

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
DIVISION OF JUDGES

INTERNATIONAL ALLIANCE OF  
THEATRICAL STAGE EMPLOYEES  
AND MOVING PICTURE TECHNICIANS,  
ARTISTS AND ALLIED CRAFTS OF THE  
UNITED STATES & CANADA, AFL-CIO  
(IATSE), LOCAL 5

and

Case 09-CB-318209

NOAH PABST

*Julius U. Emetu, II*, for the General Counsel  
*Julie C. Ford, Esq. (Doll, Jansen & Ford)*, for Respondent

**DECISION**

Sarah Karpinen, Administrative Law Judge. The trial in this case was held in Cincinnati, Ohio on August 19 and 20, 2025. The Complaint alleges that Charging Party Noah Pabst asked Respondent Union, International Alliance of Theatrical State Employees and Moving Picture Technicians, Artists and Allied Crafts of the United States and Canada, AFL-CIO (IATSE), Local 5, about the availability of hiring hall jobs and what he was required to do to be referred for work, and that, since about October 21, 2022, the Union failed and refused to refer Pabst to jobs or provide him with hiring hall information regarding the availability of work and his obligations to qualify for referral from its hiring hall. (Complaint, paras. 7-8).

The Union filed a timely Answer to the Complaint, and as an affirmative defense, alleged that the charge was untimely filed and served under Section 10(b) of the Act. (Answer, para. 12). The charge was filed on April 21, 2023, and served on May 17, 2023 (Complaint, para. 1(a)). Under Section 10(b) of the Act, a party is not liable for conduct that occurs more than six months prior to a properly served charge. See, e.g., *Old Colony Box Co.* 81 NLRB 1025, 1027 (1949); *Dun & Bradstreet Software Servs., Inc.*, 317 NLRB 84, 85 (1995). At the trial, the General Counsel moved to amend the Complaint to allege that Pabst did not know or could not have known about the alleged unfair labor practices before December 5, 2022. As outlined below, I deny the proposed amendment and find that the Charging Party knew the facts necessary to file a charge by no later than September 22, 2022, about eight months before the charge was filed and served. Therefore, I recommend dismissal of the Complaint in its entirety.

After carefully considering the entire record in this case, including briefs filed by the General Counsel and Union, I make the following findings of fact, conclusions of law, and recommendations:

## FINDINGS OF FACT

### I. Jurisdiction

5           The Union admits, and I find, that at all times relevant to this case it has been a labor  
 organization within the meaning of Section 2(5) of the Act. The Union also admits that it is  
 signatory to collective bargaining agreements with employers in the Cincinnati area including  
 Music and Event Management, Inc. (MEMI), Cincinnati Arts Association (CAA), and Cincinnati  
 10 Playhouse in the Park (PIP), and that during a representative twelve-month period ending May 1,  
 2023, MEMI purchased and received goods valued in excess of \$50,000 directly from points  
 outside the State of Ohio, and CAA and PIP derived gross revenues in excess of \$500,000 and  
 received goods valued in excess of \$5,000 directly from points outside the State. Based on the  
 above, I find that the companies were engaged in commerce within the meaning of Section 2(2),  
 (6), and (7) of the Act and that the NLRB has jurisdiction over this matter.

### II. Alleged unfair labor practices

#### A. Background

20           The Union represents employees who perform work related to setting up, operating, and  
 taking down equipment to support live stage performances. The Complaint alleges that the Union  
 is the exclusive source of referrals for stage employees hired by MEMI, CAA and PIP  
 (Complaint, para. 6 (a), (b) and (c)). The Union admits, and I find, that it is the exclusive source  
 of referrals for MEMI and CAA. (Jt. Exh. A, Art. 10.4, Jt. Exh. B, Art. 10.4). The Union denies  
 25 that it has an exclusive referral arrangement with PIP. (Tr. Vol. I, pp. 279-281, Answer, para. 6).  
 Its collective bargaining agreement with PIP gives the employer “sole discretion” to fill  
 vacancies. The Union may refer employees and can file a grievance if it believes PIP bypassed a  
 referral for a less qualified candidate but must prove that the Union candidate was better  
 qualified under the employer’s standards. (Jt. Exh. C, Art. 2). Therefore, I find that there is no  
 30 exclusive referral arrangement between the Union and PIP.

          The Union maintains a hiring hall and has written procedures for its operation. It also  
 maintains a referral list that is split into five categories, ranging from A to E. (Jt. Exh. E). The  
 Union usually refers participants from the A-list before moving on to Lists B, C, D, and E. (Tr.  
 35 Vol. II, pp. 134-136). Inclusion on the A-List requires five years of continuous residence in the  
 Union’s geographical jurisdiction, six years of experience as a stage technician, and a passing  
 grade on a Journeyman qualification test. (Tr. Vol. II, pp. 61-68, Jt. Exh. E, p. 2-3). The B-List  
 consists of participants in the Union’s apprenticeship program. The C-List consists of individuals  
 who are employed full-time as stage technicians within the Union’s jurisdiction.

40           Charging Party Pabst started out on the Union’s E-list in 2015. He later qualified for the  
 D-list, where he remained when the events of this case began. (Tr. Vol. I, pp. 237-239, R. Exh.  
 1). The D and E lists consist of hiring hall participants who have not met the requirements to  
 enter the Union’s apprenticeship program. D and E list participants are not eligible for union  
 45 membership and do not pay dues but do pay referral fees. (Tr. Vol. I, p. 220, Vol. II, p. 64).  
 Pabst’s membership status and payment of referral fees are not at issue in this case.

