

NOTICE: This opinion is subject to formal revision before publication in the bound volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.

Mastec, Inc. and Jose Luis Sanchez Cordero

Mastec Services Co. and Moisha Ben Levison. Cases 12–CA–153478 and 12–CA–154795

September 13, 2018

DECISION AND ORDER

BY CHAIRMAN RING AND MEMBERS MCFERRAN AND KAPLAN

On August 31, 2016, Administrative Law Judge Michael A. Rosas issued the attached decision. The Respondents filed exceptions.

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

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 Mastec, Inc. and Mastec Services Co. (the Respondents) violated Section 8(a)(1) of the National Labor Relations Act by maintaining and enforcing a Dispute Resolution Policy (“the Policy”) 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 its decision in *Epic Systems Corp. v. Lewis*, 584 U.S. ___, 138 S.Ct. 1612 (2018), a consolidated proceeding including 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*, 808 F.3d 1013 (5th Cir. 2015). *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. Id. at ___, 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 ___, 138 S. Ct. at 1619, 1632.

The Board has considered the decision and the record in light of the exceptions. In light of the Supreme Court’s ruling in *Epic Systems*, which overrules the

¹ Member Emanuel is recused and took no part in the consideration of this case.

Board’s holding in *Murphy Oil*, we conclude that the complaint must be dismissed.²

ORDER

The complaint is dismissed.

Dated, Washington, D.C. September 13, 2018

John F. Ring, Chairman

Lauren McFerran, Member

Marvin E. Kaplan, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

Caroline Leonard, Esq., for the General Counsel.
Jessica T. Travers and *William J. Emanuel, Esqs. (Littler Mendelson, P.C.)*, of Miami, Florida, and Los Angeles, California, for the Respondents.
Scott C. Adams (LaBar & Adams, P.A.), of Orlando, Florida, and *Jay P. Lechner, Esq. (Whittel & Melton, LLC)*, of St. Petersburg, Florida, for the Charging Party.

DECISION

STATEMENT OF THE CASE

MICHAEL A. ROSAS, Administrative Law Judge. This matter is before me on a stipulated record. The charging parties, Jose Luis Sanchez Cordero and Moisha Ben Levison, filed unfair labor practice charges against Mastec, Inc. and Mastec Services Co. (collectively Respondents) on June 3 and 24, 2015, respectively.¹ The General Counsel issued the consolidated complaint on March 31, 2016. The consolidated complaint alleges that the Respondents violated Section 8(a)(1) of the National Labor Relations Act (the Act)² by maintaining and enforcing a Dispute Resolution Policy (DRP) requiring its employees to waive their right to pursue class, collective, or representative actions, with the availability of an opt-out provision.

On June 30 2016, the parties submitted a Joint Motion and Stipulated Record, requesting that the foregoing allegations be decided without a hearing based on a stipulated record. I granted the parties’ motion and, on August 10, 2016, the parties

² We therefore find no need to address other issues raised by the Respondents’ exceptions.

¹ All dates are referred to herein relate to the year 2015 unless otherwise indicated.

² 29 U.S.C. §§ 158(a)(1), et seq.

submitted their respective posthearing briefs in this case.

On the entire stipulated record and after considering the parties' briefs, I make the following

FINDINGS OF FACT

I. JURISDICTION

MasTec, Inc. and its subsidiary, MasTec Services Co., have been Florida corporations with a common principal office and place of business in Coral Gables, Florida. At all material times, the Respondents maintained places of business located in Brooksville and Longwood, Florida, and at other locations throughout the United States. During the past 12 months, Respondents purchased and received at their place of business in the State of Florida, goods valued in excess of \$50,000, directly from points outside the State of Florida. Respondents have been contractors performing engineering, procurement, construction and maintenance of infrastructures for electric transmission and distribution, oil and natural gas pipelines, and communications systems, including the installation of satellite television systems, home security systems, home automation systems and related services. At all material times, Respondents admit, and I find, that they are employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. Dispute Resolution Policy

Prior to February 1, 2013, MasTec Inc. and its subsidiaries and affiliates maintained in effect and enforced a Dispute Resolution Policy (DRP) in its employee handbook applicable to all of their employees in the United States, including those employed at its Brooksville and Longwood, Florida facilities. An exception applied to those employees who opt out pursuant to the procedure set forth in the DRP. The DRP further stated that an employee choosing to opt-out would "not be subject to any adverse employment action as a consequence of that decision."

