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5 Labor Developments To Watch after UAW Loss at VW Plant

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The [United Auto Workers](#) suffered a devastating defeat at the polls at [Volkswagen AG's Chattanooga, Tenn.](#), plant on Valentine's Day, losing a [National Labor Relations Board](#)-conducted election by a vote of 712 to 626. The defeat comes despite unusual management efforts to cooperate with the union in its organizing efforts.

The UAW effectively partnered with IG Metall, the powerful German union that has a seat on Volkswagen's global board of directors, to achieve an unprecedented "Agreement for a Representation Election" that was signed on Jan. 20, 2014.

The agreement provided for: (1) a quick election conducted by the NLRB; (2) management's adherence to the UAW's "Principles for Fair Union Elections;" (3) immediate union access to a list of the names and home addresses of worker-voters; (4) management's agreement not to take a position opposed to union representation; (5) coordinated, mutually agreed-upon communications; (6) UAW access to plant premises, including the use of a designated room in the human resources department; (7) union opportunities to speak at shift meetings for all unit employees; and (8) a detailed agreement on the structure of a works council to be established in the event of a union victory.

Despite creating this favorable playing field, the UAW lost at the ballot box. The result was jarring for outgoing UAW International President Bob King, who wanted a victory at Volkswagen to be his valedictory. In the aftermath, King said that the UAW was "outraged at the outside interference in this election. It never happened in this country before that a sitting U.S. senator, active governor, a leader of the House of Representatives as well as a leader of the legislature [have all] threatened workers with loss of product."

But the loss is hardly the death knell for the UAW and organized labor. Here are

several developments to look for in the election's aftermath:

1. UAW President King famously 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."

Notwithstanding King's calling this a "temporary setback," the union has suffered a major, large-scale defeat. But that will not stop labor from continuing to organize.

Too much is at stake. Expect that the UAW will stick to its strategy of pursuing works councils and will build upon its global network, including its relationship with IG Metall, in order to turn its sights to the Mercedes-Benz manufacturing plant in Vance, Ala., which so far has been far more resistant to union overtures than Volkswagen. It remains to be seen whether the UAW and its German labor allies will be able to pressure Mercedes-Benz at the board of directors level with the same success as at Volkswagen.

2. UAW pressure on foreign automakers in the Southeast will not abate. The UAW has spent millions to create an organizing infrastructure, including building alliances with a variety of community and faith-based groups and activist organizations across the South.

King predicted that these coalitions "will deliver tremendous victories not just now but five years from now, ten years from now, fifteen years from now." Expect the UAW to turn its attention to vendors and suppliers of the Southern automakers where it recently has had some success, organizing Mercedes-Benz suppliers like ZF Industries, [Faurecia Interior Systems](#) and Inteva Products. More victories like these would support King's statement that "the perception is wrong that you cannot organize in the South."

3. Expect unions to turn away from high-profile, big-ticket campaigns, like the one at Volkswagen, which attracted a surprising level of outside attention to the UAW effort.

The Obama administration's NLRB has taken a number of steps recently to make it easier for unions organizing at the grassroots level. In Speciality Healthcare &

Rehabilitation Center,[1] the NLRB changed its traditional community-of-interest standards by placing the burden on an employer seeking a unit larger than that sought by a union to demonstrate “an overwhelming community of interest” among the larger group and the petitioned-for unit.

More recently, the NLRB issued a notice of proposed rulemaking with 11 changes to its protocols to accelerate and streamline the processing of union election petitions. Bolstered by these so-called “ambush election” rules for so-called “micro units,” unions may lower their sights and take aim at smaller employers and groups of workers.

4. Extraordinary outside influences were brought to bear at the Volkswagen election. Among others, Grover Norquist and the Competitive Enterprise Institute, which is backed by several conservative foundations, launched comprehensive publicity campaigns against the UAW.

