

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

**VOLKSWAGEN GROUP OF AMERICA
CHATTANOOGA OPERATIONS, LLC,**

Employer

and

Case No. 10-RC-239234

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

Petitioner.

**PETITIONER INTERNATIONAL UNION, UAW'S RESPONSE IN OPPOSITION TO
VOLKSWAGEN'S REQUEST FOR REVIEW OF REGIONAL DIRECTOR'S ORDER
AND MOTION TO STAY PROCEEDINGS**

Pursuant to National Labor Relations Board Rule §102.67(f), Petitioner International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) responds in opposition to Employer Volkswagen Group of America Chattanooga Operations, LLC's request for review of the Regional Director's April 16, 2019 Order Deferring Ruling on Motion to Dismiss Petition, and its motion to stay proceedings.

Pursuant to Section 102.67(d) of the Board's Rules and Regulations, a request for review is granted "only where compelling reasons exist therefore," and "only upon one or more of the following grounds:"

- (1) That a substantial question of law or policy is raised because of:
 - (i) The absence of; or
 - (ii) A departure from, officially reported Board precedent.
- (2) That the Regional Director's decision on a substantial factual issue is clearly erroneous on the record and such error prejudicially affects the rights of a party.
- (3) That the conduct of any hearing or any ruling made in connection with the

proceeding has resulted in prejudicial error.

(4) That there are compelling reasons for reconsideration of an important Board rule or policy.

Here, the Employer has no compelling reasons for its request, and none of these grounds exist in this case. As explained below, the Regional Director's actions in deferring ruling on the Employer's motion to dismiss the Petition following the development of a hearing record and post-hearing briefs is fully consistent with Section 102.65(a) of the Board's Rules and Regulations. Furthermore, the Employer's attempts to shoehorn a discussion of the merits of its position into its request is entirely premature and inappropriate, because the Regional Director has not yet made any ruling on the Employer's motion to dismiss, and under Section 102.67(a), he is plainly charged with deciding that issue in the first instance. Finally, "extraordinary relief" under Section 102.67(j), including a stay of the proceedings, "will only be granted upon a clear showing that it is necessary under the particular circumstances of the case," and the Employer plainly has not met that burden here. *See* Rules and Regulations, § 102.67(j)(2). Accordingly, the Board should deny the Employer's request in its entirety.

I. BACKGROUND

Briefly, the relevant facts are as follows: On December 14, 2015, in Case No. 10-RC-162530, UAW Local 42 was certified as the exclusive bargaining representative for a unit of maintenance workers at the Employer's Chattanooga, Tennessee plant. The Employer has consistently refused to bargain with Local 42, and has argued for the last three-plus years that the only appropriate unit of its workers is a production and maintenance unit. Between December 2015 and November 2017, Local 42 filed a total of four unfair labor practice charges alleging refusal to bargain and/or unilateral change. Case Nos. 10-CA-166500 and 10-CA-169340 were consolidated for complaint, and the Board held that VW's refusal to bargain violated Section

8(a)(5). *See Volkswagen Group of Am., Inc.*, 364 NLRB No. 110 (2016). The Employer appealed, but prior to the Court of Appeals issuing a decision, the Board requested remand of the cases, citing its decision in *PCC Structural*s, 365 NLRB No. 160 (2017). On December 26, 2017, the Court of Appeals remanded the case to the Board, which has not taken any further action. A complaint was also issued in Case No. 10-CA-191620, the third charge filed by Local 42, but no further action has been taken. And, no complaint has been issued in the fourth charge filed by Local 42, Case No. 10-CA-209575.

On April 9, 2019, Petitioner International Union, UAW Local 42's parent labor organization, filed a petition seeking to represent a unit of production and maintenance workers at the Employer's Chattanooga plant. A copy of the petition is attached hereto as Exhibit "1." NLRB Region 10 scheduled a pre-election hearing for April 17, 2019. Prior to the hearing, on April 15, 2019, UAW Local 42 disclaimed interest in representing the maintenance unit (a copy of the disclaimer is attached hereto as Exhibit "2"); withdrew the petition in Case No. 10-RC-162530 (a copy of the withdrawal of the petition is attached hereto as Exhibit "3"); and withdrew the unfair labor practice charges pending in Case Nos. 10-CA 166500, 10-CA-169340, 10-CA-191620 and 10-CA-209575 (a copy of the withdrawal of the charges is attached hereto as Exhibit "4").

