Pabst Theater Foundation, Inc. *and* 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. Case 30–CA–18389

December 29, 2009

ORDER DENYING MOTION

BY CHAIRMAN AND LIEBMAN AND MEMBER SCHAUMBER

The General Counsel seeks a default judgment in this case on the ground that the Respondent has failed to file an answer to the complaint. Upon a charge filed by the Union on July 22, 2009, the General Counsel issued the complaint on September 18, 2009 against Pabst Theater Foundation, Inc., the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the Act. The Respondent failed to file an answer.

On October 20, 2009, the General Counsel filed a Motion for Default Judgment with the Board. Thereafter, on October 22, 2009, 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[1]

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 complaint affirmatively states that the answer must be received on or before October 2, 2009. The complaint further states that if no answer was filed, 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 disclose that the Region, by letter dated October 5, 2009, advised the Respondent that unless an answer was received by October 13, 2009, a motion for default judgment would be filed. We therefore find that the Respondent has not shown good cause for failing to file a timely answer. Nevertheless, as discussed below, we deny the General Counsel's motion for default judgment.

The Complaint Allegations

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

During the past calendar year, the Respondent, in conducting its operations described above, derived gross revenues in excess of $1 million and purchased and received goods and materials valued in excess of $5000 directly from suppliers located outside the State of Wisconsin.

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

At all material times, Gary Witt has held the position of executive director, 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.

The employees of the 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.

About January 27, 2009, the Union and the Respondent reached a complete agreement on the terms and conditions of employment of the unit to be incorporated in a collective-bargaining agreement.

About February 16, March 12, April 6 and 16, June 10, 17 and 18, 2009, the Union requested that the Respondent execute a written contract containing the agreement described above.

From about February 16 until September 2, 2009, the Respondent, by Gary Witt, failed and refused to execute

[1] Effective midnight December 28, 2007, Members Liebman, Schaumber, Kirsanow, and Walsh delegated to Members Liebman, Schaumber, and Kirsanow, as a three-member group, all of the Board's powers in anticipation of the expiration of the terms of Members Kirsanow and Walsh on December 31, 2007. Pursuant to this delegation, Chairman Liebman and Member Schaumber constitute a quorum of the three-member group. As a quorum, they have the authority to issue decisions and orders in unfair labor practice and representation cases. See Sec. 3(b) of the Act. See *Narricot Industries, L.P. v. NLRB*, ___ F.3d ___, 2009 WL 4016113 (4th Cir. Nov. 20, 2009); *Snell Island SNF LLC v. NLRB*, 568 F.3d 410 (2d Cir. 2009), petition for cert. filed 78 U.S.L.W. 3130 (U.S. Sept. 11, 2009) (No. 09-328); *New Process Steel v. NLRB*, 564 F.3d 840 (7th Cir. 2009), cert. granted ___ S.Ct. ___, 2009 WL 1468482 (U.S. Nov. 2, 2009); *Northeastern Land Services v. NLRB*, 560 F.3d 36 (1st Cir. 2009), petition for cert. filed 78 U.S.L.W. 3098 (U.S. Aug. 18, 2009) (No. 09-213); *Teamsters Local 523 v. NLRB*, ___ F.3d ___, 2009 WL 4912300 (10th Cir. Dec. 22, 2009). But see *Laurel Baye Healthcare of Lake Lanier, Inc. v. NLRB*, 564 F.3d 469 (D.C. Cir. 2009), petition for cert. filed 78 U.S.L.W. 3185 (U.S. Sept. 29, 2009) (No. 09-377).

the agreement described above and unduly delayed execution of the written collective-bargaining agreement.

Analysis

We decline to grant the General Counsel's Motion for Default Judgment. There is no allegation in the complaint that the Union is or has been the exclusive collective-bargaining representative of the unit employees. Absent that allegation, we cannot find, for purposes of this proceeding, that the Respondent violated the Act as alleged by unduly delaying execution of a written collective-bargaining agreement between the Respondent and the Union. Nothing herein will require a hearing if, in the event of an amendment to the complaint alleging that the Union has been the exclusive collective-bargaining representative during the relevant time period, the Respondent again fails to answer, thereby admitting evidence that would permit the Board to find the alleged violation. In such circumstances, the General Counsel may renew the motion for default judgment with respect to the amended complaint allegations.[2]

ORDER

IT IS ORDERED that the General Counsel's motion for default judgment is denied and the proceeding is remanded to the Regional Director for Region 30 for further appropriate action.

Dated, Washington, D.C. December 29, 2009

Wilma B. Liebman, Chairman

Peter C. Schaumber, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

[2] See, e.g., *Plaza Properties of Michigan, Inc.*, 340 NLRB 983 (2003) (default judgment denied based on insufficient complaint allegations).