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**Pacific Bell Telephone Company d/b/a AT&T California and Communications Workers of America, District 9, Local 9421.** Cases 20–CA–301120 and 20–CA–302339

May 19, 2026

DECISION AND ORDER

BY CHAIRMAN MURPHY AND MEMBERS PROUTY  
AND MAYER

The General Counsel<sup>1</sup> seeks default judgment in this case pursuant to the terms of an informal settlement agreement. Upon charges filed by Communications Workers of America, District 9, Local 9421 (the Union) on August 9, 2022 (amended November 3) and August 26, 2022 (amended November 9), the Regional Director for Region 20 issued a consolidated complaint and notice of hearing on November 17, 2022, against Pacific Bell Telephone Company d/b/a AT&T California (the Respondent), alleging that it has violated Section 8(a)(5) and (1) of the Act (hereinafter “*Pacific Bell I*”).

On November 28, 2022, the Regional Director approved an informal settlement agreement in *Pacific Bell I*. Pursuant to the terms of the settlement agreement, the Respondent agreed, among other things, to: (1) refrain from refusing to bargain in good faith with the Union as the exclusive collective-bargaining representative of its employees in the appropriate bargaining unit; (2) refrain from failing or refusing to timely provide the Union with information it requests that is relevant and necessary to its role as the bargaining representative of unit employees; and (3) refrain from interfering with employees’ Section 7 rights in any like or related manner.

The “Performance” provision of the settlement agreement also contained the following non-compliance provision:

The Charged Party agrees that in case of non-compliance with any of the terms of this Settlement Agreement by the Charged Party, and after 14 days’ notice from the Regional Director of the National Labor Relations Board of such non-compliance without remedy by the Charged Party, the Regional Director will issue a Complaint that includes the allegations covered by the Notice to Employees, as identified above in the Scope of Agreement section, as well as filing and service of the charge(s), commerce facts necessary to establish Board

jurisdiction, labor organization status, appropriate bargaining unit (if applicable), and any other allegations the General Counsel would ordinarily plead to establish the unfair labor practices. Thereafter, the General Counsel may file a Motion for Default Judgment with the Board on the allegations of the Complaint. The Charged Party understands and agrees that all of the allegations of the Complaint will be deemed admitted and that it will have waived its right to file an Answer to such Complaint. The only issue that the Charged Party may raise before the Board will be whether it defaulted on the terms of this Settlement Agreement. The General Counsel may seek, and the Board may impose, a full remedy for each unfair labor practice identified in the Notice to Employees. The Board may then, without necessity of trial or any other proceeding, find all allegations of the Complaint to be true and make findings of fact and conclusions of law consistent with those allegations adverse to the Charged Party on all issues raised by the pleadings. The Board may then issue an Order providing a full remedy for the violations found as is appropriate to remedy such violations. The parties further agree that a U.S. Court of Appeals Judgment may be entered enforcing the Board Order ex parte, after service or attempted service upon Charged Party at the last address provided to the General Counsel.

On about February 9, 2023, the Regional Director closed *Pacific Bell I* after a compliance investigation showed that the Respondent had complied with the affirmative terms of the settlement agreement by posting and emailing a notice to employees encompassing the alleged violations, and by conducting mandatory supervisor and manager training.

Thereafter, the Union filed charges against the Respondent in Case 20–CA–314296 on March 16, 2023, and in Case 20–CA–318265 on May 17, 2023. On August 30, 2023, the Regional Director for Region 20 issued a consolidated complaint and notice of hearing in those cases, alleging that the Respondent again unreasonably delayed providing the Union with relevant and necessary requested information (hereinafter “*Pacific Bell II*”). The Respondent’s allegedly unlawful conduct underlying that complaint commenced prior to the closing of *Pacific Bell I*.

