Briad Wenco, LLC d/b/a Wendy's Restaurant *and* Fast Food Workers Committee. Case 29–CA–165942

September 11, 2019

SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN RING AND MEMBERS MCFERRAN, KAPLAN, AND EMANUEL

On July 6, 2016, Administrative Law Judge Joel P. Biblowitz issued the attached decision. The Respondent filed exceptions and a supporting brief, the Charging Party filed an answering brief, the General Counsel filed an answering letter brief, and the Respondent filed a reply brief. In addition, the Charging Party filed limited cross-exceptions with supporting argument, and the Respondent filed an answering brief.

The National Labor Relations Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions only to the extent consistent with this Decision and Order.

The Respondent owns and operates Wendy's restaurants in New York, New Jersey, and Pennsylvania. At its restaurants, the Respondent maintains mandatory arbitration agreements that are identical except for their reference to applicable State laws. Employees are required to sign the agreement applicable to the restaurant at which they work as a condition of employment.

The agreements contain numbered paragraphs that read, in relevant part, as follows:

> 1. Any claim, controversy or dispute (hereafter "claim") that I have against the Company or the Company has against me, arising from or relating to my employment or the termination of my employment with the Company . . . shall be fully heard and settled by binding arbitration . . . .
>
> 2. The claims covered by this Agreement include, but are not limited to . . . claims alleging any violation of any federal, state, local or other governmental law, statute, regulation, or ordinance, except claims expressly excluded from arbitration in Paragraph 11 of this Agreement.
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> . . .
>
> 11. Nothing in this Agreement shall be construed to prohibit any current or former employee from filing any charge or complaint or participating in any investigation or proceeding conducted by an administrative agency, including but not limited to . . . the National Labor Relations Board . . . .
>
> 12. The Company and I agree that any and all claims subject to arbitration under this Agreement will be instituted only in an individual capacity, and not as a representative plaintiff on behalf of any purported class, collective or consolidated action.

The judge found, relying on *Murphy Oil USA, Inc.*, 361 NLRB 774 (2014), enf. denied in relevant part 808 F.3d 1013 (5th Cir. 2015), that the Respondent violated Section 8(a)(1) by maintaining its mandatory arbitration agreements because they required employees to waive their right to pursue class or collective actions in all forums. He also found, relying on the "reasonably construe" prong of *Lutheran Heritage Village-Livonia*, 343 NLRB 646 (2004), that the Respondent violated Section 8(a)(1) because employees would reasonably read the agreements as barring or restricting them "from access to the Board and/or filing charges with the Board."

On October 3, 2018, the Board issued a Decision, Order, and Notice to Show Cause in this case. The Board dismissed the allegation that the Respondent's mandatory arbitration agreements unlawfully require employees to waive their right to pursue class or collective actions in all forums based on *Murphy Oil*, above, in light of the Supreme Court's decision in *Epic Systems Corp. v. Lewis*, 584 U.S. __, 138 S.Ct. 1612 (2018) (holding that agreements that contain class- and collective-action waivers and stipulate that employment disputes are to be resolved by individualized arbitration do not violate the National Labor Relations Act). The Board also gave notice to the parties to show cause why the remaining issue in the case—whether the Respondent's mandatory arbitration agreements unlawfully restrict employee access to the Board—should not be remanded to the judge for further proceedings in light of the Board's decision in *Boeing Co.*, 365 NLRB No. 154 (2017). In *Boeing*, the Board overruled the "reasonably construe" prong of *Lutheran Heritage* and announced a new standard, which applies retroactively for evaluating the lawfulness of a facially neutral policy. Id., slip op. at 3.[1] The Respondent and the

[1] Under *Boeing*, the Board first determines whether a challenged rule or policy, reasonably interpreted, would interfere with the exercise of rights under Sec. 7 of the Act. If not, the rule or policy is lawful. If so, the Board evaluates two things: "(i) the nature and extent of the potential impact on NLRA rights, and (ii) legitimate justifications associated with the rule." Id., slip op. at 3. The *Boeing* standard replaced the "reasonably construe" prong of *Lutheran Heritage*. Other aspects of *Lutheran*

Charging Party each filed a response to the Notice to Show Cause.[2]

In *Prime Healthcare Paradise Valley, LLC*, we held that "an arbitration agreement that explicitly prohibits the filing of claims with the Board or, more generally, with administrative agencies must be found unlawful" because "[s]uch an agreement constitutes an explicit prohibition on the exercise of employee rights under the Act." 368 NLRB No. 10, slip op. at 5 (2019). We further stated that where an agreement does not explicitly prohibit the filing of claims with the Board, the Board must apply the standard set forth in *Boeing* and initially "determine whether that agreement, 'when reasonably interpreted, would potentially interfere with the exercise of NLRA rights.'" Id. (quoting *Boeing*, above, slip op. at 3). "The 'when reasonably interpreted' standard is objective and looks solely to the wording of the rule, policy, or other provision at issue[,] . . . interpreted from the employees' perspective." Id., slip op. at 6 fn. 14. For the reasons discussed below, we reverse the judge and find that the Respondent did not violate Section 8(a)(1) by maintaining its mandatory arbitration agreements because the agreements, when reasonably interpreted, do not potentially interfere with employees' right to access the Board and its processes, including the filing of Board charges and participating in Board proceedings.[3]

Although the first paragraph of the Respondent's agreements provides that "[a]ny claim, controversy or dispute" shall be resolved through binding arbitration, the second paragraph, which lists the claims covered by the agreements, refers to paragraph 11 of the agreements as excluding certain claims from arbitration. Paragraph 11 does not expressly exclude claims arising under the Act from covered claims subject to arbitration. Nonetheless, it does explicitly provide that "[n]othing in this Agreement shall be construed to prohibit any current or former employee from filing any charge or complaint or participating in any investigation or proceeding conducted by an administrative agency, including but not limited to . . . the National Labor Relations Board." We find that this "savings clause" language in paragraph 11 renders the Respondent's agreements lawful under *Boeing*.

