

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

UBER TECHNOLOGIES, INC.

and

Case 20-CA-181146

LENZA H. McELRATH III

NOTICE TO SHOW CAUSE¹

On June 13, 2017, Administrative Law Judge Mara-Louise Anzalone issued the attached decision finding that the Respondent, Uber Technologies, Inc., violated Section 8(a)(1) of the National Labor Relations Act by maintaining a “Dispute Resolution Agreement” that employees reasonably would believe bars or restricts them from filing unfair labor practice charges with the Board.² The Respondent filed exceptions and a supporting brief, the General Counsel filed an answering brief, and the Respondent filed a reply brief. The General Counsel also filed cross-exceptions and a supporting brief, the Respondent filed an answering brief, and the General Counsel filed a reply brief.

¹ Member Emanuel took no part in the consideration of this case.

² On June 29, 2018, in light of *Epic Systems Corp v. Lewis*, 584 U.S. ___, 138 S. Ct. 1612 (2018), the Regional Director for Region 20 dismissed the complaint allegation that the Respondent violated Sec. 8(a)(1) by maintaining and enforcing a “Dispute Resolution Agreement” that requires employees, as a condition of employment, to waive their rights to pursue class or collective actions involving employment-related claims in all forums, whether arbitral or judicial.

On November 14, 2018, the Respondent filed a motion requesting that the Board approve withdrawal of the charge alleging that the Respondent violated Sec. 8(a)(1) by maintaining a “Dispute Resolution Agreement” that employees would reasonably believe bars or restricts them from filing unfair labor practice charges with the Board and dismiss the related complaint allegation in light of the Respondent’s non-Board settlement with the Charging Party. On December 14, 2018, the Board denied this motion without prejudice to the Respondent renewing it to include the terms of the settlement agreement. The Respondent has not renewed its motion.

At the time of the administrative law judge’s decision and the parties’ exceptions, the question whether maintenance of a work rule or policy that did not expressly restrict employee access to the Board violated Section 8(a)(1) on the basis that employees would reasonably believe it did would have been resolved based on the prong of the analytical framework set forth in *Lutheran Heritage Village-Livonia*, 343 NLRB 646 (2004) (*Lutheran Heritage*), that held an employer’s maintenance of a facially neutral work rule would be unlawful “if employees would reasonably construe the language to prohibit Section 7 activity.” *Id.* at 647. The Board subsequently overruled the *Lutheran Heritage* “reasonably construe” test and announced a new standard that applies retroactively to all pending cases. *The Boeing Co.*, 365 NLRB No. 154, slip op. at 14-17 (2017).

Accordingly, the Board hereby issues the following notice to show cause why this proceeding should not be remanded to the judge for further proceedings in light of *Boeing*, including, if necessary, the filing of statements of position, reopening the record, and issuance of a supplemental decision.³

NOTICE IS GIVEN that any party seeking to show cause why this case should not be remanded to the administrative law judge must do so in writing, filed with the Board in Washington, D.C., on or before December 26, 2019 (with affidavit of service on the parties to

³ See generally *Prime Healthcare Paradise Valley, LLC*, 368 NLRB No. 10, slip op. at 5 (2019) (explaining the Board’s post-*Boeing* approach to analyzing allegations that a mandatory arbitration agreement unlawfully restricts access to the Board).

this proceeding). Any briefs or statements in support of the motion shall be filed on the same date.

Dated, Washington, D.C., December 12, 2019.

By direction of the Board:

Roxanne Rothschild
Executive Secretary