FELHABER LARSON

ATTORNEYS AT LAW

Concerted & Protected Activity Under the NLRA

Focus on…

Strikes | Insignia

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Thomas R. Trachsel

NATIONAL LABOR RELATIONS ACT

Although the National Labor Relations Act (NLRA) is the principal piece of legislation regulating ***labor relations*** (*i.e.*, union matters) in the private sector, the NLRA applies to non-union workplaces as well as unionized workplaces.

The NLRA is administered and enforced by the Relations Board (NLRB).

NATIONAL LABOR RELATIONS BOARD

- The Board issues decisions that apply and modify the law under the NLRA.
- The statute (29 U.S.C. §151 *et seq.*) is short.
- In almost all situations, you must turn to cases to determine the substantive law under the NLRA.
- New cases are (as of October 2019) going into vo the Board's decisions and orders volumes.

NLRA Section 7:

Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and ***to engage in other concerted activities for the purpose of*** collective bargaining or other ***mutual aid or protection***, and shall also have the right to refrain from any or all of such activities[.]

NLRA Section 8(a)(1):

(a) It shall be an ***unfair labor practice for an employer*** –

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7;

NLRA Section 7 and Section 8(a)(1) (combined):

Unlawful to **interfere with / restrain employees from** …

Unlawful to **retaliate / discriminate against employees for**…

"…engag[ing] in other concerted activities for … mutual aid or protection."

CONCERTED AND PROTECTED ACTIVITY

1. This issue is *implicated* any time an employer wishes to discipline an employee for engaging in **conduct that is in protest of or seeks to improve wages, hours, or other terms and conditions of employment** (*e.g.,* working conditions, work schedules, overtime, vacation / PTO, health insurance, retirement benefits, personnel policies, wage rates, workplace treatment / harassment, etc.)

   The issue is also implicated when an employer wishes to instruct or direct employees that they are forbidden from engaging in such conduct.

- **This applies in the union and non-union setting.**

MUTUAL AID OR PROTECTION

2. This often includes ***efforts to improve terms and conditions in the employee's own workplace*** (e.g., wages, hours, benefits, working conditions, etc.) through various means, including raising concerns / making requests during meetings, signing a petition or collecting petition signatures, sending messages or social media postings to co-workers and management, and distributing flyers during non-working time in non-working areas.
   - Including by ***wearing qualifying insignia***.
   - Including by ***engaging in a concerted strike***.

CONCERTED AND PROTECTED ACTIVITY

EXAMPLES

- ✓ Nine employees sign a petition, asking the company to "please do something about the slippery floor in the shipping & receiving area before somebody falls and injures themselves," which is placed under the Plant Manager's door while she is at lunch.
- ✓ Three employees go the Director of Human Resources, report that the employer's competitor across town is paying $2 more per hour, and ask that they receive a $2 increase.
- ✓ Two employees write and sign a letter to the CEO, stating that their supervisor "is a big bully to staff, and is creating an abusive and toxic work environment," and asking the CEO "to please take action on this now before everyone quits."

MUTUAL AID OR PROTECTION

3. In *Eastex, Inc. v. NLRB* (S.Ct. 1978), the Supreme Court recognized that the protection afforded by §7 extends to…
   - …activities in which employees "seek to improve terms and conditions of employment or otherwise improve their lot as employees ***through channels outside the immediate employee-employer relationship***."
   - ….such activities ***even in situations where the issue does not relate to a specific dispute over which the employer has the right or power to affect***.
   - ➢ Including by ***wearing qualifying insignia***.
   - ➢ Including by ***participating in qualifying protest events***.

MUTUAL AID OR PROTECTION

However, with regard to claimed efforts to improve T/C employment "***through channels outside the immediate employee-employer relationship***," in "situations ***where the issue does not relate to a specific dispute over which the employer has the right or power to affect,***" the Supreme Court in *Eastex* recognized that this "bears a less immediate relationship to employees' interests as employees than other such activity," and "***at some point the relationship becomes so attenuated that an activity [does not fall within the protection of NLRA Section 7]***."

CONCERTED AND PROTECTED WORK STOPPAGES

Non-union employees have the right to engage in a ***concerted work stoppage*** in an effort to improve their terms and conditions of employment with their employer.

NLRB v. Washington Aluminum Co. (S. Ct. 1962).

CONCERTED AND PROTECTED WORK STOPPAGES

In *NLRB v. Washington Aluminum* (S.Ct. 1962), *a* group of ***non-union*** employees walked off the job (before starting for the day) in protest of the cold working conditions in the plant. The company terminated these employees. The Supreme Court upheld the Board's view that walking off the job in this situation was concerted and protected activity under Section 7 of the NLRA.

