

# NLRB Rules that Employees may use Employer E-mail System to Engage in Concerted Activity

In a recent decision, the National Labor Relations Board (NLRB) ruled that employees who are granted access to their employer's e-mail system for business purposes are generally entitled to use these work e-mail systems to engage in discussions about the terms and conditions of their employment while on non-working time. This decision, which applies to both union and non-union workplaces, overruled a precedential decision issued by the NLRB in 2007. As a result of this decision, many employers may need to revise their employee handbook provisions regarding the use of the employer's computer systems in order to avoid a potential unfair labor practice charge.

By Jack Blum, former Associate

In *Purple Communications*, 361 N.L.R.B. No. 126 (2014), an employer assigned to its employees individual e-mail accounts on its e-mail system, which the employees could access from both their workstations and their personal computers and smartphones. The employees' use of the employer's e-mail system was subject to several provisions set forth in the employer's handbook. One provision stated that access to the employer's e-mail system "should be used for business purposes only." Another provided that employees were "strictly prohibited" from using the e-mail system to engage in activities on behalf of "organizations or persons with no professional or business affiliation with the Company" or to send "uninvited e-mail of a personal nature."

The NLRB charges at issue in *Purple Communications* arose out of an unsuccessful union organization election at two of the employer's worksites. The union filed objections to the election results, claiming that the employer's electronic communications policy interfered with the election. It also filed an unfair labor practice charge with the NLRB. Based on the union's complaint, the NLRB's general counsel issued a complaint against the employer regarding the policy.

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