

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

In the Matter of:)	
)	
MACY'S, INC.,)	
Respondent,)	
)	Case No. 01-CA-123640
and)	
)	
LOCAL 1445, UNITED FOOD AND)	
COMMERCIAL WORKERS INTERNATIONAL)	
UNION,)	
Charging Party.)	
)	

**CHARGING PARTY'S OPPOSITION TO THE RESPONDENT'S EXCEPTIONS
TO PART OF THE DECISION OF THE ADMINISTRATIVE LAW JUDGE**

Now comes the Charging Party, Local 1445, United Food and Commercial Workers International Union (the Union), and hereby submits this Opposition to the Respondent's Exceptions to Part of the Decision of the Administrative Law Judge (the ALJ) pursuant to Section 102.46 of the Rules and Regulations of the National Labor Relations Board (NLRB or the Board). In a well-reasoned decision, the ALJ found that the Respondent unlawfully maintained overly broad rules in its Employee Handbook. The Respondent makes exceptions to the portions of the ALJ's decision finding that the Respondent violated Section 8(a)(1) of the Act by maintaining overly broad rules in its Employee Handbook that restrict its employees use of information regarding the Respondent's customers. For the reasons set forth by the ALJ in his decision, the Union respectfully requests that the Board affirm the decision of the ALJ and adopt his recommended order in full.

The Respondent takes issue solely with the ALJ's finding that the portions of the Respondent's Employee Handbook restricting employees' use of information regarding

customers in vendors is overly broad. Specifically, the Respondent challenges the following finding:

Counsel for the General Counsel also challenges the restrictions on the use of information regarding customers and vendors. In certain situations, employees are permitted to use such information in furtherance of their protected concerted activities, and Counsel for the General Counsel argues that these restrictions are also unlawful. In *Trinity Protection Services, Inc.*, 357 NLRB No. 117 (2011), the Board stated, “employees’ concerted communications regarding matters affecting their employment with their employer’s customers or with other third parties, such as governmental agencies, are protected by Section 7 and, with some exceptions not applicable here, cannot lawfully be banned. I therefore find that this restriction violates Section 8(a)(1) as well. *Kinder-Care Learning Centers*, 299 NLRB 1171 (1990); *Boch Imports, Inc.*, 362 NLRB No. 83, fn. 4 (2015).

[See ALJ Decision at 12; Respondent’s Exceptions at 6.] The Respondent hyperbolically argues that this finding gives employees “carte blanche to disclose customers’ personal identifying data such as names and home contact information.” [See Respondent’s Exceptions at 7.]

The Respondent’s argument utterly ignores the sum and substance of the ALJ’s decision, which appropriately takes issue with the overly broad context in which its Employee Handbook refers to customers. The challenged restrictions broadly prohibit employees from disclosing information “relating to our customers, business partners or our co-workers,” [see ALJ Decision at 3]; “certain personal data of its present and former associates, customers and vendors,” [*id.* at 4]; “information that is not generally available to the public that relates to the Company or the Company’s customers, employees, vendors, contractors, service providers, Systems, etc.,” [*id.* at 6]; and “information regarding its present and former associates, customers and vendors,” [*id.*]. While the Employee Handbook does mention that personal and confidential data includes names and home contact information, it does so in a broad discussion of its prohibition against employees disclosing any information about the Company’s employees, customers, business partners, vendors, contractors, and service providers unless “specifically authorized,” [see ALJ Dec. at 4], or with “prior approval from your Company supervisor and consultation with the Law

Department, [*id.* at 6],” or with “the written approval of your senior Sales Promotion executive or, for support organizations, your Chief Executive Officer,” [*id.*]. In other words, these categories encompass a wide range of information, and there is no language describing the types of information that employees *may* disclose without the Company’s approval. As determined by the ALJ, because the challenged rules are not adequately limited by language or context, the Employee Handbook rules are ambiguous regarding their application to Section 7 activity and are therefore unlawful. *See Fresh & Easy Neighborhood Market*, 361 NLRB No. 8, *3 (2014) (finding that overly broad rule did not solely apply to relevant data protection and privacy laws because it encompassed a wide range of information without including limiting language to clarify the information that employees may not disclose).

Moreover, the only thing that the ALJ’s recommended order seeks to protect is the ability of employees to engage in concerted protected activity by communicating about their terms and conditions of employment with each other as well as through channels outside the immediate employee-employer relationship. The Board has previously found that employees’ communications about their working conditions are protected when directed to third parties, including an employer’s customers. Thus, in *Kinder-Care Learning Centers*, 299 NLRB 1171 (1990), the Board held that a rule prohibiting child care employees from discussing their terms and conditions of employment with all parents, not just employee-parents, to be unlawful because it interfered with the statutory right of employees to communicate their employment-related complaints to persons and entities other than the employer, including a union or the Board. *See also, Bach Imports, Inc.*, 362 NLRB 83, fn. 4 (2015) (finding that employer’s handbook policy prohibiting the unauthorized disclosure of confidential information, including information about customers and suppliers, was overbroad).

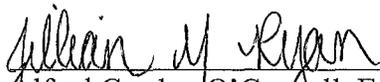
In sum, while an employer may have a right to protect certain customer information, the Respondent uses a broad brush to prohibit such a wide range of information (not just names and contact information) relating to several groups (not just Respondent's customers), employees could reasonably interpret these rules as restricting their Section 7 rights. *See Fresh & Easy Neighborhood Market, supra; Lutheran Heritage Village-Livonia*, 343 NLRB 646, 646-647 (2004); *University Medical Center*, 335 NLRB 1318, 1320-22 (2001); *New Passages Behavioral Health & Rehab. Servs.*, 362 NLRB No. 55 (2015); *Battle's Transp., Inc.*, 362 NLRB No. 17 (2015).

Thus, for the foregoing reasons, the Respondent's Exceptions have absolutely no merit. Therefore, the Union respectfully requests that the Board adopt the ALJ's rulings, findings, and conclusions and adopt the recommended order that the Respondent cease and desist from maintaining overly broad rules in its Employee Handbook.

Respectfully submitted,

UNITED FOOD AND COMMERCIAL
WORKERS, LOCAL 1445

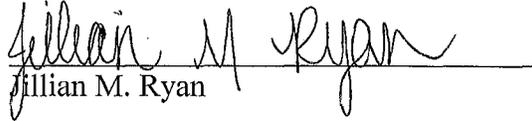
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the above document was filed electronically on the Board's E-Filing System and that a copy was served upon counsel for the Employer by email to wjoy@morganbrown.com and on Counsel for the General Counsel by email to Alejandra.hung@nlrb.gov.


Jillian M. Ryan