UNITED STATES OF AMERICA
FEDERAL LABOR RELATIONS AUTHORITY
OFFICE OF ADMINISTRATIVE LAW JUDGES
WASHINGTON, D.C. 20424

| | |
|---|---|
| DEPARTMENT OF THE NAVY<br>NAVAL WEAPONS STATION CONCORD<br>CONCORD, CALIFORNIA<br><br>Respondent | |
| and | Case Nos. 9-CA-60349<br>9-CA-60351 |
| AMERICAN FEDERATION OF<br>GOVERNMENT EMPLOYEES,<br>LOCAL 1931, AFL-CIO<br><br>Charging Party | |

Gilbert J. Merrill, Jr., Esquire
For the Respondent

Mr. James L. Wright
For the Charging Party

Susan E. Jelen, Esquire
Patricia Jeanne Howze, Esquire
For the General Counsel

Before: WILLIAM B. DEVANEY
Administrative Law Judge

DECISION

Statement of the Case

This proceeding, under the Federal Service Labor-Management Relations Statute, Chapter 71 of Title 5 of the United States Code, 5 U.S.C. § 7101, et seq. 1/, and the Final Rules and Regulations issued thereafter, 5 C.F.R.

---

1/ For convenience of reference, sections of the Statute hereinafter are, also, referred to without inclusion of the initial "71" of the statutory reference, e.g., Section 7116 (a)(5) will be referred to, simply, as "§ 16(a)(5)".

§ 2423.1, et seq., arises from two separate charges each of which alleged certain unilateral changes of conditions of employment by Respondent. The Consolidated Complaint alleged that: on, or about July 22, 1986, Respondent unilaterally implemented a "white tee shirt" only policy; implemented a requirement that firemen remain in uniform while on stand-by time; and implemented a 90 minute lunch break (previously, the practice had been to allow firemen a two hour lunch period from 11:00 a.m. to 1:00 p.m., although the contract provided for only a one hour lunch period (as close to 12:00 as the work situation permits) [the second eating period of one hour, "as close to . . . 1700 as the work situation permits" (Resp. Exh. 3, Art. X 4(c)(4) as provided for by agreement was unchanged from the contract provision]. The Consolidated Complaint further alleged that on, or about, July 16, 1986, Respondent unilaterally imposed a new mustache grooming policy without notice to the Union. At the hearing, General Counsel moved to amend the Consolidated Complaint to add subparagraph (c) to Paragraph 10 to read as follows:

> "(c) As a result of Respondent's unilateral change as described in subparagraph 10(a) above, without furnishing the union with notice and the opportunity to bargain concerning said change, bargaining unit employee Tracy Gilmour was illegally terminated as of July 31, 1986." (Tr. 18-19).

Respondent objected to the proposed amendment; however, I granted General Counsel's motion to amend the Complaint 2/;

---

2/ I overruled Respondent's assertion that the amendment was barred by § 18(a)(4)(A) of the Statute inasmuch as the allegation had been raised specifically by the original charge (G.C. Exh. 1(c)). In so ruling, I did not note that a First Amended charge had been filed (G.C. Exh. 1(d)) which omitted any reference to disciplinary action, including, of course, the termination of Tracy Gilmour. Nevertheless, I adhere to my previous ruling that the amendment was not barred by § 18(a)(4)(A) for the reason that I conclude that the First Amended charge by alleging that the unilateral implementation of the new mustache grooming standard was sufficiently broad as to include discipline flowing from implementation of the alleged unilateral change of a condition of employment. Veterans Administration, West Los Angeles Medical Center, Los Angeles, California, 23 FLRA No. 37, 23 FLRA 278 (1986).

but granted Respondent a recess to prepare for any change in strategy that the granting of General Counsel's motion might entail.

Respondent denied that it made any unilateral change in conditions of employment and asserted various defenses, including in its opening statement an assertion that consideration of the termination of Tracy Gilmour was, in any event, barred by § 16(d) of the Statute since a grievance was filed prior to the filing of the charge (Tr. 24, 26). Respondent does not raise this contention in its Brief and it is assumed that Respondent has abandoned this defense. If this assumption is not correct, I nevertheless find that this proceeding is not barred by § 16(d) for the reasons that, although the Commanding Officer, Captain G.C. Mays, did review Mr. Gilmour's termination (G.C. Exhs. 2, 7 and 8), the review was not pursuant to the negotiated grievance procedure; that termination of probationary employees is excluded from the grievance procedure (G.C. Exh. 11); and that no "grievance" within the meaning of § 16(d) was filed (see, also, Resp. Exh. 10).

Case No. 9-CA-60349 was initiated by a charge filed on August 7, 1986 (G.C. Exh. 1(a)), which alleged violations of §§ 16(a)(1), (2), (5), and (7) and (8) of the Statute and by a First Amended charge filed on October 31, 1986 (G.C. Exh. 1(b)), which alleged violations of §§ 16(a)(1) and (5) only. Case No. 9-CA-60351 was initiated by a charge filed on August 8, 1986 (G.C. Exh. 1(c)) and by a First Amended charge filed on October 31, 1986 (G.C. Exh. 1(d)), each of which alleged violations of §§ 16(a)(1) and (5) of the Statute. An Order Consolidating cases, Consolidated Complaint and Notice of Hearing issued on November 28, 1986 (G.C. Exh. 1(e)), alleged violations of § 16(a)(1) and (5) of the Statute, and set the matter for a calendar call, together with other cases, for February 9, 1987. By Order dated February 2, 1987, the calendar call was rescheduled for February 11, 1987 (G.C. Exh. 1(g), was subsequently postponed for settlement discussions and by Order dated March 6, 1987 (G.C. Exh. 1(h)) was rescheduled for calendar call on April 21, 1987, at which time the case was set for hearing on April 22, 1987, pursuant to which a hearing was duly held on April 22 and 23, 1987, in San Francisco, California, before the undersigned.

All parties were represented at the hearing, were afforded full opportunity to be heard, to introduce evidence bearing on the issues presented, to examine and cross-examine witnesses, and were afforded the opportunity to

present oral argument which each party waived. At the conclusion of the hearing, May 26, 1987, was fixed as the date for mailing post-hearing briefs, which time was subsequently extended, on timely motion of the General Counsel, joined by the other parties, for good cause shown, to June 17, 1987. Respondent and General Counsel each timely mailed an excelllent brief, received on, or before June 18, 1987, which have been carefully considered. Upon the basis of the entire record 3/, including my observation of the witnesses and their demeanor, I make the following findings and conclusions:

## Findings

A. General.

1. American Federation of Government Employees, Local 1931, AFL-CIO (hereinafter referred to as the "Union") is the certified exclusive representative of, inter alia, a unit of firefighters at the Department of the Navy, Naval Weapons Station Concord (hereinafter referred to as "Respondent" or "Concord"). The Union and Respondent are parties to a collective bargaining agreement (Resp. Exh. 3) which became effective March 30, 1979, for a term of three years; however, the terms of this agreement were continued in effect pending negotiation of a new agreement, negotiation of which had been completed in January, 1987 (Tr. II, 8), but the new agreement, although signed by Respondent (Tr. II, 15), had not been signed by the Union and had not became effective at the dates of the hearing.

2. The grievance procedure of the Agreement (Resp. Exh. 3) made no reference to probationary employees who were not by its terms excluded. Mr. James L. Wright, who had been President of the Union since 1982 (Tr. 30), testified that the Agreement had been negotiated under Executive Order and the grievance procedure was not a broad scope grievance procedure, as permitted under the Statute; that the Union had sought re-negotiation, pursuant to Authority decision, to include a broad scope grievance procedure; that, when the

---

3/ The transcript of testimony for each day, i.e., April 22 and 23, 1987, begins with page 1. Consequently, to identify the particular transcript, the transcript for April 22 will be referred to as "Tr." followed by the appropriate page reference; and the transcript for April 23 will be referred to as "Tr. II" followed by the appropriate page reference.

parties were unable to agree, the matter was submitted to the Federal Service Impasses Panel (FSIP) which, by Decision and Order dated January 28, 1982 (G.C. Exh. 10), adopted the Union's proposal on the scope of the grievance procedure except that the Union's proposal was amended, inter alia, to "exclude probationary employees from coverage" (G.C. Exh. 10, p. 16); and that the parties upon receipt of the FSIP Decision and Order modified Article XXIII [The Grievance Procedure] as set forth in General Counsel's Exhibit 11 (Tr. II, 147-150). Although the record does not show that the modification of Article XXIII (G.C. Exh. 11) was ever signed, Mr. James D. Fisher, Labor Relations Officer (Tr. II, 4), conceded that he had found the document (G.C. Exh. 11) in his file. Accordingly, I find, as Mr. Wright testified without contradiction, that Article XXIII of the Agreement was amended, pursuant to the FSIP Decision and Order, as set forth in General Counsel Exhibit 11 and, specifically, as pertains to this proceeding, that termination of an employee serving a probationary period was excluded from the grievance procedure.

3. There are two fire stations at Concord: Inland Station; and Tidal Station. The offices of the Fire Chief and two Assistant Chiefs are located at the Inland Station (Tr. 78, 93). The Assistant Chiefs report to the Fire Chief, the Chief reports to the Security Manager (a civilian), Mr. John Banta, who in turn reports to the Security Officer (a military officer), Major, later Lt. Colonel R. W. Rathbon (Tr. 93). One Assistant Chief is assigned to A shift (or platoon), the other to B shift (or platoon). Employees on each shift work the same hours but on different days of the week (Tr. 94).

