

UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD  
SETTLEMENT AGREEMENT

IN THE MATTER OF  
Foodlink, Inc.

Cases 03-CA-285847  
03-CA-285889  
03-CA-285977  
03-CA-285978

Subject to the approval of the Regional Director for the National Labor Relations Board, the Charged Party and the Charging Party **HEREBY AGREE TO SETTLE THE ABOVE MATTERS AS FOLLOWS:**

**POSTING OF NOTICE** — After the Regional Director has approved this Agreement, the Regional Office will send copies of the approved Notice to the Charged Party in English and Spanish. A responsible official of the Charged Party will then sign and date those Notices and immediately post them in locations at the Charged Party's facility where notices to employees are customarily posted, including all break rooms. If the Employer's place of business is currently closed and a substantial number of employees are not reporting to the facility due to the Coronavirus pandemic or is operating with less than a substantial complement of employees, the 60 consecutive day period for posting will begin when the Employer's place of business reopens and a substantial complement of employees have returned to work. For purposes of this notice posting, a substantial complement of employees is at least 50% of the total number of employees employed by the Employer prior to closing its business due to the Coronavirus pandemic. The Charged Party will keep all Notices posted for 60 consecutive days after the initial posting.

**E-MAILING NOTICE** — The Charged Party will email a copy of the signed Notices in both English and in Spanish to all employees, supervisors, and managers who work at the facility located at 1999 Mt. Read Blvd., Rochester, NY 14615. The message of the e-mail transmitted with the Notice will state: "We are distributing the Attached Notice to Employees to you pursuant to a Settlement Agreement approved by the Regional Director of Region 03 of the National Labor Relations Board in Cases 03-CA-285847, 03-CA-285889, 03-CA-285977, and 03-CA-285978." If the Employer's place of business is currently closed due to the Coronavirus pandemic, the Employer will email the copy of the Notice to its employees, supervisors, and managers when the Employer's place of business reopens. To document its compliance with this requirement, the Charged Party will e-file a copy of its distribution e-mail, with all of the recipients' e-mail addresses visible, along with a copy of the attached Notices and a fully completed Certification of Posting form, via the Agency's e-filing portal at [www.nlr.gov](http://www.nlr.gov).

**READING OF NOTICE** — Within 14 days of the Regional Director's approval of this agreement, the Charged Party will hold meetings at 6:30 a.m., 12:30 p.m., and 3:30 p.m. at which times (b) (6), (b) (7)(C) will read the Notice in English and Spanish in person at the facility. An agent of the Board will attend virtually to witness the readings via Microsoft Teams and the Charged Party agrees to facilitate this virtual attendance (both video and audio) with the agent. The Charged Party agrees also that it will distribute the virtual Microsoft Teams invitation to employees who are not present at the facility on the date of the readings to allow for their virtual attendance if they choose. The date of the readings must be approved by the Regional Director and the announcement of the meetings to employees will be in the same manner the Charged Party normally announces meetings, announced in both English and Spanish, and must be approved by the Regional Director prior to the notice readings.

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**NON-ADMISSION** – By entering this Settlement Agreement, the Charged Party does not admit that it has violated the National Labor Relations Act.

**COMPLIANCE WITH NOTICE** — The Charged Party will comply with all the terms and provisions of said Notice.

**BACKPAY** — Within 14 days from approval of this agreement, the Charged Party will make whole the employee named below by payment to him as set forth below. The Charged Party will make appropriate withholdings from both backpay and frontpay. No withholdings should be made from the interest payment. The Charged Party will provide the Regional Director with a Report on Backpay allocating the backpay and frontpay payments to the appropriate calendar year and a copy of the IRS form W-2 for 2022 within 14 days from approval of this agreement. The Regional Office will provide Charged Party with pre-populated data to facilitate its completion.

<b>Employee</b>	<b>backpay</b>	<b>+</b>	<b>frontpay</b>	<b>+</b>	<b>interest</b>	<b>=</b>	<b>total</b>
(b) (6), (b) (7)(C)	\$21,763	+	\$6,000	+	\$530	=	\$28,293

**NEUTRAL REFERENCE** — The Charged Party agrees to provide a neutral reference for (b) (6), (b) (7)(C) as follows: in response to inquiries from prospective employers, the Charged Party will only confirm that (b) (6), (b) (7)(C) was employed by the Charged Party, the dates of (b) (6) employment, and (b) (6) rate of pay.

**LETTER OF APOLOGY** — Within 7 days of approval of this Agreement, the Charged Party shall send a letter of apology to (b) (6), (b) (7)(C) in which it expressly apologizes to (b) (6), (b) (7)(C) for the termination. It will be sent to the address the Region will confirm for Charged Party prior to the mailing. The Charged Party will send the letter of apology by United States Mail and the letter shall be on the Charged Party’s letterhead and signed by (b) (6), (b) (7)(C). The letter shall read: “As you are aware, Local 153, OPEIU filed unfair labor practices charges against Foodlink with Region 3 of the National Labor Relations Board. One of the allegations in those charges is that Foodlink discharged you for engaging in protected concerted activity and union activity. Please accept my apology on behalf of Foodlink for any hardship or distress you may have experienced related to your discharge. We wish you the best in your future endeavors.” To document its compliance with this requirement, the Charged Party will e-file a copy of the letter along with a fully completed Certification of Posting form, via the Agency’s e-filing portal at [www.nlr.gov](http://www.nlr.gov).

**SCOPE OF THE AGREEMENT** — This Agreement settles only the allegations in the above-captioned case(s), including all allegations covered by the attached Notice to Employees made part of this agreement, and does not settle any other case(s) or matters. It does not prevent persons from filing charges, the General Counsel from prosecuting complaints, or the Board and the courts from finding violations with respect to matters that happened before this Agreement was approved regardless of whether General Counsel knew of those matters or could have easily found them out. The General Counsel reserves the right to use the evidence obtained in the investigation and prosecution of the above-captioned case(s) for any relevant purpose in the litigation of this or any other case(s), and a judge, the Board and the courts may make findings of fact and/or conclusions of law with respect to said evidence.

**PARTIES TO THE AGREEMENT** — If the Charging Party fails or refuses to become a party to this Agreement and the Regional Director determines that it will promote the policies of the National Labor Relations Act, the Regional Director may approve the settlement agreement and decline to issue or reissue a Complaint in this matter. If that occurs, this Agreement shall be between the Charged Party and the undersigned Regional Director. In that case, a Charging Party may request review of the decision to approve

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the Agreement. If the General Counsel does not sustain the Regional Director's approval, this Agreement shall be null and void.

**AUTHORIZATION TO PROVIDE COMPLIANCE INFORMATION AND NOTICES DIRECTLY TO CHARGED PARTY** — Counsel for the Charged Party authorizes the Regional Office to forward the cover letter describing the general expectations and instructions to achieve compliance, a conformed settlement, original notices and a certification of posting directly to the Charged Party. If such authorization is granted, Counsel will be simultaneously served with a courtesy copy of these documents.

Yes \_\_\_\_\_  
          Initials

No \_\_\_\_\_  
          Initials

**PERFORMANCE** — 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 Consolidated 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 Consolidated Complaint. The Charged Party understands and agrees that all of the allegations of the Consolidated Complaint will be deemed admitted and that it will have waived its right to file an Answer to such Consolidated 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 Consolidated 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.

**NOTIFICATION OF COMPLIANCE** — Each party to this Agreement will notify the Regional Director in writing what steps the Charged Party has taken to comply with the Agreement. This notification shall be given within 5 days, and again after 60 days, from the date of the approval of this Agreement. If the Charging Party does not enter into this Agreement, initial notice shall be given within 5 days after notification from the Regional Director that the Charging Party did not request review or that the General Counsel sustained the Regional Director's approval of this agreement. No further action shall be taken in the above captioned case(s) provided that the Charged Party complies with the terms and conditions of this Settlement Agreement and Notice.

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**(To be printed and posted on official Board notice form)**

**THE NATIONAL LABOR RELATIONS ACT GIVES YOU THE RIGHT TO:**

- Form, join, or assist a union;
- Choose a representative 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** interfere with, restrain, or coerce you in the exercise of the above rights.

**WE WILL NOT** watch you in order to find out about your union activities.

**WE WILL NOT** make it appear that we are watching your union activities.

**WE WILL NOT** threaten you with unspecified reprisals if you choose to be represented by or support a union by asserting unions limit employee promotion and/or ruin employee careers.

**WE WILL NOT** threaten you with unspecified reprisals if you engage in activity with other employees regarding your wages, hours, and working conditions.

**WE WILL NOT** deny you access to parts of the facility, previously accessible to you, to restrict or limit your union activity.

**WE WILL NOT** stop you from distributing union information and materials on non-work time in non-work areas.

**YOU HAVE THE RIGHT** to freely bring issues and complaints over wages, hours, or other terms and conditions of employment to us on behalf of yourself and other employees and **WE WILL NOT** do anything to interfere with your exercise of that right.

**WE WILL NOT** fire you because you exercise your right to bring issues and complaints to us on behalf of yourself and other employees.

**WE WILL NOT** fire you because of your union membership or support.

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

**WE WILL** make (b) (6), (b) (7)(C) whole for the wages (b) (6) lost because we separated (b) (6), (b) (7)(C) from (b) (6), (b) (7)(C) employment.

The National Labor Relations Board, Region 3 has found that (b) (6), (b) (7)(C) is entitled to reinstatement to (b) (6) former job, or to a substantially equivalent position. (b) (6), (b) (7)(C) has waived any right to reinstatement.

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**WE WILL** remove from our files all references to the circumstances surrounding our separating (b) (6), (b) (7)(C) from (b) (6), employment. **WE WILL** notify (b) (6), (b) in writing that this has been done and that (b) (6), separation from employment will not be used against (b) (6), (b) in any way.

**WE WILL** rescind the “Open Door” policy regarding “constructive criticism” in our employee handbook to the extent that it limits acceptable criticism to that deemed “constructive.”

**WE WILL** rescind the “Standards of Conduct” policy in our employee handbook to the extent that it states employees may be disciplined for “other misconduct” without stating what type of misconduct would result in discipline.

**Foodlink, Inc.**

\_\_\_\_\_  
(Employer)

**Dated:** \_\_\_\_\_

**By:** \_\_\_\_\_  
(Representative) (Title)

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*The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. We conduct secret-ballot elections to determine whether employees want union representation and we investigate and remedy unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below or you may call the Board's toll-free number 1-844-762-NLRB (1-844-762-6572). Hearing impaired callers who wish to speak to an Agency representative should contact the Federal Relay Service (link is external) by visiting its website at <https://www.federalrelay.us/tty> (link is external), calling one of its toll free numbers and asking its Communications Assistant to call our toll free number at 1-844-762-NLRB.*

130 S Elmwood Ave Ste 630  
Buffalo, NY 14202-2465

**Telephone:** (716)551-4931

**Hours of Operation:** 8:30 a.m. to 5 p.m.

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**THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE**

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the above Regional Office's Compliance Officer.

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