

Labor Looks South: UAW And Volkswagen's Chattanooga Plant

Share us on: [Twitter](#)[Facebook](#)[LinkedIn](#) 0 Comments

Law360, New York (December 20, 2013, 6:36 PM ET) --

After Bob King was elected as the [United Auto Workers'](#) ("UAW") President in 2010, he said the following about organizing foreign-owned automotive companies: "If we don't organize these transnationals, I don't think there's a long-term future for the UAW." In 2011, King predicted that with the UAW's "Principles for Fair Union Elections," the UAW would organize at least one foreign-owned automotive plant by the end of 2011. The UAW, however, organized no foreign-owned automotive plants in 2011, 2012 or 2013.



Gary Klotz

The UAW, with the help of IG Metall, a German labor union, is now trying to organize [Volkswagen's](#) assembly plant in Chattanooga, Tenn.

German Works Councils and American Labor Law

Under German law, a business must have a "works council" in which all workers, including unionized workers, are represented by elected council members. A works council is separate from union representation, but union leaders are among the elected works council members. A works council has codetermination rights about how the business operates in areas including working hours, overtime, employee leave, health and safety and performance evaluation. A works council also consults with management about other issues, including working methods and production planning. A German employer, however, does not negotiate wages and benefits with a works council.

A German-owned company would violate American labor law by setting up a works council in a non-unionized facility in the United States. Under American labor law, a works council would be a "labor organization" for the following reasons: Employees would participate in the works council, and the works council would deal with the employer about topics such as hours of employment and conditions of work. 29 USC section 152(5). The employer could violate American labor law by "dominating or assisting" with the "formation or administration"

of a labor organization — a works council — in a non-unionized facility or by contributing financial aid or other support to the works council. 29 USC section 158(a)(2). These principles of American labor law mean that a German-style works council is possible in the U.S. only if a company's hourly employees are represented by a labor union, such as the UAW or, alternatively, an independent union formed by Volkswagen ("VW") employees so that they could participate in a works council without the UAW or another union.

Volkswagen and the UAW: Partners for a Works Council?

Volkswagen has works councils at almost all of its fully owned plants. IG Metall, which represents Volkswagen's hourly workers in Germany, wants Volkswagen's Chattanooga plant to have a works council. But to have a works council would also mean that the hourly workers in the Chattanooga plant would have to be represented by a labor union. In March 2013, Horst Neumann, an IG Metall member and Volkswagen's Vice President of Human Resources, stated that the "UAW would be the natural partner" for Volkswagen at Chattanooga, so that there could be a works council at that plant.

Even though the UAW does not represent the hourly workers at the Chattanooga plant, Volkswagen has already been negotiating with the UAW about a works council and, possibly, a collective bargaining agreement if the UAW is selected by the hourly employees at the Chattanooga plant as their labor union. In a September letter to its Chattanooga employees, Volkswagen stated that it was negotiating with the UAW about "the possibility of implementing an innovative model of employee representation for all employees" — a works council — but that a works council at the Chattanooga plant "can only be realized together with a trade union."

Bernd Osterloh, an IG Metall member and the head of Volkswagen's global works council, has said that the UAW is "ready to cede power to a works council, in which salaried employees and hourly workers are to be represented equally." In September, the UAW said: "If the Chattanooga workers choose to have representation and a works council, the UAW is committed to engaging with Volkswagen in open, fair, and respectful dialogue to create an environment where Tennessee workers can participate in Volkswagen's global works council system." Volkswagen has stated that an agreement with the UAW about a works council may not be completed until January 2014.

Yet, is it even legal for Volkswagen and the UAW to negotiate before the UAW represents

the Chattanooga hourly employees? The negotiations may be unlawful: Volkswagen may be unlawfully negotiating with a union — the UAW — that does not represent a majority of its hourly employees. Their legality will depend on what specifically is being negotiated.

Under American labor law, an employer can only lawfully bargain with a labor union that has been selected by a majority of its hourly workers as their “exclusive collective bargaining representative.” Under a 2010 decision by the pro-union [National Labor Relations Board](#), a “pre-recognition” agreement between an employer and a union that does not yet represent the employer’s hourly employees can be a lawful “framework” for a collective bargaining agreement if the “pre-recognition” agreement is conditioned on the union’s achieving majority support from the hourly workers and recognition as their union by the employer. Dana Corp., 356 NLRB #70 (2010). Dana may support the legality of the VW-UAW negotiations, even though the UAW does not represent a majority of VW’s hourly employees.

The UAW’s Campaign at Volkswagen’s Chattanooga Plant

By enlisting the help of IG Metall and its representatives within Volkswagen and by negotiating with Volkswagen before it represents any of the Chattanooga hourly workers, the UAW is engaging in a “top-down” organizing campaign: It is organizing Volkswagen first and the hourly workers last.

Under American labor law, a majority of the employees in an appropriate bargaining unit must select a labor union to be their “exclusive collective bargaining representative.” The employees can indicate their support by signing union authorization cards or by voting for a union in a secret ballot election conducted by the NLRB. An employer can voluntarily recognize a union on the basis of signed union authorization cards from a majority of the hourly employees, or the employer has the legal right to insist on a secret ballot election.

The UAW wants Volkswagen to recognize it on the basis of signed union authorization cards from a majority of the Chattanooga hourly workers. It does not want the employees to vote in a secret ballot election. UAW President Bob King has opposed an election for the Chattanooga plant, claiming that an “election process is more divisive.” UAW Regional Director Gary Casteel, however, admitted that the UAW opposes a secret ballot election because it fears that it would lose an election: “We know if we go for a traditional election where the outside organizations could campaign against us, we’d probably lose.”

Volkswagen has not yet announced whether it will recognize the UAW on the basis of signed union authorization cards or will insist on a secret-ballot election. Osterloh, in September 2013, said that a vote would be “absolutely unacceptable,” but, in October 2013, said that “democracy does not end at the plant gates,” which may suggest that his position on a secret ballot election changed. In September 2013, Jonathan Browning, the then-CEO of Volkswagen Group of America, said that “ultimately, the decision of formal third party representation is up to our employees through a formal vote.”

But even if Volkswagen insists on a secret ballot election, it could voluntarily reach pre-election agreements with the UAW that would help the UAW win the election. Volkswagen, for example, could agree to accept the UAW’s “Principles for Fair Union Elections,” which are one-sided in favor of the UAW. Volkswagen could agree to be “neutral” during the campaign and could even grant the UAW access to its hourly workers in the Chattanooga facility before, during, or after working hours. Volkswagen has not publicly stated whether it would agree to “neutrality” or other actions that would help the UAW win an election.

Volkswagen is likely to insist on a secret ballot election. But it is also likely to agree to “neutrality,” the UAW’s “Principles for Fair Union Elections,” or other actions that will help the UAW win an election. Assuming that Volkswagen will not actively oppose the UAW in a pre-election campaign, then the anti-UAW workers and outside groups, including the [National Right to Work Foundation](#) and other anti-union organizations, will lead the campaign against the UAW.

The UAW has been soliciting union authorization cards from hourly employees at the Chattanooga plant since 2012. The “UAW Authorization Card,” which is valid for one year after it is signed, only states that the employee authorizes “the UAW to represent me in collective bargaining.” Yet the UAW is linking its selection as the employees’ union to the establishment of a works council. In a separate document that is related to the authorization card, the UAW, for example, states that it supports “the Volkswagen philosophy of codetermination” and that the “best way” for Volkswagen employees “to actively participate” in Volkswagen and to “contribute to VW’s continued success is to achieve representation as our colleagues have at the other 61 Volkswagen facilities across the globe.”

Anti-UAW workers, with the help of the anti-union National Right to Work Legal Defense Foundation, filed an NLRB unfair labor practice charge against the UAW. That charge

alleges that the UAW misled and coerced employees into signing union authorization cards and that some of the cards were signed too long ago to remain valid. On their website, www.no2uaw.com, the anti-UAW workers claim that the UAW made, among others, the following misrepresentations:

- Volkswagen wanted the employees to sign a union authorization card
- The UAW was just gauging interest, but there was not an official organizing campaign
- The authorization card was for the “works council,” not the UAW
- “No UAW, No Works Council”
- “No Works Council, No VW Expansion”
- The UAW promised temporary workers that, if they signed union cards, they would be hired by Volkswagen after the cards were counted

The NLRB should dismiss the charge, even if the UAW made the alleged misrepresentations. The reason is that the UAW’s authorization card clearly states that by signing the card, an employee is authorizing the UAW to represent the employee in collective bargaining, regardless of what the UAW may have told the employees.

The UAW, in September 2013, claimed that it had signed union authorization cards from a majority of the approximately 1,550 hourly employees at the Chattanooga facility. In contrast, the anti-UAW workers, in October, submitted to Volkswagen signed petitions from over 600 hourly workers who want to revoke their UAW authorization cards. The petition states, in part, as follows:

- “The undersigned employees do NOT want to be represented by the United Auto Workers (UAW) Union, do NOT want to join the UAW, and do NOT support the UAW in any manner.”
- “To the extent that any of the undersigned employees have ever previously signed a Union ‘authorization card’ or other indication of support for union representation, the undersigned employee hereby REVOKES that card, effective immediately...any such card signed by an undersigned employee is NULL and VOID.”

