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DRESS CODES AND ARBITRATION

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ABSTRACT

Personal grooming and dress code issues are not disappearing. Generally, employers attempt to justify rules regarding personal appearance as necessary to promote its image or for health or safety reasons. Employees may find such rules as inhibiting their own notions of personal freedom and expression. An emerging question arising out of such rules is the degree of proof required by arbitrators to establish the necessity for promulgating them. Such proof appears to be more often required in image cases to those involving the safety and health of employees. Public sector and male-female dress code issues are also reviewed in this article.

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others see us!
(Robert Burns)

Especially since the 1960s, arbitrators have been deciding cases involving dress codes, personal appearance requirements, and discipline imposed for alleged violations of such dress codes. While the passage of time may have dampened some of the ardor or tone involved in these cases, the issues have not disappeared [1]. Dress codes have also been attacked on grounds such as alleged violations of the U.S. Constitution or civil rights laws [2].

While no one would seriously question management's right to adopt and implement reasonable dress requirements, unions have sometimes disagreed with the assumptions on which such requirements are based. For example, unions may question whether clothing-related safety rules are really necessary or whether such rules should be applied to even those employees not directly affected by the

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alleged safety hazard. They may also question whether or not dress codes, based on an employer's need to project a certain image, are valid. In addition, issues arise as to the need for employers to support image-related dress codes with empirical data. Grievances may also concern an alleged or real disparity in dress code requirements between men and women. Moreover, issues may emerge concerning whether or not employers can maintain safety-related dress codes in the face of religious objections and what restrictions exist for employees who identify themselves on their apparel as union members or union representatives.

These and other related questions became the focal point of this research. Thirty-nine arbitration awards published in the Bureau of National Affairs' *Labor Arbitration Reports* and the Commerce Clearing House's *Labor Arbitration Awards*, covering the years 1978 to 1995, were consulted in an attempt to provide data relevant to the research issues. The results of this study are summarized below.

MANAGEMENT'S RIGHTS TO ESTABLISH DRESS CODES

There is little doubt that it is a fundamental right of management to unilaterally establish reasonable work rules, including standards of appearance [6]. Of course, such a right would be subject to bargaining with the union if work rules, including the dress code, had been incorporated into the terms of the collective bargaining agreement. In such an event, the original appearance code would have to be bargained, and any changes thereto would be required to be negotiated. Absent such a contractual restriction, management may unilaterally establish and change dress codes [8]. Employees may challenge personal appearance rules as being "unreasonable," i.e., not related to a business need, or simply arbitrary and capricious.

Even in the absence of a formal dress code, an employee's right to be attired in any fashion is not an unfettered one. Arbitrator Marlatt noted:

> There is, of course, a limit on an employee's freedom to wear whatever he or she chooses in any work environment. Dress which is patently offensive to other employees may properly be banned (e.g., T-Shirts painted with obscenities or racial slurs, or clothing soiled to the point of being noticeably unhygienic) [9, at 5284].

JUSTIFICATIONS FOR DRESS CODES

Employers normally promulgate a dress code based on one of two reasons: 1) enhancement of the company's image or 2) health and/or safety reasons. Naturally, it is possible to incorporate a dress code for both reasons, but understanding of the underlying issues is facilitated with a separate discussion of each.

Image concerns may involve wearing a type of uniform, hair restrictions, weight restrictions; or may, in the negative, indicate attire considered by the employer to be inappropriate. More disputes arise out of dress codes based on image than from those based on safety or health. This is because an employer's business objectives often run contrary to an employee's feelings regarding his/her right to self-expression. Arbitrator Christopher put it this way:

> Any rule governing an employee's appearance must consider the impact the rule may have on the employee's freedom of expression. Such consideration balances the Company's desire to portray a special image against the employee's right to be free from unreasonable restrictions on her appearance [10, at 1104, 1105].

In arbitrator Christopher's case, the employer required cocktail waitresses to have blond hair or to wear a blond wig, so as to maintain the elegant and distinctive dining atmosphere of the restaurant. It was found by the arbitrator that this rule was reasonable as it was related to a legitimate management objective, and employment candidates were informed of the existence of the hair-rule requirement at the time of hire [10].

