

## Weston Hurd NLRB Update - December 2014

# "You've Got Mail"

### THE NLRB RULES THAT EMPLOYEES CAN USE EMPLOYER EMAIL FOR UNION ORGANIZING

Prepared by Morris L. Hawk

On December 11, 2014, the National Labor Relations Board held that employees have the right to use their employer's email system for non-business purposes, including sending emails supporting union organizing. The only way that an employer can prohibit such use is if it denies all access to its email system to certain categories of employees (for example, hourly employees). But as long as an employee can use an employer's email system for *business* purposes, he or she can also use the email system for union organizing or for complaining to other employees about wages and working conditions. The Board decision is *Purple Communications, Inc.*, 361 NLRB No. 126 (December 11, 2014) which overturned the Board's own 2007 precedent in *Register Guard*, 351 NLRB 1110 (2007).



The Board claims that its ruling in *Purple Communications* is "carefully limited" because it permits an employee to send such emails only on "nonworking time" and because it establishes an exception for employers that can prove that "special circumstances" justify restrictions or a complete ban on nonwork emails. But, practically speaking, these "limitations" are of no use to employers. It is difficult to conceive how an employer will be able to effectively police whether an employee is sending or reading an email on "nonworking time." And the Board provides absolutely no guidance on what might constitute "special circumstances" that would justify a restriction on nonwork emails, except to mention that it would be the "rare case" where an employer could meet that burden. In addition, under this new ruling, an employer could only find out whether its "special circumstances" pass muster by defending itself against an unfair labor practice before the Board.

The Board also runs roughshod over an employer's property right to control the use of its email system. In 2007, the Board had concluded in the *Register Guard* case that an employer could limit the use of its email system to business purposes because the employer owned it. The Board has now overturned that common sense rule and concluded that an employee's right to engage in protected, concerted activity trumps the employer's property rights.

So even though employees can already communicate with each other through Facebook, Twitter, YouTube, Gmail, and text message, the Board has concluded that those avenues of communication are not enough. According to the Board, employees must also have the right to communicate using their employer's email systems. It is not clear if the Board is through with its expansion of employee rights to use other employer property for union organizing activity (for example, printing union flyers on employer copy machines or showing pro-union videos on breakroom televisions). What is clear, however, is that the Board continues to overturn both longstanding and recent precedent to create new rights for employees and unions (even if that means an employer can no longer control its own property).

If you have any questions, comments or concerns about this NLRB Update, please contact your Weston Hurd lawyer.



**Morris L. Hawk** is a Partner with Weston Hurd LLP. He represents privately-owned and publicly-held corporations in matters involving labor and employment law, commercial litigation, construction and gaming law. Mr. Hawk can be reached at 216.687.3270 or [MHawk@westonhurd.com](mailto:MHawk@westonhurd.com).

For more information about Mr. Hawk and Weston Hurd, please visit Weston Hurd's web site at [www.westonhurd.com](http://www.westonhurd.com).

#### **About Weston Hurd LLP**

With offices in Cleveland, Columbus and Beachwood, Weston Hurd LLP provides comprehensive legal counsel to Fortune 500 companies, insurance carriers, financial institutions, healthcare providers, small- and medium-sized businesses, the real estate industry, governmental agencies, non-profit enterprises and individuals.

For additional information regarding Weston Hurd's Labor publications, please visit the [Publications](#) page on Weston Hurd's web site. Information about Weston Hurd's Labor Practice Group and its attorneys, can be found on the [Practice Areas](#) page.

*As a reminder, this material is being provided to draw your attention to the issues discussed.*

*Although prepared by professionals, it should not be utilized as a substitute for legal advice and representation in specific situations.*

**[www.westonhurd.com](http://www.westonhurd.com)**

**Copyright 2014**