Federal Arbitration Act – Enforceability Of Class-Action Waivers In Employment Arbitration Agreements

Epic Systems Corp. v. Lewis, No. 16-285

In 2012, the National Labor Relations Board ruled that Section 7 of the National Labor Relations Act, which gives employees the right to organize, bargain collectively, and "engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection," includes the right to bring a class or collective action and that an employment agreement that requires employees to resolve disputes on an individual basis in arbitration is therefore an unfair labor practice under Section 8 of the Act. Today, in a 5-4 decision, the Supreme Court held that the NLRB's position is precluded by the Federal Arbitration Act (FAA). Justice Gorsuch's opinion for the Court concluded that the FAA requires courts to enforce arbitration agreements according to their terms—including terms providing for individualized proceedings—and that Section 7 of the NLRA, which does not mention arbitration or class actions, does not contain the clear and manifest congressional command required to displace the FAA. The Court also held that the Board's interpretation of the NLRA does not fall within the FAA's savings clause—which allows courts to refuse to enforce arbitration agreements on grounds that exist "at law or equity for the revocation of any contract"—because a prohibition against bilateral arbitration would interfere with fundamental attributes of arbitration.

Justice Thomas joined the majority opinion in full and also filed a short concurring opinion. Justice Ginsburg filed a dissenting opinion, joined by Justices Breyer, Sotomayor, and Kagan, that sided with the NLRB's position and would have held that Section 7 of the NLRA prohibits the enforceability of agreements calling for bilateral arbitration in the employment context.