Podcast Transcript

Rev Up! The Green Flag is Waved!

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Kattman: Welcome to Rev Up!, Where the Rubber Meets the Law, a podcast series focusing on the people and issues driving the fast-paced automotive mobility industry. With a view on the future of mobility, the discussions on Rev Up! will offer insights on the realistic and the futuristic in this evolving industry. I'm Amy Kattman and you're listening to BakerHosts.

On today's episode of Rev Up!, we kick off the series looking at the issues impacting the workforce and the changing automotive industry. Our host is Ashley Hess, a partner and co-leader of BakerHostetler's Automotive Mobility Industry team. Today's guest is Mike Asensio, BakerHostetler Partner with more than 30 years' experience representing clients and collective bargaining, representation cases, grievance arbitration, and labor litigation matters. So, let's buckle up and listen to Rev Up!, Where the Rubber Meets the Law.

Hess: Mike Asensio, welcome to Rev Up!, our podcast focusing on the automotive and mobility industry. I am really excited to have you with us today and I'm excited to talk about this topic of workforce dynamics and the automotive industry. This is a topic that stays in the headlines and plays such a major role in the ability of the industry to evolve. And I can tell you from experience, this is a topic that is on the mind of every client and contact I speak with about the automotive industry and what is going on in the sector right now. I am sure you are going to provide some insights for our listeners.

Okay, Mike, let's get started. Why don't you first tell our listeners about your practice and how you got involved in the area of law where you practice.

Asensio: Be happy to, and thanks for having me, Ashley. I am a management labor lawyer by practice. I've been practicing for 39 years, all at Baker, and I went to law school knowing I wanted to be a management labor lawyer, which is a little bit of an odd thing, but have enjoyed working in a variety of industries, automotive included. What I do day-to-day in my practice is help clients when they might have organizing drives where employees are considering whether to join a union. I do a lot of collective bargaining, and then a lot of management administration of bargaining agreements which can include grievance arbitration work and maybe labor relations litigation as well.

Hess: So, Mike, I want to start with this topic area of managing the workforce in the evolving automotive industry. And just to set the stage with what I mean about in industry and evolution, the automotive industry is undergoing a significant transition driven by several technological advances. First, we have the shift to electric vehicles, which is a revolutionary change, moving away from the internal combustion engine that has dominated the industry for over a century and this transition is propelled by government actions and increasing consumer demand for EVs. In the long haul trucking industry, there is a notable shift towards hydrogen fuel cell technology, which offers a promising alternative to traditional diesel engines for a cleaner environment. And additionally, there are advancements in robotics and automation that is transforming the manufacturing process within this industry. And these changes collectively signify a major evolution in the automotive sector, impacting workforce dynamics, production methods, and overall industry strategies. So, let's start there. Why don't you tell us about a few hot topics that you see in the labor relation area that clients are inquiring about when it comes to working in an industry in transition.

Asensio: Well, I think you've hit on something that is not only common to the automotive industry, but sometimes can be cyclical in especially manufacturing and other industries. And that is when you've got change that is going on in the industry, which can be change within the industry, could be change with economic forces that are impacting it, or you could have a cyclone of events that all come together at the same time that cause a lot of different change within a particular industry.

One of the things that I think that is absolutely key when you have something like that, it almost always sparks concerns from an employment standpoint about job security. So, from a labor employment perspective, job security is going to be front and center. If you're looking at issues like automation, maybe looking at the introduction of AI, and certainly a change as you see in the automotive industry from combustion engines to electric vehicles, that is going to pose a significant concern amongst employees as to what their future looks like in the industry. So, we've seen that manifest itself recently with the negotiations in 2023. We've seen that in other industries. Just today, the dock workers on the Eastern Seaboard ended up concluding what had been, thankfully, a very short-lived strike. But their major concern was automation as it concerns the loading and unloading of ships and how that was going to impact their future job security. So, that is the kind of thing that we see from time to time as technology advances.

