding Non-Participation in the Current Strike.**

In support of the RM Petition, ASARCO submitted evidence that the Union commenced a strike against ASARCO on October 13, 2019. Of the 144 employees currently employed by ASARCO at the Silver Bell Mine, 128 employees chose not to strike, and another three employees abandoned the strike and returned to work. Only eleven employees are currently on strike. Two employees were on a leave of absence at the time of the strike, and to date, remain inactive employees on leave. (Exhibit 2, Affidavit of Stacy Sinele, Paras. 11-12)

The Regional Director disregarded this evidence, stating that employees' "non-participation in a strike or abandonment of strike does not necessarily indicate that the employees no longer wish to be represented by their union." (Exhibit 7, page 2). As stated earlier, the Regional Director's "not necessarily" analysis is, on its face, at odds with *Allentown Mack's* analysis that such evidence "could also" demonstrate non-support for the union.

In addition, in support of his “not necessarily” analysis the Regional Director relied upon *Alexander Linn Hosp. Assn.*, 288 NLRB 103 (1988) and *Curtis Matheson Scientific*, 287 NLRB 350 (1987), two Board cases decided *prior to* the Supreme Court’s analysis in *Allentown Mack* regarding the proper interpretation of the “good-faith reasonable uncertainty” standard and the Board’s adoption of the standard in *Levitz Furniture*.

The Regional Director’s reliance upon these pre-*Allentown Mack* and *Levitz Furniture* cases is faulty for other reasons as well. In *Alexander Linn*, the strike had ended over a year before the employer’s withdrawal of recognition, and the employer had thereafter entered into a labor agreement, thereby making the evidence of non-participation in the strike “stale.” In *Curtis Matheson Scientific*, the evidence demonstrated that only 5 out of 27 unit employees (18%) had not participated in the strike. The facts in these cases are in stark contrast to the current situation, where 92% of the bargaining unit employees are not participating in a current, ongoing strike.

**C. The Regional Director Disregarded Evidence Regarding Non-Membership in and Resignations from the Union.**

ASARCO submitted evidence that of the 144 bargaining unit employees, only 14 are members of the Union. On information and belief, 66 employees never joined the Union. Additionally, since the strike commenced on October 13, 2019, at least 29 employees have resigned their membership with the Union. Prior to the strike, another 33 had already resigned from the Union (this totals at least 62 who resigned; two other employees revoked their authorization for dues deduction, but it is unknown if they resigned from the Union.) (Exhibit 2, Affidavit of Stacy Sinele, Paras. 13-14) In resigning from the Union, each of these employees indicated they no longer want the Union to represent them because the revoked Union membership form specifies that the employee is authorizing the Union to act for the employee as a collective bargaining agent in all matters pertaining to employment at the Silver Bell Mine.

The Regional Director disregarded this evidence, stating that employees' non-membership in a union, resignation from membership in a union, or choice not to authorize automatic dues check-off "does not necessarily" indicate these employees no longer wish to be represented by their union. (Exhibit 7, page 2) Once again, the Regional Director failed to apply the proper standard as required by *Allentown Mack* and *Levitz Furniture*.

In *McDonald Partners, Inc. v. NLRB*, above, the employer refused to bargain based in part upon declines in union membership and union dues checkoff authorizations. The ALJ in the underlying case (as affirmed by the Board) rejected this evidence as supporting a good faith reasonable doubt as to the union's majority status. The ALJ stated that the Board had traditionally disregarded such declines as grounds for reasonable doubt because an employee may desire union representation even though they do not belong to the union or pay dues. 331 F.3d at 1006. In remanding the case to the Board, the court rejected this reasoning and application of the standard:

This was not a correct treatment of the company's evidence. It is true that a union may enjoy majority support even if less than a majority of employees maintain union membership or authorize their employer to deduct union dues from their paychecks. See, e.g., *Furniture Rentors of Am., Inc. v. NLRB*, 36 F.3d 1240, 1244-45 (3d Cir.1994); *NLRB v. Koenig Iron Works, Inc.*, 681 F.2d 130, 138 (2d Cir.1982); *NLRB v. Silver Spur Casino*, 623 F.2d 571, 580 (9th Cir.1980). Employees may have reasons other than dissatisfaction with the union. See *Peoples Gas Sys., Inc. v. NLRB*, 629 F.2d 35, 44 (D.C. Cir.1980). They may wish to free ride on the payment of union dues by others, thereby obtaining the benefits of union representation while avoiding its financial burdens, or they may wish to pay their dues directly to the union. See *Lodges 1746 & 743, Int'l Ass'n of Machinists & Aerospace Workers v. NLRB*, 416 F.2d 809, 812 (D.C. Cir.1969) (citing *Convair Div. of Gen. Dynamics Corp.*, 169 N.L.R.B. 131, 1968 WL 18630 (1968)); *Helton v. NLRB*, 656 F.2d 883, 892 & n. 46 (D.C. Cir.1981). But the fact that the membership and dues checkoff evidence might not conclusively demonstrate lack of majority support is scarcely a reason for disregarding the evidence altogether. That is the point of this portion of the Supreme Court's opinion in *Allentown Mack*: "It must be borne in mind that the issue here is not whether [an employee's] statement clearly established a majority in opposition to

the union, but whether it contributes to a reasonable uncertainty whether a majority in favor of the union existed.” If a high percentage of checkoffs is persuasive evidence of majority support when the employees are under no obligation to join the union, *see Peoples Gas*, 629 F.2d at 40 n. 9; *Lodges 1746 & 743*, 416 F.2d at 812 & n. 8, we see no rational reason why a low percentage of checkoffs—here the percentage was zero—is not persuasive for the opposite proposition, or more accurately, why the employer could not rely on such evidence to establish good-faith doubt of the union's majority support.

*Id.* at 1006-1007.

Another federal court has also ruled that declines in union membership and checkoff authorizations can support the “reasonable doubt” standard as analyzed in *Allentown Mack*. In *Tri-State Health Services, Inc. v. NLRB*, the court stated:

The Board is, of course, correct to note that a decline in checkoffs may be attributable to some innocent explanation, and an employer reasonably could conclude that such evidence does not engender any uncertainty about the level of support the union enjoys. Nevertheless, it is equally as reasonable for an employer to witness a decline in checkoffs and infer that its current work force is less supportive of the union than it was just a few years before, when eleven employees manifested support for the union by authorizing direct withdrawal of dues from their paychecks.

*Tri-State Health Services, Inc.*, 374 F.3d at 354.

Finally, the cases cited by the Regional Director as alleged precedent for his Decision to Dismiss the RM Petition are not supportive based on the facts of those cases. First, in *Marion Hospital Corporation*, 335 NLRB 1016, 1018 (2001), *enfd.* 321 F.3d 1178 (D.C. Cir. 2003), 60 of 157 bargaining unit employees (38%) resigned union membership; however, those 60 employees agreed to remain “financial core” members, thereby expressing their willingness to pay for the union’s representational services. Not only does the number of bargaining unit ASARCO employees choosing not to be members of the Union clearly outweigh those in *Marion Hospital* (90% v. 38%), there is no evidence that any of those ASARCO employees chose to remain financial core members.

Second, in *Kuno Steel Products Corporation*, 252 NLRB 904 (1980), enfd. in relevant part *NLRB v. Koenig Iron Works*, 681 F.2d 130 (2<sup>nd</sup> Cir. 1982), the Board noted that in the context of 2 out of 7 bargaining unit employees resigning union membership, the “decline in union representation is not a reliable indicator of employee lack of support for a union.” However, *Kuno* was decided prior to the Supreme Court’s *Allentown Mack* clarification of the appropriate standard and the Board’s adoption of the good-faith reasonable uncertainty standard in *Levitz Furniture*. In addition, only 28% of the bargaining unit employees in *Kuno* were not union members, as opposed to 90% non-membership in the present case.

Finally, just as with the erroneous citation to *Kuno*, the same holds true with respect to the Regional Director’s citation to *Terrell Machine Company*, 173 NLRB 1480 (1969), enfd. 427 F.2d 1088 (4th Cir. 1970), cert. denied 398 U.S. 929 (1970) – a case both involving resignations of less than 50% of the bargaining unit, and decided pre-*Allentown Mack* and *Levitz Furniture*.

**D. The Regional Director Disregarded Evidence Regarding Employee Statements of Dissatisfaction.**

ASARCO submitted evidence that a number of employees made statements to ASARCO regarding their dissatisfaction with the Union, including but not limited to, statements regarding getting rid of the Union, the Union being useless, the workplace being better without a Union, and it being a mistake to join the Union as their loyalty is to ASARCO. (Exhibit 3 -- Affidavit of Deborah McMorrow, Paras. 13-17; Affidavit of Brad Stonehouse, Para. 5; Affidavit of Emily Schmitt, Paras. 8-9; Affidavit of Darren Steinhoff, Paras. 5-8).

The Regional Director disregarded such evidence, stating;

limited or vague<sup>2</sup> employee statements of dissatisfaction are not sufficient to support an RM petition if, based on the number of statements made or the nature of the statements, they do not reliably establish good faith uncertainty as to a union's continued majority status. .... The testimony of the Petitioner's supervisors only establishes that a very small minority of unit employees have made statements about their dissatisfaction with the Union.

(Exhibit 7, page 2).

The Regional Director's analysis of the evidence and its impact is contrary to the legal standards. That only a "very small minority" of employees expressed dissatisfaction with the Union is not a determinative factor. In *Allentown Mack*, cited favorably by the Board in *Levitz Furniture* as an example of sufficient evidence of good-faith reasonable uncertainty, the evidence was that only seven out of 32 employees made statements of dissatisfaction; when considered in the context of additional evidence of dissatisfaction, the Court found the minority statements supportive of an overall reasonable uncertainty. *See also Silvan Industries*, 367 NLRB 28 (2018), noting that "some" employees' statements of disaffection would in certain cases be "enough, perhaps, to establish good faith reasonable uncertainty." *Id.* at \*4.

In addition, the cases cited by the Regional Director as alleged precedent regarding employee statements of disaffection are not supportive. First, in *Henry Bierce Co.*, 328 NLRB 646, 648 n. 18 (1999), *affd.* and remanded 234 F.3d 1268 (6th Cir. 2000), the Board specifically noted that regarding the evidence of disaffection, the petitioner "adduced one pro-union statement and one antiunion statement." In the present case, there was no contradictory evidence presented – the employee statements of disaffection were multiple in nature, and uniformly negative regarding the Union.

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<sup>2</sup> Asarco will separately address the Regional Director's factual finding that the submitted statements were "vague" in Section III of this Request for Review.

Next, in *In Re Sceptor Ingot Castings, Inc.*, 331 NLRB 1509 (2000), the evidence of employee statements consisted of a single employee stating that she “felt” that the union had “no standing”, that she “felt” like the employees no longer wanted a union, and that she “felt” that the union’s status was “a gone issue.” In the present case, rather than one employee’s subjective “feelings” about the mind-set of other employees, ASARCO presented evidence of actual statements made by multiple employees expressing their own personal dissatisfactions.

Additionally, in *In Re Horizon House Development Services, Inc.*, 337 NLRB 22 (2001), the Board disregarded evidence of employee statements: (1) regarding “the difficulty of contacting the union”; (2) complaining “about being required to pay dues, when other employees were not so required”; (3) that “not all employees were paying dues because their dues cards had been lost”; and (4) that staff did not want to have union dues “taken out of their paychecks.” None of these statements are similar in nature to the employee statements of obvious dissatisfaction submitted by ASARCO.