The language in paragraph 11 is unconditional and sufficiently prominent. With the inclusion and placement of this language, the agreements cannot be reasonably interpreted to prohibit employees from filing Board charges or participating in Board proceedings in *any* manner, whether acting individually or in concert with coworkers.[4] Paragraph 11 is sufficiently prominent within the agreements to ensure that employees who read them know that the agreements preserve employees' rights to access the Board and its processes. In particular, paragraph 2 refers to paragraph 11, which contains the relevant language. In addition, paragraph 11 is reasonably proximate to paragraphs 1 and 2; they are separated by only about a page of text and are part of the same document. Because the agreements are explicit in informing employees that there is "nothing" in them that should be read as preventing employees from accessing the Board, and this language is sufficiently prominent within the agreements, they cannot be reasonably understood to potentially interfere with employees' exercise of their NLRA rights. Accordingly, we find paragraph 11 in the agreements to be an effective "savings clause" and that the agreements are lawful under *Boeing* Category 1(a). *Boeing*, above, slip op. at 4 (Category 1(a) consists of "rules that are lawful because, when reasonably interpreted, they would have no tendency to interfere with Section 7 rights and therefore no balancing of rights and justifications is warranted . . . .") (internal footnote omitted).[5]

In finding the violation, the judge relied on *Amex Card Services Co.*, 363 NLRB No. 40 (2015), a case decided prior to *Boeing*, in which the Board found that an employer's mandatory arbitration policy unlawfully restricted employees' right to file Board charges. However, *Amex* is factually distinguishable. In that case, although

Heritage remain intact, including whether a challenged rule or policy explicitly restricts activities protected by Sec. 7. 343 NLRB at 646.

[2] In its response to the Notice to Show Cause, the Charging Party urges the Board to remand this case to the judge because *Boeing* had not issued when the judge issued his decision in this case or when the Respondent filed exceptions to that decision. The Respondent urges the Board to find the agreements lawful under *Boeing* and dismiss the complaint or, "[a]t a minimum," remand the case to the judge. Because the only issue in this case is the facial lawfulness of the arbitration agreements—which are already a part of the record before us—we find that a remand is unnecessary.

[3] This is in contrast to the unlawful arbitration agreement in *Prime Healthcare*, which, when "[r]easonably interpreted, . . . ma[d]e arbitration the *exclusive* forum for the resolution of all claims, including federal statutory claims under the National Labor Relations Act," and thus was found to restrict employees from filing charges with the Board. 368 NLRB No. 10, slip op. at 6 (emphasis included).

[4] Notably, the class- or collective-action waiver in par. 12 of the agreements applies to "all claims subject to arbitration under this Agreement." It does not require an employee with a claim against the Respondent that is not being arbitrated, such as a Board charge, to pursue it "only in an individual capacity."

[5] Member McFerran acknowledges that *Boeing*, above, is currently governing law, and joins the majority in applying that standard for institutional reasons but adheres to and reiterates her dissent in that case. Here, Member McFerran agrees with her colleagues that employees would not reasonably construe the arbitration policy as prohibiting employees from filing charges with the Board, under either the standard set forth in *Boeing* or the previous standard. Likewise, she agrees that the cases prior to *Boeing* finding that those arbitration policies unlawfully restricted access to the Board are factually distinguishable.

the arbitration policy permitted the filing of Board charges, the employer required employees to sign a separate form that served as its own complete agreement and stated that arbitration is the exclusive forum for the resolution of all employment-related disputes without any limitation. *Amex*, above, slip op. at 2–3. The form did not provide that employees are permitted to file a claim or charge with the Board. Id. Here, employees were presented with only a single document, and in light of the prominent "savings clause" and its proximity to the provision requiring that all claims be resolved through binding arbitration, we find that employees would not reasonably interpret the agreements to bar or restrict their access to the Board.[6]

ORDER

The complaint is dismissed.

Dated, Washington, D.C. September 11, 2019

_____

John F. Ring, Chairman

_____

Lauren McFerran, Member

_____

Marvin E. Kaplan, Member

_____

William J. Emanuel, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

Annie Hsu, Esq., for the General Counsel.

Jason Pruzansky, Esq. (Davis & Gilbert, LLP), for the Respondent.

Ceilidh Gao, Esq. (Levy Ratner P.C.), for the Charging Party.

DECISION

STATEMENT OF THE CASE

JOEL P. BIBLOWITZ, Administrative Law Judge**.** By Joint Motion to Transfer Proceedings to the Division of Judges and Joint Stipulation of Facts dated May 26, 2016, the parties waived a hearing and submitted this matter directly to the undersigned. The parties agree that this case was initiated by an unfair labor practice charge and a first and second amended charge filed by Fast Food Workers Committee (the Union), on December 10, 2015,[1] January 7 and March 16, 2016; on March 28, 2016, complaint issued alleging that Briad Wenco, LLC, d/b/a Wendy's Restaurant (the Respondent), violated Section 8(a)(1) of the Act by (a) maintaining a mandatory arbitration agreement that employees would reasonably believe bars or restricts them from filing charges with the Board and/or restricts their access to the Board's processes, (b) maintaining a mandatory arbitration agreement under which employees are compelled to waive the right to maintain class or collective actions in all forums, whether arbitral or judicial, and (c) requesting that its employees sign the mandatory arbitration agreement described above; and that Respondent filed a timely answer denying the alleged violations of the Act.

The parties also stipulated to the following:

1. At all material times, Respondent has been a limited liability company with its principal office and place of business located at 78 Okner Parkway, Livingston, New Jersey, and has been engaged in the operation of Wendy's restaurants at the locations set forth in the Appendix attached hereto.

2. Annually, Respondent, in conducting its business operations

[6] Because the Respondent's agreements unequivocally state that employees have a right to file Board charges and participate in Board proceedings, we find that this case is factually distinguishable from those in which the pre-*Boeing* Board found "savings clause" language, in context, to be confusing, ambiguous, or otherwise insufficient, without passing on whether those cases were correctly decided. Specifically, in *Lincoln Eastern Management Corp.*, 364 NLRB No. 16, slip op. at 2–3 (2016), the arbitration policy contained language stating that "following the appropriate administrative processes . . . is a prerequisite" to arbitration, which, the Board found, suggested that the filing of Board charges would be futile because all disputes would ultimately be resolved through arbitration. In addition, employees had to sign a separate document agreeing to binding arbitration of all claims, and that separate agreement did not specify that employees may file charges with the Board. Id., slip op. at 2. In *Ralph's Grocery*, 363 NLRB No. 128, slip op. at 1–3 (2016), the Board found that the arbitration agreement suggested that the filing of Board charges would be permissible only when necessary to satisfy "any applicable statutory conditions precedent or jurisdictional prerequisites" and would be futile because arbitration is the "sole and exclusive remedy." Moreover, as in *Lincoln Eastern*, employees also had to sign a separate document, in this case an employment application, summarizing the arbitration agreement without referring to employees' right to file Board charges. Id., slip op. at 2. In *SolarCity Corp.*, 363 NLRB No. 83, slip op. at 4–5 (2015), the arbitration agreement contained language qualifying employees' right to file Board charges by stating that employees could pursue only those claims "that are expressly excluded from arbitration by statute" or that "applicable law permits [an] agency or administrative body to adjudicate . . . ." The Board reasoned that this language required an employee to have "specialized legal knowledge" to determine whether the filing of Board charges is permitted. Id., slip op. at 5. The Board further found that the agreement suggested that, even if employees can invoke the Board's processes, they may only do so individually because the agreement required them to "waive any right to pursue or participate in any dispute on behalf of, or as part of, any class, collective or representative action," which the Board found clearly encompassed the filing of Board charges that speak to a group or collective concern. Id., slip op. at 6. Member McFerran agrees with her colleagues that *Amex*, *Lincoln Eastern*, *Ralph's Grocery*, and *SolarCity* are distinguishable, and adheres to her views in those cases that the agreements at issue were unlawful.

