Epic Systems Corp. v. Lewis

RBG's Stand for Workers' Rights

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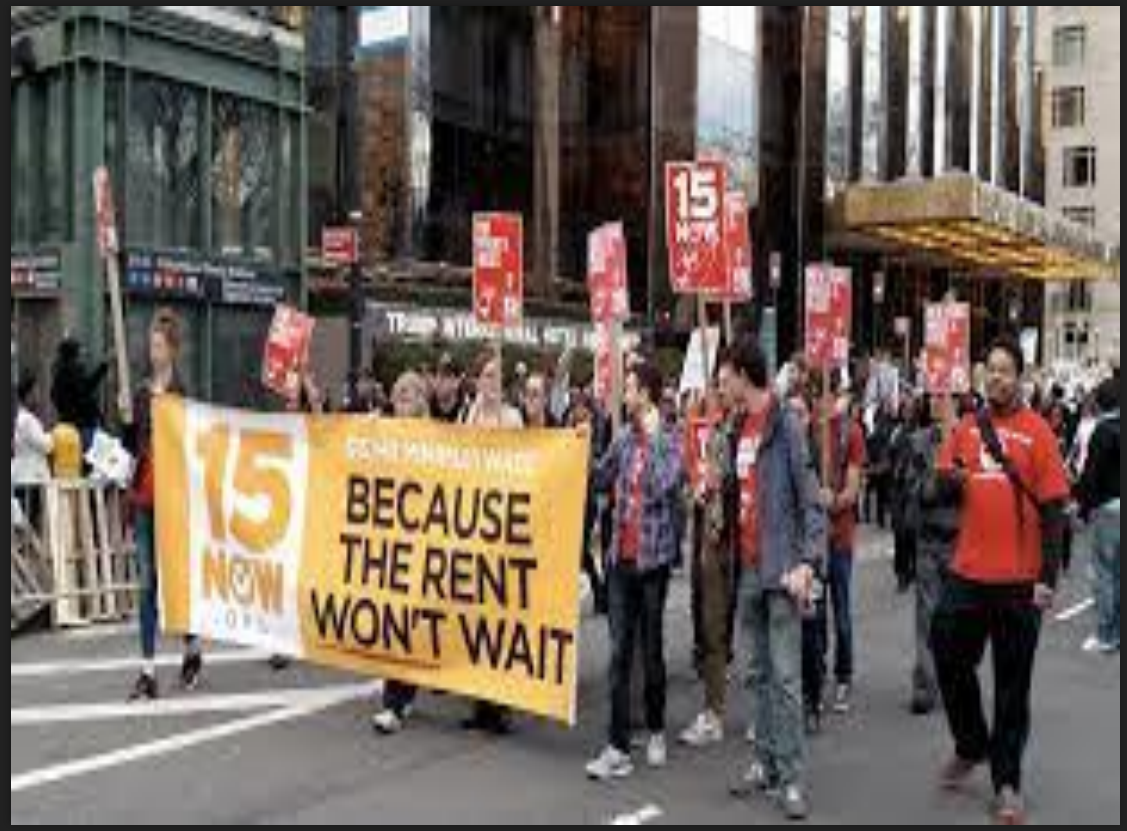
The Case

