

CONCISE SUMMARY OF THE CASE

Pursuant to 3rd Cir. LAR 33.3, counsel are required to file a concise summary of the case within **14** days of the date of docketing of the Notice of Appeal. Total statement is limited to no more than 2 pages, single-spaced. Counsel may utilize this form or attach a 2 page statement encompassing the information required by this form.

SHORT
CAPTION: **East Brunswick European Wax v. NLRB**

USCA NO.: **20-2120**

LOWER COURT or AGENCY and DOCKET NUMBER:
NLRB Case No.: 22-CA-178646

NAME OF
JUDGE: **Chairman Ring and Members Kaplan and Emanuel**

Specify who is suing whom, for what, and the subject of this action. Identify (1) the nature of the action; (2) the parties to this appeal; (3) the amount in controversy or other relief involved; and (4) the judgment or other action in the lower court or agency from which this action is taken:

- (1) The National Labor Relations Board ("NLRB") sought enforcement of an informal settlement agreement entered in the above matter following an initial, amended and second amended charge filed by Kellie Meagan Zambrano, which charge(s) resulted in General Counsel issuing a Complaint on November 30, 2016 against Respondent/Appellant, East Brunswick European Wax Center, LLC alleging violation of Section 8(a)(1) and (3) of the National Labor Relations Act.
- (2) Appellant: East Brunswick European Wax Center, LLC; Respondent: National Labor Relations Board; Interested Party: Kellie Meagan Zambrano
- (3) NLRB sought default judgment on reissued complaint for a full remedy for the unfair labor practices alleged therein.
- (4) May 13, 2020 Decision and Order by the NLRB.

LIST and ATTACH a copy of each order, judgment, decision or opinion which is involved in this appeal. If the order(s) or opinion(s) being appealed adopt, affirm, or otherwise refer to the report and recommendation of a magistrate judge or the decision of a bankruptcy judge, the report and recommendation or decision shall also be attached.

The May 13, 2020 Decision and Order is attached.

Provide a short statement of the factual and procedural background, which you consider important to this appeal:

Kellie Meagan Zambrano issued a charge, first amended charge and a second amended charge on June 20, August 5, and October 31, 2016, respectively. General Counsel for the NLRB issued a complaint on November 30, 2016 against Appellant/Respondent, East Brunswick European Wax Center, LLC alleging violation of Sections 8(a)(1) and (3) of the National Labor Relations Act. An informal settlement agreement was reached and approved by the Regional Director in or about January 2017. The Regional Director later reissued the Complaint and vacated the settlement agreement for alleged non-compliance and further filed a Motion for Default Judgment. As set forth in the opposition to the Motion for Default Judgment, the terms of the settlement agreement had been complied with and evidence of the same provided. The NLRB findings to the contrary are unjust and without support.

Identify the issues to be raised on appeal:

Following the issuance of a Complaint in this matter, an informal settlement agreement was entered and approved in this matter, which required Appellant, East Brunswick European Wax Center, LLC to, among other things: (1) post at its facility the appropriate Board notice for 60 days; (2) send the notice by text message to all employees who work at the facility; (3) read, or have a Board Agent read, the notice; (4) comply with all the terms and provisions of the notice, including rescinding handbook rules prohibiting talking or complaining about wages, hours, and working conditions or the Respondent's rules, policies, and/or procedures and rescinding the final warning issued to Liz Siebold; (5) make Kellie Zambrano whole by paying her \$20,000 in backpay and interest; (6) remove from its files all references to Zambrano's discharge, and inform Zambrano in writing that it had been done; and (7) notify the Regional Director in writing what steps the Respondent had taken to comply with the settlement.

Respondent substantially complied with all obligations under the terms of the parties' Settlement Agreement. Specifically, items 1, 3, 4, 5, 6 and 7 were completed as outlined above. With regard to item 2, however, the notice was issued to all employees by way of email and not text message. Appellant maintains this substantially complied with the required electronic notice and the NLRB finding to the contrary as the sole basis for non-compliance is unjust and unsubstantiated.

This is to certify that this Concise Summary of the Case was electronically filed with the Clerk of the U.S. Court of Appeals for the Third Circuit and a copy hereof served to each party or their counsel of record

this 24th day of June, 2020.

