News Release
National Labor Relations Board

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Board finds employer and union agreement in Dana case was lawful

Pre-recognition letter with framework for 'partnership' upheld

The National Labor Relations Board, in a 2-1 decision, found that an auto parts manufacturer and the United Auto Workers union did not violate labor law by agreeing to ground rules by which the union would be recognized if a majority of employees signed cards in favor of it, and by creating a framework for any future collective bargaining agreements.

The letter of agreement signed by the union and Dana Corporation – an auto parts manufacturer with 30 plants in the United States - stated that "We both believe that membership in a union is a matter of personal choice and acknowledge that if a majority of employees wish to be represented by a union, Dana will recognize that choice." The parties also agreed that any labor contracts that resulted from the agreement would be at least four years long and would incorporate "team-based approaches," keep health-care costs at competitive levels, and allow for mandatory overtime when necessary, among other guidelines.

The UAW had a long relationship with Dana and already represented workers at nine facilities; the letter applied to all of its non-unionized U.S. plants.

Today's Board decision stemmed from an attempt by the UAW to organize about 300 employees at a Dana plant in St. Johns, Michigan. As called for in the agreement, the union began the process by requesting a list of employee addresses from Dana. Three employees filed unfair labor practice charges with the regional NLRB office in Detroit, claiming that the pre-recognition agreement violated a section of labor law that prohibits employers from providing certain kinds of support to unions or creating their own company unions.

In September 2004, the Regional Director found potential merit to the charges and issued a complaint alleging that, by entering into the agreement, Dana gave unlawful assistance to the union and the union coerced employees in the exercise of their statutory rights. However, NLRB Administrative Law Judge William G. Kocol dismissed the complaint in April, 2005, following a hearing.

In the end, the union failed to collect signatures from a majority of employees at the St. Johns facility and was never recognized as their representative. The case proceeded nevertheless.

It reached the Board on appeal in 2006, but was not decided during a 27-month period when vacancies reduced Board membership from five to two. The Board now has four members. Member Craig Becker recused himself from consideration of the case, so it fell to a three-member panel to issue a decision.

In their majority opinion, Chairman Wilma Liebman and Member Mark Pearce agreed with ALJ Kocol that the agreement was lawful. "The Board and courts have long recognized that various types of agreements and understandings between employers and unrecognized unions fall within the framework of permissible cooperation," they wrote. That is not to say that every pre-recognition agreement is lawful, they added. "Each case, rather, will depend upon its own facts."

Dissenting, Member Brian Hayes said the agreement between Dana and the UAW was factually and legally similar to an earlier case (*Majestic Weaving Co.*, 147 NLRB 859, (1964)), in which the employer and union were found to have acted unlawfully. "My colleagues' approach threatens to reinstate the very practice that those statutory provisions were meant to prohibit, i.e., the establishment of collective-bargaining relationships based on self-interested union-employer agreements that preempt employee choice and input as to their representation and desired terms and conditions of employment."

The Board had invited comments from interested parties in addition to the respondents, and amicus briefs were received from the AFL-CIO, American Maritime Association, American Rights at Work, Associated Builders and Contractors, Inc., several Members of the U.S. House of Representatives, Cingular Wireless, employees of Freightliner Corporation, General Motors Corporation, DaimlerChrysler Corporation, The Ford Motor Company, Liz Claiborne, Inc., National Alliance for Worker and Employer Rights, and Wackenhut Corporation.

The National Labor Relations Board is an independent federal agency vested with the power to safeguard employees' rights to organize and to determine whether to have unions as their bargaining representative. The agency also acts to prevent and remedy unfair labor practices committed by private sector employers and unions.

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