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**Northrop Grumman Systems Corporation and Porfiria Vasquez.** Case 31–CA–167294

August 2, 2018

DECISION AND ORDER

BY MEMBERS PEARCE, MCFERRAN, AND KAPLAN

On November 2, 2016, Administrative Law Judge Eleanor Laws issued the attached decision. The Respondent filed exceptions and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.<sup>1</sup>

The judge found, applying the Board’s decisions in *D. R. Horton*, 357 NLRB 2277 (2012), enf. denied in relevant part 737 F.3d 344 (5th Cir. 2013), and *Murphy Oil USA, Inc.*, 361 NLRB 774 (2014), enf. denied in relevant part 808 F.3d 1013 (5th Cir. 2015), that the Respondent violated Section 8(a)(1) of the National Labor Relations Act by maintaining its dispute resolution program, formally titled the “Employee Mediation/Binding Arbitration Program,” that requires employees, as a condition of employment, to waive their rights to pursue class or collective actions involving employment-related claims in all forums, whether arbitral or judicial.

Recently, the Supreme Court issued a decision in *Epic Systems Corp. v. Lewis*, 138 S.Ct. 1612 (2018), a consolidated proceeding that included review of court decisions below in *Lewis v. Epic Systems Corp.*, 823 F.3d 1147 (7th Cir. 2016), *Morris v. Ernst & Young, LLP*, 834 F.3d 975 (9th Cir. 2016), and *Murphy Oil USA, Inc. v. NLRB*, supra. *Epic Systems* concerned the issue, common to all three cases, whether employer-employee agreements that contain class- and collective-action waivers and stipulate that employment disputes are to be resolved by individualized arbitration violate the National Labor Relations Act. 138 S.Ct. at 1619–1621, 1632. The Supreme Court held that such employment agreements do not violate this Act and that the agreements must be enforced as written pursuant to the Federal Arbitration Act. *Id.* at 1619, 1632.

The Board has considered the decision and the record in light of the exceptions and briefs. In light of the Supreme Court’s ruling in *Epic Systems*, which overrules the Board’s holding in *Murphy Oil*, we conclude that the complaint must be dismissed.<sup>2</sup>

<sup>1</sup> Chairman Ring is recused and took no part in the consideration of this case.

<sup>2</sup> We therefore find no need to address other issues raised by the Respondent’s exceptions.

ORDER

The complaint is dismissed.

Dated, Washington, D.C. August 2, 2018

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Mark Gaston Pearce, Member

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Lauren McFerran, Member

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Marvin E. Kaplan, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

*Rudy L. Fong Sandoval*, for the General Counsel.  
*Thomas M. Stanek, Christopher J. Meister*, for the Respondent.  
*Vida M. Holguin*, for the Charging Party.

DECISION

STATEMENT OF THE CASE

ELEANOR LAWS, Administrative Law Judge. This case was tried by joint stipulation approved by Associate Chief Administrative Law Judge Gerald Etchingham on September 2, 2016, and assigned to me for a decision.

Porfiria Vasquez (the Charging Party or Vasquez) filed the charge through January 7, 2016. The General Counsel issued the complaint on June 27, 2016. Northrup Grumman Systems Corporation (the Respondent) filed a timely answer denying all material allegations and setting forth defenses.

This is another case applying the Board’s decisions in *D. R. Horton, Inc.*, 357 NLRB 2277 (2012), enf. denied in relevant part, 737 F.3d 344 (5th Cir. 2013), and *Murphy Oil USA, Inc.*, 361 NLRB 774 (2014), enf. denied 808 F.3d 1013 (5th Cir. 2015). Specifically, the complaint alleges the Respondent violated the National Labor Relations Act (the Act) by maintaining and enforcing agreements requiring employees to resolve employment-related disputes through individual binding arbitration, unless prohibited on unspecified jurisdictional grounds.

On the entire record, and after considering the briefs filed by the General Counsel, the Charging Party, and the Respondent, I make the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, Respondent Northrup Grumman Systems Corporation, a Delaware corporation with a place of business in Redondo Beach, California, has been engaged in aerospace and defense contracting. The parties admit, and I find, that at all material times, the Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6),

and (7) of the Act.

#### A. *The Dispute Resolution Program*

Since at least about September 15, 2006, the Respondent has maintained a corporate procedure regarding an “Employee Mediation/Binding Arbitration Program” (Jt. Exh. 2).<sup>1</sup> The Respondent amended its dispute resolution program (referred to by the parties and herein as the “DRP”) on February 15, 2010. (Jt. Exh. 3.)

