

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

# Advice Memorandum

DATE: October 8, 2004

TO : Alan Reichard, Regional Director  
Region 32

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

SUBJECT: Longs Drug Stores California, Inc. 512-5024-2500  
Case 32-CA-21550 5036-6735  
5072-2000

This Section 8(a)(1) case was submitted for advice on whether two employee handbook provisions (1) requiring the reporting to management of solicitation on company property, and (2) barring the disclosure of confidential information regarding customers, employees or company business, are unlawfully over broad because employees could reasonably interpret them to apply to Section 7 activity.

We conclude that (1) the provision requiring the reporting of solicitation on company property would not be read by employees to apply to lawful employee solicitation, but (2) the provision barring disclosure of employee information is unlawful under current Board law.

### FACTS

This case arises in the context of a contemporaneous Board election. In May, 2004, the Union filed a petition seeking to represent the Employer's warehouse employees. On July 7, the Union lost the Board election by a vote of 175 to 107. The Union filed five objections, one of which concerned the unlawful nature of the two provisions in the employee handbook.

The Employer's "Solicitation" rule, which is located on page 10 of the handbook, states:

In order to avoid disruption of company operations, Longs employees may not solicit during working time for any purpose. Working time includes the work time of both the employee doing the solicitation as well as the employee being solicited. Working time does not include scheduled break periods, meal periods, or time before or after the employee's shift.

In addition, Longs employees may not distribute literature of any kind during working time nor

may employees distribute literature at any time for any purpose in working areas.

Persons who are not employed by the company may not solicit or distribute literature on company property at any time for any purpose.

If you observe solicitation on company property at any time, report it to your manager immediately.

The Employer's "Confidential Information" rule or policy, located on page 9 of the handbook, states:

In the course of performing your duties as an employee, you may have access to confidential information about the company or its customers. It is your responsibility to keep the trust the company has place in you by not disclosing such information to unauthorized persons, or organizations, or use it for personal gain.

Failure to maintain this trust may result in corrective action, up to and including you immediate dismissal.

On page 13 of the handbook, in a section entitled "Corrective Action/Employee Conduct," the handbook lists the following as one of many examples of conduct that may result in disciplinary action, up to and including termination:

Unauthorized disclosure of confidential information regarding customers, employees, or the business of the company.

There is no evidence that the rules were initiated or disseminated in response to Union or protected activity. There also is no evidence that the Employer has applied either rule to protected activity, i.e., no evidence that the Employer has required the reporting of, or has disciplined employees for failing to report, lawful employee surveillance, or has disciplined employees for disclosing employee information.

#### ACTION

We conclude, in agreement with the Region, that the reporting of solicitation rule is not unlawfully over broad.

We have found a rule requiring employees to report "any solicitation" to be unlawful because employees would reasonably interpret such a rule to apply to protected, solicitation activity.<sup>1</sup> The rule here does not apply to "any solicitation." To the contrary, the rule is limited to solicitation "on company property at any time." More importantly, this descriptive language is repeated verbatim in the preceding paragraph barring solicitation by non-employees. Since the reporting of solicitation provision mirrors that language, and does not refer to "work time" when lawful employee solicitation may occur, we find that employees would reasonably interpret the reporting provision to apply only to prohibited non-employee solicitation, and to not apply to lawfully permitted employee solicitation.

We conclude that the provision barring "unauthorized disclosure of confidential information" is unlawfully over broad under extant Board law because it bars the disclosure of information concerning "employees." The Board has found essentially this same language to be unlawfully over broad.<sup>2</sup> We thus conclude that the second provision is unlawful under current Board law.

B.J.K.

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<sup>1</sup> Mercy Hospital, Case 31-CA-24189, Advice Memorandum dated March 10, 2000 (unlawful rule: "Any solicitation should be reported to administration.")

<sup>2</sup> See Flamingo Hilton-Laughlin, 330 NLRB 287, 288, note 3 (1999) (rule prohibiting disclosure of "confidential information regarding our customers, fellow employees, or Hotel business", held unlawful); University Medical Center, 335 NLRB No. 87 (2001), enf. denied in pertinent part, 335 F.3d 1079 (D.C. Cir. 2003) (rule prohibiting "release or disclosure of confidential information concerning patients or employees", held unlawful); IRIS USA, Inc., 336 NLRB No. 98 (2001) (rule prohibiting disclosure of trade secrets or confidential information "whether about [the company], its customers, suppliers, or employees", held unlawful).