

NLRB Approves Company's Baseball Cap Rule

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Practice Area: Labor and Employment

Under Section 8(a)(1) of the National Labor Relations Act ("NLRA"), employers are permitted to maintain uniform and dress code policies in the workplace, so long as such policies do not prohibit employees from wearing union insignia, absent special circumstances, such as health and safety concerns. While seemingly straightforward, application of this rule can be quite meticulous in practice. A recent National Labor Relations Board (the "Board") case, *World Color (USA) Corp., a Wholly-Owned Subsidiary of Quad Graphics Inc.*, 369 NLRB No. 104 (June 12, 2020), provides guidance as to when an employer can restrict apparel logos at work.

When Can You Limit Apparel to Company Logos?

World Color (USA) Corp., is a Wisconsin company that maintains a facility in Nevada, where it prints commercial inserts for newspapers.

In early 2011, World Color distributed a set of mandatory guidelines to its employees containing a uniform and dress code policy requiring that all employees wear authorized company uniforms as a condition of employment, and to dress and groom professionally at all times. The guidelines permitted employees to accessorize the uniform, but required the accessorizing to be "in good taste and in accordance with all safety rules." The guidelines further required that if "hair... could potentially get caught in [production equipment], it must be secured... with a hairnet or other means. Baseball caps are prohibited except for [company] baseball caps worn with the bill facing forward." World Color further prohibited wearing buttons and pins on the production floor as a safety hazard.

After the union filed a charge, the Administrative Law Judge (ALJ) found that the policy was unlawful because it prohibited employees from wearing baseball caps with union logos and from displaying union insignia on hats.

After several appeals, however, the Board found that the policy did not prohibit employees from engaging in the protected activity of wearing caps bearing union insignia. Rather, the cap policy merely required employees to wear a company cap to align with the overall company uniform. The Board noted that employees were not prohibited from wearing union insignia on the company cap as long as they were "in good taste and in accordance with all safety rules". As such, the Board found that the uniform policy was lawful because it permitted employees to wear union insignias on company caps as long as they did not pose a safety risk.

What This Decision Means for Employers

Uniform and dress code rules are just one of a great number of issues that employers face in ensuring that their workplace policies comply with the mandates of the NLRA. The NLRA applies to almost all private sector employers nationwide, whether their employees are currently represented by a union or not. Employers should be aware of the level of scrutiny that can be placed on their workplace policies — by unions, by ALJs, and by the Board. Employers should be on the look-out for uniform and dress code provisions that:

- Specifically prohibit wearing union insignia;
- Broadly prohibit wearing all non-company insignia, even without reference to unions;
- Require company or supervisor approval or authorization of union insignia;
- Unreasonably limit the size and shape of union insignia on uniforms;
- Prohibit union insignia without documented specific and legitimate safety reasons.

We recommend that employers consult with experienced labor counsel to revise and review their workplace policies to fully comply with all state and federal requirements, including the NLRA. This way, employers will be in the best position to protect the right to efficiently and effectively maintain their businesses. Moreover, employers should be aware that even seemingly minor violations of the NLRA may compromise the ability to assert their rights in other contexts, such as possible threats of union organizing.

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