

The Germans are Coming!

...and the UAW is organizing in Tennessee and throughout the South

By Carl F. Horowitz

Summary: *The United Auto Workers has seen membership decline dramatically in its Midwest stronghold. Now it is desperate to unionize new plants in the South built by foreign companies. Unfortunately, under pressure from a powerful union in Germany, Volkswagen may be colluding with the UAW to force membership on workers in Chattanooga who have no desire to jeopardize the success of their plant.*

Membership in the United Auto Workers (UAW) has declined dramatically these past few decades—by three-fourths since 1979. But union officials may have found a way to recapture the glory days by teaming up with the Germans.

This incipient partnership has been made possible by a combination of the UAW’s hardball organizing efforts in Chattanooga, Tennessee, and by labor law in Germany and the U.S. At stake are thousands of auto industry jobs in Chattanooga and elsewhere.

American unions have been thinking, and acting, globally in recent years. This past September, at the AFL-CIO’s quadrennial convention in Los Angeles, delegates called for amnesty for “undocumented” foreign workers, restrictions on multinational corporations, and greater linkages with labor organizations abroad. The federation website explains that “the grinding effort of consolidating people power in America’s communities will



In May, workers at the Chattanooga Volkswagen plant celebrated building a quarter-million Passats in two years and five weeks.

be far more difficult than energizing a convention hall. This work involves disentangling the complex, obfuscated supply chains of the global economy—of helping America’s workers see the link between their own rights and the rights of workers across the globe.”

Unions are also becoming global players in a less overtly political way, by mounting aggressive organizing campaigns at foreign-owned auto assembly plants in the U.S. Chattanooga is the focal point. For the last two and a half years, Volkswagen has operated a non-union plant on the outskirts of that southeast Tennessee city of about 170,000, where the company assembles its mid-sized Passat sedan. Thus far, well over 250,000 of these cars have rolled off the production lines.

It’s a high-quality product. From about three dozen possibilities, *Motor Trend* selected the Passat as its “Car of the Year” for 2012. “The well-equipped Passat is a breakthrough car for Volkswagen, as it has been designed to suit the North American market and is being built in a brand-new, state-of-the-art assembly plant in Chattanooga, Tennessee,” explained *Motor Trend* editor-at-large Angus MacKenzie. “It

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has one of the roomiest interiors in its class, a wide choice of power trains and a well-tuned chassis. A compelling new entry in the toughest, most competitive vehicle segment in the U.S. today, it's a terrific all-around family sedan."

Rave endorsements like these, coupled with brisk sales, have prompted Volkswagen Group headquarters in Wolfsburg, Germany, to propose expanding the Chattanooga facility to build a mid-sized "crossover" vehicle known as the Cross Blue. Expansion is doable. The plant was designed to accommodate production lines in addition to the Passat. It currently operates at less than 70% capacity. To facilitate expansion, the City of Chattanooga has set aside additional land, while the State of Tennessee has made additional training available and given tax incentives for hiring workers.

Maintaining the plant at its present scale, however, is proving to be a major challenge. Germany's approach to labor relations is different from that of the United States, with the difference manifest in the former's requirement that employers establish "works councils." These joint employer-union organizations hold face-to-face discussions on a variety of workplace issues, with the stated purpose of resolving disputes before they lead to a strike. All workers

at a given site—whether union or non-union, blue-collar or white-collar—are encouraged to participate.

Volkswagen Group, which manufactures motor vehicles under a dozen separate brand names, including Audi, Bentley, and Porsche, is the world's third-largest automaker, right behind Toyota and General Motors. In 2012 it generated about 109 billion euro (roughly US\$138 billion) in total revenues. The company strongly promotes the works council principle, calling it an example of "co-determination" in which both sides end up as winners. Of the slightly more than 100 VW-owned facilities worldwide, almost 90 of them have works councils.

The "company union" problem

For now, the Passat plant in Chattanooga is one of the exceptions. Indeed, outside of mainland China, it is the *only* exception. VW executives, though not enthusiastic over the prospect of the Chattanooga plant going union, very much want a works council there. Given that half of the 20 seats on VW Group's executive board consist of union and works council representatives, management accepts unionism as a fact of life.

The UAW, by contrast, vehemently opposes works councils outside the context of collective bargaining. If there is a council, the UAW wants to set its ground rules. Otherwise, the union argues, a council would be nothing more than a variation of "company unions," that is, fronts for union-busting employers. Unions abhor company unions, considering them impediments to the creation of real unions, which is why the National Labor Relations Act (NLRA) has effectively banned company unions since its passage in 1935.

