

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

Advice Memorandum

DATE: January 3, 2003

TO : Ronald M. Sharp, Regional Director
Marlin O. Osthus, Regional Attorney
Robert Chester, Assistant to Regional Director
Region 18

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

SUBJECT: Pinkerton's Inc.
Case 18-CA-16257-1 and 18-CA-16332-1

This case was submitted for advice as to whether the Employer has violated Section 8(a)(1) by maintaining a rule that prohibits the wearing of all pins, buttons and other organizational symbols on uniforms worn by its security officers.

We conclude that the rule is unlawful but only insofar as it is overbroad because it applies to employees who are wearing their uniforms but are not on duty.

The Employer is an international security company which provides uniformed security officers to various businesses. In July 2001, SEIU (the Union) began organizing the Minneapolis security officers as part of a nationwide organizing effort.¹

The Employer maintains an employee handbook, distributed to all officers nationwide, which contains a "Uniform and Appearance Policy" that states, in pertinent part:

In the security business, your appearance is a reflection of your professionalism. The public

¹ There have been multiple Section 8(a)(1) and (3) charges arising out of the organizing campaign. After the Region issued a complaint, the Employer signed a settlement agreement settling all allegations except the allegation related to the button/pin rule. [FOIA Exemption 5

responds positively to an authoritative presence. Therefore, in order to provide the best possible service for our clients, we must present ourselves in a manner that displays professionalism and commands respect.

* * *

You must wear prescribed Company uniforms. Only conventional belt buckles may be worn. Unauthorized pins, patches, or devices may not be worn. Absolutely no political, religious or other organizational symbols of any kind may be worn while on duty or in uniform.

* * *

The Employer's rule came to light after two officers were directed to remove small SEIU pins from their uniforms. Both officers contend that they have been allowed to wear other non-Union buttons/pins at other times. Although the Employer denies disparate enforcement of its rule, the settlement agreement it signed includes resolution of the allegation that the Employer disparately enforced the rule.

We conclude that the rule is lawful insofar as it applies to employees while they are on-duty as security guards, whether on the day shift where they are likely to have a lot of public contact or on night security patrol where their public contact is less likely. However, the rule is unlawful insofar as it applies to employees while they are in uniform but not at work (e.g., while going to and from work).

Although employees have a presumptive right to wear union paraphernalia while at work, an employer can demonstrate special circumstances that would justify prohibition of such a practice.² One such special circumstance involves an employer's business interest in preserving employees' uniformity of appearance in particular occupations where employees wear employer-issued uniforms and deal with the public.³ An employer meets its burden of showing special circumstances in that context where it demonstrates that union insignia "may reasonably interfere with the public image which the employer has

² Republic Aviation v. NLRB, 324 U.S. 793 (1945).

³ See Con-way Central Express, 333 NLRB No. 128 (April 20, 2001); UPS, 195 NLRB 441 (1972).

established as part of its business plan through appearance rules for its employees."⁴

The Employer has made that showing here. Thus, the Employer has illustrated the importance of the uniform to the security industry, which relies on the message conveyed by the uniform to an even greater degree than do other industries where the Board has permitted limitations on union insignia. The uniform that these employees wear 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 sends a message to all people encountered by the security officer that an authority figure is present. Although the wearing of a Union pin would not interfere with the public's recognition of the officers as security officers, it could interfere with the message of authority that the Employer hopes its officers will convey. Furthermore, it is likely that the Employer's business would suffer if its clients determined that its officers did not adequately convey a presence of authority.

Under these circumstances, we conclude that the Employer may lawfully prohibit working security officers from wearing any pins/buttons, including Union insignia, on their uniforms. Since all of the Employer's security officers are in positions where they may need to assist or confront members of the public, the rule is not overbroad in its application to all officers. However, the rule, by its terms, applies to the wearing of insignia "while on duty or in uniform." The Employer does not have a legitimate interest in prohibiting the wearing of insignia when employees are off-duty.

Accordingly, the Region should issue a complaint, absent settlement, alleging that the rule is overbroad because it applies to the off-duty wearing of union insignia.

B.J.K.

⁴ UPS, 312 NLRB 596, 597 (1993), enf. denied 41 F.3d 1608 (6th Cir. 1994).