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WTF? NLRB's OK With 'Cut The Crap?'

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**Gerald F.
Lutkus**
Of Counsel
(Retired)

The National Labor Relations Board (NLRB) has yet again undercut employers' efforts to limit profane and vulgar language by workers finding vulgar buttons and stickers to be protected speech under the National Labor Relations Act (NLRA).

In [Pacific Bell Telephone Company and Nevada Bell Telephone Company d/b/a AT&T and Communication Workers of America, Case # 20-CA-080400](#), the board ruled that the two companies violated the NLRA when they attempted to block workers from wearing buttons and stickers containing the phrase "Cut the Crap" and the abbreviation "WTF." The buttons and stickers read "WTF Where's the Fairness," "FTW Fight to Win" and "Cut the Crap! Not My Healthcare." In overturning an administrative law judge's (ALJ) prior ruling and holding 2-1 that the buttons and stickers were protected speech, the board majority found the language not to be so profane as to lose protection of the Act, particularly where the "WTF" and "FTW" buttons and stickers "provided a nonprofane, nonoffensive interpretation on their face."

The board's final order in the case barred the two companies from maintaining and enforcing an overbroad rule which banned these employees from wearing the union-provided pins and stickers. The companies were further ordered to cease and desist from refusing to let employees work unless they removed this union insignia.

The case is the latest in a series of cases in which the board is making it very

clear that a wide variety of foul, vulgar and otherwise offensive language remains protected speech and does not lose its protection under the Act when the language is used in the context of concerted activity. In the *Plaza Auto Center, Inc.*, *Hooters*, and *Starbucks* cases, the Board also condoned extremely offensive language and overturned decisions to terminate employees.

Employers who are considering discipline or termination of employees for foul, vulgar and/or offensive language must step carefully given this series of decisions. You must first make certain that the language used could not be considered to have been part of a discussion or interchange with the employee that could be viewed as concerted activity.