Alorica, Inc., and its subsidiary/affiliate Expert Global Solutions, Inc.[1] ***and*** **OPEIU Local 153, Office & Professional Employees International Union, AFL–CIO**

Alorica, Inc., and its subsidiary/affiliate Expert Global Solutions, Inc. ***and*** **Seth Goldstein and Office & Professional Employees International Union, Local 53.** Cases 18–CA–190846, 25–CA–185622, and 25–CA–185626

July 25, 2019

DECISION AND ORDER

BY CHAIRMAN RING AND MEMBERS KAPLAN AND EMANUEL

On October 18, 2017, Administrative Law Judge Melissa M. Olivero issued the attached decision. The Respondent filed exceptions and a supporting brief, the General Counsel filed an answering brief, and the Respondent filed a reply. The General Counsel filed limited cross-exceptions and a supporting brief, and the Respondent filed an answering brief.[2] On October 29, 2018, the Board issued a Notice to Show Cause why the complaint allegations involving the maintenance of allegedly unlawful work rules or policies should not be severed and remanded to the administrative law judge. The General Counsel and the Respondent filed responses.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The 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,[3] and conclusions[4] only to the extent consistent with this Decision and Order.

Background

Since at least July 2016, the Respondent has maintained an Agreement to Arbitrate (Agreement), which employees are required to sign as a condition of employment. The relevant portion of the Agreement reads as follows:

> All disputes, claims, or controversies arising out of or relating to your employment by the Company, the termination of your employment by the Company, and/or this Offer Letter, and any claims or disputes as to the scope and enforceability of this arbitration agreement, shall be resolved exclusively by final and binding arbitration.
>
> . . . .
>
> You and the Company agree that any dispute or controversy arising out of or in any way related to your employment, or the termination of your employment, which cannot be resolved by use of the Company's internal grievance procedures or by good faith negotiation between the parties, will be resolved by final and binding arbitration as provided herein. You and the Company voluntarily and irrevocably waive any and all rights to have any such dispute decided in court or by a jury.

Discussion

Applying the Board's decision in *U-Haul Co. of California,* 347 NLRB 375, 377–378 (2006), enfd. 255 Fed.Appx. 527 (D.C. Cir. 2007), which relied on the "reasonably construe" prong of *Lutheran Heritage Village-Livonia*, 343 NLRB 646 (2004), the judge found that employees would reasonably read the Agreement to prohibit the filing of unfair labor practice charges with the Board. The judge thus concluded that the Respondent violated Section 8(a)(1) of the National Labor Relations Act by maintaining the Agreement.

Recently, the Board issued a decision in *The Boeing Co.*, 365 NLRB No. 154 (2017), overruling the "reasonably construe" prong of *Lutheran Heritage*. *Boeing* set forth an analysis for evaluating facially neutral rules to strike the proper balance between the business justifica-

[1] We amend the caption to correct the name of the Respondent, Expert Global Solutions, Inc.

[2] The Respondent also submitted a letter pursuant to Sec. 102.6 of the Board's Rules and Regulations, and the General Counsel filed a response.

[3] For the reasons given in the judge's decision, we adopt her finding that the Respondent violated the Act by threatening to discharge Jennifer Fultz and Clarise Washington.

In finding that the Respondent violated Sec. 8(a)(1) by discharging Fultz and Washington for refusing to sign its Agreement to Arbitrate, we find it unnecessary to rely on *Continental Group, Inc.,* 357 NLRB 409 (2011), or *Double Eagle Hotel & Casino,* 341 NLRB 112 (2004), enfd. 414 F.3d 1249 (10th Cir. 2005). Instead, we rely on *Deep Distributors of Greater NY d/b/a The Imperial Sales, Inc.*, 365 NLRB No. 95, slip op. at 3 (2017) (violation to discharge employees for failure to sign unlawful rule), enfd. mem. 740 Fed.Appx. 216 (2d Cir. 2018).

