JD(SF)–09–19
Tucson, Arizona

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

GC SERVICES LIMITED PARTNERSHIP,
a limited partnership, and
GC FINANCIAL CORP., general partner

and Case 28–CA–166389

BRADLEY NELSON, an Individual

Rodolfo Martinez, Esq.,
for the General Counsel.
Christopher J. Meister, Esq.,
for the Respondent.

DECISION

STATEMENT OF THE CASE

ELEANOR LAWS, Administrative Law Judge. This case was tried based on a joint motion and stipulation of facts Associate Chief Administrative Law Judge Gerald Etchingham approved on January 11, 2019. The case was subsequently assigned to me.[1]

Bradley Nelson (Nelson or Charging Party) filed original and amended charges on December 18 and 23, 2015, and March 23, 2016. The original complaint was issued on March 30, 2016, after which time certain complaint allegations were severed, and an amended complaint was issued on June 17, 2016. The parties entered into a joint stipulation of facts, filed with the National Labor Relations Board (the Board or NLRB) on September 26, 2016, which the Board approved on January 9, 2017. On May 21, 2018, the Supreme Court issued its decision in *Epic Systems Corp. v. Lewis*, 584 U.S. ___, 138 S.Ct. 1612 (2018), which held that the National Labor Relations Act (the NLRA or Act) does not bar arbitration agreements requiring employees to utilize individual arbitration to resolve disputes with their employers.[2] Because the amended complaint contained allegations resolved by *Epic Systems*, the Board rescinded its order approving the joint stipulation on October 31, 2018.

[1] The case was initially assigned to a different administrative law judge.

[2] *Epic Systems* did not consider the issue of whether employees can be forced to contract away their right to file charges with the National Labor Relations Board as a condition of employment, and the underlying claims in *Epic Systems* did not arise under the NLRA.

On November 8, 2018, the General Counsel issued the present amended complaint. GC Services Limited Partnership (the Respondent), filed a timely answer denying all material allegations.

The complaint alleges the Respondent maintained, as part of its dispute resolution program, a mutual agreement for dispute resolution (MADR) that interferes with, restrains, and coerces employees in the exercise of the rights guaranteed under Section 7 of the Act, in violation of Section 8(a)(1) of the NLRA.

On the entire record, and after considering the briefs filed by the General Counsel and the Respondent,[3] I make the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent provides customer care and accounts receivable management services for public and private sector organizations. At all material times, the Respondent has been a limited partnership headquartered in Houston, Texas, and has maintained an office and place of business in Tucson, Arizona. In conducting its operations during the 12–month period ending December 18, 2015, the Respondent derived gross revenues in excess of $500,000, and performed services valued in excess of $50,000 in States other than the State of Arizona. The Respondent is admittedly an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

Since at least about December 15, 2015, at all of its nationwide offices and places of business, the Respondent has maintained and required all of its employees, managers, and executives to sign, as a condition of employment, the following Mutual Agreement for Dispute Resolution (MADR):

> MUTUAL AGREEMENT FOR DISPUTE RESOLUTION
>
> This Mutual Agreement for Dispute Resolution ("Agreement") is for the purpose of resolving claims by single-party arbitration and is mutually binding upon both the employee whose name appears on the signature block below ("Employee") and GC Services Limited Partnership and all GC-Related Entities for which Employee works or has ever worked, which are defined as any entity owned, controlled, or managed in any manner or to any extent by GC Services Limited Partnership (collectively, the

[3] The Respondent attached an exhibit to its post-hearing brief. The General Counsel filed a motion to strike the exhibit from the record. Paragraph 3 of the parties' joint stipulation states, "The parties agree this Stipulation of Facts, with attached exhibits described herein, constitutes the entire record in this case and that no oral testimony is necessary or desired by the parties." I therefore will not consider the Respondent's extra-record submission belatedly attached with a post-hearing brief. I note, however, that consideration of it would not impact the outcome of this decision whatsoever.

"Company"). The following contains the terms and conditions of the mutually binding Agreement:

1. **All Disputes Must Be Arbitrated**.

