



Stone Busailah, LLP

A Partnership of Professional Law Corporations

1055 East Colorado Blvd., Suite 320, Pasadena, California 91106 Tel (626) 683-5600 Fax (626) 683-5656

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USE OF EMPLOYER E-MAIL SYSTEM

Los Angeles Unified School District (2018)

PERB Decision No. 2588

Napa Valley Community College District (2018)

PERB Decision No. 2563

By Robert Rabe, Esq.

The Public Employment Relations Board (PERB or Board) decided two cases this year on the subject of using an employer's e-mail system that will be of interest to public safety officers and members of employee unions.

In the most recent case, the United Teachers Los Angeles (UTLA or Union) sent the Los Angeles Unified School District (LAUSD or District) an e-mail message "formally asserting its right to use of institutional bulletin boards, mailboxes and other means of communication to communicate with members of the UTLA

bargaining unit." The UTLA then requested that LAUSD send a "document to the lausd.net email accounts of all UTLA bargaining unit members."¹ The document was an announcement regarding UTLA's upcoming regional area meetings. The LAUSD replied that it "could find no authority under which a school district may use its internal email system to transmit an email on behalf of a union" and denied the request.

¹The LAUSD assigns an "lausd.net" e-mail to every member of UTLA's bargaining unit.

"Defending Those Who Protect Others"

In deciding the case, the Board noted that “PERB must adapt its jurisprudence to address changing circumstances in the workplace”, and had recently observed “e-mail is a fundamental forum for employee communication in the present day.” As a result of this technological change, PERB has had to address the issue of permissible use of employers’ e-mail systems to send protected communications.

In a case decided earlier this year, *Napa Valley Community College District* (2018) PERB Decision No. 2563 (*Napa Valley CCD*), the PERB held that “employees who have rightful access to their employer’s e-mail system in the course of their work have a right to use the e-mail system to engage in EERA²-protected communication on nonworking time.” PERB “[r]ecogniz[ed] that e-mail is a fundamental forum for employee communication in the present day, serving the same function as faculty lunch rooms and employee lounges did when EERA was written”. The Board concluded that “in the contemporary workplace ... employees who have rightful access to their employer’s e-mail system in the course of their work have a right to use the e-mail system to engage in EERA

²Educational Employment Relations Act

protected communications³ on nonworking time.”

In the LAUSD case, PERB had to address the ability of an employee organization to use an employer’s e-mail system to send protected communications. While PERB concluded that the EERA grants employee organizations the right to communicate with employees via the employer’s e-mail system, the Board rejected the “UTLA’s claim that this right obligate[d] the employer to send e-mails to employees on the employee organization’s behalf.” The PERB noted that “[t]oday, an employer’s e-mail system serves the same function as its physical mail delivery system did when EERA was written.” While a physical mail delivery system would require the employer’s assistance to transport and deliver material, the Board recognized that now a “UTLA representative can send an e-mail to employees at their District e-mail addresses⁴ without any assistance from

³There is “a right to communicate at the worksite, free from employer restriction, about specific terms and conditions of employment as well as matters of more general political, social or economic concern to employees.”

⁴The Board remarked that if the UTLA lacks employees’ District e-mail addresses, it can obtain them from the LAUSD via an

LAUSD.” Thus, the employer’s participation is not necessary for an employee organization to fully exercise its statutory right to communicate with employees via the employer’s e-mail system.

While PERB decided these two cases under the EERA, which provides employees the right to “form, join, and participate” and discuss “matters of legitimate concern to the employees as employees”, the same employee rights are also provided by the Meyers-Milias-Brown Act (MMBA) and other public sector labor statutes enforced by PERB. This makes these new PERB rulings applicable to counties, cities and special districts subject to the MMBA and the other labor relations statutes administered by PERB.

Stay Safe!

Robert Rabe is Stone Busailah, LLP’s writs and appeals specialist. His 40 years practicing law include 16 years as a Barrister, Supreme Court of England and Wales, practicing in London, England

information request.