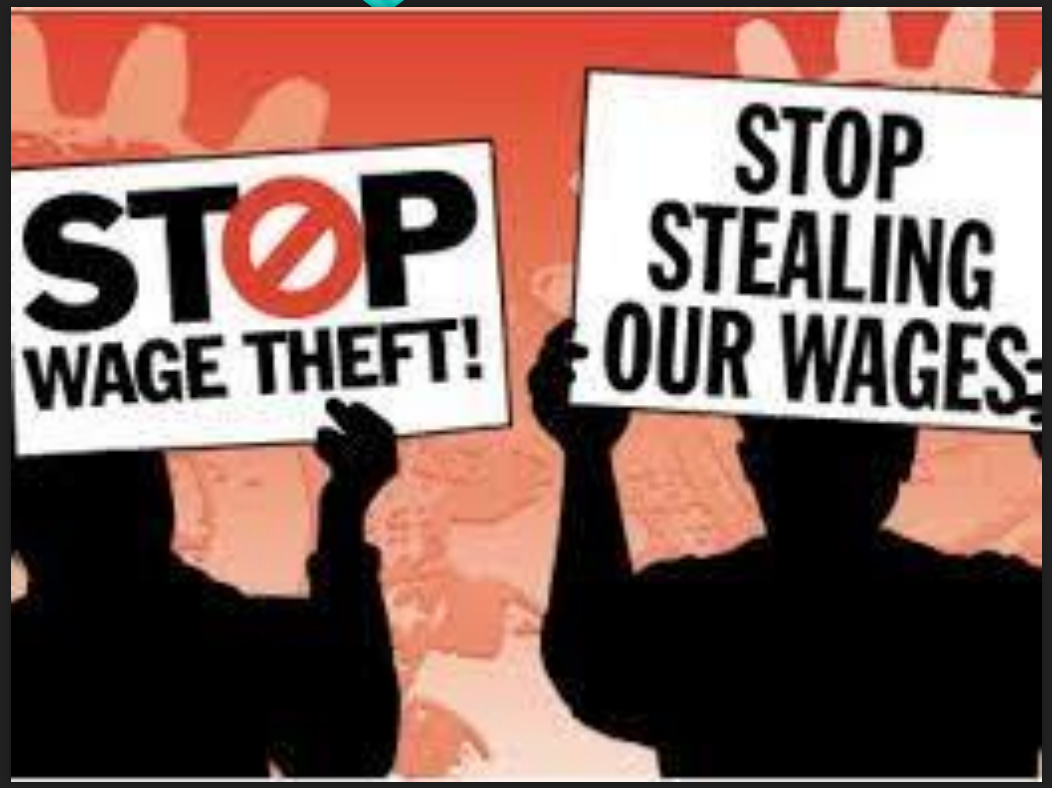
- Decided May 21, 2018.
- Three cases consolidated on appeal from the 5th, 7th, & 9th Circuits.
- Gorsuch for the majority, joined by Roberts, Kennedy, Thomas (concurring), and Alito.
- Ginsburg for the dissent, joined by Breyer, Sotomayor, and Kagan.

The Big Picture

- Decades-long decline in federal rights for workers and unions.
- #MeToo movement, Fight for $15, and Occupy Wall Street impact big-business & male-dominated C-level movers & shakers.
- 5/4 conservative SCOTUS
- Trump is POTUS



The Facts – Majority View



- Plaintiffs signed agreements with their respective employers.
- Agreements contained arbitration clauses that mandated arbitration of claims against the employer and prohibited collective actions.

The Facts – Minority View

- Employers attached arbitration agreement to an email set to employees which stated that by continuing to work for the company, the employees agreed to the terms.
- Agreements prohibited collective action – even in arbitration.

The Issue – Majority View

"Should employers be allowed to agree that any dispute between them will be resolved through one-on-one arbitration?"

"Should employees always be permitted to bring their claims in class or collective actions, no matter what they agreed with their employers?"

The Issue – Minority View

Does the FAA "permit employers to insist that their employees, whenever seeking redress for commonly experienced wage loss, go it alone, never mind the right secured to the employees by the [NLRA] 'to engage in . . . concerted activities' for their 'mutual aid or protection.'?"

The History

2012: NLRB holds that collective litigation is a form of concerted activity under the NLRA.

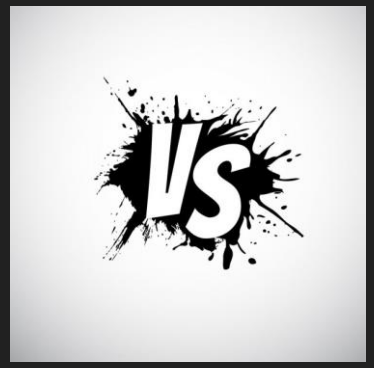
Various Circuit Courts begin to use this decision to invalidate arbitration clauses that prohibit collective action against the employer.

The Statutes

FAA

Federal Arbitration Act

1925



NLRA

National Labor Relations Act

1935

The FAA

- Strong Congressional approval of arbitration agreements.
- "Instructs" federal courts to uphold arbitration agreements EXCEPT "upon such grounds as exist at law or in equity for the revocation of any contract."
- If there is a reason the contract might be invalid, then the arbitration provision might also be invalid.