Finally, in *Transpersonnel, Inc.*, 336 NLRB 484, 486 (2002), enfd. 349 F.3d 175 (4th Cir. 2003), the bargaining unit consisted of 23 employees. The Board considered the evidence of dissatisfaction to consist, at most, of statements from nine employees. However, at the time of the withdrawal of recognition, there were ten employees actively on strike against the employer, which the Board considered as action which “clearly indicated their support for the union.” (Id. at 486). Thus, in *Transpersonnel* there was *affirmative evidence of actual support for the union by 43% of the bargaining unit*, and no additional supporting evidence of disaffection – such as 92% of the bargaining unit electing not to strike and 90% of the bargaining unit employees electing to be non-members of the Union as in the present case. In contrast, the only affirmative

evidence of record in the present case regarding “support” is that eleven employees (out of a unit of 144) are on strike.

**III. The Regional Director’s Decision on a Substantial Factual Issue is Clearly Erroneous On the Record, and Such Error Prejudicially Affects ASARCO’s Rights.**

As noted above, the Regional Director found the employee expressions of dissatisfaction submitted in support of the RM petition to be “vague.” This factual finding is clearly erroneous and prejudicially affected ASARCO, as it led to the dismissal of its RM Petition.

The statements of employee dissatisfaction are not “vague” as found by the Regional Director. Rather, the statements are express statements of obvious dissatisfaction (Exhibit 3 -- Affidavit of Deborah McMorrow, Paras. 13-17; Affidavit of Brad Stonehouse, Para. 5; Affidavit of Emily Schmitt, Paras. 8-9; Affidavit of Darren Steinhoff, Paras. 5-8)<sup>3</sup>: (1) The “Union is worthless.” (2) “Wouldn’t it be great if we didn’t have a Union?” (3) “Why can’t we get rid of the Union.” (4) It “was a big mistake to join, and now I feel bad for joining.” (5) “My loyalty is to ASARCO.” (6) “We’re doing better without the Union.” (7) “I wish we could get the Union out of here.” (8) An employee telling a supervisor he “wanted the union gone.” (9) An employee “doesn’t want to be a part of it and have them [the Union] represent her.” (10) An employee “did not want people speaking for him.” (11) An employee “wants to work in a mine without a union.” (12) An employee stated he was “anti-union.”

These statements are not “vague” – rather, they are clear expressions of employee dissatisfaction with the Union and desires to not be represented by the Union.

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<sup>3</sup> To maintain the privacy of employees who made statements of Union disaffection to Asarco and to protect them from retaliation by the Union or fellow Union members, identifying information regarding these employees has been redacted from the attached affidavits. Unredacted affidavits were provided to Region 28 with the filing of the RM Petition.

Based on the above, ASARCO requests that the March 5, 2020 Decision to Dismiss the instant petition be reversed, and that the Board order Region 28, through the immediate processing to a secret-ballot election, to allow ASARCO's bargaining unit employees at the Silver Bell Mine to make their own free choice about whether to continue to be represented by the Union.

WHEREFORE, ASARCO LLC and SILVER BELL MINING LLC requests that the Board reverse the Decision to Dismiss the RM Petition issued by the Regional Director of Region 28, and direct the Regional Director of Region 28 to proceed to process the RM Petition.

Respectfully submitted,

ASARCO LLC and SILVER BELL  
MINING LLC

By:   
One of Its Attorneys

March 18, 2020

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**CERTIFICATE OF SERVICE**

I hereby state that I served a copy of the foregoing Request for Review via electronic mail to ([usw937terrazas@gmail.com](mailto:usw937terrazas@gmail.com), [gprescott@usw.org](mailto:gprescott@usw.org), [bfickman@usw.org](mailto:bfickman@usw.org), [rspillers@gslaw.org](mailto:rspillers@gslaw.org), [gbarrett@wardkennanbarrett.com](mailto:gbarrett@wardkennanbarrett.com), and [cornele.overstreet@nlrb.gov](mailto:cornele.overstreet@nlrb.gov)) and by depositing same in an envelope addressed as follows:

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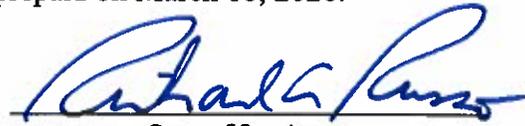
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and by delivering same by first class mail, postage prepaid on March 18, 2020.

  
One of Its Attorneys

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# **EXHIBIT 1**

UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD  
**RM PETITION**

DO NOT WRITE IN THIS SPACE	
Case No. <b>28-RM-255301</b>	Date Filed <b>January 27, 2020</b>

**INSTRUCTIONS: Unless e-Filed using the Agency's website, www.nlr.gov, submit an original of this Petition to an NLRB Office in the Region in which the employer concerned is located. The petition must be accompanied by a certificate of service showing service on all parties named in the petition of the following: (1) the petition; (2) Statement of Position form; and (3) Description of Procedures in Certification and Decertification Cases (Form NLRB 4812). The petition must also be accompanied by evidence supporting the statement that a labor organization has made a demand for recognition on the employer or that the employer has good faith uncertainty about majority support for an existing representative. However, if the evidence reveals the names and/or number of employees who no longer wish to be represented, the evidence shall not be served on any party.**

**1. PURPOSE OF THIS PETITION: RM-CERTIFICATION OF REPRESENTATIVE** – One or more individuals or labor organizations have presented a claim to the Employer/Petitioner to be recognized as the representative of employees of the Employer/Petitioner or the Employer/Petitioner has a good faith uncertainty about majority support for an existing representative. If a charge under Section 8(b)(7) of the Act has been filed involving the Employer/Petitioner named in this petition, this statement shall not be deemed made. The Petitioner alleges that the following circumstances exist and requests that the National Labor Relations Board proceed under its proper authority pursuant to Section 9 of the National Labor Relations Act.

<b>2a. Name of Employer/Petitioner</b> ASARCO LLC and Silver Bell Mining LLC	<b>2b. Address(es) of Establishment(s) involved (Street and number, city, State, ZIP code)</b> 25000 W. Avra Valley Road AZ Marana 85653-
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<b>3a. Employer/Petitioner Representative – Name and Title</b> Stacy Sinele Director of Human Resources	<b>3b. Address (if same as 2b – state same)</b> 5285 E. Williams Circle, Suite 2000 AZ Tucson 85711-
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<b>3c. Tel. No.</b> (520) 879-7818	<b>3d. Cell No.</b>	<b>3e. Fax No.</b>	<b>3f. E-Mail Address</b> ssinele@asarco.com
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<b>4a. Type of Establishment (Factory, mine, wholesaler, etc.)</b> Metal Mining	<b>4b. Principal product or service</b> Copper
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<b>5a. Description of Unit Involved</b> <b>Included:</b> See Attached Page 2 for additional details <b>Excluded:</b> See Attached Page 2 for additional details	<b>5b. City and State where unit is located:</b> Marana, AZ
	<b>6. No. of Employees in Unit:</b> 144

Unless a charge alleging a violation of Section 8(b)(7) is pending, check EITHER item 7a or 7b, whichever is applicable

7a.  A labor organization made a demand for recognition on the Employer/Petitioner on (Date) \_\_\_\_\_

7b.  The Employer/Petitioner has a good faith uncertainty about majority support for an existing representative.

<b>8a. Recognized or Certified Bargaining Agent - Name</b> Alexander Terrazas United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, Local 937	<b>8b. Affiliation, if any</b> United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International
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<b>8c. Address</b> 877 S Alvernon Way AZ Tucson 85711-	<b>8d. Tel. No.</b> (520) 243-9102	<b>8e. Cell No.</b>
	<b>8f. Fax No.</b>	<b>8g. E-Mail Address</b> uw937terrazas@gmail.com

<b>9. Date of Recognition or Certification</b> 05/21/1998	<b>10. Expiration Date of Current or Most Recent Contract, if any (Month, Day, Year)</b> 10/13/2019
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11. Is there now a strike or picketing at the Employer's establishment(s) involved? Yes If so, approximately how many employees are participating? 11  
(Name of labor organization) United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, Local 937 has picketed the Employer since (Month, Day, Year) 10/13/2019

12. Organizations or individuals other than those named in item 8, which have a contract with the Employer/Petitioner or represent employees of the Employer/Petitioner or demanded recognition as representatives and other organizations and individuals known to have a representative interest in any employees in the unit described in item 5 above. (If none, so state)  
United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO, CLC

<b>12a. Name and affiliation if any</b> Gaylan Z Prescott District Director	<b>12b. Address</b> Five Gateway Center PA Pittsburgh 15222-	<b>12c. Tel. No.</b>	<b>12d. Cell No.</b>
		<b>12e. Fax No.</b>	<b>12f. E-Mail Address</b> gprescott@uaw.org

13. Election Details: If the NLRB conducts an election in this matter, state your position with respect to any such election.

<b>13b. Election Date(s):</b> proposed: 2/18 and 2/19/2020	<b>13c. Election Time(s):</b> proposed: 4:30 - 7:30 am & 5:30 - 7:00 pm	<b>13d. Election Location(s):</b> 25000 W. Avra Valley Road, Marana, AZ 85653
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14. Representative of the Employer/Petitioner who will accept service of all papers for purposes of the representation proceeding.

<b>14a. Name and Title</b> Richard A Russo Attorney Davis & Campbell LLC	<b>14b. Address (street and number, city, state, and ZIP code)</b> 401 Main Street, Suite 1600 IL Peoria 61602-
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<b>14c. Tel No.</b> (309) 673-1681	<b>14d. Cell No.</b>	<b>14e. Fax No.</b> (309) 673-1690	<b>14f. E-Mail Address</b> rarusso@dcmplaw.com
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I declare that I have read the above petition and that the statements are true to the best of my knowledge and belief.

<b>Name (Print)</b> Stacy Sinele	<b>Signature</b> Stacy Sinele	<b>Title</b> Director of Human Resources	<b>Date</b> 01/27/2020 14:40:13
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WILLFUL FALSE STATEMENTS ON THIS PETITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

**PRIVACY ACT STATEMENT**

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

**DO NOT WRITE IN THIS SPACE**

Case

Date Filed

Attachment

**Employees Included**

All production and maintenance employees of the Employer at the Silver Bell Mine

**Employees Excluded**

All office clerical, technical, & professional employees, watchmen and supervisors

# **EXHIBIT 2**

### **AFFIDAVIT OF STACY SINELE**

Stacy Sinele, having first been duly sworn, states upon oath as follows:

1. I am employed by ASARCO LLC ("ASARCO") as the Director of Human Resources at ASARCO's office in Tucson, Arizona.
2. ASARCO is a Delaware limited liability company and is a fully integrated miner, smelter, and refiner of copper and other metals. ASARCO currently operates three mines and one processing facility in Arizona and one processing facility in Texas.
3. One of the three mines, located in Marana, Arizona ("Silver Bell Mine"), is owned and operated by Silver Bell Mining LLC ("Silver Bell Mining"). Silver Bell Mining is fully-owned by AR Silver Bell Inc. AR Silver Bell Inc. is a wholly owned subsidiary of ASARCO.
4. Silver Bell Mining has an arrangement with ASARCO for the procurement of administrative services provided by ASARCO, including assisting with the Human Resources and labor relations function at the Silver Bell Mine.
5. The employees at the Silver Bell Mine are represented by the United Steel, Paper & Forestry, Rubber, Manufacturing, Energy, Allied Industrial & Service Workers International Union, Local 937 ("Union").
6. As Director of Human Resources at ASARCO, I administer and oversee the entire labor relations function at ASARCO, including providing Human Resources and labor and employee relations services to Silver Bell Mining.
7. In providing Human Resources and labor and employee relations services to Silver Bell Mining, I have access to all of the personnel files and employment records at the Silver Bell Mine, including documents provided by employees authorizing deductions for Union dues and regarding Union membership.
8. On October 13, 2019, the Union commenced a strike at the Silver Bell Mine.
9. I am aware of the job status of Silver Bell Mine employees, including which employees are on strike and which employees are working, as well as which employees have notified management at the Silver Bell Mine regarding Union membership.
10. Based on the personnel files and employment records at Silver Bell Mine, I prepared the attached spreadsheet containing the names, job classifications, department, strike status and union membership status of current employees at Silver Bell Mine. *See attached Exhibit 1.*

11. At the time of the strike on October 13, 2019, there were 147 employees in the bargaining unit at the Silver Bell Mine. There are currently 144 bargaining unit employees at the Silver Bell Mine.
12. Of the current employees, 131 employees crossed the picket line and continued to work at the Silver Bell Mine. Of those employees 128 of them never went on strike in the first place, and 3 abandoned the strike and returned to work. At present, there are only 11 employees striking at the Silver Bell Mine. Also, two employees were on a leave of absence at the time of the strike, and to date, remain inactive employees on leave.
13. Of the 144 bargaining unit employees currently employed at the Silver Bell Mine, on information and belief, only 14 of those employees are members of the Union.
14. Also on information and belief, of the 144 current bargaining unit employees, 66 of those employees never joined the Union in the first place, and at least 62 resigned their membership with the Union. This includes 29 employees who resigned since the strike began on October 13, 2019. Two other employees revoked their dues deduction authorizations but it is unknown if they resigned their Union membership.

