

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

Advice Memorandum

DATE: February 27, 2001

TO: Rochelle Kentov, Regional Director
Region 12

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

SUBJECT: Wal-Mart Stores, Inc.
Cases 12-CA-20986(1) and (2)¹

These cases were submitted for advice, pursuant to Memorandum OM 00-24, concerning charge allegations that Wal-Mart Stores, Inc. ("Wal-Mart" or "the Employer") violated Section 8(a)(1) by discriminatorily denying and/or attempting to deny access to non-employee handbillers from the United Food & Commercial Workers Union ("the Union") at the Employer's John Young Parkway and East Colonial Drive supercenters, both located in Orlando, Florida.²

With respect to the John Young Parkway facility, security staff and management directed the Union handbillers to leave because Wal-Mart did not permit such activity on its property; management later directed the handbillers to move approximately 35 yards from the entrances at which they had stationed themselves (which would have placed them out of the path of their intended audience, Wal-Mart employees); management threatened to call the police; and security staff physically blocked a handbiller distributing leaflets. With respect to the East Colonial Drive facility, security staff twice ordered the handbillers to leave the property; and management ordered the handbillers to move to the end of the building (approximately 40 to 50 yards away from the entrance at which they were stationed), or else move to the street.

We conclude, in agreement with the Region, that

¹ The Charging Party voluntarily withdrew a third charge against the Employer, filed in case 12-CA-20986(3); accordingly it is not addressed herein.

² The Region has determined that Wal-Mart owns the buildings and surrounding land at both locations.

complaint should issue, absent settlement, alleging that the Employer discriminatorily interfered with Union handbillers in violation of Section 8(a)(1).

We agree with the Region that these circumstances demonstrate that Wal-Mart did not possess a property interest which outweighed the Union's Section 7 rights.

Thus, it is undisputed that the Employer permits organizations, including unions, to solicit or distribute literature outside of its stores.³ As of June 27, 2000, the date of events at issue herein, the Employer permitted individual stores to promulgate further local restrictions consistent with the above corporate policy, so long as those restrictions were uniformly enforced. However, the Employer does not contend that either of the above stores maintained any such additional restrictions. Further, the Union asserts that, approximately 10 days after the events at issue, it observed Girl Scouts selling cookies outside the entrance to the John Young Parkway facility, and a school group selling candy outside the entrance to the East Colonial Drive facility, and neither group was instructed by the Employer to move away from these entrances.

Moreover, there are other indicia that the Employer acted based upon the Union or otherwise protected content of the handbills rather than legitimate business considerations. In this regard, management at the John Young Parkway facility confiscated handbills from approximately 85 employees and threw them away. Management at the East Colonial Drive facility confiscated handbills from 10 to 15 employees, directed other employees not to accept handbills, and told two female employees who did accept handbills that they should not have done so, and took a handbill away from one of them.⁴

³ This policy was contained in a Wal-Mart Corporate Affairs memorandum dated March 16, 2000, which states, in relevant part, that, "We have made a business decision to allow charities, social service organizations, etc. access to the OUTSIDE of our facilities.... We allow this despite the fact that this also permits other organizations the legal right to access the OUTSIDE of our facilities for purposes of solicitation." (Emphasis in original.)

⁴ We agree that these actions make out independent Section 8(a)(1) violations.

We conclude, based upon the foregoing, that Wal-Mart's actions were unlawful because they constituted a course of conduct designed to interfere with the Union's ability to engage in Section 7 protected activity. We recognize that the Union handbillers in the instant case did not comply with the Employer's directives to leave the property or move away from the stores' entrances, and in fact continued to handbill near the entrances at which they initially stationed themselves. There is, however, evidence that the Employer affirmatively interfered with this lawful Union communication. This case thus differs from another access case involving this Employer,⁵ where Union agents were, in fact, permitted to handbill consistent with the announced policy. Based on that distinction, we conclude that the Region should issue a Section 8(a)(1) complaint in the instant case, absent settlement.

B.J.K.

⁵ Wal-Mart Stores, Inc., Case 6-CA-31672, Advice Memorandum dated February 1, 2001 (Revised).