By letter dated October 18, 2023, the Regional Director notified the Respondent that by engaging in the conduct alleged in *Pacific Bell II*, the Respondent was in noncompliance with the settlement agreement in *Pacific Bell I*. The letter advised the Respondent of the General

to now General Counsel Crystal S. Carey, for simplicity, we use the term General Counsel throughout.

<sup>1</sup> Although this case spans the transition from then-General Counsel Jennifer A. Abruzzo to then-Acting General Counsel William B. Cowen

Counsel's intention to seek default judgment in the settled case after successfully proving the Section 8(a)(5) and (1) violations alleged in the post-settlement case.

On February 16, 2024, Administrative Law Judge Robert A. Ringler issued a decision in *Pacific Bell II*, finding the Respondent violated Section 8(a)(5) and (1) of the Act as alleged. Subsequently, on April 9, 2024, the Regional Director issued a consolidated complaint in *Pacific Bell I*. On April 26, 2024, the General Counsel filed a Motion to Transfer Case to the Board, for Consolidation of Cases, and for Default Judgment. On May 1, 2024, the National Labor Relations Board issued an order transferring the motion to the Board and Notice to Show Cause why the motion should not be granted. The Respondent filed a response opposing the General Counsel's motion, and the Union filed a response supporting the General Counsel's motion and advocating for extraordinary remedies.<sup>2</sup>

On March 28, 2025, the Board issued a decision adopting the judge's rulings, findings, and conclusions in *Pacific Bell II* regarding the Union's December 6, 2022 information request, and adopting the judge's recommended Order, with modifications.<sup>3</sup> *Pacific Bell Telephone Co. d/b/a AT&T California*, 374 NLRB No. 24 (2025). On April 8, 2025, the Board issued a supplemental notice to show cause regarding the General Counsel's motion for default in *Pacific Bell I* in light of the Board's decision in *Pacific Bell II*. The Respondent again filed a response opposing the General Counsel's motion, and the Union filed a response asserting that the Board should continue to process the motion and grant its request for extraordinary remedies. The General Counsel did not file replies to any of the parties' filings.

#### Ruling on Motion for Default Judgment

The Respondent asserts that default judgment is inappropriate because the settled cases were closed after full compliance with the terms of the settlement. It claims that subsequent unfair labor practices cannot be the basis for the Board's finding a breach of a prior settlement. We disagree. Although the Respondent complied with the affirmative provisions of the settlement and the cases were closed, the obligation to refrain from violating the Act in

any "like or related manner" is an ongoing obligation. It is undisputed that the violation found in *Pacific Bell II* is the same type of violation settled by the November 2022 informal settlement in *Pacific Bell I* and that the conduct underlying *Pacific Bell II* commenced prior to the closing of *Pacific Bell I*. Thus, we find that the Respondent's delay in providing the requested information in *Pacific Bell II* was a violation of the earlier settlement agreement's prohibition against violating the Act in any "like or related manner." See *Aqua-Aston Hosp., LLC*, 365 NLRB 604, 605 (2017) (finding that "[b]y the Respondent's actions in the post-settlement case . . . , the Respondent breached the terms of the settlement agreement" and granting General Counsel's motion for default judgment); *Jack Cooper Holdings Corp. d/b/a Jack Cooper Transp. Co., Inc.*, 365 NLRB 1793, 1797 (2017) (finding respondent's refusal to provide requested information in subsequent case was a violation of earlier settlement agreement's prohibition against violating the Act in any "like or related manner" and supports finding default judgment); *ConAgra Foods, Inc.*, 361 NLRB 944, 947-948 (2014) (finding unlawful conduct "like or related to" conduct specifically prohibited under the settlement agreement supports finding of default judgment), enfd. in part, 813 F.3d 1079 (8th Cir. 2016) (partially reversing Board as to underlying violation, but not as to broader holding that such a violation supports default judgment).