Also contributing to the number of image cases is the fact that management's judgments regarding whether or not an employee is complying with grooming or appearance standards are sometimes subjective in nature [11, at 3041]. For example, in *Spartan Stores, Inc.*, a company's right to refuse to allow its drivers to wear tank tops, shorts, or T-shirts during the summer months while they were making deliveries to retail customers was upheld [12]. Arbitrator Daniel noted that

> . . . everyone has a different point of view regarding his clothes, his body and sartorial appearance and is, oftentime, entirely naive and blind not only to the imperfections but also to the offensiveness of his appearance. It simply cannot be left to individual 'good taste' nor should the employer be required to have a daily inspection line [12, at 5256].

The arbitrator also indicated that any appearance standard should never be lowered to that of the minority of employees but should be maintained as the "generally accepted practice" [12, at 5256].

In an interesting "image" case, Disneyland's right to place an employee on involuntary leave because of her inability to reduce her weight was upheld by an arbitrator [13]. The employee's job was a ticket seller, and the parties' contract provided that the employer would supply costumes or uniforms if it required employees to wear them. Disneyland maintained costumes for ticket sellers to fit a range of sizes from two to twenty. The employee was unable to fit into the largest size, and the arbitrator held that it was not reasonable for the company to

be required to tailor-make each costume or uniform. Nevertheless, because the employee's weight problem had a medical origin, a thirty-day limit imposed by the company on the employee to lose the required weight was extended, and the employee was given the option of reimbursing the employer for alteration costs to the uniform if she could not fit into the largest size of the standard costume [14].

MALE-FEMALE IMAGE STANDARDS

The question sometimes arises whether a dress code, so as not to appear sexually biased, must require both males and females to wear similar (or identical) attire. This question was answered in the *Walgreen Company* case [15]. The drugstore chain required pharmaceutical employees to display the appearance of "highly trained professionals." Male pharmacists were to wear a uniform consisting of a blazer, shirt, and tie, while female pharmacists were to be similarly attired except no tie was required for them. Subsequently, the reasonableness of the company's policy was grieved by the union, including the disparity in attire between male and female pharmacists. In brushing aside the union argument, arbitrator Wies noted:

> . . . it is the Arbitrator's opinion that requiring male employees to adhere to different standards of dress than female employees is not improper unless it is shown that the standards place an unreasonable burden on one sex compared with the other [15, at 1198].

There was no showing, arbitrator Wies believed, that requiring men to wear a tie, while not imposing the same standard for women, placed an onerous burden on the male pharmacists.

IMAGE ISSUES IN THE PUBLIC SECTOR

Public sector employers, whether local, state, or federal government agencies, face issues regarding employee appearance similar to those that exist in the private sector [17]. However, public sector employers have additional responsibilities not shared by their private sector bretheran, e.g., employees such as firefighters or police, for whom personal identity, authority, and image take on special importance. In such instances employers may treat such employees as being paramilitary in nature, and thus management may be accorded greater discretion in commanding stringent personal appearance and uniform requirements. In this regard, a rule mandating that firefighters wear black shoes with their blue (employer) furnished uniforms, was held to be reasonable [20]. Prior to the parties' most recent contract negotiations, the work rules had provided that firefighters must wear "polished shoes," but subsequently, during the middle of contract negotiations, the city issued new work rules requiring the wearing of

black shoes. The city discussed the rules with the union, but claimed the black shoe rule was not negotiable. Arbitrator Cocalis maintained that

> The most important functions of a uniform are to identify, and add authority to, the person wearing it. Obviously, the City feels its firemen's dress should reflect that they belong to a City organization devoted to the protection of the public. Absent a collective bargaining agreement, the City could require, as other employers have required, that the employees supply their own uniforms [20, at 952; 21].

Similarly, a police officer was held to be properly suspended for five days for refusing to cut his hair in accordance with departmental regulations [22]. The employee's argument that he would lose his personal identity was not persuasive. Instead, the arbitrator stressed the paramilitary and *esprit de corps* needs of the department that formed the basis of the rule [23].

Moreover, an employee must not demean or abuse his/her uniform. In an interesting case, just cause was held to exist to terminate a police officer who wore her complete police uniform with a Keystone Kop hat and a pig snout mask as a Halloween costume at a lesbian bar in a disreputable part of town [25]. The officer not only gave a false account of the incident to Internal Affairs, but also failed to comply with guidelines regarding the wearing of police uniforms while off-duty. Arbitrator Marlatt concluded that

> She held her fellow officers up to shame and ridicule by debasing her police uniform into a ludicrous Halloween costume characterizing police officers as "pigs" [26, at 5567].

