

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 10**

VOLKSWAGEN GROUP OF AMERICA, INC.

Employer/Petitioner

and

Case 10-RM-121704

INTERNATIONAL UNION, UNITED AUTOMOBILE,
AEROSPACE AND AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA (UAW)

Union

and

MICHAEL BURTON, *et al*

Intervenor

and

SOUTHERN MOMENTUM, TAVIS FINNELL
AND SEAN MOSS, *et al*

Intervenor

REPORT ON OBJECTIONS
AND
ORDER DIRECTING HEARING

Pursuant to a petition filed by the Employer/Petitioner on February 3, 2014, and a Stipulated Election Agreement approved by the undersigned on the same date, an election by secret ballot was conducted on February 12, 13, and 14, 2014, to determine whether the Employer/Petitioner's unit employees desired to be represented by the Union for purposes of collective bargaining.¹

¹ The appropriate unit as set forth in the Stipulated Election Agreement is: "All full-time and regular part-time production and maintenance employees employed by Volkswagen Group of America, Inc., and/or its wholly-owned subsidiary Chattanooga Operations LLC, at its facility located at 8001 Volkswagen Drive, Chattanooga, TN 37421 (the "Chattanooga Plant"), including

Upon conclusion of the election, a tally of ballots was made available to all parties showing the following results:

| | |
|--|------|
| Approximate number of eligible voters..... | 1506 |
| Void Ballots..... | 0 |
| Votes cast for the Union..... | 626 |
| Votes cast against participating labor organization..... | 712 |
| Valid votes counted..... | 1338 |
| Challenged ballots..... | 0 |
| Valid votes counted plus challenged ballots..... | 1338 |

On February 21, 2014, the Union timely filed five objections to conduct affecting the results of the election, a copy of which are attached as Appendix 1. All of the alleged misconduct is attributed to third parties i.e. parties who were not direct participants in the election such as the Union which filed the petition or the Employer/Petitioner which signed the Stipulated Election Agreement² and employs the unit employees.³

Pursuant to Section 102.69 of the Board’s Rules and Regulations, Series 8, as amended, an investigation of the issues raised by the Objections was conducted under my direction and supervision. After considering the evidence submitted in support of the Objections, the undersigned finds that the Objections raise substantial and material issues which can best be resolved by the conduct of a hearing as hereafter provided.

Team Members, Skilled Team Members and Team Leaders but excluding all Specialists, Technicians, plant clerical employees, office clerical employees, engineers, purchasing and inventory employees, all temporary and casual employees, all employees employed by contractors, employee leasing companies, and/or temporary agencies, all professional employees, and all guards, managers and supervisors as defined in the Act.”

² There were no intervenors who formally participated in the election.

³ The Employer/Petitioner takes no position regarding the merits of the Union’s objections regarding the alleged third party conduct. The Intervenors allege that no objectionable conduct has occurred and urges the objections be overruled.

THE OBJECTIONS

In Objection 1, the Union alleges in sum that during the critical period⁴ numerous State of Tennessee Officials publicly threatened that State tax and financial incentives would be withheld from the Employer to the detriment of the Employer/Petitioner and employees if employees selected the Union to represent them. The Union asserts these threats were clearly designed to influence the employees' votes and deprive them of their Section 7 right to vote in an atmosphere free of coercion, intimidation, and interference. In support of the Objection, the Union submitted numerous news articles and other documents which it asserts contain threats by, but not limited to, Governor William Haslam, State House Speaker Beth Harwell, State House Majority Leader Gerald McCormick, Senate Speaker Pro Tem Bo Watson, Chairman of the Senate State Commerce and Labor Committee Jack Johnson, and Vice-Chairman of the State Senate Commerce and Labor Committee Mark Green which it contends demonstrate a coordinated and widely-publicized coercive campaign to deprive employees of their federally-protected right, through the election, to select the Union as their exclusive collective-bargaining representative, free of coercion, intimidation, threats and interference. The Union also presented evidence obtained from web sites and other internet sources which it contends shows these threats were rapidly adopted by persons opposed to the Union and widely disseminated to most if not all unit employees. In addition, the Union avers numerous employee witnesses will testify to the wide spread adoption and repetition of the threats by employees and others opposed to the Union.

In Objection 2 the Union alleges that within hours of a February 10, 2014, press conference during which Senate Speaker Pro Tem Bo Watson threatened the loss of financial

⁴ As a general rule, the Board only considers as potentially objectionable conduct which occurs during "critical period". The critical period is defined as the period between the date of the filing of the petition and the date of the election. *Ideal Electric Mfg. Co.*, 134 NLRB 1275 (1961). In this case the critical period is February 3, 2014, through February 14, 2014.

incentives, Intervenor Southern Momentum, through its attorney Maurice Nicely, publicly repeated Watson's threats. In addition, his remarks as stated in the press were that "[f]urther financial incentives – which are absolutely necessary for the expansion of the VW facility here in Chattanooga – *simply will not exist if the UAW wins the election.*" In support of the Objection, the Union submitted news articles which it contends shows the statements by Watson and Nicely were clearly viewed as threats by those hearing or reading them as well as evidence of the wide dissemination of such statements to unit employees.

In Objection 3 the Union alleges that on February 10, 2014, Southern Momentum published the State Officials' threats of the loss of financial incentives discussed in Objection 1 on its website No2UAW. The Union further alleges other anti-Union websites also published the alleged coercive statements. In support of this objection, the Union submitted copies of the posted materials and evidence of their wide dissemination to unit employees.