The other issue I would say, Ashley, that is out there, when you get that kind of concern along with at the same time economic forces that we've seen in the past few years, such as contraction or expansion of the relevant industry, maybe recruitment, retention concerns due to something that could be like having low unemployment numbers and difficulty to attract and retain, and then combine that with inflation, you're going to get a situation where you're going to create a lot of concern amongst employees within a particular industry.

Hess: Well and with, when you're working with clients, have you noticed certain trends for successful outcomes versus suboptimal performances when it comes to how to handle labor relations in an industry in transition?

Asensio: I have, and I'll tell you, I wish I could tell you that there was a secret sauce or secret button in terms of what to do when you're faced with it. But I, with the examples I have over the years that I've been practicing, I think it simply comes down to good leadership. If you have good leadership with a particular client you're dealing with, who has a vision on how to navigate the obstacles that they're facing when the industry and their business faces change, if they have the ability to communicate that throughout the organization, the ability to execute on the strategies that support that vision, they're going to get better outcomes, than those competitors who can't navigate through the obstacles because they don't, they're more reactive perhaps, and less proactive in understanding what the change is going to involve and how it is going to impact employees and how to best prepare employees to go through it. In that regard, I think it is almost the same as it's always been. Good leadership makes a big difference.

Hess: So, Mike, I want to move to something that you just touched on in one of the previous answers and that is some of the UAW activity that we've seen in the last couple of years. And just to set the stage for our listeners, in 2023, the UAW, which is the United Auto Workers, negotiated new national contracts with Ford, General Motors, and Stellantis following a 46-day strike that they had. And the UAW touted the gains that they made in these contracts as being extremely significant and it appeared to be a very big win for the UAW. Then in April of 2024, the UAW also had a successful campaign at the Volkswagen plant in Chattanooga, Tennessee, where workers voted to organize and the campaign was extremely successful with 73% of the eligible workers voting to join the UAW. So, the UAW on very much a roll at that point in time. However, the UAW faced a setback in its campaign at the Mercedes-Benz plant near Tuscaloosa, Alabama, when the majority of workers at that plant voted against unionization.

So, I want to talk a little bit about the UAW and what we've seen over the last couple of years, and maybe we start with you telling us what was different about the UAW's 2023 negotiation process and how they approached it?

Asensio: Well, I'd be happy to hit on a couple of points that at least to me stand out that made this past negotiation cycle different for the UAW and the Big Three. Starting with, you had a confluence of economic events. I'd start with the 40-day strike that they had in 2019 during the last negotiations. You had, in the, within the industry, a decade of strong profits for the auto companies, tight labor market with low unemployment that really surfaced over the last few years here, and then a rapid run-up in inflation that we all remember about a year and a half to two years ago that eroded purchasing power. So, you had those economic events. You had a federal corruption probe of the UAW that resulted in new grassroots leadership, with Shawn Fain taking control of the union after really a historic vote by the general membership. The general membership had its first opportunity to vote on its leadership and that resulted in new strategies, a new leader, and a more strategic approach.

Prior to Fain assuming the leadership of the UAW, I think the perception among the Union membership at least is, you hear about it through urban legend, was that union leadership was too cozy with the auto companies. Fain represented a new, more combative approach from the factory floor. A good example is when they kicked off negotiations this last go around in 2023, they didn't do the traditional handshakes with the CEOs and the photo ops that they typically do at the opening of the negotiations. Instead, Fain went to the factory floor and did handshakes with members and made it very clear that they were there to do business, and I think this change in approach was something that he wanted to signal loud and clear as they kicked off bargaining this last go around.

Hess: Yeah, those are some great points and let's talk a bit about the differing tactics that the UAW used in this effort, because it was different from what we had seen in the past. Maybe you could shed some light on that.

Asensio: Yeah, historically really from the days of Walter Reuther, forward, what the UAW had done was engage in pattern bargaining, and what they would do is select a lead or target employer from the Big Three, previously the Big Four, and bargain with that employer first, strike the deal that they were seeking with that employer, at least that is what the strategy was, and then try and take that deal and then pattern bargaining negotiated with the remaining automotive companies.

This time they made very clear that they designated the Big Three as a whole as their target employer. They also prepared a very, very aggressive wish list going into bargaining with some very large demands, significantly got a lot of media attention, was the demand for a 40% wage increase over four years. And finally, and I think this is an equally important, they really embraced the strike option. They were able and willing to fully employ strike action to support their position at the table and what they reintroduced was instead of having a target employer that they would focus all strike action upon, they engaged in what are called stand-up strikes, where workers go on strike without warning as opposed to going on strike after much advance notice and they were willing to target key plants and willing to target large plants even such as the Rouge plant in Detroit. So, those strategies coming together, very aggressive, very different. And given the fact that the Fain did not assume leadership of the UAW until just before they were ready to kick off negotiations, I think made it a very difficult proposition for the automotive companies to really react to it and analyze it. They had to go on the fly in dealing with them as a result.

Hess: Yeah. And what were the UAW's main concerns with, when negotiating with the Detroit Three this time?

Asensio: Well, the main objectives, first and foremost, with the UAW, it is always going to be wages, and that is a typical of any collective bargaining situation. They were seeking 40% increase over a four year agreement. Included in that, they wanted to eliminate tiered wages, which had been introduced about 15, 20 years before, and they're also looking for restoration of COLA. And that obviously a response to the inflation that had occurred within the economy over the past couple of years.

Secondly, they were looking for restoration of benefits. Principle among that was the restoration of a defined benefit plan that had been shut down except for employees that were very senior in nature. And then they were looking as well for securing coverage of all their EV operations under their main contracts, which from their standpoint would provide additional job security for the employees that were working on the EV operations.

And then finally, they were looking for some work-life improvements. Significantly, they wanted to move to a four-day workweek. Although they had many objectives, at least in my mind, those were the major ones that they were seeking.

Hess: Well, let's give them a grade. How did it turn out? What was the outcome? And was the UAW successful?

Asensio: Well, if you look at immediate reactions, I think that a lot of the media coverage gave them a name, made it seem as if they achieved all their goals at the table. That rarely, if ever, occurs. I would say it, as usual, it is a mixed bag. I think from their perspective, the membership was very happy. They did achieve a 25% increase over four years, which is a very strong increase and comparable to what you see in the different industries, at least now in collective bargaining following the economic stressors that we've been under for the last several years.

Tiered pay was not eliminated, but it was limited. They reduced the years that it takes to catch up to the, from starting pay to the full senior-level pay that exists. And you have to, I think, view this agreement in context and over time. One of the things that is important with wages in the automotive industry is for the past 20 years, they've had a lot of lump sum payments in lieu of wage increases and fairly conservative percentage increases across the board when they've occurred. As a result, you do tend to see in this industry certain negotiation cycles will have large increases that make up for the fact that they may have had lump sums over time, and this is certainly one of those cycles where that occurred.

They didn't get the defined benefit plan that they were looking for and didn't get any expansion of that, and they didn't move to a four-day workweek as they were seeking.

So, I think from a wage perspective, probably would have to say it was successful. Some of the other things are probably more nuanced in terms of what they achieved in the agreement and not as successful in those areas and it certainly wasn't as reported as wages were in the media.

Hess: Yeah. Well, following that outcome with the Detroit Three, the UAW next had a success when there was a vote to organize at the Volkswagen plant in Chattanooga, Tennessee. Why don't you put that successful organization in context for our listeners as well?

Asensio: That, to me, is a simple matter of timing. Whoever was going to be first up after the UAW completed negotiations with the Big Three and got the very favorable press it did about the wage increases it was able to achieve, I think was going to have a difficult time in dealing with the UAW organizing campaign, even if it is in the South, which has historically been resistant to union organizing.

Hess: Well, and so that is in March, April of 2024, then in May of 2024, there was a campaign to organize at the Mercedes-Benz manufacturing plant in Alabama, which was not successful. So, what is the difference between Volkswagen in Chattanooga, Tennessee a month earlier compared to Mercedes-Benz in May of 2024?

