

**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 MOTION TO LIFT STAY

COMES NOW, Petitioner International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), and respectfully moves the Board to lift the stay of proceedings entered in the above-captioned case on May 3, 2019 (the "Stay"). As argued herein, all the purported bars for an election in the wall-to-wall unit sought by Petitioner have been eliminated. Accordingly, the Stay should be lifted so that NLRB Region 10 may resume processing the Petition in Case No. 10-RC-239234 and determine if an election is to be directed in a wall-to-wall unit at Volkswagen Group of America Chattanooga Operations, LLC ("Volkswagen").

I. Procedural History

On February 2, 2014, Volkswagen filed a petition in case 10-RM-121704 seeking an election of, "All regular full-time and regular part-time production and maintenance employees" at its Chattanooga, Tennessee assembly plant. Volkswagen thereafter entered into a Stipulated

Election Agreement with UAW for an election on February 12-14, 2014. An election was held, and UAW was not selected as bargaining representative by a majority of voting employees.

On October 23, 2015, United Auto Workers Local 42, a local union affiliate of International Union, UAW (“Local 42”), filed a petition for an election of all full-time and regular part-time maintenance employees at Volkswagen. *See* Case No. 10-RC-162530. NLRB Region 10 held a hearing, and the Regional Director issued a decision and direction of election on November 18, 2015, finding the petitioned-for maintenance employees to constitute an appropriate unit. An election was held over two days on December 3 and 4, 2015. Local 42 prevailed by a vote of 108 to 44. The Regional Director issued a Certification of Representation on December 15, 2015. Volkswagen refused to bargain with Local 42 - and has never bargained with Local 42 - and argued that the only appropriate bargaining unit at its Chattanooga plant is a wall-to-wall 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 Volkswagen’s refusal to bargain violated Section 8(a)(5). *See Volkswagen Group of Am., Inc.*, 364 NLRB No. 110 (2016). Volkswagen appealed the Board’s ruling to the D.C. Circuit Court of Appeals, 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. A complaint was also issued in Case No. 10-CA-191620, the third charge filed by Local 42, but no further action was taken on the complaint. And, no complaint was issued in the fourth charge filed by Local 42, Case No. 10-CA-209575.

On April 9, 2019, Petitioner filed the instant Petition seeking to represent a unit of all production and maintenance workers at the Chattanooga plant. NLRB Region 10 scheduled a pre-election hearing for April 17, 2019. Prior to the hearing, on April 15, 2019, Local 42 disclaimed interest in representing the maintenance unit; withdrew the petition in Case No. 10-RC-162530; 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 few hours after Local 42 disclaimed interest, withdrew the maintenance unit petition, and withdrew the pending charges, Volkswagen 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. Petitioner filed a response in opposition to Volkswagen’s motion to dismiss.

On April 16, 2019, the Regional Director issued an Order “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.” On April 16, Volkswagen filed its statement of position, arguing that, “The petition in the proposed unit is barred by a certification bar. The maintenance employees cannot be included in the proposed production and maintenance unit. The Board has already issued a certification that such employees are represented in a separate unit by another union...” The April 17, 2019 hearing proceeded. That same day, UAW and Counsel for the NLRB General Counsel submitted a Joint Motion to Dismiss the Complaint issued in Cases 10-CA-166500 and 10-CA-169340.¹

¹ On April 16, 2019, NLRB Region 10 approved Local 42’s request to withdraw the charge in 10-CA-191620 and dismissed the complaint in that case, and Region 10 approved the withdrawal of the charge in 10-CA-209575 as well.

Following the conclusion of the hearing on April 17, Volkswagen filed a Request for Review and Motion to Stay with the NLRB, seeking review of the Regional Director's order deferring the ruling on its motion to dismiss and a stay of further proceedings on the instant Petition. On April 19, Petitioner filed a response in opposition to Volkswagen's request for review.

On May 3, 2019, the Board granted the Joint Motion to Dismiss the Complaint issued in Cases 10-CA-166500 and 10-CA-169340 and remanded the cases to Region 10. Also, on May 3, the Board in a 2-1 decision granted Volkswagen's request to stay all proceedings in the instant case.

On May 6, 2019, the Regional Director for NLRB Region 10 granted Local 42's request to withdraw the charges in 10-CA-166500 and 10-CA-169340, dismissed the complaint, and closed the cases. A copy of the Regional Director's May 6 Order is attached as Exhibit "1". Also, on May 6, the Regional Director for NLRB Region 10 revoked the Certification of Representation issued in Case 10-RC-162530. A copy of the Order Revoking Certification is attached as Exhibit "2".²

II. The Stay imposed on May 3 should be lifted by the Board because grounds for the Stay no longer exist

In its Request for Review and Motion to Stay, Volkswagen argued that:

The unique circumstances of this case, in which a union and a Regional Director continue to proceed towards an election in a unit containing a group of employees for whom a representative has already been certified and before that certification year has expired, demonstrate that extraordinary relief in the form of a stay of all further proceedings in the representation case is appropriate.

