

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

# Advice Memorandum

DATE: June 20, 2000

TO : Martha Kinard, Acting Regional Director  
Region 16

FROM : Barry J. Kearney, Associate General Counsel  
Division of Advice

SUBJECT: Luke Soules/ACOSTA Southwest                   506-6080-8700  
Case 16-CA-20317   512-5012-6737  
  524-8393-5030

This Section 8(a)(1) case was submitted for advice on whether the Employer maintained and enforced an overly broad rule against employee divulgence of wage and benefit information to individuals outside the company.

We conclude, in agreement with the Region, that the rule is overly broad and unlawful.<sup>1</sup> We also conclude that the Employer discipline pursuant to the rule was unlawful.

Discipline pursuant to an unlawful rule is also unlawful unless the employer can independently justify that discipline.<sup>2</sup> In Daylin, the Board stated that a rule that unlawfully restricts employee solicitation:

can provide no justification for the discharge of an employee who violated it. Therefore, if an employee is discharged for soliciting in violation of an unlawful rule, the discharge also is unlawful unless the employer can establish that the solicitation interfered with the employees' own work or that of other employees, and that this rather than violation of the rule was the reason for the discharge.

Thus, where an employer can adduce a separate reason not implicating Section 7 for discipline, apart from the unlawful rule, such discipline is lawful.

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<sup>1</sup> See, e.g., BET Services, Inc. d/b/a Aggregate Equipment, Case 33-CA-12769, Advice Memorandum dated January 14, 1999; Otis Spunkmeyer, Inc., Case 32-CA-15772, Advice Memorandum dated November 20, 1998; The Medical Center of Beaver, Pa. Inc., Case 6-CA-27543, Advice Memorandum dated December 18, 1995.

<sup>2</sup> Daylin, Inc., 198 NLRB 281 (1972).

In the instant case, the Employer imposed the discipline in the belief that the employee had violated the rule, i.e., had disclosed salary information to an outsider. Since this conduct constituted protected activity<sup>3</sup> and the Employer offered no other basis for the discipline separate and apart from the rule, the discipline also is unlawful.

B.J.K.

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<sup>3</sup> Certified Grocers of Illinois, Inc., 276 NLRB 133 (1985).