Federal and state legislators were especially aggressive. U.S. Senator Bob Corker, R-TN, assured Volkswagen workers that if the UAW was rejected, the reward would be the addition of a new midsize SUV product line in Chattanooga (a comment that Volkswagen CEO Frank Fischer quickly disavowed).

Republican State Senator Bo Watson from Chattanooga announced that there would be opposition in the statehouse to any tax incentives for Volkswagen expansion if workers chose to be represented by the UAW. Not to be outdone, after the election, Bernd Osterloh, a member of Volkswagen's supervisory board and head of the Volkswagen's Works Council, said that if codetermination is not guaranteed in the U.S. in the future, German workers would not be able to vote in favor of potential Volkswagen expansions in the South. These statements would be unfair labor practices if made by a party.

On this point, the NLRB coincidentally issued an opinion while the Volkswagen polls were open reaffirming its traditional agency standards in Amalgamated Transit Union, Local Union No. 1433.[2] In determining whether someone is an agent of a party, the NLRB looks to that individual's position and duties, and the context in which the challenged conduct occurs, to evaluate whether employees

would reasonably believe that the individual in question was reflecting company or union policy, and speaking and acting on behalf of the principal. The NLRB administrative law judge in that case wrote: “Imposing a duty to disavow someone else’s speech also would push the [b]oard’s remedial authority to the edge of the envelope and perhaps beyond.”

Notwithstanding the Board's established agency rulings, the UAW late Friday filed objections to the outcome of the election with the NLRB, not directed at VW but instead protesting what it called interference by politicians and outside special interest groups. In the objections, the UAW wrote that “Sen. Corker’s conduct was shameful and undertaken with utter disregard for the rights of the citizens of Tennessee and surrounding states that work at Volkswagen. The clear message of the campaign 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.”

The traditional legal standards notwithstanding, given the NLRB’s clear agenda to make it easier for workers to organize, expect thorough legal scrutiny by the board of the actions of the outside influencers active in the Chattanooga unionization drive, especially given the surprising tone of the politicians’ statements on the eve of the election and the comments of the German union official afterwards. Changes in the law could follow.

5. The specific terms of the Volkswagen/UAW “Agreement for a Representation Election” also warrant study. In Dana Corp.,^[3] the employer and the UAW entered into a letter of agreement, setting out ground rules for union organizing and procedures for voluntary recognition upon proof of majority status, while going on to list substantive issues that collective bargaining would address after lawful recognition. The NLRB found that this was not an unlawful prerecognition agreement.

However, the labor-management agreement breaks new ground with a four-page attachment that describes in detail the works council that would be implemented, had the union won the election. Interestingly, the works council would have authority to represent employees in the day-to-day running of the plant, serving as

management's contact for issues arising under the collective bargaining agreement.

The works council would be expected to focus on workplace issues such as shift calendars, overtime scheduling and health and safety, as well as the implementation of and participation in a grievance procedure. All of these subjects are within the legal jurisdiction of the designated collective bargaining agent in American labor relations. It remains an open issue as to whether this level of detail regarding the parties' ultimate contractual relationship rises to the level of an unlawful a prerecognition agreement.

Although the UAW, and all organized labor, has suffered a bitter defeat under the most favorable of circumstances, expect unions to redouble their organizing efforts in the South. After the election, Tefere Gebre, an executive vice president of the [AFL-CIO](#), commented that the labor movement must focus on areas where human suffering happens the most, which he identified as the South. And expect to hear from the NLRB with respect to the cutting-edge legal issues framed by the UAW's objections arising from the Volkswagen campaign.

—By Steven W. Suflas, [Ballard Spahr LLP](#)

Steven Suflas is managing partner at Ballard Spahr in the firm's New Jersey office. Suflas concentrates on the representation of management in all phases of labor and employment matters, including collective bargaining and traditional labor law issues, employment litigation, trials and appeals, appearances before courts and administrative agencies, Employee Retirement Income Security Act, and wage and hour law.