

OFFICE OF THE GENERAL COUNSEL
Division of Operations-Management

MEMORANDUM OM 17-11

January 26, 2017

TO: All Regional Directors, Officers-in-Charge,
and Resident Officers

FROM: Beth Tursell, Associate to the General Counsel

SUBJECT: Impact on pending cases due to Supreme Court's grant of certiorari in
NLRB v. Murphy Oil USA

On January 13, 2017, the Supreme Court granted certiorari in *NLRB v. Murphy Oil USA*, along with *Epic Systems Corp. v. Lewis* (7th Circuit) and *Ernst & Young, et al. v. Morris* (9th Cir.), all presenting the issue of whether arbitration agreements that bar employees from pursuing work-related claims on a collective or class basis in any forum violates Section 8(a)(1) of the Act. Following is guidance regarding how cases involving this issue or related issues should be handled at the Regional level.

The General Counsel is committed to judicial economy and avoiding undue litigation. In light of the grant of certiorari and the fact that this significant issue is now before the Supreme Court, the General Counsel has re-evaluated his prior position of proceeding on these matters. Thus, in cases alleging that the employer is either maintaining and/or enforcing an agreement prohibited by *Murphy Oil*, Regions, after determining the case has merit, are directed to propose that the parties enter informal settlement agreements conditioned on the Agency prevailing before the Supreme Court in *Murphy/Epic/Ernst & Young*. To the extent any charge contains both an allegation that the employer has been maintaining and/or enforcing an unlawful *Murphy Oil* agreement, as well as an allegation unrelated to said agreement, Regions are to propose that the parties enter into an informal settlement agreement relating to the *Murphy Oil* allegation(s) conditioned on the Agency prevailing before the Supreme Court. To the extent charged parties are unwilling to settle the unrelated allegations, Regions should go forward on those found to have merit. In situations involving opt in/opt out clauses in mandatory arbitration agreements or where it is argued that some other feature of these agreements renders them distinguishable from *Murphy Oil*, Regions are directed to hold such cases in abeyance. Other cases may be held in abeyance or motions to stay may not be opposed, depending on the circumstances, and will be considered on a case by case basis.

If you have any questions regarding this matter, please feel free to contact your respective AGC or DAGC in Operations-Management.

/s/
B.T.

cc: NLRBU
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