[1] Unless indicated otherwise, all dates referred to herein relate to the year 2015.

described above in paragraph (1), derives gross revenues valued in excess of $500,000 and purchases and receives at its New York facilities goods valued in excess of $50,000 directly from enterprises located outside the State of New York.

3. At all material times, Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the National Labor Relations Act (the Act).

4. At all material times, the Fast Food Workers Committee (the Charging Party) has been a labor organization within the meaning of Section 2(5) of the Act.

5. The Complaint and Notice of Hearing dated March 28, 2016 alleges that at all material times, Respondent, at its facilities listed below in the Appendix, maintained arbitration agreements which Respondent requested its employees to sign as part of their new hire paperwork. The following facilities maintained the Arbitration Agreements:

6. Respondent's facilities located in New York, Exhibit 1, maintained the Arbitration Agreement.

7. Respondent's facilities located in New Jersey, Exhibit 2, maintained the Arbitration Agreement.

8. Respondent's facilities located in Pennsylvania, Exhibit 3, maintained the Arbitration Agreement.

Exhibit 1 (New York Employees)

BRIAD WENCO, L.L.C.
ARBITRATION AGREEMENT (THE "AGREEMENT")
For New York Employees
PLEASE READ THIS AGREEMENT CAREFULLY. BY SIGNING THIS AGREEMENT YOU AGREE TO WAIVE YOUR RIGHT TO BRING A LAWSUIT IN COURT AGAINST YOUR EMPLOYER, INCLUDING BUT NOT LIMITED TO A LAWSUIT INVOLVING DISCRIMINATION AND HARASSMENT CLAIMS.

[Name], in consideration of my hiring by **Briad Wenco, L.L.C.** ("the Company") and for other good and sufficient consideration, expressly agree as follows:

1. Any claim, controversy or dispute (hereafter "claim") that I have against the Company or the Company has against me, arising from or relating to my employment or the termination of my employment with the Company (its owners, directors, officers, managers, employees, agents, franchisors or any company owned by or affiliated with the Company) shall be fully heard and settled by binding arbitration in accordance with the JAMS Employment Arbitration Rules & Procedures (the "Rules") and judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The parties agree that it is intended that the entire controversy or dispute between the parties, from commencement of the controversy or dispute through the arbitration hearing, including all discovery, be brought in JAMS.

2. The claims covered by this Agreement include, but are not limited to:
• claims alleging discrimination or harassment under federal, state or local law or regulation including, but not limited to, claims for discrimination based upon race, color, national origin, ancestry, religion, marital status, age, gender, sexual or affectional orientation, gender identity or expression, civil union status, domestic partnership status, veteran status, citizenship status, pregnancy, medical condition or disability, genetic information, predisposing genetic characteristics, creed status as victim of domestic violence, arrest records, or conviction records (including but not limited to claims under Title VII of the Civil Rights Act of 1964, the Civil Rights Act of 1991, the Age Discrimination in Employment Act of 1967, the Americans with Disabilities Act of 1990, the New York Human Rights Law, and the New York City Human Rights Law, and all amendments to any such statutes);
• retaliation claims;
• claims for wages or other compensation (including but not limited to claims under the Fair Labor Standards Act or New York Labor Law, for overtime, salary, bonuses, severance pay, and vacation pay and any other compensation);
• claims alleging breach of any contract or covenant (express or implied);
• tort claims;
• defamation claims;
• claims alleging wrongful termination;
• claims alleging violation of any federal or state leave laws or regulations (including but not limited to the Family and Medical Leave Act and the New York City Earned Sick Time Act);
• claims for employee benefits including health care benefits or pension benefits (including but not limited to claims under the Consolidated Omnibus Budget Reconciliation Act and the Employee Retirement Income Security Act);
• and any other claims alleging any violation of any federal, state, local or other governmental law, statute, regulation, or ordinance, except claims expressly excluded from arbitration in Paragraph 11 of this Agreement,

3. I accept and consent to binding arbitration as an alternative to civil litigation and agree to forego a trial by jury with respect to all claims covered by this Agreement.

4. The arbitration shall occur at a JAMS hearing site located nearest to the place of my employment (or, where I was last employed, if at the time of the commencement of the arbitration I am no longer employed). The law of the State in which I am employed (or, where I was last employed, if at the time of the commencement of the arbitration I am no longer employed) is the law which shall govern any procedural and substantive issues at the arbitration.

5. A single arbitrator shall hear any dispute brought under this Agreement. The arbitrator selected for the arbitration shall be a licensed attorney with experience in employment law. The parties agree to follow the "Rules" on the selection of an arbitrator, including but not limited to the strike and rank process, but if no arbitrator is selected from the first list of arbitrators sent to the parties, the parties agree that a second list of arbitrators will be sent to the parties for striking and ranking in accordance with the Rules. If no arbitrator is selected from the second list of arbitrators sent to the parties, the parties agree that a third list of arbitrators will be sent to the parties for striking and ranking in accordance with the Rules. If no arbitrator is selected from

the third list of arbitrators, JAMS will have the power to appoint an arbitrator in accordance with the Rules.

6. The arbitration will be conducted in the English Language. The parties agree to follow the Rules, except as herein provided: Each party shall be permitted at the arbitration to take one (1) deposition no longer than seven (7) hours, except that if there are multiple Claimants, the Company will be permitted to take one (1) deposition no longer than seven (7) hours for each Claimant. Each party shall be permitted to serve one set of no more than twenty-five (25) written interrogatories, including all discrete subparts, upon the other party. Each party shall be entitled to serve one (1) request for production of documents upon the other party. The parties are free to request additional discovery, which shall be left to discretion of the arbitrator Each party shall be permitted to file a written motion to dismiss some or all claims prior to the hearing.

7. The parties agree to pay the JAMS administrative fees in accordance with the Rules. All other costs and expenses associated with the arbitration, including, without limitation, each party's respective attorneys' fees, shall be borne by the party incurring the expense.

