



Shhh! NLRB Says Companies Can Block Union Talk On The Clock

June 9, 2020 | [Labor And Employment, National Labor Relations Board](#)



David J. Przybylski
Partner

Rules [limiting employee discussion on forming unions](#) historically have been a tricky area for employers to navigate legally. However, the National Labor Relations Board (NLRB) recently made the significant ruling that companies [generally can prohibit employees](#) from encouraging coworkers to support unionization during working time.

At issue in the case was an employee who was disciplined for talking about a union election with an on-duty employee, a conversation which lasted several minutes. The employer had a policy that generally prohibited employees from soliciting union support or distributing union-related materials during working time or in work areas.

The NLRB held the discipline for the employee violating the proscription on soliciting for union support during work time was lawful. The Board further overruled prior NLRB precedent that indicated minimal discussions about union organizing were not sufficient to constitute “solicitation” and held:

“Board and court precedent regarding no-solicitation policies is based on the principle that union solicitation is likely to disrupt work. As a result, a rule prohibiting solicitation during working time is presumed valid, and employers may lawfully discipline an employee who violates such a rule, even if the employee has not interrupted work. In our view, a requirement that there be a significant interruption, or indeed any interruption, of work to constitute prohibited solicitation interferes with the balance between employees’ right to

RELATED PRACTICE AREAS

Discipline and Termination
Labor and Employment
Labor Relations
National Labor Relations Board (NLRB)

RELATED TOPICS

Union Solicitation
Discipline

organize and the equally undisputed right of employers to maintain discipline in their establishments.”

Based on that rationale, the Board determined that the several-minute conversation interfered with the on-duty employee’s work, which is exactly what the policy was intended to deter.

This decision offers some welcome clarity for employers in terms of whether employees can be disciplined for violating a lawfully maintained no solicitation policy. Of course, companies must take care in drafting and consistently enforcing such policies in order to take full advantage of them.