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## ***NLRB Redefines “Union Solicitation”***

Many employers have “no solicitation” policies for the workplace, prohibiting employees from soliciting for causes of any kind at work. These policies can be tricky to enforce when union solicitation is at issue. In recent years, the Board had narrowed the definition of “union solicitation” to hold that it does not qualify as “solicitation” unless the person soliciting provided a union authorization card to the listener. Now, the Board has reversed that precedent.

In *Wynn Las Vegas, LLC*, 369 NLRB No. 91 (May 29, 2020), the Board reversed decisions in *Wal-Mart Stores* [2003] and *ConAgra Foods, Inc.* [2014]. In these cases, the Board ruled that discussing the possibility of a union would only be solicitation if a union authorization card was offered. In *Wynn Las Vegas*, the Board held that the employer had the right pursuant to its no-solicitation policy to discipline an employee who distracted a security guard on work time with comments like, “any union is better than no union,” “the dealers did this, you can do it, too,” and “you guys need to have your own voice and. . . just hang in there.” The Board held:

“[I]n the context of a union campaign, solicitation for a union ordinarily means that someone is asking an employee to join a union by signing a union authorization card. However, solicitation is not limited to this act. **We hold that solicitation for or against a union also encompasses the act of encouraging employees to vote for or against union representation.** Such conduct constitutes union solicitation because the employee is selling or promoting the services of the union [or urging employees to reject those services].” [emphasis added]

It remains to be seen how the Board will continue to interpret the term “union solicitation” in the future, but employers should keep the new decision in mind when investigating claims of solicitation going forward.

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