THE REQUIREMENT FOR PROOF IN IMAGE CASES

An issue that has emerged in "image" dress code cases is whether or not an employer is required to establish (i.e., "prove") a relationship exists between its dress or appearance code and customer disapproval and/or business impact if such a dress code is not adopted. Arbitrators have, of course, cast a jaundiced eye toward personal appearance requirements when employees have limited or no contact with the public [26]. As arbitrator Talent observed: "Personal likes or dislikes do not provide a legitimate basis for establishing a rule" [24]. Other arbitrators have stressed the point that image standards may be adjusted to reflect prevailing public views in urban versus rural settings [11].

In addition, arbitrator Richard described an ongoing controversy in arbitration regarding the degree of proof required in image cases [27]. Richard reported both sides of the controversy:

> One school of thought, holding that the Employer has the burden of establishing the reasonableness of its enactment of employee appearance standards, and that it is not enough for the Company to assert a possible negative impact on its [business] exists, requires Employers to present *proof* of a demonstrable relationship between those attitudes and the rules intended to nurture a positive public image [27, at 5921; 28].

An example of this approach is illustrated in a case involving a chain grocery store [29]. A personal appearance rule at the store stated: "Hair is to be clean and neatly groomed at all times and cannot be worn longer than the top of the shirt collar or cover the entire ear. Unkept hair, flamboyant, extreme hair styles or colors are not permitted." A checker had his hair closely cropped around the ears while the hair on top of his head was "fluffy and abundant" [29]. It was also dyed on top so that the hair was two-toned. Although the grievant had his hair trimmed a few times, he was subsequently suspended. Arbitrator Ross placed the burden of proof on management to show a negative impact on customers, based on the parties' contractual requirement to prove just cause in discipline and discharge matters. Ross noted:

> Although I appreciate management's difficulty in its effort to protect its image in a highly competitive market area, in balancing that need with the right of employees to use grooming styles that express their identity and personal image, I find that in this case objective proof of customer preference was required . . . [29, at 629].

In this regard, arbitrators take into account such proof indices as customer or public surveys, letters written by customers, customer complaints, etc. (see also [24]).

Arbitrator Richard has also indicated the opposite point of arbitral view toward proof requirements in "image" cases:

> Proponents of the opposing school of thought merely require a showing of a *reasonable belief* on the part of the Employer that an employee's appearance can reasonably threaten its relations with its customers or other employees [cites omitted]: that a public prejudice exists against the appearance adopted by an employee, which could affect the Company's business adversely, or that a danger exists which can be removed by the application of rules governing employee appearance [cite omitted]. The controlling factor is not the reasonableness of the prejudice against a particular style of appearance, nor the absolute existence of it, but the reasonableness of management's belief that it exists and that its existence represents a danger that some segment of its customer base will be offended [cites omitted] [27, at 5921; 30].

In the above-stated point of view, if an employer can demonstrate a reasonable relationship between its image and the success of its business, the burden of proof shifts to the union to rebut management's image concerns. In *Pepsi-Cola Bottling Company* [31], arbitrator Winograd adopted such a viewpoint. The company prohibited route drivers from wearing beards. However, the collective agreement contained a provision requiring employees to maintain a "good personal appearance," and work rules mandated they should be clean shaven. The employer produced no customer complaints regarding beards, conducted no opinion survey among its customers, and made no showing of economic harm caused by its beard-adorned drivers. Nevertheless, Winograd asserted:

> Traditionally, employers are given substantial leeway to oversee the image presented when employees are in contact with the public. This is especially evident in the food industry, and among delivery personnel [cites omitted]. As long as the employer exercises its oversight in a reasonable fashion, arbitrators are reluctant to intervene, even if the work rule is not supported by opinion survey, customer complaints or proof of economic loss [31, at 3233-34; 32].

HEALTH AND SAFETY DRESS CODES

The second major basis for dress and/or appearance codes is premised on an employer's concern for the health or safety of its employees. While proof may be required by some arbitrators to show that an employer's image will suffer in the absence of some appearance standard or work rule, when the appearance of employees has a direct bearing on the health and safety of the public and/or coworkers, employers may enjoy broad discretion to regulate appearance [34].

