

NOTICE: This opinion is subject to formal revision before publication in the bound volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.

World Color (USA) Corp., a wholly-owned subsidiary of Quad Graphics, Inc. and Graphic Communications Conference of the International Brotherhood of Teamsters, Local 715-C. Cases 32–CA–062242 and 32–CA–063140

June 12, 2020

SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN RING AND MEMBERS KAPLAN
AND EMANUEL

On February 12, 2014, the National Labor Relations Board issued a Decision and Order affirming Administrative Law Judge William Nelson Cates’ finding that the Respondent’s cap policy, which prohibits employees from wearing any baseball caps other than company caps, violates Section 8(a)(1) of the Act.¹ The Respondent filed a petition for review of the Board’s Order with the United States Court of Appeals for the District of Columbia Circuit, and the Board filed a cross-application for enforcement. On January 16, 2015, the court granted the petition for review and remanded the case to the Board for reconsideration of its decision.²

On April 14, 2015, the Board notified the parties to this proceeding that it had accepted the court’s remand and invited them to file statements of position. The Respondent, General Counsel, and Charging Party each filed a statement of position.

We have carefully reviewed the record and the parties’ statements of position in light of the court’s decision, which we accept as the law of the case. For the reasons explained below, we dismiss the complaint.

I. FACTS

The Respondent is a Wisconsin company that maintains a facility in Fernley, Nevada, where it prints commercial inserts for newspapers. The Charging Party represented a unit of the Respondent’s employees from at least 2007 until late 2010 or early 2011, when it was decertified. In early 2011, the Respondent distributed a set of “Employee Guidelines” (Guidelines) to its employees.³ Section 2 of the Guidelines, entitled, “Quad/Graphics’ Expectations,” includes a policy entitled, “Uniforms,” which states in relevant part:

You are required to wear the authorized Quad/Graphics uniform as a condition of employment. In addition, you are required to dress and groom professionally at all times. While accessorizing the uniform in good taste and in accordance with all safety rules is acceptable, your name (first and last) and the Quad/Graphics logo must show at all times. All uniform requirements will be applied in accordance with applicable laws.

The Quad/Graphics uniform consists of a navy blue shirt or top and plain navy blue pants, shorts or skirts. Options include but are not limited to collared button-down shirts, polo shirts, vests, t-shirts, sweatshirts and sweaters containing your name and the Quad/Graphics logo.⁴

Section 3 of the Guidelines, entitled, “Protecting Our Employees and Our Facilities,” contains a “Corporate Safety Program” that includes the following subpart (quoted in relevant part):

24. If hair . . . could potentially get caught in [the] equipment, it must be secured to the head with a hairnet or by other means. Baseball caps are prohibited except for Quad/Graphics baseball caps worn with the bill facing forward.

Baseball caps with the Quad/Graphics logo were available for purchase on the Respondent’s intranet site at the employees’ expense. Although not expressly stated in the Guidelines, unrebutted employee testimony established, and the Respondent’s counsel stated during the hearing, that buttons and pins are prohibited on the production floor as a safety hazard.⁵ Violation of the abovementioned Guidelines subjects employees to corrective action up to and including discharge.

II. PRIOR PROCEEDINGS

The General Counsel alleges that the Respondent violated Section 8(a)(1) by maintaining the cap policy set forth in safety rule 24. The administrative law judge agreed, finding that the policy precludes employees from wearing baseball caps except those with the company logo, thus prohibiting them from wearing “union logo baseball type hats.” 360 NLRB at 234. The judge also found that the policy prohibits employees from “display-

⁴ Production employees pay a weekly rental fee of \$1.50 for uniforms. The fee includes laundering.

⁵ During oral argument to the court, the Respondent gave some indication that it treats buttons like pieces of jewelry. Subpart 22 of sec. 3 of the Guidelines states that “[j]ewelry—e.g., rings, bracelets, chains, watches, necklaces and earrings other than studs (including exposed body piercings)—may not be worn while engaged in production activities within manufacturing areas.”

¹ *World Color (USA) Corp.*, 360 NLRB 227 (2014).

² *World Color (USA) Corp. v. NLRB*, 776 F.3d 17 (D.C. Cir. 2015).

³ The record reveals that the Guidelines formally codified previously existing policies, namely, the uniform and cap policies, discussed *infra*.

ing union insignia on . . . hats.”⁶ *Id.* Citing *Republic Aviation Corp. v. NLRB*, 324 U.S. 793 (1945), and *Goodyear Tire & Rubber Co.*, 357 NLRB 337, 341 (2011), among other cases, the judge reasoned that, absent special circumstances, employees have a statutory right to wear union insignia at work. The judge rejected the Respondent’s asserted reasons for the cap policy—safety, security, and alignment with its uniform policy⁷—and found that company caps do not address those concerns more effectively than union caps.

