

Rio All-Suites Hotel & Casino, 368 NLRB No. 143 (Dec. 16, 2019)

The issue before us is whether the National Labor Relations Act requires the Respondent to permit employees to use its email and other information-technology (IT) resources for the purpose of engaging in activities protected by Section 7 of the Act. The Respondent indisputably has a property right to restrict employee use of its equipment, including its IT resources. The question presented here is whether that property right must give way where employees seek to use the Respondent's IT resources for Section 7 activity. In deciding this issue, we are guided by the Supreme Court's admonition that "[o]rganization rights are granted to workers by the same authority, the National Government, that preserves property rights. Accommodation between the two must be obtained with as little destruction of one as is consistent with the maintenance of the other."

The Board has long held that with regard to oral solicitation during nonworking time and the distribution of literature during nonworking time in nonworking areas, the Act does limit an employer's property right to control the use of its premises. The Supreme Court approved this "adjustment between the undisputed right of self-organization assured to employees under the" Act and "the equally undisputed right of employers to maintain discipline in their establishments" in its seminal decision in *Republic Aviation Corp. v. NLRB*. But decades of Board precedent establish that the Act generally does not restrict an employer's right to control the use of its equipment. In *Register Guard*, the Board held that this precedent, and the principle for which it stands, applies with equal force to an employer's email system. Subsequently, however, a divided Board in *Purple Communications, Inc.* overruled *Register Guard*, holding for the first time in the history of the Board that employees do have a right to use employer-owned equipment for nonwork purposes. As explained below, the Board's unprecedented decision in *Purple Communications* impermissibly discounted employers' property rights in their IT resources while overstating the importance of those resources to Section 7 activity. Accordingly, we shall overrule *Purple Communications* and return to the standard announced in *Register Guard*. Under that standard, employees have no statutory right to use employer equipment, including IT resources, for Section 7 purposes. However, we shall recognize an exception to the *Register Guard* rule in those rare cases where an employer's email system furnishes the only reasonable means for employees to communicate with one another.

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