

NLRB STRIKES DOWN NON-SOLICITATION POLICY

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Non-solicitation and non-distribution policies are part of “old school” labor law, but on May 30, 2014, the National Labor Relations Board took a fresh look at these policies and struck down a non-solicitation policy contained in the employee handbook of Food Services of America, Inc. *Food Services of America, Inc. and Paul Louis Carrington*, 360 NLRB No. 123. Even though the Board affirmed most of the administrative law judge’s conclusions which dismissed virtually all of the claims against the employer, the Board took the opportunity to strike down the employer’s solicitation policy. The handbook policy stated:

Solicitation discussions of a non-commercial nature, by Associates, are limited to the non-working hours of the solicitor as well as the person being solicited and in non-work areas. (Working hours do not include meal breaks or designated break periods.)

The Board found that this policy restricted Section 7 activity because it prohibited solicitation, including union solicitation in work areas during non-work time. In an extremely brief discussion of the rule, the Board determined that the rule here “expressly provides that solicitations are limited to non-working hours *and* ... non-work areas (emphasis added), indicating that both conditions must be satisfied before solicitation is permitted. The Respondent argues that the rule permits solicitation in work areas when both employees are on non-work time. Perhaps that was what the Respondent meant to say, but it is not what the rule says.” The Board’s opinion also contains an extended discussion of the Board’s continually expanding jurisprudence on protected concerted activity. In its decision, the Board construed a series of instant messages between two employees as discussions about job security which it found to be protected under Section 7 of the Act. The Board’s opinion is available [here](#).

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