## CASE NO. 10-RC-162530 ATTACHMENT D TO VOLKSWAGEN'S NOVEMBER 2, 2015 STATEMENT OF POSITION

## 3(a): State the basis for your contention that the proposed unit is not appropriate.

## I. SUMMARY OF POSITION<sup>1</sup>

A voting unit limited to maintenance employees as petitioned for by United Auto Workers Local 42 (the "Union" or "Local 42") is not appropriate under the Act because the maintenance employees are not recognizable as a group, and the excluded production employees share an overwhelming community of interest with the maintenance employees.<sup>2</sup> The production and maintenance employees are all properly regarded as manufacturing employees. Further, even under *Specialty Healthcare* (which was wrongly decided as argued below and should not apply in this situation), a voting unit limited to the maintenance group cannot be sanctioned pursuant to the Board's guidelines in that case.

Splitting the maintenance and production employees into separate units would improperly fracture manufacturing employees who work together embedded in the same departments, who are integrated operationally to manufacture the same product, who have the same basic terms and conditions of employment, and who the Union itself has historically treated and continues to treat as one unit. Further, allowing such a fractured unit would be a decision controlled by the extent of organization in violation of section 9(c)(5) of the Act. Accordingly, the Region should reject the Union's petitioned-for unit and find a unit of all maintenance and production

<sup>&</sup>lt;sup>1</sup> Volkswagen respects the right of employees to decide whether to have a collective bargaining representative and is neutral with respect to that decision. Regardless, for the reasons stated herein, Volkswagen believes that the only appropriate unit for the employees' decision is a unit consisting of both production and maintenance employees.

<sup>&</sup>lt;sup>2</sup> Volkswagen believes that the showing of interest used to support the petition is not adequate. Volkswagen believes that many of the cards may be stale or otherwise insufficient to support the petition. Volkswagen does not waive any arguments it may have with respect to these issues and requests that the Region re-examine the showing of interest.

employees the only appropriate one here.

# II. FACTUAL BACKGROUND<sup>3</sup>

#### A. Chattanooga Plant and "One Team" Philosophy

The Chattanooga Plant (the "Plant") occupies 1,400-acres, started production in 2011 and manufactures the VW Passat. There are approximately 162 maintenance employees and 1,247 other production employees who work at the Plant in addition to managers, supervisors, clerical and other employees excluded from the petitioned-for unit.

All of the employees at the Plant work under an overarching "One Team" philosophy, which reflects the deeply rooted employee relations culture of the organization. This philosophy stresses the value and importance of team work, communication and responsibility among all employees. This "One Team" philosophy drives Volkswagen's terms and conditions of employment for production and maintenance employees and, as a result of this philosophy, employees understand that they must work together, regardless of whether they are classified as maintenance, production or other employees, to accomplish a shared operational goal—to produce high quality automobiles.

All employees undergo the same safety training. All employees receive the same harassment and equal employment opportunity training. And all employees meet together in plant-wide meetings. Additionally, as described below, the Plant is physically laid out so that employees in each shop work together, have open break and lunch spaces, and other shared facilities. In sum, the Plant is not segregated into operational silos of employees who work independently, but rather is organized on a shop-by-shop basis so that employees are integrated by specific design and in practice as "One Team."

<sup>&</sup>lt;sup>3</sup> Volkswagen offers to prove the facts set forth in this Statement of Position among others, through appropriate testimony and documentary evidence at the November 3, 2015 hearing.

### **B.** Plant's Operational Structure

The three areas of the Plant relevant to the Union's petition are the Body Shop, the Paint Shop and the Assembly Shop. All of the maintenance employees and approximately 95% of the production employees work in one of these. The shops are divided by walls or are otherwise geographically separated. Production employees and maintenance employees report to Supervisors. These Supervisors in turn report to the management of each shop. There is no centralized department or head of maintenance.

Similarly, there is no centralized, delineated maintenance work area at the Plant. The maintenance employees are embedded in one of the shops, the same as are production employees. All maintenance and production employees park in the same parking lot and enter the Plant through the same door. They share common cafeterias and fitness, medical and picnic areas.

Maintenance employees are assigned and report directly to work in one of the shops on a permanent basis.<sup>4</sup> Generally, they do not transfer between shops. Maintenance employees do not have a common schedule. Instead their work schedule depends on the shops in which they work. Although there are maintenance cages in each of these shops, maintenance employees are assigned to work in specific geographic zones throughout the shops or to work with a specific technology (such as a particular motor) within each shop. Since they are assigned to a specific zone or a specific technology, the maintenance employees regularly work together and in an integrated fashion with the production employees in each shop.

