

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
THIRTIETH REGION**

PABST THEATER FOUNDATION, INC.

and

Case 30-CA-18389

**MILWAUKEE THEATRICAL STAGE EMPLOYEES UNION,
LOCAL #18 OF THE INTERNATIONAL ALLIANCE OF
THEATRICAL STAGE EMPLOYEES, MOVING PICTURE
TECHNICIANS, ARTISTS AND ALLIED CRAFTS OF THE
UNITED STATES, ITS TERRITORIES AND CANADA, AFL-CIO,
CLC**

MOTION FOR DEFAULT JUDGMENT

Pursuant to Sections 102.24 and 102.50 of the Board's Rules and Regulations (Rules), General Counsel moves for default judgment with respect to the allegations contained in the Complaint and Notice of Hearing in this proceeding on the ground that there is no genuine issue as to any material fact framed by the pleadings and that General Counsel is entitled to judgment as a matter of law. In support of said Motion, Counsel for General Counsel submits the following:

1. On July 22, 2009, the Milwaukee Theatrical Stage Employees Union, Local #18 of the International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the United States, Its Territories and Canada, AFL-CIO, CLC (Union) filed a charge in Case 30-CA-18389, a copy of which is attached and incorporated as Exhibit 1. The charge alleges that Pabst Theater Foundation, Inc., (Respondent) violated Section 8(a)(5) of the National Labor Relations Act (Act) by failing and refusing to bargain in good faith when it refused to execute a collective-bargaining agreement that was agreed upon between the parties and ratified by the Union.

2. Following investigation of the charge referred to above, on September 18, 2009, the Regional Director of the Thirtieth Region of the National Labor Relations Board (Board) issued a Complaint and Notice of Hearing, a copy of which is attached and incorporated as Exhibit 2, alleging, inter alia:

6. (a) On or about January 27, 2009, the Union and Respondent reached a complete agreement on the terms and conditions of employment of the Unit to be incorporated in a collective-bargaining agreement.

(b) On or about February 16, March 12, April 6, April 16, June 10, June 17 and June 18, 2009, the Union requested that Respondent execute a written contract containing the agreement described above in paragraph 6(a).

(c) From about February 16, 2009 until September 2, 2009 Respondent, by Gary Witt, failed and refused to execute the agreement described above in paragraph 6(a) and unduly delayed execution of the written collective-bargaining agreement.

7. By the conduct described above in paragraph 6, and its subparagraphs, 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)(1) and (5) of the Act.

3. A copy of the September 18, 2009, Complaint and Notice of Hearing was served upon Respondent by certified mail as reflected in the Affidavit of Service and Return Receipt, copies of which are attached and incorporated as Exhibits 3(a) and (b), respectively.

4. On October 5, 2009, a letter was served on Respondent by certified mail notifying Respondent that it had not filed an Answer to the Complaint within the requisite 14 days and giving Respondent until October 13, 2009 to file its Answer to the Complaint. Copies of the letter and return receipts are attached as Exhibits 4(a) and (b), respectively.

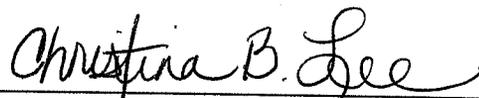
5. To date, Respondent has failed to file an Answer as required by Sections 102.20 and 102.21 of the Board's Rules.

6. Inasmuch as Respondent has failed to file an Answer to the Complaint as required by the Board's Rules and Regulations, all allegations in the Complaint should be deemed to be true and be so found by the Board.

7. Based upon the foregoing, it is clear that the pleadings and exhibits in the instant case show there are no material issues of fact not admitted, previously determined or controverted; that no hearing is necessary in this matter; and that it is appropriate for the Board to issue a Decision and Order without further proceedings herein.

8. Accordingly, Counsel for General Counsel respectfully moves that the Board grant this Motion for Default Judgment, finding all of the allegations of the Complaint to be true and to issue an appropriate remedial order.

Signed at Milwaukee, Wisconsin on October 20, 2009.



