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Customer Service or Union Organizing – NLRB Sets Hotel Priorities

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A recent decision of the National Labor Relations Board (NLRB) addressed several work rules that impact the hospitality industry. The first rule raised the question of to what extent a hotel can lawfully control the solicitation and distribution activities of its employees on the hotel's premises.

At issue was a work rule which prohibited employees from circulating petitions and soliciting memberships "during the working time of either the employees to whom non-company literature is being distributed or any time in working areas or in customer and public areas." *Crowne Plaza Hotel*, 352 NLRB No. 55 (2008). The rule appeared in a handbook issued to employees of Crowne Plaza Hotel at Crowne Plaza's property in Rochester, New York. The property was franchised and operated by the franchisee.

In addition to issuing the handbook, the Crowne Plaza management declared that all public areas at the hotel, including parking areas, sidewalks and public restrooms, were "guest service areas" where employees could not engage in any activities that might interfere with "customer satisfaction." That approach is consistent with "guest-centric" brand standards that focus on the guest environment and guest experience. As hotel brands are devoted to measuring guest satisfaction and judging franchisee performance on the basis of guest feedback, management's attention to customer satisfaction has become a major emphasis.

In support of a complaint issued against the Crowne Plaza franchisee, the General Counsel of the NLRB claimed that the handbook rule (and by implication any similar brand standard) unlawfully interfered with employees' right to protest working conditions because it denied employees the right to engage in solicitation and distribution activities in public areas during their non-working time. The complaint was based upon an unfair labor practice charge filed against the hotel by the union UNITE HERE.

In its defense, the hotel franchisee pointed out that in certain establishments, including casinos, restaurants and retail stores, employees may lawfully be prevented from engaging in solicitations and distribution activities in customer service areas. From this, it argued that unlike a casino, restaurant or retail store, a hotel lacks specific identifiable customer service areas, and therefore, the maintenance of a rule prohibiting solicitation and distribution in all areas open to customers is necessary "to curtail employees from interrupting customer satisfaction."

The NLRB, however, noted that under established precedent, employees could not be restricted from engaging in solicitations and distributions in strictly public areas such as public restrooms and restaurants or, as in the case of casinos, they could not be restricted from engaging in such activities beyond aisles and corridors located adjacent to gambling areas, citing *Santa Fe Hotel & Casino*, 331 NLRB 723, 729 (2000). The NLRB concluded that employees would read the rule as prohibiting them from engaging in protected activities in purely public areas, and, as a result, the agency found that the rule was an overly broad restriction on rights protected by Section 7 of the National Labor Relations Act. Thus, the agency concluded that the Crowne Plaza franchisee had maintained the rule in violation of Section 8(a)(1) of the Act.

In a 2007 case, the United States Court of Appeals for the District of Columbia Circuit, held, in agreement with the NLRB, that a casino violated the Act by having police remove union demonstrators from the casino's privately-owned sidewalk. *Venetian Casino Resort, L.L.C. v. NLRB, 484* F. 3d 601 (D.C. Cir. 2007). In this

case, the casino repeatedly warned demonstrators that they were trespassing on private property and that if they did not leave, they could be arrested. The court held that the casino's property interest in the sidewalk did not entitle it to take action interfering with employees' protected right to protest working conditions and to seek union representation.

In the Rochester Crowne Plaza case, the NLRB held that in addition to unlawfully maintaining an overly broad no solicitation/no distribution rule, the hotel owner violated the National Labor Relations Act by maintaining a rule which prohibited employees from communicating with the media concerning events occurring on hotel property. In particular, it was held to be unlawful for the hotel management to tell employees that the hotel's general manager was the only employee authorized to furnish information to the news media. The NLRB held that this directive encroached upon the right of employees to communicate complaints about working conditions to the press.

Further, two other Rochester Crowne Plaza work rules were found to be unlawful on grounds that they restricted the right of employees to engage in a strike during the middle of a work shift. One of these rules prohibited employees from leaving their work areas during work time without authorization from management, while the second prohibited employees from "walking off the job." The NLRB found both rules to be overly broad, and therefore unlawful, on the basis that they infringed upon employees' unfettered right to engage in a concerted work stoppage for the purpose of protesting working conditions.

We note for the record that in March 2008, the general manager of the Rochester Crowne Plaza, Paul Kremp, announced plans for a major renovation to be carried out in conjunction with a change in the name of the hotel to the Rochester Plaza Hotel and Conference Center. No information is available as to whether the two events are related.

Hospitality operators should note that the legality of a work rule frequently turns on the particular facts of a case. For that reason, employers wishing to adopt new rules or revise existing rules may find it beneficial to consult a lawyer knowledgeable in labor matters before making additions or revisions. Periodic review of employer's work rules is helpful to assure that they conform to the NLRB's current interpretation of the statute.