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

In the Matter of

VOITH INDUSTRIAL SERVICES, INC.

and

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

and

UNITED AUTOMOTIBLE, AEROSPACE AND AGRICULTURUAL IMPLEMENT WORKERS OF AMERICA, AFL-CIO

and

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

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

And

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

9-CB-0755075
9-CB-082805

ANSWER TO THE AMENDED SECOND CONSOLIDATED COMPLAINT OF RESPONDENT, VOITH INDUSTRIAL SERVICES, INC.

Respondent, VOITH INDUSTRIAL SERVICES, INC., by its attorneys, Lindner & Marsack, S.C. and Thompson Hine LLP, for its Answer to the Amended Second Consolidated Complaint in the above-captioned matter states as follows:

EXHIBIT 9

1(a). Respondent Voith admits the allegations in paragraph 1(a) of the Complaint.

(b). Respondent Voith admits the allegations in paragraph 1(b) of the Complaint.

(c). Respondent Voith admits the allegations in paragraph 1(c) of the Complaint.

(d). Respondent Voith admits the allegations in paragraph 1(d) of the Complaint.

(e). Respondent Voith admits the allegations in paragraph 1(e) of the Complaint.

(f). Respondent Voith admits the allegations in paragraph 1(f) of the Complaint.

(g). Respondent Voith admits the allegations in paragraph 1(g) of the Complaint.

(h). Respondent Voith admits the allegations in paragraph 1(h) of the Complaint.

(i). Respondent Voith admits the allegations in paragraph 1(i) of the Complaint.

2(a). Respondent Voith admits the allegations in paragraph 2(a) of the Complaint. Answering further, Respondent Voith avers that it also is engaged in the business of providing the following additional services to customers in the automobile manufacturing industry: paint shop services, technical maintenance services, mobile equipment maintenance, production support services which includes assembly work, facilities services and filtration and commodities management services.

(b). Respondent Voith admits the allegations in paragraph 2(b) of the Complaint.

(c). Respondent Voith admits the allegations in paragraph 2(c) of the Complaint.

3(a). Respondent Voith admits only that on or about February 13, 2012, and March 1, 2012, it entered into agreements with Ford Motor Company ("Ford") to provide vehicle processing and inventory management services for Ford and denies the remaining allegations in paragraph 3(a). Answering further, Respondent Voith avers that the work for which it contracted with Ford is not the same work previously performed by Auto Handling, Inc., a subsidiary of Jack Cooper Transport Company ("Cooper Transport"). Respondent Voith also avers that since

February, 2012, RCS, Inc., a company unrelated to Respondent Voith, performs work formerly performed by Cooper Transport. On information and belief, Respondent Voith further avers that RCS from its inception did employ and continues to employ members of IBT, Local 89, and former Cooper Transport employees to perform this work and that such employees constitute a majority of RCS's workforce. Accordingly, RCS is the successor employer within the meaning of NLRB and Supreme Court decisional law. Further answering paragraph 3(a), Respondent Voith avers that Cooper Transport, itself, continues to perform certain work for Ford, as it has in the past. Additionally, Cassens Trucking and Allied Motors, Inc., two additional subcontractors, perform car hauling work at LAP which was work formerly performed by Cooper Transport. Respondent Voith performs only a small fragment of work formerly performed by Cooper Transport under its terminated contract with Ford which contract expired in October, 2010. Accordingly, there is not "a substantial continuation of the employing industry" and Respondent Voith is not, therefore, a successor employer.

(b). Respondent Voith denies the allegations in paragraph 3(b) of the Complaint.

(c). Respondent Voith denies the allegations in paragraph 3(c) of the Complaint.

(d). Respondent Voith denies the allegations in paragraph 3(d) of the Complaint and avers that Cooper Transport, RCS, as well as Allied and Cassens, perform the car hauling at LAP and KTP, work formerly performed exclusively by Cooper Transport. Answering further, Respondent Voith avers that work for which it has contracted with Ford is "new work" and only a fragment of the work previously performed by Cooper Transport and, as such, the requisite "continuity of the employing industry" does not exist and for this and other reasons; Respondent Voith denies that it is a successor employer.

4. Upon information and belief, Respondent Voith admits the allegations in paragraph 4 of the Complaint.

5(a). Respondent Voith admits the allegations in paragraph 5(a) of the Complaint.

(b). Respondent Voith admits the allegations in paragraph 5(b) of the Complaint.

6. Respondent Voith denies the allegations in paragraph 6 of the Complaint.

7(a). Respondent Voith denies that Harry J. Nieman was its President during the relevant period. Further Voith denies that Donald G. Morsch was its Treasurer. Rather Mr. Morsch is President. Voith admits that Doug Couch during some period was a Facility Manager at Voith. Further, Voith states that Mr. Crouch is now a Regional Manager. Voith admits the remaining allegations in paragraph 7(a) of the Complaint.

(b). Respondent Voith lacks knowledge sufficient to form a belief as to the truth of the allegations in paragraph 7(b) of the Complaint and, therefore, denies the same.

8. Respondent Voith lacks knowledge sufficient to form a belief as to the truth of the allegations in paragraph 8 of the Complaint and, therefore, denies the same.

9(a). Respondent Voith denies the allegations in paragraph 9(a) of the Complaint. Further answering, Respondent Voith avers that in order to meet the contractual staffing requirements imposed in its contract with Ford it filled the fifty (50) initial full-time car processing positions with then-current employees of Respondent Voith. Said employees were transferred to the car processing work and employed under the terms and provisions of the collective bargaining agreement between Respondent Voith and the UAW International Union.

(b). Respondent Voith denies the allegations in paragraph 9(b) of the Complaint and avers that it has hired and/or considered for employment certain of the employees listed on Exhibit A to the Complaint; moreover, on information and belief, certain of the employees listed

on Exhibit A were never employees of the alleged predecessor employer, Auto Handling, Inc., and other employees listed on Exhibit A, were considered for employment but failed and/or refused to complete the application process.

(c). Respondent Voith denies the allegations in paragraph 9(c) of the Complaint.

10. Respondent Voith admits only that the bargaining unit as defined 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 ("National Master Agreement"), constitutes an appropriate unit for bargaining and denies the remaining allegations in paragraph 10 of the Complaint. Answering further, Respondent Voith, on information and belief, avers that the unit defined in Article 3 of the "Master Agreement" referenced above constitutes a national bargaining unit covering numerous Cooper Transportation facilities and locations across the country. The Ford Louisville Assembly Plant (LAP) was only one of many facilities and locations operated by Cooper or its subsidiaries under the terms of the "Master Agreement." Further, answering paragraph 10, Voith avers that the work performed by Cooper Transport's subsidiary, Auto Handling, Inc. at the LAP constituted only a fragment of the work covered by the "Master Agreement" which fragment does not itself constitute a unit appropriate for bargaining. Cooper Transport, on information and belief, continues to perform work at other of its numerous facilities and locations under the terms of the "Master Agreement," as it has in the past, including KTP.

11(a). Respondent is without information sufficient to form a belief as to the allegations in paragraph 11(a) of the Complaint and, therefore, denies the allegations.

(b). Respondent is without information sufficient to form a belief as to the allegations in paragraph 11(b) of the Complaint and, therefore, denies the allegations.

(c). Respondent Voith denies the allegations in paragraph 11(c) of the Complaint.

(d). Respondent Voith denies the allegations in paragraph 11(d) of the Complaint.

12(a). Respondent Voith admits only that it refused to recognize and bargain with Teamsters Local 89. Answering further, Respondent Voith avers that it was not obligated under the Act to recognize and bargain with Teamsters Local 89 for the reason that it is not a successor employer and for the reason that Teamsters Local 89 has never demonstrated, nor offered to demonstrate, that it represented an uncoerced majority of Respondent Voith's employees in a unit appropriate for bargaining.

(b). Respondent Voith denies the allegations contained in paragraph 12(b) of the Complaint.

(c). Respondent Voith admits the allegations contained in paragraph 12(c) of the Complaint.

(d). Respondent Voith denies the allegations in paragraph 12(d) of the Complaint. Answering further, Respondent Voith denies that it was obligated under the Act to provide prior notice or bargain with Teamsters Local 89 for the reason that Teamsters Local 89 was not the statutory bargaining representative for Voith employees employed at LAP.

(e). Respondent Voith denies the allegations contained in paragraph 12(e) of the Complaint.

13. Respondent Voith denies the allegations contained in paragraph 13 of the Complaint. Respondent Voith avers further that it does not have the authority to control Ford's premises, nor does it have the authority to enforce Ford's work rules including its no solicitation rules.

14(a). Respondent Voith admits only that it granted recognition to Respondent UAW International and Respondent UAW Local 862 and denies the remaining allegations in paragraph 14(a). Answering further, Respondent Voith avers that it granted recognition to Respondent UAW International and Respondent UAW Local 862 based upon a card showing that established that these labor organizations represented an uncoerced majority of the employees in a unit appropriate for bargaining which obligated Respondent Voith to do so, and alternatively, that such recognition was required under the NLRB's accretion doctrine, majority test doctrine and/or contract extension principles.

(b). Respondent Voith admits the allegations contained in paragraph 14(b) of the Complaint.

(c). Respondent Voith denies the allegations contained in paragraph 14(c) of the Complaint.

(d). Respondent Voith denies the allegations contained in paragraph 14(d) of the Complaint.

15. Respondent Voith denies the allegations in paragraph 15 of the Complaint.

16. Respondent Voith denies the allegations in paragraph 16 of the Complaint.

17. Respondent Voith denies the allegations in paragraph 17 of the Complaint and avers that Ford, not Respondent Voith, controls Ford's plant premises and the enforcement of Ford's work rules, including its no solicitation rules.

