OPRA Solicitation Guidelines

Labor Relations Issues

August 28, 2013

***General Principles***

Most employers do (and all employers should) maintain a written policy addressing solicitation of employees in the workplace.

The NLRA regulates these policies because of they could be used to limit union organizing activity.

 To pass muster under the NLRA, a no-solicitation policy:

Must permit solicitation between employees during non-working time (*e.g.*, breaks, meal periods, before or after scheduled work shifts). Both employees (the one doing the solicitation and the one being solicited) must be on non-working time.

Must permit solicitation in a working area, unless the working area might qualify as a “patient care area” in the case of a nursing home, acute care, or similar patient treatment environment. Solicitation may be prohibited in a “patient care area.”

Must not reference “company time” or similar formulations, but must instead refer to “working time.”

Separate rules regulate no-distribution policy (*e.g.*, handing out fliers), which are slightly different than no-solicitation rules.

Employers may not “discriminate” against union solicitation in the application of their no-solicitation policy (*e.g.*, permit solicitation for some causes, but not for union membership).

Employers may ban third parties from soliciting anywhere on their property, but may not enforce this ban in a discriminatory manner (*e.g.*, permit some third parties but not others to solicit).