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NLRB Limits Non-Employee Leafletting On Employer Premises

The National Labor Relations Board (the “Board”) recently issued a precedent-reversing ruling on August 23, 2019, that allows employers to bar non-employees from leafletting on their premises. In its decision, the Board held that contractor employees are not generally entitled to the same National Labor Relations Act (NLRA) Section 7 access rights as the property owner’s employees.

The majority reversed the agency’s judge ruling that the Bexar County Performing Arts Center violated the NLRA by blocking symphony members represented by American Federation of Musicians from protesting on its property. There, the judge relied on a prior 2011 *New York New York LLC* board decision, which held employers can bar off-duty workers working for on-site contractors from handing out leaflets on their property only when they would significantly interfere with the employer’s use of the property or when excluding the workers is justified by another legitimate business reason.

The Bexar County Performing Arts Center challenged the original ruling that it broke the law by kicking the musicians off its property during a performance. The musicians had been passing out leaflets and had performed at the Center but were *not* employees of the Center.

The Board found that the *New York New York LLC* decision and a subsequent decision in *Simon DeBartolo Group* unfairly restricted an employer’s rights to control their property, including the rights to exclude. Although the NLRA gives an employer’s workers some rights to access its property, this is not the case for workers like the musicians, the majority said.

However, the Board limited its bar on off-duty workers. If the workers “regularly and exclusively” work on the property and do not have one or more “reasonable nontrespassory” ways of getting their point across, they can access the property.

This ruling is the latest in a series of decisions by the majority Trump-appointed Board largely favoring employers, in contrast to employee-favored decisions under the Obama administration. As such, employers stay tuned for further decisions and interpretations of the NLRA that could potentially change the way employers may control and regulate their property.

Questions? Contact Stokes Wagner.