

International HR Best Practices Tip of the Month

April 2007

This Month's Challenge

Company intranet and email systems are increasingly favored by unions as quick and cheap communications tools.

Best Practice Tip of the Month

While the law is still in flux, make sure company policies specify permitted and impermissible uses of company computers and intranets.

Union's Right to Email Use Further Solidified

With the ever-increasing reliance on email and intranets for a company's employees to communicate with each other, the clash between the desire of unions and employees to use these devices to encourage union actions and workplace disruptions and the desire of employers to keep a lid on union access to these powerful tools is inevitable. The U.S. National Labor Relations Board is thinking about the issue now, and a decision could come any day. A French administrative court recently weighed in on the matter, invalidating a disciplinary warning against a public employee union shop steward for sending a union-related email over an employer's intranet, concluding union representation is a fundamental liberty that must be protected. In the course of its decision, however, the court indicated that some limitations on unions' access to employer email facilities could be permitted. (*Tribunal Administratif de Besançon, Elisabeth M. v. Ville de Lons-Le-Saunier*, 12/19/06.)

The employee in this case, Elisabeth M., was an administrative assistant and union steward in the employ of Lons-Le-Saunier, a city in eastern France, near the Swiss border—home to laughing cow cheese and France's oldest dinosaur fossil. She sent an email over the city's intranet, using her city computer, to about twenty co-workers, inviting them to participate in a work stoppage. For this act, the mayor gave her a disciplinary warning for neglecting her duty of loyalty and violating a rule forbidding non-professional use of email on her work computer.

The employee challenged the disciplinary action, and the court ruled in her favor. The right to union representation is a fundamental liberty, the court said, and an employer may not restrict that liberty unless the restriction is justified by the nature of the job and is proportionate to the ends sought by such restriction. The court indirectly delineated the scope of this “fundamental liberty,” suggesting that had the communications included defamatory, pornographic, racist, or otherwise illicit material, or had they incited actions “contrary to the public order” or possessed the potential to offend other internet users or the city itself, the outcome of this case may have been different, and the punishment justified. But that was not the case here. Further, the court noted that the “involvement” of the public authorities—i.e., the punishment imposed—was actually targeting the labor union and not the individual employees themselves, thereby implying that a prohibition on employees’ use of email for personal purposes is permissible in so far as it does not impinge on the employee representatives’ ability to carry out their functions. The court, therefore, invalidated the administrative warning Elisabeth M. received and ordered the city of Lons-Le-Saunier to pay her 150 euros.

Notably, Elisabeth M. is an administrative decision involving a public employee and is not directly applicable to private employee representatives. Prior to Elisabeth M., the French Supreme Court had already held that French labor unions have the right to use employer-owned computers to send union information if the employer expressly consents beforehand or if the company has agreed to such use in its collective agreement. (*Cour de Cassation, Chambre Sociale, CFDT v. Clear Channel France*, No. 02-30.946, 1/25/05.) How far the courts will go to permit private-sector employers to restrict union access to employer-owned intranets remains to be seen. *Elisabeth M.*, by extending the right to email and internet use in the workplace to public employee representatives, may signal a trend toward more expansive definitions of the rights of employee representatives.