

81 FLRR 2-1465

**American Federation of Government  
Employees, NY-NJ Council of District  
Office Locals and Department of Health,  
Education and Welfare, Social Security  
Administration, Utica, NY**

LAIRS 13476; 81-2 ARB 8409; 77 LA 195

**July 8, 1981**

**Judge / Administrative Officer**

**Arbitrator: Felician F. Foltman (Deceased)**

**Related Index Numbers**

**55.027 Improper Personal Conduct, Dress Code**

**78.019 Work Rules, Conflict With Contract**

**78.099 Work Rules, Mode of Dress**

**Case Summary**

THE EMPLOYER HAD ACCEPTED IN NEGOTIATIONS LIMITATIONS ON ITS RIGHT TO PRESCRIBE EMPLOYEE DRESS.

The employer had accepted in negotiations limitations on its right to prescribe employee dress. The labor agreement stated: "Employees will wear appropriate attire which is in good taste. Extreme styles would not be in good taste." Grievant protested management's attempts to discourage him from wearing a windbreaker with a union logo while working with clients in the field. The arbitrator ruled that management could not unilaterally impose its version of appropriate attire. He further found that a windbreaker was appropriate attire and that the right to wear union logos had been well established in other arbitration awards. No detriment to the image of the agency was proven. The grievance was sustained.

**Full Text**

**BACKGROUND**

The essential facts giving rise to the grievance are not in dispute, although perceptions of the precipitating incident do differ. Basically, the problem relates to attire worn by a field representative of the Social Security Administration, during working hours.

On May 15, 1980 the grievant filed a grievance with the Assistant District Manager of the Utica office of the Social Security Administration in which it was claimed that Article VI, Section 16 of the General Agreement had been violated by the assistant district manager and which requested relief in the following phrase, "I want you to refrain from interfering with Evan's right to wear appropriate attire which is in good taste."

Approximately two weeks earlier ("Early May", according to the testimony) the grievant's immediate supervisor, the Assistant District Manager, discussed attire with the grievant. This conversation covered the wearing of coats and ties he engaged in field work and, more specifically, reviewed the propriety of wearing a windbreaker to which is affixed a union logo. This discussion was informal and informative the grievant was asked to "think about" appropriate attire.

On the afternoon of May 15, 1980, the grievant while working in his office received a telephone call requiring him to go out of the office to meet with a client. As he was leaving the office wearing a windbreaker with the union logo, he was met by his supervisor and asked, "Where do you think you're going"? Dress was discussed but no specific orders concerning grievant's attire were issued on this occasion. Grievant thereupon left the office wearing the aforementioned windbreaker. Following this incident the present grievance was filed.

**THE ISSUE**

The parties did not agree on a specific stipulation of the issue. The Union version of the issue reads, "Does Evan Ballard have the right to determine his own working attire under the standards outlined in Article VI, Section 16, of the General Agreement and, if so, did local office management violate that right?" The Employer suggested the following two versions: "Does Management have the right to determine working attire under the standards of Article VI, Section 16, of the general agreement?" or the following, "Did Management violate Article VI, Section 16 of the General Agreement by informing

Evan Ballard that he was inappropriately dressed?". Since the parties could not agree on how the issue was to be framed they specifically authorized the arbitrator to determine the issue and to issue his award.

In this situation the Arbitrator looked to the General Agreement for illumination as to the scope or limits of arbitration. Article XXXIV, Section 7, of the General Agreement does not define the limits of jurisdiction except to say that if the Employer and the Union fail to settle any grievance such matters "shall be submitted to arbitration". As a next step the Arbitrator turned to the original grievance. As stated in a letter from Peter Hayes, President of AFGE/SSA Local 3343, to Ronald Rutkowski, Assistant District Manager of the Utica Office of the Social Security Administration, date of May 15, 1980, the grievance read: "I wish to initiate a first step grievance on behalf of Evan Ballard for your violation of Article VI, Section 16, of the General Agreement. As relief for this grievance, I want you to refrain from interfering with Evan's right to wear appropriate attire which is in good taste". For the purpose of this arbitration the original grievance adequately defines the issue.

#### RELEVANT CONTRACT PROVISIONS

1) ARTICLE VI, Employee Rights, Section 16. Employees will wear appropriate attire which is in good taste. Extreme styles would not be in good taste.