Since 1982, the reported cases dealing with health and safety appearance codes all involved the same factual situation, namely, when an employer ordered certain employees to shave their beards, mustaches, and/or sideburns to facilitate a proper seal for a respiratory mark [34]. While the requirement to have employees wear properly fitting respiratory masks is generally considered to be a reasonable one, it is not without its limitations. For example, it was found to be a discriminatory application of a no-beard rule to force all utility operators to be clean shaven instead of applying the rule only to those employees who would be members of an emergency crew and would need respirators at times [39]. In another case, it was determined that a company's respirator-readiness requirements exceed those imposed by California/OSHA regulations, and those regulations were incorporated into the parties' collective bargaining agreement [36]. A safety rule requiring employee's who wear respirators to be clean shaven was determined not to be reasonable in view of the fact that such employees were given periodic respirator tests and frequently were able to pass the test, even while having facial hair [37]. Those employees failing to pass the test were given

a second opportunity to pass it. Moreover, there was a substantial amount of "facial seal" leakage that was not explained by the presence of facial hair. Of course, another employee defense for failing to shave a beard to accommodate a respirator seal would be a valid employee medical reason [5].

RELIGIOUS DISCRIMINATION AND DRESS CODES

The 1964 Civil Rights Act, of course, bans various forms of discrimination, including discrimination based on religion. It requires reasonable accommodation to religious beliefs without "undue hardship on the conduct of its business" [40, 41]. Parties to collective agreements have also frequently incorporated into their contracts language forbidding discrimination based on race, religion, sex, etc. Arbitrators have been involved in cases when employees have been disciplined or discharged for failing to wear apparel specified by the employer, based on safety reasons. The employee, in response, contends that s/he was not disciplined for just cause and was a victim of religious discrimination [43]. All of the reported arbitration cases involved a safety rule requiring both male and female employees to wear full-length protection in the form of pants or slacks. The female employees contended that to wear pants or slacks is an action contrary to Biblical prohibitions [49].

In the earliest reported case dealing with a collision between a safety rule and religious accommodation [45], arbitrator Volz found the requirement for males and females to wear pants to be a reasonable one as there was evidence that this leg protection reduced the possibility of employee injury due to scratches, flying sparks, etc. Volz pointed out that the rule was not discriminatory because it applied equally to males and females. He observed that

> While it may be said that a woman has a constitutional right to her religion but not a constitutional right to a job with the particular employer, reasonableness suggests that an accommodation should be sought, if reasonably possible, between the Company's right to adopt and enforce a safety rule and the personal right of the employee to her religious beliefs [45, at 3448-49].

Nevertheless, Volz noted that while there was uniform application of the rule in question, there was a disproportionate impact on a group of employees [females] with strong religious objections to wearing men's clothing. Accordingly, arbitrator Volz reinstated two grievants with back pay provided they could develop a suitable alternative to wearing pants. It is interesting that there were four conditions explicit in Volz's attempt to accommodate:

1. the burden of developing an acceptable substitute was placed on the employee;

2. the substitute apparel could not create a safety hazard;
3. the substitute appeal should not be so "bizarre or outlandish" to cause a distraction among coworkers; and
4. the substitute apparel must be provided at the expense of the employee [45, at 3449].

In *Hurly Hospital*, arbitrator Roumell also placed the burden of producing a suitable scrub gown uniform on the employee/grievant. When the grievant failed to produce an alternative satisfactory to the hospital, she was transferred [47]. Similarly, arbitrator Rutherford in the *Colt Industries* case [46], sustained the discharge of an employee who had been suspended two times before her termination, for wearing a dress instead of slacks or pants. Rutherford did not permit even an attempt at accommodation, however, but allowed the employee to return to work only when she agreed to comply with the company's safety dress code. The arbitrator concluded that employers may give greater weight to safety consideration than to religious preferences "in certain circumstances" [46, at 25], although he did not elaborate as to the nature of those circumstances [50].

