GC Services Limited Partnership, a limited partnership, and GC Financial Corp., general partner *and* Bradley Nelson. Case 28–CA–166389

July 24, 2020

DECISION AND ORDER

BY CHAIRMAN RING AND MEMBERS KAPLAN AND EMANUEL

On March 19, 2019, Administrative Law Judge Eleanor Laws issued the attached decision. The Respondent filed exceptions[1] and a supporting brief, the General Counsel filed an answering brief, and the Respondent filed a reply brief.

The National Labor Relations Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions and to adopt the recommended Order as modified and set forth in full below.[2]

The issue in this case is whether the Respondent violated Section 8(a)(1) of the Act by requiring employees, as a condition of employment, to sign an agreement that requires them to submit "all legally cognizable disputes," specifically including "any claim under the National Labor Relations Act," to final and binding arbitration. The judge found the violation as alleged, reasoning that the arbitration agreement explicitly interferes with employees' right to file charges with the Board or invoke the Board's processes. For the reasons stated below, we agree with the judge's conclusion.

I. BACKGROUND

The Respondent, which is headquartered in Houston, Texas, provides customer care and accounts receivable management services for organizations in the public and private sectors. Since about December 15, 2015, the Respondent, at all its offices nationwide, has maintained and required its employees, managers, and executives to sign, as a condition of employment, the following Mutual Agreement for Dispute Resolution (MADR):

> This Mutual Agreement for Dispute Resolution ("Agreement") is for the purpose of resolving claims by single-party arbitration and is mutually binding upon both the employee whose name appears on the signature block below ("Employee") and GC Services Limited Partnership . . . . The following contains the terms and conditions of the mutually binding Agreement:
>
> 1. **All Disputes Must Be Arbitrated**.
>
> It is the intent of the parties hereto that **all legally cognizable disputes between them that cannot be resolved to the parties' satisfaction through use of the Company's personnel policies, must be resolved by final and binding arbitration. Claims subject to arbitration include all legally cognizable claims in the broadest context and include**, but are not limited to, any dispute about the interpretation, applicability, validity, existence, enforcement, or extent of arbitrability of or under this Agreement, and **any claim arising under federal**, state, or local **statute**, regulation, or ordinance, any alleged contract, or under the common law. **This includes**, by way of non-exhaustive illustration only, any claim of employment discrimination in any alleged form, any claim for wage and hour relief, including under the Fair Labor Standards Act or state or local law, any claim under the Family Medical Leave Act or state or local law or regulation, **any claim under the National Labor Relations Act** or state or local law or regulation, or any other claim, whether contractual, common-law, statutory, or regulatory arising out of, or in any way related to, Employee's application for employment with and/or employment with Company, the termination thereof, this Agreement, or any other matter incident or in any manner related thereto. It is the intent of the parties that this Agreement shall be construed as broadly as legally possible and shall apply to any and all legally cognizable disputes between them regardless of when the dispute has arisen or may arise and includes any dispute that occurred before or

[1] No party excepts to the judge's failure to rule on the amended complaint's allegation that the Respondent violated Sec. 8(a)(1) of the Act by maintaining and requiring employees to sign the "GC Services' Dispute Resolution Program." Accordingly, we shall dismiss that complaint allegation. See *North Hills Office Services*, 346 NLRB 1099, 1099 fn. 9 (2006).

[2] We shall modify the judge's recommended Order to conform to our findings and to the Board's standard remedial language, including the temporary change to the Board's standard notice-posting remedy to adapt to the ongoing COVID-19 pandemic, see *Danbury Ambulance Service, Inc.*, 369 NLRB No. 68 (2020), and we shall substitute a new notice to conform to the Order as modified. No party has excepted to the provision in the recommended Order requiring the Respondent to post the remedial notice in all locations where its Mutual Agreement for Dispute Resolution (MADR) was maintained, not merely in its facility in Tucson, Arizona, where the Charging Party was employed. In any event, we find that a nationwide-posting remedy is appropriate because the parties stipulated that the Respondent required all its employees nationwide to sign the MADR, which we find unlawful for the reasons stated below.

We deny the Respondent's exception to the judge's failure to take "judicial notice" of an email exchange between Respondent's counsel and the Region that the Respondent attached to its posthearing brief to the judge. The judge properly declined to consider this document because it was not part of the stipulated record, and in any event, she correctly noted that considering it would not impact the outcome of the decision.

> after the parties execute this Agreement as well as disputes that arise or are asserted after Employee leaves the Company's employ, regardless of the reason for separation. This Agreement will apply to all claims, no matter when they accrue, excepting only claims which have already been filed in a court of proper jurisdiction in which both parties are expressly identified by name in such pending lawsuit filed before this Agreement is signed by both parties. The parties jointly agree neither may file any lawsuit to resolve any dispute between them but **Employee may file a complaint with any federal, state, or other governmental administrative agency, regarding any perceived infringement of any legally protected rights**.

(Jt. Exh. 2 (emphasis added).)

Since at least December 2015, the Respondent, at all its offices nationwide, has also maintained and required its employees to sign, as a condition of employment, a Code of Business Ethics and Conduct containing the following provision, which refers to the MADR:

> GC Services' Dispute Resolution Program
>
> The Company maintains a mandatory mutual dispute resolution program. As a condition and qualification for employment or continued employment, [a]ll applicants and employees are required to sign and agree to GC Services' Mutual Agreement for Dispute Resolution, which is attached as Attachment D. Should an employee decline to sign and agree to the Mutual Agreement for Dispute Resolution, effective immediately, the Company shall consider the employee to have voluntarily separated his or her employment from GC Services.

(Jt. Exh. 3.) The Respondent's employees were notified of the MADR and the Dispute Resolution Program through the Respondent's intranet, and they were required to sign electronic notices of receipt.

