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WORLD COLOR (USA) CORP., a wholly
8 owned subsidiary of QUAD/GRAPHICS, INC.

9
10 UNITED STATES OF AMERICA
11 BEFORE THE NATIONAL LABOR RELATIONS BOARD
12 REGION 32
13

14 WORLD COLOR (USA) CORP., a wholly
owned subsidiary of QUAD/GRAPHICS,
15 INC.
16 and
17 GRAPHIC COMMUNICATIONS
18 CONFERENCE OF THE
INTERNATIONAL BROTHERHOOD OF
19 TEAMSTERS, LOCAL 715-C
20

Case Nos. 32-CA-062242
32-CA-063140

**RESPONDENT QUAD/GRAPHIC
INC.'S STATEMENT OF POSITION
ON ISSUES REMANDED TO NLRB
FOR RECONSIDERATION**

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1 **I. STATEMENT OF THE CASE**

2 Pursuant to the letter dated April 14, 2015 from the Associate Executive Secretary
3 of the National Labor Relations Board, and Section 102.46(j) of the National Labor
4 Relations Board’s Rules and Regulations, Respondent Quad/Graphics, Inc. (“Quad”)
5 submits this statement of position addressing the issues raised by the United States Court
6 of Appeals for the D.C. Circuit in its Opinion dated January 16, 2015, which remanded this
7 action to the National Labor Relations Board for reconsideration.

8 The Court of Appeals for the D.C. Circuit held that, on remand, the Board must
9 determine whether Quad’s hat policy is lawful under the National Labor Relations Act (the
10 “Act”) by applying the two-step inquiry described in *Guardsmark, LLC v. NLRB*, 475 F.3d
11 369 (D.C. Cir. 2007) and *Martin Luther Memorial Home*, 343 NLRB 646 (2004). Under
12 the first step of this inquiry, the Board must decide whether the hat policy expressly
13 restricts Section 7 activity. The unequivocal answer to this question is no, for two reasons.
14 First, the D.C. Circuit’s holding concludes that the policy must preclude something more
15 than the wearing of union hats to constitute an unlawful restriction on Section 7 activity.
16 The policy on its face fails to restrict anything other than union hats, and therefore does not
17 explicitly restrict Section 7 activity. Second, by its terms, Quad’s hat policy simply states
18 that, if an employee elects to secure his or her hair with a hat, the hat must be a Quad
19 baseball cap. As the D.C. Circuit acknowledged, the written policy at issue does not state
20 that employees are prohibited from wearing other union insignia, either on their hat, on
21 their body, or otherwise.

22 Because Quad’s hat policy plainly is not unlawful on its face, the Board must move
23 to the second prong of the *Martin Luther Memorial Home* test, namely, whether the hat
24 policy (1) would be reasonably construed by employees as prohibiting Section 7 activity;
25 (2) was promulgated in response to union activity; or (3) has been applied to restrict the
26 exercise of Section 7 rights. Again, the unmistakable answer to these three questions is
27 “no.”

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1 As an initial matter, the Government failed to set forth evidence showing that any of
2 these three requirements have been established. The reason there is no evidence
3 implicating these issues is because the Government's Complaint alleged only that the hat
4 policy was unlawful because it prohibits employees from wearing a union hat. Indeed, the
5 Government's entire case below was fixated on the argument that the prohibition by Quad
6 of union hats in the workplace was unlawful. The D.C. Circuit's opinion concludes that
7 this prohibition is not enough to constitute an unlawful restriction on Section 7 activity.
8 Because the Government failed to present any other legal theory for challenging the hat
9 policy, the analysis must stop and the Complaint must be dismissed. Remand is not
10 appropriate as it would allow a brand new theory, not encompassed by the Complaint, to
11 proceed.

12 In any event, the second prong of the two-part test cannot be met, even if the matter
13 were remanded. First, employees could not reasonably construe the narrowly drafted Quad
14 hat policy as prohibiting Section 7 activity. While the hat policy does not permit
15 employees to wear any hat of their choosing, the policy on its face does not preclude
16 employees from wearing other union insignia. In fact, the Government failed to present
17 any evidence showing that employees construed the hat policy as anything other than a
18 policy that required the wearing of a Company hat if the employee chose to wear one.
19 Second, there is no evidence that Quad's hat policy was formulated in response to union
20 activity. Had there been such evidence it would have been tried as a Section 8(a)(3)
21 discrimination case as well. There was no such allegation. Third, Quad's hat policy has
22 not been applied to restrict the exercise of Section 7 rights or in any discriminatory
23 manner. To the contrary, the only evidence presented on this point shows that Quad
24 uniformly applied its hat policy. Indeed, the Board agreed that the ALJ's ruling suggesting
25 as much was not supported by the record. And, again, if there were such evidence it would
26 have been alleged in the Complaint.

