

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 9

In the Matter of

VOITH INDUSTRIAL SERVICES, INC.

and

Cases 9-CA-075496  
9-CA-078747  
9-CA-082437

GENERAL DRIVERS, WAREHOUSEMEN &  
HELPERS, LOCAL UNION NO. 89, AFFILIATED  
WITH THE INTERNATIONAL BROTHERHOOD  
OF TEAMSTERS

and

INTERNATIONAL UNION, UNITED AUTOMOBILE,  
AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS  
OF AMERICA, AFL-CIO

and

UNITED AUTOMOBILE, AEROSPACE AND  
AGRICULTURAL IMPLEMENT WORKERS  
OF AMERICA, LOCAL UNION NO. 862, AFL-CIO

and

Cases 9-CB-075505  
9-CB-082805

GENERAL DRIVERS, WAREHOUSEMEN &  
HELPERS, LOCAL UNION 89, AFFILIATED  
WITH THE INTERNATIONAL BROTHERHOOD  
OF TEAMSTERS

ORDER CONSOLIDATING CASES,  
AMENDED SECOND CONSOLIDATED COMPLAINT  
AND  
ORDER SCHEDULING HEARING

General Drivers, Warehousemen & Helpers, Local Union No. 89, affiliated with the  
International Brotherhood of Teamsters, hereir called Teamsters Local 89, in Cases

EXHIBIT 2

9-CA-075496, 9-CA-078747 and 9-CA-082437, has charged that Voith Industrial Services, Inc., herein called Respondent Voith, and in Cases 9-CB-075505 and 9-CA-082805, has charged that International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, AFL-CIO, herein called Respondent UAW International, and United Auto Workers Local 862, AFL-CIO, herein referred to by its correct name United Automobile, Aerospace and Agricultural Implement Workers of America, Local Union No. 862, AFL-CIO, and herein called Respondent UAW Local 862, have been engaging in unfair labor practices as set forth and defined in the National Labor Relations Act, 29 U.S.C. § 151 et seq., herein called the Act. Based thereon, and in order to avoid unnecessary costs or delay, the Acting General Counsel, by the undersigned, pursuant to Section 102.33 of the Rules and Regulations of the National Labor Relations Board, herein called the Board, ORDERS that these cases are consolidated.

These cases having been consolidated, the Acting General Counsel, by the undersigned, pursuant to Section 10(b) of the Act and Section 102.15 of the Board's Rules and Regulations, issues this Order Consolidating Cases, Amended Second Consolidated Complaint and Order Scheduling Hearing and alleges as follows:

1. (a) The charge in Case 9-CA-075496 was filed by Teamsters Local 89 on February 28, 2012, and a copy was served by regular mail on Respondent Voith on February 29, 2012.

(b) The charge in Case 9-CA-078747 was filed by Teamsters Local 89 on April 12, 2012, and a copy was served by regular mail on Respondent Voith on April 13, 2012.

(c) The amended charge in Case 9-CA-078747 was filed by Teamsters Local 89 on May 31, 2012, and a copy was served by regular mail on Respondent Voith on June 1, 2012.

(d) The charge in Case 9-CB-075505 was filed by Teamsters Local 89 on February 28, 2012, and a copy was served by regular mail on Respondent UAW Local 862 on February 29, 2012.

(e) The amended charge in Case 9-CB-075505 was filed by Teamsters Local 89 on June 14, 2012, and a copy was served by regular mail on Respondents UAW Local 862 and International on June 14, 2012.

(f) The charge in Case 9-CA-082437 was filed by Teamsters Local 89 on June 5, 2012, and a copy was served by regular mail on Respondent Voith on the same date.

(g) The amended charge in Case 9-CA-082437 was filed by Teamsters Local 89 on July 19, 2012, and a copy was served by regular mail on Respondent Voith on July 20, 2012.

(h) The charge in Case 9-CB-082805 was filed by Teamsters Local 89 on June 11, 2012, and a copy was served by regular mail on Respondent UAW Local 862 on the same date.

(i) The amended charge in Case 9-CB-082805 was filed by Teamsters Local 89 on June 18, 2012, and a copy was served by regular mail on Respondents UAW Local 862 and International on June 19, 2012.

2. (a) At all material times, Respondent Voith, has been a corporation with an office and place of business in Louisville, Kentucky and has been engaged in the business of cleaning and providing transportation and logistic services to customers in the automobile manufacturing industry.

(b) During the past 12 months, Respondent Voith, in conducting its operations described above in paragraph 2(a), purchased and received at its Louisville, Kentucky facility goods valued in excess of \$50,000 directly from points outside the Commonwealth of Kentucky.