4. There are six lead firefighters, also called Captains, one for each engine company (Tr. 92), who are part of the bargaining unit (Tr. 24). Firefighters work twenty-four hour shifts, are off the next twenty-four hours, plus an additional day, called an "R" day, when they do not work. Each twenty-four hour shift consists of 8 hours active duty, from 7:30 a.m. to 4:00 p.m.; 8 hours stand-by; and 8 hours sleep (Tr. 94).

B. The Mustache Standard.

5. The record is clear that there had been a "mustache" standard at Concord since at least September 29, 1970, when the then Chief, Mr. K. Hollis, issued a memorandum to all Fire Department Personnel re "Grooming, Haircuts, Sideburns, Mustaches and Beards" which provided, in part, as follows:

"c. MUSTACHES: A mustache, if kept neat and trimmed, will be permitted. It shall not exceed more than one-half inch beyond the corners of the mouth, nor shall it extend below a line horizontal with the corners of the mouth. The full upper lip must be readily discernible. Extreme styles are not permitted." (Resp. Exh. 8)

On October 3, 1974, SECDEPTINST 11320.1 was distributed by Concord. This is also known as the "Red Book" because, as issued by Concord, it had a red cover. For some period of time it was issued to all firefighters and, while it has not been issued for some years, it sill in full force and effect. SECDEPTINST 11320.1 provides, in part, as follows:

"48. In the interest of personal safety for the individual and his fellow crew members during fire fighting operations, the following grooming standards shall apply to all members of the Fire Division:

a. Hair Style - Shall be neatly trimmed on the back and sides to a degree that long, loose hair does not protrude below the top of the shirt collar or cause the helmet to fit loosely on the head.

b. Beards and Sideburns - All beards, mutton chops and/or bushy sideburns are prohibited because of interference with the proper seating/ wearing of breathing apparatus.

c. Moustache - Shall be kept neatly trimmed so as not to interfere with use of the masks. Large handlebar type, for instance, would not be acceptable.

d. Common sense should prevail in all cases, but in the event of a particular instance/problem, the Fire Chief after investigation and observation, shall make the final determination concerning the safety aspects. (G.C. Exh. 3).

6. Following the discharge of permanent fireman Tony H. Klobucar in 1977, affirmed by the Civil Service Appeals Review Board on March 6, 1978 (Resp. Exh. 5), for refusal to obey a direct order to cut his hair to conform to agency standards, the Union by its President, Mr. Wilfred J. Scott, by letter dated August 29, 1978, addressed to the Commanding Officer, requested negotiations concerning SECDEPTINST 11320.1. Mr. Scott stated that SECDEPTINST 11320.1, ". . . appears to be ambiguous language. For this reason, it was my understanding that about six months ago, a firefighter was fired because he [Mr. Kolbucar] did not comply with the intent of ref. (a) [i.e., SECDEPTINST 11320.1] . . . It is the Union's position that it would be in the best behalf of the Weapons Station and Union to negotiate clear and concise language that both parties may be able to adhere to." (Resp. Exh. 6). The record does not show that there were ever any negotiations, as Mr. Scott requested, but does show consultation with the Union, for the then Security Officer's, Lt. Colonel G.L. Diffee, covering memorandum of October 10, 1978, to all fire fighters stated, in part, ". . . The reason deliberations have gone on so long is that I wanted make sure that all concerned have had an opportunity to make their feelings known . . . Now with the wisdom of Minerva and the counsel of the Chief, the Union, and many of you who have talked with me, I will state what the grooming standard will be until better indications come along or directed by someone higher than me. It is not what the Chief would like and falls somewhat short of what the Union Representative would like as well. But I do feel that it is considerably more liberal than existing standards and generally represents a solid cross-section of what the majority of you feel the image of the fire department should be." (Resp. Exh. 7). The hairgrooming standards, which were attached, provided, in part, as follows:

"GROOMING

"HAIRSTYLE, SIDEBURNS, MUSTACHES AND BEARDS

"A. HAIRSTYLE. [Very different from the 1970 Hollis memorandum (Resp. Exh. 8); obviously intended to remove any ambiguity in SECDEPTINST 11320.1].

"B. SIDEBURNS. [Identical to 1970 Hollis memorandum (Resp. Exh. 8), except phrase, shall be closely cropped" was omitted.] [Much more detailed than

SECDEPTINST 11320.1; but, with elimination of closely cropped" does not appear to prohibit "bushy sideburns" as SECDEPTINST 11320.1 does].

"C. MUSTACHES. Identical to 1970 Hollis memorandum (Resp. Exh. 8) and again provided:

> "A mustache, if kept neat and trimmed will be permitted. It shall not extend more than one-half inch beyond the corners of the mouth, nor shall it extend below a line horizontal with the corners of the mouth. The full upper lip must be readily discernible. Extreme styles are not permitted."
>
> [quite different from SECDEPTINST 11320.1]
>
> "D. BEARDS. [Prohibited as by SECDEPTINST 11320.1 and 1970 Hollis memorandum (Resp. Exh. 8)].
>
> "E. WIGS. [Permitted; but "When worn, the wig, as well as any natural hair, shall conform to the hairstyle criteria as stated in this section of the procedure guide."] [No similar provision in 1970 Hollis memorandum (Resp. Exh. 8) or in SECDEPTINST 11320.1].
>
> . . . " (Resp. Exh. 7, Enclosure).

7. The Performance Element " . . . Appearance (grooming)" and the Performance Standards for Security (Fire Division), provides, as relevant, ". . . Has hair and mustache neatly trimmed and is clean shaven." (G.C. Exh. 4).

8. Mr. James Sealock, who worked as a firefighter and driver-operator at Concord from 1974 to 1986 (Tr. 130-131), testified that a Mr. Ogiline had been Chief when he started at Concord in 1974; that Mr. Walther came in as Chief after Ogiline about 1975; and that Mr. Ross followed Walther as Chief and served as Chief from 1980 to 1986; and that Mr.

Carlsen succeeded Ross as Chief in 1986 and was Chief when he, Sealock, left Concord in 1986 (Tr. 132). Mr. Sealock conceded that he was well aware of the policy that a mustache could not touch the upper lip or extend past the corners of the mouth (Tr. 133-134); that this had carried over from Chief Walther and had been the policy before Chief Walther (Tr. 134); but, he stated, Chief Ross had not enforced that policy (Tr. 134). Mr. Sealock testified that Chief Ross, with regard to mustaches,

> ". . . didn't like it if it was for safety features. He didn't want it to interfere with the performance of a Scott Air Pack . . . And so he just didn't want the moustache to interfere with the seal." (Tr. 132-133).

Mr. Sealock answered in the affirmative when asked if Chief Ross had allowed ". . . long, bushy moustaches" (Tr. 133), but stated that beards were not allowed (Tr. 133). Mr. Sealock also testified that he knew about the "Red Book" and had been issued a copy in 1974 (Tr. 140). Indeed, Mr. Sealock further testified that the contents of the "Red Book" were ". . . brought out through the union, that we were trying to negotiate a different book, over the years" (Tr. 140), i.e., between 1974 and 1986 (Tr. 140). After Mr. Carlsen became Chief, Mr. Sealock was told by Assistant Chief Johnson to trim his mustache (Tr. 141-142). On the first occasion, Mr. Sealock said that Assistant Chief Johnson did not tell him how much to trim his mustache; that he did trim it so it was just past the corner of his mouth but off his upper lip (Tr. 142); that Johnson told him to trim it again and told him, ". . . it needed to come up a litter higher off the lip and not down past the corner of the mouth." (Tr. 143); that he trimmed it again; that Johnson said nothing about his mustache, but, he Sealock, went to Chief Carlsen, because he was the one giving the standards, and Chief Carlsen said it needed to be trimmed shorter and "he showed me" (Tr. 143); and he (Sealock) trimmed it, "Till there wasn't hardly anything there, just a little bitty old line of a moustache." (Tr. 144). Mr. Sealock stated that he also had his head shaved (Tr. 144). Mr. Sealock said Chief Carlsen was pleased and told him, ". . . I would make a good role model for the Fire Department." (Tr. 144).

9. Mr. Raymond E. Borgia, a firefighter, who has been at Concord since 1978, and is a shop steward for the Union

(Tr. 91, 92), has a full, thick mustache similar to that of Tom Selleck on "Magnum"; but, while it appeared to extend slightly beyond the corners of his mouth, was not more than a half-inch beyond the corners of his mouth (and my impression was that it did not approach this length) and was not below the corners of his mouth. Mr. Borgia described his mustache as "bushy" (Tr. 109) and testified he had worn his mustache essentially as it appeared at the hearing since he had been at Concord (Tr. 109). He stated that he had never been told prior to July, 1986, that his mustache could not touch the upper lip or extend past the corners (Tr. 109). Mr. Borgia stated that firefighters who had mustaches wore mustaches similar to his except that one, Tracy Gilmour, discussed hereinafter, had a Fu Manchu type, and two had handlebar mustaches (Tr. 109). Mr. Stuart Cook, discussed, hereinafter, clearly was one asserted to have had a handlebar mustache; and while Mr. Borgia did not specifically identify Mr. Sealock as the other fireman who, he asserted, had a handlebar mustache, there is strong inference that he did refer to Mr. Sealock (see, Tr. 116, 119). However, although, Mr. Sealock was, indeed, told to trim his mustache, Mr. Sealock did not describe his mustache as having been a "handlebar" mustache, nor did any other witness.

