UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

Alan P. Krug and Jeffrey A. Sample
(Petitioners)

Metaldyne Precision Forming,
(Employer)

Case Nos. 6-RD-1518
6-RD-1519

and

International Union, United Automobile Aerospace and Agricultural Implement Workers of America, AFL-CIO ("UAW")
(Union)

Clarice K. Atherholt,
(Petitioner)

Dana Corp.,
(Employer)

Case No. 8-RD-1976

and

International Union, United Automobile Aerospace and Agricultural Implement Workers of America, AFL-CIO ("UAW")
(Union)

PETITIONERS' JOINT MOTION TO CONSOLIDATE CASES; AND
JOINT MOTION REQUESTING THAT THE BOARD SEEK AMICUS BRIEFS

By and through their undersigned attorneys, the Petitioners in the above referenced

decertification cases hereby move the Board to consolidate these two cases for purposes of deciding the Requests for Review, since both cases present similar facts and legal arguments against a common union, the International Union, United Automobile Aerospace and Agricultural Implement Workers of America, AFL-CIO ("UAW").

Additionally, because these two Requests for Review raise issues fundamental to the proper administration of the Act, and call into question some of the Board's recent and sharply divided decisions concerning the use of a "voluntary recognition bar" to halt employee requests for secret ballot elections, see, e.g., Seattle Mariners, 335 NLRB 563, 566 (2001) (Chairman Hurtgen, dissenting) and MGM Grand Hotel Inc., 329 NLRB 464, 469-475 (1999) (Member Brame, dissenting), the Petitioners move the Board to designate these as "lead cases" and solicit amicus briefs from interested parties. Those interested parties should be asked their views on the extent to which the Board should overrule its "voluntary recognition bar" rules, especially in light of the dissenting opinions of former Chairman Hurtgen and Member Brame cited above and the facts of these cases.

Petitioners make this request because "neutrality and card check" arrangements are supplanting the Board's traditional secret ballot election processes as the primary means by which unions gain power in the workplace. These private, often secret arrangements threaten to render the Board obsolete, by ending all Board oversight of unionization (and related issues such as the appropriate composition of the bargaining unit, the scope of bargaining, and what constitutes "laboratory conditions" warranting certification or recognition). See, e.g., Charles I. Cohen, Neutrality Agreements: Will the NLRB

Sanction Its Own Obsolescence?, The Labor Lawyer, (Fall, 2000); Daily Labor Reporter, August 15, 2003, Page B-1, Five Members Discuss Decisionmaking, Wide Variety of Issues at ABA Meeting, wherein Chairman Battista questioned the growing use of neutrality agreements and stated that the "purpose of using neutrality agreements is not to expedite [employee free choice], but to silence one of the parties."

Indeed, the facts of these two decertification cases show that the two "voluntary recognitions" foisted upon the Petitioners by their employers and the unwanted UAW union were fundamentally unfair, and lacked even a semblance of the "laboratory conditions" that the Board would require if it were conducting a secret ballot election. General Shoe Corp., 77 NLRB 124 (1948); NLRB v. Gissel Packing Co., 395 U.S. 575, 602 (1969) ("secret elections are generally the most satisfactory-indeed the preferred-method of ascertaining whether a union has majority support").

As such, and for the reasons more fully stated in the accompanying Requests for Review, use of a "voluntary recognition bar" to deny the Petitioners and their co-workers the right to decide for themselves whether or not they support the UAW (a union which was hand-picked by their employers pursuant to secret "neutrality" agreements) is both legally and morally wrong. The Board is asked to open these cases for amicus filing because the Petitioners assert that the Board should overrule, or at least circumscribe, the use of its "recognition bar" doctrine.

In several recent circumstances where the issues were of great public importance, the Board designated "lead cases" and solicited amicus briefs from interested parties.

See, e.g., Oakcrest Healthcare Inc., No. 7-RC-22141, Golden Crest Healthcare Center, No. 18-RC-16415 and Croft Metals, Inc., No. 15-RC-8393, all analyzing the impact of NLRB v. Kentucky River Community Care, Inc., 532 U.S. 706 (2001); and Can-Am Plumbing, Inc., No. 32-CA-16097 and J.A. Croson, No. 9-CA-35163, all analyzing the job-targeting issue in light of the D.C. Circuit's decision in Can-Am Plumbing, Inc. v. NLRB, 321 F.3d 145 (D.C. Cir. 2003). Petitioners submit that the issues raised by these Requests for Review are not just "interesting" or "novel," but go directly to the heart of the Act and the future of this Board. Charles I. Cohen, Neutrality Agreements: Will the NLRB Sanction Its Own Obsolescence?, The Labor Lawyer, (Fall, 2000).

Wherefore, the Petitioners jointly move the Board to consolidate these two cases for purposes of deciding the Petitions for Review. Petitioners also move the Board to designate these as "lead cases" and solicit amicus briefs from interested parties on the issue of whether, and to what extent, the Board should overrule its "voluntary recognition bar" rules. This is especially true in light of the dissenting opinions of former Chairman Hurtgen and Member Brame in Seattle Mariners, 335 NLRB 563, 566 (2001); MGM Grand Hotel Inc., 329 NLRB 464, 469-475 (1999) and the facts of these cases.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was sent by Federal Express Overnight Delivery to:

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