

NLRB Ruling Critical Of Company Distribution / Solicitation Rule

December 3, 2014 | [National Labor Relations Board, Labor And Employment](#)



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The NLRB last week affirmed an earlier ALJ decision finding that Mercedes-Benz US International, Inc.'s non-solicitation and non-distribution rule was overbroad and violated the Act by prohibiting discussions of union organizing by employees in working areas and prohibiting distribution of union literature in "mixed use" or non-working areas. The portion of MBUSI's handbook policy on solicitation and distribution provided as follows: "MBUSI prohibits solicitation and/or distribution of non-work related materials by Team Members during work time or in working areas." The General Counsel claimed the language would reasonably be interpreted by employees to prohibit a non-working employee from discussing the union with another non-working employee if they were in a work area. Specifically, the GC argued, "This provision can only be reasonably read as 'prohibiting solicitation by team members in working areas.' As written, this policy prohibits any solicitation at any time in working areas, regardless of whether the employees are on working time or not. Respondent's rule is ambiguous and does not clearly convey that employees may lawfully solicit in working areas on nonworking time and it does not describe what is a working area." MBUSI argued it did not enforce the rule in a manner that was unlawful and the ALJ agreed: "I find that the Respondent truly sought to be neutral and did not intend its rule to be construed in a way which discouraged employees from engaging in protected activities. Nevertheless, because MBUSI maintained the rule in its employee handbook – and did not clarify its application or intent in a supplement to the handbook – the ALJ concluded it was unlawful. "I have no doubt that Respondent generally allowed employees to discuss the union in the workplace [but] mere maintenance of the rule, even without enforcement, violates the Act." "Clearly, a rule does not have to be enforced to be unlawful [and] perhaps that was what the Respondent meant to say, but it is not what the rule says." MBUSI was ordered to rescind the rule and inform employees they would not enforce such a rule going forward. A copy of the Board's decision can be found [here](#). Media coverage of the decision can be found [here](#) and [here](#).

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