Based on published news reports, instances of strikes by non-union employees appear to be on the rise.

November 1, 2018

The New York Times

Google Walkout: Employees Stage Protest Over Handling of Sexual Harassment

By Daisuke Wakabayashi, Erin Griffith, Amie Tsang and Kate Conger

Nov. 1, 2018

144

Workers protest against Google's handling of sexual misconduct allegations at the company's Mountain View, Calif., headquarters on Thursday, Nov. 1, 2018. (AP Photo/Noah Berger)


Google Walkout For Real Change
@GoogleWalkout
Follow
We, Google employees and contractors, will walkout on November 1 at 11:10am to demand these five real changes. #googlewalkout
1. An end to Forced Arbitration in cases of harassment and discrimination.
2. A commitment to end pay and opportunity inequity.
3. A publicly disclosed sexual harassment transparency report.
4. A clear, uniform, globally inclusive process for reporting sexual misconduct safely and anonymously.
5. Elevate the Chief Diversity Officer to answer directly to the CEO and make recommendations directly to the Board of Directors. In addition, appoint an Employee Representative to the Board.
6:19 PM - 31 Oct 2018
2,039 Retweets 4,591 Likes
153
2.0K
4.6K

THE WALL STREET JOURNAL.

TECH

Google Employees Stage Global Walkout Over Treatment of Sexual Harassment

Organizers demand the tech giant remove mandatory-arbitration clauses from employee contracts

Google employees fill Harry Bridges Plaza in San Francisco in a protest against what they said is the tech company's mishandling of sexual-misconduct allegations. PHOTO: ERIC RISBERG/ASSOCIATED PRESS

By Douglas MacMillan, Ezequiel Minaya and Mengqi Sun

Updated Nov. 1, 2018 8:02 pm ET

May 23, 2019

THE WALL STREET JOURNAL.

McDonald's Workers Strike to Protest Pay and Harassment Complaints

Fast-food giant says it has improved workplace policies and training

By *Heather Haddon*
Updated May 23, 2019 5:24 pm ET

Protestors hold signs and chant outside of the McDonald's on Merle Hay Road on Thursday, May 23, 2019, during a rally calling for a $15 minimum wage, in Des Moines. Fight for 15 protests were held across the country today. *(Photo: Kelsey Kremer/The Register)*

Presidential candidate Julián Castro rallies with McDonald's employees and other activists demanding fairer pay, better working conditions, and the right to unionize in Durham, N.C., on Thursday. **PHOTO**: GERRY BROOME/ASSOCIATED PRESS

July 15, 2019

CNBC

Amazon Prime Day strike: Minnesota workers are protesting on company's biggest day

Jasmine Wu, CNBC Published 4:12 p.m. ET July 15, 2019 | **Updated 7:55 p.m. ET July 15, 2019**


amazon WORKERS ON STRIKE!
amazon WORKERS ON STRIKE!
NEVER
Glen Stubbe @gspphoto · Jul 15
This Prime delivery truck was briefly blocked by picketers outside the Amazon fulfillment Center in Shakopee, MN on the afternoon of #AmazonPrimeDay #AmazonStrike
GLEN STUBBE / StarTribune

Amazon facility workers hold a sign during a protest in Shakopee, Minnesota, July 15, 2019.

Katie Schoolov | CNBC

Workers, supporters and activists picket outside the Amazon fulfillment Center in Shakopee, Minn. on the afternoon of Prime Day, Monday, July 15, 2019. Trucks were allowed through the picket line after a brief delay. *(Photo: Glen Stubbe, AP)*

▲ Workers protest outside the Amazon fulfillment center in Shakopee, Minneapolis. Photograph: Glen Stubbe/AP

In *Washington Aluminum*, the employees walked off the job to protest the bitterly cold temperature ***in their plant***.

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On 11/1/18, Google employees walked off the job to protest ***how Google*** was handling sexual harassment.

On 5/23/19, McDonald's employees walked off the job over the wage rates paid ***by McDonald's***, and over ***how McDonald's*** had been handling sexual harassment.

On 7/15/19, approximately 15 Amazon employees in Shakopee conducted a strike in protest of the following ***at the Amazon Shakopee facility*** – claimed excessive productivity quotas, needed additional efforts to prevent employees from getting injured, and the failure to acknowledge religious practices of East African workers.

November 1, 2018

The New York Times

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May 23, 2019

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Fast-food giant says it has improved workplace policies and training

By Heather Haddon
Updated May 23, 2019 5:24 pm ET

July 15, 2019

The Washington Post

Amazon Prime Day means protest for workers in Minnesota

Employees at a fulfillment center outside Minneapolis are calling on the company to improve safety and benefits on one of the top sales days of the year

In *Washington Aluminum*, the employees had the right to walk off the job to protest the cold working conditions in ***their plant***.