Likewise, we find no merit to the Respondent's assertion that the allegations are time-barred by Section 10(b) of the Act because the General Counsel filed her motion for default judgment more than one year after the Region closed *Pacific Bell I* on the Respondent's compliance with the settlement agreement. Section 10(b), which governs the time period between alleged unfair labor practice and charge, is inapplicable to the timeliness of the General Counsel's motion.<sup>4</sup> The Respondent does not argue that the initial charges were untimely filed, or that those charges were withdrawn, then untimely resurrected. Nor could it. By the terms of the settlement "[t]he only issue that the Charged Party may raise before the Board will be whether it defaulted on the terms of this Settlement Agreement."<sup>5</sup>

<sup>2</sup> In addition, the Union filed a separate motion to stay the proceedings and for recusal of Member Marvin E. Kaplan. We deny this motion as moot. Member Kaplan's term expired August 27, 2025, and he took no part in the consideration of this case. As of January 7, 2026, the Board has regained a valid quorum.

<sup>3</sup> The Board found it unnecessary to pass on whether the Respondent unreasonably delayed its response to the Union's January 24, 2023 information request because doing so would not affect the remedy. The Board also implicitly denied the General Counsel's request to consolidate the instant motion with the post-settlement case.

<sup>4</sup> Sec. 10(b) of the Act provides in relevant part that "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."

<sup>5</sup> Even had the settled charges been withdrawn, then reinstated, the Board's established doctrine is that "[t]he Regional Director has authority to revoke a settlement agreement beyond the 10(b) period, particularly where, as here, the subsequent alleged unfair labor practices are contrary to the remedial provisions of the prior settlement agreement. Otherwise, there would be little to prevent a party from breaching a

Finally, we reject the Respondent's contentions that the Regional Director failed to give it 14 days' notice of the breach and/or that it remedied the breach. Per the settlement, "[t]he Charged Party agrees that in case of non-compliance with any of the terms of this Settlement Agreement by the Charged Party, and after 14 days' notice from the Regional Director of the National Labor Relations Board of such non-compliance without remedy by the Charged Party, the Regional Director will issue a Complaint that includes the allegations covered by the Notice to Employees." The Regional Director unequivocally gave such notice on October 18, 2023. The Regional Director then issued the instant consolidated complaint on April 9, 2024—174 days later. The Respondent's claim that it remedied the breach by providing the Union with the information it requested in *Pacific Bell II* is belied by the Board's order there, which found that the Respondent violated the Act by unduly *delaying* in providing the Union with the requested information.

By the Respondent's actions in the post-settlement case, *Pacific Bell II*, the Respondent breached the terms of the settlement agreement in *Pacific Bell I*. Consequently, pursuant to the noncompliance provisions of the settlement agreement set forth above, we find that the allegations of the complaint are true.<sup>6</sup> Accordingly, we grant the General Counsel's Motion for Default Judgment.<sup>7</sup>

On the entire record, the Board makes the following

#### FINDINGS OF FACT

##### I. JURISDICTION

At all material times, the Respondent has been a California corporation with a principal office and place of business located in San Francisco, California, and with offices and facilities located throughout the State of California and has been engaged in the business of providing telecommunications services.

In conducting its operations described above, during the 12-month period ending December 31, 2023, the Respondent derived gross annual revenues in excess of \$100,000 and purchased and received at its California facilities, goods valued in excess of \$5000 directly from points outside the State of California.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that the Union, Communications Workers of America, District 9, Local 19421, is a labor organization within the meaning of Section 2(5) of the Act.

settlement agreement with impunity once the 6-month period had expired." *Jack Cooper*, 365 NLRB at 1798 (internal citations omitted).

<sup>6</sup> See *U-Bee, Ltd.*, 315 NLRB 667 (1994).

