

PUBLIC JUSTICE E-LERT

AMERICA'S PUBLIC INTEREST LAW FIRM

August 2, 2011

Millions of American workers regularly confront poor working conditions, wage and hour violations, and encroachment on their civil rights.

And for those workers, a case being heard before the National Labor Relations Board (NLRB) couldn't be more important: the NLRB is currently considering whether an employer's contractual class action ban contained in a mandatory arbitration agreement with employees runs afoul of the National Labor Relations Act (NLRA). The NLRA protects most employees in the private sector -- both union and non-union.

In *D.R. Horton, Inc.*, twenty-seven organizations nationwide -- led by Public Justice and the National Employment Lawyers Association -- have come together in an *amici curiae* brief urging the NLRB to hold that a class and collective action ban in the workplace violates workers' rights to engage in "concerted activities" under the NLRA and constitutes an unfair labor practice.

Filed in late July, the brief was written on behalf of groups representing some of the most vulnerable and exploited low-wage and immigrant worker populations in this country -- including workers in the building maintenance, car wash, construction, landscaping, food processing, food service, hospitality, light manufacturing, warehousing and shipping, child care, and nursing home industries.



These types of low-wage workers lack the financial and legal resources necessary to enforce their rights through individual lawsuits. Our brief argues that class and collective action bans interfere with a worker's core NLRA right to join together, and are no more enforceable than a "yellow dog contract" prohibiting unionization altogether. The brief also explains that the U.S. Supreme Court's recent decision in *AT&T Mobility v. Concepcion* **did not** overrule clear Supreme Court precedent allowing plaintiffs to resist terms in arbitration clauses on the ground that they interfere with the effective vindication of statutory rights, such as those under the NLRA.

To read our brief, [click here](#).

In all, ten *amicus* briefs were filed in *D.R. Horton, Inc.*, including a joint brief from the U.S. Secretary of Labor and the Equal Employment Opportunity Commission (EEOC). According to these two government agencies, class and collective actions are critical to the enforcement of the employment

laws they administer, and "...a waiver of an employee's right to bring a class or collective action in a mandatory arbitration agreement is unenforceable if it prevents an employee from effectively vindicating his or her statutory rights."

To read the Secretary and EEOC's brief, [click here](#).

Special thanks to Michael Subit of Seattle, Wash., for drafting our brief with assistance from Rebecca Hamburg of the National Employment Lawyers Association and Public Justice Senior Attorney Victoria Ni. The brief was filed on behalf of the following groups:

- Public Justice
- The National Employment Lawyers Association
- The Employee Rights Advocacy Institute for Law & Policy
- The Asian American Justice Center
- The Asian American Legal Defense and Education Fund
- The Asian Law Caucus
- Asian Pacific Legal Center
- CASA de Maryland, Inc.
- CATA (the Farmworker Support Committee)
- The D.C. Employment Justice Center
- The Equal Justice Center
- Equal Rights Advocates
- Friends of Farmworkers, Inc.
- The Lawyers' Committee for Civil Rights Under Law
- The Lawyers' Committee for Civil Rights of the San Francisco Bay Area
- The Legal Aid Society
- The Low Wage Workers Legal Network
- The Maurice & Jane Sugar Law Center for Economic & Social Justice
- The National Employment Law Project
- The National Lawyers Guild Labor and Employment Committee
- The National Partnership for Women & Families
- The National Whistleblowers Center
- The National Women's Law Center
- The North Carolina Justice Center
- Northwest Workers' Justice Project
- The Public Justice Center
- The University of Texas Law School-Transnational Worker Rights Clinic

Finally, and as always, thank you 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