UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

DANA CORPORATION
Employer

and Case 8-RD-1976

CLARICE K. ATHERHOLT
Petitioner

and

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

METALDYNE CORPORATION (METALDYNE SINTERED PRODUCTS)
Employer

and Cases 6-RD-1518
6-RD-1519

ALAN P. KRUG AND JEFFREY A. SAMPLE
Petitioners

and

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

AMICUS BRIEF OF THE GENERAL COUNSEL

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I. INTRODUCTORY STATEMENT AND SUMMARY OF ARGUMENT

On June 7, 2004, the National Labor Relations Board granted the Petitioners' Requests for Review of the Regional Directors' administrative dismissals of the decertification petitions in the instant cases. The petitions in these cases were supported by showings of interest obtained after the Employers voluntarily recognized the Union pursuant to neutrality and card check agreements. The Board granted review because these cases "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 presented. 341 NLRB No. 150, slip op. at 1 (2004). On June 14, the Board invited the parties and interested amici to file briefs addressing the issues raised in these cases.

The General Counsel has substantial interests and expertise in these matters resulting from his experience and responsibilities in evaluating and prosecuting unfair labor practice charges arising out of elections and voluntary recognitions, as well as from his oversight of Regional Office personnel who process representation case petitions and conduct elections on behalf of the Board. Because of the importance of these issues to ensuring employee free choice in the administration of the Act, the General Counsel is vitally concerned that the Board have before it his analysis and position on these issues.

The voluntary recognition bar,[1] like the certification bar, effectuates the important policy of fostering collective bargaining through a representative chosen by a majority of employees, and it should be retained. However, there are important differences between establishing majority status through Board elections and establishing majority status to card checks. The General Counsel therefore respectfully submits that the Board should create a limited exception to the voluntary recognition bar where a decertification petition is filed no later than 30 days after formal written notice to employees of the recognition, where that petition is supported by a document expressing opposition to union representation signed by at least 50 percent of the unit employees no later than 21 days after formal written notice of the recognition. In such situations, there is uncertainty whether a majority of employees actually support the union, and therefore reason to provide an opportunity for them to definitively express their desires through a Board election. The voluntary recognition bar, and the limited exception to it proposed here, should apply in any case of voluntary recognition based upon a card check, regardless of whether the recognition was pursuant to a neutrality/card check agreement entered into before cards were obtained or pursuant to a card check agreement entered into after cards were signed.[2]

[1] The facts of these cases implicate the voluntary recognition bar based upon a card check agreement. Not all of the issues addressed here are implicated in a voluntary recognition based upon a privately conducted election. Such a process also raises other issues not addressed here.

[2] It has come to the General Counsel's attention that a separate case implicating another issuing box aspect of the voluntary recognition bar is pending before the Board. Cequent Towing Products, 25-RD-1447. That case involves whether the Board should permit processing of an individual employee's decertification petition that was filed shortly after voluntary recognition but supported by a showing of interest obtained entirely before

II. ARGUMENT

A. THE VOLUNTARY RECOGNITION BAR FURTHERS THE PURPOSES AND POLICIES OF THE ACT AND SHOULD BE RETAINED

1. Under the Act, both Board-conducted elections and voluntary recognition are accepted methods of establishing valid collective bargaining relationships.

An exclusive bargaining relationship between an employer and a union can be established through the Board's election and certification procedures under Section 9(c) of the Act, or through voluntary recognition based on a showing of majority support, i.e., a card check or employee-signed petition. The Board and courts have recognized, and the General Counsel believes, that a Board-conducted election provides the most reliable basis for determining whether employees desire representation by a particular union.[3] An informal card designation procedure is a less reliable but nevertheless legitimate method of establishing majority support. It is less reliable than a Board election because, among other things, it lacks the secrecy and procedural safeguards of an election.[4] Also, cards

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recognition. See Seattle Mariners, 335 NLRB 563 (2001); Smith's Food and Drug Centers, Inc., 320 NLRB 844 (1996). The Board has not asked for statements of position regarding that case and nothing in this Statement should be considered as bearing on that case.

[3] Dana Corp., 341 NLRB No. 150, slip op. at 1, citing Linden Lumber v. NLRB, 419 U.S. 301 (1974); See also NLRB v Gissel Packing Co., 395 U.S. 575, 602 (1969); NLRB v Cayuga Crushed Stone, 474 F.2d 1380, 1383 (2d Cir. 1973) (discussing reliability of Board-supervised, secret ballot elections).