10. Mr. Stuart Cook, a firefighter, transferred from Treasure Island to Concord in January, 1986 (Tr. 76) and returned to Treasure Island in July, 1986, to accept a position as Captain (Tr. 76). Mr. Cook testified at the hearing and there is no question that he then had a "handlebar" mustache. The body of his mustache was full, like Mr. Borgia's, except: (a) it extended, I would estimate, a full half-inch beyond the corners of his mouth; and (b) the ends, apparently waxed, extended I would estimate, an inch further - straight out, as shown in General Counsel's Exhibit 9.4/ Mr. Cook described his mustache as, "A handlebar moustache, approximately an inch and a half" (Tr. 77). The significance, is not primarily whether Mr. Cook had a handlebar mustache while he was at Concord, 5/ but, rather, whether he had a handlebar mustache

---

4/ This picture was taken sometime shortly after Mr. Cook had returned to Treasure Island (Tr. 82).

5/ There is no dispute that in June, 1986, at a mid-term evaluation Mr. Cook was given a "satisfactory" rating on one category, instead of "highly satisfactory" because, as Chief Carlsen told him, ". . . your mustache is too long." (Tr. 78-79); that Mr. Cook filed a grievance (Tr. 87) which was dropped because, ". . . Mr. Cook did go to Treasure Island, and since it was a mid-term appraisal, it did not follow him." (Tr. 89).

when he transferred to Concord from Treasure Island, inasmuch as he was interviewed by and hired by Chief Ross, who was Fire Chief from 1980 until March, 1986 (Tr. 110, 132) and who, General Counsel asserts, during his tenure as Fire Chief, ". . . allowed [the men] to wear any type of moustache, including handlebar moustaches, as long as it was neat and did not interfere with safety." (G.C. Brief, pp. 15-16). Mr. Cook testified that he had a mustache, which was about the same length as his mustache at the time of the hearing, during his entire employment at Concord (Tr. 76); and that General Counsel Exhibit 9, a picture taken on, or about July 17, 1986 (Tr. 116), after his transfer from Concord back to Treasure Island, was an accurate reflection of the mustache that he had at the time he worked at Concord (Tr. 82). Mr. Borgia testified that Mr. Cook had a handlebar mustache while Mr. Cook worked at Concord and that the mustache shown in General Counsel's Exhibit 9 is the mustache that Mr. Cook had when he was at Concord (Tr. II, 157).6/ Mr. James Douglas, who testified that he worked on the same shift with Mr. Cook the entire time Mr. Cook was employed at Concord, testified that Mr. Cook had that handlebar mustache the entire time he (Cook) was at Concord,

> "He had it when he was hired and he had it when he left, the whole time. He never shaved it, never trimmed it. All he'd done was sit around at night and waxed it and rolled it up, every night, watching TV." (Tr. II, 160).

Mr. Donald W. Carroll, Chief Steward of the Union, testified that he had told Chief Carlsen that,

> ". . . he [Cook] had been hired in with a handlebar moustache by the previous fire chief, which was Chief Ross, that he knew of no grooming standard for the moustache, and during his whole firefighter career, he's always had one." (Tr. 88).

---

6/ Mr. Borgia's direct testimony can be read to suggest: either that: (a) Mr. Borgia did not know Mr. Cook while Mr. Cook worked at Concord; or (b) Mr. Cook did not have a handlebar mustache the entire time he was at Concord as shown by his testimony: ". . . And he was --- he had his handlebar moustaches and I said, 'Boy I'd sure like to get a -- a picture of that." (Tr. 117).

Mr. Cook testified that during his employment interview, conducted by Chief Ross, Chief Ross did not mention his (Cook's) mustache (Tr. 77). Mr. Irvin Oliver Hansen, better known as "Swede" Hansen (Tr. II, 141), a fire inspector at Concord, who had worked with Mr. Cook some years before at Adak, Alaska (Tr. 11, 142), testified that Chief Ross told him, Hansen, because he, Hansen, was a friend of Mr. Cook's, to inform Mr. Cook before he came to work at Concord, ". . . to be sure he was well groomed before he came to -- to there. And he did not have a handlebar at that time." (Tr. II, 142). Mr. Hansen further stated that he was told by Chief Ross to inform Mr. Cook or Mr. Cook's wife,

> "To be sure -- because he had a bushy moustache, that he would be well groomed when he came here to Concord . . . ."
> (Tr. II, 143).

Mr. Hansen stated that he spoke to Mr. Cook because "he [Mr. Cook] was still down at T.I." (Tr. II, 143). I have strong reservations about Mr. Hansen's testimony;7/ but even assuming that Mr. Hansen was instructed by Chief Ross to inform Mr. Cook to be "well groomed", there was nothing in the message that made any reference whatever to Mr. Cook's mustache and there could be no doubt, other possible considerations aside, that Mr. Cook's mustache, as shown in General Counsel's Exhibit 9, was, indeed, well groomed. A mustache, such as Mr. Cook's, and essentially similar to Adolphe Menjou's, the ends of which are twisted together into a narrow line might not be considered by everyone as what he, or she, identifies as a handlebar mustache. In any event, the testimony of retired Chief Carlsen (Tr. II, 49), of Assistant Chief Ray Gilmore (Tr. II, 109), of retired Captain Robert E. White (Tr. II, 132), and of Inspector Hansen (Tr. II, 142) that Mr. Cook did not have a handlebar mustache when he worked at Concord is not credited. For example, Assistant Chief Gilmore stated it would take at

---

7/ Mr. Cook's testimony that Chief Ross did not mention his, Cook's mustache during his employment interview, was unchallenged and, therefore, is fully credited. I find it difficult to believe that Chief Ross would have refrained from mention of the mustache when talking to Mr. Cook but to have been sufficiently concerned about to have dispatched Mr. Hansen to deliver a message to Mr. Cook.

least 1 1/2 to 2 months to grow a mustache like the one Mr. Cook had in General Counsel's Exhibit 9 (Tr.II, 115, 116). As Mr. Cook left Concord on, or after July 1, 1986 (Tr. 76) and the picture was taken at Treasure Island, as fixed by the uncontradicted testimony of Mr. Borgia, on or about, July 17, 1986 (Tr. 116), obviously, by Mr. Gilmore's estimate, Mr. Cook necessarily had his handlebar mustache while he worked at Concord. Accordingly, I credit the testimony of Messrs. Cook, Borgia, Douglas and Carroll that Mr. Cook had a handlebar mustache when he was hired by Chief Ross and I further conclude, as Mr. Cook most credibly testified, that Chief Ross did not mention his mustache during his employment interview.

10. Thus, General Counsel made a prima facie case that the Hollis mustache policy of 1970, reiterated in the Diffee Grooming Standards of 1978, was not enforced by Chief Ross; that the policy, and only policy, concerning mustaches enforced by Chief Ross was that a mustache must not interfere with the performance of their respirators (Tr. 115, 132-133). I further find, as General Counsel agrees (General Counsel's Brief pp. 16 n. 23, 23) that Chief Ross' policy was, in fact, that set forth in the Red Book (SECDEPTINST 113.20.1) (see, also, Department of the Navy Performance Appraisal Form, Performance Standard No. 7). Although Chief Carlsen (Tr. II, 30), Assistant Chiefs Johnson (Tr. II, 91) and Gilmore (Tr. II, 108), Captains Dove (Tr. II, 119) and Carpenter (Tr. II, 124) and Inspector Hansen (Tr. II, 141, 142, 143) testified that the standard for mustaches had consistently been, essentially, that it could not extend more than one-half inch beyond the corners of the mouth8/ and that it could not extend below a line horizontal with the corners of the mouth, which is the Hollis-Diffee standard; however, Captain Parzino stated that he understood the policy was that, "Moustaches are acceptable as long as they are neatly trimmed." (Tr. II, 137), as did retired Captain White, although Captain White added, ". . . no handlebars and no Fu Manchus." (Tr. II, 131). Nevertheless, Respondent offered no evidence or testimony that Chief Ross during his tenure, 1980-86, ever enforced such standard, to rebut the testimony and evidence

---

8/ I am aware that Captain Dove, for example, said the mustache was not to extend beyond the corner of the mouth (Tr. II, 119) as did Inspector Hansen (Tr. II, 141), but the slight deviations are of no significance.

that he did not.9/ Chief Carlsen stated that he had never seen the memo from Diffee, "But I found it in the file." (Tr. II, 65) sometime after the Final Decision letter (Tr. II, 66) on Tracy Gilmour (G.C. Exh. 8), discussed hereinafter. Indeed, no reference was made in the original notice of termination of Mr. Gilmour (G.C. Exh. 5), the amended notice (G.C. Exh. 6), nor in the Final Decision (G.C. Exh. 8) to the Hollis-Diffee standard since, as Chief Carlsen stated, "At that particular moment, I didn't have that in hand." (Tr. II, 66). To the contrary, the only standard referred to was that of SECDEPTINST 11320.1 (the Red Book).

Obviously, Chief Carlsen's position was that because SECDEPTINST 11320.1 does give the Fire Chief authority to make the final decision, he, as Fire Chief had total discretion. Thus Chief Carlsen stated, in part,

> "Q . . . But it doesn't specifically say how long the moustache should be. Doesn't it say 'neat and trim' or 'neatly trimmed'?
>
> "A. 'Neatly trimmed,' and the fire chief will be the one that decides." (Tr. II, 66).

However, SECDEPTINST 11320.1 gives the Fire Chief only limited discretion and then only as to safety aspects. Section 48 begins with the statement, "In the interest of personal safety . . . the following grooming standards shall apply . . . ." With respect to mustaches, Paragraphs c and d provide as follows:

> "c. Moustaches - Shall be kept neatly trimmed so as not to interfere with use of the masks. Large handlebar type, for instance, would not be acceptable."