A few hours after UAW Local 42 disclaimed interest, withdrew the maintenance unit petition, and withdrew the pending charges, the Employer filed an "Emergency Motion to Dismiss Petition Based on Prior Certification of the Maintenance Unit," claiming that the production and maintenance unit petition is barred by the certification of the maintenance unit. On April 16, 2019, the Regional Director issued the Order that is the subject of the instant Request for Review, in which he stated that he is "deferring ruling on the Employer's Motion to Dismiss pending development of a record at hearing, scheduled for April 17, 2019, and consideration of that record

evidence and post-hearing briefs.” The April 17, 2019 hearing proceeded, and the parties’ post-hearing briefs are due to be filed with the Regional Director on April 24, 2019.

II. ARGUMENT

The Regional Director’s decision to defer ruling on the Employer’s motion to dismiss was entirely appropriate under §102.65(a) of the Board’s Rules and Regulations, which provides, in relevant part:

The Regional Director may rule upon all motions filed with him . . . or may refer the motion to the Hearing Officer The Hearing Officer shall rule, either orally on the record or in writing, upon all motions filed at the hearing or referred to the Hearing Officer as hereinbefore provided, . . . *except that all motions to dismiss petitions shall be referred for appropriate action at such time as the entire record is considered by the Regional Director or the Board, as the case may be.* [emphasis added]

It therefore was entirely correct for the Regional Director to defer deciding the motion to dismiss the petition until after the development of the record at hearing, and there is no valid issue raised by the Employer’s Request for Review.

In the absence of any improper action by the Regional Director, and no other unusual facts or circumstances, there is no justification for staying proceedings in this case pursuant to Section 102.67(j)’s “extraordinary relief” provision. The Employer spills much ink about the purported merits of its motion to dismiss the petition based upon an alleged certification bar. However, because the Regional Director has not yet ruled on the motion, any discussion of the merits is completely premature. Moreover, Section 102.67(a) of the Board’s Rules and Regulations plainly provides that the Regional Director is empowered, in the first instance, to decide whether a question concerning representation exists, including the merits of a motion to dismiss the petition:

The Regional Director may proceed, either forthwith upon the record or after oral argument, the submission of briefs, or further hearing, as the director may deem proper, to determine whether a question of representation exists in a unit appropriate for purposes of collective bargaining, and to direct an election, dismiss

the petition, or make other disposition of the matter. A decision by the Regional Director upon the record shall set forth the director's findings, conclusions, and order or direction.

Section 102.67(c) permits a party to file a request for review with the Board of "any action of a Regional Director delegated to him under Section 3(b) of the Act," but the request may only be filed "at any time following the action until 14 days after a final disposition of the proceedings by the Regional Director." Here, the Regional Director's only actions have been to set a hearing after the filing of a petition and defer consideration of a motion to dismiss that petition until after the hearing, so that he may decide the motion based upon the record and post-hearing briefs. As noted above, these actions were entirely proper exercises of his authority. Accordingly, there is nothing else for the Board to review at this time, and nothing about this case is "extraordinary" or merits a stay of the proceedings.

III. CONCLUSION

None of the grounds for review set forth in Section 102.67(d) are present in this case, and the Employer has not shown that extraordinary relief under Section 102.67(j) is necessary. The Employer seeks to have the Regional Director make a ruling on its emergency motion to dismiss without a record and without a hearing. The Employer's arguments in favor of dismissal of the petition in this case have no legal basis and are entirely frivolous, and therefore it is not surprising that the Employer attempts to prevent the Region from consideration of the entire record. Accordingly, the Board should deny the Employer's Request for Review and Motion to Stay Proceedings in its entirety.

