

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

UNITED PARCEL SERVICE, INC.

and

Case 10-CA-338971

EVETTE R. AVERY, an individual

Demi Kim and Joshua Jacob, Esqs., for the General Counsel.
Steve Ensor, Emily Leiter, and Cynthia Little, Esqs., for the Respondent.

Decision

Kimberly Sorg-Graves, Administrative Law Judge.

STATEMENT OF THE CASE

On April 1, 2024, Evette R. Avery (Charging Party or Avery) filed an unfair labor practice charge against United Parcel Service, Inc. (Respondent or UPS), docketed by Region 10 of the National Labor Relations Board (NLRB) as case 10-CA-338971. In response to the charge and amendments thereto, the Regional Director of Region 10 (Regional Director) issued a complaint on August 13, 2025, an amended complaint on August 13, 2025, and subsequently an amendment at hearing¹ alleging that Respondent unlawfully maintained and disparately enforced its policies entitled Yard Control Program and UPS Uniform and Personal Appearance Standards in violation of Section 8(a)(1) of the National Labor Relations Act (Act). (GC Exhs. 1(e), (g), (j), and (m)).²

A trial was conducted in this matter on September 8 and 9, 2025, in Atlanta, Georgia. Counsel for the General Counsel, and the Respondent filed post-trial briefs in support of their position by December 5, 2025.

On the entire record, I made the following findings, conclusion of law, and recommendations.³

¹ Counsel for General Counsel's (General Counsel) unopposed request to further amend the amended complaint at hearing in the following manners was granted: 1) in paragraph 2(a) correct the street number of Respondent's facility by replacing "570" with "270", and 2) in paragraph 6(a) replace "Supervisor Rodney Wilkinson" with "Business Manager Maggie Scales and Division Manager Michael DiBlasi". (Tr. 10, 11.)

² Abbreviations used in this decision are as follows: "Tr." for the Transcript, "Jt. Exh." for joint exhibits, "GC Exh." and "GC Br." for the General Counsel's exhibits and posthearing brief, "R. Exh." and "R. Br." for Respondent's exhibits and posthearing brief. Specific citations to the transcript, exhibits, and briefs are included where appropriate to aid review and are not necessarily exclusive or exhaustive. My findings and conclusions are not based solely on the record citations contained in this decision but rather are based upon my consideration of the entire record for this case.

³ The transcripts in this case generally are accurate, but I hereby make the following transcript correction: throughout the transcript for September 9, the spelling of my name is corrected from Song-Graves to Sorg-Graves.

FINDINGS OF FACT

JURISDICTION

At all material times, Respondent has been a corporation with facilities located throughout the United States, including a corporate headquarter located at 55 Glenlake Parkway NE, Atlanta, Georgia, and a facility located at 270 Marvin Miller Drive SW, Atlanta, GA 30336, (Respondent's facility) and has been engaged in the interstate transportation of freight. (Tr. 10 and 11; GC Exh. 1(j) and 1(m).)

At all material times, United Parcel Service, Inc. has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and the International Brotherhood of Teamsters, Local 728 (Union) has been a labor organization within the meaning of Section 2(5) of the Act. Based on the foregoing, I find that this dispute affects commerce and that the Board has jurisdiction of this case, pursuant to Section 10(a) of the Act. (GC Exh. 1(j) and 1(m).)

ALLEGED UNFAIR LABOR PRACTICES⁴

Respondent is a parcel logistics company that moves freight or packages and employs approximately 490,000 people. (Tr. 207.) The International Brotherhood of Teamsters and various of its local unions have been long-term representatives for most of Respondent's employees. (R. Exhs. 1 through 16.) Respondent has entered into consecutive National Master United Parcel Service Agreements with the International Brotherhood of Teamsters (National Master Agreement) containing a grievance/arbitration agreement that ends in binding arbitration. (Tr. 236-240, 295; Jt. Exh. 1.)

While many of Respondent's employees do not interact with Respondent's customers, its package car drivers interact with customers who ship smaller packages and feeder drivers interact with large commercial shippers.⁵

Charging Party Evette Avery (Avery) started working for Respondent in 2006 as a ramp agent unloading airplanes. She transferred to the Atlanta hub in 2020 to become a package car driver. Avery has been a steward for the Union for 17 years, representing employees by enforcing the collective bargaining agreement between Respondent and the Union through the grievance process. (Tr. 19-22.) Avery works under Division Manager DiBlasi, Business Manager Scales, and road supervisors Wilkinson and Kluntz. (Tr. 23.) Avery spends between 55 and 105 minutes at the hub doing tasks before and after performing her delivery route. Her delivery route takes approximately 9 hours to perform. (Tr. 107-111.) Therefore, most of Avery's shift consists of delivering packages and interacting with customers. (Tr. 124.)

The Respondent's package car and feeder drivers wear uniforms, called UPS browns, that consist of shirts, pants or shorts, hats or visors, belts, and socks. (Tr. 23, 112, 176, 177, 215.) The

⁴ All dates are in 2023 unless otherwise indicated.

⁵ Package car driver is the term Respondent uses for delivery drivers that operate box trucks, and feeder driver is the term used for tractor/trailer drivers. (Tr. 212, 213, 315.)

uniform and appearance policies require all drivers outer clothing to be issued from UPS and limit the color and visibility of underclothing. (Tr. 217; Jt. Exh. 2.) Part of the drivers' training focuses on meeting these requirements and management addresses these and other policies in short, daily beginning of shift meetings. (Tr. 221-223.) Respondent has maintained its uniform and appearance policies since 1930. These policies are part of their promotional brand to have clean, professional and easily recognizable delivery personnel. (Tr. 218-221.) Other employees, who work in Respondent's shipping and sorting facilities, do not wear a uniform but have clothing guidelines to promote safety, such as not wearing loose clothing. (Tr. 284, 285.)

