

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

Advice Memorandum

DATE: January 31, 2008

TO : Irving Gottschalk, Regional Director
Region 30

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

SUBJECT: Ashley Furniture Industries, Inc. 512-5012-0125-0000
Cases 30-CA-17857 and 30-CA-17890

These cases were submitted for advice as to whether the Employer unlawfully told employees that they could not discuss meetings they had with the Employer about their immigration or visa status. We agree with the Region that the Employer's statements constituted oral promulgation of rules that are overly broad and violated employees' Section 7 rights in violation of Section 8(a)(1) of the Act.

FACTS

In July 2007,¹ Ashley Furniture Industries, Inc. (the Employer) had individual meetings with approximately 40 of its employees, none of whom are represented by a union. At these meetings, the Employer told employees that it had received "no match" letters from the Social Security Administration with regard to their employment documentation, and that they would be fired if they failed to provide valid documentation within 30 days. After the 30-day period had passed, and again after another 30 days, the Employer met again with the employees who had not yet provided valid documentation and repeated what it had said in the first meetings.² At all of these meetings, the Employer instructed each of the employees not to talk with anyone about the subject of the meetings.

In addition, the Employer also met with another employee regarding his expired visa, informing the employee that he would be terminated if he did not provide evidence of a valid visa within 45 days. As in the other meetings

¹ All dates hereinafter are in 2007, unless otherwise noted.

² The Employer did not, in fact, terminate any of the employees, assertedly because of ongoing changes in the federal regulations relating to the employment of undocumented workers.

discussed above, the Employer told the employee with the expired visa not to discuss the issue with anyone.

ACTION

We agree with the Region that the Employer's statements constituted oral promulgation of rules that are overly broad and violated employees Section 7 rights in violation of Section 8(a)(1) of the Act.

It is well established that an Employer violates Section 8(a)(1) of the Act by prohibiting employees from discussing terms and conditions of employment, including wages, hours, and working conditions, in the absence of a substantial and legitimate business justification.³ For example, the Board has made it clear that the imposition or maintenance of a rule prohibiting employee discussion of employer disciplinary actions "constitutes a clear restraint on employees right to engage in concerted activities for mutual aid and protection concerning undeniably significant terms of employment."⁴ The Board explained that "[i]t is important that employees be permitted to communicate the circumstances of their discipline to their coworkers so that their colleagues are aware of the nature of discipline being imposed, how they might avoid such discipline, and matters which could be raised in their own defense."⁵

In the instant cases, the opportunity for employees to discuss amongst themselves the threat of termination due to the receipt of a "no match" letter or an expired visa presents the same importance for mutual aid and protection as ordinary employer disciplinary actions. Because different employers act differently towards employees who are the subject of such letters, and an individual employer may itself discriminate between employees, employees have a significant interest in knowing how their employer is

³ See, e.g., Pontiac Osteopathic Hospital, 284 NLRB 442, 465-466 (1987) (rule limiting discussion of terms and conditions of employment); Kinder-Care Learning Centers, 299 NLRB 1171, 1171-1172 (1990) (same); Aroostook County Regional Ophthalmology Center, 317 NLRB 218, enf. denied in part 81 F.3d 209 (D.C. Cir 1996) (rule limiting discussion of grievances).

⁴ Verizon Wireless, 349 NLRB No. 62, slip op. at (2007), quoting Westside Community Mental Health Center, 327 NLRB 661, 666 (1999).

⁵ Ibid.

treating other employees in these circumstances. Perhaps even more importantly, as the Board noted in Verizon Wireless, employees have a significant interest in being able to share with each other how they might avoid the consequences of a "no match" letter or expired visa, and how they might defend their employment status, e.g., by discussing what documentation might be sufficient to establish lawful employment status, suggesting an immigration lawyer, or working together to affect public policy. Therefore, as the Employer has offered no substantial and legitimate business justification for prohibiting employees from discussing these matters amongst themselves,⁶ we agree with the Region that the Employer here has orally promulgated rules that are overly broad and violated employees Section 7 rights.

Accordingly, the Region should issue complaint, absent settlement, alleging that the Employer's oral promulgation of these overly broad rules prohibiting employees from discussing the subject of their meetings with the Employer violated Section 8(a)(1) of the Act.

B.J.K.

⁶ The only justification offered by the Employer for its rule was its concern that non-employees in the greater community might become hostile to the Employer's employees if the employees' immigration status issues were generally known, and that somehow this hostility might spill over into the plant itself. Even if we assume, arguendo, that this unsubstantiated assertion would be a sufficient justification for imposing a rule prohibiting employees from making these issues public, we agree with the Region that it does not justify the Employer's overbroad prohibition of employees discussing the matter amongst themselves nor overcome the employees' Section 7 right to engage in mutual aid and protection.