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How the UAW Lost Tennessee Gaming U.S. Labor Law Failed to Overcome Worker Opposition

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Foreign automakers located in the South, known in the industry as transplants, have long been a target of the United Auto Workers (UAW) union's organizing strategy. For the UAW, unionizing transplants may be a matter of survival, as membership has fallen from a high in 1979 of 1.5 million to under 400,000 today.¹ In 2011, at the union's legislative conference, UAW President Bob King said, "If we don't organize these transnationals, I don't think there's a long-term future for the UAW—I really don't."² That same year, he ramped up the union's efforts by pledging \$60 million to unionize transplants.³

Yet despite the \$60 million investment, the UAW has repeatedly failed to organize employees at factories owned by Toyota, Honda, Nissan, Hyundai Motor Co., Kia, BMW, and Mercedes-Benz.⁴ Nissan workers in Tennessee rejected UAW representation by a two-to-one ratio twice, in 1989 and 2001.⁵

When the UAW has faced opposition from transplants in the South, it has resorted to intimidation, including public relation smear campaigns, protests, and recruiting progressive allies to pressure the company targeted for unionization.⁶ Through this coordinated intimidation, known as a "corporate campaign," the union seeks to get the employer to sign what is known as a neutrality agreement. Such agreements set the terms of the union election, require the company not to oppose the union's organizing campaign, and almost always include a card check provision, which allows a workforce to be unionized without a secret ballot election.

Card check invariably leads to worker harassment and intimidation because union organizers pressure and even deceive workers into signing the cards, out in the open. If union organizers can get 50 percent plus one of the workers to sign cards, then 100 percent of the workers lose their right to a secret ballot election.⁷ Without a secret ballot election, workers are deprived of the time to consider, on their own and without outside pressure, whether they want to authorize a union to represent them. Thus, labor law should protect that right more strongly than it does now.

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UAW Targets Volkswagen. In 2011, after state tax incentives⁸ lured Volkswagen to Chattanooga, Tennessee, the UAW saw its best chance of making the goal of unionizing a foreign automaker a reality. Volkswagen was a chief target for two primary reasons.

First, every Volkswagen plant, except the one in Chattanooga, incorporates a “works council” into its management structure. This is a system of employee involvement that allows workers to provide input on company decision that impact them. Both white and blue collar employees elect representatives to the works council, which has a say in major company changes, such as expansion and layoffs. The union, a separate entity from the works council, bargains over wages and benefits. Volkswagen employees in Germany are represented by IG Metall, a powerful German steelworkers union that has several members on Volkswagen’s board.

The UAW pushed the idea of establishing a works council in Chattanooga, arguing that under U.S. labor law a works council may only be formed with a union as serving as the employees’ exclusive representative.⁹ The National Labor Relations Act deems it an unfair labor practice for management to “dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it.”¹⁰ The union also cited a December 1992 National Labor Relations Board (NLRB) decision that declared that, “in non-union firms, labor-management cooperation on a wide range of issues is illegal because the committees through which such cooperation takes place amount to ‘company unions.’”¹¹

However, legal scholars disagree on the legality of such a system in the U.S. Some, like former NLRB Chairman Peter Schaumber, believe a works council is prohibited under U.S. labor law.¹² Former NLRB member John Raudabaugh questioned whether the UAW, as exclusive employee representative, would defer to a works council. “If you think the UAW will sit back and not be involved, that’s crazy,” he said.¹³ National Right to Work Legal Defense Foundation President Mark Mix echoes Raudabaugh, saying, “This talk of workplace councils is sort of a wink-and-a-nod. ... The UAW knows they can’t do that without getting union recognition, but after that, only the union’s bargaining team can speak for the workers.”¹⁴

Second, unlike other transplants in the South, Volkswagen declared it would remain neutral in the UAW organizing campaign. But Volkswagen’s neutrality really meant giving the UAW access to the plant and workforce and conducting closed door meetings with the UAW. Moreover, Volkswagen’s neutrality did not extend to Volkswagen employees opposed to unionization, who were not allowed to communicate their views on union representation with their coworkers.

UAW’s Card Check and Misinformation Campaign. In 2012, the UAW’s card check organizing drive began. In March of that year, organizers began passing out union authorization cards to Volkswagen employees.¹⁵ UAW officials told employees that the card meant simply that they wanted more information on unionization and the UAW. However, the UAW would later attempt to use the

signed authorization cards as proof that a majority of workers wanted union representation and that Volkswagen should voluntarily recognize UAW as the exclusive representative, bypassing a secret ballot election.

With the majority of workers in Chattanooga unenthusiastic about union representation, the UAW focused its organizing drive on currying favor with Volkswagen management and IG Metall. In March 2013, the UAW's talks with IG Metall proved fruitful, as it got an official endorsement from the German union. IG Metall President Berthold Huber issued a letter saying, "We strongly recommend that eligible employees at Volkswagen, Chattanooga, decide that UAW should represent them."¹⁶

Volkswagen's response at the time was noncommittal: "We've been very clear that that process has to run its course, that no management decision has been made and that it may or may not conclude with formal third-party representation."¹⁷ However, during the organizing drive, the UAW and Volkswagen engaged in closed door meetings on how to organize the workforce and establish a works council.¹⁸

Volkswagen and the UAW agreed to coordinate their communications, deliver pro-UAW sales pitches to captive audiences of employees, give UAW organizers access to the plant, and shut out anti-union messages.¹⁹ For example, Mike Burton, a Volkswagen employee opposed to unionization, said "UAW organizers were given the floor to attempt to persuade team members of why they should vote for the UAW. Although the meetings weren't mandatory, those workers who stayed were told they could not ask questions."²⁰ Volkswagen management allowed the UAW to campaign on company property and post campaign messages on bulletin boards, and even gave the union an office inside the plant.

