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.	)	Case No. 8-RD-1976
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 Nos. 6-RD-1518; 6-RD-1519

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BRIEF OF *AMICI CURIAE* GENERAL MOTORS CORPORATION, DAIMLERCHRYSLER CORPORATION, THE FORD MOTOR COMPANY, AND DELPHI CORPORATION

Amici curiae General Motors Corporation ("GM"), DaimlerChrysler Corporation ("DaimlerChrysler"), The Ford Motor Company ("Ford"), and Delphi Corporation ("Delphi") (collectively, "*Amici*") respectfully submit this brief in support of retention of the recognition bar doctrine as advocated in these consolidated cases by the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, AFL-CIO (the "UAW"), Dana Corporation ("Dana Corp."), and Metaldyne Corporation ("Metaldyne").

I. Preliminary Statement

A. Interests of the *Amici*

Amici GM, Ford, and DaimlerChrysler are large manufacturers of, *inter alia*, automotive products. Their domestic workforces, comprised of both represented and unrepresented employees, number in the hundreds of thousands. *Amicus* Delphi is a large, diversified manufacturer and supplier of, *inter alia*, automotive and truck components and systems. It likewise has a very large domestic workforce comprised of both represented and unrepresented employees.

Amici have extensive and long-standing collective bargaining experience, with some of their bargaining relationships spanning many decades. *Amici*'s experiences with Board elections and voluntary recognition are broad and varied. Each has experienced, in varying degrees, disruptions and distractions during the course of contentious organizing campaigns, as well as the impact such campaigns have on the overall labor-management relationship. Particularly in recent decades, a number of bargaining relationships, including *Amici*'s, have had their genesis in voluntary recognition based on a lawful demonstration of majority support in an appropriate unit, without the necessity of secret-ballot elections. Moreover, *Amici*'s use of voluntary recognition

agreements could result in future instances of such voluntary recognition. Accordingly, *Amici* have a keen interest in the development of the law regarding voluntary recognition.

Amici believe that the recognition bar doctrine, which is the focus of these consolidated cases, is essential for the maintenance of industrial peace and stability following voluntary recognition. *Amici* seek to avoid a bargaining process or commitment, lawfully created by their voluntary recognition agreements, that would become tentative and uncertain with the elimination or erosion of the recognition bar. As such, the preservation of the recognition bar doctrine is of particular and important interest to *Amici*.

B. Scope of the Issue Presented

The issue before the National Labor Relations Board (the "Board") is whether a bargaining relationship, lawfully established through voluntary recognition, should be given a reasonable period of time to succeed. Here, Petitioners have sought to challenge new, lawful bargaining relationships within three and five weeks, respectively, of their voluntary creation. The Board must now decide, given its decision to review its longstanding precedent and policies, whether such an early attack on the new bargaining relationship fosters and promotes, or is instead inimical to, the Congressionally-declared purposes and policies of the National Labor Relations Act, 29 U.S.C. § 151, et seq. (the "Act").

In framing the issue, *Amici* believe it is equally important to state what is ***not*** at issue in these consolidated cases. First, as found by the Board majority in its Order Granting Review, the legality of voluntary recognition itself is not challenged by any party. Dana Corp., 341 NLRB No. 150, at 1 (2004). These consolidated cases do not involve any allegations of coercion, misrepresentation, or other wrongdoing in connection with the showing of majority support.[1]

[1] Petitioners, in both consolidated cases, made no resort to established Board procedures to challenge the lawfulness of the UAW's initial showing of majority support.

Second, this is not the opportunity to delve into neutrality agreements and their use. Questions involving the legality of neutrality agreements in their many varying forms and vestiges are not raised by these consolidated cases. While *Amici*, as parties to neutrality agreements (and in some cases for many years), are strongly interested in any proposed changes to the legal standards upon which they have relied, such legal standards are not directly at issue in these consolidated cases.

