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What Does The UAW's Formation Of Local 42 For Volkswagen Employees At VW's Plant In Chattanooga, Tennessee Mean?

In February, Volkswagen employees voted 712 to 626 against the UAW in an election conducted by the federal National Labor Relations Board. The UAW filed "objections" to the election, claiming that Republican politicians and outside groups illegally interfered with the election. But in April, the UAW "withdrew" those objections. The NLRB then "certified" as official the UAW's loss in the election. Another NLRB election cannot be held until, at the earliest, the one-year anniversary of the February 2014 election.

Yet the UAW, on July 10th, announced that it was creating a local union – "Local 42, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW)" – for the VW employees at the Chattanooga, Tennessee plant who, by a majority of the votes cast in the election, voted against the UAW five months ago.

This article explains what the UAW's creation of Local 42 means and what may happen with VW's employees and UAW Local 42.

Background

On January 30, 2014, the UAW and VW signed an "Agreement for a Representation Election" for an NLRB election to be held at the VW plant on February 12th through February 14th. The UAW then lost that election by a vote of 712 to 626.

Section 6, Post Election Obligations, of the Agreement states that if the UAW lost the election, then the UAW would stop trying to organize VW's employees for at least one year from the date of the election. Specifically, Section 6(c) states that if the NLRB certified the UAW's election loss, the UAW "(i) shall *discontinue all organizing activities at the Chattanooga Plant ... for a period of not less than one (1) year beginning with the date of the election*, (ii) that it shall not make another request for recognition or file a representation petition with the NLRB to seek a representation election ... for a period of not less than one (1) year from that date, and (iii) *that it shall not engage in or resume any organizing activity or other activity in connection with the Chattanooga Plant ... for a period of not less than one (1) year from the date of the election.*" (Emphasis added).

UAW's Formation of Local 42

On July 10th, the UAW announced the formation of UAW Local 42 for the VW employees. The UAW described UAW Local 42 as "a new local union providing representation for employees" at the VW plant in Chattanooga, Tennessee.

UAW Secretary-Treasurer Gary Casteel, who was the UAW Regional Director for the South when the UAW lost the election in February, said as follows about UAW Local 42:

- "We will be announcing a local, and we would fully expect that Volkswagen would deal with this local union if it represents a substantial portion of its employees. It's dependent on the employees and what they want to do."

- UAW Local 42 will develop its own by-laws and elect its own officers.
- UAW Local 42 will be independent of the UAW.
- UAW Local 42 members will have the same rights as other UAW members.
- “What there won’t be is exclusive representation. If you deal with a local union, you have recognized them under federal labor law. We have an agreement with them that they’re going to do that. It’s a consensus on the formation of this local, and we’re agreed on this path forward.”
- The formation of UAW Local 42 will avoid the need for another election, which could involve “third-party interference.” “All of the interference came from the outside. There’s no sense in going through that process again. We have a consensus with VW.”
- UAW Local 42 may engage in “members-only bargaining” with VW so that “our members might get something in the contract that the rest of the employees won’t get.”

VW, however, publicly denied any “consensus” with the UAW: “Just like anywhere else in the world, the establishment of a local organization is a matter for the trade union concerned. There is no contract or other formal agreement with UAW on this matter.”

In fact, any labor union can form a new local union whenever and wherever it wants to. It does not need an employer’s approval or a “consensus” with an employer to form a new local union. Whether to form a new local union is entirely an internal union decision and is none of an employer’s business.

Employees can voluntarily join UAW Local 42 and will not have to pay any union dues to the UAW until after it negotiates a collective bargaining agreement with VW.

But, at this time, the UAW does not represent any VW employees. That is because, due to its failure to win the February election, the UAW, under federal labor law, is not the “exclusive collective bargaining representative” of the VW employees. As a result, neither the UAW nor its UAW Local 42 has any legal right to negotiate a collective bargaining agreement that would apply to VW workers, to file grievances on behalf of VW employees, or to do anything else that an “exclusive collective bargaining representative” would have the legal right to do. Forming UAW Local 42 does not change the UAW’s status with respect to the VW employees: the UAW does not represent any VW employees.

Fifteen VW employees initially signed UAW Local 42’s charter and became members of UAW Local 42. It is unknown how many have signed up to become members of UAW Local 42 since its July 10th formation.

Professor Dan Cornfield of Vanderbilt University summarized the formation of UAW Local 42 as follows: “What they created is a voluntary association, but they do not have any bargaining rights at this time.” Professor Cornfield also noted that UAW Local 42 could eventually obtain bargaining rights if a majority of the VW employees sign union authorization cards and VW voluntarily recognizes the UAW, or there could be another election.

