

The NLRB Issues Key Rulings Regarding Employee E-Mail Use, Deferrals To Arbitration, And Representation-Case Procedures

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The 2014/2015 holiday season marked a period of change for the National Labor Relations Board (NLRB). First, on December 11, 2014, **the NLRB ruled** that under Section 7 of the National Labor Relations Act (NLRA) employees can use their employer-issued email accounts to participate in union organizing efforts, as well as discuss their wages and workplace issues, so long as those efforts do not occur on working time. The decision, however, does not provide a right for non-employees - presumably including union officials - to access an employer's e-mail systems nor does it require employers to provide e-mail accounts to employees who do not already have them. The decision also does not preclude employers from monitoring employee e-mail use as long as it is done for "legitimate" purposes (e.g., reviewing e-mails for purposes of monitoring union organizing activity would not be deemed a "legitimate" purpose). Second, on December 15, 2014, the NLRB overturned a decision regarding the legal standard applied when a party is seeking deferral of certain unfair labor practice charges to contractual arbitration proceedings and/or awards. **The decision** overturned the old standard by shifting the burden of proof to the party seeking deferral and by allowing deferral only if specific criteria are met: (1) the arbitrator was explicitly authorized to decide the statutory issue, whether through a showing that the specific statutory right was incorporated in the collective bargaining agreement or by explicit agreement of the parties in the specific case; (2) the arbitrator was, in fact, presented with and considered the statutory issue, or was prevented from doing so by the party opposing deferral; and (3) NLRB law would

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reasonably permit the award. Finally, the NLRB **adopted a much-anticipated final rule** amending its representation-case procedures. The rule becomes effective on April 14, 2015 and creates a number of changes, which are summarized **here**, including, among others: (1) providing for electronic filing/sending of election petitions and other documents; (2) adopting best practices and uniform procedures across regions; (3) requiring that additional contact information (personal telephone numbers and email addresses) be included in voter lists, to the extent that information is available to the employer; and (4) allowing parties to consolidate all election-related appeals to the NLRB into a single, streamlined appeals process.