For example, if a particular zone of the Assembly Shop goes down, both production and maintenance team members assigned to that zone will work together to bring the area back on

<sup>&</sup>lt;sup>4</sup> The maintenance employees only maintain equipment involved in the production of cars. They do not maintain the Plant's facilities. Maintenance work unrelated to vehicle production is performed by non-employee third parties.

line. Assigning employees in this way is a critical aspect of the One Team culture because it requires these employees to work together closely and in conjunction with one another to carry out their job duties and ensure that each area of the Plant safely and efficiently produces quality cars.

# C. Training and Hiring of Production and Maintenance Employees

Also critical to Volkswagen's One Team culture are its hiring and training programs, which are designed to promote internal opportunities as well as an understanding and endorsement of the unified approach which defines the operations. Since October 16, 2014, maintenance employees are either promoted from the ranks of production employees or come through Volkswagen's Automotive Mechatronics Program (the "Apprentice Program"). Maintenance employees are not currently hired "off the street."

The Apprentice Program is offered in conjunction with Chattanooga State Community College. Candidates in the program spend approximately half their time in on-the-job training, which includes time working in both production and maintenance positions. Once a candidate graduates from the Apprentice Program, he or she will be assigned to an available position. Sometimes there will be a maintenance position available to which the candidate is assigned, but when there is no maintenance position available, the candidate will be assigned to a production position from where he or she can later apply for a transfer to an open maintenance position. In short, many of the Plant's maintenance employees either worked in production positions or have experience in such positions through the Apprentice Program.<sup>5</sup>

# **D.** Production and Maintenance Employees Share Common Benefits and Compensation Systems.

Production and maintenance employees also share the most significant benefits and

<sup>&</sup>lt;sup>5</sup> Maintenance employees are also able to apply for open production positions if they so choose.

compensation terms. These include the same:

- 1. health insurance;
- 2. retirement savings plans;
- 3. PTO and other paid leave;
- 4. life and disability insurance;
- 5. tuition reimbursement;
- 6. Volkswagen-provided uniforms and allowance;
- 7. adoption assistance; and
- 8. Volkswagen's favorable employee car leasing terms.

Maintenance and production employees also have the same compensation structure, which includes an 84-month "grow-in" period. This grow-in period reflects the time it usually takes for employees to learn their jobs, and it includes a wage progression unique to maintenance and production employees. Although the wage rates vary, the requirements to increase from level to level within the progression are the same.

Production and maintenance employees also are eligible for the same bonus program. The payout is based on their combined efforts. The bonus is a percentage of compensation based on safety, quality, productivity, and individual employee attendance. Production and maintenance bonuses are interdependent: For example, the productivity component of the bonus program is based on the efforts of both groups of employees. If maintenance takes too long to fix a machine, production will suffer and *both* groups of employees' bonus opportunities will be affected. The same is true if production employees are inefficient in their building of cars, which would impact the bonus for both production and maintenance. When bonuses are awarded, the same percentage bonus is awarded to all production and maintenance employees. Again, these common benefits and compensation systems are critical to the Plant's One Team culture. They encourage the production and maintenance employees to work together to accomplish the common task of safely and efficiently producing quality cars.

# E. Other Pertinent Terms and Conditions of Employment

Production and maintenance employees also share other important terms and conditions of employment. Both are subject to the same Team Member Guidebook, which includes, among other things, the following policies:

- 1. Open Door (problem solving)
- 2. Communications
- 3. Equal Employment Opportunity
- 4. Americans with Disabilities Act
- 5. Employment of Relatives
- 6. Severing the Employment Relationship
- 7. Attendance, including PTO and other leaves
- 8. Workplace Conduct
- 9. Workplace Violence
- 10. Corrective Action
- 11. Peer Review
- 12. Safety and Wellness
- 13. Security and Fire
- 14. Information Technology

Additionally, one central Human Resources department makes personnel decisions (recruiting, hiring, training, discipline, etc.) for both groups of employees. Both groups have the opportunity to appeal an involuntary termination to a peer review panel, which can include—and

has included—maintenance employees serving as jurors for production employee appeals, and vice versa.

# F. The Union Itself Treats Maintenance and Production Employees as a Single, Integrated Unit.

Not only do the Plant's production and maintenance employees work together under the shop structure and have the same basic terms and conditions of employment, the Union also has treated and continues to treat the production and maintenance employees as one homogeneous unit.

