

NLRB Decides That Elections Are Not Barred Where Majority of Workers Petitions Against Union *Before* Employer Extends “Voluntary” Recognition: *Richards v. Cequent Towing Products & United Steelworkers* (NLRB)—Staff Attorney William Messenger.

Cequent Towing was a party to a “neutrality and card check” agreement with the United Steelworkers (USW). During a USW organizing drive at Cequent’s plant in Goshen, Indiana, a *majority* of employees signed a petition stating that they did not want the union to be their exclusive bargaining representative, and wanted an NLRB election if Cequent ever recognized the USW. Cequent recognized the USW based upon a “card check” despite the petition against USW representation. Soon thereafter, worker Douglas Richards filed the petition with the NLRB with the signatures obtained before the recognition requesting a decertification election. As in *Dana/Metaldyne* [[insert link](#)], the Regional Director dismissed the petition under the so-called “voluntary recognition bar” rule.

Bill Messenger then filed a Request for Review for Richards with the Board. This request argued two alternative grounds for granting an election. First, the Board’s “dual card” doctrine—that cards signed by an employee for rival unions cancel each other out—should invalidate a union authorization card when the same employee signs a document opposing union representation. If so, the union never had majority employee support in this case. Second, the “voluntary recognition bar” should not apply when the showing of support for a decertification petition is signed by employees *before* the employer grants “voluntary recognition.” On June 9, 2004, a 3-2 majority of the Board granted review “in light of the Board’s grant of review in [*Dana/Metaldyne*].”

On September 29, 2007, the Board majority held in *Dana/Metaldyne*, as Bill argued in this case, that the “requisite showing of interest in support of a [decertification] petition may include employee signatures obtained before as well as after the recognition” of the union by the employer. The majority explained that “there is no sound reason why the act of voluntary recognition should negate the validity of employee signatures antedating recognition.” However, a three-Member panel of the Board affirmed the Regional Director’s dismissal of this petition, because in *Dana/Metaldyne* the Board “has modified the recognition-bar doctrine . . . on a prospective basis only.” As in *Dana/Metaldyne*, there was no appeal from the Board’s rulings in this case, so it is closed.