

**UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

GRILL CONCEPTS SERVICES, INC.)	
D/B/A THE DAILY GRILL)	
)	
Petitioner/Cross-Respondent)	
)	
v.)	Nos. 17-1100, 17-1121
)	
NATIONAL LABOR RELATIONS BOARD)	
)	
Respondent/Cross-Petitioner)	
)	
and)	
)	
UNITE HERE LOCAL 11)	
)	
Intervenor)	

**MOTION OF THE NATIONAL LABOR RELATIONS BOARD TO
REMOVE THIS CASE FROM ABEYANCE AND SUMMARILY GRANT
THE COMPANY’S PETITION FOR REVIEW AND DENY THE BOARD’S
CROSS-APPLICATION FOR ENFORCEMENT OF ITS ORDER**

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

The National Labor Relations Board (“the Board”), by its Deputy Associate
General Counsel, respectfully moves this Court to remove this case from abeyance
and summarily grant the Company’s petition for review, and deny the Board’s
cross-application for enforcement. In support of this motion, the Board shows:

1. On June 30, 2016, the Board issued a Decision and Order finding that
Grill Concepts Services, Inc., d/b/a The Daily Grill (“the Company”) had

committed numerous violations of the National Labor Relations Act (29 U.S.C. § 151, *et seq.*, “the Act”). *Grill Concepts Services, Inc., d/b/a The Daily Grill*, 364 NLRB No. 36 (2016). Relevant here, the Board found that the Company had violated the Act by maintaining an arbitration agreement barring employees from concertedly pursuing work-related claims in any forum, arbitral or judicial. In doing so, the Board applied the rule set forth in *Murphy Oil, USA, Inc.*, 361 NLRB 774 (2014), *enforcement denied in relevant part*, 808 F.3d 1013 (5th Cir. 2015), *cert. granted*, No. 16-307 (Jan. 13, 2017).

2. The Company subsequently filed a petition for review of the Board’s Order, which the Court docketed as case number 16-1238, and the Board filed a cross-application for enforcement of its Order, which the Court docketed as case number 16-1287. The Court subsequently granted intervenor status to UNITE HERE Local 11 (“the Union”), the charging party below, which intervened on behalf of the Board.

Thereafter, the Court granted the Company’s unopposed motion to sever from that case the issue of the enforceability of a class-action waiver in an employment arbitration agreement.¹ In doing so, the Court assigned that issue the present docket number (17-1100), docketed the Company’s previously filed

¹ The Court subsequently issued a decision enforcing in part and remanding in part the unsevered portions of the Board’s decision and Order. *Grill Concepts Servs., Inc. v. NLRB*, 2018 WL 1052613, at *1 (D.C. Cir. Jan. 29, 2018).

petition for review under that case number, and transferred counsels' appearances and the Union's status as intervenor. The Court subsequently granted the Board's unopposed motion to docket in this case its previously filed cross-application for enforcement, which the Court assigned case number 17-1121.

3. On March 30, 2017, this Court placed this case in abeyance pending the Supreme Court's decisions in *Epic Systems Corp. v. Lewis*, No. 16-285; *Ernst & Young, LLP v. Morris*, No. 16-300, and *NLRB v. Murphy Oil USA, Inc.*, No. 16-307.

4. On May 21, 2018, the Supreme Court issued its decision in *Epic Systems Corp. v. Lewis*, No. 16-285, 2018 WL 2292444 (U.S. May 21, 2018), holding that employers may lawfully maintain arbitration agreements that bar employees from concertedly pursuing work-related legal claims.² The Board acknowledges that under that decision, the Decision and Order in this case is no longer enforceable. The Board therefore consents to the summary grant of the Company's petition for review, and the summary denial of the Board's cross-application for enforcement, of the Board's Order.

WHEREFORE, the Board respectfully moves this Court to remove this case from abeyance, and summarily grant the Company's petition for review (No. 17-

² The Court issued *Epic Systems* together with *Murphy Oil*, No. 16-307, and *Ernst & Young LLP v. Morris*, No. 16-300.

1100) and deny the Board's cross-application for enforcement (No. 17-1121) of the Board's Order.

Respectfully submitted,

/s/Linda Dreeben

Linda Dreeben

Deputy Associate General Counsel

NATIONAL LABOR RELATIONS BOARD

1015 Half Street, S.E.

Washington, D.C. 20570

Dated at Washington, D.C.
this 22nd day of May 2018

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CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 32(g)(1), the Board certifies that its motion contains 587 words of proportionally-spaced, 14-point type, and that the word processing system used was Microsoft Word 2010.

s/ Linda Dreeben
Linda Dreeben
Deputy Associate General Counsel
National Labor Relations Board
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CERTIFICATE OF SERVICE

I certify that on May 22, 2018, the foregoing motion was filed with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit by using the appellate CM/ECF system, and that all counsel are registered CM/ECF users.

s/ Linda Dreeben
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