

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

VOLKSWAGEN GROUP OF AMERICA, INC.,

Petitioner-Employer,

and

Case 10-RM-121704

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

Labor Organization.

**UAW'S REPLY TO OPPOSITIONS TO ITS REQUEST FOR SPECIAL PERMISSION
TO APPEAL ORDER GRANTING INTERVENORS' MOTIONS TO INTERVENE**

1. On March 18, 2014, the Region 10 Director issued his "Revised Report on Objections and Order Directing Hearing," directing a hearing on the UAW's Objections. ("Revised Report," Reply Exhibit 1 attached hereto.) Under Section 102.69(i)(1) of the Board's Rules and Regulations, the issuance of that notice of hearing on objections "constitute[s] a transfer of th[is] case to the Board..." Further, as the Rules and Regulations provide at Section 102.69(i), that transfer to the Board means "the provisions of Section 102.65(c) shall apply with respect to special permission to appeal to the Board from any such direction of hearing."

Section 102.65(c), in turn, makes it clear that the UAW's request for special permission to appeal here is proper. Thus, the proviso contained in Section 102.65(c) states:

Provided, however, That if the Regional Director has issued an order transferring the case to the Board for decision such rulings may be appealed directly to the Board by special permission of the Board.

Here, the Regional Director's notice of hearing incorporates the earlier order of the Acting Regional Director granting the intervention motions in this matter, which prior order provides that the putative intervenors shall be given the right to participate in the objections hearing, apparently as parties (although this is not clear). (See Revised Report, n. 3.) Accordingly, even if the UAW's March 12, 2014 request for special permission for appeal was not ripe, it is ripe now, and the Board should grant that request for special appeal *nunc pro tunc*.¹

2. Further, the UAW's request for special permission to appeal satisfies the the criteria for a special appeal, since the ARD's Order admittedly departs from Board precedent², as perplexingly evidenced by the ARD's reference to her intervention order as "*non-precedential*." (ARD Order, p. 2, emphasis supplied.) A grant of special

¹ If the Board determines it necessary, the UAW is prepared to refile its request for special permission to appeal, relying, *inter alia*, on Section 102.69(i)(1) and the proviso to Section 102.65(c) of the Board's Rules and Regulations, as cited above. Review should not be denied because UAW's initial request for special permission to review cited Section 102.26 of the Board's Rules and Regulations, given the fact that, as provided in Section 102.69(i)(1), this case has now been transferred to the Board.

² See NLRB Case Handling Manual, Section 11194.4, entitled "Tests for Granting or Denying Intervention[, which provides that s]hould the union seeking intervention meet any of the tests described in Secs. 11022, et seq., the motion for intervention should be granted. *Motions to intervene made by employees or employee committees not purporting to be labor organizations should be denied. Motions to intervene made on the basis of interest in the unit by labor organizations representing employees in other parts of the plant, for example, or other plants of the employer, should be granted.*" See also *Ashley v. NLRB*, 255 Fed. Appx. 707, 709 (4th Cir. 2007) and other cases cited in UAW's Opposition to Motions to Intervene.

permission for review of the ARD's Order is proper for that reason, if no other.³

Moreover, the ARD's Order is not supported by her factual assertion that "...some of the alleged objectionable conduct involves statements made by employees..." (See ARD Order, p. 2.) As discussed in detail in our initial request, that statement by the ARD is clearly erroneous,⁴ because the only citation to a statement made by any of the putative intervenors in UAW's Objections is to a republication by bargaining unit employee Michael Burton of threats made by State of Tennessee officials among the workforce, to be used merely as evidence of the *dissemination* of those politicians' threats among the workforce.

3. Finally, the Board should disregard the claims of the Southern Momentum group intervenors that somehow the UAW's Objections accuse them of committing unfair labor practices as to which the Board may at sometime in the future find them guilty, thus making their intervention necessary in order to defend their conduct. The reason that claim must be rejected is simple: none of the putative intervenors – neither the individual employees nor Southern Momentum – are either employers or labor organizations. As such, they are not subject to the Board's Section 8 and Section 10 unfair labor practice jurisdiction (just as is true with respect to the Tennessee state officials and Senator Corker who are the subject of the UAW's objections, who have so far not sought to intervene). The mere fact that a putative intervenor may have disseminated one or more of the statements made by the political figures that are the

³ 29 CFR § 102.67(c)(1) ("...a request for review may be granted [when] ... a substantial question of law or policy is raised because of ... a departure from officially reported Board precedent.")

⁴ See, e.g., Section 102.67(c)(2) of the Board's Rules and Regulations.

target of the UAW's objections is not a legitimate basis for granting those putative intervenors party status.

CONCLUSION

For the foregoing reasons, and those stated in our prior papers on this issue, the Board should grant UAW's request for special permission to appeal and reverse the ARD's Order.⁵ The UAW also renews its request that the Board stay the hearing in this matter, now set for April 7, 2014, until it rules on UAW's request for special permission for appeal.⁶

Respectfully submitted,

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⁵ The UAW again reiterates that it does not oppose the Board's granting the request of certain of the putative intervenors' alternative request to file an amicus brief after the close of the hearing that the Regional Director has now ordered in this case, just as the Board has done in other cases.

⁶ The putative intervenors represented by Glenn Taubman, William Messenger and John Radabaugh stated in their reply to UAW's request for special permission to appeal that they do not oppose this stay request. See Opposition, p. 1.

Implement Workers of America, UAW

Dated: March 18, 2014

REPLY EXHIBIT 1

**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

REVISED 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 motions and filings prior to the opening of the record, including but not limited to motions for postponement or requests for subpoenas, should be filed with the Regional Director. All filings and communications for Judge Olivero 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**, a hearing will be held at the Hamilton County Courthouse, 4th Floor, located at 625 Walnut Street, Chattanooga, Tennessee, and will be conducted on consecutive days thereafter until completed, at which time and place you will have the right to appear, or otherwise, give testimony and to examine and cross examine witnesses.

Dated at Atlanta, Georgia on March 18, 2014.



Claude T. Harrell Jr., Regional Director
National Labor Relations Board
Region 10
Harris Tower
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CERTIFICATE OF SERVICE

I hereby certify that on March 18, 2014, I submitted the foregoing UAW's Reply to Oppositions to its Request for Special Permission to Appeal Order Granting Intervenors' Motions to Intervene to the National Labor Relations Board by electronic filing and e-mailed a copy of same to:

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