

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

EVERGLADES COLLEGE, INC.
d/b/a KEISER UNIVERSITY and
EVERGLADES UNIVERSITY

and

Case 12-CA-096026

LISA K. FIKKI

NOTICE TO SHOW CAUSE

On December 23, 2015, the National Labor Relations Board issued a Decision and Order, 363 NLRB No. 73, finding that the Respondent violated Section 8(a)(1) of the Act by (1) maintaining and enforcing a mandatory individual arbitration agreement, (2) interfering, through the arbitration agreement, with employees' ability to access the Board, and (3) discharging employee Lisa K. Fikki because of her failure to sign the arbitration agreement. On June 26, 2018, the United States Court of Appeals for the Eleventh 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 and third findings back to the Board.

At the time of the Board's decision, and Administrative Law Judge Melissa M. Olivero's August 14, 2013, decision that the Board affirmed, the issue of 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, slip op. at 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 December 13, 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 29, 2018.

By direction of the Board:

/s/ Roxanne Rothschild
Acting Executive Secretary