

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

DANA CORPORATION

Employer

and

Case 8-RD-1976

CLARICE K. ATHERHOLT

Petitioner

and

INTERNATIONAL UNION, UNITED  
AUTOMOBILE, AEROSPACE AND  
AGRICULTURAL IMPLEMENT  
WORKERS OF AMERICA, AFL-CIO  
Union

METALDYNE CORPORATION (METALDYNE  
SINTERED PRODUCTS)

Employer

and

Cases 6-RD-1518  
6-RD-1519

ALAN P. KRUG AND JEFFREY A. SAMPLE

Petitioners

and

INTERNATIONAL UNION, UNITED  
AUTOMOBILE, AEROSPACE AND  
AGRICULTURAL IMPLEMENT  
WORKERS OF AMERICA, AFL-CIO  
Union

---

**AMICUS BRIEF  
ON BEHALF OF KAISER FOUNDATION HEALTH PLAN, INC.**

This amicus brief is filed on behalf of Kaiser Foundation Health Plan, Inc., and its subsidiary and affiliated organizations (collectively referred to herein as "the Kaiser Permanente Medical Care Program" or "Kaiser Permanente").

## Introduction

The Kaiser Permanente Medical Care Program provides or arranges primarily pre-paid medical and hospital services to over eight million Health Plan members in nine states and the District of Columbia. Kaiser Permanente organizations have over 128,000 non-physician employees, of whom nearly 97,000 are represented by 36 labor organizations in 54 bargaining units.

Most of the relationships between Kaiser Permanente organizations and the unions that represent their employees have been in existence for at least a quarter of a century. A substantial majority of the represented employees are in bargaining units that have existed for more than fifty years. Some of these units were established through NLRB elections, while others were established through card counts or other non-Board processes. Regardless of how the units were created, these bargaining relationships generally have proven to be stable, productive, and beneficial to the employers, the employees, and the unions that represent them.

## Use of Neutrality and Card Check Agreements

Approximately eight years ago, Kaiser Permanente and 26 of the unions that represent Kaiser Permanente employees agreed to cooperate in establishing and maintaining a labor-management environment that enabled employees and the unions that represent them to participate more actively in improving the quality of their work lives and assuring that Kaiser Permanente's Health Plan members received the best possible attention and care. The parties also recognized that the protracted and often adversarial NLRB election processes frequently undermined the ability of everyone involved to focus on the primary mission of providing quality health care. Accordingly, Kaiser Permanente and the unions agreed to use neutrality and card count agreements as the primary means of determining whether unrepresented employees wish to be represented by one of those unions. As the parties explained in their agreement, doing so reflected "the intention of the parties that employees' desire for exclusive bargaining representation be resolved in the most expeditious manner possible".

Since that time, there have been 23 neutrality and card check agreements entered into between Kaiser Permanente organizations and different unions in nine states. In 18 instances, a majority of the employees in the agreed-upon units selected union representation. In 5 cases, the card counts resulted in the establishment of new bargaining units. In 13 others, the employees who selected union representation became part of an existing unit. In the remaining 5 cases the union involved did not obtain a card majority, and the employees involved remained unrepresented.

The neutrality and card count agreements have had a number of common features meant to assure employee free choice:

- The use of mediation or binding arbitration to expeditiously resolve appropriate unit and union composition disputes without the necessity of protracted litigation;
- Guidelines for union communication with employees in the proposed unit to assure that the employees are fully informed concerning the purposes for which a signed authorization card will be used;
- Requirements that the union use authorization cards that clearly state that the signed card will be used to determine the union's majority status without a NLRB-conducted election;
- The use of a federal mediator or neutral arbitrator conversant with NLRA requirements to oversee the process, resolve disputes, and conduct the card count; and,
- Processes by which employees can rescind their signed authorization card by notifying the neutral overseer.

It has been Kaiser Permanente's experience that the results of card counts held under these agreements have reflected the free, voluntary and non-coercive choice of a majority of employees in the proposed units. Additional features of the neutrality and card count agreements, such as employer neutrality, union commitments to refrain from soliciting support by denigrating the employer, union agreements to forgo strikes, picketing or corporate campaigns, and an expedited dispute resolution process have helped minimize disruption or distraction, promote stable and harmonious relationships between all parties, and provided a positive foundation for productive collective bargaining. These objectives are particularly important in the health care industry, where the attention of management, employees and labor organizations needs to be focused on providing the best quality care and service to patients and consumers.

### The Effect of the Recognition Bar

The recognition bar, as historically recognized and applied by the NLRB, has been essential to ensuring that the neutrality and card count agreements support the twin objectives of employee free choice and minimizing disruption and delay. It has permitted the parties a reasonable period of time to negotiate a collective bargaining agreement and for the union to submit it to a ratification vote of the employees without the concern that the process will be delayed, influenced or sidetracked by the filing of a petition for decertification or for representation by another union, either of which can have significant destabilizing effects in a workplace. It has promoted mature and responsible collective bargaining by ensuring that employees can evaluate an entire collective bargaining agreement negotiated by their chosen representative without the distraction of simultaneously deciding whether to remove or replace that representative.

In this way, the vote on a complete, negotiated contract (rather than speculation as to what the terms of the contract might be) is the point at which the employees evaluate the actual effectiveness of their chosen representative. If they are satisfied, then the contract is ratified and a contract bar becomes effective until the statutory window period. If they are not satisfied, or if the union is unable to negotiate an agreement within a reasonable period of time (but no longer than a year) after it is recognized, the Board's long-standing recognition bar doctrine provides the employees with a near-immediate opportunity to seek a NLRB election if they desire one.

Accordingly, there would appear to be no benefit to either employee free choice or stable and harmonious labor relations by the elimination, modification (through an immediate window period) or reduction of the recognition bar period as applied to situations where an employer has voluntarily and lawfully recognized a union pursuant to a neutrality and card check agreement. To the contrary, the effects of such changes are likely to be disruptive and destabilizing, without any compensating benefit to workplace democracy.

### Conclusion

Based on the foregoing, it is the position of the Kaiser Permanente Medical Care Program that the Board's longstanding recognition bar doctrine has worked well to effectuate the purposes and policies of the Act. Accordingly, we would urge the NLRB to continue to apply that doctrine in all instances of lawful non-Board recognitions, including in situations involving neutrality and card check agreements between employers and unions.

Respectfully submitted,

KAISER FOUNDATION HEALTH PLAN, INC.

By: \_\_\_\_\_  
Ronald E. Goldman  
Senior Counsel

DATED: July 13, 2004

cc: Steve Zatkan  
Kathy Aure  
Judi Saunders  
Leslie Margolin  
Rob Worrall  
Diana O. Ceresi, SEIU