First, on February 3, 2014, Volkswagen and the International UAW entered into a Stipulated Election Agreement. (See Stipulated Election Agreement, Case No. 10-RM-121704.) The unit described in that Stipulated Election Agreement included "[a]ll full-time and regular part-time production and maintenance employees" at the Plant. (*Id.*) The consequence of this stipulation of course is that the Union sought to represent a unit composed of both groups of employees and formally acknowledged the appropriateness of the broad unit based on the clear community of interest they shared. The Union could have but obviously did not consider a segregated unit of maintenance employees to be appropriate then, and it should not be able to do so now as there have been no substantive changes in any relevant factor since that time.

Ultimately, the voting unit of all production and maintenance voted against Union representation. Thereafter, the International UAW formed the Petitioner in this case—Local 42—to speak with the Employer with regard to certain issues relevant to both production and maintenance employees at the Plant. Local 42 has never considered the groups different or distinct from one another. In fact, the contrary is true. The officers of Local 42 consist of both production and maintenance employees.

Also, subsequent to the NLRB election, the Union decided to take part in VW's Community Organization Engagement Policy. This policy provides a format for an organized exchange of information and ideas about working conditions between the Company and its employees. Under the policy, employees voluntarily decide whether to participate in the process, how they will be grouped (*e.g.* maintenance only or production employees only, or combined), who might represent them, and also to select leadership to engage with management.

Local 42 is one of two groups of employees that have decided to participate under the policy. Consistent with the initial election stipulation, Local 42 purports to represent both production and maintenance employees. As stated above, the leadership of Local 42 includes maintenance and production employees. These employee representatives meet with management on a bi-weekly basis to discuss various employment and production matters of mutual concern. Under the policy, an annual, confidential third party audit is conducted to verify that employees still want to be in their chosen groups with their chosen spokesperson.

The most recent audit—conducted in the last few weeks—verified that the maintenance and production employees wish to be included together under the aegis of Local 42. Local 42 itself has endorsed this process and recognized its role with respect to production and maintenance employees. When Local 42 engages with Volkswagen, it addresses matters relevant to both production and maintenance employees. Finally, Local 42's LM-4 asserts that the Union has represented over 800 members. Accordingly, it is undisputed that the Union's membership includes hundreds of production employees in addition to those in maintenance.

## G. Current Petition

The Union filed the petition in this case on October 23, 2015. Despite its prior recognition of the appropriateness of the plant-wide unit and continued advocacy for both production and maintenance employees, the Union now seeks to segregate out and represent only

a fraction thereof-the "full-time and regular part-time maintenance employees" at the Plant.

### III. ANALYSIS

Section 9(a) of the Act permits employees to form a bargaining unit "appropriate" for collective bargaining purposes. 29 U.S.C. § 159(a). The Act grants the Board discretion to determine whether a petitioned-for unit is appropriate. *Id.* at § 9(b). For the following reasons, *Specialty Healthcare and Rehabilitation Center of Mobile*, 357 NLRB 83 (2011), *enf'd sub nom. Kindred Nursing Centers East, LLC v. NLRB*, 727 F.3d 552 (6th Cir. 2013), was wrongly decided and should not be applied in this case. Volkswagen recognizes, however, that *Specialty Healthcare* supplies the rule of decision. Thus, regardless of whether the Board applies its longheld standards to evaluate the petitioned-for unit or the new *Specialty Healthcare* standards, the petitioned-for unit should include both maintenance and production employees in the unit will be the result of giving controlling weight to the extent of organization in violation of Act section 9(c)(5).

### A. Specialty Healthcare was Wrongfully Decided.

*Specialty Healthcare* was wrongly decided and should be overturned for all of the reasons stated in the dissents of Member Miscimarra in *Macy's, Inc.*, 361 NLRB No. 4, slip op. at 22-33 (2014) and Member Johnson in *DPI Secuprint,* 362 NLRB No. 172, slip op. at 9-19 (2015). These dissents are fully incorporated into this Statement of Position by reference. *See also NLRB v. Lundy Packing Co.*, 68 F.3d 1577, 1581-82 (4th Cir. 1995).

## **B.** The Petitioned-For Unit Does Not Share a Sufficient Community of Interests.

The petitioned-for unit of maintenance employees does not satisfy the first step of the *Specialty Healthcare* test because it is a fractured unit: it is not readily identifiable as a group and it does not share a sufficient community of interests. *See Bergdorf Goodman*, 361 NLRB

No. 11 (2014). *Specialty Healthcare* and its progeny recognized that "[a] petitioner cannot fracture a unit, seeking representation in 'an arbitrary segment of what would be an appropriate unit." *Odwalla*, 357 NLRB 132, slip op. at 5 (citing *Specialty Healthcare*, 357 NLRB 83, slip op. at 13).

