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October 14, 2011

The Honorable Mark G. Pearce
Chairman
National Labor Relations Board
1099 14th Street, N.W.
Washington, D.C. 20570

Dear Chairman Pearce:

In its 2007 *Dana Corp.* decision,¹ the National Labor Relations Board (NLRB) provided workers and rival unions 45-days in which to demand a secret-ballot election when their employer voluntarily recognized a union. According to the most recent statistics, the NLRB has received 1,333 requests for voluntary recognition since its *Dana* decision. In response to these requests, 102 election petitions were filed, and 62 elections were conducted.² In more than 25 percent of those secret-ballot elections, employees rejected the voluntarily recognized union, including two elections in which a different union was selected over the union recognized by the employer.³

Despite the success of the *Dana* holding in ensuring employee free choice, the board recently decided to roll back the decision and the protections it provided workers.⁴ Now workers may have to wait up to four years to cast a secret ballot in an election intended to challenge an employer recognized union. It is impossible to conceive how restricting workers' access to a secret ballot furthers the board's mission to safeguard the rights of employees.

As egregious as this action is, it is even more disturbing in light of the board's decision to apply the ruling "retroactively in all pending cases, except those in which an election was held and the ballots have been opened and counted."⁵ As explained by Ms. Barbara Ivey⁶ at a September 22,

¹ 351 NLRB 434 (2007).

² *Lamons Gasket Company*, 357 NLRB No. 72, page 4 (2011).

³ *Id.*

⁴ *Id.*

⁵ *Id.* at 10.

⁶ An employee of Kaiser Permanente Northwest who filed a *Dana* challenge after her employer recognized SEIU based on cards.

2011 House Education and the Workforce Committee hearing, employees who successfully petitioned for a secret-ballot election now have no timely means to demand a secret-ballot election after their employer voluntarily recognizes a union. In the case of Ms. Ivey and her coworkers, an election was scheduled but will likely never take place, and they will have to wait up to four years before exercising their rights under the National Labor Relations Act.

It appears that in at least three cases the NLRB collected ballots following workers' demand for an election, but dismissed the election due to its August decision.⁷ These ballots, cast by employees in the midst of a legitimate election, will never be counted by the NLRB. This is a devastating blow to workers who exercised their rights under the law.

In response to the committee's September hearing, you stated the actions by the board represent part of its mission to "protect worker free choice." However, this assertion is directly contradicted by testimony of witnesses. As Ms. Ivey described to the committee, "[i]n revoking the "DANA" decision, the NLRB has taken away one of the last guarantees workers have of a fair and honest vote in workplace elections."

To better understand the extent of the *Lamons Gasket* decision and its consequences for workers, please provide the following no later than October 28, 2011:

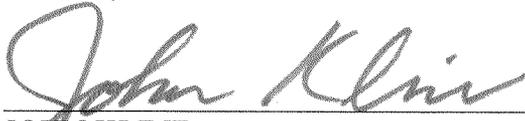
1. A list of all cases in which an election petition pursuant to the holding in *Dana Corp.* was filed, including the date of recognition, the date of notice of recognition, the date the election petition was filed, the date of the election, the date ballots were or would have been counted, the size of the bargaining unit, the number of employees that signed the petition, and the results of the election;
2. A list of all cases that have been dismissed pursuant to the holding in *Lamons Gasket*, including the date of recognition, the date of notice of recognition, the date the election petition was filed, the date of the election, and the date ballots were or would have been counted, the size of the bargaining unit, the number of employees that signed the petition, and identify each case where ballots were collected;
3. A list of all cases in which an election petition was filed pursuant to the holding in *Dana Corp.* and an unfair labor practice charge was filed prior to or after the petition, including the date of the unfair labor practice charge, a description of the unfair labor practice, and a description of the disposition of the unfair labor practice charge;
4. A list of all cases that have been dismissed pursuant to the holding in *Lamons Gasket* in which an unfair labor practice charge was filed prior to or after the petition, including the date of the unfair labor practice charge, a description of the unfair labor practice, and a description of the disposition of the unfair labor practice charge; and
5. The ballots in each case that was dismissed pursuant to the holding in *Lamons Gasket* and ballots were collected.

⁷ *Lamons Gasket/Steelworkers*, Case No. 16-RD-1597; *Aramark Uniform and Career Apparel/SEIU*, Case No. 18-RD-2692; and *ATI Portland Forge*, 09-RD-002213.

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If you have any questions regarding this request, please contact Marvin Kaplan, House Education and the Workforce Committee, at (202) 225-7101.

Sincerely,



JOHN KLINE
Chairman
Committee on Education and the Workforce



DAVID "PHIL" ROE
Chairman
Subcommittee on Health, Employment, Labor
and Pensions

cc: The Honorable George Miller, Senior Democratic Member, Education and the Workforce Committee

cc: The Honorable Robert Andrews, Senior Democratic Member, Health, Employment, Labor, and Pensions Subcommittee