UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

DANA CORPORATION Employer, and CLARICE K. ATHERHOLT Petitioner, and INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, AFL-CIO Union and METALDYNE CORPORATION (METALDYNE SINTERED PRODUCTS) Employer and ALAN P. KRUG AND JEFFREY A. SAMPLE Petitioners and INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, AFL-CIO Union	)	CASE NO. 8-RD-1976 CASE NOS. 6-RD-1518 6-RD-1519

BRIEF OF *AMICUS CURIAE*
COLLINS & AIKMAN CORPORATION

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

LEGISLATIVE HISTORY

I. INTRODUCTION.

Amicus curiae Collins & Aikman Corporation ("Collins & Aikman") respectfully submits this brief in support of the retention of the voluntary recognition doctrine and the recognition bar, as advocated by the International Union, United Automobile, Aerospace & Agricultural Implement Workers of America, AFL-CIO, Dana Corporation and Metaldyne Corporation.

A. Preliminary Statement.

Amicus curiae Collins & Aikman is a manufacturer of automotive components. Its workforce consists of both unionized and nonunion employees. Collins & Aikman urges the Board to uphold the Regional Director's decision to dismiss the decertification petitions. The Board should honor its longstanding jurisprudence that once the bargaining obligation is established—whether by election or voluntary recognition through a card check—it must continue for a reasonable time. This policy allows the parties time to negotiate a collective bargaining agreement without the constant pressure of employees who expect instant results.

II. LAW AND ARGUMENT.

A. The Fundamental Policy Underlying the National Labor Relations Act is Industrial Peace.

Congress enacted the National Labor Relations Act in 1935 to encourage the practice and procedure of collective bargaining and encourage friendly adjustment of industrial disputes. 29 U.S.C. § 151. The legislative history of the NLRA indicates that industrial peace was the cornerstone of the Act. Section 301 the Senate Report states that the goal of the NLRA is "to

encourage the making of agreements and to promote industrial peace through faithful performance by the parties . . . ." 1947 Senate Report, at 16-17, 1 Legislative History, at 422-423. While other goals, such as the preservation of an employee's right to self organization were discussed and included in the Act, Congress was more concerned with stabilizing the relationships between organized labor and employers. *See* 79 Cong.Rec. 6184 (1935); *See also id.,* at 7574 (Senator Wagner, sponsor of the NLRA, affirming that the Act encourages "voluntary settlement of industrial disputes"). In addition to the legislative history, statutory language indicates that industrial peace and stable bargaining relationships between the parties are the key policies behind the Act. For example, in Section 8(b)(7)(A), Congress prohibits recognitional picketing by employees represented by recognized union. 29 U.S.C. § 158(b)(7)(A). Section 8(b)(7)(B) prohibits recognitional picketing for one year after election. 29 U.S.C. § 158(b)(7)(B). Finally, Section 9(c)(3) prohibits second representation election within one year). 29 U.S.C. § 159(c)(3)

The United States Supreme Court has also consistently held that industrial peace is the overriding policy of the NLRA. *First National Maintenance Corp. v. NLRB*, 452 U.S. 666, 674 (1981); *NLRB v. Gissel Packing Co.*, 395 U.S. 575, 601-605 (1969); *Vaca v. Sipes* 386 U.S. 171, 182 (1967); *Brooks v. NLRB*, 348 U.S. 96, 103 (1954); *Charles Dowd Box Co. v. Courtney*, 368 U.S. 502, 509 (1967). The Supreme Court has shown that industrial peace should be attained even if it subordinates other rights guaranteed by the Act, including an employee's Section 7 rights. *See Emporium Capwell v. Western Addition Community Organization*, 420 U.S. 50, 52 (1975); *John Wiley & Sons v. Livingston*, 376 U.S. 543 (1964).