(c) At all material times, Respondent Voith has been an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

3. (a) On or about February 13 and March 1, 2012, Respondent Voith entered into agreements with Ford Motor Company, herein called Ford, to provide vehicle staging, shuttle and yard/inventory management services for Ford. These services had been previously performed by Auto Handling, Inc., a wholly owned subsidiary of Jack Cooper Transport Company, herein called Cooper Transport.

(b) Since about April 9, 2012, Respondent has operated the prior business of Cooper Transport described above in paragraph 3(a) in basically unchanged form.

(c) But for the conduct described below in paragraph 9, Respondent Voith would have employed as a majority of its employees individuals who were previously employees of Cooper Transport.

(d) By virtue of the operations and conduct described above in paragraphs 3(a) through (c), and below in paragraph 9, Respondent Voith has continued the employing entity and is successor to Cooper Transport.

4. At all material times, Teamsters Local 89 has been a labor organization within the meaning of Section 2(5) of the Act.

5. (a) At all material times, Respondent UAW International has been a labor organization within the meaning of Section 2(5) of the Act.

(b) At all material times, Respondent UAW Local 862 has been a labor organization within the meaning of Section 2(5) of the Act.

6. At all material times from about March 1, 2012 to the present, Aerotek, Inc. (Aerotek) has been an agent of Respondent Voith for purposes of hiring employees within the meaning of Section 2(13) of the Act.

7. (a) At all material times, the following individuals have held the positions set forth opposite their respective names and have been supervisors of Respondent Voith within the meaning of Section 2(11) of the Act and agents of Respondent Voith within the meaning of Section 2(13) of the Act:

Harry J. Nieman	-	President
Donald G. Morsch	-	Treasurer
Jerri Hall	-	Vice President of People Services
Erwin Gebhardt	-	Director of Labor Relations
Doug Couch	-	Facilities Manager
Timothy P. Bauer	-	Peoples Services Manager
Bret Griffin	-	Regional Manager
Dennis D. Frank	-	Services Line Manager for Vehicle Processing
Tom Baker	-	Offsite Supervisor

(b) At all material times, Sarah Curry Martinez held the position of Aerotek's Accounts Manager, and has been a supervisor of Aerotek within the meaning of Section 2(11) of the Act and an agent of Respondent Voith within the meaning of Section 2(13) of the Act.

8. At all material times, the following individuals have held the positions set forth opposite their respective names and have been agents of Respondent UAW International and Respondent UAW Local 862 within the meaning of Section 2(13) of the Act:

Jimmie Settles	-	UAW International Vice-President, UAW Ford National
George Palmer	-	UAW International Representative, UAW Region 8
Todd Dunn	-	UAW Local 862 President
Steve Stone	-	UAW Local 862 LAP Building Chairman
Dennis Skaggs	-	UAW Local 862 Representative
Teddy Hunt	-	UAW Local 862 Voith Unit Chairperson

9. (a) About January 31, 2012, Respondent Voith implemented a plan to hire about 84 employees and established a hiring procedure and engaged in other conduct designed to exclude and/or limit the hiring of applicants who were former employees of Cooper Transport or members of Teamsters Local 89.

(b) Since about February 17, 2012, Respondent Voith has failed and refused to hire or consider for hire the former employees of Cooper Transport listed on Exhibit A attached hereto, who were members of the bargaining unit described below in paragraph 10, and others similarly situated.

(c) Respondent Voith engaged in the conduct described above in paragraphs 9(a) and (b) because the former employees of Cooper Transport were members of Teamsters Local 89, engaged in concerted activities, and to discourage employees from engaging in these activities and in order to avoid an obligation to recognize and bargain with Teamsters Local 89 as the exclusive collective-bargaining representative of the employees described below in paragraph 10.

10. The employees of Respondent Voith, as set forth in Article 3 of the National Master Automobile Transporters Agreement, Central and Southern Area Supplemental Agreements and the Job Descriptions provisions of the Local Rider, herein called the Unit, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

11. (a) Since about 1952 and at all material times, Teamsters Local 89 has been the designated exclusive collective-bargaining representative of the Unit and, during that time, Teamsters Local 89 has been recognized as the representative by Cooper Transport and its

predecessors. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which was effective June 1, 2011 to August 31, 2015.

(b) At all times from 1952 to February 16, 2012, based on Section 9(a) of the Act, Teamsters Local 89 has been the exclusive collective-bargaining representative of the Unit described above in paragraphs 10 and 11(a).

(c) At all material times since about February 17, 2012, based on the conduct described above in paragraphs 3, 9, and 11(a) and (b), Teamsters Local 89 has been the exclusive collective-bargaining representative of Respondent Voith's employees in the Unit.