8. Any conflict between the Rules and those set forth in this Agreement shall be resolved in favor of those in this Agreement.

9. The parties agree to keep the entire arbitration proceeding confidential, except as otherwise prohibited by law.

10. The award of the arbitrator shall be accompanied by a statement of the reasons upon which the award is based.

11. Nothing in this Agreement shall be construed to prohibit any current or former employee from filing any charge or complaint or participating in any investigation or proceeding conducted by an administrative agency, including but not limited to, the Equal Employment Opportunity Commission, the National Labor Relations Board, the Department of Labor or any state or local fair employment practices agency or other government enforcement agency, in connection with any claim such employee may have against the company. Further, any claims for workers' compensation, unemployment compensation, or temporary disability benefits are not covered by this Agreement and are not subject to arbitration under this Agreement. Also, any claims seeking injunctive and/or equitable relief for any alleged unfair competition and/or the use and/or unauthorized disclosure of trade secrets or confidential information are not covered. Either party is free to seek and obtain such relief from a court of competent jurisdiction.

12. The Company and I agree that any and all claims subject to arbitration under this Agreement will be instituted only in an individual capacity, and not as a representative plaintiff on behalf of any purported class, collective or consolidated action. It is the parties' intent to the fullest extent permitted by law to waive any and all rights to the application of class or collective action procedures or remedies to arbitration proceedings conducted under this Agreement, and it is expressly agreed between the Company and me that any arbitrator adjudicating claims under this Agreement shall have no power or authority to adjudicate class, collective or consolidated claims. Furthermore, the Company and I agree that neither can join or participate as a member of a class or collective action that may have been instituted in court or in arbitration by a third-party in order to pursue any claims that are subject to arbitration under this Agreement.

13. As a prerequisite to submitting an employment dispute to arbitration, the parties agree to make good faith efforts at resolving any dispute prior to the commencement of such arbitration on an informal basis. Only when those internal efforts fail may an employment dispute be submitted to final and binding arbitration in accordance with this Agreement. Current or former employees should contact the Vice President of Human Resources to attempt to resolve their employment disputes informally.

14. If any proceeding in which the validity or enforceability of this Agreement is challenged, the prevailing party to such proceeding shall be entitled to an award of attorney's fees and costs through and including any appeals of such proceeding.

15. Should any term of this agreement be deemed void or unenforceable, that term shall be severed and the remaining portions of the agreement shall be enforceable.

16. The term of this Agreement shall survive the termination of my employment with the Company.

17. **Nothing in this Agreement in any way alters my at-will employment with the Company.** I may terminate my employment at any time, without prior notice and with or without cause. Likewise, the Company may terminate my employment at any time, without prior notice and with or without cause. My status as an at-will employee can only be changed by an express written agreement between myself and the President and Chief Operating Officer.

Exhibit 2 (New Jersey Employees):

BRIAD WENCO, L.L.C.
ARBITRATION AGREEMENT (THE "AGREEMENT")
For New Jersey Employees.
PLEASE READ THIS AGREEMENT CAREFULLY. BY SIGNING THIS AGREEMENT YOU AGREE TO WAIVE YOUR RIGHT TO BRING A LAWSUIT IN COURT AGAINST YOUR EMPLOYER, INCLUDING BUT NOT LIMITED TO A LAWSUIT INVOLVING DISCRIMINATION AND HARASSMENT CLAIMS.

[Name], in consideration of my hiring by Briad Wenco, L.L.C. ("the Company") and for other good and sufficient consideration, expressly agree as follows:

1. Any claim, controversy or dispute (hereafter "claim") that I have against the Company or the Company has against me, arising from or relating to my employment or the termination of my employment with the Company (its owners, directors, officers, managers, employees, agents, franchisors or any company owned by or affiliated with the Company) shall be fully heard and settled by binding arbitration in accordance with the JAMS Employment Arbitration Rules & Procedures (the "Rules") and judgment upon the award rendered by the

arbitrator(s) may be entered in any court having jurisdiction thereof, The parties agree that it is intended that the entire controversy or dispute between the parties, from commencement of the controversy or dispute through the arbitration hearing, including all discovery, be brought in JAMS.

2. The claims covered by this Agreement include, but are not limited to:
• claims alleging discrimination or harassment under federal, state or local law or regulation including, but not limited to, claims for discrimination based upon race, color, nationality, national origin, ancestry, religion, marital status, age, gender, sexual or affectional orientation, gender identity or expression, civil union status, domestic partnership status, veteran status, citizenship status, pregnancy, medical condition or disability, handicap, genetic information, atypical hereditary cellular or blood trait, or creed (including but not limited to claims under Title VII of the Civil Rights Act of 1964, the Civil Rights Act of 1991, the Age Discrimination *in* Employment Act of 1967, the Americans with Disabilities Act of 1990, the New Jersey Law Against Discrimination, and all amendments to any such statutes);
• retaliation claims (including but not limited to claims under the New Jersey Conscientious Employee Protection Act);
• claims for wages or other compensation (including but not limited to claims under the Fair Labor Standards Act or New Jersey State Wage and Hour Law or New Jersey State Wage Payment Law, for overtime, salary, bonuses, severance pay, and vacation pay and any other compensation);
• claims alleging breach of any contract or covenant (express or implied);
• tort claims;
• defamation claims;
• claims alleging wrongful termination;
• claims alleging violation of any federal •or state leave laws or regulations (including but not limited to the Family and Medical Leave Act, the New Jersey Family Leave Act, and the New Jersey Paid Family Leave Act);
• claims for employee benefits including health care benefits or pension benefits (including but not limited to claims under the Consolidated Omnibus Budget Reconciliation Act and the Employee Retirement Income Security Act);
• and any other claims alleging any violation of any federal, state, local or other governmental law, statute, regulation, or ordinance, except claims expressly excluded from arbitration in Paragraph 11 of this Agreement.

3. I accept and consent to binding arbitration as an alternative to civil litigation and agree to forego a trial by jury with respect to all claims covered by this Agreement.

4. The arbitration shall occur at a JAMS hearing site located nearest to the place of my employment (or, where I was last employed, if at the time of the commencement of the arbitration I am no longer employed). The law of the State in which I am employed (or, where I was last employed, if at the time of the commencement of the arbitration I am no longer employed) is the law which shall govern any procedural and substantive issues at the arbitration.

5. A single arbitrator shall hear any dispute brought under this Agreement. The arbitrator selected for the arbitration shall be a licensed attorney with experience in employment law. The parties agree to follow the "Rules" on the selection of an arbitrator, including but not limited to the strike and rank process, but if no arbitrator is selected from the first list of arbitrators sent to the parties, the parties agree that a second list of arbitrators will be sent to the parties for striking and ranking in accordance with the Rules. If no arbitrator is selected from the second list of arbitrators sent to the parties, the parties agree that a third list of arbitrators will be sent to the parties for striking and ranking in accordance with the Rules. If no arbitrator is selected from the third list of arbitrators, JAMS will have the power to appoint an arbitrator in accordance with the Rules.

6. The arbitration will be conducted in the English Language. The parties agree to follow the Rules, except as herein provided: Each party shall be permitted at the arbitration to take one (1) deposition no longer than seven (7) hours, except that if there are multiple Claimants, the Company will be permitted to take one (1) deposition no longer than seven (7) hours for each Claimant. Each party shall be permitted to serve one set of no more than twenty-five (25) written interrogatories, including all discrete subparts, upon the other party. Each party shall be entitled to serve one (1) request for production of documents upon the other party. The parties are free to request additional discovery, which shall be left to discretion of the arbitrator Each party shall be permitted to file a written motion to dismiss some or all claims prior to the hearing.

7, The parties agree to pay the JAMS administrative fees in accordance with the Rules. All other costs and expenses associated with the arbitration, including, without limitation, each party's respective attorneys' fees, shall be borne by the party incurring the expense.

8. Any conflict between the Rules and those set forth in this Agreement shall be resolved in favor of those in this Agreement.

9. The parties agree to keep the entire arbitration proceeding confidential, except as otherwise prohibited by law.

10. The award of the arbitrator shall be accompanied by a statement of the reasons upon which the award is based.

11. Nothing in this Agreement shall be construed to prohibit any current or former employee from filing any charge or complaint or participating in any investigation or proceeding conducted by an administrative agency, including but not limited to, the Equal Employment Opportunity Commission, the National Labor Relations Board, the Department of Labor or any state or local fair employment practices agency or other government enforcement agency, in connection with any claim such employee may have against the company. Further, any claims for workers' compensation, unemployment compensation, or temporary disability benefits are not covered by this Agreement and are not subject to arbitration under this Agreement. Also, any claims seeking injunctive and/or equitable relief for any alleged unfair competition and/or the use and/or unauthorized disclosure of trade secrets or confidential

information are not covered. Either party is free to seek and obtain such relief from a court of competent jurisdiction.

12. The Company and I agree that any and all claims subject to arbitration under this Agreement will be instituted only in an individual capacity, and not as a representative plaintiff on behalf of any purported class, collective or consolidated action. It is the parties' intent to the fullest extent permitted by law to waive any and all rights to the application of class or collective action procedures or remedies to arbitration proceedings conducted under this Agreement, and it is expressly agreed between the Company and me that any arbitrator adjudicating claims under this Agreement shall have no power or authority to adjudicate class, collective or consolidated claims. Furthermore, the Company and I agree that neither can join or participate as a member of a class or collective action that may have been instituted in court or in arbitration by a third-party in order to pursue any claims that are subject to arbitration under this Agreement.

13. As a prerequisite to submitting an employment dispute to arbitration, the parties agree to make good faith efforts at resolving any dispute prior to the commencement of such arbitration on an informal basis. Only when those internal efforts fail may an employment dispute be submitted to final and binding arbitration in accordance with this Agreement. Current or former employees should contact the Vice President of Human Resources to attempt to resolve their employment disputes informally.

14. If any proceeding in which the validity or enforceability of this Agreement is challenged, the prevailing party to such proceeding shall be entitled to an award of attorney's fees and costs through and including any appeals of such proceeding.

15. Should any term of this agreement be deemed void or unenforceable, that term shall be severed and the remaining portions of the agreement shall be enforceable.

16. The term of this Agreement shall survive the termination of my employment with the Company.

17. Nothing in this Agreement in any way alters my at-will employment with the Company. I may terminate my employment at any time, without prior notice and with or without cause. Likewise, the Company may terminate my employment at any time, without prior notice and with or without cause. My status as an at-will employee can only be changed by an express written agreement between myself and the President and Chief Operating Officer.

Exhibit 3 (Pennsylvania Employees):

BRIAD WENCO, L.L.C.
ARBITRATION AGREEMENT (THE "AGREEMENT")
For Pennsylvania Employees
PLEASE READ THIS AGREEMENT CAREFULLY. BY SIGNING THIS AGREEMENT YOU AGREE TO WAIVE YOUR RIGHT TO BRING A LAWSUIT IN COURT AGAINST YOUR EMPLOYER, INCLUDING BUT NOT LIMITED TO A LAWSUIT INVOLVING DISCRIMINATION AND HARASSMENT CLAIMS.

[Name], in consideration of my hiring by Briad Wenco, L.L.C. ("the Company") and for other good and sufficient consideration, expressly agree as follows:

1. Any claim, controversy or dispute (hereafter "claim") that I have against the Company or the Company has against me, arising from or relating to my employment or the termination of my employment with the Company (its owners, directors, officers, managers, employees, agents, franchisors or any company owned by or affiliated with the Company) shall be fully heard and settled by binding arbitration in accordance with the JAMS Employment Arbitration Rules & Procedures (the "Rules") and judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof The parties agree that it is intended that the entire controversy or dispute between the parties, from commencement of the controversy or dispute through the arbitration hearing, including all discovery, be brought in JAMS.

2. The claims covered by this Agreement include, but are not limited to:
• claims alleging discrimination or harassment under federal, state or local law or regulation including, but not limited to, claims for discrimination based upon race, color, national origin, ancestry, religion, familial status, age, gender, veteran status, pregnancy, medical condition or disability or handicap, genetic information, religious creed, use of guide or support animals because of blindness, deafness, or physical handicap of the user or because the user is a handler or trainer of support or guide animals (including but not limited to claims under Title VII of the Civil Rights Act of 1964, the Civil Rights Act of 1991, the Age Discrimination in Employment Act of 1967, the Americans with Disabilities Act of 1990, the Pennsylvania Human Relations Act, and all amendments to any such statutes);
• retaliation claims (including but not limited to claims under the Pennsylvania Whistleblower Law);
• claims for wages or other compensation (including but not limited to claims under the Fair Labor Standards Act or the Pennsylvania Wage Payment and Collection Law, for overtime, salary, bonuses, severance pay, and vacation pay and any other compensation);
• claims alleging breach of any contract or covenant (express or implied);
• tort claims;
• defamation claims;
• claims alleging wrongful termination;
• claims alleging violation of any federal or state leave laws or regulations (including but not limited to the Family and Medical Leave Act);
• claims for employee benefits including health care benefits or pension benefits (including but not limited to claims under the Consolidated Omnibus Budget Reconciliation Act and the Employee Retirement Income Security Act);
• and any other claims alleging any violation of any federal, state, local or other governmental law, statute, regulation, or ordinance, except claims expressly excluded from arbitration in Paragraph 11 of this Agreement.