27 For the reasons set forth below, the Board should reverse the ALJ's order and
28 dismiss the Complaint in its entirety without further proceedings.

1 **II. BACKGROUND**

2 Quad is a multi-national printing corporation that puts ink on paper. (*See* Transcript
3 of Hearing Before Administrative Law Judge William N. Cates dated June 4, 2013
4 (“Rec.”) 140:4-6.) On July 2, 2010, Quad acquired World Color (USA) Corp. Included
5 in the acquisition was the Fernley plant location, which prints retail newspaper inserts
6 (*e.g.*, advertisements in the Sunday paper). (Rec. 40:12-15.)

7 **A. The Quad Hat Policy**

8 Quad maintains a company-wide uniform policy that applies to all of its facilities
9 and all management and non-management employees nationwide, including at the Fernley
10 facility. (*See* Joint Exhibits (“Joint Exh.”) 2, 4-5.) The uniform, known as “Quad/Blues,”
11 consists of navy blue pants, shorts or a skirt and a navy blue shirt with the Quad logo and
12 the employee’s name. Optional clothing under the policy includes vests, t-shirts, hats, and
13 sweaters, all of which may be purchased through Quad’s website and contain the Quad
14 logo. (*See id.*) The company uniform policy is set forth in the “Employee Guidelines For
15 U.S. Employees” (“Employee Guidelines”), among other places. (*See* Joint Exh. 2.)

16 The uniform policy has never been targeted and the Board has at no time disputed
17 the lawfulness of Quad’s uniform policy. (*See* Rec. 37:18-17:1 (stating that it “does not
18 have any problem with an employer asking it's employees to wear a uniform that depicts a
19 logo of the company”), 103:25-104:1 (stating “The uniform policy is not in dispute on
20 General Counsel's -- in General Counsel's case”), 105:18-106:2 (agreeing that “based on
21 the complaint allegations,” General Counsel is not challenging “the requirement to wear a
22 uniform,” “that [the] uniform contain the company logo, and the person's name or
23 nickname, that it be matching blue”), 133:21-22) (conceding that “[t]he uniform policy has
24 never been at issue. It is not in dispute. It is not what has been alleged in the complaint”).)

25 Instead, it is only the hat policy that is at issue. In mid-2010, Quad decided to
26 formalize a written Company-wide policy allowing hats to be worn as part of the optional
27 portion of the Quad uniform. Quad applied the policy to all of its facilities throughout the
28 country, including the World Color facility. (Rec. 203:1-10, 206:1-4, 207:11-20.) The

1 record is absent of any accusation that the policy was implemented for an unlawful or
2 discriminatory reason. The hat policy in effect during the relevant period reads as follows:

3 All hair hanging past the bottom of the collar must be secured
4 to the head while in the production areas. If hair does not hang
5 past the collar but could potentially get caught in our
6 equipment, it must be secured to the head with a hairnet or by
7 other means. Baseball caps are prohibited except for
8 Quad/Graphics baseball caps with the bill facing forward.
9 Ponytails are strictly prohibited. Facial hair longer than the
10 base of the neck must be secured.

11 (Joint Exh. 2 at 17.)

12 Quad's hat policy is one of several means employees can employ to secure their
13 hair. Due to the obvious dangers of bodily injury posed by the printing presses, Quad's
14 production employees are required to secure to their heads "all hair hanging past the
15 bottom of the collar." (*See id.*; Joint Exh. 5.) Even if "hair does not hang past the collar
16 but could potentially be caught in equipment, it must be secured with a hairnet or by other
17 means." (*Id.*)

18 Three departments worked together to formulate Quad's hat policy: Safety,
19 Security, and Human Resources. (Rec. 204:10-205:25, 211:21-212:2.) Safety wanted to
20 ensure "that the hat was appropriate for the production floor, safe, as well as making sure
21 that it could secure hair to the head." (Rec. 206:5-17.) Security had concerns about gang
22 insignia and symbolism, specifically the colors of the hats. (Rec. 206:18-207:6.) Human
23 Resources "wanted to make sure the hat aligned with the uniform policy from a
24 presentation standpoint." (Rec. 207:7-13.)