This was something ***within the control of <u>their employer</u>***. That is, ***the struck employer itself had the power to affect the issue***.

But what about participation in…….

April 15, 2015

Fight for $15 swells into largest protest by low-wage workers in US history

Workers in more than 200 cities walked out on jobs or joined protests bankrolled by organized labor on Wednesday in latest bid to raise minimum wage

February 16, 2017

Search ~ The Guardian US edition ~

'Day without immigrants' protests close restaurants across the US

Day was part of a growing movement of strikes against Trump's immigration policies: 'We're making a statement that this country is sustained by us'

CBS NEWS

Nationwide "Day Without Immigrants" protest closes many restaurants

UPDATED ON: FEBRUARY 16, 2017 / 8:07 PM / CBS/AP

Employees at your company participate in a protest event.

Was their participation protected by Section 7 of the NLRA?

Two step analysis:

1) **Does their participation fall within the "mutual aid or protection" clause in Section 7 of the NLRA?**
2) **Were the *means employed* by the employees protected?**

1) **Does their participation fall within the "mutual aid or protection" clause in Section 7 of the NLRA?**

Eastex, Inc. v. NLRB (S.Ct. 1978). Paraphrased:

Section 7 activity extends to activities in which employees seek to improve T/C of employment ***through channels outside the immediate employee-employer relationship, and even though the issue may not relate to a specific dispute over which the employer has the right or power to affect.***

But where the issue does not relate to a specific dispute over which the employer has the right or power to affect, this bears a less immediate relationship to employees' interests as employees, ***and at some point the relationship becomes so attenuated that an activity does not fall within the protection of NLRA Section 7***.

1) Does their participation fall within the “mutual aid or protection clause” in Section 7 of the NLRA?

April 15, 2015, Fight for $15 protest and strike

February 16, 2017, Day Without Immigrants protest and strike

1) **Does their participation fall within the "mutual aid or protection" clause in Section 7 of the NLRA?**

April 15, 2015, Fight for $15 protest and strike

In *Eastex*, the Court upheld the Board's determination that employees had the right to distribute a newsletter in nonworking areas during nonworking time that, in relevant part, noted that the President recently had vetoed a bill to increase the **federal minimum wage** from $1.60 to $2.00 per hour and compared this action to the increase of prices and profits in the oil industry under administration policies, and admonished: "As working men and women we must defeat our enemies and elect our friends. If you haven't registered to vote, please do so today."

February 16, 2017, Day Without Immigrants protest and strike

1) **Does their participation fall within the "mutual aid or protection" clause in Section 7 of the NLRA?**

February 16, 2017, Day Without Immigrants protest and strike

In two Advice Memos, the NLRB GC took the position "yes," noting that this was in response to a sudden crackdown on undocumented immigrants living and working in the U.S., and the possible revival of immigration raids in the workplace.

February 16, 2017, Day Without Immigrants protest and strike

- Aggressive enforcement means undocumented immigrants less likely to initiate complaints → employment standards and working conditions deteriorate.
- Workplace raids and stricter enforcement will likely diminish workers' employment opportunities.
  - ER may avoid hiring immigrants for fear of workplace raids.
  - Discourage the hiring of employees who look or sound "foreign."
  - Workers may limit job searches to "sanctuary" employers or jurisdictions.

1) Does their participation fall within the “mutual aid or protection of clause” in Section 7 of the NLRA?

April 15, 2015, Fight for $15 protest and strike

February 16, 2017, Day Without Immigrants protest and strike

YES.

2) Were the *means employed* by the employees protected?

Yes, if the employees engage in the activity during their ***non-working time***.

However, ***not appearing for scheduled work – or leaving or stopping work –*** to engage in the activity may be subject to restrictions imposed by lawful and neutrally-applied work rules.**

** ***There is no definitive case, but the presenter believes that this should be the proper result. However, a Democrat-appointed GC may take a more aggressive approach, particularly if the circumstances allow.***

Not appearing for scheduled work – or leaving or stopping work – to engage in the activity may be subject to restrictions imposed by lawful and neutrally-applied work rules.

This means that you cannot ignore your policies and practices with regard to attendance. You cannot apply the company's attendance policy in more stringent manner than you do in other situations.

DUAL GOALS

Employees attending a public event in support of a cause that is outside of the employer's ability to effect (*e.g.*, $15 minimum wage or change to U.S. immigration policy), ***may also be, at the same time, attempting to improve their T/C of employment with their employer.***

If the evidence demonstrates that the employees are participating to ***also improve their T/C of employment with their own employer***, the Board will conclude that ***missing work*** to participate was protected.

