



WAIT A MINUTE! YOU CAN'T SEND AN EMAIL ABOUT THE UNION

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The National Labor Relations Board recently issued a decision regarding employees' rights to use their employer's e-mail system to send union-related e-mails. Labor unions reacted very negatively to the decision because the NLRB acknowledged its departure from years of precedent concerning discriminatory enforcement of no-solicitation policies. Employers now have more flexibility to control the content of employee e-mails if policies are drafted carefully and enforced consistently.

The NLRB held that an employer can establish a policy prohibiting employee use of the company's e-mail system for all "non-job-related solicitations" even if the policy operates to prevent e-mails regarding union activity. The key to an employer's ability to prevent employees from soliciting other employees remains basically the same because the language of the policy remains critical and the consistency of the policy's enforcement will be scrutinized. The decision, however, does prohibit union-related solicitation. Also interesting is the NLRB's holding that an employer can prohibit the use of its e-mail system to communicate about union activities even if employees communicate via e-mail about non-work-related issues.

The NLRB's decision in *Register Guard* allows an employer to prohibit solicitations and other communications regarding a labor union via e-mail, but the line that is drawn between permissible and non-permissible solicitations must be drafted carefully and enforced consistently. The NLRB also preserved a legal distinction between permissible solicitations for charitable organizations like the United Way and impermissible solicitations for a labor union.

Drafting a policy to take advantage of this decision requires an employer to define what type of email communication is permissible while also describing prohibited subject matter. For example, the NLRB specifically described the following distinctions as permissible: charitable solicitations can be permitted while other solicitations are prohibited; the line can be drawn between solicitations of a personal nature (e.g., a car for sale) and solicitations for commercial sales (e.g., Avon products); invitations for an organization versus invitations of a personal nature; "solicitations and mere talk" between employees; and distinctions between business-related use of the employer's email system and non-business related use.



CLIENT ALERT

To take advantage of this decision, employers should review their current policies and consider redrafting their policies artfully with the goal of ensuring that employees do not have free rein to use their employer's e-mail system to discuss a labor union. Do not hesitate to contact

Elarbee Thompson at www.elarbeethompson.com to discuss your policy or to seek assistance in drafting a new policy.