UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

DANA CORPORATION

Employer

and **Case 8-RD-1976**

CLARICE K. ATHERHOLD

Petitioner

and

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

Union

METALDYNE CORPORATION (METALDYNE SINTERED PRODUCTS)

Employer **Cases 6-RD-1518**
6-RD-1519

and

ALAN P. KRUG AND JEFFREY A SAMPLE

Petitioners

and

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

Union

UNITED TRANSPORTATION UNION'S AMICUS BRIEF

United Transportation Union ("UTU") respectfully files this amicus brief pursuant to the National Labor Relations Board's ("Board") Notice and Invitation to File Briefs addressing the issues raised in the *Dana* and *Metaldyne* cases. More specifically, on June 7, 2004, the Board (Chairman Battista, Members Schaumber and Meisburg; Members Liebman and Walsh, dissenting) granted the Petitioners' Requests for Review of the Regional Directors' administrative dismissals of the petitions in the instant cases because the Board held "they raise substantial issues regarding whether the Employers' voluntary recognition of the Union bars a decertification petition for a reasonable period of time under the circumstances of these cases."

In response to the Board's invitation, UTU supports the legal reasoning and policy arguments made by Members Liebman and Walsh in dissent to the Order Granting Review, which explain why the voluntary recognition policy should not be upset in any fashion. As noted in the dissent, "[t]he overriding policy of the Act is industrial peace." (citing *Fall River Dyeing Corp. v. NLRB*, 482 U.S. 27, 38 (1987); *Brooks v. NLRB*, 348 U.S. 96, 103 (1954)). "The [NLRA] is designed to promote industrial peace by encouraging the making of voluntary agreements governing relations between union and employers." *NLRB v. American National Insurance Co.*, 343 U.S. 395, 401 (1952).

Any attempt in this proceeding to overturn or weaken current precedent regarding the voluntary recognition bar would completely run afoul of the NLRA's purpose. To eliminate or weaken the present standard would essentially result in the elimination of voluntary recognition as we know it, since, without it, the parties would end up in the rank miasma of workplace politics instead of working towards a cooperative, orderly resolution of issues between the employer and employees. A new union on a property is already in a difficult position, and does

not need the added turmoil of decertification petitions being filed or threatened in the midst of early, initial contract negotiations. UTU is somewhat astounded that the Board would give this 40-year old policy a second look since the language in the Act itself and Supreme Court decisions support a voluntary recognition bar as presently established. First of all, there is no debate that a union can be voluntarily recognized as the exclusive bargaining representative on the property. *See NLRB v. Gissel Packing Co.,* 395 F.2d 575, 596 (1969). The Court in *Gissel* stated in pertinent part:

> A union is not limited to a Board election, however, for, in addition to § 9, the present Act provides in § 8 (a)(5) (29 U.S.C. § 158(a)(5)), as did the Wagner Act in § 8(5), that "[i]t shall be an unfair labor practice for an employer . . . to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9(a)." Since § 9(a), in both the Wagner Act and the present Act, refers to the representative as the one "designated or selected" by a majority of the employees without specifying precisely how that representative is to be chosen, it was early recognized that an employer had a duty to bargain whenever the union representative presented "convincing evidence of majority support." Almost from the inception of the Act, then, it was recognized that a union did not have to be certified as the winner of a Board election to invoke a bargaining obligation; it could establish majority status by other means under the unfair labor practice provision of § 8(a)(5) – by showing convincing support, for instance, by a union-called strike or strike vote, or, as here, by possession of cards signed by a majority of the employees authorizing the union to represent them for collective bargaining purposes.
>
> We have consistently accepted this interpretation of the Wagner Act and the present Act, particularly as to the use of authorization cards. See, e.g., *NLRB v. Bradford Dyeing Assn.,* 310 US 318, 339-340, 84 L

> Ed 1226, 1240, 1241, 60 S Ct 918 (1940); Franks Bros. Co. v. NLRB, 321 US 702, 88 L Ed 1020, 64 S Ct 817 (1944); United Mine Workers v. Arkansas Flooring Co., 351 U.S. 62, 100 L.Ed 941, 76 S.Ct 559 (1956). Thus, in United Mine Workers, *supra*, we noted that a "Board election is not the only method by which an employer may satisfy itself as to the union's majority status," 351 US, at 72, n. 8, 100 L Ed at 949, since § 9(a), "which deals expressly with employee representation, says nothing as to how the employees' representative shall be chosen," 351 US, at 71, 100 L Ed at 949. We therefore pointed out in that case, where the union had obtained signed authorization cards from a majority of the employees, that "[i]n the absence of any bona fide dispute as to the existence of the required majority of eligible employees, the employer's denial of recognition of the union would have violated § 8(a)(5) of the Act." 351 US, at 69, 100 L Ed at 947. We see no reason to reject this approach to bargaining obligations now.

395 U.S. at 595-99.

In an earlier discussion of election bars in *Brooks*, the Supreme Court noted:

> The underlying purpose of this statute is industrial peace. To allow employers to rely on employees' rights in refusing to bargain with the formally designated union is not conductive to that end, it is inimical to it. Congress has devised a formal mode for selection and rejection of bargaining agents and has fixed the spacing of elections, with a view of furthering industrial stability and with due regard to administrative prudence.
>
> We find wanting the arguments against these controlling considerations.

348 U.S. at 103.

Similarly, here, the Petitioners claim to enforce the rights of employees by filing these decertification petitions shortly after voluntarily recognizing the units. However, this position

contradicts the long-standing policy of the Supreme Court regarding the promotion of industrial peace in like situations. That is because the Petitioners are not really seeking to support employee rights, but are trying to undermine them.

What is actually transpiring here is a heavy-handed stealth campaign sponsored by the Right To Work Legal Defense Foundation to weaken the rights of employees by providing employers another tool to bust unions. The Foundation's intended result by its proposed elimination or weakening of the voluntary recognition bar is the complete destruction of voluntary recognition.

This result would be inevitable since unions would be very suspicious of voluntary recognition offers by employers since employers could simply turn around and implode the entire relationship between the parties filing a decertification petition shortly thereafter in the midst of initial collective bargaining agreement negotiations, thereby making the union look powerless during this crucial stage of the process.

In other words, the all too transparent effort here is to destroy an employee's right to have a union. This proposal has no positive effect on employees, but would certainly be a positive for employers.

The sponsor of this litigation, the National Right To Work Legal Foundation, is funded and controlled by anti-union business executives. More than 80 percent of its contributions come from business and corporate sources. The goal of this Foundation is not employee freedom, but to destroy unions. A win here by this group would demonstrate total disregard for past Board precedent, the statutory law, and the Supreme Court's admonitions regarding these types of situations.

CONCLUSION

Based on the foregoing discussion, United Transportation Union respectfully asks the Board to reject the Petitioners' request regarding voluntary recognition bar.

Respectfully submitted,

_____

Daniel R. Elliott, III
Associate General Counsel
United Transportation Union
14600 Detroit Avenue
Cleveland, Ohio 44107
(216) 228-9400