² On May 7, the Region 10 Regional Director issued an Errata to include Right to Request Review procedures that were erroneously omitted from the May 6 order. The Order and Errata are included together as Exhibit "2".

(VW Req. for Rev. at p. 9). Volkswagen argued that a Stay was warranted because, “Continuing these proceedings...despite the fact that the Local Union has already been certified as the bargaining agent of the maintenance employees, and its certification has not been revoked... is fundamentally inconsistent with the prior certification and ‘necessarily at odds’ with the principle of exclusive representation.” (*Id.*). In footnote 12, Volkswagen argued that “Although the International Union contends the Local Union’s disclaimer of interest resolved this issue, the Board must take action to revoke the certification and dismiss the unfair labor practice charges over which it has jurisdiction... The prior certification and the pending unfair labor practices need to be decided first...” Volkswagen further went on to argue that the proceeding should be stayed because:

There are unfair labor practice charges predicated on the certification of the maintenance unit still pending before the Board. These charges allege violations of Section 8(a)(5) of the Act and seek to establish a bargaining relationship, the remedy for which includes an affirmative bargaining order. There is no question that the potential issuance of an order requiring Volkswagen to bargain with the Local Union as the representative of the maintenance-only unit is inherently inconsistent with the International Union’s Petition seeking to represent an overlapping unit of production and maintenance employees. *While the International Union asserts that the Local Union has withdrawn its unfair labor practice charges, the withdrawal of the test-of- certification complaint has not been approved, and the unfair labor practice case has not been dismissed. As such, the representation case should not move forward until these issues are fully resolved by the Board.*

(VW Req. for Rev. at pp. 10-11) (emphasis added).

Volkswagen’s Motion to Stay is predicated entirely on the existence of the certification in 10-RC-162530 and the charges in 10-CA-166500 and 10-CA-169340. Volkswagen provided no other basis for a Stay of the instant Petition other than these matters.

Now that the Board has remanded the cases to Region 10 and the Regional Director has closed the cases in 10-CA-166500 and 10-CA-169340 and revoked the certification in 10-RC-

162530, all of these purported bars to an election in the wall-to-wall unit have been removed. Therefore, there is no basis to continue the Stay, because Volkswagen's reasons for the Stay no longer exist. In other words, all issues raised by Volkswagen in its Motion to Stay have been "fully resolved" and there is no basis for any further Stay of the proceedings. As a result, Petitioner respectfully requests that the Stay be immediately lifted.

III. Conclusion

The only arguments in support of Volkswagen's Motion to Stay were the pendency of the certification in 10-RC-162530 and unfair labor practice charges in 10-CA-166500 and 10-CA-169340. Those purported hurdles have been cleared and they no longer preclude the processing of the Petition.³ As a result, the Stay should be immediately lifted so that Region 10 can resume processing the Petition in this case.

Respectfully submitted, this 9th day of May, 2019.

s/ Michael B. Schoenfeld
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Counsel for Petitioner

³ As argued in its Response in Opposition to Volkswagen's Request for Review and Motion to Stay, Response in Opposition to Volkswagen's Motion to Dismiss, and its Post-Hearing Brief, Petitioner maintains that there is no basis in Board law for dismissal of the instant petition. *See also WTOP*, 114 NLRB 1236, 1237 (1955) (holding that no certification bar existed even though RC petition was filed by the Radio & Television Broadcast Engineers & Technicians, Local No. 1215 less than twelve months after the American Federation of Television and Radio Artists won an election as was certified as the bargaining representative of the same unit, because the American Federation of Television and Radio Artists "disclaimed interest in the unit ... following the filing of the" petition by Local No. 1215); *National By-Products Company*, 122 NLRB 334, 335 (1958) (finding no bar to petition filed by International Brotherhood of Teamsters, Local 452, where union that represented 2 of the 12 employees in the petitioned-for unit disclaimed interest); *Brunswick Hospital Center, Inc.*, Case Nos. 29-CP-437, 29-CP-438 and 29-RC-4846, 1981 WL 26024 at p. *2 (Advice Memorandum, Feb. 20, 1981) (finding no certification bar where RC petition was filed by Brunswick Nurses Association for a unit of registered nurses within twelve months of Teamsters Local 803's certification as bargaining representative of the same unit, because Teamsters Local 803 disclaimed interest in representing the unit).

CERTIFICATE OF SERVICE

I hereby certify that on May 9, 2019, I submitted the foregoing **PETITIONER**
INTERNATIONAL UNION, UAW'S MOTION TO LIFT STAY to the NLRB via e-filing
with a copy of the same sent by e-mail to the following:

Kerstin Meyers
Field Attorney
National Labor Relations Board, Region 10
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Samuel Morris
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s/ Michael B. Schoenfeld

EXHIBIT 1

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

VOLKSWAGEN GROUP OF AMERICA

and

**Cases 10-CA-169340 and
10-CA-166500**

UNITED AUTO WORKERS LOCAL 42

**ORDER APPROVING WITHDRAWAL REQUEST,
DISMISSING COMPLAINT, AND CLOSING CASES**

On May 3, 2019, the National Labor Relations Board remanded these cases to the undersigned for the purpose of approving the Union's request to withdraw the underlying unfair labor practice charges. Having duly considered the Union's request for withdrawal,

IT IS ORDERED that the request to withdraw the charges are approved, the Complaint is dismissed, and the cases are closed.

