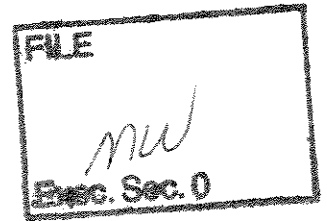


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UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD



DANA CORPORATION)
(Respondent Employer),)
and)
INTERNATIONAL UNION, UNITED)
AUTOMOBILE AEROSPACE AND)
AGRICULTURAL IMPLEMENT)
WORKERS OF AMERICA, AFL-CIO,)
(Respondent Union),)
and)
GARY L. SMELTZER, JOESEPH)
MONTAGUE, and KENNETH GRAY)
(Employee Charging Parties).)

Judge William G. Kocol

Case Nos. 7-CA-46965, 7-CA-47078,
7-CA-47079, 7-CB-14083, 7-CB 14119,
and 7-CB-14120.

**CHARGING PARTIES' EXCEPTIONS TO THE ADMINISTRATIVE
LAW JUDGE'S DECISIONS.**

Charging Parties Gary L. Smeltzer, Joseph Montague, and Kenneth Gray hereby file the following exceptions to Administrative Law Judge's ("ALJ") William G. Kocol's decisions at the hearing of February 8, 2005, and written decision of decision of April 11, 2005, in the above captioned case. Charging Parties arguments in support of the following exceptions are contained in the Brief in Support of Charging Parties' Exceptions.

The following abbreviations shall be used herein.

- ▶ The ALJ's decision of April 11, 2005 shall be referred to as "ALJD."
- ▶ The transcript of the hearing of February 8, 2005, shall be referred to as "Tr. ____"
- ▶ Respondent Dana Corporation shall be referred to as "Dana."
- ▶ Respondent International Union, United Automobile and Agricultural Implement Workers of America, AFL-CIO, shall be referred to as the "UAW."

- ▶ The August 6, 2003, Letter of Agreement between the UAW and Dana shall be referred to as the “Letter of Agreement.”

Charging Parties hereby file exceptions to the following decisions of the ALJ:

- | | | |
|----|--|-------------------------------------|
| 1 | The ALJ revoking the subpoenas served by Charging Parties and the General Counsel. | TR 26-29, 37 |
| 2 | The ALJ’s conclusion that evidence and testimony regarding the negotiation of the Letter of Agreement is irrelevant and inadmissible. | TR 26, 29, 59, 73, 76 |
| 3 | The ALJ’s conclusion that evidence and testimony regarding the implementation of the Letter of Agreement at Dana’s St. John’s facility is irrelevant and inadmissible. | TR 26, 42, 44, 49, 50, 53, 54, 56, |
| 4 | The ALJ’s rejection of General Counsel Exhibit 4. | TR 46 |
| 5 | The ALJ granting Dana’s and the UAW’s Motion to Strike. | ALJD p. 2 lns. 42-47. |
| 6 | The ALJ’s finding that the purpose of the Letter of Agreement is the purpose stated in the Letter of Agreement. | ALJD p. 3 ln. 17.
to p. 4 ln.15. |
| 7 | The ALJ’s finding that “[t]he letter of agreement provides that Dana will adopt a position of neutrality . . .” | ALJD p. 4 ln. 18. |
| 8 | The ALJ’s “procedural dismissal.” | ALJD p. 6 lns. 14-44. |
| 9 | The ALJ’s conclusion that the issue in the case is the one stated by Dana in its brief. | ALJD p. 6 lns. 17-22. |
| 10 | The ALJ’s conclusion that the General Counsel needed to “establish unlawful recognition in order to prevail.” | ALJD p. 6 lns. 23-24. |