25 While the hat policy is consistent with and is a part of the uniform policy, it is
26 contained in the Safety Section of the Employee Guidelines to which it specifically
27 applies. (See Joint Exh. 2 at 12-13, 17.) Just like the rest of Quad's uniform policy, the
28 hat policy does not allow employees to wear baseball caps displaying non-Quad logos,
such as for sports teams, clothing apparel brands, or vacation destinations. (*Id.*) Just like
the rest of Quad's uniform policy, the hat policy does not expressly restrict the rights

1 guaranteed to employees by Section 7 of the NLRA. Importantly, also like the rest of
2 Quad's uniform policy, the hat policy does not expressly or impliedly prohibit employees
3 from wearing union insignia or accessories that demonstrate union support. (*See* Joint
4 Exh. 4, 5.) For example, because wearing a Quad hat is not a requirement, employees can
5 use another safety-compliant device, of any color, with a union or other insignia if they so
6 wish, to secure their hair to their heads. (*See id.*)

7 The hat policy, together with the uniform policy, was announced to the World Color
8 employees at the Fernley facility on February 8, 2011 and rolled out over the next few
9 weeks. (*See* Rec. 208:21-209:6; Joint Exh. 4, 5.) A memorandum sent to the employees
10 explained the mandatory requirements of the uniform (Quad shirt/blue pants or skirt) and
11 the optional components available for purchase (jackets and hats). (Joint Exh. 4, 5.)

12 **B. Procedural History**

13 The Graphic Communications Conference of the International Brotherhood of
14 Teamsters, Local 715-C (the "Union") filed an unfair labor practice charge with the NLRB
15 on September 26, 2012. After a Complaint issued, the case was tried before administrative
16 law judge William Cates on June 4, 2013, in Reno, Nevada. The sole allegation in the
17 Complaint relevant to this matter is as follows:

18 7.

19 (a) At all material times since about April 26, 2011,
20 Respondent has maintained in effect at its Fernley, Nevada
21 facility a set of "Employee Guidelines for U.S. Employees,"
22 which includes the following rules and safety policies, the
23 violation of which subjects employees to corrective action up
24 to and including immediate discharge:
25 ". . . . Baseball caps are prohibited except for Quad/Graphics
26 baseball caps worn with the bill facing forward. . . . "
27 ["Corporate Safety Program," Policy No. 24]

28 8.

By the conduct described in paragraph[] . . . 7, Respondent has
been interfering with, restraining and coercing employees in
the exercise of the rights guaranteed in Section 7 of the Act in
violation of Section 8(a)(1) of the Act.

1 (Consolidated Complaint (“Cmplt.”) ¶¶ 7, 8; Amendment to Consolidated Complaint.) At
2 the hearing, the Government presented no admissible evidence that World Color prohibited
3 employees from wearing union insignia on their hats or elsewhere. Nor was there any
4 evidence of discrimination. This is because the only theory presented by the Government
5 was that the hat policy precluded employees from wearing union hats.

6 On July 31, 2013, the ALJ issued his Report and Recommendations, finding that
7 Quad’s hat policy was separate and distinct from the uniform policy, discriminatory, and
8 interfered with the exercise of employees’ Section 7 rights because it precluded employees
9 from displaying *union insignia on hats* worn at the Company. (See Decision and Order
10 dated Feb. 12, 2014 (“NLRB Decision”) at 7-8.) World Color filed exceptions to the
11 ALJ’s recommended Order. (World Color’s Exceptions Brief at 1.)

12 On February 12, 2014, the Board issued an Order affirming the ALJ’s finding in
13 part and reversing it in part. The Board held that Quad’s hat policy “is overbroad and in
14 violation of Sec. 8(a)(1),” finding that “it is undisputed that the policy on its face prohibits
15 employees from engaging in the protected activity of wearing caps bearing union
16 insignia,” and that no special circumstances exist to justify the prohibition. (NLRB
17 Decision at 1 n.3.) The Board struck the ALJ’s characterization of the hat policy as
18 discriminatory or unlawfully enforced, noting specifically that neither allegation was
19 presented in the Complaint. *Id.*

20 Quad appealed the Board’s decision to the Court of Appeals for the D.C. Circuit.

21 On January 16, 2015, the D.C. Circuit issued an opinion granting Quad’s petition
22 for review, denying the Board’s application for enforcement, and remanding this case back
23 to the Board. See *World Color (USA) Corp. v. NLRB*, 776 F.3d 17 (2015). The Court
24 concluded that the test that must be applied to determine whether the hat policy is lawful is
25 the two-step inquiry described in *Guardsmark LLC v. NLRB*, 475 F. 3d 369 (D.C. Cir.
26 2007), and *Martin Luther Memorial Home*, 343 NLRB 646 (2004):

27 First, the Board examines whether the rule explicitly restricts
28 Section 7 activity; if it does, the rule violates the Act. If the

1 policy does not explicitly restrict protected activity, the Board
2 considers whether (1) employees would reasonably construe
3 the language to prohibit Section 7 activity; (2) the rule was
4 promulgated in response to union activity; or (3) the rule has
5 been applied to restrict the exercise of Section 7 rights.

6 *Id.* at 20 (internal quotations and citations omitted).

7 After outlining the two-step test, the Court concluded that the Board's holding at the
8 first step relied on a finding that was not supported by the record. *Id.* The Court disagreed
9 with the Board's finding that "it is undisputed that the [hat] policy on its face prohibits
10 employees from engaging in the protected activity of wearing caps bearing union
11 insignia." The Court held that "the policy simply prevents employees from replacing the
12 Company hat with any hat of their own choosing." *Id.* The Court further stated that,
13 "[a]lthough the hat policy restricts the type of hat that may be worn, it does not say
14 anything about whether union insignia may be attached to the hat." *Id.* The Court also
15 pointed out that, under Quad's uniform policy, "all uniform requirements will be applied
16 in accordance with applicable laws." *Id.*

17 In light of the Board's unsupported reasoning, the Court remanded this case to the
18 Board for reconsideration. *Id.* at 21. The Board accepted the remand of this action on
19 April 14, 2015.¹ Given that the Court concluded that the policy on its face does not restrict
20 the exercise of Section 7 activity, the Board is left with consideration of the rule under the
21 second prong of the analysis. Nonetheless, it is clear that the hat policy is not unlawful
22 under either the first or second prong of the analysis and that the policy should be upheld
23 as lawful.

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27 ¹ Before the Board accepted the remand of this action, the Union prematurely filed a
28 Statement of Position of Charging Party Graphic Communications Conference of the
International Brotherhood of Teamsters on Remand (the "Union's Position Statement").

1 **III. LEGAL ARGUMENT**

2 **A. The Board Should Reverse The ALJ’s Decision Because Quad’s Hat**
3 **Policy Does Not Violate The Act**

4 Under the two-step inquiry that the D.C. Circuit instructed the Board to apply on
5 remand, Quad’s hat policy does not infringe on employees’ right to engage in Section 7
6 activity. As the Court of Appeals explained, the first step of the inquiry requires the Board
7 to examine “whether the rule explicitly restricts Section 7 activity.” *See World Color*, 776
8 F.3d at 20 (citing *Guardsmark LLC v. NLRB*, 475 F.3d 369, 374 (D.C. Cir. 2007); *Martin*
9 *Luther Memorial Home*, 343 NLRB 646, 647 (2004)). If the work rule does not explicitly
10 restrict Section 7 activity, the Board must examine three factors: (1) whether employees
11 would reasonably construe the rule’s language to prohibit Section 7 activity; (2) whether
12 the rule was promulgated in response to Section 7 activity; and (3) whether the rule has
13 been applied to restrict the exercise of Section 7 activity. *See id.*

14 As explained below, Quad’s hat policy does not expressly restrict Section 7 activity.
15 The Government’s entire case, as alleged in the Complaint, was predicated on the theory
16 that the hat policy forbids employees from wearing union hats, and therefore violates
17 employees’ Section 7 rights. The D.C. Circuit acknowledged that Quad’s hat policy
18 precludes employees from wearing union hats, but nonetheless declined to hold that the
19 policy explicitly restricts Section 7 activity. *See World Color*, 776 F.3d at 20. Since that
20 was the Government’s only theory of the case, the Board should apply the D.C. Circuit’s
21 reasoning and conclude that the first and second prongs of the *Martin Luther Memorial*
22 *Home* test have not been satisfied.

23 Regardless, if the Board should go further to apply the two-prong analysis, it should
24 still dismiss the Complaint without further proceedings. As to the first prong, the policy
25 does not on its face preclude the wearing of other union insignia on the hat, and therefore
26 does not explicitly restrict Section 7 activity. As to the second prong, none of the three
27 factors enunciated in the *Martin Luther Memorial Home* test is present in this case. The
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1 hat policy is merely a neutral, non-discriminatory dress code policy like those previously
2 approved by the Board. Accordingly, the Board should reverse the ALJ's decision.

3 1. The Hat Policy Does Not Expressly Restrict Section 7 Activity

4 The Court of Appeals' decision obviates any further analysis of the first prong of
5 the *Martin Luther Memorial Home* two-part test, because the hat policy does not explicitly
6 restrict Section 7 activity. Quad's hat policy narrowly precludes employees from wearing
7 union hats. The Court of Appeals acknowledged this when it stated that the policy
8 "restricts the type of hat that may be worn[.]" *World Color*, 776 F.3d at 20. If a work
9 rule's prohibition against union hats constituted an explicit restriction on Section 7 activity
10 under the *Martin Luther Memorial Home* test, the Court of Appeals would have held that
11 Quad's hat policy satisfied the first prong of the test and was unlawful on its face.
12 However, the Court did not reach this conclusion. By declining to hold that the hat policy
13 explicitly restricts Section 7 activity, the Court acknowledged that the policy must impose
14 some additional restriction in order to give rise to a section 8(a)(1) violation. Because the
15 language of the policy only prevents employees from replacing Quad baseball caps with
16 some other hat (such as a union hat), the Court rejected the Board's holding that the policy
17 expressly restricts Section 7 activity.

18 The Board need not inquire further because the language in Quad's hat policy
19 makes clear that the policy does not explicitly restrict Section 7 activity. To determine
20 whether a work rule "explicitly restricts" Section 7 activity, the Board must focus on the
21 text of the rule. *See Guardsmark*, 475 F.3d at 374. Here, Quad's hat policy, by its terms,
22 simply authorizes workers to wear Quad baseball hats to secure their hair on the
23 production floor and neutrally precludes the wearing of other hats. The policy makes no
24 reference whatsoever to an employee's right to display political sympathies, opinions,
25 union insignia or engage in protected activity. True, the policy prevents employees from
26 replacing the company hat with a hat of their own choosing, such as a New York Yankees
27 hat, a Nike hat, a "Life Is Good" hat, or a union hat. But the policy language does not

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1 “explicitly restrict Section 7 activity” by identifying the type of hat that workers can wear
2 if they elect to secure their hair with a hat.

3 Quad’s hat policy does not reference, much less explicitly restrict, the display of
4 union insignia. Because the hat policy does not explicitly restrict Section 7 activity, the
5 first step of the two-step inquiry set forth in *Martin Luther Memorial Home, Guardsmark*
6 and *World Color* has not been satisfied.

7 2. Step Two Of The Two-Part Inquiry Has Not Been Satisfied Here

8 Where the challenged work rule does not explicitly restrict Section 7 rights, the rule
9 can be found to violate Section 8(a)(1) only if it satisfies one of the following conditions
10 set forth in part two of the *Martin Luther Memorial Home* test: (1) employees would
11 reasonably construe the language of the rule to prohibit Section 7 activity; (2) the rule was
12 promulgated in response to Section 7 activity; or (3) the rule has been applied to restrict
13 the exercise of Section 7 activity. *See World Color*, 776 F.3d at 20 (citing *Martin Luther*
14 *Memorial Home, Inc.*, 343 NLRB 646, 647 (2004)).

15 The Board need not examine whether Quad’s hat policy satisfies these three
16 conditions, because the Government failed to allege in this action that the hat policy did
17 anything other than preclude employees from wearing union hat. Thus, any finding that
18 the policy satisfies the second prong of the *Martin Luther Memorial Home* test would be
19 outside the scope of the Complaint. However, even if the Board were to analyze each
20 condition, it must conclude that the policy does not fulfill the second prong of the test.

21 a. The Government Never Alleged That the Hat Policy Was
22 Unlawful Under The Second Prong Of The Two-Part Inquiry

23 Significantly, the Government never argued in this action that the hat policy
24 inhibited employees from wearing union insignia other than union hats. (*See* NLRB
25 Decision at 1 n.3 (declining to decide whether the hat policy was discriminatory or
26 unlawfully enforced because neither allegation was raised in the Complaint).) As the
27 Company pointed out at the hearing before the ALJ, there was “no evidence from Counsel
28 for the General Counsel that employees are prohibited from wearing union insignia in the

1 workplace. This is not a button case. It's not a pin case." (Rec. 32:20-23.) ALJ Cates then
2 asked the Government whether it "agree[s] with Company Counsel that you're not
3 speaking to pins, or -- or medallions or anything of this sort" (Rec. 37:6-9.) In
4 response, the Government made clear that this case was only about the employees'
5 purported right to wear a union hat:

6 . . . the General Counsel's position is that the rule as established
7 in Item 24 is unlawful, which says only hats that have Quad
8 Graphic logo can be worn, with the bill facing forward. That is
9 General Counsel's position.

9 (Rec. 37:10-14.)

10 In addition, the Complaint filed by the Government was drafted narrowly to
11 challenge only the terms of Quad's hat policy. (See Consolidated Complaint at ¶¶ 7, 8;
12 Amendment to Consolidated Complaint.) That is, the Government's only theory of the
13 case was that Quad's hat policy restricts Section 7 activity because it prevents employees
14 from wearing union hats. (Rec. 25:22-25 ("General Counsel submits that Respondent's
15 prohibition of all headgear except for Quad Graphics baseball caps is unlawful as it
16 restricts the Fernley employees Section 7 rights to wear hats with Union insignia.")) The
17 Government did not present allegations in the Complaint or evidence at the hearing
18 showing that the policy imposed restrictions on union insignia broader than its prohibition
19 against non-Quad hats. This is because its comprehensive investigation did not yield such
20 evidence. If it had, a Section 8(a)(3) allegation would have been included in the
21 Complaint.

22 The Government failed to allege or argue that the hat policy was unlawful under
23 any of the conditions in the second prong of the *Martin Luther Memorial Home* test.
24 Accordingly, the Government has waived any argument that the hat policy fulfills the
25 second prong of the two-step inquiry. See *Central Steel Erecting Co., Inc.*, 313 NLRB
26 741, 741 (1994) (ALJ properly declined to consider argument that was not raised at
27 hearing).

1 b. The Board Should Conclude On The Merits That The Second
2 Prong Of The Two-Part Inquiry Has Not Been Satisfied

3 Even if the Government had preserved its right to argue that the hat policy was
4 unlawful under the second prong of the *Martin Luther Memorial Home* test – which it did
5 not – the hat policy plainly does not satisfy any of the three conditions set forth in the
6 second prong of the test. Each condition is discussed *seriatim*.

7 (1) Employees Would Not Reasonably Construe The Hat
8 Policy As Restricting Section 7 Rights

9 When assessing the lawfulness of work rules, the Board must “give the rule a
10 reasonable reading . . . it must refrain from reading particular phrases in isolation.” *Martin*
11 *Luther Memorial Home*, 343 NLRB at 646. Objectively, it cannot be demonstrated that
12 the hat policy as written could be reasonably construed to restrict employees from wearing
13 other union insignia. For one, the hat policy does not preclude employees from adorning
14 the hat with union insignia. *See World Color*, 776 F.3d at 20 (stating that the hat policy
15 “does not say anything about whether union insignia may be attached to the hat”). In
16 addition, the hat policy is one of several options that employees may select to secure their
17 hair on the production floor. Employees may wear a headband or a hair tie to secure his or
18 her hair, and these hair accessories may display union insignia. Furthermore, employees
19 enjoy other opportunities to adorn union insignia on their person while complying with
20 Quad’s hat policy. For example, the policy does not prohibit employees from wearing
21 union insignia elsewhere on their body, such as a belt buckle. Indeed, Quad’s general
22 uniform policy – which was not challenged in this action – permits employees to wear
23 accessories “in good taste and in accordance with all safety rules[.]” *Id.* (citing Joint
24 Exh. 2.) Put simply, Quad’s hat policy does not prohibit employees from wearing union
25 insignia at work, on their hat, or otherwise.

26 In addition, Quad’s hat policy cannot be reasonably construed as restricting Section
27 7 activity when read together with the savings clause in the uniform policy. The Board
28 must take context into account when determining whether an employer’s work rule

1 violates the NLRA. *See Aroostook County Regional Ophthalmology v. NLRB*, 81 F.3d 209
2 (D.C. Cir. 1996) (countenancing against reading work rules out of the employment context
3 in which they arise). As the Court of Appeals highlighted, Quad’s uniform policy “asserts
4 that ‘[a]ll uniform requirements will be applied in accordance with applicable laws.’”
5 *World Color*, 776 F.3d at 20. Thus, even if an employee were unsure whether the display
6 of union insignia is allowed under the hat policy (which the evidence does not support), the
7 uniform policy’s savings clause makes clear that the hat policy does not restrict Section 7
8 activity.

