



## **Baristas and Buttons: NLRB v. Starbucks**

Insights

9.03.12

(Hospitality Update, No. 3, September 2012)

The next time you stop in for your morning "must-have" caffeine, take a look at your Starbucks barista. He or she is likely to be wearing the familiar "Starbucks green" apron and black pants. Your barista may also be sporting a number of pins and buttons touting Starbucks products and promotions. Who knows what those pins and buttons will say?

You may not be able to predict what pins and buttons your barista will be wearing. But, after a recent federal appeals court ruling there is one thing you can know for sure. There won't be more than one pro-union pin on the uniform. The court told Starbucks that it was okay to limit employees to wearing only one pro-union button with their uniform at work.

So, how did this ruling come about? And what does it mean for you?

### **Background**

Beginning in 2004, the Industrial Workers of the World (IWW) undertook a highly visible campaign to unionize Starbucks hourly employees. The campaign focused on four Starbucks stores in New York. The union held protests, attempted to recruit Starbucks employees, and made numerous statements to the media.

In response, Starbucks mounted an anti-union campaign in an effort to restrict the growth of pro-union sentiment. The National Labor Relations Board (NLRB) found that Starbucks engaged in a number of restrictive and illegal policies, including: prohibiting employees from discussing the union or the terms and conditions of their employment; prohibiting the posting of union material on bulletin boards in employee areas; and, discriminating against pro-union employees regarding work opportunities.

### **Who's Got The Button?**

Needless to say, the IWW's efforts to unionize Starbucks employees created a challenge for the company. In the midst of the IWW's efforts to unionize Starbucks employees and the company's attempts to counter those efforts, Starbucks initially prohibited employees from wearing pro-union buttons with their uniforms at work. After the NLRB attacked that practice, Starbucks reached an informal settlement agreement with the NLRB and began precluding the wearing of more than one pro-union button at a time.

After Starbucks managers requested that employees wearing multiple pro-union buttons remove all but one of the buttons, another dispute arose. The NLRB ruled that the Starbucks dress code limiting employees to wearing only one pro-union button on their work clothes was an unfair labor practice. The NLRB ruling on the one-button policy (along with rulings – beyond the scope of this article – concerning the terminations of two employees) was reviewed by the U.S. Court of Appeals for the 2<sup>nd</sup> Circuit. On review, the 2<sup>nd</sup> Circuit concluded that "the [NLRB] has gone too far in invalidating Starbucks's one button limitation."

But, what did the court look at in reaching that conclusion?

### **The Court's Analysis**

The 2<sup>nd</sup> Circuit began its analysis of the one-button policy by acknowledging that the National Labor Relations Act protects the right of employees to wear union insignia at work. Normally, preventing employees from wearing union insignia is a violation of the Act. But the court reasoned that Starbucks could overcome this presumption of illegality by showing "special circumstances," which could include "maintaining a certain employee image (especially with respect to uniformed employees)."

So, to determine if Starbucks could meet the "special circumstances" test, the court took a look at the Starbucks dress code and company practices related to employees wearing different types of buttons or pins. The Starbucks dress code for employees is comprehensive and includes rules about appropriate types and colors of shoes, pants, socks, shirts, undershirts, and jewelry. According to the Starbucks' employee handbook, the purpose of the dress code is to ensure that employees "present a clean, neat, and professional appearance appropriate of [sic] a retailer of specialty gourmet products."

The court took particular notice that Starbucks encourages employees to wear multiple pins and buttons issued by Starbucks, advertising company products and promotions. The NLRB was contending that allowing employees to wear multiple pro-union buttons did not seriously harm Starbucks's interest in employee image because "the Company . . . encouraged employees to wear multiple buttons as part of that image."

Starbucks, on the other hand, argued that allowing employees to wear an unlimited number of pro-union buttons would convert them into "personal message boards" and would "seriously erode" the information conveyed by Starbucks-issued pins promoting company products. In fact, the record before the court revealed that one employee attempted to display eight union pins on her pants, shirt, hat, and apron during work.

In making its decision, the court found that Starbucks is "entitled to oblige its employees to wear buttons promoting its products, and the information contained on those buttons is just as much a part of Starbucks's public image as any other aspect of its dress code." The court also found that

Starbucks is entitled to avoid the distraction from its message that a number of union buttons would risk.

The 2<sup>nd</sup> Circuit found that Starbucks met its burden of establishing that the one-button restriction is a necessary and appropriate means of protecting its interest in conveying a particular public image through the messages contained on employee buttons. Accordingly, the court ultimately found that Starbucks "adequately maintains the opportunity to display pro-union sentiment by permitting one, but only one, union button on workplace clothing."

So, if Starbucks can tell its baristas to only wear one pro-union button on their work clothes, what does that mean for your company?

### **The Bottom Line**

Companies should tread carefully when taking actions that could be perceived as discouraging unionization. But if you can show that limited and selective uniform restrictions are a reasonable and necessary way to protect your public image, you can limit the display of pro-union insignia. You do that in a number of ways, including what you say in your employee handbook, how and where you advertise, and how new employees are oriented.

We end where we began – back at Starbucks for your morning caffeine fix. As you take note of the buttons your barista may or may not be wearing, remember to keep your eyes open wherever you are. You never know the next little thing – like a one inch button – that will impact the HR landscape.

---

This article also appeared in the July 2012 issue of [HR Professionals of Greater Memphis](#).