

NLRB says cleaning company's rules are spotless

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Employers, even those that are union-free, must comply with the National Labor Relations Act (NLRA). Under the Act, you can't discriminate against union members or restrict employees' right to organize. Union members and organizers often challenge employers' nonsolicitation and no-access policies as being in violation of those rules under the Act. Of course, an employer whose policy restricts outsiders' access to its workplace can legally prohibit union organizers from coming onto company property to recruit members, but there are guidelines you should follow in creating and enforcing such a policy to avoid raising NLRA issues. One company recently relied on such a policy to defeat a union's unfair labor practice charge, and the National Labor Relation Board's (NLRB) decision gives us an opportunity to review some of those guidelines.

Union claims cleaning company is involved in dirty business

A company that contracted its services to a number of office buildings in a metropolitan area had a strict policy about nonemployees in its work area. None were allowed — period. The company's policy stated, "No unauthorized personnel on the job at any time. (This includes children.) Only people who are employed by [the company] can be on the property."

A union began a campaign to organize the company's workforce; the union must have thought it needed to try to clean things up a bit. During the campaign, a supervisor saw an employee talking to a union representative in a customer's parking lot after her shift. The next day, the supervisor told the employee "we have to follow building norms and [you can't talk with the union] or any other stranger inside the parking lot." The supervisor also told the employee she could talk to anyone she liked, but not on the customer's property.

About a month later, another supervisor saw the same employee talking to a union representative in her car in a customer's parking lot after her shift. The supervisor told the employee she couldn't talk to the union representative on the customer's property but that she could have the conversation off the property, about 25 feet away. The employee complied with the supervisor's request. The next day, the supervisor reminded the employee of the company's rule prohibiting unauthorized individuals on the customer's property. The union filed an unfair labor practice charge against the employer claiming it violated the NLRA by prohibiting the employee from talking to the union representative.

Employer has clean hands

This case involved two well-settled principles of federal labor law: (1) you can take reasonable steps to prevent nonemployees from trespassing at your workplace, and (2) you can't restrict an employee's right to organize, absent special circumstances. The union claimed the company violated the law by prohibiting the employee from talking to the union representative

and, therefore, restricted her right to organize. It pointed out that the company didn't attempt to enforce its policy prohibiting unauthorized access to the customer's property because it didn't tell the union representative to leave the property. Instead, it told the employee she couldn't talk to the representative on the customer's property where she had been working.

The NLRB disagreed with the union's argument and decided that the company's actions were lawful. The Board said the supervisors weren't required to direct their comments to the union representative because the purpose of their actions was to enforce the employer's policy. It didn't matter whether they enforced the policy by speaking to the employee or the union representative. *North Hills Office Services, Inc.*, 345 N.L.R.B. No. 107.

How to keep your labor relations 'squeaky clean'

If you want to prohibit union organizers and representatives from accessing your workplace, here are a few tips you can follow to minimize the risk of an unfair labor practice charge:

- ❖ Implement a policy prohibiting nonemployee access to your property or place of work.
- ❖ Enforce the policy consistently (*i.e.*, the policy must be enforced with respect to all nonemployees, not just union folks).
- ❖ Disseminate the policy to all employees and post it in conspicuous areas and at access points.
- ❖ Train your supervisors to instruct all nonemployees to leave the premises.
- ❖ In the policy, also prohibit employees from remaining on the work premises before or after their shift (that will give you the authority to require employees who are off the clock to leave the premises).

Likewise, if you have nonsolicitation policies and electronic systems policies that permit the use of company bulletin boards and electronic systems for business purposes only, ensure that you enforce those policies in a nondiscriminatory manner. If you allow employees to use your bulletin boards and electronic systems for nonbusiness purposes, such as to invite others to attend meetings and functions of various private organizations, you may not be able to lawfully exclude discussions about unions and union events. While some employers find that prohibiting all noncompany communications on bulletin boards and electronic systems is impractical today, most employers that are and want to remain union-free prefer to adopt and enforce a policy restricting outsiders, including unions, from their property. ■