



## **WTF, NLRB? (WTF = “Where’s The Fairness?”)**

Insights

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In yet another blow to employers, a National Labor Relations Board Administrative Law Judge recently upheld the right of employees who regularly work with customers to wear offensive union buttons prominently displaying the letters “WTF.”

### **Union Says: “WTF = Where’s The Fairness?”**

The case involved two groups of AT&T employees, “Core Techs” and “Prem Techs,” who started wearing the buttons at the onset of contract negotiations. The buttons included the letters “WTF” in large text, with “AT\$T” following in slightly smaller text. The union name “CWA Local 4622” was written in small text across the top of the button, and “Where’s the Fairness?” was written in small text across the bottom.

AT&T instructed the Prem Techs to remove the buttons, citing mandatory appearance standards requiring apparel not to be altered “in any way, which includes adding buttons, pins, stickers, writing, etc.” AT&T had previously offered to discuss these same standards with the union, yet it never received a demand for bargaining.

AT&T later extended the same directive to its Core Techs on the basis that the buttons were offensive, profane, and inappropriate, particularly to the extent that customers would likely take the letters “WTF” by their commonly understood meaning (which is not “where’s the fairness?”), thereby damaging customer relations.

The union filed an unfair labor practice charge alleging that the company was violating employee rights to wear union insignia in the workplace. AT&T countered that the buttons were patently offensive, vulgar, and interfered with its reputation and public image. The company further contended that the union waived any right to contest application of its mandatory appearance standards for Prem Techs by failing to demand bargaining over them.

### **Judge Sides With Union**

In a seemingly tone-deaf analysis, the ALJ determined that “WTF” was not offensive when viewed in the context of the accompanying smaller “Where’s the Fairness?” statement. When combined with “AT\$T,” the judge said it simply conveyed existence of a labor dispute. The ALJ ultimately concluded that the expression “WTF” could not be interpreted so as to offend customers.

Likewise, the ALJ ruled that the buttons would not harm the company's relationship with its customers, as their message was "a non-profane, inoffensive one," as evidenced by the fact that AT&T received no resulting customer complaints. Accordingly, the ALJ concluded that the company violated the right of its Core Techs to wear union insignia in the workplace.

As for the Prem Techs, however, the ALJ ruled in the company's favor. The judge reasoned that the union's failure to demand bargaining over the appearance standards effectively waived its right to subsequently challenge the standards.

### **Employers, Beware**

This case serves as yet another reminder that the NLRB is continuing well down the path of whittling away previously established employer rights, regulating the workplace in favor of enhanced protections for employees and unions alike. It remains to be seen where the agency will look next with respect to this encroachment strategy, but it's fair to assume that a host of related employer property rights are now in serious jeopardy.

In the meantime, you should monitor this evolving area for further developments, and consult with counsel to ensure that your existing policies are compliant with current NLRB doctrine.

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