



FEDERAL LABOR RELATIONS AUTHORITY
Office of Administrative Law Judges
WASHINGTON, D.C.

OALJ 15-28

DEPARTMENT OF HOMELAND SECURITY
U.S. CUSTOMS AND BORDER PROTECTION
WASHINGTON, D.C.
(SAVANNAH, GEORGIA)

RESPONDENT

Case No. AT-CA-13-0180

AND

NATIONAL TREASURY EMPLOYEES UNION

CHARGING PARTY

Brent S. Hudspeth
For the General Counsel

Currita C. Waddy
For the Respondent

Jonathan S. Levine
For the Charging Party

Before: CHARLES R. CENTER
Chief Administrative Law Judge

DECISION

STATEMENT OF THE CASE

This case arose under the Federal Service Labor-Management Relations Statute (Statute), 5 U.S.C. §§ 7101-7135 and the Rules and Regulations of the Federal Labor Relations Authority (Authority), part 2423.

On January 8, 2013, the National Treasury Employees Union (Charging Party/Union/NTEU), filed an unfair labor practice (ULP) charge against the Department of Homeland Security, U.S. Customs and Border Protection, Washington, D.C. (Savannah, Georgia), (Respondent/Agency). On April 23, 2013, the Charging Party amended the charge against the Respondent. After conducting an investigation, the Regional Director of the FLRA's Atlanta Region issued a complaint and notice of hearing on June 3, 2013, alleging

that the Respondent violated § 7116(a)(1) and (5) of the Statute when it unilaterally changed the dress code for the NTEU Chapter 150 President when she was on official time without providing the Union with notice and an opportunity to bargain. The Complaint also alleged the Respondent committed a separate violation of § 7116(a)(1) of the Statute by prohibiting the NTEU Chapter 150 President from wearing NTEU or pro-union shirts. Lastly, the Complaint alleged that the Respondent violated § 7116(a)(2) of the Statute by prohibiting the NTEU Chapter 150 President from wearing clothing with union logos on them while permitting other employees to wear clothing with logos on them.

A hearing in this matter was conducted on July 11, 2013, in Savannah, Georgia. All parties were represented and afforded an opportunity to be heard, to introduce evidence, and to examine witnesses. During the hearing, the General Counsel withdrew its allegation that Respondent violated § 7116(a)(2) of the Statute.

In making this decision I have fully considered the post-hearing briefs filed by the General Counsel, Charging Party and Respondent. Based on the entire record, including my observation of the witnesses and their demeanor, I find that the Respondent unilaterally implemented changes to the dress code for the NTEU President of Chapter 150 without providing notice or bargaining with the Union regarding the change. The Respondent committed a separate violation by allegedly prohibiting the NTEU Chapter 150 President from wearing NTEU and other pro-union clothing. In support of these determinations, I make the following findings of fact, conclusions of law, and recommendations.

FINDINGS OF FACT

The Respondent is an agency under § 7103(a)(3) of the Statute. G.C. Ex. 1(e). The National Treasury Employees Union (NTEU), is a labor organization under § 7103(a)(4) of the Statute and is the exclusive representative of a unit of employees appropriate for collective bargaining at the Respondent's facilities in the Port of Savannah, Georgia. G.C. Ex.1 (e).

In May 2011, the Respondent and the Union entered into their current National Collective Bargaining Agreement ("Agreement"). Tr. 15. Jonathan Levine, Assistant Counsel for Negotiations at NTEU, negotiated the Agreement between the parties. *Id.* Article 26 of the Agreement covers policies and procedures to be used by the Respondent and the Union when engaging in collective bargaining. Jt. Ex. 1. Section 4 of Article 26 specifies that:

The Union, in accordance with law and the terms of this Agreement has the right to initiate bargaining on its own and engage in mid-term bargaining over proposed changes in conditions of employment with the exception of the following areas:

- A. Matters specifically addressed in this Agreement or another negotiated agreement between the parties. . . .

Jt. Ex. 1 at 104-05.

