

Summary Of NLRB Decisions For Week Of Feb. 1 - 5, 2016

March 1, 2016 | [National Labor Relations Board, Labor Relations](#)

The summary of NLRB decisions for the week of Feb. 1-5 is [now available](#). **Summarized Board Decisions *Waffle House, Inc.*** (10-CA-121178; 363 NLRB No. 104) Norcross, GA, February 1, 2016. Applying its decisions in *D. R. Horton, Inc.*, 357 NLRB No. 184 (2012), enf. denied in relevant part 737 F.3d 344 (5th Cir. 2013) and *Murphy Oil USA, Inc.*, 361 NLRB No. 72 (2014), enf. denied in relevant part 808 F.3d 1013 (5th Cir. 2015), a Board panel majority consisting of Chairman Pearce and Member Hirozawa found that the Respondent violated Section 8(a)(1) by maintaining a mandatory arbitration agreement that requires employees, as a condition of employment, to waive their right to maintain class or collective actions in all forums, whether arbitral or judicial. Relying on *SolarCity Corp.*, 363 NLRB No. 83 (2015), the Board panel majority rejected the Respondent's argument that its agreement was lawful because it permitted employees to file charges with administrative agencies, including with the Board. The Board panel majority also rejected the Respondent's argument that its arbitration agreement was voluntary because employees could decline employment with Waffle House and seek employment with an employer that does not mandate individual arbitration as a condition of employment. The Board panel majority ordered the Respondent to post remedial notices at all locations where the agreement was in effect. In dissent, Member Miscimarra would have dismissed the complaint. Consistent with his dissent in *Murphy Oil*, Member Miscimarra concluded that the agreement did not violate the Act. As such, he found it unnecessary to reach whether agreements containing an exemption permitting filings with administrative agencies should independently be deemed lawful to the extent that they "leave[] open a judicial forum for class and collective claims." Charge filed by an individual. Chairman Pearce and Members Miscimarra and Hirozawa participated. [Continue reading on the NLRB website.](#)

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