The DRP reads in pertinent part:

By accepting or continuing employment, employees covered by this Program agree to submit any covered claims to binding arbitration, rather than to have such claims heard by a court, jury, or government agency.

...

Claims Covered: This Program does not apply to or cover claims . . . [a]s to which an agreement to arbitrate such claims is prohibited by law; [or that are] [c]overed under the National Labor Relations Act and within the exclusive jurisdiction of the National Labor Relations Board. . . .

...

Class Action Claims: To the extent it is permissible to do so in the jurisdiction where the arbitration is held and (if applicable) under the jurisdiction where the parties’ obligation to arbitrate claims under this Program is enforced, both you and the Company waive the right to bring any covered claim under this Program as a class action. In jurisdictions where this is permissible, the arbitrator will not have authority or jurisdiction to consolidate claims of different employees into one proceeding, nor shall the arbitrator have the authority or jurisdiction to hear the arbitration as a class action.

In any jurisdiction where the class action waiver described above is not permitted by law or is not enforceable, the issue of whether to certify any alleged or putative class for a class action proceeding must be decided by a court of competent jurisdiction. The arbitrator will not have authority or jurisdiction to decide class certification issues. Until any class certification issues are decided by the court, all arbitration proceedings shall be stayed, and the arbitrator shall take no action with respect to the matter. However, once any issues regarding class certification have been decided by the court, the arbitrator will have authority to decide the substantive claims on an individual or a class basis, as may be determined and directed by the court.

#### A. *Charging Party’s Actions and Litigation*

The parties stipulated to the following facts concerning Charging Party Porfiria Vasquez:

Vasquez worked for the Respondent from about 2004 until her employment ended on or about October 25, 2012. (Jt. Mot. ¶5(g).)

<sup>1</sup> “Jt. Exh.” stands for joint exhibit; “Jt. Mot.” stands for joint motion. Though I have made certain specific citations, I have considered the entire record in rendering this decision.

In or about October 2006, the Respondent required Vasquez to acknowledge that compliance with the DRP was a condition of employment. Vasquez acknowledged acceptance and compliance with the DRP on about October 2006 and again on about February 2010 as a condition of employment. (Jt. Mot. ¶5(h).)

On or about August 5, 2015, Vasquez filed a complaint for damages and injunctive relief against the Respondent captioned *Porfiria Vasquez v. Northrop Grumman Systems Corporation*, Does 1-50, case 2:15-CV-05926-AB-AFM (United States District Court, Central District of California) (the Federal lawsuit). (Jt. Mot. ¶5(i); Jt. Exh. 4.)

On or about October 6, 2015, Vasquez filed a first amended complaint in the Federal lawsuit. (Jt. Mot. ¶5(j); Jt. Exh. 5.)

On or about December 17, 2015, the Respondent filed a motion to compel binding arbitration (motion to compel) in the Federal lawsuit. The Respondent’s motion to compel was filed concurrently with declarations of Lori Ullmer-McCallum, Gina Piellush, Monica Krause, Alexis Goubran, Lizbeth Aleman, James Carpenter and Taraneh Fard. (Jt. Mot. ¶5(k); Jt. Exh. 6.)

On or about January 4, 2016, Vasquez filed an Opposition to the Respondent’s motion to compel. (Jt. Mot. ¶5(l); Jt. Ex. 7.)

On or about March 4, 2016, the Court granted the Respondent’s motion to compel binding arbitration in the Federal lawsuit. (Jt. Mot. ¶5(m); Jt. Exh. 8.)

Vasquez is pursuing her claims against the Respondent in an arbitral forum and an arbitration hearing is scheduled to begin on April 24, 2017. (Jt. Mot. ¶5(n); Jt. Exh. 9.)

Vasquez has identified both current and former employees of Respondent as witnesses she intends to use to support her claims at the arbitration hearing. (Jt. Mot. ¶5(o); Jt. Exh. 19.)

Respondent did not discipline Vasquez or terminate her employment for filing a class, collective, or joint action or complaint, nor has Respondent disciplined, or terminated the employment of, any other current or former employee, for filing a class, collective, or joint action or complaint. (Jt. Mot. ¶5(p).)