The judge found that the Respondent violated Section 8(a)(1) of the Act by maintaining and requiring employees to sign the MADR on the basis that the MADR explicitly restricts employees' right to file charges with the Board or invoke the Board's processes. Applying *Lutheran Heritage Village-Livonia*, 343 NLRB 646, 646 (2004), the judge stated that the "inquiry into whether the maintenance of a challenged rule is unlawful begins with the issue of whether the rule explicitly restricts activities protected by Section 7," and "[i]f it does, [the Board] will find the rule unlawful."[3] She then determined that based on its plain text, the MADR explicitly restricts employees' right to access the Board by expressly and specifically identifying NLRA claims as among those subject to final and binding arbitration.

The judge rejected the Respondent's argument that the MADR avoids an explicit restriction by providing that "[e]mployee[s] may file a complaint with any federal, state, or other governmental administrative agency[] regarding any perceived infringement of legally protected rights." She observed that this savings-clause language is contradicted by the coverage language that specifically identifies claims arising under the NLRA as covered disputes. Applying principles of contract interpretation, the judge reasoned that the coverage provision prevails over the savings clause because it is the more specific of the two and because any ambiguity should be construed against the Respondent as the drafter. Having found an explicit restriction of NLRA rights, the judge found inapplicable *Boeing*'s balancing analysis for evaluating facially neutral employer policies, which replaced the "reasonably construe" prong of the *Lutheran Heritage* standard.

Excepting, the Respondent argues that the MADR does not explicitly restrict employees' right to file charges with the Board because it specifically acknowledges employees' right to file "a complaint with any federal . . . administrative agency, regarding any perceived infringement of any legally protected rights." The Respondent contends that an arbitration agreement can both subject NLRA claims to arbitration and preserve employees' right to file charges with the Board. The Respondent further contends that because the MADR does not explicitly restrict that right, the MADR should be analyzed under *Boeing*. Applying *Boeing*, the Respondent argues that the MADR has no tendency to restrict charge filing or, alternatively, that any tendency to restrict charge filing would be outweighed by legitimate interests in maintaining an arbitration policy. The General Counsel contends that the Respondent has provided no valid reason for disturbing the judge's analysis, and he further contends that even under *Boeing*, the MADR is unlawful and belongs in *Boeing* Category 3.

II. DISCUSSION

We affirm the judge's conclusion that the Respondent violated Section 8(a)(1) of the Act by maintaining and requiring employees to sign the MADR as a condition of employment.

In *Prime Healthcare Paradise Valley, LLC*, we held, in relevant part, that "an arbitration agreement that explicitly prohibits the filing of claims with the Board or, more generally, with administrative agencies must be found

[3] The Board's decision in *Boeing Co.*, 365 NLRB No. 154 (2017), did not affect the holding of *Lutheran Heritage* that a rule is unlawful if it explicitly restricts Sec. 7 activity. *Prime Healthcare Paradise Valley, LLC*, 368 NLRB No. 10, slip op. at 5 fn. 10 (2019).

unlawful" because "[s]uch an agreement constitutes an explicit prohibition on the exercise of employee rights under the Act." 368 NLRB No. 10, slip op. at 5. We also held that the Federal Arbitration Act (FAA) does not authorize the maintenance or enforcement of arbitration agreements that interfere with employees' right to file charges with the Board, consistent with the clear congressional command in Section 10(a) of the Act that the Board's power to prevent unfair labor practices "shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law or otherwise." Id.

Applying *Prime Healthcare* here, we find that the MADR must be found unlawful because it explicitly impedes access to the Board and its processes by specifically subjecting to final and binding arbitration "any claim under the National Labor Relations Act." In so finding, we do not disagree with the Respondent's observation that an arbitration agreement can both subject NLRA claims to arbitration and preserve employees' right to file charges with the Board. Indeed, we have so found. See *Anderson Enterprises, Inc. d/b/a Royal Motor Sales*, 369 NLRB No. 70 (2020); *Briad Wenco, LLC d/b/a Wendy's Restaurant*, 368 NLRB No. 72 (2019). But the agreements in *Anderson Enterprises* and *Briad Wenco* were fundamentally different from the MADR at issue here. In those cases, the arbitration agreement featured *general* coverage language implicitly encompassing but not expressly specifying claims arising under the Act, and *specific* savings-clause language expressly preserving the right to bring claims or charges before the National Labor Relations Board. Here, the MADR includes *specific* coverage language expressly requiring arbitration of claims under the National Labor Relations Act, and *general* savings-clause language stating that employees may file complaints with federal administrative agencies. Thus, the MADR explicitly rules out any possibility that claims arising under the NLRA may be resolved in any way other than through final and binding arbitration even if employees can file complaints with administrative agencies, implicitly including the Board.[4] By expressly informing employees that arbitration is the final and binding forum for the resolution of any claim under the Act, the MADR explicitly restricts employees in the exercise of their Section 7 right to file charges with the Board or otherwise access its processes. Accordingly, by maintaining the MADR, the Respondent violated Section 8(a)(1) of the Act. *Prime Healthcare,* supra.

The Respondent argues that language in the MADR permitting employees to file complaints with federal administrative agencies renders the MADR "neutral," thus requiring that it be analyzed under the *Boeing* "reasonably interpret" standard for neutral rules.[5] The Board has indicated that a savings clause may be legally sufficient, even if it does not expressly refer to "the National Labor Relations Board," "the NLRB" or "the Board," if it informs employees of their right to file claims or charges with administrative agencies generally.[6] In no case, however, has the Board found such a generally worded savings clause legally sufficient where the agreement at issue specifically requires claims arising under the National Labor Relations Act be resolved exclusively through final and binding arbitration.[7] As the judge explained, under principles of contract interpretation the MADR's coverage provision prevails over the savings clause because it is the more specific of the two. Contrary to the Respondent, then, we find that the savings clause does not render the MADR "neutral."[8]

[4] We do not decide here whether an agreement that expressly covers claims arising under the NLRA but also specifically preserves the right to file charges with the NLRB would be lawful.

