

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

Advanced Services, Inc.

and

Tabita Sheppard Howard

and

Princess Ballard

Cases 26-CA-063184  
26-CA-071805

NOTICE TO SHOW CAUSE<sup>1</sup>

On December 22, 2015, the National Labor Relations Board issued a Decision and Order, 363 NLRB No. 71, finding that the Respondent violated Section 8(a)(1) of the Act by (1) maintaining and enforcing a mandatory dispute resolution policy that required employees to waive the right to pursue class or collective actions in all forums, (2) maintaining a rule requiring all proceedings under the Respondent's dispute resolution policy be kept confidential, and (3) prohibiting discussion of performance improvement plans and disciplinary investigations. On August 22, 2018, the United States Court of Appeals for the Eighth 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, remanded the second finding back to the Board, and dismissed with prejudice, owing to a settlement between the parties, the Respondent's petition for review on the third finding.

At the time of the Board's decision, and Administrative Law Judge Margaret G. Brakebusch's decision that the Board affirmed in relevant part, the issue of whether the

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

maintenance of a policy requiring dispute resolution proceedings to be kept confidential 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 proceeding 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 23, 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., November 9, 2018.

By direction of the Board:

/s/ Roxanne L. Rothschild  
Acting Executive Secretary