C. *Amici*'s Position

Amici submit that new bargaining relationships, lawfully established through voluntary recognition with no indicia of coercion, misrepresentation, or other unlawful conduct, should be given a reasonable period and opportunity to succeed. Permitting such newly-formed bargaining relationships to be challenged at their very outset, as Petitioners seek to do here, would likely result in industrial strife, unrest, and destabilization of the process of collective bargaining, all in contravention of the Congressionally-declared purposes and policies of the Act. *Amici*'s experiences in collective bargaining over many years cause them to conclude that retention of the recognition bar doctrine gives the new bargaining relationship a chance to work, fosters and promotes the purposes of the Act, provides sufficient time to hammer out a first contract, avoids the disruptions and instability that would ensue from the alternate positions advanced by Petitioners,[2] and protects important employee Section 7 rights by giving full force and effect to majority rule as reflected by an uncoerced, lawful demonstration of support for representation by a labor organization from a majority of employees in an appropriate unit. As set forth below, the elimination or erosion of the recognition bar doctrine will materially change the industrial

[2] Petitioners, alternatively, urge the Board to either abrogate the recognition bar doctrine in its entirety or to fashion a 30- to 45-day window period after voluntary recognition is extended within which a decertification petition can be filed.

landscape, largely render meaningless voluntary recognition, and interject an unacceptable level of uncertainty for all parties -- employers, unions, and employees alike -- in new bargaining relationships.

II. Applicable Legal Principles

The recognition bar doctrine is premised on sound, well-established legal principles, all of which derive from the Act and all of which find consistent support in long-standing legal authority developed by the Board and Judiciary, including the United States Supreme Court. These principles include:

- voluntary recognition based upon a showing of majority support is legitimate and well-established;
- agreements among employers and unions to allow for voluntary recognition are entirely consistent with Congress's declaration of policy in enacting the Act;
- unfair labor practice procedures afford adequate protection against abuse;
- the Act is anchored in the majority rule principle; and
- the Act favors interaction between employers and labor organizations without government interference.

Each of these established principles, and the legal support therefor, are briefly discussed below.

A. Voluntary Recognition Is a Well-Established and Legitimate Right of Employers and Unions.

Voluntary recognition, premised on a showing of uncoerced, majority support from employees, is a permissible and legitimate right of employers and labor organizations. The United States Supreme Court has long recognized that a Board-supervised, secret-ballot election is not the only method for determining majority support for a union. See, e.g., Gissell Packing Co. v. NLRB, 395 U.S. 575, 596-99 (1969); United Mine Workers v. Arkansas Flooring Co., 351 U.S. 62, 72, n. 8 (1956). The Court, in Gissell, observed that the statutory language of the Act did not require a Board election to establish a majority's choice of representative; indeed, the Act

allowed for a showing of majority support and recognition through a card check.[3] 395 U.S. at 596, 598-600. The Court noted widespread and consistent acceptance of this card check method for demonstrating majority support:

> Almost from the inception of the Act, then, it was recognized that a union did not have to be certified as the winner of a Board election to invoke a bargaining obligation; it could establish majority status . . . by possession of cards signed by a majority of the employees authorizing the union to represent them for collective bargaining purposes.

Gissell, 395 U.S. at 596-97; accord United Mine Workers, 351 U.S. at 69. In sum, the Court, in Gissell, refused "to take the step the 1947 amendments and their legislative history indicate Congress did not take, namely, to rule out completely the use of cards in the bargaining arena." Gissell, 395 U.S. at 601. Here, any changes in the allowed methods of recognition, and any limitations on voluntary recognition, should be legislated by Congress, not the Board.

Both before and after the U.S. Supreme Court's pronouncement in Gissell, the Board has consistently endorsed the practice of voluntary recognition and the use of card checks to establish majority support. Prior to the Gissell decision, in Keller Plastics Eastern, Inc., the Board observed:

> Collective-bargaining relationships normally arise out of a Board certification . . . , or, as here, ***from voluntary recognition of a majority union***.

157 NLRB 583, 586 (1966) (emphasis added); accord Snow & Sons, 134 NLRB 709, 710-11 (1961) (finding an unlawful refusal to bargain with a union after it established majority status through authorization cards). After the Gissell decision, the Board reaffirmed its position in

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[3] The Congressional Conference Committee that produced the Taft-Hartley Act rejected an attempt by the House of Representatives to amend section 8(a)(5) to eliminate the use of authorization cards as a method for establishing representational status. See Gissell, 395 U.S. at 598 (citing H.R. Conf. Rep. No. 510, 80th Cong., 1st Sess., 41 (1947)).

Rockwell Int'l Corp., acknowledging that the employer's "choice of a card check was not only reasonable but ***one long accepted and sanctioned by the Board.***" 220 NLRB 1262, 1263 (1975) (emphasis added).

