

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

**MASSEY ENERGY COMPANY AND ITS
SUBSIDIARY, SPARTAN MINING COMPANY
D/B/A/ MAMMOTH COAL COMPANY**

And

**Case 9-CA-042057
358 NLRB #159 (2012)**

UNITED MINE WORKERS OF AMERICA

Charging Party's Motion Seeking Remand from Court of Appeals

Comes Now the United Mine Workers of America ("Union"), Charging Party in this matter, and by its undersigned counsel respectfully requests that the Board seek to have this case remanded from the D.C. Circuit Court of Appeals for further review and consideration.

This case has been delayed by various procedural challenges, the most recent of which is the Noel Canning "recess-appointed" issue. In the same way that the Board sought and obtained Courts of Appeals remands after New Process Steel, we urge that process be pursued in this matter.

The complained of discrimination in this case occurred in 2004 and 2005, so any further delay caused by the Supreme Court's review of Noel Canning is especially troubling. Thus, whether as a matter of right or by the exercise of discretion, we ask that the Board seek a remand of this case from the D.C. Circuit so the Board may reconsider the matter and issue a decision that would be free of any recess-appointment issue.

By the Union's letter to the Board dated September 10, 2013, the Union requested that the Board consider seeking such a remand. Since then the Union invited the Respondents to join in a Motion seeking Remand, but they have declined.

Respectfully submitted,

Charging Party, UMWA
By Counsel

/s/ Judith Rivlin
Judith Rivlin, Esq.
United Mine Workers of America
18354 Quantico Gateway Drive
Suite 200
Triangle, VA 22172-1779
(703)291-2425 Fax: (703)291-2448

/s/ Charles F. Donnelly
Charles F. Donnelly, Esq.
1300 Kanawha Boulevard, East
Charleston, WV 25301
(304)346-0341 Fax: (304)346-1186

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 30th day of September, 2013, a copy of the foregoing was served via e-mail upon:

Jonathan A. Duffey
Counsel for the General Counsel
Region 9, National Labor Relations Board
3003 John Weld Peck Federal Building
550 Main Street
Cincinnati, OH 45202-3271
jonathanduffey@nlrb.gov

Gregory Robertson
Hunton & Williams, LLP
Counsel for Respondent Alpha Natural Resources
Riverfront Plaza, East Tower
951 East Byrd Street
Richmond, VA 23219
grobertson@hunton.com

/s/ Judith Rivlin
Judith Rivlin, Esq.
United Mine Workers of America
18354 Quantico Gateway Drive
Suite 200
Triangle, VA 22172-1779
(703)291-2425 Fax: (703)291-2448