

United States of America

BEFORE THE FEDERAL SERVICE IMPASSES PANEL

In the Matter of

DEPARTMENT OF VETERANS AFFAIRS
JAMES H. QUILLEN VA MEDICAL
CENTER
WILLIAM C. TALLENT OUTPATIENT
CLINIC
KNOXVILLE, TENNESSEE

and

LOCAL 2400, AMERICAN FEDERATION OF
GOVERNMENT EMPLOYEES, AFL-CIO

Case No. 12 FSIP 66

DECISION AND ORDER

The Department of Veterans Affairs (VA), James H. Quillen VA Medical Center, William C. Tallent Outpatient Clinic, Knoxville, Tennessee (Employer) and Local 2400, American Federation of Government Employees, AFL-CIO (Union) filed a joint request for assistance with the Federal Service Impasses Panel (Panel) to consider a negotiation impasse under the Federal Service Labor-Management Relations Statute (Statute), 5 U.S.C. § 7119.

Following an investigation of the request, which arose out of negotiations over the updating and renewal of the James H. Quillen VA Medical Center's dress code policy, the Panel determined that the matter should be resolved through the issuance of an *Order to Show Cause (OSC)*. Under this procedure, the Employer was directed to show cause why the Panel should not impose the *status quo* by continuing to allow employees at the William C. Tallent Outpatient Clinic (also known as the Knoxville Outpatient Clinic or KOPC) to wear blue jeans. The Employer also was permitted to offer an alternative proposal, and the Union was given the opportunity to rebut the Employer's response to the *OSC*. The parties were advised further that after considering the entire record the Panel would take whatever action it deems appropriate to resolve the impasse, which may

include the issuance of a *Decision and Order*. The Panel now has considered the entire record.

BACKGROUND

The mission of the James H. Quillen VA Medical Center, located in Johnson City, Tennessee and also known as Mountain Home, is to provide healthcare to more than 170,000 veterans living in Tennessee, Virginia, Kentucky, and North Carolina through inpatient treatment at its primary hospital facility and outpatient and specialty care at nine clinics: KOPC, its main clinic, as well five community-based and three rural outreach clinics. Mountain Home is a part of Veterans Service Integrated Network (VISN) 9. The Union represents approximately 100 professional and nonprofessional employees at the KOPC who are part of a nationwide consolidated bargaining unit of over 100,000 VA employees. The unit includes physicians, registered nurses, licensed practical nurses, cafeteria workers and a variety of clerical and administrative positions. The parties are governed by a master collective bargaining agreement (MCBA) which is due to expire in March 2014.

Prior to October 2007 the KOPC was part of the VA Tennessee Valley Healthcare System (TVHS) headquartered in Nashville, Tennessee, which is also in VISN 9. The dress code policy negotiated between the Union and the TVHS covering employees at the KOPC stated that "jeans are permissible providing they are neat, clean, pressed, and without holes, patches or fringes."^{1/} A few months after the KOPC's transfer to Mountain Home, the parties established a labor-management partnership. At the parties' June 26, 2008, partnership meeting the Employer submitted its June 1, 2008, Dress Code Policy, Medical Center Memorandum No. 00-08-21 (MCM 00-08-21), which included jeans in a list of clothing items "considered unreasonable and inappropriate for the work place." The Union objected to the implementation of the policy for the employees it represents at the KOPC. During the October 24, 2008, partnership meeting, the parties agreed to continue to allow jeans to be worn at the KOPC with the proviso that, when KOPC employees visit Mountain Home on official business, they would adhere to the Mountain Home

^{1/} On April 1, 2012, the TVHS published its most recent dress code policy, Memorandum 626-11-05-27, which, like the one in existence when the KOPC was transferred to Mountain Home, allows employees to wear denim jeans as long as they are "neat, clean, pressed, and without holes, patches or fringes."

dress code prohibiting the wearing of jeans. In 2011, during a routine 2-year review of the dress code policy, the Employer proposed to amend MCM 00-08-21 by prohibiting the wearing of jeans at all of its associated outpatient clinics, including the KOPC. The instant request for assistance was filed after the parties failed to reach an agreement during their negotiations over the matter.

ISSUE AT IMPASSE

The parties essentially disagree over whether bargaining unit employees at the KOPC should continue to be permitted to wear denim jeans.

POSITIONS OF THE PARTIES

1. The Employer's Position

The Employer proposes to: (1) prohibit the wearing of jeans at the KOPC except during a well-advertised "casual/sports day" monthly event, which Veteran patients would be informed of in advance, where employees could "dress down and wear jeans that are in good repair, without holes or fraying of the seams and not overly faded"; and (2) grant employees a 60-day "grace period" prior to changing the current KOPC dress code policy. In this regard, "appropriate dress and personal grooming are components of a safe and professional environment" that promotes the "overall image" of the Medical Center. Projecting a professional image is a "critical element" of its "overall operations" because healthcare professionals and administrative staff "are the initial point of contact" for its Veteran patients and their family members. A professional appearance provides "a lasting first impression" of the facility and the quality of care that Veterans can expect to receive. The continued wearing of "utility clothing such as blue jeans," on the other hand, does not promote the "professional image" of the Medical Center and is unsuitable "as routine attire for a healthcare environment."