Here, the facts will show, among other things, that there is no centralized maintenance department or head of maintenance. Rather, maintenance employees are assigned to each particular shop and directly report to that shop's management. Maintenance employees are geographically separated from each other in the shops, and also there is no common work schedule amongst the maintenance employees; rather their schedule depends on the shop in which they work. For most of the work day, the maintenance employees work with production and other employees within their own shop; they do not work with employees in other shops. The only common supervision for all maintenance employees is the Director of Manufacturing, who oversees all of the shops, and all of the production and maintenance employees within those shops. Thus, the petitioned-for unit is not drawn along the supervisory or department lines created by Volkswagen.

Nor is the petitioned-for unit drawn along lines of compensation or other terms and conditions of employment. As explained herein, all maintenance and production employees have the same 84-month wage progression, the same benefits, and the same bonus program. They work under the same Team Member Guidebook, they park in the same parking lot, they enter the plant through the same door, and they have the same basic uniforms.

Thus, although the maintenance employees share some interests with one another, a maintenance-only unit does not comport with any geographic, administrative or operations lines drawn by Volkswagen. As the Board stated in *Specialty Healthcare*, "[i]t is highly significant

that, except in situations where there is a prior bargaining history, the community-of-interest test focuses almost exclusively on how the employer has chosen to structure the workplace." 357 NLRB No. 83, slip op. at 9, n.19 (quoted by *Bergdorf*, 361 NLRB No. 11, slip op. at 3). Volkswagen has chosen to integrate production and maintenance employees within various shops, have those shops report through their own supervisory chains, and give production and maintenance employees a common compensation structure, a common benefits structure and a common Team Member Guidebook to further its One Team culture. A maintenance-only unit is therefore inappropriate. *See Becker College*, 01-RC-081265 (DDO, 2012) (petitioned-for unit not appropriate where the unit did not track lines drawn by the employer, did not track lines reflecting work locations and did not track lines of supervision, among other things).

# C. Production Employees Should be Included in the Unit Applying Either Community of Interest Standard.

Under the Board's new "overwhelming community of interest" standard, and certainly under the Board's traditional standards, the production employees should be included in the petitioned-for unit. The Board has not specifically articulated what constitutes sufficient evidence to show an overwhelming community of interest, but several principles can be gleaned from the Board's *Specialty Healthcare* line of cases.

First, the Board has consistently looked to how the *employer* structures its operations when analyzing whether an overwhelming community of interest exists. *See Macy's, Inc.*, 361 NLRB 4 (2014), slip op. at 9 ("The fact that the petitioned-for unit tracks a dividing line drawn by the employer is *particularly significant*.") (emphasis added); *Neiman Marcus*, 361 NLRB 11 (2014), slip op. at 3 (no community of interest when, "The boundaries of the petitioned-for unit do not resemble any administrative or operational lines drawn by the Employer."). Second, the Board has held that an overwhelming community of interest exists between the petitioned-for

unit and other, excluded employees when the community of interest factors "overlap almost completely" between the petitioned-for unit and excluded employees. *Id.*, slip op. at 11 (citing *Blue Man Vegas, LLC v. NLRB*, 529 F.3d 417, 422 (D.C. Cir. 2008)). The maintenance employees in the proposed bargaining unit share an overwhelming community of interest with the production employees.

# 1. Volkswagen's Operational Structure Requires a Production and Maintenance Unit.

Volkswagen has structured its operations so that production and maintenance employees within a given shop work hand-in-glove. *See Macy's*, slip op. at 9 (noting significance of how employer structures its operations when analyzing community of interest). Specifically, Volkswagen has structured its production department into three separate shops, *not* separate production and maintenance functions. Production and maintenance employees work together in their assigned shops and zones. They both report to Supervisors within those shops as well as to shop managers and, ultimately, to the Director of Manufacturing. The Board has consistently viewed these factors as conclusive indicia that a broader combined group of employees is the appropriate unit. *Vincent M. Ippolito*, 313 NLRB 715, 718 (1994); *see also Odwalla, Inc.*, 357 NLRB 132 (2011), slip op. at 5 (stating that the Board will not approve a fractured unit).

The physical structure of the Plant also shows that production and maintenance employees share an overwhelming community of interest. Both sets of employees use the same entrances and exits; work within the same four walls of their respective shops; and share cafeterias, locker rooms, restrooms, fitness and medical facilities, and parking lots.