## II. DECISION AND ANALYSIS

### A. *Maintenance of the DRP*

The complaint alleges that the Respondent has violated the Act by maintaining the DRP, which require employees to waive their right to resolution of employment-related disputes by collective or class action, in violation of Section 8(a)(1) of the Act.<sup>2</sup>

Under Section 8(a)(1), 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 of the Act. The rights Section 7 guarantee 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 . . .”

<sup>2</sup> Both the Respondent and the Charging Party point to provisions in the DRP regarding Board proceedings. As the General Counsel points out, there is no allegation in the complaint regarding the DRP and Board charges, and no party contends the underlying claims in Vasquez’ lawsuit fall within the Board’s jurisdiction to decide.

When evaluating whether a rule, including an arbitration agreement, violates Section 8(a)(1), the Board applies the test set forth in *Lutheran Heritage Village-Livonia*, 343 NLRB 646 (2004). See *U-Haul Co. of California*, 347 NLRB 375, 377 (2006), *enfd.* 255 Fed.Appx. 527 (D.C. Cir. 2007); *D. R. Horton*, *supra*. Under *Lutheran Heritage*, the first inquiry is whether the rule explicitly restricts activities protected by Section 7. If it does, the rule is unlawful. If it does not “the violation is 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.

Because the DRP explicitly prohibits employees from pursuing employment-related claims on a class or collective basis “to the extent it is permissible to do so in the jurisdiction where the arbitration is held” or enforced, I find it violates Section 8(a)(1). The right to pursue concerted legal action, including class complaints, addressing wages, hours, and working conditions falls within Section 7’s protections. See, e.g., *Murphy Oil USA, Inc.*, *supra*; *D. R. Horton*, *supra*;<sup>3</sup> see also *Eastex, Inc. v. NLRB*, 437 U.S. 556, 566 (1978) (Sec. 7 protects employee efforts seeking “to improve working conditions through resort to administrative and judicial forums”); *Spandsco Oil & Royalty Co.*, 42 NLRB 942, 948–949 (1942); *Salt River Valley Water Users Assn.*, 99 NLRB 849, 853–854 (1952), *enfd.* 206 F.2d 325 (9th Cir. 1953); *Brady v. National Football League*, 644 F.3d 661, 673 (8th Cir. 2011) (“lawsuit filed in good faith by a group of employees to achieve more favorable terms or conditions of employment is ‘concerted activity’ under §7 of the National Labor Relations Act.”); *Trinity Trucking & Materials Corp. v. NLRB*, 567 F.2d 391 (7th Cir. 1977) (*mem. disp.*), *cert. denied* 438 U.S. 914 (1978). Accordingly, an employer rule or policy that interferes with such actions violates Section 8(a)(1). *D. R. Horton*, *supra*; *Murphy Oil*, *supra*; see also, e.g., *Chesapeake Energy Corp.*, 362 NLRB No. 80 (2015); *Cellular Sales of Missouri*, 362 NLRB No. 27 (2015); *Neiman Marcus Group, Inc.*, 362 NLRB No. 157 (2015); *Countrywide Financial Corp.*, 362 NLRB No. 165 (2015); *Leslie’s Pool Mart, Inc.*, 362 NLRB No. 184 (2015); *Lewis v. Epic Systems Corp.*, Case No. 15–2997 (7th Cir., May 26, 2016); *Morris v. Ernst & Young*, Case No. 13–16599 (9th Cir., August 22, 2016).

The Respondent argues that the Board’s interpretation in *D. R. Horton* and *Murphy Oil* fails to comply with the FAA. This argument has been repeatedly rejected by the Board, as articulated in the cases cited above, among others.<sup>4</sup> The Respondent’s argument that the Board’s caselaw is inconsistent with the Rules Enabling Act has likewise been rejected by the Board. See *MasTec Services Co.*, 363 NLRB No. 81, *slip op.* at 2 *fn.* 3 (2015). The Board has also repeatedly and consistently rejected the Respondent’s argument that *D. R. Horton* and *Murphy Oil* conflict with the Federal Rules of Civil Procedure. See *id.*

<sup>3</sup> The Board in *Murphy Oil* reexamined *D. R. Horton*, and determined that its reasoning and results were correct.

<sup>4</sup> The Board has fully addressed the relationship between the FAA and both the National Labor Relations Act and the Norris-LaGuardia Act.

“[T]he substantive Sec. 7 right to pursue employment-related claims collectively, without employer interference or restraint, is distinct from the procedural governing class certification.”)