Respectfully submitted, this 19th day of April, 2019.

s/ Michael B. Schoenfeld
Stanford Fagan LLC
2540 Lakewood Ave. SW

Atlanta, Georgia 30315
404-622-0521, ext. 2244
michaels@sfglawyers.com
Counsel for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that on April 19, 2019, I submitted the foregoing **UAW'S RESPONSE IN OPPOSITION TO VOLKSWAGEN'S REQUEST FOR REVIEW OF REGIONAL DIRECTOR'S ORDER AND MOTION TO STAY PROCEEDINGS** to the NLRB via e-filing, with a copy of the same sent by email to the following:

John D. Doyle, Jr.
Regional Director
National Labor Relations Board, Region 10
john.doyle@nlrb.gov

Kerstin Meyers
Field Attorney
National Labor Relations Board, Region 10
Kerstin.meyers@nlrb.gov

Samuel Morris
Godwin Morris Laurenzi Bloomfield
Counsel for Local 42
smorris@gmlblaw.com

Arthur Carter
Arrissa Meyer
John Harper, III
Counsel for the Employer
ATCarter@littler.com
AKMeyer@littler.com
AJHarper@littler.com

s/ Michael B. Schoenfeld

EXHIBIT 1

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
RC PETITION

DO NOT WRITE IN THIS SPACE	
Case No. 10-RC-239234	Date Filed April 9, 2019

INSTRUCTIONS: Unless e-Filed using the Agency's website, www.nlr.gov, submit an original of this Petition to an NLRB office in the Region in which the employer concerned is located. The petition must be accompanied by both a showing of interest (see 6b below) and a certificate of service showing service on the employer and all other parties named in the petition of: (1) the petition; (2) Statement of Position form (Form NLRB-505); and (3) Description of Representation Case Procedures (Form NLRB 4812). The showing of interest should only be filed with the NLRB and should not be served on the employer or any other party.

1. PURPOSE OF THIS PETITION: RC-CERTIFICATION OF REPRESENTATIVE - A substantial number of employees wish to be represented for purposes of collective bargaining by Petitioner and Petitioner desires to be certified as representative of the employees. **The Petitioner alleges that the following circumstances exist and requests that the National Labor Relations Board proceed under its proper authority pursuant to Section 9 of the National Labor Relations Act.**

2a. Name of Employer Volkswagen Group of America Chattanooga Operations, LLC	2b. Address(es) of Establishment(s) involved (Street and number, city, State, ZIP code) 8001 Volkswagen Drive, Chattanooga, TN 37421
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3a. Employer Representative - Name and Title Nicole Koesling, Sr. VP of HR	3b. Address (If same as 2b - state same) 8001 Volkswagen Drive, Chattanooga, TN 37421
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3c. Tel. No. 423-320-0767	3d. Cell No.	3e. Fax No.	3f. E-Mail Address nicole.koesling@vw.com
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4a. Type of Establishment (Factory, mine, wholesaler, etc.) Automobile Manufacturer	4b. Principal product or service Automobiles	5a. City and State where unit is located: Chattanooga, TN
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5b. Description of Unit Involved Included: See attachment Excluded: See attachment	6a. No. of Employees in Unit: Approx. 1709	6b. Do a substantial number (30% or more) of the employees in the unit wish to be represented by the Petitioner? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
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Check One: 7a. Request for recognition as Bargaining Representative was made on (Date) 4/9/19 and Employer declined recognition on or about No reply (Date) (If no reply received, so state).
 7b. Petitioner is currently recognized as Bargaining Representative and desires certification under the Act.

8a. Name of Recognized or Certified Bargaining Agent (If none, so state). United Auto Workers, Local 42	8b. Address Godwin, Morris, Laurenzi & Bloomfield, PC, 50 North Front St., Suite 800, Memphis, TN 38103
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8c. Tel No. 901-528-1702	8d Cell No.	8e. Fax No.	8f. E-Mail Address smorris@gmlblaw.com
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8g. Affiliation, if any International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW)	8h. Date of Recognition or Certification 12/15/15	8i. Expiration Date of Current or Most Recent Contract, if any (Month, Day, Year)
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9. Is there now a strike or picketing at the Employer's establishment(s) involved? No If so, approximately how many employees are participating? _____
(Name of labor organization) _____, has picketed the Employer since (Month, Day, Year) _____.

10. Organizations or individuals other than Petitioner and those named in items 8 and 9, which have claimed recognition as representatives and other organizations and individuals known to have a representative interest in any employees in the unit described in item 5b above. (If none, so state)
None

10a. Name	10b. Address	10c. Tel. No.	10d. Cell No.
		10e. Fax No.	10f. E-Mail Address

11. **Election Details:** If the NLRB conducts an election in this matter, state your position with respect to any such election.

