

In the Matter of

DEPARTMENT OF STATE
PASSPORT SERVICES AGENCY
WESTERN PASSPORT CENTER
TUCSON, ARIZONA

and

LOCAL 1998, NATIONAL FEDERATION
OF FEDERAL EMPLOYEES,
FEDERAL DISTRICT 1, IAMAW,
AFL-CIO

Case No. 13 FSIP 42

ARBITRATOR'S OPINION AND DECISION

Local 1998, National Federation of Federal Employees, Federal District 1, IAM&AW, AFL-CIO (Union), filed a request for assistance with the Federal Service Impasses Panel (Panel) to consider a negotiation impasse under the Federal Service Labor-Management Relations Statute, 5 U.S.C. § 7119, between it and the Department of State, Passport Services Agency, Western Passport Center, Tucson, Arizona (Employer or WPC).

After an investigation of the request for assistance, which arises from bargaining over office attire, the Panel directed the parties to mediation-arbitration with the undersigned, Panel Member Edward F. Hartfield. Accordingly, on May 8, 2013, a mediation-arbitration proceeding was convened by telephone with representatives of the parties. During the mediation phase, the parties addressed their interests and positions and they were able to reach agreement over an issue involving the size of logos and writing on T-shirts. However, a second issue could not be resolved voluntarily and, consequently, it has been submitted for arbitration. In reaching my decision, I have considered the entire record, including the parties' final offers, documentary evidence, and post-hearing briefs.^{1/}

^{1/} Subsequent to the parties' submission of their post-hearing briefs the Union objected to certain arguments raised by the Employer in its brief claiming that they were "novel arguments, not expressed or discussed during or prior to the hearing" for which the Union now is disadvantaged in

BACKGROUND

The Employer adjudicates applications for U.S. passports. The Union represents a bargaining unit consisting of approximately 1,200 employees in about 24 offices nationwide. The parties are covered by a master collective-bargaining agreement (MCBA) that was to expire on July 20, 2012, but has been extended until a successor agreement is implemented. In the Western Processing Center, the Union represents approximately 36 bargaining-unit employees most of whom hold the position of passport specialist.

The MCBA offers some guidance concerning standards of dress, but it leaves to the parties at the local level the right to determine more specific requirements. It also guarantees a casual dress day at least 1-day-per-week. Currently, the Tucson office has a "casual Friday" dress code policy.

ISSUE AT IMPASSE

The parties disagree over when employees may wear casual attire to work.^{2/}

that it has not had an opportunity to respond. The Union asks that such newly-raised arguments not be considered by the Arbitrator. I note that the Employer's arguments to which the Union now objects were made in response to evidence and testimony submitted by the Union during the mediation-arbitration proceeding. Inasmuch as the Employer has limited the discussion in its brief to record testimony and documentation, I will allow the arguments made by the Employer to continue to be part of the record before me.

^{2/} Agreements already have been reached with respect to clothing items that are permissible and prohibited on casual day.

POSITIONS OF THE PARTIES1. The Union's Position

The Union proposes the following:

Casual Days

- Fridays, with the exception of when dignitaries from headquarters (such as the Managing Directors or Deputy Assistant Secretary of State) or other government agencies or departments are on the premises. This is generally limited to visiting Department of State employees who are members of the Senior Executive Service.
- Each day beginning 2 calendar months, plus 2 calendar weeks, prior to and ending on Labor Day will be casual, with the same exceptions as above.
- The day immediately preceding a Federal holiday, with the exception of the weeks during which Christmas and Thanksgiving fall (which will always be casual), will be casual. The same exceptions as above apply.

Management will inform the employees a reasonable amount of time ahead when casual days are cancelled, the reason(s) for the cancellation, etc. If an employee shows up dressed casually because he or she did not receive notification of the communication, e.g. returning from leave status after the notification was transmitted, Management has the option of sending them home to change without charge to leave or allowing them to stay dressed.