[5] *Boeing* replaced the "reasonably construe" standard in *Lutheran Heritage* with a balancing analysis for facially neutral employer policies. As we stated in *Prime Healthcare*, 368 NLRB No. 10, slip op. at 5, when an arbitration agreement does not contain an explicit prohibition but rather is facially neutral, the standard set forth in *Boeing* applies. Under the *Boeing* standard, the Board begins by determining whether an employer's policy, "when reasonably interpreted, would potentially interfere with the exercise of NLRA rights." *Boeing*, 365 NLRB No. 154, slip op. at 3.

[6] See *Haynes Building Services, LLC*, 369 NLRB No. 2, slip op. at 3 (2019) (agreement at issue "did not contain a savings clause preserving employees' right to file charges with the Board or with administrative agencies generally"); *E. A. Renfroe & Co.*, 368 NLRB No. 147, slip op. at 3 (2019) (agreement at issue "[did] not contain a savings clause preserving employees' right to file charges with the Board or, more generally, with administrative agencies"); *Beena Beauty Holding, Inc. d/b/a Planet Beauty*, 368 NLRB No. 91, slip op. at 2 (2019) (arbitration agreement at issue "contained no exception for filing charges with the Board or other administrative agencies").

[7] *Hobby Lobby Stores, Inc.*, 369 NLRB No. 129 (2020), cited by our concurring colleague, is not to the contrary.

[8] Even assuming, as our colleague believes, that the *Boeing* framework applies to the MADR, we would find the MADR unlawful and place it in *Boeing* Category 3.

Chairman Ring agrees with his colleagues that the MADR is unlawful, but he would find the violation under the *Boeing* framework, not on the basis that the MADR explicitly restricts Board charge filing. Like his colleagues, the Chairman would find that the MADR *specifically* requires employees to resolve all claims arising under the NLRA through final and binding arbitration. If there were nothing more than this coverage language, the MADR would explicitly restrict access to the Board. But the MADR also contains a savings clause, and the Board has made clear that it examines savings-clause language in the context of the arbitration agreement as a whole. *20/20 Communications, Inc.*, 369 NLRB No. 119, slip op. at 3 (2020). Moreover, we have recognized that a savings clause may be sufficient to protect employees' rights without expressly referring to "the National Labor Relations Board," "the NLRB" or "the Board," and recently, we found such a savings clause legally

The Respondent advances several other arguments. First, the Respondent argues that we cannot or should not find that the MADR unlawfully interferes with access to the Board because, in recent years, its employees have filed more than 40 charges with administrative agencies (including an unspecified number of charges with the Board) without repercussions, and because the General Counsel failed to prove that the MADR in fact restrained any employee from filing charges with the Board.[9] This argument is without merit because an arbitration agreement that *explicitly* restricts employees from exercising their Section 7 rights is unlawful on its face. See *Prime Healthcare*, 368 NLRB No 10, slip op. at 5.[10]

Second, the Respondent argues that the FAA requires arbitration agreements to be enforced as written and therefore precludes the Board from finding that the MADR violates the NLRA. For the reasons explained in *Prime Healthcare*, however, "the FAA does not authorize the maintenance or enforcement of agreements that interfere with an employee's right to file charges with the Board." 368 NLRB No. 10, slip op. at 5.

Finally, the Respondent argues that there is an irreconcilable tension between our finding that the MADR is unlawful and longstanding Board precedent under which the Board will defer, under certain circumstances, to an arbitrator's resolution of an NLRA claim. See, e.g., *United Parcel Service, Inc.*, 369 NLRB No. 1 (2019). There is no merit to this contention. The standards set forth in *United Parcel Service* govern whether a charge filed with the Board may be deferred when the charge involves issues that are also cognizable under a collectively bargained grievance arbitration provision. Those standards presuppose that a charge has been filed. The question presented here is whether the MADR interferes with charge filing in the first place. Far from conflicting with the Board's deferral precedent, our decision safeguards it by protecting access to charge filing, without which the Board cannot apply that precedent to decide whether deferral is warranted in specific cases.

In sum, we find that the Respondent violated Section 8(a)(1) by maintaining an arbitration agreement that expressly interferes with employees' Section 7 right to file charges with the Board and otherwise access its processes.

ORDER

The National Labor Relations Board orders that the Respondent, GC Services Limited Partnership and GC Financial Corp., Houston, Texas, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Maintaining a Mutual Agreement for Dispute Resolution that states that claims under the National Labor Relations Act must be resolved through final and binding arbitration and thereby interferes with the right of employees to file charges with the National Labor Relations Board or invoke the Board's processes.

(b) 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 the Mutual Agreement for Dispute Resolution in all its forms, or revise it in all its forms to make clear to employees that it does not interfere with employees' right to file charges with the National Labor Relations Board or invoke the Board's processes.

(b) Notify all current and former employees who were required to sign or otherwise became bound to the Mutual Agreement for Dispute Resolution in any form that the Mutual Agreement for Dispute Resolution has been rescinded or revised and, if revised, provide them a copy of the revised agreement.

(c) Post at its Tucson, Arizona facility and all other facilities where the Mutual Agreement for Dispute Resolution has been maintained copies of the attached notice marked "Appendix."[11] Copies of the notice, on forms

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sufficient. See *Hobby Lobby Stores, Inc.*, 369 NLRB No. 129, slip op. at 3 (2020). While the Chairman, viewing the MADR as a whole from the point of view of a reasonable employee, finds that the savings clause is too general to overcome the specificity of the MADR's coverage language, he disagrees that the MADR explicitly restricts employees' right of access to the Board. Accordingly, he would analyze the MADR under the *Boeing* framework. *Boeing*, 365 NLRB No. 154, slip op at 3. Under that framework, the Chairman finds that the MADR, when reasonably interpreted from the perspective of the Respondent's employees, makes arbitration the exclusive forum for resolution of claims arising under the Act. On this basis, he finds the MADR unlawful and would place it in *Boeing* Category 3. See *Prime Healthcare*, 368 NLRB No. 10, slip op. at 6.

[9] From January 1, 2015, to December 15, 2015, the Respondent's employees filed 13 charges or complaints with various federal, state, and local administrative agencies. From December 15, 2015, through the parties' filing of the joint motion and stipulation of facts, the Respondent's employees filed 41 charges or complaints with various federal, state, and local administrative agencies, including the Board. The Respondent has not disciplined or terminated any employee for filing an administrative charge or complaint with, or participating in an investigation by, any federal, state, or local administrative agency.