UNION IDENTIFICATION SYMBOLS AND DRESS CODES

The right of employees to wear tasteful union insignia has been long upheld by the courts [51]. In *Pay Less Drug Stores Northwest, Inc.*, arbitrator Tilbury was confronted with a case when an employee was ordered to remove a button she wore while on duty on the selling floor, identifying her as a union steward [53]. The company had a dress code prohibiting pins to be worn by employees except for United Way or company-issued pins or buttons. Grievant had worn her steward's pin for many years without interference from the company. However, management believed the pin created a negative impact on customers, although such complaints were not substantiated. In sustaining the grievance, arbitrator Tilbury stated:

> The pin also served a purpose protected by the National Labor Relations Act since the function of the steward is to encourage and give mutual aid and protection to those who are members of the Union [53, at 5019].

The right of employees to wear union insignia may not be unlimited, however. Arbitratory Tilbury suggested some tests for the permissible wearing of union insignia, based on court, NLRB, and arbitration awards. Some of these include:

1. If rule predated wearing union buttons, it would be less likely to be based on anti-union animus.
2. Was rule always enforced? Did rule ban all buttons or only those with pro-union overtones or messages?

3. Is there a showing of past anti-union animus?
4. Does employee have contact with customers? This is generally not a sufficient reason by itself to ban union buttons.
5. Were pins that were worn subtle and unobtrusive, or large, loud, and conspicuous? Were they tasteful and neat? This might be important in a fashion store or in food handling.
6. Was there a rival union seeking to represent employees and thus, might the wearing of pins cause friction or animosity among employees?
7. Was the wearing of union pins a safety hazard or a valid health or sanitary risk?
8. Did pins have tendency to worry residents (e.g., retirement or nursing home residents) or customers?
9. Did pins impair the employer's image with the public or detract from the dignity of the business?
10. Was the banning of the pins necessary to preserve discipline?
11. Did buttons mislead the public?
12. Can union's objective of identifying a steward be limited to a certain area with limited customer contact?
13. Do pins detract from uniform or personal appearance?
14. Was the rule written or unwritten? and
15. Would wearing a pin cause a distraction in a job requiring great concentration?

UNIFORM ALLOWANCE GRIEVANCES

There are a number of arbitration awards dealing with issues involving the interpretation and/or application of uniform-allowance provisions, or when employees contend such provisions are implied as part of the collective agreement. In one case, a grocery store was found not to be obligated to furnish and launder the white shirts/white blouses specified in its dress code [54]. The parties' contract stated that "any uniforms deemed necessary by Employer should be furnished and laundered by Employer." Arbitrator Fogelberg determined that the shirt or blouse, dark slacks, and shoes specified by the store was not a uniform, as they could be worn before or after work and did not "identify them as employees of Food Barn" [54, at 3184]. When clothing is appropriate to wear beyond the hours of work, it does not meet the criterion of being a uniform.

A contract stated that the employer would pay a part of the costs of uniforms required by it [55]. After discontinuing the requirement that certain employees wear uniforms, the co-op also halted the payments of uniform allowances to those employees. Arbitrator Welch pointed out that the contract language only obligated the employer to pay part of the cost for the purchase of uniforms when they were "required by the Cooperative" [55, at 285], meaning that it had broad discretion to require or not require employees to wear uniforms. Welch also

rejected the union contention that the employer had unilaterally changed the collective agreement [55].

In a public sector case, the warden of a correctional institution issued an order prohibiting the wearing of other than white T-shirts [55]. A provision in the parties' collective agreement said the state would furnish and replace uniforms. T-shirts were not provided by the prison. However, the purpose of the warden's order was to ban T-shirts bearing logos and messages with overtones of racism or extremist ideology. Thus, the arbitrator found no violation of the parties' contract, particularly in view of the fact that the union had previously tried to negotiate a dress code, but had failed.

A medical center and a union had negotiated a contract provision providing for a uniform allowance should the employer require that specific attire be purchased and worn by employees [57]. A male psychiatric assistant was told he should not wear denim pants to work. The hospital's written dress code also provided that wearing such pants was not permitted. It was feared by the hospital that denim jeans did not reflect a professional appearance for an employee who had a specific patient load and who provided individual and group counseling. A written warning was issued to the assistant, and he was sent home because he had been previously advised of the dress code. Moreover, the arbitrator did not countenance a union argument that the grievant should be given a uniform allowance, because the hospital did not require the grievant to buy a uniform, only ordered him not to wear denim pants.