# 2. Production and Maintenance Employees Share the Same Terms and Conditions of Employment.

In addition to Volkswagen's operations structure, production and maintenance employees have nearly identical terms and conditions of employment. They have the same safety and

human resources training. Maintenance employees frequently have worked in production positions and Apprentice Program graduates are often assigned to production positions prior to moving into maintenance positions. This underscores a crucial point: maintenance employees are only currently hired from the ranks of production employees or graduates of the apprenticeship program. Volkswagen does not hire outside maintenance personnel.

Production and maintenance employees also share a compensation program that is unique to them and no one else at the Plant. The grow-in program only applies to them, and Volkswagen does not differentiate between the steps required for advancement between them under the program. Even more important, production and maintenance employees participate in the same bonus plan. Production and maintenance employees receive the same percentage bonuses based on the same criteria (safety, attendance, etc.). Furthermore, the successes or setbacks of within the entire plant directly affect the amount of bonus earned by everyone. That Volkswagen would have to overhaul its compensation plan if maintenance employees were separated from production employees strongly suggests that the two share an overwhelming community of interest. *Cf. See Odwalla*, 357 NLRB 132, slip op. at 5 (no community of interest where "recommended unit [was not] drawn in accordance with methods of compensation").

The production and maintenance employees share other basic and important terms and conditions that cover every aspect of their employment with Volkswagen. They are subject to the same handbook, consequential work rules, attendance policy, corrective action process, and termination appeal process. Notably, employees from production have served on the peer review panels for employees from maintenance, and vice versa. That production and maintenance employees would be involved in determining each other's continued employment underscores the community of interest that exists between the two groups.

Finally, the administration of the Apprenticeship Program shows that breaking apart production and maintenance employees would be arbitrary. Graduates of that program are currently placed in both production and maintenance positions, and the curriculum involves both production and maintenance components. To separate production and maintenance employees would likely entail overhauling the content of the Apprenticeship Program and the placement of graduates, another sign that a maintenance-only unit would be a fractured unit.

**3.** Finding the Proposed Unit Appropriate Would Violate Section 9(c)(5).

Although unit determinations fall within the Board's discretion, "the Board must operate within statutory parameters." *NLRB v. Lundy Packing Co.*, 68 F.3d 1577, 1580 (4th Cir. 1995). Section 9(c)(5) provides that in determining whether a unit is appropriate for collective bargaining "the extent to which the employees have organized shall not be controlling." 29 U.S.C. § 159(c)(5).

Section 9(c)(5) was enacted as part of the Taft-Hartley Act in 1947. *Lundy Packing*, 68 F.3d at 1580. Prior to Taft-Hartley, the Board regularly issued "decisions where the unit determined could only be supported on the basis of the extent of organization." *NLRB v. Metro. Ins. Co.*, 380 U.S. 438, 441 (1965). As a result, Congress amended the law so that the Board could consider "the extent of organization" as only one factor among many when determining whether a proposed unit was appropriate. *Id.* at 442.

In this case, approving the petitioned-for unit would violate Section 9(c)(5). The analysis in the previous sections shows that an overwhelming community of interest exists between production and maintenance employees at the Plant. Therefore, approving the petitioned-for unit could only be based on an approval of a unit specifically hand-picked by the Union based upon the extent of organization.

The history between Volkswagen and the Union makes this point plain. The parties

specifically agreed in Case No. 10-RM-121704 that an appropriate unit would include all production and maintenance employees. The Union lost the election in that case, but nonetheless formed Local 42 to represent both the production and maintenance employees. Local 42 has officers that are both production and maintenance employees. It claims to have over 800 members, which clearly establishes that its members consist of both production and maintenance employees. And when Local 42 purports to engage Volkswagen on topics of interest to its members, it does so on behalf of both production and maintenance employees. Local 42 claims to represent all of the production and maintenance employees, and that it enjoys the overwhelming support of that group. It also claims that it desires to be the bargaining representative of all production and maintenance employees. Yet with the departure from its consistent and well-established position until the very different one now reflected in the instant petition, a fair inference can be drawn that Local 42's position is based not upon the legal standard which must be applied by the Board but its own belief that the maintenance unit is the only one in which it is confident it might secure any representational rights.

#### **IV. CONCLUSION**

The Regional Director should dismiss the Union's petition. The Union's attempt to limit the unit to maintenance employees conflicts with the way Volkswagen has structured its operations, ignores the overwhelming community of interests between the production and maintenance employees, and is contrary to the parties' prior agreement on the appropriate unit. Furthermore, the petitioned-for unit would violate Section 9(c)(5) because the sought-after unit corresponds to the extent of the Union's organizational efforts, and the petition should be dismissed on that basis.

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