The Board has not wavered in its approval of voluntary recognition through card checks. See, e.g., Terracon, Inc., 339 NLRB No. 35 (2003); Seattle Mariners, 335 NLRB 563, 564 (2001); MGM Grand Hotel, Inc., 329 NLRB 464, 465-66 (1999); The Ford Center for the Performing Arts, 328 NLRB 1, 1-2 (1999). The Board has confirmed its approval by consistently eliminating unnecessary barriers affecting an employer's ability to voluntarily recognize a union as the exclusive representative of its employees. See, e.g., Smith's Food & Drug Centers, Inc., 320 NLRB 844, 845-46 (1996) (modifying the Board's recognition-bar policy in the context of rival unions because, among other things, the policy "unnecessarily discourage[d] employers from voluntarily recognizing labor organizations"). As the Board stated in MGM, "[i]t is a 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." 329 NLRB at 466 (citations omitted).

B. Voluntary Recognition Facilitated by Agreement between the Employer and Union Is Fully Consistent with Declared Congressional Intent.

The Board has repeatedly permitted formal agreements among employers and unions facilitating the "long-established Board policy" of voluntary recognition. This remains true regardless of the timing of the agreement to recognize a union upon a showing of majority support. In Seattle Mariners, for instance, the employer and union entered into a written neutrality/card check agreement, providing, in part, for a card check to be conducted by a specified neutral arbitrator; two to three months later the union submitted authorization cards

from a majority of the employees to the arbitrator. 335 NLRB at 563. The Board, in Seattle Mariners, found a lawful voluntary recognition by the employer. Id. at 564-65.

By comparison, in Rockwell Int'l Corp, the union, after an organizing campaign, informed the employer that it represented a majority of its employees and requested recognition. 220 NLRB at 1262. In response, the employer agreed that it would recognize the union if an independent third party concluded from a review of the proffered authorization cards that the union had garnered majority support. Id. The card check revealed majority support for the union, and the employer, consistent with its agreement with the union, recognized the union as the exclusive bargaining representative. Id. at 1262-63. The Board, in Rockwell, concluded that "the Employer validly recognized the Union after a neutral third party determined the Union had majority status." Id. at 1263.

Moreover, the Board has previously concluded that there is no meaningful distinction between voluntary recognition agreements before an organizing campaign, as in Seattle Mariners, and agreements reached upon the conclusion of a campaign, as in Rockwell. In Kroger Co., the Board concluded that national labor policy favors the validity of voluntary recognition agreements, noting:

> The Board has held that an employer may agree in advance of a card count to recognize a union on the basis of a card majority, and we can perceive of no reason why it may not contract with the union to do so ***in advance of the time the union has commenced organization***.

219 NLRB 388, 389 (1975) (emphasis added). In short, contrary to the view expressed by the Board majority in granting review, under established Board law, the timing of a voluntary recognition agreement has no bearing on it validity.

Each *Amici* has entered into pre-campaign voluntary recognition agreements and, in fact, has recognized unions under those agreements based upon a showing of majority support. The

Amici view voluntary recognition as their established and valid right. Each *Amici* would experience a significant impact if voluntary recognition were significantly undermined as an available mechanism to establishing new bargaining relationships. As demonstrated above, the U.S. Supreme Court and the Board, consistent with a plain reading of the Act and expressed Congressional intent, have concluded that voluntary recognition is a lawful method for establishing a bargaining relationship between an employer and union. *Amici* urge the Board not to depart from this established law or otherwise diminish the right of voluntary recognition.

C. The Recognition Bar is Essential to Give Full Meaning and Effect to the Right of Voluntary Recognition.

The recognition bar serves a salutary purpose in effectuating and protecting the well-established right of voluntary recognition. Otherwise, the specter of a premature decertification petition (and election) would significantly frustrate the process of voluntary recognition and any subsequent good-faith bargaining among the parties. Without a recognition bar, or with the addition of a 30- or 45-day window to file a decertification petition, the continued viability of voluntary recognition is threatened.

1. The Board Has Repeatedly Found the Recognition Bar Necessary to Effectuate an Employer's Right of Voluntary Recognition.

Starting with Keller Plastics, decided in 1966, the Board has repeatedly recognized the need for a recognition bar -- "a bargaining relationship once rightfully established must be permitted to exist and function for ***a reasonable period*** in which it can be given a fair chance to succeed." Keller Plastics, 157 NLRB at 586 (emphasis added); see also Seattle Mariners, 335 NLRB at 564 ("Well-established Board precedent provides that an employer's lawful voluntary recognition of a union will bar a petition for a reasonable period of time."). The Keller Plastics recognition bar is wholly consistent with the law of the U.S. Supreme Court. In Gissell, for instance, the Court used language nearly identical to that quoted above in Keller Plastics in the

context of enforcing bargaining orders for a reasonable period of time. See Gissell, 395 U.S. at 613.

