Permobil, Inc. *and* Mark Westphal. Case 19–CA–324895

January 29, 2026

BY MEMBERS PROUTY, MURPHY AND MAYER

ORDER

On December 9, 2024, on a stipulated record, Administrative Law Judge Robert A. Giannasi issued a decision in this matter finding that the Respondent violated Section 8(a)(1) of the National Labor Relations Act (the Act) by requiring, in its Employment Agreement, that employees not disclose the terms of the Employment Agreement or that employees are prevented from disparaging or criticizing the Respondent when, in either case, the employees are engaged in activities protected by the Act. The judge dismissed allegations that the noncompetition and non-solicitation-of-employees provisions of the Employment Agreement, as well as other nonsubstantive portions of the agreement, violated the Act. He also dismissed the allegation that the Respondent violated the Act by filing and maintaining a lawsuit in federal district court to enforce the Employment Agreement against the Charging Party.

Following the issuance of the judge's decision, the Acting General Counsel filed exceptions with the National Labor Relations Board on February 6, 2025.[1] Meanwhile, the Respondent, the Charging Party, and the Charging Party's subsequent employer reached a non-Board settlement agreement executed on February 7, 2025.[2] This settlement addressed both the Board charge filed by the Charging Party in this proceeding and the Respondent's federal district court litigation against the Charging Party. Pursuant to the terms of the settlement agreement, the Charging Party requested that the Board charge be withdrawn. On September 22, 2025, the Respondent filed the instant motion to remand the case to the Regional Director to process the settlement and the Charging Party's request to withdraw the charge. The Acting General Counsel filed an opposition to the motion to remand, and the Respondent filed a reply.

After careful consideration, we find that it would not effectuate the purposes and policies of the Act to grant the Respondent's motion. We are mindful that there is an "important public interest in encouraging the parties' achievement of a mutually agreeable settlement without litigation," *Independent Stave Co., Inc.*, 287 NLRB 740, 742 (1987), and that the Respondent, the Charging Party, and the Charging Party's employer have voluntarily entered into the agreement at issue here. However, on balance, we find that the settlement agreement does not satisfy the standard set forth in *Independent Stave*, 287 NLRB at 743, and that the first two factors of that standard warrant denying the Respondent's motion.[3]

First, the Acting General Counsel opposes the Respondent's motion, arguing, among other things, that the settlement agreement does not effectively resolve the instant case because, while it provides a remedy for the Charging Party, it does not provide redress to other employees of the Respondent who were required to sign the Employment Agreement. The Acting General Counsel's opposition is an important consideration that weighs against accepting the settlement. See, e.g., *Flint Iceland Arenas*, 325 NLRB 318, 319 (1998); and *Frontier Foundries*, 312 NLRB 73, 74 (1993).

Second, we find that the proposed settlement is not reasonable in light of the nature of the allegations. As noted above, this case involves allegations that, among other things, the Respondent violated Section 8(a)(1) by maintaining various provisions in its Employment Agreement. In particular, we note that employees other than the Charging Party were subject to the Employment Agreement, and that the Respondent does not except to the judge's finding that the non-disclosure and non-disparagement provisions of the Employment Agreement are unlawful. The settlement agreement, however, does not meaningfully address the unfair labor practices alleged in the complaint and provides no remedy related to the Board proceeding, not even to address the provisions of the Employment Agreement found unlawful by the judge and not challenged by the Respondent on exception. The settlement agreement also

[1] On April 2, 2025, the Acting General Counsel filed a motion seeking to withdraw the exception related to the maintenance of the non-compete provision of the Employment Agreement.

[2] The above-referenced parties previously executed a non-Board settlement agreement on January 12, 2025, but later revised the Confidentiality and Non-Disparagement sections of the settlement agreement to ensure compliance with the law and policy underlying the Act.

[3] In *Independent Stave Co.*, the Board adopted a standard for determining whether to give effect to a private non-Board settlement. The Board held that it would examine all the surrounding circumstances, including the following factors:

> (1) whether the charging party(ies), the respondent(s), and any of the individual discriminatee(s) have agreed to be bound, and the position taken by the General Counsel regarding the settlement; (2) whether the settlement is reasonable in light of the nature of the violations alleged, the risks inherent in litigation, and the stage of the litigation; (3) whether there has been any fraud, coercion, or duress by any of the parties in reaching the settlement; and (4) whether the respondent has engaged in a history of violations of the Act or has breached previous settlement agreements resolving unfair labor practice disputes. Id. at 743.

does not provide for a notice-posting remedy and therefore provides no mechanism for informing the Respondent's employees subject to the Employment Agreement of their statutory rights or to otherwise dissuade the Respondent from continuing to maintain and enforce an Employment Agreement that infringes on those rights. We therefore agree with the Acting General Counsel that, although the settlement agreement provides for a resolution of the dispute between the Charging Party and the Respondent, it fails to address the public interest in protecting the statutory rights of the other employees subject to the unlawful provisions of the Employment Agreement. See, e.g., *Flint Iceland Arenas*, 325 NLRB at 319 (second *Independent Stave* factor not satisfied when alleged unlawful conduct was directed at the entire workforce and the settlement agreement did not provide for notices or assurances to employees against similar retaliatory conduct in the future, although it did provide individual remedies to some specific employees).

Accordingly, the Respondent's motion is denied.

Dated, Washington, D.C. January 29, 2026

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David M. Prouty, Member

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James R. Murphy, Member

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Scott A. Mayer, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD