

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

# Advice Memorandum

DATE: February 9, 2004

TO : Victoria E. Aguayo, Regional Director  
Region 21

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

SUBJECT: Langner Security Services 512-5012-6787  
Case 21-CA-35324; 35579 512-5012-6787-3300  
512-5012-6787-6700

This case was originally submitted for advice regarding whether security guards were engaged in protected, concerted activity when they wore buttons, distributed by the Union a year after the September 11<sup>th</sup> attacks, containing the message, "In Remembrance of Our Unsung Heroes." Advice concluded that the wearing of the buttons constituted activity for "mutual aid or protection" under Section 7 of the Act.<sup>1</sup> However, Advice directed the Region to further investigate, based upon the analysis set forth therein, whether the Employer could demonstrate special circumstances that would justify its prohibition of the buttons. We now conclude that the Employer did not violate the Act by prohibiting the security guards from wearing the "In Remembrance of Our Unsung Heroes" button because there are special circumstances that justify the button's prohibition.

### FACTS

The underlying facts are set forth in the July 22 Advice memorandum. Briefly, the Employer (Langner Security Services) provides security services on a contract basis to MaguirePartners, the owner of the Gas Company Tower building in downtown Los Angeles. The Employer maintains a written "Uniform and Appearance Policy" that requires security guards to be "in full uniform at all times while on duty." MaguirePartners provides the security guards' uniforms. The MaguirePartners' uniform policy provides in pertinent part:

Because contracted employee uniforms are standardized for all MaguirePartners properties, individual

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<sup>1</sup> Langner Security Services, 21-CA-35324, Advice Memorandum dated July 22, 2003.

enhancements such as accessories or other non-standard items are not permitted. Only those items issued as the basic uniform compliment [sic] are to be worn.

The Employer also has a "Uniform and Appearance Policy" which provides in pertinent part:

Female officers fingernails must be of a reasonable length with no polish or with a neutral polish color. Female officers' makeup must be kept to a minimum.

Visible body piercing, including earrings, for male officers are prohibited. Male officers may wear a single finger ring and a wristwatch while on duty. Visible body piercing, other than a single pair of stud earrings, is not allowed for female officers. Female officers may wear a single finger ring and a wristwatch while on duty.

Remember when you put on your uniform you are a representative of Langner Security Services, Inc. It is important to always look your best while on duty. Let us work together to continue to make Langner the best in the security industry.

About a week before September 11, 2002, some employees began wearing a button distributed by the Union (SEIU, Local 1877) to honor service workers who died in the World Trade Center. The button, approximately 2 ¼ inches in diameter, has a purple background containing a smaller circle with a gold image of the Twin Towers amidst a waving American flag. The words "In Remembrance of Our Unsung Heroes" are written in white print around the top of the button. Prior to this time, the Employer had authorized the wearing of three buttons: a dime-sized brass or copper "officer of the month" pin issued by the Employer; a postage stamp-sized American flag pin issued by the Employer shortly after September 11, 2001; and a postage-stamp sized commemorative flag pin depicting firefighters raising the flag at ground zero distributed by MaguirePartners shortly before September 11, 2002. As detailed in the July 22 Advice memorandum, the Employer prohibited the employees from wearing the Union-issued "Remembrance of Our Unsung Heroes" button.

#### **ACTION**

We conclude that the Employer has demonstrated special circumstances justifying its prohibition of the "In Remembrance of Our Unsung Heroes" button.

Even where the wearing of buttons or insignia comes within the "mutual aid or protection" clause, an employer may still be able to demonstrate special circumstances that would justify prohibition of such a practice.<sup>2</sup> One such special circumstance involves an employer's business interest in preserving a "public image which the employer has established, as part of its business plan, through appearance rules for its employees."<sup>3</sup> In determining whether the employer's concerns about its "public image" justify a ban on union insignia, the Board considers both the importance of the asserted "public image" to the employer's business and whether the particular insignia reasonably could have interfered with that image.<sup>4</sup> The Board examines such factors as the size and appearance of the button and whether the words on the button are provocative.<sup>5</sup> The Board also considers whether the employer has previously permitted employees to deviate from its appearance policy.<sup>6</sup>

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<sup>2</sup> Republic Aviation Corporation v. NLRB, 324 U.S. 793, 803-804 (1945). See also Southwestern Bell Telephone Co., 200 NLRB 667, 669-670 (1972).