In Objection 4 the Union alleges that on February 12, 2014 United States Senator Bob Corker made various statements to the public and the press in an attempt to coerce employees to vote against the Union by stating that he had been assured by the Employer/Petitioner that if workers voted against the Union, the Employer would announce in coming weeks that it would manufacture its new SUV at its Chattanooga plant. In support of the objection, the Union submitted evidence that the statement was published and re-published on the Senator's official Senate website and broadly disseminated in local and national media. The Union asserts the statements were coercive and widely disseminated and were immediately posted on Southern Momentum's No2UAW website and the Grover Norquist "Worker Freedom" website.

In Objection 5 the Union alleges that the cumulative effect of the above-described third-party conduct created a situation in which the message to employees was that voting for the

Union would result in “stagnation for the Chattanooga plant, with no new product, no job security, and withholding of State support for its expansion.” In further support of its objections, the Union cited Board case authority involving alleged third-party conduct.

CONCLUSION

The Board will set aside an election based on third party conduct only if such conduct viewed on an objective rather than a subjective basis creates a general atmosphere of fear or reprisal rendering a free election impossible. See *Westwood Horizons Hotel*, 270 NLRB 802, 803 (1984) and *Picoma Industries* 296 NLRB, 498 (1989).

Inasmuch as substantial and material issues of fact and law exist with respect to whether such conduct occurred in the instant case, I find that the issues raised by the objections can best be resolved on the basis of record testimony at a hearing conducted before a duly designated hearing officer. Accordingly, I will direct that a hearing be held with respect to the Union’s Objections 1, 2, 3, 4 and 5.

ORDER DIRECTING HEARING

IT IS HEREBY ORDERED pursuant to Section 102.69(d) of the Board’s Rules and Regulations, Series 8, as amended, that a hearing be held before a Hearing Officer of the National Labor Relations Board for the purpose of receiving evidence to resolve these Objections. The Hearing Officer will be Administrative Law Judge Melissa M. Olivero. All filings and communications should be directed to the Washington D.C. Division of Judges.

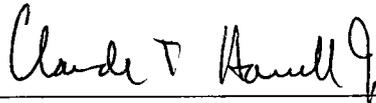
IT IS FURTHER ORDERED that upon the conclusion of the hearing Administrative Law Judge Olivero shall prepare and cause to be served upon the parties a report containing findings of fact, including resolutions of credibility of witnesses, and recommendations to the Board as to the disposition of these issues. Within 14 days from the date of the issuance of such

report, any of the parties may file with the Board in Washington, D.C. exceptions, thereto. Immediately upon filing such exceptions, the party filing the same shall serve a copy thereof on the other parties and shall file a copy with the Regional Director. If no exceptions are filed, the Board may decide the matter upon the record or may make other disposition of the case.

NOTICE OF HEARING

YOU ARE HEREBY NOTIFIED that commencing at **9:00 a.m. (Eastern Standard Time) on Monday, April 7, 2014**, at a place to be determined hereafter and for consecutive days until concluded, a hearing in this matter will be conducted. At the hearing, the parties will have the right to appear in person, or otherwise, give testimony and to examine and cross examine witnesses.

Dated at Atlanta, Georgia on March 17, 2014.



Claude T. Harrell Jr., Regional Director
National Labor Relations Board
Region 10
Harris Tower
233 Peachtree Street NE, Ste 1000
Atlanta, GA 30303-1531

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 10

VOLKSWAGEN GROUP OF AMERICA, INC.

Employer/Petitioner

and

INTERNATIONAL UNION, UNITED AUTOMOBILE,
AEROSPACE, AND AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA (UAW)

Union

Case 10-RM-121704

and

MICHAEL BURTON, *et al*

Intervenor

and

SOUTHERN MOMENTUM, TAVIS FINNELL AND SEAN
MOSS, *et al*

Intervenor

AFFIDAVIT OF SERVICE OF: Report on Objections and Order Directing Hearing, dated March 17, 2014.

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on, I served the above-entitled document(s) by **fax and regular mail** upon the following persons, addressed to them at the following addresses:

Steven Swirsky , Attorney for Petitioner
Epstein Becker & Green, P.C.
250 Park Ave Fl 12
New York, NY 10177

Gary Casteel
International Union, United Automobile, Aerospace and
Agricultural Implement Workers of America, UAW, Region 8 L
151 Maddox Simpson Pkwy
Region 8
Lebanon, TN 37090-5345

Volkswagen Group of America, Inc.
8001 Volkswagen Drive
Chattanooga, TN 37416

Michael Nicholson, General Counsel
International Union, United Automobile, Aerospace and
Agricultural Implement Workers of America (UAW), AFL-CIO
Law Department
8000 E. Jefferson Ave.
Detroit, MI 48214-3963
Maury Nicely
Southern Momentum
835 Georgia Ave Ste 800
Chattanooga, TN 37402

James D. Fagan, Esq.
Stanford Fagan
191 Peachtree St NE Ste 4200
Atlanta, GA 30303-1748

Glenn M. Taubmann, Attorney
National Right to Work Legal Defense Foundation,
Inc.
8001 Braddock Rd Ste 600
Springfield, VA 22160

March 17, 2014

Date

JOSELLE CHATMAN,
Designated Agent of NLRB

Name

A handwritten signature in black ink that reads "joselle chatman". The signature is written in a cursive style with lowercase letters. The first name "joselle" is written in a smaller, more compact script, while "chatman" is written in a larger, more flowing script. The signature is positioned above a horizontal line.

Signature