

BECKER MEISEL ATTORNEYS AT LAW

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EMPLOYMENT AND LABOR PRACTICE

Mandatory Arbitration of Class Claims Declared Unlawful by Nat'l Labor Relations Board

For many years, the courts have repeatedly and wholeheartedly endorsed the use of arbitration as the preferred method for resolving disputes, including those arising from employment claims and even charges of discrimination under federal and state law. For example, on January 10, 2012, the U.S. Supreme Court in *CompuCredit Corp. v. Greenwood*, enforced an agreement requiring arbitration of statutory claims under the Credit Repair Organizations Act. The principles of the Federal Arbitration Act, the court found, took precedence over the remedial aspects of the CROA, and required that the arbitration agreement be enforced as written, including arbitration of the plaintiffs' class claims under CROA.

In the face of such strong and well established legal principles, the National Labor Relations Board took it upon itself to side-step the Supreme Court and find that an arbitration agreement that bars class claims and required employees to pursue their claims individually through arbitration, violates employees' rights to engage in protected concerted activity under the National Labor Relations Act. In *D.R. Horton, Inc.*, (NLRB, January 3, 2012), a two-member panel of the Board found that the right to pursue class claims was protected by Section 7 of the NLRA, and that the company's arbitration agreement requiring arbitrations of all disputes, including statutory claims, and prohibiting any class actions, violated employees' rights under Section 8(a)(1) of the Act.

The Board's decision effectively invalidates any private arbitration or employment agreement between an employer and its employees that prohibits or limits employees in pursuing class or group claims. This decision is applicable to both union and non-union companies, as employee rights to act collectively covers all workers, whether they are represented by a union or not.

Companies with arbitration provisions in their employment agreements should review them and, if needed, revise them, to avoid potential unfair labor practice charges. And companies with collective bargaining agreements should review their grievance and arbitration provisions for potential non-compliance as well. It is likely that the Horton decision will be appealed to the courts, but until the U.S. Supreme Court says otherwise, the NLRB will enforce this new decision on a case by case basis.

If you would like further information about this recent NLRB decision or how it may potentially affect your company, you can contact Steven R. Weinstein at Becker Meisel LLC, Livingston, New Jersey.

By: Steven R. Weinstein



Steven Weinstein has over 30 years experience in represent-

ing management in labor and employment matters, and has received an AV peer review rating for legal ability and ethical standards from Martindale-Hubbell, the highest peer-based ranking awarded by Martindale. Before entering private practice in 1982, Mr. Weinstein worked as an attorney with the National Labor Relations Board. He is a graduate of Syracuse University, received a law degree from Brooklyn Law School and holds an LL.M. in Labor Law from New York University School of Law, and is a member of the New Jersey, New York and District of Columbia Bars as well as the U.S. Supreme Court and various federal district and appellate courts.

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