<sup>7</sup> The Respondent's contention, in response to the Board's initial notice to show cause, that the General Counsel's motion for default

##### II. ALLEGED UNFAIR LABOR PRACTICES

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

Tonye Niweigha - Manager

Ivanne Chaney - Manager

Virginia Perez - Manager

2.(a) The following employees of the Respondent (the unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All accounting associates, analysts, antenna technicians, assignment administrators, building mechanics, building specialists, cable locators, collectors, combination technicians (Nevada only), company telecommunications technicians, customer service associates, data administrators, data specialists, drivers, engineering administrators, engineering assistants, engineering cost associates, ENOC technicians, equipment installation technicians, equipment specialists, facilities administrators, facilities technicians, FACS administrators, field job administrators, facilities specialists, facilities technicians, FACS administrators, field job administrators, garage attendants, garage mechanics, human resources operations associates, maintenance administrators, maintenance administrators bilingual, maintenance notification associates (PBIS MNG only), medical assistants, messengers (motorized), network maintenance specialists, operations administrators, operations specialists, outside plant technicians, RCMA administrators, reports associates, services specialists, services technicians, splicing technicians, staff associates, supervisor's assistants, supply specialists (Nevada only), systems technicians, systems technicians – data communications, testing technicians, associate field service representatives, field service representatives, and senior field service representatives employed by Respondent in California and/or Nevada.

(b) At all material times, the Respondent has recognized the Union as the exclusive collective-bargaining representative of the unit. This recognition has been embodied in successive collective-bargaining agreements,

judgment was premature because it was filed before the Board issued a final decision in the post-settlement case is without merit. *Aqua-Aston*, 365 NLRB at 605 fn.4.

the most recent of which is effective from April 5, 2020, to April 6, 2024 (CBA).

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

3.(a) About June 15, 2022, the Union filed a grievance with the Respondent regarding alleged harassment of a unit employee by a Respondent supervisor.

(b) About June 15, 2022, as part of the grievance identified in subparagraph 3(a), the Union requested that the Respondent produce “any and all documentation to show basis of accusation or steps taken to confirm same.”

(c) About June 20, 2022, the Union filed a revised version of the grievance identified in subparagraph 3(a).

(d) About June 20, 2022, the Union reiterated its request that the Respondent produce the information requested in subparagraph 3(b).

(e) The information requested by the Union, as described above in subparagraph 3(b) is necessary for, and relevant to, the Union’s performance of its duties as the exclusive collective-bargaining representative of the unit.

(f) From about June 15, 2022, to about August 18, 2022, the Respondent unreasonably delayed in furnishing the Union with the information requested by it as described above in subparagraph 3(b).

4.(a) About June 6, 2022, the Union filed a grievance with the Respondent regarding the suspension of a Union-represented unit employee.

(b) About June 6, 2022, as part of the grievance identified in subparagraph 4(a), the Union requested, among other items, that the Respondent produce:

- (i) Copy of Asset Protection investigation;
- (ii) Copy of Flexible Workplace Program MOA with all extensions;
- (iii) FIDO for grievant from February 15, 2022, to March 15, 2022;
- ...
- (iv) Every Breath You Take report for all days unauthorized overtime was worked;
- ...
- (v) Proof grievant was paid for 189 minutes of unauthorized overtime;
- (vi) All documents that were falsified in manager’s claim;
- (vii) COBC with highlighted section that the grievant violated in manager’s claim;
- (viii) All notes, emails, memos regarding this incident with the Respondent’s HR, the union, and management.

(c) About June 21, 2022, the Union reiterated its request to the Respondent for the information requested in subparagraph 4(b).

(d) About July 18, 2022, the Union reiterated its request to the Respondent for the information requested in subparagraph 4(b).

(e) The information requested by the Union, as described above in subparagraph 4(b) is necessary for, and relevant to, the Union’s performance of its duties as the exclusive collective-bargaining representative of the unit.

(f) From about June 6, 2022, to about July 18, 2022, the Respondent unreasonably delayed in furnishing the Union with the information requested by it as described above in subparagraphs 4(b)(iv) and 4(b)(viii).