But the line dividing a "company" union from a "real" one isn't necessarily bright and clear. NLRA (29 USC., chapter 7, subchapter 152) defines a

"labor organization" as "any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rate of pay, hours of employment, or conditions of work."

There are two ways to look at this statute. Under the law, a non-union organization may not perform the functions of a union. On the other hand, the law doesn't bar employer and employee representatives from discussing workplace issues that aren't covered by collective bargaining. Mutual cooperation isn't synonymous with usurping a collective bargaining agreement, especially in a plant where no collective-bargaining agreement exists. Experience from Germany and elsewhere in Europe has shown that the issues discussed at works council meetings are similar to those discussed at many U.S. workplaces, unionized or not.

The prevailing view among labor experts is that employee-management councils constitute "company unions" if (1) they are dominated by management or (2) they seek to resolve issues normally covered by collective bargaining. That leaves a lot of room for interpretation, but in practice, a works council won't be allowed in an American workplace unless a union dictates the terms of its operations.

However, a former member of the National Labor Relations Board, John Raudabaugh, believes that a works council *can* be set up legally, on its own terms, at the VW Chattanooga plant. Raudabaugh, who served on the NLRB during 1990-93 and who since has taught at a number of law schools, argues that while federal law bars collective bargaining outside the context of formal unionism, that doesn't mean companies need permission from a union to talk to employees. "They can

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meet for free without paying a union,” he said recently. “Employees should focus on using their money for their personal purposes.”

A potential game-changer

All foreign-owned auto plants in the South, and not just the VW facility in Chattanooga, are non-union, and all are in right-to-work states. That’s a major reason why their respective companies chose these locations in the first place. The small number of union campaigns conducted thus far in the pro-right-to-work region have failed. The UAW lost convincingly in representation votes in 1989 and 2001 at the Nissan assembly plant in Smyrna, Tennessee, and hasn’t conducted a vote in a Southern state since.

Union officials believe the Chattanooga plant will be the game-changer. The \$1 billion facility, which opened in May 2011, has been very profitable for the Volkswagen Group. Executives in Wolfsburg, in fact, see this facility as crucial to raising the company’s recent share of the North American auto market from 3% to something approaching its worldwide share figure of roughly 11%.

Not surprisingly, the UAW wants a piece of the extra action. There are roughly 2,500 employees at the Chattanooga plant, of whom nearly two-thirds are hourly production and maintenance workers. These workers are prime targets for UAW organizing.

Winning!

In recent months, the UAW, backed by its German equivalent (the 2.25 million-member metal/auto assembly workers union, IG Metall), has been stepping up efforts to gain recognition as a bargaining agent. And the union has been successful—or so it claims. In a recent interview with the German newspaper *Handelsblatt*, UAW President Bob King announced that a major-

ity of workers at the Chattanooga site had signed pledge cards handed out by union organizers indicating a desire to join. “Yes, we have a majority,” King asserted.

Management and union, in effect, are playing on the same team. Volkswagen executives insist upon a works council. The United Auto Workers is willing to accept one as long as it gets to define the nature and scope of the council’s functions.

Political leaders in Tennessee want both the corporation and union to reconsider their positions. Republican Gov. Bill Haslam stated in June that a significant number of businesses may decide against expanding in his state if the Chattanooga plant goes union. “We’ve communicated that to Volkswagen,” he said. “Ultimately . . . we want to see them [Volkswagen] grow here.”

U.S. Sen. Bob Corker, a Republican, said in September that the automaker disclosed that it was negotiating with the UAW to unionize the Chattanooga assembly plant. The disclosure was made by the company under pressure from an activist member of the company’s board. Said Corker, a former mayor of Chattanooga: “There was a lot of discussion within the company. Candidly, one board member got very involved and forced this letter to go out” disclosing the negotiation. Corker added that UAW representation at the plant would be “job-destroying.”

Gary Casteel, Southeast regional director for UAW, said that Sen. Corker was speaking “from a position of ignorance.” Casteel defended the idea of works councils, claiming that they are a major reason why VW is a successful company. Yet for more than 15 years, the highly profitable U.S. subsidiary of the German-based Mercedes-Benz has operated an assembly plant outside of Vance, Alabama, near Tuscaloosa, without the benefit of a works council. Even

with a works council in place, there is no reason why the management-labor relationship at a workplace must be defined by, or lead to, union representation.

