

United States of America

BEFORE THE FEDERAL SERVICE IMPASSES PANEL

In the Matter of

DEPARTMENT OF HOMELAND SECURITY
U.S. CITIZENSHIP AND
IMMIGRATION SERVICES
DISTRICT 3
NEW YORK, NEW YORK

and

LOCAL 1917, AMERICAN FEDERATION OF
GOVERNMENT EMPLOYEES, AFL-CIO

Case No. 08 FSIP 34

DECISION AND ORDER

The Department of Homeland Security, U.S. Citizenship and Immigration Services, District 3, New York, New York (Employer or USCIS) filed a request for assistance with the Federal Service Impasses Panel (Panel) to consider a negotiation impasse under the Federal Service Labor-Management Relations Statute (Statute), 5 U.S.C. § 7119, between it and Local 1917, American Federation of Government Employees, AFL-CIO (Union or AFGE).

Following an investigation of the request for assistance, the Panel determined that the dispute, concerning the implementation of a casual dress day policy in District 3, should be resolved through an informal conference with Panel Member Grace Flores-Hughes. The parties were informed that if a complete settlement was not reached during the informal conference, Member Flores-Hughes would notify the Panel of the status of the dispute, including the parties' final offers and her recommendations for resolving the impasse. After considering this information, the Panel would take whatever action it deems appropriate, which may include the issuance of a binding decision.

Pursuant to the Panel's procedural determination, the parties' representatives met with Member Flores-Hughes on May 23, 2008, at the District 3 Regional Office in New York, New York. While the possibility of a voluntary resolution was

explored, a settlement was not reached. The Panel has now considered the entire record, including the parties' pre-conference and post-conference submissions.

BACKGROUND

The Employer's primary mission is to administer immigration and naturalization adjudicatory functions and to establish immigration services, policies, and priorities. The Union represents approximately 430 bargaining-unit employees who work as clerical and support staff, Adjudication Officers and uniformed Immigration Information Officers. The casual dress day policy would affect clerical staff, support staff and Adjudication Officers. The parties' Master Collective Bargaining Agreement (MCBA) expired in 2003; they are still following its terms, however, until a successor MCBA has been negotiated. The parties also have a Local Supplemental Agreement (LSA) that runs concurrent with the MCBA.

ISSUE

Essentially, the parties disagree over what the dress standards should be for casual dress day in District 3.^{1/}

POSITIONS OF THE PARTIES

1. The Employer's Position

The following is the Employer's proposal for casual dress day:

This policy supersedes Article 25(A) of the August 30, 2000, Local Supplemental Agreement between AFGE Local 1917 and New York District. This policy will remain in effect for two years, unless superseded by subsequent negotiations or agreements (*i.e.*, national or local). If this policy is not superseded within two years of its effective date, at the beginning of the 3rd year, management and the union will review the policy for any adjustment.

The specific conditions of the policy follow:

^{1/} USCIS District 3 has two primary locations: New York, New York, and Garden City, New Jersey.

- Friday is designated as a casual dress day for all offices within the New York District.
- Management may designate an additional day(s) for casual dress day. In addition, the Director or a manager may suspend any casual dress day due to operational needs (e.g., visits from USCIS senior leadership or from representatives of other agencies and organizations and performing interviews).
- Casual dress attire must conform to acceptable business standards.

Acceptable clothing includes:

- For men, slacks and shirt with a collar,
- For women, slacks or skirts, with a blouse or sweater,
- For women, tops or dresses with bare shoulders may be worn, however, a blouse, shirt, jacket or sweater must be worn over it,
- Casual shirts, dress shirts, sweaters, golf-type shirts, and turtlenecks.

Inappropriate clothing includes:

- Denim,
 - Shorts, tee shirts, athletic wear, beachwear, tank tops, midriff tops, shirts with writings or slogans, halter tops, [and] sweatshirts, []
 - Revealing, low cut or see-through clothing, and
 - Footwear, such as athletic shoes, sneakers, house slippers, flip-flops, beach footwear.
- Supervisors are responsible to comply with this

dress code as well and are responsible to ensure subordinate employees adhere to this dress policy.