I have read the foregoing fourteen (14) typewritten paragraphs and the statements contained therein are true and correct to the best of my knowledge and belief.

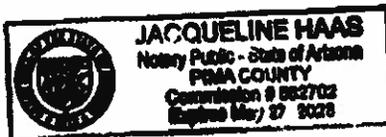
*Stacy Sinele*

\_\_\_\_\_  
Stacy Sinele

Subscribed and sworn to before me this 27<sup>th</sup> day of January, 2020.

*Jacqueline Haas*

\_\_\_\_\_  
Notary Public



Emp# ID	Last Name	First Name	Job Code Description	Department	Strike Status	Union Membership Status	Date Resigned from Union
302431	Alcocer	Paul	Heavy Truck Driver	Mine Operations	Did Not Strike	Never Joined	Never Joined
309004	Andrade	Ramiro	Repairman 2nd Class	Plant Maintenance	Did Not Strike	Never Joined	Never Joined
301488	Andrade	Fernando	Repairman 2nd Class	Plant Maintenance	Did Not Strike	Resigned	6/24/2015
245047	Ayers	Gordon	Shovel Operator	Mine Operations	Did Not Strike	Never Joined	Never Joined
302209	Baldoso	John	Mechanic 2nd Class	Mine Maintenance	Did Not Strike	Resigned	10/18/2019
302957	Ballard	Isaac	Mechanic 2nd Class	Mine Maintenance	Did Not Strike	Never Joined	Never Joined
248430	Beam	Roger	Repairman 1st Class	Plant Maintenance	Did Not Strike	Resigned	10/14/2019
247573	Belding	Anthony	Mechanic 2nd Class	Mine Maintenance	On Strike	Member	Not Applicable
244889	Benitez	Servando	Leadman - Mechanic	Mine Maintenance	Leave of Absence	Member	Not Applicable
301121	Benacourt	Joseph	Heavy Truck Driver	Mine Operations	Did Not Strike	Never Joined	Never Joined
302495	Brady	David	Electrician 1st Class	Electrical Maintenance	Did Not Strike	Never Joined	Never Joined
302900	Brady	Michael	Heavy Truck Driver	Mine Operations	Did Not Strike	Never Joined	Never Joined
302825	Carapas	Jesus	Maintenance Laborer	Mine Maintenance	Did Not Strike	Never Joined	Never Joined
302211	Carapas	Juan	Leach Operator	SHEW Operations	Did Not Strike	Resigned	6/20/2019
245767	Carido	David	Leach Operator	SHEW Operations	Did Not Strike	Resigned	6/23/2015
300862	Castro	Scott	Heavy Truck Driver	Mine Operations	Did Not Strike	Never Joined	Never Joined
247945	Case	Charles	EW Operator	SHEW Operations	On Strike	Member	Not Applicable
300738	Castillo	Mike	Heavy Truck Driver	Mine Operations	Did Not Strike	Resigned	2/2/2015
302868	Castillo	Ramon	Mechanic 2nd Class	Mine Maintenance	Did Not Strike	Never Joined	Never Joined
302633	Castro	Jesus	Mechanic 2nd Class	Mine Maintenance	Did Not Strike	Resigned	10/18/2019
301858	Christman	James	Mechanic 2nd Class	Mine Maintenance	Did Not Strike	Resigned	10/15/2019
302157	Cline	Arthur	Heavy Truck Driver	Mine Operations	Did Not Strike	Resigned	6/3/2017
302610	Coles	Coran	Maintenance Helper	Mine Maintenance	On Strike	Member	Not Applicable
247571	Connelly	Ryan	Mechanic 2nd Class	Mine Maintenance	On Strike	Member	Not Applicable
248974	Cota	Robert	SHEW Helper	SHEW Operations	Did Not Strike	Resigned	10/14/2019
302573	Crowell	Marcos	Electrician 1st Class	Electrical Maintenance	Did Not Strike	Resigned	11/26/2013
301723	Crowell	John	Heavy Truck Driver	Mine Operations	Did Not Strike	Resigned	10/14/2019
248070	Cuatas	Alfred	Coar Operator	Mine Operations	Did Not Strike	Never Joined	Never Joined
302369	Collen	Andrew	EW Operator	SHEW Operations	Did Not Strike	Never Joined	Never Joined
302326	Cumingham	Joseph	Mechanic 2nd Class	Mine Maintenance	Did Not Strike	Never Joined	Never Joined
302829	Dally	Shane	Heavy Truck Driver	Mine Operations	Did Not Strike	Never Joined	Never Joined
248863	Davis	Michael	Coar Operator	Mine Operations	Did Not Strike	Never Joined	Never Joined
246845	Diaz	David	Coar Operator	Mine Operations	Did Not Strike	Never Joined	Never Joined
243908	Duabina	Heath	Shovel Operator	Mine Operations	Did Not Strike	Never Joined	Never Joined
302212	Duarte	Bryan	Mechanic 2nd Class	Mine Maintenance	Did Not Strike	Resigned	10/15/2019
247624	Fahett	Brandon	Coar Operator	Mine Operations	Did Not Strike	Resigned	10/15/2014
302336	Fisher	William	Heavy Truck Driver	Mine Operations	Did Not Strike	Resigned	12/7/2018
248971	Fisher	Jesus	Heavy Truck Driver	Mine Operations	Did Not Strike	Never Joined	Never Joined
241926	Florence	Ridge	Welder 1st Class	Mine Maintenance	Did Not Strike	Resigned	10/14/2019
246329	Foster	Steven	Coar Operator	Mine Operations	Did Not Strike	Resigned	3/16/2015
228705	Garcia	Serdalago	Field Laborer	Mine Maintenance	Did Not Strike	Resigned	6/10/2015
302860	Garcia	Luis	Heavy Truck Driver	Mine Operations	Did Not Strike	Never Joined	Never Joined
302828	Gibbons	Michael	SHEW Helper	SHEW Operations	Did Not Strike	Resigned	10/17/2019
301150	Gonzales	Ruben	Heavy Truck Driver	Mine Operations	On Strike	Member	Not Applicable
309087	Gonzalez	Claudio	SHEW Helper	SHEW Operations	Did Not Strike	Never Joined	Never Joined
382758	Guevara	Javier	Welder 1st Class	Mine Maintenance	Did Not Strike	Resigned	10/16/2019
381498	Gullen	Henry	Rotary Drill Operator	Mine Operations	Did Not Strike	Resigned	6/5/2018
243384	Gumbawang	Seanton	SK Operator	SHEW Operations	Did Not Strike	Never Joined	Never Joined
382380	Hall	Richard	Mechanic 2nd Class	Mine Maintenance	Did Not Strike	Unknown	10/15/2019
382675	Hernandez	Tyler	Mechanic 2nd Class	Mine Maintenance	Did Not Strike	Never Joined	Never Joined
383040	Hernandez	Christian	Electrician 2nd Class	Electrical Maintenance	Did Not Strike	Never Joined	Never Joined
382869	Hernandez	Jeremiah	Mechanic 2nd Class	Mine Maintenance	Did Not Strike	Never Joined	Never Joined
382733	Hiddle	Thomas	Heavy Truck Driver	Mine Operations	Did Not Strike	Never Joined	Never Joined
382142	Howard	Chaz	SHEW Laborer	SHEW Operations	Did Not Strike	Never Joined	Never Joined
383110	Iniguez	Gilberto	SHEW Helper	SHEW Operations	Did Not Strike	Never Joined	Never Joined
380736	James	Harry	EW Operator	SHEW Operations	On Strike	Member	Not Applicable
382856	Jost	Anthony	Mechanic 2nd Class	Mine Maintenance	Return to Work	Member	Not Applicable
245215	Keaton	David	SK Operator	SHEW Operations	Did Not Strike	Resigned	6/2/2015
382885	Kelly	Geoffrey	Repairman 1st Class	Plant Maintenance	Did Not Strike	Never Joined	Never Joined
244949	Kent	Russel	Shovel Operator	Mine Operations	Did Not Strike	Never Joined	Never Joined
245365	Kohler	Christopher	Heavy Truck Driver	Mine Operations	Did Not Strike	Resigned	5/2/2019
381449	Krotchwil	Richard	Heavy Truck Driver	Mine Operations	Did Not Strike	Never Joined	Never Joined
245942	Lang	Boyd	Shovel Operator	Mine Operations	Did Not Strike	Never Joined	Never Joined
383442	Lantz	Nicky	Heavy Truck Driver	Mine Operations	Did Not Strike	Never Joined	Never Joined
383214	Laymon	Niklaus	Mechanic 2nd Class	Mine Maintenance	Did Not Strike	Never Joined	Never Joined
302734	Lebbe	Robert	Electrician 2nd Class	Electrical Maintenance	Did Not Strike	Never Joined	Never Joined
248507	Leonard	James	Leadman - Mechanic	Mine Maintenance	Did Not Strike	Resigned	10/14/2019
302672	Looney	Ryle	EW Operator	SHEW Operations	Did Not Strike	Resigned	9/7/2010
301102	Lopez	Jesus	Mechanic 1st Class	Mine Maintenance	Did Not Strike	Resigned	6/24/2018
300924	Lopez	Jesus	Battery Drill Operator	Mine Operations	Did Not Strike	Resigned	4/10/2013
302801	Lovelace	Wayne	Heavy Truck Driver	Mine Operations	Did Not Strike	Never Joined	Never Joined

