



NLRB Upholds Ban On Use Of Company Email For Union Organizing

Insights

6.02.20

The National Labor Relations Board took the opportunity last week to double down on its recent reversal of the *Purple Communications* doctrine, holding that T-Mobile USA did not violate federal labor law by implementing a rule barring call center employees from using the company's email system to discuss union organizing activities. The May 27 decision represents another step away from Board doctrine that had previously upheld the right of workers to utilize an employer's electronic communications systems to solicit co-workers for organizing purposes during non-working time.

How Did The Board Arrive At This Decision?

The NLRB analyzed the issue under the framework of a December 2019 decision called *Caesar's Entertainment*, which provides that employers do not violate the National Labor Relations Act (NLRA) by restricting the nonbusiness use of its IT resources, absent proof that their email systems furnish the only reasonable means for employee communications, or evidence of discrimination. In accordance with that decision, employers may legally restrict the use of work emails and other electronic systems, even for organizing activities protected under Section 7 of the NLRA, provided that reasonable alternative communication means are available.

In last week's decision, the Board held that the employer was entitled to exercise its property rights to restrict use of its email system for organizing purposes because there was "no indication in the record that the respondent's employees do not have access to other reasonable means of communication, and no party contends that the respondent's email system furnishes the only reasonable means for the employees to communicate with one another." To the contrary, the record contained detailed information establishing that the employees already had adequate and effective means to communicate with each other without the use of T-Mobile's email system. For example, they had the options of oral solicitation during non-working time, access to smart phones and social media, and personal email accounts. The NLRB further held that T-Mobile was entitled to specifically address and reprimand employees for violating its email restrictions.

What Does This Decision Mean For Employers?

The *T-Mobile* case demonstrates that the NLRB is committed to applying the *Caesar's Entertainment* standard in a straightforward manner. The burden for establishing a lack of alternative communication vehicles will be challenging for unions and their supporters.

In light of these rulings, you should evaluate your current policies to ensure that any limits on their equipment and IT systems are justified and sufficiently documented. Although the conduct at issue in the *T-Mobile* case occurred in 2015, the *Caesar's Entertainment* standard applies retroactively to all pending cases challenging employer's rules restricting the use of IT resources for nonwork purposes. If you have a pending matter before the NLRB, you should consult with your labor counsel to determine how these decisions will impact your case.

We will continue this line of decisions, and other cases issues by the Board, so you should subscribe to [Fisher Phillips' alert system](#) to ensure you are receiving the most up-to-date information. If you have questions about this decision, please contact your Fisher Phillips attorney or any member of our [Labor Relations Practice Group](#).

This Legal Alert provides an overview of a specific NLRB ruling. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.

Related People



Steven M. Bernstein
Regional Managing Partner and Labor Relations Group Co-Chair
813.769.7513
[Email](#)

Service Focus

Labor Relations