[10] Even under the *Boeing* framework, the Respondent's assertion fails because the Board looks solely to the wording of the arbitration agreement interpreted from the employees' perspective, not at whether employees actually filed charges or whether the employer has actually invoked the agreement to restrict charge filing. *Prime Healthcare*, 368 NLRB No. 10, slip op. at 6 fn. 14.

[11] If the facility involved in these proceedings is open and staffed by a substantial complement of employees, the notices must be posted within 14 days after service by the Region. If the facility involved in these proceedings is closed due to the Coronavirus Disease 2019

provided by the Regional Director for Region 28, 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, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. 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 December 15, 2015.

(d) Within 21 days after service by the Region, file with the Regional Director for Region 28 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.

IT IS FURTHER ORDERED that the amended complaint is dismissed insofar as it alleges violations of the Act not specifically found.

Dated, Washington, D.C. July 24, 2020

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John F. Ring, Chairman

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Marvin E. Kaplan, Member

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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 maintain a Mutual Agreement for Dispute Resolution that states that claims under the National Labor Relations Act must be resolved through final and binding arbitration and thereby interferes with the right of employees to file charges with the National Labor Relations Board or invoke the Board's processes.

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 the Mutual Agreement for Dispute Resolution in all its forms, or revise it in all its forms to make clear to employees that it does not interfere with employees' right to file charges with the National Labor Relations Board or invoke the Board's processes.

WE WILL notify all current or former employees who were required to sign or otherwise became bound to the Mutual Agreement for Dispute Resolution in any form that the Mutual Agreement for Dispute Resolution has been rescinded or revised and, if revised, WE WILL provide them a copy of the revised agreement.

GC SERVICES LIMITED PARTNERSHIP AND GC FINANCIAL CORP.

The Board's decision can be found at www.nlrb.gov/case/28-CA-166389 or by using the QR code below. Alternatively, 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.

(COVID-19) pandemic, the notices must be posted 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 delay in the physical posting of paper notices also applies to the electronic distribution of the notice if the Respondent customarily communicates with its employees by electronic means. 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."

Rodolfo Martinez, Esq., for the General Counsel.
Christopher J. Meister, Esq., for the Respondent.

DECISION

STATEMENT OF THE CASE

ELEANOR LAWS, ADMINISTRATIVE LAW JUDGE. This case was tried based on a joint motion and stipulation of facts Associate Chief Administrative Law Judge Gerald Etchingham approved on January 11, 2019. The case was subsequently assigned to me.[1]

Bradley Nelson (Nelson or Charging Party) filed original and amended charges on December 18 and 23, 2015, and March 23, 2016. The original complaint was issued on March 30, 2016, after which time certain complaint allegations were severed, and an amended complaint was issued on June 17, 2016. The parties entered into a joint stipulation of facts, filed with the National Labor Relations Board (the Board or NLRB) on September 26, 2016, which the Board approved on January 9, 2017. On May 21, 2018, the Supreme Court issued its decision in *Epic Systems Corp. v. Lewis*, 584 U.S. ___, 138 S.Ct. 1612 (2018), which held that the National Labor Relations Act (the NLRA or Act) does not bar arbitration agreements requiring employees to utilize individual arbitration to resolve disputes with their employers.[2] Because the amended complaint contained allegations resolved by *Epic Systems*, the Board rescinded its order approving the joint stipulation on October 31, 2018.

On November 8, 2018, the General Counsel issued the present amended complaint. GC Services Limited Partnership (the Respondent), filed a timely answer denying all material allegations.

The complaint alleges the Respondent maintained, as part of its dispute resolution program, a mutual agreement for dispute resolution (MADR) that interferes with, restrains, and coerces employees in the exercise of the rights guaranteed under Section 7 of the Act, in violation of Section 8(a)(1) of the NLRA.

On the entire record, and after considering the briefs filed by the General Counsel and the Respondent,[3] I make the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent provides customer care and accounts receivable management services for public and private sector organizations. At all material times, the Respondent has been a limited partnership headquartered in Houston, Texas, and has maintained an office and place of business in Tucson, Arizona. In conducting its operations during the 12–month period ending December 18, 2015, the Respondent derived gross revenues in excess of $500,000, and performed services valued in excess of $50,000 in States other than the State of Arizona. The Respondent is admittedly an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

Since at least about December 15, 2015, at all of its nationwide offices and places of business, the Respondent has maintained and required all of its employees, managers, and executives to sign, as a condition of employment, the following Mutual Agreement for Dispute Resolution (MADR):

> MUTUAL AGREEMENT FOR DISPUTE RESOLUTION
>
> This Mutual Agreement for Dispute Resolution ("Agreement") is for the purpose of resolving claims by single-party arbitration and is mutually binding upon both the employee whose name appears on the signature block below ("Employee") and GC Services Limited Partnership and all GC-Related Entities for which Employee works or has ever worked, which are defined as any entity owned, controlled, or managed in any manner or to any extent by GC Services Limited Partnership (collectively, the "Company"). The following contains the terms and conditions of the mutually binding Agreement:
>
> 1. **All Disputes Must Be Arbitrated**.
>
> It is the intent of the parties hereto that all legally cognizable disputes between them that cannot be resolved to the parties' satisfaction through use of the Company's personnel policies, must be resolved by final and binding arbitration. Claims subject to arbitration include all legally cognizable claims in the broadest context and include, but are not limited to, any dispute about the interpretation, applicability, validity, existence, enforcement, or extent of arbitrability of or under this Agreement, and any claim arising under federal, state, or local statute, regulation, or ordinance, any alleged contract, or under the common law. This includes, by way of non-exhaustive illustration only, any claim of employment discrimination in any alleged form, any claim for wage and hour relief, including under the Fair Labor Standards Act or state or local law, any claim under the Family Medical Leave Act or state or local law or regulation, any claim under the National Labor Relations Act or state or local law or regulation, or any other claim, whether

[1] The case was initially assigned to a different administrative law judge.