Following voluntary recognition, the employer and union must be afforded a "reasonable time" to bargain in good faith and to execute a collective bargaining agreement. Keller Plastics, 157 NLRB at 587. Without this "reasonable time," a decertification petition (and election) could disrupt bargaining in its early, yet critical, stages. As the Board held in Keller Plastics, the bargaining process must be allowed the opportunity to work:

> Such negotiations can succeed [], and the policies of the Act can thereby be effectuated, only if the parties can normally rely on the continuing representative status of the lawfully recognized union for a reasonable period of time.

157 NLRB at 587. Repeatedly recognizing the need for "reasonable time," this observation by the Board has been consistently echoed in subsequent Board decisions. Seattle Mariners, 335 NLRB at 565 (finding that a decertification election, set by a petition filed one month after recognition, "would have the deleterious consequence of 'disrupt[ing] the nascent relationship' between the employer and union . . . . "); MGM, 329 NLRB at 466 (noting that the recognition bar reflects "a policy judgment which seeks to ensure that the bargaining representative chosen by a majority of employees has the opportunity to engage in bargaining to obtain a contract on the employees' behalf without interruption."). Although Board members have certainly disagreed over the amount of "reasonable time" to be afforded under the recognition bar, there has always been a general acknowledgement of the need for the bar. See, e.g., MGM, 329 NLRB at 467, n. 10 (the three-member majority found 11+ months to be a "reasonable time" and the two dissenting members viewed 9 to 10 months as a "reasonable time").

In the combined experiences of *Amici*, the recognition bar gives effect to their right of voluntary recognition by providing predictability and certainty. The elimination or erosion of the

recognition bar would render any voluntary recognition, lawfully outside the NLRB election process, quite precarious, if not meaningless. Without a recognition bar, there can be no predictability or certainty, as a decertification petition could be filed at any time by a minority of represented employees. Under such circumstances, the union's bargaining status or authority would be immediately and continuously suspect and in jeopardy. In the midst of initial contract negotiations, all talks could be effectively placed on hold for a decertification campaign and potentially mooted with the premature ouster of the recognized union.

These concerns of predictability and certainty in the bargaining relationship go beyond abstract potentialities and academic hypotheticals. Without assurance that the negotiations will extend for a reasonable time, *Amici* cannot feel secure in discussing sensitive economic information with a union, that may or may not be around the following week or month. Similarly, employers may be discouraged from truly engaging in an open give-and-take discussion and "tipping their hand" by identifying areas of compromise with the specter of an early decertification. *Amici* believe that the possibility of such an early disruption, or termination, of the new bargaining relationship would likely cause very significant, if not insuperable, obstacles to the practice and procedure of collective bargaining.

2. The Alternate Proposal of Petitioners for a 30- or 45-day Window Frustrates the Purposes of the Recognition Bar and Diminishes the Value of Voluntary Recognition.

The 30- or 45-day window proposed by Petitioners would not allow for a "reasonable time" for the new labor-management relationship, grounded in majority status, to work. The employer and recognized union, from the outset of the relationship, must be permitted the opportunity to bargain for 30 days, 45 days, and beyond -- a "reasonable time," without interruption, to allow the new relationship to develop. This is particularly true with initial contracts.

In determining a "reasonable time," the Board focuses on "'what transpired and what was accomplished in the bargaining.'" MGM, 329 NLRB at 466 (quoting Ford Center for the Performing Arts, 328 NLRB at 1). Traditionally, the Board has been particularly sensitive to permitting a sufficient, uninterrupted opportunity for the negotiation of initial contracts, recognizing "the attendant problems of establishing initial procedures, rights, wage scales, and benefits in determining whether a reasonable time has elapsed." MGM, 329 NLRB at 466; see also Seattle Mariners 335 NLRB at 565, n. 8 (finding that a "reasonable time" had not elapsed where only one month passed between recognition and a decertification petition, the parties were negotiating an initial contract, and the parties had just begun the preliminary stages of preparation for negotiations); Ford Center for the Performing Arts, 328 NLRB at 2 ("That the process took 9 months was clearly not unreasonable especially given the difficulties of initial contract bargaining.").[4]

