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July 14, 2004

via e-Gov and U.S. mail

Lester A. Heltzer
Executive Secretary
Office of the Executive Secretary
National Labor Relations Board
1099 14th Street, N.W.
Washington, D.C. 20570-0071

Re: Dana Corporation, et al.,
Case No. 8-RD-1976
and Metaldyne Corporation, et al.,
Cases No. 6-RD-1518 and 6-RD-1519

Dear Mr. Heltzer,

We are requesting to submit this amicus brief letter pursuant to the National Labor Relations Board's June 14, 2004 invitation to file amicus briefs in the above-captioned cases. It has been served by facsimile on the parties listed on the attached sheet.

My name is Adrienne Eaton and I am Professor of Labor Studies and Employment Relations at Rutgers University. I earned my Ph.D. in Industrial Relations from the University of Wisconsin in 1988. Along with Prof. Jill Kriesky, Wheeling Jesuit University (Ph.D., Economics, University of New Hampshire, 1988), I have conducted extensive research on neutrality and card check agreements over the last several years.

We are writing because we believe this research is relevant to the above-cited cases, and in particular, the legitimacy of the card check process in conveying the interests of the employees. The initial phase of this research included interviews with union representatives about their experiences negotiating and organizing under neutrality and card check agreements. Some of the results of this research were published in the peer reviewed publication, Industrial and Labor Relations Review (October 2001). The following results seem most relevant to issues raised by the Dana and Metaldyne cases:

-The assertion is sometimes made that card check provides no supervision of the

procedure by which employees make their representation decision. We found the opposite to be true. Almost all (62 of the 71 respondents answering the question) of the card check agreements that we studied provided for certification of the cards by a third party neutral, most typically an arbitrator.

–The widespread use of illegal campaign behavior by employers during union organizing drives under the NLRA is well-documented. These tactics were reported far less frequently in card check campaigns. For instance, prior research by a number of scholars has indicated that between 24 and 32% of election campaigns involve the discharge of union supporters. Only 8.7% of card check campaigns involve such discharges.

–Card check campaigns are not 100% successful. In our study, card check campaigns (measured as any action of the union to organize, a much looser definition than in NLRB election studies) resulted in union wins about 80% of the time, suggesting that employees are able to reject unionization in card check campaigns.

–When asked about the impact of the neutrality and/or card check agreement on union organizing tactics, many union representatives responding indicated that less time was spent on countering management's anti-union message and on "trashing" the employer and more on emphasizing the positive contributions of the union. Beyond that, the organizing campaigns were often similar to traditional campaigns involving the building of internal organizing committees, etc. As we conclude in our study, although card check and/or neutrality agreements "make the hard work of organizing easier, they cannot be viewed as substitutes for that work."

–3/4 of the agreements we studied included limitations on union organizing behaviors as well as on management. These include union speech limitations, notice requirements, and time limits. Unions are waiving statutory rights just as employers are.

–These and other limits on union behaviors are typically enforceable, and have in fact been enforced through arbitration, as are management's obligations under the agreement.

In a second phase of this research, we interviewed employers. Early results of this research were presented at the 2001 meeting of the Industrial Relations Research Association. More complete results were presented at a conference at Michigan State University in October 2002 and are forthcoming in a conference volume soon to be published. Our analyses of these interviews include the following points:

–In the majority of cases, these agreements have resulted in improved relations with the union, enabling management to achieve other bargaining or business goals.

–Many employers find these agreements an opportunity to shape the organizing campaign by bargaining with the union over limitations on the union (as discussed above). If employers don't like house calls, for instance, they may be able to deal with that through negotiating with the union over the organizing process.

–Many employers were willing to agree to neutrality/card check because of the value that unions added to the business via partnership, supply of skilled labor, improved relations with customers, investment dollars, and increased public financing.

–Although this has not been the focus of our research, there are many examples of employers who have refused to accede to this demand. Other employers we have talked to have successfully bargained much weaker kinds of language than that demanded by the union ("weak" neutrality without card check). Employers assess the "business case" in deciding whether or not to agree.

–Employers report that union misrepresentation regarding the meaning of cards for recognition purposes is rare, in part because the parties often work together to design the card and/or material given to employees about the card. Further, with a few exceptions, employers respond to the misrepresentation of cards through various avenues including arbitration, NLRB charges, workforce education, and meetings with union leaders and organizers.

–Other union misconduct involving cards (coercion, forgery) is even rarer and has similarly been corrected through formal or informal mechanisms.

Copies of this letter brief have been served on the counsel and at the fax numbers listed as cc's. We hope that you find this information useful. We would be happy to provide you with our research reports or additional information if necessary.

Sincerely,

Adrienne E. Eaton
Professor

Jill Kriesky
Professor

cc: attached list

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Dana Corporation – Case No. 8-RD-1976

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