- 11 The ALJ's conclusion that the General Counsel is argument is ALJD p. 6 lns. 23-24,
that Dana recognized the UAW as the representative of the its ALJD p. 7 lns. 11-12.
employees at the St. John's facility.
- 12 The ALJ's conclusion that the Complaint should be dismissed ALJD p. 6 lns. 39-42.
because it does not allege unlawful recognition.
- 13 The ALJ "Dismissal on the Merits." ALJD p. 6-8.
- 14 The ALJ's conclusion that the Letter of Agreement merely ALJD p. 7 lns. 14-15.
"touch upon terms and conditions of employment."
- 15 The ALJ's conclusion that the issue in the case "whether Dana ALJD p. 7 lns. 12-13.
granted recognition to the UAW by entering into the letter of
agreement notwithstanding the disclaimers to the contrary."
- 16 The ALJ's conclusion that a provision of the Letter of ALJD p. 7 lns. 20-25.
Agreement does not waive employees' right to strike.
- 17 The ALJ's conclusion that the Letter of Agreement merely sets ALJD p. 7 lns. 24-35.
forth "general principles."
- 18 The ALJ's conclusion that the Letter of Agreement "does not ALJD p. 7 lns. 41-44.
deal with significant matters such as wages, pensions,
grievances and arbitration, vacations, union security, etc."
- 19 The ALJ's conclusion that Respondents' conduct is not ALJD p. 8
unlawful under Majestic Weaving Co., 147 NLRB 859 (1964)
and its progeny.

- 20 The ALJ's conclusion that "the complaint does not allege that Dana and the UAW independently violated the Act by conveying the impression to employees of unlawful recognition so to that extent I need not resolve that matter." ALJD p. 8 lns. 32-36.
- 21 The ALJ's conclusion that the General Counsel's and Charging Parties' offers of proof are not relevant. ALJD p. 8 lns. 38-41.
- 22 The ALJ's conclusion that the Complaint should be dismissed because "the evidence fails to show that Dana has recognized the UAW for employees at the St. Johns facility." ALJD p. 8 lns. 42-45.
- 23 The ALJ's conclusion that Respondents conduct is lawful under Kroger Co., 219 NLRB 388 (1975). ALJD p. 9.
- 24 The ALJ's conclusion that Pall Biomedical Products Corp., 331 NLRB 1674 (2000), *enf'd denied on other grounds*, 275 F.3d 116 (D.C. Cir. 2002) "has little bearing on this case." ALJD p. 9 lns. 9-17.
- 25 The ALJ's failure to overrule Kroger Co., 291 NLRB 388 (1975). ALJD p. 9 lns. 44-48.
- 26 The ALJ's contention that if "the UAW had turned instead to its represented Dana facilities and bargained with the employer to extend its master or other agreements to the St. Johns employees, its actions would have been lawful." ALJD p. 9 lns. 18-22.
- 27 The ALJ's contention that "all employees who are interested will know of the specific terms of the letter of agreement." ALJD p. 9 lns. 38-41.
- 28 The ALJ's contention that the UAW did not agree to concessions in the Letter of Agreement. ALJD p. 9 ln. 42 to p. 10 ln. 2.

- 29 The ALJ's conclusion that "Charging Parties make a number of arguments not encompassed by the complaint." ALJ p. 10 ln. 4.
- 30 The ALJ's conclusion that Charging Parties argument that a pre-recognition agreement constitutes a threat of reprisal or a promise of benefits is outside of the Complaint. ALJD p. 10 lns. 6-9.
- 31 The ALJ's failure to find that the Letter of Agreement constitutes a threat of reprisal or a promise of benefits in violation of the Act. ALJD p. 10.
- 32 The ALJ's conclusion that Charging Parties argument that "UAW will violate its duty of fair representation if and when it is recognized by Dana" is outside of the Complaint. ALJD p. 10 lns. 10-12.
- 33 The ALJ's failure to conclude that the UAW has violated its duty of fair representation to employees. ALJD p. 10.
- 34 The ALJ's conclusion "the employees will decide whether they desire union representation and they will be free to assess the letter of agreement in that process." ALJD p. 10 lns. 9-14.
- 35 The ALJ failure to consider whether the Dana "interfere[s] with the formation or administration of" the UAW in violation of § 8(a)(2) of the Act . ALJD p. 6-10.
- 36 The ALJ failure to conclude that Dana has "interfere[d] with the formation or administration of" the UAW in violation of § 8(a)(2) of the Act ALJD p. 6-10.
- 37 The ALJ's failure to find the Letter of Agreement contrary to national labor policy. ALJD p. 9-10.

38 The ALJ's dismissal of the Complaint.

ALJD p. 10.

39 The ALJ failed to order the remedy requested by Charging

ALJD p. 10.

Parties in their Brief on the Merits, pp. 43-57.

Respectfully submitted this 6th day of June, 2005.



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