

## NLRB Hacks Email Systems of Every Business In the U.S.

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Earlier today, **the NLRB reversed existing precedent and granted all employees the right to use their employer's email systems for union organizing and other forms of protected concerted activity**. In *Purple Communications, Inc.*, the employer's policy limited employee use of its email and other electronic systems to "business purposes only" and "specifically prohibit[ing]" certain uses by employees. While the employer had a policy that all parties acknowledged complied with existing law, the Board reversed course, declaring 2007 decision in *Register Guard*, was "clearly incorrect."

The Board majority contends that its decision was “carefully limited,” because it applies only to employees that “have already been granted access to the employer’s email system in the course of their work and does not require employers to provide such access.” However, Board Member Johnson in dissent argues, “that the new rule is a radical one is unsurprising given that my colleagues have both disregarded the substantial differences between email and face-to-face communication and have failed to consider the revolutionary social networking developments that have occurred since *Register Guard* issued, which make access to employer email systems even more unnecessary for employees to engage in Section 7 activity.”

The Board majority held that an employer could “justify a total ban on nonwork use of email, including Section 7 use on nonworking time, by demonstrating that special circumstances make the ban necessary to maintain production or discipline;” or, “absent such justification, may apply uniform and consistently enforced controls over its email system to the extent such controls are necessary to maintain production and discipline.” However, that potential limitation ignores the realities of the modern workplace. As dissenting Board Member Miscimarra pointed out the current state of electronic communication “render implausible any suggestion that employees are unreasonably prevented from engaging in NLRA protected communications absent a statutory right to conduct such activities on the employer’s business email system.”

Given the breadth and scope of this ruling, future appellate review is likely.

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