

DC CIRCUIT OVERTURNS NLRB ON COMPANY ONLY HAT RULE

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**Gerald F.
Lutkus**

Of Counsel
(Retired)

In a short and sweet decision, the United States Court of Appeals for the D.C. Circuit has overturned an NLRB decision that that declared a “company hat only” policy to be violative of employee Section 7 rights. Quad Graphics, a subsidiary of World Color (USA) Corp., prohibits employees from wearing any baseball caps except for caps bearing the company logo. The Teamsters took issue with the policy and filed an unfair labor practice charge against the company saying that the policy interfered with workers’ rights under section 7 of the NLRA which allows them to wear union insignia. An NLRB ALJ agreed and the Board ultimately confirmed the ALJ’s decision. However, in confirming that decision, the NLRB misstepped according to the D.C. Circuit. The NLRB’s review of a corporate policy under section 7 is to follow the two-step test set out in *Guardsmark, LLC v. NLRB*, 475 F.3d 369, 374 (D.C. Cir. 2007). First, the Board must examine whether the rule explicitly restricts section 7 activity; if it does, the rule violates the Act. If the policy does not explicitly restrict protected activity, the Board considers whether (1) employees would reasonably construe the language to prohibit Section 7 activity; (2) the rule was promulgated in response to union activity; or (3) the rule has been applied to restrict the exercise of Section 7 rights. The Court in *World Color (USA) Corp. v. National Labor Relations Board*, determined that the Board erred when it “short-circuited this inquiry at the first step by concluding that there was no dispute regarding whether the policy facially prohibited employees from wearing caps bearing union insignia.” The Court said that the Board was simply wrong and ignored its own record in coming to that conclusion. Although the hat policy restricted the type of hat that may be worn, it does not say anything about whether union insignia may be attached to the hat. The Company argued throughout that the hat policy was part of its overall uniform policy and the general uniform policy allows employees to accessorize “in good taste and in accordance with all safety rules” and asserts that “[a]ll uniform requirements will be applied in accordance with applicable laws.” Thus, the Court ruled, the Board’s conclusion was wrong that the policy facially prohibited employees from wearing union insignia on their company caps. The Court reversed the NLRB’s decision and remanded the case to the Board for reconsideration. A copy of the decision is available [here](#).

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