[4] We have amended the judge's conclusions of law to omit her inadvertent finding of an enforcement violation, which was neither alleged in the complaint nor litigated by the parties. We have amended the remedy to provide that the Respondent shall compensate Fultz and Washington for their search-for-work and interim employment expenses. We shall modify the judge's recommended Order to be consistent with our findings and to conform to the Board's standard remedial language. We shall further modify the judge's recommended Order in accordance with our decision in *Excel Container, Inc.*, 325 NLRB 17 (1997). We shall substitute a new notice to conform to the Order as modified.

tions for maintaining a challenged rule and the invasion of employee rights in light of the Act and its policies, viewing the rule or policy from the employees' perspective. Id. Subsequently, the Board issued a decision in *Prime Healthcare Paradise Valley, LLC*, which found that, under *Boeing*, arbitration agreements violate the Act when, "taken as a whole, [they] make arbitration the *exclusive* forum for the resolution of all claims, including federal statutory claims under the National Labor Relations Act." 368 NLRB No. 10, slip op. at 6 (2019). Further, the Board found that, "as a matter of law, there is not and cannot be any legitimate justification for provisions, in an arbitration agreement or otherwise, that restrict employees' access to the Board or its processes." Id.

The Agreement here requires that "all disputes . . . shall be resolved exclusively by final and binding arbitration." As in *Prime Healthcare*, we find that such language makes arbitration the *exclusive* forum for resolving all disputes, including those brought under the Act, and is therefore unlawful. In so finding, we find unpersuasive the Respondent's argument that the Agreement's interference with Section 7 rights is minimal or outweighed by the efficient resolution of workplace disputes. Accordingly, we find that the Agreement is unlawful under Category 3 of *Boeing*. Id., slip op. at 6–7.[5]

AMENDED CONCLUSIONS OF LAW

Substitute the following for Conclusion of Law 2.

"2. Respondent violated Section 8(a)(1) of the Act by maintaining its Agreement to Arbitrate."

AMENDED REMEDY

In addition to the remedies provided in the judge's Order as amended, we shall also order the Respondent to compensate Fultz and Washington for reasonable search-for-work and interim employment expenses regardless of whether those expenses exceed interim earnings, in accordance with our decision in *King Soopers, Inc.*, 364 NLRB No. 93 (2016), enfd. in relevant part 859 F.3d 23 (D.C. Cir. 2017). Search-for-work and interim employment expenses shall be calculated separately from taxable net backpay, with interest at the rate prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010).[6]

ORDER

The Respondent, Alorica Inc. and its subsidiary/affiliate Expert Global Solutions, Inc., with facilities in Cedar Rapids, Iowa, and Rockford, Illinois, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Maintaining an Agreement to Arbitrate that employees reasonably would believe bars or restricts the right to file charges with the National Labor Relations Board.

(b) Threatening to discharge employees for failing or refusing to sign an Agreement to Arbitrate that they reasonably would believe bars or restricts the right to file charges with the National Labor Relations Board.

(c) Discharging or otherwise discriminating against employees for failing or refusing to sign an Agreement to Arbitrate that they reasonably would believe bars or restricts the right to file charges with the National Labor Relations Board.

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

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

(a) Rescind the Agreement to Arbitrate in all its forms, or revise it in all its forms to make clear to employees that the Agreement to Arbitrate does not bar or restrict employees' right to file charges with the National Labor Relations Board.

(b) Notify all current and former employees who were required to sign or otherwise became bound to the Agreement to Arbitrate in any form that the Agreement to Arbitrate has been rescinded or revised, and if revised, provide them a copy of the revised agreement.

(c) Within 14 days from the date of this Order, offer Jennifer Fultz and Clarise Washington full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

(d) Make Jennifer Fultz and Clarise Washington whole for any loss of earnings and other benefits suffered as a result of the discrimination against them plus rea-

[5] *Prime Healthcare* also considered and rejected the contention that an arbitration agreement is rendered lawful by language that limits its scope to claims for which a court would be authorized to grant relief. Id., slip op. at 6 & fn. 12. Accordingly, we reject the Respondent's argument that its Agreement is lawful because it does not mention proceedings before the Board but applies only to claims "decided in court or by a jury."

[6] The General Counsel seeks a make-whole remedy that includes consequential damages incurred as a result of the Respondent's unfair labor practice. The relief sought would require a change in Board law. Having duly considered the matter, we are not prepared at this time to deviate from our current remedial practice. Accordingly, we decline to order this relief at this time. *Laborers' International Union of North America, Local Union No. 91 (Council of Utility Contractors*), 365 NLRB No. 28, slip op. at 1 fn. 2 (2017).

sonable search-for-work and interim employment expenses, in the manner set forth in the remedy section of the judge's decision as amended in this decision.