(g) From about June 6, 2022, to about September 18, 2022, the Respondent unreasonably delayed in furnishing the Union with the information requested by it as described above in subparagraphs 4(b)(i-iii), 4(b)(v), and 4(b)(vii).

(h) Since about June 6, 2022, the Respondent has failed and refused to furnish the Union with the information requested by it as described in subparagraph 4(b)(vi).

#### CONCLUSIONS OF LAW

1. The Respondent violated the terms of the settlement agreement entered into in disposition of Cases 20–CA–301120 and 20–CA–302339 by unreasonably delaying furnishing the Union with information it requested on December 6, 2022, as the Board found in *Pacific Bell Telephone Co. d/b/a AT&T California*, 374 NLRB No. 24 (2025). Accordingly, pursuant to the “performance” clause of the settlement agreement, we conclude that by the conduct described above in subparagraphs 3(f) and 4(f)-(h), the 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)(5) and (1) of the Act.

2. The unfair labor practices of the Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

#### REMEDY

Having found that the Respondent engaged in certain unfair labor practices, we shall order it to cease and desist. As the General Counsel concedes that the Respondent has already complied with the affirmative remedy in the previously settled cases, we do not order any affirmative remedy.<sup>8</sup>

<sup>8</sup> *Jack Cooper*, 365 NLRB at 1800 fn.17. The Charging Party requests we order additional, non-traditional remedies. We deny that request because the Charging Party has not shown that these additional

measures are needed to remedy the effects of the Respondent’s unfair labor practices.

## ORDER

The National Labor Relations Board orders that the Respondent, Pacific Bell Telephone Company d/b/a AT&T California, San Francisco, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Upon request, refusing to bargain in good faith with Communications Workers of America, Local 9421 (the Union) as the exclusive collective-bargaining representative of the Respondent's unit employees.

(b) Failing or refusing to timely provide the Union with information it requests that is relevant and necessary to its role as the exclusive collective-bargaining representative of the Respondent's unit employees.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

Dated, Washington, D.C. May 19, 2026

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James R. Murphy, Chairman

\_\_\_\_\_  
David M. Prouty, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

MEMBER MAYER, concurring:

The complaint in this case alleges that the Respondent unreasonably delayed in furnishing the Union with information that it requested in 2022. The Respondent has never admitted the violation, nor has the violation ever been proven. The parties entered into a settlement agreement and the case was closed in 2023, after the Regional Director determined that the Respondent had complied with its terms. But today the Board resurrects that closed case, that has already been remedied pursuant to the settlement and finds the violation all the same. The sole basis for doing so is that, in 2025, the Board found that the Respondent unlawfully delayed its response to another, subsequent information request and, solely based on *that* violation, the Board finds that the Respondent defaulted on its agreement to settle the allegations in *this* case, thereby

permitting the entry of default judgment. The premise for all this is that by entering into the settlement, the Respondent promised that for the rest of time it would never again commit a "like or related" violation of the Act. Because that interpretation of the agreement is consistent with extant precedent, I reluctantly concur. However, I vehemently disagree with that precedent. For the reasons that follow, I believe that the Board should reconsider it at the first available opportunity.

## FACTS

On November 17, 2022, the General Counsel issued a complaint in this case alleging that the Respondent has unreasonably delayed in providing certain requested information. On November 28, the parties entered into an informal settlement agreement that resolved the complaint allegations. Under the terms of the settlement, the Respondent was required to post and distribute the notice, provide mandatory training for supervisors and managers, and "comply with all the terms and provisions of said Notice." The notice, in turn, relevantly provided that

WE WILL NOT fail or refuse to timely provide the Union with information it requests that is relevant and necessary to its role as the bargaining representative of our Unit employees.

WE WILL NOT in any like or related manner interfere with your rights under Section 7 of the Act.

It is undisputed that the Respondent complied with all of the affirmative provisions of the settlement and that the case was closed on compliance by the Regional Director on February 9, 2023.