In support of its proposal, the Union notes that summertime in Tucson is oppressively hot and less formal and constricting clothing would be a welcome relief for employees. The parties already have agreed to exclude many clothing items as inappropriate for casual day (e.g. clothing that contains profane writing or writing that promotes or exhibits drugs or alcohol) so the Employer should not be wary that employees would abuse casual dress privileges. During the 3 years that the office has been in existence, no employee has been counseled or disciplined about their attire and there has not been a single

grievance relating to dress code issues, which indicates that employees have used good judgment regarding their dress.

Another locally-negotiated agreement concerning dress code at the National Passport Center reveals that employees in that office enjoy a casual dress policy year round with a few exceptions - when employees perform work at the counter where they interface with the public; when VIPs visit the office; and when employees attend outreach events. At the Colorado Passport Agency, management and the Union have agreed that employees are permitted to dress casually every workday during the summer, except when they have assignments where they deal with the public. Also, in the New York Passport Agency, the parties have agreed to allow employees to wear casual attire in the office when they do not interface with the public. This comparability data demonstrates that bargaining-unit employees in other offices who perform substantially the same work and hold the same position have more enhanced opportunities to dress casually well beyond casual Fridays. There is no reason why employees in the Tucson office should not have the same benefit.

In Arizona, where there seems to be a greater resentment from the public towards Government, employees would feel less conspicuous if they could dress, at least part of the year, by wearing casual attire. In addition, allowing employees a greater number of days to wear casual clothing will improve employees' overall security and safety.^{3/} Furthermore, there are some parts of the office where the air-conditioning works less effectively because of the size of the windows and some work areas become too warm and uncomfortable. Having the option to wear cooler, lighter-weight clothing would improve the work environment for employees.

Moreover, allowing employees to wear casual attire during the periods proposed by the Union would not adversely impact agency operation. Finally, no evidence was presented by the Employer that members of the public have ever complained about employee attire worn on current casual Fridays.

3/ This argument, apparently, is in reference to a situation when employees, who were not dressed in casual attire at the time, were outside the office, in public view, due to an evacuation and an individual with an AK-47 was spotted nearby.

2. The Employer's Position

The Employer proposes the following:

Casual Days

Friday:

- Fridays, with exception of when dignitaries from headquarters (such as the Managing Directors or Deputy Assistant Secretary of State) or other government agencies or departments are on the premises. This is generally limited to visiting Department of State employees who are members of the Senior Executive Service.
- When dignitary(ies) is/are scheduled to visit the WPC on a Friday, an alternate date will be designated by WPC management as a Casual Day in lieu of the Friday Casual Day.

Additional Casual Days:

- The day immediately preceding a Federal holiday. If the Federal holiday falls on a Monday the Casual Day will be the preceding Friday. If the Federal holiday falls on a Tuesday, Wednesday, Thursday, or Friday, the Casual Day will be designated as the preceding business day.
- The week of Thanksgiving (Monday-Friday) annually.
- The week of Christmas (from December 24-December 31) annually.

Attire and Regular Days Off (RDOs)

- When BUEs come to the WPC on their RDO for the purpose of working adjudication overtime, the day will be treated as a Casual Day for attire purposes.

The Employer opposes expanding casual dress days to the extent proposed by the Union. It is important for employees to maintain a professional appearance because the public expects it

and to convey respect for colleagues. In the past, management has had "concerns" regarding the way some employees dress on casual day and it believes that casual dress day, generally, should be a once-a-week occurrence and not all summer long. The State Department, typically, is a conservative place to work and the Employer's proposal would maintain the culture, but still allow employees to dress casually once-a-week, for the most part.

The Union has not demonstrated a need to allow casual dress for the entire summer. Employees work in a climate-controlled building and the Employer disputes the Union's contention that the office sometimes is too warm in areas near large windows; rather, some employees have been known to wear sweaters and use space heaters because the office is too cool. Even if there are some work areas in the office that are warmer than others, wearing jeans to work is not likely to be any less cool than the business casual attire currently worn Monday through Thursday. Furthermore, the Union's proposal would be inherently unfair for many bargaining-unit employees who would not be permitted to wear casual attire during the summer because they have a monthly rotational assignment at the public counter where casual dress is not permitted.