The Union's hiring hall is administered by its business representative, Thomas Guidugli, Jr. (Tr. Vol. I, p. 27). The Union's call steward is responsible for contacting participants on the referral list about available work. During the time period relevant to this case, Kevin Eviston had this role. He testified that he usually called or texted hiring hall participants directly about available jobs. The Union also uses an automated texting application called Textedly to contact participants. (Tr. Vol. II, pp. 202-203, GC Exh. 6).

### **B. The Charging Party's referral history**

In September 2018, Pabst was suspended from the hiring hall for 45 days, fined \$100, and placed on a six-month probationary period after a hearing before the Executive Board, assertedly for drinking on the job at Jack Casino. (GC Exh. 8, p. 1-2). Article O states that hiring hall participants who are "considered impaired by alcohol or any controlled substance" will be fined, dismissed from the job and referred to the Executive Board under Article M, which states:

Hiring Hall Participants who abuse the referral system or jeopardize its reputation as a source of competent and reliable technicians because of shoddy work, violation of legitimate work rules, or improper conduct on the job will, upon written notice and after a hearing before the Executive Board, be excluded from the referral system either temporarily or permanently.

Pabst testified that he never received notice of the hearing but did attend. (Tr. Vol. II, pp. 38-39). Business Agent Guidugli testified that as a result of Pabst's conduct, the casino (which had a non-exclusive referral arrangement with the Union) stopped accepting referrals for an unspecified time period. (Tr. Vol. II, pp. 73-75).

Pabst returned to work on October 22, 2018. His probationary period ended on April 23, 2019. (Tr. Vol. I, p. 209, GC Exh. 8, p. 2). During his probationary period, he was fined \$50 for being late to work on February 16. (GC Exh. 8, p. 4). The fine was imposed under Article K1 of the Hiring Hall Procedure, which states:

If a Hiring Hall Participant fails to appear at the job on time without a legitimate excuse, the first offense will be a \$50.00 fine and the possibility to be replaced. Second offense will be a \$100.00 fine and the possibility to be replaced. Third offense within one year from the first offense will be a \$300.00 fine and the possibility to be replaced and dealt with under Article "M". All fines must be paid in full before the hiring hall participant is referred to another job. (Jt. Exh. E).

He also received another month of probation. (GC Exh. 8, p. 5, Tr. Vol. I, p. 210). Business Agent Guidugli testified that the Union imposes harsh penalties for tardiness because workers must set up and take down shows in a tight time frame. (Tr. Vol. II, pp. 75-76).

In December 2021, Pabst was referred to a job with Playhouse in the Park (PIP). He became ill and contacted PIP management to let them know he would not be at work. Union Call Steward Kevin Eviston testified that Pabst was not supposed to reach out to PIP management directly and should have contacted Eviston instead so he could find a replacement for him. (Vol.

II, 141-145, R. Exh. 5). He called Pabst and told him he did not follow the proper call-out procedure. Pabst testified that he did not know the procedure prior to this call and said that he hung up on Eviston because he was upset about the way he was speaking to him. (Tr. Vol. I, p. 245). Eviston admitted that he was angry because Pabst would not accept fault for the incident and kept insisting that it was “no big deal.” (Tr. Vol. II, 147-148).

Business Agent Guidugli testified that after this incident, Pabst refused to take any referrals until approximately March 2022. (Tr. Vol. II, p. 99-101). Eviston testified that Pabst accepted some work and also declined work. (Tr. Vol. II, p. 149). Pabst denied that he refused referrals during this time but acknowledged that he submitted a statement to the Union stating that after Eviston “screamed, belittled me, and acted completely unprofessional,” he “decided to take some time and began saying no to some calls.” (Tr. Vol. I, 245-248, R. Exh. 2).

### C. Interactions between the Charging Party and the Union in 2022 and 2023

On May 9, 2022,<sup>1</sup> Call Steward Eviston contacted Pabst about a job on May 10 at Heritage Bank Arena, which Pabst accepted. Pabst testified that he was unable to report because his car broke down on his way to work. He texted Eviston at about 9:45 PM, either 15 or 45 minutes before his shift, to let him know. (Tr. Vol. I, pp. 139-140, 179, GC Exh. 2). Eviston received the message but was unable to get a replacement for Pabst. (Tr. Vol. II, p. 154).

The Union notified Pabst that he was subject to a \$50 fine under Article K1 for not showing up for work. (GC Exh. 8, p. 6). Pabst testified that he never received notice of the fine because it was sent to his former residence. He moved in 2019 and admitted that he never notified the Union of his new address. (Tr. Vol. I, p. 212, 216, Vol. II, p. 41). Eviston testified that he contacted Pabst the following week to offer him a referral, but Pabst turned it down. Eviston testified that he retired and no longer has his work phone, so he does not have records showing that he contacted Pabst that week. (Tr. Vol. II, p. 154).

On June 24, a notice went out from the Union through its Textedly application stating that there would be a large volume of calls coming up, and hiring hall participants should make themselves available. (Tr. Vol II, pp. 27-28, GC Exh. 6). On July 8, a notice went out for a job from July 11 through July 24. Pabst did not respond and testified that could not accept due to childcare issues. (Tr. Vol. I, p. 257, Vol II, pp. 27-28, GC Exh. 6). On July 19, Pabst texted Eviston, asking “You got any calls I can get on this week or next?” (Tr. Vol I, p. 179-180, GC Exh. 2). On July 27, Pabst received a Textedly notice about a job beginning August 2. Pabst did not respond. He initially testified that he did not recall receiving the notice but later testified that he had childcare issues and could not accept. (Tr. Vol. I, p. 257-258, Vol. II, p. 29, GC Exh. 6).

#### 1. The Union stops referring Pabst

Eviston testified that after Pabst stopped responding to messages, he informed Business Agent Guidugli. (Tr. Vol. II, p. 155-156, 167). He explained that hiring hall participants can turn down work but will normally answer with a yes or no or provide a reason. (Tr. Vol. II, p. 167).

