United States Government

NATIONAL LABOR RELATIONS BOARD

Region 6

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January 30, 2004

Re: Metaldyne Corp.
(Metaldyne Sintered Pro.)
Case 6-RD-1518
and
Metaldyne Sintered
Case 6-RD-1519

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

Dear Mr. Messenger:

The above-captioned cases, petitioning for an investigation and decertification of representative under Section 9(c) of the National Labor Relations Act, have been carefully investigated and considered.

As a result of the investigation, it appears that further proceedings are not warranted at this time inasmuch as the petitions must be dismissed as untimely under the recognition bar doctrine enunciated in Keller Plastics Eastern, Inc., 157 NLRB 583 (1966). This doctrine, as explained in later cases, provides that if an employer extends voluntary recognition to a union in good faith based on demonstrated majority status, at a time when only the recognized union was actively engaged in organizing unit employees, the recognition bars a petition for a reasonable period of time. See e.g. Jack L. Williams, D.D.S., 231 NLRB 845, 846 (1977).

The investigation disclosed that on December 1, 2003, Metaldyne Sintered Products, the Employer herein, granted voluntary recognition to the Union in a production and maintenance unit at the Employer's St. Mary's, Pennsylvania facility, based on majority status determined through a card check by a neutral third party.[1] Thereafter, on December 23, 2003, the instant decertification petitions were filed, supported by a showing of interest obtained after the grant of recognition. Although the petitions refer to the Employer by slightly different names, it is clear that they both are seeking a decertification election in the same recognized unit.

[1] The card check was conducted by a mediator from the Federal Mediation and Conciliation Service. The cards recite that "I [print name] authorize the United Auto Workers to represent me in collective bargaining."

In these cases, the Petitioners urge the creation of an exception to the recognition bar doctrine which would allow the filing of a decertification petition within a 30-day window after an employer voluntarily recognizes a union based on a card check. The Petitioners argue that such an exception promotes employee free choice because an election is conducted under "laboratory conditions" while authorization cards may be signed as a result of coercion or misrepresentations. Further, the Petitioners argue that such an exception will not impair industrial stability in that it is unlikely that substantial negotiations would occur within 30 days of recognition. In fact, the Petitioners contend the exception they propose actually fosters industrial stability because employees will have confidence in the results of a Board-conducted election. Finally, the Petitioners argue that such an exception ensures that the NLRB is the arbiter of majority status rather than a third party conducting a card check.

While urging the creation of an exception to the recognition bar doctrine to allow a decertification petition filed within 30 days of the grant of recognition, the Petitioners do not challenge the validity of the initial grant of recognition herein. That is, while the Petitioners suggest that the possibility of coercion and misrepresentation[2] attendant to card signing provides a rationale for the creation of an exception to the recognition bar doctrine, the Petitioners do not argue that the initial grant of recognition by the Employer herein was invalid. In addition, the Petitioners do not argue that the Employer could not invoke the recognition bar doctrine under Keller Plastics.[3]

Furthermore, while urging the creation of an exception to the recognition bar doctrine, the Petitioners acknowledge, as they must, the availability of redress for an unlawful grant of recognition under Section 8(a)(2) of the Act. Rather, the Petitioners assert that Section 8(a)(2) cannot remedy interference with employee free choice that does not rise to the level of an unfair labor practice, which they assert may have occurred in this case.

Notwithstanding the Petitioners' arguments regarding the unreliability of voluntary recognition based on a card check, and the alleged inadequacy of redress under Section 8(a)(2), the Board has long accepted an employer's voluntary recognition of a union based on a card check and has granted the union a reasonable period to engage in collective bargaining negotiations. See e.g., Keller Plastics, supra.

Nearly 30 years ago, the Board rejected an attempt to file a decertification petition within 30 days of a grant of recognition. In Rockwell International Corp., 220 NLRB 1262, 1263 (1975), the Board dismissed a decertification petition as untimely following voluntary recognition. In that case, a neutral third party certified that the union possessed majority status based upon a card check. A decertification petition was filed 14 days later, and the petition was supported by over 50 percent of the unit employees. The petitioner asserted that the employees were led to believe that they would have the right to vote and that the employer's voluntary recognition

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[2] In support of this argument, the Petitioners have submitted an affidavit from an employee, who is not in the bargaining unit, in which she states her belief that other employees signed authorization cards because of coercion and/or misrepresentation.

