

77 FLRR 2-1874

**American Federation of Government
Employees, Local 2369 and Department of
Health, Education and Welfare, Social
Security Administration, Newark, NJ**

LAIRS 10776

January 11, 1977

Judge / Administrative Officer

Arbitrator: Daniel House (Deceased)

Related Index Numbers

37.024 Discipline, Corrective

37.069 Discipline, Just Cause

37.112 Discipline, Reprimand

37.117 Discipline, Severity

37.130 Discipline, Suspension

37.143 Discipline, Violation of Law or Regulation

55.027 Improper Personal Conduct, Dress Code

58.012 Insubordination, Discipline

58.018 Insubordination, Failure to Obey Orders

109.005 Suspensions, Basis

Case Summary

There was no just cause to remove the grievant from his position at the agency; just cause did, however, exist for a ten-day suspension. Between 09/03/75, when the grievant began working at the office involved and 11/28/75, the grievant refused to obey his supervisor's order to wear a necktie. During this time, a dispute concerning the agency's authority to require male employees to wear neckties was pending before an arbitrator. The grievant's consistent refusal to wear a necktie was met with progressively severe disciplinary actions - an oral admonishment, a letter of reprimand, a ten-day suspension and finally, removal from the Service. The grievant argued that his refusal to obey the supervisor's order was justified because it was an illegal order that discriminated against men. The agency claimed that the grievant's suspension was actually based on his continuous insubordination, which was a more significant issue

than the refusal to wear a necktie. The arbitrator rejected the grievant's argument that the order was not properly grounded in supervisory authority. "If it were held that during the pendency of resolution. . .of a dispute about a rule or regulation. . . supervisors are without authority to enforce that rule or regulation. . .then the mere filing of a grievance. . .would serve as an injunction against the enforcement of what might. . .be a proper rule." The grievant's refusal to obey the proper order did not fall within the exceptions to the general rule of obey now, grieve later. Only when an order would expose the employee to abnormal hazards or involve the commission of an illegal act would disobedience be justified. Neither of these factors was involved, and it was not shown that serious or irreparable damage would have resulted if the grievant had obeyed the order and then filed a grievance. The agency, however, misused the corrective discipline system by applying progressively severe discipline on the grievant after it became apparent that he would not change or correct his behavior. The agency failed to help the grievant correct his behavior, and the arbitrator was not convinced that the grievant was incorrigible to the extent that removal would be justified. The 10-day suspension, was however, justified in light of the grievant's actions in giving an unapproved television interview in the office during working hours.