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Bulletin Boards

Contents

- Types of bulletin boards
- When employers must allow postings
- When employers can deny postings
- Union bulletin boards
- When are employers liable for disparaging content?
- New technologies
- Policies, Notes and References

Employee bulletin boards are like a firearm in a desk drawer; they have been misused to post defamatory or demeaning content, giving rise to suits for racial or sexual harassment. They also have been useful in defusing labor-management tensions, in building worker loyalty and in providing worthwhile information.

A tiny San Francisco suburb paid \$90,000 to three police employees who were offended by O. J. Simpson jokes posted on the department's bulletin board by the then Chief of Police. [1]

❖ Types of bulletin boards

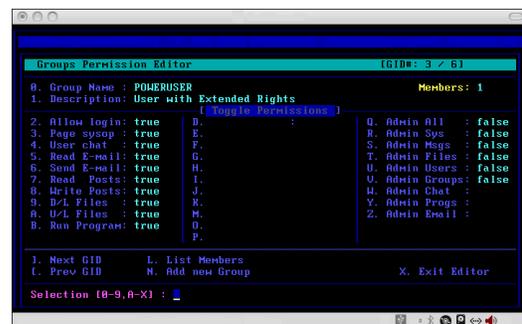
There are at least three types of work-related bulletin boards. One is provided by the employer to further the goals of the organization. It contains announcements and messages of varied content. Management authors or controls the postings.

Another is provided by the employer as a convenience for workers. They may advertise a vehicle or other items an employee wants to sell, to solicit a car pool arrangement or share living quarters. Management typically monitors the content and removes inappropriate postings.

A third kind is maintained by a union or employees' association for the use of its members. It is often controlled by a worksite steward or a designated representative. The content is informative.

An [electronic bulletin board](#) (EBB) sometimes replaces, but usually supplements corkboards erected in the workplace. It is accessed via an [Intranet](#) portal or an access controlled [Extranet](#) website.

Regardless of who maintains a bulletin board, there has been litigation over who can post and what can be posted.



❖ When employers must allow postings

If management allows some employee groups access to a workplace bulletin board, must it allow all?

A federal court in New York refused to dismiss a suit brought by an association of Latino police officers. Although management can generally deny a noncertified employee association the privilege of using official precinct bulletin boards, management may not withhold the privilege because of the content of the messages. *Latino Officers Assn. v. City of N.Y.*, #97 Civ. 1384, 1998 U.S. Dist. Lexis 2018 (S.D.N.Y.).

However, a three-judge panel denied the supporters of a police boxing team the right to use official NYPD bulletin boards to publicize their events. Precinct stations and other facilities are not a public forum, and management could restrict postings to recognized bargaining units.

The department had a legitimate interest in accommodating the PBA in order to maintain harmonious labor relations. [Fighting Finest v. Bratton](#), #95-9042, 95 F.3d 224 (2d Cir. 1996).

❖ When employers can deny postings

The Seventh Circuit has said that a law that allows employees to form a union and seek recognition “does not give employees an unfettered right to use a company’s bulletin boards to stir up interest in unionization.” [Loparex v. N.L.R.B.](#), #09-2187, 591 F.3d 540 (7th Cir. 2009).

At a U.S. Naval installation, a union was allowed use of the employer’s electronic bulletin board. Management removed information related to the *internal workings* of a union local. The union grieved, but a neutral arbitrator upheld the removal. He also held that:

1. A union may file a grievance any time the employer deletes any material from the electronic bulletin board.
2. The deletion of union material is a continuing violation.
3. A union’s failure to grieve each and every time the employer deletes material does not bar the union from grieving on other occasions.
4. Management can act promptly to remove unauthorized or inappropriate material from the EBB.

[Naval Inventory Control Point and AFGE L-1156](#), 118 LA (BNA) 695 (Pritzker, 2002).

In Milwaukee, police officers were required to obtain a supervisor’s approval and official stamp, before items were placed on official notice boards. A union steward declined to follow procedures and persisted on posting comments and notes – which were removed. She also was assessed a two-day disciplinary suspension.

She filed a civil rights suit in federal court. The city was granted a summary judgment and a three-judge appeals panel affirmed. The removal of unapproved notes was consistent with a legitimate interest in workplace efficiency. [*Kuchenreuther v. City of Milwaukee*](#), #99-3611, 221 F.3d 967, 2000 U.S. App. Lexis 17441 (7th Cir.).

In 2007, the National Labor Relations Board ruled that employers may lawfully prohibit union activity in an organization's e-mail system if management banned solicitations by other outside organizations, even if "office chitchat and personal messages" were tolerated.