CONCLUSIONS

Having considered the parties' proposals and positions, I have determined that the impasse should be resolved on the basis of a modified version of the Union's proposal.

First and foremost, the most compelling argument to ruling in favor of the Union is the Employer's failure to address the Union's argument of comparability: How is it that the same department (State) can negotiate an agreement in offices in Washington, D.C., New York City, and Denver with a significantly greater casual dress flexibility than it is willing to offer in the Western Passport Center? How is it possible to allow employees in those larger and more visible urban areas to dress casually on days other than just Fridays and not in Tucson at the WPC? The Employer's arguments simply do not address that question.

The parties are in agreement that employees will not wear casual dress when visiting dignitaries or visitors from headquarters are scheduled to be on site. The Employer did not refute the Union's contention that the public cannot see employees that are working away from the counter. Nor did the

Employer refute the Union's contention that no employee has ever been disciplined for inappropriate dress.

The Employer does raise a concern about the tight staffing schedules in the busy summer season and the possibility that employees who were not originally scheduled to interact with the public might have to do so on short notice. The Employer also mentioned its concern in having to pay employees to go home to get dressed appropriately and the loss of productivity when that occurs. While I understand the concern that is being raised, it seems more practical and prudent to this Arbitrator that the Employer will recommend to employees to keep a set of clothing appropriate for working at the counter with them in the event that they are pressed into duty on an unscheduled basis. Given the importance that the Union asserted its bargaining-unit members attached to the casual dress issue, such a recommendation should be easily accepted.

In a similar vein, the Employer raises the argument that, given the practice of rotational assignments, some employees will miss out on the opportunity to wear casual clothing during the summer due to their assignment at the public counter or on outreach activities. In addition, the Employer maintains that contractor employees or other non-bargaining unit employees will not have the advantage of the enhanced summer dress policy. The Employer maintains that this will result in a casual dress policy that is neither equitable nor fair.

I am not persuaded at all by these arguments. In the first place, the Union has brought this issue of a more extensive casual dress policy before the Panel on behalf of its bargaining-unit members. Second, the Employer retains the discretion to modify or regulate the policy for other employees; that matter has no bearing on these deliberations. Nor am I persuaded by the Union's request that employees who are assigned to counter or fraud investigation rotations during the summer months should receive an additional month of casual dress to compensate.

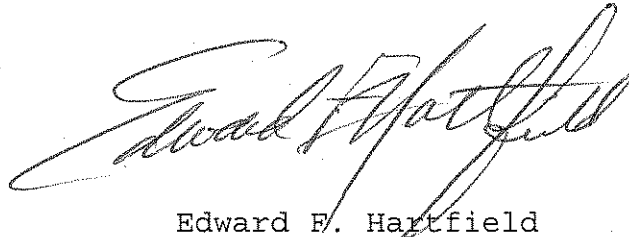
In reference to the Union's assertion that expanding the casual dress policy would be a morale booster, the Employer simply points out that there already are a number of other activities to boost morale. It does not contest the Union's claim.

DECISION

I hereby order the parties to adopt the following modified version of the Union's proposal as a basis for resolving this dispute:

Casual attire shall be permitted as follows:

1. On Fridays, with the exception of when dignitaries from headquarters (such as the Managing Directors of Deputy Assistant Secretary of State) or other government agencies or departments are on the premises. This is generally limited to visiting Department of State employees who are members of the Senior Executive Service. Management will provide employees with advance notice of these visits to facilitate appropriate employee dress.
2. In addition to Friday, casual attire will be permitted the day after a Federal holiday.
3. Casual attire will be permitted from Memorial Day to Labor Day each year.
4. Employees shall not dress in casual attire when:
 - a. They are required to work at the counter and interface with the public; and
 - b. Employees participate in outreach activities and events.



Edward F. Hartfield
Arbitrator

June 14, 2013
St. Clair Shores, Michigan