

MODESTO DRESS CODE FOR PROMOTION GRIEVANCE PRESENTATION

HOWARD EGERMAN

On March 18, 2009 AFGE Local 3172 filed a Section 10 grievance on behalf of employees in the Modesto District

The Local had learned that on February 19, 2009 at a staff meeting the Assistant District Manager Bob Harrington said the following as reported by employees whose name(s) AFGE Local 3172 will not disclose.

“Even though we don’t have a dress code, we expect you to dress in an acceptable fashion which would be consistent with other businesses in the area.”

He then went on to say that wearing jeans and tennis shoes is not considered business attire.

He also said “If you want to be considered for promotion in this office, you might want to consider dressing appropriately, if any of you have aspirations of going further in your career.”

To AFGE Local 3172 this seemed to be an ongoing and continuing violation of the contract and for this reason the grievance was filed.

GRIEVANCE COMPONENTS

As was noted in the grievance itself, AFGE Local 3172 is concerned about the impact of employees per se. As we asked in our information request what people wear at work can be related to their ethnicity as well as their religion among other factors covered in Article 3. We noted as well that some people may be afflicted with color blindness or indeed have a disability such as visual impairment which could impact the type of clothing that they may wear. Furthermore, the issue of income at a time when the nation is at major economic downturn is important to point out with respect to this provision.

Article 16 deals with training and career development. In filing this grievance, AFGE Local 3172 was greatly concerned about the issue of

promotions and clothing as articulated by ADM Harrington in that an employee's clothing selections could affect a person's career in the Modesto District and for that reason as well Article 19 Upward Mobility was cited.

AFGE Local 3172 was concerned as well in filing this grievance with the nature of the comments and the way the agency handles its promotional policies. Our Local's review of job applications, indicates that promotional opportunities normally deal with issues such as experience, job knowledge, time in grade, KSA's and not necessarily what one wears on one's back, shoulders, feet, knees, ankles and all other body parts. AFGE Local 3172 in filing this grievance was concerned about the nature of an employee and an employee's ability to do a job not what an employee wears.

The Local too was concerned about the way in which ADM Harrington's comments impacted individuals in both their careers and their job futures. Our Local's rationale for this is that an individual attains retirement eligibility under FERS or CRS based upon a person's high 3 years of service and an individual receiving a promotion would often by definition be able to receive a higher salary. The inability to get a promotion as a result of wearing jeans or tennis shoes could impact a person's entire future.

In addition, the Local in filing this grievance was concerned about the issue of promotions globally as well as locally. The employees who contacted Local 3172 indicated that they would have to bear a different type of burden in order to be promoted within the Modesto District than employees in other parts of Northern and Central California as well as Northern Nevada in that they would have to pass a clothing approval test while employees elsewhere in other Districts both in Cal Central, Region 9 and the rest of the country would not have to bear.

In other words wanting to be promoted in Modesto meant that employees would be treated differently than employees elsewhere having to be evaluated first on what they did not wear—they could not wear jeans or tennis shoes and then having to wear clothing similar to the clothing worn in other businesses and establishments in the Modesto area if they wished to attain a promotion.

Equality and equity in all actions is one of the things that AFGE Local 3172 strives for. The Local as well as AFGE nationally values employee's period. They are concerned about employees and their career development and their

ability to do a job and not their wardrobe should be responsible for promotional opportunities within the agency.

ANNUAL PERSONNEL REMINDERS

The only place AFGE and management apparently can find a reference to dress for employees is in the Annual Personnel Reminders.

AFGE wishes to make one thing clear, SSA management during the negotiations that led to the 2005 National Agreement proposed a dress code for employees and then withdrew the proposal with prejudice.

The section 1.6 Conduct On and Off the Job has a section entitled “Dressing Appropriately” This section states “You are expected to observe standards of dress and appearance that are:

Acceptable in similar work in the community; and
Suitable to the work environment

SSA will not prescribe what you may wear unless:

Your mode of dress presents a safety hazard to you or others

Your mode of dress disrupts employees or the public from doing official business

You are required to wear a uniform or safety equipment.

FOLLOWING THESE REMINDERS

In his address to employees, Mr. Harrington referred to types of appropriate dress. He did not list any businesses that he went to.

