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briefings

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Organized Labor's International Strategy To Solve Its Domestic Crisis

A look at how American labor unions are reaching out to European and other international allies to influence U.S. labor relations and how companies should respond

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The (Sad) State of the Unions

"Workers here in the United States and all around the world are in crisis. Every day, their freedoms are infringed upon and their rights are trampled ... [T]he world's labor movement is coming together with a unified voice to say we will stand together to combat this troubling trend and build a global movement that's capable of restoring the rights of workers worldwide."

— AFL-CIO President John Sweeney, November 29, 2007

It is no secret that the organized labor movement in the United States is struggling. But it was not always this way. At its high point in the late 1940s, unions represented more than one out of every three American workers. Subsequent amendments to the National Labor Relations Act (NLRA), however, placed tighter regulations on unions and curtailed certain union activities. Employers became more sophisticated and proactive in their communications with employees.

Public setbacks, such as corruption scandals involving unions like the Teamsters and Laborers, as well as Reagan's discharge of striking PATCO air traffic controllers, also hampered organized labor's growth.

The bottom line is that today 11.3 percent of American workers are unionized, but much of that is government employment. In the private sector, unions represent a scant 6.7 percent of the American workforce, and that number continues to trend downward.



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The World Is Shrinking

Another major factor contributing to organized labor's decline in the U.S. is the global economy. As the market for goods and services transitioned from domestic to global, U.S. companies faced downward pressure on labor costs to remain competitive. At the same time, organized labor continued to push for generous economic terms and inflexible job protections. Many companies and their unions did not respond effectively to the impact of international competition, resulting in layoffs and plant closings in industries such as steel and auto, where unions were unable to backfill the lost jobs. By the 1990s many were asking whether unions were still relevant in the U.S. Organized labor needed a major shift in its member recruitment strategy.

By the 2000s, certain segments of the American organized labor movement struck on the idea that they could leverage success from the global economy. If corporations could be multinational, why couldn't unions form international alliances to level the playing field? Bob King, former president of the United Auto Workers (UAW) union, was one of the first to see the benefits of forming alliances with European unions such as Germany's IG Metall. The idea is to apply leverage "over there" through foreign labor alliances to achieve results in the U.S. in the form of neutrality and card check agreements.

This Practice Briefing takes an in-depth look at how this strategy would work when applied to multinational corporations head-

quartered in European countries with substantial investment in the United States. The Briefing focuses specifically on whether the laws and labor climates in Germany and England can help American unions achieve their organizing aims at the U.S. operations of companies headquartered in those two countries.

Case Study No. 1: Germany

"You can't just be a national union to take on a fight with these global corporations and win unless you build global solidarity. We have made a lot of progress there."

— Bob King, farewell address as UAW president, June 2, 2014

The ongoing organizing campaign by the UAW at Volkswagen's manufacturing plant in Chattanooga, Tennessee, is a textbook example of how an American union's alliances in Europe can bear fruit in the U.S. Volkswagen opened its first U.S. plant in Westmoreland, Pennsylvania in 1978, at a time when the UAW represented a significant percentage of employees working at the Big Three automakers and their suppliers. According to reports, when the UAW began organizing the Westmoreland employees, IG Metall urged VW's German board of directors to look favorably on those efforts. The UAW successfully organized the Westmoreland employees, but the plant was ultimately shut down in 1988.

Today the UAW-IG Metall alliance is pushing for UAW representation at VW's Chattanooga plant so that the plant purportedly can establish a German-style works council. The NLRA's prohibition against management domination or interference with labor organi-

zations prevents a U.S. employer from lawfully establishing a works council without negotiating first with a union.

The UAW narrowly lost a representation election in Chattanooga in February 2014, but has persisted in its organizing efforts and, as of this publication, is reportedly close to a representation agreement with VW. The UAW has been trying unsuccessfully for two decades to organize a U.S. transplant auto company. The union could not have made progress at VW without the direct assistance of IG Metall and the VW Works Council. A closer examination of German corporate labor law sheds some light on how all of this came to pass in eastern Tennessee.

Volkswagen is headquartered in Wolfsburg, Germany. German corporations generally have a two-tiered system of board management; the management board and the supervisory board. The supervisory board determines company decisions, including construction or acquisition of a plant outside of Germany, and the operations and policies of foreign plants. It makes decisions based on majority vote. German law gives employee representatives rights of co-determination on the supervisory board depending on how many employees the corporation has in Germany. Because VW has more than 2,000 employees in Germany, it must reserve 50 percent of the seats on its supervisory board for employee representatives.

The employee seats may be held by union representatives or delegated to other entities such as

members of the company's works council or individual employees. Typically, however, the greater the unionization rate at the company, the more seats the union will hold. A German company's works council cannot on its own veto or block a corporate decision regarding an operation outside of Germany. The involvement of IG Metall, however, is more problematic because even without majority representation it can leverage its desired outcome by suggesting that it will conduct a wage strike somewhere in Germany unless the board votes its way. This is how a German union can affect labor relations in the U.S. or elsewhere.

Additionally, the UAW-IG Metall alliance can give the UAW a "seat at the table" at the European corporate level. In 2012, IG Metall had King appointed to the supervisory board of GM's subsidiary, Adam Opel AG, and the UAW previously held a seat on the Daimler-Chrysler board. All of this provides American unions with a blueprint for organizing the U.S. subsidiaries of German corporations. If the UAW can achieve representation at VW's Chattanooga plant, the union undoubtedly will call on IG Metall in Munich and Stuttgart to clear a path to organize BMW's South Carolina facility and the Mercedes plant in Alabama.

