

EMAILS AND SURFING THE WEB ON CAMPUS COMPUTERS THE EXPECTATION OF PRIVACY

The rapid proliferation of email and web use raises the issue of employees' expectations of privacy regarding email and Internet technology in the workplace. Since grievance chairs are already dealing with email and web use issues, this is a gentle reminder to think about the consequences of your computer use in the work place.

Privacy Clause in the Full-Time Agreement

The Agreement contains a privacy clause under Article XI Section M. that states, "The Colleges/Universities will not abrogate the lawful rights of employees as to opening of their mail or the privacy of their offices or personal belongings" (p. 16). When the Council first constructed this language, email was definitely not the object of the clause and so it does not necessarily prohibit an employer's legal right to monitor your email usage. Now, when the Union files a grievance regarding the monitoring of email the Union argues that the intent and the language of XI.M. reasonably includes email. Nonetheless, the Council operates under the premise that all employee email is the legal property of the College/University. In fact, the Union strongly advises grievance chairs not to file grievances or conduct any but routine union business over the College/University E-mail system.

The Union bases its position on court cases from the 1990's, one of which states that "an employee does not have a reasonable expectation of privacy in E-mail communications voluntarily made over the company E-mail system, notwithstanding any assurances from the employer that such communications were private and would not be intercepted by management" (*Michael A. Smyth v. The Pillsbury Company*, No. 05-5712, January 18, 1996). The court's reasoning is that E-mail communications are voluntary in nature and as such, are distinguishable from a forced disclosure of employee communications or other invasions of privacy such as urinalysis or a property search that results in a termination. The court also believes that management's interest in preventing the inappropriate or even illegal use of email outweighs employees' privacy interests in those communications. * (*United States District Court for the Eastern District of Pennsylvania*).

Fortunately, Article XI.M provides the Union with some latitude to argue that an employee's right to privacy regarding mail includes electronic mail — that is as long as an employee has not transmitted materials such as "off-color" jokes or cartoons that the recipient may find offensive. However, it is almost impossible to argue that an employee has a reasonable expectation to privacy when it comes to surfing the Internet.

Using the Web

Downloading materials from questionable or illegal sites and spending time surfing the web on "company time" are very risky. (Boldface added) Do not think that you will never be found out. In recent months, tech services entered a unit member's office on a work order to repair equipment and found downloaded pornography. Of course, the unit member thought no one would ever see this material and argued that an employee has a right to privacy in such matters. This is not so. College and university employees have lost their jobs over such activities. Because equipment and time belong to the employer, and because all campuses have policies regarding email, webpage development and general Internet use, the Union has been able to do little to help the involved unit member.

What To Do

Whether members use email for union or non-union business, a good rule of thumb is that employees should never send an email that would not be an appropriate interdepartmental memo. Grievance officers should know the College /University's policy about electronic monitoring of employee email and Internet use. These policies are usually in the Employee Handbook.

Legally, an employer can incorporate some of the following statements in an email/internet policy:

- * E-mail is to be used for business purposes only.
- * Information transmitted and stored is the sole property of the employer.
- * There is no right to privacy in any matter created, received or sent on the email, internet/intranet systems — management may access and review all electronic transmissions.

Lastly, keep in mind that in large institutions with network servers, all data are downloaded for storage once a day and thus can be reviewed at a later date — including your email messages and the history of your webpage visits and downloads.

Council of New Jersey State College Locals