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LEGISLATIVE ACTION ALERT

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NLRB Board Restores Protections for Employees Who Advocate for Nonemployees

On August 26, the NLRB in *American Federation for Children, Inc.*, reversed its 2019 decision in *Amnesty International*, returning to longstanding precedent that concerted advocacy by statutory employees on behalf of nonemployees is protected by the National Labor Relations Act (Act) when it can benefit the statutory employees.

In *Amesty International*, the Trump Board found that the statutory concept of "mutual aid or protection" did not encompass the efforts of statutory employees to help themselves by helping others who are not statutory employees. This was at odds with consistent prior Board, Circuit Court and Supreme Court precedent. In reversing *Amnesty International*, the current Board explained that such efforts by employees toward non-statutory individuals can benefit employees by improving their own working conditions or by leading nonemployees to later return the help they have received.

"The previous Board in *Amnesty International* failed to recognize that 'mutual aid or protection' easily covers situations where employees extend help to nonemployees, especially those who work alongside them," said Chairman McFerran. "Standing in solidarity can be a protected act regardless of the employment status of those you stand with – the question is simply whether, in helping others, employees might help themselves and get help in return."

The Board also reaffirmed established precedent that job applicants are statutory employees. As such, they are entitled to the protection of the Act, meaning, for example, that they cannot be questioned about their feelings concerning labor organizations or their past contacts with unions.



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