

Purple Haze – NLRB Delays Decision On Employee Use Of Company Email Systems

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Employers will have to wait a while longer to see if the NLRB will overturn its existing precedent allowing employers to bar employees from using the company email system for non-job-related solicitations. Such a prohibition is critical in the context of a union organizing campaign and the Board has followed this rule since its *Register Guard* decision in 2007. In the recent [Purple Communications, Inc. case](#), the ALJ relied on *Register Guard* and dismissed the portion of the complaint that alleged the employer violated Section 8(a)(1) of the Act by maintaining a policy “prohibiting employees from using Purple’s email system for any nonbusiness reason.” The NLRB General Counsel and the Union urged the Board to overturn *Register Guard* and hold that employees who are permitted to use their employer’s email for work purposes have the right to use it for Section 7 activity. On May 1, 2014, the NLRB announced it was inviting the filing of briefs from the parties and interested *amici* on the issue, in a move many thought was a signal of the

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Board's willingness to perhaps overturn *Register Guard*. The Board's announcement can be found [here](#). The Board decided the *Purple Communications* case on September 24, 2014, but decided not to resolve the email policy issue with the rest of the case. The Board decision noted, "we sever and hold for further consideration the question whether Purple's electronic communications policy was unlawful" and whether *Register Guard* should be overturned. While the Board did not indicate when they would decide this issue, employers should continue to watch this closely as the ultimate outcome of this question could have a dramatic impact on future union organizing efforts. Some of our prior coverage of this issue can be found [here](#).