

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

Advice Memorandum

DATE: November 19, 2003

TO : Dorothy L. Moore-Duncan, Regional Director
Region 4

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

SUBJECT: Wal-Mart Stores, Inc.
Case 4-CA-32391

This case was submitted for advice as to whether Wal-Mart's current company-wide solicitation and distribution policy is ambiguous and unlawfully overbroad. We conclude that the Region should dismiss the charge, absent withdrawal.

The facts are set forth in the Region's Request for Advice. Briefly, Wal-Mart previously had a solicitation and distribution policy that was unlawfully overbroad in that it prohibited employees from engaging in union solicitation during non-working time in non-selling areas. That violation was ultimately resolved through an informal Board settlement agreement approved by ALJ West. Wal-Mart and the General Counsel entered into a side agreement wherein they agreed that the informal settlement did not represent the General Counsel's approval of Wal-Mart's current amended policy.

Wal-Mart has amended the unlawful policy by removing the offending part of the previous rule while revising the first sentence of the rule to state that "Wal-mart strives to provide an atmosphere for our customers and Associates that is free from the solicitation and the distribution of literature inside our facilities."¹ The rule then lawfully states that Wal-Mart does not permit solicitation in any selling area during business hours or in other working areas when Associates are on working time.

We agree with the Region that this case is controlled by the Board's recent decision in Mediaone of Greater Florida, 340 NLRB No. 39 (2003), which issued a month after

¹ The previous rule stated only that Wal-mart "strives to provide a solicitation-free atmosphere for our customers." The new rule also added a second sentence: "Our Associates are to be focused on being productive and providing excellent service."

the instant charge was filed. In that case, the employer's employee handbook contained a long section on rules of conduct and a two-page table of contents that briefly summarized each rule and provided a page number for the full rule. The summary of the no-solicitation rule stated that "You may not solicit employees on company property." At the cited page, the handbook lawfully set forth: "You may not solicit another employee in work areas during work time," along with an explanation for the policy. The Board found that the employees reasonably would believe that the fuller version represented the employer's policy and that they would not rely on the statement in the table of contents but would disregard it as an incomplete and shorthand reference to the complete policy found later in the handbook. The Board majority rejected the dissent's argument that the handbook contained two conflicting rules that created an unlawful ambiguity, the same argument that the Union makes in the instant case.²

Accordingly, the Region should dismiss the charge, absent withdrawal.

B.J.K.

² The Union also contends that there is evidence that Walmart has applied this new rule in an unlawful way, pointing to the February 2003 testimony of the Aiken, South Carolina store manager in case 11-CA-19105 that "we don't allow solicitation in work areas" and to a charge recently filed in Region 28 alleging an unlawful discharge in part because the employee was distributing union literature in the employee breakroom. We agree with the Region that this is insufficient evidence that the company-wide rule is being applied in an unlawful way.