DUAL GOALS

EYM King of Missouri d/b/a Burger King, 365 NLRB No. 16 (2017), enf'd. 726 Fed.Appx. 524 (8th Cir. 2018).

Employer violated §8(a)(1) by issuing written warnings to six employees who participated in 4/15/15 Fight for $15 strike, where the employees were also participating in the strike to protest grievances they specifically had against their own employer – injuries because of lack of protective equipment, unsafe working conditions, unpredictable scheduling, and claimed wage theft.

DUAL GOALS

International Warehouse Group, Inc., Case 29-CA-197057 (10/5/17 Advice Memorandum).

The GC authorized Complaint, alleging that the company unlawfully terminated employees who engaged in a strike in support of their own workplace grievances in addition to the Day Without Immigrants.

- Latino employees were regularly underpaid.
- Latino employees believed they were forced to work more overtime than non-Latino co-workers.
- Latino employees felt they were pressured to work too fast, experienced shortened breaks, and had to forgo bathroom visits.

CONCERTED AND PROTECTED WORK STOPPAGES

- ✓ Although ***non-union employees*** have the right to engage in a ***concerted work stoppage*** in an effort to improve their terms and conditions of employment with their employer…

- ✓ … the Board has found certain strikes ***indefensible*** – *i.e.*, where the employees fail to take reasonable precautions to protect the employer's plant, equipment, or products from foreseeable imminent danger due to sudden cessation of work.

CONCERTED AND PROTECTED WORK STOPPAGES

- ✓ Section 8(g) of the NLRA requires "[a] labor organization" to provide a "health care institution" with a 10-day strike notice. Non-union employees who are planning to engage in an otherwise protected work stoppage are *not* obligated to furnish such a 10-day notice.
  - *Walker Methodist Residence*, 227 NLRB 1630 (1977).
  - *Bethany Medical Center*, 328 NLRB 1094 (1999).

KEY TAKEAWAYS – CONCERTED AND PROTECTED STRIKES

1) **Do** understand that non-union employees have the right to strike to improve their terms and conditions of employment at their place of employment.
2) **Do** understand that non-union employees have the right to participate in protest events during their non-working time where the events are over issues that impact their interests as employees.
3) **Do not threaten** employees that participation in such events during their non-working time will lead to discipline or termination, and **do not interrogate** employees about attending such events.

KEY TAKEAWAYS – CONCERTED AND PROTECTED STRIKES

4) **Do** contact legal counsel to discuss issues and options if you are expecting a large number of employees to miss work to attend such an event.
5) You **do** have the right to communicate with employees that everyone who's scheduled to work at the time of such event is expected to appear for work as scheduled.
6) If employees do miss work, you should be able to follow your normal attendance policy, provided that you are doing so consistently with past administration of that policy.
7) If employees do miss work, **do** be very careful about the possibility that they may have dual goals.

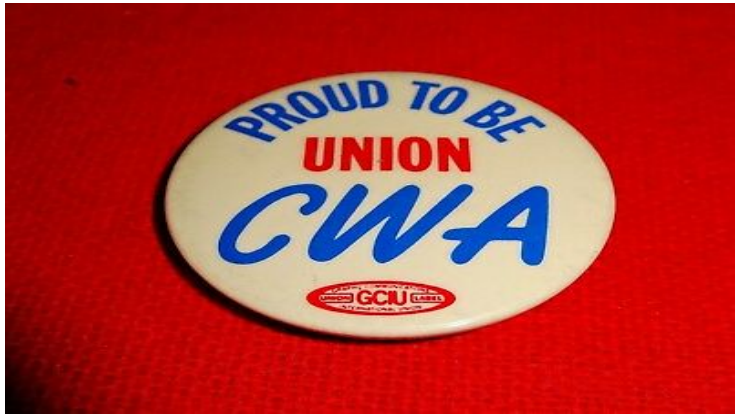
KEY TAKEAWAYS – CONCERTED AND PROTECTED STRIKES

8) **Do** consider the PR implications of terminating employees.
9) **Do** keep your eyes and ears open for what the union is saying if your employees are represented by a union. (Suggesting or encouraging employees to skip work to attend may be considered a violation of no-strike clause in CBA).
10) **Do** review any existing workplace policies, as the Board has held that it's unlawful to maintain a work rule stating that employees are prohibited from walking off the job.