The Meaning Of The UAW’s Formation of UAW Local 42

If the UAW does not now represent any VW employees and, until February 2015, cannot request, under the Agreement with VW, either voluntary recognition based on signed union authorization cards from a majority of the employees, which the UAW wants, or another election, which the UAW does not want, why did the UAW form UAW Local 42?

Here are explanations for the UAW's formation of UAW Local 42:

First, the formation of UAW Local 42 amounts to the next phase of the UAW's on-going campaign to organize VW's employees, despite its election loss in February 2014. UAW Local 42 constitutes the UAW organizing office in Chattanooga.

In fact, members of UAW Local 42 are already distributing UAW authorization cards to employees at VW. The "Volkswagen Chattanooga Employees UAW Local 42 APPLICATION FOR MEMBERSHIP" or authorization card states as follows:

- "I hereby apply for membership in Local 42, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), and *authorize it to represent me for purposes of collective bargaining with respect to compensation, hours of employment or other conditions of employment.*"
- "As a member, I agree to faithfully observe the Constitution of the Union, as approved by UAW members meeting in Convention."
- "This does not obligate payment or authorize withholding of membership dues or any other fees. When a contract is ratified, I understand I will have the opportunity to sign a separate card to authorize dues payments."

(Emphasis added).

The highlighted language is the language that authorizes UAW Local 42 to become the employees' "exclusive collective bargaining representative." It does not require the UAW to seek another NLRB election. Instead it would permit the UAW to ask VW to voluntarily recognize the UAW based on signed authorization cards from a majority of the VW employees.

UAW Local 42 is soliciting VW employees to sign authorization cards. If it obtains signed authorization cards from a majority of the VW employees, it can request VW to voluntarily recognize it as the "exclusive collective bargaining representative" of *all* the VW employees without a secret ballot election. Under the Agreement, no request for voluntary recognition can occur until February 2015, so UAW Local 42's solicitation of signed authorization cards is a key part of the UAW's campaign to organize the VW employees between now and February 2015. Voluntary recognition based on signed authorization cards is what the UAW wants, but VW has not publicly commented about whether it would voluntarily recognize the UAW based on those signed cards.

The reference in the authorization card to the "Constitution of the Union" denotes the Constitution of the International Union, UAW. By signing the authorization card, a VW employee is agreeing to "observe" the UAW's Constitution. This reference contradicts Mr. Casteel's claim that UAW Local 42 is independent from the International Union, UAW.

But if Section 6(c) of the Agreement between the UAW and VW bars the UAW from engaging in organizing activities for a year, does the formation of UAW Local 42 and the solicitation of signed union authorization cards from VW employees now violate Section 6(c)? Yes, a fair reading of Section 6(c) is that the UAW has violated that section by forming Local 42 and soliciting union authorization cards. That may be why Mr. Casteel has claimed that Local 42 is independent from the International Union, UAW, even though the new members of UAW Local 42 are agreeing to "observe" the International Union's constitution. The formation of UAW Local 42, in other words, may give the International Union, UAW the ability to deny that it has violated Section 6(c) due to UAW Local 42's alleged independence from the International Union, UAW.

Whether that deniability is plausible or implausible may not make any difference. That is because unless VW objects to the formation of UAW Local 42 and Local 42's organizing activities, the UAW will be able to violate Section 6(c) by those actions without *any* consequences. That is because the Agreement containing Section 6(c) is *only* between VW and the UAW, and *only* VW can assert that the UAW has violated Section 6(c). In this regard, Section 10, No Third

Party Beneficiaries, states that no one, except VW and the UAW, “shall have any right to bring any action to enforce any provision of this Election Agreement.” Unless VW takes action against the UAW for violating Section 6(c), the UAW’s violation of Section 6(c) will continue with impunity.

If VW fails to take any action against the UAW’s violation of Section 6(c), that inaction may mean that VW supports the UAW’s action. VW’s failure to enforce Section 6(c)’s one-year ban on UAW organizing and “other activity in connection with the Chattanooga Plant” would demonstrate that it still wants the UAW to become the “exclusive collective bargaining representative” of its employees, so that it can establish a “works council” in the Chattanooga plant. To date, VW has not made any public comment about whether the UAW’s recent actions violate Section 6(c) and whether VW will seek to enforce Section 6(c) against the UAW.

One indication that VW, in fact, supports the UAW’s on-going efforts to organize the VW employees in Chattanooga was VW’s July 14th announcement that Bernd Osterloh will join the board of directors of Volkswagen Group of America. Mr. Osterloh, a German labor union leader, is the chairman of the VW Group Works Council of Volkswagen and was a vocal supporter of the UAW before the February election.