Article 44 of the Agreement addresses the attire and appearance standards for both uniformed and non-uniformed employees. Jt. Ex. 8. Employees in "uniformed" positions are required to wear uniforms as a condition of employment. Tr. 25-26, 41, 65. "Non-uniform" positions include import specialists, attorneys, auditors and employees in those positions that are generally not required to wear uniforms. Tr. 26, 65. Article 30 of the Agreement covers issues associated with union representatives and official time. Jt. Ex. 7. Article 30, Section 14 provides that "[e]mployees are permitted but not required to wear a uniform while on official time." Jt. Ex. 7 at 138.

Nicole Byram is a Customs and Border Protection Officer at the Respondent's Port of Savannah facility. Tr. 34-35. The Customs and Border Protection Officer position is a "uniformed" position. Tr. 25-26, 41, 65. In June 2011, she became President of NTEU Chapter 150. Tr. 35. In October 2011, Byram began using fifty percent of her work day for official time, referred to as "block time." Tr. 35, 70. While on block time, she would normally wear jeans, sneakers, and a t-shirt or sweatshirt. Tr. 36, 71. Byram wore a uniform while she was performing her regular duties. Tr. 36. Managers and supervisors at the Respondent's facility were aware of what Byram was wearing on official time since she regularly interacted with managers and supervisors within the Port warehouse during her block of official time. Tr. 37, 71. At some point after October 2011 and before November 2012, Port Director Lisa Brown commented during a Labor-Management Relations meeting that she wished Byram would dress in a more professional manner. Tr. 53. However, Brown did not order Byram to stop wearing jeans, athletic shoes, sweatshirts or other clothing while she performed her union duties on official time. Tr. 42. Byram continued to wear the same type of clothing after the remark was made. Tr. 42, 72.

In November 2012, Byram was summoned by Brandon Sallis, her supervisor, to a meeting in his office. Tr. 38. Supervisory Import Specialist Eric Buchanan was also present. *Id.* Upon Byram's request, Union Chief Steward John Wilcher also attended the meeting. Tr. 39. Buchanan proceeded to inform Byram that she could no longer wear jeans, athletic shoes, t-shirts or sweatshirts while she was on official time. Tr. 39, 74. Byram and Wilcher responded by asking Buchanan under what authority he was imposing the new rule regarding her attire. Tr. 40. Buchanan replied that he was relying upon Section (3)(C) of Article 44 of the Agreement, which applied to non-uniformed employees. Tr. 40-41, 75. Byram and Wilcher suggested that if Buchanan wanted to change the policy that he should contact Jonathan Levine from NTEU. Tr. 40. Buchanan responded that "he was not looking to negotiate a new policy," he was just informing Byram of what she had to wear now. *Id.*

After Levine was informed of the meeting between Byram and Sallis, he called Donald Stakes, Director of Labor Relations for the Respondent, and reminded him that the parties never negotiated the attire to be worn by NTEU employees while in civilian clothing on official time. Tr. 28-29. Levine asserted that directing Byram not to wear certain clothes was a unilateral change that had to be rescinded. Tr. 29. Levine had the same conversation with Barry Carpenter, a labor relations specialist for the Respondent. *Id.*

Following the November 2012 meeting between Byram and Sallis, Byram wore the CBP uniform while she was on official time although she was told she could also wear business casual clothing. Tr. 42. Byram testified that she wore her uniform instead of business casual while on official time because she worked in a seaport environment where a lot of the work was outdoors. *Id.* Byram explained that the work at the port took place in a rough duty environment involving heavy equipment and manual labor, which was not conducive for business casual dress that could be stained or damaged. Tr. 43. Byram stated that she did not think it would be safe to walk around the port environment in business casual dress shoes. *Id.* Byram also testified that she would have to purchase additional clothing in order to wear business casual attire since she did not own many dress clothes. Tr. 44.

Byram explained that it would be hard for her to wear business casual because she often goes outdoors to see bargaining unit members working on the Port. Tr. 44. Byram testified that it was helpful for her to get out and see bargaining unit members in their work environment. Tr. 57-58. Byram was more able to interact and answer questions from bargaining unit employees by getting out into their work environment. Tr. 58. Byram testified that she did not use the union office for official time because it was located several miles away in an area where no bargaining unit employees were stationed. Tr. 48.

