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**Badger Packaging Corporation and United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO-CLC.** Cases 18-CA-248224, 18-CA-256426 and 18-CA-257051

July 31, 2020

DECISION AND ORDER

BY CHAIRMAN RING AND MEMBERS KAPLAN AND  
EMANUEL

The General Counsel seeks a default judgment in this case on the ground that Badger Packaging Corporation (the Respondent) has failed to file an answer to the complaint. Upon charges and amended charges filed by United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO-CLC (the International Union) on behalf of its Local 2-00598 (Local Union) (collectively referred to as “the Union”) on various dates from September 13, 2019, through April 8, 2020, the General Counsel issued a consolidated complaint and notice of hearing on April 17, 2020, against the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the Act.<sup>1</sup> The Respondent failed to file an answer.

On May 19, 2020, the General Counsel filed with the National Labor Relations Board a motion for default judgment. Thereafter, on June 3, 2020, 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.

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 from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively stated that unless an answer was received by May 1, 2020, 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

<sup>1</sup> The complaint states that the charge and first amended charge in Case 18-CA-248224 were served on the Respondent on September 16 and September 20, 2020, respectively. We correct these inadvertent errors to read 2019, as reflected on the respective affidavits of service.

<sup>2</sup> The General Counsel’s motion states that on May 5, 2020, Subregion 30 advised the Respondent’s president, James Anderson, that the

disclose that Subregion 30, by letter served via UPS, certified and regular mail, and email dated May 5, 2020, advised the Respondent that unless an answer was received by May 12, 2020, the Region may pursue a default judgment.<sup>2</sup> Nevertheless, 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 motions to transfer case to and continue proceedings before the Board and for default judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent has been a corporation with an office and place of business in West Bend, Wisconsin (the Respondent’s facility) and has been engaged in the manufacture of corrugated fiber board packaging. In conducting its operations during the calendar year ending December 31, 2019, the Respondent sold and shipped from its West Bend, Wisconsin, facility goods valued in excess of \$50,000 directly to points outside the State of Wisconsin.

We find that the Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

At all material times, the International Union and the Local Union have been labor organizations within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

1. At all material times, James Anderson held the position of the Respondent’s president 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.

2. 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 regular full-time and regular part-time employees employed by the Employer in the following classifications: Flexo Folder Glue Operator, Flexo Folder Glue Helper, Printer/Slotter Operator, Printer/Slotter Helper, Rotary Die Cutter Operator, Rotary Die Cutter Helper,

Respondent had until May 5, 2020 to file and serve its answer to the complaint. However, the record indicates that the Subregion’s letter requested that the Respondent file an answer by May 12, 2020. We correct this inadvertent error.

Autoplaten Operator, Autoplaten Helper, Die Mounter, Finishing Operator, Bander Operator, Shipping/Dispatch, Material Handler, Truck Driver, Maintenance, Maintenance Helper, and Lead Man Adder.

3. 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 September 1, 2017, to August 31, 2019.

4. At all material times, based on Section 9(a) of the Act, the Union has been the designated exclusive collective-bargaining representative of the unit.

5. The Union, on the dates and by the methods listed below, requested that the Respondent bargain collectively with the Union as the exclusive collective-bargaining representative of the unit for a successor collective-bargaining agreement:

May 15, 2019	by certified letter
July 2019	by voicemail
(on three unknown dates)	
August 2, 2019	in person
August 8, 2019	by certified letter
August 26, 2019	by certified letter

6. Between May 15, 2019, and September 30, 2019, the Respondent failed and refused to respond to the Union's requests to bargain.

7. Between May 15, 2019, and October 10, 2019, the Respondent failed and refused to bargain with the Union as the exclusive collective-bargaining representative of the unit.

8. On October 10, 2019, the Respondent met and bargained with the Union, resulting in a signed side agreement. This agreement provided, among other things, that the parties would extend the collective-bargaining agreement and postpone negotiations for a successor collective-bargaining agreement until March 2020, with an agreement renewal set for June 2020. The agreement also provided that the Respondent would make whole 401(k) participants by the end of November 2019.

9. The Union, on the dates and by the methods listed below, requested that the Respondent bargain collectively with the Union as the exclusive collective-bargaining representative of the unit for a successor collective-bargaining agreement, pursuant to the side agreement described above:

February 26, 2020	by electronic mail
March 9, 2020	by electronic mail

10. Since February 26, 2020, the Respondent has failed and refused to respond to and bargain with the Union as the exclusive collective-bargaining representative of the unit.

