

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

ADVANCEPIERRE FOODS, INC.)	
)	
Petitioner)	
)	
v.)	No. 18-1219
)	
NATIONAL LABOR RELATIONS BOARD)	
)	
Respondent)	
)	
and)	
)	
UNITED FOOD AND COMMERCIAL WORKERS UNION, LOCAL 75)	
)	
Proposed Intervenor)	

OPPOSITION TO MOTION TO HOLD CASE IN ABEYANCE

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

The National Labor Relations Board, by its Deputy Associate General Counsel, responds to AdvancePierre Foods, Inc.’s (“the Company”) motion to hold this case in abeyance pending mediation. As discussed below, the Board is amenable to mediation of this appeal, but opposes the Company’s abeyance request because staying the appeal at this early juncture, before any mediation sessions have been held, would be premature. In support of its position, the Board states as follows:

1. On July 19, 2018, the Board issued its Decision and Order in *AdvancePierre, Inc.*, 366 NLRB No. 133, finding that the Company committed numerous unfair labor practices during the United Food and Commercial Workers Union, Local 75's ("the Union") organization campaign. The Board's Order requires the Company to cease and desist from its unlawful conduct, to offer reinstatement to and make whole an unlawfully discharged employee, and to post and read a remedial notice. *Id.* slip op. at 6.

2. On August 18, 2018, the Company filed its petition for review of the Board's decision. On September 9, the Union filed a motion to intervene in this appeal; the Court has not yet ruled on that motion. The record is due on September 24.

3. On September 10, the Company moved to hold this appeal in abeyance "until this case has been mediated through the Appellate Mediation Program." (Motion, p.1.) The Company explained that it had requested participation in the mediation program, but had not yet received confirmation that the case has been selected for mediation. *Id.* The Company also noted that a briefing schedule had not yet been established. *Id.*

4. The Board is amenable to mediation of this appeal and will participate willingly and fully if the case is accepted by the Court's mediation program. The Board, however, believes that holding the appeal in abeyance at this early juncture

is premature. The case is not yet in mediation, no mediator has been assigned, and the parties have yet to participate in any mediation session. Should these events all occur, the Board is open to revisiting a stay if it would facilitate mediation. Until the case is placed in mediation and the parties engaged in settlement discussions, holding the case in abeyance at this early juncture does not, as the Company claims, ensure that “justice is done.” (Motion, p. 2.)

WHEREFORE, the Board respectfully asks this Court to deny the Company’s motion to hold this case in abeyance.

Respectfully submitted,

s/ Linda Dreeben
Linda Dreeben
Deputy Associate General Counsel
National Labor Relations Board
1015 Half Street, SE
Washington DC 20570
(202) 273-2960

Dated at Washington, DC
this 12th day of September 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 511 words of proportionally spaced, 14-point type, and that the word processing system used was Microsoft Word 2016.

/s/ Linda Dreeben

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

Date at Washington, DC
this 12th day of September 2018

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CERTIFICATE OF SERVICE

I certify that on September 12, 2018, the foregoing motion for an extension of time 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
Linda Dreeben
Deputy Associate General Counsel
National Labor Relations Board
1015 Half Street, SE
Washington, DC 20570

Date at Washington, DC
this 12th day of September 2018