

**NLRB Is Considering Expanding Union Rights
to Organize on Employer Premises:
What Employers Should Do Now**

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By Peter M. Panken, Steven M. Swirsky, and Michael W. Casey, III

The new Obama National Labor Relations Board (“NLRB” or the “Board”) has signaled that it will likely be granting union organizers the right to enter employers’ premises to conduct union organizing activity. This would reverse a trend in the last few years of preserving an employer’s property rights, and of confining union organizers to areas outside of an employer’s private premises, including those areas open to the public, in retail, healthcare, hospitality, and other venues where non-employees are allowed access.

It has long been the law that an employer is generally permitted to limit access to its private property, so long as the employer does not discriminate against outside union organizers. However, it has been widely recognized that the exception of allowing charitable organizations to solicit on company premises has not opened the floodgates to union organizers.

But the newly constituted NLRB, composed of a majority of attorneys who had in their law practices represented unions, has now issued an invitation “for all interested parties to file briefs regarding the question of what legal standard the Board should apply in determining whether an employer has discriminated against nonemployee union agents seeking property access.”

Given the current composition of the NLRB, which has supported union positions over those of management in virtually every case decided by it since the new members were seated this past spring, we fully expect a decision that greatly expands the rights of non-employee union organizers to enter an employer’s premises to engage in union activity. The Board would not have issued its “invitation” if it planned to reaffirm existing interpretations of law.

WHAT EMPLOYERS SHOULD DO NOW

Employers are well advised to consider the following actions to preserve, as best possible, intended restriction and to ready their businesses for a likely change in Board law:

1. Review all existing rules and policies prohibiting non-employees from soliciting on company premises, as well as those restricting solicitations by employees to be sure that the rules themselves do not create undue risks.
2. Revise those rules and policies that are most likely to be subject to adverse scrutiny by the NLRB.
3. Review the manner in which such rules and policies are applied and administered to ensure that lawful non-solicitation rules are consistently enforced and appropriate documentation is maintained.
4. Establish protocols to monitor the enforcement of the rules and to maintain written records of communications regarding such rules and policies and their application.
5. Consult with counsel promptly when any non-employees, including union organizers, seek permission or attempt to enter company premises, to assess vulnerability to unfair labor practice charges, discover what actions may be taken lawfully, and assess the precedential value of decisions made and actions taken.
6. Assess the risk associated with allowing charitable solicitations on company premises (although many employers allow United Way solicitations and similar solicitations, these employers may be well advised to have such solicitations conducted by off-duty employees rather than outsiders).

For more information about this Advisory, please contact:

Peter M. Panken
New York
212/351-4840
ppanken@ebglaw.com

Steven M. Swirsky
New York
212/351-4640
sswirsky@ebglaw.com

Michael W. Casey, III
Miami
305/579-3205
mcasey@ebglaw.com

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