The Respondent argues that nothing in the DRP penalizes employees for attempting to pursue collective or class litigation. This does not withstand even cursory scrutiny. An employee cannot meaningfully pursue something she has been required to contract away. The DRP is the epitome of employer interference with the right to pursue, in a manner that is not futile, employment-related claims as a class. It is one thing for a court or other tribunal to deny class certification, collective proceedings, joinder, consolidation, or other means of hearing claims of more than one individual at a time, based on failure to meet the criteria under governing rules and procedures of the deciding forum. It is quite another for an employer to require employees to agree to forego this determination as a condition of employment.

The language about permitting class collective arbitration in jurisdictions where it is unlawful to preclude it does not save the DRP. The Board’s clear position is that collective and class claims about wages, hours, and working conditions are protected by the Act, without regard to independent jurisdictional “permission” or even lack of preclusion. The Respondent’s attempt to restrict this by way of nonspecific jurisdictional language that is not readily discernible by a layperson is unavailing.<sup>5</sup> See *Allied Mechanical*, 349 NLRB 1077, 1084 (2007). Considering that ambiguities must be construed against the drafter of the DRP, which is the Respondent, I find the DRP violates Section 8(a)(1) because employees would reasonably believe the DRP requires arbitration of class or collective employment-related claims covered by the Act, at least in some unidentified areas. See *Aroostook County Regional Ophthalmology Center*, 317 NLRB 218 (1995).

The Respondent propounds numerous other arguments as to why *D. R. Horton* and its progeny should be overturned.<sup>6</sup> I am, however, required to follow Board precedent, unless and until it is overruled by the United States Supreme Court. See *Gas Spring Co.*, 296 NLRB 84, 97 (1989) (citing, *inter alia*, *Insurance Agents International Union*, 119 NLRB 768 (1957), *revd.* 260 F.2d 736 (D.C. Cir. 1958), *affd.* 361 U.S. 477 (1960)), *enfd.* 908 F.2d 966 (4th Cir. 1990), *cert. denied* 498 U.S. 1084 (1991). Any arguments regarding the legal integrity of Board precedent are therefore properly addressed to the Board.

#### B. Enforcement of the Agreement

The complaint further alleges that the Respondent violated Section 8(a)(1) of the Act by enforcing the DRP, as detailed above.

The Board in *D. R. Horton* and *Murphy Oil* held that an em-

<sup>5</sup> Obviously, highly trained lawyers and judges disagree over whether some sort of jurisdictional “permission” to bring collective actions is requisite anywhere; otherwise the current complaint and the many akin to it would not exist.

<sup>6</sup> Many of these arguments are in line with the dissents in *D. R. Horton* and *Murphy Oil*. Numerous Board and ALJ decisions have addressed the specific arguments raised by the Respondent and there is nothing I can add in this decision that has not already been addressed repeatedly.

ployer violates Section 8(a)(1) of the Act when it enforces an unlawful arbitration provision through a motion to compel arbitration to prevent employees' collective claims. *Murphy Oil*, 361 NLRB 774, 792–794. Here, it is undisputed that the Respondent enforced the DRP by filing a motion to compel arbitration in Vasquez' lawsuit. The Respondent contends, however, that removing Vasquez' individual complaint to arbitration did not restrict her in the exercise of her Section 7 rights.

A threshold issue is thus whether Vasquez' Federal lawsuit amounts to concerted activity. Vasquez is the sole named plaintiff in the lawsuit; neither the complaint nor the amended complaint lists any other plaintiffs, and most of the claims in Vasquez' lawsuit seek only individual relief.

The General Counsel asserts that two of Vasquez' causes of action under California State law seek collective relief. The sixth cause of action alleges failure to pay for meal and rest breaks pursuant to the California Labor Code §§ 226.7, 512, and Wage Order No. 1, section 12, and Wage Order No. 9, section 12. Some of the complaint paragraphs in the sixth cause of action refer to other aggrieved employees. Specifically, paragraph 61 of the complaint states:

61. Plaintiff is informed and believes and thereon alleges that she and other nonexempt employees were not authorized or permitted to take a 10 minute rest period every 4 hours of work. As a result, defendants must pay each employee 1 hour of pay at his regular rate of compensation.

Paragraphs 64 and 65 of the complaint state:

64. By virtue of Defendants' unlawful failure to provide meal and rest periods to Plaintiff and others, they each have suffered, and will continue to suffer, damages in the amount which is presently unknown to Plaintiff, but which will be ascertained and established according to proof at a trial.