11. Since about April 2019, the Respondent unilaterally, and without agreement of the Union, has failed to remit dues to the International Union despite having deducted dues from employee paychecks pursuant to valid dues checkoff authorizations.

12. Since at least June 2019, the Respondent unilaterally, and without agreement of the Union, has failed to:

(a) Deposit 401(k) contributions that were deducted from employee paychecks;

(b) Match 50 percent of the first 5 percent of pay contributed by employees to their 401(k) accounts; and

(c) Make a discretionary contribution of \$300 per quarter for employees who have worked a minimum of 250 hours during the quarter and have been employed by or retained seniority with the Respondent on the last day of the quarter.

13. The subjects set forth above in paragraphs 11 and 12 relate to wages, hours, and other terms and conditions of employment of the unit and are mandatory subjects for the purposes of collective bargaining.

14. The Respondent engaged in the conduct described above in paragraphs 11 and 12 without prior notice to the Union and without providing the Union an opportunity to bargain with the Respondent with respect to this conduct.

15. About April 2019, the Respondent failed to continue in effect all the terms and conditions of the agreement described above in paragraphs 2 through 4 by failing to remit dues to the International Union despite having deducted dues from employee paychecks pursuant to valid dues checkoff authorizations.

16. About June 2019, the Respondent failed to continue in effect all the terms and conditions of the agreement described in paragraphs 2 through 4 by failing to:

(a) Deposit 401(k) contributions that were deducted from employee paychecks;

(b) Match 50 percent of the first 5 percent of pay contributed by employees to their 401(k) accounts; and

(c) Make a discretionary contribution of \$300 per quarter for employees who have worked a minimum of 250 hours during the quarter and have been employed by or retained seniority with the Employer on the last day of the quarter.

17. The terms and conditions of employment described in paragraphs 15 and 16 are mandatory subjects for the purposes of collective bargaining and the Respondent engaged in the conduct without the Union's consent.

18. Since about May 15, 2019, the Union has requested in writing that the Respondent furnish the Union with the

information set forth in Exhibit A of the complaint to prepare for contract negotiations.<sup>3</sup>

19. Since about August 26, 2019, the Union has requested in writing that the Respondent furnish the Union with the following information: an explanation of the frequency with which dues are submitted; the last transaction in which dues were submitted with some type of receipt or verification; a list of all employees who participate in the Company 401(k) plan; how much each employee contributes to the 401(k) plan; how much the company contributes to each employee 401(k) plan; and when the last contribution was made to each 401(k) plan participant.

20. The information requested by the Union, as described above in paragraphs 18 and 19, is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the unit.

21. Since about May 15, 2019, the Respondent, by President James Anderson, has failed and refused to furnish the Union with the information requested by it.

#### CONCLUSIONS OF LAW

By the conduct described above in paragraphs 5 through 14 and 18 through 21, 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.

By the conduct described above in paragraphs 15 through 17, the Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees within the meaning of Section 8(d) of the Act in violation of Section 8(a)(5) and (1) of the Act.

The Respondent's unfair labor practices described above affect 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 violated Section 8(a)(5) and (1) by failing and refusing to bargain collectively and in good faith with the Union as the exclusive collective-bargaining representative of the employees in the unit by failing and refusing to respond to the Union's requests to bargain and by failing and refusing to bargain with the Union, we shall order the Respondent, on request, to meet and bargain

collectively and in good faith with the Union as the exclusive collective-bargaining representative of the unit, and, if an understanding is reached, to embody the understanding in a signed agreement.

Having found that the Respondent has violated Section 8(a)(5) and (1) by making unilateral changes to the terms and conditions of employment of bargaining unit employees, we shall order the Respondent to rescind those changes upon request. Having found that the Respondent unilaterally failed to remit dues to the International Union, despite having deducted the dues from employee paychecks pursuant to valid dues checkoff authorizations, we shall order the Respondent to make the Union whole for all dues that would have been paid but for the Respondent's unlawful conduct by remitting to the International Union the dues deducted from about April 2019 until the expiration of the collective-bargaining agreement as extended<sup>4</sup> and to make employees whole for any expenses ensuing from the Respondent's failure to make the remittances as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891, 891 fn. 2 (1980), *enfd.* 661 F.2d 940 (9th Cir.1981), the amounts to be computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), with interest as prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010). We shall further order the Respondent to return to employees any dues deducted but not remitted to the Union after the expiration of the extended contract, with the amounts and interest calculated in the manner set forth above.<sup>5</sup>

