

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

## Advice Memorandum

DATE: May 5, 2014

TO: Wanda Pate Jones, Regional Director  
Region 27

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

SUBJECT: Wal-Mart Stores, Inc.  
Case 27-CA-105693

512-0125  
512-5012-8300  
512-5012-8700

This case was resubmitted for advice based on a request for reconsideration by the Charging Party. The case was originally submitted to Advice as to whether the Employer violated Section 8(a)(1) on April 18, 2013, by telling offsite employees, who were at the Employer's store speaking to on-duty employees about OUR Walmart, to leave, and by threatening to call the police if they did not. In an Advice Memorandum dated March 31, 2014, we concluded, based on the evidence available at that time, that the Employer did not violate the Act because in denying access on that date, it was merely enforcing its lawful no-solicitation policy and there was insufficient evidence to conclude that the Employer had a past practice of permitting offsite employees on the retail floor to talk to on-duty employees.

The Charging Party asserts that the Employer in fact has a past practice of freely allowing offsite employees on the retail floor to talk to on-duty employees and that the Employer has continued to apply that practice following the April incident. The Charging Party is prepared to give affidavit testimony of numerous examples in which, both before and after the April incident, the Employer knowingly allowed offsite employees to speak with coworkers on the retail floor.

Assuming that the Charging Party's assertions are correct, we conclude that it would not effectuate the purposes and policies of the Act in this instance to issue complaint here. Specifically, the denial of access was a one-time occurrence, there is no assertion that the Employer denied access at any other time in any of its stores, and a month after the April occurrence, the same employees were allowed access to the retail floor of the same store to talk to on-duty employees.

/s/  
B.J.K.