18. Respondent Voith denies the allegations in paragraph 18 of the Complaint and avers that Ford, not Respondent Voith, controls Ford's plant premises, as well as the enforcement of its work rules, including its no solicitation policy.

19. Respondent Voith denies the allegations in paragraph 19 of the Complaint and avers that Ford, not Respondent Voith, controls Ford's plant premises, as well as the enforcement of its work rules, including its no solicitation rules.

20(a). Respondent Voith admits the allegations in paragraph 20(a) of the Complaint and avers that its recognition of Respondent UAW International and Respondent UAW Local 862 was based upon the fact that UAW represented an uncoerced majority of employees in a unit appropriate for collective bargaining and for the alternative reasons stated at paragraph 14(a) of this Answer.

(b). Respondent Voith admits the allegations in paragraph 20(b) of the Complaint.

(c). Respondent Voith denies the allegations in paragraph 20(c) of the Complaint.

(d). Respondent Voith denies the allegations in paragraph 20(d) of the Complaint.

21(a). Respondent Voith denies the allegations in paragraph 21(a) of the Complaint.

(b). Respondent Voith denies the allegations in paragraph 21(b) of the Complaint.

(c). Respondent Voith denies the allegations in paragraph 21(c) of the Complaint.

22(a). Respondent Voith denies the allegations in paragraph 22(a) of the Complaint. Answering further, denies that Sara Curry Martinez was an agent of Respondent Voith.

(b). Respondent Voith denies the allegations in paragraph 22(b) of the Complaint. Answering further, denies that Sara Curry Martinez was an agent of Respondent Voith.

23. Respondent Voith denies the allegations in paragraph 23 of the Complaint.

24. Respondent Voith denies the allegations in paragraph 24 of the Complaint.

25. Respondent Voith denies the allegations in paragraph 25 of the Complaint.

26. Respondent Voith denies the allegations in paragraph 26 of the Complaint.

27. Respondent Voith denies the allegations in paragraph 27 of the Complaint.

28. Respondent Voith denies the allegations in paragraph 28 of the Complaint.

AFFIRMATIVE DEFENSES

1. Voith is not a successor employer; the requisite "substantial continuation of the employing industry" does not exist for the following reasons.

(a) In October, 2010, car hauling operations at the LAP facility terminated and Cooper Transportation's contract with Ford terminated.

(b) In December of 2011, Respondent Voith and Cooper Transportation became competitive bidders for certain limited aspects of the car hauling work performed by Cooper Transportation, under its prior terminated contract.

(c) Under its contract with Ford, from the period of 2008 to 2010, Cooper Transportation performed all of the car hauling functions from the portal of LAP and KTP to the ultimate dealer. Since the car hauling work has been reestablished at LAP in March of 2012, the work has been parsed and where there was one contractor performing the work when it ceased in 2010, there are now six (6) contractors involved in the car hauling process. These contractors include, in addition to Voith, Cassen and Allied Motors, RCS and AWCS, as well as Cooper Transportation. Voith performs only a fragment of the work at LAP formerly performed in its entirety by Cooper Transportation. Moreover, the work formerly performed by Cooper Transportation is only a small fragment of the work it performs nationally and continues to perform the same or similar work at other of its facilities and locations under terms of the "Master Agreement," including the car hauling work it historically performed at KTP.

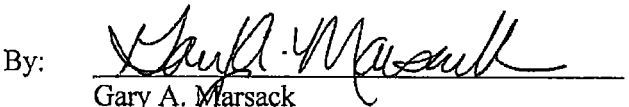
2. The car hauling work performed by Voith under its contract with Ford constitutes an accretion to the existing janitorial bargaining unit established under the terms of the National Agreement between UAW and Voith.

3. Alternatively, Respondent Voith's collective bargaining agreements with the UAW at other of Ford Motor Company's locations were intended to extent to and did, in fact, extend to car hauling work performed by Respondent Voith at LAP.

4. Alternatively, if the car hauling work at the LAP is deemed to constitute an appropriate "stand alone" unit appropriate for bargaining the UAW and its Local 862, UAW, have, from its inception, maintained and/or obtained majority status which obligated the Respondent Voith to recognize and bargain with the UAW and its Local 862 and/or extend the terms of the National Contract.

WHEREFORE, Voith Industrial Services, Inc. denies that the Acting General Counsel is entitled to any of the relief sought in the Complaint and respectfully requests that the Second Consolidated Complaint be dismissed in its entirety and that Voith Industrial Services, Inc. be awarded such other relief as is just and proper.

Respectfully submitted this 14th day of August, 2012.

By: 

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Answer to the Amended Second Consolidated Complaint of Respondent, Voith Industrial Services, Inc. was served upon the National Labor Relations Board by electronic filing in PDF format using the Agency's E-filing system on this 14th day of August, 2012.

I further certify that a copy of the foregoing was served upon the following by regular U.S. mail in accordance with CFR 102.11(4) on this 14th day of August, 2012:

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