DISCUSSION

Arbitrators have extended broad discretion to management to formulate employee dress-related rules, in the absence of a negotiated code. Employers justify dress codes on two grounds: safety and image. Both types of justifications have been subject to employee grievances. Image reasons for dress codes, because they are often subjective in nature, perhaps have been attacked more often than those grounded on safety reasons. An emerging issue in arbitration concerns the degree to which employers must demonstrate image appearance needs. For example, customer preference surveys, customer complaints, etc., may be required by some arbitrators to justify a dress code provision, based solely on image. Naturally, employees not in the public eye should be considered exempt from image-related dress code requirements. In view of the growing burden imposed by arbitrator to "prove-up" image needs, employers may be well-advised to obtain quantifiable justification for their dress code, based on image. Greater leeway, perhaps, is extended public sector employers who may use paramilitary notions of image for such employees as firefighters and for police. The sample cases demonstrate that different standards of dress may exist for male and female employees, unless an unreasonable burden is placed on one sex compared with the other.

Safety justifications for dress codes have not withstood scrutiny by arbitrators when such rules apply to employees not in jeopardy to a particular safety mishap, e.g., requiring all males to shave their beards instead of only those actually forced to wear respirators as part of their jobs. Naturally, dress codes allegedly premised on safety needs cannot be justified when employees wearing beards, long hair, mustaches, etc., are just as likely as employees without such adornment to wear respirators without losing the proper seal.

Arbitrators seemed to be in substantial agreement that religious objections to wearing certain garments, such as pants, must be subordinated to reasonable safety reasons. While some arbitrators have attempted some accommodation to employee religious beliefs, they are careful to point out that the employee has the burden of creating an alternative garment to the one specified in the safety dress code, acceptable to the employer. It must also be safe, not distracting to coworkers, and any cost of creating such an alternative must be borne by the employee.

Finally, employees sometimes grieve regarding what they believe is a cost to them for implementing the employer's dress code. However, when the contract is silent regarding such payments, the employer is not usually deemed to be required to pay anything. When a contract states that the employer must pay for a uniform, that obligation does not extend to paying for attire that can be worn before and after work without identifying a person as an employee of a particular employer.

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ENDNOTES

1. For example, recently an entire column in a major metropolitan newspaper was devoted to casual dress codes. See Sue Morem, "Much ado about casual dress in the workplace" in Taking Care of Business, *Minneapolis Star Tribune*, Sec. D., August 6, 1996, p. D2. Also see, "Workplace gets a real dressing down," by Barbara Sullivan, *Chicago Tribune*, September 4, 1996, Section 3, pp. 1 and 3.
2. Arbitrator Caraway in *Gulf South Beverages, Inc.* [3] dealt with the issue of a company right to implement a no-beard policy and to terminate an employee who failed to comply with the rule. The policy was imposed to improve its public image. A survey showed that the company suffered from an image problem, as its employees were viewed by customers as not being neat and management believed that the drivers' beards were inappropriate. Caraway cited arbitrator Volz's decision in *Pepsi-Cola General Bottlers, Inc.* [4], when the latter stated there was no constitutional right to employees to wear a beard in the private sector. It was observed by Volz that:

> However, where such rules and regulations as here, are reasonable, an employee has no constitutional or other right to defy or violate them except at his own risk. He may have a constitutional right to self-expression, but he has no constitutional right to continued employment in clear violation of reasonable Company rules [4, at 667].

Moreover, arbitrator Taylor asserted that when a safety-related rule is found to be reasonable . . . "there is no substantial constitutional right or any other right to wear hair in a beard in such a fashion as suited the Employee" [5, at 1166].

