Noted employment attorney Curt Surls comments on a recent Supreme Court opinion issued in Epic Systems Corp. v. Lewis

In his first article in his series of instructional articles, Employment Lawyer Curt Surls reviews a recent Supreme Court case that reverses NLRA precedent

Articles by Curt Surls on CELA VOICE

MANHATTAN BEACH, CALIFORNIA, UNITED STATES, September 20, 2018 /EINPresswire.com/ -- The U.S. Supreme Court recently issued an opinion that reverses an Obama-era National Labor Relations Board's interpretation of the National Labor Relations Act (hereinafter "NLRA"), that individualized arbitration provision in employment contracts were not enforceable.

In Epic Systems Corp. v. Lewis, the Supreme Court addressed whether employment contract provision requiring individual arbitration between the employer and employee, instead of collective or class action, is enforceable. In doing so, the opinion also decides two other cases presenting substantially the same issue, Ernst & Young, LLP v. Morris and National Labor Relations Board v. Murphy Oil USA, Inc. Ordinarily, Federal Arbitration Act requires that courts recognize and enforce the parties' arbitration agreement. The exception is where the agreement's provision violates another federal law. In these cases, the employees argued that the individualized arbitration requirement violates the NLRA.

> Epic Systems Corp. and related cases signal a return to the pre-2012 era when individualized arbitration provisions were enforced by the courts."
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> *Curtis Surls, Employment Lawyer*

The majority opinion, written by Justice Gorsuch, noted that "[a]lthough the Arbitration Act and the NLRA have long coexisted—they date from 1925 and 1935, respectively—the suggestion they might conflict is something quite new. Until a couple of years ago, courts more or less agreed that arbitration agreements like those before us must be enforced according to their terms." The Court explained that "[i]n 2012, the Board— for the first time in the 77 years since the NLRA's adoption—asserted that the NLRA effectively nullifies the Arbitration Act in cases like ours."

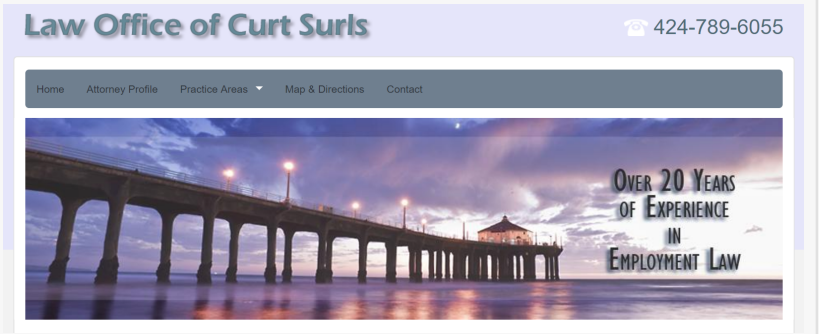
The majority opinion noted that the origin of the Federal Arbitration Act was from a perception,

perhaps justified, that courts were hostile to arbitration agreements and regularly refused to recognize their validity. Therefore, Congress passed the Arbitration Act that "establishes 'a liberal federal policy favoring arbitration agreements.'" Also, "[n]ot only did Congress require courts to respect and enforce agreements to arbitrate; it also specifically directed them to respect and enforce the parties' chosen arbitration procedures." Thus, "[o]n first blush, these emphatic directions would seem to resolve any argument under the Arbitration Act. The parties before us contracted for arbitration. They proceeded to specify the rules that would govern their arbitrations, indicating their intention to use individualized rather than class or collective action procedures. And this much the Arbitration Act seems to protect pretty absolutely."

Employees sought to avoid individualized arbitration due to the Arbitration Act's savings clause, which "allows courts to refuse to enforce arbitration agreements 'upon such grounds as exist at law or in equity for the revocation of any contract.'" Employees argued that "illegality under the NLRA is a 'ground' that 'exists at law . . . for the revocation' of their arbitration agreements, at least to the extent those agreements prohibit class or collective action proceedings.

