

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

# Advice Memorandum

DATE: August 18, 2000

TO : Ralph R. Tremain, Regional Director  
Region 14

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

SUBJECT: JJ Projective Services, d/b/a Pro-Tec Fire  
Services, LTD  
Case 14-CA-26041

506-6070  
506-6090-3400  
512-5012-0100

This case was submitted for advice as to whether certain provisions in the Employer's Company Rules and in its Professional Conduct, Confidentiality Policy restrict employees in the exercise of Section 7 under Lafayette Park Hotel, 326 NLRB No. 69 (1998).

## FACTS

The Union was certified on March 9, 2000. The Employer's Company Rules and its policy entitled Professional Conduct and Confidentiality, include the following provisions which prohibit:

- Unauthorized disclosure of personal data (including salary information). Group 1, number 17 of Company Rules.
- Disclosure of any operational information of the Company or its clients to any third person (including the media) without prior written approval. Group II, number 12 of Company Rules.
- Deliberate statements or actions detrimental to the Company; knowingly spreading false reports or information intended to disrupt relations among employees, and/or between employees, supervisors, and/or the Company. Group II, number 13, of Company Rules.
- Discussion of any business related information with co-workers, non-employees of our Company, our client, the client's employees, or any third party without the

direction or permission of a supervisor. The immediate supervisor and/or designated representative of the Company will determine what information will be passed on or shared with others regarding work assignments. Policy of Professional Conduct and Confidentiality.

- When an employee does not agree with Company policies/procedures, a supervisor, or co-workers, he/she shall bring these matters to the attention of his/her immediate supervisor privately for review and discussion. Employees will not discuss these issues with co-workers, our client, our client's employees, or anyone else outside the work group.

On January 5, 2000, the Employer issued a written notice of discipline to employees. One of the factors the Employer listed for issuing this discipline was the employees discussion with another employee of events relating to another employee's discharge. The Region has concluded, and we agree, that the rule prohibiting the unauthorized disclosure of personal data is unlawful.

#### ACTION

Complaint should issue, absent settlement, alleging that the Employer violated Section 8(a)(1) by maintaining and enforcing overly broad rules as analyzed under Lafayette Park.

In Lafayette Park, the Board held it would not find unlawful the mere maintenance of arguably ambiguous employer rules where the rules address "legitimate business concerns"<sup>1</sup> and there is no evidence that the employer has engaged in actions or applied the rule in such a manner as to lead employees to conclude that the rule prohibits Section 7 activity. Thus, 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.<sup>2</sup> The Board therefore found that the rule was not ambiguously overbroad and would not chill employees in the

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<sup>1</sup> Lafayette Park Hotel, 326 NLRB No. 69, slip op. at 2.

<sup>2</sup> Id., slip op. at 3.

exercise of Section 7 rights.<sup>3</sup> Similarly, the Board held, in Super K-Mart,<sup>4</sup> that an employer's confidentiality provision in its employee handbook did not violate Section 8(a)(1) where the provision stated that "Company business and documents are confidential . . . [and] disclosure of such information is prohibited," and did not "by its terms prohibit employees from discussing wages or working conditions." Because the rule was limited to "confidential" company information, it was addressed to protecting the employer's legitimate confidentiality interests and did not implicate employee Section 7 rights.

Here, unlike in Lafayette Park and Super K-Mart, the Employer's rules prohibiting disclosure of operational and business-related information about the Company are not limited in any way to confidential or proprietary information, and employees reasonably would understand those rules to apply to all information about the Company including information protected by Section 7. That would include information regarding the Employer's labor relations, terms and conditions of employment of its employees, and other types of information which employees have a protected right by law to discuss and disseminate outside the Company.

In fact, a portion of the Employer's rule specifically prohibits discussion of any of the Company's policies and procedures, i.e., it explicitly prohibits employees from, without prior approval, disclosing personal data, including salary information. This clearly restricts Section 7 conduct.<sup>5</sup>

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<sup>3</sup> The Board reaffirmed the principle that if a rule is ambiguous, the ambiguity must be construed against the employer as the promulgator of the rule. 326 NLRB No. 69, slip op. at 5, citing Norris/O'Bannon, 307 NLRB 1236, 1245 (1992). See also J.C. Penney Co., 266 NLRB 1223, 1224-5 (1983); Taylor-Dunn Mfg. Co., 252 NLRB 799, 813 (1980); Paceco, 237 NLRB 399, 400 fn. 8 (1978), enfd. in pertinent part 601 F.2d 180 (5th Cir. 1979); and The Trustees of Columbia University, 225 NLRB 185, 192 fn. 7 (1976).

<sup>4</sup> K-Mart, d/b/a Super K-Mart, 330 NLRB No. 29 (November 30, 1999).

<sup>5</sup> See Flamingo Hilton-Laughlin, 330 NLRB No. 34 (Nov. 30, 1999) (rule barring disclosure of "confidential information regarding customers, fellow employees, or Hotel business" unlawful because of specific reference to employees, which Board found could reasonably be interpreted to include ban

Further, we agree with the Region that the Employer rule prohibiting deliberate statements or actions detrimental the Company is overly broad and vague since employees could interpret that rule as prohibiting lawful handbilling or striking.

However, the Employer's rule prohibiting "knowingly spreading false reports or information intended to disrupt relations among employees, and/or between employees, supervisors, and/or the Company" is lawful under Linn v. Plant Guard Workers.<sup>6</sup>

Finally, the requirement that employees obtain prior approval is a requirement that has been held by the Board to have a chilling effect on Section 7 activity.<sup>7</sup>

In addition to being unlawful on its face, the Employer's rules are overbroad because they were enforced in a manner that interfered with employees' Section 7 rights, and that unlawful enforcement will further signal to employees that the rules applies to Section 7 activity.<sup>8</sup>

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on discussions regarding terms and conditions of employment); Kinder-Care Learning Centers, 299 NLRB 1171 (1990) (child care center violated Section 8(a)(1) by maintaining a rule which prohibited employees from discussing work-related issues with parents and other third parties).

<sup>6</sup> 383 U.S. 53 (1966) (statements made with "actual malice", i.e. with knowledge of their falsity or reckless disregard of whether they were true or false" are not protected by Section 7. See also N.Y. Times v. Sullivan, 376 U.S. 254 (1964).

<sup>7</sup> Cf. Norris/O'Bannon, 307 NLRB 1236 (1992) (company rules requiring prior approval for soliciting at any time on company premises, and specific authorization for distribution of literature, violated Section 8(a)(1)); Kurz-Kasch, Inc., 286 NLRB 1343 (1987) (same); Christie Electric Corp., 284 NLRB 740 (1987) (same); AMC Air Conditioning Co., 232 NLRB 283, 284 (1977) (employer cannot lawfully require employee to secure permission as precondition to engaging in protected concerted activities on company property in non-work areas during non-work time).

<sup>8</sup> Compare Lafayette Park and Super K-Mart, where the Board,

Thus, employee Schaffer was disciplined, pursuant to the Employer's rules, for engaging in Section 7 activities, discussing an employee's discharge with another employee.

B.J.K.

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in determining that the employers' confidentiality rules were not overbroad, relied heavily on that the fact that the employers had not enforced the provisions to prohibit employees from discussing their terms and conditions of employment, and therefore the employees would not reasonably believe that the rules prohibited such discussions.