/s/ Carmen M. Finegan

Signature of Counsel

Rev. 07/2015

NOTICE: This opinion is subject to formal revision before publication in the bound volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.

East Brunswick European Wax Center, LLC and Kellie Meagan Zambrano. Case 22-CA-178646

May 13, 2020

DECISION AND ORDER

BY CHAIRMAN RING AND MEMBERS KAPLAN AND EMANUEL

The General Counsel seeks a default judgment in this case pursuant to the terms of an informal settlement agreement. Upon a charge, first amended charge, and second amended charge filed by Kellie Meagan Zambrano on June 20, August 5, and October 31, 2016, respectively, the General Counsel issued a complaint on November 30, 2016, against the Respondent, alleging that it violated Section 8(a)(1) and (3) of the National Labor Relations Act. The Respondent did not file an answer to the complaint.

Subsequently, the Respondent entered into an informal settlement agreement, which was approved by the Regional Director on January 3, 2017. Pursuant to the terms of the settlement agreement, the Respondent agreed, among other things, to: (1) post at its facility the appropriate Board notice for 60 days; (2) send the notice by text message to all employees who work at the facility; (3) read, or have a Board Agent read, the notice; (4) comply with all the terms and provisions of the notice, including rescinding handbook rules prohibiting talking or complaining about wages, hours, and working conditions or the Respondent's rules, policies, and/or procedures and rescinding the final warning issued to Liz Siebold; (5) make Kellie Zambrano whole by paying her \$20,000 in backpay and interest; (6) remove from its files all references to Zambrano's discharge, and inform Zambrano in writing that it had been done; and (7) notify the Regional Director in writing what steps the Respondent had taken to comply with the settlement.

The agreement also contained the following provision:

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 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.

By letter dated January 6, 2017, the Region's compliance officer outlined the Respondent's obligations under the settlement agreement, specifically that the agreement required the Respondent to pay Zambrano \$20,000, remove from its files any reference to her discharge and notify her in writing of the same, rescind the final warning of Siebold, and post, read in the presence of a Board agent, and transmit by text the Notice to Employees. By letter dated February 1, 2017, the Region's compliance officer notified the Respondent that the Respondent had failed to fulfill the terms of the settlement agreement and stated that, unless full compliance was achieved by February 15, 2017, the compliance officer would recommend that the Regional Director reissue the complaint and filed a Motion for Default Judgment with the Board. By email dated March 20, 2017, the Region's compliance officer acknowledged receipt of Zambrano's backpay and interest, but noted that the Respondent failed to remove from its files reference to Zambrano's discharge or notify her of

the same, failed to rescind Siebold's final warning, failed to post, read, and text the notice and failed to return the required settlement agreement paperwork to the Region, such as the Certification of Compliance forms. The Region's compliance officer gave the Respondent until April 4, 2017, to comply with its additional obligations.

On June 12, 2017, the Region's compliance officer read the notice to Employees at the Respondent's facility. By email to the Respondent on June 19, 2017, the Region's compliance officer noted that she had read the notice and sought compliance with the remaining obligations of the settlement agreement. Specifically, she asked the Respondent to send the notice by text to employees, rescind Siebold's final warning, remove references to Zambrano's discharge from its files and inform her of the same, and complete and return the relevant forms by June 23, 2017. As of June 19, 2017, the Respondent had taken no further steps toward compliance with the terms of the settlement agreement.

Accordingly, pursuant to the terms of the noncompliance provision of the settlement agreement, on July 31, 2018, the Regional Director reissued the complaint and vacated the settlement agreement. Also on July 31, 2018, the General Counsel filed a Motion for Default Judgment with the Board, requesting that the Board issue a Decision and Order against the Respondent containing findings of fact and conclusions of law based on the allegations in the reissued complaint, and that the Board provide "a full remedy for the unfair labor practices alleged." On August 3, 2018, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. On August 17, 2018, the Respondent filed a response with an attached submission of documents.