Byram testified that being required to wear her uniform while on official time has impacted her ability to provide effective union representation to employees. Tr. 45-46. She wore union apparel while on her block of official time prior to November 2012, which gave employees a visual indicator that she was on official time. Tr. 46. Byram testified that after she started wearing her uniform, employees have told her they did not come to her for assistance because they were not sure if she was on official time or not. *Id.* Byram also stated that after she began wearing her uniform during her block of official time in November 2012, supervisors would assign her work or transfer phone inquiries while she was on official time because they did not realize she was performing work related to her union position. *Id.*

POSITIONS OF THE PARTIES

General Counsel

The General Counsel argues that the Respondent violated § 7116(a)(1) and (5) by changing the attire standards for Byram without providing the Union with notice and an opportunity to bargain. The General Counsel cites *AFGE, Local 1633*, 64 FLRA 732 (2010) and contends that Byram established a practice of wearing jeans, athletic shoes, and sweatshirts with union logos while on official time for more than a year with the Respondent's full knowledge and acquiescence. The General Counsel asserts the Respondent changed this established practice in November 2012 when it informed Byram that she could no longer wear jeans, athletic shoes, or t-shirts with union logos.

The General Counsel asserts that the impact of the change was more than *de minimis*. It argues that the warehouse where Byram works was a dirty environment in which it was reasonably foreseeable that business casual clothing would likely be ruined and wearing formal footwear would be unsafe. The General Counsel also contends that because Byram

was effectively forced to wear her uniform instead of the attire she previously wore during her blocks of official time, bargaining unit employees were prevented from seeking her assistance for union matters because there was no visual indication that she was on official time.

The General Counsel maintains there is no dispute that the Respondent did not notify the Union prior to implementing the change in dress code and thus did not provide the Union an opportunity to bargain. The General Counsel contends that the Respondent ignored the Union's reminders that the change required negotiations and therefore the Union was denied the opportunity to negotiate the change.

The General Counsel asserts that the Respondent also violated § 7116(a)(1) of the Statute by prohibiting Byram from wearing pro-union shirts and shirts with NTEU logos on them. The General Counsel contends that the Authority has held that wearing union insignias in the workplace is an employee right specifically protected under the Statute. *Army & Air Force Exch. Serv., Fort Drum Exch., Fort Drum, N.Y.*, 41 FLRA 85, 95 (1991).

The General Counsel argues there is no evidence that the Union waived its right to bargain in this case. The General Counsel contends there is nothing approaching a clear and unmistakable waiver by the Union here and further that the Union was not even required to request bargaining because it was not given notice of the change.

Also, the General Counsel maintains that the matter at issue in this case is not covered by the Agreement. The General Counsel notes that Section 3 of Article 44 relied on by the Respondent only applies to non-uniformed employees and thus was not applicable to Byram since she was a uniformed employee. The General Counsel argues that the status of uniformed employees while out of uniform does not transfer them to a non-uniformed position. The Respondent cannot assert that Article 44 is "inseparably bound up" with the change at issue because Article 26, Section 4(a) and (b) of the Agreement states that the Respondent's bargaining obligation was only excused for matters "specifically addressed" in the Agreement or "clear[ly] and unequivocal[ly] waive[d] . . . by the Union." Jt. Ex. 1 at 104-05.

The General Counsel maintains there was no provision in the Agreement that specifically addresses the attire for uniformed union officials who elect to wear something other than a uniform while on official time. There was also no provision that specifically addressed Union officials wearing clothing with union slogans or other wording embodied in the actual clothing. The General Counsel contends again there was no evidence that the Union waived its right to bargain over these matters.