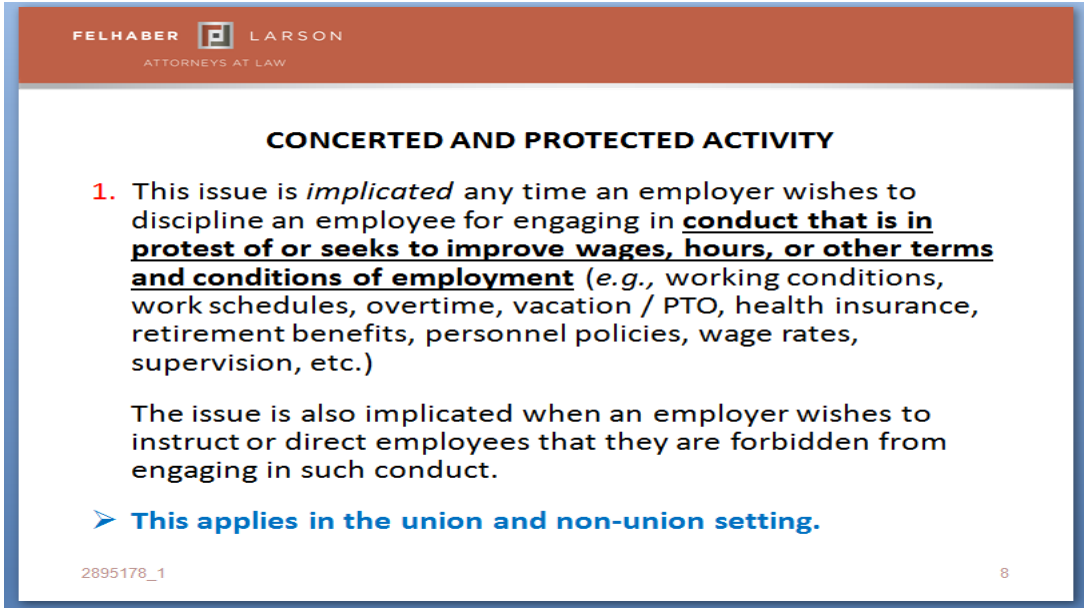
INSIGNIA

- The Board has long recognized that an employee has the protected right under Section 7 of the NLRA to wear union insignia while at work.
- The same protection applies to insignia containing a message or slogan that is otherwise subject to coverage by the mutual aid or protection clause.
- In the absence of "special circumstances," the promulgation of a rule prohibiting the wearing of such insignia is violative of Section 8(a)(1), as is instructing or directing employees that they are prohibited from wearing or displaying such insignia.

Employees generally have the right to wear ***union insignia*** (buttons/stickers) at work, absent special circumstances.



- The same protection applies to insignia containing a message or slogan that is otherwise subject to coverage by the mutual aid or protection clause.




Overtime

Mt. Clemens General Hospital, 335 NLRB 48 (2001), *enf.d* 172 LRRM 2513 (6th Cir. 2003).

The Board held that nurses had the right to wear these buttons where the hospital was requiring staff to work overtime and no longer compensating them double time when this occurred.


STOP GLOBAL WARMING
STOP GLOBAL WARMING


Stop Climate Change


MARQUETTE


Miller
HIGH LIFE


PACKERS


FIGHT FOR
$15

In-N-Out Burger, Inc., 365 NLRB No. 39 (2017).

The Board held that the restaurant violated §8(a)(1) of the NLRA by directing employees that they could not wear "Fight for $15" buttons in support of a campaign to raise the minimum wage to $15 per hour, and asking employees to remove them.