301500	LeFevig	Joseph	Mechanic 1st Class	Mine Maintenance	Did Not Strike	Resigned	7/7/2025
247378	Maggard	Matthew	Mechanic 1st Class	Mine Maintenance	Did Not Strike	Resigned	10/14/2019
243848	Majlica	Nano	Shovel Operator	Mine Operations	Did Not Strike	Resigned	5/19/2020
301377	Marquis	Jason	Leadman - Leach	SHEW Operations	Did Not Strike	Resigned	6/21/2015
300904	McCaleb	Jonathan	Heavy Truck Driver	Mine Operations	Did Not Strike	Never Joined	Never Joined
302385	McCurdy	Tara	Heavy Truck Driver	Mine Operations	Did Not Strike	Resigned	10/16/2019
301513	McCurdy	Luke	Rotary Drill Operator	Mine Operations	Did Not Strike	Never Joined	Never Joined
241399	McDonald	William	Leach Operator	SHEW Operations	Did Not Strike	Resigned	12/7/2017
302884	McIvey	William	Welder 1st Class	Mine Maintenance	Did Not Strike	Never Joined	Never Joined
246508	Meddosa	Manuel	EW Operator	SHEW Operations	Did Not Strike	Resigned	10/14/2019
302443	Melner	Philip	Leach Operator	SHEW Operations	Did Not Strike	Resigned	10/15/2019
302188	Menez	Ronald	Welder 1st Class	Mine Maintenance	Did Not Strike	Resigned	10/6/2019
301470	Murphy	Katherine	Heavy Truck Driver	Mine Operations	Did Not Strike	Resigned	8/1/2019
302805	Murphy	Michael	Rotary Drill Operator	Mine Operations	Did Not Strike	Never Joined	Never Joined
302156	Quandre	Daryl	Heavy Truck Driver	Mine Operations	Did Not Strike	Resigned	8/1/2017
302628	Perez	Robert	EW Operator	SHEW Operations	Did Not Strike	Resigned	10/14/2019
303143	Petty, Jr.	Aaron	Mechanic 2nd Class	Mine Maintenance	Did Not Strike	Never Joined	Never Joined
247978	Puede	Raul	Welder 1st Class	Mine Maintenance	Did Not Strike	Unknown	10/16/2018
302865	Pitts	Joseph	Electrician 1st Class	Electrical Maintenance	Did Not Strike	Never Joined	Never Joined
302579	Pitts	John	EW Operator	SHEW Operations	Did Not Strike	Resigned	1/15/2019
302636	Polanco	Alberto	Heavy Truck Driver	Mine Operations	On Strike	Member	Not Applicable
302885	Price	Ryan	Heavy Truck Driver	Mine Operations	Did Not Strike	Never Joined	Never Joined
302057	Prince	Kathy	Heavy Truck Driver	Mine Operations	Did Not Strike	Never Joined	Never Joined
246293	Quick	Corbin	SX Operator	SHEW Operations	Did Not Strike	Never Joined	Never Joined
249634	Quilote	Adam	EW Operator	SHEW Operations	Did Not Strike	Resigned	9/5/2023
300788	Ramos	Daniel	Heavy Truck Driver	Mine Operations	Did Not Strike	Never Joined	Never Joined
302734	Ramos Lopez	Humberto	Welder 1st Class	Mine Maintenance	Did Not Strike	Never Joined	Never Joined
302900	Raney	Nolan	Heavy Truck Driver	Mine Operations	Did Not Strike	Never Joined	Never Joined
246364	Rangal	Gilberto	SX Operator	SHEW Operations	Did Not Strike	Resigned	10/14/2019
247131	Raynolds	Mason	Repairman 1st Class	Plant Maintenance	Did Not Strike	Resigned	7/15/2021
246285	Romero	Guillermo	Mechanic 1st Class	Mine Maintenance	Did Not Strike	Resigned	10/16/2019
301832	Rosette	Thomas	Heavy Truck Driver	Mine Operations	Did Not Strike	Never Joined	Never Joined
247429	Roybal	Margaret	Mechanic 1st Class	Mine Maintenance	Did Not Strike	Resigned	10/16/2019
242780	Roybal	Sabino	Welder 1st Class	Mine Maintenance	Did Not Strike	Resigned	8/15/2014
303213	Saldívar	Christina	SHEW Laborer	SHEW Operations	Did Not Strike	Never Joined	Never Joined
241294	Sanger	Douglas	Leadman - Repair	Plant Maintenance	Did Not Strike	Resigned	12/5/2016
246041	Santacruz	Ronald	Dozer Operator	Mine Operations	Did Not Strike	Resigned	7/1/2015
245213	Schuel	Gregory	Sampler	SHEW Operations	On Strike	Member	Not Applicable
300911	Schwocher	Mark	Heavy Truck Driver	Mine Operations	Did Not Strike	Never Joined	Never Joined
302906	Schwosow	Michael	Welder 1st Class	Mine Maintenance	Did Not Strike	Resigned	10/14/2019
244607	Schwizer	Robert	Shovel Operator	Mine Operations	Did Not Strike	Resigned	8/1/2002
248419	Sherill	Jody	Dozer Operator	Mine Operations	Did Not Strike	Never Joined	Never Joined
245973	Silva	Harry	Shovel Operator	Mine Operations	Did Not Strike	Never Joined	Never Joined
246510	Smith	Daniel	Leadman - Leach	SHEW Operations	Did Not Strike	Resigned	10/15/2019
302723	Spencer	Jason	Heavy Truck Driver	Mine Operations	Did Not Strike	Never Joined	Never Joined
303212	Spencer	Ryan	SHEW Laborer	SHEW Operations	Did Not Strike	Never Joined	Never Joined
302876	Stahkopf	German	Heavy Truck Driver	Mine Operations	Did Not Strike	Resigned	10/14/2019
302296	Stahkopf	German	Heavy Truck Driver	Mine Operations	Did Not Strike	Never Joined	Never Joined
302837	Steen	Mark	Mechanic 1st Class	Mine Maintenance	Did Not Strike	Never Joined	Never Joined
246346	Stewart	Randy	Dozer Operator	Mine Operations	Did Not Strike	Resigned	10/17/2019
300931	Swisher	Billy	Powderman	Mine Operations	Did Not Strike	Never Joined	Never Joined
300568	Talles	Michelle	Heavy Truck Driver	Mine Operations	Did Not Strike	Never Joined	Never Joined
300115	Talles	Daniel	Heavy Truck Driver	Mine Operations	Did Not Strike	Never Joined	Never Joined
302288	Teran	Victor	Electrician 1st Class	Electrical Maintenance	Did Not Strike	Never Joined	Never Joined
202279	Thompson	Kenneth	Mechanic 1st Class	Mine Maintenance	Did Not Strike	Never Joined	Never Joined
246089	Tindesholt	Brian	Shovel Operator	Mine Operations	Did Not Strike	Never Joined	Never Joined
302289	Trojillo	Stefan	Electrician 1st Class	Electrical Maintenance	On Strike	Member	Not Applicable
300732	Tucker	Clint	Repairman 1st Class	Plant Maintenance	Did Not Strike	Resigned	10/14/2019
302624	Valencia	Isidro	Maintenance Helper	Mine Maintenance	Return to Work	Resigned	10/28/2019
243449	Valencia	Isidro	Repairman 2nd Class	Plant Maintenance	Return to Work	Member	Not Applicable
303039	Valenzuela	Daniel	Electrician 2nd Class	Electrical Maintenance	Did Not Strike	Never Joined	Never Joined
302380	Valenzuela	Frank	Leach Operator	SHEW Operations	Did Not Strike	Resigned	10/14/2019
302908	Vazquez	Julian	Leach Operator	SHEW Operations	Did Not Strike	Resigned	10/10/2018
302352	Vello-Schoch	Chance	EW Operator	SHEW Operations	On Strike	Member	Not Applicable
236506	Wagner	David	Dozer Operator	Mine Operations	Did Not Strike	Never Joined	Never Joined
302882	Washley	Clyde	SHEW Helper	SHEW Operations	Leave of Absence	Member	Not Applicable
242587	White	Kevin	Electrician 1st Class	Electrical Maintenance	Did Not Strike	Resigned	7/13/2013
302480	WRI	Samuel	Powderman	Mine Operations	Did Not Strike	Never Joined	Never Joined
242805	Woolhock	Karl	Heavy Truck Driver	Mine Operations	Did Not Strike	Resigned	10/14/2019
302506	Wyntis	Christopher	Welder 1st Class	Mine Maintenance	On Strike	Member	Not Applicable
300888	Yount	Matthew	Heavy Truck Driver	Mine Operations	Did Not Strike	Never Joined	Never Joined
302729	Zizka	Lyle	Heavy Truck Driver	Mine Operations	Did Not Strike	Never Joined	Never Joined
302153	Zizka	Lyle	Leadman - Electrician	Electrical Maintenance	Did Not Strike	Resigned	11/28/2018
302632	Zona	Robert	Heavy Truck Driver	Mine Operations	Did Not Strike	Resigned	10/15/2019

# **EXHIBIT 3**

### **AFFIDAVIT OF DEBORAH McMORROW**

Deborah McMorrow, having first been duly sworn, states upon oath as follows:

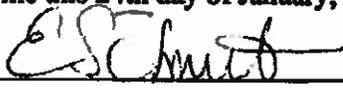
1. I am employed by ASARCO LLC ("ASARCO") as Human Resources Business Partner at the Silver Bell Mine in Marana, Arizona.
2. As Human Resources Business Partner at the Silver Bell Mine, I administer and oversee the labor and employee relations function at the Silver Bell Mine.
3. The employees at the Silver Bell Mine are represented by the United Steel, Paper & Forestry, Rubber, Manufacturing, Energy, Allied Industrial & Service Workers International Union, Local 937 ("Union").
4. As Human Resources Business Partner, I have access to all of the personnel files and employment records at the Silver Bell Mine, and regularly communicate with bargaining unit employees at the Silver Bell Mine.
5. I am also responsible for receiving and processing Union dues payroll deductions forms from the Union. Additionally, when employees resign from the Union and/or no longer wish for Union dues to be deducted from their paychecks, I am regularly given such information by employees, and provide such information to the Union.
6. At various times in the past, along with their authorization for Union dues deduction, the Union has provided me copies of employee Union membership forms for Local 937. The Union membership form states: "I hereby request and accept membership in the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (also known in short as 'United Steelworkers' or 'USW'), and of my own free will hereby authorize the USW, its agents or representatives to act for me as a collective bargaining agency in all matters pertaining to rates of pay, wage, hours of employment, or other conditions of employment, and to enter into contracts with my employer covering all such matters including contracts which may require continuance of my membership in the United Steelworkers, as a condition of my continued employment."
7. On October 13, 2019, the Union commenced a strike at the Silver Bell Mine.
8. I am aware of the job status of employees, including which employees are on strike and which employees are working, as well as which employees have notified management at the Silver Bell Mine regarding Union membership.
9. At the time of the strike on October 13, 2019, there were 147 employees in the bargaining unit at the Silver Bell Mine. There are currently 144 bargaining unit employees at the Silver Bell Mine.

10. Of the current employees, 131 employees crossed the picket line and continued to work at the Silver Bell Mine. Of those employees 128 of them never went on strike in the first place, and 3 abandoned the strike and returned to work. At present, there are only 11 employees striking at the Silver Bell Mine. Also, 2 employees were on a leave of absence at the time of the strike, and to date, remain inactive employees on leave.
11. Of the 144 bargaining unit employees currently employed at the Silver Bell Mine, on information and belief, only 14 of those employees are members of the Union
12. Also on information and belief, of the 144 current bargaining unit employees, 66 of those employees never joined the Union in the first place, and at least 62 resigned their membership with the Union. This includes 29 employees who resigned since the strike began on October 13, 2019. 2 other employees revoked their dues deduction authorizations but it is unknown if they resigned their Union membership.
13. Besides receiving requests from employees to resign from the Union, in 2019 and 2020, several employees made other comments to me regarding dissatisfaction with the Union.
14. One such employee was [REDACTED] Over the course of several different conversations, [REDACTED], made statements to me such as the "Union is useless", "Why do we have a Union?" and "Wouldn't it be great if we didn't have a Union".
15. Another employee was [REDACTED]. Sometime in September or October before the beginning of the strike, [REDACTED] said to me something like "Why can't we get rid of the Union?"
16. On October 11, 2019, [REDACTED] informed me that the Union "was a big mistake to join, and I feel bad now for joining. My loyalty is to ASARCO."
17. On January 16, 2020, [REDACTED], told me "We're doing better without the Union."

