

**NLRB Reconsiders Whether Elections Are Barred Where a Majority of Workers Petitions Against a Union *Before* an Employer Extends “Voluntary” Recognition: *Richards v. United Steelworkers & Cequent Towing Products* (NLRB)—Staff Attorney William Messenger.**

Cequent Towing is a party to a “neutrality and card check” agreement with the United Steelworkers (USW). During a USW organizing drive at Cequent’s plant in Goshen, Indiana, a *majority* of employees signed a petition stating that they did not want the union to be their exclusive bargaining representative, and wanted an NLRB election if Cequent ever recognized the USW. Cequent recognized the USW based upon a “card check” despite the petition against USW representation. Soon thereafter, worker Douglas Richards filed a petition with the NLRB for a decertification election. As in *Dana/Metaldyne*, the Regional Director dismissed the petition under the so-called “voluntary recognition bar” rule. Bill Messenger then filed a Request for Review for Richards with the Board. This request argued two alternative grounds for granting an election. First, the Board’s “dual card” doctrine—that cards signed by an employee for rival unions cancel each other out—should invalidate a union authorization card when the same employee signs a document opposing union representation. If so, the union never had majority employee support in this case. Second, the “voluntary recognition bar” should not apply when the showing of support for a decertification petition is signed by employees *before* the employer grants “voluntary recognition.” On June 9, 2004, a 3-2 majority of the Board granted review. The Board has not yet ruled on the merits of the case, presumably, as in *Dana/Metaldyne*, because two of the five Board seats subsequently became vacant and were not filled until January 2006.