<sup>1</sup> From here forward, all dates are in 2022 unless otherwise indicated.

Participants are not penalized if they have a reason for not taking a job, but if they continue to decline for a month or two, they will not get any more referrals. (Tr. Vol. II, pp. 168-169). Pabst initially testified that he did not recall turning down any jobs between May and August 2022. (Tr. Vol. I, p. 214). He later admitted that he “probably would have turned down a couple,” and that the procedure for turning down a job is “simply letting [Eviston] know, and he takes a note that you will not be on the call.” (Tr. Vol. II, pp. 146-147). Pabst testified that his July 19 text to Eviston was the first time he contacted him after May 10. (Tr. Vol. I, pp. 141, 275).

The guidelines for the D-list state in part:

Retention on the D-List depends upon performance and reliability. A D-List individual who refuses a job will not be offered any other job for the duration of the job that was refused. A second consecutive refusal of work will result in suspension from the D-List for one month from the date of such refusal. A third refusal within six months will result in removal from the D-List. (Jt. Exh. E).

Pabst texted Call Steward Eviston on August 3, 4, 5, 6, 11 and 15, asking whether there was any work available. (Tr. Vol I, p. 141, 180, GC Exh. 2). Eviston did not respond. Pabst also texted Business Agent Guidugli on August 9, asking what he needed to do to “get back to work as I really don’t want to lose my spot on the list.” (Tr. Vol. I, pp. 141-142, 194, GC Exh. 3). Guidugli testified that he did not respond because he does not reply to workers who are not eligible for referral and that at that point, Pabst was considered to have “abandoned the hiring hall,” and had an “outstanding fine that was a part of that abandonment.” He testified that in his experience, some hiring hall participants who receive a fine letter will “choose to never return,” and “if they do so, they are not eligible to be referred.” (Tr. Vol. II, p. 87).

## 2. Pabst visits the Union’s office on August 15

On August 15, Pabst went to the Union’s office in downtown Cincinnati. Business Agent Guidugli testified that he was on a call when Pabst arrived, but he could see him from his office. He testified that Pabst was fidgeting while he waited for him to get off the phone and was enraged and hostile by the time the call ended. He testified that Pabst jumped up when Guidugli approached him and told him, “I need money. I need to get back to work.” Guidugli described Pabst’s behavior as “erratic,” that he “quickly accelerated to rage,” and appeared to be “somewhat unkempt and fidgety and very red,” and that his hands were “flailing.” Guidugli testified that he deals with conflict regularly, but that the interaction with Pabst caused him real fear that he might become violent. (Tr. Vol. I, pp. 40-43, Vol. II, pp. 80-84).

Guidugli sat down at a conference table to try to calm the situation, which he described as “intense and very uncomfortable.” (Tr. Vol. I, pp. 42-43). He testified that he told Pabst that he was not eligible to work because he had an unpaid fine, had abandoned the hiring hall and had a history of violations. (Tr. Vol. I, pp. 42-43, Vol. II, p. 80). Pabst asked if all he had to do was pay a fine to return to work. Guidugli testified that he told Pabst that was not all he needed to do, but that the fine was outstanding. At that point Pabst left and slammed the door behind him. (Tr. Vol. II, pp. 80-81). Guidugli testified that he could tell from his demeanor that Pabst believed he could return to work by paying his fine. He testified that he told Pabst this was not the case, and

also considered not accepting the fine, but decided “due to the safety of myself and others, that we would just receive it and return it later.” (Tr. Vol II, pp. 85-86). However, the Union did not return the money due to “fear of the situation that had exploded that day.” (Tr. Vol. I, p. 66). He testified that after this incident, the Union kept its front door locked during business hours and added a camera to the entrance. (Tr. Vol. II, p. 86).

Pabst denied being upset when he went to the office and testified that he did not recall saying that he needed money or needed work. (Tr. Vol. I, pp. 293-294). He also denied having to wait for Guidugli to get off the phone. (Tr. Vol. I, pp. 267-268). He testified that Guidugli told him that he had “an unpaid fine for not making it to the May the 10<sup>th</sup> call, and that once I paid that fine, that I would be permitted to go back to work. So I left the office, I went to the ATM, I got \$50, I paid the fine, I got my receipt, and I left the office thinking that I would be receiving a call in the...near future to be referred out for work.” He testified that Guidugli was “pretty aggressive toward me, saying that I had abandoned my job. I hadn’t worked there in a very long time, and that I...had been denying calls,” but that he left thinking that he would be able to return to work, as he did after paying his fines in the past. (Tr. Vol. I, pp. 143-145).

The Union’s current office manager, Carley Haas, was working at the Union’s office on August 15. At that time, she was the office assistant. Haas testified that Pabst had an “air of desperation” and “seemed borderline emotional,” and implied he was having financial problems. She testified that Guidugli told Pabst that he had abandoned the hiring hall and declined calls and wasn’t working because of that. (Tr. Vol. II, pp. 213-214). As the conversation became “more hostile,” she testified that Guidugli sat down and they continued to talk back and forth, with Pabst becoming upset and using profanity, while Guidugli remained calm. She testified that the exchange made her very uncomfortable and that she was concerned that Pabst would become physical toward Guidugli. (Tr. Vol. II, pp. 215-217). She testified that Guidugli mentioned the fine as “one of the...various reasons” Pabst wasn’t getting referrals and did not recall him saying anything which would suggest that paying the fine would resolve the matter. The conversation ended with Pabst leaving to get the funds to pay his fine and then returning to pay it without further incident. She confirmed that she previously left the front door to the office unlocked unless she was there alone, but that she now keeps it locked all day and that the Union also obtained a front door camera for safety. (Tr. Vol. II, pp. 217-219).