It is the intent of the parties hereto that all legally cognizable disputes between them that cannot be resolved to the parties' satisfaction through use of the Company's personnel policies, must be resolved by final and binding arbitration. Claims subject to arbitration include all legally cognizable claims in the broadest context and include, but are not limited to, any dispute about the interpretation, applicability, validity, existence, enforcement, or extent of arbitrability of or under this Agreement, and any claim arising under federal, state, or local statute, regulation, or ordinance, any alleged contract, or under the common law. This includes, by way of non-exhaustive illustration only, any claim of employment discrimination in any alleged form, any claim for wage and hour relief, including under the Fair Labor Standards Act or state or local law, any claim under the Family Medical Leave Act or state or local law or regulation, any claim under the National Labor Relations Act or state or local law or regulation, or any other claim, whether contractual, common-law, statutory, or regulatory arising out of, or in any way related to, Employee's application for employment with and/or employment with Company, the termination thereof, this Agreement, or any other matter incident or in any manner related thereto. It is the intent of the parties that this Agreement shall be construed as broadly as legally possible and shall apply to any and all legally cognizable disputes between them regardless of when the dispute has arisen or may arise and includes any dispute that occurred before or after the parties execute this Agreement as well as disputes that arise or are asserted after Employee leaves the Company's employ, regardless of the reason for separation. This Agreement will apply to all claims, no matter when they accrue, excepting only claims which have already been filed in a court of proper jurisdiction in which both parties are expressly identified by name in such pending lawsuit filed before this Agreement is signed by both parties. The parties jointly agree neither may file any lawsuit to resolve any dispute between them but Employee may file a complaint with any federal, state, or other governmental administrative agency, regarding any perceived infringement of any legally protected rights.

(Jt. Stip. ¶ 1(t); Jt. Exh. 2.)[4]

[4] "Jt. Exh." stands for "joint exhibit" and "Jt. Stip. stands for "joint stipulation of facts." Although I have included some citations to the record , I emphasize that my findings and conclusions are based not solely on the evidence specifically cited, but rather are based my review and consideration of the entire record.

Since at least December 15, 2015, at all its nationwide offices and places of business, Respondent has maintained and required all of its employees, managers, and executives to sign, as a condition of employment, a Code of Business Ethics and Conduct, which includes the following provision:

> **GC Services' Dispute Resolution Program**
>
> The Company maintains a mandatory mutual dispute resolution program. As a condition and qualification for employment or continued employment, All applicants and employees are required to sign and agree to GC Services' Mutual Agreement for Dispute Resolution, which is attached as Attachment D. Should an employee decline to sign and agree to the Mutual Agreement for Dispute Resolution, effective immediately, the Company shall consider the employee to have voluntarily separated his or her employment from GC Services.

(Jt. Stip. ¶1(u); Jt. Exh. 3.)

The employees were notified of the MADR and the dispute resolution program electronically through the Respondent's intranet, and were required to sign electronic notices of receipt. From January 1, 2015 through December 15, 2015, the Respondent's employees filed 13 charges or complaints with various Federal, State, and local administrative agencies. From December 15, 2015 through the filing of the joint motion, the Respondent's employees filed 41 charges or complaints with various Federal, State, and local administrative agencies including the National Labor Relations Board, Equal Employment Opportunity Commission, and Department of Labor. The Respondent has not disciplined or terminated an employee for filing an administrative charge or complaint with, or participating in an investigation by any Federal, State, or local administrative agency. (Jt. Sip. ¶¶ 1(v)–(y).)

III. DECISION AND ANALYSIS

Under Section 8(a)(1) of the NLRA, it is an unfair labor practice for an employer to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed by Section 7. The rights Section 7 guarantees include the right "to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection . . ."

