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Labor Board's Boeing Handbook Rule Produces Encouraging Results

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When the National Labor Relations Board announced a sorely needed new standard for evaluating employer handbook rules in December 2017, employers had high hopes for its implications. By now, the new standard, along with the *Boeing* case in which it was introduced, are well publicized, but whether those high hopes would pan out has remained to be seen.

A recent NLRB case, *LA Specialty Produce Company*, demonstrates just how much of a difference the new handbook standard makes. At issue in the case were two of the employer's policies which were alleged to be unlawful. Here's the text of the policies, according to the NLRB decision:

- Confidentiality policy: "Every employee is responsible for protecting any and all information that is used, acquired or added to regarding matters that are confidential and proprietary of [the employer] including but not limited to client/vendor lists…"
- Media contact rule: "Employees approached for interview and/or comments by the news media cannot provide them with any information. Our President, Michael Glick, is the only person authorized and designated to comment on Company policies or any event that may affect our organization."

One can imagine a time not so long ago when the Board would have quickly

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declared both of these policies unlawful. Now, however, there is a different standard, and more importantly, a different result.

In finding the confidentiality policy lawful under the NLRA, the Board declared that, “[r]ules seeking to protect [confidential and proprietary customer and vendor] lists target the protection of business information a company has developed over time. These rules do not target information central to the exercise of Section 7 rights, such as employee salary or wage information. Nor do they prohibit employees from appealing to customers or vendors for support in a labor dispute, or from disclosing the names and locations of customers or vendors derived from sources other than the employer’s own confidential records.”

Notice that the Board’s pronouncement is about policies protecting the confidentiality of customer or vendor lists generally – not just the policy at issue in the case. Employers now have an intelligible standard by which to judge their confidentiality policies.

In finding the media contact rule to be lawful, the Board said that, “read as a whole and from the perspective of a reasonable employee, the rule provides that because only Glick is authorized and designated to comment on company matters, employees approached for comment by the news media cannot speak on the Respondent’s behalf.”

After interpreting the rule from the perspective of an objectively reasonable employee, the Board made a broader declaration about these types of media contact policies in general:

“Since there is no Section 7 right to speak to the media on behalf of the employer—i.e., to act as the company spokesperson—such rules, when reasonably interpreted, would not potentially interfere with the exercise of Section 7 rights.”

While it’s still best for employers to carefully draft policies and tailor them so that they do not restrict protected employee activity, this case provides an illustration that the Board is taking Boeing’s directive seriously and not demanding “linguistic precision.”