



Dealerships On Pins And Needles After Latest Union Pin Decision

Insights

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Niedermeyer: “A pledge pin?!? On your uniform? Just tell me, mister, what fraternity would pledge a man like you?”

Flounder: “It’s a Delta pin, sir.”

Niedermeyer: “You will report to the stable tonight and every night at 1900 hours ... AND WITHOUT THAT PLEDGE PIN!”

Animal House (1978)

Doug Niedermeyer is not the most sympathetic character in American film, but any dealership manager faced with employees who want to wear union pins, buttons, or other insignia might understand his frustration. To many managers, dealerships simply ought to be able to control what their employees wear to work, especially if they interact with the public. But the National Labor Relations Board (NLRB) says otherwise, and you should proceed with extreme caution if you maintain a dress code policy that prohibits these kinds of adornments.

The federal courts are backing the Board up on this point. Though it did not cite the classic National Lampoon film, the 1st Circuit Court of Appeals recently affirmed a Labor Board decision holding that a Massachusetts Honda dealership’s prohibition on all pins, insignias, and “message clothing” violated the National Labor Relations Act (NLRA).

Dealership Pins Hopes On Public Image Argument

The case arose in 2011 when Boch Honda in Norwood, Massachusetts, was bargaining with the Machinists Union over a new contract. The union objected to the dress code policy contained in an employee handbook and ended up filing an unfair labor practice charge with the NLRB. The case then took a circuitous path through the Board’s administrative process to the 1st Circuit Court of Appeals, which ruled in June 2016 that Boch Honda’s dress code infringed upon the dealership employees’ right to organize.

The dealership argued that it had developed a neutral policy that was fair and balanced – it prohibited all “message clothing” and pins, regardless of the message. The dealership said that this

blanket prohibition was necessary to maintain its public image, but the Board and the court of appeals disagreed.

Court Pins Back Dealership

The court started with the well-accepted premise that employees are “presumptively entitled under Section 7 [of the NLRA] to wear union insignia and other attire during work hours.” It then analyzed the kinds of “special circumstances” that might justify limitations on that right. Historically, the Board has considered threats to employee safety, potential damage to machinery or products, or unreasonable interference with the employer’s public image to be the kinds of circumstances that might warrant a ban.

Boch Honda argued that its ban on pins was justified by the potential risk of vehicle damage that could result if the pin fell off while a technician was working on a vehicle. The court disagreed, noting that the broad application of the ban was not narrowly tailored to address those concerns.

The dealership then pointed out an earlier Board decision in which the NLRB had approved of a hotel chain’s prohibition against pins worn by uniformed employees who interacted with the public, arguing that the same standard should apply to them. In that case, the Board found that the hotel had established the “special circumstances” justifying a ban. The Board found that uniformed employees wearing a particular union button in public areas would have interfered with the “special atmosphere” the hotel was trying to create which included fashionable, all-black attire. The Board agreed that the hotel’s efforts to create a “unique, fantasy-like ambiance” would have been unreasonably thwarted by the union pin.

The court distinguished that case from the dealership’s case. At Boch Honda, the pin ban applied to all employees, including not just those who wore uniforms (like service advisors and service technicians) but also to any employee simply required to dress in business-casual attire (like salespeople, F&I, and administrative staff). The pin ban applied to employees who were “public-facing” as well as those who only occasionally interacted with dealership customers. Rather than create a “unique atmosphere,” the court found, the blanket prohibition against pins was designed merely to generally promote professionalism, which did not justify the ban.

What This Means For Your Dealership

If you are interested in minimizing the risk that your dress code might violate the NLRA, you might have better luck pointing to different justifications for the classes of employees subject to the ban. For example, service technicians and service advisors might be prohibited from wearing pins for safety reasons given their work on and around automobiles.

While it is possible that a ban on pins worn by uniformed personnel interacting with the public potentially might be upheld, such a ban could be risky given the Board’s reluctance to restrict employees’ rights to wear these adornments. And under current Board law, there is little hope that you could prevent administrative employees or others not interfacing with the public from wearing such pins.

such pins.

It is important to note that the Board's rules prohibiting blanket bans on union pins and insignia are not limited to dealerships which already have a union or which are currently undergoing a union election process. The NLRA applies to all employers, whether union or non-union. So if there is a Niedermeyer on your management team upset at your pin-wearing workers, you might want to pull him down from that horse before he is dragged across the fairgrounds and your dealership is dragged into court.

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