(e) Compensate Jennifer Fultz and Clarise Washington for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and file with the Regional Director for Region 18, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar years for each employee.

(f) Within 14 days from the date of this Order, remove from its files any reference to the unlawful discharges, and within 3 days thereafter, notify Jennifer Fultz and Clarise Washington in writing that this has been done and that the discharges will not be used against them in any way.

(g) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(h) Within 14 days after service by the Region, post at its facilities in Cedar Rapids, Iowa, and Rockford, Illinois, copies of the attached notice marked "Appendix A," and at all other facilities where the unlawful arbitration agreement is or has been in effect, copies of the attached notice marked "Appendix B."[7] Copies of the notice, on forms provided by the Regional Director for Region 18, 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, 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. If 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 July 11, 2016.

(i) Within 21 days after service by the Region, file with the Regional Director for Region 18 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 25, 2019

_____

John F. Ring, Chairman

_____

Marvin E. Kaplan, Member

_____

William J. Emanuel, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX A

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 an Agreement to Arbitrate that our employees reasonably would believe bars or restricts their right to file charges with the National Labor Relations Board.

WE WILL NOT threaten to discharge you for failing or refusing to sign an Agreement to Arbitrate that you reasonably would believe bars or restricts the right to file charges with the National Labor Relations Board.

WE WILL NOT discharge or otherwise discriminate against you for failing or refusing to sign an Agreement to Arbitrate that you reasonably would believe bars or

[7] 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."

restricts the right to file charges with the National Labor Relations Board.

WE WILL NOT in any like or related manner interfere with, restrain or coerce you in the exercise of the rights listed above.

WE WILL rescind the Agreement to Arbitrate in all its forms or revise it in all its forms to make clear that the Agreement to Arbitrate does not restrict your right to file charges with the National Labor Relations Board.

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

WE WILL, within 14 days from the date of the Board's Order, offer Jennifer Fultz and Clarise Washington full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL make Jennifer Fultz and Clarise Washington whole for any loss of earnings and other benefits resulting from their discharge, less any net interim earnings, plus interest, and WE WILL also make them whole for reasonable search-for-work and interim employment expenses, plus interest.

WE WILL compensate Jennifer Fultz and Clarise Washington for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and WE WILL file with the Regional Director for Region 18, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay awards to the appropriate calendar year(s) for each employee.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful discharges of Jennifer Fultz and Clarise Washington, and WE WILL, within 3 days thereafter, notify them in writing that this has been done and that the discharges will not be used against them in any way.

ALORICA, INC., AND ITS SUBSIDIARY/AFFILIATE
EXPERT GLOBAL SOLUTIONS, INC.

The Board's decision can be found at https://www.nlrb.gov/case/18-CA-190846 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.

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 an Agreement to Arbitrate that our employees reasonably would believe bars or restricts their right to file charges with the National Labor Relations Board.

WE WILL NOT in any like or related manner interfere with, restrain or coerce you in the exercise of the rights listed above.

WE WILL rescind the Agreement to Arbitrate in all its forms or revise it in all its forms to make clear that the Agreement to Arbitrate does not restrict your right to file charges with the National Labor Relations Board.

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

ALORICA, INC., AND ITS SUBSIDIARY/AFFILIATE
EXPERT GLOBAL SOLUTIONS, INC.

The Board's decision can be found at https://www.nlrb.gov/case/18-CA-190846 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.

Joseph Bornong, Esq., for the General Counsel.
Harry J. Secaras, Esq. (Ogletree, Deakins, Nash, Smoak & Stewart, P.C.), of Chicago, Illinois, for the Respondent.

DECISION

STATEMENT OF THE CASE

MELISSA M. OLIVERO, Administrative Law Judge. This case was tried in Rockford, Illinois, on July 13, 2017. Seth Goldstein and the Office Professional Employees Local 153 filed the charges pertaining to Jennifer Fultz on October 5, 2016 (Cases 25–CA–185622 and 25–CA–185626). They filed the charge pertaining to Clarise Washington on January 5, 2017 (Case 18–CA–190846). The General Counsel issued a consolidated complaint in Cases 25–CA–185622 and 25–CA–185626 on December 29, 2016, a complaint in Case 18–CA–190846 on April 19, 2017, and an order consolidating these cases on June 14, 2017. (GC Exh. 1(g), (r), (v).)

