NLRB's *Murphy Oil* Decision Reaffirms *D.R. Horton* Despite Rejection by Some Federal Courts

By David W. Garland and Jill Barbarino

Introduction

On October 28, 2014, a three-member majority of the National Labor Relations Board ("NLRB" or "the Board") in *Murphy Oil U.S.A., Inc.*[1] revisited and reaffirmed its position set forth in *D.R. Horton* that employers violate the National Labor Relations Act ("NLRA" or "the Act") by requiring covered employees (*virtually all nonsupervisory and non-managerial employees of most private sector employees, whether unionized or not*) to waive, as a condition of their employment, participation in class or collective actions. This reaffirmation comes despite rejection of the Board's position by various federal courts addressing the issue and the long standing and liberal federal policy favoring resolution of disputes via arbitration.

The Board's controversial position is yet another attempt to interject its influence and agenda into the non-union workplace. The last word on the issue raised by *Murphy Oil* will likely only come when the Supreme Court considers it.

Facts of the Case

Murphy Oil USA, Inc. ("Murphy Oil") is the owner and operator of over 1,000 retail fueling stations. Prior to March 6, 2012, Murphy Oil required all job applicants and current employees to execute a "Binding Arbitration Agreement and Waiver of Jury Trial" (the "Agreement").

The Agreement provides in relevant part as follows:

> Excluding claims which must, by statute or other law, be resolved in other forums, Company and Individual agree to resolve any and all disputes or claims each may have against the other which relate in any manner whatsoever as to Individual's employment, including but not limited to, all claims beginning from the period of application through cessation of employment at Company and any post-termination claims and all related claims against managers, by binding arbitration. . . .
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> By signing this Agreement, Individual and the Company waive their right to commence, be a party to, or [act as a] class member [in, any class] or collective action in any court action against the other party relating to employment issues. Further, the parties waive their right to commence or be a party to any group, class or collective action claim in arbitration or any other forum. The parties agree that any claim by or against Individual or the Company shall be heard without consolidation of such claim with any other person or entity's claim.
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> INDIVIDUAL AND COMPANY UNDERSTAND THAT, ABSENT THIS AGREEMENT, THEY WOULD HAVE THE RIGHT TO SUE EACH OTHER IN COURT, TO INITIATE OR BE PARTY TO A GROUP OR COLLECTIVE ACTION CLAIM, AND THE RIGHT TO A JURY TRIAL, BUT, BY EXECUTING THIS AGREEMENT, BOTH PARTIES GIVE UP THOSE RIGHTS AND AGREE TO HAVE ALL EMPLOYMENT DISPUTES BETWEEN THEM RESOLVED BY MANDATORY, FINAL AND BINDING ARBITRATION. ANY EMPLOYMENT RELATIONSHIP BETWEEN INDIVIDUAL AND COMPANY IS TERMINABLE AT-WILL, AND NO OTHER INFERENCE IS TO BE DRAWN FROM THIS AGREEMENT.[2]

Sheila Hobson signed the Agreement when she applied for employment with Murphy Oil in 2008. Two years later, Hobson and three other employees filed a collective action in the Northern District of Alabama pursuant to the Fair Labor Standards Act ("FLSA"), alleging that Murphy Oil failed to pay them and other similarly situated employees for overtime and other work-related activities performed off the clock. Murphy Oil moved to compel the plaintiffs to arbitrate their claims on an individual basis and to dismiss the FLSA claims based on the plaintiffs having signed the Agreement.

Hobson thereafter filed an unfair labor practice charge and the NLRB's General Counsel issued a complaint, alleging that Murphy Oil had violated Section 8(a)(1) of the NLRA by maintaining and enforcing a mandatory

[1] 361 NLRB No. 72, 2014 NLRB LEXIS 820 (Oct. 28, 2014).

[2] *Murphy Oil USA, Inc.*, 361 NLRB No. 72, 2014 NLRB LEXIS 820, at *12-14 (Oct. 28, 2014).

arbitration agreement prohibiting employees from engaging in protected, concerted activities. The complaint also alleged that the Agreement violated Section 8(a)(1) because its language leads employees to believe that they are prohibited from filing unfair labor practice charges.

