

Employers Must Allow Email Use for Organizational Activities

In a reversal of previous practice, employees may use their employer's email system for labor organizing, the National Labor Relations Board ruled.

The new case involved the right of employees to "communicate with one another regarding self-organization at the jobsite" under Section 7 of the National Labor Relations Act. In 2007 the NLRB had found that employees were not entitled to use employer email systems for such activity because the email system was owned by the employer.

Reversing the 2007 decision, the NLRB said emails have "effectively become a 'natural gathering place,' pervasively used for employee-to-employee conversations" regarding their employment. "Neither the fact that email exists in a virtual (rather than physical) space, nor the fact that it allows conversations to multiply and spread more quickly than face-to-face communications, reduces its centrality to employees' discussions, including their Section 7-protected discussions about terms and conditions of employment. If anything, email's effectiveness as a mechanism for quickly sharing information and views *increases* its importance to employee communication."

Because email is important for employee-to-employee communications, employees should be allowed to use employer email systems. Such use, the NLRB said, "will rarely interfere with others' use of the email system or add significant incremental costs, particularly in light of the enormous increases in transmission speed and server capacity" for hosting emails.

The decision applies only to employees who already have been granted access to the employer's email system in the course of their work and does not require employers to provide access. An employer may justify a total ban on nonwork use of email, including Section 7 use on nonworking time, by "demonstrating that special circumstances make the ban necessary to maintain production or discipline." The NLRB warned that, because "limitations on employee communications should be no more restrictive than necessary to protect the employer's interests, we anticipate that it will be the rare case where special circumstances justify a total ban on nonwork email use by employees."

The NLRB wrote that the decision "does not prevent employers from continuing, as many already do, to monitor their computers and email systems for legitimate management reasons, such as ensuring productivity and preventing email use for purposes of harassment or other activities that could give rise to employer liability." However, the decision notes that monitoring cannot increase during "an organizational campaign or focusing its monitoring efforts on protected conduct or union activists."

Purple Communications, Inc. and Communications Works of America, AFL-CIO, NLRB Nos. 21-CA-095151, 21-RC-091531 and 21-RC-091584, issued Dec. 11, 2014.