Respondent insisted that all employees sign an agreement to arbitrate in order to continuing to work for Alorica after it acquired Expert Global Solutions (EGS). On September 12, 2016, it terminated the employment of Fultz and Washington for their refusal to do so. Prior to these discharges, Respondent threatened both Fultz and Washington with termination if they refused to sign the arbitration agreement.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and Respondent, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent, a corporation, operates call centers from various locations, including Rockford, Illinois, and a training facility in Cedar Rapids, Iowa. In the 12 months prior to June 14, 2017, Respondent performed services valued in excess of $50,000 outside of Iowa. Respondent admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. (GC Exh. 1(k), (u).) Respondent further admits, and I find, that Joseph Meza, Patricia (Pat) Green, Katie Aldridge, and Esmeralda (Essie) Samardzic are supervisors of Respondent within the meaning of Section 2(11) of the Act and/or agents of Respondent within the meaning of Section 2(13) of the Act. (GC Exh. 1(k), (u).)

II. ALLEGED UNFAIR LABOR PRACTICES

In June 2016 Respondent Alorica acquired Expert Global Solutions (EGS). (Tr. 46.) Alorica retained all the employees of EGS, provided they signed the following agreement:

> . . . In the interest of gaining the benefits of a speedy and impartial dispute-resolution procedure for any disputes which may arise between us concerning your employment by the Company, You and the Company desire to submit any such disputes to binding arbitration as described below. . .
>
> All disputes, claims, or controversies arising out of or relating to your employment by the Company, the termination of your employment by the Company, and/or this Offer Letter, and any
> claims or disputes as to the scope and enforceability of this arbitration agreement, shall be resolved exclusively by final and binding arbitration.
>
> Arbitration pursuant to this Agreement shall be held within the
> Federal Judicial District in which you are or were last employed bythe Company and shall be conducted pursuant to the JAMS Employment Arbitration Rules . . . The Company agrees to bear all but the first $350 of the arbitration filing fee.
>
> You and the Company expressly intend and agree that class action, collective action, and representative action procedures shall not be asserted, nor shall they apply, in any arbitration pursuant to this Agreement; that neither You nor the Company shall assert a class, collective, or representative claim against the other, in arbitration or otherwise; and that each of You and the Company shall submit only its own, individual claims to arbitration and will not seek torepresent the interests of any other person:
>
> You and the Company agree that any dispute or controversy arising out of or in any way related to your employment, or the termination of your employment, which cannot be resolved by use of the Company's internal grievance procedures or by good faith negotiation between the parties, will be resolved by final and binding arbitration as provided herein. You and the Company voluntarily and irrevocably waive any and all rights to have anysuch dispute decided in court or by a jury.

(GC Exh. 2.) In July 2016, Respondent announced to its employees that were previously employed by EGS, that they must sign the Agreement to Arbitrate (arbitration agreement) in order to retain their employment with Respondent. (Tr. 49–50.) Thus, signing this agreement was required as a condition of continued employment. (GC Exh. 4; Tr. 64.)

Jennifer Fultz, a call center employee in Rockford, Illinois, who had worked for EGS for 4-1/2 years, refused to sign the arbitration agreement. (Tr. 14.) Fultz was terminated and escorted from the premises by the police after refusing to sign the agreement. (Tr. 16–17.) Clarise Washington, a call center employee/trainer assigned to Respondent's facility in Cedar Rapids, Iowa, who worked for EGS for 3 years, also refused to

sign the agreement and was terminated the same day.[1] (Tr. 33–34.)

On September 12, 2016, Fultz reported to work in Rockford, Illinois, as usual and began taking calls. (Tr. 12.) Around 9 a.m., Fultz was summoned to the office of Katie Aldridge in Respondent's human resources department.[2] (Tr. 12–13.) Aldridge presented Fultz with a copy of the arbitration agreement and told her to sign it. (Tr. 13.) Fultz told Aldridge that she did not agree with the arbitration agreement. (Tr. 13.) Fultz also asked to take the agreement to a lawyer and said she would sign it if the lawyer approved. (Tr. 14.) Aldridge responded that Fultz had 30 minutes in which to sign the agreement, and, if she did not, Fultz would be considered "voluntarily resigning." (Tr. 14.)

