

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

Advice Memorandum

DATE: April 4, 1996

TO : William C. Schaub, Regional Director
Region 7

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

SUBJECT: Teleflex, Inc. 512-5012-3322
Case 7-CA-37994

This Section 8(a)(1) case was submitted for advice on whether the Employer lawfully required prior approval of items employees posted on the Employer's bulletin board.

The Employer's Employee Handbook provides various bulletin boards for posting of Employer notices, and also provides a bulletin board near the cafeteria where employees "may post personal information, which has been approved by the Human Resources Department." There is no evidence that the Employer had any unlawful motive in initially promulgating this prior approval restriction.

On October 3, 1995, during the Union's organizational campaign, employee Burgher asked Human Resource Director Cole if Burgher could post a Union Fact Sheet.¹ Director Cole denied Burgher's request stating that the company's handbook prohibited solicitation. One week later, the Employer announced a ban on the posting of anything personal on company bulletin boards.²

Thereafter on November 20, Director Cole told Burgher that she could post notices of Union meetings on the bulletin board if she obtained prior approval. Cole also stated, however, that Burgher would not be allowed to post Union Fact Sheets. Burgher has since sought and obtained approval to post notices of Union meetings. It appears that during the Union organizing campaign, employees have been

¹ The Fact Sheet contained, inter alia, a list of internal Union issues which members had the power to decide.

² The Region has concluded that (1) Director Cole's October 3 oral ban on solicitation was unlawful as overly broad; and (2) the subsequent blanket ban on personal postings also was unlawful as discriminatorily motivated. The Region will issue complaint on these violations, absent settlement.

allowed to distribute Union Fact Sheets and other materials during non-working hours and in non-working areas without any Employer interference.

We conclude that the Employer's prior approval restriction on employee bulletin board postings is not per se unlawful, but that Director Cole's November 20 prohibition of the posting of Union Fact Sheets was discriminatory and unlawful.

In Rhode Island Hospital, Case 1-CA-31049, Advice Memorandum dated February 1, 1994, we affirmed our prior conclusion that an employer rule requiring prior approval of employee postings did not unlawfully interfere with employee Section 7 rights. We noted that employees have no statutory rights to post on employer bulletin boards, and that employers therefore could totally ban any postings. We thus concluded that "it would be anomalous to argue that the Employer's lesser restriction here (i.e., posting if there is permission) was unlawful."³ We affirm that conclusion here and note that the Board's decisions in Central Vermont Hospital⁴ and Leather Center, Inc.⁵ do not warrant a contrary result.

In Central Vermont Hospital, the ALJ found that the employer discriminatorily denied the posting of union related materials because it had freely allowed the posting of personal items. The ALJ then additionally concluded that the employer had discriminatorily imposed a prior approval restriction on postings because the employer had shown no business justification for that restriction. The Board agreed with the ALJ's finding of unlawful discrimination against union postings, and specifically found it "unnecessary to reach the issue discussed by the judge", viz., "whether an employer may advance a legitimate business justification for imposing a prior approval requirement...". Id at note 2. We do not view the Board's "unnecessary to

³ We also noted that in that case, as here, employees had reasonable alternative means of communication and could engage in both solicitation and the distribution of materials if the employer's prior approval restriction somehow dissuaded them from using the bulletin boards.

⁴ 288 NLRB 514 (1988).

⁵ 312 NLRB 521 (1993).

reach" statement as a signal that the legality of a rule requiring prior approval for postings, absent some business justification, is an open or doubtful issue. Rather, the Board was simply noting that it had already found that the employer had both discriminatorily denied union postings and also discriminatorily enforced its prior approval rule.

We note that the Board has long held that the discriminatory promulgation of a prior permission restriction is unlawful.⁶ In many of these cases, the prior permission restriction was promulgated close in time to employee Section 7 activity, such as a union organizing campaign. In these circumstances of close timing, the Board sometimes attempted to determine whether the new prior permission restriction in fact was discriminatorily motivated by taking into account whether the employer offered some business justification for this new restriction.⁷ In our view, the Board's "unnecessary to reach" statement in Central Vermont Hospital is fully consistent with these cases, i.e., the Board already had found a discriminatory denial of union postings, and did not need to examine any asserted employer justification.

In Leather Center, the ALJ found that the employer had discriminatorily imposed a requirement of prior permission for posting in retaliation against the union's organizing drive. Noting "a substantial question as to whether this issue was fully litigated", the Board stated that "we do not pass on the judge's finding that the Respondent violated

⁶ As the ALJ in Leather Center, supra, stated, "the cases are legion wherein the Board has held that the promulgation, maintenance and enforcement of such a [discriminatory] rule or policy is violative of the Act." Id at 527, citing numerous cases.

⁷ "Additionally, by telling employees notices to employees to be posted on the bulletin board had to be signed, dated, and okayed by the Respondent prior to posting, without demonstrating a legitimate business reason therefor, the Respondent's motive to further discourage employees from engaging in union activity is clearly revealed." Peck, Inc., 269 NLRB 451, 458 (1984). See also Palomar Transport, Inc., 256 NLRB 1176, 1177 (1981) (discriminatory motive found rejecting employer justification based on alleged previous defacings of postings); Liberty Nursing Homes, Inc., 236 NLRB 456 (1978) (discriminatory motive found where asserted justification found baseless and speculative).

Sec. 8(a)(1) by its [discriminatory] enforcement of that rule." The violation found by the ALJ was not that the prior permission rule was per se unlawful, and in any event the Board found that the discriminatory restriction issue was not litigated. We therefore do not view Leather Center as any indication that the lawfulness of a prior permission restriction, per se absent any discrimination, may be an open or doubtful issue.

Finally, we conclude that Director Cole's November 20 prohibition of the posting of Union Fact Sheets, while approving the posting of Union meeting notices, was discriminatory and unlawful. The Board has held that an employer engages in unlawful discrimination when it allows bulletin board postings of personal employee items and union items, but denies postings of dissident union items.⁸ In Nugent Service, Inc., 207 NLRB 158, 161 (1973), the ALJ, adopted by the Board, stated that "an employer who permits official union notices and communications to its members to be posted on its bulletin boards may not thereafter discriminate against an employee who posts a union notice which meets the employer's rule or standard but which the employer finds distasteful..."⁹ The Employer here engaged in exactly this kind of unlawful discrimination between different kinds of Section 7 postings.

B.J.K.

⁸ See, e.g., Transcom Lines, 235 NLRB 1163 (1978); East Texas Motor Freight, 262 NLRB 868 (1982).

⁹ In that case, the employer's removal of dissident campaign literature was found privileged because the partisan nature of that campaign was serving to entangle the employer in the internal union dispute, which should have been none of its concern.