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Polychem Corporation, a Subsidiary of Conmat Technologies, Inc., Polychem Corporation, a division of Eecsis LLC and United Food and Commercial Workers Union Local 130T. Cases 4-CA-31082, 4-CA-31485, and 4-CA-31529

December 31, 2003

DECISION AND ORDER

BY MEMBERS LIEBMAN, SCHAUMBER, AND WALSH

The General Counsel seeks a default judgment¹ in this case on the ground that the Respondent has withdrawn its answer to the complaint. Upon a charge filed by the Union in Case 4-CA-31082 on February 22, 2002; a charge and an amended charge filed by the Union in Case 4-CA-31485 on July 29, 2002, and August 23, 2002, respectively; and a charge filed by the Union in Case 4-CA-31529 on August 20, 2002, the General Counsel issued the consolidated complaint on November 26, 2002, against Polychem Corporation, a subsidiary of ConMat Technologies, Inc. (Respondent ConMat) and its successor, alter ego, and single employer, Polychem Corporation, a division of Eecsis LLC (Respondent Eecsis), collectively called the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the Act. Respondent Eecsis filed an answer to the consolidated complaint on about January 10, 2003. On October 15, 2003, however, Respondent Eecsis withdrew its answer. Respondent ConMat did not file an answer.

On October 23, 2003, the General Counsel filed a Motion for Summary Judgment with the Board. On October 27, 2003, 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 the 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 consolidated complaint affirma-

¹ The General Counsel's motion requests summary judgment on the ground that the Respondent has failed to file an answer to the complaint. Accordingly, we construe the General Counsel's motion as a motion for default judgment.

tively stated that unless an answer was filed within 14 days from service of the consolidated complaint, all the allegations in the consolidated complaint would be considered admitted. On January 10, 2003, Respondent Eecsis filed an answer to the complaint. However, by letter dated October 15, 2003, to the Regional Director for Region 4, Respondent Eecsis withdrew its answer. The withdrawal of an answer has the same effect as a failure to file an answer, i.e., the allegations in the consolidated complaint must be considered to be true.²

Accordingly, 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, until it ceased operations in June or July 2002, Respondent ConMat, a Pennsylvania corporation with an office and place of business in Phoenixville, Pennsylvania (the Facility), was engaged in the manufacture and sale of plastic components in the water treatment and material handling industries.

During a 12-month period ending March 1, 2002, Respondent ConMat, in conducting its business operations described above, purchased and received at the Facility goods valued in excess of \$50,000 directly from points outside the Commonwealth of Pennsylvania.

At all material times, since in or about March 2002, Respondent Eecsis, a Delaware limited liability company with an office and place of business at the Facility, has been engaged in the manufacture and sale of plastic components in the water treatment and material handling industries.

Since March 1, 2002, Respondent Eecsis, in conducting its business operations described above, purchased and received at the Facility goods valued in excess of \$50,000 directly from points outside the Commonwealth of Pennsylvania.

In March 2002, Respondent Eecsis purchased the business of Respondent ConMat, and since then has continued to operate the business of Respondent ConMat in basically unchanged form, and has employed, as a majority of its employees, individuals who were previously employees of Respondent ConMat.

In late June 2002, Respondent Eecsis offered continued employment at the Facility to employees in the unit referred to below, without notifying the employees that they would be employed under changed terms and conditions.

² See *Maislin Transport*, 274 NLRB 529 (1985).

Before engaging in the conduct described above, Respondent Ececis had notice of Respondent ConMat's liability in Board Case 4-CA-31082 because agents of Respondent Ececis, who are also agents of Respondent ConMat, received the charge on about February 25, 2002.

About March 2002, Respondent Ececis was established as a disguised continuation of Respondent ConMat.

Since about March 2002, Respondent ConMat and Respondent Ececis have been affiliated business enterprises operating at the same facility with substantially the same ownership, management, supervision, personnel, suppliers, customers, equipment and business purpose.

Based on the conduct and operations described above, Respondent Ececis has continued the employing entity with notice of Respondent ConMat's potential liability to remedy its unfair labor practices and is: (1) a successor of Respondent ConMat;³ and (2) a "perfectly clear" successor of Respondent ConMat.⁴

Based on the conduct and operations described above, Respondent ConMat and Respondent Ececis are alter egos and a single employer within the meaning of the Act.

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 United Food and Commercial Workers Union Local 130T, 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, the following individuals held the positions set forth opposite their respective names and have been supervisors of Respondent ConMat within the meaning of Section 2(11) of the Act and agents of Respondent ConMat within the meaning of Section 2(13) of the Act:

Paul A. DeJuliis	- Chief Executive Officer
Richard Rex Schutte	- President
William J. Crighton	- Vice President
David Dalziel	- Production Manager

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

Paul A. DeJuliis	- Chief Executive Officer
Richard Rex Schutte	- President

William J. Crighton	- Comptroller
David Dalziel	- Production Manager

The following employees of Respondent ConMat (prior to about June or July 2002) and of Respondent Ececis (since March 2002) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All production and maintenance employees employed by Respondents at the Facility, including group leaders, but excluding all company officials, main office force, Employee Relations Department personnel, time study persons, estimators, laboratory employees, security guards, general supervisors, supervisors and all other supervisory employees (but not group leaders) with authority to hire, promote, discharge, discipline or otherwise affect changes in the status of employees or effectively recommend such action.