Since February 1, 2013, all newly hired employees of Respondents, their subsidiaries and affiliates have been required to sign the DRP. The DRP provision at issue here expressly prohibits an employee's right to join a class or collective action. The pertinent provision states as follows:

This Dispute Resolution Policy is governed by the Federal Arbitration Act, 9 U.S.C. § 1 at seq. This Policy applies to any dispute arising out of, or related to, Employee's employment with or termination of employment with MasTec, Inc. and any of its subsidiaries and affiliates ("the Company"). Nothing contained in this Policy shall be construed to prevent or excuse an Employee from utilizing the Company's existing internal procedures for resolution of complaints, and this Policy is not intended to be a substitute for the utilization of such procedures. Except as it otherwise provides, this Policy is intended to apply to the resolution of disputes that otherwise would be resolved in a court of law, and therefore this Policy requires all such disputes that have not otherwise been resolved to be resolved only by an arbitrator through final and binding arbitration and not by way of court or jury trial. Such disputes include, without limitation, disputes arising out of or relating to interpretation or application of this policy, but not as to the enforceability or validity of the Policy or any portion of the

Policy. The Policy also applies, without limitation, to disputes regarding the employment relationship, trade secrets, unfair competition, compensation, breaks and rest periods, termination, or harassment and claims arising under the Uniform Trade Secrets Act, Civil Rights Act of 1964, Americans With Disabilities Act, Age Discrimination in Employment Act, Family Medical Leave Act, Fair Labor Standards Act, Employee Retirement Income Security Act, and state statutes, if any, addressing the same or similar subject matters, and all other state statutory and common law claims (excluding workers compensation, state disability insurance and unemployment insurance claims). Regardless of any other terms of this policy, claims may be brought before and remedies awarded by an administrative agency if applicable law permits access to such an agency notwithstanding the existence of an agreement to arbitrate such administrative claims, including without limitation, claims or charges brought before . . . the National Labor Relations Board. . . .

[T] here will be no right or authority for any dispute to be brought, heard or arbitrated as a class, collective or representative action, or in a representative or private attorney general capacity on behalf of a class of persons or the general public ("Class Action Waiver").

B. Opt-Out Provision

The DRP also contains, in pertinent part an "opt out" procedure:

An Employee may submit a form stating that the Employee wishes to opt out and not be subject to this Policy. The Employee must submit a signed and dated statement on a 'Dispute Resolution Policy Opt Out' form ('Form') that can be obtained from the Company's Legal Department, 800 Douglas Road, 11th Floor, Coral Gables, Florida 33134, by calling 305-406-1875. In order to be effective, the signed and dated Opt Out form must be returned to the Legal Department within 30 days of the Employee's original receipt of this Policy. An Employee choosing to opt out will not be subject to any adverse employment action as a consequence of that decision.

In the event that an employee does not opt out of the DRP, the employee acknowledges that he/she and the Company will be bound by the policy.

The Charging Parties are former employees of the Respondents. Moishe Ben Levison was employed by MasTec Services Co. as a satellite television installer/technician from June 10, 2013, until April 2, 2015. Jose Luis Sanchez Cordero was employed by MasTec Services Co. from April 14, 2014, until January 23, 2015. During their employment, Levison and Sanchez signed forms acknowledging receipt of the Respondents' DRP.

C. Class Action Lawsuits

On April 9, 2015, Sanchez and Mastec Services Co. employees Luiz Gomez-Montanez, Alexis A. Warner, and Brian Nazar, on behalf of themselves and others similarly situated, filed a collective action complaint against MasTec, Inc. and co-defendant AT&T Digital Life in United States District Court for the Middle District of Florida (the Sanchez FLSA Lawsuit).

On May 22, 2015, MasTec, Inc. and AT&T Digital Life filed a motion to compel arbitration and alternative motion to dismiss with memorandum of law in support. On July 27, 2015, the District Court granted Respondents' motion to compel arbitration in the Sanchez FLSA Lawsuit.