A short time later, Futz returned to Aldridge's office. (Tr. 14.) She told Aldridge that she would sign the arbitration agreement under protest. (Tr. 14.) Fultz signed the agreement and Aldridge made a copy for her. (Tr. 14.) Fultz then changed her mind and asked for the document back. (Tr. 15.)

A few minutes later, with another employee present as a witness by Futlz' request, Fultz advised Aldridge that she would not sign the arbitration agreement, but that she was not quitting her job either. (Tr. 15.) Aldridge told Fultz that if she did not sign the agreement, they could "gather [her] stuff" and "[do] a walk out." (Tr. 15.) Fultz told Aldridge to call the cops because she was not quitting her job. (Tr. 15.) Aldridge then called Pat [Green] at Respondent's corporate headquarters and explained that Fultz would not sign the agreement and was refusing to leave. (Tr. 15–16.) Green told Aldridge that Fultz was trespassing by refusing to leave and advised Aldridge to summon the police. (Tr. 16.) The police were called and escorted Fultz from the premises. (Tr. 16–17.)

On September 12, 2016, Clarise Washington began her workday as usual. (Tr. 32.) Between 9 and 10 a.m., she was she was called into a telephone conference with Joe Meza. (Tr. 33.) Meza asked Washington if she was going to sign the arbitration agreement. (Tr. 33.) She said no. (Id.) Meza then said, well, we have given you enough time and we are going to terminate you at the end of the day as a voluntary resignation. (Id.) Washington advised Meza that she had already emailed Samardzic that she was not quitting and would sign the agreement. (Tr. 33–34.) Meza then stated that Respondent was terminating Washington at the end of the day.[3] (Tr. 34.)

A few minutes later, Washington was called into another telephone conference, this time with Samardzic. (Tr. 34.) During this phone call, Washington was told to immediately log off of the system because she was terminated. (Tr. 34.) Washington did so immediately. (Id.)

Analysis

Respondent's Agreement to Arbitrate violates the Act

The issue before me regarding Respondent's arbitration agreement is limited to whether it violates the Act because it would reasonably be read to preclude filing charges with the Board. The Regional Director for Region 18 approved a conditional settlement prior to the hearing in which the parties agreed to act in accordance with the Supreme Court's disposition of *NLRB v. Murphy Oil,* Docket No. 16-307 with regard to class actions such as those filed under the Fair Labor Standards Act. (R. Br. fn. 2.) This decision does not address the broader *Murphy Oil* issue.

Any employer policy, including one contained in a mandatory arbitration agreement, which would reasonably be read to prohibit the filing of unfair labor practice charges with the Board violates the Act even if it does not explicitly restrict access to the Board. *2 Sisters Food Group,* 357 NLRB 1816 (2011). Respondent's arbitration agreement specifically applies to "any disputes which may arise between us concerning your employment by the Company," without any limiting language. Non-lawyer employees would be very unlikely to read this provision as excluding the filing of unfair labor practice charges from the purview of the agreement. Other language in the agreement, waiving the right to have any such dispute decided in court or by a jury, does not detract from a layman's likely understanding that the agreement applies to all employment disputes, including those in which the employee believes that the employer committed an unfair labor practice, *U-Haul Co. of California,* 347 NLRB 375, 377–378 (2006), enfd. 255 Fed.Appx. 527 (D.C. Cir. 2007).

Respondent unlawfully threatened Jennifer Fultz and Clarise Washington

The Board has long held that an employer violates Section 8(a)(1) of the Act when it engages in conduct that might reasonably tend to interfere with the free exercise of employee rights under Section 7. *Greenbriar Rail Services,* 364 NLRB No. 30, slip op. at 35 (2016), citing *American Freightways Co.,* 124 NLRB 146 (1959). The Board has found that threatening to terminate, and subsequently actually terminating, an employee for refusing to sign an arbitration agreement violates the Act. *SF Markets, LLC,* 363 NLRB No. 146, slip op. at 2 (2016), affd. 691 Fed.Appx. 815 (5th Cir. 2016). By maintaining the arbitration agreement, which I have found unlawful, as a condition of employment, threatening to discharge and/or discharging an employee for refusing to agree to the unlawful arbitration agreement also violates Section 8(a)(1). Id., citing *Denson Electric Co*., 133 NLRB 122, 129, 131 (1961), and *Keiser University*, 363 NLRB No. 73, slip op. at 1, 7 (2015) (affirming judge's finding that discharging employee for refusing to sign unlawful arbitration agreement was unlawful).