The NLRA

- Gives private sector employees the right to unionize and collectively bargain with their employer concerning the terms and conditions of employment.

- Prohibits employer action that interferes with the employees' right to engaged in "other concerted activity. . . ."

The Decision

- FAA savings clause recognizes only defenses that apply to ANY contract – i.e., fraud, duress, unconscionability.

- Court applied *AT&T Mobility LLC. v. Concepcion,* 563 U.S. 333 (2011), which held that a state law prohibiting the waiver of collective litigation in the consumer context was NOT a defense under the FAA savings clause.

- Such a defense impermissibly disfavors arbitration in contravention of the FAA's purpose.

The Dissent

- Illegality is a generally accepted contract defense.
- Employer-dictated collective-litigation waivers are unlawful under the NLRA.
- The FAA savings clause allows for the prohibition of such waivers in arbitration agreements.

The Dissent

- FAA's legislative history shows that Congress did not intend the statute to apply to employment contracts.
- Congress envisioned application of the FAA to voluntarily-negotiated agreements.

The Decision

- NLRA does not protect the right to collective litigation, therefore employees may waive their rights to it.
- Collective actions weren't even a thing when the NLRA was drafted.
- "[O]ther concerted activity" means "things employees just do for themselves in the course of exercising . . . rights in the workplace. . ." rather than court-based litigation.

The Dissent

- Compares forced arbitration clauses to "yellow-dog" contracts.
- Such forced agreements contradict the Congressional purpose behind the NLGA and the NLRA.
- NLGA recognized that "the individual, unorganized worker is commonly helpless to exercise actual freedom of contract. . . ."

The Dissent

- Reads the NLRA broadly to protect more than just the right to organize and bargain collectively.

- Suits to enforce employees' rights "fit comfortably under the umbrella of 'concerted activities for the purpose of . . . mutual aid or protection'."

The Dissent

- Congress did not intend to limit employee protections only to those available in 1935.

- Federal courts have recognized that the NLRA shields employees from employer interference when they join together to file complaints with administrative agencies that were not in existence in 1935.

The Decision

- Strong precedent in favor of the Court's decision.
- Court has "rejected *every* effort to date" to "conjure conflicts between the Arbitration Act and other Federal statutes. . . ." (emphasis in original).
- No *Chevron* deference to the NLRB decision, because the NLRB doesn't have the authority to interpret the FAA.

The Dissent

- NLRB and federal courts consistently have held that the NLRA protects employees' from employer interference when the employees' engage in collective action.

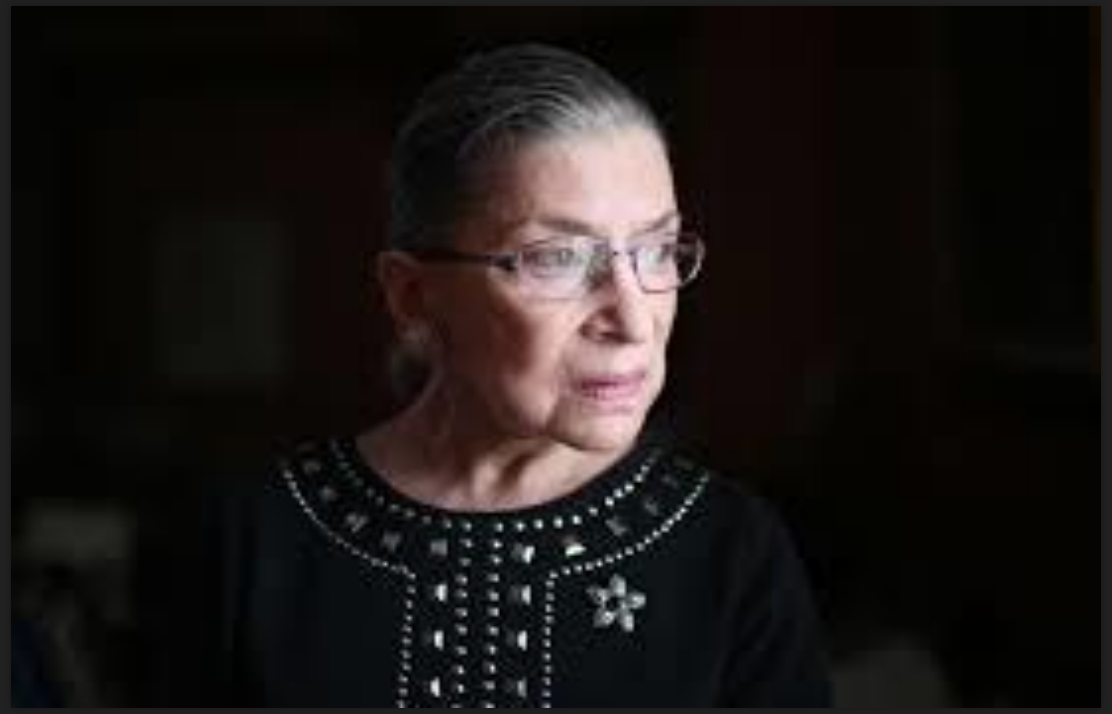
- The NLRB did not interpret the FAA. It simply stated that employers cannot force employees to waive their NLRA rights.