Additionally, having found that the Respondent failed to continue in effect all the terms and conditions of the 2017–2019 collective-bargaining agreement in violation of Section 8(a)(5) and (1) by failing since June 2019 to deposit 401(k) contributions that were deducted from employee paychecks; to match 50 percent of the first 5 percent of pay contributed by employees to their 401(k) accounts; and to make a discretionary contribution of \$300 per quarter for employees who have worked a minimum of 250 hours during the quarter and have been employed by or retained seniority with the Respondent on the last day of the quarter, as required by the 2017–2019 collective-bargaining agreement, we shall order the Respondent to rescind its unlawful actions and to make whole its unit employees by making all such delinquent fund contributions on behalf of unit employees that have not been made since June 2019, including any additional amounts due the funds in accordance with *Merryweather Optical Co.*, 240

<sup>3</sup> Exhibit A consists of a standard form entitled "Contract Negotiation Information Request." The form seeks data concerning numbers, hours, and wages of hourly employees, as well as information about the coverage and costs of their insurance, pension, and 401(k) benefits.

<sup>4</sup> See *Valley Hospital Medical Center, Inc. d/b/a Valley Hospital Medical Center*, 368 NLRB No. 139 (2019).

<sup>5</sup> See *Betterroads Asphalt, LLC*, 369 NLRB No. 114 (2020).

NLRB 1213, 1216 fn. 7 (1979). The Respondent shall also reimburse the employees for any expenses ensuing from its failure to make the required contributions, as set forth in *Kraft Plumbing & Heating*, supra, the amounts to be computed in the manner set forth in *Ogle Protection Service*, supra, with interest as prescribed in *New Horizons*, supra, compounded daily as prescribed in *Kentucky River Medical Center*, supra.

We shall order the Respondent to compensate the unit employees for any adverse tax consequences of receiving lump-sum backpay awards and to file a report with the Regional Director for Region 18 allocating the backpay award to the appropriate calendar years for each employee, in accordance with *AdvoServ of New Jersey, Inc.*, 363 NLRB No. 143 (2016).

Finally, having found that the Respondent violated Section 8(a)(5) and (1) by failing and refusing to furnish the Union with relevant and necessary information, we shall order the Respondent to furnish to the Union, in a timely manner, the information requested on May 15 and August 26, 2019.

#### ORDER

The National Labor Relations Board orders that the Respondent, Badger Packaging Corporation, West Bend, Wisconsin, its officers, agents, successors, and assigns shall:

1. Cease and desist from
  - (a) Failing and refusing to bargain with United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO, CLC, on behalf of its Local 2-00598, as the exclusive collective-bargaining representative of the employees in the bargaining unit.
  - (b) Unilaterally changing the terms and conditions of employment of its unit employees.
  - (c) Failing and refusing to continue in effect all the terms and conditions of the collective-bargaining agreement by failing to make required benefit fund contributions.
  - (d) Refusing to bargain collectively with the Union by failing and refusing to furnish the Union with requested information that is relevant and necessary to the Union's performance of its functions as the exclusive collective-bargaining representative of the Respondent's unit employees.
  - (e) 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 with the Union as the exclusive collective-bargaining representative of the employees in

the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

All regular full-time and regular part-time employees employed by the Employer in the following classifications: Flexo Folder Glue Operator, Flexo Folder Glue Helper, Printer/Slotter Operator, Printer/Slotter Helper, Rotary Die Cutter Operator, Rotary Die Cutter Helper, Autoplaten Operator, Autoplaten Helper, Die Mounter, Finishing Operator, Bander Operator, Shipping/Dispatch, Material Handler, Truck Driver, Maintenance, Maintenance Helper, and Lead Man Adder.

(b) Before implementing any changes in wages, hours, or other terms and conditions of employment of bargaining unit employees, notify and, on request, bargain with the Union as the exclusive collective-bargaining representative of unit employees.

(c) Rescind the changes in the terms and conditions of employment of its unit employees that were unilaterally implemented about April and June 2019.

(d) Continue in effect all the terms and conditions of employment contained in its collective-bargaining agreement effective September 1, 2017, to August 31, 2019 as extended.

(e) Make the Union whole by remitting to the International Union dues that were deducted from unit employees' paychecks but not remitted from April 2019 until the expiration of the collective-bargaining agreement as extended, with interest, in the manner set forth in the remedy section of this decision.