Following issuance of the General Counsel's complaint, in March 2012, Murphy Oil revised the Agreement it required employees to sign upon hire (the "Revised Agreement"). The Revised Agreement contained the same language as the initial Agreement and inserted a new paragraph that states:

> Notwithstanding the group, class or collective action waiver set forth in the preceding paragraph, Individual and Company agree that Individual is not waiving his or her right under Section 7 of the National Labor Relations Act ... to file a group, class or collective action in court and that Individual will not be disciplined or threatened with discipline for doing so. The Company, however, may lawfully seek enforcement of the group, class or collective action waiver in this Agreement under the Federal Arbitration Act and seek dismissal of any such class or collective claims. Both parties further agree that nothing in this Agreement precludes Individual or the Company from participating in proceedings to adjudicate unfair labor practices charges before the National Labor Relations Board.... including, but not limited to, charges addressing the enforcement of the group, class or collective action waiver set forth in the preceding paragraph.[3]

In October 2012, the General Counsel issued an amended complaint that further alleges that Murphy Oil's enforcement of the Revised Agreement also violates Section 8(a)(1).

The Competing Statutory Provisions at Issue

The NLRA

Section 7 of the NLRA states:

> "Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, *and to engage in other concerted activities* for the purpose of collective bargaining *or other mutual aid or protection*, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a)(3) of this title."[4]

Section 8(a)(1) of the NLRA further states that it "shall be an unfair labor practice for an employer ... to interfere with, restrain, or coerce employees" in the exercise of their Section 7 rights.[5]

FAA

The FAA generally makes employment-related arbitration agreements enforceable. The FAA's enforcement provision provides in pertinent part:

> A written provision in any maritime transaction or a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction, or the refusal to perform the whole or any part thereof, or an agreement in writing to submit to arbitration an existing controversy arising out of such a contract, transaction, or refusal, shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.[6]

The FAA was enacted in 1925 to "reverse the longstanding judicial hostility to arbitration agreements" and to put arbitration agreements on "the same footing as other contracts."[7] A long line of Supreme Court jurisprudence makes clear that there is a clear "liberal federal policy favoring arbitration agreements."[8]

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[3] *Murphy Oil USA, Inc.*, 361 NLRB No. 72, 2014 NLRB LEXIS 820, at *16-17 (Oct. 28, 2014).

[4] 29 U.S.C. § 157 (emphasis added).

[5] 29 U.S.C. § 158(a)(1).

[6] 9 U.S.C. § 2.

[7] *Gilmer v. Interstate/Johnson Lane Corp.*, 500 U.S. 20, 24 (1991).

[8] *See, e.g.*, *CompuCredit Corp. v. Greenwood*, 132 S. Ct. 665, 669 (2012) ("requir[ing] courts to enforce agreements to arbitrate according to their own terms ... even when the claims at issue are federal statutory claims"); *AT&T Mobility LLC v. Concepcion*, 131 S. Ct. 1740, 1749 (2011) (finding that the FAA was "designed to promote arbitration ... [and] embodies a national policy favoring arbitration") (internal citations omitted); *Gilmer v. Interstate/Johnson Lane Corp.*, 500 U.S. 20, 26 (1991) ("[i]t is by now clear that statutory claims may be the subject of an arbitration agreement, enforceable pursuant to the FAA"); *Moses H. Cone Mem. Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24 (1983) (finding "a liberal federal policy favoring arbitration agreements").

***D.R. Horton* (Board Decision)**

On January 3, 2012, the NLRB held in "an issue of first impression" that an employer violates Section 8(a)(1) of the NLRA when it requires employees to agree, as a condition of their employment, that they will not pursue class or collective litigation of claims in any arbitral or judicial forum.[9] The Board reasoned that employees' ability to "join together" in pursuit of redressing workplace grievances, including wage and hour violations, is Section 7 protected activity, which is a "substantive" right that is "central to the Act's purposes."[10] While acknowledging the "liberal federal policy favoring arbitration," the Board held that such policy must accommodate the "substantive" rights of other statutes, including the NLRA.[11]

***D.R. Horton* (Fifth Circuit)**

On December 3, 2013, the Fifth Circuit[12] rejected the Board's aggressive interpretation of the NLRA and overturned the Board's controversial *D.R. Horton* decision.

The Fifth Circuit first reasoned that the use of class action procedures "is not a substantive right."[13] As a basis for this conclusion, the Fifth Circuit relied on Supreme Court and other Circuit Court decisions holding that individuals do not have the substantive right to litigate as a class under the Age Discrimination in Employment Act, or to proceed collectively under the Fair Labor Standards Act (the statute under which the plaintiff in *D.R. Horton* had originally sued).[14] Consequently, since the right to litigate collectively is not a substantive right, waivers to participation in class or collective actions are lawful.