[2] *Epic Systems* did not consider the issue of whether employees can be forced to contract away their right to file charges with the National Labor Relations Board as a condition of employment, and the underlying claims in *Epic Systems* did not arise under the NLRA.

[3] The Respondent attached an exhibit to its post-hearing brief. The General Counsel filed a motion to strike the exhibit from the record. Para. 3 of the parties' joint stipulation states, "The parties agree this Stipulation of Facts, with attached exhibits described herein, constitutes the entire record in this case and that no oral testimony is necessary or desired by the parties." I therefore will not consider the Respondent's extra-record submission belatedly attached with a posthearing brief. I note, however, that consideration of it would not impact the outcome of this decision whatsoever.

> contractual, common-law, statutory, or regulatory arising out of, or in any way related to, Employee's application for employment with and/or employment with Company, the termination thereof, this Agreement, or any other matter incident or in any manner related thereto. It is the intent of the parties that this Agreement shall be construed as broadly as legally possible and shall apply to any and all legally cognizable disputes between them regardless of when the dispute has arisen or may arise and includes any dispute that occurred before or after the parties execute this Agreement as well as disputes that arise or are asserted after Employee leaves the Company's employ, regardless of the reason for separation. This Agreement will apply to all claims, no matter when they accrue, excepting only claims which have already been filed in a court of proper jurisdiction in which both parties are expressly identified by name in such pending lawsuit filed before this Agreement is signed by both parties. The parties jointly agree neither may file any lawsuit to resolve any dispute between them but Employee may file a complaint with any federal, state, or other governmental administrative agency, regarding any perceived infringement of any legally protected rights.

(Jt. Stip. ¶ 1(t); Jt. Exh. 2.)[4]

Since at least December 15, 2015, at all its nationwide offices and places of business, Respondent has maintained and required all of its employees, managers, and executives to sign, as a condition of employment, a Code of Business Ethics and Conduct, which includes the following provision:

> **GC Services' Dispute Resolution Program**
>
> The Company maintains a mandatory mutual dispute resolution program. As a condition and qualification for employment or continued employment, All applicants and employees are required to sign and agree to GC Services' Mutual Agreement for Dispute Resolution, which is attached as Attachment D. Should an employee decline to sign and agree to the Mutual Agreement for Dispute Resolution, effective immediately, the Company shall consider the employee to have voluntarily separated his or her employment from GC Services.

(Jt. Stip. ¶1(u); Jt. Exh. 3.)

The employees were notified of the MADR and the dispute resolution program electronically through the Respondent's intranet and were required to sign electronic notices of receipt. From January 1, 2015, through December 15, 2015, the Respondent's employees filed 13 charges or complaints with various Federal, State, and local administrative agencies. From December 15, 2015 through the filing of the joint motion, the Respondent's employees filed 41 charges or complaints with various Federal, State, and local administrative agencies including the National Labor Relations Board, Equal Employment Opportunity Commission, and Department of Labor. The Respondent has not disciplined or terminated an employee for filing an administrative charge or complaint with, or participating in an investigation by any Federal, State, or local administrative agency. (Jt. Stip. ¶¶ 1(v)–(y).)

III. DECISION AND ANALYSIS

Under Section 8(a)(1) of the NLRA, it is an unfair labor practice for an employer to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed by Section 7. The rights Section 7 guarantees include the right "to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection . . ."

Employees have a Section 7 right to utilize the Board's processes "without fear of restraint, coercion, discrimination, or interference from their employer." *Bill Johnson's Restaurants, Inc.*, 461 U.S. 731, 740 (1983). Complete freedom of employees to exercise their rights to file Board charges is necessary "to prevent the Board's channels of information from being dried up by employer intimidation of prospective complainants and witnesses." *NLRB v. Scrivener*, 405 U.S. 117, 122 (1972), quoting *John Hancock Mutual Life Insurance Co. v. NLRB*, 191 F.2d 483, 485 (D.C. Cir. 1951); See also *Nash v. Florida Industrial Comm'n*, 389 U.S. 235 (1967). Interfering with employees' rights to file charges with the Board in furtherance of concerted employee activities concerning wages or other working conditions violates Section 8(a)(1). See, e.g., *Bill's Electric*, 350 NLRB 292, 296 (2007); *Murphy Oil USA Inc. v. NLRB*, 808 F.3d 1013, 1019 (5th Cir. 2015).

Arbitration agreements such as the MADR have been evaluated under the same legal standards as other work rules. The Board's decision in *Boeing Co*., 365 NLRB No. 154 (2017), reversed part of the Board's longstanding paradigm, set forth in *Lutheran Heritage Village-Livonia*, 343 NLRB 646 (2004), for evaluating workplace rules that potentially infringe on Section 7 rights.[5] Under *Lutheran Heritage*, the first inquiry is whether the rule explicitly restricts activities protected by Section 7. If it does, the rule is unlawful. For facially neutral rules, a violation was previously "dependent upon a showing of one of the following: (1) employees would reasonably construe the language to prohibit Section 7 activity; (2) the rule was promulgated in response to union activity; or (3) the rule has been applied to restrict the exercise of Section 7 rights." *Lutheran Heritage* at 647. *Boeing* overruled *Lutheran Heritage* only with respect to the first prong of the facially-neutral paradigm. As such, the Board no longer will find certain work rules unlawful merely upon a showing that employees would reasonably construe the rule's language to prohibit or interfere with Section 7 activity.

The "reasonably construe" standard only applied to rules that do not explicitly restrict activity protected by Section 7. In *Lutheran Heritage*, the Board analyzed whether a rule about using abusive or profane language in the workplace was unlawful on

[4] "Jt. Exh." stands for "joint exhibit" and "Jt. Stip. stands for "joint stipulation of facts." Although I have included some citations to the record, I emphasize that my findings and conclusions are based not solely on the evidence specifically cited, but rather are based my review and consideration of the entire record.

