

NLRB INVITES INPUT ON USING EMPLOYERS' E-MAIL FOR ORGANIZING

News

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Steve Bernstein was quoted in the *Society For Human Resource Management* article entitled "NLRB Invites Input on Using Employers' E-mail for Organizing."

The National Labor Relations Board expressed interest in overturning a decision that bars employees from using their employer's e-mail for union organizing purposes on April 30, 2014, inviting briefs to address the following questions:

- Should the board reconsider its decision in *Register Guard*, 351 NLRB 1110 (2007), that employees do not have a statutory right to use their employer's e-mail for organizing purposes?
- If the board overrules *Register Guard*, what standard of employee access to the employer's electronic communications systems should be established? What restrictions, if any, may an employer place on such access, and what factors are relevant to such restrictions?
- In deciding these questions, to what extent should the impact on the employer of employees' use of its electronic communications technology affect the issue?
- Do employee personal electronic devices, social media accounts and personal e-mail accounts affect the proper balance between employers' rights and employees' organizing rights to communicate about work-related issues?
- What other technological issues concerning e-mail or other electronic communications systems should the board consider, including any relevant changes that may

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have occurred in electronic communications technology since *Register Guard* was decided?

"*Register Guard* extended an age-old doctrine about workplace solicitation and applied it to the virtual world," according to Steve.

"That doctrine applies to e-mail as well," he said. "If an employer treats it like a bulletin board with its use restricted to business purposes well before a union shows up, then it can restrict its use to business purposes."

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