### 3. Pabst continues to text Union officials

Pabst texted Call Steward Eviston on August 15, stating, “I spoke with Tom Guidugli today and paid my fine. Please let me know when there is a call that I can get on.” He texted again on August 23 and 26. Eviston did not respond. (Tr. Vol I, pp. 180-181, GC Exh. 2). He testified that Guidugli told him that they were waiting until the Executive Board could meet and weren’t going to “use [Pabst] until the executive board ruled on it.” (Tr. Vol. II, p. 177).

On August 23, Pabst texted Guidugli, stating that he had reached out to Eviston “multiple times with absolutely no response,” and that Guidugli assured him that he could return to work if he paid his fine. He also said that he knew “people that are under me on the list are working almost every day. This is completely unprofessional.” (Tr. Vol. I, pp. 194-195, GC Exh. 3). Pabst testified that he heard “from other members that there were junior members to me that were being permitted to work while I was not being allowed to work.” (Tr. Vol. I, p. 150). Guidugli

testified that Pabst's statement that he received assurances that he could return to work was incorrect, but he did not respond to the text because he believed that he had been "very clear on the day when we met that he was not eligible to be referred." (Tr. Vol. I, p. 114).

5 On September 1, Pabst messaged Eviston asking if there were any calls available. (Tr. Vol I, p. 181, GC Exh. 2). Eviston did not respond. Pabst also messaged Guidugli, noting that he had not received a response from him or Eviston, and that he was aware of people on the E-list receiving calls while he was "being ignored." He stated that he planned to reach out to the national union and accused Eviston of "slandering my name throughout the union." He said that he had responded to Eviston "every single time" until his car broke down, and that he tried to message him then, but "have not heard a word back from him since." (GC Exh. 3, pp. 3-4).

#### 4. September 6: Pabst receives a Textedly notification about Riverbend

15 On September 6, Pabst received a text through the Union's Textedly application stating that workers were needed the following day for a show at the Riverbend Music Center<sup>2</sup> for load in at 9 AM or load out at 10 PM. Pabst responded, "Yes both" less than an hour after receiving the message. (GC Exh. 6). Pabst testified that normally he would get a response from Eviston confirming the time he should report. After he did not receive such a message, Pabst sent several messages directly to Eviston asking whether he was working. Eviston replied that the call was covered, without giving any further explanation. (Tr. Vol I, p. 181-182, GC Exh. 2, pp. 1-2).

25 After receiving Eviston's message, Pabst texted, "Tommy [G]uidugli assured me once...my fine was paid, I would be back to work as usual, and my spot on the list restored. How are e listers and people I know are under me on the list working almost every day, and this is the first time you have responded to any of my messages[?]" He asked, "When is the next e board meeting," and said, "I have already reached out to the national union about this whole situation. And how unprofessional you and Tommy Guidugli have been...he's the union rep. He should be fighting for me to return to work not be one of my biggest obstacles." He then texted, "What, are you going to ignore me again now? Why did I get the mass text if the call is already filled?" He asked again about the executive board meeting, and then texted, "I see you're reading my messages and not replying." (Tr. Vol. I, p. 183, GC Exh. 2, p. 4). Eviston did not reply.

35 Guidugli testified that the Union mistakenly sent the September 6 notice to Pabst even though he was no longer eligible for referral. He explained that there is often a lag in unsubscribing people from the list, and that the Union did not unsubscribe Pabst until September 23, 2022, although he "should have been removed on September 15." (Tr. Vol. II, p. 91).

#### 5. Pabst's texts to the Union on September 8 and September 13

40 On September 8, Pabst messaged Guidugli to let him know he responded to the September 6 Textedly notice, only "[f]or Kevin to tell me the call was filled and then completely ignore me again. What else do I need to do to get back to work?" (GC Exh. 3, p. 4-5). Guidugli

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<sup>2</sup> Riverbend is operated by MEMI. (Tr. Vol. II, p. 57, Jt. Exh. B).

did not respond. (Tr. Vol. I, p. 107). Pabst also texted Eviston on September 8 asking if there was any work available. (Tr. Vol 1, p. 185, GC Exh. 2).

5 On September 13, Pabst texted Eviston again asking if any calls were available, stating that Guidugli “assured me, when I paid my fine, I would be back to work as usual.” He also told Eviston that he was aware that people below him on the list were able to work the Riverbend job and informed him that he “already reached out to the national union, and if I’m not back to work within the next couple of weeks, I will be taking legal action for you not abiding by your union contract, and defamation and slander. As well as my lost wages. I’m not playing these games  
10 anymore.” Eviston did not respond. (Tr. Vol I, pp. 154, 156, 185, GC Exh. 2).

Pabst messaged Guidugli that same day, stating:

15 Hey Tom, just reaching out yet again, wondering what exactly is going on, as it has been almost a month since we spoke in person and you assured me if I paid my fine I would be back to work. I got the mass text for odeza [Riverbend] and replied immediately, saying I could work, for Kevin to tell me the call was filled and I know for a fact that there was people beneath me on the list working. I've already reached out to the national union and  
20 will be considering legal action if I am not back to work soon. And you are supposed to be our union representative. You're supposed to be fighting for me to return to work. Not fighting against me and completely and utterly ignoring all attempts of communication.

25 And by soon I mean within the next 2 weeks.

(GC Exh. 3, pp. 5-6). Guidugli did not respond. (Tr. Vol I, p. 156).

30 Pabst testified that he learned from other hiring hall participants that people with less seniority than he had were able to work at Riverbend on September 6, and he wanted to make Guidugli “aware that there was junior members to me working, that he had promised to let me go back to work. And that if I was not put back to work, that I was going to file a complaint with the national union. And I did that.” (Tr. Vol. I, 154-155).