She has read the foregoing seventeen (17) typewritten paragraphs and the statements contained therein are true and correct to the best of knowledge and belief.

  
 Deborah McMorrow

Subscribed and sworn to before me this 24th day of January, 2020.

  
 Notary Public

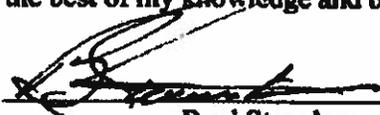


### **AFFIDAVIT OF BRAD STONEHOUSE**

Brad Stonehouse, having first been duly sworn, states upon oath as follows:

1. I am employed by ASARCO LLC ("ASARCO") as the General Manager at the Silver Bell Mine in Marana, Arizona.
2. As the General Manager at the Silver Bell Mine, I manage and oversee all of the production and operations at the Silver Bell Mine.
3. The employees at the Silver Bell Mine are represented by the United Steel, Paper & Forestry, Rubber, Manufacturing, Energy, Allied Industrial & Service Workers International Union, Local 937 ("Union").
4. On October 13, 2019, the Union commenced a strike at the Silver Bell Mine.
5. A few weeks after the strike began, two employees came into my office. One of the employees was [REDACTED] and the other was [REDACTED]. While in my office, [REDACTED] said "I wish we could get the Union out of here". In response to his statement, [REDACTED] discussed his understanding of how the decertification process worked.
6. Prior to the strike, in September 2019, I became aware of an incident between employees related to the Union. I learned that the Union, in August and September 2019, was making an effort to increase union membership. I also know this was coincidental to the Union receiving ASARCO's last, best and final offer during contract negotiations on September 5, 2019.
7. In September 2019, I learned that [REDACTED] felt harassed by one of the Union stewards, Ryan Connelly, because he was not supporting the Union. To my knowledge, Connelly then stated something to [REDACTED] akin to, 'you need to get your people in line.'
8. To my knowledge, during the time the Union and Connelly were attempting to garner additional employee support in September of 2019, no employee of Silver Bell joined the Union. In fact, during that time, it is my understanding that several Silver Bell employees instead decided to quit the Union.

I have read the foregoing eight (8) typewritten paragraphs and the statements contained therein are true and correct to the best of my knowledge and belief.

  
\_\_\_\_\_  
Brad Stonehouse

Subscribed and sworn to before me this 23<sup>rd</sup> day of January, 2020.



  
\_\_\_\_\_  
Notary Public

### **AFFIDAVIT OF EMILY SCHMITT**

Emily Schmitt, having first been duly sworn, states upon oath as follows:

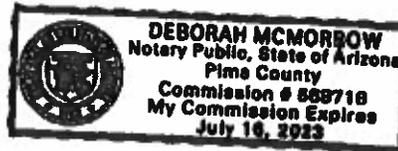
1. I am employed by ASARCO LLC ("ASARCO") in the Human Resources department at the Silver Bell Mine in Marana, Arizona.
2. In the Human Resources department at the Silver Bell Mine, I assist with payroll and human resources functions at the Silver Bell Mine.
3. The employees at the Silver Bell Mine are represented by the United Steel, Paper & Forestry, Rubber, Manufacturing, Energy, Allied Industrial & Service Workers International Union, Local 937 ("Union").
4. On October 13, 2019, the Union commenced a strike at the Silver Bell Mine.
5. After the Union contract expired on October 13, 2019, I was approached by several employees asking me to stop their dues deduction authorization and advising me that they no longer wish to be a part of the Union.
6. As part of my job, I change the status of the employee requesting to no longer have dues deducted. I also notify the Union when the employee has withdrawn the dues authorization and where appropriate, that the employee resigned from the Union.
7. Since the strike started, more employees than usual have resigned from the Union.
8. One of those employees, [REDACTED], told me he was, "upset about being in the union." He continued to tell me that he wanted the union gone.
9. Another employee I spoke with shortly before the strike was [REDACTED]. [REDACTED] told me, "she felt misled by the union and they didn't support her or include her in important discussions or meetings. She said that the union served a purpose at one time but they don't anymore so she doesn't want to be a part of it and have them represent her."

I have read the foregoing nine (9) typewritten paragraphs and the statements contained therein are true and correct to the best of my knowledge and belief.

  
\_\_\_\_\_  
Emily Schmitt

Subscribed and sworn to before me this 23<sup>rd</sup> day of January, 2020.

  
\_\_\_\_\_  
Notary Public

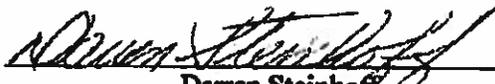


**AFFIDAVIT OF DARREN STEINHOFF**

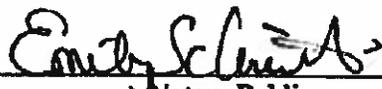
Darren Steinhoff, having first been duly sworn, states upon oath as follows:

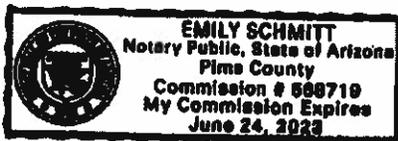
1. I am employed by ASARCO LLC ("ASARCO") as the General Supervisor of the SX/EW at the Silver Bell Mine in Marana, Arizona.
2. As the General Supervisor of the SX/EW at the Silver Bell Mine, I manage and oversee all of the production and operations of that department at the Silver Bell Mine.
3. The employees at the Silver Bell Mine are represented by the United Steel, Paper & Forestry, Rubber, Manufacturing, Energy, Allied Industrial & Service Workers International Union, Local 937 ("Union").
4. On October 13, 2019, the Union commenced a strike at the Silver Bell Mine.
5. While working as the General Supervisor, I have heard several of my employees express that they did not want to be represented by a union.
6. One of the employees is [REDACTED]. In 2019, [REDACTED] told me that he did not like the Union, and in particular, "Did not want people speaking for him." He dropped out of the Union in 2017 or 2018 and told me that he, "Did not want to strike."
7. Another employee who has expressed dissatisfaction with the Union in 2019 is [REDACTED]. [REDACTED] is a [REDACTED]. [REDACTED] told me that he, "wants to work in a mine without a union."
8. Finally, one of the [REDACTED], [REDACTED], spoke to me recently about the Union. He told me he is, "anti-union".

I have read the foregoing eight (8) typewritten paragraphs and the statements contained therein are true and correct to the best of my knowledge and belief.

  
\_\_\_\_\_  
Darren Steinhoff

Subscribed and sworn to before me this 23<sup>rd</sup> day of January, 2020.

  
\_\_\_\_\_  
Notary Public



# **EXHIBIT 4**



**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 28**



<p align="center"><b>ASARCO LLC AND SILVER BELL MINING LLC</b></p> <p align="center"><b>Employer/Petitioner</b></p> <p align="center"><b>and</b></p> <p><b>UNITED STEEL, PAPER AND FORESTRY, RUBBER, MANUFACTURING, ENERGY, ALLIED INDUSTRIAL AND SERVICE WORKERS INTERNATIONAL UNION, LOCAL 937, AFL-CIO, CLC</b></p> <p align="center"><b>Union</b></p>	<p align="center"><b>Case 28-RM-255301</b></p>
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**NOTICE OF REPRESENTATION HEARING**

The Petitioner filed the attached petition pursuant to Section 9(c) of the National Labor Relations Act. It appears that a question affecting commerce exists as to whether the employees in the unit described in the petition wish to be represented by a collective-bargaining representative as defined in Section 9(a) of the Act.

YOU ARE HEREBY NOTIFIED that, pursuant to Sections 3(b) and 9(c) of the Act, at 10:00 AM on **Wednesday, February 5, 2020** and on consecutive days thereafter until concluded, at the National Labor Relations Board Hearing Room, 2600 North Central Avenue, Suite 1400, Phoenix, AZ 85004, a hearing will be conducted before a hearing officer of the National Labor Relations Board. At the hearing, the parties will have the right to appear in person or otherwise, and give testimony.

YOU ARE FURTHER NOTIFIED that, pursuant to Section 102.63(b) of the Board's Rules and Regulations, ASARCO LLC and Silver Bell Mining LLC must complete the Statement of Position and file it and all attachments with the Regional Director and serve it on the parties listed on the petition such that it is received by them by no later than **Noon Mountain Standard time on Tuesday, February 4, 2020**. The Statement of Position may be E-Filed but, unlike other E-Filed documents, must be filed by noon Mountain Standard on the due date in order to be timely. If an election agreement is signed by all parties and returned to the Regional Office before the due date of the Statement of Position, the Statement of Position is not required to be filed.

Dated: January 28, 2020




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Cornele A. Overstreet, Regional Director  
National Labor Relations Board - Region 28

# **EXHIBIT 5**



UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD

REGION 28  
2600 North Central Avenue  
Suite 1400  
Phoenix, AZ 85004

Agency Website: [www.nlr.gov](http://www.nlr.gov)  
Telephone: (602)640-2160  
Fax: (602)640-2178

Agent's Direct Dial: (602)416-4769

February 5, 2020

**VIA E-MAIL ONLY:**

Richard A. Russo, Attorney at Law  
Davis & Campbell LLC  
401 Main Street, Suite 1600  
Peoria, IL 61602  
E-mail: [rarusso@dcamplaw.com](mailto:rarusso@dcamplaw.com)

Paul Burmeister, Attorney at Law  
Davis & Campbell, LLC  
333 South Wabash Avenue, Suite 2700  
Chicago, IL 60604  
E-mail: [phburmeister@dcamplaw.com](mailto:phburmeister@dcamplaw.com)

Re: ASARCO LLC and Silver Bell Mining LLC  
Case 28-RM-255301

Gentlemen:

I am writing this letter to inform you that the documents and information submitted by ASARCO LLC and Silver Bell Mining LLC (the Petitioner) in the above-referenced matter does not establish a good-faith uncertainty as to the Union's continued majority status as set forth in *Levitz Furniture Co. of the Pacific*, 333 NLRB 717 (2001).

In petitioning the Board for an election to question the continued majority of an incumbent union, employers must demonstrate a "good-faith reasonable uncertainty (rather than disbelief) as to unions' continuing majority status." *Levitz Furniture Co. of the Pacific, Inc. (Levitz)*, 333 NLRB 717 (2001). The petition must be supported by evidence, viewed in its entirety, which might establish good-faith uncertainty as to the union's continued majority status. The information submitted by the employer must be specific and detailed. For example, names of employees must be listed. The evidence must be objective and reliably indicate that a majority of the employees oppose the incumbent union, rather than mere speculation. Such evidence would include, but is not limited to, antiunion petitions signed by unit employees, firsthand employee statements indicating a desire to no longer be represented by the incumbent union, employees' unverified statements regarding other employees' antiunion sentiments, and employees' statements expressing dissatisfaction with the union's performance as bargaining representative. Case Handling Manual Part II "Representation Proceedings" Section 11042; *Levitz*, supra at 728, 729; see also General Counsel Memorandum 02-01 "Guideline Memorandum Concerning *Levitz*" at 9, 10.

February 5, 2020

The failure of new hires and/or strike replacements to join the Union, employees' failure to pay dues to the Union or authorize dues check off, employee turnover in the bargaining unit, nonparticipation in a strike, and anti-union statements by a minority of unit employees, whether considered individually or cumulatively, do not establish good-faith reasonable uncertainty. *Levitz* at 729, and cases cited therein. See also *Atlanta Hilton & Towers*, 278 NLRB 474, 480-481 (1981); *Alexander Linn Hospital Association*, 288 NLRB 103, 107-109 (1988); and *Flex Plastics, Inc.*, 262 NLRB 651, 657-568 (1982).

