

## **Edgett #1**

IN THE MATTER OF ARBITRATION BETWEEN:

Employer

AND

Union

### **BACKGROUND**

On January 21 1993, Maintenance Foreman Person 1 was in the Leads Office when the Employee, a Lead Utility Man, came in wearing a black T-shirt with lettering reading "Scabs will pay". The T-shirt also carried a skull and cross bones. The Employee was in the office to do some faxing, and as he left, Person 1 called and asked him to step in the Foreman's office. Person 1 asked him to remove the T-shirt and told him that it should not be worn on Employer property. Person 1 said that he did not want to see the shirt any more. When asked, at the arbitration about the Employee's reaction, he said that the Employee got hot, punched out, and went home. At a Later time, Local Chairman Person 2 talked to Person 1. He said that he advised the Employee to desist from wearing the shirt until the matter was settled. A grievance was filed and deadlocked at the System Board of Adjustment.

### **DISCUSSION**

As the Association sees it, the question is whether or not the Employer can tell a person what may be worn. Associated with that point, the Union says, is the right of an employee to voice his or her concerns.

The Employer takes the view that the shirt and its message is threatening and that it violates Rule No. 21. Rule No. 21 reads:

"21. Threatening, intimidating, or otherwise interfering with other employees at any time is prohibited. This includes off-duty periods."

The Employer cited decisions of the Courts, the NLRB and a System Board of Adjustment which recognized that an Employer may limit or bar such activity in consideration of production or discipline. The Courts have upheld a prohibition of the wearing of Union badges, bearing the legend "Don't be a scab", saying that the use of the term could have a disruptive influence on work and discipline. In *Midstate Telephone Corporation NLRB*, 706 F.2d 401 L98:3., the Court permitted an Employer to forbid the wearing of T-shirts carrying the Employer's trademark cracked in three places, and the words "I survived the Midstate Strike of 1971-75-79." The Court discussed the employee's right to display Union insignia and wear apparel claiming support, but it said that that right must be balanced against "the equally undisputed right of Employers to maintain discipline in their establishments." The Court also discussed a *Southwestern Bell* case, in which employees are prohibited from wearing sweatshirts bearing the slogan "Ma Bell is a Cheap Mother". It quoted with approval the Board's view that:

"In view of the controversial nature of the language used and its admitted susceptibility to derisive and profane construction; Respondent could legitimately ban the use of the provocative slogan as a reasonable precaution against discord and bitterness between employees and Management, as well as to assure decorum and discipline in the Plant."

There are other decisions to the same effect, and they show that consideration must be given to the words used on the T-shirt and their likely effect upon the maintenance of discipline and appropriate interpersonal relations within the work place.

The T-shirt is black, with white lettering, a skull and cross bones, and a lettering style which emphasizes and highlights the message. The Union has explained that employees who crossed the picket line were facing charges under the Union's constitution and that the T-shirts simply emphasized the fact that they could be made to pay fines levied against them. The question is not so much the subjective intent of the person wearing the T-shirt as to the message conveyed, but what could be reasonably understood by the use of the word "scab" and the skull and cross bones. There can be no doubt that many persons would view this as threatening or intimidating. This is the important point, not the subjective intent expressed by the wearer

Objection was made by Foreman Person 1 to the T-shirt at a time when the Employee was on the clock and engaged in activities which were a part of his job. The wearing of the T-shirt could properly be restricted by the Employer within the work area. The finer point, whether the shirt could be worn on in the Employer parking lot or the locker room prior to starting work is not raised by the factual situation presented here. It should be noted that Rule 21, at least, addressed that point since it prohibits threats or intimidation at any time and says "this includes off-duty periods."

The Employer did not violate Article XIV, Paragraph B, or Article V, Paragraph B, when it directed Employee to cease wearing the T-shirt in question on the Employer premises.

## **AWARD**

Grievance denied.