3. I accept and consent to binding arbitration as an alternative to civil litigation and agree to forego a trial by jury with respect

to all claims covered by this Agreement.

4. The arbitration shall occur at a JAMS hearing site located nearest to the place of my employment (or, where I was last employed, if at the time of the commencement of the arbitration I am no longer employed). The law of the State in which I am employed (or, where I was last employed, if at the time of the commencement of the arbitration I am no longer employed) is the law which shall govern any procedural and substantive issues at the arbitration.

5. A single arbitrator shall hear any dispute brought under this Agreement. The arbitrator selected for the arbitration shall be a licensed attorney with experience in employment law. The parties agree to follow the "Rules" on the selection of an arbitrator, including but not limited to the strike and rank process, but if no arbitrator is selected from the first list of arbitrators sent to the parties, the parties agree that a second list of arbitrators will be sent to the parties for striking and ranking in accordance with the Rules. If no arbitrator is selected from the second list of arbitrators sent to the parties, the parties agree that a third list of arbitrators will be sent to the parties for striking and ranking in accordance with the Rules. If no arbitrator is selected from the third list of arbitrators, JAMS will have the power to appoint an arbitrator in accordance with the Rules.

6. The arbitration will be conducted in the English Language. The parties agree to follow the Rules, except as herein provided: Each party shall be permitted at the arbitration to take one (1) deposition no longer than seven (7) hours, except that if there are multiple Claimants, the Company will be permitted to take one (1) deposition no longer than seven (7) hours for each Claimant. Each party shall be permitted to serve one set of no more than twenty-five (25) written interrogatories, including all discrete subparts, upon the other party. Each party shall be entitled to serve one (1) request for production of documents upon the other party. The parties are free to request additional discovery, which shall be left to discretion of the arbitrator Each party shall be permitted to file a written motion to dismiss some or all claims prior to the hearing.

7, The parties agree to pay the JAMS administrative fees in accordance with the Rules. All other costs and expenses associated with the arbitration, including, without limitation, each party's respective attorneys' fees, shall be borne by the party incurring the expense.

8. Any conflict between the Rules and those set forth in this Agreement shall be resolved in favor of those in this Agreement.

9. The parties agree to keep the entire arbitration proceeding confidential, except as otherwise prohibited by law.

10. The award of the arbitrator shall be accompanied by a statement of the reasons upon which the award is based.

11. Nothing in this Agreement shall be construed to prohibit any current or former employee from filing any charge or complaint or participating in any investigation or proceeding conducted by an administrative agency, including but not limited to, the Equal Employment Opportunity Commission, the National Labor Relations Board, the Department of Labor or any state or local fair employment practices agency or other government enforcement agency, in connection with any claim such employee may have against the company. Further, any claims for workers' compensation, unemployment compensation, or temporary disability benefits are not covered by this Agreement and are not subject to arbitration under this Agreement. Also, any claims seeking injunctive and/or equitable relief for any alleged unfair competition and/or the use and/or unauthorized disclosure of trade secrets or confidential information are not covered. Either party is free to seek and obtain such relief from a court of competent jurisdiction.

12. The Company and I agree that any and all claims subject to arbitration under this Agreement will be instituted only in an individual capacity, and not as a representative plaintiff on behalf of any purported class, collective or consolidated action. It is the parties' intent to the fullest extent permitted by law to waive any and all rights to the application of class or collective action procedures or remedies to arbitration proceedings conducted under this Agreement, and it is expressly agreed between the Company and me that any arbitrator adjudicating claims under this Agreement shall have no power or authority to adjudicate class, collective or consolidated claims. Furthermore, the Company and I agree that neither can join or participate as a member of a class or collective action that may have been instituted in court or in arbitration by a third-party in order to pursue any claims that are subject to arbitration under this Agreement.

13. As a prerequisite to submitting an employment dispute to arbitration, the parties agree to make good faith efforts at resolving any dispute prior to the commencement of such arbitration on an informal basis. Only when those internal efforts fail may an employment dispute be submitted to final and binding arbitration in accordance with this Agreement. Current or former employees should contact the Vice President of Human Resources to attempt to resolve their employment disputes informally.

14. If any proceeding in which the validity or enforceability of this Agreement is challenged, the prevailing party to such proceeding shall be entitled to an award of attorney's fees and costs through and including any appeals of such proceeding.

15. Should any term of this agreement be deemed void or unenforceable, that term shall be severed and the remaining portions of the agreement shall be enforceable.

16. The term of this Agreement shall survive the termination 'of my employment with the Company.

17. Nothing in this Agreement in any way alters my at-will employment with the Company. I may terminate my employment at any time, without prior notice and with or without cause. Likewise, the Company may terminate my employment at any time, without prior notice and with or without cause. My status as an at-will employee can only be changed by an express written agreement between myself and the President and Chief Operating Officer.

Analysis

This is another case in line with *D. R. Horton, Inc.*, 357 NLRB 2277 (2012), *Murphy Oil USA, Inc.*, 361 NLRB 774 (2014) and *Cellular Sales of Missouri, LLC,* 362 NLRB 241 (2015). Paragraphs 1 and 2 require the employees to utilize arbitration to determine any dispute with the Respondent while paragraph 12 prohibits class, collective, or consolidated actions. However, the agreement, at paragraph 11 permits covered employees to file charges and to participate in proceedings of administrative agencies, such as the Board and the EEOC, although it does not contain an "opt out" provision wherein employees can affirmatively notify the Respondent that he/she does not want to be bound by these restrictions. *Horton* applied the test as set forth in *Lutheran-Heritage Village-Livonia*, 343 NLRB 646 (2004), which stated that the initial inquiry is whether the rule at issue explicitly restricts activities that are protected by Section 7 of the Act; if so, it is unlawful. If not, the finding of a violation is dependent upon a showing of one of the following: employees would reasonably construe the rule to prohibit protected activity or the rule has been applied to restrict the exercise of this activity. The Board, in *Horton*, found that "employers may not compel employees to waive their NLRA right to collectively pursue litigation of employment claims in all forums arbitral and judicial" as a condition of employment. In *Murphy Oil,* supra, at page 2, the Board stated that although *Horton* was rejected by the U.S. Court of Appeals for the Fifth Circuit and was viewed as unpersuasive by the Second and Eighth Circuits: "We have independently reexamined *D. R. Horton*, carefully considering the Respondent's arguments, adverse judicial decisions, and the views of our dissenting colleagues. Today we reaffirm that decision. Its reasoning and result were correct" On May 26, 2016, the United States Court of Appeals for the Seventh Circuit, in *Jacob Lewis v. Epic Systems Corporation* agreed with the Board and found that these restrictions on class, collective, or representative proceedings violate the Act and affirmed the District Court's decision to refuse to dismiss the employee's claim based upon the arbitration agreement. The Court cited a number of Supreme Court rulings in making this finding: Contracts "stipulating . . . the renunciation by the employees of rights guaranteed by the [NLRA]" are unlawful and may be declared to be unenforceable by the Board, *National Licorice Co. v. NLRB,* 309 U.S. 350, 369 (1940); "Whenever private contracts conflict with [the Board's] functions, they obviously must yield or the [NLRA] would be reduced to a futility." *J. I. Case Co. v. NLRB*, 321 U.S. 332, 337 (1944); and Section 7's "other concerted activities" have long been held to include "resort to administrative and judicial forums." *Eastex, Inc. v. NLRB,* 437 U.S. 556, 566 (1978). The Court further stated:

> Epic's clause runs straight into the teeth of Section 7. The provision prohibits any collective, representative, or class legal proceedings. Section 7 provides that "employees shall have the right . . . to engage in…concerted activities for the purpose of collective bargaining or other mutual aid or protection." A collective representative, or class legal proceeding is just such a "concerted activity."

The Court concluded that a contract that limits Section 7 rights that is a condition of employment or of continued employment, interferes with and restrains employees in the exercise of those rights in violation of Section 8(a)(1) of the Act. And that is the situation in the instant matter. The Respondent's Arbitration Agreements required employees to forego any class, collective or consolidated actions and that all arbitrations must be brought in an individual capacity. As employees were required to agree to these terms in order to become or remain employees of the Respondent, I find that the Respondent has violated Section 8(a)(1) of the Act.[2]

The final issue is whether the agreement violates the Act because the employees would reasonably believe that it bars or restricts them from access to the Board and/or filing charges with the Board. As stated above, the first paragraph of the agreement states that "Any claim, controversy or dispute that I have against the Company . . . relating to my employment. . .shall be fully heard and settled by binding arbitration" and paragraphs 2 and 3 state the types of claims included and that the individual accepts and consents to binding arbitration and agrees to forego a trial by jury with respect to all claims covered by the agreement. However, paragraph 11 states that nothing in the agreement shall be construed to prohibit an employee or former employee from filing a charge or participate in any proceeding before the Board or other specified administrative agencies. Counsel for the Respondent alleges that regardless of the earlier provisions of the agreement, this paragraph clearly gives employees the right to file charges with the Board and therefore this allegation should be dismissed. While I agree that paragraph 11 is clear and unequivocal that employees have the right to take their complaints to the Board, I disagree with this argument and find that the agreement further violates the Act as alleged in the complaint.

As is usual in these matters, we begin with *Lutheran Heritage Village-Livonia,* supra, to determine whether employees would reasonably construe the agreement to prohibit them from taking their complaint to the Board. In making this determination, I recognize that typical "nonlawyer employees" do not have specialized legal knowledge to analyze these agreements, *2 Sisters Food Group, Inc.,* 357 NLRB 1816 (2011). Further, as the Board stated in *Ingram Book Co.*, 315 NLRB 515, 516 fn. 2 (1994): "rank and file employees do not generally carry law books to work or apply legal analysis to company rules as do lawyers and cannot be expected to have the expertise to examine company rules from a legal standpoint." Although paragraph 11 in unequivocal, stating that nothing in the agreement should be construed to prevent an employee from filing charges with the Board, paragraphs 1 and 2 are also unequivocal stating that any claim, controversy or dispute must be resolved by individual arbitration. I believe that it is fair to assume that the applicants for employment, if they did read the provisions of the agreement, did not get as far as paragraph 11 and, if they did, it is likely that they would not understand that they could file charges with the

[2] Counsel for the Respondent, in his brief, argues that the agreement is lawful, based upon the Federal Arbitration Act. I reject that argument as the Board has.

Board, regardless of the provisions contained in paragraphs 1 and 2. Further, even if the employee did get as far as paragraph 11, the following paragraph reinforces the restrictions contained in paragraphs 1 and 2. I therefore find that these agreements restricted the employees from filing charges with the Board, in violation of Section 8(a)(1) of the Act. *Amex Card Services Co.,* 363 NLRB No. 40 (2015).

CONCLUSIONS OF LAW

1. The Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.
2. Fast Food Workers Committee has been a labor organization within the meaning of Section 2(5) of the Act.
3. The arbitration agreements maintained by the Respondent at its locations in the States of New York, New Jersey, and Pennsylvania listed in the attached Appendix violate Section 8(a)(1) of the Act by requiring the employees to waive the right to maintain class or collective actions and restrict the employees from filing charges with the Board.

THE REMEDY

Having found that the Respondent has violated the Act by maintaining the arbitration agreement as a condition of employment, I recommend that the Respondent be ordered to cease and desist from maintaining and enforcing this agreement, and that it be ordered to notify all employees, including those who signed the agreement, that it has been rescinded and they will not be required to sign it as a condition of employment. Further, I recommend that Respondent be ordered to notify any arbitral or judicial panel where it has attempted to enjoin, or otherwise, prohibit, employees from bringing or participating in class or collective actions, that it is withdrawing these objections and that it no longer objects to such employee actions.

Upon the foregoing findings of fact, conclusions of law and based upon the entire record, I hereby issue the following recommended[3]

ORDER

The Respondent Briad Wenco, LLC, d/b/a Wendy's Restaurant, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Maintaining or enforcing its arbitration agreements in the States of New York, New Jersey, and Pennsylvania.

(b) Telling its employees that they must sign the arbitration agreement as a condition of obtaining or retaining employment with the Respondent in the States of New York, New Jersey, or Pennsylvania.

(c) In any like or related manner, interfering with, restraining, or coercing its employees in the exercise of their rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action designed to effectuate the policies of the Act.

(a) Rescind the arbitration agreements in the States of New York, New Jersey, and Pennsylvania and notify all employees, and employee applicants, that it will no longer require employees in these states to sign this agreement as a condition of employment.

(b) Notify arbitral or judicial panels, if any, where the Respondent has attempted to enjoin or otherwise prohibit employees in the States of New York, New Jersey, or Pennsylvania from bringing or participating in class or collective actions, that it is withdrawing those objections and that it no longer objects to such employee actions.

