IAM
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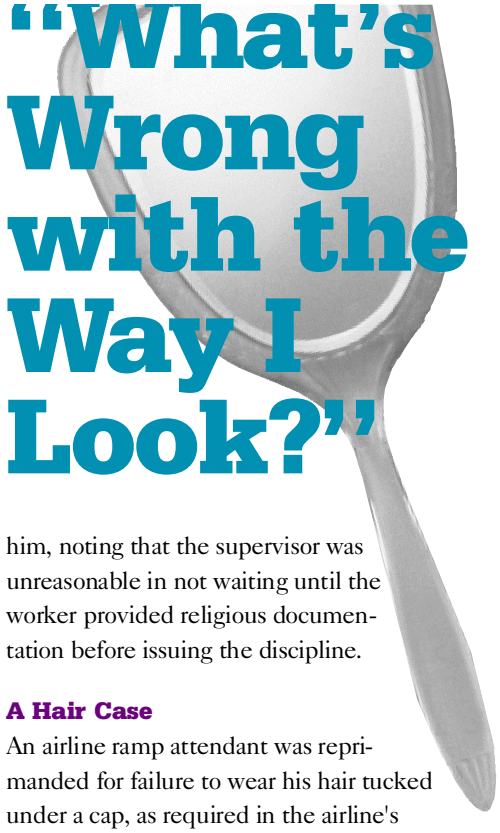
What's Wrong with the Way I Look?

"What's Wrong with the Way I Look?"



Times, lifestyles and fashions change, but one thing remains constant: stewards will almost surely get caught up in disputes involving workers' personal appearance. Thirty-five years ago the flap would probably have been over long hair and scraggly beards. Today, though, it's likely to involve not just hair, but tattoos, metal jewelry suspended from or inserted into unlikely parts of the anatomy, and claims that a member's ethnic or religious heritage are being trampled upon by the employer.

You may also find yourself representing someone who belongs to a group that wants to wear black clothing, long chains, and button-up boots while on the job. Or perhaps it is a turban or headscarf that the employer sees as a problem. Stewards must be aware that whatever a worker's appearance, the same sort of protection must be offered him or her as workers who are accused or disciplined for violating other company rules.

The following cases offer you some arbitrators' thoughts on recent cases involving personal appearance.

Offensive T-Shirt

A woman in a metalworking plant was reprimanded for wearing a "Hooters" T-shirt that featured the slogan "More than a Mouthful." She was disciplined under a company rule forbidding crude and vulgar pictures and slogans in the plant. The company argued permitting such a T-shirt to be worn created a "permissive atmosphere in the work place." The arbitrator said the company could enforce the rule against indecent clothing and cited the employee, but said she had been improperly disciplined because other employees had "vulgar" and "sexually" explicit pictures on their tool boxes and weren't reprimanded. In addition, they had permitted her to wear the T-shirt for two months after a sexual harassment memorandum had been posted.

Shirttail Hanging Outside Pants

A Muslim worker was fired for refusing to tuck in his shirt. He appealed on religious grounds, declaring the Muslim faith requiring modesty. The arbitrator reinstated him, noting that the supervisor was unreasonable in not waiting until the worker provided religious documentation before issuing the discipline.

A Hair Case

An airline ramp attendant was reprimanded for failure to wear his hair tucked under a cap, as required in the airline's grooming standard. The arbitrator upheld the reprimand, saying the rule was not arbitrary, capricious or inconsistent since it preserved the employer's image with customers. The arbitrator said the airline did not discriminate even though there was a different standard covering female attendants. The arbitrator said Title VII of the Equal Employment Opportunity Act does not bar sex-based distinctions in the personal grooming code, the union did not establish that the male ramp attendant was treated disparately even though male maintenance employees could wear their hair without a cap, and the rule had been properly communicated to the grievant, who testified he was warned prior to the reprimand.

Wearing the Wrong Kind of Scarf

An Hispanic employee was terminated for wearing an African print scarf as a headdress in a fashion that 14 black coworkers said was "disrespectful." She was discharged for insubordination after refusing several orders by management to take it off. The arbitrator reduced the discharge to reinstatement because the act was not a "flagrant" act of insubordination; but reinstatement was contingent upon an apology to black employees and the supervisor whose orders the employee disobeyed. She was also ordered to attend sensitivity training. Further, she could wear the scarf if her fellow workers and the union determined this would not cause future problems.

Mandatory Bargaining Issue

A union filed a grievance when a department store instituted dress codes for sales clerks in the domestics department. The arbitrator upheld the union, saying that clothing requirements are a mandatory topic for contract bargaining.

