

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

Advice Memorandum

DATE: October 26, 2001

TO : Rosemary Pye, Regional Director
Ronald S. Cohen, Regional Attorney
Paul Rickard, Assistant to the Regional Director
Region 1

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

SUBJECT: Computer Associates International 512-5012-0133-2275
Case 1-CA-38933 512-5012-1725-0100
512-5012-1737-0100
512-5012-1737-3300
512-5012-6729
512-5012-6735

This case was submitted for advice as to whether the Employer's maintenance of certain work rules pertaining to the usage of e-mail and computer systems violates Section 8(a)(1) of the Act. For the reasons more fully discussed below, the Region should issue complaint, absent settlement, alleging that: (1) Employer rules prohibiting all non-business use of its electronic mail, intranet, and internet systems are an overly broad ban on solicitation; (2) the Employer rule restricting off-site employees' use of e-mail and internet systems to non-business hours is an unlawfully overbroad ban on solicitation because it prohibits the use of these systems during non-worktime hours; (3) the Employer rule requiring employees to obtain Employer approval before sending personal messages on the Employer's e-mail system is an unlawful restriction on solicitation; and (4) the Employer rule prohibiting the [s]ending, forwarding, storing, copying, or displaying of e-mails that "present [the Employer] in a bad light, or reflect badly on the image or reputation of the employer or otherwise harm the employer in any manner" is unlawfully ambiguous under Lafayette Park Hotel.¹

FACTS

Computer Associates International (the "Employer") is an independent software company employing approximately 18,000 employees. All on-site employees have a desktop computer assigned to them at their personal workstation. Some employees, such as those who travel to client sites, have Employer laptops, and all home-based employees are connected to the Employer's e-mail and network. Employees

¹ 326 NLRB 824 (1998), enfd. 203 F.3d 52 (D.C. Cir. 1999).

use their computers for virtually all work-related activities. They log-on to their computer with a personal password, and have access to the Employer's e-mail and intranet networks. Access to the internet, however, is more limited; because of virus fears, some internet sites are blocked.

The Employer uses its e-mail system to communicate with employees. For example, because the Human Resources Department is in Chicago, employees use e-mail for everyday personnel functions. Moreover, employees use the company intranet for work-related functions; they annually evaluate their managers via an intranet web survey, and the Employer handbook is available to employees on the intranet.

After filing an initial charge against the Employer,² Charging Party employee Viall filed a second amended charge alleging that certain rules in the Employer's United States Employee Handbook ("Handbook") violated the Act. The Charging Party does not allege, nor is there any evidence to indicate, that any of the Handbook provisions at issue were promulgated or implemented in response to any organizing drive. Likewise, there is no evidence that any Handbook provision has been discriminatorily enforced with regard to employees' union or other protected concerted activities.

There are a number of Handbook rules at issue. First, the Employer's E-mail, Internet and Intranet Policy ("E-mail Policy") states as follows:

Use of E-mail, The Internet And The Intranet

CA's [Computer Associates] E-Mail, Internet, Intranet Systems and Network Systems (hereinafter collectively referred to as "CA's Information Systems") are the property of CA. CA Employees are only authorized to use these systems for business-related purposes or as otherwise sanctioned by CA. Employees should be aware that when they sign onto CA's Information Systems and click the accept button, they consent to CA's review, screening and monitoring of their use of

² The Charging Party filed the original charge on March 23, 2001, alleging that the Employer gave her an adverse evaluation and transferred her to another facility in retaliation for her protected concerted activities. During the investigation, she also alleged that the Employer's restriction on the discussion of evaluation and salary packages violated Section 8(a)(1); the Region plans to issue complaint on that restriction.