The Fifth Circuit also disagreed with the Board that there is an inherent conflict between the NLRA and FAA.[15] The NLRB took the position that the "policy behind the [the Act] trumped the different policy considerations in the FAA that supported enforcement of arbitration agreements."[16] The Fifth Circuit evaluated the NLRB's position by analyzing two exceptions to the FAA's general rule that arbitration agreements must be enforced according to their own terms: (a) the FAA's "savings" clause which invalidates arbitration agreements only "upon such grounds as exist at law or in equity for the revocation of any contract;" and (b) a "congressional command" to override the FAA.[17] The Fifth Circuit concluded that the "savings" clause was inapplicable in this case based on public policy considerations discussed by the Supreme Court in *AT&T Mobility v. Concepcion*, which held that "requiring the availability" of class or collective arbitration "interferes with fundamental attributes of arbitration[.]"[18] The Fifth Circuit further held there was no text or legislative history in the NLRA containing a "congressional demand" to override the FAA.[19]

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[9] *D.R. Horton, Inc.*, 357 NLRB No. 184, 2012 NLRB LEXIS 11, at *1, 32 (Jan. 3, 2012).

[10] *D.R. Horton, Inc.*, 357 NLRB No. 184, 2012 NLRB LEXIS 11, at *6-7, 13 (Jan. 3, 2012).

[11] *D.R. Horton, Inc.*, 357 NLRB No. 184, 2012 NLRB LEXIS 11, at *36 (Jan. 3, 2012) (citing *Moses H. Cone Memorial Hospital v. Mercury Constr. Corp.*, 460 U.S. 1, 24 (1983); *D.R. Horton, Inc.*, 357 NLRB No. 184, 2012 NLRB LEXIS 11, at *50 (Jan. 3, 2012) (citing *Southern Steamship Co. v. NLRB*, 316 U.S. 31, 47 (1942); *Morton v. Mancari*, 417 U.S. 535, 551 (1974)).

[12] Following the Board's decision, D.R. Horton filed a petition for review to the Fifth Circuit Court of Appeals and the Board cross-applied for enforcement of the Board's Order. *See D.R. Horton Inc. v. NLRB*, 737 F.3d 344, 349 (5th Cir. 2013).

[13] *D.R. Horton Inc. v. NLRB*, 737 F.3d 344, 357 (5th Cir. 2013).

[14] *D.R. Horton Inc. v. NLRB*, 737 F.3d 344, 357 (5th Cir. 2013) (citing *Gilmer v. Interstate/Johnson Lane Corp.*, 500 U.S. 20, 32 (1991) (holding there is no substantive right to class procedures under the Age Discrimination in Employment Act); *Carter v. Countrywide Credit Indus., Inc.*, 362 F.3d 294, 298 (5th Cir. 2004) (holding no substantive right to proceed collectively under the Fair Labor Standards Act)).

[15] *D.R. Horton Inc. v. NLRB*, 737 F.3d 344, 362 (5th Cir. 2013).

[16] *D.R. Horton Inc. v. NLRB*, 737 F.3d 344, 358 (5th Cir. 2013).

[17] *D.R. Horton Inc. v. NLRB*, 737 F.3d 344, 358-59 (5th Cir. 2013).

[18] *D.R. Horton Inc. v. NLRB*, 737 F.3d 344, 359 (5th Cir. 2013) (citing *AT&T Mobility LLC v. Concepcion*, 131 S. Ct. 1740, 1748 (2011)).

[19] *D.R. Horton Inc. v. NLRB*, 737 F.3d 344, 360-62 (5th Cir. 2013). The Fifth Circuit did find, however, that the particular arbitration agreement at issue violated the NLRA, enforcing part of the Board's order. The Court determined that the language of the agreement would lead an employee to reasonably interpret the agreement as prohibiting the filing of a claim with the Board, which is an unfair labor practice. *See D.R. Horton Inc. v. NLRB*, 737 F.3d 344, 364 (5th Cir. 2013).

The NLRB's Decision In *Murphy Oil*

Notwithstanding having "no illusions" that its decision in *Murphy Oil* would be the "last word on the subject," in a 59-page decision, the Board reiterated and endorsed its prior position and addressed its critics head on, including two lengthy dissents from Board Members Harry Johnson and Philip Miscimarra.