The UAW also engaged in deceptive practices. With no basis, UAW officials promised workers they would receive bonuses and other benefits if the UAW won the election.²¹ "When I was approached to sign a card a year and a half ago, it was, 'oh, the card just means you want more information,'"²² said Volkswagen employee Carol Wilson, who also claimed that UAW officials bribed workers to sign cards. "I know somebody that got nine tickets to go to Lake Winnie to go sign a card."²³

In response to all this, Volkswagen workers opposed to unionization banded together to create Southern Momentum, a nonprofit organization that maintains the website No2UAW.com, which stands for "No to Uninformed Auto Workers." Southern Momentum's primary goal was to inform Volkswagen workers of the UAW's deceptive tactics and expose the fact that, "the UAW and VW management have agreed behind closed doors in Germany of a strategy to divide and conquer when it comes to employees."²⁴ Southern Momentum targeted the UAW's card check campaign because many Volkswagen employees were unaware that signing the UAW cards counted as a vote for the union.

Workers Campaign for Secret Ballot Election. In September 2013, after a year of collecting signatures, UAW southern regional director Gary Casteel told reporters that a majority of Volkswagen’s eligible workers had signed cards seeking union representation.²⁵ Casteel then demanded that Volkswagen voluntarily recognize the union as the exclusive representative of the plant workers. UAW President Bob King claimed in an interview, “An election process is more divisive.... If they want to...recognize us based on majority, I think that is the quickest, most effective way.”²⁶

Volkswagen workers did not buy King’s rationale for taking away their right to a secret ballot election. In September 2013, eight Volkswagen workers filed charges with the National Labor Relations Board alleging that the UAW had coerced employees to “forfeit their rights in what is now a ‘card-check’ unionization drive.” They also accused the UAW of “misrepresentations, coercion, threats, and promises” to subvert a secret-ballot election.²⁷ The NLRB dismissed the charges.

The next move was up to Volkswagen management. With a majority of the union authorization cards, Volkswagen could voluntarily recognize the union or challenge the cards and call for a secret ballot election. In October, 2013, Southern Momentum launched a petition of Volkswagen employees calling for a secret ballot election.²⁸ The group collected 563 signatures out of around 1600 eligible workers—around 30 percent of the workforce, in just two weeks—which it then presented to Volkswagen management.²⁹ (In contrast, it took UAW a year and the use of deceptive tactics to collect a majority of employee signatures.)

Neutrality Agreement. Despite the workers’ efforts to secure a free and fair secret ballot election, Volkswagen and the UAW still entered into a neutrality agreement on January 27, 2014.³⁰ The agreement set a secret ballot election for February 12-14, 2014, and stipulated that Volkswagen and the UAW “shall advise one another of their planned communications,” and “align messages and communications through the time of the election.”³¹ It also set a very short time period between the filing of the petition and the start of voting. On average, there are 38 days between a request for a union election and the holding of an election. Former NLRB member John Radabaugh said, “It’s the most slam-bam thing I’ve ever seen in my career.”³² Despite the UAW throwing everything into its organizing campaign, Volkswagen workers still voted 712-626 against UAW representation.³³

Post-Election Challenges. On February 21, 2014, the UAW filed an appeal with the Atlanta NLRB Regional office asking for a re-vote, citing “political interference” from elected officials as the cause for the union’s defeat in the Volkswagen union election.³⁴ The union claimed that federal and local officials deprived workers of their Section 7 rights under the National Labor Relations Act, “to vote in an atmosphere free of coercion, intimidation and interference.”³⁵ The UAW complaint focuses on the remarks of Senator Bob Corker (R-Tenn.), who stated, “I’ve had conversations today and based on those am assured that should the workers vote against the UAW, Volkswagen will announce in the coming weeks that it will manufacture its new mid-size SUV here in Chattanooga.”

Five Volkswagen workers opposed to the UAW filed a motion to intervene.³⁶ The Atlanta Regional NLRB office granted their motion. The UAW reacted angrily, calling the granting of the motion an “outrage.”³⁷ The union filed another appeal, challenging the Atlanta Regional NLRB decision with the D.C. NLRB office, arguing that workers have no standing to appear before the NLRB hearing which will determine if the outcome of the union election will stand.³⁸ Volkswagen sided with the UAW’s position that workers should not be present at the NLRB hearing.

Conclusion. Both union and non-union workers overwhelmingly support secret ballot union elections.³⁹ Labor unions should not have the power to take away workers’ right to a secret ballot election. The primary lesson from the UAW’s campaign to organize the Chattanooga Volkswagen plant is that workers must actively work to protect their right. U.S. labor law should be reformed to guarantee the only mechanism for conducting a union election is a secret ballot.

The Employee Rights Act (ERA, S. 1712), introduced by Sen. Orrin Hatch, would guarantee union elections are only conducted using a secret ballot. It reforms the National Labor Relations Act’s Section 9(a) so that a secret ballot election conducted by the NLRB is the only way for employees to select union representation.⁴⁰ It also defines the majority of the employees in a collective bargaining unit as comprising the majority of all employees in a unit, not just of those voting in an election.

In addition, Congress should look at ways to reform the National Labor Relations Act to allow for employee participation programs that do not require union membership. Employees should always have a vote and a voice when it comes to their own representation.

Notes

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