2) ARTICLE IV9 Rights and Responsibilities of Management. Section 1. Management officials of the agency retain the right, in accordance with applicable laws and regulations:

- a. to direct employees of the agency;
- b. to hire, promote, transfer, assign, and retain employees in positions within the agency, and to suspend, demote, discharge, or take other disciplinary action against employees;
- c. to relieve employees from duties because of lack of work or for other legitimate reasons;
- d. to maintain the efficiency of the Government operations, entrusted to them;

e. to determine the methods, means, and personnel by which such operations are to be conducted:

and

f. to take whatever actions may be necessary to carry out the mission of the agency in situations of emergency.

#### CONTENTIONS OF THE UNION

The Union supports its contention that the grievant has the right to determine his own working attire under the standards outlined in Article VI, Section 16 of the General Agreement with the following principal arguments and interpretations.

1) Field representatives are professionals who have the responsibility to exercise independent judgement as to how best to perform their services. Since they operate in many parts of the local community without immediate or direct supervision it is incumbent that they be able to adapt to a variety of circumstances and conditions by dint of personal knowledge, experience and judgement. The fact that the grievant had an exemplary work performance record attests to his performance capabilities, which by definition incorporate sound decisions of judgement.

2) Two arbitration awards have been rendered within the Social Security Administration on the matter of dress within recent years. The first, #74K/15267, 9/3/74 written by Mr. Oren Root, and the second #10771, 11/26/75 written by Mr. Sidney Wolff. Both of these awards clarify and extend the employee right to choose appropriate working attire. The Root award states that under Article V. Section 11 of the Agreement (which in the present agreement and in the instant case is Article VI, Section 16) "the employees have the right to determine their own style of dress based on individual-assessments of what is "appropriate attire which is in good taste." If management determines that clothing being worn by an employee is an "extreme style" or otherwise not "in good taste", management can exercise the rights given to it by other provisions of the Agreement or by

law." Effectively, employees have the right to choose their dress, management in turn, if it feels that employees choose dress that is unsuitable can discipline under the agreement and, if necessary obtain a final and binding ruling from an arbitrator.

The Wolff award strongly confirmed the employee's right to decide what is appropriate attire with management free to exercise its rights as stated in the Root award. Specifically, Wolff ruled that a non-supervisory employee in a Social Security office could not be required to wear a tie during duty hours, that such an order violated Section 11, Article V of the contract. Although the Wolff opinion was aimed at employees who Work inside and not field representatives (the outside workers) there is no reason not to apply the Wolff logic or standards to the present grievance. As paraphrased by the Union in the post hearing brief the Wolff opinion was suggesting the following standards, posed as questions:

1) Does the wearing or the non-wearing of one or more articles of clothing have an adverse impact upon the work performance of his/her co-workers?

2) Does the wearing or the non-wearing of one or more articles of clothing have an adverse effect upon those members of the public contacted by the employee?

3) Does the wearing or the non-wearing of one or more articles of clothing serve any legitimate interest of the employee or the community served?

According to the Union no persuasive evidence was produced by the Employer that these standards were violated, that wearing the windbreaker with a union 1090 had adverse consequences on co-workers, the public, or job performance.

With regard to wearing a windbreaker with union insignia, members of public employee unions, just as their private sector counterparts, have a constitutional right to freedom of speech. To this end the Union introduced eight exhibits where the NLRB or an arbitrator defended the right of free expression modified only by the needs Of employers to function effectively and safely. Not unimportant in this

connection is the fact that the Grievant had been wearing the windbreaker with the union logo for some fifteen months before being advised that it was unsuitable attire.

4) What is and what is not appropriate attire is changing constantly as the attitudes and values of society change. Union witnesses from local public agencies which have some relationship to Social Security testified that dress styles are changing and that the Grievant was appropriately dressed. On the other hands the union contends that Employer surveys concerning appropriate dress cannot be considered to be conclusive because respondents were not truly representative of the total local community.

5) The Grievant has an excellent work record. Since his performance has been judged to be more than acceptable it follows that his work has not been adversely affected by the attire that he chose as he went about the performance of his tasks.

6) The Employer bears the burden of proof to support a contention that the wearing of a windbreaker had an adverse effect on efficiency, the image or the mission of the agency. Unsupported opinions or employer preferences are no substitute for specific proof. No proof was offered by Employers other than what they believe to be suitable or appropriate.