The Board majority found that the NLRA is "*sui generis*," meaning that it is unique with "special character" and that it is not "simply another employment-related federal statute."[20] Given its special nature, the NLRB held that the protection for collective action lies at the heart of the NLRA, which along with the FAA must be "carefully accommodate[d]" to finding the class action waivers unlawful.

The Board's reaffirmed its decision in *D.R. Horton* on the following grounds:

(1) Section 7 of the Act grants employees the *substantive* right to act "concertedly for mutual aid or protection," and mandatory arbitration agreements that bar an employee's ability to bring join, class, or collective workplace claims restrict this *substantive* right. This right to pursue litigation concertedly has been upheld by the federal appellate courts.[21]

(2) Agreements that require pursuit of claims on an individual basis violate the NLRA. The Board based this on Supreme Court precedent regarding individual employment contracts and their waiver of collective bargaining rights.[22]

(3) The conclusion that mandatory class action waivers are unlawful under the Act does not conflict with the FAA or its underlying policies because:

   (a) such a finding treats arbitration agreements no less favorably than any other private contract that conflicts with federal law;

   (b) Section 7 rights are *substantive*, which means that they cannot be waived under the FAA like procedural rights found in other statutes;

   (c) the "savings clause" in the FAA affirmatively provides that an arbitration agreement's conflict with federal law is grounds for invalidating an agreement;

   (d) if there is a direct conflict between the NLRA and the FAA, then the Norris-LaGuardia Act – which prevents private agreements that are inconsistent with the statutory policy of protecting employees' rights to engage in concerted activity – requires the FAA to yield to the NLRA as necessary to accommodate Section 7 rights.[23]

After reaffirming *D.R. Horton*, the Board applied its reasoning to the facts at issue in *Murphy Oil* and held that the Agreement and Revised Agreement were unenforceable under the NLRA.[24] Although Murphy Oil's Agreement excluded "claims which must, by statute or other law, be resolved in other forums[,]" such as unfair labor practices, the Board found that this was not sufficient to "countermand the plain meaning of the . . . broad mandatory arbitration and concerted-litigation waiver provisions."[25] As to the new language in the Revised Agreement, which stated that an "[i]ndividual is not waiving his or her right . . . to file a group, class or collective action[,]" the Board held that such language "[left] intact the entirety of the original Agreement" and "at best" created "an ambiguity" that employees would reasonably construe to waive concerted action in all forums.[26]

Criticism of Fifth Circuit and other Circuit Courts

In *Murphy Oil*, the Board directly addressed — and criticized — the Fifth Circuit's rejection of *D.R. Horton*. Among other things, the Board stated that the Fifth Circuit gave too little weight to the "crucial point" that "the Board, like the courts, must carefully accommodate *both* the NLRA and the FAA" and not treat the FAA and its policies as "sweeping far more broadly than the statute or the Supreme Court's decisions warrant."[27] The Board accused the Fifth Circuit of failing to accommodate both statutes and as viewing the NLRA "narrowly[.]"

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[20] *Murphy Oil USA, Inc*., 361 NLRB No. 72, 2014 NLRB LEXIS 820, at *37 (Oct. 28, 2014).

[21] *See Murphy Oil USA, Inc.*, 361 NLRB No. 72, 2014 NLRB LEXIS 820, at *22 (citing *Brady v. National Football League*, 644 F.3d 661, 673 (8th Cir. 2011); *Mohave Electric Cooperative, Inc. v. NLRB*, 206 F.3d 1183, 1188 (D.C. Cir. 2000)).

[22] *See Murphy Oil USA, Inc*., 361 NLRB No. 72, 2014 NLRB LEXIS 820, at *3-5 (Oct. 28, 2014).

[23] *See Murphy Oil USA, Inc*., 361 NLRB No. 72, 2014 NLRB LEXIS 820, at *24-25 (Oct. 28, 2014).

[24] *Murphy Oil USA, Inc.*, 361 NLRB No. 72, 2014 NLRB LEXIS 820, at *84 (Oct. 28, 2014).

[25] *Murphy Oil USA, Inc*., 361 NLRB No. 72, 2014 NLRB LEXIS 820, at *85-88 (Oct. 28, 2014).

[26] *Murphy Oil USA, Inc*., 361 NLRB No. 72, 2014 NLRB LEXIS 820, at *89-90 (Oct. 28, 2014).

[27] *Murphy Oil USA, Inc*., 361 NLRB No. 72, 2014 NLRB LEXIS 820, at *31 (Oct. 28, 2014).

