

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TENNESSEE  
AT CHATTANOOGA**

MICHAEL BURTON, MICHAEL  
JARVIS and DAVID REED,

Plaintiffs,

v.

INTERNATIONAL UNION, UNITED  
AUTOMOBILE, AEROSPACE &  
AGRICULTURAL IMPLEMENT  
WORKERS OF AMERICA, UAW,  
VOLKSWAGEN GROUP OF  
AMERICA, INC., and VOLKSWAGEN  
GROUP OF AMERICA  
CHATTANOOGA OPERATIONS,  
LLC,

Defendants.

Case No. 1:14-CV-76

**COMPLAINT**

Plaintiffs Michael Burton, Michael Jarvis, and David Reed are employees of Volkswagen Group of America. In this suit, they seek injunctive and declaratory relief under § 302 of the Labor-Management Relations Act (“LMRA”), 29 U.S.C. § 186, to prevent their employer from illegally providing “thing[s] of value” to the International Union, United Automobile, Aerospace & Agricultural Implement Workers of America, UAW (“UAW”) to assist the union with organizing them and their co-workers.

## **JURISDICTION**

1. This Court has subject matter jurisdiction over this § 302 action pursuant to § 302(e) of the LMRA, 29 U.S.C. § 186(e), and 28 U.S.C. § 1331. This is also a case of actual controversy in which Plaintiffs seek a declaration of their rights under 28 U.S.C. §§ 2201 and 2202.

2. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(b-c) and 1392(a) because the events giving rise to this suit occurred in this judicial district, Defendants transact business in this judicial district, and Plaintiffs reside in this judicial district.

## **PARTIES**

3. Defendant UAW is a labor organization headquartered in Detroit, Michigan that transacts business and seeks to represent employees in this judicial district.

4. Defendant Volkswagen Group of America, Inc. is a New Jersey corporation. Defendant Volkswagen Group of America Chattanooga Operations, LLC, is a Tennessee limited liability company. Both Defendants can be served with process through their registered agent, Corporation Service Company, 2908 Poston Avenue, Nashville, TN 37203-1312. Both of these Defendants shall collectively be referred to as “Volkswagen.”

5. Volkswagen is an employer engaged in an industry affecting interstate commerce that operates a manufacturing facility at 8001 Volkswagen Drive, Chattanooga, Tennessee 37416 (“Chattanooga Plant”). Volkswagen employs approximately 1,500

Production and Maintenance employees at the Chattanooga Plant (“Employees”).

6. Michael Burton, Michael Jarvis, and David Reed are Employees. Michael Burton resides in Bradley County, Tennessee. Michael Jarvis and David Reed reside in Hamilton County, Tennessee.

## FACTS

### I. The Organizing Agreement

7. The UAW does not represent the Employees, but seeks to exclusively represent them and would admit them to membership in the union.

8. On January 27, 2014, the UAW and Volkswagen entered into an Agreement for a Representation Election (“Organizing Agreement”). A copy of the Organizing Agreement disclosed at [www.nooga.com](http://www.nooga.com) is attached at Exhibit A and is incorporated herein.<sup>1</sup> However, the attached document may not constitute the full agreement between the parties.

9. The Organizing Agreement requires Volkswagen to assist the UAW with unionizing the Employees in consideration for the UAW’s commitment to make concessions upon becoming the Employees’ exclusive bargaining representative and for other consideration.

10. Specifically, Volkswagen agreed to provide the UAW with the following assistance with unionizing the Employees:

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<http://nooga.com/165337/updated-agreement-between-volkswagen-uaw-reveals-details-of-next-weeks-election/> (last accessed on March 3, 2014).

a. *Captive Audience Meetings*: Volkswagen agreed in § 5(d) of the Organizing Agreement to conduct meetings for all Employees, on paid work time and on company property, at which Volkswagen would inform Employees that it supports the formation of a “Works Council” and at which the UAW could solicit employees to support the union.

b. *Use of Property*: Volkswagen agreed in § 5(c) of the Organizing Agreement to give UAW organizers use of its private property for organizing activities, including use of a particular office and other areas in the Chattanooga Plant.

c. *Non-Compete Clauses*: Volkswagen agreed “not [to] take a position opposed to . . . [union] representation,” Organizing Agreement, § 5(b), to not to issue communications opposing the UAW, *id.*, §§ 5(b) & (e), to train its supervisors and managers not to express opposition to the UAW, *id.*, § 5(f), and to “not make any negative comments (written or verbal) against the UAW,” *id.*, § 9. In addition, Volkswagen and the UAW agreed to “advise one another of their planned communications activities and . . . [to] seek, as appropriate, to align messages and communications through the time of election and the certification of the results by the NLRB.” *Id.*, § 3(f).

These three types of assistance shall collectively be referred to as “Organizing Assistance.”