Employees have a Section 7 right to utilize the Board's processes "without fear of restraint, coercion, discrimination, or interference from their employer." *Bill Johnson's Restaurants, Inc.*, 461 U.S. 731, 740 (1983). Complete freedom of employees to exercise their rights to file Board charges is necessary "to prevent the Board's channels of information from being dried up by employer intimidation of prospective complainants and witnesses." *NLRB v. Scrivener*, 405 U.S. 117, 122 (1972), quoting *John Hancock Mutual Life Insurance Co. v. NLRB*, 89 U.S.App.D.C. 261, 263 (1951); See also *Nash v. Florida Industrial Comm'n*, 389 U.S. 235 (1967). Interfering with employees' rights to file charges with the Board in furtherance of concerted employee activities concerning wages or other working conditions violates Section

8(a)(1). See, e.g., *Bill's Electric*, 350 NLRB 292, 296 (2007); *Murphy Oil USA Inc. v. NLRB*, 808 F.3d 1013, 1019 (5th Cir. 2015).

Arbitration agreements such as the MADR have been evaluated under the same legal standards as other work rules. The Board's decision in *Boeing Co*., 365 NLRB No. 154 (2017), reversed part of the Board's longstanding paradigm, set forth in *Lutheran Heritage Village-Livonia*, 343 NLRB 646 (2004), for evaluating workplace rules that potentially infringe on Section 7 rights.[5] Under *Lutheran Heritage*, the first inquiry is whether the rule explicitly restricts activities protected by Section 7. If it does, the rule is unlawful. For facially neutral rules, a violation was previously "dependent upon a showing of one of the following: (1) employees would reasonably construe the language to prohibit Section 7 activity; (2) the rule was promulgated in response to union activity; or (3) the rule has been applied to restrict the exercise of Section 7 rights." *Lutheran Heritage* at 647. *Boeing* overruled *Lutheran Heritage* only with respect to the first prong of the facially-neutral paradigm. As such, the Board no longer will find certain work rules unlawful merely upon a showing that employees would reasonably construe the rule's language to prohibit or interfere with Section 7 activity.

The "reasonably construe" standard only applied to rules that do not explicitly restrict activity protected by Section 7. In *Lutheran Heritage*, the Board analyzed whether a rule about using abusive or profane language in the workplace was unlawful on its face as follows: "The rules do not expressly cover Section 7 activity. Nor are verbal abuse and profane language an inherent part of Section 7 activity." *Lutheran Heritage,* supra at 647. Only after making this determination did the Board move on to the criteria for facially neutral rules. The first step then is to determine whether the MADR expressly covers Section 7 activity or whether the conduct it seeks to regulate is an inherent part of Section 7 activity.[6] For the reasons discussed below, I find the MADR's plain language explicitly restricts Section 7 activity.

The MADR expressly states, "Claims subject to arbitration include . . . any claim under the National Labor Relations Act. . . ." It is hard to think of a more explicit and direct restriction on employees' rights to invoke the Board's proceedings. The Respondent argues that the clause at the end of the same section of the MADR, stating the "Employee may file a complaint with any federal, state, or other governmental administrative agency, regarding any perceived infringement of any legally protected rights," cures the initial restriction. I disagree for the following reasons.

[5] I have considered the parties' arguments under *Boeing*, but for reasons detailed herein, particularly the fact that *Boeing* only comes into play for facially neutral documents, I do not believe it applies to the MADR.

[6] In *Lutheran Heritage*, the Board analyzed rules about abusive/profane language. Its extension to arbitration contracts appears to be somewhat of a misfit. In any event, a document that explicitly restricts employees' core Section 7 rights on its face, whether a handbook rule about workplace conduct or an arbitration contract, doesn't survive under any paradigm.

First, the catchall statement that employees may file administrative complaints does not make the MADR neutral. There is a difference between neutrality and contradiction. A contract can expressly restrict something yet contain contradictory terms, as this one does. Consider a simplistic example, by way of illustration, of an employment contract requiring adherence to a dress code as a condition of continued employment and then stating, in separate clauses, first, "Employees may wear blue headbands only on Tuesdays" and later, "Employees may wear any color attire they wish." Can it be said with any integrity that this contract does not include a restriction on the wearing of blue headbands? Putting aside for the moment legal interpretation, common sense dictates that the contract is not neutral regarding whether or when employees can wear blue headbands. Contradictory and perhaps confusing and ambiguous? Yes. Neutral? No.[7]