35 On September 13 and 22, Pabst contacted IATSE Local 5 President Tommy Bankemper, via text message and asked to speak with him about Guidugli and Eviston and find out why he was not receiving any calls. He testified that he did this to avoid pursuing “complaints with the national [Union] and other forms of...lawsuit, what have you, for lost wages.” Bankemper did not respond to his messages. (Tr. Vol. I, pp. 155-156, 158, 200, GC Exh. 4).  
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Pabst also filed a complaint with the International Union in September. Neither party introduced the complaint as an exhibit, but Pabst testified that he filed it because of Guidugli’s “completely unprofessional behavior and his unwillingness to represent me as not only the...business agent, but also as my union representative. I was not being awarded due process in  
45 any of these matters. I was not allowed to present my case to the E-Board...they did not follow their own policies for conducting disciplinary actions.” He testified that he also filed it because

even though he responded to the mass text on September 6, hiring hall participants with less seniority were able to work when he was not. (Tr. Vol. I, pp. 157, 271).

## 6. September 15 Executive Board meeting

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On September 15, the members of the Union's Executive Board held a meeting. One of the agenda items was entitled, "Discussion on certain workers. Noah Pabst no longer to be referred." (Tr. Vol. I, p. 39, GC Exh. 7). Guidugli testified that the board discussed Pabst's abandonment of the hiring hall as well as what occurred when he came to the Union's office a month earlier, on August 15. He testified that Pabst's conduct was a safety concern, and that the Union had taken similar actions against participants who engaged in what the union saw as threatening behavior in the past. (Tr. Vol. II, p. 89-90).

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Guidugli testified that the Board discussed whether Pabst should be notified of its decision to remove him from the referral list, but decided, based on his conduct in the office on August 15, that it would not be advisable to do so. He testified that they notified some hiring hall participants of similar actions in the past, but did not notify others, and was not obligated under the hiring hall rules to do so. He also noted that he verbally informed Pabst that he was no longer being referred for work when he came to the office on August 15. (Tr. Vol. II, pp. 90, 116-117).

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Call Steward Eviston testified that Guidugli told the Executive Board what happened when Pabst came to the office on August 15, and "they all decided that there--- there's no reason to refer him." (Tr. Vol. II, p. 156). Eviston testified that the Board also discussed Pabst's non-response to calls between May 10 and July 19. (Tr. Vol. II, pp. 195-196). He testified that the Union did not notify Pabst of its decision because "they weren't sure how he was going to react ...". (Tr. Vol. II, p. 157). He testified that removal from the referral list is usually brought up at an executive board or regular meeting and discussed, and that the person being removed sometimes attends, but that he was not involved in deciding who could and who could not attend meetings and testified that the business representative made that decision. (Tr. Vol. II, pp. 187-188).

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## 7. September 22 text messages

On September 22, Pabst messaged Guidugli:

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Just reaching out yet again to see where we stand. You guys have a lot of nerve commenting on my bad communication when you're in a position of power and can not even return a text or phone call. I need to know what I need to do to get back to work as this has been dragged out for almost 2 additional months at yours and Kevin's doing. I'm not going to be ignored until my year is up and I lose my seniority. (GC Exh. 3, p. 7).

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Pabst testified that he was upset because he heard from friends in the Union that Guidugli was telling people he was irate on August 15, "made a huge scene" and had to be "escorted out of the office." He testified that he was also upset because his messages were being ignored, "despite attempts of trying to find out when the next E-board meeting was, so that I was able to come and present my case, not because I had a disciplinary matter, but in order to present my case to the

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board in order to come to some kind of conclusion on the matter, internally, without having to file charges and a lawsuit and..." (Tr. Vol. I, pp. 198, 216).

5 Pabst also messaged Eviston on September 22, stating "You guys have a lot of nerve commenting on my bad communication when you're in a position of power and cannot even return a text or phone call. I need to know what I need to do to get back to work, as this has been dragged out for almost two additional months at yours and Tommy Guidugli's doing. I'm not going to be ignored until my year is up, and I lose my seniority." (Tr. Vol 1, p. 186, GC Exh. 2).

## 10 **8. Pabst continues to text the Union in October, November and December**

Pabst continued to text Eviston in October or November<sup>3</sup> asking "any calls I can get on[?]" He messaged him again on December 5 with the same inquiry. (Tr. Vol I, p. 186-187, GC Exh. 2). Unlike the messages Pabst sent in September, these messages did not inquire about what Pabst needed to do to get referrals but only asked whether there were any calls available. Pabst testified that after sending "several messages throughout September, October, November and into December. The last of those being on December 5th," and not hearing back from the Union, he proceeded to file for unemployment. (Tr. Vol I, p. 159).

## 20 **9. Pabst's contacts with the Union in 2023**

Pabst continued to send texts to Eviston asking if there were any calls available on January 5, February 7 and 9, March 3, 2023, and two additional dates. (Tr. Vol I, pp. 187-188, GC Exh. 2, p. 7).<sup>4</sup> At the end of March, he visited the Union's office again. He met with Business Agent Guidugli and recorded their conversation on his phone. In the recording, Guidugli tells Pabst the Union completed his unemployment paperwork "to the best of our ability." Pabst asked Guidugli if he was employed, and Guidugli responded, "Well, you abandoned your job and you haven't worked here for very long, so---" to which Pabst replied, "I did not." Guidugli responded, "I'm done having this conversation. We'll answer the questions as they're provided to us. Please do not come here and harass me again like you did last time." (Tr. Vol I, pp. 168-169, GC Exh. 10). Pabst denied harassing anyone, and Guidugli asked him to "quit texting and harassing me through text." Pabst asked whether Guidugli was his employer, and Guidugli told him he was not, and asked Pabst not to come back to the Union office. Pabst replied that he would be hearing from his lawyer. (GC Exh. 10).