The UAW’s Casteel may deny that unionization talks are going on, but the company has acknowledged the talks in a letter signed by Frank Fischer, the Chattanooga plant’s COO, and Sebastian Patta, its human resources manager. The company denies succumbing to union pressure. “The letter to the Chattanooga workforce was drafted, written, and signed by Frank Fischer and Sebastian Patta to avoid further speculation from outside the company, without being forced by anyone,” said Guenther Scherelis, plant spokesman. Still, when an employer admits to being in the midst of ostensibly secret negotiations with a union, it’s a sign it is feeling pressure from the union.

Fighting back against the UAW

Volkswagen, it would seem, does not have a major problem with the Chattanooga plant becoming unionized. Yet many workers there, who realize non-union auto plants in this country have averted the mass lay-offs and downsizing that have afflicted union plants, do object. Calling themselves “No to Uninformed Auto Workers,” these employees have printed and distributed handbills, held meetings, and created an online petition to oppose union organizers. These workers’ online manifesto is as much an expression of satisfaction with being “Volkswagen Team Members” as it is of unwillingness to submit to United Auto Workers representation:

First, we like the pay. Our hourly wage is right in line with the Big 3. Actually, a little better. We trust our employer will continue this trend without any need for outside representation, arbitration or strikes. Four years ago, Frank Fischer and

team crafted a pay scale that is working quite well. And on top of that, unanticipated, unbargained for, quarterly bonuses!

Second, we like our benefits. Correction: LOVE our benefits. We have our choice of two levels of health care, two 401(k) programs, a workout facility, a lease car program unmatched by any other car company and so much more. . . . For others, you have to put money down AND carry insurance. We are the envy of all who wish they could work here, too.

Third, our hours. Right now, team members are enjoying a 4-day, 40-hour work week with 3-day weekends off! Yes, we have the battle scars from getting our plant up and running. We survived two weeks of midnights at a time. We survived meeting our relief coming and going in a ten-hour shift. We did what we had to do because we know that hard work pays off.

Clearly, the anti-UAW workers enjoy working for Volkswagen. They don't want to risk their good fortune by becoming beholden to the UAW. To them, union representation would be anything but a victory.

The UAW, by contrast, is pulling out the stops to win. As noted, the UAW's Bob King claimed support from "a majority" via the card-check process. Under current law, card-check responses representing a majority would not compel VW to recognize the UAW as a bargaining agent. (That's what *would* have happened under the proposed card-check law backed by unions, the so-called Employee Free Choice Act, but the Obama administration has been unable to push the measure through Congress.) As critics of unions point out, unions can get card-check majorities by intimidating workers into signing; there's no secret ballot for pledge cards.

Still, a card-check majority does give a union enormous leverage. Card-check majorities, especially if they exceed 60%, often lead to employer recognition. At that level of (apparent) support, many employers assume unions would win any future NLRB-supervised secret ballot election.

UAW President Bob King asserts that the Chattanooga card check was fully above board. The "No to Uninformed Auto Workers" coalition claims otherwise. Its members say that union organizers placed undue pressure on employees to sign pledge cards. They also say that organizers often provided misleading information to workers. They note that intrusive and deceptive tactics are often associated with the card-check process, and that they have evidence of such behavior. As such, they have taken legal action.

The NLRB complaint

On September 25, eight employees at the Chattanooga plant filed a complaint with the National Labor Relations Board charging union organizers with using deception and intimidation during the card-check process. Represented by attorneys from the National Right to Work Legal Defense Foundation, the plaintiffs argued that UAW organizers refused to inform workers that a signature would constitute a vote for representation.

The problem, it appears, wasn't just lying by omission. According to a statement issued by the foundation, "They [the eight workers] also allege other improprieties, including using cards that were signed too long ago to be legally valid." Also, the foundation claimed, a number of workers had second thoughts after signing, but encountered resistance from the union when they tried to reclaim their cards.

Mark Mix, the foundation's president, said, "Despite making it so easy to sign union 'cards' at the workplace, UAW officials are now demanding that workers

go to the union office to exercise their right to reclaim their cards. This case underscores how card check unionization schemes make it easy to check in, but impossible to check out." The complaint also stated that the union bribed several workers with things of value if they agreed to sign. The foundation demanded that the UAW cease and desist indefinitely from seeking union recognition.