A federal appeals court panel modified the holding because management had disciplined the concerned employee in a discriminatory way. But the appellate panel left unchanged the NLRB's holding that management may prohibit union-related communications under a neutrally drafted and applied non-solicitation e-mail policy. [*The Guard Publishing Co. v. N.L.R.B.*](#), #07-1528, 571 F.3d 53, 387 U.S. App. D.C. 53 (2009); prior N.L.R.B. decision at [351 NLRB 1110](#) (2007).

❖ Union bulletin boards

In those states with mandatory public sector bargaining, an employer cannot unilaterally violate the terms of a bargaining agreement or a recognized past practice.

The Seventh Circuit has held that management committed an unfair labor practice by removing postings from a union bulletin board just before a representation election. [*ATC Vancom v. N.L.R.B.*](#), #03-3476, 370 F.3d 692 (7th Cir. 2004).

Management can act unilaterally to prevent a violation of election laws.

The Second Circuit found that a union informational poster, comparing the political positions of the presidential candidates, could not be posted on federal government bulletin boards, as it clearly violated the [Hatch Act](#), [5 U.S. Code §§ 7321-7326](#). [*Burrus v. Vegliante*](#), #02-6257, 336 F.3d 82, 2003 U.S. App. Lexis 14125 (2nd Cir.). Most states have enacted a version of the Hatch Act. [2]

❖ When are employers liable for disparaging content?

Management can control a corkboard with routine daily inspections. An electronic bulletin board (EBB) is more difficult to monitor, because it may have hundreds of virtual “file folders.” Intranet E-mails, once opened, cannot be recalled.

The New Jersey Supreme Court has held that an employer can be liable for harassing content on an electronic bulletin board used by its employees, even though the employer is not the host of the EBB service.

The 7-to-0 panel emphasized that “employers do not have a duty to monitor private communication of their employees ... [but they] do have a duty to take effective measures to stop co-employee harassment” when they know or have reason to know about a pattern of workplace-related harassment.

What matters is the nature of the contact, not the location of the EBB. [Blakey v. Continental Airlines](#), #A-5-99, 164 N.J. 38, 751 A.2d 538 (2000).

❖ New technologies

Corkboards are relics of the last century. Employee EBBs are supplanted by social media networks and anonymous blogs. In April 2010, a prior article addressed that media. See, [Online Networking, Texting and Blogging by Peace Officers: Part One – Impeachment, Policy & First Amendment Issues](#).

- Many mainstream news sites encourage readers to post responses. Like restroom wall graffiti, remarks can be mean-spirited, defamatory and anonymous.

❖ Policies

AELE has collected a few specimen policies that address the issue.

- [Specimen policies on bulletin boards and electronic notices](#) (*opens a new menu*).

❖ **Notes:**

1. *Avedano v. City of Belvedere*, 1997 (2) Fire & Police Rptr. 25-6; Jul. 6, 1996 S.F. Examiner A12; Jul. 7, 1996 S.F. Chronicle A20.
2. [Political Activity and the State and Local Employee](#), U. S. Office of Special Counsel (1995).

❖ **References:** (*Chronological*)

1. [Employees on Guard](#): Employer Policies Restrict NLRA-Protected Concerted Activities on E-mail, by Christine O'Brien, 88 Ore. L. Rev. 195-253 (2009).
2. [Company Bulletin Boards](#): Communicating Policies, Procedures, and Practices, by Fred Whitford, Purdue University (Apr. 2002).
3. Internet message boards become forums for employee harassment, Sunday Gazette-Mail, Charleston, WV (Apr. 29, 2001).
4. [Regulations](#) governing the use of University of California Santa Cruz facilities and access to university employees by employee organizations/unions and their representatives (Mar. 1998).
5. The [Tavani Bibliography](#) of Computing, Ethics, and Social Responsibility (1996).
6. Electronic Underground: Computer Piracy and Electronic Bulletin Boards, by Charles Cangialosi, 5 Rutgers Computer & Tech. L.J. 265 (1989).
7. Computer Bulletin Boards and Defamation: Who Should be Liable? Under What Standard? 2 J. Law & Techn. (Georgetown Univ.) 121 (Winter, 1987).
8. Computer Mediated Communications: Bulletin Boards, Computer Conferencing, Electronic Mail, and Information Retrieval, by Matthew Rapaport, John Wiley & Sons (1991). ISBN: 0-471-51642-2.
9. Employee Access to Union Bulletin Boards, by Joan Garden, 32 (2) Labor Law Journal (CCH) 71-82 (Feb. 1981).

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Wayne W. Schmidt
Employment Law Editor
P.O. Box 75401
Chicago, IL 60675-5401 USA
E-mail: wws@aele.org
Tel. 1-800-763-2802

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