Both Fultz and Washington testified that they were threat-

[1] Although Respondent attempted to characterize these terminations as "voluntary separations," I find that they were, in fact, terminations of employment. (Tr. 57.) Fultz and Washington both testified that did not quit and were discharged after refusing to sign the arbitration agreement. (Tr. 16, 33–34.) There is no evidence that either employee would have been fired, but for their refusals to sign the arbitration agreement.

[2] Aldridge did not testify at the hearing.

[3] Meza testified that he, "Never threatened to terminate. I basically shared with her that by not agreeing to Alorica's binding Arbitration Agreement, that is a personal choice and that it would be considered as a voluntary resignation and that would be processed accordingly." (Tr. 57.) Despite Meza's characterization that his statement was not a threat, I find that it was. Meza clearly told Washington that her employment with Respondent would end if she chose not to sign the arbitration agreement.

ened with discharge if they refused to sign the arbitration agreement. This evidence was not refuted or contradicted by any of Respondent's witnesses. I have already found that by maintaining the arbitration agreement, Respondent violated the Act. Therefore, I find that the statements made by Meza and Aldridge, advising Fultz and Washington that they would be discharged if they refused to sign the arbitration agreement, violated Section 8(a)(1) of the Act.

Respondent violated the Act in terminating Jennifer Fultz and Clarise Washington

Respondent argues that even if its arbitration agreement violates the Act, neither Fultz nor Washington is entitled to any remedy, such as reinstatement and backpay. Respondent contends this is so because neither engaged in any protected concerted activity and neither specifically objected to signing the arbitration agreement on the grounds that it interfered with their ability to file an unfair labor practice charge.

Regardless of whether either Fultz or Washington engaged in protected activity, Respondent violated the Act in terminating them. Discipline imposed pursuant to an unlawfully overbroad rule is generally unlawful. *Continental Group, Inc.,* 357 NLRB 409 (2011); *Double Eagle Hotel & Casino,* 341 NLRB 112, 112 fn. 3 (2004), enfd. 414 F. 3d 1249 (10th Cir. 2005); *Butler Medical Transport, LLC,* 365 NLRB No. 112 (2017). See also *SF Markets, LLC,* supra.

In *Continental Group, Inc.,* supra, the Board held that this principle does not apply in situations in which the conduct for which an employee is disciplined is wholly distinct from activity that fall within the ambit of Section 7 (e.g., sleeping on the employer's premises when off duty). The exception does not apply in this case, wherein Respondent's rule touches on concerns animating Section 7 conduct (e.g. filing charges with the Board). Thus, Respondent's discharge of Fultz and Washington violated Section 8(a)(1) of the Act.

CONCLUSIONS OF LAW

1. Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Respondent has and is violating Section 8(a)(1) of the Act in maintaining and enforcing its Agreement to Arbitrate.

3. Respondent violated Section 8(a)(1) of the Act by threatening Jennifer Fultz and Clarise Washington with discharge if they refused to sign its Agreement to Arbitrate.

4. Respondent violated Section 8(a)(1) of the Act by discharging Jennifer Fultz and Clarise Washington.

5. By engaging in the unlawful conduct set forth in paragraphs 2, 3, and 4, above, Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1), and Section 2(6) and (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.

The Respondent, having discriminatorily discharged Jennifer Fultz and Clarise Washington, must offer them reinstatement and make them whole for any loss of earnings and other benefits. Backpay shall be computed in accordance with *F. W. Woolworth Co*., 90 NLRB 289 (1950), with interest at the rate prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center,* 356 NLRB 6 (2010). Respondent shall further compensate the affected employees for any adverse tax consequences of receiving a lump-sum backpay award. *Don Chavas, LLC d/b/a Tortillas Don Chavas*, 361 NLRB 101 (2014).

The Respondent, having discriminatorily discharged Jennifer Fultz and Clarise Washington, must offer them reinstatement and make them whole for any loss of earnings and other benefits. Backpay shall be computed in accordance with *F. W. Woolworth Co*., 90 NLRB 289 (1950), with interest at the rate prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center,* 356 NLRB 6 (2010). Respondent shall further compensate the affected employees for any adverse tax consequences of receiving a lump-sum backpay award. *Don Chavas, LLC d/b/a Tortillas Don Chavas*, supra.