CA's Information Systems pursuant to this policy...Employees must use common sense when using CA's Information Systems. The use of CA's Information Systems for the following purposes is prohibited and may be grounds for termination of an employee's employment with CA:³

3. Using CA's Information Systems for personal solicitation or personal business purposes;⁴

8. Sending, forwarding, storing, copying or displaying e-mails that present CA in a bad light or reflect badly on the image or reputation of CA or otherwise harm CA in any manner;

The E-mail Policy concludes with the following:

While CA recognizes that some limited use of CA's e-mail system and the Internet for personal purposes may occur with those employees who have CA owned or purchased lap tops, such personal use should be restricted to non-business hours, occur outside of a CA office and occur in accordance with these guidelines.

Next, the Handbook contains a section on "Posting Notices," which states that "[p]osting of any material on CA bulletin boards or sending personal messages on e-mail is not permitted unless prior written approval is obtained from Human Resources."

Furthermore, on December 4, 2000, the Employer distributed a memorandum, authored by Employer Associate Counsel Katz, to all employees via e-mail (the "Katz Memo"). The Katz Memo sets forth "etiquette" which employees must

³ We list only the rules addressed in this memorandum. The E-mail Policy rules are set forth in their entirety at pages 18 and 19 of the Handbook.

⁴ The Computer Systems Security Policy imposes a similar prohibition, restricting access to CA systems "to specifically authorized employees for business purposes only." This policy defines "computer systems" as "all information technology systems which access, process, or have custody of corporate data as well as the physical equipment itself." We include this rule in the same discussion as the E-mail Policy bans on the use of the Information System for personal/non-business purposes.

follow in their use of the Employer's "Information System," and states in part:

CA's intranet, internet and e-mail systems are here for you to use in the performance of your day-to-day responsibilities. They are not to be used as a vehicle for you to pursue your personal, outside-of-work, interests. While we recognize that CA employees will occasionally send an e-mail to a friend, or visit an internet site for personal enjoyment, this should be the exception rather than the rule when using such systems.

CA employees are expected, at all times, to use good judgment and common sense when sending or forwarding e-mails, or using the inter- or intranet. CA employees are not permitted to use CA network resources as vehicles for carrying on daylong email conversations, distributing "spam" or advertisements, or as a means to "create friendships" with other CA employees The misuse of CA resources has also recently led to systems' problems such as e-mail viruses infecting the CA network.

All employees are expected to adhere to CA's policies on "Computer Systems Security", "Use of E-mail, the Internet and the Intranet" ... found in Section 2 of the Employee Handbook.

ACTION

We conclude that the Region should issue a Section 8(a)(1) complaint, absent settlement, as discussed below.

I. E-Mail Policy Rules Prohibiting the Personal/Non-Business Uses of Employer's Information System

We agree with the Region that the Employer's maintenance of rules banning employee use of its Information System for personal/non-business purposes (in the opening paragraph and Rule 3 of the E-mail Policy, as well as the "Posting Notices" section⁵) violates Section 8(a)(1) of the Act as an overly broad ban on solicitation.

⁵ The Region should similarly allege that the Employer's maintenance of the Computer Security Systems Policy ban on the non-business use of the Employer's systems is overly broad, for the reasons discussed in this section.

In Pratt & Whitney,⁶ we concluded that, aside from questions of disparate treatment, the employer's complete ban on all non-business e-mail, including messages otherwise protected under Section 7, was overbroad and facially unlawful. The employees communicated with each other and with management primarily by e-mail and performed a significant amount of their work (one employee estimated up to 75-80%) on the computer network. The employer invited employees to access the network from outside the building through the use of laptop computers and facilitated access to the network from the employees' home computers. In a very real sense, the computer network constituted the employees' "work area" within the meaning of Republic Aviation⁷ and Stoddard-Quirk⁸ because it was on this network that the employees were productive. Therefore, the flat ban on personal e-mail, the sole method of communication through this computerized "work area," also effectively banned protected solicitations as defined in Republic Aviation and therefore was unlawfully overbroad.⁹

Here, 100% of the employees have computers and use them to perform virtually all work-related activities. Moreover, the Employer communicates to employees via the e-mail network for such work-related purposes as personnel matters. Likewise, employees access the Employer's intranet to complete evaluations of managers and view the Employer handbook. Consequently, we agree with the Region that the

⁶ Cases 12-CA-18446 et al., Advice Memorandum dated Feb. 23, 1998.