The settlement agreement also included a "Performance" clause that relevantly provided that the General Counsel could file a motion for default judgment with the Board "in case of non-compliance with any of the terms of this Settlement Agreement by the Charged Party, and after 14 days' notice from the Regional Director of the National Labor Relations Board of such non-compliance without remedy by the Charged Party." Under those circumstances, "[t]he Charged Party understands and agrees that all of the allegations of the Complaint will be deemed admitted and that it will have waived its right to file an Answer to such Complaint. The only issue that the Charged Party may raise before the Board will be whether it defaulted on the terms of this Settlement Agreement."<sup>1</sup>

<sup>1</sup> The full text of the clause reads as follows:

Performance by the Charged Party with the terms and provisions of this Agreement shall commence immediately after the Agreement is approved by the Regional Director, or if the Charging Party does not enter into this Agreement, performance shall commence immediately upon receipt by the Charged Party of notice that no review has been requested

or that the General Counsel has sustained the Regional Director. The Charged Party agrees that in case of non-compliance with any of the terms of this Settlement Agreement by the Charged Party, and after 14 days' notice from the Regional Director of the National Labor Relations Board of such non-compliance without remedy by the Charged Party, the Regional Director will issue a Complaint that includes the

On June 7, 2023, the Region notified the Respondent that it intended to issue a complaint in Case 20–CA–314296 and that, because the conduct alleged in this case constituted the same or similar types of conduct which were encompassed by the settlement agreement in this case, “. . . the alleged new conduct constitutes a breach of the cease and desist terms of the November Settlement Agreement. Therefore, I am informing you of our intention to seek default judgment in the Settled Cases after we successfully prove the Section 8(a)(5) violations alleged in Case 20–CA–314296.” On August 30, 2023, the General Counsel issued a complaint in Cases 20–CA–314296 and on March 28, 2025, the Board issued its decision in that case finding that the Respondent unreasonably delayed the completion of its responses to a December 6, 2022 information request for 6 months.<sup>2</sup> Thereafter, the General Counsel filed the motion for default judgment before us today.

#### DISCUSSION

The Board has held that a respondent breaches the terms of a settlement agreement if it commits in the future a violation of the Act that is “like or related to” the violations covered by the agreement.<sup>3</sup> I agree with my colleagues that this precedent compels the conclusion that the Respondent breached its settlement agreement by

committing a “like or related” violation in *Pacific Bell II*. While I apply that precedent for institutional reasons for the purpose of deciding this case, it is fundamentally flawed and should be abandoned at the earliest opportunity.

First, extant precedent neither cites nor applies the settled principle that any respondent has a Constitutional and statutory right to notice and an opportunity to be heard before it can be adjudged in violation of the Act.<sup>4</sup> While a party may waive its right to a hearing, any waiver of statutory or Constitutional rights must be clear and unmistakable.<sup>5</sup> No such finding has been made or could reasonably be made in the circumstances presented here.

Nothing in the performance clause of the settlement agreement in this case indicates that the respondent waives its right to a hearing in this case if it ever again commits a violation of the Act that is “like or related” to the settled allegations. To the contrary, the most natural reading of the clause is that it only applies to the affirmative obligations specified in the agreement. After all, the clause doesn’t permit the General Counsel to move for default judgment based on a non-compliance determination alone (even though that is what happened here). Instead, it permits default judgment only “after 14 days’ notice from the Regional Director of the National Labor Relations Board

