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NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

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ALLENTOWN MACK SALES & SERVICE, INC. *v.* NATIONAL LABOR RELATIONS BOARD

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 96–795. Argued October 15, 1997– Decided January 26, 1998

Mack Trucks, Inc., sold its Allentown, Pennsylvania, branch to petitioner Allentown Mack Sales, Inc. Allentown thereafter operated as an independent dealership, employing 32 of the original 45 Mack employees. Although the Mack branch's service and parts employees had been represented by Local Lodge 724 of the machinists' union, a number of Mack employees suggested to the new owners, both before and immediately after the sale, that the union had lost their support or the support of bargaining-unit members generally. Allentown refused Local 724's request for recognition and for commencement of collective-bargaining negotiations, claiming a good-faith reasonable doubt as to the union's support; it later arranged an independent poll of the employees, who voted 19 to 13 against the union. The union then filed an unfair-labor-practice charge with the National Labor Relations Board. Under longstanding Board precedent, an employer who entertains a good-faith reasonable doubt whether a majority of its employees supports an incumbent union has three options: to request a formal, Board-supervised election, to withdraw recognition from the union and refuse to bargain, or to conduct an internal poll of employee support for the union. The Administrative Law Judge (ALJ) held, *inter alia*, that because Allentown lacked an "objective reasonable doubt" about Local 724's majority status, the poll violated §§8(a)(1) and 8(a)(5) of the Act. The Board agreed and ordered petitioner to recognize and bargain with the union. The Court of Appeals enforced the order.

Held: The Board's "good-faith reasonable doubt" test for employer polling is facially rational and consistent with the Act, but its factual finding that Allentown lacked such a doubt is not supported by sub-

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stantial evidence on the record as a whole. Pp. 3–21.

(a) This Court rejects Allentown's contention that, because the "good-faith reasonable doubt" standard for polls is the same as the standard for unilateral withdrawal of recognition and for employer initiation of a Board-supervised election, the Board irrationally permits employers to poll only when it would be unnecessary and legally pointless to do so. While the Board's adoption of this unitary standard is in some respects puzzling, it is not so irrational as to be "arbitrary [or] capricious" under the Administrative Procedure Act. Although it makes polling useless as a means of insulating withdrawal of recognition against an unfair-labor-practice charge, there are other reasons why an employer would wish to conduct a poll. Similarly, although the Board's avowed preference for Board-supervised elections over polls should logically produce a more rigorous standard for polling, there are other reasons why that standard ought to be *less* rigorous; since it would be rational to set the polling standard either higher or lower than the threshold for a Board-supervised election, it is not irrational for the Board to split the difference. Pp. 3–6.

(b) On the evidence presented, a reasonable jury could not have found that Allentown lacked a "good-faith reasonable doubt" about whether Local 724 enjoyed continuing employee support. The Board's contrary finding rests on a refusal to credit probative circumstantial evidence, and on evidentiary demands that go beyond the substantive standard the Board purports to apply. Accepting the Board's concession that Allentown did receive reliable information that 7 of the 32 bargaining-unit employees did not support the union, the remaining 25 would have had to support the union by a margin of 17 to 8– a ratio of more than 2 to 1– if the union commanded majority support. The statements of various employees proffered by Allentown would cause anyone to doubt that degree of support, and neither the Board nor the ALJ discussed any evidence that Allentown should have weighed on the other side. The Board cannot covertly transform its presumption of continuing majority support into a working assumption that *all* of a successor's employees support the union until proved otherwise. Pp. 6–12.

(c) This Court need not determine whether, as Allentown asserts, the Board has consistently rejected or discounted similarly probative evidence in prior cases. Such a practice could not cause "good-faith reasonable doubt" to mean something more than what the phrase connotes, or render irrelevant to the Board's decision any evidence that tends to establish the existence of a good-faith reasonable doubt. Pp. 12–21.

83 F. 3d 1483, reversed and remanded.

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SCALIA, J., delivered the opinion for a unanimous Court with respect to Part I, the opinion of the Court with respect to Part II, in which STEVENS, SOUTER, GINSBURG, and BREYER, JJ., joined, and the opinion of the Court with respect to Parts III and IV, in which REHNQUIST, C. J., and O'CONNOR, KENNEDY, and THOMAS, JJ., joined. REHNQUIST, C. J., filed an opinion concurring in part and dissenting in part, in which O'CONNOR, KENNEDY, and THOMAS, JJ., joined. BREYER, J., filed an opinion concurring in part and dissenting in part, in which STEVENS, SOUTER, and GINSBURG, JJ., joined.