

## Common Sense Sometimes Matters

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With that deft opening to its opinion, the D.C. Circuit Court of Appeals last week overturned yet another controversial decision of the National Labor Relations Board which prohibited AT&T Connecticut from barring its technicians from wearing t-shirts into customer homes that portrayed themselves as prisoners of their employer. The company had banned its employees who go into customer homes or otherwise interact with the public from wearing t-shirts that said “Inmate” on the front and “Prisoner of AT&T” on the back. The back also had vertical prisoner-like stripes. The shirts did not mention the union involved (Communications Workers of America) or say anything about a labor dispute. The NLRB determined that the shirts were protected as protected concerted activity by the union members who wore them. The D.C. Circuit on the other hand said that AT&T’s rule “seems reasonable.” The D.C. Circuit agreed with AT&T that the “special circumstances” rule articulated in *Republic Aviation* applied here -- that a company may ban union messages on publicly visible apparel if the messages may harm the company’s relationship with its customers or its public image. The decision is further reminder that employers caught in a fight with the NLRB usually have to fight the battle to the Court of Appeals level to secure relief. A copy of the court’s opinion is available [here](#).

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