B. **The Use of Neutrality Agreements and Authorization Cards Encourages Industrial Peace and Cooperative Relationships Between Unions and Employers.**

Industrial peace is achieved through the use of neutrality agreements and authorization cards. In fact, both the Board and the federal courts have routinely upheld neutrality agreements. *See, e.g., UAW v. Dana Corp.*, 278 F.3d 548, 558-60 (6th Cir. 2002); *HERE Local 217 v. J.P. Morgan Hotel*, 996 F.2d 561, 566 (2d Cir. 1993); *HERE Local 2 v. Marriott Corp.*, 961 F.2d 1464, 1470 (9th Cir. 1992); *Verizon Info. Systems*, 335 NLRB No. 444 (2001); *Cellco Partnership d/b/a Verizon Wireless*, 2002 WL 254221 (NLRB Div. of Advice Memorandum, Cases 4-CA-30729, 4-CB-8747, Jan. 7, 2002): *Bethlehem Steel Corp.*, 2000 WL 174175 (NLRB Div. of Advice Memorandum, Cases 4-CA-28847-1 and 4-CB-8403, June 26, 2000). In the above cases, the courts and/or the Board upheld as lawful neutrality agreements wherein employers agreed to recognize a union based on a majority of signed authorization cards (as opposed to a Board election); and maintain a neutral position and limit communications during organizing campaigns. *See also, NLRB v. Broadmoor Lumber Co.*, 578 F.2d 238 (9th Cir. 1978).

C. **The Statutory Language and Well Established Precedence Allows the Use of Authorization Cards to Determine a Union's Majority Status.**

The statutory language of the NLRA does not provide a preferred method by which a union can be appointed exclusive bargaining representative. Section 9(a), the section of the act specifically dealing with representation issues, remains silent on the method that employees must use to choose (or not choose) a collective bargaining representative. 29 U.S.C. § 159(a). In addition, Section 8(a)(5) states that it is an unfair labor practice for an employer to refuse to bargain collectively with the representatives of his employees. 29 U.S.C. § 158(a)(5). Accordingly, the union and employer are left to determine how the employees will choose a representative. Since the NLRA was enacted almost seventy years ago, majority status has been

established through a variety of means, including secret ballot elections, strike votes, and card check recognition. *Gissel*, 395 U.S. at 597. The Board can also order a bargaining order.

While the Board states in its order that "secret-ballot election[s] remain the best method for determining whether employees desire union representation," the Supreme Court has consistently held that a Board election is not the only method by which a union can gain majority status. *United Mine Workers v. Arkansas Flooring Co.* 351 U.S. 62, 72 (1956); *Gissel*, 395 U.S. at 596-99. In *United Mine Workers*, the Court found that an employer violates Section 8(a)(5) if it refuses to bargain with a union who obtained signed authorization cards from a majority of employees. *Id*. at 69. In addition, Congress specifically rejected a proposed change that would have eliminated the use of authorization cards as the basis for majority recognition when it enacted the Taft-Hartley amendments in 1947. *Gissel,* 395 U.S. at 598.

The Board has also consistently endorsed the use of authorization cards to establish a union's majority support. *See Keller Plastics Eastern Inc.*, 157 NLRB 583 (1966) ("Collective bargaining relationships [can arise] as here, from voluntary recognition of a majority union."); *Seattle Mariners*, 335 NLRB 563 (2001); *MGM Grand Hotels, Inc.*, 329 NLRB 464 (1999). It is long established Board policy to promote voluntary recognition and bargaining between employers and labor organizations as a means of promoting harmony and stability of labor-management relations)(emphasis added); *McLaren Health Care Corp.*, 333 NLRB No. 31 (2001); *Nantucket Fish Co.,* 309 NLRB 794, 795 (1992) ("If an employer agrees to recognize the union on proof of majority status through a card check, it is bound by the card check result and violates the Act if it thereafter refuses to recognize the union or withdraws recognition.")