Accordingly, the Employer has **48 hours** to present sufficient evidence of a good-faith reasonable uncertainty as to the Union's continued majority status or to withdraw the instant petition. Absent such evidence or withdrawal, the Employer's petition will be dismissed. In addition, the Employer must submit a list of all unit employees, including names, job classifications, and identifying whether they are strikers, non-strikers/crossovers, permanent or temporary replacements, or new hires.

Very truly yours,

*/s/ Cornele A. Overstreet*

Cornele A. Overstreet  
Regional Director

CAO/KAS/dmm

# **EXHIBIT 6**

# DAVIS & CAMPBELL L.L.C.

401 MAIN STREET  
SUITE 1600  
PEORIA, ILLINOIS 61602-1241  
TEL: (309) 673-1681  
FAX: (309) 673-1690  
www.dcamplaw.com

FILE NUMBER: 32248-021

February 6, 2020

## VIA ELECTRONIC MAIL & FEDERAL EXPRESS

Cornele A. Overstreet  
Regional Director  
National Labor Relations Board  
Region 28  
2600 N. Central Ave, Suite 1400  
Phoenix, AZ 85004

Re: ASARCO LLC and Silver Bell Mining LLC  
Case 28-RM-255301

Dear Mr. Overstreet:

ASARCO LLC and Silver Bell Mining LLC ("Petitioner") are writing in response to your February 5, 2020 letter wherein you have erroneously decided to deny employees their free choice to choose whether or not they want to continue to be represented by USW, Local 937 ("Union") at the Silver Bell Mine. This despite the fact that the Petitioner provided evidence that a number of employees had made statements expressing dissatisfaction with the Union, that at least 128 out of 142 (90%) active employees chose not to be members of the Union and that 131 out of 142 (92%) active employees chose not to strike.

Your citation to *Levitz Furniture* in justifying your decision mischaracterizes the evidence the Board indicated would be required to make a showing of good faith reasonable uncertainty. For example, contrary to your assertion that statements from a minority of employees is insufficient evidence, the Board, in *Levitz Furniture*, cited favorably to the *Allentown Mack* case wherein only 7 of 32 employees indicated their personal dissatisfaction with the Union, and indicated that such evidence was sufficient to establish a good faith reasonable uncertainty by an employer.

Moreover, the evidence presented by Petitioner is clearly distinguishable from the two cases cited by *Levitz Furniture* as being insufficient to establish a good faith reasonable uncertainty. In one case, *Sceptor Ingot Casings*, the employer only relied on ambiguous statements from one employee about union dissatisfaction and the amount of employee turnover as its evidence. In the other case, *Henry Bierce Co.*, the employer's evidence was that only one employee made an anti-union statement, and the remaining evidence was that newly hired employees failed to join the union, "some" employees failed to sign the dues checkoff, and the union's failure to file grievances, appoint a steward or submit a tentative agreement for ratification.

## **DAVIS & CAMPBELL L.L.C.**

In stark contrast, besides providing a number of statements of dissatisfaction with the Union, the Petitioner also provided evidence that 128 Silver Bell employees have chosen not to be members of the Union, with 66 employees having never joined the Union in the first place (including not only new employees, but many long-term employees) and another 62 employees having resigned their membership with the Union (more than half prior to the October 13, 2019 strike).

Additionally, the Petitioner's evidence does not simply show that "some" employees failed to sign dues checkoff, the Petitioner can demonstrate that 130 employees either revoked their Union dues deduction authorization or did not ever authorize dues deduction.

Moreover, the Petitioner did not just demonstrate that "some" employees chose not to participate in the strike, the Petitioner provided evidence that almost all of its 142 active employees chose not to participate, and have crossed the picket line and are working during the strike.<sup>1</sup>

The remaining cases cited in your letter as supporting the dismissal of the RM Petition, besides being factually distinguishable, are inapposite as they were decided prior to *Levitz Furniture* using a higher standard of good faith belief, which was rejected by the Board in *Levitz Furniture* and replaced with a more lenient reasonable uncertainty standard.

Given our ruling above regarding withdrawals of recognition, we think it appropriate to reconsider the showing that we shall require for holding employer-requested elections. After careful consideration of all the options, we have decided to adopt the lower—uncertainty—standard. The Board and the courts have consistently said that Board elections are the preferred method of testing employees' support for unions. And we think that processing RM petitions on a lower showing of good-faith uncertainty will provide a more attractive alternative to unilateral action. By contrast, were we to require employers to demonstrate a higher showing of good-faith *belief* of lost majority support in order to obtain an RM election, as in *United States Gypsum*, we might encourage some employers instead to withdraw recognition rather than seeking an election. An employer who has enough evidence to establish a good-faith belief, though not necessarily enough to

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<sup>1</sup> All of the statistical information is contained in the Silver Bell employee list attached as Exhibit A. Per your February 5 request for employee information, Exhibit A is a copy of the employee list previously submitted as Exhibit 1 to the Affidavit of Stacy Sinele filed in support of the RM Petition, with the hire date added for each employee and "Revoked Dues Deduction" added to the "Date resigned from Union" column title to indicate, that unless otherwise noted, they are the same date. All employees hired after October 13, 2019 are permanent replacements.

**DAVIS & CAMPBELL L.L.C.**

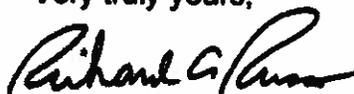
show loss of majority status, may be tempted to withdraw recognition in the hope of being able to make that showing in an unfair labor practice proceeding (and, in any event, ousting the union while the proceeding is pending). Thus, by liberalizing the standard for holding RM elections, we are promoting both employee free choice (by making it easier to ascertain employees' support for unions via Board elections) and stability in collective-bargaining relationships (which remain intact during representation proceedings).

*Levitz Furniture*, at 727.

Simply put, the objective evidence submitted by the Petitioner shows that nearly every employee at Silver Bell Mine, not just "some" employees, have taken affirmative measures to show their dissatisfaction with the Union and its failed representation of employees at Silver Bell Mine. Under the circumstances, in accordance with *Levitz Furniture*, the Petitioner has clearly established a good faith reasonable uncertainty as to the majority status of the Union at the Silver Bell Mine.

Therefore, in accordance with *Levitz Furniture*, the RM Petition should not be dismissed and the Silver Bell Mine employees should be afforded the opportunity, through a Board election, to exercise their free choice as to whether or not they want to continue to be represented by the Union.