The Steward with Nose Jewelry

A Mexican-heritage PBX Operator/Receptionist was prohibited from wearing nose jewelry by her employer. She said the jewelry reflected her heritage and culture and filed a grievance. The arbitrator upheld the company. He said the contract allows the company to "adopt reasonable rules of conduct," and the rule did not violate the contract's non-bias rule since Title VII of the 1964 Equal Employment Opportunity Act does not protect the right of workers to express their cultural heritage in the workplace. Further, he said that the fact she was a union steward didn't violate the contract clause protecting union representatives where her role as steward had no relation to wearing nose jewelry.

When dealing with personal appearance disputes, here are some things to remember:

- The employer is required to conduct a thorough investigation before issuing disciplines.
- If workers cite religious or ethnic reasons for their dress or appearance, they have to document their reasons to the employer.
- The employer has a right to establish reasonable rules.
- Dress and grooming styles change, but the employer has to link its policy to a business reason for wanting to control how an employee looks.
- Where the public's taste has become more permissive over time, the employer should take this into account when enforcing grooming standards.

— George Hagglund. The writer is professor emeritus at the School for Workers, University of Wisconsin - Madison.

Fighting "Contracting Out"

More and more unionized employers are contracting out work, to nonunion contractors either across town or out of the country. Stewards have to be especially vigilant to protect against this potential for job losses and eventual erosion of bargaining unit work. A key way to combat "contracting out" is to understand some basic guidelines.

Most union contracts require that all "normal and customary"work be performed by employees covered by the agreement. However, sometimes management can — "in good faith," as the agreement usually reads — contract out such work. Arbitrators use standards to determine if management acted in good faith, and it's the wise steward who considers these questions in determining whether to fight the action.

Management's "good faith" is key

In the view of arbitrators, if management cannot answer "yes" to most of these questions, then the employer most probably has not contracted out "in good faith."

1) Does the history of negotiations support the contracting out? Contract language, bargaining minutes or notes may establish when contracting out can occur, and when it can't.

2) Was the work ever contracted out before? If so, under what conditions? Were those conditions similar in most respects to this situation?

3) Is the work in question not considered normal and customary because it has never, or only rarely, marginally or incidentally, been done by the bargaining unit?

4) Can the reasons for contracting out be justified? Employers often give reasons like these to justify the action: economy, maintenance, expertise, warranty, security, control of backlog, unachievable backlog, safety and lack of specialized skills. But these claims should be completely investigated to see if they are accurate. And they must have been fully investigated and documented before management made the decision to contract out.

5) Was the contracting out done in a way that didn't discriminate? The contracting out cannot discriminate against union members or displaced or laid off workers. Nor can it deprive employees of wages, hours, jobs, overtime, or opportunities for learning and advancement that would otherwise be reasonably available to them if not for the contracting out.

6) Were properly qualified employees unavailable, or did they refuse to perform the work? If they were available and willing to work, arbitrators generally find, they should have been used.

7) Was contracting out necessary because equipment and facilities were not available or could not be economically purchased?

Ultimately, an issue of contract interpretation

8) Was the contracting out for a temporary or limited amount of time, and not for a permanent change or indefinite time period? Even if the work was originally intended to be for a short while, if it eventually went on for an extended period of time, beyond its original limit or purpose, then the action might be considered bad faith.

9) Was the contracting out justified by some special or unusual circumstances, such as an "act of God" emergency or dire need in the community? If it was a question of protecting life, limb or property, and it couldn't be done by using employees covered by the contract, arbitrators might be more forgiving.

10) Was the union apprised of the need to contract out in a timely fashion, thus allowing it the ability to offer alternative, appropriate solutions under the contract?

11) Did management exhaust every reasonable possibility under the contract, or otherwise available, to proactively retain the work with its own forces and prevent having to resort to contracting out?

Some contracts require employers to impose mandatory overtime before they can contract out work. Other contracts may give management the right to impose mandatory overtime but do not require they do so before contracting out. Still others may be silent on the issue.

If your contract does not specifically link management's ability to contract out to their requiring mandatory overtime, you may need to dig deeper to make your case, usually into the areas of past practice or contract interpretation.

In contracts where overtime is voluntary, in order to demonstrate that members were available the union will need to show members signed up for overtime but were not called and left waiting. If the membership either did not sign up or respond to the call out it could be a problem for the union's case.

Don't forget, a dispute over contracting out will be a contract interpretation case. That means the union will need to either shoulder the burden of proof, or be crushed under it!