As of mid-December, whether the UAW had valid, unrevoked, signed union authorization cards from a majority of the Chattanooga hourly employees was unknown. The UAW had not submitted its signed authorization cards to Volkswagen or the NLRB for an inspection, and Volkswagen had not commented on the petitions submitted by the anti-UAW workers.

In October, Osterloh made a statement that seemed to condition the expansion of the Chattanooga plant to build a second model on the formation of a works council at that plant. He said: “We know how important that vehicle is for Chattanooga. It would be good if the Chattanooga factory already had a works council because what’s also at stake at the moment is another model for our U.S. factory.” Mark Mix, president of the National Right to Work Foundation, stated: “With reports that Volkswagen is considering Chattanooga to build its new SUV, this is no idle threat. If VW management was discouraging from joining the UAW with threats, there’s little question that an NLRB prosecution would have already begun at the UAW’s behest.”

In response, the anti-UAW workers, with the help of the National Right to Work Defense Legal Defense Foundation, filed an NLRB “unfair labor practice” charge against Volkswagen. That charge alleges that Volkswagen has unlawfully interfered with the employees’ rights to decide whether to select a union, unlawfully discriminated “regarding terms and conditions of employment” that encourage membership in the UAW, and has dominated or interfered with the formation of a labor organization.

The specific factual allegations are as follows:

- Engaging in “talks with the United Auto Workers to facilitate the formation and recognition of a labor organization at its Chattanooga, Tennessee facility.”
- Encouraging “the distribution of UAW cards to employees to seek unionization” and encouraging “employees to sign the cards.”
- Communicating “to Chattanooga employees the need for a labor organization at the Chattanooga facility before any additional production would be authorized.”
- Threatening “and coercing Chattanooga-based employees by conditioning any further expansion of the facility, and any future work opportunities, on the employees’ approval of the United Auto Workers union as their exclusive bargaining agent in order to establish a German-style works council.” Osterloh “said publicly that employees in Chattanooga must form a works council and bring in the UAW as their agent if their plant is going to be given the opportunity to produce additional products for VW.”

Whether the pro-union NLRB would prosecute Volkswagen for attempting to help the UAW organize the Chattanooga plant, however, is, at best, uncertain and, at worst, unlikely.

Conclusion

By organizing the Chattanooga plant’s hourly workers, the UAW would become their “exclusive collective bargaining representative” and would bargain for wages, benefits and other employment terms and conditions. The UAW would also participate in a works council that would address issues affecting the plant and the employees that are not covered by the collective bargaining agreement. Volkswagen would have both a UAW collective bargaining agreement and a UAW role in the works council. Volkswagen would then learn whether the UAW would be a constructive partner.

Despite its public statements about its employees’ right to choose whether to be represented by the UAW, Volkswagen’s actions indicate that it does not care whether its employees want union representation. To the contrary, in this top-down organizing campaign, Volkswagen wants the UAW to represent its hourly employees because of

pressure from IG Metall and because Volkswagen's management in Germany wants a works council at the Chattanooga plant.

The UAW's campaign to organize Volkswagen's Chattanooga plant is critical to the UAW's future. UAW President King has said: "If we complete Volkswagen and get an agreement there, that will help with all the other transplants. Volkswagen would be a real breakthrough in American labor-management relations." By working with the UAW as its "natural partner," Volkswagen would help the UAW succeed in rebranding itself as a less confrontational and more cooperative labor union than it was in the past. For non-unionized, foreign-owned OEMs and suppliers, particularly in the South, that success would mean that the UAW would become more of a threat to their union-free status. The UAW would continue its campaigns to organize the Nissan plant in Mississippi and the Mercedes-Benz plant in Alabama. It could also seek to organize, possibly with Volkswagen's help, Volkswagen's suppliers, especially German-owned suppliers, that support the Chattanooga plant. The UAW could attempt to organize other foreign-owned suppliers as well.

The UAW's goal has not changed: Organize as much of the transplant automotive industry — OEMs and suppliers — as possible and as soon as possible.

—By Gary Klotz, [Butzel Long](#)

Gary Klotz is a shareholder in the labor and employment law group of Butzel Long and is based in the firm's Detroit office.

The opinions expressed are those of the author(s) and do not necessarily reflect the views of the firm, its clients, or Portfolio Media Inc., or any of its or their respective affiliates. This article is for general information purposes and is not intended to be and should not be taken as legal advice.