Next, to decide whether the Respondent's argument has merit, it is necessary to examine the essence of the MADR. Like most other arbitration agreements, the MADR does not purport to regulate workplace conduct. Instead, it regulates the legal forum in the event of a work-related dispute, such as, for example, a dispute over discipline for violating a rule in the employer's employee handbook. The MADR is a contract about how employees and the employer can litigate, pure and simple. See *Epic Systems,* supra at 6 ("The parties before us contracted for arbitration."); *AT&T Mobility LLC v. Concepcion*, 563 U. S. 333 (2011) (Primary provision of the FAA reflects the "'fundamental principle that arbitration is a matter of contract"' and "courts must place arbitration agreements on equal footing with other contracts." (quoting *Rent–A–Center, West, Inc. v. Jackson*, 561 U.S. 63, 67 (2010))); See also *Prima Paint*, 388 U. S. 395, at 404, fn. 12 (1967); (Through the Arbitration Act, Congress sought "to make arbitration agreements as enforceable as other contracts, but not more so.").

Because the MADR is a contract, determining what it says requires interpreting its terms under contract law.[8] One of the primary canons of contract law is that a contract's terms should be harmonized if possible. To say that employees must arbitrate any claim under the National Labor Relations Act, while at the same time saying employees may file a complaint with any governmental administrative agency is a complete contradiction, and I see no way to harmonize these provisions without nullifying one of them.[9]

Given that the provisions cannot be harmonized, the next step is to determine if one carries more weight than the other. It is a generally accepted principle of contract interpretation that "specific terms and exact terms are given greater weight than general language." Rest.

---

[7] Section 2 of the MADR provides that disputes over the MADR's applicability must be resolved by final and binding arbitration. (Jt. Exh. 2.)

[8] It is undisputed that the Board has the authority to interpret the terms of a collective-bargaining agreement to determine whether an unfair labor practice has been committed. *NLRB v. C & C Plywood Corp.* 385 U.S. 421, 428 (1967). Moreover, the Board, particularly in the last few years, has interpreted countless individual arbitration contracts to determine whether they violate the NLRB.

[9] The contradiction is particularly stark given that there is no private cause of action to prevent and remedy unfair labor practice. Enforcement rests exclusively with the Board, triggered necessarily by the filing of a charge, as the General Counsel is precluded from looking for violations on his own initiative.

As discussed more fully below, the Respondent's argument that arbitration provisions are contained in many collective-bargaining agreements and that the Board may in its discretion defer to arbitral awards under certain circumstances, is inapposite; This case involves employer-imposed *individual* agreements as a condition of employment.

Second) of Contracts § 203 (1981).[10] The MADR's specific requirement to individually arbitrate any claim under the NRLA thus prevails over the language that employees may file a complaint with any federal, state, or other governmental administrative agency, regarding any perceived infringement of any legally protected rights.

Even assuming the specific clause does not prevail over the general, and therefore uncertainty remains, the result is the same. In cases of uncertainty, the language of a contract should be interpreted most strongly against the party who caused the uncertainty to exist, i.e. the drafting party. See, e.g., Restatement (Second) of Contracts § 206; *United States v. Seckinger*, 397 U.S. 203, 210 (1970). As the Court stated in *Mastrobuono v. Shearson Lehman Hutton, Inc.*, 514 U.S. 52, 63, (1995), "Respondents drafted an ambiguous document, and they cannot now claim the benefit of the doubt."[11]

The Respondent asserts that the fact that employees filed charges with administrative agencies means they understood the MADR permits them to do so.[12] The problem is that this doesn't change the fact that the MADR, by its own terms, explicitly and specifically requires arbitration of any claim under the NLRA.[13]

The next question is whether the MADR, an arbitration agreement that on its face imposes a restriction on employees' rights to utilize the Board's procedures, is nonetheless valid pursuant to the Federal Arbitration Act, 9 U.S.C.§1 et seq. (FAA). It is not, as the clear language

---

[10] The MADR's construction, whether inadvertent or artful, begs the question: What could possibly be the purpose of specifically saying that any claims under the National Labor Relations Act must be individually arbitrated if this specific statement is only nullified by general language permitting administrative complaints?

