

Labor and Employment E-news

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NLRB Decision Clarifies Rule on Employee Use of E-mail Systems and Enforcement of No-Solicitation Policies

In The Guard Publishing Co., the employer adopted a Communications System Policy ("CSP") which provided that "communications systems are not to be used to solicit or proselytize for commercial ventures, religious or political causes, outside organizations or other non-job-related solicitations." The union filed an unfair labor practice charge claiming that said policy unlawfully interfered with the statutory right of employees to engage in union and concerted activities.

Declaring that an employer has a basic property right to regulate and restrict employee use of company property the NLRB held that the employer could lawfully prohibit the use of the company's e-mail system for non-job-related solicitations.

The NLRB majority further announced a new standard for determining whether an employer has violated the Act by discriminatory enforcement of a no-solicitation policy. The NLRB has traditionally found that an employer acts unlawfully if it permits non-job-related communications but not those related to union activity. Under this new standard an employer will be held to have engaged in discriminatory enforcement of a policy only when the activities involved are similar in character. Thus, permitting employees to use the e-mail for purely personal messages or charitable solicitations would not be deemed discriminatory enforcement where union and commercial non-charitable solicitations are prohibited.

Employers should review their no-solicitation policy and determine whether the policy should be revised to accord with the NLRB ruling in The Guard Publishing Co.

For more information on this or any labor and employment matter, contact the author of this E-Bulletin as indicated below, or any member of Butzel Long's Labor and Employment Law Practice Group.

Craig S. Schwartz
248-258-2507
schwartz@butzel.com

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Butzel Long
Suite 100
150 West Jefferson Avenue
Detroit, Michigan 48226
T: 313 225 7000
F: 313 225 7080