Labor board OKs personal use of company e-mail (Update)

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In a victory for unions, the National Labor Relations Board ruled Thursday that employees can use their company email accounts for union organizing and other workplace-related purposes, if they do it on their own time.

Once an employer gives an employee access to the company email system, then the business cannot restrict what the employee emails, so long as it is generally workplace-related and isn't during working hours, the NLRB ruled. The NLRB is a government agency that investigates unfair labor practices.

The ruling said that "the use of email as a common form of workplace communications has expanded dramatically in recent years." The ruling could give unions a powerful organizing weapon.

The three Democrats on the five member board voted "yes," while the two Republicans abstained.

The ruling reverses a 2007 board decision that employees don't have a legal right to use their employers' email for union activity or discussing wages or other workplace issues.

It also upholds an opinion by the NLRB's general counsel, who suggested that workers had a presumed statutory right to use company email to discuss a range of workplace issues—so long as they did it on their own time and unless an employer could demonstrate that doing so would hurt

productivity of office discipline.

The decision was a victory for the Communications Workers of America, which brought the case in 2012 after it was unable to use company email to organize employees of Purple Communications in Rocklin, California, a company that provides interpreting services for the deaf and hard of hearing. The union contended that prohibiting Purple workers from using company email for to organize interfered with its efforts.

Bernie Lunzer, president of the Newspaper Guild-CWA and a vice president of the Communications Workers of America, called the ruling "a big victory for workers in general. Basically the board is saying that there is a wide berth for that kind of discussion, that it can't be prohibited. There are limitations. This is something where people are supposed to be doing this not on the work time. And they can't be obstructive to the productivity of the company. But the flat-out prohibition of any discussion of forming a union or acting collectively, basically to board has said that's fair."

Joel Barras, a lawyer who represents employers in collective bargaining and labor arbitration matters, said that the NLRB in its ruling "once again elevated employee protected activity over employer property rights. Not only will employees now have the ability to use their work emails in their efforts to unionize or discuss terms and conditions of employment with co-workers, an employer's communication system may also become an incredibly effective tool used to recruit members to form or join class-action cases."

In Thursday's ruling, the board majority said the earlier decision "was clearly incorrect. The consequences of that error are too serious to permit it to stand."

"By focusing too much on employers' property rights and too little on the importance of email as a means of workplace communication, the Board (in its earlier ruling) failed to adequately protect employees' rights ... and abdicated its responsibility 'to adapt the Act to the changing patterns of industrial life."

A number of weighty issues have yet to be decided by the board, and it seems likely to tackle some of them before the Dec. 16 departure of one of its Democratic members, Nancy Schiffer, when her term expires.

There will still be a 3-2 majority on the board with the GOP takeover of Senate control next year after the Senate voted 54-40 earlier this month to confirm Lauren McGarity McFerran, a Democrat, to fill the vacancy.

Pending decisions include whether college athletes on scholarships have the right to unionize. The case stems from an effort by Northwestern University scholarship football players to organize.

More information: Online: NLRB Case 21-CA-095151