

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

PURPLE COMMUNICATIONS, INC.

and

Cases 21-CA-095151
21-RC-091531
21-RC-091584

COMMUNICATIONS WORKERS OF
AMERICA, AFL-CIO

NOTICE AND INVITATION TO FILE BRIEFS

On October 24, 2013, Administrative Law Judge Paul Bogas issued a decision in the above-captioned case, dismissing the General Counsel's allegation that the Respondent violated Section 8(a)(1) by maintaining a policy prohibiting personal use of its electronic equipment and systems. Under existing law, "employees have no statutory right to use the[ir] Employer's e-mail system for Section 7 purposes." *Register Guard*, 351 NLRB 1110 (2007), enfd. in relevant part and remanded sub nom. *Guard Publishing v. NLRB*, 571 F.3d 53 (D.C. Cir. 2009). In excepting, the General Counsel and Charging Party ask the Board to overrule *Register Guard* and adopt a rule that employees who are permitted to use their employer's email for work purposes have the right to use it for Section 7 activity, subject only to the need to maintain production and discipline.

To aid in the consideration of this issue, the Board now invites the filing of briefs in order to afford the parties and interested *amici* the opportunity to address the following questions.

1. Should the Board reconsider its conclusion in *Register Guard* that employees do not have a statutory right to use their employer's email system (or other electronic communications systems) for Section 7 purposes?
2. If the Board overrules *Register Guard*, what standard(s) of employee access to the employer's electronic communications systems should be established? What restrictions, if any, may an employer place on such access, and what factors are relevant to such restrictions?

3. In deciding the above questions, to what extent and how should the impact on the employer of employees' use of an employer's electronic communications technology affect the issue?
4. Do employee personal electronic devices (e.g., phones, tablets), social media accounts, and/or personal email accounts affect the proper balance to be struck between employers' rights and employees' Section 7 rights to communicate about work-related matters? If so, how?
5. Identify any other technological issues concerning email or other electronic communications systems that the Board should consider in answering the foregoing questions, including any relevant changes that may have occurred in electronic communications technology since *Register Guard* was decided. How should these affect the Board's decision?

In answering these questions, the parties and *amici* are invited to submit empirical and other evidence.

Briefs not exceeding 25 pages in length shall be filed with the Board in Washington, D.C. on or before June 16, 2014. The parties may file responsive briefs on or before June 30, 2014, which shall not exceed 25 pages in length. No other responsive briefs will be accepted. The parties and *amici* shall file briefs electronically at <http://mynlrb.nlr.gov/efile>, and serve all case participants. A list of case participants may be found at <http://www.nlr.gov/case/21-CA-095151> under the heading "Service Documents." If assistance is needed in filing through <http://mynlrb.nlr.gov/efile>, please contact Gary W. Shinnors, Executive Secretary, National Labor Relations Board. The briefs submitted by the parties in this case are accessible at <http://www.nlr.gov/search/documents/21-ca-095151>.

Dated, Washington, D.C., April 30, 2014

By direction of the Board:

Gary W. Shinnors
Executive Secretary