When AFGE inquired in terms of enforcing these reminders we were not aware of any instance in which wearing jeans or tennis shoes in the Modesto District office posed a safety hazard to employees or others.

We were not aware of any disruption throughout incident alerts to the public or other employees as a result of employees wearing jeans or tennis shoes.

We are not aware of employees having to wear a uniform or safety equipment.

In terms of appropriate to the community clothing, AFGE Local 3172 went to the World Wide Web. At www.ci.modesto.ca.us/about/ the Local learned that Modesto “offers the diversity and facilities of a metropolitan city but still maintains an atmosphere of old fashioned hospitality and small town charm.” Such comments make it appear that wearing jeans and tennis shoes would be appropriate clothing in Modesto California.

Furthermore, the web goes on to say that Modesto is located in the heart of one of the greatest agricultural areas of our nation—the San Joaquin Valley. Dairy products, almonds, apricots, melons, tomatoes, wine grapes, peaches, walnuts and poultry products are some of our top commodities.”

This AFGE Rep is a graduate of UC Davis which has an agricultural college. This Rep has visited Modesto numerous times as well. This rep has the understanding that wearing jeans and tennis shoes are appropriate items of clothing for an agricultural city such as Modesto.

In addition, another section of the Web notes that Modesto was named Tree City USA.

It clearly appears to AFGE that wearing jeans and tennis shoes would be more appropriate for this community than wearing a three piece suit, wing tipped shoes, dresses, skirts and blouses, high heels or spiked heel shoes. It is hard to imagine someone in business attire climbing a tree, pruning it, or dealing with crops such as almonds, apricots, melons, tomatoes, peaches, walnuts, poultry products or other agricultural pursuits.

This rep recalls while at UC Davis at this time of the year when UC Davis celebrates its regular open house called Picnic Day that there would be cow milking contests between both the Student Body Presidents and the Chancellors of the schools. The participants when milking cows did not wear suits and ties and in the case of females dresses and skirts and as I recall wing tipped shoes and/or high heels and spike heels were not worn either.

It further appears to this Rep and AFGE that members of the public in Modesto would not feel that the employee who wears jeans and/or tennis

shoes would not be an appropriate person to take their SSI or SSA applications and that the members of the public would not have a lower view of the agency for having such employees be clothed in such a manner.

The lack of a survey showing a contrary view or a view in accordance with the doctrine expressed by Mr. Harrington in his employee meeting as a result of such a survey makes AFGE conclude that jeans and tennis shoes would be appropriate wear in Modesto and would be in compliance with the Annual Personnel Reminders.

MODESTO VISITOR AND CONVENTION BUREAU

For appropriateness I also looked at www.visitmodesto.com and found that Modesto is the city of water, wealth contentment and health. Again it notes that Modesto is in the “heart of one of the greatest agricultural areas in our nation, the fertile San Joaquin Valley.” And dairy products, nuts, fruits, wine grapes and poultry products are some of their top commodities.

Again as someone who is a graduate of UC Davis in terms of dairy, I am aware of numerous cow milking contests between the student presidents of Berkeley and Davis and I assume that their attire is similar to others in dairy who wore jeans. I do not think that milking a cow lends itself to wearing a three piece suit or a skirt, dress and high heels.

The article also notes that Modesto is the birthplace of George Lucas and inspired his classic film American Graffiti which also did not feature 3 piece suits and other so-called business attire.

DRESS CODE FOR STUDENTS

In an effort to learn more about appropriateness of clothing I looked into dress codes for Modesto students. While there is different appropriate dress for school dances, graduation activities and other special events that are communicated to parents, the regular standards are instructive.

These standards are different than those communicated by ADM Harrington.

They say that prohibited are shorts, skirts, pants and tops that fail to conceal undergarments, back, abdomen and cleavage and

Back-less or strap less tops

Low cut tops and dresses

Bare-midriff tops

Chains of any sort, wallet or utility type chains

See Through or fishnet fabrics that fail to conceal undergarments.

Nothing is said about jeans.

In terms of foot wear, all it says is that shoes shall be worn at all times.

Prohibited are steel-toed boots and bedroom slippers. Nothing is said about tennis shoes.

Clearly, in terms of community standards, the standards of Modesto do not prohibit the wearing of jeans and/or tennis shoes. AFGE strongly believes that if students can wear jeans and tennis shoes then their parents should as well.

