

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

DANA CORPORATION  
Respondent Employer

and

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

and

GARY L. SMELTZER, JR.

Cases 7-CA-46965  
7-CB-14083

and

JOSEPH MONTAGUE

Cases 7-CA-47078  
7-CB-14119

and

KENNETH A. GRAY

Cases 7-CA-47079  
7-CB-14120

**BRIEF OF AMICUS CURIAE CINGULAR WIRELESS**

This amicus brief is filed on behalf of Cingular Wireless and urges the Board to affirm the decision of the Administrative Law Judge in this case. Cingular does not believe that entering into a neutrality and voluntary recognition agreement constitutes a violation of Section 8(a)(1) and (2) of the Act or a violation of Section 8(b)(1)(A) of the Act. Rather, such agreements should be upheld as they allow for an effective and efficient means for the conduct of union organizing drives. Cingular has found that such agreements (1) minimize the disruption to the orderly conduct of Cingular's day-to-day business; (2) insure a standard of civility that respects the employer, the union, and the employees; and (3) foster a cooperative and

collaborative relationship that gives Cingular a competitive edge in the fast-paced global economy.

### **Introduction**

Cingular is the largest provider of wireless telecommunications services in the United States. Cingular serves nearly 56 million customers, providing wireless voice, data, and wireless products and services. Approximately 36,000 Cingular employees are represented by the Communications Workers of America, AFL-CIO (“CWA”).

Cingular, through certain of its predecessor companies (i.e., SBC Wireless and Southwestern Bell Mobile Systems), first established a collective bargaining relationship with CWA in 1992. Bargaining units were initially established through NLRB elections. Subsequent bargaining units were established both through NLRB elections and through neutrality and voluntary recognition agreements. Regardless of how these various units were organized, they have resulted in stable and productive relationships for Cingular, our employees, and CWA.

### **Neutrality and Card Check Agreements**

In 1992, Cingular’s predecessor negotiated its first neutrality agreement with CWA. In 1995, card check agreements were established in specific bargaining units. Finally, in 1997, Cingular and CWA negotiated a region-wide neutrality and card check agreement. Through a series of mergers and acquisitions, including the recent acquisition of AT&T Wireless, Cingular grew from a regional wireless company to the nation’s largest wireless company. Since 1997, all union organizing activity within Cingular and its predecessor companies has been conducted through our neutrality and card check agreements (also referenced as neutrality and voluntary recognition agreements). Using these agreements as the primary means of letting employees decide whether they want to be represented by a union or not, Cingular has achieved the goal

stated in our agreement-- to minimize disruption and to allow for the orderly conduct of the Company's day-to-day business in a fair and efficient manner. Simply stated, these agreements have worked well.

The neutrality and voluntary recognition agreements have a number of provisions that well serve the needs of the parties, particularly the right of employees to free choice:

- (1) binding arbitration using arbitrators of national reputation and demonstrated expertise, where necessary, to promptly resolve unit scope and unit placement issues, without delay or protracted litigation;
- (2) specific guidelines for communications with employees to insure that they are fully informed about the process and other relevant issues, with specific assurances against interference, restraint or coercion in the exercise of their rights;
- (3) cards which clearly state that the purpose of those cards will be to determine the union's majority status without an NLRB election;
- (4) a neutral third party, the American Arbitration Association, to verify majority status and certify the results.

### **The Benefit of Such Agreements**

Cingular's experience with its neutrality and card check agreements has shown that they have resulted in free, voluntary and non-coercive decisions by a majority of our employees in the appropriate units.<sup>1</sup> Cingular's commitment to neutrality and CWA's commitment to refrain from combative and unduly partisan campaigns, along with the parties' mutual commitment to standards of conduct, have avoided problematic and costly disruption of business operations and have brought civility and informed decision-making to the process. Where organizing efforts have resulted in a majority of employees designating CWA as their bargaining representative, the parties have been able to begin a collective bargaining relationship on a positive and productive

---

<sup>1</sup>The parties' agreements honor the rights of employees to file charges with the NLRB if they believe that any of their rights under the National Labor Relations Act have been violated.

footing. This has led to mature, harmonious, and productive relationships which are a key to enabling Cingular to remain the leader in the volatile and highly competitive wireless telecommunications field.

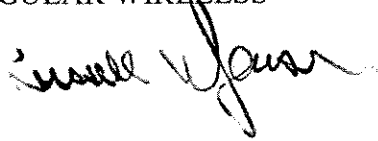
Moreover, Cingular acknowledges that not all employees endorse or support CWA; however, their interests would be acknowledged through the card check process just as they would be through an election process. In both recognition processes, employees are afforded an individual choice to participate or not, which of course means that in both instances, there will be dissenters from a majority decision. Cingular has always believed that representation by a union is a matter of individual choice for our employees and we have respected their decisions.

