

Insights: Alerts

NLRB Redefines “Solicitation” Broadening What May Be Considered Unprotected Activity

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On May 29, 2020, the National Labor Relations Board issued a decision in *Wynn Las Vegas, LLC*, 369 NLRB No. 91 (2020) broadening the definition of “solicitation.” The Board overruled its prior decisions in *Wal-Mart Stores*, 340 NLRB 637 (2003) and *ConAgra Foods, Inc.*, 361 NLRB 944 (2014), which, together, required that a union authorization card be present in order for a communication to be considered “solicitation.”

The recent decision in *Wynn Las Vegas* held that an employee engages in solicitation “where an employee makes statements to a coworker during working time that are intended and understood as an effort to persuade the employee to vote a particular way in a union election.” Thus, an employee may be subject to discipline based on a “validly enacted and applied no-solicitation policy” for engaging in any such solicitation during working time.

The decision marks the latest in a series of decisions overturning previous Board precedent.

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