9 To be clear, the only way Quad’s hat policy could be construed as infringing on
10 employees’ Section 7 rights is if this Board concluded that employees have an unfettered
11 right to wear a union hat. However, such a conclusion would depart from Board
12 precedent, and would directly contradict the Court’s remand decision. The Court rejected
13 the Board’s holding and acknowledged that the hat policy only prevented employees from
14 wearing hats other than a Quad/Graphics hat. *See id.* The Court’s reasonable construction
15 of the hat policy does not restrict Section 7 activity.

16 The Government not only failed to show that the hat policy could be reasonably
17 construed as prohibiting Section 7 activity, it failed to put forth any evidence showing that
18 Quad employees in fact interpret the policy as prohibiting anything other than wearing a
19 union hat. The record contains no evidence that employees have been prohibited from
20 wearing union insignia on their hat or their person, or that they have felt constrained by the
21 policy in the exercise of their Section 7 rights.² That is because nothing in the hat policy
22 prohibits employees from wearing union headbands or hairnets to secure their hair – it only

23 _____
24 ² Although the Union’s Position Statement points to testimony from Phillip Decker as
25 evidence of an employee’s reasonable construction of the policy, Mr. Decker’s vague
26 testimony regarding wearing union insignia was undeveloped and unsupported by record
27 evidence. Moreover, his single statement concerned the uniform policy and not the hat
28 policy (Rec. 123:9-12 (“Q And why haven't you put on any of that insignia on your
uniform? A It's against company policy, and as far as buttons or items such as that, it
would be a safety hazard.”).) As discussed *infra* in Section III.B, Quad’s uniform policy is
not under review – the Union has challenged only the lawfulness of Quad’s hat policy as
written.

1 prevents them from replacing the Company hat with any other type of hat, including a
2 union hat.

3 The Quad hat policy does not prohibit employees from wearing union insignia.
4 Moreover, the record evidence does not show that employees interpreted the hat policy as
5 prohibiting the display of union insignia while wearing a Quad baseball cap. Accordingly,
6 because employees could not reasonably construe Quad's hat policy as restricting Section
7 7 activity, the first of the three alternative conditions has not been satisfied.

8 (2) The Government Failed To Present Evidence That
9 Quad's Hat Policy Was Promulgated In Response To
Section 7 Activity

10 There is no evidence in the record showing that Quad's hat policy was enacted in
11 response to lawful Section 7 activity. Nor could there be. The undisputed evidence shows
12 that the hat policy was implemented for legitimate business reasons – namely, to provide
13 employees with an option for safely securing their hair to their heads in a way that is
14 neither tied to gang affiliation nor interferes with the employees' appearance from a
15 presentation standpoint. (Rec. at 204:10-205:25, 206:5-207:14, 211:21-212:2.) The
16 Government presented no evidence that the hat policy was targeted at union activity, rather
17 than based on these legitimate business concerns. Instead, the Government introduced
18 evidence that only supported Quad's legitimate, nondiscriminatory reason for
19 implementing the hat policy: employees who work in production areas of printing
20 facilities chose to wear hats because "the worst thing to get in your hair is paper, dust and
21 grease." (Rec. 63: 21-23.) Quad's hat policy was not promulgated in response to
22 employees' lawful Section 7 activity, and therefore does not satisfy the second element of
23 the second step of the *Martin Luther Memorial Home* test.

24 (3) The Government Failed To Prove That Quad Applied
25 The Hat Policy In A Manner That Restricts Section 7
Activity

26 The Complaint does not include a Section 8(a)(3) discrimination allegation but
27 instead only a Section 8(a)(1) allegation. Thus, the record contains absolutely no evidence
28 that the hat policy has been applied to restrict Section 7 activity. The Government never

1 presented evidence that employees were prohibited from adorning hats with union insignia
2 that comply with Quad's safety policies (*e.g.*, no pins or buttons on the production floor
3 that could fall into the equipment). (*See* Joint Exh. 2 and 5.) The Government also failed
4 to show that the hat policy has been applied discriminatorily to prohibit only union hats in
5 the workplace. In fact, one of the Government's witnesses showed that the policy was
6 applied consistently when he testified that an employee was required to remove a Green
7 Bay Packers hat on the production floor. (Rec. 100:18 – 102:1.)

8 In addition, the Government failed to present evidence of actual interference,
9 coercion, or restraint of employees in the exercise of Section 7 rights. Indeed, the record
10 does not even contain evidence that any employee attempted to or even desired to wear
11 union logos or insignia in the workplace, much less that the policy was applied in a manner
12 to preclude them from wearing such insignia. Absent such evidence, the Board cannot
13 conclude that the Quad hat policy has been applied to restrict Section 7 activity.