D. **The Recognition Bar Effectuates the Right of the Parties to Voluntary Recognition Through Authorization Cards.**

To further the goals of industrial peace, a union must be given the presumption of majority support for a reasonable time following certification or voluntary recognition. *Fall River Dyeing & Finishing Corp. v. NLRB*, 482 U.S. 27, 38 (1987). The presumption of majority support allows the union to bargain without worrying that the employees will file a decertification petition before results can be achieved. *Fall River*, 482 U.S. at 38. The presumption also tempers the employer's desire to delay bargaining to undermine the union's support amongst its employees. *Id*.

In the context of authorization cards, the Board and the federal courts have allowed a union to enjoy the presumption of majority support for a "reasonable time" following voluntary recognition. *See Brooks v. NLRB,* 348 U.S. 96 (1954); *Rock-Tenn Co. v. NLRB,* 69 F.3d 803, 808 (7th Cir. 1995); *Randall Division of Textron, Inc. v. NLRB,* 965 F.2d 141, 145 (7th Cir. 1992); *NLRB v. Montgomery Ward & Co.,* 399 F.2d 409 (7th Cir. 1968); *Seattle Mariners*, 335 NLRB 563 (2001); *MGM Grand Hotels, Inc.*, 329 NLRB 464 (1999); *Smith's Food & Drug Centers, Inc.*, 320 NLRB 844 (1996).

Former Board Chairman Gould gave a lengthy policy discussion outlining the importance of this voluntary recognition bar. *Smith's Food & Drug Centers, Inc.*, 320 NLRB 844 (1996) (Chairman Gould, concurring). In his concurrence, Chairman Gould noted that the voluntary recognition bar effectuates rather than impedes employee free choice. When employees execute authorization cards during a union organizational drive, they do so to obtain union representation as soon as possible. A subsequent election to reconfirm the employees' decision does nothing but disservice the employees' original choice. "If an employee or a competing union believes that the employer provided unlawful assistance to the recognized

union, they may avail themselves of the Board's unfair labor practice proceedings under Section 8(a)(2). If employees later decide that their designated representative does not meet their expectations, they may take steps to decertify the union after a reasonable time for bargaining." *Id.*

The courts have also recognized the importance of the voluntary recognition bar in labor policy. In *NLRB v. Montgomery Ward & Co.,* 399 F.2d 409 (7th Cir. 1968), the court listed four reasons why a recognized union should be afforded a reasonable time to succeed as a bargaining agent:

> (1) The choice of a bargaining agent is like the choice of a political candidate and in both cases making the choice binding for a fixed time would promote a sense of responsibility of choice and a needed coherence in administration;
> (2) A union should be given time to carry out its mandate so that it will not be forced to bargain in an atmosphere demanding immediate and highly successful results;
> (3) An employer should not be allowed to feel that by stalling the negotiation process he may be able to undermine union strength; and
> (4) Raiding and a strike between competing unions should be minimized.

Id. at 412.

Once a union is recognized, whether by election or a card check, the union's entitlement to NLRB protection and an ensuing bargaining relationship must not lightly be overturned. If the Board allows a thirty to forty-five day "window period" before the voluntary recognition bar begins or completely eliminates the bar altogether, this will effectively eradicate the use of authorization cards as a legitimate and valid method of finding majority support. The employer and the recognized union will not have the ability to form a bargaining relationship and negotiate a contract without constantly worrying that employees will file a decertification petition and force an election. Employees would be given a second chance to determine if they want union

representation, an opportunity they are not given if they cast a ballot in a Board certified election. *Gissel*, 395 U.S. at 604. Employees could exercise this right at any point following the card check.

