JD–86–17
Irvine, CA
Rockford, IL

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

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

and **Case No. 18-CA-190846**

OPEIU LOCAL 153, OFFICE & PROFESSIONAL EMPLOYEES INTERNATIONAL UNION, AFL-CIO

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

and **Case Nos. 25-CA-185622**
25-CA-185626

SETH GOLDSTEIN AND OFFICE & PROFESSIONAL EMPLOYEES INTERNATIONAL UNION, LOCAL 153

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 (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 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, 2017, 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 by the 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 to represent 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 any such 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 ½ 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 9:00 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.)

[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.

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 9:00 and 10:00 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.

[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.

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. 136, slip op. at 2 (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). *SF Markets, LLC,* at 2, 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 threatened 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 ftn. 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 No. 10 (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*, 361 NLRB No. 10 (2014).

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).

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

[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.

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

Melissa M. Olivero
Administrative Law Judge

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."

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, restrain, 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.