

NLRB Extends Deadline for Amici to Address Purple Communications Ruling

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On August 31, 2018, the National Labor Relations Board (“NLRB” or “Board”) extended the deadline for public comment regarding whether the Board should revisit its 2014 ruling in *Purple Communications*, 361 NLRB 126 (2014). Employers will recall that the Board’s decision in *Purple Communications* opened the doors for employees to make use of their employer’s email system to engage in union organizing and other protected concerted activities.

The Board’s request for briefs from amici was initially issued August 1 in a case styled *Caesars Entertainment Corp.*, Case 28-CA-060841. Specifically, the Board requested that interested amici submit briefing regarding the following questions:

- Should the Board adhere to, modify, or overrule *Purple Communications*?
- If you believe the Board should overrule *Purple Communications*, what standard should the Board adopt in its stead? Should the Board return to the holding of *Register Guard* or adopt some other standard?
- If the Board were to return to the holding of *Register Guard*, should it carve out exceptions for circumstances that limit employees’ ability to communicate with each other through means other than their employer’s email system (e.g., a scattered workforce, facilities located in areas that lack broadband access)? If so, should the Board specify the circumstances in advance or leave them to be determined on a case-by-case basis?
- The policy at issue in this case applies to employees’ use of the Respondent’s “[c]omputer resources.” Until now, the Board has limited its holdings to employer email systems. Should the Board apply a different standard to the use of computer resources other than email? If so, what should that standard be? Or should it apply whatever standard the Board adopts for the use of employer email systems to other types of electronic communications (e.g., instant messages, texts, postings on social media) when made by employees using employer-owned equipment?

Briefs from amici must be filed by October 5.

Labor watchers have been tracking this issue closely since the Board regained a Republican majority with the confirmation of Member John Ring. We will be following this case on the blog, so stay tuned for further developments.

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