(d) At all times since about February 17, 2012, based on Section 9(a) of the Act, Teamsters Local 89 has been the exclusive collective-bargaining representative of the Unit.

12. (a) Since about February 17, 2012, Respondent Voith has failed and refused to recognize and bargain with Teamsters Local 89 as the exclusive collective-bargaining representative of the Unit and has unilaterally established initial terms and conditions of employment for the employees in the Unit.

(b) On a date presently unknown to the Acting General Counsel, Respondent Voith unilaterally contracted with Aerotek, Inc. to perform bargaining-unit work.

(c) The subject set forth above in paragraph 12(b) relates to wages, hours and other terms and conditions of employment of the Unit and are mandatory subjects for the purpose of collective bargaining.

(d) Respondent engaged in the conduct described above in paragraph 12(b) without prior notice to Teamsters Local 89 and without offering Teamsters Local 89 an opportunity to bargain with Respondent Voith with respect to this conduct and the effects of this conduct.

(e) As a result of Respondent Voith's conduct described above in paragraph 12(b) Respondent Voith failed and refused to hire or consider for hire the former employees of Cooper Transport listed on Exhibit A, attached hereto.

13. About February 20, 2012, Respondent Voith rendered assistance and support to Respondent UAW International and Respondent UAW Local 862 by allowing Respondent UAW International and Respondent UAW Local 862 to meet with employees during their orientation in order to urge the employees to sign membership applications and check off authorizations.

14. (a) About February 22, 2012, Respondent Voith granted recognition to Respondent UAW International and Respondent UAW Local 862 as the exclusive collective-bargaining representatives of the Unit described above in paragraph 10.

(b) About May 1, 2012, Respondent Voith granted recognition to Respondent UAW International and Respondent UAW Local 862 as the exclusive collective-bargaining representative of the Unit described above in paragraph 10.

(c) Respondent Voith engaged in the conduct described above in paragraphs 14(a) and (b) even though Respondent UAW International and Respondent UAW Local 862 did not represent an uncoerced majority of the Unit.

(d) Respondent Voith engaged in the conduct described above in paragraph 14(a) even though Respondent Voith had not started normal operations and did not employ in the Unit a representative segment of its ultimate employee complement.

15. On or about March 5, 2012, Respondent Voith, by Tim Bauer, during an employment interview at the offices of Aerotek, Inc., told an employee that if the employee was hired the employee would have to become a member of Respondent UAW International and Respondent UAW Local 862.

16. About April 10, 2012, Respondent Voith, by Doug Couch, during orientation, told an employee that new hires were represented by Respondent UAW and would receive UAW health insurance.

17. About April 11, 2012, Respondent Voith, by Dennis Frank, rendered assistance and support to Respondent UAW International and Respondent UAW Local 862 by allowing Respondent UAW International and Respondent UAW Local 862 to meet with its employees during work time in order to urge Respondent Voith's employees to sign membership applications and check off authorizations.

18. About April 16, 2012, Respondent Voith, by Tom Baker, rendered assistance and support to Respondent UAW International and Respondent UAW Local 862 by allowing Respondent UAW International and Respondent UAW Local 862 to meet with Respondent Voith's employees during work time in order to urge its employees to sign membership applications.

19. About February 20, April 11, and April 16, 2012, Respondent UAW International and Respondent UAW Local 862 received assistance and support from Respondent Voith which allowed Respondent UAW International and Respondent UAW Local 862 to meet with Respondent Voith's employees in order to urge the employees to sign membership applications and check off authorizations.

20. (a) About February 22, 2012, Respondent UAW International and Respondent UAW Local 862 obtained recognition from Respondent Voith as the exclusive collective-bargaining representatives of the Unit.

(b) About May 1, 2012, Respondent UAW International and Respondent UAW Local 862 obtained recognition from Respondent Voith as the exclusive collective-bargaining representative of the unit.

(c) Respondent UAW International and Respondent UAW Local 862 engaged in the conduct described above in paragraphs 20(a) and (b), even though they did not represent an uncoerced majority of the Unit.

(d) Respondent UAW International and Respondent UAW Local 862 engaged in the conduct described above in paragraph 20(a), even though Respondent Voith had not started normal operations and did not employ in the Unit a representative segment of its ultimate employee complement.

21. Respondent Voith, by Bret Griffin, at its Louisville, Kentucky facility:

(a) About May 31, 2012, threatened to discharge employees if they did not wear a Voith/UAW safety vest.

(b) About June 1, 2012, instructed employees in a staff meeting to report other employees' union activities.