MODESTO CLIMATE

Another factor that needs to be considered in this matter is the climate of the area. I have checked the web for a monthly climate summary for Modesto from the period 3/1/1906 to 12/31/2008 and found that the average maximum temperature in the city is 74.6 degrees and average minimum 48.3.

Employee clothing selections AFGE wishes to note can be impacted by climate

CLAIMANT COMFORT ZONE

The material I examined on the issue of appropriateness made it seem clear to me that individuals in a community such as Modesto which is agricultural

and plays a major role in our state's economy may actually feel more comfortable in dealing with an employee wearing jeans and tennis shoes rather than an individual wearing a three piece suit and wing tipped shoes or a dress and skirt and blouse and high heels.

INFORMATION REQUESTS

In order to get a handle on the Harrington dress code proclamation made in the staff meeting a number of information requests were made.

In information request 1 we asked for copies of all Modesto District, Cal Central, Region 9 and National policies, memoranda, instructions, procedures and all other written material that ADM Harrington relied upon when he made his comments to the employees along with copies of all data, studies and surveys that he used in order to determine what type of acceptable fashions were worn by employees businesses when he made his declaration.

The material we received indicated that the Annual Personnel Reminders was the document used. There was nothing else said about surveys or visits to any business etc.

As such, it seems obvious to AFGE that wearing jeans and tennis shoes should not be factors disqualifying an individual from consideration for promotions.

We also asked for guidance about issues dealing with individuals whose religion requires them to wear various types of clothing such as head coverings or individuals whose disabilities may require the wearing of certain clothing as well. We also asked for guidance on individual who have special needs in terms of height and weight. AFGE's concern was with the fact that such individuals are accommodated by the agency with furniture including chairs that can accommodate an individual's weight and size and AFGE feels strongly that there should be similar provisions for individuals whose clothing selections could be impacted by their size, or weight.

We were told that were no such guidance. Clearly, again there should be no prohibitions about individuals whose religion or disability or height and weight impact their clothing choices in their promotional opportunities and

again the wearing of jeans and tennis shoes should not be considered as disqualifying apparel for promotion seekers and apparel consumers.

AFGE also asked if there were designated clothing outlets or pictures, charts or guides of appropriate clothing that people needed to wear to get promoted.

We were told that were none? Again, we believe as such that wearing jeans and tennis shoes should not be considered taboo clothing that prevented people from being promoted.

We also asked for copies of OSHA Log 300s and other safety data showing the number of injuries suffered by employees as a result of injuries from wearing jeans, tennis shoes, suits, dress coats, slacks and ties, dresses, skirts and blouses, pant suits and other clothing.

We received a response dealing with particularized need and the need for more information. However, this rep is the national AFGE health and safety rep and gets national data. He is not aware of any injury or illness caused by wearing jeans and/or tennis shoes or other clothing.

In addition, AFGE asked about copies of all Modesto District, Cal Central, Region 9 and National Policy Instructions concerning the panel interview process and the role in which clothing is used in making determinations, whether employees had to watch Project Runway, scoring sheet for wearing various clothing apparel.

The response we received informed AFGE that AFGE could do audits of promotions and we also asked about the criteria or training that individuals who made promotional decisions had achieved in terms of clothing knowledge and we were told that were no information about this matter.

Clearly, again to AFGE it is obvious that the wearing of clothing should not impact promotional decisions.

In item we asked for copies of all Modesto, Cal Central, Region 9 and National policies and procedures as well as pictures of web sites on the intranet that reference career development discussing the role of clothing selections in the promotion processes and we mentioned such items as

Career Doctor, Extreme Makeover Career Edition, and USA Jobs among other issues.

We were told that no such policies or material exists. Again, clearly employees seeking promotion should be able to wear jeans and/or tennis shoes.

For 8 we asked about outer and inner garments as well as brand names of garments employees were to wear as well as union companies and/or sweatshop goods.

We were told that no such data existed.

We in item 9 asked for employee related questions for Modesto promotional panels including such questions as

1. Have you ever owned a pair of jeans or tennis shoes?
2. If yes, are such products in your closet or home?
3. If yes, when do you wear such products, to work on weekends, evenings?
4. What are the brands of products?

We also asked about home clothing inspections.