---

9/ The record does show, however, that Assistant Fire Chief Carlsen did, personally and through then Captain Johnson, follow the Hollis-Diffee mustache standard with respect to firemen under his supervision. (See, Resp. Exh. 11, pp. 1, 2, and 3; Tr. II, 30, 31, 35, 63, 64, 92, 93, 106).

"d. Common sense should prevail in all cases, but in the event of a particular instance/problem, the Fire Chief after investigation and observation, shall make the final determination concerning the safety aspects." (SECDEPTINST 11320.1; (G.C. Exh. 3).

The facts clearly establish that safety was not a consideration in the termination of Tracy L. Gilmour (Tr. 41-42, 45, 53, 96, 185, 186).

11. When Mr. Carlsen became Fire Chief in March, 1986, he resurrected the Hollis-Diffee mustache policy which, as set forth above, had been dormant and had not been enforced by Chief Ross during his tenure as Chief from 1980-86, although Mr. Carlsen, then Assistant Fire Chief, had during the 1980-86 period followed the Hollis-Diffee mustache standard with respect to firemen under his supervision.10/ Thus, Chief Carlsen: (a) advised Mr. Cook that his mustache was too long and that he would have got a highly satisfactory in one category except that his mustache was too long and ". . . we're giving you a satisfactory. . . ." (Tr. 79); (b) initially through Assistant Chief Johnson (Tr. 141-143) and later personally (Tr. 143-144), told Mr. Sealock to trim his mustache; and (c) told Mr. Gilmour to trim his mustache, and when he failed to do so, terminated him. Mr. Gilmour is discussed more fully hereinafter.

12. Mr. Tracy L. Gilmour was employed at Concord as a Firefighter on September 16, 1985, and was terminated during his probationary period. His termination was effective August 1, 1986.

Mr. Gilmour did not describe the mustache he had when employed, but Chief Carlsen testified that he did not then have a mustache which came below the corners of his mouth (Tr. II, 61). Rather, Mr. Gilmour's then mustache was

---

10/ As the two Assistant Chiefs rotated shifts annually (Tr. 118), Assistant Chief Carlsen would, in a two-year period, have directly supervised all firemen. The evidence and testimony shows only that Assistant Chief Carlsen in the Fall of 1985, with respect to Mr. Gilmour, applied the Hollis-Diffee mustache standard. Although compliance with the Hollis-Diffee mustache standard was counseled and such "counsel" may have had a certain coercive effect, there is no evidence or testimony that Chief Ross concurred.

described by Chief Carlsen as "bushy" 11/ (Resp. Exh. 11, p. 1). Assistant Chief Carlsen met with Mr. Gilmour on September 16, 1985, when he reported to work and told Mr. Gilmour to trim his mustache (Resp. Exh. 11, p. 1, Tr. 173). Mr. Gilmour said that Carlsen said, ". . . he didn't like moustaches on his shift and it needed to be trimmed." (Tr. 173), Mr. Carlsen testified that any firefighter that came to work that had a mustache was told what the grooming regulations were, namely that the mustache, ". . . was not to exceed a half-inch width 12/ and not to go below the upper lip." (Tr. II, 30), and that he discussed the grooming standard with Mr. Gilmour (Tr. II, 31). At Assistant Chief Carlsen's direction, Captain Johnson told Mr. Gilmour to trim his mustache; on October 16, 1985, Carlsen directed Johnson to give Gilmour a direct order to trim his mustache (Resp. Exh. 11, p. 1) and on October 18, 1985, Captain Johnson gave Gilmour a direct order to trim his mustache and hair (Resp. Exh. 11, p. 3). Gilmour denied that Captain Johnson give him a direct order, stating that, "It was more of a casual type of meeting, to trim it neat." (Tr. 175). In view of Captain Johnson's earlier meeting with Gilmour, which may well have been "of a casual type"; Assistant Chief Carlsen's direction of October 16; and the written contemporaneous note by Captain Johnson, I find that Gilmour was given a direct order on October 18, 1985. In all, while he was Gilmour's fire captain, Captain Johnson told Mr. Gilmour three or four times to trim his mustache and stated that each time, "He'd marginally trim it . . . but then he would go back into it, into noncompliance." (Tr. II, 101).

Chief Carlsen testified that several months after Mr. Gilmour started to work he noticed that Gilmour's mustache was progressively getting away from what it had been when he reported and was starting to exceed the standards (Tr. II, 63). Assistant Chief Johnson further explained that Gilmour

---

11/ Mr. Borgia described his mustache as "bushy". I would not. I would describe it as "thick" or "heavy", but it was not bushy which, to me, as regards a mustache, connotes an unrestrained, rather "wild" appearance. Nor was Mr. Gilmour's mustache as shown in Respondent's Exhibit 21, "bushy" in this sense.

12/ What Mr. Carlsen meant to say, as he later did say, was that "The moustache would not exceed a half-inch to the sides and would not go below the upper lip." (Tr. II, 34-35).

had begun the Fu Manchu style, (Tr. II, 101-102) i.e., the ends of the mustache dropped down vertically as shown in General Counsel's Exhibit 21.13/ Assistant Chief Johnson testified that he told Gilmour of the mustache standard (Tr. II, 93) and explained to Gilmour; ". . . that it wasn't to exceed one-half inch from the lip" (Tr. II,, 93); that he told Gilmour ". . . he had to clear it away from the corner -- to get it to the corner of the mouth and get rid of the radical style." (Tr. II, 106). Mr. Sealock admitted that Assistant Chief Johnson told him, Sealock, that his mustache, ". . . needed to come up a litter higher off the lip and not down past the corner of the mouth." (Tr. 143).

In October, 1985, Assistant Chief Carlsen met with Mr. Gilmour to explain how the evaluation system worked (Tr. 175-176). Mr. Gilmour stated that no one else was present (Tr. 176); however, Assistant Chief Johnson testified that he, then Gilmour's fire captain, had been present (Tr. II, 93), which is consistent with Chief Carlsen's written notation (Resp. Exh. 11, p. 2); that Mr. Gilmour was told to trim his mustache (Tr. II, 94), which is also confirmed by Chief Carlsen's written notation (Resp. Exh. 11, p. 2). Mr. Gilmour admitted that Assistant Chief Carlsen told him he ". . . would like" Gilmour's mustache trimmed (Tr. 176).

On April 8, 1986, Chief Carlsen met with Mr. Gilmour to review his performance appraisal form on which he had given Mr. Gilmour a "satisfactory" rating for "Punctuality . . . Appearance . . . Cleanliness . . . .", i.e., including, "Has hair and mustache neatly trimmed . . . ." (G.C. Exh. 4). Mr. Gilmour stated that Captain Dove was present and admitted that Chief Carlsen mentioned his mustache and told him to ". . . Just keep it trimmed, cleaned, keep it short . . . He said I might want to trim it a little bit." (Tr. 178). Chief Carlsen testified that he told Mr. Gilmour, ". . . I will give you a satisfactory on this item, but you do not meet the regulations and I'd like to have you trim

---

13/ This picture was taken after Gilmour received his notice of termination, i.e., on, or about July 15, 1986. Mr. Gilmour's appearance at the hearing was the same.

your moustache." (Tr. II, 34).14/ Chief Carlsen stated that he explained the mustache standard to Mr. Gilmour, which standard was that, "The moustache would not exceed a half-inch to the sides and would not go below the upper lip." (Tr. II, 34-35). Captain Dove was not asked about this meeting.

On June 27, 1986, Chief Carlsen made a written notation that Gilmour, ". . . still has mustache extending down like Fu Manchu" (Resp. Exh. 11, p. 4; Tr. II, 87) and on July 3, 1986, he told Captain Dove to have Mr. Gilmour trim his mustache (Resp. Exh. 11, p. 4; Tr. 37, 87). On July 7, 1986, Chief Carlsen made a written notation that Captain Dove had, on July 3, 1986, told Mr. Gilmour to trim his mustache but that as of July 7, Mr. Gilmour had not done so (Resp. Exh. 11, p. 4; Tr. II, 87). Mr. Carlsen testified to the same effect (Tr. II, 37) as did Captain Dove. Captain Dove stated that he talked to Mr. Gilmour about his mustache because he was directed to do so by the Fire Chief (Tr. II, 119) and that he told Mr. Gilmour to ". . . take his moustache down in the corners." (Tr. II, 119). Captain Dove stated that he understood the mustache standard was that ". . . it wasn't suppose to proceed beyond the corners of the mouth" (Tr. II, 119) and that this had been the standard

---

14/ I am aware that when asked on cross-examination, ". . . you testified that you gave him a satisfactory even though he wasn't satisfactory." Chief Carlsen responded "A. Yes. It was my error." (Tr. II, 72, 73); however, I do not find from the record that Chief Carlsen either was ". . . so careless as to give . . . an inaccurate rating on a mid-year performance evaluation" or that ". . . Carlsen did not consider Gilmour's appearance to be a problem" as General Counsel asserts (General Counsel's Brief, p. 6 n. 7). Even Gilmour admitted that as of April his mustache was, indeed a problem. Thus he conceded that Chief Carlsen mentioned his mustache and suggested that Gilmour ". . . might want to trim it . . . ." which was fully consistent with Chief Carlsen's testimony that he told Gilmour ". . . I'd like to have you trim your mustache." Of course, the rating was in "error" in the sense that it stated "satisfactory" when Gilmour's grooming was not satisfactory; but from Chief Carlsen's testimony, it appears that he was, in effect, telling Mr. Gilmour that even though he was not satisfactory, on this mid-year evaluation he was going to give him a satisfactory on the expectation that Gilmour would trim his mustache.

since he, Dove, had been at Concord and he had come to Concord in June or July, 1981 (Tr. II, 122). Captain Dove said that he had never seen the mustache standard in writing (Tr. 122), but learned of the standard by word of mouth (Tr. II, 119, 122-123). When he told Mr. Gilmour to cut his mustache, Captain Dove stated that Mr. Gilmour ". . . was upset when I told him, and he yelled a few words and then he walked out." (Tr. II, 120). Captain Mark Steven Carpenter testified, in relevant part, as follows:

> "Q. . . . were you ever in the fire house when Mr. Gilmour had been told anything about his moustache?
>
> "A. Yes. The one day that it happened -- first of all, let me start from the beginning. Chief Carlsen came down and reminded Captain Dove to talk to Tracy about his moustache should be trimmed up. Later on in the afternoon, I had gone into the bunkroom, which is on the other side of the fire station, and I heard this screaming and yelling going on in the apparatus floor, and it sounded like two people were yelling at each other. And just as I -- decided to come out, and just as I came out, I pushed open the apparatus room door, or the bunkroom door, and Mr. Gilmour was coming in. And as he did, he says, 'I don't take no orders from no f------ n-----.' He just walked right by me.
>
> "So I went outside and I said -- asked Captain Dove what was going on. He said, well, he just told Tracy that Chief Carlsen advised him it was time to trim the moustache up, and about being on probation. 'But the man just doesn't want to listen,' is what he said." (Tr. II, 126).

