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Recent NLRB Decision Upholds Validity of Pre-Organization Agreements between Labor and Management

In a recent decision, *Dana Corporation*, 356 NLRB No. 49 (available at http://www.nlrb.gov/shared_files/ Board%20Decisions/356/v35649.pdf), the National Labor Relations Board ("NLRB or "the Board") upheld a letter of agreement entered into by the United Auto Workers ("UAW") and auto parts manufacturer Dana Corporation ("Dana") on behalf of non-unionized employees at its facility in St. Johns, Michigan.. The agreement gave UAW rights to unionize the company's employees without a secret-ballot election, instead providing that the union would be recognized if a majority of employees signed cards in its favor. Union officials and management also negotiated a pre-organization agreement on behalf of employees, stipulating to such items as four-year labor contracts and mandatory overtime.

The agreement required the UAW to begin organization efforts by requesting a list of employee addresses from Dana. When this occurred, several employees filed unfair labor practice charges with the NLRB, claiming that such behavior violated prohibitions against an employer assisted or dominated union. While the UAW never succeeded in collecting a majority of employee signatures, thus ending the organization effort, the case made its way all the way to the Board on review.

Chairman Wilma Liebman and Member Mark Pearce upheld the validity of the agreement, noting that "meeting with a union early on to ascertain its goals and representation philosophy enables the employer to more realistically assess (1) the potential impact of the union on the employer's operations; and (2) the wisdom of expending company resources to campaign against the union." The Board did not establish guidelines for managing similar future negotiations, determining instead to "leave for another day the adoption of a general standard for regulating prerecognition negotiations between unions and employer."

In a solo dissent, Member Brian Hayes cautioned that the decision would lead to "self-interested union-employer agreements that preempt employee choice and input as to their representation and desired terms and conditions of employment."

This decision paves the way for union representatives to negotiate favorable terms with management before the organization process even begins. It also allows organized labor representatives to sidestep a required secret-

ballot election if the employer is inclined to make such concessions.

For questions regarding this development (or for other labor and employment issues), please contact Joseph McCoin, Scott Simmons, or your Miller & Martin Labor and Employment law attorney.

The opinions expressed in this bulletin are intended for general guidance only. They are not intended as recommendations for specific situations. As always, readers should consult a qualified attorney for specific legal guidance. Should you need assistance from a Miller & Martin attorney, please call 1-800-275-7303.

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