[5] I have considered the parties' arguments under *Boeing*, but for reasons detailed herein, particularly the fact that *Boeing* only comes into play for facially neutral documents, I do not believe it applies to the MADR.

its face as follows: "The rules do not expressly cover Section 7 activity. Nor are verbal abuse and profane language an inherent part of Section 7 activity." *Lutheran Heritage,* supra at 647. Only after making this determination did the Board move on to the criteria for facially-neutral rules. The first step then is to determine whether the MADR expressly covers Section 7 activity or whether the conduct it seeks to regulate is an inherent part of Section 7 activity.[6] For the reasons discussed below, I find the MADR's plain language explicitly restricts Section 7 activity.

The MADR expressly states, "Claims subject to arbitration include . . . any claim under the National Labor Relations Act . . . ." It is hard to think of a more explicit and direct restriction on employees' rights to invoke the Board's proceedings. The Respondent argues that the clause at the end of the same section of the MADR, stating the "Employee may file a complaint with any federal, state, or other governmental administrative agency, regarding any perceived infringement of any legally protected rights," cures the initial restriction. I disagree for the following reasons.

First, the catchall statement that employees may file administrative complaints does not make the MADR neutral. There is a difference between neutrality and contradiction. A contract can expressly restrict something yet contain contradictory terms, as this one does. Consider a simplistic example, by way of illustration, of an employment contract requiring adherence to a dress code as a condition of continued employment and then stating, in separate clauses, first, "Employees may wear blue headbands only on Tuesdays" and later, "Employees may wear any color attire they wish." Can it be said with any integrity that this contract does not include a restriction on the wearing of blue headbands? Putting aside for the moment legal interpretation, common sense dictates that the contract is not neutral regarding whether or when employees can wear blue headbands. Contradictory and perhaps confusing and ambiguous? Yes. Neutral? No.[7]

Next, to decide whether the Respondent's argument has merit, it is necessary to examine the essence of the MADR. Like most other arbitration agreements, the MADR does not purport to regulate workplace conduct. Instead, it regulates the legal forum in the event of a work-related dispute, such as, for example, a dispute over discipline for violating a rule in the employer's employee handbook. The MADR is a contract about how employees and the employer can litigate, pure and simple. See *Epic Systems,* supra at 6 ("The parties before us contracted for arbitration."); *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333 (2011) (Primary provision of the FAA reflects the "'fundamental principle that arbitration is a matter of contract"' and "courts must place arbitration agreements on equal footing with other contracts." (quoting *Rent-A-Center, West, Inc. v. Jackson*, 561 U.S. 63, 67 (2010))); See also *Prima Paint*, 388 U.S. 395, at 404, fn. 12 (1967); (Through the Arbitration Act, Congress sought "to make arbitration agreements as enforceable as other contracts, but not more so.").

Because the MADR is a contract, determining what it says requires interpreting its terms under contract law.[8] One of the primary canons of contract law is that a contract's terms should be harmonized if possible. To say that employees must arbitrate any claim under the National Labor Relations Act, while at the same time saying employees may file a complaint with any governmental administrative agency is a complete contradiction, and I see no way to harmonize these provisions without nullifying one of them.[9]

Given that the provisions cannot be harmonized, the next step is to determine if one carries more weight than the other. It is a generally accepted principle of contract interpretation that "specific terms and exact terms are given greater weight than general language." Restatement (Second) of Contracts § 203 (1981).[10] The MADR's specific requirement to individually arbitrate any claim under the NRLA thus prevails over the language that employees may file a complaint with any federal, state, or other governmental administrative agency, regarding any perceived infringement of any legally protected rights.

Even assuming the specific clause does not prevail over the general, and therefore uncertainty remains, the result is the same. In cases of uncertainty, the language of a contract should be interpreted most strongly against the party who caused the uncertainty to exist, i.e. the drafting party. See, e.g., Restatement (Second) of Contracts § 206; *United States v. Seckinger*, 397 U.S. 203, 210 (1970). As the Court stated in *Mastrobuono v. Shearson Lehman Hutton, Inc*., 514 U.S. 52, 63, (1995), "Respondents drafted an ambiguous document, and they cannot now claim the

[6] In *Lutheran Heritage*, the Board analyzed rules about abusive/profane language. Its extension to arbitration contracts appears to be somewhat of a misfit. In any event, a document that explicitly restricts employees' core Sec. 7 rights on its face, whether a handbook rule about workplace conduct or an arbitration contract, doesn't survive under any paradigm.

[7] Sec. 2 of the MADR provides that disputes over the MADR's applicability must be resolved by final and binding arbitration. (Jt. Exh. 2.)

[8] It is undisputed that the Board has the authority to interpret the terms of a collective-bargaining agreement to determine whether an unfair labor practice has been committed. *NLRB v. C&C Plywood Corp.* 385 U.S. 421, 428 (1967). Moreover, the Board, particularly in the last few years, has interpreted countless individual arbitration contracts to determine whether they violate the NLRB.

[9] The contradiction is particularly stark given that there is no private cause of action to prevent and remedy unfair labor practice. Enforcement rests exclusively with the Board, triggered necessarily by the filing of a charge, as the General Counsel is precluded from looking for violations on his own initiative.

As discussed more fully below, the Respondent's argument that arbitration provisions are contained in many collective-bargaining agreements and that the Board may in its discretion defer to arbitral awards under certain circumstances, is inapposite; This case involves employer-imposed *individual* agreements as a condition of employment.

[10] The MADR's construction, whether inadvertent or artful, begs the question: What could possibly be the purpose of specifically saying that any claims under the National Labor Relations Act must be individually arbitrated if this specific statement is only nullified by general language permitting administrative complaints?