7) Clearly, there are no unambiguous dress standards in existence at this time.

8) The claim that past practices or administrative guidelines constitute the proper basis for directives on dress cannot be supported because the collective bargaining process is the higher authority. More specifically, the collective bargaining agreement and arbitration awards can and do modify or override administrative guidelines.

As remedy the Union wants the Employer to refrain from interfering with the Grievant's right to choose and to wear attire that is suitable according to the collective bargaining agreement and the interpretations of that agreement contained in the two cited arbitration awards.

#### CONTENTIONS OF THE EMPLOYER

The employer argues that it was within its rights in advising the Grievant that a coat and tie were appropriate dress for field work, that the wearing of a windbreaker with a union logo on it was inappropriate and that evidence and logic support this stance. In summary, the Employer makes the following points.

1) The collective bargaining agreement as interpreted by arbitrators qualifies the employee's right to establish his own grooming standards if that individual works primarily in the field. In the Wolff award it was pointed out that outside contacts and public relations make employee appearance a critical factor. The image of the Social Security Administration is tied to how field representatives present themselves. To prevent management from determining what is in good taste and what will affect its public image is to prevent it from its right and duty to manage. If employees have the absolute right to determine attire, management loses a vital part of its authority. Short of terminating, suspending, or admonishing, "all of which are extreme", according to the Employer post hearing brief, there is no legitimate authority to enforce an order about dress.

2) The dress standard was clear and consistently enforced. Long established, that is, past practice, validate and reinforce the fact that field representatives wear coat and tie when engaged in official duties outside their office. Testimony from management witnesses (Ruggiero and Schaffer) indicate that coat and tie is and has been, the norm. These long established practices have inculcated an expectation on the part of the local community that the appropriate attire for a field representative is coat and tie.

The dress standard is reasonably related to a business need of the Social Security Administration. Public confidence and public cooperation must be earned by providing good services and by maintaining a good, that is trustworthy or credible, image. This is particularly important for the Social Security Administration which lacks subpoena power to obtain employment records when processing social security

claims. Management should have the right to determine what its public image should be. Moreover, to argue that it is necessary or useful to dress down when providing field services to the poor is simply not true.

4) The dress standard was adequately communicated to all employees affected. What dress was appropriate for field employees has been communicated by word and deed over the years. Although the supervisor felt that he could not tell the Grievant how to dress, he could and did make it clear that the windbreaker was not acceptable. Not unimportant also, is the fact that the other field representative (there were two employed as field representatives at the time, with Grievant one of the two) embraced the dress standards and so testified as a union witness.

5) The standard of dress is reasonably attuned to contemporary mores and attitudes towards dress and grooming. In a survey of Utica business firms conducted by the Utica SSA manager, it was almost unanimously the opinion of these respondents that the standard of dress was jackets, shirts and ties. The community is entitled to have public representatives who respect this standard. Deviations from this dress standard, as they might be practiced in a state hospital, a storefront community organization, or in other communities such as Brockton, Mass., or Washington D.C., are simply not relevant.

6) The Union effort to assert that the Grievant had a protected right to wear the windbreaker with the union logo while performing official duties cannot be given great credence because the cases cited were chiefly from the private sector. Since Federal employees are covered by the Civil Service Reform Act and by Presidential Executive Orders, cases and evidence from the private sector simply do not apply. Furthermore, where it has been ruled that employees have a right to wear union insignia, these should be "small, neat, inconspicuous and non-provocative". In the instant case the logo on the windbreaker worn by the Grievant was four or five inches in diameter, not really inconspicuous. In any event, even the union

logo itself is a false issue since the windbreaker without a logo would also be inappropriate.

#### DISCUSSION AND OPINION

The central issue here is the interpretation of the collective bargaining agreement regarding employee rights on attire as modified, if at all, by two prior arbitrations referring to attire.

No one could disagree with my conclusion that the present contract language in question is somewhat vague and ambiguous. The pertinent phrases are "appropriate attire", "good taste" and "extreme styles". Take the word extreme, for example. As defined in Webster's Unabridged Dictionary, it carries the following meanings: "at the utmost point, last, final, immoderate, exceeding reasonable limits, utmost limit that is supposable or tolerable, undue departure from the mean". It does not mean moderate or ordinary.