All employees also must wear Respondent-approved yellow⁶ safety vests or harnesses/belts when working in the yard where vehicles and carts transport packages. (Tr. 24, 120, 159, 160, 228-229, 274, 275; Jt. Exh. 3; GC Exh. 11; R. Exh. 21.) Respondent contends that the safety vests/harnesses are selected to maximize visibility. To make sure that visibility is not diminished, it does not allow them to be altered. (Tr. 230; R. Exh. 17.) All employees may but are not required to wear approved safety vests/harnesses while inside the hub and delivering packages. (Tr. 25, 269.)

Respondent has enforced its Uniform Standards and Appearance policies with few exceptions throughout its decades of operations. (Tr. 277, 278.) For the first time Article 4 of the August 1, 1987, thru July 31, 1990, National Master Agreement, provided that "Job Stewards, or designated alternates, shall be allowed to wear an identifying steward's badge, provided by the Union, at all times while on the Employer's premises." (Tr. 240, 242-245; Jt. Exh. 1; R. Exh. 2.) In negotiations for a successor National Master agreement in 2002 and 2008 the Union unsuccessfully advocated for changing this wording to allow the wearing of the badge "at all times" and "at all times while on the Employer's premises or on duty." (Tr. 246, 247, 249-250; R. Exhs. 3 and 5.) Since 2008, the Union has not proposed broadening the language regarding the wearing of a steward's badge and the language has remained unchanged through the current National Master Agreement. (Tr. 248-253, 267; R. Exhs. 4, 6, 7, and 8.) There are no collective-bargaining provisions that cover uniform or safety-vest standards. UPS makes those policies. (Tr. 171, 172.)

Since at least 1997, Article 21 of the National Master agreement entitled Union Activity, has stated:

Any employee member of the Union acting in any official capacity whatsoever shall not be discriminated against for acts as such officer of the Union so long as such acts do not interfere with the conduct of the Employer's business, nor shall there be any discrimination against any employee because of union membership or activities. Any employee shall have the right to wear a Union pin where there is a practice affording such a right. (Tr. 172-174, 240, 268; R. Exh. 10.)

During subsequent contract negotiations the Union failed in its attempts to broaden the employees' right to wear union pins or union insignia on their uniforms. (Tr. 241, 253-262; R. Exhs. 11 through 16.) In both Article 4 and 21 the term Union refers only to the International Brotherhood of Teamsters and its affiliated locals. (Tr. 280, 281.) The Union pin is a lapel style pin with a separate

⁶ Some people refer to the color of the safety vest as yellow, and others refer to it as green. For ease of reading, I refer to it as yellow although it might be more accurately described as yellow green.

back and most employees who wear it place it on their collars. (Tr. 287.) Employees are not allowed to wear insignia of other unions. (Tr. 288.)

The yard is one of the designated traffic areas where a safety vest/harness must be worn. Respondent maintains its “8 Rules of Yard Control,” which includes the rule that “[a]ll certified yard employees are required to wear a reflective vest anytime they are working in the yard.” (Tr. 26, 225-227; GC Exh. 18; R. Exh. 21.) Employees are trained on the 8 Rules of Yard Control during their orientation. Employees only have contact with other UPS employees in the yard and the hub. (Tr. 175.)

The safety vests distributed by Respondent are bright yellow green, cover the torso like a button up sweater vest, have reflective tape around the abdomen slightly above the waist, and have silver reflective tape over each shoulder meeting the reflective tape at the waist in front and back. (GC Exh. 8.) The harnesses are made with bright yellowish-green color straps containing a narrower strip of silver reflective tape. A waist strap is attached to suspender style straps that cross in the middle of the back and go over the shoulders and attach to the waist strap in the front. The harnesses cover significantly less of the torso than the vests. For safety reasons at least some of Respondent’s facilities require 5-point breakaway vests/harnesses that are closed with Velcro at the front closure and shoulder and side seams in case they get snagged on machinery. Avery credibly testified that the ones distributed at the Atlanta hub were not breakaway, although Respondent contended that breakaway vests/harnesses were required at the Atlanta hub. (Tr. 32, 33; GC Exh. 10.)

While working at the Atlanta airport facility, Avery was a member of the safety team and received from Respondent a safety vest that has the UPS logo over the left breast pocket and the word “SAFETY” in black, block letters on the back. (Tr. 32-35, 122; GC Exh. 10.) The airport facility also followed the 8 Rules of Yard Safety. Avery wore the safety team vest every workday on her shift starting at 3:30 a.m. until she transferred to the Atlanta hub. (Tr. 35.)

When Avery started at the Atlanta hub, she was not given a company-issued vest and did not wear any safety vest between May 2020 and January 2021, even when crossing the yard to enter the hub. (Tr. 127.) In early 2021, she started wearing a safety vest that she purchased. The vest has a black/dark gray background and reflective stripes around the waist and over the shoulder. The vest is not breakaway and has Local 728 in small block lettering over the front right pocket area and a front zipper closure. It has reflective belt stripes around the waist and over both shoulders. On the center of the back of the vest there is a round black Teamster horsehead logo with silver reflective lettering of “Teamsters” above the logo and “Local 705” below the reflective stripe. Avery started wearing the safety vest while working, including when in the hub and delivering packages. (Tr. 25, 32, 37; GC Exh. 9.) She continued to wear the vest she purchased until May 2023, for visibility regarding safety and union support. (Tr. 38, 155, 156.)