Finally, the General Counsel requests a notice posting on all bulletin boards and electronically at the Respondent's facilities in Savannah. The General Counsel requests a status quo ante remedy for the Respondent's alleged violations and maintains that a status quo ante remedy is appropriate here where the matter was substantively negotiable. *Veterans Admin. W. L.A. Med. Ctr., L.A., Cal.*, 23 FLRA 278 (1986) (VA). The General Counsel argues that the clothing worn by an employee on official time was clearly substantively negotiable. The General Counsel contends that even if the Respondent is only limited to

impact and implementation bargaining, a status quo ante remedy is still warranted applying the *FCI* factors. *Fed. Corr. Inst.*, 8 FLRA 604 (1982). The General Counsel points out that the Respondent did not notify the Union of the change in dress code. The Union requested bargaining after learning of the change. The Respondent ignored the Union's request to bargain and thus acted willfully and intentionally. The General Counsel contends there was a significant impact on Byram and bargaining unit employees. Lastly, the General Counsel asserts that the Respondent did not present any evidence to show that a status quo ante remedy would disrupt the efficiency or effectiveness of the Respondent's operations.

Charging Party

The Charging Party argues that the Respondent was required to negotiate over the substance of its decision to change the dress code applicable to Byram while she was on official time. The Charging Party points to Authority case law to contend that the performance of union representational activities under § 7131(d) of the Statute does not involve the performance of agency work. See *AFGE, Council 214, AFL-CIO*, 31 FLRA 1259, 1261-62, (1988); *U.S. Dep't of Def., Army & Air Force Exch. Serv., Dall., Tex.*, 53 FLRA 20, 23-24 (1997); *NAGE, SEIU, AFL-CIO*, 26 FLRA 515 (1987).

The Charging Party rejects the Respondent's defense that it was not required to bargain in this case because the Charging Party asserts the attire to be worn by union officials while on official time was not specifically addressed in the Agreement. The Charging Party maintains that the language of the Agreement excuses bargaining by the Respondent only over matters "specifically addressed" in the Agreement. The Charging Party argues that the Respondent's position, that it could hold Byram to the attire and appearance standards for non-uniformed employees while performing official time, was refuted by the Respondent's lone witness who stated that a uniformed employee was not transformed into a non-uniformed employee when excused from wearing a uniform.

The Charging Party argues that while Byram is a uniformed employee, her attire and appearance is not governed by Sections 1 and 2 of Article 44 addressing uniformed employees because Article 30, Section 14 of the Agreement specifically permits her to not wear her uniform. The Charging Party asserts therefore that the first prong of the Authority's "covered by" doctrine, whether the matter was "specifically addressed" or "expressly contained" in the Agreement, did not excuse the Respondent's conduct.

The Charging Party also contends that second prong of the Authority's "covered by" analysis does not support the Respondent's position. The Charging Party looks to testimony regarding the bargaining history of Article 26, Section 4 of the Agreement to support its claim that only the first prong of the Authority's "covered by" analysis would apply when evaluating whether the Respondent had a duty to bargain over agency-initiated mid-term changes. Consequently, the parties agreed that the second prong of the Authority's "covered by" test would not apply in evaluating a "covered by" defense by the Respondent. The Charging Party asserts that since the parties never negotiated over the attire standards for union representatives while on official time, the Respondent's "covered by" defense must be rejected.

The Charging Party requests a finding that the Respondent made a unilateral change in Byram's working conditions when it imposed new attire and appearance standards that had a greater than de minimis impact upon her working conditions and those of other bargaining unit employees.

The Charging Party asserts that a status quo ante remedy is appropriate here because the change was substantively negotiable and there were no special circumstances present. *U.S. DOJ, INS, L.A., Cal.*, 59 FLRA 387 (2003). The Charging Party asserts that there is no evidence that the Respondent was motivated by a management right or what management right was involved in regulating the attire of union officials while on official time. The Charging Party argues there is no evidence of special circumstances here that would prevent a status quo ante remedy.

Also, the Charging Party contends that if the change here was found to be made pursuant to a management right, the *FCI* factors would still favor a status quo ante remedy. The Charging Party points out that the change here impacted the working conditions of all bargaining unit employees at the Respondent's facility in Savannah by interfering with their right to union representation and interfered with Byram's right to perform her union representational activities. The change also adversely affected Byram's conditions of employment by requiring her to either damage her civilian business casual attire or accept limitations on her ability to represent the bargaining unit including being assigned agency work while she was on official time. Finally, the Charging Party also requests a notice posting on all bulletin boards at Respondent's facility along with electronic distribution to all bargaining unit employees.