I note that in addition to the specific language referencing claims under the NLRA, the MADR also states, in more general all-inclusive terms, that it applies to "any claim arising under federal, state, or local statute . . ." Therefore the general language providing for filing administrative charges is contradicted elsewhere in the contract by both broadly-worded general language as well as specific language.

[11] This is particularly true with adhesion contracts, such as the MADR. See *Batory v. Sears, Roebuck & Co*., 124 Fed.Appx. 530, 531–532 (9th Cir.2005).

[12] I am not looking at how the MADR was reasonably interpreted under *Boeing*. As noted in *Lutheran Heritage,* "Work rules are necessarily general in nature and are typically drafted by and for laymen . . . " 343 NLRB at 648; see also *Boeing*, supra. at fn. 41. Arbitration contracts, by contrast, are legal documents that are inherently more difficult to interpret, rendering objective lay employee analysis misplaced.

[13] The Respondent urges reliance on the dissent in *GameStop Corp*., 363 NLRB No. 89, slip op. at 4 (2015), and arguing the dissent reasoned that language in an arbitration agreement that expressly preserves the right to file administrative complaints precludes a finding that it unlawfully interfered with Board charge-filing. This is an unwarranted extension of what the dissent actually said, and it is misplaced in the present context. *GameStop* involved the inverse: The prohibition did not specifically include NLRA claims, but the agreement at issue specifically excluded from the term "Covered Claim" "[m]atters within the jurisdiction of the National Labor Relations Board." Id. In none of the other cases where the Respondent encourages reliance on the dissent's reasoning does the arbitration agreement at issue say explicitly and with specific statutory reference that employees must arbitrate all of their NLRA claims.

of the NLRA, and the uniformity with which this issue has been interpreted by both the Board and the various courts to have addressed it, show.

The NLRA, at Section 10(a), explicitly and exclusively gives the Board power "to prevent any person from engaging in any unfair labor practice" and states that this power "***shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law, or otherwise***." (Emphasis supplied.) Section 10(b) provides:

> Whenever it is charged that any person has engaged in or is engaging in any such unfair labor practice, the Board, or any agent or agency designated by the Board for such purposes, shall have power to issue and cause to be served upon such person a complaint stating the charges in that respect, and containing a notice of hearing before the Board or a member thereof, or before a designated agent or agency.

The FAA, at 9 U.S.C. § 2 provides:

> A written provision in any maritime transaction or a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction, or the refusal to perform the whole or any part thereof, or an agreement in writing to submit to arbitration an existing controversy arising out of such a contract, transaction, or refusal, shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.

If possible, the FAA and the NLRA must be read to give both effect. "The courts are not at liberty to pick and choose among congressional enactments, and when two statutes are capable of co-existence, it is the duty of the courts, absent a clearly expressed congressional intention to the contrary, to regard each as effective." *Morton v. Mancari*, 417 U.S. 535 (1974).

The FAA reflects an "emphatic federal policy in favor of arbitral dispute resolution." *AT&T Mobility* supra, at 344 ; *KPMG LLP v. Cocchi*, 565 U.S. 18, 21 (2011). This "emphatic" policy is not limitless, however. '"The Board asserts a public right vested in it as a public body, charged in the public interest with the duty of preventing unfair labor practices'. . . Wherever private contracts conflict with its functions, they obviously must yield or the Act would be reduced to a futility." *J. I. Case Co. v. NLRB*, 321 U.S. 332, 337 (1944), quoting *National Licorice Co. v. National Labor Relations Board*, 309 U.S. 350 (1940). As noted, arbitration agreements under the FAA are on equal footing with other contracts. *AT&T Mobility,* supra; *Buckeye Check Cashing, Inc. v. Cardegna*, 546 U.S. 440 (2006.)

There is "no doubt that illegal promises will not be enforced in cases controlled by the federal law." *Kaiser Steel Corp. v. Mullins*, 455 U.S. 72, 77 (1982).[14] The FAA incorporates this through its saving clause, providing that arbitration agreements "shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract." 9 U.S.C. § 2. One such ground is illegality. See *Buckeye Check Cashing*, supra.

