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**Conforming Matrix Corporation and International Union, United Automobile, Aerospace, and Agricultural Implement Workers of America, Local 12 (UAW). Case 08–CA–222146**

September 13, 2019

**DECISION AND ORDER**

BY CHAIRMAN RING AND MEMBERS MCFERRAN  
AND EMANUEL

The General Counsel seeks a default judgment in this case on the ground that the Respondent has failed to file an answer to the complaint. Upon a charge and a first amended charge filed by the International Union, United Automobile, Aerospace, and Agricultural Implement Workers of America, Local 12 (UAW) (the Union) on June 18, 2018 and April 2, 2019, the General Counsel issued a complaint and notice of hearing on April 29, 2019 (the complaint), against Conforming Matrix Corporation (the Respondent), alleging that it violated Section 8(a)(5) and (1) of the National Labor Relations Act (the Act). The Respondent failed to file an answer.

On June 7, 2019, the General Counsel filed a Motion for Default Judgment with the Board. Thereafter, on June 11, 2019, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

**Ruling on Motion for Default Judgment**

Section 102.20 of the Board's Rules and Regulations provides that the allegations in a complaint shall be deemed admitted if an answer is not filed within 14 days of service of the complaint, unless good cause is shown. In addition, the complaint affirmatively stated that, unless an answer was filed by May 13, 2019, the Board may find, pursuant to a motion for default judgment, that the allegations in the complaint are true. Further, the undisputed allegations in the General Counsel's Motion for Default Judgment disclose that the General Counsel, by letter and email dated May 15, 2019, advised the Respondent that unless an answer was filed by May 24, 2019, a motion for default judgment would be filed. Nonetheless, despite these notices, the Respondent failed to file an answer.

In the absence of good cause being shown for the failure to file an answer, we deem the allegations in the

complaint to be admitted as true, and we grant the General Counsel's Motion for Default Judgment.

On the entire record, the Board makes the following

**FINDINGS OF FACT**

**I. JURISDICTION**

At all material times, the Respondent, an Ohio corporation with an office and place of business in Toledo, Ohio (the Respondent's facility), has been engaged in the business of manufacture of custom coating systems and decorative masking equipment.

During the 12-month period preceding January 31, 2018, the Respondent, in conducting its business operations described above, sold and shipped from its Toledo, Ohio facility goods valued in excess of \$50,000 directly to points outside the State of Ohio.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

**II. ALLEGED UNFAIR LABOR PRACTICES**

At all material times, Jeffrey Mosley held the position of the Respondent's general manager, and has been a supervisor of the Respondent within the meaning of Section 2(11) of the Act and an agent of the Respondent within the meaning of Section 2(13) of the Act. The following employees of the Respondent (the unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All production employees and employees on temporary layoff, but excluding office clerical employees, shipping and receiving, professional employees, draftsmen, machine designers, guards and supervisors as defined by the National Labor Relations Act.

Since at least 2012, and at all material times, the Respondent has recognized the Union as the exclusive collective-bargaining representative of the unit. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which was effective from April 1, 2015 to March 31, 2018.

On about February 1, 2018, the Respondent, by Jeffrey Mosely, notified the Union by email that it would cease operations and close its facility, effective February 2, 2018. On about February 1 and on subsequent dates, the Union requested, by voicemail and email, that the Respondent bargain collectively with the Union regarding the effects of its decision to cease operations and close its facility. About February 2, 2018, the Respondent ceased operations and closed its facility.

The subjects set forth above relate to the wages, hours, and other terms and conditions of employment of the unit and are mandatory subjects for the purposes of collective bargaining. The Respondent engaged in the conduct described above without providing timely and sufficient notice of its decision to cease operations to the Union and without affording the Union a meaningful opportunity to bargain collectively with the Respondent with respect to the effects of this conduct. Since about February 1, 2018, and continuously thereafter, the Respondent has failed and refused to bargain collectively about the subjects set forth above.

#### CONCLUSION OF LAW

By failing and refusing to bargain over the effects of its decision to close its Toledo, Ohio facility, the Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees, in violation of Section 8(a)(5) and (1) of the Act, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

#### REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(5) and (1) of the Act by refusing to bargain with the Union about the effects of its decision to close the facility, we shall order the Respondent to bargain with the Union, on request, about the effects of that decision. Because of the Respondent's unlawful conduct, however, the unit employees have been denied an opportunity to bargain through their collective-bargaining representative at a time when the Respondent might still have needed their services and a measure of balanced bargaining power existed. Meaningful bargaining cannot be assured until some measure of economic strength is restored to the Union. A bargaining order alone, therefore, cannot serve as an adequate remedy for the unfair labor practices committed.

Accordingly, we deem it necessary, to ensure that meaningful bargaining occurs and to effectuate the policies of the Act, to accompany our bargaining order with a limited backpay requirement designed both to make whole the unit employees for losses suffered as a result of the violations and to recreate in some practicable manner a situation in which the parties' bargaining position is not entirely devoid of economic consequences for the Respondent. We shall do so by ordering the Respondent to pay backpay to the unit employees in a man-

ner similar to that required in *Transmarine Navigation Corp.*, 170 NLRB 389 (1968), as clarified by *Melody Toyota*, 325 NLRB 846 (1998).

