

10/24/18

RMcK
San Bruno, CA

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

ADECCO USA, INC.

and

Case 32-CA-142303

RAJAN NANAVATI

ORDER DENYING MOTION AND REMANDING

On May 24, 2016, the National Labor Relations Board granted the General Counsel's motion for summary judgment in a Decision and Order, 364 NLRB No. 9, finding that the Respondent violated Section 8(a)(1) of the 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 July 20, 2018, the United States Court of Appeals for the Fifth Circuit denied enforcement of the Board's Order on the first finding, in light of *Epic Systems Corp. v. Lewis*, 584 U.S. ___, 138 S. Ct. 1612 (2018), and remanded the second finding back to the Board.

At the time of the Board's decision, the issue of whether the maintenance of a policy that did not expressly restrict employee access to the Board violated Section 8(a)(1) on the basis that employees would reasonably believe it did would have been resolved based on the prong of the analytical framework set forth in *Lutheran Heritage Village-Livonia*, 343 NLRB 646 (2004), which held that 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, slip op. at 14-17 (2017).

Under the standard announced in *Boeing*, the General Counsel has not established in his motion for summary judgment that there are no genuine issues of material fact or that he is entitled to judgment as a matter of law. Accordingly, we deny without prejudice the General Counsel's motion and we will remand this issue to the Regional Director for Region 32 for further action he deems appropriate.

ORDER

IT IS ORDERED that the General Counsel's motion for summary judgment is denied, and this proceeding is remanded to the Regional Director for Region 32 for further appropriate action.

Dated, Washington, D.C. November 6, 2018.

John F. Ring, Chairman

Lauren McFerran, Member

Marvin E Kaplan, Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD