

NLRB WEEKLY SUMMARY OF DECISIONS, AUGUST 10 – 14, 2015

August 25, 2015 | [National Labor Relations Board, Labor Relations](#)

The Summary of NLRB decisions for the week of August 10 – 14, 2015, is now available. **Summarized Board Decisions Countrywide**
Financial Corporation ([31-CA-072916](#); [362 NLRB No. 165](#)) Calabasas, CA, August 14, 2015. Applying *D.R. Horton, Inc.*, 357 NLRB No. 184 (2012), enf. denied in relevant part 727 F.3d 344 (5th Cir. 2013) and *U-Haul Co. of California*, 347 NLRB 375 (2006), enfd. 255 Fed. Appx. 527 (D.C. Cir. 2007), a Board panel majority consisting of Chairman Pearce and Member Hirozawa found that the Respondents violated Section 8(a)(1) by maintaining a mandatory arbitration agreement that employees would reasonably construe to prohibit the filing of unfair labor practice charges with the Board. The panel majority rejected the Respondents' argument that a savings clause in the agreement stating "nothing in this Agreement shall be construed to require arbitration of any claim if an agreement to arbitrate such a claim is prohibited by law" is a valid defense to the alleged violation. Member Johnson dissented and would have dismissed the Section 8(a)(1) allegation based on the savings clause. In his view, employees would not reasonably conclude, after reading the clause, that the arbitration agreement restricted their access to the Board's processes. Applying *Murphy Oil USA, Inc.*, 361 NLRB No. 72 (2014), the panel majority further found that although the agreement is not unlawful on its face by compelling employees to waive their Section 7 right to collectively pursue litigation of employment claims in all forums, the Respondents enforced the agreement in violation of 8(a)(1) by filing a motion in federal district court to compel individual arbitration in response to a collective lawsuit filed by former employees alleging wage and hour violations under the Fair Labor Standards Act and California Labor Code. The panel majority found that the court motion had an "illegal objective" within the meaning of footnote 5 of the Supreme Court's decision in *Bill Johnson's Restaurants v. NLRB*, 461 U.S. 731 (1983), and thus was not protected by the First Amendment. Member Johnson, in dissent, stated that he would dismiss the 8(a)(1) enforcement violation for the reasons set forth in his dissent in *Murphy Oil*, and also because the agreement is not, as in *Murphy Oil*, unlawful on its face with respect to waiver of class or collective litigation of employment claims. In Member Johnson's view, because the Board has not previously ruled on whether enforcement of a facially lawful arbitration agreement is unlawful, the illegal objective exception of *Bill Johnson's* does not apply and the enforcement violation cannot be found. Charges filed by individuals. Administrative Law Judge William G. Kocol issued his decision on February 13, 2013. Chairman Pearce and Members Hirozawa and Johnson participated. To read more, visit the [NLRB's website](#).

RELATED PRACTICE AREAS

Labor and Employment
Labor Relations
National Labor Relations Board (NLRB)

RELATED TOPICS

Weekly Summary