

NLRB Continues Assault On Employer Arbitration Agreements

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On Monday, May 18, an administrative law judge (ALJ) for the National Labor Relations Board held a company violated the National Labor Relations Act by creating an arbitration program that effectively precluded employees from bringing class action lawsuits against the employer. Interestingly, the arbitration agreement at issue was silent on whether employees “waived” their ability to bring class action lawsuits against the company – unlike other agreements found unlawful by the Board that contained express language forbidding the formation of class actions. However, the employer successfully argued to a state court that a prior class action lawsuit filed against it should be forced to arbitration on an individual basis based on its arbitration agreement. That is, the employer was successful in using its agreement to stave off a class action. Relying on prior Board precedent finding “class action waivers” to be restrictive of employees’ Section 7 rights, the judge ruled the employer’s arbitration agreement violated the Act. Moreover, as part of the remedy, the judge ordered the company to inform the state court that it no longer opposed its employees bringing a class action lawsuit against it. While no federal court of appeals has yet adopted the NLRB’s position on class action waivers, this case shows that the Board nevertheless is continuing to attack these agreements. A copy of the decision can be found [here](#).

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