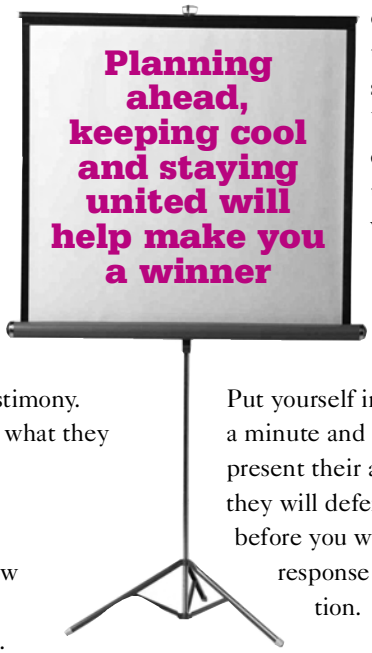
— Bob Oberstein. The writer is a professor of Labor Management and HR courses at Ottawa University in Phoenix, Arizona, where he teaches effective grievance processing, arbitration and employment law. He also serves as an arbitrator, mediator and factfinder.

Ten Secrets of Successful Grievance Presentation

1 Have a Plan

Shooting from the hip when going into a grievance session is dangerously close to shooting yourself in the foot. Meet with your grievant beforehand. Review all the arguments. Decide on your best evidence. Talk about strategy — the plan for how the meeting is likely to go. Know what your desired outcome is.

If your grievant is going to testify, go through a rehearsal. Ask all the questions that you think management may ask when they try to undermine his or her testimony. Make sure the answers are what they should be.



2 No Surprises

Make sure you know everything about what happened in the case. Nothing destroys a game plan more than finding out new information in the middle of a grievance hearing, like witnesses you didn't know about or prior warnings.

3 Don't Lose Your Cool

If you want to maintain control of the meeting, start by maintaining your self-control. That's not to say that anger or emotion cannot be effective tools for you to use. But don't be spontaneous. Any outbursts should be a part of your plan.

4 Be Realistic About Your Chances

Understand going into the session whether you're in a strong position or a weak one. What does your contract say? What about the law or enforceable policies? If the facts or precedent are clearly on your side, don't give an inch until you want to.

But most grievances aren't that black and white. Often it's a situation that is new, that wasn't anticipated the last time the contract was negotiated. Be sure you know if you're building a case on concrete or sand. And discuss the odds in advance with your grievant.

5 Know Where the Other Side Stands

Put yourself in the employer's shoes for a minute and think about how they'll present their arguments. Consider how they will defend their actions, and know before you walk in the room what your response will be to their presentation.

6 Don't Get Personal

You want to challenge management's actions, but you don't want to attack people personally. If you make it personal, it's harder for the other side to agree that you're right.

And if management makes it personal, don't get baited into a shouting match. Don't let your grievant call the boss a stupid clown — no matter how true it may be. It will only help prove their claim of a pattern of inappropriate conduct on the part of the grievant.

7 Ask Questions

Look for the inconsistencies in management's arguments, and pick them apart. Don't let them off the hook if they offer evasive answers. Be persistent. If their side of the story is a fairy tale, chances are there will be a contradiction in their arguments, witnesses, evidence, and/or statements. Find them.

8 Have Notes, Take Notes

Never go into a grievance hearing without a written outline of the arguments you're going to present, and the evidence you have to back it up.

During the hearing, take good notes — especially when management is making their case. Nothing slows a supervisor down more than knowing you are writing down what they say, word for word. Good notes will also help you prepare if you need to appeal the case further.

9 Have Written Evidence

It's a fact of life — people are more likely to believe something if it's written down. It worked for the Ten Commandments, it can work for you.

If you have copies of relevant official documents, hand them out at the hearing. If your argument entails a specific chronology of events, type it out and distribute it. Written documents easily become the point of reference for everybody's discussion. If they are your documents, then you are controling the discussion.

10 Stay United

Never disagree among yourselves during a grievance hearing. Be especially careful if management asks a question you didn't anticipate. Feel free to call for a caucus, so you can step outside and discuss something in private with your grievant. Never show management that there is anything but full agreement on your side of the table.

— Tom Israel. The author is executive director of the Montgomery County (MD) Teachers Association and former president of SEIU Local 205 in Nashville, Tenn. An earlier version of this article appeared in Steward Update Vol. 6, No. 3.