In April 2023, Division Manager DiBlasi was assigned to manage the Atlanta hub. I credit DiBlasi’s testimony that it is his practice to address attendance, uniform and appearance rules, and safety with employees when taking over supervision of a facility. (Tr. 308.) Avery’s testimony that DiBlasi was handing out safety vests and that Mgr. Scales said that DiBlasi wanted these issues addressed supports DiBlasi’s testimony. I also credit DiBlasi’s testimony that he spoke to many drivers about their dress and appearance before and after he was assigned to the Atlanta hub and

that he has not issued discipline to other employees at the Atlanta hub for uniform or appearance infractions, because employees typically complied with his directions to remove the out of policy items. (Tr. 312-322.) DiBlasi testified that he saw Avery wearing her dark background vest with the union logo and spoke to her about wearing the company issued vest before May 23, 2023. (Tr. 311.)

On May 23, 2023, Div. Mgr. DiBlasi was handing out safety vests but did not offer a vest to Avery. (Tr. 38, 41; GC Exh. 8.) Instead, he called Union Business Agent Gentry and told him that she was not allowed to wear the vest she purchased. (Tr. 39, 40; GC Exh. 3.) Gentry texted with Avery about this conversation and told her that DiBlasi said she could wear the vest she purchased in the Atlanta hub but could not wear it on her delivery route. Gentry directed her to comply until he could check with the Union President about the issue. (Tr. 43; GC Exh. 17.) Later, Gentry advised her that he could not find any Union steward vest for her. Respondent had allowed the stewards to wear a steward vest provided by the Union. He told her that Respondent controls the uniform policy and that the vest she purchased is not one that she could wear over her uniform while delivering packages. Avery filed a grievance and an internal company complaint that she was harassed because she supported the Union by wearing her purchased vest and that other employees wear the same type of vest without the union logos and are not harassed. (Tr. 46; GC Exh. 3.)

Avery testified and the record contains pictures of a handful of employees who at least sometimes wore non-compliant vests, including vests with gray or black backgrounds. (Tr. 92-98, 160-165; GC Exhs. 11, 12, and 22.) She has also seen other employees wearing UPS issued vests and safety belts while delivering packages as she does. (Tr. 167-168, 170, 276.) As a Union steward, Avery was not aware of any employee being disciplined for wearing a non-compliant safety vest. (Tr. 100, 101.) She testified generally that others wore non-compliant vests the day that DiBlasi was distributing vests and that DiBlasi offered other employees vests and did not take the step to contact Gentry about them. (Tr. 42, 45.) She is unaware of management speaking to any of these employees about the vests they wore. (Tr. 46.)

On June 21, 2023, Human Resources Representative Wimberly spoke with Avery about her corporate complaint. Avery recorded the conversation. (Tr. 47; GC Exhs. 13, 14.) Wimberly told Avery that she was “not supposed to wear your union vest all around the building or so, only when you’re doing union work” and that her union work would be confined to Wednesdays. (GC Exh. 14.) Wimberly noted that Avery had been doing union work on various days of the week and that it interfered with her getting an air delivery package delivered on time. (GC Exh. 14.)

In Avery’s experience, she had worn the vest she bought without incident, then was told not to wear it when delivering to customers and about a month later told she could only wear it when she was pulled from her normal work to perform union work. (Tr. 50, 51.) She started wearing a vest provided by Respondent.

In October 2023, the Union gave Avery a yellow-green steward’s vest. (Tr. 53, 130, 274, 275; GC Exhs. 7 and 8.) The steward’s vest is the same color and style as the vests distributed by Respondent. The steward’s vest has a black outline of the Union’s logo with “STEWARDS” above it and “LOCAL 728” below it. The design allows the yellow of the vest to show between the lines of the logo and wording. The symbol and words partially cover the vest above the reflective stripe at the waist and between the two stripes going over the shoulders, taking up approximately one-sixth of the total back of the vest. The same design is also on the front, left chest of the vest and

covers less space than a typical front chest pocket covers. (GC Exhs. 7, 19.) Avery started regularly wearing it only while working at the Atlanta hub, a non-customer-facing location, as Gentry suggested she do until her grievances were finalized. (Tr. 53, 131-133; GC Exh. 4.) Avery, afraid that the Union steward vest would be soiled, changed vests and wore a company issued vest while delivering packages.

In October 2023, the Union and Respondent settled Avery's May 2023 grievance alleging that she was discriminated against based upon her union activity. Respondent agreed to abide by Articles 36, 37, and 66, which forbid discrimination for protected activity and other mistreatment of employees. (Tr. 299.) Avery believed this resolved the issue and allowed her to continue wearing the steward's vest, but Respondent's District Labor Manager Leefoon testified that complying with Articles 36, 37, and 66 does not require Respondent to allow the wearing of the steward's vest. (Tr. 300.)