On or about June 30, 2015, Levison, on behalf of himself and others similarly situated, filed a lawsuit against Respondents in the Civil Division, Circuit Court of the Fifth Judicial Circuit in Hernando County, Florida (the Levison FLSA Lawsuit I). On or about July 7, 2015, following removal of the Levison FLSA Lawsuit I to the District Court for the Middle District of Florida, Levison and coworker Steven Salmons, on behalf of themselves and others similarly situated, filed an amended complaint against Respondent and DirecTV, Inc., in the United States District Court for the Middle District of Florida (the Levison FLSA Lawsuit II).

On July 30, 2015, Levison and Salmons, on behalf of themselves and others similarly situated, filed a motion to conditionally certify collective action and facilitate notice to potential class members and incorporated memorandum of law in the Levison FLSA Lawsuit II.

On July 31, August 4, and 21, 2015, in response to the Levison FLSA Lawsuit II, the Respondents filed motions to compel arbitration and memoranda in support in the District Court for the Middle District of Florida. On August 25, 2015, the District Court granted the Respondents' Motion to Compel Arbitration in the Levison FLSA Lawsuit II, concluding that the parties' claims must proceed to arbitration.

Legal Analysis

The issue in this case is whether the Respondents' Dispute Resolution Policy violates Section 8(a)(1) of the Act even though the policy includes an opt-out procedure for employees who do not want to sign the DRP.

The General Counsel alleges that the administrative law judge is bound to follow extant agency precedent in *D. R. Horton, Inc.*, 357 NLRB 2277 (2012). In that case, the Board held that Section 7 creates a substantive right for employees to pursue collective action and, thus, a required waiver of such right violates Section 8(a)(1) of the Act. The General Counsel further asserts that the enforcement of the class action waiver in the DRP constitutes additional violations.

The Respondents contend that the DRP does not violate the Act because: (1) the Board decision in *D. R. Horton* was overruled by the federal courts; (2) *D. R. Horton* was wrongly decided and conflicts with the Federal Arbitration Act (FAA); (3) an employee is not required to sign the DRP as a condition of employment; (4) an employee may voluntarily exercise a Section 7 right to "refrain" from concerted activity; and (5) Section 7 does not protect the procedural right to participate in class or collective actions.

I. THE BOARD PRECEDENT IN *D. R. HORTON, INC.* GOVERNS THE DRP.

The Respondents maintain that the charging party cannot rely on Board decisions in *D. R. Horton* and *Murphy Oil* that were reversed by the federal courts that upheld class action waivers. *D. R. Horton, Inc. v. NLRB*, 737 F.3d 344, 359–360 (5th Cir. 2013); *Murphy Oil USA, Inc. v. NLRB*, 808 F.3d 1013,

1016 (5th Cir. 2015). In *Murphy Oil*, the Board affirmed the holding in *D. R. Horton* and addressed the Fifth Circuit's rejection of the Board's decision by reiterating its position that the Board is not required to follow their decisions in other cases. *Murphy Oil*, 361 NLRB 774, 775 fn. 17, citing *Enloe Medical Center v. NLRB*, 433 F.3d 834, 838 (D.C. Cir. 2005).

Only the Board or the Supreme Court can reverse extant Board precedent in *D. R. Horton* and *Murphy Oil*. *Waco, Inc.*, 273 NLRB 746, 749, fn. 14 (1984); *Iowa Beef Packers, Inc.*, 144 NLRB 615, 616–617 (1963), enf. granted in part 331 F.2d 176 (1964). As such, unless and until the Supreme Court says otherwise, an administrative law judge is bound to follow the Board's controlling precedent finding class action waivers unlawful. See, e.g., *Waco, Inc.*, 273 NLRB 746, 749 fn. 14 (1984); *Pathmark Stores*, 342 NLRB 378 fn. 1 (2004) (finding that the administrative law judge has duty to apply established Board precedent which the Supreme Court has not reversed); *Chesapeake Energy Corp.*, 362 NLRB No. 80 (2015) (rejecting the administrative law judge's deference of the Act to the FAA and finding that arbitration policies violated Section 8(a)(1)).

Moreover, the federal courts diverge in their opinions regarding the issue. The Seventh Circuit recently agreed with the Board's decision in *D. R. Horton* and deferred to the Board's interpretation of Sections 7 and 8 as prohibiting employers from requiring employees to refrain from pursuing class action remedies. *Lewis v. Epic Systems Corp.*, 823 F.3d 1147 (7th Cir. 2016). Deference to the Board's interpretation of the Act is neither a novel nor new concept, even at the Supreme Court. See, e.g., *Lechmere, Inc. v. NLRB*, 502 U.S. 527, 536 (1992).

