

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

PITTSBURGH ATHLETIC ASSOCIATION

and

Cases 6-CA-105460 and
6-CA-105461

UNITE HERE LOCAL 57

MOTION FOR DEFAULT JUDGMENT

Counsel for the Acting General Counsel, pursuant to Sections 102.24, 102.26 and 102.50 of the Board's Rules and Regulations, Series 8, as amended, makes this motion to transfer this case to the Board and to grant default judgment against Respondent based on the pleadings and related documents which accompany this Motion. In support of this Motion, Counsel for the Acting General Counsel submits that because Respondent failed to file any Answer to the Consolidated Complaint and Notice of Hearing issued, all allegations of the Consolidated Complaint should be deemed to be true and so found by the Board as to Respondent without the necessity of a hearing. In support of this motion, Counsel for the Acting General Counsel further submits that the pleadings raise no material issues of either fact or law, and states the following:

1. On August 29, 2013, a Consolidated Complaint and Notice of Hearing, a copy of which is attached hereto as Exhibit A, issued in the instant matter alleging that Respondent had engaged in unfair labor practices affecting commerce within the meaning of Sections 8(a)(1) and (5) and 2(6) and (7) of the Act by failing to continue in effect all terms and conditions of the collective bargaining agreement by failing to remit to the exclusive collective-bargaining representative of its employees dues and fees deducted from unit employees' wages.

2. A true and correct copy of the Consolidated Complaint and Notice of Hearing was duly served by certified mail upon Respondent on August 29, 2013.
3. In the Consolidated Complaint and Notice of Hearing, Respondent was advised that pursuant to Section 102.20 and 102.21 of the Board's Rules and Regulations, an Answer was due by September 12, 2013, and that any failure to deny the allegations of the Complaint in the manner required under the Board's Rules and Regulations could result in a determination that the allegations of the Consolidated Complaint were true.
4. As Respondent has failed to file any Answer to the Complaint or to serve an Answer upon the Charging Party, the Regional Director for Region Six of the National Labor Relations Board, by letter dated September 23, 2013, again advised Respondent of the obligation to file an Answer under Section 102.20 of the Board's Rules and Regulations. A copy of the letter is attached hereto and marked as Exhibit B. In his letter, the Regional Director further advised that unless an Answer was filed, a Motion for Default Judgment would be filed with the Board.
5. To date, no Answer or request for extension of time to file an Answer has been received from Respondent.

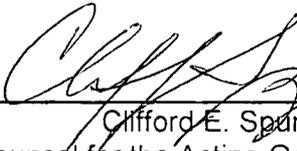
WHEREFORE, Counsel for the Acting General Counsel respectfully requests the following:

- A. That the Board grant this Motion for Default Judgment.
- B. That all allegations in the Consolidated Complaint be deemed to be admitted to be true;
and
- C. That Respondent be found to have violated Section 8(a)(1) and (5) of the Act in the manner alleged in the Complaint without the taking of evidence in support of the

allegations of the Compliant and that an appropriate remedial Order issue. See e.g. *Malik Roofing Corporation*, 338 NLRB 930 (2003)

Dated at Pittsburgh, Pennsylvania, this 22nd day of October 2013.

Respectfully submitted,



Clifford E. Spungen
Counsel for the Acting General Counsel

NATIONAL LABOR RELATIONS BOARD
Region 6
William S. Moorhead Federal Building
1000 Liberty Avenue, Room 904
Pittsburgh, Pennsylvania 15222
412-395-4689
Email: clifford.spungen@gmail.com

Attachments

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 6**

PITTSBURGH ATHLETIC ASSOCIATION

and

**Cases 06-CA-105460
and
06-CA-105461**

UNITE HERE LOCAL 57

**ORDER CONSOLIDATING CASES, CONSOLIDATED
COMPLAINT AND NOTICE OF HEARING**

Pursuant to Section 102.33 of the Rules and Regulations of the National Labor Relations Board (the Board) and to avoid unnecessary costs or delay, IT IS ORDERED THAT Case 06-CA-105460 and Case 06-CA-105461, which are based on charges filed by UNITE HERE Local 57 (the Union) against Pittsburgh Athletic Association (Respondent) are consolidated.