The adoption of its proposal also would be consistent with the policies of three of the five VA Medical Centers in VISN 9. Moreover, one of the other VA Medical Centers within VISN 9 that still permits jeans, the VA Medical Center in Huntington, West Virginia, is "revisiting the wear of jeans and may become more restrictive." The Employer also "has made inquiries with the two major civilian hospital groups in [its] immediate local area" and has been informed that neither allows its employees to

wear jeans. In addition, the 2008 agreement permitting the continued wearing of jeans was implemented to allow a "temporary adjustment period until the Dress Code Memorandum came up for renewal in 2011." It is now time to bring the approximately 100 employees who work at the KOPC in alignment with the other 2,000 Mountain Home employees to ensure the "fair and equitable treatment as called for" by the parties' MCBA. Finally, the change would have "minimal impact" on KOPC employees because there is now "an approximate equal mixture of newly hired or recently transferred employees" who were unaccustomed "to being allowed to wear jeans while previously assigned under TVHS." Furthermore, only a few KOPC employees wear jeans in any event as the large majority dress either in medical scrubs or business casual with lab coats.

2. The Union's Position

The Panel should order the parties to continue to abide by the agreement reached at the October 24, 2008, partnership meeting allowing jeans at KPOC, but providing that when KPOC employees visit Mountain Home on "official business," they would adhere to the Mountain Home dress code of "no jeans." Contrary to the Employer's position, "professionalism and quality of care is not determined by the type of clothes one wears." Rather, "it is determined by the response of the Veterans and the families to the staff." In this regard, "there have been no documented instances" where the care of a patient was substandard because an employee was dressed in blue jeans, and patient satisfaction survey scores demonstrate that "the care they receive in the KOPC is excellent." In fact, the VA's own survey scores validate that while employees were wearing blue jeans at KOPC "they provided outstanding care and were perceived as professional by the patients, their families, and the general public." The Medical Center and its community-based outpatient clinics, including the KOPC, also received several awards in the past year and it has been the leader in VISN 9 on many VA initiatives. Additionally, management's claim that about half of the bargaining unit is now a mixture of newly hired and recently transferred employees needs to be clarified. There have been 50 employees hired "from the outside" since 2010 and only 2 employees that transferred from Mountain Home or one of its outpatient clinics. Therefore, the vast majority of employees have been permitted to wear blue jeans since at least 2010, and the former TVHS employees of the KOPC have had a past practice of wearing blue jeans since 2005.

While the practices at other facilities should have no

bearing on this case, the Union has verified that "other VAs from across the country such as Durham, NC and Milwaukee, WI [do] not prohibit wearing blue jeans," nor do the private sector outpatient clinics in Knoxville that it polled. The Employer's contention that implementation of its proposed change would have minimal impact also requires correction. In fact, the KOPC's nurses wear scrubs and all other employees wear business casual, which includes blue jeans, at various times, including the physicians who provide care to the patients. There would be an overall decrease in the morale of the employees "and possible decrease in patient satisfaction scores" due to management's implication that employees wearing jeans are unprofessional and not delivering good quality care. The Employer's proposed change also should be rejected because the monetary cost "may impact the employees at the lower end of the salary scale in a negative way." Finally, the Employer's assertion concerning the need for equitable treatment of Mountain Homes' 2,000 other employees "is a veiled attempt to claim unfairness to the rest of the employees" when management knows that the labor organization representing them did not demand to bargain the policy, thereby "placing [those] employees at a disadvantage." Hence, this case is really about the Union protecting the rights, and ensuring the fair treatment, of the employees it represents against the "personal preference" of a VA Director who is failing to honor both a past practice and a previous agreement that was reached through partnership.

CONCLUSIONS

Having carefully considered the Employer's response to the OSC, and the Union's rebuttal, we conclude that unit employees at the KOPC should continue to be permitted to wear denim jeans except when they visit Mountain Home on official business. As the Panel has stated numerous times in previous decisions, a party proposing to change the *status quo* bears the initial burden of demonstrating why the change is necessary. In our view, the Employer has failed to show cause why its proposal should be adopted. In this regard, its belief that the wearing of jeans undercuts the professional image projected by the KOPC is unsupported by evidence that the facility's patients share the same perception or that their health care has been, or may be, adversely affected if the practice continues. Moreover, management's contention that its proposed change would have minimal impact because only a few employees at the KOPC wear jeans is actually an argument that supports continuation of the practice. Finally, while the policies of other health care providers might have been persuasive in this context, the

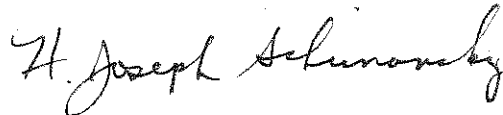
conflicting record presented by the parties fails to substantiate that the wearing of jeans is routinely prohibited at other comparable facilities. Accordingly, we shall order the adoption of the Union's proposal to resolve the parties' impasse.

ORDER

Pursuant to the authority vested in it by the Federal Service Labor-Management Relations Statute, 5 U.S.C. § 7119, and because of the failure of the parties to resolve their impasse during the course of proceedings instituted pursuant to the Panel's regulations, 5 C.F.R. § 2471.6(a)(2), the Federal Service Impasses Panel under § 2471.11(a) of its regulations hereby orders the following:

Bargaining unit employees shall be permitted to wear jeans at the KOPC. However, when KOPC employees visit Mountain Home on official business, they will adhere to the Mountain Home dress code of no jeans.

By direction of the Panel.



H. Joseph Schimansky
Executive Director

July 10, 2012
Washington, D.C.