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ALLEGHENY COUNTY LABOR COUNCIL
REPORT OF LEGAL COUNSEL
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The NLRB Declines to Revisit the *Register-Guard* Decision

Under current federal labor law, employers are permitted to enact policies that prohibit employees from using company e-mail for all non-work related purposes—even if the purpose is to engage in protected activity. Specifically, in *Register-Guard*, 351 NLRB 1110 (2007), the NLRB found that an employer did not violate the NLRA by maintaining a company policy prohibiting the use of company e-mail for all "non-work related solicitations." The NLRB concluded that the policy did not violate the NLRA because employees do not have a statutory right to use company e-mail to engage in protected activities. The NLRB ultimately found that it was legal for the employer to discipline an employee for sending e-mails simply asking co-workers to wear green in support of the Union's contract negotiations and participate in the Union's entry in an upcoming parade.

Over the past seven years, the *Register-Guard* decision has allowed employers to discipline employees for violating policies prohibiting the use of company e-mail for non-work related purposes even if they are engaged in protected activity. There are strong reasons for overturning the decision given the chilling effect the *Register-Guard* decision can have on employees who want to engage in protected activities. The NLRB was recently presented with the opportunity to revisit the legality of such technology policies with the case of *Purple Communications, Inc.*, 361 NLRB No. 43 (2014).

In *Purple Communications*, the NLRB General Counsel and the CWA asked the Board to overrule *Register-Guard* and adopt a rule that employees who are permitted to use their company's e-mail for work purposes have the right to use it to engage in protected activities. In support of this proposed change, the General Counsel and the CWA argued that e-mail has transformed the workplace and now serves as the modern day water cooler. Specifically, they explained that rather than talking about working conditions while standing around the water cooler, workers in today's world often discuss these matters through the use of e-mail.

In response to these arguments, the NLRB invited interested parties to file briefs regarding whether *Register-Guard* should be overturned. In response to the invitation for briefs, several employer organizations, including the Chamber of Commerce and the Society for Human Resource Management, filed briefs arguing that *Register-Guard* should be upheld. The AFL-

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CIO and the SEIU filed briefs arguing in favor of the position advanced by the General Counsel and the CWA because *Register-Guard* has the effect of allowing employers to enact technology policies with the effect of prohibiting most Union-related e-mail communications.

Despite the urging of the parties and the invitation for briefing, the NLRB declined to revisit the *Register-Guard* decision and instead decided the case on other grounds. While the *Register-Guard* decision is still the law for now, the NLRB may revisit the decision in the future given the position of the General Counsel. Should the NLRB adopt the recommendations of the General Counsel, this change would provide employees with the right to use company e-mail to engage in protected activities. We will keep the Allegheny County Labor Council updated about any new developments regarding the *Register-Guard* decision.

Respectfully submitted,

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