Christina B. Lee
Counsel for General Counsel
National Labor Relations Board
Thirtieth Region
310 West Wisconsin Avenue, Suite 700
Milwaukee, Wisconsin 53203

Attachments

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST EMPLOYER

DO NOT WRITE IN THIS SPACE	
Case 30-CA-18389	Date Filed July 22, 2009

INSTRUCTIONS:

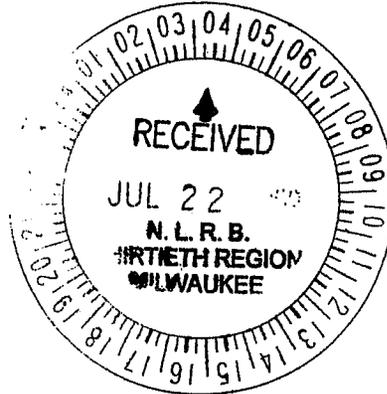
File an original together with four copies and a copy for each additional charged party named in item 1 with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT		
a. Name of Employer Pabst Theater Foundation, Inc.	b. Number of workers employed 3 (approximately)	
c. Address (Street, city, state, and ZIP code) 144 East Wells Street Milwaukee WI 53202	d. Employer Representative Gary Witt Executive Director	e. Telephone No. (414) 287-0301 Fax No. (414) 286-2154
f. Type of Establishment (factory, mine, wholesaler, etc.) Theater	g. Identify principal product or service Live Entertainment	

h. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (list subsections) and (5) _____ of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act.

2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)

Since on or about February 16, 2009, the above-referenced Employer has failed and refused to bargain in good faith by refusing to execute a collective bargaining agreement that was agreed upon between the parties and ratified by the Union.



By the above and other acts, the above-named employer has interfered with, restrained, or coerced employees in the exercise of the rights guaranteed in Section 7 of the Act.

3. Full name of the party filing charge (if labor organization, give full name, including local name and number) International Alliance of Theatrical Stage Employees, Local 18, AFL-CIO-CLC		
4a. Address (Street and number, city, state and ZIP code) 230 W. Wells Street, Suite 405 Milwaukee, WI 53203	4b. Telephone No. (414) 272-3540 Fax No. (414) 272-3592	
5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization) International Alliance of Theatrical Stage Employees, AFL-CIO-CLC		

6. DECLARATION

I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.

By Mark A. Sweet
(signature of representative or person making charge)

Mark A. Sweet, Attorney
(Print/type name and title or office, if any)

(fax) (414) 332-5430

Address 705 East Silver Spring Drive, Milwaukee, WI 53217

(414) 332-2255
(Telephone No.)

07/22/09
(date)

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
THIRTIETH REGION**

ORIGINAL

PABST THEATER FOUNDATION, INC.

and

Case 30-CA-18389

**MILWAUKEE THEATRICAL STAGE EMPLOYEES UNION, LOCAL
#18 OF THE INTERNATIONAL ALLIANCE OF THEATRICAL
STAGE EMPLOYEES, MOVING PICTURE TECHNICIANS,
ARTISTS AND ALLIED CRAFTS OF THE UNITED STATES, ITS
TERRITORIES AND CANADA, AFL-CIO, CLC**

COMPLAINT AND NOTICE OF HEARING

Milwaukee Theatrical Stage Employees Union, Local #18 of the International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the United States, Its Territories and Canada, AFL-CIO, CLC, described above by its correct name (Union), has charged that Pabst Theater Foundation, Inc. (Respondent) has been engaging in unfair labor practices as set forth in the National Labor Relations Act, 29 U.S.C. §151 et seq. (Act). Based on this charge, the General Counsel, by the undersigned, pursuant to Section 10(b) of the Act and Section 102.15 of the Rules and Regulations of the National Labor Relations Board (Board), issues this Complaint and Notice of Hearing and alleges as follows:

1. The original charge in this proceeding was filed by the Union on July 22, 2009, and a copy was served on Respondent by regular mail on July 23, 2009.

2. (a) At all material times, Respondent, a corporation, has been engaged in the management and operation of a facility for performing arts at its Milwaukee, Wisconsin facility.

(b) During the past calendar year, Respondent, in conducting its operations described above in paragraph 2(a), derived gross revenues in excess of \$1,000,000 and purchased

and received goods and materials valued in excess of \$5,000 directly from suppliers located outside the State of Wisconsin.

