

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

MASTEC SERVICES COMPANY, INC.)	
)	
Petitioner)	
)	
v.)	No. 16-60011
)	
NATIONAL LABOR RELATIONS BOARD)	
)	
Respondent)	

UNOPPOSED MOTION TO HOLD 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”) moves the Court to hold this case in abeyance pending the final resolution of *Murphy Oil USA, Inc. v. NLRB*, 5th Cir. Case No. 14-60800, and states the following in support:

1. On December 24, 2015, the Board issued a Decision and Order finding that MasTec Services Company, Inc. (“the Company”), violated Section 8(a)(1) of the National Labor Relations Act (“NLRA”), 29 U.S.C. §§ 151, 158(a)(1), by maintaining a mandatory Dispute Resolution Policy that requires employees, as a condition of employment, to waive the right to maintain class or collective actions in all forums, whether arbitral or judicial. 363 NLRB No. 81, 2015 WL 9460025.

2. In support of its findings, the Board cited to, and applied its decisions in, *D.R. Horton*, 357 NLRB No. 184, 2012 WL 36274 (Jan. 3, 2012), *enforcement denied in part*, 737 F.3d 344 (5th Cir. 2013), *petition for reh'g en banc denied*, 5th Cir. No. 12-60031 (April 16, 2014), and *Murphy Oil USA, Inc.*, 361 NLRB No. 72, 2014 WL 5465454 (Oct. 28, 2014), *enforcement denied in part*, ___ F.3d ___, 2015 WL 6457613. In both cases, this Court rejected the Board's findings that the maintenance of a mandatory arbitration agreement violated Section 8(a)(1) of the NLRA to the extent the agreement barred concerted pursuit of work-related legal claims in any forum, and denied enforcement of that violation.

3. The Board intends to petition the Court to rehear *Murphy Oil* en banc.

4. The Board Decision and Order under review here presents identical issues to those in *Murphy Oil*. Accordingly, in the interest of judicial economy, the Board requests that the Court hold this case in abeyance until the Board's petition for rehearing en banc is resolved and the time for petitioning the Supreme Court for a writ of certiorari has passed.

5. This Court has previously placed numerous similar cases in abeyance pending the outcome of *Murphy Oil*. See, e.g., *Brinker Int'l Payroll Co., L.P.*, Case No. 15-60859 (held in abeyance until petition for rehearing en banc is resolved and time for petitioning the Supreme Court for a writ of certiorari has

passed in *Murphy Oil*); *Prof'l Janitorial Serv. of Houston, Inc.*, Case No. 15-60858 (same); *Am. Express Travel Related Servs. Co.*, Case No. 15-60830 (same).

6. The need for an abeyance is particularly warranted given that the Board has continued issuing orders presenting identical issues to those in *Murphy Oil*, many of which parties may petition this Court to review under the NLRA's broad venue provision. *See Murphy Oil*, 2015 WL 6457613, at *1, 4.

7. Counsel for the Company does not oppose the Board's motion.

WHEREFORE, the Board respectfully requests that the Court hold this case in abeyance pending final resolution of *Murphy Oil*.

Respectfully submitted,

/s/ Linda Dreeben

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Dated at Washington, DC
this 3rd day of February, 2016

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CERTIFICATE OF SERVICE

I certify that on February 3, 2016, 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
Linda Dreeben
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Dated at Washington, DC
this 3rd day of February, 2016