This Order Consolidating Cases, Consolidated Complaint and Notice of Hearing, which is based on these charges, is issued pursuant to Section 10(b) of the National Labor Relations Act, 29 U.S.C. § 151 et seq. (the Act) and Section 102.15 of the Board's Rules and Regulations, and alleges Respondent has violated the Act as described below:

1. (a) The charge in Case 06-CA-105460 was filed by the Union on May 20, 2013, and a copy was served by regular mail on Respondent on May 20, 2013.

(b) The charge in Case 06-CA-105461 was filed by the Union on May 20, 2013, and a copy was served by regular mail on Respondent on May 20, 2013.

2. At all material times, Respondent, a non-profit Pennsylvania corporation, with an office and place of business in Pittsburgh, Pennsylvania, herein called Respondent's facility, has

been engaged in the operation of a private club which supplies food and beverage services, athletic services and related services to members and their guests.

3. (a) In conducting its operations, during the 12-month period ending April 30, 2013, Respondent, derived gross revenues in excess of \$500,000.

(b) In conducting its operations, during the 12-month period ending April 30, 2013, Respondent, purchased and received at its Pittsburgh, Pennsylvania, facility goods valued in excess of \$50,000 from other enterprises, including Sysco Food Service, located within the Commonwealth of Pennsylvania, which other enterprise had received these goods directly from points outside the Commonwealth of Pennsylvania.

4. 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.

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

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

Joseph Dengler -	General Manager
Robert Dauer -	President, Board of Directors
John Freyvogel -	Vice-President, Board of Directors
James Sheehan -	Secretary, Board of Directors
Mike McSorely -	Treasurer, Board of Directors

7. For many years, Respondent has recognized the Union as the exclusive collective-bargaining representative of all food and beverage and housekeeping employees of Respondent, herein called the Unit. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective by its terms from March 1, 2012 to February 28, 2015.

8. The Unit, as set forth in the collective-bargaining agreement described above in paragraph 7, constitutes a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

9. At all material times, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the Unit.

10. Article I, Section 2 of the collective bargaining agreement described above in paragraph 7, reads as follows:

The employer shall make monthly deductions for dues and fees as instructed by the Secretary-Treasurer of the union from the first paycheck of every month. If the wages are insufficient to make the deduction, the employer shall make the deduction that month from the next paycheck, which has sufficient wages for the deduction. If no deduction is made for union dues in the month, the employer will make up the deduction in the following month from the paycheck following the paycheck from which deduction for current dues were made.

Except for the deduction of the initiation fee, reinstatement fee or other special fees as instructed by the Secretary-Treasurer of the union, in no case shall the employer deduct more than two months dues during any one month, or more than one month's dues from any single paycheck. Deductions for missed dues payments shall be made at the rate of one extra deduction per month until the missed dues are paid.

No later than the tenth day of each month, the employer shall submit one check for the previous month's dues deductions together with one list of all bargaining unit employees, showing their names, their social security numbers, their dates of hire, hours worked, the total amount deducted from each employee each month, the reason if no deduction was made. The

employer shall deposit the list in an electronic format approved by the Union on the Union's FTP site.

11. Since in or about November 2012, Respondent failed to continue in effect all terms and conditions of the agreement described in paragraph 10 by failing to remit to the Union dues and fees deducted from the unit employees' wages.

12. The terms and conditions of employment described above in paragraph 11 are mandatory subjects for the purposes of collective bargaining.

13. Respondent engaged in the conduct described above in paragraph 11 without the Union's consent.

14. Since about April 16, 2013, the Union has requested orally and in writing to Dengler, that Respondent furnish the Union with the following information:

- (a) Payroll summaries for each employee (Monthly) for the years of 2011, 2012, and 2013.
- (b) Bargaining Unit Lists Monthly for the years 2011, 2012, 2013.
- (c) Year end summaries for all bargaining unit employees for 2011, 2012 and 2013.