Ruling on Motion for Default Judgment

In its response to the Notice to Show Cause, the Respondent contends that the Motion for Default Judgment should be denied and the reissued complaint should be dismissed because the documents attached to its response to the Notice to Show Cause, which consist of copies of completed compliance forms, an email communication to employees, a copy of an email stating that Manager Shania Guadalupe read the notice on April 7, 2017, email communication confirming the compliance officer's reading of the notice on June 12, 2017, a copy of the check issued to Zambrano, a copy of the correspondence sent to Zambrano confirming expungement of the discharge from her

personnel record, and a copy of Siebold's file with all references to the final written warning she received removed, show "that the alleged deficiencies were all addressed and complied with."

Although the Respondent asserts that it has complied with the settlement agreement, the Respondent has not established that it has sent the notice to employees by text message to employees. As noted above, the noncompliance provision in the settlement agreement provides that "[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." As described, the Respondent has not shown that it has fully complied with that agreement. The settlement agreement further provides that "[t]he 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." Therefore, because the Respondent has not established that it complied with all of the terms of the settlement agreement, we find that the Respondent has failed to raise any material issue of fact warranting a hearing.¹

Accordingly, we grant the General Counsel's Motion for Default Judgment and find, pursuant to the non-compliance provision of the settlement agreement set forth above, that all of the allegations in the reissued complaint are true.²

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent has been a limited liability company with an office and place of business in East Brunswick, New Jersey, and has been engaged in the operation of a waxing salon providing beauty services and the retail sale of related products.

During the 12-month period ending August 31, 2016, the Respondent has derived gross revenues in excess of \$500,000, and it has purchased and received more than \$5000 of goods and materials directly from points located outside of the State of New Jersey.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

¹ The Respondent also has not established that it has rescinded the handbook rules prohibiting talking or complaining about wages, hours, and working conditions or the Respondent's rules, policies, and/or procedures. However, the Region has not cited this as a basis for default,

either in its Motion for Default Judgment or its communications with the Respondent, and therefore we do not rely on it here.

² See *U-Bee, Ltd.*, 315 NLRB 667 (1994).

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, the following individuals have 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:

Dipali Patel—Shareholder and Officer

Vicki Walkoviak—Regional Director

Shania Guadalupe—Manager

The Respondent engaged in the following conduct:

1. The Respondent, by the individuals named below, about the dates and at the locations opposite their names, interrogated its employees about their union and protected concerted activities:

(a) Patel—The end of May 2016—In the office at the Respondent's facility

(b) Walkoviak—May 31, 2016—In the office at the Respondent's facility

(c) Guadalupe—May 26, 2016—In the office at the Respondent's facility

2. About May 26, 2016, the Respondent, by Guadalupe, at the Respondent's facility, implied that employees would be discharged if they engaged in union or protected concerted activities.

3. About the end of May 2016, the Respondent, by Patel, at the Respondent's facility, solicited employee assistance in ascertaining the union and protected concerted activities and support of their coworkers.

4. Since at least 6 months prior to the filing of the charge, the Respondent, by issuing an employee handbook rule, promulgated and since then has maintained the following rules:

(a) Under Standards of Conduct/Disciplinary Actions:

"Discussions related to personal information or behavior of any employee member or guest is prohibited. Gossip about fellow employees and guests, your work environment, or center policies and/or procedures is prohibited. All concerns related to any these [sic] work-related areas should be communicated to Senior Management or the Center Manager."

(b) Under grounds for discipline:

"Gossiping or complaining about co-workers, clients or the center's rules and or [sic] procedures."

5. Since about June 1, 2016, the Respondent has prohibited discussions among employees about ongoing internal investigations.

6. In about May 2016, the Respondent's employee, Kellie Zambrano, engaged in concerted activities with other employees for the purposes of collective bargaining and other mutual aid and protection, by discussing and texting with her coworkers regarding their terms and conditions of employment.

7. About June 9, 2016, the Respondent discharged Zambrano.

8. About June 9, 2016, the Respondent issued a final written warning to its employee, Siebold.

9. The Respondent engaged in the conduct described above in paragraph 7 because Zambrano engaged in the conduct described above in paragraph 6 and to discourage employees from engaging in these or other concerted activities.

10. The Respondent engaged in the conduct described above in paragraphs 7 and 8 because Zambrano and Siebold violated the prohibition described above in paragraph 5 and to discourage employees from engaging in these or other concerted activities.