Case Study No. 2: England/UK

"For a long time we thought that globalization only happened to industrial workers. We need to get ahead of this before it gets ahead of us."

— SEIU Official, reflecting on the private security industry, August 2006

Group 4 Securicor (G4S), headquartered in England, is the world's largest security firm and includes a U.S. subsidiary, The Wackenhut Corporation. The Service Employees International Union (SEIU) is an American labor union that represents employees in many segments of the U.S. economy, including private security services.¹ According to the SEIU, only 8 percent of U.S. security officers are represented by a union. In the UK, the largest general union, GMB, represents thousands of G4S employees. SEIU has a strategic alliance with GMB, with the two unions hoping they can raise labor standards on both sides of the Atlantic through coordinated strategies in the areas of organizing, collective bargaining, and political action. SEIU clearly hoped its alliance with GMB in the United Kingdom would lead directly to membership gains in the U.S. To date, however, SEIU has had very little success organizing Wackenhut employees.

Unlike German law, UK laws do not provide for codetermination by employees or their representatives in corporate matters. Thus, unions in the UK such as GMB generally cannot pressure employers in the boardroom and must instead resort to more conventional labor tactics, such as strikes, picketing, and boycotts, similar to tactics used by U.S. unions. Generally, a union in the UK can deploy economic weapons of labor against an employer with whom it has a trade dispute. In the U.S., the NLRA protects economic actions against the union's primary target, but prohibits actions that enmesh secondary or neutral employers in the labor dispute. Likewise in the

UK, union actions targeting another employer are deemed secondary in nature and expose the union to potential legal risks for procuring breach of contract or interference with contract.

By law, the UK union is protected if its actions are in furtherance of a trade dispute. The term "trade dispute" is broadly defined under UK labor law as:

a dispute between employers and workers, or between workers and workers, which is connected with one of more of the following matters (a) terms and conditions of employment . . . (b) engagement or non-engagement or termination or suspension of employment . . . (c) allocation of work or the duties of employment . . . (d) matters of discipline (e) the membership or non-membership of a trade union . . . (f) facilities for officials of trade unions; and (g) machinery for negotiation or consultation, and other procedures, relating to any of the foregoing matters . . .

A union in the UK aligned with a U.S. union might argue that its "dispute" with an England-based multinational corporation that is resisting organized labor at a U.S. subsidiary constitutes a trade dispute. But if the UK union explicitly frames its actions in terms of affecting labor relations at another employer, *i.e.*, the U.S. subsidiary, the activities likely would be deemed secondary and unprotected.

The lack of a trade dispute, however, does not render a UK union powerless to help its sister union in the U.S. Similar to American labor law, a UK union can use certain pressure tactics to influence labor relations elsewhere. The October

2014 Carr Report to the UK Government severely criticized union “leverage” campaigns – coordinated tactics that could not be neatly defined as striking or picketing, but nevertheless placed undue pressure on companies to take certain actions in their labor relations. These leverage campaign tactics are similar to those used in corporate campaigns in the U.S. and include unflattering statements to the media, direct appeals to customers and suppliers, mass protests, banners and inflatable rat displays, along with clearly illegal tactics such as trespass and threats of violence.

It was this type of unconventional campaign that ultimately allowed SEIU to organize a small group of Wackenhut employees in the U.S. The SEIU-GMB relationship never really took off, but SEIU did find a productive alliance in UNI, a Swiss-based global union federation. This alliance and international pressure on G4S led to a global framework agreement that culminated in the SEIU’s small Wackenhut victory.

Lessons for Employers

Corporations must understand that modern organized labor thinks and acts globally, just like industry. There are a number of lessons that companies can take away from this fact:

- *Education.* Corporate leaders and decision makers need to be aware of organized labor’s global strategies and tactics, including knowledge of any campaigns in the company’s industry.
- *Training.* Corporations and legal counsel should train key personnel how to react lawfully and effectively to global unionization tactics.
- *Due Diligence.* As part of any multinational merger or acquisition, legal counsel should consider the corporate labor laws of the countries of the corporations involved, and should analyze whether the transaction could increase the company’s union vulnerability as a result of international labor laws.
- *Information Gathering.* Monitor global developments and trends in relevant industries and assess whether they are predictive of tactics that could be used against the company.
- *Communication.* Establish internal and external lines of communication in the event the company needs to react swiftly to a global labor campaign. **PAB**

NOTES

* FordHarrison LLP is a U.S. law firm representing management in all aspects of labor, employment, benefits, and immigration law and is the sole U.S. member of Ius Laboris, a global alliance of leading employment law firms. Mr. Gerson is the firm’s Co-Managing Partner and is based in Atlanta, Georgia and Memphis, Tennessee, and is Chair of the Ius Laboris Americas Committee. Mr. Kurtz is a partner in FordHarrison’s Chicago, Illinois office. The authors would like to thank Lisa Patmore, partner with Ius Laboris affiliate firm Lewis Silkin, Dr. Markus Bohnau, partner with Ius Laboris affiliate firm Kliemt & Vollstädt, and Johannes Simon, attorney with Kliemt & Vollstädt, for their contributions to the discussions of UK and German law.

1 This article does not address section 9(b) (3) of the NLRA, which prohibits the Board from certifying a bargaining unit that includes guards and non-guards.