Respondent

The Respondent maintains that the General Counsel has not met its burden of proof that the Respondent violated the Statute. The Respondent asserts that there was no change in working conditions or dress standards for Byram and that it had no duty to bargain an already established term of attire and appearance as set forth in Article 44 of the Agreement. The Respondent argues that it did not change its dress code policy with respect to Byram, and thus, there was no obligation to bargain with the Union over the matter.

The Respondent points out that it is a para-military agency with both uniformed and non-uniformed employees and as expressed in the Employee Standards of Conduct, all employees are expected to be professional and appropriately attired for their workplace, business contacts, and duties.

The Respondent contends that management had expressed its concerns over Byram's attire as early as October 2011. The Respondent states that Byram is assigned to work in an office area and does not physically perform warehouse inspections or other rough duty as part of her regular position. The Respondent points out that Byram admitted the union was provided official space at Ocean Terminal, a few miles away from the Central Examination Station where Byram's office was located. Byram also admitted that she sometimes encountered members of the public while on official time and that there were other non-uniformed employees stationed at her duty location.

The Respondent contends that it was unreasonable for the Union to assert that employees, who elect to not wear their uniforms on official time, should not be treated as non-uniformed employees and thus not subject to Article 44, Section 3 of the Agreement. According to the Respondent, the Union's interpretation of the Agreement suggests that Byram should be permitted to wear whatever inappropriate or offensive attire she deems fit.

The Respondent cites Buchanan's testimony regarding the dress code at the Central Examination Station in Savannah. Buchanan testified that non-uniformed employees in that facility are required to comply with the business casual dress code. Buchanan explained that there is a newly renovated office space within the Central Examination Station warehouse where Byram is assigned. Buchanan stated that the normal attire for non-uniformed employees ranged between business casual to professional business attire. Buchanan also testified that items such as sweatpants, sweatshirts, t-shirts, shirts with slogans, jeans and sneakers, do not meet the business casual standard at Respondent's facility where Byram is assigned. Buchanan asserted that there was no change in working conditions or dress code for Byram. Buchanan contended that all employees were required to maintain a professional appearance consistent with the norms prevailing in the local community and as outlined in the Agreement at Article 44, Section 3. The Respondent cites Buchanan's testimony that there were other uniformed employees that have been permitted to work in civilian attire and they were advised that business casual was the required standard.

ANALYSIS AND CONCLUSIONS

The Respondent Unilaterally Changed the Dress Code For Byram

Prior to implementing a change in conditions of employment, an agency is required by § 7116(a)(5) of the Statute to provide the exclusive representative with notice of the change and an opportunity to bargain over those aspects of the change that are within the duty to bargain, if the change will have more than a de minimis effect on conditions of employment. *U.S. Dep't of the Air Force, AFMC, Space & Missile Sys. Ctr., Detachment 12, Kirtland AFB, N.M.*, 64 FLRA 166, 173 (2009). The Authority has recognized that "parties may establish terms and conditions of employment by practice, or other form of tacit or informal agreement, and that this, like other established terms and conditions of employment, may not be altered by either party in the absence of agreement or impasse following good faith bargaining." *Dep't of the Navy, Naval Underwater Sys. Ctr., Newport Naval Base*, 3 FLRA 413, 414 (1980). In order to establish the existence of a past practice, there must be a showing that the practice has been consistently exercised over a significant period of time and followed by both parties or that the practice has been followed by one party and not challenged by the other. *U.S. Patent & Trademark Office*, 57 FLRA 185, 191 (2001). The Authority has held that attire standards for employees concern conditions of employment. *Dep't of the Navy, Naval Weapons Station Concord, Concord, Cal.*, 33 FLRA 770 (1988).

