

**CASE NOS. 17-70948, 17-71062 AND 17-71276  
IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

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**COMMUNICATION WORKERS OF AMERICA, AFL-CIO,**

*Petitioner and Intervenor,*

**v.**

**NATIONAL LABOR RELATIONS BOARD,**

*Respondent and Petitioner,*

**v.**

**PURPLE COMMUNICATIONS, INC.,**

*Respondent, Petitioner and Intervenor.*

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ON CROSS-PETITIONS FOR REVIEW FROM AN ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
365 NLRB NO. 50, CASE NO. 21-CA-095151

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**CROSS-PETITIONER PURPLE COMMUNICATIONS, INC.'S  
REPLY TO UNION'S OPPOSITION TO NLRB MOTION TO REMAND**

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Cross-Petitioner Purple Communications, Inc. (“Purple”) hereby replies to Communications Workers of America’s (the “Union’s”) January 9 opposition to the NLRB’s motion to remand this case. (Dkt. Entry 85). Purple supports the Board’s motion, because remand is compelled by the Board’s recent decision to overrule the legal standard set by the case presently on appeal. *See Caesars Entertainment Corp. d/b/a Rio All-Suites Hotel & Casino*, 368 NLRB No. 143 (Dec. 16, 2019). The Supreme Court has long held remand to the Board is required whenever an intervening change in the agency’s legal standard arises during an appeal. *See Food Store, Inc. v. NLRB*, 417 U.S. 1, 10, n.10 (1974). The Union has cited no contrary authority in its opposition to the Board’s motion, *i.e.*, no case in which this Court has denied a Board motion to remand after the Board overruled the case under review.

The Board’s Reply filed today also correctly observes that the Union’s arguments pertaining to the non-recusal of a Board member in the *Rio* case and related Board actions should only be considered by the Court, if at all, after the Union’s objections are first considered and addressed by the Board. That is the purpose of the remand.

It is also worth noting, though not mentioned in the Union’s opposition, that the overbroad recusal analysis on which the Union relies is inconsistent with the Board’s recently published Report on member recusals, and that Report’s analysis

of the Board's *Hy-Brand* decision(s) in particular. *See National Labor Relations Board Ethics Recusal Report* (Nov. 19, 2019), available at <https://www.nlr.gov/reports/other-agency-reports/ethics-recusal-report>.

Also omitted from the Union's opposition is the fact that Board Member Emanuel resigned his employment with the Littler firm upon being appointed to the Board in September, 2017, more than two years ago. Under the plain language of Executive Order 13770 (Jan. 28, 2017), Member Emanuel was only required to recuse himself from participation in a particular matter involving specific parties in which his former employer represented a party for a two-year period from the date of his appointment. That recusal period expired months before any of the actions in the present case about which the Union's opposition complains.

For the reasons stated above and in the Board's motion, the motion to remand should be granted.

*/s/ Maurice Baskin*

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**CERTIFICATE OF COMPLIANCE**

Pursuant to FRAP 32(g)(1), I hereby certify that this reply contains 376 words of proportionally-spaced, 14-point type, and the word processing system used was Microsoft Word 2010.

/s/ Maurice Baskin  
Counsel for Cross-Petitioner

**CERTIFICATE OF SERVICE**

I hereby certify that on this 13th day of January, 2020, I electronically filed a true and correct copy of the foregoing using the CM/ECF system, thereby sending notification of such filing to all counsel of record.

/s/ Maurice Baskin  
Counsel for Cross-Petitioner