(c) About June 1, 2012, denied Teamsters 89 representatives access to employees while extending access to Respondent UAW.

22. Respondent Voith, by Sarah Curry Martinez:

(a) On or about April 9, 2012, by telephone, informed an employee that he would only be hired if he promised to refrain from engaging in lawful Section 7 activity, i.e. engaging in striking or picketing.

(b) On or about April 9, 2012, by telephone, informed an employee that other members of Teamsters 89 would be hired if she did not fear that they would engage in lawful Section 7 activity, i.e. striking or picketing.

23. By the conduct described above in paragraphs 15, 16, 21 and 22, Respondent Voith has been interfering with, restraining and coercing employees in the exercise of their rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.

24. By the conduct described above in paragraphs 13, 14, 15, 16, 17 and 18, Respondent Voith has been rendering unlawful assistance and support to Respondent UAW International and Respondent UAW Local 862 in violation of Section 8(a)(1) and (2) of the Act.

25. By the conduct described above in paragraph 9, Respondent Voith has been discriminating in regard to the hire or tenure, or terms or conditions of employment, of its employees, thereby discouraging membership in a labor organization in violation of Section 8(a)(1) and (3) of the Act.

26. By the conduct described above in paragraph 12, Respondent Voith 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)(1) and (5) of the Act.

27. By the conduct described above in paragraphs 19 and 20, Respondent UAW International and Respondent UAW Local 862 have been restraining and coercing employees in the exercise of their rights guaranteed in Section 7 of the Act in violation of Section 8(b)(1)(A) of the Act.

28. The unfair labor practices of Respondents Voith, UAW International and UAW Local 862 described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

WHEREFORE, as part of the remedy for the unfair labor practices alleged above in paragraphs 9 and 25, the Acting General Counsel seeks an Order requiring that Respondent Voith preserve and, within 14 days of a request, provide at the office designated by the Board or its agents, a copy of 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 reimbursement for lost wages or related costs due under the terms of this Order. If requested, the originals of such records shall be provided to the Board or its agents in the same manner.

In addition, as part of the remedy for the unfair labor practices alleged above in paragraphs 9 and 25, the Acting General Counsel seeks an Order requiring reimbursement of amounts equal to the differences in taxes owed upon receipt of a lump-sum payment and taxes that would have been owed had there been no discrimination. The Acting General Counsel also seeks, as part of the remedy for the allegations in paragraphs 9 and 25 that Respondent Voith be required to submit the appropriate documentation to the Social Security Administration so that when backpay is paid, it will be allocated to the appropriate periods.

Further, as a remedy for the unfair labor practices alleged herein, the Acting General Counsel seeks an Order requiring Respondent Voith to hold a meeting or meetings, scheduled to ensure the widest possible attendance at which the Board's Notice is to be read to employees by a responsible management official of Respondent Voith, or at Respondent Voith's option, by a

Board agent in that official's presence. Also, Respondent Voith shall be required to allow a representative of Teamsters Local 89 to be present during such reading or readings of the Notice.

As part of the remedy for the unfair labor practices alleged above in paragraphs 9, 12, 24, 25 and 26, the Acting General Counsel seeks an order requiring Respondent Voith to restore the terms and conditions of employment of its employees to those in effect under the collective-bargaining agreement, described in paragraph 10 above. These terms and conditions should be applied to all discriminatees herein and to the employees employed by Respondent Voith in the Unit as required by the Board in *Love's Barbecue*, 245 NLRB 78 (1979).

As part of the remedy for the unfair labor practices alleged in paragraph 12, the Acting General Counsel seeks an order requiring Respondent Voith, *inter alia*, to rescind its contract with Aerotek to perform work which otherwise would have been performed by the Unit and to offer any jobs created by this rescission to the employees listed in Exhibit A attached hereto and to others similarly situated.

Lastly, the Acting General Counsel further seeks all other relief as may be just and proper to remedy the unfair labor practices alleged.

#### **ANSWER REQUIREMENT**

Respondent is notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, it must file an answer to the complaint. The answer must be received by this office on or before **August 17, 2012**, or postmarked on or before **August 16, 2012**. Unless filed electronically in a pdf format, Respondent should file an original and four copies of the answer with this office.

