

ETS Unfair Labor Practice Merit Determinations

Case Nos. 03-CA-392470; 03-CA-330339; 03-CA-331598; 03-CA-332191; 03-CA-335668

The following is the list of unfair labor practice allegations that Region 3 of the National Labor Relations Board found to have merit upon its investigation into Elmwood Taco and Subs at Delavan, Inc.'s unlawful conduct in response to the union campaign at the restaurant since Fall 2023. This document is a summary provided by the union after conferring with Region 3 and is not issued on behalf of the agency.

Unlawful Coercive Conduct (Section 8(a)(1) Violations):

- In about October 2023, by creating the impression of surveillance by having all three owners visit the store with much greater frequency in response to union activity;
- In about October 2023, by enforcing its dress code policy to prevent employees from wearing union pins on their uniforms;
- On about October 22, 2023, by interrogating an employee about their union activity;
- In about October 2023, by soliciting employee grievances in response to union activity;
- In about October 2023, by granting employees benefits in response to union activity by discontinuing breakfast service;
- In about October 2023, by changing employee job responsibilities in response to union activity in an attempt to preclude union representation;
- In about October 2023, by threatening employees that the employer is going to change the schedules and restructure the workplace in response to union activity;
- In about October 2023, by threatening to terminate employees in response to union activity;
- In about October 2023, by threatening employees with closing the store in response to union activity;
- In about October 2023, by telling employees that changes need to be made to keep the store open in response to union activity;
- In about October 2023, by threatening employee benefits in response to union activity.
- On about November 15, 2023, by holding mandatory anti-union captive audience meetings with employees;
- On about November 15, 2023, by telling employees you “can’t resolve things” through collective bargaining;
- On about November 15, 2023, by asking employees “how will they deliver for you what they could not deliver across the street?” in reference to the Starbucks Workers United campaign at the Elmwood Avenue Starbucks location as an unlawful statement of futility;
- On about November 15, 2023, by implicitly threatening employees with worse working conditions by telling employees that ownership believes there will be a worse “working environment” if they unionize;

- On about November 15, 2023, by threatening employees with worse working conditions by telling them they will not be able to have “direct communication” with ownership if they unionize.
- On about November 26, 2023, by holding a mandatory anti-union captive audience meeting with employees;
- On about November 26, 2023, by telling employees that workers at the Starbucks location at Delaware Avenue and Chippewa Street in downtown Buffalo had voted to decertify the union because it could not get them anything. This statement is not true and is an unlawful statement of futility;
- On about December 7, 2023, owner Ron Lucchino, by revving the engine and speeding his truck aiming at a picketer while pulling into the ETS parking lot. The picketer had to suddenly move out of the way to avoid being hit by the truck. Then, Lucchino continued into the parking lot, saw employees picketing the drive-thru area, sped towards them in his truck, and aimed his truck at the picketers in order to intimidate them, and left his truck parked there, not in a parking spot;
- In about January 2024, owner Jaclyn Kooshoian unlawfully surveilled employees by restationing her desk from the office into the employee work area in order to more actively monitor employees in the restaurant;
- Beginning in November 2023, the above-named Employer violated Section 8(a)(1) of the Act by more strictly enforcing work rules;

Unlawful Retaliation (Section 8(a)(1) and (3) Violations):

- Since about October 2023, by cutting the hours of employees in response to union activity;
- On about October 22, 2023, by closing the store in response to union activity;
- Since about October 2023, by enforcing previously unenforced rules against employees in response to union activity.
- On or about December 19, 2023, by demoting employees for engaging in union activity and to discourage union activity;
- On or about December 19, 2023, by cutting the wages of employees for engaging in union activity and to discourage union activity;
- On or about December 19, 2023, by eliminating an in-unit job title in response to union activity and to discourage union activity;
- On or about December 19, 2023, by changing the job duties of employees in response to union activity and to discourage union activity;
- In about November 2023, by discharging Kafay Kaboke by removing her from the schedule;
- In about January 2024, the Employer changed its clock-in and clock-out procedure in response to union activity and to discourage union activity;

- In about January 2024, the Employer rescinded its 10-minute grace period at the beginning and ending of shifts, establishing a more demanding time and attendance policy in response to union activity and to discourage union activity.

Unlawful Bargaining Violations (Section 8(a)(1) and (5) Violations):

- On or about December 19, 2023, by demoting employees without providing the Union notice or an opportunity to bargain over their demotions;
- On or about December 19, 2023, by unilaterally cutting the wages of employees without providing the Union notice or an opportunity to bargain over the cut in wages;
- On or about December 19, 2023, by eliminating an in-unit position without providing the Union notice or an opportunity to bargain over its elimination;
- On or about December 19, 2023, by unilaterally changing the job duties of employees without providing the Union notice or an opportunity to bargain over the change in job duties.
- In about December 2023, by failing to provide notice or an opportunity to bargain over scheduling changes due to the Employer's elimination of bargaining unit work;
- In about January 2024, by failing to provide notice or an opportunity to bargain over the Employer's change in clock-in and clock-out procedure;
- In about January 2024, by failing to provide notice or an opportunity to bargain over the Employer's elimination of the ten-minute grace period for employees, thereby unilaterally imposing a more onerous time and attendance policy without bargaining.

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