14 Accordingly, the third and final element in the second step of the *Martin Luther Memorial*
15 *Home* two-part inquiry has not been met.

16 **B. The Union's Statement Of Position Attempts To Improperly Expand**
17 **The Scope Of The Complaint And The Issue Remanded To The Board**
18 **For Reconsideration**

19 Because it cannot successfully argue that Quad's hat policy violates Section 8(a)(1),
20 the Union resorts to arguing, for the first time at this late stage of the proceeding, that
21 Quad's entire uniform policy is unlawful. To this end, the Union's Position Statement
22 inaccurately identifies the issue before the Board by stating, incorrectly, that Quad's
23 *uniform* policy is under review in this matter. (Union Position Statement at 7 (stating that,
24 "[o]n remand, the appellate court instructed the Board to evaluate whether Quad's *uniform*
25 *policy* set forth in its employee handbook interferes with, restrains or coerces employees in
26 the exercise of their Section 7 rights") (emphasis added).) The Union further argues that
27 Quad's uniform policy is "restrictive with respect to the type of accessorizing with union
28 insignia that employees are permitted," (Union Position Statement at 8). However, these
allegations were never raised in the Union's charge, the Government's Complaint, or at

1 any earlier stage in this litigation. (Rec. 133:21-22.) The Union’s arguments are also
2 undermined by the factual holdings below, where both the ALJ and the Board found that
3 the hat policy is not part of the uniform policy and that the matter at issue had nothing to
4 do with the wearing of union insignia, pins or buttons.

5 Specifically, the Complaint alleges only that the policy authorizing employees to
6 wear Quad baseball caps violates Section 8(a)(1) of the Act. The Complaint does not
7 reference any other provision in Quad’s uniform policy, and it does not challenge the
8 intersection of the hat policy with other uniform or safety policies. The Government
9 admitted before the Board that the lawfulness of Quad’s uniform policy is not challenged
10 in this action. At the hearing before the ALJ, the Government admitted that it “does not
11 have any problem with an employer asking it’s [sic] employees to wear a uniform that
12 depicts a logo of the company.” (See Rec. 37:18-38:1.) The Government conceded that
13 “[t]he uniform policy is not in dispute . . . in General Counsel’s case.” (*Id.* 103:25-104:1.)
14 Furthermore, the Government admits that neither the charges filed by the Union nor the
15 Complaint it filed allege that Quad’s uniform policy ran afoul of employees’ Section 7
16 rights. (See Charge dated Aug. 8, 2011; Charge dated Aug. 22, 2011; Consolidated
17 Complaint dated Sept. 26, 2012; Rec. 133:21-22) (conceding that “[t]he uniform policy has
18 never been at issue. It is not in dispute. It is not what has been alleged in the complaint”.)
19 The Government admitted in its appellate brief that “the uniform policy has never been at
20 issue and was not part of the complaint.” See Brief for the National Labor Relations Board
21 at 23, *World Color (USA) Corp. v. NLRB*, Nos. 14-1028, 14-1037 (D.C. Cir. Aug. 22,
22 2014) (internal quotations and citations omitted). Finally, when asked by the ALJ whether
23 General Counsel was challenging Quad’s policy on the display of pins or union insignia at
24 the workplace, the Government responded, “the General Counsel’s position is that the rule
25 as established in Item 24 is unlawful, which says only hats that have Quad Graphics logo
26 can be worn, with the bill facing forward.” (Rec. 37:6-14.)

27 Because the Board is precluded from reviewing Quad’s uniform policy, the Union’s
28 arguments concerning the purportedly “restrictive” uniform or safety policies are outside

1 the scope of this action. The Union cannot belatedly expand the scope of its charge and
2 the Complaint. (See Charge dated Aug. 8, 2011; Charge dated Aug. 22, 2011;
3 Consolidated Complaint.) See *J.I. Case Co.*, 71 NLRB 1145, 1148 (1946) (Board reverses
4 trial examiner's unfair labor practice finding that was outside the scope of the complaint).

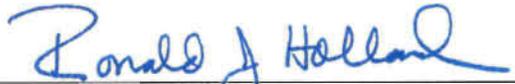
5 **IV. CONCLUSION**

6 For the foregoing reasons, Quad respectfully requests that the Board reverse the
7 ALJ's decision.

8 Dated: June 2, 2015

9 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

10
11 By



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