On December 20, 2023, Avery was getting signatures of employees who wanted to limit the number of days that they would have to work 9.5 hour or longer shifts. If employees want to limit the length of their shifts, they are required by the collective-bargaining agreement to sign a document stating this preference every six months. (Tr. 56.) Ctr. Mgr. Scales approached Avery and told her to "take that goddamn thing off," referring to the steward's vest, and instructed her to wear the UPS issued vest. (Tr. 58, 63, 67, 68, 76, 77; Exhs. 7, 8, 15, and 16.) Avery testified that Scales told her that DiBlasi instructed that all uniform breaches, such as wearing sports caps and non-UPS issued vests, be corrected. (Tr. 69, 135.) Avery filed a grievance concerning this direction and continued to wear her steward's vest while working at the Atlanta hub. (Tr. 54, 55, 56, 77, 78; GC Exh. 4.)

On January 2, 2024, Respondent issued Avery four disciplinary notices—a warning; a warning letter; a notice of intent to suspend; and a discharge notice for failure to stop wearing the steward safety vest. (Tr. 79-81; GC Exh. 2.) Each of these actions were grieved. On January 3, 2024, the grievances were reduced to one warning letter for failure to follow directions. Avery was paid for one day of lost wages and returned to work on January 4, 2024. (Tr. 82-86, 136, 137 266; GC Exhs. 5 and 6.) Union officials again advised Avery to only wear her steward's vest as directed until her December 2023 grievance on the issue was resolved. (Tr. 141, 266; GC Exh. 4.)

After Avery was reinstated, her October 2023 grievance alleging discrimination against her for wearing the vest she purchased was settled by Respondent agreeing to abide by Articles 36 and 37 of the National Master Agreement and Article 66 of the Local agreement with the Union. Avery believes that these articles' prohibition on discrimination and protections of employee and steward rights allow her to wear the steward's vest. (Tr. 87-90, 144-147; GC Exh. 23.) Her December 2023 grievance also alleging discrimination was still pending at the time of the hearing.⁷ (Tr. 148.)

⁷ On March 1, 2024, Ctr. Mgr. Scales issued Avery a documented warning for interrupting management during employee meetings. (GC Exh. 24.) The record contains no allegation concerning this conduct, and therefore, I have not addressed it.

PRELIMINARY ISSUES

DOCTRINE OF ISSUE PRECLUSION

Respondent contends that the allegations asserting that it violated Section 8(a)(1) by maintaining and enforcing its Uniform Standards policy that prohibits the wearing of an unapproved safety vest or belt including those identical to its approved vest bearing a union logo and/or other union related speech should be dismissed pursuant to the doctrine of issue preclusion based upon the holding in *United Parcel Service v. NLRB*, 41 F.3d 1068 (6th Cir. 1994) (*UPS v. NLRB*).⁸ Respondent contends that the doctrine of issue preclusion forecloses litigating the lawfulness of its prohibition on altering its approved safety vests/harnesses in this case, and therefore, the allegations involving UPS's maintenance and enforcement of the Uniform Standards and Appearance policies should be dismissed. (R. Br. 1-2, 29-33.) General Counsel does not specifically address the holding in *UPS v. NLRB* but does argue that prior cases and the uniform standards policy does not address safety vests/belts, alluding to this case being one of first impression.

In Board proceedings, issue preclusion applies “where the government is litigating the same issue arising under virtually identical facts against the same party” in a subsequent proceeding. *United States v. Stauffer Chemical Co.*, 464 U.S. 165, 173 (1984). The Board applying this standard in *Siren Retail Corp. d/b/a Starbucks Reserve Roastery*, 373 NLRB No. 140 (2024) (enf. denied in relevant part, No. 24-3168, 2026 WL 2588722, at *1 (2nd Cir. Sept. 2, 2026), found that the General Counsel was not precluded from relitigating whether Starbucks could prohibit employees from wearing any union insignia other than one small pin because of changes in its uniform requirements.

In *UPS v. NLRB*, the Sixth Circuit considered whether UPS lawfully precluded its drivers from wearing a dime-sized union pin when it maintained a strict uniform policy and allowed the wearing of several company approved pins. The Circuit noted that the collective-bargaining agreement granted UPS the right “to promulgate and enforce appearance standards,” which UPS still enjoys under the current collective-bargaining agreement. *Id.* at 1073. The Circuit also found that UPS “create[ed] and maintain[s] a public image of neatness of its uniform personnel and equipment, which come into contact with the public, overrides any conflicting rights that a few feeder drivers.” *Id.* at 1072. The Sixth Circuit focused on drivers’ appearance while on their routes interacting with customers and held that UPS could prohibit “any uniform accessories, pins or other insignia that [UPS] did not issue, sanction or authorize.” *Id.* at 1073.

Respondent asserts that it still consistently maintains the uniform standards policy including its requirement for drivers to wear only approved safety vests/belts to maintain its public image of neat, uniformed employees. Respondent also notes that the contract provision granting Respondent the right to “to promulgate and enforce appearance standards,” has not changed in subsequent contracts.

⁸ I take judicial notice of the administrative law judge and Board decisions underlying *United Parcel Service v. NLRB* and the facts discussed therein.

While the contract and uniform standards policy have not changed, the circumstances of this case do not mirror those in *UPS v. NLRB*. The underlying administrative law judge decision in *UPS v. NLRB* found that prior to 1994 UPS drivers were responsible for their uniform shirts but changed into the rest of their uniform at work. At that time drivers could enter the facility wearing clothing of their choice. Now drivers are required to report to work in uniform and an approved vest/harness upon exiting or returning to their personal vehicle or otherwise entering the facility grounds. (Tr. 24, 120, 159, 160, 228-229, 274, 275, 291, 292; Jt. Exh. 3.) All employees are allowed to remove the vests upon entering the Atlanta hub and drivers are not required to wear them on their routes. The record is unclear where employees store the vests if they choose not to wear them after entering the hub.⁹ Therefore, the issue here is whether Respondent can legally prohibit the wearing of union insignia on safety vests/harnesses that are not part of its required customer-facing uniforms. This issue was not considered in *United Parcel Service v. NLRB*, and therefore, I find that decision does not preclude the litigation of this distinct issue in this case.

APPROPRIATENESS OF DEFERRAL

The parties agree that the principles for determining the appropriateness of deferral to settlement agreements reached during grievance and arbitration proceedings are set forth in *Spielberg Mfg. Co.*, 112 NLRB 1080 (1955) and *Olin Corp.*, 268 NLRB 573 (1984). Based upon those principles, the Board defers to grievance settlements reached through the parties' grievance/arbitration procedures where: (1) the grievance/settlement proceedings were fair and regular; (2) all parties agreed to be bound; and (3) the settlement agreement was not clearly repugnant to the purposes and policies of the Act. *Postal Service*, 300 NLRB 196, 197 (1990); *Alpha Beta Co.*, 273 NLRB 1546 (1985), affirmed sub nom. *Mahon v. NLRB*, 808 F.2d 1342 (9th Cir. 1987).

General Counsel relies on *Roadway Express, Inc.*, 145 NLRB 513, 515 (1963) to support its contention that the grievance procedures taken in this case were not fair and regular and that not all parties agreed to be bound, but this reliance is misplaced. In *Roadway Express*, the grievant had formed a second union in opposition to the union processing his grievance through a grievance procedure that did not end in binding arbitration. See also, *United Parcel Serv., Inc.*, 372 NLRB No. 158 (Nov. 21, 2023) (holding that proceedings were not fair and regular when joint board was comprised of union officials applying a collective-bargaining agreement that the grievant vehemently and actively campaigned against).

Here, Avery supports the Union as a steward, and the Union provided Avery and other Union stewards with the safety vest for which Avery had been disciplined. While the Union directed Avery to comply with management restrictions on wearing the vest, it did so in response to contract provisions and Respondent's policies not animus towards Avery's actions. The Union unsuccessfully attempted to change those provisions during contract negotiations to expand employee rights under the contract to wear union logos/messaging. These actions are contrary to General Counsel's claim that the Union was biased against Avery's positions. Here, the Union reasonably considered itself constrained by contractual provisions in the position it took in settling

⁹ The package cars are parked in the hub to be loaded, and the drivers enter the vehicles there and leave the facility.

the grievances. Furthermore, the Union negotiated substantially favorable terms for Avery, unlike in *Roadway Express* where the union agreed to the grievant's discharge.

General Counsel also argued that like in *Roadway Express*, Avery, a party to the grievance, did not agree to be bound. General Counsel's assertion is contrary to the standard set forth in *Spielberg* and *Olin*. In *Roadway Express*, the grievance procedure ended with a joint board determination not binding arbitration. Here, as in most cases, the parties to the collective bargaining agreement are the Union and the Respondent, and their contractual grievance procedure ends in binding arbitration. Therefore, the Union and Respondent have agreed to be bound by their grievance procedure. Thus, I find that the precedent in *Roadway Express* is not controlling as to whether the allegations of this case should be deferred to the grievance arbitration procedure.

General Counsel also argues that the grievance settlement is repugnant to the Act because it does not resolve the issues of whether Respondent's policies are overly broad and violate the Act. I agree with General Counsel that it is not appropriate to defer the issue of whether maintenance of the policies at issue are lawful to the settlement of Avery's grievances or a future grievance resolution under either the *Collyer* or *Dubo* deferral procedures. While the settlement of the grievances filed by Avery addressed her discipline, no action was taken on the issue of the legality of the policies at issue. Based upon the collective-bargaining provisions and the parties' past-practice, any future grievance, even if subject to binding arbitration, would not address the legality of the restrictions on placing union logos on the required safety vests/harnesses under the Act. I disagree with Respondent's assertions on the record that the Union can negotiate any employee rights under the Act. The Supreme Court has affirmed that a "union may bargain away its members' economic rights, but it may not surrender rights that impair the employees' choice of their bargaining representative." *Metro. Edison Co. v. NLRB*, 460 U.S. 693, 705-706 (1983), citing *NLRB v. Magnavox Co. of Tenn.*, 415 U.S. 322 (1974). Therefore, I address the allegations of unlawful maintenance of the policies at issue below.

Finally, I find that the complaint does not allege, nor does General Counsel argue in posthearing briefing, that Avery's discipline was unlawful because it was issued in response to unlawful policies. Instead, the complaint alleges that the policies were enforced disparately¹⁰ against Avery. Disparate treatment arguments are appropriate for deferral to the parties' grievance/arbitration proceedings. The application of the required *Spielberg/Olin* post-arbitral deferral standards are all met. The Board has a long history of upholding grievance settlements that substantially return the grievant to their terms and conditions of employment prior to the conduct at issue. Here, the Union negotiated most of the remedies that the Board order would grant if Charging Party prevailed. Therefore, I find it appropriate to defer the settlement of Avery's grievances regarding the allegations of unlawful or discriminatory enforcement in this case.

¹⁰ I find insufficient evidence that the policies were enforced disparately. Avery testified that the enforcement of the policies was lax until DiBlasi became the division manager. Avery testified that other managers started enforcing the policies more diligently at DiBlasi's direction and DiBlasi distributed company approved vests. I credit Respondent's witnesses that they seldom discipline employees for uniform, dress code, or safety vest/harness violations, because most employees complied after receiving verbal reminders. The record contains no evidence contradicting this claim. Also, while Avery provided some testimony and pictures of dress or safety vest requirements violations, she provided very few in relation to the number of employees working at the facility.