At this writing, there is a standoff. VW officials want to create a works council. But that's virtually impossible in the face of a continuing union organizing campaign. The company is keeping the lines of communications open in hopes of a compromise. Bernd Osterloh, head of the VW global works council, says he wants to continue talks with the union. He said he also wants to secure political support, in Tennessee and elsewhere, once all legal issues are resolved. Meanwhile, Horst Neumann, a member of IG Metall and a member of the VW executive board for some eight years, put it this way: "I find it very depressing how deeply divided the country is on the issue of labor unions. Had they been here to listen to the roundtable discussion (which took place in September between German auto industry and IG Metall officials) they would have seen that we work together. It's a model for success."

The key to breaking the impasse appears to lie with Congress. Put simply, lawmakers could amend the National Labor Relations Act to explicitly allow "company unions" at a work site, whether or not unionized. In this way, Volkswagen management and works councils could establish a council in Chattanooga, while individual employees at the plant could avoid being forced to join the UAW or pay the union "agency fees." But such action could take many months, if not years. And it would meet with ferocious opposition—not just from the United Auto Workers. All of organized labor in the

U.S. would see such legislation as an act of war against the working people they claim to represent. The thunder emanating from AFL-CIO President Richard Trumka alone might scare many lawmakers out of taking action.

In historical context, it's clear the UAW has seen better times. At the dawn of the 1980s, the Detroit-based UAW had about 1.5 million active members. Today it has only about 380,000, a three-fourths drop. The decline in recent years has been precipitous as well. Only a decade ago, for example, General Motors employed 120,000 UAW members. Now it employs 50,000.

Shrinking, and too big to fail

Much of this decline has been the UAW's own doing. The union over the decades negotiated a series of contracts that locked General Motors, Ford, and Chrysler into costly and unsustainable long-term commitments. By the fall of 2007, the Big Three automakers, faced with a double whammy of rapidly escalating costs (especially benefit-related) and declining market shares, offloaded their retiree health plans onto a proposed (and since established) union-managed Voluntary Employee Beneficiary Association (VEBA) tax-exempt trust fund. But even that step wasn't enough to stave off collapse. In December 2008, after a humbling trip to Washington, D.C., the CEOs of General Motors and Chrysler received emergency loan commitments from the Bush administration in return for structural reforms (Ford backed away due to a surge in sales). Then, with the industry wracked by recession in the first several months of 2009, GM and Chrysler requested much larger aid packages.

President Obama saw an opportunity to refashion U.S. industrial policy. That spring, the new administration agreed to step up aid. It provided General Motors with \$30 billion in emergency loans, on top of the \$19.4 billion loaned to

the company months earlier. It also arranged for Chrysler to receive \$8 billion on top of its existing \$4 billion. The Obama White House held the cards—and it played them. The administration forced the companies into Chapter 11 bankruptcy, in the process replacing senior management in both companies and rewarding the appropriate United Auto Workers VEBA funds with a 17.5 percent equity stake in GM and a 55.5 percent equity stake in Chrysler.

The big losers in this arrangement were shareholders and bondholders, who received only cents on the dollar, in violation of basic bankruptcy law principles. As political commentator Michael Barone, a Detroit-area native and Yale Law grad, put it at the time:

The White House ... is seeking to transfer the property of one group of people to another group that is politically favored. In the process it is setting aside basic property rights in favor of rewarding the United Auto Workers for the support the union has given the Democratic Party.... We have just seen an episode of Gangster Government. It is likely to be part of a continuing series.

Auto industry sales have risen substantially these past several years. This has in turn raised employment at assembly plants in Southern states, where various European, Japanese, and South Korean automakers now operate. Those plants have powerful appeal as targets for the UAW, which must win new members to regain its clout. Control over retiree health plans is not enough, especially given that those plans, collectively, are estimated to be underfunded by \$20 billion.

A successful organizing drive at the VW Tennessee plant would send a strong signal to automakers that collective bargaining is coming their way throughout the U.S. Though solidly right to work, the South would no longer be a refuge

from unionism. The Chattanooga plant may escape unionization, despite the company's and the UAW's collaboration against its workers, but if it is unionized, workers will face powerful pressures to join up, despite the state's right-to-work law. And even if a worker doesn't join the union, he will face union efforts to extract fees from him for "collective bargaining."

In short, if the UAW overcomes the plant's current stalemate, it will enjoy a windfall of new revenue and have a foothold for future unionizing in the industry. "If we don't organize these transnationals, I don't think there's a long-term future for the UAW," says union president King.

That may be true. But the long-term future of the United Auto Workers is far less important than that of the auto industry itself. The last thing anyone should want is UAW contract demands that lead to another round of bankruptcies and bailouts. Amending the NLRA to allow "company unions," regardless of circumstances, could be a good way to short-circuit such an outcome.

