

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

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DISH NETWORK CORPORATION	)	
	)	
and	)	Cases 16-CA-027316, 16-CA-
	)	027331, 16-CA-027514,
COMMUNICATIONS WORKERS	)	16-CA-027700, 16-CA-
OF AMERICA LOCAL 6171	)	027701, and 16-RC-010919
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**CHARGING PARTY’S MOTION FOR RECONSIDERATION AND  
SUGGESTION FOR CONSIDERATION BY THE FULL BOARD**

Charging Party Communications Workers of America Local 6171 (the Union) moves for reconsideration or consideration by the full Board of the panel’s Decision and Order in this case pursuant to Section 102.48(d) of the NLRB Rules & Regulations. The Board should grant this motion because the panel majority plainly erred in holding that the Union waived its argument that the Board should overrule its decision in *Tri-Cast Inc.*, 274 NLRB 377 (1985). Because the Board’s consideration of whether to overrule its own precedent constitutes an extraordinary circumstance, the Board should withdraw its decision in this case and call for supplemental briefing on this issue.

Neither of the rationales offered by the panel majority for declining to reach the Union’s argument that *Tri-Cast* should be overruled withstands scrutiny. As the Union demonstrates in the accompanying brief, contrary to the panel majority’s

conclusion, a careful review of the Union's opening exceptions brief shows that the Union preserved its request to overrule *Tri-Cast*.

The panel majority's conclusion that it could not reach the Union's argument because it was the Union, rather than the Acting General Counsel, that urged the Board to overrule *Tri-Cast* is similarly unavailing. As the Union explains in the accompanying brief, as a matter of law, once a complaint alleging an unfair labor practice is presented to the Board by the General Counsel, the decision whether to overrule one or more of the Board's earlier decisions in order to decide the case in front of it belongs solely to the Board and does not require a request or concurrence from the General Counsel.

Because the Union did not waive its argument that *Tri-Cast* should be overruled and because the Board had ample authority to overrule its own precedent in this case, the Board should withdraw its decision and call for supplemental briefing on the issue of whether *Tri-Cast* should be overruled.

WHEREFORE, Charging Party Communications Workers of America Local 6171 respectfully requests that the Board grant this motion for reconsideration or for consideration by the full Board.

DATED: May 9, 2012

Respectfully Submitted,

/s/ Matt Holder

Matt Holder

DAVID VAN OS & ASSOCIATES, P.C.

1524 N. Alamo St.

San Antonio, TX 78215

(210) 229-8683

Matthew J. Ginsburg

Kyle A. Mohr

AFL-CIO

815 Sixteenth Street, NW

Washington, DC 20006

(202) 637-5397

## CERTIFICATE OF SERVICE

I, Matthew J. Ginsburg, hereby certify that on May 9, 2012, I caused to be served a copy of the foregoing Charging Party's Motion for Reconsideration and Suggestion for Consideration by the Full Board by U.S. mail and electronic mail on the following:

George Basara  
Buchanan, Ingersoll & Rooney, P.C.  
One Oxford Centre  
301 Grant Street, 20th Floor  
Pittsburgh, PA 15219-1410  
george.basara@bipc.com

Art Laurel  
Attorney  
Region 16  
National Labor Relations Board  
819 Taylor Street, Room 8A24  
Ft. Worth, TX 76102-6178  
Arturo.Laurel@nlrb.gov

/s/ Matthew J. Ginsburg