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

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

4. At all material times, Gary Witt has held the position of Executive Director, and has been a supervisor of Respondent within the meaning of Section 2(11) of the Act and an agent of Respondent within the meaning of Section 2(13) of the Act.

5. The employees of Respondent, in the unit described more particularly in Article VII of the collective-bargaining agreement in effect from April 1, 2009 to March 31, 2010, constitute a Unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

6. (a) On or about January 27, 2009, the Union and Respondent reached a complete agreement on the terms and conditions of employment of the Unit to be incorporated in a collective-bargaining agreement.

(b) On or about February 16, March 12, April 6, April 16, June 10, June 17 and June 18, 2009, the Union requested that Respondent execute a written contract containing the agreement described above in paragraph 6(a).

(c) From about February 16, 2009 until September 2, 2009 Respondent, by Gary Witt, failed and refused to execute the agreement described above in paragraph 6(a) and unduly delayed execution of the written collective-bargaining agreement.

7. By the conduct described above in paragraph 6, and its subparagraphs, 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)(1) and (5) of the Act.

8. The unfair labor practices of Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

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 October 2, 2009, or postmarked on or before October 1, 2009.** Unless filed electronically in a pdf format, Respondent should file an original and four copies of the answer with this office and serve a copy of the answer on each of the other parties.

An answer may also be filed electronically by using the E-Filing system on the Agency's website. In order to file an answer electronically, access the Agency's website at <http://www.nlr.gov>, click on **E-Gov**, then click on the **E-Filing** link on the pull-down menu. Click on the "File Documents" button under "Regional, Subregional and Resident Offices" and then follow the directions. 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 document 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 be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing.

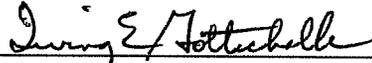
Service of the answer on each of the other parties must be accomplished in conformance with the requirements of Section 102.114 of the Board's Rules and Regulations. The answer may not be filed by facsimile transmission. If no answer is filed or if an answer is filed untimely, the Board may find, pursuant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

NOTICE OF HEARING

PLEASE TAKE NOTICE THAT on **December 3, 2009, at 9 a.m. at the Regional Office Hearing Room, 310 West Wisconsin Avenue, Suite 700, Milwaukee, Wisconsin**, and on consecutive days thereafter until concluded, a hearing will be conducted 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.

Signed at Milwaukee, Wisconsin on 18th day of September 2009.



Irving E. Gottschalk, Regional Director
National Labor Relations Board
Thirtieth Region
310 West Wisconsin Avenue, Suite 700W
Milwaukee, WI 53203

Attachments

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

PABST THEATER FOUNDATION, INC.

and

Case 30-CA-18389

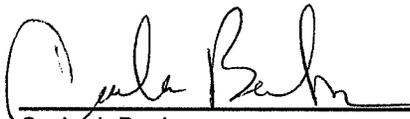
**INTERNATIONAL ALLIANCE OF THEATRICAL STAGE
EMPLOYEES, LOCAL 18, AFL-CIO-CLC**

DATE OF DOCUMENT: *DATE September 18, 2009*

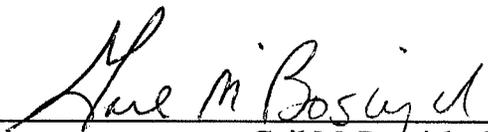
AFFIDAVIT OF SERVICE OF **Complaint and Notice of Hearing with Forms NLRB-4668
and NLRB-4338 attached.**

I, the undersigned employee of the National Labor Relations Board, being duly sworn, depose and say that on the date indicated above I served the above-entitled document(s) by certified mail, to the following parties of record:

<u>CERTIFIED MAIL</u>	<u>DATE OF RECEIPT</u>	<u>REGULAR MAIL</u>
Mr. Mark A. Sweet, Esq. Sweet and Associates 705 East Silver Spring Drive Milwaukee, WI 53217-5231	9/24/09	Mr. Peter Misko, Business Manager International Alliance of Theatrical Stage Employees, Local No. 18, AFL-CIO-CLC 230 West Wells Street, Suite 405 Milwaukee, WI 53203
Mr. Gary Witt, Executive Director Pabst Theater Foundation, Inc. 144 East Wells Street Milwaukee, WI 53202	9/22/09	Mr. Gary Witt, Executive Director Pabst Theater Foundation, Inc. 144 East Wells Street Milwaukee, WI 53202