⁷ 324 U.S. 793 (1945).

⁸ 138 NLRB 615 (1962).

⁹ See also National TechTeam, Inc., Case 16-CA-19810, Advice Memorandum dated April 11, 2000 (same conclusion); TXU Electric, Case 16-CA-19810, Advice Memorandum dated Oct. 18, 1999 (employer's e-mail network a "work area" where employees communicated daily with each other and management using e-mail, employer announced corporate policy through e-mail, and one employee estimated that he worked on e-mail for about an hour each day). Cf. Gallup, Case 16-CA-20422, Advice Memorandum dated Oct. 20, 2000 (employees used computers at their desks but did not have access to e-mail or the internet through these computers; even though employer allowed employees to use front office computers for personal purposes during their breaks, employees did not use e-mail or the internet to be productive, and thus these systems were not "work areas").

employees' use of the Employer's Information System constitutes a "work area" because employees are productive on this system.¹⁰ The Information System is inextricably intertwined with the physical space these employees occupy and provides the virtual space in which they perform their jobs; as such, that virtual space is a "work area" within the meaning of Republic Aviation and Stoddard-Quirk.

Given our finding that the Employer's Information System is a "work area" under Pratt & Whitney, we further conclude that the E-mail Policy rules prohibiting the use of the system at all times is an unlawfully overbroad ban on solicitation. The Board has long held that while an employer has a right to expect that employees' working time be for work,¹¹ an employee has a right to use non-working time for activities protected by Section 7, even on the Employer's property.¹² In affirming the Board's analysis, the Supreme Court firmly established the rule that, while employers are rebuttably presumed to act lawfully when they limit employees' right to solicit other employees during working times,¹³ prohibitions on employee solicitation

¹⁰ There is no evidence as to the extent of the employees' work-related use of the internet, although the Employer contemplates business use of the internet since it restricts Internet access to work-related, nonpersonal usage. [FOIA Exemptions 2 and 5

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¹¹ See Republic Aviation Corp. v. NLRB, 324 U.S. at 803 n.10 (quoting Payton Packing Co., 49 NLRB 828, 843 (1943)) (citations omitted): "The Act, of course, does not prevent an employer from making and enforcing reasonable rules covering the conduct of employees on company time. Working time is for work."

¹² See *id.* at 803-04 n.10: "It is no less true that time outside working hours, whether before or after work, or during luncheon or rest periods, is an employee's time to use as he wishes without unreasonable restraint, although the employee is on company time."

¹³ *Ibid.*, stating "It is ... within the province of an employer to promulgate and enforce a rule prohibiting union solicitation during working hours. Such a rule must be

during non-working time, even in work areas, are presumed to be unlawful.¹⁴

Here, in the opening paragraph and in Rule 3 of the E-mail policy, respectively, the Employer imposes an outright ban at all times on the use of its systems for non-business and personal uses. Therefore, we conclude that the E-mail Policy rules at issue constitute facially unlawful bans on communications that include protected Section 7 solicitation under Pratt & Whitney.

The Posting Notices Policy rule prohibiting the "sending personal e-mail ... unless prior written approval is received from Human Resources" is also facially unlawful as interfering with protected Section 7 solicitation. In

presumed to be valid in the absence of evidence that it was adopted for a discriminatory purpose."

¹⁴ Ibid. (an employer may not promulgate and enforce a rule prohibiting union solicitation outside of working hours, although on company property, because the rule would be an unreasonable impediment to self-organization and, therefore, discriminatory in the absence of evidence that special circumstances make the rule necessary in order to maintain production or discipline).

