The Region submitted this Section 8(a)(5) withdrawal-of-recognition case for advice on whether employee ratification was a condition precedent to the renewal of the parties’ contract. We conclude that no contract was in effect when the Employer withdrew recognition and the charge should be dismissed, absent withdrawal.

The Employer and the Union were parties to a collective-bargaining agreement, which was set to expire on July 7, 2020. Articles XIII and XIV of the contract—covering health benefits and wages, respectively—stated they were “[e]ffective upon ratification.” On June 24, 2020, the parties executed an MOA adopting all language from the expiring CBA—including the “[e]ffective upon ratification” language—except the modifications detailed in the MOA. Notably, the main modifications were updates to Articles XIII and XIV concerning wage rates and health and welfare contributions. At the conclusion of the meeting, the Union’s business agent stated would schedule a ratification vote with employees, which was held on June 28-29. The ballot read as follows:

REJECTION OF THE CONTRACT MUST BE BY A 50% PLUS 1 VOTE, WHICH WILL RESULT IN A STRIKE. IF 50% OF THE EMPLOYEES REFUSE TO HONOR THE PICKET LINE, WE WILL CONSIDER THE CONTRACT RATIFIED AND IT WILL BE SIGNED.

After employees rejected the contract, the business agent immediately informed the employer on June 29 of the result, stating, “let’s get together because a strike was not good for anyone.” Later that day, the business agent told the Employer that, regardless of the result of the vote, the MOA was enforceable. On July 6, the Employer notified the Union that, effective July 7, it was withdrawing recognition as it had received and accepted an employee petition signed by 18 out of the 20 unit employees expressly stating they no longer wished to be represented by the Union.

It is well established that a union and an employer may agree that employee ratification is a necessary pre-condition to a collective-bargaining agreement. See, e.g., Hertz Corp., 304 NLRB 469, 469 (1991) (express oral bilateral agreement to submit parties’ negotiated contract to ratification vote). Here, the record contains strong indications of such an agreement. First, the only substantive changes from the expiring agreement reflected in the MOA were updates to wage rates and health and welfare contributions, both of which were clearly subject to employee ratification before becoming effective in a new collective-bargaining agreement, and there is no question that the employees voted down this agreement, and no strike occurred rendering it impossible to determine whether 50 per cent of the employees would refuse to honor the picket line. Cf. Personal Optics, 342 NLRB 958, 962-63 (2004) (finding full-unit ratification not condition precedent to final agreement despite proposed contract provisions including “ratification bonus” and fifteen-cent raise “upon ratification,” where parties also referred to bonus as “signing bonus,” parties never discussed how ratification would occur, union consistently maintained ratification was internal matter, and ratification occurred when employees on negotiating committee unanimously accepted the
agreement), enforced mem., 165 F. App’x 1 (D.C. Cir. 2005). Second, the business agent’s initial statement to the Employer after the ratification vote failed—that the parties should return to the bargaining table to avoid a strike—also suggests that ratification was a prerequisite to a final agreement.

Additionally, even if ratification technically was not a prerequisite to the parties reaching an agreement on a contract, the Union’s conduct calls into question whether the parties had concluded bargaining and reached a complete agreement. To determine whether parties have indeed concluded bargaining, certain “hallmark” words and actions typically signal that negotiations have finished and the parties have reached an agreement. See Teamsters Local No. 771 (Ready-Mix Concrete), 357 NLRB 2203, 2207 (2011) (finding it “obvious” that the parties had reached an agreement when they concluded their meeting “with handshakes and mutual expressions of satisfaction on the successful outcome of their [contract negotiations]”); ABM Parking Services, 360 NLRB 1191, 1204 (2014) (finding parties concluded their agreement as shown by mutual congratulations). Here, the Union’s conduct after the ratification vote suggested the opposite. The Union’s request to go back to the bargaining table was hardly a “mutual expression of satisfaction on the successful outcome” of negotiations. Further, the Union’s warning of a potential strike indicates its belief that the parties had not reached a new contract because, per the language of the MOA, a new contract would have incorporated the expiring contract’s no-strike clause.

In these circumstances, without an agreement in place or evidence of Employer interference in the employees’ disaffection petition, the allegation that the Employer unlawfully withdrew recognition should be dismissed, absent withdrawal.

This email closes the case in Advice.