LEGALIZE MARIJUANA
IN BUD WE TRUST


sexual
harassment


Stopping
Sexual Harassment
In The Workplace

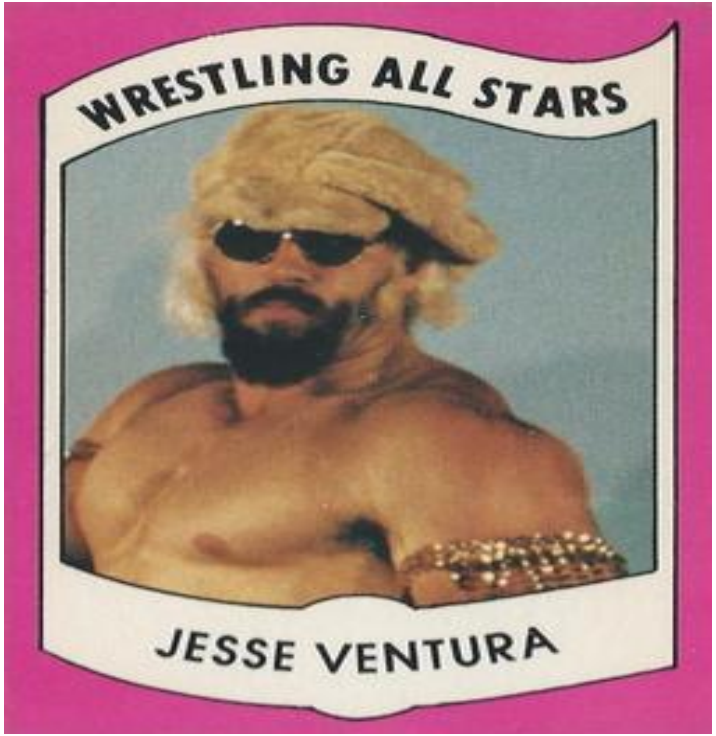

Hillary
For President
2016


TRUMP'16
FOR PRESIDENT


TRUMP
2020
KEEP
AMERICA
GREAT


WARREN
2020


MAKE AMERICA
GREAT AGAIN


WRESTLING ALL STARS
JESSE VENTURA

Can the union convert a political button into a union button simply by adding its name?

Special Circumstances

1. **Employer's burden.** It is the employer's burden to establish special circumstances.
2. **Balancing test.** Where the employer relies upon special circumstances, the Board balances the employee's right to engage in protected activities against the employer's right to maintain discipline or achieve other legitimate business objectives. Case-by-case analysis that depends upon all the circumstances.
3. Note, however, that **health care institutions** may prohibit the wearing of all insignia in **immediate patient care areas.**

Special Circumstances, *continued*

4. **Look for …**
   - Disruptive or vulgar message.
   - Disparagement of the employer's product or service.
   - Detract from the employer's public image (developed through a business plan and appearance rules).
   - Health and safety.
   - Potential damage to company's equipment or product.
5. **Customer contact** does not, standing alone, permit an employer to prohibit employees from wearing union insignia. The requirement that employees wear a **uniform** is not, standing alone, a special circumstance.

W San Diego, 348 NLRB 372 (2006).

Issue #1 – Public image

In-room delivery server (whose uniform consisted of a black t-shirt, black slacks, and a black apron), who delivered food orders from kitchen to guests' rooms.

Held lawful.

Rare "special circumstances" case.

2 inches

JUSTICE NOW!
JUSTICE AHORA!
HERE Local 30

W San Diego, continued

Issue #2 – Health and safety

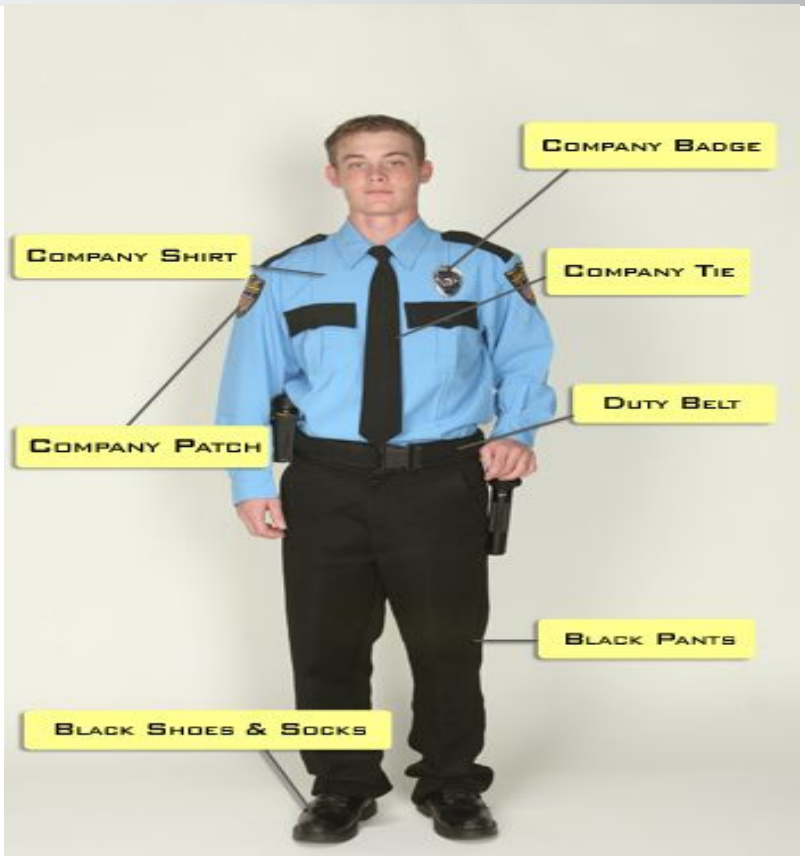
Employer told cook and other kitchen staff to remove these stickers from their food preparation uniforms.

