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Purple In The Face: Union Urges Federal Court To Permit Non-Business Use Of Company Email Systems By Employees

January 23, 2018 | National Labor Relations Board,Labor And Employment

David J. Pryzbylski
Partner

Many companies have policies that limit or outright restrict the use of their email systems by employees for non-work related purposes, but are those policies lawful? According to an infamous Dec. 2014 ruling by the National Labor Relations Board (NLRB) – *Purple Communications* – such policies may run afoul of the National Labor Relations Act (NLRA). Specifically, in *Purple Communications*, the board concluded that the company's email policy completely banning personal use of the employer's email system was unlawful. The NLRB 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 other words, the board effectively mandated that if a company gives an employee a company email account, the employer generally must permit that employee to use the email system during nonworking time for communications protected by the NLRA – even if the communications are not in furtherance of the worker's job duties. For example, an employee would be permitted to communicate about a union organizing drive or perceptions related to the worker's terms and conditions of employment (*e.g.*, salary, benefits, etc.). Accordingly, the board took the position that company policies categorically banning any "non-business" use of employer email systems generally violated the NLRA. The ruling applies to union and non-union companies alike. Purple Communications appealed the NLRB's ruling and the case is pending at the U.S. Court of Appeal for the Ninth Circuit. The company has raised various arguments to the court in an attempt to invalidate the board's ruling, including that the agency's decision violates employers' property rights in their technology and communications systems. Fast forward to now. The Communications Workers of America (CWA) union filed a brief on Jan. 19 urging the court to back the NLRB's ruling and force companies to permit workers to use employer email servers for non-work related purposes. A decision in the case is expected later this year. Even if the court upholds the agency's ruling, a CWA victory may be short lived because the NLRB's new general counsel, Peter Robb, issued a memo late last year indicating his office may be seeking to have the board overturn the decision. We'll see who has the final say.

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