No Right to E-mail: NLRB Looks Through the Looking Glass & Sees Absolutely No Problem

December 29 2007, by Mary Anne Simpson

The NLRB recently handed down a decision relating to the use of e-mail by an Oregon newspaper guild, (union) and found what is and what was, isn't necessarily true no more.

A recent decision by the National Labor Relations Board, (NLRB), has newspaper guild members grounded along the Northwest rocky shores of Cape Disappointment. As most seafarers know the cross currents and tricky passage along the rocky coast of Washington and Oregon have been the watery grave of many of fine vessels. The case decided December 16, 2007 by the NLRB, The Guard Publishing Company d/b/a, The Register Guard case, can be read at: www.nlrb.gov/shared_files/Board%20Decisions/351/V35170.pdf .

The Gist of the Story:

A newspaper located in Eugene, Oregon, The Register Guard disciplined an employee/president of the union, (Eugene Newspaper Guild) for using the e-mail system to disseminate union business. This issue was combined with other unfair labor practices involving the company´s refusal to withdraw its proposal to ban e-mail use for union business only, and impinging on the unions rights to communicate with its employees. The problem started with a union rally, wherein the newspaper sent e-mails to all employees that the rally posed a safety risk because there were suspected "anarchists" that would be attending. No

anarchists showed and this incident began a cat and mouse game to correct the e-mail mis-reporting the safety issue and Herculean attempts to miss the jagged rocks of the company's prohibition on non-business related e-mails.

The good ship, Eugene Newspaper Guild got a pass on the first e-mail correcting the story, but the ship grounded on unfettered solicitations and hairs were split on what are basic rights to communicate by e-mail. The hair splitting really got interesting when the NLRB found that since the Guild did not formally request at the bargaining table that the newspaper withdraw the ban on union e-mails proposal, there was no bad faith in bargaining. The union had filed an unfair labor practice that was dismissed administratively. Since there was no "insistence" by management of an unlawful proposal---no problem. A real head scratcher.

The fact the employer allowed United Way communications and other personal e-mails made no difference because this NLRB jumped over precedent and relied on a case in a US District Court. In order to find discrimination there must be discrimination of "like" communications. It would take the form of if one employee sent an e-mail dissuading union membership, the union would be allowed the same right to e-mail. Since the likelihood of this occurring is nil, the current criteria for finding discrimination essentially shuts down modern technology in communications. .

Some Overall Points:

As a brief primer on the subject, employees have certain rights to organize and hold elections for representation by unions. These are known as Section 7 rights under the National Labor Relations Act. A companion of these rights are sections 8 (a) 1 and 8 (a) 5 which prohibit employers from disciplining or harassing employees in exerting the right

to engage in forming unions, participating in bargaining collectively for wages, hours and working conditions. The hook is managements right to keep the workplace tidy and run the everyday operations of the company. Thus, the good ship, Eugene Newspaper Guild, had a treacherous route to chart before clear skies and open water could be realized.

The good ship, Eugene Newspaper Guild, had a compass, precedent set by other decisions by the NLRB which narrowed the passage way to almost stream access. I will not put the reader to sleep with selling Avon versus selling a personal car exceptions and the other rock slides that have occurred in the past decades.

The basic route available to the good ship, Eugene Newspaper Guild was the basic principle that a company cannot discriminate by prohibiting only union communications. What the Guild was not prepared for was re-defining what is a rock and what is safe passage. A rock is only a rock if it is shaped like another rock. If it is not identically shaped, it is not a rock. It´s not okay to prohibit only union e-mail business, but did the company insist on the proposal. More importantly, did the Guild object in the proper manner. By filing an unfair labor practice was this an indication of a rejection of the "unlawful proposal? "No," says the NLRB.

There is a big dissent in the opinion, one Board member alludes to the Rip Van Winkle approach by the tired out of date NLRB. This is noteworthy, but the newspaper industry itself has become somewhat of an anachronism. Syndicated and local newspapers are clawing for ways to stay afloat. New Internet products including blogs, and real time news reporting from laptop reporters located in all parts of the world could care less about traditional filtered news. While there is a mainstay of loyal readers for local news, the plight of newspaper personnel or any unionized group is a hard sell. Google and Microsoft have made

millionaires out of their staff without a union. For everyone else, it is the stupid economy of trying to make a livable wage.

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