[4] For example, group pressures may induce an employee to sign a card in order to go along with his fellow workers when otherwise the employee might not support the union. Cayuga, 474 F.2d at 1383.

are generally signed over a period of time, during which some individuals may well change their minds.[5]

Despite its lesser degree of reliability, voluntary recognition based on a card check provides a well-accepted method of determining majority support that promotes the Act's policy of encouraging employee free choice.[6] It is long-established Board policy to promote voluntary recognition and bargaining between employers and labor organizations as a means of furthering harmony and stability of labor-management relations.[7] It has the pragmatic advantage of quickly permitting parties to commence bargaining where that is the employees' and the employer's desire.[8] Accordingly, an employer's voluntary recognition of a majority union is a "favored element of national

[5] See, e.g., Le Marquis Hotel, LLC, 340 NLRB No. 64 (2003) (recognition based on apparent card majority unlawful because nine employees subsequently switched their support to a different union); Alliant Foodservice, 335 NLRB 695, 696 (2001) (recognition based on apparent card majority unlawful because 16 employees had also signed authorization cards for a different union; it is "at least as logical to infer that when an employee signs a card for one union and later signs a card for a second union, *the employee has changed his mind and now wishes to be represented by the second union*" (emphasis added)).

[6] The Supreme Court has recognized that cards can adequately reflect employee sentiment for purposes of determining whether a union has majority support. See Gissel, 395 U.S. at 602.

[7] See, e.g., San Clemente Publishing Corp., 167 NLRB 6, 8 (1967), enfd. 408 F.2d 367, 368 (9th Cir. 1969).

[8] It should be noted, however, that a Board-conducted election is also a quick method of effectuating employee free choice. Regional Offices currently proceed to an election within a median of 40 days from the filing of a petition, and more than 90 percent of all initial representation elections are conducted within 56 days of the petition filing. See Summary of Operations (Fiscal Year 2003), Office of the General Counsel, Memorandum GC 04-01 (December 5, 2003). Moreover, parties who seek an even more expeditious election by the Board can execute a "straight consent" election agreement, thus limiting any delay in the processing of post-election issues.

labor policy"[9] sanctioned by the Board and courts since the earliest days of the Act. Indeed, voluntary recognition has existed under the Act since 1935 without any subsequent limitation or prohibition by Congress.[10] In sum, voluntary recognition based on a card check, established under lawful circumstances, is likely to promote a harmonious bargaining relationship and thereby effectuate the Act's fundamental policy of promoting employees' choice regarding bargaining representation.

2. Election bars are necessary to protect and effectuate employee choice in newly established bargaining relationships.

As the Supreme Court has recognized, "a bargaining relationship, once rightfully established, must be permitted to exist and function for a reasonable period in which it can be given a fair chance to succeed."[11] Without a bar against the filing of decertification petitions for some reasonable period, one cannot be confident that the free choice that employees have exercised as to their bargaining representation will be honored and effectuated.

Thus the Board has imposed decertification bars in connection with both accepted methods, i.e. Board elections and voluntary recognition, of establishing a bargaining relationship. Under the Board's certification bar, a labor organization that has demonstrated its majority support in a Board election enjoys an irrebuttable presumption

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[9] NLRB v. Lyon & Ryan Ford, Inc., 647 F.2d 745, 750 (7th Cir. 1981), citing NLRB v. Broadmoor Lumber Co., 578 F.2d 238, 241 (9th Cir. 1978).

[10] Gissel, 395 U.S. at 595-599.

[11] Franks Bros. v. NLRB, 321 U.S. 702, 705 (1944).

of continuing majority status for one year following the union's certification.[12] Similarly, in the voluntary recognition context, when an employer freely and in good faith recognizes a union based on a demonstrated showing of majority support, the Board bars the processing of an election petition for a "reasonable" period of time.[13] The Board also applies decertification bars for a "reasonable" period of time in cases involving remedial bargaining orders,[14] as well as in cases where an employer has agreed to bargain as part of a settlement of refusal-to-bargain charges.[15]

Decertification bars effectuate the purposes of the Act in several ways. They protect, and even strengthen, employees' basic freedom of choice by allowing the parties time to effectuate the choice that the unit majority has made.[16] They do so by allowing the bargaining representative freely chosen by employees an opportunity to bargain for a collective bargaining agreement without worrying that it must produce immediate results

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[12] Brooks v. NLRB, 348 U.S. 96, 100 (1954). As the Court pointed out in Brooks, 348 U.S. at 98-102, the certification rule was developed by the Board.

