

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

BLOOMINGDALE'S, INC.

and

Case 31-CA-071281

FATEMEH JOHNMOHAMMADI

NOTICE TO SHOW CAUSE

On April 29, 2016, the National Labor Relations Board issued a Decision and Order, 363 NLRB No. 172, finding that the Respondent violated Section 8(a)(1) of the National Labor Relations Act by both (1) maintaining and enforcing a mandatory individual arbitration policy and (2) interfering, through the arbitration policy, with employees' ability to access the Board. On June 28, 2018, the United States Court of Appeals for the Ninth Circuit denied enforcement, in light of *Epic Systems Corp. v. Lewis*, 584 U.S. \_\_\_, 138 S. Ct. 1612 (2018), of the Board's Order on the first finding and remanded the second finding back to the Board.

At the time of the Board's decision, and Administrative Law Judge Jeffrey D. Wedekind's June 25, 2013 decision that the Board affirmed in relevant part, the issue whether maintenance of a policy that did not expressly restrict employee access to the Board violated Section 8(a)(1) would be resolved based on the prong of the analytical framework set forth in *Lutheran Heritage Village-Livonia*, 343 NLRB 646 (2004), that held an employer's maintenance of a facially neutral work rule would be unlawful "if employees would reasonably construe the language to prohibit Section 7 activity." *Id.* at 647. Recently, the Board overruled the *Lutheran Heritage* "reasonably construe" test and announced a new standard that applies retroactively to all pending cases. *The Boeing Co.*, 365 NLRB No. 154 at slip op. 14-17 (2017).

Accordingly, the Board hereby issues the following notice to show cause why this issue should not be remanded to the judge for further proceedings in light of *Boeing*, including, if necessary, the filing of statements, reopening the record, and issuance of a supplemental decision.

**NOTICE IS GIVEN** that any party seeking to show cause why this case should not be remanded to the administrative law judge must do so in writing, filed with the Board in Washington, D.C., on or before November 7, 2018 (with affidavit of service on the parties to this proceeding). Any briefs or statements in support of the motion shall be filed on the same date.

Dated, Washington, D.C., October 24, 2018.

By direction of the Board:

/s/ Farah Z. Qureshi

Associate Executive Secretary