Captain Dove testified that ". . . to his knowledge" Mr. Gilmour did not comply with his, Dove's, order to trim his mustache, i.e., that a couple of days later, the mustache ". . . looked like it did the same day that I told him . . . ." (Tr. II, 123).

Mr. Gilmour testified that his meeting with Captain Dove was a ". . . casual meeting" and that Captain Dove had said, ". . . since I might be coming off probation within the next six weeks, I might want to trim up my moustache." (Tr. 179). Mr. Gilmour denied that Captain Dove said how much he, Gilmour, ". . . might want to trim it" (Tr. 180); and Mr. Gilmour stated that he trimmed his mustache the day after Captain Dove spoke to him (Tr. 179) and that he trimmed it, "neat and trimmed" (Tr. 180). Although recalled as a rebuttal witness, Mr. Gilmour neither denied nor otherwise controverted the testimony of Captain Carpenter, particularly the racist statement regarding orders by Captain Dove. Mr. Gilmour also denied that Captain Johnson, later Assistant Chief, (Tr. 175) or Assistant Chief Carlsen, later Chief (Tr. 178), ever told him how much he should trim his mustache and further that no one ever told him his mustache was to be trimmed to the corners of his mouth (Tr. II, 155).

Contrary to Mr. Gilmour's testimony, his meeting with Captain Dove was not a "casual meeting"; but as Captain Dove testified, Gilmour was upset, yelled a few words and walked out. That Mr. Gilmour shouted and was angry and defiant was shown by Captain Carpenter's unrefuted testimony. Accordingly, as I found Captain Dove to be an entirely credible witness, I credit his testimony that he told Mr. Gilmour to,

> ". . . take his moustache down in the corners." (Tr. II, 119).

If Captain Dove's instruction were lacking in clarity to Mr. Gilmour he made no inquiry but, in passing Captain Carpenter, responded with a defiant15/ retort, . . . "I don't take no orders from no f------- n-----." (Tr. II, 126). Assistant Chief Johnson testified that, while Gilmour's Captain, he had,

> ". . . explained to him [Gilmour] that it wasn't to exceed one-half inch from the lip." (Tr. II, 93).

Under similar circumstances, Mr. Sealock admitted that Johnson had told him how much he wanted his mustache trimmed

---

15/ Mr. Gilmour stated that he trimmed his mustache after Captain Dove told him to trim it; but the picture, Respondent Exhibit 21, taken on, or about July 15, 1986, shows that Mr. Gilmour's mustache at that time still extended substantially below his lower lip.

(Tr. 143). While proof that Johnson told Sealock certainly does not prove that Johnson told Gilmour, it does indicate a probability that he told Mr. Gilmour, particularly in view of the repeated occasions on which Mr. Johnson told Mr. Gilmour to trim his mustache. As I found Mr. Johnson in the main a credible witness, I conclude, as he testified, that he did tell Mr. Gilmour that his mustache was not to exceed one-half inch from the lip. Under the circumstances, it is unnecessary to resolve the conflict in testimony to determine whether Mr. Carlsen, while Assistant Chief and later as Chief, also explained the mustache standard to Mr. Gilmour, as Mr. Carlsen testified he did, see, for example, (Tr. II, 30, 31, 34-35), and which Mr. Gilmour denied (Tr. 173, 176, 178, Tr. II, 155).

On, or about July 22, 1986, the various Fire Captains pursuant to Chief Carlsen's instructions, announced various changes, including the mustache policy, at morning muster (Tr. 103, 104, 136, 139-140, 151-152), although the new mustache policy had already been implemented with respect to Mr. Gilmour by Chief Carlsen in his meeting with Messrs. Wright and Gilmour on, or about, July 15, 1986 (Tr. 40, 42).

C. Other Asserted Changes of Conditions of Employment.

I. Tee Shirt Policy

13. The record shows that for some time prior to July 22, 1986, firemen had been permitted to wear tee shirts of various colors under their dress shirts (Tr. 112, 133, 161, 193). Indeed, in early 1985 (Tr. 129), the record shows without contradiction that Chief Ross had encouraged the group purchase of colored tee shirts with fire department logos for the softball team (Tr. 112-113). As Captain Carpenter explained,

> ". . . the team had brought T-shirts to wear as game jerseys. And all of a sudden . . . different people would put the game jerseys on under their uniform shirts, and it got to the point where, after two or three people were wearing the game shirts, the light blue with the dark blue collar, some of the guys were coming in with a multitude of colors showing.

"Q. Didn't you also have T-shirts that were dark blue with a --

. . .

"Q. -- firefighter symbol?

"A. That was for the second year, yes. And they were wearing those." (Tr. II, 129).

Thus, even though there may have been uniformity in the color of T-shirts worn prior to the advent of the softball team (Tr. II, 129) (see Mr. Douglas's testimony re sale of colored T-shirts by Ms. Laurie Lee, a female firefighter; however no specific time frame was shown except that it was prior to Mr. Carlsen's elevation to Chief (Tr. 153), there is no dispute that Chief Ross knowingly permitted firemen to wear many different colors of T-shirts; that Chief Carlsen disliked the practice, although he permitted it to continue from the time he became Chief in March, 1986, until July 22, 1986; and that on, or about July 22, 1986, he changed the practice to require that T-shirts must be white. Chief Carlsen testified, in part, as follows:

"Q. Would say that Chief Ross' philosophy on how the firefighters should look was a little more relaxed than yours?

"A. Yes.

"Q. Considerably more relaxed?

"A. Yes.

"Q. You wanted them to shape up?

"A. I wanted them to look like a -- in fact, I think one of these terms I used, I said, 'I don't like a rag-tag outfit. We're all here, we're a semi-military group. Let's all look alike.'

"Q. And they were rag-tag under Chief Ross?

"A. I felt that they were, just because of the fact that there was four or five or six different colored T-shirts that I thought looked bad.

"Q. And that's why you made these changes?

"A. That's why I made that one.

"Q. That one? Which one are you referring to?

"A. That's T-shirts will be white. They were being worn by the majority at that time anyway; it was white.

"Q. But there were still some who were not wearing white.

"A. Oh, that's right, yes." (Tr. II, 81-82)

Nor is there any dispute that Chief Carlsen's policy was adopted and implemented through meetings held by Fire Captains without prior notice to the Union on, or about July 22, 1986.

II. Lunch Break

Although the old agreement and the newly negotiated agreement (not signed by the Union and not in effect at the time of the hearing) each provide for a one-hour lunch period, Chief Ross, beginning in 1980 or 1981, had permitted a two-hour lunch period (Tr. 110, 134, 160, 193), a practice which Chief Carlsen not only admitted (Tr. II, 57) but which he permitted to continue until July 22, 1986. On, or about, July 22, 1986, Chief Carlsen changed the lunch period to 90 minutes (Tr. 155). He stated, in relevant part, as follows:

"A. . . . Chief Ross had allowed two hours for a lunch break, and I believe that the union contract stated one hour. And so, I said, [in his meeting with the Fire Captains] 'Well, I can't buy the two-hour one, but let's cut it down to an hour and a half.'

"Q. Did that happen?

"A. Yes." (Tr. II, 57).

III. Attire on Stand-By

There is a conflict in testimony concerning attire permitted for firemen in the day room 16/ [TV Room] during stand-by time after July 22, 1986; but no disagreement that Chief Ross had not required the men to be in uniform while in the day or stand-by time. Mr. Borgia stated that for four or five years Chief Ross had permitted firemen on stand-by time to wear largely what they pleased. He said, "The majority of men wore athletic clothes, sweat pants, sweatshirts . . . shorts, and tennis shoes." (Tr. 109-110). Mr. Sealock testified that, ". . . on stand-by, most of the guys wore, after working hours, was -- they'd take off their uniform shirt or put on shower shoes or tennis shoes and stuff like that." (Tr. 135). Mr. Sealock further stated that after exercising they remained in athletic clothes and some wore just socks (Tr. 135). Mr. Gilmour testified that, "A lot of people, on their own time, just being comfortable, wore sweat pants or gym shorts in the summertime to keep cool, and stayed in that until they took a shower." (Tr. 193-194).

