

Bodman PLC

November 18, 2025

Federal Appeals Courts Split on NLRB Remedial Authority

By: Cameron D. Ritsema, Member, Workplace Law Group

Two late-October decisions from different circuit courts highlight a divide over the scope of the National Labor Relations Board's ("the Board") remedial powers. The Fifth Circuit's *Hiran Management* decision curtailed the Board's ability to award broad monetary damages, while the Ninth Circuit's *North Mountain Foothills Apartments* opinion reaffirmed the Board's traditional remedies powers.

Background

In a groundbreaking decision in 2022, the Board announced that it would begin to order damages for "all foreseeable harms" resulting from unfair labor practices. See *Thryv, Inc.*, 372 NLRB No. 22 (2022). In addition to standard remedies such as reinstatement and backpay, *Thryv* ushered in potential compensation beyond backpay, including far-reaching awards for expenses like credit-card interest, missed rent, or childcare costs that workers might incur as a result of an employer's alleged unfair labor practice.

Since *Thryv*, the Third Circuit (covering Delaware, New Jersey, and Pennsylvania) disapproved of the Board's expanded remedial powers. See *NLRB v. Starbucks Corp.*, 125 F.4th 78, 97 (3d Cir. 2024), while the Ninth Circuit (covering California, Nevada, Washington, Oregon, Arizona, Montana, Idaho, Alaska, and Hawaii) upheld the remedial scheme. *IUOE, Local 39 v. NLRB*, No. 23-124, No. 23-150, 23-188 (9th Cir. Jan. 21, 2025).

It is in this quagmire that the Fifth and Ninth Circuits spoke.

Fifth Circuit: *Hiran Management v. NLRB* (Oct. 31, 2025)

Rejecting *Thryv*, the Fifth Circuit held that the NLRB may not award "full compensatory damages"; that is, payment for "direct or foreseeable pecuniary harms." The court concluded that the National Labor Relations Act authorizes **only** equitable relief, such as reinstatement, backpay, and notice posting.

- **Significance:** This decision curtails the Board's expanded "make-whole" framework and provides employers within the Fifth Circuit (Texas, Louisiana, Mississippi) with a strong precedent to resist broad monetary awards.

Ninth Circuit: *NLRB v. North Mountain Foothills Apartments* (Oct. 28, 2025)

Days earlier, the Ninth Circuit enforced the Board's standard remedial order, including reinstatement, backpay, and notice posting, and rejected constitutional attacks on the agency's structure.

- **Significance:** The Ninth Circuit continues to afford the Board broad remedial discretion, although it limited awards to the Board's traditional remedial powers in *North Mountain Foothills*.

Key Takeaways

Circuit split: The Third, Fifth and Ninth Circuits now diverge on whether the NLRB may issue "compensatory" monetary relief. Therefore, an employer's exposure depends heavily on jurisdiction. The complexity of a given matter could dramatically increase if a collective group of workers located within various locations and/or jurisdictions files an unfair labor practice charge.

Forum matters: The split increases the likelihood of Supreme Court review.

Conclusion

Avoiding unfair labor practice allegations remains the best defense. Employers should proactively comply with the NLRA, consider reviewing ongoing NLRB cases for exposure to "make-whole" monetary awards, and coordinate litigation strategy by circuit (for multi-jurisdictional employers) as needed. Please contact the author, Cameron D. Ritsema (critsema@bodmanlaw.com | 616-205-4358) or any member of [Bodman's Workplace Law Group](#) if you have questions regarding any of the information above. Bodman cannot respond to your questions or receive information from you without establishing an attorney-client relationship and clearing potential conflicts with other clients. Thank you for your patience and understanding.

BODMAN'S WORKPLACE LAW GROUP

JOHN DAVID GARDINER <i>Chair</i> 616-205-3123 jgardiner@bodmanlaw.com	REBECCA C. SEGUIN-SKRABUCHA <i>Vice Chair</i> 248-925-1936 rseguin-skrabucha@bodmanlaw.com	JOHN T. BELOW 248-743-6035 jbelow@bodmanlaw.com	JOHN C. CASHEN <i>Of Counsel</i> 248-743-6077 icashen@bodmanlaw.com
MACKENZIE E. CLARK 248-925-1926 mclark@bodmanlaw.com	AMANDA MCSWEEN EMPEY 313-392-1056 aempey@bodmanlaw.com	GARY S. FEALK 248-743-6060 gfealk@bodmanlaw.com	AARON D. GRAVES 313-392-1075 agraves@bodmanlaw.com
MICHELLE L. KOLKMEYER 248-743-6031 mkolkmeyer@bodmanlaw.com	CHRISTINA L. NECHIPORCHIK 734-930-2495 cnechiporchik@bodmanlaw.com	KAREN L. PIPER <i>Of Counsel</i> 248-743-6025 kpiper@bodmanlaw.com	CAMERON D. RITSEMA 616-205-4358 critsema@bodmanlaw.com
DAVID B. WALTERS 248-743-6052 dwalters@bodmanlaw.com			