ADI Worldlink, LLC; Samsung Electronics America, Inc. f/k/a Samsung Telecommunications Americas, LLC, Respondents *and* Tim Curry, Ozias Foster, Royce Ellison, Mervin L. McGirt, Clarence Cook, and Kevin Astrop, Region 7 Charging Parties *and* Nathan Nesbit, Chris Carethers, Lamar Hall, Leon Townsend, Steven Le, and Sean Goodson, Region 20 Charging Parties. Cases 07–CA–157722, and 20–CA–156284

October 2, 2018

DECISION AND ORDER REMANDING[1]

BY CHAIRMAN RING AND MEMBERS MCFERRAN AND KAPLAN

Pursuant to charges filed by Tim Curry, Ozias Foster, Royce Ellison, Mervin L. McGirt, Clarence Cook, Kevin Astrop, Nathan Nesbit, Chris Carethers, Lamar Hall, Leon Townsend, Steven Le, and Sean Goodson, the General Counsel issued a complaint on November 30, 2015. The complaint alleges that the Respondent has maintained and enforced a mandatory arbitration agreement in violation of Section 8(a)(1) of the National Labor Relations Act. The complaint also alleges that the mandatory arbitration agreement includes overboard provision prohibiting or restricting employee access to the Board in violation of Section 8(a)(1). On April 12, 2016, Respondent ADI Worldlink, LLC filed a motion for summary judgment. On April 19, 2016, the General Counsel filed a response to the motion and a cross-motion for summary judgment.

On July 25, 2016, the National Labor Relations Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why either motion should not be granted. Respondent ADI Worldlink, LLC, Respondent Samsung Electronics America, Inc., and the Charging Parties filed a response to the Notice to Show Cause.

1. Recently, the Supreme Court issued its decision in *Epic Systems Corp. v. Lewis*, 584 U.S. __, 138 S.Ct. 1612 (2018), a consolidated proceeding including review of court decisions below in *Lewis v. Epic Systems Corp.*, 823 F.3d 1147 (7th Cir. 2016), *Morris v. Ernst & Young, LLP*, 834 F.3d 975 (9th Cir. 2016), and *Murphy Oil USA, Inc. v. NLRB*, 808 F.3d 1013 (5th Cir. 2015). *Epic Systems* concerned the issue, common to all three cases, whether employer-employee agreements that contain class- and collective-action waivers and stipulate that employment disputes are to be resolved by individualized arbitration violate the National Labor Relations Act. Id. at __, 138 S.Ct. at 1619–1621, 1632. The Supreme Court held that such employment agreements do not violate this Act and that the agreements must be enforced as written pursuant to the Federal Arbitration Act. Id. at __, 138 S.Ct. at 1619, 1632. In light of the Supreme Court's decision in *Epic Systems*, which overrules the Board's holding in *Murphy Oil USA, Inc.*, we conclude that the complaint allegations that the mandatory arbitration agreement is unlawful based on *Murphy Oil* must be dismissed.

2. There remains the separate issue whether the Respondent's arbitration agreement independently violates Section 8(a)(1) of the Act because it interferes with employees' ability to access the Board. When the parties filed their pending motions, the issue whether maintenance of a facially neutral work rule or policy violated Section 8(a)(1) would be resolved based on the "reasonably construe" prong of the analytical framework set forth in *Lutheran Heritage Village-Livonia*, 343 NLRB 646 (2004). On December 14, 2017, the Board issued its decision in *The Boeing Company*, 365 NLRB No. 154, in which it overruled the *Lutheran Heritage* "reasonably construe" test and announced a new standard that applies retroactively to all pending cases. Under the standard announced in *Boeing*, the parties' motions do not establish that there are no genuine issues of material fact and that either party is entitled to judgment as a matter of law as to this complaint allegation.

Accordingly, we deny without prejudice the motions for summary judgment with respect to this complaint allegation, and we will remand this proceeding to the Regional Director for Region 7 for further action as she deems appropriate.

ORDER

The complaint allegations that the maintenance and enforcement of the mandatory arbitration agreement unlawfully restricts employees' statutory rights to pursue class or collective actions are dismissed.

IT IS FURTHER ORDERED that the parties' motions for summary judgment are denied without prejudice in all other respects, and these proceedings are remanded to the

[1] The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel. Chairman Ring, who is recused, is a member of the panel but took no part in the consideration of this case on the merits. Member Emanuel is also recused and took no part in the consideration of this case. In *New Process Steel, L.P. v. NLRB*, 560 U.S. 674 (2010), the Supreme Court left undisturbed the Board's practice of deciding cases with a two-member quorum of a panel when one of the panel members has recused himself. Under the Court's reading of the Act, "the group quorum provision [of Sec. 3(b)] still operates to allow any panel to issue a decision by only two members if one member is disqualified." *New Process Steel*, 560 U.S. at 688; see also *Correctional Medical Services, Inc.*, 356 NLRB 277, 277 fn. 1 (2010).

Regional Director for Region 7 for further appropriate action.

Dated, Washington, D.C. October 2, 2018

John F. Ring, Chairman

Lauren McFerran, Member

Marvin E. Kaplan, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD