

# PUBLICATION

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## Why Did the UAW Withdraw its Objections to the Volkswagen Election?

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The UAW surprised many observers on April 21, 2014 by withdrawing its objections to the February 12-14, 2014 election at Volkswagen's Chattanooga, Tennessee plant. After employees voted by a 53% margin to reject representation by the UAW, the UAW filed objections, claiming that statements by Tennessee government officials tainted the outcome of the election. The fact that the objections were withdrawn has been widely reported. However, there has been less analysis of *why* the UAW withdrew its objections. Since this blog is not privy to the UAW's thinking, our analysis of the reasons for the UAW's decision are merely theories. However, it is likely that one or more of the following factors drove the UAW's decision to withdraw its election objections.

### 1. The UAW was on shaky legal ground.

The UAW's election objections were unprecedented. Never before in the history of the NLRB has the Board been asked to set aside an election based on the comments of politicians. While the NLRB has recognized the concept of "third party interference" in an election, the "third parties" whose activities have justified setting aside an election in the past have been employees, not government officials.

Even if the UAW were able to fit a square peg into a round hole by arguing that statements by government officials were "third party interference," their burden of proof was extremely high. The UAW would have had to show that the statements by the government officials created "a general atmosphere of fear and reprisal rendering a free election impossible." *Westwood Horizons Hotel*, 270 NLRB. 802 (1984). They also would have had to show that the objectionable statements affected the outcome of the election. In other words, they would have to show that at least 44 employees would have been likely to vote for the UAW, if the objectionable conduct had not occurred. Legally and factually, the UAW was facing an uphill battle.

### 2. A UAW loss would create adverse NLRB precedent.

If the UAW were unsuccessful in litigating its objections, the NLRB precedent created by this case would create a new avenue for government officials and other outside interests to impact NLRB elections. Any such precedent would be a setback for the entire labor movement, not just the UAW. The UAW may have received quiet pressure from its brethren in the labor movement to avoid the risk of creating new precedent that allowed outside interference in NLRB election campaigns.

### 3. The UAW had already achieved its PR objectives.

After a staggering loss in Chattanooga, the UAW needed a scapegoat. Tennessee politicians provided an easy target. By subpoenaing Governor Haslam, Senator Corker, Speaker Harwell, and scores of other government officials, the UAW was effectively able to shift attention away from its own failure in Chattanooga. The UAW's subpoenas drew press coverage from the *Washington Times*, *BusinessWeek*, the *LA Times*, and numerous local press outlets. The Tennessee Attorney General had petitioned to revoke the subpoenas. Rather than risking a PR setback if the subpoenas were revoked, the UAW withdrew the objections.

### 4. Congressional Democrats will achieve the same objectives with less restrictions.

On April 16, 2014, Rep. George Miller (D-CA) and Rep. John Tierney (D-MA) sent a letter to Tennessee Governor Bill Haslam initiating an "inquiry" into whether Tennessee officials improperly conditioned economic aid to Volkswagen on the outcome of the election. The letter contained a document request, seeking many of the documents that the UAW had attempted to subpoena in the NLRB objections proceeding. In order to obtain the documents through the NLRB subpoena, the UAW would be required demonstrate that the documents requested were related to the objectionable conduct. Congressional inquiries have no such relevance constraints. Therefore, the UAW was more likely to achieve its objectives through pressure from its allies in Congress than by using the NLRB process to apply political pressure.

**5. Even if the UAW's objections were successful, the objections would not necessarily expedite a second election.**

The entire purpose of NLRB election objections is to achieve a re-run election. Regardless of its objections, the UAW could petition the NLRB for a second election one year after the first election. Litigation of NLRB election objections often takes longer than a year to complete. Therefore, the UAW could probably achieve a second election more quickly by simply re-petitioning the NLRB in a year, without wasting time, effort, and expense on objections litigation at the NLRB, which was unlikely to conclude within a year anyway.

**6. The UAW may have cut a card check deal with Volkswagen.**

There has been widely publicized speculation that the UAW has cut a card check deal with Volkswagen. Under a card check agreement, a company agrees to recognize a union if the union obtains authorization cards from a majority of unit employees. The UAW has publically claimed that it possesses authorization cards from a majority of Volkswagen employees. Arguably, if the UAW presented Volkswagen with authorization cards from a majority of the unit employees, Volkswagen could circumvent the NLRB election process entirely and recognize the UAW as its employees' bargaining representative. If Volkswagen were to recognize the UAW through card check, after its employees voted against the UAW, there would undoubtedly be additional litigation. However, a card check agreement is one potential explanation for the UAW's withdrawal of the election objections. There would be no need for the UAW to obtain a re-run election through objections at the NLRB, if Volkswagen has already agreed to card check.

**7. The UAW is waiting for the outcome of Volkswagen's decision on SUV production in Chattanooga.**

In raising its objections, the UAW relied on Senator Corker's statement allegedly tying the expansion of the Chattanooga plant to the employees rejecting the UAW. The UAW also relied on state officials allegedly conditioning economic incentives on the outcome of the vote. The premise of the UAW's objections was that employees feared that Volkswagen would not expand in Chattanooga, and the state would not provide economic incentives, if the employees voted for the UAW. Apparently, the UAW believed that this leverage dictated the outcome of the election. By withdrawing its objections, the UAW has cleared the way for Volkswagen to announce, one way or the other, whether it intends to expand in Chattanooga. It has also cleared the way for the state to proceed with economic incentives. Once Volkswagen announces its decision, any leverage that the decision provided in the election is eliminated. In other words, if the UAW waits for a year, and the SUV decision has already occurred, then government officials will not be able to influence the next election.

Some or all of the factors above may have motivated the UAW's withdrawal of its NLRB objections. In any event, the UAW's decision was clearly motivated by strategic priorities. It would be a mistake to assume that the UAW was surrendering in Chattanooga by withdrawing its objections.