[13] See, e.g., Keller Plastics Eastern, Inc., 157 NLRB 583, 587 (1966) (establishing recognition bar doctrine); Royal Coach Lines, 282 NLRB 1037, 1038 (1987), enf. denied on other grounds 838 F.2d 47 (2d Cir. 1988).

[14] See, e.g., Exxel/Atmos, Inc. v. NLRB, 28 F.3d 1243, 1248 (D.C. Cir. 1994); Lee Lumber & Building Material Corp., 322 NLRB 175, 178 (1996), enfd. in part, remanded in part, 117 F.3d 1454 (D.C. Cir. 1997), on remand, 334 NLRB 399 (2001), enfd. 310 F.3d 209 (D.C. Cir. 2002).

[15] See, e.g., Poole Foundry & Machine Co., 95 NLRB 34, 36, enfd. 192 F.2d 740, 742 (4th Cir. 1951), cert. denied 342 U.S. 954 (settlement of charges in which employer agrees to bargain precludes any challenge to union's majority status for a reasonable period of time).

[16] See, e.g., Vincent Industrial Plastics, Inc., 336 NLRB 697, 698 (2001) (decertification bar accompanying affirmative bargaining order protects the "desire to be represented by the [u]nion initially expressed by a majority of the employees…").

or risk losing majority support and being decertified.[17] They remove any incentive to delay the bargaining process in order to undermine the union's majority support.[18] In other words, by providing a "reasonable period" free from challenges to the union's representational status,[19] decertification bars serve important policies of the Act by fostering meaningful collective bargaining and industrial peace.[20]

The decertification bars are not based on an assumption that the union's majority status will not erode. Indeed, the Board and courts expressly recognize that during the period of a bar, the degree of support for the union may fluctuate and even drop below a majority level.[21] The aim of the bars is to ensure that the bargaining representative, once

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[17] See Brooks, 348 U.S. at 101.

[18] Brooks, 348 U.S. at 100; see also Vincent Industrial Plastics, 336 NLRB at 698 (involving an affirmative remedial bargaining order).

[19] See Brooks, 348 U.S. at 103.

[20] See, e.g., NLRB v. Broad Street Hospital & Medical Center, 452 F.2d 302, 304-305 (3d Cir. 1971):

> We respect the fundamental principle that employees should be given the maximum opportunity to select or reject bargaining representatives, and that trade union representation must reflect the will of the bargaining unit fairly achieved through democratic processes. ... Thus,... the employer's bona fide recognition of a union's majority status... must be binding [because]... the inability of all parties to the collective-bargaining process to rely on such recognition would produce an uncertainty potentially generative of strike and discord in industrial relations.

[21] See Brooks, 348 U.S. at 98 (certification bar applies for a reasonable period despite any interim loss of majority). See also Keller Plastics, 157 NLRB at 586-587 (parties entitled to rely on continuing majority status for a reasonable period even though, in fact, the union may have lost its majority); Blue Valley Machine & Mfg. Co., 180 NLRB 298, 304 (1969), enfd. in rel. part 436 F.2d 649 (8th Cir. 1971) (same); Poole Foundry & Machine Co., 95 NLRB at 36 (where a union has been recognized pursuant to a settlement agreement, the bargaining obligation continues for a reasonable time without regard to fluctuations in majority status).

validly chosen by a majority of employees, has the opportunity to engage in effective bargaining to obtain a contract without interruption.[22]

In Brooks v. NLRB,[23] the Supreme Court detailed various reasons for this policy. It noted that voters in a political context are bound for a fixed period by their choice among candidates, and that this promotes a "sense of responsibility in the electorate" and "coherence in administration." The Court reasoned that these considerations apply equally to labor relations. In essence, it explained that, among other things, a certification bar: (1) provides time for a union to carry out its mandate without pressure to produce hurried results lest it be turned out; (2) removes the incentive for an employer to delay or undermine bargaining in order to oust the union; (3) provides assurance to employers that if they work conscientiously toward an agreement, the employees cannot, at the last moment, repudiate their agent; (4) minimizes raiding and strife caused by competing unions; and (5) generally furthers industrial peace.