**Conclusion**

In view of the above and foregoing, Cingular would respectfully urge the Board to refrain from challenging agreements that provide for neutrality and voluntary recognition. Such agreements provide a valid, useful, and open alternative to traditional Board procedures. Cingular asks the Board to affirm the decision of the Administrative Law Judge in this case.

Respectfully submitted,

CINGULAR WIRELESS



By: \_\_\_\_\_

Dated: April 27, 2006

**CERTIFICATE OF SERVICE**

THIS IS TO CERTIFY that I have this 27<sup>th</sup> day of April 2006, served, by first class mail prepaid, a true and correct copy of the Brief of Amicus Curiae on the following parties:

Barbara Peterson  
Dana Corporation  
916 West State Street  
Saint Johns, MI 48879  
*Respondent Employer*

Gary Golden, Law Department  
Dana Corporation  
4500 Dorr Street  
Toledo, OH 43615  
*Respondent Employer*

Stanley J. Brown, Esq. &  
Emily J. Christiansen, Esq.  
Hogan & Hartson, LLP  
8300 Greensboro Drive  
Suite 1100  
McLean, VA 22102  
*Respondent Employer*

Ron Gettelfinger, President  
International Union UAW  
8000 East Jefferson Avenue  
Detroit, MI 48214  
*Respondent Union*

Betsey A. Engel, Esq. &  
Blair Simmons, Esq.  
International Union UAW Legal  
8000 East Jefferson Avenue  
Detroit, MI 48214  
*Respondent Union*

William A Messenger, Esq.  
National Right to Work Legal  
Defense Foundation  
8001 Braddock Road  
Suite 600  
Springfield, VA 22160  
*Charging Party Individual*

Gary L. Smeltzer, Jr.  
15814 Florence Street  
Lansing, MI 48906  
*Charging Party Individual*

Joseph Montague  
5612 Wildcat Road  
Saint Johns, MI 48879  
*Charging Party Individual*

Kenneth A. Gray  
330 North Chandler  
Saint Johns, MI 48879  
*Charging Party Individual*

National Labor  
Region 07 - Detroit  
477 Michigan Avenue, Room 300  
Detroit, MI 48226  
*Charging Party Individual*

CINGULAR WIRELESS

By:   
\_\_\_\_\_

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

DANA CORPORATION  
Respondent Employer

and

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

and

GARY L. SMELTZER, JR. Cases 7-CA-46965  
7-CB-14083

and

JOSEPH MONTAGUE Cases 7-CA-47078  
7-CB-14119

and

KENNETH A. GRAY Cases 7-CA-47079  
7-CB-14120

**MOTION SEEKING PERMISSION TO BECOME AN AMICUS AND TO FILE A  
JOINT BRIEF WITH RESPONDANT UAW IN OPPOSITION TO THE EXCEPTIONS**

Comes now Cingular Wireless and hereby moves the National Labor Relations Board to grant permission to become amicus in the above captioned matter and with this permission, Cingular Wireless herein submits the attached brief for consideration joining with Respondant UAW.

Respectfully submitted,

CINGULAR WIRELESS

By

  
\_\_\_\_\_  
Dated: April 27, 2006

**CERTIFICATE OF SERVICE**

THIS IS TO CERTIFY that I have this 27<sup>th</sup> day of April 2006, served, by first class mail prepaid, a true and correct copy of the Motion Seeking Permission to Join and Brief of Amicus Curiae on the following parties:

Barbara Peterson  
Dana Corporation  
916 West State Street  
Saint Johns, MI 48879  
*Respondent Employer*

Gary Golden, Law Department  
Dana Corporation  
4500 Dorr Street  
Toledo, OH 43615  
*Respondent Employer*

Stanley J. Brown, Esq. &  
Emily J. Christiansen, Esq.  
Hogan & Hartson, LLP  
8300 Greensboro Drive  
Suite 1100 *Respondent Union*  
McLean, VA 22102  
*Respondent Employer*

Ron Gettelfinger, President  
International Union UAW  
8000 East Jefferson Avenue  
Detroit, MI 48214

Betsey A. Engel, Esq. &  
Blair Simmons, Esq.  
International Union UAW Legal  
8000 East Jefferson Avenue  
Detroit, MI 48214  
*Respondent Union*

William A Messenger, Esq.  
National Right to Work Legal  
Defense Foundation  
8001 Braddock Road  
Suite 600  
Springfield, VA 22160  
*Charging Party Individual*

Gary L. Smeltzer, Jr.  
15814 Florence Street  
Lansing, MI 48906  
*Charging Party Individual*

Joseph Montague  
5612 Wildcat Road  
Saint Johns, MI 48879  
*Charging Party Individual*

Kenneth A. Gray  
330 North Chandler  
Saint Johns, MI 48879  
*Charging Party Individual*

National Labor  
Region 07 - Detroit  
477 Michigan Avenue, Room 300  
Detroit, MI 48226  
*Charging Party Individual*

CINGULAR WIRELESS

By:  \_\_\_\_\_