35 Pabst also made a written request for information, including three years of his call lists, his unemployment paperwork, and a receipt for the \$50 fine he paid in August. (GC Exh. 5, p. 2). He received the information he requested within a few days. (Tr. Vol. I, p. 120, 160, 203, GC Exh. 5, p. 3). On April 13, Pabst requested a copy of the local union's constitution. He testified that he never received one. (Tr. Vol. I, pp. 204-205, GC Exh. 5, p. 3).<sup>5</sup>

<sup>3</sup> The Complaint alleges that Pabst contacted the Union on October 5, 11, 17 and 20, November 12 and 14, and December 5, 2022. (Complaint, para. 7(c), (d)). The dates on the exhibit the General Counsel provided to establish these contacts are very difficult to read. However, there is no reason to doubt that they were sent on approximately the dates alleged in the Complaint. (GC Exh. 2, pp. 6-7).

<sup>4</sup> The dates of the two text messages after March 3 are not legible.

<sup>5</sup> The Complaint does not include any allegations concerning this request.

## ANALYSIS

### I. The charge is time-barred under Section 10(b) of the Act

5 Under Section 10(b) of the National Labor Relations Act, “no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge with the Board and the service of a copy thereof upon the person against whom such charge is made.” The Charging Party is responsible for timely and proper service of the charge, although “the Regional Director will, as a matter of course, cause a copy of such charge to be served on  
10 the person against whom the charge is made, but... shall not be deemed to assume responsibility for such service.” Sec. 102.14, Board's Rules and Regulations. The party that raises Section 10(b) as an affirmative defense bears the burden of proof. See *Chinese Am. Planning Council*, 307 NLRB 410, 410 (1992), rev. denied mem. 990 F.2d 624 (2d Cir. 1993).

15 The Complaint does not meet the requirements of Section 10(b). The Board has consistently held that the 6-month time period is “determined by the date of the service of the charge. Thus, a day 6 months earlier becomes the cutoff date and activities occurring before such date may not be alleged as unfair labor practices.” *Dun & Bradstreet Software Services, Inc.*, 317 NLRB 84, 85 (1995), affd. sub nom. 79 F.3d 1238 (1st Cir. 1996), quoting *Koppers Company, Inc.*, 163 NLRB 517, 517 (1967). Pabst filed his initial charge in this matter on April 21, 2023. (GC Exh. 1(a)). It was served on the Union on May 17, 2023. (GC Exh. 1(a), (b) and (g), para. 1(a)). The Complaint alleges that the Union has been engaging in unlawful conduct since about October 21, 2023. October 21 is six months before Pabst filed his initial charge, but over six months before the charge was served. (GC Exh, 1(g), Complaint, paras. 1(a), 7(e) and 8(a)).  
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The Union raised the timeliness of the service and filing of the charge as an affirmative defense in its Answer, at the trial and in its post-trial brief. (GC Exh. 1(i), Answer, p. 3). The General Counsel attempted to resolve the issue by proposing to amend the Complaint to change the operative date of the unfair labor practice to December 5. I am denying the proposed  
30 amendment for the reasons outlined below. I also find that the General Counsel failed to show that the Charging Party did not know about the alleged unfair labor practices before December 5, and instead find that he had the facts necessary to file his charge in September.

#### A. The General Counsel’s motion to amend the Complaint is denied

35 On the second and final day of trial, the General Counsel moved to amend the Complaint to change the allegations in paragraphs 7(e) and 8(a) to: “Since about December 5<sup>th</sup>, 2022, before which Pabst did not know and could not have known, Respondent has failed and refused to provide Pabst with hiring hall information maintained by Respondent to determine job  
40 availability and his obligations under the hiring hall procedure to qualify for referral from its hiring hall,” and “has failed and refused to refer Pabst to employment with MEMI, CAA and PIP.” The Union opposed the amendment. Both parties made oral arguments on the record, and I deferred ruling to allow them to brief the issue. <sup>6</sup>

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<sup>6</sup> During the evening after the first day of trial, the General Counsel sent an email to me and opposing

Counsel for the General Counsel argues that the amendment is necessary to conform to facts adduced on the record that after Pabst texted the Union repeatedly in September, October, and November with no response, he concluded on December 5 that he was not going to get any referrals and filed for unemployment. (Tr. Vol. II, p. 7-8, GC Brief, Part IV). This evidence arises from Pabst’s testimony on the first day of trial that after several texts to Eviston, he sent the “last of” them on December 5, then filed for unemployment. (Tr. Vol. I, p. 159, GC Exh. 2).

The Union opposed the amendment, arguing that the Charging Party knew or should have known before December that he potentially had a claim, and that there were no grounds for allowing a mid-trial amendment of such a dispositive issue when the Union raised 10(b) as a defense prior to the hearing, and the evidence the General Counsel cited as a basis for the proposed amendment came from the General Counsel’s own witness and exhibit. The Union also noted that the amendment was proposed after the Union’s counsel cross-examined Pabst on the first day of trial about the significance of the October 21 date in the original Complaint, and after the General Counsel initially announced an intent to amend the Complaint to allege November 17 as the operative date. (Tr. Vol. II, pp. 8-12, 18-20, R. Brief, p. 17-18).

An ALJ has broad discretion to grant or deny a motion to amend a complaint after considering: “(1) whether there was surprise or lack of notice, (2) whether the General Counsel offered a valid excuse for its delay in moving to amend, and (3) whether the matter was fully litigated.” *Stagehands Referral Service, LLC*, 347 NLRB 1167, 1171-1172 (2006). After carefully considering these factors, I am denying the motion to amend. There is no evidence of surprise or lack of notice. The 10(b) problem in this case was evident from the face of the Complaint, which states that the charge was not served until May 17, 2023, but that the unfair labor practice allegations dated back to October 21, 2022.

