

EMPLOYER LAW BLOG

# 5th Circuit Brings Some Reasonableness to the NLRB

AUTHOR: JOHN L. GILBERT

In *Tesla, Incorporated*, the 5th Circuit on November 14, rebuked the NLRB as the Board continues its assault on employers. In short, Tesla instituted a work uniform policy (Team Wear) to protect vehicles and to identify the hierarchy of assembly floor employees and supervisors. Tesla prohibited wearing union (IAM) tee shirts adorned with union insignias because of those reasons but allowed union stickers of any kind to the uniforms.

The NLRB held that the prohibition of the union tee shirts interfered with the employee's rights to wear union insignias and required Tesla to prove special circumstances for its ban. Special circumstances have become a euphemism for employers losing cases where it is required by the Board. The Board's ruling, according to the Court, held that all uniform requirements are presumptively unlawful and must always pass the special circumstances test.

The Court ruled that the Board exceeded its statutory authority in imposing such a rule and that the rule was irrational.

In what may be a hopeful signal from the Courts of Appeal, the 5th Circuit opined that the Board failed to strike a reasonable balance of employee and employer rights as is its obligation under the NLRA. Management attorneys will attest such a balance has been missing in recent years.

The Labor and Employment Team of Sandberg Phoenix stands ready to advise employers on the minefield which is labor law. Let us assist you.