[14] "It is a bedrock principle of federal labor law and policy that agreements in which individual employees purport to give up the statutory right to act concertedly for their mutual aid or protection are void." *Bristol Farms*, 363 NRLB No. 45, slip op. at 3 (2015).

Because the provision requiring individual arbitration of claims under the NLRA unlawfully restricts employees' right to invoke the Board's procedures, it meets the criteria of the FAA's saving clause for non-enforcement of an illegal contract. As such, the two statutes can be effectively read together.

Notably, the Court in *Epic Systems* recognized that Congress can require specific enforcement mechanisms, stating, "Telling, too, is the fact that when Congress wants to mandate particular dispute resolution procedures it knows exactly how to do so. Congress has spoken often and clearly to the procedures for resolving 'actions,' 'claims,' 'charges,' and 'cases' in statute after statute." 138 S.Ct. at 1626. The Court then provided examples of statutory dispute resolution schemes administered by the Department of Labor and the Equal Employment Opportunity Commission (EEOC), which are not in any material way different than the Board's dispute resolution mechanism for violations of the NLRA, governed by Section 10 of that statute.[15]

The Respondent argues that there is no congressional command prohibiting arbitration of NLRA claims, citing to cases where the Board has deferred unfair labor practices to arbitration.[16] The deferral cases are fundamentally and crucially different from what the MADR contemplates, because they involve agreements to arbitrate embodied in collective-bargaining agreements negotiated mutually between the employees' bargaining representative and the employer.[17]. A crucial aspect of the Board's deferral decisions in this context is that deferral is exclusively a matter of Board discretion in line with Section 10(a) of the NLRA. Exercise of that discretion comes with safeguards to ensure the parties' statutory rights are adequately considered before the parties will be forever bound by an arbitrator's decision.[18] The situation here is radically different, as it provides for final and binding arbitration of NLRA claims pursuant to individual contracts of adhesion. As the Board has held in the context of alleged violations of Section 8(a)(4) of the NLRA:

> The prohibition expressed in Section 8(a)(4) against discharging or otherwise discriminating against an employee because he has filed charges or given testimony under the Act is a fundamental guarantee to employees that they may ***invoke*** or

[15] In *Gilmer v. Interstate/Johnson Lane Corp.*, 500 U.S. 20, 28 (1991), in determining lawsuits under the Age Discrimination in Employment Act (ADEA) could be subject to individual arbitration pursuant to an arbitration agreement, the Court stated, "An individual ADEA claimant subject to an arbitration agreement will still be free to file a charge with the EEOC, even though the claimant is not able to institute a private judicial action." The agreement in Gilmer did not specifically mention ADEA claims.

[16] See R. Br. p. 7.

[17] These cases implicate Section 203(d) of the Labor-Management Relations Act, which states, "[f]inal adjustment by a method agreed upon by the parties is declared to be the desirable method for settlement of grievance disputes arising over the application or interpretation of an existing collective-bargaining agreement." 29 U.S.C. §173(d).

In *Alexander v. Gardner-Denver Co.*, 415 U.S. 36, 51 (1974), the Court, when discussing statutorily protected rights related to collective activity, stated, "These rights are conferred on employees collectively to foster the processes of bargaining and properly may be exercised or relinquished by the union as collective-bargaining agent to obtain economic benefits for union members."

[18] See *Spielberg Mfg. Co*., 112 NLRB 1080 (1955); *Babcock & Wilcox Construction Co.*, 361 NLRB 1127 (2014); *Collyer Insulated Wire*, 192 NLRB 837 (1971).

> participate in the investigative procedures of this Board without fear of reprisal and is clearly required in order to safeguard the integrity of the Board's processes.

Filmation Associates, 227 NLRB 1721 (1977) (Emphasis supplied). The Board in *Filmation Associates* determined that its function of ensuring the integrity of Board processes rests solely with the Board and cannot be delegated to the parties or to an arbitrator. See also *Operating Engineers Local 138*, 148 NLRB 679 (1964); *McKinley Transport*, 219 NLRB 1148 (1975). The same reasoning appears here, because interference is interference, whether at the front end or the back end of the Board's processes.