ANALYSIS

In considering the legality of company dress code/uniform policies and the prohibition on wearing union insignia the Board applies the Supreme Court's balancing test that weighs employees' rights to wear union insignia against an employer's right to maintain discipline. See *Republic Aviation Corp. v. NLRB*, 324 U.S. 793, 802–803 & fn. 7 (1945). In balancing these principles, the Board applies a presumption that employer limitations on the display of union insignia are invalid, with the burden on the employer to establish special business circumstances that outweigh employees' right under Section 7 of the Act to display union insignia. *Tesla, Inc.*, 371 NLRB No. 131, slip op. at 6 (2022), enf. denied, 86 F.4th 640 (5th Cir. 2023). This test is used for various types of insignia such as union stickers, pins, buttons, and T-shirts. *Id.* at slip op. at 7; *Great Plains Coca-Cola Bottling Co.*, 311 NLRB 509, 515 (1993). Any prohibition against wearing union insignia, including the maintenance of facially neutral, nondiscriminatory dress codes and uniform policies which limit or restrict the display of union insignia, must be justified by legitimate business interests that outweigh employees' right to display union insignia and must be narrowly tailored to meet those interests. *Tesla*, supra, at 7, 17; *Wal-Mart Stores*, 340 NLRB 637, 638 (2003), enf. in relevant part 400 F.3d 1093 (8th Cir. 2005). Furthermore, contact with customers or the public, or uniform requirements alone do not establish special circumstances. *Floridian Hotel of Tampa, Inc.*, 137 NLRB 1484 (1962). *Long Beach Memorial Medical Center, Inc.*, 366 NLRB No. 66, slip op. at 3 (2018); *P.S.K. Supermarkets*, 349 NLRB 34, 35, (2007).

Special circumstances may include, inter alia, “situations where display of . . . insignia might ‘jeopardize employee safety, damage machinery or products, exacerbate employee dissension, or unreasonably interfere with a public image that the employer has established, as part of its business plan, through appearance rules for its employees.” *Home Depot USA, Inc.*, 373 NLRB No. 25, slip op. at 13 (2024) (quoting *Bell-Atlantic-Pennsylvania*, 339 NLRB 1084, 1086 (2003), enf. 99 Fed. Appx. 233 (D.C. Cir. 2004)). In establishing unreasonable interference with a public image,

the Board requires more than conjecture about customers' negative reactions to employees' Section 7 activity to find special circumstances. An employer must show “that the wearing by its employees of insignia . . . adversely affected its business . . . and that, because of deleterious effects on these interests, the employer's ban on the wearing of such insignia outweighs the employees' statutory right” *Medco Health Solutions of Las Vegas, Inc.*, 364 NLRB 1687, 1690 (2016) (quoting, *Inland Counties Legal Services*, 317 NLRB 941, 941 (1995).

See also, *Danbury HCC*, 360 NLRB 937, 938 fn. 5 (2014) (“[A]n employer who presents only generalized speculation or subjective belief about potential disturbance . . . or disruption of operations fails to establish special circumstances justifying a ban on union insignia.”), enf. sub nom. *HealthBridge Management, LLC v. NLRB*, 798 F.3d 1059 (D.C. Cir. 2015); *St. Luke's Hospital*, 314 NLRB 434 (1994) (finding no special circumstances to justify a ban on “United to Fight for Our Health Plan” buttons and stickers where there was no evidence that any patient complained of, or even noticed, the message); *Medco Health Solutions of Las Vegas, Inc.*, 364 NLRB 1687, 1690 (2016) (an employer must show that the wearing by its employees of insignia adversely affected its business sufficiently that the employer's need to ban the wearing of such insignia outweighs the employees' statutory right); *Inland Counties Legal Services*, 317 NLRB 941, 941 (1995) (“Neither the mere possibility that the Respondent's employees may come into

contact with a customer or supplier nor an employer's interest in avoiding controversy among its clientele that an expression of union membership or support might engender outweighs the employees' Section 7 right to wear these emblems.”).

UPS Allows the Wearing of a Union Distributed Pin

5 The Board has found that it is irrelevant that an employer permits employees to wear other union insignia that it deems acceptable, when evaluating the legality of a prohibition on another type of union insignia apparel. *Holladay Park Hospital*, 262 NLRB 278, 279 (1982). Therefore, UPS's policy of allowing employees to wear one small Union distributed pin and for stewards to wear a steward's pin is not determinative of whether UPS can prohibit other protected concerted
10 messaging or insignia. I find that especially true here where UPS's agreement with the Union only allows for a Union-approved pin and for Union stewards to where a pin stating “steward.”

Asserted Safety Justifications for “8 Rules of Yard Control” Policy

15 Here, I find that Respondent did not establish a business justification for its 8 Rules of Yard Control policy prohibiting all union insignia and concerted messages on its approved safety vests that outweighs employees' statutory right to wear such insignia. Respondent failed to establish that obscuring a portion of its approved yellow/green safety vests unacceptably diminishes their safety function.

