

NLRB Rules that Restricting Pro-Union T-Shirts Violates Labor Law

Labor & Employment Law Update

By Timm Schowalter on August 31, 2022

On August 29, 2022, the National Labor Relations Board (NLRB) examined workplace restrictions on the display of union insignia where employers require employees to wear uniforms or designated clothing. In a 3-2 ruling, the NLRB decided that Tesla, Inc. violated labor law by restricting employees from wearing pro-union t-shirts because such restriction implicitly prohibits workers from substituting union attire for required uniforms.

This dispute arose in August 2017 where a production associate wore a black cotton shirt containing small logos with the union campaign slogan – “Driving a Fair Future at Tesla” on the front with a large “UAW” on the back. The production associate, however, was subject to Tesla’s General Assembly (GA) Team Wear Policy that required him – along with all other production associates and team leads - to wear “team wear” with occasional substitution for alternative all black clothing. The policy also stated that alternative clothing must be mutilation free, appropriate for work and pose no safety risks.

The NLRB found that Tesla’s policy violated Section 8(a)(1) of the National Labor Relations Act because, “when an employer interferes *in any way* with its employees’ right to display union insignia, the employer must prove special circumstances that justify its interference.” The ‘special circumstances’ test weighs and examines the entire circumstances of a particular situation to balance the potentially conflicting interests of an employee’s rights to display union insignia and the employer’s rights to limit or prohibit the display.

Tesla argued that team wear policy was intended to aid in the “visual management” of the General Assembly (GA) and to lower the risks of employee’s clothing causing mutilations to the vehicles. However, there was no evidence that the black union shirts caused mutilations. The Board also rejected Tesla’s visual management argument because the black union shirts were not substantially different from black team wear shirts or the plain black shirts worn in accordance to the Team Wear Policy. Here, the majority of the Board found that Tesla failed to establish any special circumstances to justify the Team Wear Policy.

Employer Take Away:

It is clear that in applying the 'special circumstances' standard from *Republic Aviation* that employers will have an exceedingly high burden of proof in order to defend similar cases.

However, as also mentioned by the Board, employees' Section 7 right to display union insignia at work is NOT absolute (see *Con-Way Central Express, Produce Warehouse of Coram, Noah's New York Bagels* where the Board decided that the employers had succeeded in establishing special circumstances). There is STILL a recognized balance between the employee's Section 7 Rights to self-organize and the equal right of employers to preserve discipline in establishments.

As always, we will continue to keep you abreast of changes as they occur.

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