<sup>3</sup> United Parcel Service, 312 NLRB 596, 597 (1993), enf. denied 41 F.3d 1608 (6<sup>th</sup> Cir. 1994). See also Con-Way Central Express, 333 NLRB 1073, 1076 (2001); United Parcel Service, 195 NLRB 441 (1992).

<sup>4</sup> See United Parcel Service, 195 NLRB at 441 fn. 2 (employer lawfully prohibited 2-½ inch button referring to an internal union campaign, where the image of a neatly uniformed driver was integral to the employer's image to its customers and the general public). Compare United Parcel Service, 312 NLRB at 597 (small, neat, inconspicuous pin free of any provocative message did not interfere with their desired image as neatly attired); Nordstrom, Inc., 264 NLRB 698, 701-702 (1982) (customer exposure to discreet, inconspicuous union insignia, standing alone, is not a special circumstance permitting an employer to prohibit its display); Waterbury Hotel Management LLC, 333 NLRB 482, 546 (2001) (employer failed to establish special circumstances where button was small, discreet, non-confrontational, tasteful and likely to blend in).

<sup>5</sup> United Parcel Service, 312 NLRB at 597; Nordstrom, Inc., 264 NLRB at 701.

<sup>6</sup> See Meyer Waste Systems, 322 NLRB 244, 247-248 (1996) (wearing of buttons protected, where employer allowed employees to deviate from uniform policy). Compare Conway Central Express, 333 NLRB at 1076 (employer lawfully prohibited button, where it consistently and

Here, the Employer has a business interest in preserving its security guards' public image to at least the same degree as employers in other industries where the Board has permitted limitations on union insignia. We further conclude that the "Unsung Heroes" button does not meet the requirements of the Employer's strict uniform and appearance policy, and that the Employer reasonably prohibited the button as interfering with the public image it sought to project through its uniform policy. In this regard, the Employer had already designated a pin to commemorate 9/11, and the Union's pin conflicted with the Employer's presentation of that message.

The guards wear MaguirePartners-issued uniforms, and MaguirePartners' written appearance policy permits "[o]nly those items issued as the basic uniform complement [sic]" and prohibits "individual enhancements such as accessories or other non-standard items . . . ." The Employer's written "Uniform and Appearance Policy" requires that security guards be "in full uniform at all times while on duty," and details proper attire and appearance in a range of areas, such as hairstyles, nail polish, body piercing, rings, and earrings. These written uniform rules can clearly be interpreted to prohibit the "Unsung Heroes" button: in particular, the prohibition against individual enhancements and accessories would reasonably be understood to include buttons; and the rule limiting guards' attire to items issued as part of the basic uniform complement clearly would exclude the "Unsung Heroes" button, since neither the Employer nor MaguirePartners issued the button.

Furthermore, the Employer reasonably concluded that these buttons could interfere with the message of authority that the Employer hopes its guards will convey, in large part through their uniforms. Thus, the size and appearance of the buttons - large and brightly colored in purple and gold - could project a different image than the Employer, through its strict uniform and appearance rules, desired to project. As the Employer put it, the buttons made the security officers look like a Boy Scout troop.

Although the Employer authorized employees to wear three of its own pins, including two commemorating the September 11 tragedy, it chose pins it had decided were consistent with the guards' public image as law enforcement officers. Thus, the pins were not deviations from the

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nondiscriminatorily enforced its uniform and appearance policy prohibiting any non-issue buttons or other adornments).

Employer's rule prohibiting unauthorized accessories, but Employer-issued complements to the guards' basic uniform.<sup>7</sup> Indeed, in contrast to the large and brightly colored "unsung heroes" button, all three Employer-issued pins were small, inconspicuous, and official in appearance. The Region's investigation revealed no evidence that the Employer had permitted any deviations from its uniform policy, i.e., by permitting non-Employer-issued buttons. Nor is there any evidence to suggest that the Employer's prohibition of the Union's button was motivated by anti-union animus.

Accordingly, the Employer has demonstrated special circumstances justifying its prohibition of the button, and the charge should be dismissed, absent withdrawal.

B.J.K.

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<sup>7</sup> Compare Meyer Waste Systems, 322 NLRB at 247-248, above.