



Joseph J. Pass
Edward H. Walter
James A. Welker
Joseph Santino Pass

Ben Paul Jubelirer (1904–1983)
Frank P. G. Intrieri (1942–1976)

of counsel
Neal R. Cramer

ALLEGHENY COUNTY LABOR COUNCIL REPORT OF LEGAL COUNSEL May 1, 2014

Salem Hospital Corporation a/k/a The Memorial Hospital of Salem County and Health Professionals and Allied Employees (HPAE); Case 04-CA-097635

This case arises from Respondent's unilateral change to its dress code policy on September 4, 2012, and failure to furnish information requested by the Union on February 11, 2013.

Since at least February 1, 2003, Respondent maintained a dress code policy; since at least January 1, 2002, it maintained a discipline and discharge policy. Respondent also included provisions on personal appearance and discipline in its employee handbooks. In April 2012, Respondent approved a revised draft dress code. The new policy assigned color-coded uniforms to each hospital department, provided general dress code rules applicable to all employees, listed non-acceptable items, and included a four-step disciplinary process for employees who failed to abide by the new policy. Respondent planned to provide three free uniforms to each employee to help ease the transition to the new dress code policy, and it began measuring employees for the new uniforms.

Respondent did not inform the Union about the changes it planned to make to the dress code. The Union became aware of the planned changes only when unit employees told the Union's staff representative, that their unit managers had made announcements about the new dress code and had begun taking measurements for the free uniforms. On May 14, 2012, the Union sent a letter to Respondent demanding bargaining over changes to the dress code policy. The Union did not receive a response. On February 4, 2013, the Union filed a charge against Respondent for unilaterally implementing the new dress code policy.

The Board held that employers have a duty to bargain in good faith with union representatives about mandatory subjects of bargaining, which generally include uniform requirements and workplace attire. To be unlawful, however, there must be evidence that the unilateral change was a "material, substantial and significant" change to employees' terms and conditions of employment. Whether a change rises to that level is determined "by the extent to which it departs from the existing terms and conditions affecting employees."



Under the handbook provisions, employees had wide latitude to determine the color and type of their scrubs. The new policy required employees to wear color-coded uniforms and permitted only coordinating solid or print warm-up jackets. As the judge found, the new color-coded uniform requirements “render[ed] useless most, if not all, of their personal scrub inventories containing other colors and styles. Notably, Respondent must have recognized this adverse financial impact because it provided three free sets of scrubs to reduce the initial monetary cost to employees of complying with the new policy.” But employees would inevitably need to purchase replacement scrubs when the free scrubs no longer fit or wore out. Although Respondent had always required employees to purchase their own scrubs, most employees already owned multiple sets of scrubs before the dress code policy was changed. Most of those scrubs did not comply with the color codes under the new policy; therefore, when the free scrubs wore out, most employees would have had to purchase new ones. The new dress code’s ban on hoodies, sweatshirts, and fleece jackets also had a significant financial impact on unit employees. To comply with the new dress code, employees who wanted to stay warm at work would have had to purchase coordinating solid or print warm-up jackets.

In addition to imposing changed attire requirements, Respondent’s revised dress code imposed a new disciplinary process for dress code violations. In the past, an employee who violated the dress code was simply sent home and made to change into appropriate attire. If the employee failed to comply, then the employee could have faced discipline under the discipline provision of Respondent’s handbook. The new dress code contained a specific disciplinary process for dress code violations. Not only did the new policy impose more stringent discipline, it also contained more restrictions than the past dress code, thus making it more easily violated. Employees therefore faced a heightened prospect of discipline under the new dress code. The addition of this disciplinary process alone is sufficient to establish that the new dress code differed materially, substantially and significantly from the past dress code.

Respectfully submitted,

JOSEPH J. PASS, ESQUIRE