The evidence that formed the basis for the proposed amendment did not come from a subpoenaed document or testimony from one of Respondent’s witnesses, but from the testimony of the Charging Party and text messages in the General Counsel’s exhibit. The General Counsel failed to offer any reason as to why it did not have this information prior to the trial, or, if it truly was new information, why the motion to amend was not made after Pabst testified on the first day of the trial, instead of waiting until the next day.

The Union had opportunities to question Pabst again or put on additional evidence after the amendment was proposed. However, I find that it would be unjust to allow the amendment when there is no evidence that the delay in proposing it was justified. See, e.g., *Stagehands Referral Service, LLC*, supra, 374 NLRB at 1172 (amendment not appropriate when the General Counsel did not offer adequate justification for failing to propose it as soon as new evidence came to light); *Consolidated Printers*, 305 NLRB 1061, 1064 (1992) (amendment denied when General Counsel did not explain delay in seeking it). See also *King Soopers*, 859 F.3d 23, 33 (D.C. Cir. 2017) (mid-trial motion to amend Complaint inappropriate when the General Counsel

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counsel announcing an intent to move the next day to amend the Complaint to allege that the Union’s unlawful conduct began on November 17, 2022, six months prior to the service of the charge. This was not entered on the record, but I am taking judicial notice of it because it was sent to both me and the Union’s counsel and was discussed on the record and in Respondent’s Brief.

had access to the relevant information prior to the trial and offered no excuse for delaying until after respondent cross-examined main witness). Compare *Remington Lodging & Hospitality, LLC*, 363 NLRB 987, n. 1 (2016) (amendment appropriate when General Counsel received information that formed basis for allegation pursuant to subpoena after the trial started).

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### **B. The 10(b)-period started in September 2022**

Even if the Complaint had been amended in a timely manner, I would still recommend dismissal because there is no basis for finding that the 10(b) period started on December 5. The six-month statute of limitations starts to run when the “charging party receives clear and unequivocal notice- either actual or constructive- of the acts that constitute the alleged unfair labor practice, i.e., until the aggrieved party knows or should know that his statutory rights have been violated.” *John Morell & Co.*, 304 NLRB, 896, 899 (1991); see also *Laborers International Union of North America, Local 872 (TV Transport)*, 373 NLRB No. 14, slip op. at 5 (2024) (charge untimely when filed eight months after the charging party knew of alleged violation).

The Union argues that the Charging Party had the information that formed the basis for his charge by no later than September 13, 2022. (R. Brief, p. 16). The General Counsel counters that the Union’s actions, in particular its acceptance of Pabst’s fine on August 15 and its September 6 text about available work at Riverbend, prevented him from having the information he needed to file his charge. (GC Brief, Sec. IV). I find that the Charging Party was on notice of the alleged unfair labor practices by no later than September 22, 2022.

#### **1. Any ambiguous conduct by the Union ended on September 6**

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Notice of an alleged unfair labor practice will not be found when the respondent sends mixed signals or conceals facts that prevent the charging party from obtaining the information necessary to form the basis for filing an unfair labor practice charge. See *IATSE Local 412 (Asolo Center for the Performing Arts)*, 308 NLRB 1084, 1087 (1992). The General Counsel argues notice was delayed in this case because the Union “actively misled” Pabst by accepting his fine on August 15, 2022, and texting him about available work on September 6, 2022.

There is no evidence that the Union did anything to intentionally mislead Pabst about his status. However, its actions on August 15 and September 6 did create ambiguity. I credit Business Agent Guidugli that he never offered Pabst assurances that he could return to work if paid his fine.<sup>7</sup> His testimony was corroborated by Haas and by his own continued refusal to consider Pabst eligible for referral after August 15. But he also admitted that he could see from Pabst’s demeanor that he believed that he could return to work if he paid his fine but accepted his payment anyway because of the volatility of the situation. This, along with the September 6 text about the Riverbend job, created ambiguity about Pabst’s referral status.

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<sup>7</sup> In making this and the other credibility findings in this decision, I considered the witnesses’ testimony in the context of their demeanor, the weight of the evidence, the facts, the probability that what they said was true, and the reasonable inferences that could be drawn from the testimony. See *Double D Construction Group*, 339 NLRB 303, 305 (2003), citing *Daikichi Sushi*, 335 NLRB 622, 623 (2001). I was also mindful that credibility determinations are not “all or nothing,” and that it is possible to disbelieve part of a witness’ testimony without discrediting all of it. See *Daikichi Sushi*, supra, at 622.

## 2. Pabst had notice of the facts underlying his charge by September 22

Although there may have been ambiguity when Pabst received the Riverbend text, the actions Pabst took AFTER receiving it show that by at least September 22, he had the facts necessary to file his charge. He knew that he was not getting referrals even though he paid his fine, that hiring hall participants with less seniority were working in his place (including at Riverbend), and that Union officials were not responding to his texts. He knew he was not getting information about executive board meetings and believed that the Union was violating its own disciplinary procedures and his due process rights and was threatening legal action as a result. This finding is based on the following undisputed evidence:

