THE UNITED STATES OF AMERICA
BEFORE THE
NATIONAL LABOR RELATIONS BOARD

DANA CORPORATION

Respondent Employer

and

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

Respondent Union

and

GARY L. SMELTZER, JR., An Individual — CASES 7-CA-46965, 7-CB-14083

Charging Party

and

JOSEPH MONTAGUE, An Individual — CASES 7-CA-47078, 7-CB-14119

Charging Party

and

KENNETH A. GRAY, An Individual — CASES 7-CA-47079, 7-CB-14120

Charging Party

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**RESPONDENT UNION, UAW AND THE AMICUS CURIAE AMERICAN FEDERAL OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS (AFL-CIO) JOINT BRIEF IN OPPOSITION TO EXCEPTIONS**

The Respondent International Union, United Automobile, Aerospace & Agricultural Implement Workers of America ("UAW" or "Union") and the Amicus Curiae American Federal of Labor and Congress of Industrial Organizations ("AFL-CIO") jointly submit this brief in opposition to the General Counsel's and Charging Parties' exceptions.

## INTRODUCTION

This case involves an ordinary recognition agreement providing that the Employer will recognize the Union upon a showing of majority support. The General Counsel and Charging Parties attempt to remove this case from the well-established line of precedent upholding and enforcing such agreements under a wholly novel theory. Citing provisions of the recognition agreement through which the parties state their common aspirations concerning a small number of subjects to be addressed in possible, future collective bargaining, the General Counsel and Charging Parties both misconstrue and seek an unjustified extension of the Board's holding in Majestic Weaving, 147 NLRB 859 (1964). But the agreement at issue here clearly, expressly, and effectively preserved and protected employee free choice, as conclusively demonstrated by the fact that employees have not chosen to be represented by the Union and remain unrepresented by the Union. For the reasons fully explained below, the Administrative Law Judge ("ALJ") correctly recommended that the Complaint be dismissed.

## PROCEDURAL HISTORY

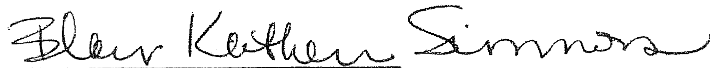
The Complaint in this case charges a violation of sections 8(a)(2) and 8(b)(1)(A) of the Act.[1] The relevant allegations in the Complaint are the following:

[1] Neither the General Counsel nor the Charging Parties have articulated any basis for the 8(b)(1)(A) charge. In the premature recognition cases such as ILGWU v. NLRB (Bernhard Altmann), 366 U.S. 731 (1961), and Majestic Weaving, 147 NLRB 859 (1964), the 8(b) violation was premised on the recognition and execution of a collective bargaining agreement absent majority support or when majority support was tainted by the premature recognition. See Bernhard-Altman Texas Corp., 122 NLRB 1289, 1293 (1959) ("just as an employer violates Section 8(a)(1) (as well as 8(a)(2)) by recognizing and contracting with a minority union, so, too, does a minority union violate Section 8(b)(1)(A) by executing and maintaining a collective-bargaining agreement in which it is recognized as the exclusive representative"). Here, the Union was never recognized and never reached a collective bargaining agreement. Thus, there was no 8(b)(1)(A) violation.

CONCLUSION

For the above-stated reasons, the Board should reject the exceptions and adopt the decision of the ALJ.

Respectfully submitted,



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