(c) Within 14 days after service by the Region, post at its facilities in the States of New York, New Jersey, and Pennsylvania listed in the appendix attached hereto, copies of the attached notice marked "Appendix B."[4] Copies of the notice, on forms provided by the Regional Director for Region 29, 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. 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 10, 2015.

(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. July 6, 2016

APPENDIX A

359 ROUTE 17 SOUTH, WOODRIDGE, NJ
301 MOUNT HOPE AVE. SUITE 2103
131 WOODBRIDGE CTR. DR.,WOODBRIDGE, NJ
853 CONVERY BLVD.(ROUTE 35), PERTH AMBOY, NJ
413 ROUTE 10 EAST, EAST HANOVER, NI
147 BLOOMFIELD AVENUE, BLOOMFIELD, Ni
327 RIDGE ROAD, LYNDHURST, NJ
30 ROUTE 17 SOUTH, RUTHERFORD, NJ
210 WEST FIRST AVE., ROSELLE, NJ
420 ROUTE 46 WEST, S. HACKENSACK, NJ
219-44 HILLSIDE AVE., QUEENS VILLAGE, NY
138-41 JAMAICA AVENUE, JAMAICA, NY
4416 QUEENS BLVD., LONG ISLAND CITY, NY
685 N. DELSEA DRIVE, GLASSBORO, NJ
5480 RT. 42 (BLACKHORSE PIKE) TURNERSVILLE,NJ
568 CUTHBERT BLVD., HADDON TOWNSHIP, NJ
300 S. BLACKHORSE PIKE, BELLMAWR, NJ
1140 ROUTE 73, MT. LAUREL, NJ
2400 CHURCH ROAD, CHERRY HILL, NJ

[3] 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.

[4] 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."

704 MANTUA PIKE, WOODBURY HEIGHTS, NJ
1006-1240 NIXON DRIVE, MT. LAUREL, NJ
1101 WALNUT STREET, PHILADELPHIA, PA
446 ROUTE 37 WEST, TOMS RIVER, NJ -
4361 ROUTE 130 SOUTH, BURLINGTON, NJ
2 WEST MAIN ST, WRIGHTSTOWN, NJ
1916 LINDEN BOULEVARD, BROOKLYN, NY
505 UTICA AVENUE, BROOKLYN, NY
469 FLATBUSH AVENUE, BROOKLYN, NY
90 ST. GEORGES AVENUE, RAHWAY, NJ
1377 BLACKWOOD-CLEM RD, CLEMENTON, NJ
2741 ROUTE 42, WASHINGTON TWP, NJ
1149 HURFEVILLE ROAD (RT.41) DEPTFORD, NJ
301 RT. 9 NORTH, LANOKA HARBOR, Ni
5300 MARLTON PIKE, (RT. 70) PENNSAUKEN, NJ
2107 MT. HOLLY ROAD (RT. 541), BURLINGTON, NJ
1501 CHESTNUT STREET, PHILADELPHIA, PA
53 BANANIER DRIVE, TOMS RIVER, NJ
356 ROUTE 72 WEST, MANAHAWKIN, NJ
55 PARSONAGE RD, MENLO PARK MALL, Edison, NJ
335 FIFTH AVE, NEW YORK, NY
7321 NORTH CRESCENT BLVD., PENNSAUKEN, NJ
935 EASTON AVE, SOMERSET, NJ ,
1101 WHITEHORSE ROAD, NJ
310 WHITEHORSE PIKE, Lawnside, NJ
69 RI 73 & LAFAYETTE AVENUE, NJ
5011 ROUTE 130 SOUTH, NI
65 SOUTH WHITEHORSE PIKE, NJ
488 CROWN POINT ROAD, NJ
6041 BLACK HORSE PIKE, NJ
74 CENTERTON ROAD, MT. LAUREL, NJ
500 Cross Keys Road, Sicklerville, NJ
3179 Atlantic Avenue, Brooklyn, N.Y,
2-30 Garfield Avenue, Jersey City, NJ.
Rt 440 & Kellogg Street, Jersey City, NJ.
2121-2123 Third Avenue & 116th St. NY, NY
3939 Broadway & West 165th St., NY, NY
181 Lefante Way, Bayonne, NJ.

600 Shrewsbury Avenue, Tinton Falls, NJ.

79 East 125th Street, NY, NY

388 Highway Rt. 35, Keyport, NJ.

35 US Highway 206 S, Chester NJ.

728 Rt 1.5 South, Lake Hopatcong, NJ

180 Rt. 23, Franklin, NJ

219 Mountain Avenue, Hackettstown, NJ

3190 Rt 22 West, Branchburg, NJ

555 West Lancaster Avenue, Haverford, PA

3600 Aramingo Avenue, Philadelphia, PA

5150 Pennell Road, Media, PA

6001 N Broad Street, Philadelphia, PA

1708 N Broad Street, Philadelphia, PA

259 City Line Avenue, Merion, PA

7700 City Line Avenue, Philadelphia, PA

800 Reed Road, Broomhali, PA

3000 Island Avenue, Philadelphia, PA

501 Adams Avenue, Philadelphia, PA

2301 Cottman Avenue. Philadelphia, PA

700 E. Hunting Park, Philadelphia, PA

901 Caftan Avenue, Philadelphia, PA

2387 Cheltenham Avenue, Philadelphia, PA

3521 Edgemont Avenue, Brookhaven, PA

2340 Oregun.Avenue, Philadelphia, PA -

2130 S Christopher Columbus Blvd, Philadelphia, PA

733 Huntingdon Pike, Huntingdon, PA

115 Stewart Avenue, Ridley, PA

5901 Ridge Avenue, Philadelphia, 5534 Wayne Ave., Philadelphia
2920 Fox Street, Philadelphia, PA

APPENDIX B

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 maintain or enforce the arbitration agreement that prohibits our employees in the States of New York, New Jersey, and Pennsylvania from bringing or participating in class or collective actions or from filing charges with the National Labor Relations Board and WE WILL rescind the agreements and notify our employees in those states that they need not sign the agreement in order to become, or remain, an employee.

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

WE WILL notify any arbitral or judicial panel where we have attempted to prevent or enjoin you from commencing, or participating in, joint or class actions relating to wages, hours or other terms and conditions of employment, that we are withdrawing our objections to these actions, and WE WILL no longer object to you bringing or participating in such class or collective actions or filing charges with the National Labor Relations Board.

BRIAD WENCO, LLC, D/B/A WENDY'S RESTAURANT

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/29–CA–165942 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.