

No-Solicitation Rule: Court Says Employer's Actual Practices Discriminated Against Labor Union.

The hospital's no-solicitation rule, as written, is non-discriminatory. The National Labor Relations Board (NLRB) does not contest that on its face the rule seems to be valid.

However, there is evidence the hospital routinely permitted employees to violate the no-solicitation rule for non-union-related commercial businesses and charitable causes.

Even if the employer's no-solicitation policy seems to be neutral on its face, when the employer has been lax in enforcement for non-union-related activities but enforces the no-solicitation policy against union-related activities, the employer is guilty of an unfair labor practice.

Pro-union employees who were given corrective interviews for violating the no-solicitation rule were victims of an unfair labor practice. They are entitled to have this particular disciplinary action expunged from their employment files.

UNITED STATES COURT OF APPEALS
SIXTH CIRCUIT
October 5, 2006

Several hospital employees were disciplined for passing out union-authorization cards in non-patient-care areas of the hospital in violation of the hospital's no-solicitation rule.

They filed a complaint with their local office of the National Labor Relations Board (NLRB). The Board found the hospital guilty of an unfair labor practice. The US Court of Appeals for the Sixth Circuit agreed with the Board.

Discriminatory Enforcement of Non-Solicitation Rule

The court found the evidence overwhelming that the hospital was lax in enforcement of its no-solicitation rule with respect to non-union-related activities.

Various commercial and charitable solicitations were openly tolerated. Employees routinely solicited other employees in non-patient-care areas selling Tupperware, Avon cosmetics and Girl Scout cookies, the court pointed out. Books, catalogues and order forms for such products were commonly left lying around, even in patient-care areas like nurses stations. Management-level supervisors could and did see what was going on and did nothing to stop it.

This made out a strong case of anti-union bias when the hospital turned around and tried to use its no-solicitation rule to justify disciplinary action against pro-union employees soliciting for the union cause on hospital premises.

Coercion Prohibited

An employer cannot give out wage increases while a union-certification election is in progress. Management cannot comment to employees on the effect that a pro-union election result, once certified, will have on proposed wage increases that are presently on hold, the court pointed out. **NLRB v. Promedica Health Systems, Inc.**, 2006 WL 2860771 (6th Cir., October 5, 2006).