
**Federal Court Report**

**NLRB Exceeded Its Authority by Imposing Penalties for Technical Violation**

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The National Labor Relations Board (NLRB) exceeded its statutory authority by imposing punitive measures against a company for an insignificant deviation from the terms of a settlement agreement resolving several unfair labor practice charges. The board sought a default judgment and imposition of penalties against the East Brunswick European Wax Center (EBEWC) because it had distributed a notice of settlement to its employees by e-mail instead of by text message. The 3rd U.S. Circuit Court of Appeals found in favor of the EBEWC, deciding the board had overreached by acting in a punitive fashion.

The EBEWC is a beauty and waxing salon in New Jersey. One of its former employees filed unfair labor practice charges against the salon. The board's Region 22 later filed a complaint alleging, among other things, that the salon had threatened to fire employees if they engaged in union or protected concerted activity and that it encouraged other employees to report employees who engaged in such activity.

The salon and the region entered into a settlement agreement. The settlement required the EBEWC to send a copy of the notice of settlement "by text to all employees who work at the facility." The region would take no further action "provided that [the EBEWC] complies with the terms and conditions" of the settlement. The salon was required to notify the region of the steps it had taken to comply with the settlement agreement.

In the months following the settlement, the region sent several letters to the EBEWC reminding it of its obligation to make employees aware of the notice of settlement, but the letters contained conflicting language as to the steps the salon was to take. For example, one letter reminded the EBEWC to "distribute the notice electronically to employees." The next letter referenced posting and reading the notice to its employees, but it did not mention texting or e-mailing the notice. Another reminder told the salon to post and read the notice. The final letter told the EBEWC that it must send the notice "via text" to all employees.

The EBEWC notified the region that it had e-mailed the notice to all employees and e-mailed confirmation of reading the notice to its employees. In response, the region accused the salon of failing to "fully comply with all of the terms of the settlement agreement," including "failing to text the notice to its employees," and claimed that the salon "communicates with its employees by text message." The region then reinstituted its lawsuit and sought a full remedy from the board, which included items that were not part of the original settlement. The board granted the default judgment.

In a strongly worded opinion, the appeals court reversed the board, finding it had exceeded its authority by imposing punitive measures upon the salon instead of implementing remedial measures to carry out the policies of the National Labor Relations Act (NLRA). The board had taken "a sledgehammer to an agreement where a chisel would have sufficed if [the EBEWC] had breached (which it did not)," according to the appeals court.

The settlement agreement warned the salon that if it failed to comply with any of its terms, a complaint would be re-issued. However, courts have the authority to "ignore trifling departures." Informing employees of their rights under the NLRA through the distribution of settlement notices is an important part of the board's remedies, but the point is to ensure that employees are notified. The salon e-mailed the settlement notices to its employees instead of texting them, but this was not a material failure to comply with the settlement because the employees were actually notified of the terms of the settlement. Moreover, there was no indication that texting, instead of e-mailing, had any real significance to the EBEWC, its employees or the board. In fact, evidence in the case showed that the salon routinely communicated important messages to its employees by e-mail, and there was no explanation as to why the board required the notification to be accomplished by text message.

The board's conflicting follow-up letters referring to electronic communications, posting and texting created further confusion. As the salon's only "default" was communicating by e-mail instead of text, the board's action in seeking a full, punitive remedy was excessive and was nothing more than an effort to punish the EBEWC for an "insignificant violation."

*East Brunswick European Wax Center LLC v. NLRB*, 3rd Cir., Nos. 20-2020/2233 (Jan. 11, 2022).

**Takeaway:** While the appeals court ruled in favor of the employer in this case, you should not interpret this decision to mean that a failure to follow an NLRB settlement agreement to the letter will not lead to adverse consequences. Always carefully review the terms of a settlement agreement and obtain the input of counsel, then execute each item in the settlement as written. If you deviate from those terms, there is a chance that a favorable settlement may collapse and lead to expensive, protracted litigation against a government agency with significant resources.  *G. Bryan Adams III is an attorney with* [*Van Hoy, Reutlinger, Adams & Pierce PLLC*](https://worklaw.com/firms/van-hoy-reutlinger-adams-and-pierce)*, the Worklaw® Network member firm in Charlotte, N.C.*