

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 29**

**TARGET CORPORATION**

**and**

**UNITED FOOD & COMMERCIAL  
WORKERS LOCAL 1500**

**Case Nos.      29-CA-30804  
                     29-CA-30820  
                     29-CA-30880  
                     29-RC-12058**

**COUNSEL FOR THE ACTING GENERAL COUNSEL’S  
REPLY TO RESPONDENT’S ANSWERING BRIEF TO UNION’S EXCEPTIONS TO  
THE DECISION OF THE ADMINISTRATIVE LAW JUDGE**

The General Counsel makes a limited response to two points raised by Target Corporation (“Respondent”) in its Answering Brief (“R. Br.”).<sup>1</sup> In his Decision, the ALJ correctly found that Respondent violated Section 8(a)(1) of the Act by: promulgating and maintaining unlawful handbook provisions at its Valley Stream, New York store; threatening discipline and other unspecified reprisals against employees because of their union activity; distributing a leaflet which included statements that threatened to close the store because of their union activity; creating an impression of surveillance of employees’ activities; enforcing an unlawful no-solicitation policy; showing a video stating that Respondent would enforce its unlawful no-solicitation policy; and interrogating employees about their union activity.

United Food & Commercial Workers, Local 1500 (“Union”) filed Exceptions to the ALJ’s Decision, in which it urged that the Board require Respondent to post a Notice at all of its facilities nationwide, and order Respondent to take affirmative action by removing the unlawful Handbook provisions from all Target Handbooks nationwide. (U. Br. 1).

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<sup>1</sup> “R. Br.” refers to Respondent’s Answering Brief to the Union’s Exceptions. “U. Br.” refers to the Union’s Exceptions to the ALJ’s Decision.

Respondent contends in its Answering Brief that the Board should reject these Exceptions. (R. Br. 6).

### **I. RESCISSION OF RULES FROM HANDBOOKS NATIONWIDE**

Respondent argues that there should be no remedy requiring Respondent to rescind the unlawful rules from all of its Handbooks in stores nationwide, arguing that there was insufficient record evidence to establish that the rules at issue were “maintained or enforced against employees outside of the Valley Stream store.” (R. Br. 5). Respondent’s contention fails, as it is contradicted by the evidence on the record.

Contrary to Respondent’s assertion, the record establishes that the unlawful provisions, contained in the corporate handbook, codify its national policies. The unlawful handbook provisions are developed in Respondent’s corporate Employee Relations department and are applied in each of its stores. (Tr. 604, Ln. 12-15; Tr. 617, Ln. 18-19, 23-24; Tr. 962, Ln. 12-14; Tr. 583, Ln. 15-17). This is consistent with the creation of all of Respondent’s employment policies, which, Respondent witnesses testified, are not created at an individual store but are determined at Respondent’s headquarters in Minneapolis. (Tr. 579, Ln. 13-17). Respondent’s own witnesses stated that the handbook is a “reference point” and an Employer policy guide for all employees. (Tr. 604, Ln. 14-15; 748, Ln. 9-11; 1006-1007, Ln. 25, 1-2). The ALJ noted in his decision that Respondent’s witnesses stated that the Handbook served as a “template” for the Employer’s policies. (ALJ Decision 43, Ln. 13-14). Further, it is clear that these handbooks are used in all of Respondent’s locations, not just the Valley Stream facility. In that regard, one of Respondent’s witnesses, the Human Resources Director for the East Coast Region, Dawn Major, testified that while Respondent does not distribute new handbooks, when printed, to all employees because there are “hundreds of thousands” of employees and it would not be cost effective to do’ so, Respondent notifies

employees that new, updated handbooks are available. (Tr. 584, Ln. 10-13). Based on this testimony, the only reasonable conclusion is that the handbooks are used in all of Respondent's stores. Furthermore, employee acknowledgement receipts, that employees nationwide sign after receiving a handbook, are kept in Respondent's Minneapolis headquarters. (Tr. 584, Ln. 20-22). The inescapable conclusion is that there is one corporate handbook that is distributed to employees at all of respondent's 1,763 stores. Moreover, Respondent failed to show the handbooks are *not* maintained at a national level, or that it distributed different handbooks to different stores.

Given these facts, the Board's Order against Respondent must include the removal of the unlawful rules from all handbooks, not only handbooks at the Valley Stream location. It is well established that an unlawful or overly-broad rule's "mere existence" "tends to restrain and interfere with employees' right under the Act even if not enforced," *Staco, Inc.*, 244 NLRB 461, 469 (1979). Further, the existence of an unlawful rule serves to "inhibit employees from engaging in otherwise protected organizational activity..." *J.C. Penney Co.*, 266 NLRB 1223, 1224 (1983). The ALJ determined in his decision that the rules were unlawful, even if they have not been enforced, and thus the fact that they exist in the handbook violates the Act. (ALJ Decision, Ln. 3-4, P. 34). As the record shows, the rules are maintained by Respondent's corporate division and are uniform for all of Respondent's locations, and so must be removed at that corporate level, necessarily beyond the Valley Stream location. Thus, the General Counsel urges that no remedy would be complete without requiring Respondent to remove the offending provisions from *all* handbooks at its more than 1700 stores, and urges the Board to order Respondent to rescind the unlawful rules from all handbooks nationwide.

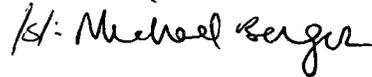
## II. NATIONWIDE NOTICE-POSTING REQUIREMENT

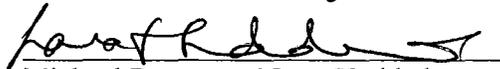
Respondent argues that there should be no requirement of a nationwide notice posting because the Consolidated Complaint and Notice of Hearing, referred only to the Valley Stream facility. (R. Br. 4.)

The Charging Party has the right to raise an issue of remedy to the Board, even if it has not been raised at a prior time. See, e.g., *Sambo's Restaurant, Inc.*, 247 NLRB No. 122 (February 4, 1980), enf. 641. F.2d 794 (9th Cir., 1981) (where the Board adopted additional remedies that had not been argued before the Administrative Law Judge). Thus, it is the General Counsel's position that the Board should decide the issue of an additional remedy properly raised in the Charging Party's Exceptions.

Dated this September 7, 2012.

Respectfully submitted,





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Date: September 7, 2012

**STATEMENT OF SERVICE OF:  
COUNSEL FOR THE ACTING GENERAL COUNSEL'S LIMITED EXCEPTIONS TO THE  
ADMINISTRATIVE LAW JUDGE'S DECISION**

I, the undersigned employee of the National Labor Relations Board, hereby state, under penalty of perjury that, in according with NLRB Rules & Regulations § 102.114(i), a copy of the foregoing was sent to each party at the addresses listed below and on the date indicated above:

By E-File

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Lara Haddad, Board Agent