Mr. Douglas testified that Captain Book told them, on or about July 22, 1986, that in the future ". . . you had to be in this uniform shirt while on stand-by . . . And even on Saturday or Sunday, when we were watching TV or anything, we had to be in this uniform [i.e. Class A uniform shirt]. We had to wear this shirt. And this was Saturday, Sunday, any time during stand-by time. We had to be in this uniform." (Tr. 152) Mr. Borgia agreed, stating that after July 22, ". . . we would have to wear a complete dress uniform for working -- working hours and stand-by time. . . ." (Tr. 105), as did Mr. Green, ". . . we had to be in full dress uniform on stand-by." (Tr. 166). On the other hand, Messrs. Sealock and Gilmour testified that there was no change with respect to removal of the dress shirt during stand-by time. Mr. Sealock stated that you could under Chief Carlsen's policy take off the uniform shirt after 3:30 (Tr. 138). Mr.

---

16/ There appears to be no disagreement that employees in the alarm room, both before July 22 and after, were required to be in full uniform (Tr. 138).

Gilmour testified that Chief Carlsen, ". . . wanted everyone with white T-shirts on and the boots and pants after -- on stand-by time." (Tr. 193). Messrs. Borgia, Sealock, Green, Douglas and Gilmour agree that after July 22, firemen upon completion of exercise, which was encouraged and for which they could dress in any desired form of athletic attire, were required to change back to their uniform pants, boots and white T-shirts, there being disagreement among them as to whether they were told they could, or could not, remove their dress shirts while on stand-by time. That is, they could no longer lounge around the day room during stand-by time in athletic attire. There was testimony that employees were also told that they could not wear white socks with the issued boots; however, I conclude, on the basis of the entire record, that this was a misconception and that they were given no such instruction; but, rather, were told only that black socks must be worn with low cut shoes (see, for example, Tr. II, 59, 60 99) which is conceded to have constituted no change from established practice.

There is no dispute that Chief Carlsen instructed the Fire Captains to inform the firemen that they could not sit around in the day room, ". . . in a pair of gym shorts or tennis shoes or whatever" because in case of an emergency to which they were going to respond, ". . . I couldn't have them going in that type of attire." (Tr. II, 56). Chief Carlsen said there were also questions of hygiene, that they were "sweaty and smelly. . . ." (Tr. II, 56). However, Chief Carlsen asserted that his instruction was not new but was simply a reaffirmation of existing policy of which employees needed to be reminded because of the non-compliance by a "a couple of people, some." (Tr. II, 57). Chief Carlsen was empathic that he had told the Fire Captains that the men could take their dress shirts off during stand-by time in the day room (Tr. II, 56). Indeed, on October 6, 1986, Chief Carlsen had issued a memorandum to all Fire Division Personnel in which he informed them, in part, as follows:

> ". . . I have no objection to you removing your uniform shirts on stand-by time when you are not dealing with the public. . . ." (Resp. Exh. 17).

Having considered the testimony of: Chief Carlsen; Assistant Chief Johnson (Tr. II, 98); Assistant Chief Ray Gilmore (Tr. II, 111); Captain Carpenter (Tr. II, 125); retired firefighter, former Captain and former steward, Robert E. White (Tr. II, 133-134); Captain Parzino, also a former steward (Tr. 137-138); and Messrs. Sealock and Gilmour, I

find that there was no change made by Chief Carlsen with regard to the removal of the dress shirt by employees in the day room during stand-by time.

There is no disagreement that in the past firemen had been required to wear trousers, boots and shirt in the day room during stand-by time; but I do not agree that Chief Carlsen's instructions, through his captains, on, or about July 22, was simply a reaffirmation of existing policy. To the contrary, the record shows without contradiction that under Chief Ross the practice had been that firemen were not required to be in uniform, or any part of it, while in the day room on stand-by time. Mr. Borgia testified that for four or five years Chief Ross had permitted firemen on stand-by time to wear largely what they pleased. Mr. Green, who had been employed at Concord three years, i.e., since 1984, testified that "informal" dress had been allowed during stand-by time throughout his employment until July 22, 1986 (Tr. 161-162) and Mr. Sealock testified that Chief Ross had permitted "informal" attire on stand-by time during his entire tenure as Chief (Tr. 135). Accordingly, the "standard" which had existed prior to 1980 or 1981 and which was the result of practice (Tr. II 128), had given way to a new "standard" under Chief Ross, from 1980 or 1981, which, as the result of known and accepted practice for a period of four to six years, had ripened into a condition of employment.

## Conclusions

### 1. Changes of Conditions of Employment

(a) Mustache Standard. There were two mustache standards at Concord. The older and quite specific standard having been issued by Chief Hollis in 1970 (Res. Exh. 8) and was reiterated by Lt. Colonel Diffee in 1978 (Res. Exh. 7, Enclosure); however, there is sharp conflict as to whether this specific standard was followed after Mr. Ross became Chief in 1980 or 1981. For reasons set forth hereinafter, I conclude that the Hollis-Diffee mustache standard was not followed by Chief Ross. The other, and very general, standard being that set forth in SECDEPTINST 11320.1, the "Red Book", issued in 1974 (G.C. Exh. 3), and conceded to have remained in full force and effect. The Red Book is premised on the "interest of personal safety" and with respect to mustaches provides, merely, that, "c. Mustache - Shall be kept neatly trimmed so as not to interfere with the use of the masks. Large handlebar type, for instance, would not be acceptable. d. Common sense should prevail . . . but in the event of a particular instance/problem, the Fire Chief after investigation and observation, shall make the

final determination concerning the safety aspects." (G.C. Exh. 3). The only limitation on mustaches contained in the Red Book is that they must, ". . . be neatly trimmed so as not to interfere with the use of masks"; and the discretion granted the Fire Chief is to ". . . make the final determination concerning the safety aspects."

The Hollis-Diffee mustache standard, on the other hand, neither referred to, nor was it conditioned by, any consideration of safety. Thus, Hollis-Diffee had several limitations in that the mustache: (a) must be kept neat and trimmed; (b) must not extend more than 1/2 inch beyond the corners of the mouth; (c) must not extend below a line horizontal with the corners of the mouth; (d) the upper lip must be readily discernible; and (e) extreme styles were not permitted.

General Counsel's witnesses testified that Chief Ross' sole concern about mustaches was that they not interfere with the performance of their respirators, i.e., in essence the "Red Book" standard. While Respondent asserts that the Hollis-Diffee mustache standard never changed, there was no evidence or testimony which showed that Chief Ross even enforced such standard. To the contrary, the record affirmatively shows that Chief Ross did not enforce the Hollis-Diffee standard, e.g., Chief Ross hired Mr. Cook with a handlebar mustache which would have been in violation of Hollis-Diffee and Mr. Sealock's mustache was not in compliance with the Hollis-Diffee standard, either because his upper lip was not readily discernible and/or because it extended more than 1/2 inch beyond the corners of his mouth; but Chief Ross never, either personally or through his subordinates, told either Mr. Cook nor Mr. Sealock that his mustache was in violation of any standard and never told either to trim his mustache. Accordingly, for reasons more fully set forth hereinabove, I conclude that the Hollis-Diffee mustache standard was not enforced by Chief Ross during the five or six year period that he was Chief and that during this period the practice of permitting firemen to wear mustaches of any size or style, provided only that no mustache could interfere with the wearing of respirators, had ripened into a condition of employment.17/

---

17/ I am aware that in the Fall of 1985, Mr. Carlsen, while Assistant Chief, and Mr. Johnson while Captain under Mr. Carlsen, had told Mr. Gilmour to trim his mustache; but there is no evidence or testimony that Chief Ross either knew or approved of their actions. Certainly, nothing was done while Ross was Chief to compel compliance by Mr. Gilmour.

Upon his elevation to Chief, following Chief Ross' retirement, Chief Carlsen changed the condition of employment respecting mustaches by invoking and enforcing the prior, but lapsed, Hollis-Diffee mustache standard. I specifically reject Respondent's assertions that: (a) the "Red Book" standard was, or is, that mustaches be, per se, "neat and trimmed," although a performance standard does, indeed, provide ". . . mustache neatly trimmed. . . ." (G.C. Exh. 4). To the contrary, the Red Book is specifically conditioned on safety and provides, in relevant part, as follows: "Moustache - Shall be kept neatly trimmed so as not to interfere with use of the masks." (G.C. Exh. 3); or (b) that the Red Book gave, ". . . the Fire Chief the ultimate determination relative to the appropriateness of the mustache." (Respondent's Brief, p. 3). Again, contrary to Respondent's assertion, the Red Book did not give the Fire Chief discretion to determination the appropriateness of the mustache; rather, the Red Book gave the Fire Chief only the authority to ". . . make the final determination concerning the safety aspects" of a mustache. Accordingly, where, as was true of Mr. Gilmour, safety is not an issue, the Fire Chief has no authority under the Red Book to make any determination concerning a mustache.

Chief Carlsen, initially on July 16, in a meeting with Union President James L. Wright, Borgia, Douglas, Gilmour and Assistant Chief Johnson, stated that Gilmour's mustache was in violation because, ". . . his hair extends beyond his top lip" and further stated, ". . . that's my policy, and this is what I have implemented." (Tr. 42). Thereafter, on, or about July 22, various Fire Captains, announced changes, implemented by Chief Carlsen, including, that mustaches had to be trimmed back to the corners of the month and the top lip had to show. As noted above, for five to six years prior to July 22, 1986, firemen had been free to wear mustaches of any style or length, provided only that a mustache must not interfere with the wearing of masks. Respondent gave the Union no notice prior to July 16, 1986, that it either had implemented, or that it intended to implement, a new mustache policy. Rather, Chief Carlsen announced in a meeting about Mr. Gilmour's notice of termination that a mustache could not extend beyond the corners of the top lip and stated that this was his policy and this was what he had implemented. Although Chief Carlsen's mustache policy was not announced generally until July 22, 1986, because it had been implemented by Chief Carlsen on July 16, I find, as President Wright asserted, that a request to bargain after "It was already implemented," (Tr. 56) would have been a futile act.

