

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

Advice Memorandum

DATE: December 6, 2007

TO : Gary W. Muffley, Regional Director
Region 9

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

SUBJECT: Atria Senior Living Groups 512-5012-0100
Case 9-CA-43922 512-5012-0133-5000
512-5012-6737

This case was submitted for advice as to whether the Employer's maintenance of a rule in its employee handbook limiting employee communication with the news media violates Section 8(a)(1) of the Act, in light of the Board's decisions in Lafayette Park Hotel¹ and Lutheran Heritage Village.² We conclude that complaint should issue, absent settlement, alleging that the Employer violated Section 8(a)(1) of the Act by maintaining the rule.

FACTS

Atria Senior Living Groups (the Employer) maintains an employee handbook, which the employer distributes to all employees at its more than 130 facilities in 27 states. The employee handbook contains the following rule:

Media Communications

At times, you may be asked for statements, interviews or photographs from representatives from newspapers, radio, television and the like. All of these types of requests must be referred to your Executive Director. All Support Center requests should be referred to the National Director of Communications. Only authorized employees may release information to outside media contacts.

On October 4, 2007, Service Employees International Union (the Union) filed the charge in the instant case, alleging that this rule violates Section 8(a)(1) of the Act, as it unlawfully restricts

¹ 326 NLRB 824 (1998), *enfd.* 203 F.3d 52 (D.C. Cir. 1999).

² 343 NLRB 646 (2004).

employees' Section 7 rights to utilize the media to solicit public support in labor disputes. The Union argues that employees may be hesitant to go to the media with a rule in place that seems to require that the employee first go to management for approval.

The Employer contends that the rule is intended to identify company spokespersons should the press call for a statement about the Employer, and that the rule is intended to be limited to situations where the media asks employees for a business-related statement and does not prohibit employees from going to the media with concerns over terms and conditions of employment.

There is no allegation or evidence that the rule was promulgated in response to any Section 7 activity or that it has ever been applied in an unlawful manner.

ACTION

We conclude that complaint should issue, absent settlement, alleging that the Employer violated Section 8(a)(1) of the Act by maintaining the "Media Communications" rule in its employee handbook.

There is no evidence that the rule at issue here was promulgated or enforced discriminatorily. However, as the Board stated in Lafayette Park Hotel:

In determining whether the mere maintenance of rules such as those at issue here violates Section 8(a)(1) of the Act, the appropriate inquiry is whether the rules would reasonably tend to chill employees in their exercise of Section 7 rights. Where the rules are likely to have a chilling effect on Section 7 rights, the Board may conclude that their maintenance is an unfair labor practice, *even absent enforcement*.³

In Lutheran Heritage Village-Livonia,⁴ the Board reiterated its Lafayette Park Hotel analysis, summarizing:

If the rule does not explicitly restrict activity protected by Section 7, the violation is dependent upon a showing of one of the following:
(1) employees would reasonably construe the

³ 326 NLRB at 825, citations omitted (emphasis added).

⁴ 343 NLRB at 647.

language to prohibit Section 7 activity; (2) the rule was promulgated in response to union activity; or (3) the rule has been applied to restrict the exercise of Section 7 rights.

Thus, the issue in the instant case is whether employees would reasonably construe the language of the rule to prohibit Section 7 activity, i.e. utilizing the media to enlist public support in disputes over terms and conditions of employment.⁵ We conclude that they would.

Significantly, on its face, the rule at issue makes no distinction between those media communications that are entirely related to the Employer's business and do not involve Section 7 matters, and those communications protected by Section 7 that involve employees' working conditions or disputes with the Employer.⁶ We recognize that the Employer contends that the rule is intended to be limited to situations where the media asks employees for a business-related statement, and that it does not prohibit employees from going to the media with concerns over terms and conditions of employment. While this contention may well be sincerely held, no such limitation is set forth in the language of the rule itself, and the Employer's subjective view of the rule would not be known to employees. Rather, employees would reasonably construe the language of the rule to mean what it says -- prohibiting all employees from giving any information to outside media contacts without authorization from management, even information protected by Section 7. Therefore, under Lafayette Park Hotel and Lutheran Heritage Village-Livonia, we conclude that the Employer's maintenance of the rule violates Section 8(a)(1) of the Act.

Accordingly, complaint should issue, absent settlement, alleging that the Employer violated Section

⁵ See, e.g., Kinder-Care Learning Centers, 299 NLRB 1171, n. 10 (1990) (employee communications with reporters about working conditions protected), citing Auto Workers Local 980, 280 NLRB 1378 (1986), *enfd.* 819 F.2d 1134 (3d Cir. 1987); Leather Center, Inc., 312 NLRB 521 (1993) (employer unlawfully maintained rule prohibiting employees from making any comment to any member of the media).

⁶ Compare AT&T Broadband & Internet Services, Case 12-CA-21220, Advice Memorandum dated November 6, 2001, p. 10 (rule requiring response regarding business-related matters to media only through designated spokespersons lawful; not a blanket prohibition against employee contact with media).

8(a)(1) by maintaining the "Media Communications" rule in its employee handbook.

B.J.K.