Keys to Successful Small Group Meetings

Good stewards know that there's great value in getting together on a regular basis with their members — in weekly "lunch-and-learn" gatherings, perhaps, or when serious grievances arise or negotiations are on the horizon, to name just a few reasons. But as valuable a union-building tool as these meetings can be, they won't work unless the steward is able to communicate effectively with everyone. Here are some tips for making your small-group meetings work.

Be confident. The biggest problem is a steward who thinks "I'm a lousy speaker." If you think this, it will come true. So, be confident that the information you want to exchange with your members is important, and get right down to it. As baseball great Tug McGraw said, "Ya gotta believe!"

Respect the time constraints of your members. If you meet before work, you must make sure that everyone gets to their work station on time. If you meet after work and you keep people too long, you can mess up their car pools and child care arrangements. If it's a lunchtime or break time meeting, there is a tight time limit. Plan your presentation accordingly.

Be organized. A steward who fumbles around at the beginning of a meeting and allows it to drift away has a big problem. Make up a note card containing the points you want to cover; have handouts, if possible, that will help illustrate your message; and try to make a coherent point right from the start so people know what you're trying to communicate.

Know your audience. If the workers are all from one department, for example, a steward can assume all of them know the work patterns, the personalities and even some of the issues. If your group comes from different areas, you have to explain this basic information to them. Don't waste your members' time by telling them things they already know.

Be careful, though, about assuming your members know all of the issues. If you are meeting to discuss a grievance, or a contract concern, you can make a huge mistake by assuming that "everyone heard" about the problem. In fact, every member may have "heard" rumors, gossip, partial information and personal opinions — but not the real story. Give the members a full set of facts, clear and in a logical order, before you try to get them going with your plan on how to deal with the situation.

Never assume that your members have read the union contract. Far too often, stewards refer to clauses of a contract, or to previous settlements, that members are not familiar with. Use these meetings to educate members about the union. Yes, the steward is discussing a particular situation, but the meeting should include discussion of relevant contract clauses that support the strength and importance of having a union.

End every meeting with an action principle. While it is important to pass along important information, it is also important to expect your members to do something with this information — sign a group grievance, wear a red shirt on Thursday, paint their toenails purple, whatever. At the very least, ask each member at the meeting to pass along the information to two other members who could not attend.

Speak with your members, not at them. A lecture from a steward is unbearable, of course, and it also weakens the union by adding to the impression that "the steward will take care of it." Make it clear that the meeting — even though the steward called it — is for the members to participate.

Plan time for members to respond. When you've finished giving out the necessary information, be sure to ask for a response. Simply saying "any questions?" while closing up your folder will discourage conversation. Increasing membership participation is a significant function for any steward, so don't hesitate to ask for input from specific people — even if you think they may disagree. It is better to have the discussion out in the open so the issues can be heard and debated by all.

Remember the "P" word — patience. Be prepared to answer the same question several times if the issue is complicated.

Finally, remember that as steward you are often regarded as "the union" by the members. So, a good presentation, with respect and patience, will build up the union. A poorly organized meeting will leave your members grumbling, "For this I pay dues?"

— Bill Barry. The writer is director of labor studies for the Community College of Baltimore County, Maryland.

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OFFICE OF THE INTERNATIONAL PRESIDENT

Dear IAM Representative:

In "What's Wrong With the Way I Look," the December issue of the *IAM Educator* examines several unusual situations a union steward might confront in the course of his or her daily activity.

On the surface, disputes regarding nose jewelry, hair length and dress codes may not appear to be the raw material for legendary confrontations between labor and management, but each case highlights the importance of providing accurate information and sound advice to our members, particularly in matters that involve discipline.

It is also worth noting that each of these cases moved all the way through the grievance procedure to arbitration, the level at which long-term contract language can be modified, for better or worse, by an arbitrator's ruling.

Frequently, employers will precipitate workplace conflicts by failing to apply company rules in an evenhanded manner. A wise steward will routinely monitor the employer's practice in matters regarding an employee's personal appearance. The appropriate and legal use of dress codes can become inappropriate and even illegal if applied in a discriminatory, arbitrary or punitive manner.

The rights, protections and due process afforded to IAM members in their contracts are in addition to statutory protections such as the 1964 Equal Employment Opportunity Act. A working knowledge of both documents can be a valuable asset for any union steward who represents a diverse workforce with racial, religious or cultural differences.

As we approach the end of a tumultuous year that included seemingly endless economic and political turmoil, we must not lose sight of our most important responsibility as union representatives: to ensure every IAM member, regardless of race, religion or other differences, receives all the legal and contractual benefits they are entitled to.

In solidarity,

R. Thomas Buffenbarger

R. Thomas Buffenbarger
International President

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