(b) Discharge of Tracy Gilmour

General Counsel argues that Mr. Gilmour was terminated ". . . because of Respondent's illegal change in the mustache grooming policy." (G.C. Brief, p. 30). In a sense, it is certainly true that if the mustache policy had not been changed Mr. Gilmour would not have been terminated; but it was not Respondent's unilateral implementation of the new mustache policy that caused his termination; rather, it was Mr. Gilmour's insubordination in refusing to obey an order to cut his mustache to eliminate its Fu Manchu style. I have found that Mr. Gilmour was told, both by Captain Dove and by Assistant Chief Johnson, how much his mustache must be trimmed. Not only did Mr. Gilmour not cut his mustache to "Get it around the corners of the month. . . ." as Captain Dove ordered (see, Res. Exh. 21), but his response to Captain Dove's order, which was not denied, was a defiant, "I don't take no orders from no f_ _ _ _ _ g n _ _ _ _ _ r." (Tr. II 126). Moreover, while Mr. Gilmour may, or may not, have been contrite after the incident with Captain Dove, obviously, as Respondent Exhibit 21 shows, he retained his Fu Manchu style mustache. Although this case does not involve an MSPB decision, as Veterans Administration, West Los Angeles Medical Center, Los Angeles, California, 23 FLRA 278 (1986), (VA, West L.A.M.C.) did, the holding of the Authority therein is very much in point. There, the Authority stated, in part, as follows:

> ". . . The discipline at issue was based, in part, on insubordination. While the Respondent's unilateral implementation of the dress code was unlawful, a refusal by an agency to negotiate in good faith does not excuse an employee's insubordination in these circumstances. Procedures exist to remedy breaches of bargaining obligations, and the Union pursued them in this case. Self help -- that is, disobeying supervisory instructions -- cannot be condoned if the purposes and policies of the Statute are to be met . . . ." (23 FLRA at 280).

Here, Respondent's unilateral implementation of the "new" mustache code was unlawful; was pursued by the Union in this case; and will be remedied. Here, as in VA, West L.A.M.C., supra, Mr. Gilmour also resorted to self-help by disobeying supervisory instructions. For reasons stated by the

Authority, in VA, West L.A.M.C., supra, such insubordination can not be condoned ". . . if the purposes and policies of the Statute are to be met. . . ." Accordingly, as Mr. Gilmour was terminated during his probationary period for insubordination, Respondent did not illegally terminate bargaining unit employee Tracy Gilmour as alleged in Paragraph 10(c) of the Complaint as amended at the hearing (Tr. 18-22).

(c) White Tee Shirt Policy - Lunch Period - Attire during Stand-by Time.

As more fully set forth above, the record shows without dispute that for at least two years, 18/ and perhaps longer, firemen had been permitted to wear colored tee shirts under their uniform dress shirts, the significance to their uniform being that, as the uniform dress shirt is worn unbuttoned at the collar, the top of the tee shirt is visible. It is also without dispute that for the entire 5 to 6 year period of Chief Ross' tenure firemen had a two hour lunch period, again with the full knowledge and consent of Respondent. Finally it is further without dispute that for the same 5 to 6 year period of Chief Ross' tenure, firemen had been permitted to lounge around the day room on stand-by time in casual dress, e.g., shorts, athletic clothes, shower slippers, etc., with the full knowledge and consent of Respondent. Each of the above practices, including the mustache standard, had long continued with the full knowledge and consent of Respondent. It has long been recognized that parties may establish terms and conditions of employment by practice, U.S. Department of the Treasury, Internal Revenue Service, New Orleans District, New Orleans, Louisiana, A/SLMR No. 1034, 8 A/SLMR 497 (1978); Internal Revenue Service, Southeastern Region, Appellate Branch Office, New Orleans, Louisiana, A/SLMR No. 1153, 8 A/SLMR 1254 (1978); Department of the Navy, Naval Underwater Systems Center, Newport Naval Base, 3 FLRA 413, 414 (1980); Norfolk Naval Shipyard, 25 FLRA No. 19, 25 FLRA

---

18/ I am inclined to believe that, as Captain Carpenter very credibly testified, the wearing of colored tee shirts began when colored tee shirts were purchased for the softball team; however, Mr. Douglas testified that a female firefighter had, with the knowledge and consent of Respondent, sold colored tee shirts but without reference to the softball team (Tr. 153-154).

277 (1987); that to establish a practice which ripens into a condition of employment, such practice must: (a) be known to management, (b) responsible management must knowingly acquiesce, and (c) such practice must continue for some significant period of time, Department of Health, Education and Welfare, Region V, Chicago, Illinois, 4 FLRA 736, 746 (1980); Department of Health and Human Services, Social Security Administration, 17 FLRA 126, 138 (1985); Norfolk Naval Shipyard, supra, 25 FLRA at 286-287; and once a practice has become a condition of employment, it may not be altered by either party without bargaining. U.S. Army Reserve Components Personnel and Administration Center, St. Louis, Missouri, 19 FLRA 290, 292 (1985). Here, I conclude that each practice set forth had become a condition of employment. Respondent does not assert that any of the practices in question had been rendered non-negotiable by the Statute, nor does it otherwise appear that any is rendered non-negotiable except the duration of the lunch period which is addressed hereinafter, see, e.g., United States Department of Defense, Department of the Air Force, Oklahoma City Air Logistics Center, Tinker Air Force Base, Oklahoma, 8 FLRA 740 (1982) (facial hair); American Federation of Government Employees, AFL-CIO, National Immigration and Naturalization Service Council, 8 FLRA 347 (1982) (Union Proposal 3 - grooming standards); American Federation of Government Employees, AFL-CIO, Local 2670, 10 FLRA 71 (1982) (meals); American Federation of Government Employees, AFL-CIO, Local 2875, 5 FLRA 441 (1981) (union proposals 1, 2 and 3) (working hours); American Federation of Government Employees, AFL-CIO, Local 1625, 25 FLRA No. 85, 25 FLRA 1028 (1987) (tee shirts); Department of the Treasury, Internal Revenue Service and United States Department of the Treasury, Internal Revenue Service, Austin Service Center, Case No. 6-CA-20356 (1983), ALJ Decisions Report No. 31 (Nov. 8, 1983) (attire).

The 1979 Agreement (Resp. Exh. 3, Art. X, Sec. 4(4), p. 21) provided for a lunch break of one hour. Nevertheless, Respondent had allowed a lunch break of two hours for a period of five to six years. Chief Carlsen on, or about, July 22 implemented, through his fire captains, various changes including a change in the lunch break from two hours to one and one-half hours. The re-negotiated Agreement, not signed by the Union at the time of the hearing, was unchanged from the 1979 Agreement with respect to the one hour lunch period (Resp. Exh. 20, Art. 10, Sec. 4 c.(4)). General Counsel states,

> "It is undisputed that lunch periods under Chief Ross were two hours in

length. Contrary to Respondent's contentions, Carlsen did admit this fact (Tr. II, 57). Moreover, this practice was consistently maintained since at least 1980. Respondent changed this practice without giving the Union notice or an opportunity to bargain and yet it attempts to justify its illegal conduct by referring to the parties' current contract negotiations. This reliance is misplaced. Inasmuch as no new contract has been signed, the practice established under the old contract are still in effect. . . . Nor can it be argued that the change in lunch hours resulted in a de minimis impact on employees, for Respondent's change results in a 25% reduction of available lunch time and an additional half-hour of active duty time which firefighters must work during every shift. This unilateral extension of unit employees' duty time has a significant impact on employees. Therefore, since the half hour reduction in the lunch period had a more than de minimis impact on employees Respondent violated Section 7116(a)(1) and (5) of the Statute by its unilateral conduct in reducing the lunch periods without prior bargaining on the impact and implementation." (General Counsel's Brief, pp. 22-23) (Emphasis supplied).

Respondent, as General Counsel anticipated, stated,

"It is the Respondent's contention that the allegation relative to the change in the lunch period has been rendered moot by the events at the collective bargaining table. There is no dispute with the General Counsel's contention that Chief Carlsen, in July 1986, announced and put into effect a change in the lunch hour from two hours to ninety (90) minutes. There is also no dispute between the parties that the provisions of the 1979 collective bargaining agreement which the parties

> were still adhering to, called for a one hour lunch period (R. Exh. No. 3). Both Mr. Wright and Mr. Fisher, chief spokesmen, for the Union and Management testified that negotiations for the 'new' collective bargaining agreement were going on between the time these Unfair Labor Practice charges were filed, August 1986, until January 1987. Both men testified that those negotiations included the same provision for lunch period for firefighters that existed previously - one hour (R. Exh. No. 20). Subsequently, the new agreement has been proofread, finalized, approved by the Secretary of the Navy, and put into effect as of June 4, 1987. Why this issue was pursued all the way through to this hearing is beyond the undersigned's comprehension." (Respondent's Brief, pp. 9-10).