20 I credit Respondent's contention that the vests'/harnesses' yellow/green color provides a safety factor especially during daylight hours. I note that safety vests and traffic warning signs, which are meant to be easily seen in daytime and nighttime, are similar in color to the background of Respondent's approved vest/harness. Based upon the pictures of the various types of vests and Respondent witness testimony, I find that Avery's black/gray background vest, even with reflective stripes, does not provide the daylight visibility that the yellow/green safety vests and harnesses do. Therefore, I find Respondent had a legitimate safety reason for prohibiting employees from
25 wearing black/gray background vests instead of the approved vests/harnesses even considering its delay in enforcing its policy.

30 Respondent also contends that the logos of any size on its approved yellow/green vest would unacceptably diminish its visibility and cause distractions. In comparison to the safety harnesses that Respondent allows, the Union steward vest, even discounting the areas covered by the logos and print, contains significantly more space of yellow/green color on all sides of the safety vest than the approved safety harnesses. Therefore, I do not find that a logo or concerted messaging of the proportions on the Union steward safety vests justified its prohibition on safety grounds.

35 Respondent contends that the logo and writing is distracting to drivers, but the record contains no evidence supporting this contention beyond a generalized belief. Common experience shows that drivers are accustomed to seeing writing on signs and vehicles. Contrary to this claim, Avery was issued a safety vest with wording on it by UPS when she worked at the airport. Also, the harnesses allow for much more of an employee's shirt to be visible. Non-drivers do not wear uniforms and could wear shirts with writing, patterns, etc. that would be visible under a safety
40 harness. I find that the record does not establish that the Union steward vest or other union logos or concerted messages covering limited portions of the safety vest unsatisfactorily diminishes its function of enhancing the visibility.

Based upon the circumstances, I do not find that Respondent established that it has a legitimate safety justification for prohibiting all union logos or concerted messages on its safety vests¹¹ regardless of the size and placement of the logos and/or writing. Accordingly, I find that Respondent's "8 Rules of Yard Control" policy requiring the wearing of only approved harnesses or unaltered approved safety vests in noncustomer areas such as the Atlanta hub and yard violates Section 8(a)(1) of the Act.

Uniform Standards Policy for Drivers

Finally, Respondent asserts that it has a heightened need to present professional drivers in clean uniforms because its face-to-face interactions with customers are primarily through its drivers at the customers' places of business and residences. I find that Respondent has a legitimate business interest in its drivers wearing clean, neat, and easily recognizable uniforms when entering customers' business or approaching their homes and that the drivers are the face of the company. Thus, the question is whether that business interest outweighs employees' right to wear union logos and associated print or concerted messages on the approved style safety vests.

The approved vest obscures most of the required uniform shirt, but the rest of the signature brown uniform is visible. Most employees removed their vests after entering the hub. The record is unclear as to how many drivers choose to wear a safety vest while delivering packages.

Avery testified that she had worn the black/gray background vest with the Union logo and lettering on it for months while she was present at the hub and delivering packages. During this period, she also wore it to the beginning of the shift meetings without any reprimand or redirection by management. Respondent presented no evidence of customer complaints about Avery's or any other driver's appearance due to wearing a vest regardless of the style or any wording or logos on it. Instead, it was a change in management at the hub, not customer concerns about the vest, that caused stricter enforcement of the uniform policy and the limits placed upon Avery wearing the vest she purchased and later the Union steward vest. Respondent's lax enforcement of the uniform policy before the change in management at the Atlanta hub without any incident does not support the argument that strict enforcement of the rule is necessary to maintain customer favor.

To enforce the uniform standard, managers check whether drivers are in uniform during their beginning-of-shift meetings. Respondent contends that if it allows drivers to wear vests with logos while entering and working in the facility, there is no practical way to police whether they continue to wear them on their routes. Respondent does not require drivers to wear safety vests on their routes. Respondent is aware, and the record reflects many drivers remove their vests and apparently store them somewhere before making deliveries. Similarly, Avery wore the Union steward vest for several months while at the facility, but she changed into a company approved vest when delivering. I find no legitimate business reason for prohibiting drivers from wearing union insignia and concerted messages other than the Union issued logo pin or a steward button on safety vests in and around Respondent's facility, regardless of the size, design, color, location of the logo and/or words displayed.

¹¹ As discussed, the harnesses display only strips of the bright yellow/green color. The parties did not specifically take positions on whether union insignia should be allowed on the safety harnesses. Because safety harnesses contain significantly less area of the yellow/green color, I confine my decision to the safety vests noting that a different outcome may be warranted if the safety harness was at issue.

The question of whether drivers should be allowed to wear the vests while making deliveries requires more consideration. The Board has ruled that employers cannot prohibit the wearing of all union pins or logos by customer facing, uniformed employees in certain circumstances. In *Nordstrom, Inc.*, 264 NLRB 698 (1982), the Board adopted the administrative law judge's finding that the wearing of a small unintrusive union button by a customer facing retail salesperson would not unreasonably interfere with the employer's operation when balanced against the right to wear union insignia. See also, *In-N-Out Burger, Inc.*, 365 NLRB 471, 471 n. 2 (2017), *enfd.* 894 F.3d 707 (5th Cir. 2018), *cert. denied*, 139 S. Ct. 1259 (2019) (finding rule prohibiting uniformed customer facing employees from wearing unions pin unlawful). Here, Respondent is asserting a generalized speculation about the effects of union insignia on its approved safety vests. The Board has found such speculation or subjective belief about a potential negative effect insufficient to rebut the presumption that restrictions on the wearing of some forms of union insignia or protected concerted messages violates the Act. See *Danbury HCC*, 360 NLRB 937, 938 fn. 5 (2014); *W San Diego*, 348 NLRB 372, 373-374 & n. 9, 380-381 (2006).