[3] The Petitioners have presented no direct evidence to call into question the validity of the initial grant of recognition. In this regard, the affidavit submitted by the Petitioners, see fn. 2, containing as it does only the unsupported beliefs of the affiant, is insufficient to establish that the initial grant of recognition was invalid.

based on a card check denied them this right. The Board held that "[f]ollowing a lawful grant of recognition the parties are entitled to a reasonable period of time to permit them to attempt to negotiate a collective-bargaining agreement; during that period a decertification petition is not timely." (Footnote omitted.)

More recently, the Board adhered to its long-standing Keller Plastics recognition bar policy in Seattle Mariners, 335 NLRB 563 (2001). In Seattle Mariners, a neutral third party certified that the union possessed majority status based upon a card check. Thirty-two days later, a decertification petition was filed based upon a 30-percent showing of disinterest obtained before the grant of recognition. Nevertheless, the Board refused to create an exception to the recognition bar doctrine.

The very concerns raised by the Petitioners in these cases have been considered and rejected by the Board in the cases following Keller Plastics. As the Board recognized in Seattle Mariners, in any organizing drive it is likely that there are employees who oppose representation. Nevertheless, reiterating that "the Act is premised on the concept of majority rule," the Board held that "[s]ince a majority of employees in the instant case have indicated their desire for representation by the Union, it would be anomalous to deprive that majority of their expressed desire for representation based merely on the contrary opinion of a minority group of employees." Id. at 565. (Footnote omitted.) The Employer and the Union, the parties to the voluntary recognition agreement, are entitled to a reasonable period of time to negotiate a collective-bargaining agreement without the 30-day window proposed by Petitioners, which, allowing for the election machinery to run its course, would involve substantially more delay to impede the bargaining process.

Further, not only has the Board continued to adhere to the recognition bar doctrine since it was first set forth in Keller Plastics nearly 40 years ago, but also the recognition bar doctrine has been approved by all the circuit courts of appeal which have considered it.[4]

Therefore, in accordance with the well-established Board policy on recognition bar, the petitions are hereby dismissed.

Pursuant to the National Labor Relations Board Rules and Regulations, Series 8, as amended, you may obtain a review of this action by filing a request therefore with the National Labor Relations Board, addressed to the Executive Secretary, National Labor Relations Board, Washington, DC, 20570. A copy of such request for review must be served on the Regional Director and each of the other parties to the proceeding. This request for review must contain a complete statement setting forth the facts and reasons upon which it is based. The request for review (eight copies) must be received by the Executive Secretary of the Board in Washington, DC, by the close of business at 5:00 p.m., on February 4, 2004. Upon good cause shown, however, the Board may grant special permission for a longer period within which to file. The request for extension of time should be submitted to the Executive Secretary of the Board in Washington, DC, and a copy of any such request for extension of time should be submitted to the Regional Director, and to each of the other parties to this proceeding.

The request for review and any request for extension of time for filing must include a statement that a copy has been served on the Regional Director and on each of the other parties to this

[4] N.L.R.B. v. Cayuga Crushed Stone, Inc., 474 F.2d 1380 (2d Cir. 1973); NLRB v. Frick Co., 423 F.2d 1327 (3d Cir. 1970); NLRB v. Universal Gear Serv. Corp., 394 F.2d 396 (6th Cir. 1968); NLRB v. Montgomery Ward & Co., 399 F.2d 409 (7th Cir. 1968).

proceeding, and the copy must be served in the same or faster manner as that utilized in filing the request with the Board. When filing with the Board is accomplished by personal service, however, the other parties shall be promptly notified of such action by telephone, followed by service of a copy by mail or telegram.

Very truly yours,

Gerald Kobell
Regional Director

cc:
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