These reasons given by the Board and courts in support of certification bars are generally applicable to the bar protecting voluntary recognition pursuant to a card check agreement.[24] Therefore, the recognition bar should be retained as an important and

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[22] See, e.g., San Clemente Publishing, 167 NLRB at 8 (fluctuations in a unit may cost the union majority support in the midst of bargaining and then restore it; to allow such fluctuations to affect negotiations "by fits and starts" would "make for shackles and a climate of friction in the bargaining process and would tend to frustrate the statutory aim of promoting industrial peace and stability").

[23] 348 U.S. at 96.

[24] See NLRB v. Cayuga Crushed Stone, 474 F.2d at 1383 (voluntary recognition case recognizing the Supreme Court's rationale supporting the one year certification bar in Brooks compels the conclusion that a bar is necessary in a voluntary recognition context);

effective means of promoting voluntary recognition and furthering the purposes and policies of the Act.

B. AN EXCEPTION TO THE RECOGNITION BAR IS WARRANTED IN CERTAIN CIRCUMSTANCES.

Although the policies underlying the certification bar and the voluntary recognition bar are generally the same, voluntary recognition based on a card check differs from certification based on a Board-conducted election. A crucial point made by the Brooks Court in justifying the certification bar is that the certification results from an election -- a "solemn" occasion, conducted under "safeguards to voluntary choice," including the "privacy and independence of the voting booth."[25] When recognition flows from certification, employee choice is determined in a Board election, a process separate in time and format from the organizing campaign. Employees are given notice of the election ahead of time; organizing activity near the day of the election and in the vicinity of the balloting is limited; employees cast their ballots in secret.

Card check recognition therefore fundamentally differs from certification. Authorization cards are typically collected during the organizing campaign over a period of time. Employee sentiment is often volatile over the course of the campaign.

Keller Plastics, 157 NLRB at 587 (in voluntary recognition cases, "like situations involving certifications, Board orders, and settlement agreements, the parties must be afforded a reasonable time to bargain and to execute the contracts resulting from such bargaining"). Cf. Franks Bros., 321 U.S. at 705 (recognizing that a bar is essential to the success of rightfully-established bargaining relationships).

[25] 348 U.S. at 99-100.

Moreover, peer pressure and other external influences may result in signatures that do not really reflect a particular employee's wishes.[26]

In addition, in contrast to certifications, where the election date is certain, in the card check context employees generally will not know when majority status is achieved or when recognition will be granted. Therefore, if during the card collection period individuals change their minds as to their desire for representation, they may not know when they must revoke their cards in order to ensure that their true intention is not misrepresented by a count that includes them.

All of these circumstances make cards a less reliable indicator of employee choice than a certification election.[27] It is therefore appropriate for the Board to be more vigilant in deciding whether the circumstances warrant applying the bar against challenges to the employees' expression of support for representation.

Thus, in light of the important differences between Board elections and voluntary recognition based on a card check, the Board should create a limited exception to the voluntary recognition bar where at least 50 percent of unit employees express their opposition to union representation at the time of or shortly after the announcement of

[26] See Brooks, 348 U.S. at 99-100, where the Supreme Court specifically contrasted the solemnity of the election process with circumstances in which "influences of mass psychology" are present.

[27] Gissel, 395 U.S. at 602.

voluntary recognition.[28] In that situation, the employees' actions indicate that a recognition bar would not serve the purpose of promoting employee free choice.

The need for some limited exception to the current voluntary recognition bar doctrine is illustrated by cases applying the bar where employee activity contemporaneous with or shortly after the recognition indicates that the card count supporting recognition did not, in fact, reflect the deliberate choice of employees such that it would justify the imposition of a bar. In Montgomery Ward & Co.,[29] for example, more than half of the employees signed a petition opposing the union, and one employee filed a decertification petition with the Board, just three days after voluntary recognition. Similarly, in Rockwell International Corp.,[30] just a few days prior to the employer's grant of recognition, a majority of the employees signed a petition requesting an election, and then within two weeks after the recognition, they filed a decertification petition with the Board. One of the instant cases -- Metaldyne -- also involves an expression of majority sentiment against the union that was virtually contemporaneous with voluntary recognition. In Metaldyne, over 50% of the employees signed a showing of support for a decertification election just days after the employer voluntarily recognized the union, and a decertification petition was filed 22 days after the recognition.