Respondent shall also expunge from its files any reference to Fultz' and Washington's unlawful discharges and to notify them in writing that this has been done and that the loss of employment will not be used against them in any way.

In addition, Respondent shall, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, file a report allocating backpay with the Regional Director for Region 18. Respondent will be required to allocate backpay to the appropriate calendar years only. The Regional Director will then assume responsibility for transmission of the report to the Social Security Administration at the appropriate time and in the appropriate manner. *AdvoServ of New Jersey, Inc.,* 363 NLRB No. 143 (2016).

I further recommend that Respondent post a notice in the usual manner, including electronically to the extent mandated in *J. Picini Flooring,* 356 NLRB 11, 15–16 (2010), enfd. 656 F.3d 860 (9th Cir. 2011).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[4]

ORDER

The Respondent, Alorica Inc. and its subsidiary/affiliate Expert Global Solutions, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Discharging or otherwise discriminating against any employee for violating an unlawful rule that touches upon Section 7 conduct.

(b) Threatening employees with discharge for refusing to sign an unlawful arbitration agreement.

(c) Maintaining and enforcing rules, policies, agreements, and/or provisions that would reasonably be read to prohibit filing unfair labor practice charges.

(d) In any like or related manner interfering with, restrain-

[4] 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.

ing, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

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

(a) Within 14 days from the date of the Board's Order, offer Jennifer Fultz and Clarise Washington full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

(b) Make Jennifer Fultz and Clarise Washington whole for any loss of earnings and other benefits suffered as a result of the discrimination against them in the manner set forth in the remedy section of the decision.

(c) Compensate Jennifer Fultz and Clarise Washington for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and file with the Regional Director for Region 18, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay awarded to the appropriate calendar years.

(d) Within 21 days of the date that the amount of backpay is fixed, either by agreement or Board order, file a report allocating backpay with the Regional Director for Region 18. Respondent will be required to allocate backpay to the appropriate calendar years only. The Regional Director will then assume responsibility for transmission of the report to the Social Security Administration at the appropriate time and in the appropriate manner.

(e) Compensate Jennifer Fultz and Clarise Washington for any adverse tax consequences of receiving a lump-sum backpay award.

(f) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(g) Within 14 days from the date of the Board's Order, remove from its files any reference to the unlawful discharges, and within 3 days thereafter notify Jennifer Fultz and Clarise Washington in writing that this has been done and that the discharges will not be used against them anyway.

(h) Rescind or revise any rules, policies, agreements and/or provisions that would reasonably be read to prohibit filing unfair labor practice charges and effectively communicate to all its employees that these rules, etc. have been rescinded or revised.

(i) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(j) Within 14 days after service by the Region, post at all its facilities copies of the attached notice marked "Appendix."[5] Copies of the notice, on forms provided by the Regional Director for Region 18, 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 September 12, 2016.

(k) 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. October 18, 2017

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 discharge or otherwise discriminate against any employee for violating an unlawful rule that touches upon Section 7 conduct.

WE WILL NOT threaten you with discharge for refusing to sign our Agreement to Arbitrate.

WE WILL NOT maintain rules, policies, agreements, and/or provisions that would be reasonably read to preclude the filing of unfair labor practice charges with the National Labor Relations Board.

WE WILL NOT in any like or related manner interfere with, re-

[5] 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."

strain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, within 14 days from the date of this Order, offer Jennifer Fultz and Clarise Washington full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL make Jennifer Fultz and Clarise Washington whole for any loss of earnings and other benefits resulting from their discharge, less any net interim earnings, plus interest compounded daily.

WE WILL, within 14 days from the date of this Order, remove from our files any reference to the unlawful discharge of Jennifer Fultz and Clarise Washington, and WE WILL, within 3 days thereafter, notify them in writing that this has been done and that the discharges will not be used against them in any way.

WE WILL file with the Regional Director for Region 18, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar year.

WE WILL compensate Jennifer Fultz and Clarise Washington for the adverse tax consequences, if any, of receiving one or more lump-sum backpay awards covering periods longer than 1 year.

WE WILL revise or rescind any rules, policies, agreements and/or provisions that would reasonably be read to prohibit filing unfair labor practice charges.

ALORICA, INC., AND ITS SUBSIDIARY/AFFILIATE EXPERT GLOBAL SOLUTIONS, INC.

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/18-CA-190846 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.