Very truly yours,



Richard A. Russo

Empl ID	Last Name	First Name	Job Code Description	Department	Hire Date	Strike Status	Union Membership	Date Resigned from	
								Status	Union/Revoked Dues
302431	Alcozar	Paul	Heavy Truck Driver	Mine Operations	03/16/2017	Did Not Strike	Never Joined	Never Joined	Never Joined
303004	Andrade	Rene	Repairman 2nd Class	Plant Maintenance	05/20/2019	Did Not Strike	Never Joined	Never Joined	Never Joined
301468	Andrade	Fernando	Repairman 2nd Class	Plant Maintenance	01/28/2013	Did Not Strike	Resigned	6/24/2015	Never Joined
245047	Ayers	Gordon	Shovel Operator	Mine Operations	11/20/2000	Did Not Strike	Never Joined	Never Joined	Never Joined
302209	Baldazo	John	Mechanic 1st Class	Mine Maintenance	11/01/2015	Did Not Strike	Resigned	10/16/2019	Never Joined
302957	Ballard	Isaac	Mechanic 2nd Class	Mine Maintenance	03/25/2019	Did Not Strike	Never Joined	Never Joined	Never Joined
246450	Beam	Roger	Repairman 1st Class	Plant Maintenance	02/28/2006	Did Not Strike	Resigned	10/14/2019	Never Joined
247573	Belding	Anthony	Mechanic 1st Class	Mine Maintenance	08/21/2007	On Strike	Member	Not Applicable	Not Applicable
244669	Benitez	Servando	Leadman - Mechanic	Mine Maintenance	03/29/2000	Leave of Absence	Member	Not Applicable	Not Applicable
301121	Betancourt	Joseph	Heavy Truck Driver	Mine Operations	03/05/2012	Did Not Strike	Never Joined	Never Joined	Never Joined
302495	Brady	David	Electrician 1st Class	Electrical Maintenance	06/12/2017	Did Not Strike	Never Joined	Never Joined	Never Joined
302800	Brady	Michael	Heavy Truck Driver	Mine Operations	07/02/2018	Did Not Strike	Never Joined	Never Joined	Never Joined
302925	Campos	Joshua	Maintenance Laborer	Mine Maintenance	01/21/2019	Did Not Strike	Never Joined	Never Joined	Never Joined
302211	Campos	Juan	Leach Operator	SKEW Operations	11/09/2015	Did Not Strike	Resigned	6/20/2019	Never Joined
245767	Cancio	David	Leach Operator	SKEW Operations	08/02/2004	Did Not Strike	Resigned	6/23/2015	Never Joined
300662	Carlstedt	Scott	Heavy Truck Driver	Mine Operations	12/15/2010	Did Not Strike	Never Joined	Never Joined	Never Joined
247345	Case	Charles	EW Operator	SKEW Operations	06/04/2007	On Strike	Member	Not Applicable	Not Applicable
300730	Castillo	Mike	Heavy Truck Driver	Mine Operations	12/16/2019	Did Not Strike	Resigned	2/2/2015	Never Joined
302868	Castillo	Ramon	Mechanic 1st Class	Mine Maintenance	12/16/2019	Did Not Strike	Never Joined	Never Joined	Never Joined
302633	Cabrero	Jesus	Mechanic 1st Class	Mine Maintenance	12/04/2017	Did Not Strike	Resigned	10/16/2019	Never Joined
301858	Chrisman	James	Mechanic 1st Class	Mine Maintenance	02/03/2014	Did Not Strike	Resigned	10/15/2019	Never Joined
302157	Cline	Arthur	Heavy Truck Driver	Mine Operations	06/01/2015	Did Not Strike	Resigned	8/3/2017	Never Joined
302610	Coles	Coren	Maintenance Helper	Mine Maintenance	11/06/2017	On Strike	Member	Not Applicable	Not Applicable
247571	Connolly	Ryan	Mechanic 1st Class	Mine Maintenance	08/21/2007	On Strike	Member	Not Applicable	Not Applicable
240974	Cota	Robert	SKEW Helper	SKEW Operations	11/01/1994	Did Not Strike	Resigned	10/14/2019	Never Joined
302573	Crockwell	Marcos	Electrician 1st Class	Electrical Maintenance	09/25/2017	Did Not Strike	Resigned	11/28/2018	Never Joined
301733	Crowell	John	Heavy Truck Driver	Mine Operations	09/19/2013	Did Not Strike	Resigned	10/14/2019	Never Joined
246070	Cuevas	Alfred	Dozer Operator	Mine Operations	04/25/2005	Did Not Strike	Never Joined	Never Joined	Never Joined
302359	Cullen	Andrew	EW Operator	SKEW Operations	10/04/2016	Did Not Strike	Never Joined	Never Joined	Never Joined
302326	Cunnigham	Joseph	Mechanic 1st Class	Mine Maintenance	08/01/2016	Did Not Strike	Never Joined	Never Joined	Never Joined
302829	Daly	Shane	Heavy Truck Driver	Mine Operations	08/06/2018	Did Not Strike	Never Joined	Never Joined	Never Joined
246663	Davis	Michael	Dozer Operator	Mine Operations	05/15/2006	Did Not Strike	Never Joined	Never Joined	Never Joined
246845	Diaz	David	Dozer Operator	Mine Operations	07/10/2006	Did Not Strike	Never Joined	Never Joined	Never Joined
243908	Donahue	Heath	Shovel Operator	Mine Operations	01/25/1999	Did Not Strike	Never Joined	Never Joined	Never Joined
302212	Duarta	Bryan	Mechanic 1st Class	Mine Maintenance	11/09/2015	Did Not Strike	Resigned	10/15/2019	Never Joined
247624	Fickett	Brandon	Dozer Operator	Mine Operations	09/18/2007	Did Not Strike	Resigned	10/15/2014	Never Joined
302336	Fisher	William	Heavy Truck Driver	Mine Operations	02/15/2005	Did Not Strike	Resigned	12/7/2018	Never Joined
245971	Fisher	Jesus	Heavy Truck Driver	Mine Operations	09/08/2016	Did Not Strike	Never Joined	Never Joined	Never Joined
241926	Florence	Ridge	Welder 1st Class	Mine Maintenance	03/19/1996	Did Not Strike	Resigned	10/14/2019	Never Joined
246329	Foster	Steven	Dozer Operator	Mine Operations	01/09/2006	Did Not Strike	Resigned	3/18/2015	Never Joined
228785	Garcia	Santiago	Field Lubeman	Mine Maintenance	09/04/1979	Did Not Strike	Resigned	6/30/2015	Never Joined
302060	Garcia	Luis	Heavy Truck Driver	Mine Operations	09/02/2014	Did Not Strike	Never Joined	Never Joined	Never Joined
302828	Gibbens	Michael	SKEW Helper	SKEW Operations	08/06/2018	Did Not Strike	Resigned	10/17/2019	Never Joined
301350	Gonzales	Ruben	Heavy Truck Driver	Mine Operations	08/16/2012	On Strike	Member	Not Applicable	Never Joined
303087	Gonzalez	Claudio	SKEW Helper	SKEW Operations	08/19/2019	Did Not Strike	Never Joined	Never Joined	Never Joined
302758	Guevara	Javier	Welder 1st Class	Mine Maintenance	04/30/2018	Did Not Strike	Resigned	10/16/2019	Never Joined
301408	Gullilan	Henry	Rotary Drill Operator	Mine Operations	11/05/2012	Did Not Strike	Resigned	6/5/2018	Never Joined
245394	Gumhwong	Soonton	SX Operator	SKEW Operations	04/10/2002	Did Not Strike	Never Joined	Never Joined	Never Joined
302500	Hall	Richard	Mechanic 1st Class	Mine Maintenance	07/03/2017	Did Not Strike	Unknown	Revoked Dues 10/15/2019	Never Joined
302875	Henneman	Taylor	Mechanic 2nd Class	Mine Maintenance	10/22/2018	Did Not Strike	Never Joined	Never Joined	Never Joined
303040	Hernandez	Christian	Electrician 2nd Class	Electrical Maintenance	07/08/2019	Did Not Strike	Never Joined	Never Joined	Never Joined
302869	Hernandez	Jeremiah	Mechanic 1st Class	Mine Maintenance	10/15/2018	Did Not Strike	Never Joined	Never Joined	Never Joined
302733	Hinkle	Thomas	Heavy Truck Driver	Mine Operations	04/02/2018	Did Not Strike	Never Joined	Never Joined	Never Joined
303142	Howard	Chaz	SKEW Laborer	SKEW Operations	10/21/2019	Did Not Strike	Never Joined	Never Joined	Never Joined
303110	Iniguez	Gilberto	SKEW Helper	SKEW Operations	09/18/2019	Did Not Strike	Never Joined	Never Joined	Never Joined
300796	James	Kerry	EW Operator	SKEW Operations	05/23/2011	On Strike	Member	Not Applicable	Never Joined
302856	Jost	Anthony	Mechanic 2nd Class	Mine Maintenance	09/17/2018	Return to Work	Member	Not Applicable	Never Joined
245215	Kerton	David	SX Operator	SKEW Operations	03/05/2001	Did Not Strike	Resigned	6/2/2015	Never Joined
302685	Kelly	Geoffrey	Repairman 1st Class	Plant Maintenance	02/12/2018	Did Not Strike	Never Joined	Never Joined	Never Joined
244949	Kent	Russel	Shovel Operator	Mine Operations	09/20/2000	Did Not Strike	Never Joined	Never Joined	Never Joined
245365	Kohler	Christopher	Heavy Truck Driver	Mine Operations	12/10/2001	Did Not Strike	Resigned	5/2/2019	Never Joined
301449	Kratovich	Richard	Heavy Truck Driver	Mine Operations	01/14/2013	Did Not Strike	Never Joined	Never Joined	Never Joined
245942	Lang	Boyd	Shovel Operator	Mine Operations	01/05/2005	Did Not Strike	Never Joined	Never Joined	Never Joined
302442	Lantz	Ricky	Heavy Truck Driver	Mine Operations	04/03/2017	Did Not Strike	Never Joined	Never Joined	Never Joined
303214	Laymon	Nikolaus	Mechanic 2nd Class	Mine Maintenance	01/06/2020	Did Not Strike	Never Joined	Never Joined	Never Joined
302794	Lerika	Robert	Electrician 3rd Class	Electrical Maintenance	07/02/2018	Did Not Strike	Resigned	10/14/2019	Never Joined
246507	Leonard	James	Leadman - Mechanic	Mine Maintenance	03/21/2006	Did Not Strike	Resigned	9/7/2010	Never Joined
302672	Looney	Kyle	EW Operator	SKEW Operations	01/22/2018	Did Not Strike	Resigned	6/24/2019	Never Joined
301102	Lopez	Jesus	Mechanic 1st Class	Mine Maintenance	01/30/2012	Did Not Strike	Resigned	4/10/2018	Never Joined
300924	Lopez	Jesus	Rotary Drill Operator	Mine Operations	08/08/2011	Did Not Strike	Resigned	7/10/2013	Never Joined
302801	Lovelace	Wayne	Heavy Truck Driver	Mine Operations	07/06/2018	Did Not Strike	Never Joined	Never Joined	Never Joined

301509	Ludwig	Joseph	Mechanic 1st Class	Mine Maintenance	03/18/2013	Did Not Strike	Resigned	7/7/2015
247378	Maggard	Matthew	Mechanic 1st Class	Mine Maintenance	06/18/2007	Did Not Strike	Resigned	10/14/2019
243049	Majalca	Reno	Shovel Operator	Mine Operations	07/08/1997	Did Not Strike	Resigned	5/19/2010
301377	Marquis	Jason	Leadman - Leach	SKEW Operations	09/17/2012	Did Not Strike	Resigned	6/23/2015
300906	McCaleb	Jonathan	Heavy Truck Driver	Mine Operations	07/25/2011	Did Not Strike	Never Joined	Never Joined
302385	McCurdy	Tara	Heavy Truck Driver	Mine Operations	11/07/2016	Did Not Strike	Resigned	10/16/2019
301513	McCurdy	Luke	Rotary Drill Operator	Mine Operations	03/20/2013	Did Not Strike	Never Joined	Never Joined
241999	McDonald	William	Leach Operator	SKEW Operations	04/16/1996	Did Not Strike	Resigned	12/7/2017
302684	McKay	William	Welder 1st Class	Mine Maintenance	02/12/2018	Did Not Strike	Never Joined	Never Joined
246508	Mendoza	Manuel	EW Operator	SKEW Operations	03/21/2006	Did Not Strike	Resigned	10/14/2019
302443	Molinar	Phillip	Leach Operator	SKEW Operations	04/03/2017	Did Not Strike	Resigned	10/15/2019
302168	Munoz	Ronald	Welder 1st Class	Mine Maintenance	07/13/2015	Did Not Strike	Resigned	10/8/2019
301470	Murphy	Katherine	Heavy Truck Driver	Mine Operations	02/04/2013	Did Not Strike	Resigned	8/1/2019
302005	Murphy	Michael	Rotary Drill Operator	Mine Operations	06/16/2014	Did Not Strike	Never Joined	Never Joined
302156	Owendine	Daryl	Heavy Truck Driver	Mine Operations	06/01/2015	Did Not Strike	Resigned	8/1/2017
302638	Perez	Robert	EW Operator	SKEW Operations	12/11/2017	Did Not Strike	Resigned	10/14/2019
303143	Petty, Jr.	Aaron	Mechanic 2nd Class	Mine Maintenance	10/21/2019	Did Not Strike	Never joined	Never Joined
247978	Pinedo	Raul	Welder 1st Class	Mine Maintenance	06/02/2008	Did Not Strike	Unknown	Revoked Dues 10/16/2018
302865	Pitts	Joseph	Electrician 1st Class	Electrical Maintenance	10/01/2018	Did Not Strike	Never Joined	Never Joined
302379	Platt	John	EW Operator	SKEW Operations	10/24/2016	Did Not Strike	Resigned	1/15/2019
302636	Polanco	Alberto	Heavy Truck Driver	Mine Operations	12/11/2017	On Strike	Member	Not Applicable
302855	Price	Ryan	Heavy Truck Driver	Mine Operations	09/17/2018	Did Not Strike	Never Joined	Never Joined
302057	Prince	Kathy	Heavy Truck Driver	Mine Operations	08/25/2014	Did Not Strike	Never Joined	Never Joined
245393	Quick	Corbin	SX Operator	SKEW Operations	04/10/2002	Did Not Strike	Never Joined	Never Joined
245654	Quilbats	Adam	EW Operator	SKEW Operations	05/05/2004	Did Not Strike	Resigned	9/5/2019
300768	Ramos	Daniel	Heavy Truck Driver	Mine Operations	04/18/2011	Did Not Strike	Never Joined	Never Joined
302724	Ramos Lopez	Humberto	Welder 1st Class	Mine Maintenance	03/19/2018	Did Not Strike	Never Joined	Never Joined
302990	Raney	Nolan	Heavy Truck Driver	Mine Operations	05/13/2019	Did Not Strike	Never Joined	Never Joined
246364	Rangel	Gilberto	SX Operator	SKEW Operations	01/23/2006	Did Not Strike	Resigned	10/14/2019
247131	Reynolds	Mason	Repairman 1st Class	Plant Maintenance	02/08/2007	Did Not Strike	Resigned	7/15/2013
246285	Romero	Gutierrez	Mechanic 1st Class	Mine Maintenance	12/19/2005	Did Not Strike	Resigned	10/16/2019
301832	Rosette	Thomas	Heavy Truck Driver	Mine Operations	01/06/2014	Did Not Strike	Never Joined	Never Joined
247429	Roybal	Margaret	Mechanic 1st Class	Mine Maintenance	07/09/2007	Did Not Strike	Resigned	10/16/2019
242730	Roybal	Sabino	Welder 1st Class	Mine Maintenance	05/06/1997	Did Not Strike	Resigned	8/15/2014
303213	Saldivar	Christian	SKEW Laborer	SKEW Operations	01/06/2020	Did Not Strike	Never Joined	Never Joined
241294	Sanger	Douglas	Leadman - Repair	Plant Maintenance	04/25/1995	Did Not Strike	Resigned	12/5/2016
246041	Santacruz	Ronald	Dozer Operator	Mine Operations	04/11/2005	Did Not Strike	Resigned	7/1/2015
245213	Schuetz	Gregory	Sampler	SKEW Operations	03/05/2001	On Strike	Member	Not Applicable
300911	Schumacher	Mark	Heavy Truck Driver	Mine Operations	08/01/2011	Did Not Strike	Never Joined	Never Joined
302956	Schwisow	Michael	Welder 1st Class	Mine Maintenance	03/19/2019	Did Not Strike	Resigned	10/14/2019
244607	Schwizer	Robert	Shovel Operator	Mine Operations	02/08/2000	Did Not Strike	Resigned	8/1/2002
248419	Sherrill	Jody	Dozer Operator	Mine Operations	02/13/2006	Did Not Strike	Never Joined	Never Joined
245973	Silva	Henry	Shovel Operator	Mine Operations	02/14/2005	Did Not Strike	Never Joined	Never Joined
246510	Smith	Daniel	Leadman - Leach	SKEW Operations	03/27/2006	Did Not Strike	Resigned	10/15/2019
302723	Spencer	Jason	Heavy Truck Driver	Mine Operations	03/19/2018	Did Not Strike	Never Joined	Never Joined
303212	Spencer	Ryan	SKEW Laborer	SKEW Operations	01/06/2020	Did Not Strike	Never Joined	Never Joined
302876	Stahlkopf	German	Heavy Truck Driver	Mine Operations	10/22/2018	Did Not Strike	Resigned	10/14/2019
302296	Stahlkopf	German	Heavy Truck Driver	Mine Operations	06/08/2016	Did Not Strike	Never Joined	Never Joined
302637	Steen	Mark	Mechanic 1st Class	Mine Maintenance	12/11/2017	Did Not Strike	Never Joined	Never Joined
246546	Stewart	Randy	Dozer Operator	Mine Operations	04/10/2006	Did Not Strike	Resigned	10/17/2019
300931	Swisher	Billy	Powderman	Mine Operations	08/15/2011	Did Not Strike	Never Joined	Never Joined
300568	Telles	Michelle	Heavy Truck Driver	Mine Operations	09/20/2010	Did Not Strike	Never Joined	Never Joined
300115	Telles	Daniel	Heavy Truck Driver	Mine Operations	09/08/2008	Did Not Strike	Never Joined	Never Joined
302588	Teran	Victor	Electrician 1st Class	Electrical Maintenance	10/23/2017	Did Not Strike	Never Joined	Never Joined
302279	Thompson	Kenneth	Mechanic 1st Class	Mine Maintenance	05/09/2016	Did Not Strike	Never Joined	Never Joined
246069	Tinderholt	Brian	Shovel Operator	Mine Operations	04/25/2005	Did Not Strike	Never Joined	Never Joined
302309	Trujillo	Steffan	Electrician 1st Class	Electrical Maintenance	07/06/2016	On Strike	Member	Not Applicable
300732	Tucher	Clint	Repairman 1st Class	Plant Maintenance	02/28/2011	Did Not Strike	Resigned	10/14/2019
302624	Valencia	Isidro	Maintenance Helper	Mine Maintenance	11/27/2017	Return to Work	Resigned	10/28/2019
242449	Valencia	Isidro	Repairman 2nd Class	Plant Maintenance	12/17/1996	Return to Work	Member	Not Applicable
303039	Valenzuela	Daniel	Electrician 2nd Class	Electrical Maintenance	07/08/2019	Did Not Strike	Never Joined	Never Joined
302380	Valenzuela	Frank	Leach Operator	SKEW Operations	11/01/2016	Did Not Strike	Resigned	10/14/2019
302308	Vasquez	Julian	Leach Operator	SKEW Operations	07/05/2016	Did Not Strike	Resigned	10/10/2018
302352	Volle-Schoch	Chance	EW Operator	SKEW Operations	09/07/2016	On Strike	Member	Not Applicable
236506	Wagster	David	Dozer Operator	Mine Operations	01/12/1989	Did Not Strike	Never Joined	Never Joined
302882	Weakley	Clyde	SKEW Helper	SKEW Operations	10/29/2018	Leave of Absence	Member	Not Applicable
242587	White	Kevin	Electrician 1st Class	Electrical Maintenance	03/04/1997	Did Not Strike	Resigned	7/13/2013
302480	Witt	Samuel	Powderman	Mine Operations	05/22/2017	Did Not Strike	Never Joined	Never Joined
243805	Woelkecke	Karl	Heavy Truck Driver	Mine Operations	09/28/1998	Did Not Strike	Never Joined	Never Joined
302506	Wynns	Christopher	Welder 1st Class	Mine Maintenance	07/10/2017	On Strike	Resigned	10/14/2019
300668	Yount	Matthew	Heavy Truck Driver	Mine Operations	01/04/2011	Did Not Strike	Never Joined	Never Joined
302729	Zitske	Lyle	Heavy Truck Driver	Mine Operations	03/23/2018	Did Not Strike	Never Joined	Never Joined
302153	Zitske	Lyle	Leadman - Electrician	Electrical Maintenance	05/11/2015	Did Not Strike	Resigned	11/28/2018
302632	Zuna	Robert	Heavy Truck Driver	Mine Operations	12/04/2017	Did Not Strike	Resigned	10/15/2019

