

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

## Advice Memorandum

DATE: April 13, 2001

TO : Rochelle Kentov, Regional Director  
Region 12

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

SUBJECT: Wal-Mart SuperCenter #582  
Case 12-CA-20882

This Section 8(a)(1) and (3) case, involving the interrogation and discharge of a pro-union employee during an organizational campaign, was submitted for advice pursuant to Operations-Management Memorandum OM 00-24 for coordination with other Wal-Mart cases seeking a nationwide remedy.

In late April 2000, employee Eagen told Store Manager Mulack and Assistant Manager Teeter that his team leader's harassment was the kind of thing that causes union activities. When Mulack asked if there were union activities at the store, and whether Eagen had signed a union card, Eagen replied yes to both questions. When Mulack then asked if others had signed cards and about how many, Eagen replied that some people had, but not many.<sup>1</sup>

Shortly thereafter, District Manager Leich told Eagen that he knew Eagen had signed a union card and that it was illegal for Leich to talk to Eagen, but Leich wanted to ask some questions. Leich asked if Eagen thought they needed a union, and whether other employees had signed cards. Eagen replied there were times when you need a union, and some employees had signed cards, but not a lot.

The Region concluded that the Employer, via Mulack and Leich, unlawfully interrogated Eagen on the above occasions.

On May 21, 2000, two to three weeks after the above interrogations, Eagen met with the Assistant Manager Graves and asked if the Graves had changed the production measurements of Eagen's crew because of the crew's age or ethnic background, because of the disability of one member, or because some members had signed a union card. Graves stated that he would look into it and get back to Eagen. The following day, Eagen came upon Manager Mulack and the

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<sup>1</sup> Store Manager Mulack states, and Eagen denies, that Eagen volunteered this information about Union activities.

Assistant Manager and again protested the different production measurements for his crew. When Mulack denied requiring the different production measurement, Eagen complained further, using the word "shit" a few times. Thirty minutes later, Mulack discharged Eagen for using profanity. Eagen asserts that supervisors and employees regularly use profanity among themselves in the store.

The Region found that Wal-Mart was unable to adduce evidence that it had previously enforced its rule prohibiting the use of profanity.<sup>2</sup> The Region thus concluded that the Employer discharged Eagen in violation of Sections 8(a)(1) and (3).

The Charging Party Union has advised the Region that it will be filing additional allegations: Section 8(a)(3) discrimination against three or four other employees, and Section 8(a)(1) threats. Although the Union considers its organizational campaign to be still active, it avers that, at two Union meetings held since Eagen's discharge, only one employee, as opposed to four or five employees, have attended. The Union also asserts that fewer employees will now speak to Union representatives, and that in November and December 2000, the Union was able to garner only one or two additional signed cards.

[FOIA Exemption 5

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B.J.K.

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<sup>2</sup> In that regard, Eagen applied for and was granted unemployment compensation on the ground that Eagen's limited use of profanity was not the basis for his discharge.

<sup>3</sup> [FOIA Exemption 5

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