The Dissent

- Focuses on the power imbalance between the employees and their employer. Without collective action, the employees' claims are "scarcely of a size warranting the expense of seeking redress …."

- First mention of the fact that agreeing to individual arbitration was a condition of employment, not a voluntary agreement as Gorsuch determined.

The Take-Away

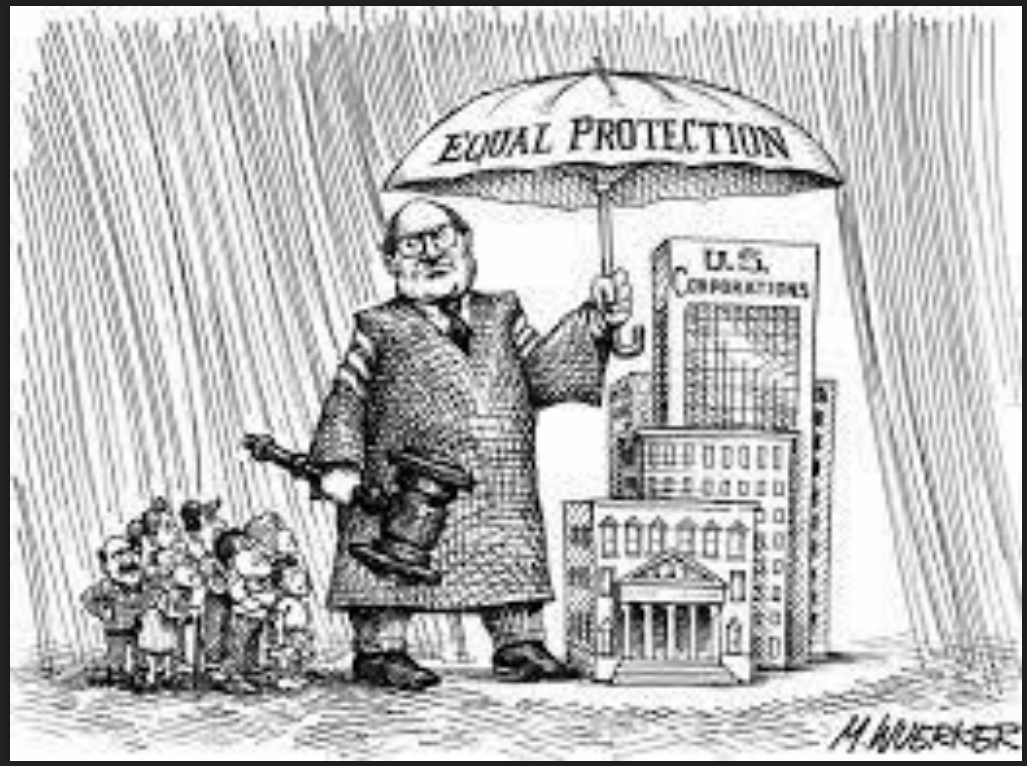


"Today the Court subordinates employee-protective legislation to the Arbitration Act."

"Congressional correction of the Court's elevation of the FAA over workers' rights to act in concert is urgently in order."