Take the phrase "appropriate attire" or "good taste". All of these words and phrases need careful interpretation. All, obviously can be interpreted differently by well meaning and intelligent persons. These phrases will continue to need interpretation unless excised or supplemented with criteria and examples to reduce some of the existing ambiguity. Constantly changing cultural standards continue to send new signals so that yesterday's extreme is today the mean. Illustrations of this point with specific reference to attire can be found in the office, in the classroom, on the street and in the world of work. In my judgement a windbreaker, with or without a union logo is not extreme style or inappropriate dress to be worn during the performance of many, if not most of the duties of a field representative. On this point Union testimony clearly concedes that a windbreaker might be inappropriate when appearing on a T.V. show, for example, or when addressing a luncheon group or on similar occasions when a staid conservative image needs to be projected. But these are exceptions, not the rule.

As to the claimed management right to determine appropriate attire, I conclude that this was

given up in negotiations which produced Article VI, Section 16. Remaining doubt on this score was removed by the two arbitration decisions reviewed above. Employees decide on appropriate attire which is in good taste and not extreme. Management can express preferences, but it cannot unilaterally impose on employees its version of appropriate attire. The options available to the Employer are: 1) attempt to negotiate new contract language regarding dress, 2) discipline employees for wearing tasteless, inappropriate or extreme style dress, with the probability that such disciplinary action will ultimately be resolved in arbitration, and 3) attempt to educate employees to accept its attire standards. There remains a gray area which needs clarification, namely, the management rights relating to clearly extreme or inappropriate attire. Assuming, for instance, that an employee decides to wear a costume complete with mask as if he were en route to a masked ball, is the only available recourse for management to attempt to discipline, with the employee continuing to wear the costume until the grievance has been processed? To permit this is to induce anarchy in the workplace. Some attire is inappropriate and should be promptly declared to be out of bounds. However, in the instant case the windbreaker in question is not "extreme style" and is in good taste. To repeat, in my opinion, employees, including field representatives, have the right to select their attire subject to the criteria of Article VI, Section 16.

Concerning the right to wear union insignia the evidence from both the public and private sectors is that such right is well established.

Field representatives are considered to be professionals in the sense that a professional has acquired knowledge and expertise, works with minimum supervision or independently and necessarily exercises judgement as to what to do and how to do it. Testimony from both parties indicated that a held representative meets these criteria of professionalism. The job description which was entered into the record refers to the public relations

and other areas of responsibility requiring wide latitude and discretion. By definition professionals must have wide discretion to use their expertise and judgement. In this instance the fact that the Grievant was indeed an excellent field representative was not contested. This despite the fact that he had been wearing a windbreaker from time to time in the course of performing field work for a period of about fifteen months. In his professional judgement his attire was not extreme. More important, the record does not show that the wearing of the windbreaker affected his ability to perform well his many field duties.

Management allegations that field representative attire affects efficiency and image are simply assertions. Little weight can be attached to data from a survey of employers which was not conducted according to established criteria and procedures for such studies. A case might be made that dress relates to public mage and public image, in turn, relates to organizational efficiency and effectiveness. But there is no persuasive evidence in this record to support such a hypothesis. Also unproven is the Employer claim that Utica is a very conservative community where the wearing of a windbreaker would affect organizational effectiveness.

Past practices in regard to dress have little or no bearing on the present situation, particularly in light of contract language and the two arbitration awards. The Union is correct in stating that the collective bargaining process has modified and will continue to modify what public employers can and cannot do. Indeed, even the rather modest changes of the Civil Service Reform Act support this general conclusion.

Management contentions that dress standard was clear, consistently enforced and adequately communicated to all, are not really germane to the issue. The Grievant is not being disciplined for a violation of dress rules where the above criteria could be pertinent. He is insisting on his right per agreement to determine and to wear appropriate attire. If management wishes to enforce a dress standard it will have to exercise its right to discipline under the

contract. As noted above, such procedure will continue delegate to arbitrators to decide what is "appropriate", "in good taste", and/or "extreme".

#### CONCLUSION

For all the reasons specified above I find that the Grievant does have a right to determine and to wear appropriate attire which is in good taste. Further, I find that the Grievant did correctly determine that wearing a windbreaker with a union logo was well within his rights and within dress standards, in his judgement.

The grievance is sustained.