From 1995 until June or July 2002, the Union was the exclusive collective-bargaining representative of the unit employed by Respondent ConMat, and, during that period of time, the Union had been recognized as such representative by Respondent ConMat. This recognition was embodied in successive collective-bargaining agreements, the most recent of which, herein called the collective-bargaining agreement, was effective by its terms from September 25, 1999, to September 28, 2002.

Since at least 1995, based on the facts described above, the Union has been the designated exclusive collective-bargaining representative of the unit.

On about August 3, 2002, the Respondent, by Paul A. DeJuliis, in statements to employees at the Facility, threatened that Union President William Warner would be physically assaulted if he came to the Facility.

Since about February 1, 2002, the Respondent has failed to continue in effect all the terms and conditions of the collective-bargaining agreement by failing to pay its employees vacation pay in accordance with paragraphs 77 through 80 and 90 of the agreement.

Since about June 21, 2002, the Respondent has failed to continue in effect all the terms and conditions of the collective-bargaining agreement by failing to remit to the Union, in accordance with paragraph 5 of the agreement, dues that had been deducted from employee paychecks.

Since about July 1, 2002, the Respondent has refused to continue in effect the terms and conditions of the collective-bargaining agreement.

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

³ See *Golden State Bottling Co. v. NLRB*, 414 U.S. 168 (1973).

⁴ See *NLRB v. Burns Security Services*, 406 U.S. 272 (1972).

The Respondent engaged in the conduct set forth above, without prior notice to the Union and without affording the Union an opportunity to bargain with the Respondent regarding this conduct and without the Union's consent.

In about the middle of August 2002, the Union, by its President William Warner, in a telephone conversation with David Dalziel, requested that the Respondent recognize the Union as the exclusive collective-bargaining representative of the unit.

Since about the middle of August 2002, the Respondent has failed and refused to recognize the Union as the exclusive collective-bargaining representative of the unit.

CONCLUSIONS OF LAW

1. By threatening that a union representative would be physically assaulted if he came to the Respondent's facility, the Respondent 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.

2. By failing and refusing to recognize the Union as the exclusive collective-bargaining representative of the unit, and by failing to continue in effect all of the terms and conditions set forth in the September 25, 1999, to September 28, 2002, collective-bargaining agreement, the Respondent has been failing and refusing to bargain collectively with the exclusive collective-bargaining representative of its employees, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and 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, we shall order the Respondent to recognize and, on request, bargain with the Union as the exclusive collective-bargaining representative of the unit employees and, if an understanding is reached, embody the understanding in a signed agreement. In addition, having found that the Respondent violated Section 8(a)(5) and (1) by failing since July 1, 2002, to continue in effect all of the terms and conditions of the September 25, 1999, to September 28, 2002, collective-bargaining agreement, we shall order the Respondent to abide by the terms of the agreement until a new agreement or good faith impasse in negotiations is reached. We shall also order the Respondent to make whole its unit employees for any loss of earnings and other benefits they have suffered as a result of the Respondent's failure to comply with the agreement since

July 1, 2002. In addition, we shall order the Respondent to make all contractually-required benefit fund contributions, if any, that have not been made since that date, including any additional amounts due the funds in accordance with *Merryweather Optical Co.*, 240 NLRB 1213, 1216 fn. 6 (1979). The Respondent shall also reimburse unit employees for any expenses ensuing from its failure to make the required contributions, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enf. 661 F.2d 940 (9th Cir. 1981).⁵ Further, having found that the Respondent also violated Section 8(a)(5) and (1) by failing since February 1, 2002, to make vacation pay payments to employees, as required by the collective-bargaining agreement, we shall order the Respondent to make unit employees whole by paying them the vacation pay that has not been paid since that date. All payments to employees shall be computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enf. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

Finally, having found that the Respondent violated Section 8(a)(5) and (1) by failing to remit dues deducted from employees' paychecks to the Union, as required by the collective-bargaining agreement, we shall order the Respondent to forward such withheld dues to the Union, with interest as prescribed in *New Horizons for the Retarded*, supra.

ORDER

The National Labor Relations Board orders that the Respondent, Polychem Corporation, a subsidiary of ConMat Technologies, Inc. and its successor, alter ego, and single employer, Polychem Corporation, a division of Ecesis LLC, Phoenixville, Pennsylvania, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Threatening that union representatives will be physically assaulted if they come to the Respondent's facility.