Asensio: For those of us that do union campaigns and union organizing efforts and pay attention to those as part of our business, there is a big difference between a first-time campaign and then repeat campaigns, even when that you might have a repeat that is five years later. When you have a first time campaign, it is very difficult for a Union, sometimes, to win those. They, the UAW did achieve 44% vote in favor of unionization, which realistically in a campaign that they're conducting as a first-time effort, is probably not a bad result. The fact is, though, Mercedes campaigned really hard prior to this election, as did local politicians in Alabama, from the governor down. So, I think it would have been a very difficult win for the UAW, probably under any circumstances.

Hess: Yeah. Well, let's take a step back now that we've talked about these three campaigns, two successful, one negotiation successful, one campaign successful, one not successful. Give us some context of what you think this will do in terms of how it is going to impact innovation. I mean, does this limit, especially with the Detroit Three, does this limit their ability to innovate and to pivot in such a dynamic industry?

Asensio: I would hope not, and I would think that they have certainly probably taken the precautions in negotiating the finer, the language elements of the contracts in such a way that they won't be limited. One of the things that is very interesting is going to be how much freedom do the auto companies have in transitioning to electric vehicles? How much freedom do they have in moving production in different areas to different parts of the country and/or the world, in order to further their transition in that regard or further innovation in any other way? And I think that one of the things that historically has been true is the auto companies are very, they're very careful about maintaining a lot of ability to act unilaterally in that regard, and that's always been a bone of contention with the UAW at the table, but I think that is something that they'll, I'm certain they have retained the ability to do that in their contracts.

The UAW is going to continue to put a lot of energy in organizing automakers in the South. Tesla suppliers, they're going to make a lot of effort to keep organizing, especially suppliers. And when they hear about something like EV innovation and new methods of production that are going to be created around that, they are going to want to bring those under the fold of their existing contracts. That will be a continued battle with the Big Three because they're going to want to maintain as much unilateral ability to make change and to manage that transition as possible.

Hess: Well, let's talk about those auto suppliers. Have automotive suppliers been impacted by the renegotiation with the Detroit Three or the organization at the Volkswagen plant?

Asensio: They probably are being impacted by the Big Three and the business changes that are going on there and the negotiations from last year. I'm sure they're being impacted. What happens typically is that the contract, when the contracts occur with the Big Three, there are opportunities for those employers to go ahead and move production to readjust supply arrangements that they may have, supply chains in general, and I'm sure they're, they have negotiated with all of those issues in mind, which is going to, typically, would result in the amount of work that suppliers see come their way, could increase it or decrease it. And one of the things that the UAW has done in reaction to that, historically, as they have sought to organize suppliers, they even famously, about 20 years ago, were looking for lists of suppliers from the automotive companies and cooperation from the Big Three or Big Four in terms of helping them organize those suppliers. So, that is absolutely, that kind of interrelationship is certainly going to continue.

Hess: And, Mike, final question for this area. What are the lessons learned from these negotiations and the two organization attempts? What are some key takeaways for our listeners?

Asensio: Well, I think the new tactics that we saw this last go around in 2023 are likely here to stay, at least through the next negotiation cycle. Very aggressive demands, more strike activity, critical for the UAW is that they take the public perception of success that they had from 2023 and try to organize automakers. And as I mentioned, in the South, Tesla ,suppliers, this is a opportune moment for them that is going to wane if they don't act on it. The automotive companies, they're going to react as well, they're going to go back and look and identify lessons learned from the last negotiations and try and do what they can to strategize around how they prepare for the next cycle of negotiations in 2027 and what types of negotiation strategies they want to implement to try and respond to what they saw from the UAW. It is always a little bit of a chess game as they go cycle to cycle.

Hess: Mike Ascencio, thank you for being a guest on Rev Up!, Where the Rubber Meets the Law.

Asensio: Thank you, Ashley.

Kattman: Thank you, Ashley and Mike. If you have any questions, their contact information is in the show notes. Thanks for listening to BakerHosts. We hope you will join us for our next episode, where we will continue discussing the workforce and take a deeper dive on labor and employment issues and M&A transactions. You can check out future episodes of Rev Up! by subscribing to BakerHosts wherever you get your podcasts.