Opryland Hotel,¹⁵ the Board held that rules requiring employees to obtain permission from their employer before engaging in solicitation is unlawful and overly restrictive of employee rights. Furthermore, in Baldor Electric Co.,¹⁶ the Board declared invalid an employer rule prohibiting solicitation in working areas without prior plant manager approval. The Employer rule here mandating that employees receive approval before sending personal e-mail, which would include protected Section 7 solicitation when conducted during non-worktime, is invalid.¹⁷

II. Rule Restricting Personal Use of Employer Laptops to Non-Business Hours

We further conclude that the last paragraph of the Employer's E-mail Policy, which permits employees with Employer laptops to access and use e-mail and the internet from these laptops for personal purposes, but only during "non-business hours ... outside of a CA office ... and in accordance with these [E-mail Policy] guidelines," violates Section 8(a)(1) as an overly broad ban on solicitation. In Ichikoh Mfg.,¹⁸ the Board held that a ban on solicitation during working hours - as distinct from working time - was unlawful because it was subject to the reasonable construction that solicitation at any time during the

¹⁵ 323 NLRB 723, 728 (1997).

¹⁶ 245 NLRB 614, 615 (1979); see also AMC Air Conditioning Co., 232 NLRB 283, 284 (1977) (employer promulgated pre-authorization requirement in response to employee's pro-union speech in company lunch room; Board found rule would violate Section 8(a)(1) even absent discriminatory promulgation because it required employees to seek permission to engage in protected conduct in non-work areas on their own time).

¹⁷ That portion of the rule requiring employees to obtain permission before posting messages on a physical or electronic bulletin board would not be unlawful. See Jordan Hospital, Case 1-CA-37857, Advice Memorandum dated May 15, 2000 (employer may limit employee or union use of an e-mail system that the employer otherwise uses as an electronic bulletin board).

¹⁸ 312 NLRB 1022, 1022 (1993), enfd. 41 F.3d 1507 (4th Cir. 1994); see also BJ's Wholesale Club, Inc., 297 NLRB 611, 612 (1990) ("a rule prohibiting solicitation during 'working hours' is prima facie susceptible of the interpretation that solicitation is prohibited during all business hours and, thus, invalid").

workday was prohibited. Likewise, the "working hours" reference in the rule here is unlawful because employees may not use the Employer's Information System for personal purposes during lunchtime or their breaks.

III. Employer Defenses to the Bans and Limitations on the Use of its Information System

1. The Information System is Employer Property

First, the Employer defends the prohibitions in its E-mail Policy by stating that the rule "*concerning the use of its private property ... is proper [and] fully lawful ... inasmuch as employees' use of the e-mail system for personal purposes ... is limited to non-work time and non-work areas.*" First, we reject the contention that, in the circumstances of this case, the Employer's Information System is purely the Employer's property because, as discussed, it constitutes a "work area" under Pratt & Whitney.

In reaching this conclusion, we recognize that the Board has long held that an employer may control employee use of certain company-owned equipment, even where that equipment is used for purposes of communication. For example, the Board has long stated that employees do not have an absolute right of access to employer bulletin boards.¹⁹ This jurisprudence arguably also extends to employer owned copier equipment²⁰ and telephones.²¹

Likewise, in Mid-Mountain Foods, Inc.,²² the Board held that the employer did not violate the Act by prohibiting employees from showing a pro-union video using the

¹⁹ See J.C. Penney, Inc., 322 NLRB 238 (1996), enfd. in pertinent part 123 F.3d 988 (7th Cir. 1997) ("An employer has a right to restrict the use of company bulletin boards").

²⁰ See Champion International Corp., 303 NLRB 102, 109 (1991) (employer had "basic right to regulate and restrict employee use of company property ...").

²¹ See Churchill's Supermarkets, Inc., 285 NLRB 138, 139 (1987), enfd. 857 F.2d 1474 (6th Cir. 1988) (employer had right to limit use of company telephones to business-related conversations and to forbid employees from using company phones for personal reasons).

