United States Government
National Labor Relations Board
OFFICE OF THE GENERAL COUNSEL

Advice Memorandum

DATE: August 11, 2006

TO : Robert W. Chester, Regional Director
Region 18

FROM : Barry J. Kearney, Associate General Counsel
Division of Advice

SUBJECT: Hannon Security Services, Inc.
Case 18-CA-18047

This case was submitted for advice on whether the Employer violated Section 8(a)(1) by maintaining a rule that prohibits the wearing of all buttons, lapel pins and other organizational symbols on uniforms worn by its security officers. We conclude that this rule is unlawfully overbroad insofar as it applies to employees who wear their uniforms while off duty going to and from work.

The Charging Party Union has been organizing the Employer's 400 security guard employees since late 2004. Since 2000, the Employer has maintained in its Employee Handbook the following policy:

> Wearing buttons, lapel pins or other items other than those prescribed by Hannon directives is prohibited. Examples of prohibited items include:
> - Political advertisements
> - Advertisement buttons
> - Emblems of any type
> - Lodge pins
> - Fraternity pins or buttons
> - Visible tattoos, unless approved by the Human Resource Department

The Employer requires security officers to wear a complete uniform at all times while on duty, and prohibits officers from wearing their uniforms while off-duty except that the Employer permits employees to wear their uniforms when they are going directly to and from work.

An employer violates Section 8(a)(1) by maintaining a work rule that "would reasonably tend to chill employees in the exercise of their Section 7 rights."[1] A work rule that explicitly prohibits employees from engaging in Section 7

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[1] Lafayette Park Hotel, 326 NLRB 824, 825 (1998) enfd. per curiam 203 F.3d 52 (D.C. Cir. 1999).

activity is unlawful. If a rule does not explicitly prohibit Section 7 activity, the rule nevertheless is unlawful if (1) employees would reasonably construe the rule to prohibit Section 7 activity; (2) the employer promulgated the rule in response to Section 7 activity; or (3) the employer has applied the rule to restrict employees in the exercise of their Section 7 rights.[2] We conclude that employees here would reasonably interpret the above Handbook rule to bar the wearing of any Union insignia on their uniforms at any time.

Although employees have a presumptive right to wear union insignia while at work, an employer may be able to demonstrate special circumstances that justify prohibition of that practice.[3] One such special circumstance involves an employer's business interest in preserving employee uniformity of appearance in occupations where employees wear employer-issued uniforms and deal with the public.[4] In that context, an employer demonstrates special circumstances where added union insignia "may reasonably interfere with the public image which the employer has established as part of its business plan through appearance rules for its employees."[5]

We conclude that the Employer has demonstrated special circumstances here at least while security guard employees are on duty. The uniform that these security guards wear while on duty is designed to enable them to easily command respect so that they can protect lives and property, control unsafe situations, and apprehend criminals. The uniform conveys the message to any member of the public encountering the guard that an authority figure is present. We recognize that the wearing of additional Union insignia may not interfere with recognizing the wearer of the uniform as a security officer. However, additional Union insignia could well interfere with the message of authority that the Employer intends the uniform to convey. It is also possible that the Employer's business would suffer if its clients determine that the Employer's officers did not adequately convey a presence of commanding authority. We

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[2] Lutheran Heritage Village-Livonia, 343 NLRB No. 75, slip op. at 1-2 (2004).

[3] Republic Aviation v. NLRB, 324 U.S. 793 (1945).

[4] See Con-way Central Express, 333 NLRB 1073, 1076 (2001); UPS, 195 NLRB 441 (1972).

[5] UPS, 312 NLRB 596, 597 (1993), enf. denied 41 F.3d 1608 (6th Cir. 1994).

therefore conclude that the Employer's Handbook lawfully prohibited security officers from wearing any buttons, lapel pins or other Union insignia on their uniforms while the officers are actually on duty.

The Handbook rule as written broadly applies to the wearing of uniforms at all times, when officers are both on duty and also off duty, traveling to and from work. The Employer does not have the same legitimate business interest, the authoritarian message conveyed by its uniform, in prohibiting the wearing of insignia when employees are in travel status off duty.[6] We therefore find the Handbook rule unlawfully overbroad to that extent.[7]

Accordingly, the Region should issue complaint, absent settlement, alleging that the Handbook rule is unlawfully overbroad because it applies to the wearing insignia when employees are off duty in travel status.

B.J.K.

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[6] The Employer argues that it does have the same legitimate interest when the officers are off duty because observing members of the public will not know that the officer is off duty. However, the legitimate interest we found to constitute special circumstances applies only to the authoritarian message conveyed by the uniform enabling the officers to carry out their work responsibilities while on duty. That special circumstance has no application when the guards are in travel status, off duty.

[7] See Pinkerton's, Inc., Case 18-CA-16257 et al, Advice Memorandum dated January 3, 2003; AlliedBarton Security Services, Case 4-CA-34212, et al, Advice Memorandum dated March 3, 2006.