Dated: May 6, 2019



A handwritten signature in black ink that reads "John D. Doyle, Jr." with a stylized flourish at the end.

JOHN D. DOYLE, JR.
REGIONAL DIRECTOR
NATIONAL LABOR RELATIONS BOARD
REGION 10
233 Peachtree Street, NE
Harris Tower - Suite 1000
Atlanta, Georgia 30303-1504

EXHIBIT 2

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

Volkswagen Group of America, Inc.

Employer

and

Case 10-RC-162530

United Auto Workers, Local 42

Petitioner

ORDER REVOKING CERTIFICATION

On December 14, 2015 the Regional Director for Region 10 of the National Labor Relations Board certified United Auto Workers, Local 42 (Union) as the exclusive collective-bargaining representative in the following appropriate bargaining unit of employees of Volkswagen Group of America, Inc. (Employer):

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 in the Act.

The Employer filed a Request for Review with the Board, which the Board denied on April 13, 2016. The Employer refused to recognize and bargain with the Union, and the Union filed unfair labor practice charges in Cases 10-CA-166500, 10-CA-169340, 10-CA-191620, and 10-CA-209575. In Cases 10-CA-166500 and 10-CA-169340, the Board found that the Employer had violated the Act by refusing to recognize and bargain with the Union. *Volkswagen Group of America, Inc.*, 364 NLRB No. 110 (2016). The Employer appealed this decision to the United States Court of Appeals for the District of Columbia Circuit. While that appeal was pending the Board issued its decision in *PCC Structurals, Inc.*, 365 NLRB No. 160 (2017), overruling *Specialty Healthcare & Rehabilitation Center of Mobile*, 357 NLRB 934 (2011), which was framework the Regional Director and Board had used in this case in determining the appropriateness of the unit. As a result, on December 26, 2017, the D.C. Circuit granted a motion remanding Cases 10-CA-166500 and 10-CA-169340 back to the Board for consideration of the affect of the decision in *PCC Structurals, Inc.* on the certification herein.

On April 15, 2019, the Union requested to withdraw the petition in this matter and disclaimed any interest in further representing the employees covered by the above-referenced certification. The Union also requested withdrawal of the charges in Cases 10-CA-166500, 10-CA-169340, 10-CA-191620, and 10-CA-209575. On April 16, 2019, I approved the Union's request to withdraw the charges in Case 10-CA-191620 and 10-CA-209575, which were pending

before me. The General Counsel and the Union moved the Board for dismissal of the complaint in Cases 10-CA-166500 and 10-CA-169340. On May 3, 2019, the Board remanded Cases 10-CA-166500 and 10-CA-169340 to me for the purposes of dismissing the complaint and closing those cases. On May 6, 2019, I issued an order dismissing that complaint and closing those cases.

No evidence has been presented that the Union is acting inconsistently with its disclaimer.¹ As the case is closed, withdrawal of the petition herein as requested by the Union is not appropriate. However, in view of the Union's disclaimer of interest to represent the employees in the above bargaining unit and consistent with Section 11478.3 of the Board's Casehandling Manual for Representation Cases,

IT IS ORDERED that the Certification of Representative issued in Case 10-RC-162530 is revoked.

Dated: May 6, 2019



JOHN D. DOYLE, JR.
REGIONAL DIRECTOR
NATIONAL LABOR RELATIONS BOARD
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¹ On April 9, 2019, International Union, United Automobile, Aerospace & Agricultural Implement Workers of America (UAW) (the International Union) filed a petition in Case 10-RC-239234 seeking to represent the broader production and maintenance unit, which the Employer has maintained throughout proceedings in the instant case was the only appropriate unit. On May 3, 2019, the Board issued an order staying the proceedings in Case 10-RC-239234. The International Union's filing of a petition seeking to represent the production and maintenance unit, which the Employer has maintained throughout is the only appropriate unit, is not inconsistent with the Union's disclaimer of interest in continuing to represent the unit described herein, which the Employer has resisted throughout.

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

Volkswagen Group of America, Inc.

Employer

and

Case 10-RC-162530

United Auto Workers, Local 42

Petitioner

ERRATA

On May 6, 2019, the undersigned issued in the above-captioned case an Order Revoking Certification. That Order erroneously omitted the following Right to Request Review language that should have been included pursuant with Section 11478.3 of the National Labor Relations Board Casehandling Manual, Part Two, Representation Proceedings.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570-0001. This request must be received by the Board in Washington by May 21, 2019. The request may be filed electronically through E-Gov on the Agency's website, www.nlrb.gov, but may not be filed by facsimile.

Dated: May 7, 2019



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