Respondent contends that in comparison to the employers like those in *Nordstrom*, *In-N-Out Burgers*, and *Tesla*, Respondent has a heightened concern for its employees to portray a neat and professional image because they are entering customers' property and the drivers are often the company's sole contact with customers. While I find some merit to this contention, the standard of review requires employers' rules to be narrowly tailored to balance their legitimate business needs with employees' Section 7 rights. Here, Respondent allows employees, including drivers, to wear the Union issued logo pin or a steward button. The record contains no evidence that these items or Avery's wearing of the black/gray background safety vest with the Union's logo and lettering caused any disruption in Respondent's business. Therefore, I find insufficient evidence that employees' wearing union insignia adversely affected Respondent's business to an extent that justifies a ban on all such insignia when weighed against employees' statutory rights. See, *Medco Health Solutions of Las Vegas, Inc.*, 364 NLRB 1687, 1690 (2016); *Tesla, Inc.*, 371 NLRB No. 131, slip op. at 6 (2022), *enf. denied*, 86 F.4th 640 (5th Cir. 2023)

Accordingly, I find that Respondent failed to prove a legitimate business justification for its uniform standard policy's prohibition on wearing any union insignia and/or concerted messaging other than the Union logo pin and union steward button on its approved safety vests, regardless of where the vests are worn and the size, design, color, location, or logos and/or words displayed that outweighs employee's Section 7 right to do so. Therefore, I find that UPS's maintenance of its overly broad uniform standards policy violates Section 8(a)(1) of the Act.

CONCLUSION OF LAW

1. The Respondent United Parcel Service, Inc. is an employer within the meaning of Section 2(2), (6), and (7) of the Act.
2. The International Brotherhood of Teamsters, Local 728 ("Union") is a labor organization within the meaning of Section 2(5) of the Act.
3. The Respondent violated Section 8(a)(1) of the Act by maintaining and enforcing overly broad work rules, specifically its "8 Rules of Yard Control" policy and Uniform Standards policy, which prohibited employees from wearing union insignia or concerted messaging on approved safety vests, restricted employees' Section 7 rights.

4. The unfair labor practices committed by the Respondent affect commerce within the meaning of Section 2(6) and (7) of the Act.

5

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I shall order it to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

10

The Respondent shall post an appropriate informational notice, as described in the attached appendix. This notice, on a form provided by the Regional Director for Region 10, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, the Respondent shall distribute the notice electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by Respondent to ensure that the notice is not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed its facility, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at the facility at any time since October 1, 2023.

20

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended¹²

25

ORDER

30

The Respondent, United Parcel Service, Inc., Atlanta, Georgia, its officers, agents, successors, and assigns, shall

1. Cease and desist from

35

Maintaining overly broad work rules, specifically its "8 Rules of Yard Control" policy and Uniform Standards policy, which prohibits employees from wearing union insignia or concerted messaging on approved safety vests, restricted employees' Section 7 rights.

40

In any like or related manner, interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

Rescind the "8 Rules of Yard Control" policy and the Uniform Standards policy.

¹²If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes due under the terms of this Order.

Furnish employees with inserts for the current employee handbooks and postings that contain the “8 Rules of Yard Control” policy and Uniform Standards policy (1) advise that the unlawful policies have been rescinded, or (2) provide lawfully worded policies on adhesive backing that will cover the unlawful policies; or publish and distribute to employees revised employee handbooks and postings that (1) do not contain the unlawful policies, or (2) provide lawfully worded policies.

Within 14 days after service by the Region, post at its Atlanta, Georgia facility copies of the attached notice marked “Appendix.”¹³ Copies of the notice, on forms provided by the Regional Director for Region 10, after being signed by the Respondent’s authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since October 1, 2023.

Within 21 days after service by the Region, file with the Regional Director for Region 10 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

Dated, Washington, D.C. October 5, 2026



Kimberly Sorg-Graves
U.S. Administrative Law Judge

¹³ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading “Posted by Order of the National Labor Relations Board” shall read “Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.”

APPENDIX

NOTICE TO EMPLOYEES
Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO:

Form, join, or assist a union;
Choose a representative to bargain with us on your behalf;
Act together with other employees for your benefit and protection;
Choose not to engage in any of these protected activities.

WE WILL NOT maintain an overly broad work rule that unlawfully limits your rights to wear union logos and/or other concerted wording on company approved safety vests.

WE WILL NOT in any like or related manner, interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL rescind the unlawful "8 Rules of Yard Control" policy and Uniform Standards policy.

WE WILL furnish you with an insert for the current employee publications that (1) advise(s) that the unlawful "8 Rules of Yard Control" policy and the Uniform Standards policy has been rescinded, or (2) provide lawfully worded policies on adhesive backing that will cover the unlawful policies; or WE WILL publish and distribute revised employee publications and postings that (1) do not contain the unlawful policies, or (2) provide lawfully worded policies.

UNITED PARCEL SERVICE, INC.

(Employer)

Dated: _____ By: _____
(Representative) (Title)

*The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation, and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website. www.nlr.gov
401 W. Peachtree Street, N.W., Suite 2201, Atlanta, GA 30308*

(404) 331-2896, Hours: 8:00 a.m. to 4:30 p.m.

The Administrative Law Judge's decision can be found at www.nlr.gov/case/10-CA-338971 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001, or by calling (202) 273-1940.



THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE
THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE
OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY
OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE
WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S
COMPLIANCE OFFICER, (470) 343-7498.