65. Plaintiff is informed and believes, and based upon that information and belief alleges, that Defendants knew or should have known that Plaintiff and other nonexempt employees were entitled to meal periods and rest breaks but purposely elected not to provide these mandated periods.

Finally, paragraph 67 states:

67. In performing that acts and practices herein alleged in violation of the labor laws, the Defendants acted and continue to act intentionally, oppressively, and maliciously toward Plaintiff, with a conscious disregard of his rights, or the consequences to him or others, and with the intent of depriving them of his property and legal rights and otherwise causing Plaintiff and others injury in order to increase corporate profits at the expense of Plaintiff and other nonexempt employees.

The ninth cause of action alleges violation of the Unfair Business Practices Act, pursuant to the Business & Professions Code §17200, et seq. Some of the complaint paragraphs in the ninth cause of action refer to other aggrieved employees. Specifically, paragraphs 80–82 state:

80. As a result of Defendants' unfair business practices, Defendants have reaped unfair benefits and illegal profits at the expense of Plaintiff and others similarly situated, as well as

members of the public. Defendants should be made to disgorge their ill-gotten gains and to restore them to Plaintiff.

81. Defendants' unfair business practices entitles Plaintiff to seek preliminary and permanent injunctive relief including, but not limited to, orders that Defendants account for, disgorge and restore to Plaintiff and other nonexempt employees the wages and other compensation unlawfully withheld from her.

82. As a result of the above-alleged misconduct, Plaintiff, on behalf of himself and similarly aggrieved employees, have been deprived of lawful wages to which he/she or they were entitled and Plaintiff and these similarly aggrieved employees have suffered damages, in an amount to be determined according to proof at trial, including interest and penalties thereon.

In *Beyoglu*, 362 NLRB No. 152 (2015), the Board found that the plaintiff's individual lawsuit brought on behalf of other employees was concerted activity, and terminating him for pursuing it was unlawful.<sup>7</sup> Accordingly, I find counts 6 and 9 of Vasquez' lawsuit, which seek relief on behalf of Vasquez herself and other employees, are concerted.

Whether Vasquez' lawsuit is concerted, however, is a separate question from whether the Respondent violated the Act by requiring that it be arbitrated rather than pursued in court. The Respondent asserts that since Vasquez has not filed a class or collective complaint, its motion to compel arbitration had no impact on her Section 7 rights.

The General Counsel acknowledges the Respondent's motion to compel arbitration does not specifically call for individual arbitration. Indeed, it does not invoke any of the language in the DRP that restricts class or collective actions. The General Counsel argues, however, that the Respondent applied the DRP's class action waiver "to restrict those portions of Vasquez' lawsuit which . . . qualify as collective or class litigation." Vasquez did not bring a class action complaint, however.<sup>8</sup> Therefore, it is not surprising that the unlawful class action waiver was not implicated in the Respondent's motion to compel arbitration, or in Vasquez' response to it. There is no evidence other employees sought to join Vasquez' complaint, sought to consolidate their complaints with hers, or sought to be included in the litigation other than to testify as witnesses.

The collective portion of Vasquez' complaint concerns remedies to herself and other employees. Importantly, on this point the DRP states, "[T]he arbitrator may award any remedy that could be awarded by a court, including, for example, back pay, compensatory damages, preliminary and/or permanent injunc-

<sup>7</sup> The Board has also held that enlisting coworker support for a lawsuit involving a workplace concern—here wages—is concerted activity. *Fresh & Easy Neighborhood Market*, 361 NLRB No. 12 (2014). As it is undisputed Vasquez lined up coworker witnesses to support her lawsuit, I find it was concerted activity.

<sup>8</sup> Under Fed.R.Civ.Pro. 23, an individual must sue as a class representative, which Vasquez did not do. There is no evidence she sought class certification, and given the nature of her lawsuit, which requests a hybrid of individual and collective relief, it is difficult to see a path to certification, even if it was sought.

tive relief, and/or punitive damages.” As such, the Section 7 protected aspects of Vasquez’ claim remain intact notwithstanding the impact of the motion to compel. Under the specific facts of this case, Vasquez’ right to pursue her claim, including her requested relief, is no different in the arbitral forum than in court. See *D. R. Horton*, 357 NLRB at 2289.