I note that in addition to the specific language referencing claims under the NLRA, the MADR also states, in more general all-inclusive terms, that it applies to "any claim arising under federal, state, or local statute . . ." Therefore, the general language providing for filing administrative charges is contradicted elsewhere in the contract by both broadly-worded general language as well as specific language.

benefit of the doubt."[11]

The Respondent asserts that the fact that employees filed charges with administrative agencies means they understood the MADR permits them to do so.[12] The problem is that this doesn't change the fact that the MADR, by its own terms, explicitly and specifically requires arbitration of any claim under the NLRA.[13]

The next question is whether the MADR, an arbitration agreement that on its face imposes a restriction on employees' rights to utilize the Board's procedures, is nonetheless valid pursuant to the Federal Arbitration Act, 9 U.S.C.§1 et seq. (FAA). It is not, as the clear language of the NLRA, and the uniformity with which this issue has been interpreted by both the Board and the various courts to have addressed it, show.

The NLRA, at Section 10(a), explicitly and exclusively gives the Board power "to prevent any person from engaging in any unfair labor practice" and states that this power "***shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law, or otherwise***." (Emphasis supplied.) Section 10(b) provides:

> Whenever it is charged that any person has engaged in or is engaging in any such unfair labor practice, the Board, or any agent or agency designated by the Board for such purposes, shall have power to issue and cause to be served upon such person a complaint stating the charges in that respect, and containing a notice of hearing before the Board or a member thereof, or before a designated agent or agency.

The FAA, at 9 U.S.C. § 2 provides:

> A written provision in any maritime transaction or a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction, or the refusal to perform the whole or any part thereof, or an agreement in writing to submit to arbitration an existing controversy arising out of such a contract, transaction, or refusal, shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.

If possible, the FAA and the NLRA must be read to give both effect. "The courts are not at liberty to pick and choose among congressional enactments, and when two statutes are capable of co-existence, it is the duty of the courts, absent a clearly expressed congressional intention to the contrary, to regard each as effective." *Morton v. Mancari*, 417 U.S. 535 (1974).

The FAA reflects an "emphatic federal policy in favor of arbitral dispute resolution." *AT&T Mobility* supra, at 344; *KPMG LLP v. Cocchi*, 565 U.S. 18, 21 (2011). This "emphatic" policy is not limitless, however. '"The Board asserts a public right vested in it as a public body, charged in the public interest with the duty of preventing unfair labor practices'. . . Wherever private contracts conflict with its functions, they obviously must yield or the Act would be reduced to a futility." *J. I. Case Co. v. NLRB*, 321 U.S. 332, 337 (1944), quoting *National Licorice Co. v. National Labor Relations Board*, 309 U.S. 350 (1940). As noted, arbitration agreements under the FAA are on equal footing with other contracts. *AT&T Mobility,* supra; *Buckeye Check Cashing, Inc. v. Cardegna*, 546 U.S. 440 (2006.)

There is "no doubt that illegal promises will not be enforced in cases controlled by the federal law." *Kaiser Steel Corp. v. Mullins*, 455 U.S. 72, 77 (1982).[14] The FAA incorporates this through its saving clause, providing that arbitration agreements "shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract." 9 U.S.C. § 2. One such ground is illegality. See *Buckeye Check Cashing*, supra. Because the provision requiring individual arbitration of claims under the NLRA unlawfully restricts employees' right to invoke the Board's procedures, it meets the criteria of the FAA's saving clause for non-enforcement of an illegal contract. As such, the two statutes can be effectively read together.

Notably, the Court in *Epic Systems* recognized that Congress can require specific enforcement mechanisms, stating, "Telling, too, is the fact that when Congress wants to mandate particular dispute resolution procedures it knows exactly how to do so. Congress has spoken often and clearly to the procedures for resolving 'actions,' 'claims,' 'charges,' and 'cases' in statute after statute." 138 S.Ct. at 1626. The Court then provided examples of statutory dispute resolution schemes administered by the Department of Labor and the Equal Employment Opportunity Commission (EEOC), which are not in any material way different than the Board's dispute resolution mechanism for violations of the NLRA, governed by Section 10 of that statute.[15]

The Respondent argues that there is no congressional

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[11] This is particularly true with adhesion contracts, such as the MADR. See *Batory v. Sears, Roebuck & Co*., 124 Fed.Appx. 530, 531–532 (9th Cir.2005).

[12] I am not looking at how the MADR was reasonably interpreted under *Boeing*. As noted in *Lutheran Heritage,* "Work rules are necessarily general in nature and are typically drafted by and for laymen . . ." 343 NLRB at 648; see also *Boeing*, supra. at fn. 41. Arbitration contracts, by contrast, are legal documents that are inherently more difficult to interpret, rendering objective lay employee analysis misplaced.

[13] The Respondent urges reliance on the dissent in *GameStop Corp*., 363 NLRB No. 89, slip op. at 4 (2015), and arguing the dissent reasoned that language in an arbitration agreement that expressly preserves the right to file administrative complaints precludes a finding that it unlawfully interfered with Board charge-filing. This is an unwarranted extension of what the dissent actually said, and it is misplaced in the present context. *GameStop* involved the inverse: The prohibition did not specifically include NLRA claims, but the agreement at issue specifically excluded from the term "Covered Claim" "[m]atters within the jurisdiction of the National Labor Relations Board." Id. In none of the other cases where the Respondent encourages reliance on the dissent's reasoning does the arbitration agreement at issue say explicitly and with specific statutory reference that employees must arbitrate all of their NLRA claims.

[14] "It is a bedrock principle of federal labor law and policy that agreements in which individual employees purport to give up the statutory right to act concertedly for their mutual aid or protection are void." *Bristol Farms*, 363 NRLB No. 45, slip op. at 3 (2015).