(f) Return to employees any dues deducted but not remitted to the Union after the expiration of the extended contract, with interest, in the manner set forth in the remedy section of this decision.

(g) Make whole its unit employees by making all contractually required benefit fund contributions that have not been made since June 2019, pursuant to the 2017-2019 collective-bargaining agreement as extended, with interest, in the manner set forth in the remedy section of this decision.

(h) Make unit employees whole for any loss of earnings and other benefits suffered as a result of the Respondent's failure to remit dues and make benefit fund contributions, with interest, in the manner set forth in the remedy section of this decision.

(i) Compensate affected employees for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and file with the Regional Director for Region 18, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay awards to the appropriate calendar years for each employee.

(j) Furnish to the Union in a timely manner the relevant and necessary information requested on May 15 and August 26, 2019.

(k) 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.

(l) Post at its West Bend, Wisconsin facility copies of the attached notice marked "Appendix."<sup>6</sup> Copies of the notice, on forms provided by the Regional Director for Region 18, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(m) Within 21 days after service by the Region, file with the Regional Director for Region 18 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. July 31, 2020

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John F. Ring, Chairman

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Marvin E. Kaplan, Member

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William J. Emanuel, Member

<sup>6</sup> If the facility involved in these proceedings is open and accessible to a substantial complement of employees and members, the notices must be posted within 14 days after service by the Region. If the facility involved in these proceedings is closed due to the Coronavirus pandemic, the notices must be posted within 14 days after the facility reopens and a substantial complement of employees have regained access, and the notices may not be posted until a substantial complement of employees have regained access. Any delay in the physical posting of paper notices

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES  
POSTED 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 post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

- Form, join, or assist a union
- Choose representatives 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.

WE WILL NOT fail and refuse to bargain with United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO, CLC on behalf of its Local 2-00598 (collectively "the Union"), as the exclusive collective-bargaining representative of our employees in the bargaining unit.

WE WILL NOT change your terms and conditions of employment without first notifying the Union and giving it an opportunity to bargain.

WE WILL NOT fail and refuse to continue in effect all the terms and conditions of the collective-bargaining agreement by failing to make required benefit fund contributions.

WE WILL NOT refuse to bargain collectively with the Union by failing and refusing to furnish it with requested information that is relevant and necessary to the Union's performance of its functions as the exclusive collective-bargaining representative of our unit employees.

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 with the Union as the exclusive collective-bargaining representative of our

also applies to the electronic distribution of the notice if the Respondent customarily communicates with its employees by electronic means. If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

employees in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

All regular full-time and regular part-time employees employed by us in the following classifications: Flexo Folder Glue Operator, Flexo Folder Glue Helper, Printer/Slotter Operator, Printer/Slotter Helper, Rotary Die Cutter Operator, Rotary Die Cutter Helper, Autoplaten Operator, Autoplaten Helper, Die Mounter, Finishing Operator, Bander Operator, Shipping/Dispatch, Material Handler, Truck Driver, Maintenance, Maintenance Helper, and Lead Man Adder.

WE WILL, before implementing any changes in wages, hours, and other terms and conditions of employment of unit employees, notify and, on request, bargain with the Union as the exclusive collective-bargaining representative of our employees in the bargaining unit.

WE WILL rescind the changes in your terms and conditions of employment that were implemented about April and June 2019.

WE WILL continue in effect all the terms and conditions of employment contained in the collective-bargaining agreement effective September 1, 2017, to August 31, 2019 as extended.

WE WILL remit to the International Union dues that were deducted from your paychecks pursuant to valid dues checkoff authorizations and that have not been remitted from April 2019 until the expiration of our collective-bargaining agreement as extended, with interest.

WE WILL return to you union dues that we deducted from your paychecks but did not remit to the Union after

the collective-bargaining agreement as extended expired, with interest.

WE WILL make you whole for your loss of earnings and other benefits suffered as a result of our unlawful cessation of dues remittance to the Union and contractually required benefit contributions, with interest.

WE WILL compensate affected employees for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and file with the Regional Director for Region 18, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay awards to the appropriate calendar years for each employee.

WE WILL furnish to the Union in a timely manner the relevant and necessary information requested on May 15 and August 26, 2019.

#### BADGER PACKAGING CORPORATION

The Board's decision can be found at [www.nlr.gov/case/18-CA-248224](http://www.nlr.gov/case/18-CA-248224) 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.