allegations covered by the Notice to Employees, as identified above in the Scope of Agreement section, as well as filing and service of the charge(s), commerce facts necessary to establish Board jurisdiction, labor organization status, appropriate bargaining unit (if applicable), and any other allegations the General Counsel would ordinarily plead to establish the unfair labor practices. Thereafter, the General Counsel may file a Motion for Default Judgment with the Board on the allegations of the Complaint. The Charged Party understands and agrees that all of the allegations of the Complaint will be deemed admitted and that it will have waived its right to file an Answer to such Complaint. The only issue that the Charged Party may raise before the Board will be whether it defaulted on the terms of this Settlement Agreement. The General Counsel may seek, and the Board may impose, a full remedy for each unfair labor practice identified in the Notice to Employees. The Board may then, without necessity of trial or any other proceeding, find all allegations of the Complaint to be true and make findings of fact and conclusions of law consistent with those allegations adverse to the Charged Party on all issues raised by the pleadings. The Board may then issue an Order providing a full remedy for the violations found as is appropriate to remedy such violations. The parties further agree that a U.S. Court of Appeals Judgment may be entered enforcing the Board Order *ex parte*, after service or attempted service upon Charged Party at the last address provided to the General Counsel.

<sup>2</sup> *Pacific Bell Telephone Co. d/b/a AT&T California*, 374 NLRB No. 24 (2025) (*Pacific Bell II*).

<sup>3</sup> See *Aqua-Aston Hosp., LLC*, 365 NLRB 604, 605 (2017) (imposing default judgment where respondent’s conduct in subsequent case violated cease-and-desist provisions of the settlement Notice); *Jack Cooper Holdings Corp. d/b/a Jack Cooper Transp. Co., Inc.*, 365 NLRB 1793, 1798 (2017) (finding that the respondent’s refusal to provide requested information was a violation of the earlier settlement agreement’s

prohibition against violating the Act in any “like or related manner” and holding that the settlement agreement imposed an “ongoing” obligation to refrain from violating the Act in any “like or related manner.”).

The majority opinion observes in several places that the unlawful conduct alleged in *Pacific Bell II* commenced prior to the date that *Pacific Bell I* was closed on compliance. But the only violation found in *Pacific Bell II* was, as noted above, that the respondent unlawfully delayed the completion of its responses to a December 6, 2022 information request for 6 months. Even assuming arguendo that this could be construed as a finding that the Respondent had committed a “like or related” violation as of February 9, 2023, when this case was closed on compliance (a finding the Board did *not* make in *Pacific Bell II*), our precedent makes clear that default can be imposed based on conduct occurring long after the settled case was closed. *Jack Cooper Holdings Corp.*, 365 NLRB at 1798 (imposing default judgement based on like or related violations occurring more than 15 months after settled case was closed on compliance). Indeed, nothing in our precedent suggests that there is any time limit on such default judgments. As such, the General Counsel can resurrect any case that has been settled, remedied, and closed in which the settlement contained the same or similar “default” language, regardless of the location and/or the length of time that passed between the subsequent alleged violation and the original case closure.

<sup>4</sup> See *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950) (recognizing that “[t]he fundamental requisite of due process of law is the opportunity to be heard.”) (citation omitted); Sec. 10(b) of the Act (specifying requirements for an unfair labor practice hearing).

<sup>5</sup> *Brady v. United States*, 397 U.S. 742, 748 (1970) (stating that “[w]aivers of constitutional rights not only must be voluntary, but must be knowing, intelligent acts done with sufficient awareness of the relevant circumstances and likely consequences.”); *Metropolitan Edison Co. v. NLRB*, 460 U.S. 693, 708 (1983) (holding that waiver of statutory rights must be “explicitly stated . . . clear and unmistakable.”).

of such non-compliance without remedy by the Charged Party. . .” By its terms, then, the agreement only contemplates default judgment for non-compliance that a charged party could, but fails to, remedy.