Carla J. Becker



DESIGNATED AGENT Gail M. Bosnjak, Office Manager
NATIONAL LABOR RELATIONS BOARD

Subscribed and sworn to before me on
September 18, 2009

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Mr. Gary Witt, Executive Director
 Pabst Theater Foundation, Inc.
 144 East Wells Street
 Milwaukee, WI 53202
30-CA-18389 C&NOH

COMPLETE THIS SECTION ON DELIVERY

A. Signature Agent
J. Hales Addressee

B. Received by (Printed Name) Date of Delivery
J. Hales *SEP 21 2008*

D. Is delivery address different from item 1? Yes
 if YES, enter delivery address below: No

3. Service Type
 Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.
 4. Restricted Delivery? (Extra Fee) Yes

7005 3110 0000 5002 2756



United States Government

NATIONAL LABOR RELATIONS BOARD

Region 30

310 West Wisconsin Avenue - Suite 700

Milwaukee, WI 53203-2211

Telephone (414)297-3881

FAX (414) 297-3880

www.nlr.gov

October 5, 2009

Mr. Gary Witt, Executive Director
Pabst Theater Foundation, Inc.
144 East Wells Street
Milwaukee, WI 53202

**Re: Pabst Theater Foundation, Inc.
Case 30-CA-18389**

Dear Mr. Witt:

The Regional Director issued a Complaint and Notice of Hearing on September 18, 2009 in the above-captioned matter. The Complaint and Notice of Hearing required an answer to be received by this office by no later than October 2, 2009. Enclosed for your information is Section 102.20, et al. of the Rules and Regulations of the National Labor Relations Board. **We have received no answer.**

Absent receipt of an answer to the Complaint and Notice of Hearing, by Tuesday, October 13, 2009, be advised that this office will file a Motion for Default Judgment.

Very truly yours,

Benjamin Mandelman
Deputy Regional Director

Exhibit 4(a)

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Mr. Gary Witt, Executive Director
 Pabst Theater Foundation, Inc
 144 East Wells Street
 Milwaukee, WI 53202

30-CA-18389

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

J. Warkles

Agent
 Addressee

B. Received by (Printed Name)

J. Warkles

C. Date of Delivery

OCT - 6 2004

D. Is delivery address different from item 1? Yes

If YES, enter delivery address below: No

3. Service Type

- Certified Mail Express Mail
- Registered Return Receipt for Merchandise
- Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee)

Yes

2. Article Number

(Transfer from service label)

7008 1830 0000 7165 0150

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-15

Pabst Theater Foundation, Inc.
Case 30-CA-18389

Copies of General Counsel's Motion for Default Judgment have been sent October 20, 2009, by regular mail, to the following parties of record:

Mr. Mark A. Sweet, Esq.
Sweet and Associates
705 East Silver Spring Drive
Milwaukee, WI 53217-5231

(414) 332-2255
FAX: (414) 332-5430
SENT VIA CERTIFIED MAIL & REGULAR MAIL.

Mr. Gary Witt, Executive Director
Pabst Theater Foundation, Inc.
144 East Wells Street
Milwaukee, WI 53202

(414) 287-0301
FAX: (414) 287-0301
SENT VIA CERTIFIED MAIL & REGULAR MAIL.

Mr. Peter Misko, Business Manager
International Alliance of Theatrical Stage
Employees, Local No. 18, AFL-CIO-CLC
230 West Wells Street, Suite 405
Milwaukee, WI 53203

(414) 272-3540
FAX: (414) 272-3592
SENT VIA CERTIFIED MAIL & REGULAR MAIL.

Lester A. Heltzer, Executive Secretary
National Labor Relations Board
Franklin Court
1099 14th Street, N.W.
Washington, DC 20570

(202) 273-1067
FAX: (202) 273-4270
FILED ELECTRONICALLY.