

**United States Government
National Labor Relations Board
OFFICE OF THE GENERAL COUNSEL**

Advice Memorandum

DATE: July 21, 2000

TO : Rosemary Pye, Regional Director
Region 1

FROM : Barry J. Kearney, Associate General Counsel
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SUBJECT: Sterilite Corp.
Case 1-CA-38239

This case was submitted for advice as to whether the Employer's rule regarding employee standards of conduct unlawfully restricts employees in the exercise of Section 7 rights.

The Employer maintains an employee handbook that includes the following "Standards of Conduct":

All Sterilite employees are expected to conduct themselves with integrity, courtesy, and consideration for others. Engaging in any of the activities or actions that are inconsistent with this expectation or with the guidelines discussed in this handbook may subject the employee to disciplinary action, including possible immediate dismissal.

Certain other activities are specifically prohibited, including:

* * *

Working for a competing business while a Sterilite employee; breach of confidentiality of personal information; failure to properly protect the confidentiality of Sterilite information.

There is no evidence that the Employer ever provided employees with any explanation regarding this rule, either orally or in writing. The term "personal information" is not defined anywhere in the handbook. There is no evidence the rule has ever been enforced.¹

¹ The Region discovered its existence in investigating an unrelated Section 8(a)(3) discharge allegation which the Region has dismissed.

We conclude that the rule is facially overbroad and unlawful because it could reasonably be interpreted by employees to preclude activities protected by Section 7.

In Lafayette Park Hotel,² the Board held that an employee handbook rule barring employees from "divulging Hotel-private information to employees or other individuals" was lawful because employees reasonably would understand that the rule was designed to protect against the disclosure of confidential information such as guest information, trade secrets, contacts with suppliers, and other proprietary information, and would not prohibit the discussion of their wages or other Section 7 protected discussions. Similarly, in Super K-Mart,³ the Board held that an employee handbook provision stating that "Company business and documents are confidential . . . [and] disclosure of such information is prohibited" was lawful since the rule was limited to "confidential" company information and did not by its terms prohibit employees from discussing wages or working conditions.

On the other hand, the Board recently found unlawful a rule prohibiting employees from revealing "confidential information regarding customers, fellow employees, or Hotel business," because the specific reference to employees could reasonably be interpreted to ban discussions regarding employee terms and conditions of employment. Moreover, although the analysis set out in Lafayette Park Hotel and Super K-Mart is, in some ways, a departure from prior Board law, it leaves intact the well-established principle that maintenance of an ambiguous rule violates the Act if the rule reasonably would chill employees in the exercise of activity protected by the Act.⁴ The Board also reaffirmed the principle that if a rule is ambiguous, the ambiguity must be construed against the employer as the promulgator of the rule.⁵

Here, the clause prohibiting employees from "breach of confidentiality of personal information" could reasonably be interpreted to preclude discussions regarding employees' terms and conditions of employment. The term "personal

² 326 NLRB No. 69 (August 27, 1988).

³ 330 NLRB No. 29 (November 30, 1999).

⁴ See J.C. Penney, 266 NLRB 1223, 1224-5 (1983).

⁵ Lafayette Park Hotel, 326 NLRB No. 69, slip op. at 5, citing Norris/O'Bannon, 307 NLRB 1236, 1245 (1992).

information" would appear to apply to information about individuals, including employees. Indeed, it is likely that an employee would conclude that the term means something other than company proprietary information, as the Employer contends, since other language in the rule specifically refers to that kind of information (employees must "protect the confidentiality of Sterilite information"). Therefore, the rule is ambiguous and overbroad and violative of Section 8(a)(1).

Accordingly, the Region should issue complaint, absent settlement.

B.J.K.