²² 332 NLRB No. 19, slip. op. at 2 (2000).

employer's television set located in an employee breakroom. Citing cases involving lawful prohibitions on the use of other forms of employer property,²³ the Board concluded that union supporters had no statutory right to show the video in the absence of evidence that the employer permitted employees to show other types of videos.²⁴

We distinguish those lawful bans on personal use of employer equipment because employees in those cases did not use the items at issue as "work areas." Thus, employees in Mid-Mountain Foods did not use the employer's television set to be productive. In contrast, employees in the present case use the Information System as a productive "work area."

2. Employer Modified its E-mail Policy to Permit Employees to Use its Information System to Non-Worktime and in Non-Work Areas

The Employer asserts in its Position Statement that the Katz Memo "amplified" and "clarified" the E-mail Policy by informing employees that they "may use e-mail and the internet for personal purposes ... [during] non-worktime and [in] non-work areas." In Eagle-Picher Industries,²⁵ the employer issued a rule revising an unlawful no-solicitation

²³ See Honeywell, Inc., 262 NLRB 1402, 1402 (1982), enfd. 722 F.2d 405 (8th Cir. 1983) (no statutory right to use an employer bulletin board); Union Carbide Corp., 259 NLRB 974, 980 (1981), enfd. in pertinent part 714 F.2d 657 (6th Cir. 1983) (no statutory right to use an employer telephone for personal or non-business purposes such as union organizing matters; no discussion of telephones as "work areas"); The Heath Co., 196 NLRB 134, 135 (1972) (no statutory right to use an employer's public address system to communicate their union views).

²⁴ We also note that in Adtranz, ABB Daimler-Benz, 331 NLRB No. 40, slip. op. at 4 (2000), vacated on other grounds sub nom. 253 F.3d 19 (D.C. Cir. 2001), the ALJ analogized the lawful prohibition of personal use of telephones to the prohibition of personal use of an employer's e-mail system. After issuance of his decision, we concluded that there was not enough record evidence to establish that the computers and e-mail system constituted a work area to be analyzed under Pratt & Whitney, and took no exceptions to this finding. Adtranz, Case 36-CA-17172, Advice Memorandum dated March 14, 2000. The Board specifically noted that no exceptions had been filed to the ALJ's dismissal of the complaint allegations regarding employee use of e-mail. 331 NLRB No. 40, slip op. at 1 n.1.

²⁵ 331 NLRB No. 14, slip. op. at 5-6 (2000).

rule; the second rule limited solicitation to non-work times and non-work areas. The ALJ, affirmed by the Board, rejected the employer's argument that employees could determine the true intent of the invalid rule by reading the valid rule, and held that the confusion created by the inconsistency between the two rules must be resolved against the party that created the confusion.

Similarly, in 299 Lincoln Street, Inc.,²⁶ an employee manual prohibited "solicitations of any kind ... other than specifically approved by the employer." The employer argued that it cured this overly broad rule by informing employees that they could discuss union matters while off-duty and if approved by a supervisor. The Board held that the employer's subsequent statement did not disavow or modify the manual rule and, as in Eagle-Picher Industries, created an ambiguity that must be resolved against the employer.²⁷

Here, we first note that the Katz Memo does not indicate that the Employer informed employees that its E-mail Policy changed. The letter merely states that employees may "occasionally send an e-mail to a friend, or visit an internet site for personal enjoyment." Furthermore, even if the Katz Memo indicated that the Employer changed its E-mail Policy, it concludes by expressly reaffirming that part of the E-mail Policy which, as noted, bans any non-business or personal use of the Employer's Information System. The Katz Memo consequently presents two inconsistencies: first between the Katz Memo and the E-mail Policy, and second within the body of the Katz Memo itself. Thus, as in Eagle-Picher Industries and 299 Lincoln Street, the ambiguity resulting from these inconsistencies must be resolved against the Employer.

