

86 FLRR 2-1700

**American Federation of Government  
Employees, Local 3231 and Department of  
Health and Human Services, Social  
Security Administration, New Kensington,  
PA**

LAIRS 16970; 85 LA 1008; 1147 GERR 63

**November 11, 1985**

**Judge / Administrative Officer**

**Arbitrator: J. Scott Tharp**

**Related Index Numbers**

**78.099 Work Rules, Mode of Dress**

**120.010 Union Insignia, Union Labels**

**130.003 Duty to Bargain, Contract Interpretation**

**Case Summary**

AN AGENCY OFFICIAL IMPROPERLY REFUSED TO MEET WITH A UNION REPRESENTATIVE CONCERNING A GRIEVANCE WHERE THE UNION REPRESENTATIVE WAS WEARING A SHIRT WITH A PRO-UNION LOGO.

An agency official improperly refused to meet with a union representative concerning a grievance where the union representative was wearing a shirt with a pro-union logo. Grievant, while acting as a union representative for another employee's grievance, appeared at a meeting with a bright green shirt emblazoned with the letters "I'M PROUD TO BE UNION." The agency official refused to meet with grievant while he wore the shirt and grievant refused to remove it. The arbitrator found, after reviewing the parties' agreement, that a dress code did not exist for private meetings between union representatives and employee representatives concerning grievance matters. Therefore, the arbitrator sustained the grievance. However, because the arbitrator believed that grievant provoked a confrontation which could have been avoided, his claim for travel expenses to the meeting was denied.

**Full Text**

**Background**

Grievant Thomas Wachter is employed by the Social Security Administration as a claims representative in its New Kensington, Pennsylvania, office. Grievant is also a union representative and spends a considerable amount of his time representing employees in grievance matters.

On October 9, 1984, Jill Hastings, an employee in the McKeesport, Pennsylvania, office, who is also an active union representative, was suspended for three days. She immediately filed a grievance and designated grievant as her representative in the matter.

Grievant and George R. Riley, district manager of the McKeesport office, the employer's representative, agreed to meet at 11:00 a.m. on October 15, 1984, at the McKeesport office to discuss the grievance.

Grievant drove from New Kensington to McKeesport, and arrived at approximately 9:15 a.m. to discuss the matter with Ms. Hastings and to prepare for his meeting with Mr. Riley. Grievant was dressed for the occasion with a shirt, tie, and sport jacket, dress slacks, and dress shoes. In addition, he wore over the shirt and tie, and under his jacket a bright green shirt emblazoned with white letters, "I'M PROUD TO BE UNION."

Because of grievant's attire, Riley refused to meet with him, indicating that he was improperly dressed for the occasion. He agreed to meet with him if he would remove the shirt. Grievant indicated his willingness to meet in Riley's office, which was semi-private, or in a multi-purpose room, which was away from the view of the general public. Riley declined to meet with him at all while he wore the green shirt.

Grievant then filed a grievance which is the subject matter of this arbitration, parts of which have since been resolved. The grievance now seeks an order requiring the agency to cease and desist from refusing to meet with the union, and further requesting travel expenses of 52 miles at 20.5 per

mile for grievant's trip to the meeting that was never held. These matters not being resolved, this case was heard by the undersigned arbitrator on September 12, 1985, in Pittsburgh, Pennsylvania.

#### Issue

Did the employer violate the National Agreement between the parties by not meeting with grievant in his representative capacity on October 15, 1984?

#### Employer's Position

The employer contends that grievant was inappropriately dressed and that its refusal to meet was justified.

#### Union's Position

The union contends that the employer was required to meet with the union representative, regardless of his attire.

#### Pertinent Contractual Provisions

##### Article 1, Section 2 - Past Practices

It is agreed and understood that any prior benefits and practices and understandings which were in effect on the effective date of this agreement at any level (national, council, regional and local), and which are not specifically covered by this agreement and do not detract from it shall not be changed except in accordance with 5 USC 71.

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##### Article 5, Supplemental Agreements

##### Section 2 - Review of Preexisting Agreements

All provisions of labor agreements currently in effect that are not superseded by, in conflict with or compromised during bargaining of this Master Agreement will automatically be incorporated into the appropriate Supplemental Agreement.

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##### Article 23

##### Disciplinary and Adverse Actions

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##### Section 5 - Short-Term Suspensions

A. An employee against whom a suspension for 14 days or less is proposed is entitled to:

1. An advance written notice stating the specific reasons for the proposed action;
2. A reasonable time to answer orally and in writing and to furnish affidavits and other documentary evidence in support of the answer; and
3. Be represented.

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##### Article 24

##### Grievance Procedure

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##### Section 4 - Representation

A. Bargaining unit employee(s), filing a grievance under this procedure, may represent themselves or be represented only by a designee of the Union.

B. Upon filing of a grievance, whether an employee is self-represented or represented by a designee of the Union, the Union has the right to be present during the grievance proceeding.

C. Where the grievant elects union representation, meeting and communications with regard to the grievance attempts at resolution shall be made through the designated union representative.

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##### Section 9 - Procedures for Employee Grievances

##### Step 1

A grievance must be submitted in writing, preferably, on the standard grievance form provided by the Administration, and presented to the Step 1 management official (designated in the Grievance Steps Chart below) who will meet with the representative and/or the grievant. Within ten (10) working days after receipt of the grievance, the Step 1 official will issue a decision in writing either granting, partially granting or denying the relief sought. The grievance may be appealed to the Step 2 official within five (5) working days after receipt of the Step 1 decision. The Step 1 Official will forward the

grievance material to the Step 2 official as indicated by the grievant's election to proceed to the next step.