11a. Election Type: Manual Mail Mixed Manual/Mail

11b. Election Date(s): April 29 & 30, 2019	11c. Election Time(s): 4:30a-9a; 2:30p-5:30p; 7p-9p; 11:30p-3:30a	11d. Election Location(s): Conference Center and/or RB1
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12a. Full Name of Petitioner (including local name and number) International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW)	12b. Address (street and number, city, state, and ZIP code) 8000 East Jefferson Avenue, Detroit, MI 48214
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12c. Full name of national or international labor organization of which Petitioner is an affiliate or constituent (if none, so state)

12d. Tel No.	12e. Cell No.	12f. Fax No.	12g. E-Mail Address
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13. Representative of the Petitioner who will accept service of all papers for purposes of the representation proceeding.

13a. Name and Title Michael B. Schoenfeld, Attorney	13b. Address (street and number, city, state, and ZIP code) Stanford Fagan LLC, 2540 Lakewood Ave SW, Atlanta, GA 30315
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13c. Tel No. 404-622-0521, ext. 2244	13d. Cell No.	13e. Fax No.	13f. E-Mail Address michaels@sfglawyers.com
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I declare that I have read the above petition and that the statements are true to the best of my knowledge and belief.

Name (Print) Michael B. Schoenfeld	Signature s/ Michael B. Schoenfeld	Title Attorney	Date April 9, 2019
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WILLFUL FALSE STATEMENTS ON THIS PETITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

ATTACHMENT

All full-time and regular part-time production and maintenance employees employed by Volkswagen Group of America Chattanooga Operations, LLC, at its facility located at 8001 Volkswagen Drive, Chattanooga, TN 37421, including Production Team Members, Skilled Team Members, Production Team Leaders and Skilled 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.

EXHIBIT 2

From: Samuel Morris

Sent: Monday, April 15, 2019 2:45 PM

To: lan.Leavy@vw.com; nicole.koesling@vw.com

Cc: atcarter@littler.com; ajharper@littler.com; akmeyer@littler.com; Kerstin.Meyers@nlrb.gov

Subject: Disclaimer - UAW Local 42 - Volkswagen Group of America, Inc.

I represent UAW Local 42.

Please be advised that UAW Local 42 hereby waives and disclaims any right to represent the employees of Volkswagen Group of America, Inc, in the following bargaining unit:

All full-time and regular part-time maintenance employees employed by the Employer at its Chattanooga, Tennessee facility, including Skilled Team Members and Skilled Team Leaders, but excluding Team Members, Team Leaders, specialists, technicians, plant clerical employees, office clerical employees, engineers, purchasing and inventory employees, temporary and casual employees, student employees in the apprenticeship program, all employees employed by contractors, employee leasing companies and/or temporary agencies, all professional employees, managers, guards and supervisors as defined by the Act.

You may contact the undersigned with any questions concerning the above.



Samuel Morris
Godwin Morris Laurenzi Bloomfield
50 N. Front St
Suite 800
Memphis, TN 38103
901 528 1702
901 949 1144

EXHIBIT 3

From: Samuel Morris

Sent: Monday, April 15, 2019 2:43 PM

To: 'Kerstin.Meyers@nrlb.gov' <Kerstin.Meyers@nrlb.gov>

Subject: Volkswagen Group of America, Inc. and UAW Local 42, 10 RC 162530

I represent UAW Local 42.

Please consider this Petitioner's withdrawal of the Petition in the above-referenced case.



Samuel Morris
Godwin Morris Laurenzi Bloomfield
50 N. Front St
Suite 800
Memphis, TN 38103
901 528 1702
901 949 1144

EXHIBIT 4

From: Samuel Morris

Sent: Monday, April 15, 2019 2:43 PM

To: 'Kerstin.Meyers@nlrb.gov' <Kerstin.Meyers@nlrb.gov>

Subject: UAW / Volkswagen Group of America - 10-CA-166500, 10-CA-169340, 10-CA-191620, 10-CA-209575

Please be advised that the Charging Party hereby withdraws the charges referenced below:

- 10-CA-166500
- 10-CA-169340
- 10-CA-191620
- 10-CA-209575

If there should be any questions concerning the above, feel free to contact the undersigned.



Samuel Morris
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50 N. Front St
Suite 800
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