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The NLRB: Sending “Convicts” into Your Customers’ Homes

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The **NLRB**’s prosecution of cases involving employee use of social networking sites has drawn recent attention. While social media sites such as Facebook and Twitter have expanded the reach of the **National Labor Relations Act** to the electronic realm, there are many other areas where the NLRB continues to aggressively pursue employers with regard to other aspects of protected, concerted activity as well. This is reflected in the **NLRB’s decision in *AT&T Connecticut*,** a decision issued earlier this year.

In *AT&T Connecticut*, service technicians who conducted service calls at customers’ homes wore T-shirts resembling prison uniforms to protest a months-long bargaining dispute between the company and the Communications Workers of America, the union representing the employees.The front of the shirts had the text “INMATE #” above a black box. The back of the shirt had bars and vertical stripes with the text “PRISONER OF AT&T.”

The administrative law judge who conducted the evidentiary hearing determined that **AT&T violated the National Labor Relations Act by disciplining employees for wearing the shirts.** The judge noted that, under Supreme Court precedent, “employees have a protected right to make known their concerns and grievances pertaining to the employment relationship, which includes the wearing of union insignia while at work.” The judge reasoned that because there were no “special circumstances” to justify the employer’s refusal to allow the shirts—such as jeopardizing employee safety, damaging machinery or product, exacerbating employee tension, unreasonably interfering with an employer’s public image, or that such a rule is necessary to maintain employee discipline and decorum—the judge ruled that the ban violated the National Labor Relations Act.

In a 2–1 decision, the NLRB affirmed the judge’s decision, rejecting the company’s argument that allowing the shirts would cause fear among AT&T’s customers, since the phrase “prisoner” on the front of the shirt was relatively small. The NLRB’s majority further concluded that customers would likely recognize that the employees actually worked for AT&T, given the lanyards they wore containing their company identification cards, and that the shirt was worn to publicize a labor dispute.

NLRB member Brian Hayes authored the dissenting opinion. He argued that AT&T demonstrated a legitimate concern—customer fear—especially in light of pretrial publicity in Connecticut regarding a 2007 home invasion by paroled felons resulting in three murders. He noted that a customer might have a subjective (albeit irrational) belief that the technician was instead a convict and not a

technician, or that the customer would be upset with AT&T because the person wearing the "prisoner" T-shirt was actually an employee of the company.

The NLRB's decision in *AT&T Connecticut* provides another reminder of the current pro-union and pro-employee sentiment that is present in its decisions. Employers should keep in mind that Section 8(a)(1) of the National Labor Relations Act covers a broad range of employee activity, even that which might not be obvious. It is also worth remembering that the National Labor Relations Act applies to nonunionized workplaces, in addition to those where employees are represented.

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