

United States of America

BEFORE THE FEDERAL SERVICE IMPASSES PANEL

In the Matter of

UNITED STATES DEPARTMENT OF AIR FORCE,  
SHEPPARD AIR FORCE BASE

And

AMERICAN FEDERATION OF GOVERNMENT  
EMPLOYEES, LOCAL 779

Case No. 19 FSIP 010

**OPINION AND DECISION**

This case, filed by the American Federation of Government Employees, Local 779 (Union) on November 16, 2018, concerns the issuance of a local dress code standard for civilian Instructors who work in the classrooms, out on the flight line, and on the hanger floor in the 82nd Training Wing of the Sheppard Air Force Base in Wichita Falls, Texas (Agency). The dispute was filed pursuant to §7119 of the Federal Service Labor-Management Relations Statute (the Statute).

**BACKGROUND**

Named in honor of Senator Morris Sheppard, former Chairman of the Senate Military Affairs Committee, Sheppard Air Force Base (Sheppard AFB) was activated October 17, 1941, and provided aircrew and aircraft mechanics training during World War II. Today, Sheppard is the largest training base in the Air Education and Training Command--the only Air Force base that is home to both technical and flying training. Sheppard trains pilots and maintainers, as well as the propulsion, avionics maintenance, flight equipment, fuels, munitions and aerospace ground equipment specialists needed to keep planes in the air, and the civil engineers, plumbers, telecommunications specialists and electricians needed to keep the bases running. The Union is the exclusive representative of the general schedule civilian employees at Sheppard AFB, representing approximately 1,000 bargaining unit employees on the base. The relevant division of the base to which the new dress code policy applies is the 82nd Training Group. The 82nd has four relevant squadrons: the 359th, the 361th, the 362nd and the 363rd. All of the 82nd is currently under the command of Commander Donohue. The impacted bargaining unit includes approximately 300 Instructors.

## **BARGAINING HISTORY**

The parties are covered by a collective bargaining agreement (CBA) that expires in June 2019. On March 8, 2018, in accordance with the parties CBA, Article 8, the Agency notified the Union of its intention to implement new standards for dress code. Due to a clerical error, the Agency sent the Union the corrected proposed dress code the next day, on March 9, 2018:

**REFERENCE: AFI 36-703, 18 February 2014**

### **Chapter 4**

#### **DRESS, APPEARANCE AND RELATIONSHIPS**

4.1. **Professional Public Image.** Employees are expected to comply with reasonable dress and grooming standards based on comfort, productivity, health, safety, and type of position occupied. Due to the diversity of work functions and locations, appropriate dress standards may vary significantly.

4.2. **Civilian Dress.** Employee attire will be in good repair, and should not be considered offensive, disruptive, or unsafe. Commanders or civilian equivalent may establish and publish local civilian dress standards. Such standards should be consistent with the provisions of 4.1. Management's disagreement with styles, modes of dress, and grooming currently in fashion is not an adequate criterion for establishing local civilian dress standards.

This is the overview of unacceptable work attire. The list is not all-inclusive. No dress code can cover all contingencies, so employees must exercise good judgment in their choice of clothing\* to wear to work ensuring it is clean and in good repair, and not considered offensive, disruptive, or unsafe. Reasonable accommodations for religious and/or medical needs will be considered and must be discussed with the employee's supervisor. If you experience uncertainty about acceptable, professional attire for work, please consult your immediate supervisor or Civilian Personnel staff for guidance.

**UNACCEPTABLE DRESS:** Shorts, tank tops, sleeveless t-shirts or cut-off/midriff/halter/strapless tops/shirts, mini- or short skirts, clothing that reveals a person's undergarments, stomach, back, chest or excessive cleavage, sweatpants/athletic pants, spandex, sheer/see-through clothing, flip-flops/thongs.

\*Clothing includes headwear or footwear (i.e., hats/caps and shoes/boots, etc.)

On March 9, 2018, the Union requested to bargain the proposed standards and requested status quo be maintained until the conclusion of bargaining. The parties met to negotiate on March 22, April 2, April 10, and May 24, 2018. By the last bargaining

session, the parties were at impasse over two remaining issues in the dress code policy:

1. The prohibition of shorts.
2. The “sweatpants/athletic pants/spandex” language in the policy.

The Federal Mediation and Conciliation Services were called into the dispute. The parties met with the assistance of Mediators on May 24, 2018, but were unable to resolve the remaining disputed issues. The Agency provided notice to the Union on October 30, 2018 that they would be implementing the proposed dress code standard effective November 8, 2018. Implementation did in fact occur. The Union filed the request for assistance on November 16, 2018. On December 12, 2018, the Federal Service Impasses Panel (FSIP or Panel) asserted jurisdiction over the matter and directed the parties to resolve the dispute through Mediation-Arbitration at the Sheppard AFB. The Panel determined that I, Chairman Mark Carter, would serve as the Panel representative in this matter. The Mediation-Arbitration was conducted on February 26, 2019.

### **PRELIMINARY ISSUE**

At the Mediation-Arbitration on February 26, 2019, the Agency provided a binder of material to support their position in the impasse over the remaining issues in the issuance of the local dress code standard. The material provided by the Agency included in Tab 14 a DC Circuit Court decision, AFGE v FLRA, 864 F2d 178 (DC Cir. 1988). In that case, the Bureau of Prison (Agency) refused to negotiate with the AFGE (Union) over its proposal to change the uniform standard in the FCI-Morgantown facility. The Agency said it would only negotiate with the Union over the Impact and Implementation of the standard. The Union filed a ULP. In that case, the Authority used a two-prong test to determine if the Agency had an obligation to bargain over the substance of the dress standard in the FCI-Morgantown facility. In that case, applying the two-prong test, it was determined that the mission of the Agency was to provide for the care and custody of the federal inmates and that the dress code in the prison facility was a means of performing the mission. In applying the test, the “image” of the correction officers equated to a higher level of “cooperation” among inmates; inmates are more likely to follow the officer’s instructions when they present in the proposed uniform (vs. the prior uniform); the image impacted the way the officers performed their duties. The DC Circuit determined that the Agency was not obligated to bargain over the substance of the uniform standard at the FCI-Morgantown facility; the Agency was willing to bargain over the impact and implementation. Because the uniform was found to be a means of performing the work of the correction officers, it was a permissive subject of bargaining.

At the conclusion of the hearing, I gave the parties an opportunity to submit additional information to consider. I advised the parties that I was particularly interested in the negotiability argument that the Agency raised at the hearing. In its timely submission, the Agency addressed its arguments over the Union's concerns over safety during high temperatures and Instructor comfort, however, it did not address in any detail its negotiability concern. The Agency only mentioned "means of performing work" on page 7 of 8 (unnumbered pages): "Nonetheless, the Agency remains of the position that shorts detract from a professional learning environment, and that adopting the Union's position interferes with **management's right to proscribe the method and means of performing work.**" (emphasis added). Otherwise, the Agency provided no argument as to why they have no substantive duty to bargain.

In its timely submission, the Union specifically addressed the Agency's duty to bargain over the proposed dress code change. The Union argued that there is a duty to bargain because there is no direct and integral relationship between the Agency's proposed dress code change and the accomplishment of the mission<sup>1</sup>. The Union argued that their proposal actually further supports (not interferes with) the accomplishment of the mission (i.e., it provides employees the ability to work for longer periods during hot months without the necessity to take breaks because of excess heat). The Union argued that the Agency failed to demonstrate that the wearing of shorts is not negotiable under these circumstances.

The duty to bargain determination belongs to the FLRA unless existing case law can be applied by the Panel. In Carswell<sup>2</sup>, the FLRA determined that the Panel can resolve a negotiability or duty to bargain issue raised in an impasse proceeding if it can apply existing Authority case law. If an agency raises a duty to bargain issue regarding a union proposal, consistent with Carswell, the Panel must review the Authority case law relied upon to determine if a substantially similar proposal to the one at impasse has been found to be negotiable. If so, the Panel can assert jurisdiction and resolve the impasse. If not, the Panel must decline jurisdiction.

I provided the parties an opportunity to provide case law that addresses the negotiability of the Union's proposal. The parties would have needed to show where the Union's proposal (i.e., allowing shorts in the Training facilities), or a proposal substantially similar, has been determined by the Authority to be negotiable or not negotiable. Because neither party presented cases that demonstrate the negotiability of the language in dispute, the negotiability matter would need to be determined by the Authority before the Panel can resolve the impasse over the Union's proposal.

---

<sup>1</sup> The Agency asserted in its statement that the mission of the Air Education and Training Command is to, "Recruit, train, and educate Airmen to deliver airpower for America."

<sup>2</sup> Commander, Carswell Airforce Base, Texas and American Federation of Government Employees, Local 1364, 31 FLRA 620 (1988) (Carswell).

**DECISION**

As the Union's proposal to allow the bargaining unit to continue to wear shorts is the last remaining issue<sup>3</sup>, and the Agency has raised a negotiability concern with that language that is more appropriately addressed by the Authority, pursuant to the authority vested in me as the Panel representative of the case under 5 U.S.C. §7119, I have determined that the Panel will withdraw its jurisdiction over the remaining issue.



Mark A. Carter  
FSIP Chairman

April 4, 2019

Washington, D.C.

---

<sup>3</sup> At the Mediation-Arbitration on February 26, 2019, the Union withdrew its objection to the "athletic pants" prohibition and was content with the clarification of "spandex" to "spandex pants". The Agency agreed to that edit to the policy. At the end of the Mediation-Arbitration, the last remaining issue was whether the impacted bargaining unit employees would be permitted to wear shorts.