Finally, interpreting an arbitration agreement to permit waiver of an employee's right to file Board charges encourages an absurd result. This is because "[a]ny person may file a charge alleging that any person has engaged in or is engaging in any unfair labor practice affecting commerce." 29 CFR § 102.9. An employee with an unfair labor practice allegation subjected to mandatory arbitration can ask: "Mom, can you go down to the NLRB on your lunch break tomorrow and file a charge about my employer committing an unfair labor practice?; I had to sign an agreement agreeing to arbitrate all my NLRA claims if I wanted to keep my job so I can't do it myself." Employees who are not coerced against this workaround will set the course for dual litigation of the same unfair labor practice claims in arbitration and at the Board. And really, more fundamentally, it makes no sense that aggrieved employees' rights to file Board charges can be stripped by an employer, given that a person with less of an interest or no interest in the outcome of the Board's proceedings may invoke such a right.

Based on the foregoing, because the MADR states, on its face, that any claims under the National Labor Relations Act must be arbitrated, I find it interferes with employees' Section 7 right to access to Board procedures and violates Section 8(a)(1) of the NLRA.

CONCLUSIONS OF LAW

1. By maintaining the Mutual Agreement for Dispute Resolution that interferes with employees' fundamental Section 7 right to file charges with the Board, the Respondent has violated Section 8(a)(1) of the Act.

2. The unfair labor practices committed by the Respondent affect commerce within the meaning of Section 2(6) and 2(7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I shall order it to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

Having found the Respondent maintains a Mutual Agreement for Dispute Resolution that explicitly states claims under the NLRA are subject to individual arbitration, the Respondent shall notify all current and former employees who were required to sign the Mutual Agreement for Dispute Resolution that it has been rescinded or revised and provide them a copy of the revised agreement. I will recommend that the Respondent post a notice in all locations where the

Mutual Agreement for Dispute Resolution was utilized. *Guardsmark, LLC*, 344 NLRB 809, 812 (2005), enfd. in relevant part 475 F.3d 369 (DC Cir. 2007).

I will order the Respondent to cease and desist from interfering with, restraining, or coercing employees in the exercise of right to file charges with the Board in any like or related manner.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[19]

ORDER

The Respondent, GCS Services Limited Partnership and GC Financial Corp., Houston, Texas, its officers, agents, and representatives, shall

1. Cease and desist from maintaining a Mutual Agreement for Dispute Resolution that explicitly states claims under the NLRA are subject to individual arbitration, and thereby interferes with employees' fundamental Section 7 right to file charges with the Board.

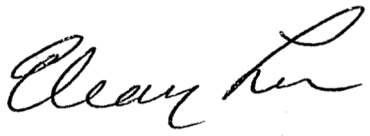
2. Notify all applicants and current and former employees who signed the Mutual Agreement for Dispute Resolution, that it been rescinded or revised and provide them a copy of the revised agreement.

2. Within 14 days after service by the Region, post at its Tucson, Arizona facility and all other facilities where the Mutual Agreement for Dispute Resolution has been maintained, copies of the attached notice marked "Appendix."[20] Copies of the notice, on forms provided by the Regional Director for Region 28, after being signed by the Respondent's authorized representative, shall be posted by the Respondent 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 Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since December 15, 2015.

[19] 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.

[20] 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."

Dated, Washington, D.C. March 19, 2019



Eleanor Laws
Administrative Law Judge

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 do anything to prevent you from exercising the above rights.

WE WILL NOT maintain a Mutual Agreement for Dispute Resolution (MADR) that bars or restricts your right to file charges with the National Labor Relations Board (NLRB).

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

WE WILL rescind the MADR in all of its forms or revise it in all of its forms to make clear to employees that it does not bar or restrict them from filing charges with the NLRB.

WE WILL notify all current and former employees who were required to sign or otherwise become bound to the MADR in any form that it has been rescinded or revised and, if revised, provide them a copy of the revised agreement.

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

2600 North Central Avenue, Suite 1800, Phoenix, AZ 85004-3099
(602) 640-2160, Hours: 8:15 a.m. to 4:45 p.m.

The Administrative Law Judge's decision can be found at https://www.nlrb.gov/case/28-CA-166389 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.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (602) 640-2146.