The record demonstrates that Byram had a past practice of wearing jeans, athletic shoes, sweatshirts, and t-shirts with union logos on them while she was on official time. Byram dressed this way everyday while on official time over a significant period of time from June 2011 to November 2012. *See U.S. DOL, Wash., D.C.*, 38 FLRA 899, 909 (1990) (16 months considered a significant period of time). Further, management officials where Byram was stationed had knowledge of the attire she wore on official time. Tr. 36-37, 71. Respondent's management made no attempt to prohibit Byram from wearing that type of attire during that time period other than the one comment made by the port director during a labor-management relations meeting that she "wished" Byram would dress more professionally. Tr. 53. There was no evidence that the Respondent ordered or directed Byram to cease wearing jeans, athletic shoes, or shirts with logos on them between June 2011 and November 2012. The evidence thus establishes that Byram was allowed to wear jeans, athletic shoes, sweatshirts, and t-shirts with logos for a period sufficient to render it a past practice and that the Respondent changed this practice in November 2012 when it directed Byram to stop wearing the above mentioned articles of clothing.

In assessing whether the effect of a change in conditions of employment is more than de minimis, the Authority looks to the nature and extent of either the effect, or the reasonably foreseeable effect, of the change on bargaining unit employees' conditions of employment. *U.S. Dep't of the Treasury, IRS*, 56 FLRA 906, 913 (2000).

The impact of the change in dress standards upon Byram was more than de minimis. A majority of the bargaining unit employees work on the Port, which is a rough duty environment. Tr. 43-45. Many of the bargaining unit employees work outdoors or in a warehouse inspecting cargo and working with heavy equipment. Tr. 42-44. Byram often meets with bargaining unit employees at their job sites during her block of official time as part of her representational duties. Tr. 56-58. The seaport environment was not conducive to wearing business casual clothing which would likely be damaged in those conditions. Tr. 43. In addition, Byram testified that it would be unsafe to wear business casual footwear in that type of environment. Tr. 43, 58. Byram also testified that she would have to purchase a whole new wardrobe in order to comply with a business casual dress code. Tr. 43-44. Byram was thus forced to wear her uniform while on official time. However, this impacted her ability to carry out her representational duties to the bargaining unit employees. Byram testified that the attire she wore while on official time before November 2012 served as a visual indicator to bargaining unit employees that she was on official time and available to handle their union-related issues. Tr. 45-46. After Byram was ordered to change her attire while she was on official time, there were instances where employees refrained from coming to her about union matters because they did not think she was on official time. Tr. 46-47. Another effect of wearing her uniform on official time was that supervisors and co-workers would inadvertently assign agency work or forward work related calls to Byram because they were unaware she was on official time. Tr. 47. Byram testified that she would honor these requests because failing to do so would reflect poorly on the Union. *Id.* The change in dress effectively forced Byram to choose between wearing business casual clothes, which Byram would have to purchase and would likely get damaged, or wearing her uniform during official time. This change had a negative impact on her and her ability to effectively represent bargaining unit employees.

The Respondent's contention that Byram could have conducted union business in the union office at the Ocean Terminal, instead of on the Port, is unreasonable. There were no bargaining unit employees stationed at the Ocean Terminal and it is located several miles from the Port and other locations where bargaining unit employees are stationed. Tr. 44, 48. It is clear from the record that it would be impracticable and inefficient for Byram and other bargaining unit employees to travel several miles to meet and conduct union business in the official space provided to the Union at the Ocean Terminal.

Considered in sum, the effects of changing the dress requirements imposed upon Byram adversely impacted her and other bargaining unit employees in more than a de minimis level. It is undisputed that the Respondent did not provide notice to the Union of the change in dress code and that the Respondent refused to bargain when requested by the Union.

Having found that the past practice permitted Byram to wear jeans, athletic shoes, t-shirts etc., during her blocks of official time, and that the Respondent unilaterally changed that practice, the Respondent may not argue that the matter was "covered by" the Agreement. An agency may not unilaterally change a condition of employment established through past practice, even if the practice differs from the express terms of the parties' collective bargaining agreement. *See Def. Distrib., Region W., Lathrop, Cal.*, 47 FLRA 1131, 1133-34 (1993). Furthermore, the language of the Agreement does not support the Respondent's assertion that the provisions in the Agreement for attire standards applicable to non-uniformed employees should apply to uniformed employees on official time. There is nothing in Article 44 of the Agreement that even suggests that Section 3 regarding non-uniformed employees is applicable to uniformed employees, such as Byram, who elect to wear something other than a uniform when on official time. The General Counsel and Charging Party also presented extensive evidence that in Article 26 of the Agreement, the Union and Respondent agreed that a bargaining obligation existed on all matters that were not "specifically addressed" in the Agreement. Tr. 17-26; Jt. Exs. 1-6. Thus the parties decided that the second prong of the Authority's "covered by" analysis, whether a matter was "inseparably bound up with" provisions of a contract, would not be used for analyzing the Agreement between the Respondent and Union. The Respondent in this case is therefore precluded from arguing that the issue of attire standards applicable to a uniformed employee on official time is "inseparably bound up" with Article 44 or any other section of the parties' Agreement. In addition, the Respondent's own witness admitted that Byram's status as a uniformed employee did not change while she was on official time. Tr. 98.

Accordingly, I find that the Respondent violated the Statute by making a unilateral change to an established past practice of attire and appearance standards applicable to Byram without providing the Union with notice and an opportunity to bargain.

The Respondent Committed a Separate Violation of § 7116(a)(1)

The General Counsel alleges that the Respondent committed an independent violation of § 7116(a)(1) of the Statute by prohibiting Byram from wearing pro-union shirts and t-shirts with NTEU logos on them. The Authority has found that wearing union insignias in the workplace, in the absence of special circumstances, is an employee right specifically

protected by the Statute. *U.S. Army Support Command, Fort Shafter, Haw.*, 3 FLRA 796 (1980). The right to wear union insignia stems from § 7102 of the Statute, which guarantees to each employee “the right to form, join, or assist any labor organization” and provides that “each employee shall be protected in the exercise of such right. . . .” *U.S. DOJ, INS, U.S. Border Patrol, San Diego Sector, San Diego, Cal.*, 38 FLRA 701, 712 (1990). Byram stated that she regularly wore shirts with an NTEU logo on them while on official time before November 2012. Tr. 38. Byram testified Buchanan told her during their November 2012 meeting that she could no longer wear t-shirts and sweatshirts with logos on them. Tr. 38-40. The Respondent’s witness did not deny that Byram was told she could not wear shirts with logos on them. After the November 2012 meeting, Byram complied with management’s directions and no longer wore shirts or sweatshirts with union logos. Tr. 42. Instead, she wore her uniform during official time. *Id.* Although the Respondent did not specify that Byram was not permitted to wear union insignia, the effect of the Respondent’s broad prohibition on clothing with logos prevented Byram from wearing clothing with union insignia on official time. The Respondent thus interfered with Byram’s § 7102 rights to wear union insignia in the workplace. The Respondent’s actions therefore violated § 7116(a)(1) by prohibiting Byram from wearing clothing with union insignia or logos while on official time.

REMEDY

When an agency has an obligation to bargain over the substance of a matter, and fails to meet that obligation, the Authority orders a status quo ante remedy in the absence of special circumstances. *Air Force Logistics Command, WRALC, Robins AFB, Ga.*, 53 FLRA 1664, 1671 (1998). The Respondent has not shown that the dress code applicable to Byram while she was on official time affected the exercise of a management right. *See VA*, 23 FLRA at 281. The Respondent has not presented any evidence that Byram’s dress code on official time affected the method or means of performing work. *Id.* The Respondent does not cite any special circumstances in this case that would support the denial of status quo ante relief, nor does the record otherwise reveal any special circumstances. Therefore I find a status quo ante remedy is appropriate based on the facts of this case.

In accordance with the Authority’s recent decision that unfair labor practice notices should, as a matter of course, be posted on bulletin boards and electronically whenever an agency uses such methods to communicate with bargaining unit employees, such postings are ordered. *See U.S. DOJ, Fed. BOP, Fed. Transfer Ctr., Okla. City, Okla.*, 67 FLRA 221 (2014).

CONCLUSION

I find that the Respondent violated § 7116(a)(1) and (5) of the Statute when it unilaterally implemented new attire standards for Byram while on official time and failed to bargain with the Union prior to implementing the new standards. I also find that the Respondent violated § 7116(a)(1) by prohibiting Byram from wearing clothing with union insignia or logos while on official time.

