



SEHAM, SEHAM, MELTZ & PETERSEN, LLP

ATTORNEYS AT LAW
199 Main Street, Seventh Floor
WHITE PLAINS, NEW YORK 10601

TEL: (914) 997-1346

FAX: (914) 997-7125

Sender's E-mail: Lmiddlebrook@ssmplaw.com

May 26, 2016

VIA E-MAIL [Bill.Venckus@wnco.com]

Bill Venckus
Director, Labor Relations
Technical Operations
Southwest Airlines Co.
2702 Love Field Dr.
Dallas, TX 75235

Re: Protected Union Activity

Dear Mr. Venckus:

You sent an e-mail to all four AMFA Southwest Air Line Representatives ("ALR"), on May 24, 2016, in which you indicated Southwest Airlines ("Southwest" or "Company") "recently noticed some Maintenance Employees wearing buttons referencing our recent negotiations." In addition, you conveyed the Company's position that the "wearing of these buttons is not authorized and violates our policy." In closing, you requested that AMFA, through the four ALR's, "help stop the usage of these buttons." I have been asked to respond to your e-mail on behalf of AMFA and the Southwest ALR's.

AMFA cannot accede to the Company's request to "help stop the usage of these buttons," because to do so would cause the Association to be complicit in the violation of our members' federally protected rights under the Railway Labor Act.

It is well established under both the Railway Labor Act and the National Labor Relations Act that employees have a statutory right to communicate their views related to working conditions and unionization. An integral part of this protected free speech is the right to communicate their views through buttons, lanyards, and t-shirts. *Republic Aviation Corp. v. NLRB*, 324 U.S. 793, 801-803 (1945); *Skywest Pilots ALPA Organizing Committee v. Skywest Airlines, Inc.*, 2007 U.S. Dist. LEXIS 48316 (N.D. Cal. June 27, 2007); *Scott v. American Airlines*, 488 F. Supp. 415 (E.D.N.Y. 1980); *Adams v. Federal Express Corp.*,

470 F. Supp. 1356, 1362-63 (W.D. Tenn. 1979)(“employees have the right to visibly demonstrate their support or opposition to a particular bargaining representative absent some exceptional reason for curtailing such expression.”). This free speech right protects not only the wearing of a t-shirt and buttons bearing a simple union acronym, but also t-shirts and buttons communicating pointed messages protesting an employer’s policies or negotiating tactics. *See Southern California Edison Co.*, 274 N.L.R.B. 1121 (1985) (finding button bearing slogan “Stick Your Retro” to be protected speech and explaining that in order “to lose the protection of the Act, the slogan must be offensive or severely disparage the employer.”).

You referenced a unilaterally promulgated Company policy in support of your position that the “wearing of the buttons is not authorized...” However, the Company’s policy cannot abridge the employees’ rights under the Railway Labor Act and does not override the express terms of the parties’ collective bargaining agreement, which provides that no covered employee “will be interfered with, restrained, coerced or discriminated against by the Company ... because of membership in or lawful activity on behalf of the Union.” (Article 1, § 2). Therefore, it is AMFA’s position that any order to employees to remove the union buttons not only contravenes federal law, but also constitutes a violation of the parties’ collective bargaining agreement. *See U.S. Steel Corp.*, 121 LA 1255 (Das 2005) (employer violated clause in collective bargaining agreement prohibiting discrimination against union members when it ordered employees to remove from their helmets and other equipment union sticker stating “No one fired on my shift today!”).

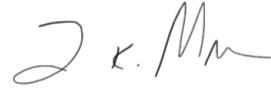
In addition, arbitral decisions under the RLA have consistently sustained grievances, ordered reinstatement and issued make-whole relief in instances where an employee was disciplined based on the exercise of his RLA-protected free speech rights. *American Airlines*, Case D-M-1018-04 (Angelo 2005) (reinstatement with make whole relief for mechanic unlawfully discharged for wearing pro-AMFA t-shirt and refusing order to remove it or turn it inside out). Furthermore, as explained by Arbitrator Angelo in the attached *American Airlines* decision, any unlawful order issued by Southwest management to remove the buttons at issue would not be subject to the work now, grieve later doctrine:

With regard to the “work now, grieve later” doctrine, the rule does not apply where, as here, a lawful order was not given. The obligation to obey first arises once a lawful order is given. Where, as here, the order is not lawful, there is no obligation to obey and, the right to grieve instead never becomes an option.

American Airlines, Case D-M-1018-04 at 20-21.

AMFA respectfully declines your request to assist you in the violation of our members' rights both under the RLA and the contract by "help[ing] stop the usage of these buttons." Moreover, AMFA will use all legal means necessary to address any actions by the Company related to this issue that contravene federal law or the terms of the collective bargaining agreement.

Sincerely,

A handwritten signature in black ink, appearing to read "L. K. Middlebrook".

Lucas K. Middlebrook, Esq.

Cc: Bob Cramer, AMFA Local 4 ALR
Craig Hamlet, AMFA Local 11 ALR
Shane Flachman, AMFA Local 18 ALR
Mike Young, AMFA Local 32 ALR
Louie Key, AMFA National Director
Earl Clark, AMFA Region 1 Director
Mike Nelson, AMFA Region 2 Director
Mike Ryan, Southwest Airlines
Gerry Anderson, Southwest Airlines