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[28] The exception proposed here should also apply in a case where an anti-union petition has begun circulating before the date of recognition but does not achieve 50 percent support until after (but within 21 days of) the date of the recognition announcement. If a majority petition expressing disaffection from the union exists prior to recognition, the recognition and its acceptance could also constitute a violation of Sections 8(a)(2) and 8(b)(1)(A). If a charge is filed, these situations must be handled and remedied through the unfair labor practice processes.

[29] 162 NLRB 294 (1966), enfd. 399 F.2d 409 (7th Cir. 1969).

[30] 220 NLRB 1262 (1975).

In all of these situations, processing an election petition would have been justified because the employees' prompt actions demonstrated that employee sentiment had not sufficiently crystallized to warrant the protection of a recognition bar. Stability is a benefit of applying the recognition bar, but the bar should not apply in order to "stabilize" a new relationship where it is so immediately evident that majority support for the newly recognized union is doubtful. In such cases, there is no basis for confidence that application of the recognition bar furthers the basic policy of effectuating the employees' free choice of their bargaining representative.

Based on these considerations, the Board should establish a limited exception to the recognition bar doctrine. We submit that an appropriate formulation of such an exception would be:

> **Where a document expressing opposition to union representation is signed by at least 50 percent of unit employees at the time of formal written notice to employees of voluntary recognition or no later than 21 days thereafter, and where a decertification petition is filed no later than 30 days after that formal written notice of voluntary recognition, the recognition shall not operate as a bar to an election.**[31]

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[31] We note that this exception could, in appropriate circumstances, encompass the filing of a RM petition where, for example, within the same time frame, employees demonstrate to their employer that a majority do not support the union. Cf. Levitz Furniture Co., 333 NLRB 717 (2001) (employers may obtain RM elections by demonstrating good-faith reasonable uncertainty as to unions' continuing majority status). That issue is not before the Board in these cases nor has the Board asked for briefing thereon.

We also note that if the Board adopts an exception to the recognition bar principle, in future cases it will have to decide the bargaining obligations of the parties during the pendency of the election petition. See, e.g., Bruckner Nursing Home, 262 NLRB 955, 958 (1982) (an employer may not bargain with one of several unions competing for initial recognition once a representation petition is filed); RCA Del Caribe, Inc., 262 NLRB 963 (1982) (employer required to continue bargaining with incumbent union after representation petition filed by challenging union); Levitz Furniture Co., 333

Any showing of less than 50 percent opposition would not support an inference that a majority of employees likely did not actually support the union.[32] In any organizing drive that culminates in certification or voluntary recognition of a union based on a card check agreement, there will usually be a minority of employees who do not want the union.

Limiting the window for obtaining a 50 percent showing of interest to a short period such as 21 days, closely contemporaneous with the recognition, will maximize the likelihood that the petition calls into question the union's majority support at or about the time of recognition. By contrast, a showing made at some significantly later time likely would reflect only the natural fluctuation of support for the union as it undertakes its representative responsibilities and would inhibit effective bargaining.[33] It is appropriate to expect that employees who are genuinely disturbed by a voluntary recognition will promptly make known their concerns,[34] and if 50 percent so indicate, a Board election is

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NLRB at 726 (where it appears there is no longer majority support and a petition is on file, employer does not violate 8(a)(2) by continuing to bargain with an incumbent union; if employer withdraws recognition, it would violate 8(a)(5) if there were no actual loss of majority); and W.A. Krueger Co., 299 NLRB 914 (1990) (continuing bargaining obligation with incumbent union despite unresolved decertification election).

[32] Because there has already been a showing of majority that has not been challenged in an unfair labor practice proceeding, reliance on the usual "showing of interest" for an RD petition (30 percent) would be insufficient to justify an exception to the recognition bar.

[33] See p. 7 and n. 21, above.

[34] In some of the cases discussed above, majority petitions against recognition were put together within a few days of the voluntary recognition. See, e.g., Rockwell International, 220 NLRB at 1262 (showing of interest obtained several days prior to recognition); Montgomery Ward, 162 NLRB at 296 (signatures obtained within two days of recognition). Cf. Keller Plastics, 157 NLRB at 584 (stipulated that union had lost majority support no later than 22 days after recognition). In Metalydne, the showing of

the best way of resolving what must be considered a question concerning representation. The Board should therefore require that the showing of interest be obtained as soon as reasonably possible after recognition. A more extended period (such as 30 or 60 days) could allow time for active undermining of a union's valid majority support, essentially continuing the organizing campaign and contributing to the very instability a bar is meant to prevent.

The 21-day showing of interest period should be accompanied by the requirement that the petition be filed quickly so that the QCR can be resolved as soon as possible. The General Counsel recommends allowing 30 days from formal notice of recognition for employees to file the petition with the regional office, as employees are often unrepresented and may be unfamiliar with Board procedures. In order to avoid litigation over when those periods (i.e., 21 days and 30 days) begin, the Board should require that they begin when the employer and/or the union give formal written notice to the unit employees of the voluntary recognition. This requirement would obviate disputes as to the timing of recognition or employee notification of recognition, disputes that may involve credibility issues that a Section 9 pre-election hearing and decision may not be able to resolve.[35]

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interest was obtained "within days" of the voluntary recognition. See declaration of Lori Yost in support of Request for Review in Metaldyne, p. 3 at ¶¶ 13 and 15 (decertification petition signed "within days" after recognition). In Dana, the signatures were obtained "within just a few days" of the circulation of the decertification petition, although it is unclear when the petition was circulated. See declaration of Clarice K. Atherholt in support of Request for Review in Dana, p. 3, ¶ 8.

[35] Of course, the election petition must be for the same unit description as the unit voluntarily recognized. See, e.g., Mo's West, 283 NLRB 130 (1987) (a petitioned-for unit in a decertification petition must be coextensive with the certified or recognized unit).

Finally, the voluntary recognition bar, and the exception to it proposed here, should apply regardless of whether voluntary recognition is established pursuant to a card check agreement that precedes employee signing of cards and that is accompanied by a neutrality agreement, as in the instant cases, or pursuant to an *ad hoc* card check after employees sign cards.[36] In both cases, any legitimate voluntary recognition must be based on cards freely signed by a majority of employees. To the extent there is alleged coercion of employees involving the recognition, this can be challenged via unfair labor practice charges.[37] For these reasons, we see no basis for distinguishing -- for purposes of whether to apply the voluntary recognition bar in general, and the exception to it proposed here -- between voluntary recognition granted pursuant to a neutrality/card check agreement entered into before an organizing campaign and one reached after a majority of employees had signed cards.

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[36] See, e.g., Snow & Sons, 134 NLRB 709 (1961), enfd. 308 F.2d 687 (9th Cir. 1962).

[37] See, e.g., Vernitron, 221 NLRB 464, 465 (1975), enfd. 548 F.2d 24 (1st Cir. 1977) (pressure employees to attend organizing meetings during work time; supervisory surveillance of employees reaction to union solicitation of cards);. Natico, Inc., 302 NLRB 668, 687-88 (1991) (unlawful canceling overtime before election to encourage employees to attend rival union's meeting); Dobbs International Services, 335 NLRB 972, 975 (2001) (unlawful interrogations, advising employees of futility of incumbent union, prohibiting solicitation on behalf of incumbent, and solicitations of employees to support rival union); Duane Reade, Inc., 338 NLRB No. 140 (2003), enforced, --- Fed.Appx. ---, 2004 WL 1238336 (D.C. Cir. June 4, 2004) (directing employees to meet with and sign cards for one of two competing unions during worktime, in presence of supervisors; denial of access to other union); Siro Security Service, 247 NLRB 1266, 1273 (1980) (unlawful threats of discharge for not signing cards); Gulf Caribe Maritime, 330 NLRB 766, 772 (2000) (union unlawfully offered to waive initiation fees and pressured and misrepresented employees into signing cards; subsequent employer recognition also unlawful).

III. CONCLUSION

In sum, we respectfully submit that the Board should adopt, and process the pending cases consistent with, the following exception to the recognition bar doctrine: Where a document expressing opposition to union representation is signed by at least 50 percent of unit employees at the time of formal written notice to employees of voluntary recognition or no later than 21 days thereafter, and where a decertification petition is filed no later than 30 days after that formal notice, the recognition shall not operate as a bar to an election.

Respectfully submitted,

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Dated: July 14, 2004

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the General Counsel's Amicus Brief was duly sent by U.S. first class mail to all parties listed below on this 14th day of July, 2004.

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