11. The Respondent engaged in the conduct described above in paragraph 7 because Zambrano formed, joined, and assisted a union and engaged in concerted activities, and to discourage employees from engaging in these activities.

CONCLUSIONS OF LAW

By the conduct described above in paragraphs 1 through 6, 8, 9, and 11, the Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.

By the conduct described above in paragraphs 7 and 11, the Respondent has been discriminating in regard to the hire or tenure of employment or the terms or conditions of employment of its employees, thereby discouraging membership in a labor organization in violation of Section 8(a)(3) and (1) of the Act.

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 has engaged in certain unfair labor practices, and in accordance with the General Counsel's request for a "full remedy" for the violations found, we shall order the Respondent to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.³ Specifically, having found that the Respondent has violated Section 8(a)(1) by

respondent to, inter alia, make a discriminatee whole "to the extent that the Respondents have not already done so").

³ To the extent that the Respondent has already complied with some of the ordered remedies, it shall not be required to do so again. See, e.g., *Able Building Maintenance*, 367 NLRB No. 134 (2019) (ordering

promulgating and/or maintaining unlawful handbook rules, we shall order the Respondent to rescind the unlawful rules. Pursuant to *Guardsmark, LLC*, 344 NLRB 809, 812 fn. 8 (2005), enfd. in part 475 F.3d 369 (D.C. Cir. 2007), the Respondent may comply with our order of rescission by rescinding the unlawful provisions and republishing its handbook without the unlawful rules. We recognize, however, as we did in *Guardsmark*, that republishing the handbook could be costly. Accordingly, the Respondent may supply the employees either with inserts to the handbook stating that the unlawful rules have been rescinded, or with new and lawfully worded rules on adhesive backing that will correct or cover the unlawful rules, until it republishes the handbook without the unlawful provisions. Any copies of the handbook that include the unlawful rules must include the inserts before being distributed to employees. See *id.*

The Respondent additionally shall be ordered to remove from its files any reference to the final written warning of Siebold and to notify her in writing that this has been done and that the final written warning will not be used against her in any way.

Further, having found that the Respondent violated Section 8(a)(3) and (1) of the Act by terminating the employment of Zambrano, we shall order the Respondent to offer Zambrano full reinstatement to her former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights or privileges previously enjoyed.⁴ In addition, we shall order the Respondent to make Zambrano whole for any loss of earnings and other benefits suffered as a result of the unlawful action against her.⁵ Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest at the rate prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010). In accordance with our decision in *King Soopers, Inc.*, 364 NLRB No. 93 (2016), enfd. in relevant part 859 F.3d 23 (D.C. Cir. 2017), we shall also order the Respondent to compensate Zambrano for her search-for-work and interim employment expenses regardless of whether those expenses exceed interim earnings. Search-for-work and interim employment expenses shall be calculated separately from taxable net backpay, with interest at the rate

prescribed in *New Horizons*, supra, compounded daily as prescribed in *Kentucky River Medical Center*, supra.⁶

The Respondent additionally shall be ordered to remove from its files any references to the termination of Zambrano and to notify her in writing that this has been done and that the termination will not be used against her in any way. We shall further order the Respondent to compensate Zambrano for any adverse tax consequences of receiving a lump-sum backpay award and to file with the Regional Director for Region 22, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar year. *AdvoServ of New Jersey, Inc.*, 363 NLRB No. 143 (2016).

Further, we shall order the Respondent to hold a meeting or meetings, scheduled to ensure the widest possible attendance on each shift, at which a high-ranking management official will read the Notice to Employees on work time in the presence of a Board agent. Alternatively, the Respondent may choose to have a Board agent read the notice during work time in the presence of a high-ranking management official. See, e.g., *Shamrock Cartage, Inc.*, 368 NLRB No. 42 (2019). Finally, since the Respondent communicates with its employees by text message, we shall require the Respondent to send the notice to its employees by text message. See, e.g., *Pacific Green Trucking, Inc.*, 368 NLRB No. 14 (2019).

ORDER

The National Labor Relations Board orders that the Respondent, East Brunswick European Wax Center, LLC, East Brunswick, New Jersey, its officers, agents, successors, and assigns shall

1. Cease and desist from

(a) Coercively interrogating employees about their union and protected concerted activities.

