Published on *The National Law Review* https://natlawreview.com

National Labor Relations Board (NLRB) Reconsiders Employee Use of E-mail Systems

Article By:

David L. Woodard

Under current law, employees have no statutory right to use their employer-provided email for Section 7 purposes. However, on April 30, 2014, the **National Labor Relations Board** (NLRB or the Board) released a Notice and Invitation to File Briefs asking advocates to submit their position as to whether the Board should overturn its decision in *Register Guard*, 351 NLRB 1110 (2007) which held that employees do not have the statutory right to use their employer's email system for non-business purposes, including Section 7 activity.

The NLRB released the invitation in response to an Administrative Law Judge's decision in , where the judge dismissed an allegation that the employer violated Section 8(a)(1) of the National Labor Relations Act (NLRA) by maintaining policy prohibiting personal use of its electronic equipment and systems. In response, the General Counsel of the NLRB and the AFL-CIO asked the Board to overrule its decision in Register Guard and adopt a rule that employees who are permitted to use their employer's email for work purposes also have the right to use it for Section 7 activity, subject only to the need to maintain production and discipline.

The Board has given interested parties the opportunity to weigh in on several questions, including: (1) should the Board reconsider its conclusion that employees do not have a statutory right to use their employer's email system (or other electronic communications systems) for Section 7 purposes and (2) if the Board overrules its decision, what standard(s) of employee access to the employer's electronic communications systems should be established?

If the Board's decision in is overruled, employees would be allowed to use their employer-provided email accounts and electronic systems to engage in a wide range of Section 7 activities including, but not limited to: (1) organizing a strike or picketing to improve working conditions, (2) forming or attempting to form a union among the employees of a company, and (3) joining a union whether the union is recognized by the employer or not.

Overruling the decision will also present the question of whether employers who provide email access to employees for work purposes would be obligated to provide access to company email during non-work time. Interested parties have until June 16, 2014 to file briefs with the Board in Washington, D.C.

National Law Review, Volume IV, Number 133