Petitioners' proposal directly contravenes the views, including that of former Chairman Hurtgen in dissent, expressed by the Board in Seattle Mariners. In Seattle Mariners, the Regional Director allowed a decertification petition to proceed where the petitioner-employee had garnered a "30-percent showing of disinterest" in union representation at the time of the arbitrator's certification of the union's card majority status. 335 NLRB at 563. Relying upon Smith's Food & Drug Centers, which addressed a competing show of support for rival unions and voluntary recognition, the Regional Director refused to extend the recognition bar and allowed a decertification petition. Id. at 563-64. The majority, in Seattle Mariners, refused to extend the Smith's Food & Drug Centers rationale where a minority of employees express disfavor of representation prior to voluntary recognition, stating:

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[4] Under established Board law, it is clear that a "reasonable time" had not elapsed in either of the

> [T]o . . . find that an election is required based on the fact that 30 percent of the employees did not support the Union at the time of the recognition would be tantamount to a repudiation of recognition bar principles.

Id. at 565. In dissent, former Chairman Hurtgen advocated the extension of Smith's Food & Drug Centers but noted "an election will be required ***only*** when there is the requisite showing of interest (30 percent and written) and only if it precedes the voluntary recognition." Id. at 566 (emphasis in original). Therefore, Petitioner's proposal of allowing a window ***after*** recognition for a showing of disinterest in union representation is contrary to both the majority and dissenting views of Seattle Mariners.

Here, *Amici* urge retention of the "reasonable time" standard applied on a case-by-case basis and rejection of Petitioners' alternate proposal of a 30- or 45-day window. This window would effectively create a "waiting period" before any meaningful bargaining could begin and greatly destabilize, rather than nurture, the new bargaining relationship. In *Amici*'s experience, during the first 30 to 45 days of a new bargaining relationship, the parties are typically engaged in preparation for negotiations -- forming committees, formulating proposals, responding to information requests, and developing negotiation strategies. It has been *Amici*'s experience that the actual negotiation of a first contract typically requires considerably more time than 30 or 45 days. In short, Petitioners alternate proposal would not allow ample opportunity for the new relationship, built upon majority support of the employees, to succeed and would greatly disrupt the bargaining process.

Amici, in fact, find significant risks presented by an unreasonably short recognition bar and the possibility of a decertification petition within the first 30 or 45 days of negotiations. In

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(continued...)

consolidated cases.

the earliest stages of negotiations, the possibility of a decertification petition, campaign, and election would distract the parties from concentrating on obtaining and fairly administering a collective bargaining agreement. The resulting pressure to produce immediate results could encourage the execution of hastily-created agreements or the use of pre-packaged deals. Moreover, the prospect of an early decertification petition may tempt an employer to delay bargaining and undermine the union's majority support. *Amici*'s concerns have been recognized by the Board in its attempt to provide "reasonable time" for the process to work. See, e.g., MGM, 329 NLRB at 466. *Amici* simply ask that the Board adhere to established labor law and let the process of collective bargaining work where employers have voluntarily agreed to recognize based on a majority showing among the employees.

D. Elimination of the Recognition Bar Is Unnecessary As Adequate Safeguards Exist to Protect Employee Section 7 Rights.

A premature decertification election is not necessary to protect the individual rights of employees and secure the will of the majority. Petitioners each describe the abuses that ***may potentially*** result during a union's gathering of a majority showing. (Atherholt Petition at 18-20; Krug and Sample Petition at 12-14.) Tellingly however, outside of the hypothetical abuses described by Petitioners, ***no evidence of any coercive behavior, misrepresentation, or any other unlawful action has been alleged in these consolidated cases.***

Even if such misconduct were to occur, the Board's unfair labor practice procedures provide employees with an adequate means of vindicating their Section 7 rights. In fact, the potential abuses that Petitioners have identified in these consolidated cases are not novel at all. Instead, as far back as 1969 in Gissel, the Supreme Court recognized the possibility of unlawful and coercive activity with the use of card checks. 395 U.S. at 602. Nevertheless, the Court still found that card checks were a permissible alternative to a secret-ballot election because of the

available checks and balances. In the event of any alleged improprieties in card collection or otherwise, "the proper course is to apply the Board's customary standards." Id. at 602-603.