15. The information requested by the Union, as described above in paragraph 14, is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the Unit.

16. From about April 16, 2013 to June 14, 2013, Respondent unreasonably delayed in furnishing the Union with the information requested by it as described above in paragraph 14.

17. By the conduct described above in paragraphs 11 and 13, 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.

18. By the conduct described above in paragraph 16, Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees in violation of Section 8(a)(1) and (5) of the Act.

19. 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 consolidated complaint. The answer must be **received by this office on or before September 12, 2013, or postmarked on or before September 11, 2013.** 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.

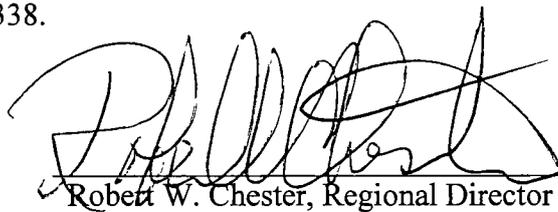
An answer may also be filed electronically through the Agency's website. To file electronically, go to www.nlr.gov, click on **File Case Documents**, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt and usability of the answer rests exclusively upon 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 consolidated complaint are true.

NOTICE OF HEARING

PLEASE TAKE NOTICE THAT on November 19, 2013, at 10:00 a.m. at the William S. Moorhead Federal Building, 1000 Liberty Avenue, Room 904, Pittsburgh, Pennsylvania, 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 consolidated 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: August 29, 2013



Robert W. Chester, Regional Director
National Labor Relations Board, Region 6
1000 Liberty Ave Room 904
Pittsburgh, PA 15222-4111

Attachments



United States Government
NATIONAL LABOR RELATIONS BOARD
REGION 6

William S. Moorhead Federal Building
1000 Liberty Avenue, Room 904
Pittsburgh, PA 15222-4111

Telephone: (412) 395-4400
Fax: (412) 395-5986
Website: www.nlr.gov

September 23, 2013

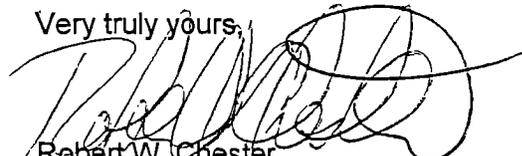
Re: Pittsburgh Athletic Association
Cases 06-CA-105460
and
06-CA-105461

Pittsburgh Athletic Association
Joseph Dengler, General Manager
4215 5th Ave.
Pittsburgh, PA 15213

Dear Mr. Dengler:

This is to notify you that Respondent's Answer to the Complaint issued in the above-captioned matter due on 9/12/13, has not been filed in accordance with Section 102.20 of the Board's Rules and Regulations and Statements of Procedure, Series 8, as amended. Unless an Answer is received in this office from Respondent by the close of business on the third business day following receipt of this letter, or unless an extension of time for filing the Answer has been granted pursuant to Section 102.20 of the Board's Rules and Regulations, a Motion for Default Judgment will be filed with the Board.

Very truly yours,



Robert W. Chester
Regional Director

CERTIFIED MAIL

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UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 6

PITTSBURGH ATHLETIC ASSOCIATION

and

UNITE HERE LOCAL 57

Case 06-CA-105460 and
06-CA-105461

AFFIDAVIT OF SERVICE OF: MOTION FOR DEFAULT JUDGMENT DATED
OCTOBER 22, 2013

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on October 22, 2013, I served the above-entitled document(s) by electronic mail, as noted below, upon the following persons, addressed to them at the following addresses:

PITTSBURGH ATHLETIC ASSOCIATION
JOSEPH DENGLER , GENERAL
MANAGER
4215 5TH AVE
PITTSBURGH, PA 15213-3599
joe.dengler@paclub.org

JOSEPH D. SHAULIS , ATTORNEY
LAW OFFICE OF CLAUDIA DAVIDSON
500 LAW & FINANCE BUILDING
429 4TH AVE
PITTSBURGH, PA 15219-1500
jdshaulis@gmail.com

October 22, 2013

Date

Charlene Prosser,
Designated Agent of NLRB

Name



Signature