We were told again that there were no such policies or procedures.

Clearly, again it appears to AFGE that wearing jeans or tennis shoes should not be considered factors disqualifying a person from being promoted.

Number 10 dealt with copies of all Modesto, Cal Central, Region 9 policies and procedures about wearing jeans and/or tennis shoes on overtime and we were told that there was no such information existing.

In Number 11 we asked for copies of all policies and procedures at all levels if there were inspections during training classes as well as a table of penalties for clothing infractions and whether or not there were clothing amnesty days.

We were told that there were no such records.

Number 12 deals with copies of all policies, procedures and instructions at all levels about the concept of casual Fridays. We were told that there were no such records.

Number 13 dealt with request for copies of all training materials, videos, instructions and manuals from the Modesto District, Cal Central ADO, Region 9 and SSA Nationally setting forth the agency's training program on fashion including color selection, designers and other materials.

We were told that no such records exist.

For number 14 AFGE asked if there were instructions at all levels regarding the type of assistance employees desiring promotion could receive in order to obtain and wear the type of business type attire needed to either to participate in an Individual Development Plan or be promoted.

AFGE was told that there were no such materials.

Number 15 dealt with the type of clothing evaluations people who were promoted would receive and information was requested at all levels. AFGE was informed that there were no such materials.

Number 16 dealt with studies related to the type of attire that is acceptable and suitable to the work environment. AFGE was told that there were none.

Again clearly it appears there really is no prohibition anywhere about wearing jeans and/or tennis shoes or anything saying that wearing such attire is a reason for disqualifying an individual for promotional consideration.

Item 17 again dealt with safety problems as a result of wearing such apparel and again there were no records.

In making these information requests, AFGE sought to note that the prohibition of wearing such clothing as discussed by Mr. Harrington in his staff meeting is not something based upon hard evidence that he derived from anything other than perhaps his own viewpoint.

Nothing was found anywhere stating that wearing jeans and/or tennis shoes should prevent an individual from being promoted in Modesto, California or elsewhere.

AFGE strongly believes that so-called designer clothing, the type listed in some of the information request items is simply put labels, similar to the type of labels an individual may have such as a religion, nationality, sex, age, handicapping condition.

It remains AFGE's contention that people seeking services from the Social Security Administration, simply want service period and wants their questions answered, their claims taken or their post entitlement actions processed.

The agency does not put a label designer or otherwise on the individual doing the work. A person, for instance who calls the 800 number seeking assistance cannot tell from the person answering the phone if that individual can see or not or can hear or not, or most often what race, color, age, creed the person is, and most assuredly what that person is wearing.

A person who comes into a field office wants her or his business taken care of. That individual is concerned about how long it takes to be seen, not if the individual is wearing jeans or tennis shoes or some label like Armani or Gloria Vanderbilt or Ralph Lauren.

The field offices that AFGE represents vary just as the country varies and has diversity just as the country has diversity. Modesto may be different than the financial district of San Francisco for instance. But the thing that should matter most in AFGE's view, a view that our union hopes, management shares is with the quality of service the individual provides, not the type of clothing the individual is wearing.

Again, labels are labels. While in the recent film, *THE DEVIL WORE PRADA* the Stanley Tucci character tells the Anne Hathaway character as does another co-worker about the type of clothing that should be worn in order to deal with boss Meryl Streep, a Social Security field office such as in the Modesto California District is simply put another animal and it must be seen that Modesto is a community clearly different than New York City which is seen as one of the world's fashion capitals.

So, it is hoped that what Mr. Harrington said should be seen as what it should be seen a personal opinion that should not translate into decision making over promotions.

While it may be asked why should AFGE spend so much time on such an issue, the answer to us is quite clear, employees who heard his comments were deeply and profoundly disturbed and upset?

As people trained in merit system principles of the civil service system, it was their view that a person's worth and value to an organization or agency such as Social Security should be based upon what the person has done and the projection about what the person may be able to do in a future job or role.

Ability to do a job and not ability to wear a certain type of apparel or attire should be the primary reason an individual is selected for promotion or even considered.

People were simply alarmed and outraged that the comments Mr. Harrington made left the impression that a superficial view of an individual's appearance rather than a substantive evaluation of a person's prior performance and/or prospective performance could be what would determine an individual's future in Modesto.

