Think you can restrict employee use of company email to "business purposes only?" What follows might surprise you.

You might think as a business owner you have the right to restrict how your employees use your email system. Furthermore, you might think you are allowed to restrict all non-work related use of your company's property. Think again. In a stunning decision last year, the National Labor Relations Board ("NLRB") declared that an employer may not prevent an employee from using its email for non-work purposes.

It is important to note that the National Labor Relations Act ("NLRA"), which is enforced by the NLRB, does not apply ***only*** to union based employees. In fact, the NLRA's application is quite broad, covering the vast majority of private employers in the United States. The Board has jurisdiction over private sector employers whose activity meets the minimum threshold established for the particular category the business falls under.

In the past two years, decisions by the Board indicate they are looking through employee handbooks and policies and paying very close attention to wording that is overly broad and prohibits an all-out ban on methods and content of communication.

Michelle Radie-Coffin

Last year, the Board reasoned that email systems are "materially different" from other employer-owned equipment and analogized a ban on email communication to general bans on oral solicitation during non-working time. Under traditional NLRB precedent, such bans are viewed as barriers to employees' efforts to organize and engage in concerted, protected activities. The NLRB's decision placed employers on notice that they cannot completely ban all employee use of company email systems for purposes that, in management's view, are not necessarily conducive to the organization's business goals.

The wording under scrutiny in last year's decision by the Board was contained in a company's email policy. The language in the email policy that came under fire limited email use to "business purposes only," expressly prohibited employees from "engaging in activities on behalf of organizations or persons with no professional or business affiliation with the company," and prohibited employees from "sending uninvited emails of a personal nature."

The real issue at hand is that the NLRA seeks to protect employees' rights to be able to communicate amongst themselves about workplace issues they are unhappy about. That's where the "concerted, protected activity" language comes into play. The moment you set forth a policy that on its face appears to ban this type of activity; you run the risk of violating the NLRA and being brought before the Board where all of your policies could come under review.

In a case decided just last month, the Board held that restrictions related to "solicitation and fundraising," which prohibited employees from using the company's communication system for distributing materials to one another even during non-working time, were overly broad and infringed upon employees' NLRA rights.

It's not to say you cannot limit how email is used, but your words of limitation must be carefully chosen. The Board's recent decisions indicate now might be a good time to review your handbook provisions and polices.

Michelle Radie-Coffin is an attorney at Shaheen & Gordon, P.A. Her practice focuses on employment and immigration law. She can be contacted at 603-617-3037 or mradiecoffin@shaheengordon.com.