

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

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NATIONAL LABOR RELATIONS BOARD,	)	
	)	
Petitioner	)	
	)	No. 16-73514
v.	)	
	)	Board Case No.
AWG AMBASSADOR, LLC,	)	28-CA-118801
	)	
Respondent	)	
	)	

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MOTION OF THE NATIONAL LABOR RELATIONS BOARD  
TO SUMMARILY DENY THE BOARD’S APPLICATION FOR  
ENFORCEMENT OF ITS ORDER

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

The National Labor Relations Board (“the Board”), by its Deputy Associate  
General Counsel, respectfully moves this Court to summarily deny the Board’s  
application for enforcement of its Decision and Order against AWG Ambassador,  
LLC (“the Company”). In support of this motion, the Board shows:

1. In the Decision and Order under review, *AWG Ambassador, LLC*, 363  
NLRB No. 137 (Feb. 25, 2016), the Board found that the Company had violated  
the National Labor Relations Act by maintaining and enforcing 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).

2. On November 3, 2016, the Board filed with this Court an application for enforcement of its Decision and Order, which was docketed as Case No. 16-73514.

3. On January 13, 2017, the Supreme Court granted certiorari in *Murphy Oil*, No. 16-307, and two companion cases, *Epic Systems Corp. v. Lewis*, No. 16-285, and *Ernst & Young v. Morris*, No. 16-300.

4. On March 21, 2017, the Ninth Circuit Mediator stayed proceedings in this case pending review of the aforementioned cases by the Supreme Court. At regular intervals thereafter, the Circuit Mediator extended the stay. *See* Court Orders of Sept. 21, 2017, and Mar. 22, 2018.

5. On May 21, 2018, the Supreme Court issued its decision in *Epic Systems, Murphy Oil*, and *Ernst & Young*. *See Epic Systems Corp. v. Lewis*, No. 16-285, 2018 WL 2292444 (U.S. May 21, 2018). The Court held that employers may lawfully maintain arbitration agreements that bar employees from concertedly pursuing work-related legal claims.

6. On May 22, 2018, the Circuit Mediator released this case from the Mediation Program and set a new briefing schedule.

6. The Board acknowledges that its Decision and Order is no longer enforceable against the Company in light of the Supreme Court's ruling. The Board therefore consents to the summary denial of its application for enforcement.

WHEREFORE, the Board respectfully moves this Court to summarily deny the Board's application for enforcement of its Order.

Respectfully submitted,

/s/Linda Dreeben  
Linda Dreeben  
Deputy Associate General Counsel  
National Labor Relations Board  
1015 Half Street, SE  
Washington, DC 20570-0001

Dated at Washington, DC  
this 23rd day of May 2018

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CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rules of Appellate Procedure 27(d)(2)(A) and 32(g)(1), the Board certifies that this motion contains 360 words of proportionally spaced, 14-point type, and the word-processing software used was Microsoft Word 2010. The Board further certifies that the PDF file submitted to the Court has been scanned for viruses using Symantec Endpoint Protection version 12.1.6 and is virus-free according to that program.

s/ Linda Dreeben \_\_\_\_\_  
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CERTIFICATE OF SERVICE

I hereby certify that on May 23, 2018, I electronically filed the foregoing with the Clerk for the Court of the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system. I further certify that this document was served on all parties or their counsel of record through the appellate CM/ECF system.

s/ Linda Dreeben  
Linda Dreeben  
Deputy Associate General Counsel  
National Labor Relations Board  
1015 Half Street, SE  
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Dated at Washington, DC  
this 23rd day of May 2018