The proposal specifically identifies appropriate and inappropriate dress for the designated Friday casual day. Sneakers and denim should be included on the list of inappropriate clothing because dress practices in District 3 on Fridays have "deteriorated substantially." In this regard, USCIS District 3 "has a unique mission that is devoted to upholding public trust and maintaining the public's confidence that decisions . . . are made by those with the highest professional standards." Moreover, USCIS's recent "surge initiative" to establish partnerships with community residents and groups will substantially increase contact with the public, even on Fridays when there may be no interviews conducted. The dress code policy, therefore, "is designed primarily to maintain the professional appearance of members within the office, and thereby foster an atmosphere of professionalism and competence within the office and among the many other people with whom office employees interact." Its proposal also is consistent with the MCBA and LSA, which require that casual dress attire conform to generally accepted business standards. Finally, the Employer disputes the Union's contention that prohibiting denim and sneakers would adversely affect productivity or morale. Wholesale movement of files or movement to other work units is the exception, as employees during non-interview days perform duties that are sedentary in nature.

2. The Union's Position

The Union proposes "[t]hat on any day when there is no calendar (interviews) the dress down policy will take effect." It also agrees that the following items would be prohibited dress wear:

1. The wearing of hats within any government building in the jurisdiction of the New York District unless they are worn for medical or religious reasons.
2. Shorts and [skorts].
3. Shirts that contain slogans, images or advertisements - the exception to this rule being those items displaying DHS/CIS (or other DHS agency and/or manufacturing branding).

4. Gym clothes, such as spandex, seat pants, etc.
5. Pants containing tears, rips, shaggy hems, stains, etc.
6. Revealing or suggestive or see-through items.
7. House slippers/flip flops (such as might be worn in the shower or at a beach).
8. Bare feet.

In addition, employees would be responsible for complying with the dress code policy, cooperating with inquiring supervisors/managers if questioned regarding compliance with the dress code policy, and expressing any concerns regarding another's compliance with the dress code to his/her supervisor. Supervisors would be responsible for complying with the dress code policy, ensuring that subordinate employees adhere to the dress code policy, and contacting other supervisors/managers expressing their concerns when he/she observes any employee not in compliance with the policy. Finally, the Union "acknowledges that management reserves the right to ask employees to dress in business attire when appropriate due to Service needs."

Its proposal would maintain District 3's past practice permitting employees who are not interviewing, meeting, or conducting business with the public to wear denim and sneakers. The past practice is consistent with a majority of the agencies that are co-located with USCIS who allow the wearing of sneakers and/or denim on designated casual dress days. In addition, the Employer has failed to provide any examples showing that Friday dress has "deteriorated substantially," or given any legitimate business reason to eliminate this established practice. Moreover, the practice creates a more relaxed and comfortable atmosphere that improves employee morale and productivity by recognizing the workplace has become less formal in its standards of dress. The need for comfort has become more important as technological advances often require employees to sit for long periods at computers. Contrary to the Employer's contention, employees regularly carry stacks of case files or boxes of files from various locations to their offices, workstations, or cubicles. These employees work in areas that are not easily visible and the general public is not allowed into these areas without permission.

CONCLUSIONS

After carefully considering the evidence and arguments presented by the parties, we conclude that the Employer has not demonstrated the need to change the current practice permitting employees who are not interviewing, meeting, or conducting business with the public to wear denim and sneakers on Fridays. Currently, most interviews with the public occur Mondays through Thursdays. While the projected increase in customers visiting District 3 during the fiscal year may require interviews on Fridays, we are persuaded that the Union's acknowledgment that managers may ask employees to dress in business attire when appropriate is sufficient to meet the Employer's needs. Accordingly, we shall order the parties to adopt the Union's proposal to resolve the dispute, modified to specify that Friday is the designated casual day for all offices in District 3.^{2/}

ORDER

Pursuant to the authority vested in it by the Federal Service Labor-Management Relations Statute, 5 U.S.C. § 7119, and because of the failure of the parties to resolve their dispute during the course of proceedings instituted under the Panel's regulations, 5 C.F.R. § 2471.6(a)(2), the Federal Service Impasses Panel under § 2471.11(a) of its regulations hereby orders the following:

The parties shall adopt the Union's proposal, with the exception of the first sentence, which will be replaced by the following wording: "Friday is designated as a casual dress day for all offices within District 3."

By direction of the Panel.

H. Joseph Schimansky
Executive Director

July 3, 2008
Washington, D.C.

^{2/} The modification is necessary because the record indicates that, in a letter dated April 17, 2007, the Union already has agreed to designate Friday as the casual dress day.