In addition, the only semblance of a "cure" is still unlawfully overbroad. The Employer asserts that it informed employees that they may use its Information System during "non-work time" and "non-work areas." This new "rule" unlawfully prohibits employees from using the Employer's systems during non-worktime in work areas because "the obvious converse [of the rule] ... is that employees who are

²⁶ 292 NLRB 172 (1988).

²⁷ See *id.* at 186. Cf. Standard Motor Products, 265 NLRB 482, 484 (1982) (presumptive invalidity of overly broad no-solicitation rule banning any non-job related activities during working hours rebutted where rule was not strictly enforced, and the evidence showed that the employer told newly-hired employees that their breaks and lunchtime were their own time to do as they wished).

in working areas during non-work times are not allowed to engage in solicitations, a plain violation of such employees' rights under Section 7 or the Act as stated in Stoddard-Quirk.²⁸ As a result, the Employer's purported statement in the Katz Memo fails to sufficiently "amplify" or "clarify" the unlawfully broad rule contained in the Handbook.

3. Restrictions on Use of Information System are Necessary to Prevent Computer Viruses²⁹

We further conclude that asserted problems relating to viruses do not justify the broad ban on the use of the Employer's Information System for personal purposes. The Employer has not specified why personal usage would pose a higher risk of computer viruses than business use. Presumably, the opening of work-related e-mails, e-mail attachments, or internet sites would pose the same technical hazards as would the opening of non-work related e-mails, e-mail attachments, or internet sites. The Employer has the ability to block internet sites feared to contain viruses. Therefore, the E-mail Policy rules limiting employee use of the Information System to business purposes are not narrowly tailored to address any purported technical concerns.³⁰

IV. Rule 8 of E-mail Policy

We conclude that the maintenance of Rule 8, which prohibits the sending, forwarding, storing, copying, or displaying of e-mails that present the Employer in a bad light or reflect badly on the image or reputation of the Employer, or otherwise harm it in any manner, is facially unlawful as an ambiguous rule that employees would reasonably interpret to prohibit activities that are protected by Section 7.

²⁸ Eagle-Picher Industries, 331 NLRB No. 14, slip. op. at 6.

²⁹ We note that the Employer did not specifically raise this defense in its Position Statement. The Katz Memo, however, notes that "the misuse of CA resources has ... recently led to systems' problems such as e-mail viruses infecting the CA network."

³⁰ Cf. TXU Electric, Case 16-CA-20576 et al., Advice Memorandum dated Feb. 7, 2001 (employer lawfully limited length of messages and number of recipients to whom e-mails may be sent because employer demonstrated that its problems with computer crashes and delayed delivery of e-mail were caused by longer or more widespread e-mails).

In Lafayette Park Hotel,³¹ the Board found unlawfully overbroad a rule that prohibited employees from "[m]aking false, vicious, profane or malicious statements toward or concerning the Lafayette Park Hotel or any of its employees" because it would prohibit forms of labor speech, such as false but not maliciously defamatory statements, that are protected by Section 7. The Board, however, found lawful a rule prohibiting employees from "[b]eing uncooperative with supervisors, employees, guests, and/or regulatory agencies or otherwise engaging in conduct not supporting the hotel's goals and objectives."³² The Board held that the mere maintenance of this rule would not reasonably tend to chill employees in the exercise of their Section 7 rights because the rule addressed legitimate business concerns.³³ The Board also found lawful a rule prohibiting "unlawful or improper conduct off the hotel's premises or during non-working hours which affects the employee's relationship with the job, fellow employees, supervisors, and the hotel's reputation or good will in the community."³⁴ The Board held that the rule was lawful because employees could not reasonably have read the rule as prohibiting protected Section 7 conduct; instead, the rule was intended to reach serious misconduct.³⁵

³¹ 326 NLRB at 828.

³² *Id.* at 825.

³³ See *id.* (any arguable ambiguity arises only by parsing the language of the rule, viewing "goals and objectives" in isolation; such a reading of the rule would produce a strained construction).

