

**UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT**

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LESLIE’S POOLMART, INC.	)	
	)	
Petitioner	)	
	)	
v.	)	No. 15-60627
	)	
NATIONAL LABOR RELATIONS BOARD	)	
	)	
Respondent	)	

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**MOTION TO HOLD IN ABEYANCE THE BOARD’S FILING OF  
THE AGENCY’S CERTIFIED RECORD  
PENDING THE COURT’S DISPOSITION OF  
THE BOARD’S MOTION TO HOLD THE CASE IN ABEYANCE**

To the Honorable, the Judges of the United States  
Court of Appeals for the Fifth Circuit:

The National Labor Relations Board (“the Board”), by its Deputy Associate General Counsel, respectfully moves this Court to hold in abeyance the Board’s filing of the certified copy of the agency record in this case until the Court rules on the Board’s pending motion to hold this case in abeyance. In support of its motion, the Board shows as follows:

1. On August 25, 2015, the Board issued a Decision and Order in *Leslie’s Poolmart, Inc.*, 362 NLRB No. 184, 2015 WL 5027605.

2. On September 8, Leslie's Poolmart petitioned this Court to review the Board's Order. The certified copy of the agency record is due to the Clerk's office no later than October 20.

3. On September 23, the Board filed a motion asking the Court to hold this case in abeyance until the Court issues decisions in *Murphy Oil USA, Inc. v. NLRB*, 5th Cir. Case No. 14-60800 (oral argument held Aug. 31, 2015), and *Chesapeake Energy Corp. v. NLRB*, No. 15-60326 (presently being briefed), which present identical issues to those in this case.

4. Based on the same concerns that led the Board to move this court to hold this case in abeyance, the Board asks that this Court abate the filing of the agency record until the Court rules on that earlier motion. If the Court grants that motion, the filing of the record would likewise be stayed. If the Court denies that motion, the Board would request an additional 7 days after the Court's ruling in which to file the record.<sup>1</sup>

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<sup>1</sup> In *PJ Cheese, Inc. v. NLRB*, 5th Cir. Case No. 15-60610, which also presents identical issues to those in *Murphy Oil* and *Chesapeake Energy*, the Board likewise filed a motion to hold the case in abeyance pending decisions in those cases, and to abate the filing of the agency record until the Court ruled on the abeyance motion. The Court issued orders on October 7 granting both motions.

WHEREFORE, the Board respectfully requests that the Court hold the filing of the agency record in abeyance until the Court rules on the Board's pending motion to hold this case in abeyance.

Respectfully submitted,

/s/ Linda Dreeben

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Dated at Washington, DC  
this 9th day of October, 2015

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**CERTIFICATE OF SERVICE**

I certify that on October 9, 2015, the foregoing motion was filed with the Clerk of the Court for the United States Court of Appeals for the Fifth Circuit by using the appellate CM/ECF system, and that all counsel are registered CM/ECF users.

s/ Linda Dreeben  
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