The Court went on to explain that even if the employees' argument could survive various issues that may not be in their favor, the fundamental problem is that "the saving clause recognizes only defenses that apply to 'any' contract. In this way the clause establishes a sort of 'equal-treatment' rule for arbitration contracts." In essence, "the saving clause does not save defenses that target arbitration either by name or by more subtle methods, such as by 'interfer[ing] with fundamental attributes of arbitration.'"

The Court also rejected the argument



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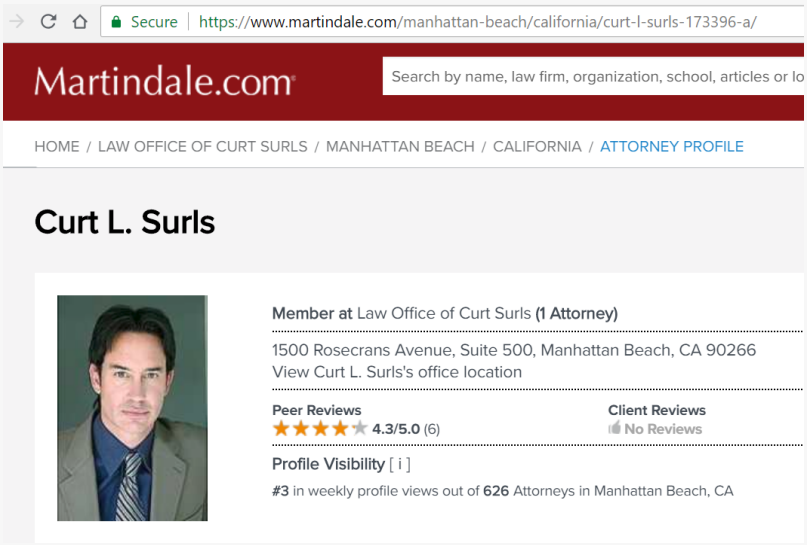

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that in these circumstances, the NLRA displaces the mandates of the Arbitration Act. "A party seeking to suggest that two statutes cannot be harmonized, and that one displaces the other, bears the heavy burden of showing 'a clearly expressed congressional intention' that such a result should follow." The employees failed to do so here. A hardly surprising result, explains the Court, considering that "[t]he notion that Section 7 [of the NRLA] confers a right to class or collective actions seems pretty unlikely when you recall that procedures like that were hardly known when the NLRA was adopted in 1935. Federal Rule of Civil Procedure 23 didn't create the modern class action until 1966; class arbitration didn't emerge until later still; and even the Fair Labor Standards Act's collective action provision postdated Section 7 by years."

Office of Curt Surls, Employment Attorney

Mr. Surls notes that Epic Systems Corp. and related cases signal a return to the pre-2012 era when individualized arbitration provisions were enforced by the courts. Unless the law is amended by Congress, employers will be able to contract with employees to foreclose collective or class action when employment contract dispute arises.

The case is Epic Systems Corp. v. Lewis, No. 16-285, decided May 21, 2018.

The full article will be published on the Blog of Mr. Surls at https://CurtSurlsBlog.Blogspot.com

About Curt Surls

Curt Surls is an Attorney in the areas of Employment Discrimination, Sexual Harassment, and Wrongful Termination, based in California.

Professional Profile on law firm website: https://www.curtsurlslaw.com/attorney-profile/

Listed in the Super Lawyer Directory (https://www.superlawyers.com/) (Super Lawyers is a rating service of outstanding lawyers from more than 70 practice areas who have attained a high-degree of peer recognition and professional achievement. This selection process includes independent research, peer nominations and peer evaluations): https://profiles.superlawyers.com/california-southern/manhattan-beach/lawfirm/law-office-of-curt-surls/7d7bf48f-c2ff-4237-9fde-9017064c7ce2.html

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