[15] In *Gilmer v. Interstate/Johnson Lane Corp.*, 500 U.S. 20, 28 (1991), in determining lawsuits under the Age Discrimination in Employment Act (ADEA) could be subject to individual arbitration pursuant to an arbitration agreement, the Court stated, "An individual ADEA claimant subject to an arbitration agreement will still be free to file a charge with the EEOC, even though the claimant is not able to institute a private judicial action." The agreement in *Gilmer* did not specifically mention ADEA claims.

command prohibiting arbitration of NLRA claims, citing to cases where the Board has deferred unfair labor practices to arbitration.[16] The deferral cases are fundamentally and crucially different from what the MADR contemplates, because they involve agreements to arbitrate embodied in collective-bargaining agreements negotiated mutually between the employees' bargaining representative and the employer.[17]. A crucial aspect of the Board's deferral decisions in this context is that deferral is exclusively a matter of Board discretion in line with Section 10(a) of the NLRA. Exercise of that discretion comes with safeguards to ensure the parties' statutory rights are adequately considered before the parties will be forever bound by an arbitrator's decision.[18] The situation here is radically different, as it provides for final and binding arbitration of NLRA claims pursuant to individual contracts of adhesion. As the Board has held in the context of alleged violations of Section 8(a)(4) of the NLRA:

> The prohibition expressed in Section 8(a)(4) against discharging or otherwise discriminating against an employee because he has filed charges or given testimony under the Act is a fundamental guarantee to employees that they may ***invoke*** or participate in the investigative procedures of this Board without fear of reprisal and is clearly required in order to safeguard the integrity of the Board's processes.

Filmation Associates, 227 NLRB 1721 (1977) (Emphasis supplied). The Board in *Filmation Associates* determined that its function of ensuring the integrity of Board processes rests solely with the Board and cannot be delegated to the parties or to an arbitrator. See also *Operating Engineers Local 138*, 148 NLRB 679 (1964); *McKinley Transport*, 219 NLRB 1148 (1975). The same reasoning appears here, because interference is interference, whether at the front end or the back end of the Board's processes.

Finally, interpreting an arbitration agreement to permit waiver of an employee's right to file Board charges encourages an absurd result. This is because "[a]ny person may file a charge alleging that any person has engaged in or is engaging in any unfair labor practice affecting commerce." 29 CFR § 102.9. An employee with an unfair labor practice allegation subjected to mandatory arbitration can ask: "Mom, can you go down to the NLRB on your lunch break tomorrow and file a charge about my employer committing an unfair labor practice?; I had to sign an agreement agreeing to arbitrate all my NLRA claims if I wanted to keep my job so I can't do it myself." Employees who are not coerced against this workaround will set the course for dual litigation of the same unfair labor practice claims in arbitration and at the Board. And really, more fundamentally, it makes no sense that aggrieved employees' rights to file Board charges can be stripped by an employer, given that a person with less of an interest or no interest in the outcome of the Board's proceedings may invoke such a right.

Based on the foregoing, because the MADR states, on its face, that any claims under the National Labor Relations Act must be arbitrated, I find it interferes with employees' Section 7 right to access to Board procedures and violates Section 8(a)(1) of the NLRA.

CONCLUSIONS OF LAW

1. By maintaining the Mutual Agreement for Dispute Resolution that interferes with employees' fundamental Section 7 right to file charges with the Board, the Respondent has violated Section 8(a)(1) of the Act.

2. The unfair labor practices committed by the Respondent affect commerce within the meaning of Section 2(6) and 2(7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I shall order it to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

Having found the Respondent maintains a Mutual Agreement for Dispute Resolution that explicitly states claims under the NLRA are subject to individual arbitration, the Respondent shall notify all current and former employees who were required to sign the Mutual Agreement for Dispute Resolution that it has been rescinded or revised and provide them a copy of the revised agreement. I will recommend that the Respondent post a notice in all locations where the Mutual Agreement for Dispute Resolution was utilized. *Guardsmark, LLC*, 344 NLRB 809, 812 (2005), enfd. in relevant part 475 F.3d 369 (D.C. Cir. 2007).

I will order the Respondent to cease and desist from interfering with, restraining, or coercing employees in the exercise of right to file charges with the Board in any like or related manner.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[19]

ORDER

The Respondent, GCS Services Limited Partnership and GC Financial Corp., Houston, Texas, its officers, agents, and representatives, shall

1. Cease and desist from maintaining a Mutual Agreement for Dispute Resolution that explicitly states claims under the NLRA are subject to individual arbitration, and thereby interferes with employees' fundamental Section 7 right to file charges with the Board.

2. Notify all applicants and current and former employees

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[16] See R. Br. p. 7.

[17] These cases implicate Sec. 203(d) of the Labor-Management Relations Act, which states, "[f]inal adjustment by a method agreed upon by the parties is declared to be the desirable method for settlement of grievance disputes arising over the application or interpretation of an existing collective-bargaining agreement." 29 U.S.C. §173(d).

In *Alexander v. Gardner-Denver Co.*, 415 U.S. 36, 51 (1974), the Court, when discussing statutorily protected rights related to collective activity, stated, "These rights are conferred on employees collectively to foster the processes of bargaining and properly may be exercised or relinquished by the union as collective-bargaining agent to obtain economic benefits for union members."

[18] See *Spielberg Mfg. Co*., 112 NLRB 1080 (1955); *Babcock & Wilcox Construction Co.*, 361 NLRB 1127 (2014); *Collyer Insulated Wire*, 192 NLRB 837 (1971).

[19] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

who signed the Mutual Agreement for Dispute Resolution, that it been rescinded or revised and provide them a copy of the revised agreement.

3. Within 14 days after service by the Region, post at its Tucson, Arizona facility and all other facilities where the Mutual Agreement for Dispute Resolution has been maintained, copies of the attached notice marked "Appendix."[20] Copies of the notice, on forms provided by the Regional Director for Region 28, 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, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, 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 December 15, 2015.

Dated, Washington, D.C. March 19, 2019

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 do anything to prevent you from exercising the above rights.

WE WILL NOT maintain a Mutual Agreement for Dispute Resolution (MADR) that bars or restricts your right to file charges with the National Labor Relations Board (NLRB).

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed to you by Section 7 of the Act.

WE WILL rescind the MADR in all of its forms or revise it in all of its forms to make clear to employees that it does not bar or restrict them from filing charges with the NLRB.

WE WILL notify all current and former employees who were required to sign or otherwise become bound to the MADR in any form that it has been rescinded or revised and, if revised, provide them a copy of the revised agreement.

The Administrative Law Judge's decision can be found at https://www.nlrb.gov/case/28-CA-166389 or by using the QR code below. Alternatively, 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.

[20] 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."