Second, the UAW’s formation of UAW Local 42 was a public relations action that was designed to generate favorable publicity for the UAW and to confirm that the UAW, despite its election loss in February, is still committed to organizing the VW employees. Regarding the formation of UAW Local 42, Mr. Casteel, for example, stated that the “election was so close, we don’t feel it’s right to turn our backs on these workers.” And the announcement about the formation of UAW Local 42 resulted in extensive news coverage on a national basis. For example, CNNMoney published a story that inaccurately, but favorably, referred to the formation of UAW Local 42 as a “big win in the South” for the UAW. The Detroit Free Press, as another example, published a photograph of the public signing of the “charter” for UAW Local 42 in which everyone wore matching UAW polo shirts with Local 42 as part of the UAW logo. Here is an additional example, which is a link to a radio interview that I did with Frank Beckmann on WJR 760 AM in Detroit on July 14th: <http://p.cmlsdet.com/player/?feed=50&id=9951>

Third, the formation of UAW Local 42 gives the UAW an opportunity to dispel its image as a group of outsiders from Detroit and to create a new favorable image as a member of the Chattanooga community. UAW Local 42 can participate in community activities, such as charitable causes, youth programs, and other community outreach programs. In fact, one of UAW Local 42’s new members, Myra Montgomery, a VW employee, stated as follows: “I see Local 42 as an opportunity to give back to Chattanooga and southeast Tennessee. As our membership grows, people are going to see us very active in this community.”

Fourth, the UAW’s formation of UAW Local 42, when it now represents no VW employees, constitutes an effort by the UAW, in conjunction with its use of UAW Local 42 to solicit signed authorization cards, to create the impression that it is the inevitable and eventual representative of all the VW employees. The UAW, in other words, is attempting to use UAW Local 42 to generate momentum or a “bandwagon” effect in favor of the UAW. The UAW’s repeated references in its recent public comments to an alleged “consensus” with VW are another indication of the UAW’s effort to posture itself as the inevitable representative of VW employees.

Fifth, the UAW may have wanted to form UAW Local 42 before VW announced on July 14th that it would expand the Chattanooga plant to build a second vehicle – a crossover utility vehicle – there, to establish a research and development center in Chattanooga, and to create another 2,000 jobs in the plant and 200 jobs in the research and development center. Whether the UAW had advance notice of VW’s decision to expand its Chattanooga facility is unknown.

But, in any event, the UAW took some credit for VW’s decision. On July 14th, Mr. Casteel, for example, stated as follows about that decision:

- “The UAW knew that withdrawing its objections to February’s tainted election, in consensus with Volkswagen, would expedite the company’s decision on the new product line.”

- “The fact that the new line is being announced four days after the rollout of UAW Local 42 in Chattanooga reinforces the consensus that the UAW has reached with the company.”
- VW’s decision is a “major vote of confidence in the Volkswagen workforce and the state of Tennessee, and it underscores the company’s consensus with the UAW to secure high-quality jobs for the future.”

Sixth, the tactic of opening new local unions where the UAW does not represent employees at foreign-owned automotive plants in the South may be part of the UAW’s new strategy for how to successfully organize those Southern plants after years of unsuccessful efforts to do so. UAW Local 42, in other words, may be the prototype for this new tactic.

The Wall Street Journal reported on July 14th that the UAW plans on establishing a similar local union for the Daimler plant in Vance, Alabama, where, to date, it has unsuccessfully attempted to organize the Daimler employees. The Wall Street Journal also reported that, in a document, German labor union IG Metall, which also supported the unionization of the VW plant in Chattanooga, and the Daimler World Employee Committee have pledged “ultimate support in the immediate formation of a UAW local” at Daimler’s Mercedes plant in Vance. There has been no public information yet about whether the UAW also plans on establishing a local union for the Nissan plant in Canton, Mississippi where, for years, it has also unsuccessfully attempted to organize the Nissan employees.

Conclusion

The UAW’s formation of UAW Local 42 for the VW plant is its latest tactic for attempting to successfully organize that plant’s employees. That formation shows that, despite losing the February election, the UAW remains committed to seeking to organize the VW plant in Chattanooga, as well as other foreign-owned automotive plants in the South. UAW Local 42 represents a continuation or a renewal of the UAW’s campaign to organize the VW plant, even though it violates Section 6(c) of its Agreement with VW. Forming a new local union for a plant where the UAW lost an election and represents no employees and making membership in the new UAW Local 42 voluntary and free are unconventional actions. But given its inability to organize the VW by other means so far, the UAW may view this new tactic as a possible path to successfully organize the VW plant. Whether a majority of VW employees will sign union authorization cards and whether VW would voluntarily recognize the UAW based on those signed authorization cards, however, are unknown. The UAW lost the February election, but whether the VW plant will remain non-unionized or will eventually become represented by the UAW remains to be determined.

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