In the instant case, the employees filed a decertification petition less than *four weeks* after the union was recognized as the employees' exclusive bargaining representative. This hardly gives the employer and the recognized union the necessary time to draft an initial contract. *See Seattle Mariners,* 335 NLRB 563 (one month did not constitute a reasonable time); *Blue Valley Machine & Mfg. Co.* (eighth months unreasonable); *Livent Realty,* 328 NLRB 1 (1999) (ten months unreasonable); *MGM Grand Hotel, Inc.*, 329 NLRB 464 (eleventh months unreasonable). Employers would have no incentive to bargain with the recognized union if, at any time, employees could vote out their bargaining representative. Likewise, unions would be wary to begin negotiations with employers if their status as exclusive bargaining representative could change at any time. This situation does not further employees' Section 7 rights – it frustrates them. Employees, by signing authorization cards, exercised their right to organize and collectively bargain. This choice is undermined if the recognized union can be eliminated through a subsequent decertification election before any meaningful bargaining has occurred.

E. **Employees' Section 7 Rights Are Protected During Voluntary Recognition.**

Petitioner's concerns that voluntary recognition may trample employees' Section 7 rights are unfounded. There is no indication that any abuse, coercive behavior or any other unlawful action occurred in these cases. Even if we are to assume that such behavior did occur, petitioners have other means to remedy these violations other than eliminating the recognition bar. The employees can file an unfair labor practice charge against the employer and/or the recognized

union. Congress specifically created the unfair labor practice charge mechanism to address the behavior of the union and employer during the organizing period and majority showing.

III. **CONCLUSION.**

Voluntary recognition has been endorsed and encouraged by the Board and the federal courts for decades. Congress did not eliminate the use of authorization cards when presented with that option in 1947. The Supreme Court has also been unwilling to prohibit the use of card checks and other forms of voluntary recognition. In fact, the Supreme Court has encouraged the use of authorization cards as a means of finding majority support. For the past forty years, the Board has also encouraged the use of alternate methods to determine a union's majority support, including the use of authorization cards. The recognition bar is essential to the give full meaning and effect to this voluntary recognition. *Amicus* urges the Board to affirm the decision of the Regional Directors and allow the continued application of the recognition bar and the protection of the rights afforded under the voluntary recognition doctrine.

Dated: July 14, 2004

Respectfully submitted,

_____

JAMES M. STONE
DAVID E. WEISBLATT
MCDONALD HOPKINS CO., L.P.A.
600 SUPERIOR AVENUE, EAST
CLEVELAND, OHIO 44114-2653
TELEPHONE: (216) 348-5400
FACSIMILE: (216) 348-5474
EMAIL: jstone@mcdonaldhopkins.com
dweisblatt@mcdonaldhopkins.com

COUNSEL FOR *AMICUS CURIAE*
COLLINS & AIKMAN CORPORATION

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the **Brief of *Amicus Curiae*, Collins & Aikman Corporation**, was sent via overnight mail to:

William J. Messenger, Esq.
Glenn M. Taubman, Esq.
National Right to Work Legal
Defense Foundation, Inc.
8001 Braddock Road, Suite 600
Springfield, VA 22160

Daniel W. Sherrick, Esq.
Betsey A. Engel, Esq.
Counsel for the International Union, UAW
8000 East Jefferson Avenue
Detroit, MI 48214-2699

Gerald Kobell,
Regional Director
National Labor Relations Board, Region 6
William S. Moorehead Federal Building,
Room 1501
1000 Liberty Avenue
Pittsburgh, Pennsylvania 15222-4173

Stanley J. Brown, Esq.
Susanne Harris Carnell, Esq.
Hogan & Hartson
8300 Greensboro Drive
McLean, VA 22012

Gary M. Golden, Esq.
Dana Corporation Law Department
4500 Dorr Street
Toledo, Ohio 43615

VIA HAND-DELIVERY:

Frederick J. Calatrello, Regional Director
National Labor Relations Board, Region 8
Anthony J. Celebreeze Federal Building
1240 East 9th Street, Room 1695
Cleveland, OH 44199-2086

James M. Stone
David E. Weisblatt
Nicole M. Monachino
McDonald Hopkins, Co. L.P.A.
Suite 2100
600 Superior Avenue, East
Cleveland, Ohio 44114

_____
David E. Weisblatt

One of the Attorneys for *Amicus Curiae*
Collins & Aikman Corporation