

# United Mine Workers of America

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22172-1779

September 10, 2013

National Labor Relations Board  
c/o Executive Secretary Gary Shinnars  
1099 14th Street, NW  
Washington, DC 20570-0001

Re: Massey Energy Company, et al., 358 NLRB No. 159 (2012)

Dear Honorable Board Members:

As you are all too aware, the enforcement and appeal proceeding in the above-noted case has been stayed pending a decision by the U.S. Supreme Court in Noel Canning on the authority of a "recess-appointed" Board to issue decisions. Since you now constitute a fully confirmed Board, we suggest there be no further delay in this case while the Supreme Court considers Noel Canning.

Accordingly, recognizing that insofar as the Board has not filed the record or transcript of this case with the D.C. Circuit Court of Appeals, the Agency may seek to have this case remanded to it for further review and consideration. See e.g. Ford Motor Co., v. NLRB, 305 U.S. 364, 368 (1939) (Board's authority over a case continues until the filing of the record of the case with the Court); Lewis v. NLRB, 350 F. 2nd 801 (D.C.C.A. 1965) (Case remanded to Board for reconsideration in light of change in circumstances and law). It is our understanding that this remand procedure was utilized following the decision in New Process Steel, and we suggest it would be particularly warranted in this case given its significant age.

We are hopeful that you will agree that the history and equities of this case require that there be no further delay and that you will facilitate an effort to move this case to a just, final and timely decision.

In advance, we appreciate your consideration of this request, and thank you for any action you may take to have this case returned to the Board for further consideration.

Should you require anything further, or wish to discuss this matter, please do not hesitate to contact us at your convenience.

Sincerely,



Judith Rivlin

cc: Grant Crandall, General Counsel  
Joseph M. Carter, International District 17 Vice President  
Gary Trout, Region II Director  
Donnie Samms, International At-Large Vice President and Region I Director  
Michael Ryan, President, Local Union 8843  
Charles Donnelly, Senior Staff Attorney