# **EXHIBIT 7**



UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD

REGION 28  
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Suite 1400  
Phoenix, AZ 85004

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March 5, 2020

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Re: ASARCO LLC and  
Silver Bell Mining LLC  
Case 28-RM-255301

Dear Counsel:

The above-captioned case, petitioning for an investigation and determination of representative under Section 9(c) of the National Labor Relations Act, has been carefully investigated and considered.

***Decision to Dismiss:*** As a result of the investigation, I find that further proceedings on the petition are not warranted.

An employer representation (RM) petition must be supported by evidence that the employer possesses a good-faith reasonable uncertainty concerning the union's continued majority status. *Levitz Furniture Co. of the Pacific, Inc.*, 333 NLRB 717, 717 (2001) (*Levitz*). ASARCO LLC and Silver Bell Mining LLC (the Petitioners) have failed to present such evidence.

In support of their claim of good-faith reasonable uncertainty, the Petitioners submitted non-Board affidavits from supervisors for the Petitioners attesting to the following:

- most unit employees have not participated in a strike called by the Union, and some have abandoned the strike;
- on information and belief, most unit employees are not members of the Union and do not pay dues, including some who resigned before the strike began and some who resigned after the strike began; and

- a very small minority of unit employees have expressed dissatisfaction with the Union to supervisors for the Petitioners.

It is well-established that employees' non-participation in a strike or abandonment of a strike does not necessarily indicate that the employees no longer want to be represented by their union. *Alexander Linn Hospital Association*, 288 NLRB 103 (1988), *enfd.*, *NLRB v. Wallkill Valley General Hospital*, 866 F.2d 632 (3d Cir. 1989); *Curtin Matheson Scientific*, 287 NLRB 350, 352 (1987), *enf. denied*, 859 F.3d 362 (5th Cir. 1988), *rev'd and remanded*, 494 U. S. 775 (1990), *enfd. on remand*, 905 F.2d 871 (5th Cir. 1990). Employees may choose not to participate in a strike for reasons other than a desire not to be represented for a union. *Id.* For example, they may still want to be represented by their union but choose not to participate in a strike for financial reasons: they may not be in a position to incur the loss of income and employment benefits resulting from participation in a strike, or they may fear temporary or permanent loss of employment or other negative consequences due to replacement or unlawful retaliation. *Id.* Further, they may still want to be represented by their union but not participate in a strike because they do not agree with the objectives of that particular strike or with the use of a strike as a means to achieve those objectives. *Id.*

It is also well-established that employees' non-membership in a union, resignation from membership in a union, or choice not to authorize automatic dues check-off does not necessarily indicate that the employees no longer want to be represented by their union. *Marion Hospital Corporation*, 335 NLRB 1016, 1018-1019 (2001), *enfd.*, 321 F.3d 1178 D.C. Cir. 2003); *Kuno Steel Products Corp.*, 252 NLRB 904, 904-905 (1980), *enfd. in relevant part*, *NLRB v. Koenig Iron Works*, 681 F.2d 130 (2d Cir. 1982); *Terrell Machine Company*, 173 NLRB 1480, 1481 (1969), *enfd.*, 427 F.2d 1088 (4th Cir. 1970), *cert. denied*, 398 U.S. 929 (1970). Employees may choose not to be members of a union, to resign from membership in a union, or not to authorize automatic dues check-off but still want to be represented by their union. *Id.* For example, they may still want to be represented by their union but not incur the cost of dues; they may still want to be represented by their union but choose not to become members or choose to resign to avoid fines for not participating in a strike; or they may want to be represented by their union and may in fact be members but choose to pay their dues directly to their union and not with their employer as an intermediary. *Id.*

Finally, limited or vague employee statements of dissatisfaction are not sufficient to support an RM petition if, based on the number of statements made or the nature of the statements, they do not reliably establish good-faith uncertainty as to a union's continued majority status. *Levitz*, 333 NLRB at 729, citing *Henry Bierce Company*, 328 NLRB 646 (1999), *affd. and remanded* 234 F.3d 1268 (6th Cir. 2000), and *Scepter Ingot Castings, Inc.*, 331 NLRB 1509 (2000); see also *Horizon Health Developmental Services, Inc.*, 337 NLRB 22, 23-26 (2001); *Transpersonnel, Inc.*, 336 NLRB 484 (2001), *enfd.*, 349 F.3d 175 (4th Cir. 2003). The testimony of the Petitioners' supervisors only establishes that a very small minority of unit employees have made statements about their dissatisfaction with the Union.

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Having considered all of the evidence submitted by the Petitioners as a whole, I find that the Petitioners have not established good-faith reasonable uncertainty as to the Union's continued majority status.

Accordingly, I am dismissing the petition in this matter.

***Right to Request Review:*** Pursuant to Section 102.67 of the National Labor Relations Board's Rules and Regulations, you may obtain a review of this action by filing a request with the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. The request for review must contain a complete statement of the facts and reasons on which it is based.

***Procedures for Filing Request for Review:*** Unless otherwise permitted under Section 102.5 of the Board's Rules and Regulations, a request for review must be filed electronically (E-Filed) on the Board's website ([www.nlr.gov](http://www.nlr.gov)) by following the instructions on the website. If a request for review is filed electronically, it will be considered timely filed if the transmission of the entire document through the Agency's website is **accomplished by no later than 11:59 p.m. Eastern Time on March 19, 2020**. To file electronically, once the Board's website is accessed, click on E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt of the request for review rests exclusively with the sender. A failure to timely file the request for review will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off line or unavailable for some other reason, absent a determination of technical failure of the site, with notice of such posted on the website.

A party that files a request for review in paper format must accompany the filing with a statement explaining why the party does not have access to the means for filing electronically or why filing electronically would impose an undue burden. If a request for review is filed in paper format it will be considered timely filed if it is received by the Executive Secretary of the Board in Washington, DC, by the close of business (**5:00 p.m. Eastern Time**) on **March 19, 2020**.

Section 102.5 of the Board's Rules does not permit a request for review to be filed by facsimile transmission.

A copy of the request for review must be served on each of the other parties to the proceeding, as well as on the undersigned, in accordance with the requirements of the Board's Rules and Regulations.

Upon good cause shown, the Board may grant special permission for a longer period within which to file a request for review. A request for extension of time, which may also be filed electronically, should be submitted to the Executive Secretary in Washington, and a copy of such request for extension of time should be submitted to the Regional Director and to each of the other parties to this proceeding. A request for an extension of time must include a statement that a copy has been served on the Regional Director and on each of the other

March 5, 2020

parties to this proceeding in the same manner or a faster manner as that utilized in filing the request with the Board.

Very truly yours,



Cornele A. Overstreet  
Regional Director

cc: Office of the Executive Secretary (by e-mail)

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