Held lawful.

Security officers

The company's handbook for security officers contained a rule that read, in relevant part:

> "No insignias, emblems, buttons, or items other than those issued by the company may be worn on the uniform without expressed permission."

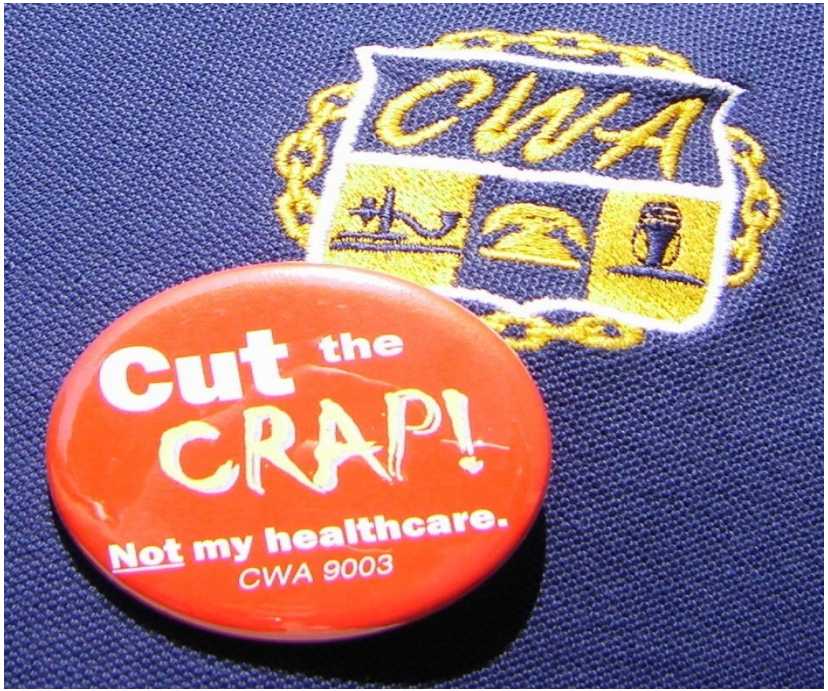


The company's unionized employees have contact with customers. The company prohibited employees from wearing these buttons, contending that they are vulgar and offensive.

AT & T, 362 NLRB No. 105 (2015).

Board (3-0): "We find that the possible suggestion of profanity, or 'double entendre,' as the Respondent characterizes it, is not sufficient to render the buttons and stickers unprotected here, where an alternative, nonprofane, inoffensive interpretation is plainly visible and where, further, the buttons and stickers were not inherently inflammatory and did not impugn the Respondent's business practices or product."

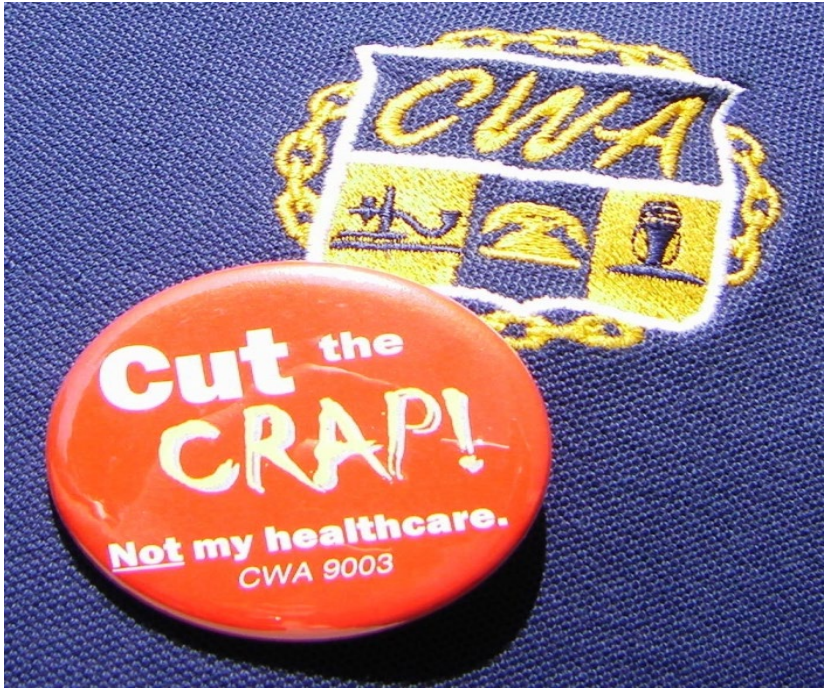
Company prohibits its employees (who are represented by CWA Local 9003) from wearing this button. Company argues, *inter alia*, that "crap" appears in feces font.