It is easy to see how that provision applies to non-compliance with the agreement’s affirmative obligations: the regional director notifies the charged party that it has (for example) failed to post the notice and the charged party has 14 days to post the notice or else it is in default. But nothing in our precedent explains how that provision applies in cases like this one, nor did the region provide any guidance in this case, including any indication of anything that the Respondent could have done to remedy the alleged non-compliance after receiving the Region’s June 7 letter.<sup>6</sup> Under these circumstances, it is unreasonable to interpret the provision to apply to any alleged future breach of the cease and desist provisions of the agreement, much less to find that it does so with the clarity required for a waiver of Constitutional and statutory rights.<sup>7</sup>

Indeed, the Region’s default notification stated that the conduct alleged in *Pacific Bell II* constituted a “breach of the cease and desist terms of settlement agreement” without providing the Respondent with any opportunity to remedy the alleged breach. Extant precedent blesses that peremptory process.<sup>8</sup> But nothing in that precedent explains how the General Counsel can successfully obtain default judgment without first providing an opportunity to remedy the default when the agreement specifically requires it. The Region’s failure to provide that opportunity should be grounds in and of itself for denying default judgment here, but under our precedent it is not.

Of course, the General Counsel *could* draft a settlement agreement that clearly and explicitly provided for default judgment if the charged party ever again committed a like or related violation of the Act. It could also draft the agreement so that the default provision could be triggered solely on the basis of a regional determination of non-compliance, with no opportunity to remedy the alleged breach. But the policy of the Act is to *encourage* “the peaceful, nonlitigious resolution of disputes” in order to provide the parties with an “opportunity to reach an early

restoration of industrial peace, which after all is a fundamental aim of the Act.”<sup>9</sup> After all, more than 90 percent of all meritorious unfair labor practice cases are resolved through settlement agreements, which have rightly been called the “‘lifeblood’ of the administrative process, especially in labor relations.”<sup>10</sup> Nothing would be more likely to choke off that lifeblood than conditioning the settlement on the respondent promising never to commit a similar violation of the Act ever again with the consequence of triggering default judgment on a case that was settled, remedied, and closed if it does. Perhaps that is why the existing form agreement does not specify those terms.

#### CONCLUSION

I do not in any way fault the General Counsel for prosecuting this case on the basis of existing precedent. Nor do I fault my colleagues for applying that precedent in deciding this case, in the absence of a majority willing to reconsider it, as I do myself. But I believe that the Board should carefully consider whether depriving a respondent of its day in court under circumstances like those presented here comports with basic standards of due process and justice.<sup>11</sup> For the reasons stated above, I believe that it does not. Accordingly, I respectfully concur.

Dated, Washington, D.C. May 19, 2026

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Scott A Mayer,

Member

NATIONAL LABOR RELATIONS BOARD

<sup>6</sup> Under extant precedent, even an offer to provide a full remedy for the subsequent conduct would not necessarily be sufficient. See *Metro Health, Inc. d/b/a Hospital Metropolitan Rio Piedras*, 373 NLRB No. 89 (2024) (rejecting practice of approving consent orders over the General Counsel’s objection even if the order provides a full remedy). I did not participate in *Hospital Metropolitan Rio Piedras* and express no view on whether it was correctly decided.

<sup>7</sup> Even assuming that the provision is ambiguous, any ambiguity must be construed against the General Counsel as its drafter. *United States v. Seckinger*, 397 U.S. 203 (1970) (holding that “a contract should be construed most strongly against the drafter” which, in that case, was the federal government).

<sup>8</sup> *Aqua-Aston Hosp., LLC*, 365 NLRB at 604 (imposing default judgment where region’s letter provided no opportunity for default); compare *Jack Cooper Holdings Corp.*, 365 NLRB at 1797 (region’s letter urged the respondent to remedy its noncompliance by providing a proposed second settlement agreement).

<sup>9</sup> *Independent Stave*, 287 NLRB 740, 741, 743 (1987).

<sup>10</sup> *NLRB v. Food and Commercial Workers*, 484 U.S. 112, 128 (1987).

<sup>11</sup> See *Berger v. United States*, 295 U.S. 78, 88 (1935) (emphasizing that federal prosecutors act in the name of the United States, “whose obligation to govern impartially is as compelling as its obligation to govern at all. . .” and whose goal, therefore, “is not that it shall win a case, but that justice shall be done.”).