3. J. Caraway, *Gulf South Beverages, Inc.* 86-2 ARBI. ¶8356 (CCH) (1986).
4. M. Volz, *Pepsi-Cola General Bottlers, Inc.*, 55 Lab. Arb. 663 (BNA) (1970).
5. F. Taylor, *Mississippi Power & Light Company*, 92 Lab. Arb. 1161 (BNA) (1989).
6. See for example, *Coca-Cola Bottling Company* [7].
7. J. Larkin, *Coca-Cola Bottling Company,* 79 Lab. Arb. 835 (BNA) (1982).
8. Some arbitrators believe that what an employee is allowed to wear on the job or forbidden to wear, is a "condition of employment," and thus, subject to bargaining. See *Computer Science Corporation* [9, at 5284].
9. E. Marlatt, *Computer Science Corporation*, 87-2 ARB. ¶ 8357 (CCH) (1986).
10. T. Christopher, *Mister A's Restaurant*, 80 Lab. Arb. 1104 (BNA) (1983).
11. F. Horowitz, *Alpha Beta Company*, 93 Lab. Arb. 855 (BNA) (1989). Same case reported at 90-I ARB. ¶ 8008 (CCH) (1989).
12. W. Daniel, *Spartan Stores, Inc.*, 85-2 ARB. ¶ 8546 (CCH) (1985).
13. J. Gentile, *Walt Disney Productions, Disneyland Division*, 78 Lab. Arb. 1044 (BNA) (1982).
14. In *Bismarck Food Service* [16], an employer properly discharged a food and beverage vendor who worked at the Detroit Tiger's stadium. The vendor had previously been suspended when he was observed with mustard and Coca-Cola stains on his uniform, his pants torn out at the crotch. He was discharged after he was discovered walking down a hall in the stadium with his shirt unbuttoned and his pants unzipped.
15. E. Wies, *Walgreen Company*, 85 Lab. Arb. 1195 (BNA) (1985).
16. E. Ellmann, *Bismarck Food Service*, 84 Lab. Arb. 870 (BNA) (1985).
17. See for example, *New Cumberland Army Depot* [18], a case involving employees who were sent home because they were wearing shorts (in violation of the dress code regulations) [19], when an employee was warned not to wear culottes to work (a split skirt resembling walking shorts). The dress code forbade employees to wear shorts, sunwear, and/or extremes of fashion. Arbitrator Penfield noted: "Proper dress is considered important in most American firms. Moreover, appropriate dress is of most importance where employees are in contact with the public" [19, at 5219]. Penfield also observed that a "rule of reason" must prevail when the parties' collective bargaining agreement does not contain a "detailed dress provision" [19, at 5219].
18. R. Mount, *New Cumberland Army Depot,* 78 Lab. Arb. 630 (BNA) (1982).
19. R. Penfield, *Food and Drug Administration, Region VII, Kansas City*, 86-2 ARB. ¶ 8526 (CCH) (1986).
20. A. Cocalis, *City of Cocoa, Florida*, 81 Lab. Arb. 949 (BNA) (1983).
21. A seventeen-year employee was reinstated without back pay after he had failed to report for two shifts following his suspension for failing to wear black shoes.

22. P. Bittel, *Hamilton County Sheriff's Dept.*, 89-1 ARB. ¶ 8110 (CCH) (1988).
23. Contrast the arbitrator's decision in this case with that of the arbitrator in *City of Pana, Illinois* [24], when a refusal to allow police officers to wear beards was found to be attributed only to the prejudice of the police chief. However, at an earlier time, officers could wear beards during the deer-hunting season, and there was no evidence of negative public attitudes toward beards.
24. M. Talent, *City of Pana, Illinois*, 86-2 ARB. ¶ 8335 (CCH) (1986).
25. E. Marlatt, *City of El Paso*, 88-2 ARB. ¶ 8515 (CCH) (1988).
26. See for example, *Computer Science Corporation* [9], when computer operator employees were required to appear as "professionals in a professional environment" but did not deal with the public.
27. W. Richard, *Fisher Foods, Inc.*, 87-2 ARB. ¶ 8483 (CCH) (1987). Same case reported at 88 Lab. Arb. 1084 (BNA) (1987).
28. See for example, such cases as 39 LA 35, 56 LA 15, 77 LA 973, 977; 75 ARB. ¶ 8198; 70-1 ARB. ¶ 8319, 60 LA 147, 73 LA 1209, 1213.
29. M. Ross, *Lucky Stores Inc.*, 91 Lab. Arb. 624 (BNA) (1988).
30. See also 54 LA 604, 606; 55 LA 1020, 1024; 55 LA 1282, 1284.
31. B. Winograd, *Pepsi-Cola Bottling Company*, 90-1 ARB. ¶ 8045 (CCH) (1989).
32. Even so, Winograd warned that where there is no contract language or work rules covering personal appearance, the union position will be materially strengthened. However, in *MeirMetal Servicenters, Inc.*, arbitrator Dallas Jones did not believe it necessary for the company to premise its dress code for truck drivers upon customer complaints [33].
33. D. Jones, *MeirMetal Servicenters, Inc.*, 8901 ARB. ¶ 8291 (CCH) (1988).
34. See for example, *Fisher Foods, Inc.*, [27 at 5920].
35. See *E. & J. Gallo Winery* [36]; *International Minerals & Chemical Corp.* [37]; *E. J. DuPont DeNemours & Company* [38]; *Union Carbide Corporation, Nuclear Division, Paducah Gaseous Diffusion Plant* [39]; and [5].
36. L. Killion, *E. & J. Gallo Winery*, 80 Lab. Arb. 765 (BNA) (1983).
37. H. D. Jones, Jr., *International Minerals & Chemicals Corp.*, 78 Lab. Arb. 682 (BNA) (1982).
38. R. Light, *E. J. DuPont DeNemours & Company*, 78 Lab. Arb. 327 (BNA) (1982).
39. A. Goldman, *Union Carbide Corporation, Nuclear Division, Paducah Gaseous Diffusion Plant*, 84-1 ARB. ¶ 8231 (CCH) (1984).
40. Civil Rights Act, 42 U.S.C. 2000e(j) (1964).
41. In *Draper v. United States Pipe & Foundry Co.*, [42], the Sixth Circuit Court noted that "Title VII does not require that safety be subordinated to the religious beliefs of an employee."
42. *Draper v. United States Pipe and Foundry Co.*, 527 F.2d 515, 521 (6th Cir., 1975).
43. The reported cases dealing with religious objections to a dress code include *Louisville Water Company* [44]; *A. O. Smith Corporation, Electric Motor Division* [45]; *Colt Industries, Trent Tube Division* [46]; *Hurly Hospital* [47]. *Lozier Corporation* [48] has been cited as a religious objection to a dress code case, but in actuality, the grievant objected to wearing slacks or pants based on a *personal belief*, not a *religious* one.
44. J. R. Hunter, Jr., *Louisville Water Company*, 80 Lab. Arb. 957 (BNA) (1983).

45. M. Volz, *A. O. Smith Corporation, Electric Motor Division*, 72-1 ARB. ¶ 8134 (CCH) (1972). Same case reported at 58 Lab. Arb. 784 (BNA) (1972).
46. W. Rutherford, *Colt Industries, Trent Tube Division*, 71 Lab. Arb. 22 (BNA) (1978).
47. G. T. Roumell, Jr., *Hurly Hospital*, 70 Lab. Arb. 1061 and 71 Lab. Arb. 1013 (BNA) (1978).
48. W. Ferguson, *Lozier Corporation*, 72 Lab. Arb. 164 (BNA) (1979).
49. The scriptural basis for these objections is Deuteronomy 22:5: "A woman shall not wear anything that pertains to a man, nor shall a man put on a woman's garment, for all who do so are an abomination to the Lord your God," and/or I Timothy 2:9: ". . . in like manner also, that the woman adorn themselves in modest apparel with propriety and moderation, not with braided hair or gold or pearls or costly clothing" (*New King James Version*, Thomas Nelson Publisher).
50. See also *Hurly Hospital* [47], for a similar conclusion
51. The leading case in this regard is *Republic Aviation Corp. v. NLRB*, 793 (1945), when the Supreme Court stated that wearing union insignia is a "reasonable and legitimate form of union activity" [52, at 802].
52. *Republic Aviation Corp. v. NLRB*, 324 U.S. 793 (1945).
53. *E. Tilbury, Pay Less Drug Stores Northwest, Inc.*, 87-2 ARB. ¶ 8311 (1987).
54. J. Fogelberg, *Food Barn Stores, Inc.*, 90-1 ARB. ¶ 8033 (CCH) (1989).
55. H. Welch, *Coosa Valley Electric Co-op, Inc.*, 83 Lab. Arb. 285 (BNA) (1984).
56. H. Sacks, *State of Connecticut, Correction Department*, 86-2 ARB. ¶ 8501 (CCH) (1986).
57. R. Miller, *Metropolitan Medical Center*, 84-1 ARB. ¶ 8160 (CCH) (1984).

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