- After Call Steward Eviston told Pabst the September 6 call was covered, Pabst asked, "**How are e listers and people I know are under me on the list working almost every day**, and this is the first time you have responded to any of my messages?" He also told him, "I see you're reading my messages and not replying." (GC Exh. 2, emphasis added).
- Pabst texted Eviston again on September 13 stating that he knew "for a fact" that hiring hall participants with less seniority were able to work the Riverbend job when he was not and **threatened legal action against the Union for "not abiding by your union contract. And defamation and slander. As well as my lost wages"** if he was not returned to work "within the next couple of weeks." (GC Exh. 2, emphasis added).
- Pabst sent a text that same day to Business Agent Guidugli telling him that **Eviston told him the Riverbend job was filled, but that he knew that there were "people beneath me on the list working,"** and that he had already "reached out to the national union and **will be considering legal action** if I am not back to work soon." (Tr. Vol. I, 154-155, emphasis added).
- Pabst contacted Local 5 president Tommy Bankemper on September 13 and 22 in an attempt to avoid pursuing "**complaints with the national [Union] and other forms of...lawsuit...for lost wages.**" (Tr. Vol. I, pp. 155-156, GC Exh. 4).
- Pabst filed a complaint with the International Union in mid-September because lower seniority participants were able to work when he was not, and Guidugli's "completely unprofessional behavior and his unwillingness to represent me as not only the...business agent, but also as my union representative," as well as the **lack of "due process in any of these matters. I was not allowed to present my case to the E-board...they did not follow their own policies for conducting disciplinary actions...."** (Tr. Vol. I, p. 157, emphasis added).
- Pabst texted Guidugli on September 22 telling him that he and Eviston had "a lot of nerve commenting on my bad communication when you're in a position of power and cannot even return a text or phone call. I need to know what I need to do to get back to work as this has been dragged out for almost 2 additional months at yours and Kevin's doing. **I'm not going to be ignored until my year is up and I lose my seniority.**" (GC Exh. 3, p. 7, emphasis added). He sent a similar message to Eviston on the same date. (Tr. Vol 1, p. 186, GC Exh. 2).

The General Counsel argues that the 10(b) period did not begin to run because the Union did not inform Pabst that he was ineligible for referral after it sent him the September 6 text about the Riverbend job. (GC Brief, Pt. IV). However, official notification of an action is not necessary when “the charging party has clear and unequivocal notice of facts necessary to support a ripe unfair labor practice [charge].” *Encore Event Technologies, LLC*, 371 NLRB No. 161, slip op. at 3-4 (2022) (charging party was on notice of unfair labor practice when he went from getting 40 hours per week of work to none and was verbally told he had been “blacklisted,” despite absence of any official notification), citing *Local 25, IBEW (SMG)*, 321 NLRB 498, 500 (1996) (upholding ALJ finding that 10(b) period for failure to refer charge began when charging party learned from other members that someone with lower seniority was referred in her place, not when she received confirmation of the referral from union officials two months later).

The General Counsel argues that Pabst “would have assumed” after receiving the September 6 text that even though that job was filled, he would be referred to the next job. (GC Brief, Part IV). But there is no basis for finding that he would be justified in making such an assumption when there is no evidence that the Union engaged in any additional ambiguous conduct after September 6,<sup>8</sup> and Pabst’s texts after that date show that he clearly knew that the Union was referring participants with less seniority, ignoring his texts and failing to provide him with the information he requested. That knowledge put him “on notice of facts that created a suspicion sufficient to warrant requiring him to file his unfair labor practice charge within 6 months ... to escape the 10(b) bar.” *Safety-Kleen Corp.*, 279 NLRB 1117, 1117, n. 1 (1986).

### 3. There is no basis for finding that the 10(b) period began on December 5

The General Counsel argues that the 10(b) period began on December 5 because “Pabst concluded that Respondent was not going to refer him out and proceeded to file for unemployment.” (See GC Brief, part IV). But there is no evidence that Pabst learned anything on December 5 that he did not already know by mid-September. There is therefore no basis for finding that the 10(b) period was triggered by his subjective decision to file for unemployment when there is undisputed evidence, including his own text messages, showing that he was aware of the facts that formed the basis for his unfair labor practice charge by September 22.

The text Pabst sent to Eviston on December 5 was identical to the texts he sent him in October and November 2022, and to the texts he continued to send in January, February and March 2023. The record is devoid of evidence as to why the December 5 text stood out, or why Eviston’s failure to respond to it gave Pabst cause for concern over his failure to respond to any of his other texts. It is also worth noting that, although the Complaint alleges that Pabst asked the Union what he was required to do to be referred to jobs in October, November and December 2022 (Complaint, para. 7(b)-(d)), the record shows that the last time he asked this question was on September 22 (GC Exh. 2, 3). The texts he sent from October 2022 forward asked only if

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<sup>8</sup> Compare *IATSE Local 412*, supra, 308 NLRB at 1088 (letter to charging party did not trigger the 10(b) period when the union continued to refer him after sending the letter, then provided him with false information about whether it had any work available); see also *SEIU Local 3036 (Linden Maintenance)*, 280 NLRB 995, 996 (1986) (unreturned phone calls did not put member on notice that union dropped his grievance because union officials were contemporaneously assuring him that it was being processed).

there were any calls he could get on. (GC Exh. 2). There is therefore no basis to find that the Union took (or failed to take) any action after September to trigger the 10(b) period.

**CONCLUSIONS OF LAW**

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1. Music and Event Management, Inc. (MEMI), the Cincinnati Arts Association (CAA) and Playhouse in the Park (PIP) are employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.
2. The International Alliance of Theatrical State Employees and Moving Picture Technicians, Artists and Allied Crafts of the United States and Canada (IATSE), AFL-CIO, Local 5 is a labor organization within the meaning of Section 2(5) of the Act.
3. The Union did not violate the Act as alleged.

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On these findings of fact and conclusions of law, and on the entire record, I issue the following recommended<sup>9</sup>

**ORDER**

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The Complaint is dismissed.

Dated, Washington, D.C., April 2, 2026

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Sarah Karpinen  
Administrative Law Judge

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<sup>9</sup> If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.