CLIENT ALERTS & INSIGHTS

Mercedes Workers in Alabama Reject UAW Unionization Efforts

MAY 21, 2024

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On the heels of the United Auto Workers' ("UAW") successful campaign to organize Volkswagen workers in Chattanooga, Tennessee, Mercedes-Benz workers in Vance, Alabama chose a different path, rejecting the UAW as their representative by a vote of 2,045 yes to 2,642 no votes, a wide 43.6% to 56.4% margin.

The Deep South has been long recognized as a bastion of nonunion sentiment, with unionization rates considerably lower in the private sector in that region compared to the country at large. Despite this, according to data compiled by the National Labor Relations Board ("NLRB"), the UAW's Mercedes loss is the first union election loss in Alabama so far in 2024. At the same time, the recent vote is among the most resounding "No" votes in Q2 2024 in the NLRB's Region 10 (serving areas in Alabama, Georgia, Kentucky, North Carolina, South Carolina, Tennessee, Virginia, and West Virginia).

The UAW likely perceived some vulnerability after Volkswagen workers in Chattanooga, Tennessee voted resoundingly (nearly 3-to-1) in favor of representation. A critical distinction between the Volkswagen campaign and the Mercedes campaign is that Mercedes engaged in a robust campaign against the organization effort. Volkswagen's failure to do so may have resulted from the company's confidence that workers in the Deep South would not support unionization or its experience with European unions. In any case, the consequences of its inaction were borne out in the ultimate vote.

UAW President Shawn Fain has signaled that the UAW will be contesting the election and its lead-up, arguing, among other things, that Mercedes held mandatory meetings with voting employees that amounted to captive audience meetings. Captive audience meetings have long been viewed as an essential tool for employers to present their case to remain union-free to the workforce during a union organizing campaign and prior to a union election. These meetings are intended to level the playing field between employers and unions in their ability to communicate with the employees about unionization. As we previously reported, captive audience meetings have come under fire by the NLRB's General Counsel Jennifer Abruzzo since early 2022, despite being authorized under the plain language of the free speech proviso of the Taft-Hartley Act of 1947. In other words, captive audience meetings have been explicitly and lawfully permitted under the law for over 75 years. It is no coincidence that unionization rates in the private sector began falling shortly thereafter. No legal decision or change in the law has occurred to render such meetings unlawful despite GC Abruzzo's non-binding memo attempting to overturn their legality. Should Mercedes be found to have engaged in one or more unfair labor practice(s) in the campaign period leading up to the election, the NLRB may designate the UAW as the presumptive representative of the putative collective bargaining unit. However, if that finding is based on a captive audience meeting, expect a

strong legal challenge from Mercedes with the potential to reach the Supreme Court and resolve the legality of such meetings.

The dichotomy between the Volkswagen and Mercedes campaign results underscores how essential it is that employers be mindful of a robust union avoidance approach to prevent petitions and, when necessary, implement a tailored, robust, and lawful campaign between the filing of an election petition and voting day, providing employees with objective facts and data so that they have a full view of facts when they vote.

We will continue to provide updates as the UAW's unfair labor practice charges progress through the NLRB's processes.

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