The Supreme Court has not overturned Board precedent in *D. R. Horton* and *Murphy Oil* holding that class action waivers in arbitration agreements restricting the right of employees to engage in concerted activity are unlawful. Therefore, *D. R. Horton* remains controlling Board law. *Manor West, Inc.*, 311 NLRB 655, 667 fn. 43 (1993).

II. *D. R. HORTON* WAS NOT WRONGLY DECIDED

The Respondents further contend that the Board's decision in *D. R. Horton* was wrongly decided because it fails to accommodate Congress's policies advanced in the FAA, citing *AT&T Mobility v. Concepcion*, 131 S.Ct. 1740 (2011), and *Compu-Credit Corp. v. Greenwood*, 132 S.Ct. 665 (2012).

The General Counsel argues that the *D. R. Horton* Board noted that *Concepcion* was decided in the context of a commercial arbitration agreement and the preemption of a state consumer protection law, not employees' substantive, federal collective action rights under Section 7 of the Act. 357 NLRB at 2288. The *D. R. Horton* Board explained that its holding did not conflict with the FAA because the intent of the FAA was to leave substantive rights undisturbed and that the right to join or pursue collective relief was a substantive Section 7 right. In *Murphy Oil*, the Board rejected the Fifth Circuit's reliance on *AT&T Mobility v. Concepcion*, 131 S.Ct. 1740 (2011), which held that the FAA preempted a California State law finding class-action waivers in consumer contracts unconscionable. *Murphy Oil*, supra, at 782.

In any event, regardless as to whether the Board precedent was wrongly decided, an administrative law judge is bound to

follow applicable Board law. *Chesapeake Energy Corp.* supra.

III. RESPONDENTS' VOLUNTARY DRP RESTRICTS SECTION 7 RIGHTS AND VIOLATES THE ACT

The Respondents allege that the Board's decision in *D.R. Horton* is not applicable to Mastec's DRP because that decision only applies to mandatory class waivers, "imposed upon" employees and "required" by employers "as a condition of employment." 357 NLRB 2277, supra at 2277. The Respondents argue that the DRP is voluntary and not required as a condition of employment. The charging parties signed the DRP and did not voluntarily opt out of the DRP within 30 days of receiving the DRP.

However, recent Board decisions have further construed *D.R. Horton* to extend to arbitration agreements that are voluntary. See *On Assignment Staffing Services*, 362 NLRB No. 189, slip op. at 10 (2015). Furthermore, whether the ADR policy was mandatory or voluntary is not dispositive of whether such policy violates the Act. *On Assignment Staffing Services*, supra, slip op. at 6 (finding the arbitration policy violated the Act even if employees could opt out of arbitration.); *Pama Management*, 363 NLRB No. 38, slip op. at 2 (2015) (rejecting the employer's assertion that the opt-out provision of its arbitration agreement made the agreement lawful); *U.S. Xpress Enterprises*, 363 NLRB No. 46, slip op. at 1–2 (2015) (same).

The Respondents refer to the fact that *On Assignment Staffing Services* was summarily reversed by the Fifth Circuit Court of Appeals. *On Assignment Staffing Services, Inc. v. NLRB*, No. 15-60642 (June 6, 2015). The Respondents also cite *Johnmohammadi v. Bloomington's, Inc.*, 755 F.3d 1072 (9th Cir. 2014), where the Ninth Circuit held that an arbitration agreement with an opt-out clause did not violate Section 8(a)(1) of the Act. However, as discussed above, the Board is not bound to follow conflicting federal courts decisions, unless reversed by itself or the Supreme Court.

In *On Assignment Staffing Services*, supra, slip op. 7, the Board held that voluntary agreements are "contrary to the National Labor Relations Act and to fundamental principles of federal labor policy." The Board found that the opt-out procedure interferes with Section 7 rights by requiring employees to take affirmative steps and burdens the exercise of Section 7 rights. A policy requiring employees to obtain their employer's permission to engage in protected concerted activity is unlawful, even if the rule does not absolutely prohibit such activity and regardless of whether the rule is actually enforced. *Chromalloy Gas Turbine Corp.*, 331 NLRB 858, 858–859 (2000), enf. 262 F.3d 184 (2d Cir. 2001); *Brunswick Corp.*, 282 NLRB 794, 794–795 (1987). The Board also found that the Respondent's opt-out procedure interferes with Section 7 rights because it requires employees who wish to retain their right to pursue class or collective claims to "make 'an observable choice that demonstrates their support for or rejection of'" concerted activity. *On Assignment Staffing Services*, supra, slip op. at 6, citing *Allegheny Ludlum Corp.*, 333 NLRB 734, 740 (2001), enf. 301 F.3d 167 (3d Cir. 2002). Similarly, MasTec's opt-out procedure forces employees to reveal their attitudes concerning Section 7 rights.

Applying Board precedent to this case, the Respondent's

DRP violates the Act. Although the DRP has an opt-out provision, employees have to take affirmative steps to opt out in order to exercise Section 7 rights. Employees who want to opt out are required to obtain an opt-out form from the legal department, and sign and return it within 30 days of receipt of the policy. The Respondents argue that the supervisors or managers of employees who elect to opt out would not know which employees opted out. The Respondents further allege that the test to determine interference, restraint, or coercion under Section 8(a)(1) is an objective one and, thus, not dependent on an employee's subjective interpretation of a statement. *Miami Systems Corp.*, 320 NLRB 71 fn. 4. The Board in *Miami Systems Corp.* did not rely on an employee's subjective interpretation of a manager's statement to eliminate the shift, instead concluding that the threat to eliminate the shift violated of the Act. Here, Mastec employee's subjective interpretation of the DRP is not applicable. It is reasonable to expect that employees would not be inclined to affirmatively opt out of the DRP over concern of standing out as an employee who rejected the employer's request that they waive their Section 7 rights.

The stand-alone DRP includes the same language that was already found to have violated Section 8(a)(1) of the Act in the employee handbook version of the DRP in *MasTec Services Co.*, 363 NLRB No. 81 (2015), enf. denied No. 16-60011 (per curiam) (5th Cir. July 11, 2016).

IV. EMPLOYEES' SIGNING DRP IS NOT THE SAME AS REFRAINING FROM CONCERTED ACTIVITY

The Respondents also assert that the DRP is lawful because employees can exercise their right to "refrain" from concerted activity. *Lee v. NLRB*, 393 F.3d 491, 494–495 (4th Cir. 2005); *BE & K Construction Co. v. NLRB*, 23 F.3d 1459, 1462 (8th Cir. 1994) (holding that the right to refrain from joining or assisting a union is an equally protected right with that of joining or forming a union).

It is true that federal courts and the Board have recognized the employee's right to waive statutorily protected rights. However, the Board already rejected the argument that an opt-out provision affords employees the power to enter into a class waiver, or refrain from doing so. *MasTec Services Co.*, 363 NLRB No. 81 (2015), enf. denied No. 16-60011 (per curiam) (5th Cir. July 11, 2016).

To further support its proposition regarding the right to refrain from concerted activity, the Respondents rely on *Ace Hardware Corp.*, 271 NLRB 1174, 1174 (1984), and *Perkins Machine Co.*, 141 NLRB 697, 700 (1963). In *Ace Hardware Corp.*, however, the circumstances were different because the Board held that employer did not violate Section 8(a)(1) of the Act by informing employees how to cancel their checkoff authorizations and offering assistance in doing so. In *Perkins Machine Co.*, the employer acted lawfully in bringing to the attention of its employees their contractual right to resign from the union and revoke their dues deduction.

As discussed above, the Board has held that even the voluntary nature of a class action waiver restricts the Section 7 rights of employees. The Respondents' employees must take affirmative measures to opt out of the waiver, while in *Ace Hardware Corp.* and *Perkins Machine Co.* the employer informed the

employees that they can revoke their authorization and opt out of union dues deductions.

V. RESPONDENTS' MOTIONS TO COMPEL ARBITRATION VIOLATE THE ACT

The Respondents filed a motion to compel arbitration and constrain the Charging Party from pursuing their lawsuits in court. The district court granted the Respondents' motion to compel arbitration in the lawsuit.

The General Counsel asserts that the Respondents' successful motions to enforce the DRP against Sanchez, Levison, and other employees who joined the lawsuits, constitute separation violations of Section 8(a)(1) of the Act. The Board has held that filing a motion to dismiss the class action and compel arbitration further violated Section 8(a)(1) as enforcement of an unlawful mandatory arbitration agreement. *Murphy Oil*, supra at 800. The Respondents rely on the aforementioned arguments that the DRPs are lawful as the basis for arguing that a district court should compel employees to arbitrate their claims.

Here, the Respondents insist that the right to engage in class or collective action is not a protected, concerted activity under Section 7 of the Act. The Respondents refer to the voluntary nature of the DRP in support of their contention that MasTec did not interfere with, restrain or coerce the Charging Parties in making their choice to opt out of the right to participate in class or collective actions. Board precedent, however, holds otherwise and the Respondent's motions to compel arbitration in the district court violated Section 8(a)(1) of the Act.

CONCLUSIONS OF LAW

1. Respondents MasTec, Inc. and MasTec Services Co. are employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Since February 1, 2013, the Respondents have violated Section 8(a)(1) of the Act by maintaining and enforcing a Dispute Resolution Policy requiring employees to resolve employment-related disputes exclusively through individual arbitration, and forego any right they have to resolve such disputes through class or collective action.

3. The aforementioned unfair labor practices affected commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that Respondents have violated the Act by maintaining and enforcing the Dispute Resolution Policy, I shall order them to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended³

ORDER

The Respondents, Mastec, Inc. and MasTec Services Co., their officers, agents, successors, and assigns, shall

³ 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.

1. Cease and desist from

(a) Maintaining and enforcing its Dispute Resolution Policy.

(b) Seeking court action to enforce the Dispute Resolution Policy that, either expressly or impliedly, or by Respondent's actions or practice, waives the right to maintain class or collective actions in all forums, whether arbitral or judicial.

(c) In any like or related manner, interfering with, restraining, or coercing employees in the exercise of their 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 or revise the Dispute Resolution Policy to make it clear to employees that the agreement does not constitute a waiver of their right to maintain employment related class or collective actions in all forums.

(b) Notify all employees at locations where the Policy is in effect, that it will no longer maintain or enforce the provisions contained in the Dispute Resolution Policy referred to in the employee handbook that waives employees' right to bring or participate in class or collective actions.

(c) Notify arbitral or judicial panels, if any, where the Respondents have attempted to enjoin or otherwise prohibit employees from bringing or participating in class or collective actions, that it is withdrawing those objections and that it no longer objects to such employee actions.

(d) Reimburse the charging parties and/or other employees who joined Civil Case No. 6:15-cv-00572-GAP-KRS and Case No. 8:15-cv-1547-RAL-AEP for any litigation expenses: (i) directly related to opposing Respondent's Motion to Compel; and/or (ii) resulting from any other legal action taken in response to Respondent's efforts to enforce the arbitration agreement.

(e) Within 14 days after service by the Region, post at all facilities where the Dispute Resolution Policy is maintained or enforced, copies of the attached notice marked "Appendix"⁴ in both English and Spanish. Copies of the notice, on forms provided by the Regional Director for Region 12, after being signed by the Respondents' authorized representative, shall be posted by the Respondents 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 Respondents customarily communicates with its employees and former employees by such means. Respondents also shall duplicate and mail, at their own expenses, a copy of the notice to all former employees who were required to sign the mandatory and binding arbitration policy during their employment with the Respondent. Reasonable steps shall be taken by the Respondents to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these pro-

⁴ 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."

ceedings, the Respondents have gone out of business or closed the facility involved in these proceedings, the Respondents shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondents at any time since February 1, 2013.

(f) 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 Respondents have taken to comply.

Dated, Washington, D.C. August 31, 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 or enforce the Dispute Resolution Policy referred to in the employees' handbook as far as it prohibits you from bringing or participating in class or collective actions in all forums, whether judicial or arbitral.

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

WE WILL rescind or revise the Dispute Resolution Policy from our employee handbook.

WE WILL notify any arbitral or judicial panel where we have attempted to prevent or enjoin you from commencing, or participating in, joint or class actions that we are withdrawing our objections to these actions.

WE WILL notify employees of the rescinded or revised agreement, including providing them with a copy of the revised agreement or specific notification that the agreement has been rescinded.

MASTEC, INC. AND MASTEC SERVICES CO.

The Administrative Law Judge's decision can be found at www.nlr.gov/case/12-CA-153478 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.