The Board affirmed the judge’s finding that the cap policy violated Section 8(a)(1). *Id.* at 227. The Board stated that it is “undisputed that the policy on its face prohibits employees from engaging in the protected activity of wearing caps bearing union insignia.” *Id.* at 227 fn. 3. The Board adopted the judge’s findings that the cap policy is not part of the uniform policy and that the asserted special circumstances for the prohibition lack merit. *Id.*

On review, the court acknowledged employees’ right to wear union insignia at work absent special circumstances. *World Color (USA) Corp. v. NLRB*, 776 F.3d at 19 (citing *Republic Aviation Corp. v. NLRB*, *supra* at 801). The court, however, rejected the Board’s factual finding that it is “undisputed that the policy on its face prohibits employees from engaging in the protected activity of wearing caps bearing union insignia.” *Id.* at 20. The court highlighted the distinction between a ban on union (i.e., noncompany) caps and a ban on “caps bearing union insignia.” *Id.* The court stated that “[a]lthough the hat policy restricts the type of hat that may be worn, it does not say anything about whether union insignia may be attached to the [company] hat.” *Id.* The court further found that the Respondent has maintained both that the cap is part of the uniform policy and that its policy facially allows employees to adorn their company caps with union insignia.⁸ *Id.*

Ultimately, the court found that the Board had failed to properly apply its test for determining whether a company rule or policy violates Section 8(a)(1). At the time of the court’s decision, that test was set forth in *Lutheran Heritage Village-Livonia*, 343 NLRB 646 (2004). Under that standard, the Board first examines whether the rule explicitly restricts Section 7 activity; if it does, the rule violates the Act. *Id.* at 647. If the rule does not explicit-

ly restrict protected activity, then the Board proceeded to the second step, asking whether (1) employees would reasonably construe the language to prohibit Section 7 activity; (2) the rule was promulgated in response to Section 7 activity; or (3) the rule has been applied to restrict the exercise of Section 7 rights. *Id.*⁹ The court held that the Board had ended the inquiry prematurely at the first step—whether the rule explicitly restricts protected activity—by erroneously finding that there was “no dispute” that the cap policy explicitly prohibited the protected activity of wearing “caps bearing union insignia.” *World Color (USA) Corp. v. NLRB*, 776 F.3d at 20. Accordingly, the court remanded the case to the Board for reconsideration. *Id.* at 21.

III. DISCUSSION

The issue on remand, as framed by the court, is whether the Respondent’s cap policy prohibits employees from engaging in the protected activity of wearing caps bearing union insignia. On the record before us, we find that it does not. The Respondent’s accessories policy allows employees to accessorize the uniform “in good taste and in accordance with all safety rules.”¹⁰ Although caps are not required and are not listed as a component of the uniform, we find that the accessories policy, when reasonably read, applies to caps.

In order to comply with the Respondent’s requirement that hair of a certain length be secured when near equipment, employees can opt to wear, among other things, a baseball cap. If employees choose to wear a baseball cap, the Respondent’s expectation, as described by Vice President of Human Resources Nancy Ott and reflected in its cap policy, is that the cap align with the uniform. It follows that if employees are permitted to accessorize the uniform, they are also permitted to accessorize the cap. So far as the record shows, aside from safety restrictions when engaged in production activities and general uniform restrictions, employees are not prohibited from donning company caps bearing union insignia. Accord-

⁹ Following the court’s decision, the Board overruled the “reasonably construe” prong of the *Lutheran Heritage* test, replacing it with the test set forth in *Boeing Co.*, 365 NLRB No. 154 (2017). Under *Boeing*, it remains the case that an employer violates the Act if it maintains a rule or policy that explicitly restricts Sec. 7 activity.

On November 15, 2018, the Board issued a Notice to Show Cause why this case should not be remanded to the administrative law judge for further proceedings consistent with the Board’s decision in *Boeing*, including reopening the record if necessary. The General Counsel and the Charging Party filed responses opposing remand. The Respondent did not file a response. Because no party favors a remand and the issue can be decided on the existing record, we find that a remand is unnecessary.

¹⁰ The General Counsel has not challenged the validity of the Respondent’s accessories policy or other safety rules.

⁶ In his discussion, the judge used the terms “union logo baseball type hats” and caps “displaying union insignia” interchangeably. *Id.*

⁷ The judge found that the cap policy, which appears in the safety section of the Guidelines, is separate from the uniform policy.

⁸ The court did not resolve whether the cap policy was part of the safety policy, as it appears in the Guidelines and as the Board found, or part of the uniform policy. The court merely noted the Respondent’s argument.

ingly, pursuant to the terms of the remand, we dismiss the complaint.

ORDER

The complaint is dismissed.

Dated, Washington, D.C. June 12, 2020

John F. Ring, Chairman

Marvin E. Kaplan, Member

William J. Emanuel, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD