

PUBLIC JUSTICE E-LERT

AMERICA'S PUBLIC INTEREST LAW FIRM

January 9, 2012

Happy New Year! It's both a new year and a new day for American workers: the National Labor Relations Board (NLRB) has just decided, as we urged, that workers must be allowed to pursue legal claims as a group. This is a huge victory for tens of millions of Americans, our Class Action Preservation Project, and our Access to Justice Campaign.

On Friday, the NLRB issued its decision that employers cannot require their employees to sign arbitration agreements forcing them to pursue work-related legal claims individually. The NLRB said such agreements interfere with workers' protected rights to join together to improve working conditions, and constitute an unfair labor practice. The ruling applies to most non-management employees in the private sector (whether or not they belong to a union).

To read the NLRB's full decision in *D.R. Horton, Inc.*, [click here](#).

The implications of this decision are enormous. If corporations can ban their employees from working together and pooling their resources to bring group claims about workplace injustices, they effectively will be immune from civil rights statutes, minimum wage laws, and other regulations protecting workers -- even if the corporations have acted illegally. Tens of millions of workers in this country who have little bargaining power individually against their employers have been forced to sign away their rights to seek redress as a group. Now, those contract provisions will no longer be allowed.



Mark Pearce, chairman of the NLRB

Last July, led by Public Justice and the National Employment Lawyers Association (NELA), more than two dozen public interest groups came together on one [amici brief](#) to urge the NLRB to hold as it did.

On the other side, employers' groups argued that a finding of an unfair labor practice would conflict with last year's Supreme Court decision in *AT&T Mobility v. Concepcion*, which held that the federal law on arbitration trumped a state supreme court decision declaring unconscionable a mandatory arbitration clause that prohibited consumers from pursuing their claims as a class action. But the NLRB said *Concepcion* was different because it did not involve federally protected workers' rights.

Special thanks to Michael Subit of Frank Freed Subit & Thomas LLP in Seattle, Wash., for drafting our brief with assistance from Rebecca Hamburg of NELA and Public Justice Senior Attorney Victoria Ni.

As you know, Public Justice has been fighting class and collective action bans on many fronts and under many theories in federal and state courts around the country for more than a decade -- in employment cases and other contexts as well. We believe the NLRB's decision is a landmark one for workers' rights.

So thank you, as always, for supporting us. Only with your help can we do the work necessary to preserve class actions and access to justice for all.

Arthur Bryant
Executive Director
Public Justice and the
Public Justice Foundation