Here, Petitioners have acknowledged that a remedy for potential abuses already exists. (Altherholt Petition at 19-20; Krug and Sample Petition at 14.) Just as Petitioner Alterholt states "***[c]learly*** [she] could have filed an unfair labor practices charge, but she ***chose*** not to." (Altherholt Petition at 19-20 (emphasis added); accord Krug and Sample Petition at 14.) Indeed, any unlawful assistance or recognition of a minority union by an employer would violate Section 8(a)(2) and would render any recognition of the union and resulting collective bargaining agreement unlawful. Further, where the Section 7 rights of employees are encroached upon, the employer and union stand vulnerable to challenge through an unfair labor practice charge. Petitioners apparently would prefer a decertification election over the unfair labor practice mechanism established by Congress. However, as the latter are adequate to the task of ensuring that any card majority showing is free of coercion, misrepresentation, or other unlawful conduct, the perceived abuses do not warrant elimination of the recognition bar doctrine.

The Board majority, in granting review, seems to imply that there are now additional threats of employer and union mischief with the increased use of voluntary recognition agreements. Even assuming that such agreements have gained increased popularity and use in recent times, the adequacy of established Board remedies has not changed. Although around for decades, any perceived proliferation of voluntary recognition agreements actually heightens the importance of the recognition bar in maintaining stability for those labor-management relationships governed by such agreements.

E. The Act Is Grounded in the Majority Rule Principle.

Without a recognition bar of sufficient duration, a minority of employees, through a decertification petition filed shortly after recognition, could frustrate the will of the majority. The representation aspects of the Act, however, are built on the foundation of majority rule:

> National labor policy has been built on the premise that by pooling their economic strength and acting through a labor organization freely chosen by the majority, the employees of an appropriate unit have the most effective means of bargaining for improvements in wages, hours, and working conditions.

NLRB v. Allis-Chalmers Mfg. Co., 388 U.S. 175, 180 (1967); see also International Ladies' Garment Workers Union (Bernhard-Altman) v. NLRB, 366 U.S. 731, 737-38 (1961); Ray Brooks v. NLRB, 348 U.S. 96, 103 (1954). The Board, in Seattle Mariners, addressed this very issue:

> Since 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.

335 NLRB at 565. In short, the democratic principles of the Act dictate that the will of the majority be heard, without unnecessary interference. The recognition bar, of a "reasonable time," strikes the necessary balance by allowing the majority to rule while respecting the individual rights of all employees.

F. The Act Favors Interaction between Employers and Labor Organizations without Unnecessary Government Interference.

Again, as found by the U.S. Supreme Court in Gissell, the "long-established Board policy" of voluntary recognition is firmly grounded in both the letter and spirit of national labor

law.[5] Likewise, agreements between employers and unions facilitating such voluntary recognition are beneficial to the labor-management harmony sought by Congress. The Act sets forth a national policy of "encouraging the practice and procedure of collective bargaining." 29 U.S.C. § 151. Significantly, voluntary recognition serves this expressed Congressional policy, as well as maintaining "labor peace" and promoting "industrial stability." Through voluntary recognition based on an uncoerced, lawful showing of majority support, employees can directly and efficiently express their will, and, consistent with the purposes of the Act, employees and labor organizations can enjoy the benefits of voluntary recognition, which fosters a healthy and stable collective bargaining relationship and minimizes unnecessary government interference.

III. Conclusion

As set forth above, voluntary recognition has been endorsed and encouraged by the Board for nearly half a century. For nearly that long, the Board has also consistently acknowledged the need for a recognition bar, of a reasonable duration, to effectuate voluntary recognition. *Amici* find no reason for the Board to now depart from this established Board policy. If voluntary recognition agreements are indeed more commonplace now, as the Board majority suggests, then retention of the recognition bar doctrine is even more essential for the preservation of industrial stability. In the collective view of *Amici*, strong policy concerns and practical considerations support the continued application of a recognition bar, including the protection of their right to voluntary recognition. Accordingly, *Amici* urge the Board to affirm the decisions of the Regional Directors dismissing the petitions for decertification.

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[5] The mechanism of voluntary recognition is consistent with the statutory language of the Act, which does not specify secret-ballot election as the sole method for choosing a representative -- "Representatives ***designated or selected*** for the purposes of collective bargaining by the majority of employees . . . . " 29 U.S.C. § 159(a) (emphasis added).

Dated: July 13, 2004.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that I have this day caused to be served a true and correct copy of BRIEF OF *AMICI CURIAE* GENERAL MOTORS CORPORATION, DAIMLERCHRYSLER CORPORATION, THE FORD MOTOR COMPANY, AND DELPHI CORPORATION via Federal Express, addressed as follows:

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