\* \* \*

#### Decision

It is undisputed that the contract requires the employer to meet with the union representative in grievance matters. The employer does not contend that this requirement does not exist, but claims that the requirement is not absolute, e.g., if the representative is not properly dressed.

Employer refers to an earlier National Agreement, dated February 5, 1974, which contained the following provisions:

"The Employer and the Union recognize that today style and fashion change rapidly. Therefore, employees shall not be required to wear any particular mode of dress other than what is acceptable in the business community. No employee shall be required to purchase or wear any uniform. No standard other than cleanliness and neatness shall be imposed as to hair styles, beards, sideburns, or mustaches."

The employer argues that this requirement still exists because of past practice, and cites Article 1, Section 2 as authority for the continuance of this practice. One of the union witnesses testified that in contract negotiations for the current contract, the employer attempted to get a dress code in the contract (which matter is now in arbitration), but subsequently withdrew this demand. The union therefore argues that the matter has now been compromised, and that under Article 5, Section 2, no dress code requirement now exists by past practice or otherwise.

No sufficient evidence of a continuing past practice was introduced by the employer. That no agreed upon standard of dress exists is bolstered by two letters between Rose M. Lepore, Regional Commissioner of the Social Security Administration, and Kris Kramer, President of Local 3231. Mrs. Lepore's letter of July 10 complains about the manner of dress of the union representatives, with a particular complaint about the wearing of T-shirts and jeans. However, Mrs. Lepore does state in her letter, "While

this region does not have a standardize dress code, it is an accepted practice that employees look presentable by adhering to the accepted mode of dress of the business community." She further stated that, "In the future any union official who arrives at a district office for a meeting with management who is dressed inappropriately will be denied access to interviewing areas and/or other work areas where the public is located." Mrs. Kramer's response of August 13 denied that management had the right to control the dress of union representatives.

Based upon a review of the evidence and the National Agreement, it is the opinion of the arbitrator that a dress code, as such, does not exist for private meetings between union representatives and employer representatives concerning grievance matters.

This is not to say that the parties involved are not required to wear appropriate dress, governed by the bounds of good taste, judgment, and reason. Because this grievance involves the very narrow issue of proper dress for a meeting between union and management representatives, no attempt is made to determine proper dress for employees in their daily contact with the general public. A bright green shirt with a union slogan may well not be proper attire for an employee meeting the public, but that issue is not before the arbitrator.

This case involves a meeting between an experienced union representative and an experienced management representative, both of whom had participated in countless similar meetings in the past. Riley is obviously not a union supporter, and grievant is likewise a staunch union adherent. Neither is likely to be taken advantage of by the other in a face to face confrontation.

Had it been required that the meeting take place in an open room where the general public was being served by Social Security representatives, Riley perhaps would have had some justification for his refusal to meet with the grievant. However, grievant indicated his willingness to meet in Riley's office, which was at least semi-private, or in another room which is completely closed to the general public.

Riley's refusal -to meet in either of these locations was completely arbitrary on his part and violated the contract. While he may have been irritated aching a shirt with a union label, he had no legal justification for refusing to meet. His feelings toward the union were not going to be changed by a union shirt, and on the other hand, grievant's wearing of the shirt should not affect a civil discussion between the parties involved. While Riley's actions may be understandable, they were not justified in this instance.

Even the district manager of the downtown Pittsburgh Social Security office, called as a management witness, indicated that he probably would have met with the grievant, in a location favorable to the organization.

Therefore, it is the opinion of the arbitrator that the attire of the grievant in this case, with shirt, tie, jacket, dress slacks, and dress shoes, with the addition of a green shirt with union label under the sport jacket, while controversial, is appropriate for the type of meeting involved, where the public is not participating or observing.

While it is not necessary for the arbitrator to discuss the matter further, as a personal aside, it seems appropriate to observe that either of the two principals involved could have avoided this grievance. Grievant justified his apparel on the day in question by indicating that he wanted the union to be visible to the employees at the McKeesport office. It is difficult to believe that with Ms. Hastings being employed at the McKeesport office, and with Riley's testimony that he had been involved in approximately 120 grievances in the last three and one-half years at McKeesport, the McKeesport employees could have any doubt that their union was alive and well. Obviously, grievant had been at the McKeesport office many times, and was familiar to the employees there. No need is apparent for his wearing the shirt to let his presence be known at that office. It is the arbitrator's opinion that grievant wore the shirt for the primary purpose of irritating and agitating Riley, and was successful in so doing.

On the other hand, a veteran management representative such as Riley needed only to disregard grievant's apparel and conduct the meeting. He would not be influenced by the shirt, and if he had simply participated in the meeting at a private or semi-private location, the issue of proper attire would not have occurred.

It appears to the arbitrator that more vital issues than this should be occupying the time of both the union and the management representatives. Perhaps an earnest effort by both parties to avoid such confrontations would reap some benefits. To expend the time and expense of arbitrating matters of this import will surely erode public confidence in both labor and management. It is the hope of the arbitrator that the parties will seek ways to find new areas of agreement, rather than seeking confrontations.

Having expounded thusly, it is the opinion of the arbitrator that the grievance must be sustained, and the employer is ordered to meet with union representatives in this case and cases involving attire reasonably similar to the one involved in this grievance. However, because of grievant's anxiety to provoke a confrontation, which could have been voided, the claim for travel expense is denied.