It is crucial to emphasize this case turns on the fact that the Respondent did not rely on any of the alleged unlawful provisions of the DRP in seeking to remove Vasquez’ lawsuit to arbitration.<sup>9</sup> If the Respondent sought to thwart any attempt by Vasquez to seek class certification or otherwise proceed collectively, or asserted the DRP in an effort to limit her requested collective remedies, this would be unlawful enforcement of the DRP. As the General Counsel has not presented evidence that the DRP has been enforced to limit any collective claims or remedies, I recommend dismissal of this complaint allegation.

### C. Request to Stay

The Respondent requests a stay of the instant matter until the Supreme Court rules on whether agreements like the DRP are lawful under the Act. I decline to stay the proceedings, given the uncertainty as to when the Supreme Court will take up and decide the issue. Until that time, my role is to follow existing Board precedent.

### CONCLUSIONS OF LAW

(1) Respondent Northrup Grumman Systems Corporation, is an employer within the meaning of Section 2(6) and (7).

(2) The Respondent violated Section 8(a)(1) of the Act by maintaining the Employee Mediation/Binding Arbitration Program that restricts employees’ Section 7 rights to engage in class or collective litigation.

### REMEDY

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

As I have concluded that the Employee Mediation/Binding Arbitration Program is unlawful, the recommended order requires that the Respondent revise or rescind it in all of forms to make clear to employees that the Employee Mediation/Binding Arbitration Program does not interfere with their right to maintain employment-related joint, class, or collective actions. The Respondent shall notify all current and former employees who were required to sign the Employee Mediation/Binding Arbitration Program agreement in any form that it has been rescinded or revised and, if revised, provide them a copy of the revised Employee Mediation/Binding Arbitration Program agreement. Because the Respondent utilized the Employee Mediation/Binding Arbitration Program on a corporate-wide basis, the Respondent shall post a notice at all locations where the Employee Mediation/Binding Arbitration Program, or any por-

<sup>9</sup> Only the class/collective partial waiver is challenged here. The DRP’s lawful provisions could lawfully be used (and were used here) to remove Vasquez’ individual age discrimination complaint to arbitration. *Gilmer v. Interstate/Johnson Lane Corporation*, 500 U.S. 20 (1991).

tion of it restricting employees’ rights to engage in class or collective action, was in effect. See, e.g., *U-Haul Co. of California*, supra, fn. 2 (2006); *D. R. Horton*, supra; *Murphy Oil*, supra.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended<sup>10</sup>

### ORDER

The Respondent, Northrup Grumman Systems Corporation, a Delaware corporation with a place of business in Redondo Beach, California, their officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Maintaining an Employee Mediation/Binding Arbitration Program that restricts employees’ Section 7 rights to engage in class or collective litigation.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed to them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act: (a) Rescind the Employee Mediation/Binding Arbitration Program in all forms, or revise it in all forms to make clear to employees that the Employee Mediation/Binding Arbitration Program does not interfere with their right to maintain employment-related joint, class, or collective actions.

(b) Notify all current and former employees who signed the Employee Mediation/Binding Arbitration Program agreement in any form that it has been rescinded or revised and, if revised, provide them a copy of the revised agreement(s).

(c) Within 14 days after service by the Region, post at all facilities where it has maintained the arbitration agreements the attached notice marked “Appendix.”<sup>11</sup> Copies of the notice, on forms provided by the Regional Director for Region 21, 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, a Respondent has gone out of business or closed any facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to

<sup>10</sup> 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.

<sup>11</sup> 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.”

all current employees and former employees employed by the Respondent at any time since August 25, 2013.

(d) Within 21 days after service by the Region, file with the Regional Director 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. November 2, 2016

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 an Employee Mediation/Binding Arbitration Program that restricts employees' rights to maintain class or collective actions regarding employment-related disputes.

WE WILL NOT in any like or related manner interfere with, re-

strain, or coerce our employees in the exercise of the rights listed above.

WE WILL rescind the Employee Mediation/Binding Arbitration Program in all forms, or revise it in all forms, to make clear that it does not restrict employees' rights to maintain class or collective actions.

WE WILL notify all current and former employees who signed the Employee Mediation/Binding Arbitration Program agreement in any of its forms that it has been rescinded or revised and, if revised, we will provide them a copy of the revised agreement(s).

NORTHROP GRUMMAN SYSTEMS CORPORATION

The Administrative Law Judge's decision can be found at [www.nlrb.gov/case/31-CA-167294](http://www.nlrb.gov/case/31-CA-167294) 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.