The Board faulted the Fifth Circuit as treating *D.R. Horton* as another case in the already "established [Supreme Court] framework," while ignoring "novel questions[]" unique to national labor policy.[28]

The Board also discussed decisions from the Eighth and Second Circuits that similarly rejected *D.R. Horton*.[29] The Eighth Circuit, in *Owen v. Bristol Care Inc.*, held that arbitration agreements containing class waivers are enforceable in claims brought under the FLSA.[30] In so reasoning, the Eighth Circuit noted that it "owe[s] no deference" to the Board's reasoning [in *D.R. Horton*] since it has "no special competence or experience in interpreting the [FAA]."[31] The Second Circuit decision, *Sutherland v. Ernst & Young LLP*, relying in part on *Owen*, held that a class-action waiver provision in an arbitration agreement should be enforced in accordance with its terms in the context of an FLSA claim.[32]

The Board, not surprisingly, criticized the Eighth Circuit and said that the Board is entitled to "*some* deference, as the primary interpreter of Federal labor law" and that it may "in fact be correct," regarding other areas of law, such as the FAA.[33] The Board also rejected *Sutherland* as merely an "unelaborated endorsement" of the Eighth Circuit.[34]

The Johnson Dissent

In a 24-page dissent, Member Johnson addressed the Board's *sui generis* argument claiming that it is not a reason to ignore precedent from the Supreme Court and the judiciary in construing statutes such as the FAA, an area of law where the Board "possesses no special authority or expertise."[35] He argued that the *D.R. Horton* approach is "unsound" and there "has been near universal condemnation from the . . . [c]ourts."[36] Member Johnson highlighted the "national policy favoring arbitration" and observed that the "stakes in these underlying cases could not be higher for employers. . . ."[37] The Board countered his dissent by contending that his acknowledgment of the strength of the FAA "goes far beyond anything the Supreme Court has held."[38] The Board added that "[a]t some point, the irresistible force of that statute must meet the immovable object of federal labor law."[39]

As to Member Johnson's argument in his dissent that "there was no such thing as a class or collective action in any modern sense when the Act was passed in 1935[,]"[40] the Board majority found this point to be irrelevant because the language of "Section 7 is general and broad."[41] As an example, the Board stated that the pursuit of unionization is "obviously protected" through the use of "modern communication technologies such as social media . . . regardless of whether workers during the Depression had access to Facebook."[42]

The Miscimarra Dissent

Member Miscimarra generally agreed with Member Johnson and the "dozens of court cases that have refused

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[28] *Murphy Oil USA, Inc*., 361 NLRB No. 72, 2014 NLRB LEXIS 820, at *32 (Oct. 28, 2014).

[29] *Murphy Oil USA, Inc*., 361 NLRB No. 72, 2014 NLRB LEXIS 820, at *49-52 (Oct. 28, 2014).

[30] *Owen v. Bristol Care Inc.*, 702 F.3d 1050, 1055 (8th Cir. 2013).

[31] *Owen v. Bristol Care Inc.*, 702 F.3d 1050, 1054 (8th Cir. 2013) (internal citations omitted).

[32] *Sutherland v. Ernst & Young LLP*, 726 F.3d 290, 299 (2d Cir. 2013).

[33] *Murphy Oil USA, Inc*., 361 NLRB No. 72, 2014 NLRB LEXIS 820, at *52-53 (Oct. 28, 2014).

[34] *Murphy Oil USA, Inc.*, 361 NLRB No. 72, 2014 NLRB LEXIS 820, at *53 (Oct. 28, 2014).

[35] *Murphy Oil USA, Inc*., 361 NLRB No. 72, 2014 NLRB LEXIS 820, at *163 (Oct. 28, 2014).

[36] *Murphy Oil USA, Inc*., 361 NLRB No. 36, 2014 NLRB LEXIS 820, at *166-67 (Oct. 28, 2014) (citing to forty-four federal and state court decisions).

[37] *Murphy Oil USA, Inc*., 361 NLRB No. 72, 2014 NLRB LEXIS 820, at *174 (Oct. 28, 2014).

[38] *Murphy Oil USA, Inc*., 361 NLRB No. 72, 2014 NLRB LEXIS 820, at *53-54 (Oct. 28, 2014).

[39] *Murphy Oil USA, Inc*., 361 NLRB No. 72, 2014 NLRB LEXIS 820, at *54 (citing Charles A. Sullivan & Timothy P. Glynn, *Horton Hatches the Egg: Concerted Action Includes Concerted Dispute Resolution*, 64 ALA. L. REV. 1013, 1020 (2013)).