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LaborNotes

In the November election, **New York City** voters elected the first Democratic mayor in 20 years, **Bill de Blasio**, who was a volunteer for the **Soviet-backed Sandinistas** in **Nicaragua**, honeymooned in the workers' paradise of **Cuba**, and was a supporter of the extremist "**Occupy**" movement. Key early support for his campaign came from the nation's largest union local, **SEIU Local 1199**. But de Blasio may have a hard time repaying municipal-employee unions for their support. According to the *New York Times*, the city's 300,000 workers "are angry that their contracts expired years ago" and they are demanding more than \$7 billion in retroactive pay hikes, even though the city faces a \$2 billion deficit next year.

In **Virginia**, **Bill and Hillary Clinton** operative **Terry McAuliffe** was elected governor with 48%, to 45.5% for his Republican opponent. A Libertarian candidate apparently pulled off enough votes to throw the election to the Democrat. Unions spent at least \$2.5 million to back McAuliffe, which **Fred Wszolek** of the **Workforce Fairness Institute** called a good investment. "No one has been a better bag man for union money than Terry McAuliffe," he said.

In **Colorado**, voters defeated an increase in the state income tax to 5% on income up to \$75,000 and 5.9% on income above that amount. The current tax rate is a flat 4.63%. The measure, supported by billionaires **Bill Gates** and **Michael Bloomberg**, failed in 62 of 64 counties. Proceeds were supposed to be used for K-12 education, but, as columnist **Michael Barone** wrote, "the fact it was strongly supported by teachers unions suggests it would have mostly pumped money to the reform-resisting unions which in turn would have pumped money into the **Democratic Party**."

In **Toledo, Ohio**, unions led the effort to oust the incumbent mayor. In **Cincinnati**, a pension-reform measure was rejected by voters. In **Boston**, the new mayor is **Martin Walsh**, who has been president of **Laborers Local 223** and secretary-treasurer of Boston's **Building Trades Council**.

At press time, there was a 19 vote lead in favor of a measure requiring a \$15-an-hour wage, along with other benefits, for transportation and hospitality workers in the vicinity of the **Seattle** airport. In **New Jersey**, voters amended the state constitution to raise the "minimum wage" to \$8.25 an hour and automatically raise it in the future; that will help unions at the expense of small businesses and of unskilled workers who will be priced out of the job market.

New Jersey's Republican Governor **Chris Christie** was re-elected 60%-38%. Michael Barone noted that "A largely unreported part of Christie's policy and political success in New Jersey has been his alliance with Democrats with private-sector union backgrounds," like the president of the state senate and "longtime political panjandrum **George Norcross** of **Camden County**." The alliance helped Christie rein in the public-sector unions, but at a price: Despite Christie's landslide victory, the GOP minority picked up no state Senate seats and only two state House seats.

The **Republican Party** is in sorry shape in **California**, holding 31% of the legislative seats and none of 10 statewide offices. But Republicans can look to unions for help. The **Service Employees International Union** in 2011 launched a political action committee aimed at supporting "moderate" [sic] Republicans. This year, SEIU donated \$15,000 to the California GOP, the **correctional officers union** gave \$50,000, and the **California Teachers Association** donated \$13,000 (out of \$100 million a year it spends on politics). All three unions were present at the state party's convention this year.

According to the *San Francisco Chronicle*, "The unions' willingness to deal with the GOP is largely credited to [the new state chairman, **Jim] Brulte**, who told Republicans at their convention that they can no longer ignore unions . . . if they hope to escape minority-party status." Said **Yvonne Walker**, president of the 93,000-member **SEIU Local 1000**: "I don't know if it's the start of something beautiful." The *Chronicle* noted that, "in a move that suggested a newly conciliatory approach, an SEIU leader [attending the state convention] even posed for pictures with a GOP blogger who has been highly critical of public-employee unions." *Kumbaya*, anyone?

Meanwhile, the national economy continues to sputter. With the nation burdened under unprecedented levels of taxes, spending, and regulation, the labor force participation rate (the percentage of people age 16 or older who have a job or are actively seeking one) has reached a 35-year low of 62.8%. Believe it or not, when a person drops out of the workforce, the government no longer counts that person as "unemployed"—which explains how **President Obama** gets credit for supposedly bringing down the unemployment rate. Otherwise, the current 7.3% would be close to 11%.

CRC's Haller intern Malia Dalesandry contributed to this report.