(b) Impliedly threatening employees that they would be discharged if they engaged in union or protected concerted activities.

(c) Soliciting employee assistance in ascertaining the union and protected concerted activities and support of their coworkers.

(d) Promulgating and/or maintaining the following unlawful rules:

(i) Under Standards of Conduct/Disciplinary Actions:

⁴ Although Zambrano waived reinstatement for the purposes of the settlement, we shall order it as part of a full remedy for her unlawful discharge.

⁵ Because it is unclear whether the total amount set forth in the settlement agreement constitutes a full make-whole remedy, we leave to compliance a determination of the proper amount due to Zambrano.

⁶ The General Counsel additionally seeks a make-whole remedy that includes reasonable consequential damages incurred as a result of the

Respondent's unfair labor practices. This issue, which was not briefed, would involve a change in Board law. We are not prepared at this time to deviate from our current remedial practice. Accordingly, we decline to order this relief at this time. See, e.g., *Laborers International Union of North America, Local Union No. 91 (Council of Utility Contractors)*, 365 NLRB No. 28, slip op. at 1 fn. 2 (2017).

“Discussions related to personal information or behavior of any employee member or guest is prohibited. Gossip about fellow employees and guests, your work environment, or center policies and/or procedures is prohibited. All concerns related to any these [sic] work-related areas should be communicated to Senior Management or the Center Manager.”

(ii) Under grounds for discipline:

“Gossiping or complaining about co-workers, clients or the center’s rules and or [sic] procedures.”

(e) Prohibiting discussions among employees about ongoing internal investigations.

(f) Issuing final written warnings to employees because they violated the prohibition on discussion among employees about ongoing internal investigations.

(g) Discharging or otherwise discriminating against employees for engaging in union or protected concerted activities.

(h) 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.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Rescind or revise the rules listed in 1(d), above.

(b) Furnish employees with inserts for the current employee handbook that (1) advise that the unlawful rules have been rescinded or (2) provide lawfully worded provisions on adhesive backing that will cover the unlawful provisions; or publish and distribute to employees revised employee handbooks that (1) do not contain the unlawful rules or (2) provide lawfully worded provisions.

(c) Within 14 days from the date of this Order, to the extent it has not already done so, remove from its files any reference to the unlawful final written warning issued to Siebold, and within 3 days thereafter, notify the employee in writing that this has been done and that the final written warning will not be used against her in any way.

(d) Within 14 days from the date of this Order, offer Zambrano full reinstatement to her former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights or privileges previously enjoyed.

(e) Make Zambrano whole, to the extent it has not already done so, for any loss of earnings and other benefits suffered as a result of the discrimination against her, in the manner set forth in the remedy section of this decision.

(f) Compensate Zambrano, to the extent it has not already done so, for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and file with the Regional Director for Region 22, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar years.

(g) Within 14 days from the date of this Order, to the extent it has not already done so, remove from its files any reference to the unlawful termination of Zambrano, and within 3 days thereafter, notify her in writing that this has been done and that the termination will not be used against her in any way.

(h) Post at its East Brunswick, New Jersey facility copies of the attached notice marked “Appendix.”⁷ Copies of the notice, on forms provided by the Regional Director for Region 22, after being signed by the Respondent’s authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically by text message. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since April 2016.

(i) At its East Brunswick, New Jersey facility, hold a meeting or meetings, scheduled to ensure the widest possible attendance of employees, at which the attached notice marked “Appendix” is to be read to employees by a high-ranking responsible management official of the Respondent, in the presence of a Board agent if the Region so desires, or, at the Respondent’s option, by a Board agent in the presence of a high-ranking management official.⁸

⁷ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading “Posted by Order of the National Labor Relations Board” shall read “Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.”

⁸ If the facility involved in these proceedings is open and staffed by a substantial complement of employees, the notices must be posted, read, and texted within 14 days after service by the Region. If the facility involved in these proceedings is closed due to the Coronavirus Disease

2019 (COVID-19) pandemic, the notices must be posted, read, and texted within 14 days after the facility reopens and a substantial complement of employees have returned to work, and the notices may not be posted until a substantial complement of employees have returned to work. Any such delay also applies to additional electronic distribution of the notice if the Respondent customarily communicates with its employees by electronic means other than text messaging. See *Danbury Ambulance Service, Inc.*, 369 NLRB No. 68 (2020).