The Impact

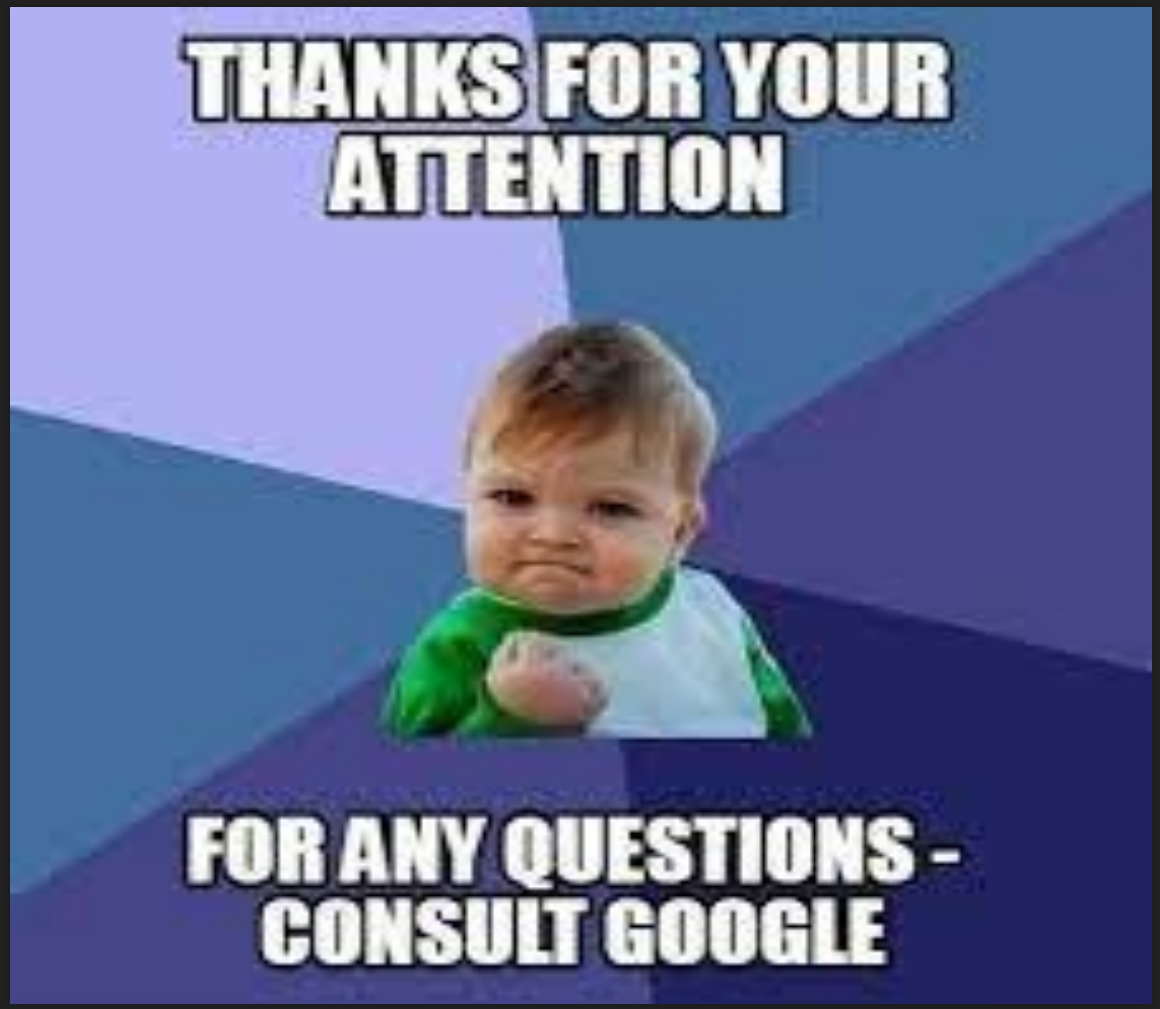
"The inevitable result of today's decision will be the underenforcement of federal and state statutes designed to advance the well-being of vulnerable workers."



The FAIR Act

The Forced Arbitration Injustice Repeal (FAIR) Act would prohibit mandatory arbitration, which takes away the rights of people to take legal action and participate in class-action lawsuits in case of employment, consumer, anti-trust and civil rights disputes.

Questions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FOR ANY QUESTIONS - CONSULT GOOGLE