

Monitoring Employee Email for Unionization Activity

October 3, 2022

By Katherine Witherspoon Fry

We're all noticing that increased unionization is the national trend. With new Democratic-appointed National Labor Relations Board members, the Board is no longer all Republican, and employers are closely watching the effects of this political shift in favor of unionization rights.

On September 30, a panel of two Republican members and one Democratic member decided that T-Mobile US, Inc. broke the National Labor Relations Act by disciplining a customer service worker for sending a union-related email following a court battle appealing its initial decision. This reversed a 2020 decision by an all-Republican panel that T-Mobile had the right to discipline the worker for using its email for non-business-related purposes.

The Board found that T-Mobile had broken labor law by "selectively and disparately" using company policies to silence the pro-union worker. However, this finding was specific to the facts of this case. Other employees had been permitted to use T-Mobile's email for non-business purposes without being disciplined. Other employees sent mass emails about non-work issues such as hockey tickets, bowling parties, and "Nacho Day" in the cafeteria—but weren't punished, said the decision. T-Mobile appeared to be targeting the worker who was promoting unionization.

Employers may still restrict workers' email use for non-work issues, including union organizing, as long as they don't target union communications specifically. So, if employers want to prevent unionization emails on their servers, they need to monitor the servers for other uses and shut them down, too.