An answer may also be filed electronically through the Agency's website. *To file electronically, go to [www.nlr.gov](http://www.nlr.gov), click on **File Case Documents**, enter the NLRB Case*

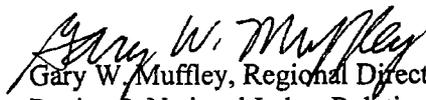
*Number, and follow the detailed instructions.* The responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that an answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. See Section 102.21. If the answer being filed electronically is a pdf document containing the required signature, no paper copies of the answer need to be transmitted to the Regional Office. However, if the electronic version of an answer to a complaint is not a pdf file containing the required signature, then the E-filing rules require that such answer containing the required signature continue to be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing. Service of the answer on each of the other parties must still be accomplished by means allowed under the Board's Rules and Regulations. The answer may not be filed by facsimile transmission. If no answer is filed, or if an answer is filed untimely, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the complaint are true.

Service of the answer on each of the other parties must be accomplished in conformance with the requirements of Section 102.114 of the Board's Rules and Regulations. The answer may not be filed by facsimile transmission. If no answer is filed or if an answer is filed untimely, the Board may find, pursuant to Motion for Default Judgment, that the allegations in the complaint are true.

**ORDER SCHEDULING HEARING**

IT IS HEREBY ORDERED that the hearing in these cases be, and they hereby are, scheduled at on **August 20, 2012**, at 1 p.m., and on consecutive days thereafter until concluded, in **Room 47, Gene Snyder Courthouse, 601 West Broadway, Louisville, Kentucky**, before an administrative law judge of the National Labor Relations Board. At the hearing, Respondent and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this complaint. The procedures to be followed at the hearing are described in the attached Form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

Dated at Cincinnati, Ohio this 3<sup>rd</sup> day of August 2012.

  
Gary W. Muffley, Regional Director  
Region 9, National Labor Relations Board  
3003 John Weld Peck Federal Building  
550 Main Street  
Cincinnati, Ohio 45202-3271

Attachments

Babbage	Terron	Miguel	
Bassett	Angela	Elizabeth	
Bernard	Jason	Neal	
Blandford	Shawn	K.	
Bridges	Roy	A.	
Bndges	Paul	M.	
Brooks	Lonnie	Paul	
Burden	Michael		
Burkhart	Maranda	Jane	
Burton	Mark	Anthony	
Burton	Richard	D.	
Byers	Tiffany	L.	
Byers	Jason	P.	
Cheatham	Deborah	Susan	
Clark	Jewell	Loury	
Davis	Johnny	Edward	
Doss	Helen	K.	
Downs	June	Gail	
Downs	William	C.	
Dudeck	Joseph	Charles Jr.	
Faulkner	Adam	Troy	
Fenwick	Virginia	Sue	
Fields	Bronston	Shane	
Filburn	Adam	Troy	
Flanagan	James	Christopher	
Flemming	Louis	E.	
Fluhr	Russell	Glen	
Fluhr	Russell	Glen	
Gilkey	Richard	Edward	
Girdley	James	Wayne	
Goldsmith	Anthony	Scott	
Goodrich	Damon	A.	
Grether	Wayne	Henry	
Helm	Walter	L.	
Helm	Brenda	L.	
Helm	Marcus	D.	
Johnson	Greg	C.	
Kelley	Theoras	Andre	
Kelley	Bronda		
Lewter	Kimberly	Dawn	
Lockard	Tammy	Lou	
Lowery	Jermaine	D.	
McCray	Michael	A.	
McCroy	Timothy	Kyle	
McGee	Vivian	J.	
Miller	Ralph	C.	
Moon	Roy	L.	
Morris	Tanitra	Tonett	
Murphy	Michael	Ronald	
Murphy	Patti	Jo	
Murphy	Tammy	Jo	
Norbury	Jason	J.	
Page	Marvin	E. Jr.	
Pinkard	Cassandra		
Poland	Dathan	L.	
Pope	Marcus	D.	
Proctor	John	A.	
Ragland	Rickey		

EXHIBIT A

Rankin	Michael	Lynn	
Rasool	Rasheed	M.	
Rhodes	James	Leroy	
Rhodes	Sandra	Darlene	
Rhodes	Tonya	Lynnett	
Ruzanka	Robert	John	
Sawyers	Eric	L.	
Schofield	Kathy	Jane	
Schott	Aaron	M.	
Scott	Gary	M.	
Scott	Donna	Sue	
Shaw	Donald	L.	
Shelburne	Angela	R.	
Smallwood	James	Timothy	
Smith	Christopher	S.	
Stein	Kellie		
Stephenson	Alicesha		
Sullivan	Michael	J.	
Swift	Brenda	Fay	
Tweedy	Bernard		
Waddle	Jamie	Glen	
Walker	Mickey	David	
Whitley	Kelly	Denise	
Wiesemann	Emily	K.	
Willis	Kenneth	B.	
Womack	Tyrone	M.	
Wordlow	Darrick		