(b) Failing and refusing to recognize the United Food and Commercial Workers Union Local 130T, as the exclusive collective-bargaining representative of the employees in the following unit:

All production and maintenance employees employed by Respondents at the Facility, including group leaders,

⁵ To the extent that an employee has made personal contributions to a fund that are accepted by the fund in lieu of the Respondent's delinquent contributions during the period of the delinquency, the Respondent will reimburse the employee, but the amount of such reimbursement will constitute a setoff to the amount that the Respondent otherwise owes the fund.

but excluding all company officials, main office force, Employee Relations Department personnel, time study persons, estimators, laboratory employees, security guards, general supervisors, supervisors and all other supervisory employees (but not group leaders) with authority to hire, promote, discharge, discipline or otherwise affect changes in the status of employees or effectively recommend such action.

(c) Failing and refusing, since July 1, 2002, to continue in effect all of the terms and conditions of the September 25, 1999, to September 28, 2002, collective-bargaining agreement.

(d) Failing and refusing, since February 1, 2002, to comply with paragraphs 77 through 80 and 90 of the collective-bargaining agreement by failing to make vacation pay payments.

(e) Failing and refusing, since about June 21, 2002, to comply with paragraph 5 of the collective-bargaining agreement by failing to transmit dues to the Union that have been deducted from employees' paychecks.

(f) 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) Recognize and, on request, bargain with the Union, as the exclusive collective-bargaining representative of the unit employees on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement.

(b) Continue in effect all of the terms and conditions of the September 25, 1999, to September 28, 2002, collective-bargaining agreement, until a new agreement or good-faith impasse in negotiations is reached.

(c) Make whole the unit employees for any loss of earnings and other benefits they may have suffered as a result of its refusal since July 1, 2002, to continue in effect all of the terms and conditions of the collective-bargaining agreement, with interest, as set forth in the remedy section of this decision.

(d) Make all contractually required benefit fund contributions, if any, that have not been made on behalf of unit employees since July 1, 2002, and reimburse unit employees for any expenses ensuing from its failure to make the required payments, with interest, as set forth in the remedy section of this decision.

(e) Pay the unit employees vacation pay that has not been paid since February 1, 2002, in accordance with paragraphs 77 through 80 and 90 of the collective-bargaining agreement, with interest, as set forth in the remedy section of this decision.

(f) Remit to the Union the dues that have been deducted from employees' paychecks since June 21, 2002, in accordance with paragraph 5 of the collective-bargaining agreement, with interest, as set forth in the remedy section of this decision.

(g) 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.

(h) Within 14 days after service by the Region, post at its facility in Phoenixville, Pennsylvania, copies of the attached notice marked "Appendix."⁶ Copies of the notice, on forms provided by the Regional Director for Region 4, 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. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since February 1, 2002.

(i) Within 21 days after service by the Region, file with the Regional Director 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. December 31, 2003

Wilma B. Liebman, Member

Peter C. Schaumber, Member

⁶ 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."

Dennis P. Walsh, Member

(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 any 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 threaten that union representatives will be physically assaulted if they come to our facility.

WE WILL NOT fail and refuse to recognize the United Food and Commercial Workers Union Local 130T, as the exclusive collective-bargaining representative of the employees in the following unit:

All production and maintenance employees employed by us at the Facility, including group leaders, but excluding all company officials, main office force, Employee Relations Department personnel, time study persons, estimators, laboratory employees, security guards, general supervisors, supervisors and all other supervisory employees (but not group leaders) with authority to hire, promote, discharge, discipline or otherwise affect changes in the status of employees or effectively recommend such action.

WE WILL NOT fail to continue in effect all of the terms and conditions of the September 25, 1999, to September

28, 2002, collective-bargaining agreement with the Union.

WE WILL NOT unilaterally fail to pay unit employees vacation pay in accordance with paragraphs 77 through 80 and 90 of the collective-bargaining agreement.

WE WILL NOT unilaterally fail to remit to the Union dues that we have deducted from unit employees' paychecks in accordance with paragraph 5 of the collective-bargaining agreement.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL recognize and, on request, bargain with the Union, as the exclusive collective-bargaining representative of the unit employees on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement.

WE WILL continue in effect all of the terms and conditions of the September 25, 1999, to September 28, 2002, collective-bargaining agreement, until a new agreement or good-faith impasse in negotiations is reached.

WE WILL make whole unit employees for any loss of earnings and other benefits they may have suffered as a result of our refusal to continue in effect all of the terms and conditions of the collective-bargaining agreement since July 1, 2002, with interest.

WE WILL make all contractually required benefit fund contributions, if any, that have not been made on behalf of unit employees since July 1, 2002, and reimburse unit employees for any expenses ensuing from our failure to make the required payments, with interest.

WE WILL pay unit employees vacation pay that has not been paid since February 1, 2002, in accordance with paragraphs 77 through 80 and 90 of the collective-bargaining agreement, with interest.

WE WILL remit to the Union the dues that we have deducted from unit employees' paychecks since June 21, 2002, in accordance with paragraph 5 of the collective-bargaining agreement, with interest.

POLYCHEM CORPORATION, A SUBSIDIARY OF
CONMAT TECHNOLOGIES, INC.

POLYCHEM CORPORATION, A DIVISION OF
ECESIS LLC