Thus, the Respondent shall pay its unit employees backpay at the rate of their normal wages when last in the Respondent's employ from 5 days after the date of this Decision and Order until occurrence of the earliest of the following conditions: (1) the date the Respondent bargains to agreement with the Union on those subjects pertaining to the effects on the unit employees of its decision to close its Toledo, Ohio facility; (2) a bona fide impasse in bargaining; (3) the Union's failure to request bargaining within 5 business days after receipt of this Decision and Order, or to commence negotiations within 5 business days after receipt of the Respondent's notice of its desire to bargain with the Union; or (4) the Union's subsequent failure to bargain in good faith.

In no event shall the sum paid to these employees exceed the amount they would have earned as wages from the date on which the Respondent closed its Toledo, Ohio facility to the time they secured equivalent employment elsewhere, or the date on which the Respondent shall have offered to bargain in good faith, whichever occurs sooner. However, in no event shall this sum be less than the unit employees would have earned for a 2-week period at the rate of their normal wages when last in the Respondent's employ. Backpay shall be based on earnings that the unit employees would normally have received during the applicable period, less any net interim earnings, and shall be computed in accordance with *Ogle Protection Service*, 183 NLRB 682 (1970), *enfd.* 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010), and minus tax withholdings required by State and Federal law.

Additionally, we shall order the Respondent to compensate the unit employees for any adverse tax consequences of receiving a lump-sum backpay award and to file a report with the Regional Director for Region 8 allocating the backpay award to the appropriate calendar years for each employee. *Advoserv of New Jersey, Inc.*, 363 NLRB No. 143 (2016).

Finally, in view of the fact that the Respondent has closed its Toledo, Ohio facility, we shall order the Respondent to mail a copy of the attached notice to the Union and to the last known addresses of its former unit employees to inform them of the outcome of this proceeding.

ORDER

The National Labor Relations Board orders that the Respondent, Conforming Matrix Corporation, Toledo, Ohio, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain collectively and in good faith with the International Union, United Automobile, Aerospace, and Agricultural Implement Workers of America, Local 12 (UAW) (the Union) as the exclusive collective-bargaining representative of the employees in the following bargaining unit by failing and refusing to bargain over the effects of the Respondent’s decision to close its Toledo, Ohio facility:

All production employees and employees on temporary layoff, but excluding office clerical employees, shipping and receiving, professional employees, draftsmen, machine designers, guards and supervisors as defined by the National Labor Relations Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain collectively and in good faith with the Union concerning the effects of the Respondent’s decision to close its Toledo, Ohio facility and reduce to writing and sign any agreement reached as a result of such bargaining.

(b) Pay to the unit employees their normal wages for the period set forth in the remedy section of this decision, with interest.

(c) Compensate the unit employees for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and file with the Regional Director for Region 8, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar years for each employee.

(d) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, duplicate and mail, at its own expense and after being signed by the Respondent’s authorized representative, copies of

the attached notice marked “Appendix”<sup>1</sup> to the Union and to the last-known address of all unit employees who were employed by the Respondent at the time that it closed its facility on about February 2, 2018. In addition to the physical mailing of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means.

(f) Within 21 days after service by the Region, file with the Regional Director for Region 8 a sworn certification of a responsible official on a form provided by the Region attesting to the steps the Respondent has taken to comply.

Dated, Washington, D.C. September 13, 2019

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John F. Ring, Chairman

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Lauren McFerran, Member

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William J. Emanuel, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD  
APPENDIX  
NOTICE TO EMPLOYEES  
MAILED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
AN AGENCY OF THE UNITED STATES GOVERNMENT

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to mail and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO  
Form, join, or assist a union  
Choose a representative to bargain with us on your behalf  
Act together with other employees for your benefit and protection  
Choose not to engage in any of these protected activities.

<sup>1</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading “Mailed by Order of the National Labor Relations Board” shall read “Mailed Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.”

WE WILL NOT fail and refuse to bargain collectively and in good faith with International Union, United Automobile, Aerospace, and Agricultural Implement Workers of America, Local 12 (UAW) (the Union) as the exclusive collective-bargaining representative of our employees in the following unit by failing to bargain with the Union over the effects of our decision to close our Toledo, Ohio facility:

All production employees and employees on temporary layoff, but excluding office clerical employees, shipping and receiving, professional employees, draftsmen, machine designers, guards and supervisors as defined by the National Labor Relations Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL, on request, bargain collectively and in good faith with the Union concerning the effects of our decision to close our Toledo, Ohio facility on February 2, 2018, and WE WILL reduce to writing and sign any agreement reached as a result of such bargaining.

WE WILL pay our unit employees limited backpay in connection with our failure to bargain over the effects of our decision to close our Toledo, Ohio facility, as re-

quired by the Decision and Order of the National Labor Relations Board.

WE WILL compensate our unit employees for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and WE WILL file with the Regional Director for Region 8, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar years for each employee.

CONFORMING MATRIX CORPORATION

The Board's decision can be found at [www.nlr.gov/case/08-CA-222146](http://www.nlr.gov/case/08-CA-222146) or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

