

EXERCISE COMMON SENSE WHEN SENDING EMAILS AND SURFING THE WEB ON CAMPUS COMPUTERS

We all do it from time to time. We use our workplace computers to check our private e-mail accounts, to surf the web and do a little online shopping and we sometimes send our coworkers jokes and cartoons. Admittedly, most employers tolerate such activities. Even if in some instances, when employers wish to discipline employees for using work computers for other than work assignments, the Union can usually sort things out in our favor. However, when employees cross the line between an occasional harmless foray into cyberspace and a disastrous trip to the seedier side of the web — such as online porn sites, the Union will find it difficult, if not impossible to defend you.

Grievance chairs are already dealing with email and web use issues in the work place. The rapid proliferation of email and web use raises the issue of employees' expectations of privacy regarding email and internet technology in the workplace. This VOICE article is meant to be 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. which 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 crafted this contract language, e-mail was not specifically the object of the clause. Therefore, it does *not* necessarily prohibit an employer's legal right to monitor your email usage. Nonetheless, when the Union files a grievance regarding the monitoring of email (especially if the employer wants to administer discipline or terminate employment), the Union will argue that the intent and the language of XI.M. reasonably includes email. However, it is downright impossible to argue that employees have a reasonable expectation to privacy when it comes to surfing the internet; or, if you send an email containing blatantly offensive or illegal content and the recipient reports you.

Using the Web

Downloading materials from questionable sites and spending time surfing the web on "company time" are very risky. 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 this matter. This is not so. College and university employees have lost their jobs over such activity. Because equipment and time belong to the employer,

the Union has been able to do little to help the involved unit member.

The Council's Position

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 the most routine union business over the College/University email system.

The Union bases its position on court cases whereby "an employee does not have a reasonable expectation of privacy in email communications voluntarily made over the company email 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 email 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*).

What To Do

Most institutions have a written policy in Employee Handbooks about electronic monitoring of employee email and internet use. Grievance officers should be familiar with their institution's policy.

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

- Email 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 system--- messages may be accessed and reviewed by the employer.

Whether members use email for union or non-union business, a good rule of thumb is that there shouldn't be anything in an email that wouldn't be appropriate in an interdepartmental memo. Also, remember that in large institutions with network servers, all data are downloaded to a storage site once a day and thus can be reviewed at a later date --- including your email messages and your history of web site visits

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