Substance, pure and simple is what AFGE wishes to argue for in making this presentation. Substance and not simply outward appearance or clothing choices is what should lead to an individual's future.

If outward appearance were the sole criterion used in selecting individuals for promotion, one might find that Abraham Lincoln considered being perhaps the greatest President (top federal worker) in history would not have been selected for promotion.

The writer Richard N. Current noted that Lincoln "the external man was made for caricature." But as Current goes on to say in the same vein as AFGE does, substance and not outward appearance must be paramount. He continues "But there was more, far more to Lincoln's appearance than all this. He cannot fairly be depicted by a mere catalogue of his peculiarities."

There are in the many books written about top federal worker Lincoln many comments made about his appearance comparing him to such animals as monkeys and baboons to name a few. It is also interesting to point out that in terms of his outward appearance Lincoln's beard as well assisted him in

terms of getting to Washington during the dangerous time in which he was President.

However, at a time when our country's future was at stake, Lincoln did prevail. He was able to in terms of his promotion to the top federal office graduate and not drop out of the Electoral College as a result of his appearance and his clothing. He saved the Union and our Nation's history as a result of the substance of his acts, not his outward appearance.

Substance, not outward appearance is what made Lincoln a giant of history and substance not mere outward appearance in terms of clothing choices and selections is in AFGE's view is what should be considered in making promotional decisions (decisions that AFGE hopes when it audits packages will not occur simply because a person did not or did wear jeans and/or tennis shoes but due to one's ability.

SUSAN BOYLE

Susan Boyle a person from England adds to the nature of AFGE's concerns in dealing with the dress code issue. This woman who has a very famous video on You Tube appeared on the Television Show "Britain's Got Talent."

In appearance she seemed to be "dowdy" and then she opened her mouth and the clips on television of Simon Cowell of American Idol standing with his mouth open is very famous as she begins to sing the song "I Dreamed a Dream".

One of the judges, Amanda Holden said, "I mean, it's a very shallow thing to say but, obviously, the minute she walked onstage we all, and the audience completely judged her on her appearance and everything else. And I hate saying that. But you know, that true cliché, we judged a book by its cover, unfortunately, and we're all very cynical. The audience was jeering and booing and it was must really uncomfortable, wasn't it."

Clearly, the attention Ms. Boyle has received makes it clear that substance, rather than outward appearance is important here.

A number of years ago this Rep made a presentation at a national conference on workers compensation. At the time of the conference, he noted the role

of substance and the image people have of individuals who are on workers compensation or disability as being people who did not want to work.

One of the ways in which this message was conveyed was by quoting a song that the folk trio Peter, Paul and Mary used in a concert televised by PBS and what appears on a CD called Peter, Paul and Mommy II.

The song is called Inside and is written by Paul and a person whose last name is Hill. The chorus refers to the issue of outward appearance and substance, the same concept that AFGE wishes to emphasize in this grievance.

The song begins by mentioning items of outward appearance such as pies and books. But the chorus notes the importance of looking inside for substance.

“Inside, Inside, that’s the most important part.

Inside, Inside that’s the place to start.

Inside, Inside, that’s where you’ll find the heart of the matter.”

And those words symbolize why AFGE Local 3172 filed this section 10 grievance.

AFGE believes that an individual’s inner qualities, a person’s abilities, a person’s knowledge, a person’s commitment to serve the public should be factors used in making promotion decisions.

A person’s clothing choices should not be the rationale for her or his selection to promotion but rather the substance of the individual, not her or his outward appearance.

RELIEF:

AFGE Local 3172 looks forward to a message from ADM Bob Harrington rescinding his comments and telling employees of the District that promotional opportunities for them will be similar to those for employees throughout Region 9 and the United States based on the individual’s substance and not based upon a person’s clothing.

Whether or not an individual wears jeans or tennis shoes will not be the factor which determines whether or not an individual will be selected for promotion or not.

Ability, substance, not outside appearance will lead to agency success.

And we would hope that while Modesto may not have an Abraham Lincoln amidst its male promotional applicants and while its female promotional applicants may not be able to carry a tune or move people as Susan Boyle has, that the District will recognize that the place to look for promotional candidates is one place.

INSIDE.

WE look forward to receiving our relief shortly.