(j) Within 21 days after service by the Region, file with the Regional Director for Region 22 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. May 13, 2020

John F. Ring, Chairman

Marvin E. Kaplan, Member

William J. Emanuel, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

- Form, join, or assist a union
- Choose representatives to bargain with us on your behalf
- Act together with other employees for your benefit and protection
- Choose not to engage in any of these protected activities.

WE WILL NOT coercively question you about your union and protected concerted activities.

WE WILL NOT impliedly threaten that you will be discharged if you engage in union or protected concerted activities.

WE WILL NOT solicit your assistance in ascertaining the union and protected concerted activities and support of your co-workers.

WE WILL NOT promulgate and/or maintain the following unlawful rules:

- (i) Under Standards of Conduct/Disciplinary Actions:

“Discussions related to personal information or behavior of any employee member or guest is prohibited. Gossip about fellow employees and guests, your work environment, or center policies and/or procedures is prohibited. All concerns related to any these [sic] work-related areas should be communicated to Senior Management or the Center Manager.”

- (ii) Under grounds for discipline:

“Gossiping or complaining about co-workers, clients or the center’s rules and or [sic] procedures.”

WE WILL NOT prohibit discussions among employees about ongoing internal investigations.

WE WILL NOT issue final written warnings to employees because they violated the prohibition on discussion among employees about ongoing internal investigations.

WE WILL NOT discharge or otherwise discriminate against you for engaging in union or protected concerted activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL rescind or revise the employee work rules listed above.

WE WILL furnish employees with inserts for the current employee handbook that (1) advise that the unlawful rules have been rescinded or (2) provide lawfully worded provisions on adhesive backing that will cover the unlawful provisions; or publish and distribute to employees revised employee handbooks that (1) do not contain the unlawful rules or (2) provide lawfully worded provisions.

WE WILL, within 14 days from the date of the Board’s Order, to the extent we have not already done so, remove from our files any reference to the unlawful final written warning to Liz Siebold, and WE WILL, within 3 days thereafter, notify her in writing that this has been done and that the unlawful final written warning will not be used against her in any way.

WE WILL, within 14 days from the date of this Order, offer Kellie Zambrano full reinstatement to her former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights or privileges previously enjoyed.

WE WILL, to the extent we have not already done so, make Zambrano whole for any loss of earnings and other benefits resulting from the unlawful termination of her employment, less any net interim earnings, plus interest, and WE WILL make Zambrano whole for reasonable search-for-work and interim employment expenses, plus interest.

WE WILL, to the extent we have not already done so, compensate Zambrano for the adverse tax consequences,

EAST BRUNSWICK EUROPEAN WAX CENTER, LLC

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if any, of receiving a lump-sum backpay award, and WE WILL file with the Regional Director for Region 22, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar years.

WE WILL, to the extent we have not already done so, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful termination of Zambrano, and WE WILL, within 3 days thereafter, notify her in writing that this has been done and that the termination will not be used against her in any way.

EAST BRUNSWICK EUROPEAN WAX CENTER, LLC

The Board's decision can be found at www.nlr.gov/case/22-CA-178646 or by using the QR

code below. Alternately, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.



United States Court of Appeals
for the
THIRD CIRCUIT

EAST BRUNSWICK EUROPEAN WAX)
CENTER, LLC,)

Petitioner)

v.)

NATIONAL LABOR RELATIONS BOARD)
& KELLI E MEAGAN ZAMBRANO,)

Respondent)

No. 20-2120

Board Case No.:
22-CA-178646

CERTIFICATION OF SERVICE

I, Carmen M. Finegan, of full age hereby certify that on June 24, 2020, that I electronically filed the foregoing with the Clerk of Court for the United States Court of Appeals for the Third Circuit by using the appellate CM/ECF system. I further certify that this document was served on all parties or their counsel of record through the appellate CM/ECF system.

Date: June 10, 2020

LAW OFFICE OF GERARD C. VINCE, LLC

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