Accordingly, I recommend that the Authority adopt the following Order:

ORDER

Pursuant to § 2423.41(c) of the Authority's Rules and Regulations and § 7118 of the Federal Service Labor-Management Relations Statute (Statute), the Department of Homeland Security, U.S. Customs and Border Protection, Washington, D.C. (Savannah, Georgia), shall:

1. Cease and desist from:

(a) Unilaterally implementing changes in dress codes for bargaining unit employees for times when they are on official time without first notifying the National Treasury Employees Union, Chapter 150 (Union) the exclusive representative of a nationwide unit of employees, and providing the Union with an opportunity to bargain to the extent required by the Statute.

(b) Prohibiting Union officers from wearing clothing with Union insignia or logos while on official time.

(c) In any like or related manner, interfering with, restraining, or coercing bargaining unit employees in the exercise of their rights assured them by the Statute.

2. Take the following affirmative action in order to effectuate the purposes and policies of the Statute:

(a) Rescind the changes in dress codes for bargaining unit employees for times when they are on official time that was implemented without providing the Union with notice and an opportunity to bargain.

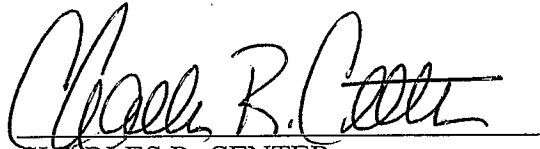
(b) Rescind the prohibition imposed upon Union insignia or logos.

(c) Post at its facilities in Savannah, Georgia, where bargaining unit employees represented by the Union are located, copies of the attached Notice to be furnished by the Federal Labor Relations Authority. Upon receipt of such forms, they shall be signed by the Director, U.S. Customs and Border Protection, and shall be posted and maintained for 60 consecutive days thereafter. Reasonable steps shall be taken to ensure that such Notices are not altered, defaced, or covered by any other material.

(d) Disseminate a copy of the Notice signed by the above Director, through the Respondent's email system to all bargaining unit employees in the Savannah, Georgia office. This Notice will be sent out on the same day that the Notice is physically posted.

(e) Pursuant to § 2423.41(e) of the Authority's Rules and Regulations, notify the Regional Director, Atlanta Region, Federal Labor Relations Authority, in writing, within 30 days from the date of this Order, as to what steps have been taken to comply.

Issued, Washington, D.C., May 5, 2015

A handwritten signature in black ink, appearing to read "Charles R. Center", written over a horizontal line.

CHARLES R. CENTER

Chief Administrative Law Judge

NOTICE TO ALL EMPLOYEES

POSTED BY ORDER OF

THE FEDERAL LABOR RELATIONS AUTHORITY

The Federal Labor Relations Authority has found that the Department of Homeland Security, U.S. Customs and Border Protection, Washington, D.C. (Savannah, Georgia), violated the Federal Service Labor-Management Relations Statute (Statute), and has ordered us to post and abide by this Notice.

WE HEREBY NOTIFY OUR EMPLOYEES THAT:

WE WILL NOT implement changes in dress codes for bargaining unit employees for times when they are on official time without first notifying the National Treasury Employees Union (Union) the exclusive representative of a nationwide unit of employees, and providing the Union with an opportunity to bargain to the extent required by the Statute.

WE WILL NOT prohibit Union officers from wearing clothing with Union insignia or logos while on official time.

WE WILL NOT in any like or related manner, interfere with, restrain, or coerce bargaining unit employees in the exercise of their rights assured by the Statute.

WE WILL rescind the changes in dress code for bargaining unit employees for times when they are on official time that was implemented without providing the Union with notice and an opportunity to bargain.

WE WILL rescind the prohibition imposed upon Union insignia or logos.

(Agency/Respondent)

Dated: _____

By: _____
(Signature) (Title)

This Notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material.

If employees have any questions concerning this Notice or compliance with its provisions, they may communicate directly with the Regional Director, Atlanta Regional Office, Federal Labor Relations Authority, whose address is: 225 Peachtree Street, Suite 1950, Atlanta, GA 30303, and whose telephone number is: 404-331-5300.