# NLRB Reinstates Reasonableness Settlement Standard in its First Reversal Under Trump Administration

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On December 11, 2017, the NLRB ruled that an ALJ in Pittsburgh properly accepted a partial settlement offered by University of Pittsburgh Medical Center (UPMC) despite objections from the agency's general counsel and the charging party. The decision swiftly reverses Obama-era policy and restores the "reasonableness" settlement standard.

This is the first reversal under the Trump Board and overrules the Board's 2016 *U.S. Postal Service* ruling that judges cannot accept partial settlements without the blessing of the general counsel and charging party unless the settlement offer constitutes a "full remedy of all of the violations alleged in the complaint." In other words, unless the respondent's settlement offer provides all the relief that the charging party would receive if successful in litigating the charge, the judge cannot accept the settlement if there is an objection. This, in turn, prevents the Board from reviewing such offers.

The Board held that this "full remedy" standard contravenes Board policy by restricting the Board's prior ability to review the reasonableness of any respondent's offered settlement terms accepted by the judge. Further, the Board explained that acceptance of reasonable settlement terms may well be in the best interest of parties who unreasonably object to consent settlement agreements.

Specifically, the decision approved an offer by UPMC to guarantee compliance with any remedies the Board may issue regarding any unfair labor practices committed by its affiliate, UPMC Presbyterian Shadyside, in exchange for the Board dropping allegations that the two comprise a single employer. The Board explained that settling the single employer issue is reasonable because litigating it "would require extensive litigation, possibly taking many years to resolve, with no certainty as to outcome." This outcome is welcomed news to those employers in the healthcare industry like UPMC with numerous affiliates.

This is one of many reversals anticipated in light of President Trump's appointments earlier this year to fill two board vacancies, Marvin Kaplan and William Emanuel, shifting the majority to Republican. Chairman Philip Miscimarra's term expires on December 16, 2017, which will leave the Board at a 2-2 tie, at least until the vacancy is filled.

Employers are likely to have many questions during this state of flux. Please contact your Fisher Phillips attorney to discuss further.

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