11. In addition to the Organizing Assistance, Volkswagen agreed to work in conjunction with the UAW to petition the National Labor Relations Board (“NLRB”)

for an expedited election on February 12-14, 2014. *See* Organizing Agreement, § 3(a). Volkswagen and the UAW agreed in advance on the dates and times for the election, *id.*, § 3(b), and on who was eligible to vote, *id.*, § 5; *see also* Mem. to Agreement.

12. In consideration for Volkswagen's commitment to provide the UAW with Organizing Assistance and an expedited election, the UAW agreed to the following:

- a. *Works Council*: Upon becoming the Employees' exclusive representative, the UAW agreed to delegate many of its duties and functions as a representative to a "Works Council." *See, e.g.* Organizing Agreement Recitals, §§ 6(a-b), & Exhibit B. Works Council members are to be selected by Volkswagen employees, including employees not represented by the UAW, *see id.* at Ex. B., §§ 1.1 & 3, and trained and funded by Volkswagen, *id.* at § 2.3.
- b. *Cost Advantage over Other Automakers*: The UAW agreed that "negotiations for an initial bargaining agreement and any future agreements shall be guided by the following considerations . . . maintaining and where possible enhancing the cost advantages and other competitive advantages that [Volkswagen] enjoys relative to its competitors in the United States and North America, including but not limited to legacy automobile manufacturers." Organizing Agreement, § 6(b).
- c. *No Strike*: The UAW agreed that "if the UAW is certified as the representative of the Hourly Unit, while the parties negotiate for an initial collective bargaining agreement, (a) the UAW will not engage in picketing, strikes, boycotts, or work slowdowns." Organizing Agreement, § 7; *see also id.*, § 5.

d. *Limits on Organizing Activities*: The UAW agreed to not visit Employees at their homes, *see* Organizing Agreement, § 3(c); to not make “negative comments” about the company, *id.* at § 9, *see also id.*, § 5(c); and to not conduct organizing or other activities in connection with the Chattanooga Plant or any other Volkswagen facility for one year if the union loses the election, *id.*, § 6(c).

13. The UAW and other unions have provided similar types of consideration to other employers with in exchange for similar types of employer assistance with unionizing their employees.

14. The UAW expended significant financial and other resources to obtain the Organizing Agreement with Volkswagen. This includes the cost of UAW officials traveling to Germany to meet with Volkswagen management and German unions.

## **II. Enforcement of the Organizing Agreement**

15. On February 3, 2012, Volkswagen petitioned the NLRB to conduct an expedited election, as required under the Organizing Agreement. The NLRB agreed to conduct an election pursuant to Volkswagen and the UAW’s timeline, scheduling an election to occur only nine (9) days later, from February 12-14, 2014.

16. Volkswagen paid and delivered, and the UAW accepted and received, the Organizing Assistance specified in the Organizing Agreement, to wit:

a. Volkswagen conducted captive audience meetings amongst Employees on behalf of the UAW, on company property and paid work time, as per § 5(d) of the

Organizing Agreement.

- b. Volkswagen granted UAW organizers use of the Chattanooga Plant for organizing, as per § 5(c) of the Organizing Agreement; and
- c. Volkswagen did not campaign or issue communications against the UAW, trained and required that its supervisors and managers not speak or act in opposition to the UAW, and made communications in support of the UAW, as per §§ 3, 5, and 9 of the Organizing Agreement.

17. The Organizing Assistance, both individually and cumulatively, has significant value to the UAW and Volkswagen, including monetary value. Among other things:
- a. the UAW expended resources and provided valuable consideration to Volkswagen to obtain the Organizing Assistance, *see* Complaint ¶¶ 12-14, *supra*;
  - b. the Organizing Assistance significantly increases the UAW's chances of unionizing the Employees, enlarging the union's membership ranks, and increasing dues-revenue for UAW;
  - c. the Organizing Assistance reduces the UAW's expense in conducting an organizing campaign against the Employees. Among other things, the captive-audience meetings and uses of Volkswagen's private property reduce the UAW's need to purchase or rent other facilities to meet with Employees, hold group meetings, and conduct campaign operations. The non-compete clauses reduce or eliminate the UAW's need to engage in communications and other activities to rebut opposition from Volkswagen.

d. Volkswagen expended money and other resources to provide Organizing Assistance to the UAW. Among other things, Volkswagen paid its employees to attend captive audience meetings with the UAW and paid its managers and supervisors when training them to enforce the Organizing Agreement.

18. Plaintiffs strongly oppose UAW representation and actively campaigned against UAW representation.

19. Notwithstanding Volkswagen's assistance, the UAW lost the election 712 to 626 in a tally of ballots conducted on February 14, 2014.

### **III. Threat of Renewed Enforcement of the Organizing Agreement**

20. On February 21, 2014, the UAW filed objections with the NLRB that seek to invalidate the results of the February 12-14 election and require a "rerun" election.

21. On information and belief, the Organizing Agreement between Volkswagen and the UAW remains in effect and Volkswagen is contractually obligated to provide the UAW with Organizing Assistance before a rerun election.

22. On information and belief, the UAW is requesting and demanding, or will request and demand, that Volkswagen provide Organizing Assistance to the UAW, or things of value similar to it, before a rerun election

23. It is likely that Volkswagen will provide Organizing Assistance to the UAW, or things of value similar to it, before a rerun election.

24. The continued existence of the Organizing Agreement, UAW's demand for Organizing Assistance, and the likelihood that Volkswagen will again provide



Organizing Assistance to the UAW, creates an imminent threat that Plaintiffs and their co-workers will become exclusively represented by the UAW against their will, and thus:

- a. be forced into an unwanted fiduciary relationship with the UAW that will grant the UAW partial control over Plaintiffs' wages, benefits, and working conditions and will deprive Plaintiffs of their individual abilities to deal with Volkswagen with respect to their terms and conditions of employment; and
- b. be forced to accept a union representative that is under the contractual control of their employer, Volkswagen, that can require the UAW, irrespective of the wishes of Plaintiffs and other Employees, to delegate its responsibilities to a company-funded Work Council, not strike or picket in support of better wages or working conditions, and not seek wages or benefits for Plaintiffs and other Employees that erode Volkswagen's cost advantages vis-à-vis other automakers in North America. *See* Complaint, ¶ 12(a-c), *supra*.

25. The foregoing injuries are irreparable under § 302.

### **ALLEGATIONS**

26. Section 302(a)(2) of the LMRA makes it “unlawful for any employer . . . to pay, lend, or deliver, or agree to pay, lend, or deliver, any money or other thing of value . . . to any labor organization, or any officer or employee thereof, which represents, seeks to represent, or would admit to membership, any of the employees of such employer.” 29 U.S.C. § 186(a)(2).

27. Section 302(b)(1) of the LMRA states that “[i]t shall be unlawful for any person to request, demand, receive, or accept, or agree to receive or accept, any payment, loan, or delivery of any money or other thing of value prohibited by subsection (a) of this section.” 29 U.S.C. § 186(b)(1).

28. Section 302(c) of the LMRA, 29 U.S.C. § 186(c), states nine exceptions to the general prohibitions of §§ 302(a-b). None of these exceptions applies here.

29. The captive audience meetings, use of property, and non-compete clauses are each a “thing of value” under §§ 302(a-b).

### **COUNT I**

#### *Volkswagen Is Violating § 302 of the LMRA*

30. Volkswagen is violating § 302(a)(2) of the LMRA because, in the Organizing Agreement, it agreed to pay, lend, or deliver Organizing Assistance to the UAW.

31. Volkswagen will violate § 302(a)(2) if it pays, lends, or delivers to the UAW Organizing Assistance, or things of value similar to the Organizing Assistance, before a rerun election. There is imminent risk that Volkswagen will violate § 302(a)(2) in this manner.

### **Count II**

#### *The UAW Is Violating § 302 of the LMRA*

32. The UAW is violating § 302(b)(1) of the LMRA because, in the Organizing Agreement, it agreed to receive and accept Organizing Assistance from Volkswagen.

33. The UAW is violating, or there is imminent danger that the UAW will violate,

§ 302(b)(1) of the LMRA by requesting and demanding that Volkswagen pay, lend, or deliver to the UAW Organizing Assistance or things of value similar to the Organizing Assistance, before a rerun election.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays that this Court:

A. Issue preliminary and permanent injunctions that:

1. prohibit Volkswagen from paying, lending, or delivering to the UAW, and from agreeing to pay, lend, or deliver to the UAW, Organizing Assistance and things of value similar to the Organizing Assistance;
2. prohibit the UAW from requesting, demanding, receiving, or accepting, and from agreeing to receive or accept Organizing Assistance, and things of value similar to the Organizing Assistance, from Volkswagen; and
3. prohibit both Volkswagen and the UAW from enforcing or attempting to enforce §§ 5(b-f) and 9 of the Organizing Agreement.

B. Issue a declaratory judgment that:

1. Volkswagen will violate, or has violated, § 302(a)(2) of the LMRA by paying, lending, or delivering Organizing Assistance to the UAW;
2. the UAW is violating, or has violated, § 302(b)(1) of the LMRA by requesting, demanding, receiving, or accepting, and from agreeing to receive or accept, Organizing Assistance from Volkswagen;
3. sections 5(b-f) and 9 of the Organizing Agreement are unlawful and facially

invalid under §§ 302(a)(2) and (b)(1) of the LMRA; and

4. the entire Organizing Agreement or, alternatively, the terms of the Organizing Agreement wherein the UAW agreed to provide consideration for the Organizing Assistance, *see* Complaint ¶ 12, *supra*, are void and unenforceable by either party because they are not severable from the terms of the Organizing Agreement unlawful under § 302.

C. Order any other legal or equitable relief deemed just and proper.

Respectfully submitted this 12th day of March, 2014.

/s/ William H. Horton  
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*\* Pro hac vice motion to be filed*

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