Respondent's argument would be more persuasive if Respondent had reverted to the contract requirement, but it did not. Neither Respondent nor General Counsel has seen fit to address the legality of the practice. I am aware that the Authority has been careful to hold that,

> ". . . It is . . . well established that the subject matter of the change, which was the time at which breaks and lunch might be observed within the work day (and not the length of the break, lunch or workday themselves), was a matter upon which the Respondent was obligated to bargain." (footnote omitted). Department of Health and Human Services, Social Security Administration, Baltimore, Maryland, 19 FLRA 1085, 1088 (1985); National Treasury Employees Union, Chapter 153, 21 FLRA 1116, 1121 (1986).

I am aware of 5 U.S.C. § 6101 and 5 C.F.R. §§ 610.102, 610.111, and 610.121 which, like the Authority's qualification, make questionable the propriety of the two hour lunch period; and, of course, I am aware of the provisions of § 6 of the Statute which, pursuant to § 6(a), possibly, renders the matter non-negotiable or, possibly,

pursuant to § 6(b)(1) makes the matter negotiable only at the election of Respondent. Nevertheless, since neither party has raised the matter, I express no opinion whatever as to whether the practice was, or was not, lawful. Whether lawful or unlawful, the Authority has held that even where a practice is unlawful and the agency unilaterally terminated the unlawful practice, there is, nevertheless, a duty to bargain over the impact on unit employees of the decision to discontinue the unlawful past practice, Department of the Interior, U.S. Geological Survey, Conservation Division Gulf of Mexico Region, Metairie, Louisiana, 9 FLRA 543, 546 (1982), and inasmuch as General Counsel alleges only a violation of §§ 16(a)(1) and (5) for failure to give the Union notice and the opportunity to bargain concerning the impact of said change and/or the procedures to be utilized (§ 6(b)(2) and (3) of the Statute), the bargaining obligation here would be the same whether the practice had been lawful or unlawful. Respondent was obligated to bargain on the impact and implementation, i.e., pursuant to § 6(b)(2) and (3) of the Statute, even if Respondent exercised a reserved management right. U.S. Customs Service, Region I (Boston, Massachusetts), 15 FLRA 309, 311 (1984).

Respondent implemented each change without notice to the Union and without affording the Union any opportunity to request negotiations prior to implementation. Respondent therefore violated §§ 16(a)(5) and (1) of the Statute by unilaterally implementing the change in the mustache grooming policy, the change requiring that white the shirts only be worn and the change requiring that employees remain in uniform while on standby without furnishing the Union with notice and opportunity to bargain concerning such changes; and Respondent further violated §§ 16(a)(5) and (1) of the Statute by changing the lunch hour from two hours to one and one half hour without furnishing the Union with notice and opportunity to bargain with respect to the impact and implementation of said change.

## REMEDY

General Counsel seeks a status quo ante remedy. In full agreement with the General Counsel, a status quo ante remedy is both proper and necessary to remedy the violations found as to changes negotiable as to substance, Department of the Navy, Northern Division, Naval Facilities Engineering Command, 24 FLRA No. 86, 24 FLRA 907 (1986), and, accordingly, a status quo ante order will be entered as to the mustache grooming policy, stand-by attire, and the color of tee shirts. However, as to the lunch period a status quo ante order is not necessary to remedy the violation found.

First, General Counsel concedes that Respondent was not required to bargain on the decision to reduce the length of the lunch period from two hours to an hour and a half. Second, the failure to afford the Union an opportunity to bargain on impact and implementation can be fully remedied by ordering present bargaining on impact and implementation. Third, applying the criteria set forth in Federal Correctional Institution, 8 FLRA 604, 606 (1982), it would disrupt or impair the efficiency and effectiveness of Respondent's operations to require that the duty time of firemen be reduced.

Having found that Respondent violated §§ 16(a)(5) and (1) of the Statute, I recommend that the Authority adopt the following:

ORDER

Pursuant to § 2423.29 of the Authority's Rules and Regulations, 5 C.F.R. § 2423.29, and § 18 of the Statute, 5 U.S.C. § 7118, the Authority hereby orders that the Department of the Navy, Naval Weapons Station Concord, California, shall:

1. Cease and desist from:

(a) Unilaterally changing established conditions of employment of firemen concerning: mustache grooming standards, attire of firemen in the day room during stand-by time, and color of tee shirts worn by firemen, without first notifying the American Federation of Government Employees, Local 1931, AFL-CIO, the exclusive bargaining representative, and affording it the opportunity to bargain, to the extent consonant with law and regulations, on any decision to change any such condition of employment.

(b) Unilaterally changing the established lunch period of firemen without first notifying the American Federation of Government Employees, Local 1931, AFL-CIO, the exclusive bargaining representative, and affording it the opportunity to bargain, to the extent consonant with law and regulations, on the impact and implementation of such change.

(c) In any like or related manner interfering with, restraining or coercing its employees in the exercise of their rights assured by the Federal Service Labor-Management Relations Statute.

2. Take the following affirmative action in order to effectuate the purposes and policies of the Federal Service Labor-Management Relations Statute:

(a) Rescind and withdraw the mustache grooming policy for firemen implemented on, or about, July 16, 1986, by Chief Carlsen, and on, or about July 22, 1986, by Chief Carlsen through his fire captains, and revert solely to the standard set forth in the Red Book (SECDEPTINST 11320.1, October 3, 1974).

(b) Rescind and withdraw the policy implemented on, or about, July 22, 1986, with respect to attire of firemen in the day room during stand-by time and with respect to the color of tee shirts firemen are permitted to wear, and revert to the practice which had pertained to each, i.e., attire during stand-by time and tee shirts, immediately prior to July 22, 1986.

(c) Notify the American Federation of Government Employees, Local 1931, AFL-CIO, the exclusive representative, of any intention to change: (a) the mustache grooming policy for firemen; (b) the attire of firemen during stand-by time; or (c) the color of tee shirts firemen are permitted to wear, and, upon request, bargain with said representative, to the extent consonant with law and regulations, on any decision to change any such conditions of employment.

(d) Upon request of the American Federation of Government Employees, Local 1931, AFL-CIO, the exclusive representative, bargain with said representative, to the extent consonant with law and regulation, with respect to the impact and/or implementation of the decision, implemented on, or about July 22, 1986, to reduce the lunch period.

(e) Post at its facilities at the Naval Weapons Station Concord, Concord, California, copies of the attached Notice on forms to be furnished by the Federal Labor Relations Authority. Upon receipt of such forms, they shall be signed by the Commanding Officer, and shall be posted and maintained for 60 consecutive days thereafter, in conspicuous places, including all bulletin boards and other places where notices to employees are customarily posted. Reasonable steps shall be taken to insure that such Notices are not altered, defaced, or covered by any other material.

(f) Pursuant to § 2423.30 of the Authority's Rules and Regulations, 5 C.F.R. § 2423.30, notify the Regional

Director, Region IX, Federal Labor Relations Authority, 901 Market Street, Suite 220, San Francisco, California 94103, in writing, within 30 days from the date of this Order, as to what steps have been taken to comply herewith.

William B. Devaney

WILLIAM B. DEVANEY
Administrative Law Judge

Dated: April 25, 1988
Washington, D.C.

NOTICE TO ALL EMPLOYEES

PURSUANT TO

A DECISION AND ORDER OF THE

FEDERAL LABOR RELATIONS AUTHORITY

AND IN ORDER TO EFFECTUATE THE POLICIES OF

CHAPTER 71 OF TITLE 5 OF THE

UNITED STATES CODE

FEDERAL SERVICE LABOR-MANAGEMENT RELATIONS STATUTE

WE HEREBY NOTIFY OUR EMPLOYEES THAT:

WE WILL NOT unilaterally change established conditions of employment of firemen concerning: mustache grooming standards, attire of firemen in the day room during stand-by time, and color of tee shirts worn by firemen, without first notifying the American Federation of Government Employees, Local 1931, AFL-CIO, the exclusive bargaining representative, (hereinafter, referred to as "Local 1931"), and affording it the opportunity to bargain, to the extent consonant with law and regulations, on any decision to change any such condition of employment.

WE WILL NOT unilaterally change the established lunch period of firemen without first notifying Local 1931, the exclusive bargaining representative, and affording it the opportunity to bargain, to the extent consonant with law and regulations, on the impact and implementation of such change.

WE WILL NOT in any like or related manner, interfere with, restrain, or coerce employees in the exercise of their rights assured by the Federal Service Labor-Management Relations Statute.

WE WILL rescind and withdraw the mustache grooming policy for firemen implemented on, or about, July 16, 1986, by Chief Carlsen, and on, or about July 22, 1986, by Chief Carlsen through his fire captains, and revert solely to the standard set forth in the Red Book (SECDEPTINST 11320.1, October 3, 1974).

WE WILL rescind and withdraw the policy implemented on, or about, July 22, 1986, with respect to attire of firemen in the day room during stand-by time and with respect to the

color of tee shirts firemen are permitted to wear, and revert to the practice which had pertained to each, i.e. attire during stand-by time and tee shirts, immediately prior to July 22, 1986.

WE WILL notify Local 1931, the exclusive representative, of any intention to change: (a) the mustache grooming policy for firemen; (b) the attire of firemen during stand-by time; or (c) the color of tee shirts firemen are permitted to wear, and, upon request, bargain with said representative, to the extent consonant with law and regulations, on any decisions to change any such conditions of employment.

WE WILL upon request of Local 1931, the exclusive representative, bargain with said representative, to the extent consonant with law and regulation, with respect to the impact and/or implementation of the decision, implemented on, or about July 22, 1986, to reduce the lunch period.

_____
(Activity)

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 any of its provisions, they may communicate directly with the Regional Director of the Federal Labor Relations Authority, Region IX, whose address is: 901 Market Street, Suite 220, San Francisco, CA 94103, and whose telephone number is: (415) 995-5000.