

## Purple Communications NLRB Decision Teed Up For Appeal?

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In a curious brief decision last week, the NLRB determined Purple Communications Inc. had conceded that there existed no “special circumstances” justifying its corporate email policy. As a result, the board entered an order confirming that the company’s email policy violated the National Labor Relations Act (NLRA). As you may remember [from a previous post](#), the NLRB’s 2014 decision in *Purple Communications* set off a bit of a firestorm when the board concluded that the company’s email policy was unlawful. In making that move, the NLRB partially overruled its 2007 decision in *Register Guard* and held that “employee use of email for statutorily protected communications on nonworking time must presumptively be permitted by employers who have chosen to give employees access to their email systems.” In the decision, the board acknowledged however that “[a]n employer may rebut the presumption by demonstrating that special circumstances necessary to maintain production or discipline justify restricting its employees’ rights.” The case, which has had a long road through the NLRB, was remanded to the original administrative law judge (ALJ) to allow the parties to introduce evidence on whether the company’s electronic communications policy was lawful under the board’s new rule. Purple Communications took the position before the ALJ that it would not argue that any “special circumstances” existed under the NLRB’s new rule, which justified the electronic communications policy. As a result, the judge ruled that Purple Communications had not rebutted the presumption and therefore its policy is unlawful. The ALJ’s order was appealed back to the board where the company again conceded that it did not show special circumstances justifying its policy and instead argued that the NLRB’s *Purple Communications* decision was wrongly decided. The board, which still retains a 2-1 Democratic majority with two empty seats, rejected the opportunity to overrule itself and confirmed the ALJ’s decision. A copy of the decision is available [here](#). It would appear that an appeal of this *Purple Communications* decision to the U.S. Court of Appeals for the D.C. Circuit is in the cards. Stay tuned.

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