

National Labor Relations Board
OFFICE OF THE GENERAL COUNSEL
Advice Memorandum

DATE: July 18, 2000

TO: Rosemary Pye, Regional Director, Region 1

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

SUBJECT: George W. Prescott Co., d/b/a The Patriot Ledger, Cases 1-CA-37925 and -37961

512-5012-1725-0100, 512-5012-1737-0100, 512-5024-2500, 530-6050-3300

These cases were submitted for advice as to the legality of the Employer's rules governing employees' use of the Employer's computer system.

FACTS

The Employer and the Union have been engaged in negotiations for at least a year for collective-bargaining agreements to replace expired agreements covering similar bargaining units at the Employer's three newspapers. Employees have used the Employer's computer system for at least 20 years. The Union asserts that employees have freely used the Employer's computers during this period to contact each other for personal reasons and to convey Union information. The Employer never attempted to promulgate any work rules concerning employee use of computers until the events described below. Nor is there any evidence that the Employer otherwise tried to restrict employee use of the computer system.

During the past year, the Employer proposed a computer use policy, the Union and the Employer discussed the proposed policy but did not reach agreement, [\(1\)](#)

and the Employer implemented its proposed policy which contained, inter alia, the following provisions:

Employees are prohibited from using The Patriot Ledger's computer systems (hardware and software) for any personal or non-Ledger use. Employees with questions about what constitutes these uses should consult with their supervisors.

Employees are encouraged to report unusual system response or performance to the Information Technology department. Furthermore, any suspicious activity involving computer resources by an individual--known or unknown--must be reported immediately to a supervisor.

The Region has determined that the employees' computers are work areas within the meaning of Pratt & Whitney, Cases 12-CA-18446 et al., Advice Memorandum dated February 23, 1998. The Region specifically notes that almost all unit employees are assigned their own computers, which they use to perform a substantial portion of their work.

ACTION

We conclude that a Section 8(a)(5) and (1) complaint should issue, absent settlement.

Initially, we agree with the Region that the evidence demonstrates that there was a past practice of personal use of computers by unit employees. That past practice has thus become a term and condition of employment and therefore a mandatory subject of bargaining. [\(2\)](#)

The Union had the right to demand that the computer policy be included in bargaining for a complete new contract. [\(3\)](#)

The Union's refusal to bargain separately over the proposed policy did not privilege the Employer's unilateral implementation of the policy. Therefore, that implementation violated Section 8(a)(5).

Next, we conclude that the two computer policy provisions quoted above violate Section 8(a)(1).

The first provision, which bars personal use of computers by the employees who use them as work areas, is an overbroad ban on employee distribution and solicitation under the analysis set forth in *Pratt & Whitney*, above. ⁽⁴⁾

We view the second provision, which requires employees to report "any suspicious activity involving computer resources," as requiring employees to report computer use that does not comport with the rule set forth above. Since we deem that rule to be unlawful, the reporting requirement is also unlawful.

Accordingly, a Section 8(a)(5) and (1) complaint should issue, absent settlement.

B.J.K.

¹ The Union contended that the parties should bargain over the proposed computer policy while bargaining for complete new contracts. These negotiations have been proceeding slowly. There is no claim that the negotiations are unlawful for any reason.

² See, e.g., *American Shipbuilding*, 226 NLRB 788, 800 (1976).

³ See *Bottom Line Enterprises*, 302 NLRB 373 (1991). We find no merit to the Employer's claim that implementation of the computer policy was a matter of such importance and emergency to the Employer that it was free to reject the Union's demand that the policy be included in the on-going negotiations for a complete collective-bargaining agreement.

⁴ See also *TU Electric*, Case 16-CA-19810, Advice Memorandum dated October 18, 1999.