³⁴ *Id.* at 827.

³⁵ See *id.* Compare Cellu Tissue, Cases 15-CA-15975 et al., Advice Memorandum dated Feb. 16, 2001 (rule prohibiting "any action" which "tends to destroy good relations between the Company and its employees or between the Company and its suppliers or customers" unlawfully ambiguous because a reasonable employee could interpret the unqualified term "any action" to prohibit activities such as strikes, boycotts, and speaking out publicly about labor relations) (emphasis added), with Webvan Group, Inc., Case 32-CA-18695, Advice Memorandum dated July 17, 2001 (rule against "abusive language" lawful because the term was couched amid a laundry list of rules addressing serious, job-related misconduct and not Section 7 activity) and Mariner Post-Acute Network, Case 11-CA-18096, Advice Memorandum dated Feb. 11, 1999 (rule prohibiting "abusive language" and "discourteous or

More recently, in Adtranz,³⁶ the Board found unlawful an employer rule prohibiting "abusive or threatening language to anyone on company premises" because "abusive language" was not defined in the rule and that term reasonably could be interpreted to include lawful union organizing propaganda or rhetoric. Similarly, in Flamingo Hilton-Laughlin,³⁷ the ALJ found unlawfully overbroad a rule that prohibited "insubordination, derogatory behavior toward management personnel, refusal of job assignments, or harassment of another employee or guest." The Board reversed that finding but only because the rule was absent from the employee handbook that had been introduced into the record.

Here, we conclude that an employee could reasonably interpret Rule 8 as prohibiting Section 7 conduct. As in the rules in the above cases that prohibited, among other things, "false," "vicious," and "abusive" statements, this rule is similarly unlawful because the Employer failed to sufficiently define or explain how or in what context an employee might present an Employer product in a bad light or reflect badly on its reputation. Rule 8 has no language couching its broad prohibition by, for example, referring to the placement of an Employer product in a bad light, which would not constitute protected Section 7 conduct.³⁸ If the

disrespectful treatment" of residents, visitors, supervisors or fellow employees lawful because, in context, the rule was clearly intended to reach job-related concerns and not Section 7 activity).

³⁶ Adtranz, ABB Daimler-Benz, 331 NLRB No. 40, slip. op. at 5-6 (citing Linn v. United Plant Guards, 383 U.S. 53 (1966)) (union campaign rhetoric is protected even when it includes "intemperate, abusive, and inaccurate statements"); see also University Medical Center, 335 NLRB No. 87 (2001), slip. op. at 4 (rule prohibiting, among other things, "disrespectful conduct" unlawful because it included "no limiting language which removes [the rule's] ambiguity and limits its broad scope"); Great Lakes Steel, 236 NLRB 1033, 1036-37 (1978), enfd. 625 F.2d 131 (6th Cir. 1980) (rule prohibiting distribution of literature which was "libelous, defamatory, scurrilous, abusive or insulting" was unlawful).

³⁷ 330 NLRB No. 34, slip. op. at 5, 13. The Board also found unlawful a rule prohibiting "loud, abusive, or foul language" because the rule did not define abusive language. See *id.* at 9.

³⁸ See El San Juan Hotel, 289 NLRB 1453, 1454 (1988) (citing NLRB v. Electrical Workers IBEW Local 1229 (Jefferson Standard), 341 U.S. 694 (1953)) ("employee conduct involving

Employer included such language, employees would be able to more clearly define the areas of permissible subjects of e-mails and could not reasonably assert that the rule caused them to refrain from engaging in Section 7 activities. Thus, the rule here is distinguishable from those held lawful in Lafayette Park Hotel, where the rules provided a clear non-Section 7 context to the types of conduct prohibited.

In conclusion, the Region should issue complaint, absent settlement, alleging that the Employer's maintenance of the above rules violates Section 8(a)(1) of the Act.

B.J.K.

a disparagement of an employer's product, rather than publicizing a labor dispute, is not protected").