[40] *Murphy Oil USA, Inc*., 361 NLRB No. 72, 2014 NLRB LEXIS 820, at *201-02 (Oct. 28, 2014).

[41] *Murphy Oil USA, Inc*., 361 NLRB No. 72, 2014 NLRB LEXIS 820, at *65 (Oct. 28, 2014).

[42] *Murphy Oil USA, Inc*., 361 NLRB No. 72, 2014 NLRB LEXIS 820, at *65 (Oct. 28, 2014).

to follow *D.R. Horton*[.]"[43] Member Miscimarra added that the Board's decision treats the NLRA as the "protector of 'class' action procedures under all laws, everywhere" and although the Act covers a "broad range" of concerted activities, class litigation is not sufficient to establish protected Section 7 activity.[44] Member Miscimarra extensively discussed the complexity of class litigation and its modern foundation in 1966, "more than three decades after the NLRA's adoption in 1935" suggesting that it could not have been Congress' intent to guarantee "class" procedures within the Section 7 rights.[45] The Board responded that this could "inadvertently cause confusion for some"[46] and that contrary to Member Miscimarra's suggestion, it has not taken the position that the Act *guarantees* a right to collective litigation; it does, however, create a right to "*pursue* joint, class or collective claims if and as available, without the interference of an employer-imposed restraint."[47]

What Happens Next?

On November 6, 2014, Murphy Oil filed a Petition for Review in the Fifth Circuit. The Fifth Circuit is expected to overturn the Board's decision, enforce the Agreement and the Revised Agreement, and compel individual arbitration as it did in *D.R. Horton*. Whether the Board will choose to seek review of that decision with the Supreme Court is unclear, as it declined to file a petition for certiorari following the Fifth Circuit's decision in *D.R. Horton*.

On the other hand, the NLRB General Counsel and Administrative Law Judges ("ALJs") are expected to continue finding that employers commit an unfair labor practice by requiring class action waiver agreements as a condition of employment.

With the federal courts not following the NLRB and the NLRB refusing to heed to the position of federal courts, employers are in a quandary in deciding whether to require mandatory arbitration waivers as a condition of employment. One option is to leave existing class action waiver agreements in place, and litigate unfair labor practice charges through to the circuit court level. This option, of course, is costly and time consuming. Alternatively, and until future resolution, employers may cease the use of mandatory class action waivers in order to avoid costly NLRB litigation.

Until the Supreme Court lays this issue to rest, employers that require class action waivers in mandatory arbitration agreements must recognize that challenges to the agreements through unfair labor practice charges remain a fact of life.

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[43] *See, e.g.*, *Sutherland v. Ernst & Young LLP*, 726 F .3d 290 (2d Cir. 2013); *Owen v. Bristol Care, Inc.*,702 F.3d 1050, 1055 (8th Cir. 2013); *Sylvester v. Wintrust Financial Corp.*, No. 12-C-01899, 2013 U.S. Dist. LEXIS 140381 (N.D. Ill. Sept. 30, 2013); *Morvant v. P.F. Chang's China Bistro, Inc.*, 870 F. Supp. 2d 831, 845 (N.D. Cal. 2012); *LaVoice v. UBS Financial Services*, No. 11 Civ. 08(BSJ)(JLC), 2012 U.S. Dist. LEXIS 5277 (S.D.N.Y. Jan. 13, 2012); *Carey v. 24 Hour Fitness USA, Inc.*, 2012 U.S. Dist. LEXIS 143879 (S.D. Tex. Oct. 4, 2012); *Iskanian v. CLS Transportation Los Angeles*, LLC, 327 P.3d 129 (Cal. Jun. 23, 2014).

[44] *Murphy Oil USA, Inc.*, 361 NLRB No. 72, 2014 NLRB LEXIS 820, at **105, 115 (Oct. 28, 2014).

[45] *Murphy Oil USA, Inc.*, 361 NLRB No. 72, 2014 NLRB LEXIS 820, at *123-30 (Oct. 28, 2014).

[46] *Murphy Oil USA, Inc.*, 361 NLRB No. 72, 2014 NLRB LEXIS 820, at *77 (Oct. 28, 2014).

[47] *Murphy Oil USA, Inc.*, 361 NLRB No. 72, 2014 NLRB LEXIS 820, at *77 (Oct. 28, 2014).

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