UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
REGION 10

VOLKSWAGEN GROUP OF AMERICA, INC.
(Employer),
and

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW)
(Union),
and

MICHAEL BURTON *et alia*
(Employee-Intervenors).

Case No. 10-RM-121704

REPLY MEMORANDUM IN SUPPORT OF MOTION TO INTERVENE

Pursuant to § 102.65 of the NLRB's Rules and Regulations and the Administrative Procedures Act, 5 U.S.C. § 554 *et alia*, Michael Burton, Michael Jarvis, David Reed, Thomas Haney and Daniele Lenarduzzi ("Employee-Intervenors") hereby file this reply memorandum in support of their Motion to Intervene and in response to the opposition filed by the UAW on March 6, 2014.[1]

First, the UAW argues that the Employee-Intervenors have no standing to intervene because employees are not parties to an RM proceeding. Of course the

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[1] Employee-Intervenors note that Volkswagen, the UAW's "neutral" partner, does not see "any basis for the Motions to Intervene to be granted," further lending support for the notion that it will not oppose the UAW's objections and will offer *no defense* of the February 12-14 election result.

Employee-Intervenors are not already parties to these proceedings. That is precisely *why* they seek to intervene. If they are allowed to intervene, they will become parties with standing to participate in these proceedings. *See* NLRB Rules & Regs. § 102.65(b) (an "intervenor shall thereupon become a party to the proceeding").

Indeed, the UAW's argument was rejected by the Board over 60 years ago in *Belmont Radio Corp.*, 83 N.L.R.B. 45, 46 n.3 (1949). That case involved employees also attempting to intervene in an election proceeding. The Board dismissed the argument that "Intervenors had no standing to file exceptions in this case because they are not parties to the proceeding" because "[t]he Intervenors acquired the status of parties when the Board in its discretion permitted them to intervene." *Id.* The same will be true if the Employee-Intervenors are allowed to intervene in this case to protect their rights and interests.

Second, the UAW misrepresents the Employee-Intervenors' position by arguing that they seek to intervene to argue that Volkswagen unlawfully assisted the UAW, which is more properly the subject of an unlawful labor practice charge. This not only is untrue, but is the opposite of the truth. The Employee-Intervenors do not want to intervene to prove that unlawful conduct occurred in the election, but rather that unlawful conduct did *not* occur and that the election is *not* tainted. As they stated in their motion to intervene:

> The Employee-Intervenors will: a) offer evidence in rebuttal to that presented by the UAW in support of its objections, including evidence about Volkswagen's consistent and public disavowal of the statements by government officials upon which the UAW's objections are based; b) cross-examine witnesses at any hearing held by Region 10, in order to create a complete record for the Board to consider; and c) present legal arguments counter to those presented by the UAW.

Employee-Intervenors' Mot. to Intervene, 10.

Moreover, the Employee-Intervenors obviously cannot *defend* the results of the election with unfair labor practice ("ULP") charges, which is all they seek here. This situation is the opposite of that presented in *Ashley v. NLRB*, 255 Fed. Appx. 707 (4th Cir. 2007), where employees attempted to intervene to argue that election results should be overturned due to wrongful employer and union conduct. In *Ashley*, it was at least conceivable that a successful ULP charge could eventually work to overturn the election that those employees lost.[2] Here, by contrast, a successful ULP charge alleging that Volkswagen wrongfully assisted the UAW would do nothing to defend (or reinstate) the February 14 election result rejecting UAW representation. If anything, such a ULP charge would have only the opposite effect. The Employee-Intervenors simply cannot defend the election's results with ULP charges, but only through permission to participate in these proceedings.

Third, the UAW's brief *supports* the Employee-Intervenors' position because the UAW intends to offer testimony and documents, and to subpoena testimony and documents from other parties, to support its objections. UAW Br., 9 n.2. Again, the Employee-Intervenors seek intervention to cross-examine the UAW's witnesses and to

[2] *Ashley* was also wrongly decided on its own merits because the possibility that an unfair labor practice charge could overturn the results of a tainted certification election sometime in the distant future did not excuse the Board's failure to provide the employees with an opportunity to be heard prior to the union's certification as their representative.

offer evidence and arguments rebutting the UAW's case. *See* Mot. to Intervene, 10. Given that the UAW's partner, Volkswagen, will not perform this function, it is imperative that the Employee-Intervenors be allowed to participate. Otherwise, the Region and Board will receive only a truncated and one-sided presentation of evidence.

In short, because the UAW and Volkswagen are colluding, no current party to these proceedings will defend the outcome of the election and the rights and interests of employees opposed to UAW representation. The Employee-Intervenors must be permitted to intervene to protect their interests and to ensure that the Board has a complete record to adjudicate the UAW's objections.

Respectfully submitted,

/s/ Glenn M. Taubman

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CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the foregoing Reply Memorandum were served on Region 10 via NLRB e-filing, and via e-mail to:

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this 7th day of March, 2014.

/s/ Glenn M. Taubman
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Glenn M. Taubman