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Changes Coming To NLRB's Stance On Company E-Mail Policies?

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The National Labor Relations Board (NLRB) made waves several years ago when it issued a ruling that declared employers, generally, cannot prohibit employees from using a company's email system for union organizing purposes or other activities protected by the National Labor Relations Act. The ruling applied to both union and non-union employers.

In December of last year, NLRB General Counsel Peter Robb issued a memo indicating that his office may seek to get various board precedent from the prior administration overturned, including the agency's stance on employee use of company email servers. It appears we are one-step closer to potentially getting new guidance on whether the NLRB will allow employers to ban any non-business use of their email systems.

On August 1, the agency issued a press release noting it was inviting briefing on the issue in a pending case. The release specifically states: "In a notice issued today, the National Labor Relations Board invites the filing of briefs on whether the Board should adhere to, modify, or overrule *Purple Communications, Inc.*, 361 NLRB 1050 (2014). In *Purple Communications*, the Board held that employees who have been given access to their employer's email system for work-related purposes have a presumptive right to use that system, on nonworking time, for communications protected by Section 7 of the National Labor Relations Act. In doing so, the majority in *Purple Communications* overruled *Register Guard*, 351 NLRB 1110 (2007),

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which held that while union-related communications cannot be banned *because* they are union-related, facially neutral policies regarding the permissible uses of employers' email systems are not rendered unlawful simply because they have the incidental effect of limiting the use of those systems for union–related communications.

In addition, while *Purple Communications* and *Register Guard* addressed only email systems, the Board is also inviting comment on the standard it should apply to evaluate policies governing the use of employer-owned computer resources other than email. The case is *Caesars Entertainment Corporation d/b/a Rio All-Suites Hotel and Casino*, 28-CA-060841. Chairman John F. Ring was joined by Members Marvin E. Kaplan and William J. Emanuel in issuing the Notice and Invitation to File Briefs. Members Mark Gaston Pearce and Lauren McFerran dissented." The implications of this case would be very far-reaching, as the decision will apply to the vast majority of private-sector employers in the U.S. Stay tuned.