AT & T, 362 NLRB No. 105 (2015).

ALJ: "…I am unable to tell if the word "Crap" represents feces, cheese, or Cheetos."

Board agrees (3-0) that the button, although of "questionable taste," is protected.



Some hospital employees, unhappy with the hospital's health insurance proposal in negotiations, were wearing this sticker. The hospital announced that this sticker could not be worn.

St. Luke's Hospital, 314 NLRB 434 (1994).

Board finds a violation:

"Although the judge found that some patients might be upset by the buttons in the manner suggested by the Respondent, the record is devoid of any evidence to support this supposition. Thus, there is no evidence that any patient complained of, or even noticed, the stickers and buttons at issue in this case."

Acute care hospital requests RNs (who are represented by a union) to remove this button in any areas where patients or family members might see the button. The hospital has been allowing employees to wear other union buttons, but is banning this one.

RNs DEMAND SAFE STAFFING

Sacred Heart Medical Center, 347 NLRB 531 (2006) (2-1 decision).

Board: "A reasonable person would construe the 'Safe Staffing' button as a claim that Respondent's staffing levels are unsafe. Such a claim is likely to cause uneasy and worry among patients and their families, and disturb the tranquil hospital atmosphere that is necessary for successful patient care. * * * The judge and our colleague suggest that special circumstances cannot be shown in the absence of evidence of actual disturbance to patients. We disagree. * * * [A]s the Supreme Court made clear in *NLRB v. Baptist Hospital*, a hospital need not wait for the awful moment when patients or family are disturbed by a button before it may lawfully be restricted."

RNs DEMAND SAFE STAFFING

Wash. State Nurses Ass'n v. NLRB, 526 F.3d 577 (9th Cir. 2008).

"The Board's determination that special circumstances justified Sacred Heart's [] button ban is not supported by substantial evidence in the record. In fact, it is not supported by any evidence. * * * Sacred Heart claims that the button's message would disturb patients. That assertion is speculative at best. Moreover, Sacred Heart's speculative concern is contradicted by actual evidence in the record that there was never any disturbance involving the button. There is no evidence in the record that supports the Board's special circumstances finding."

Hospital maintains a policy stating that “[b]adge reels may only be branded with MemorialCare approved logos or text.” This means that employees cannot wear badge reels branded with union insignia or other protected messages.

Long Beach Memorial Medical Center, 366 NLRB No. 66 (2018).

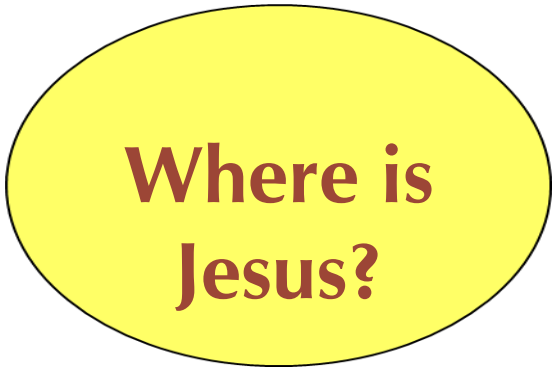
The Board held 2-1 that this was overbroad because it was not limited to immediate patient care areas.

["Badge reels may only be branded with MemorialCare approved logos or text."]

Seven unionized cafeteria workers (who work in customer service areas visible to customers) were told to remove this button. The button referred to the union's chief shop steward, Jesus Andrade, who had recently been suspended. The Employer was concerned that customers would read the button as a reference to Christianity and be offended by that. One customer asked a manager about the button.

Stanford Hospital, Case 32-CA-23631 (Advice Memo 2/25/08).

The NLRB General Counsel declined to issue Complaint. Employer had a reasonable belief that customers might be offended. Customers and patients would likely view as a reference to Biblical Jesus. Christians may consider it irreverent use of the name of God, and/or provocative way of questioning the existence of Jesus or God. Non-Christians might consider it a distasteful promotion of Christianity. The hospital allowed other union insignia.



KEY TAKEAWAYS

1) **Do** understand that employees generally have a baseline right to wear union insignia, as well as insignia otherwise falling within the "mutual aid or protection" clause, but this does not extend to purely political insignia.
2) **Do** consult with legal counsel if you believe that there may be grounds for demonstrating blanket "special circumstances," allowing you to prohibit employees from wearing all insignia while in working areas during working time.
3) **Do** tread carefully when addressing particular insignia that may give you "special circumstances."
4) **Do** review any current dress code or uniform policy, and revise the policy if it is unlawfully overbroad.

Tom Trachsel

612-339-6321
ttrachsel@felhaber.com
www.felhaber.com