Abernathy #2

IN THE MATTER OF THE ARBITRATION BETWEEN

UNION

AND

EMPLOYER

Grievance No. B01223-SFOMK "Black Shoes"

HEARING SITE: Employer Headquarters City 1, State 1

HEARING DATE: March 1, 1994

ARBITRATOR: John H. Abernathy

EXHIBITS

Joint
1. 1989-1994 Mechanics' Agreement

Union
1. 71 LA 1055
2. 82 LA 538
3. 74 LA 1136
4. Award in UAL-UNION Grievance No. 99380

Employer
1. Employer Maintenance, Ramp and Cabin Services Appearance and Uniform Standards
2. Employer brochure describing Employer uniforms
3. Employer Ramp and Cabin Service Appearance and Uniform Standards
4. Employer Personnel Regulations (Appearance Guidelines)
5. Objectives of Ramp Services and Aircraft Maintenance Service 1989 New Uniform Program
6. Ramp/Mechanic Uniform Meeting, September 1, 1988
7. Ground Services 1981 Uniform Program Changeover Ordering and Procedure Manual, December 2, 1981
8. Wear Standards, May 24, 1982
9. List of issues and suggestions from ramp, cabin and mechanic uniform meetings
10. Letter forwarding updated ramp and cabin uniform and appearance standards, October 4, 1990
11. Appeal to arbitral authority

BACKGROUND

The Employer and the Union are parties to a 1989-1994 collective bargaining agreement that covers employees in the Mechanics, Helpers, Apprentices, Utility Employees and Ground Communications Technicians (Joint Exhibit 1, the "Mechanics' Agreement"). Article XVIII of the Mechanics' Agreement sets forth a four-step grievance procedure. The fourth step of that grievance procedure permits the appeal of a grievance to a three-person System Board of Adjustment (a Neutral Chairman, an Employer and Union Member) for decision by majority vote.

Grievance No. B01223-SFOMK, filed by the Employee, was appealed through the first three steps of this grievance procedure without resolution and was then submitted to this System Board of Adjustment for final determination. At a hearing on March 1, 1994 at the Employer's Executive Offices in the City 1, before a System Board composed of John H. Abernathy, Neutral Chairman, Union Board Member, and Employer Board Member, each party appeared and presented evidence and arguments. In its case the Union relied entirely on documentary evidence and argument including appeal to arbitral authority. (see Union Exhibits 1-4). The Union presented no witnesses and the grievant was not present. The Employer presented documentary evidence (Employer Exhibits 1-11); the testimony of Person 1 (Senior Staff Specialist-Uniforms), Person 2 (Staff Specialist-Uniforms) and Person 3 (Ramp Supervisor-SFO); and arguments including appeal to arbitral authority (Employer Exhibit 12). Upon completion of oral closing argument, the hearing record was closed.

The System Board then met in Executive Session to discuss the evidence presented and to develop plans for future executive sessions. It was decided that the Neutral Chairman would draft an opinion and award, fax copies to the other Board members and then arrange a

conference call for review and comment by the Union and Employer Board members. After those steps, a final opinion and award will be issued.

STATEMENT OF FACTS

1. The Employer is an air carrier providing scheduled transportation for passengers, baggage, mail and cargo to over 160 locations throughout the United States, Canada, Mexico, Europe, the Caribbean, South American and the Pacific Basin.

2. The Employer's employees classified as Utility Employees are represented by the Union. At the time this dispute arose, Utility Employees were covered by the provisions of the 1989-1994 Mechanics' Agreement (Joint Exhibit 1). Article IV, Classification of Work and Qualifications, provides the following description of duties for Lead Utility Employee and Utility Employee (need to get CBA - page 9)

3. Article XXI, Paragraph F of the Mechanics' Agreement is the controlling language in this case. It addresses the subject of uniforms as follows:

> F. Should the Employer at any time require employees covered by this Agreement to wear standard caps (wearing such a cap will be optional with the employee unless the Employer advises the Union to the contrary and affords the Union an opportunity to discuss the reasons for the change), coveralls or other work clothes in the performance of their work, arrangements will be made by the Employer whereby employees can purchase them at a particular location and one-half of the cost of new and replacement outfits will be borne by the Employer. Such caps, coveralls, or other work clothes shall be kept laundered by the Employer at no expense to the employee, however, where laundry service is not provided the employee will be reimbursed for laundry expense. The Employer, however, shall not clean or reimburse for expense of cleaning Spring-Fall and Winter uniform coats purchased by employees covered by this Agreement. When standards for such uniform coats are changed by the Employer, those employees who have previous standard Spring-Fall and Winter uniform coats, including employees who now have present standard Spring-Fall and winter coats, will not be required to purchase new coats until a replacement is needed. Recommendations of the Union will be considered by the Employer before making any changes in the style or color of the standard uniform coats.

4. In 1987, the Employer began developing new uniforms to replace the camel or brown colored uniforms then in existence. The Employer developed objectives (Employer Exhibit 5), obtained input from employees, designed possible uniforms, field tested those that showed promise and met with the Union to obtain its input (See Employer Exhibit 6).

5. At the same time, the Employer advised Ramp Servicemen and Utility Employees that black shoed would be required with the new uniforms.

6. Effective January 1, 1990, a new uniform was introduced for use by more than 12,000 Mechanic, Ramp, and Cabin Service employees throughout Employer's system.

7. The new uniform included a change in color from brown to navy blue, and effectively brought the ground uniform into conformity with the uniforms worn by other employees, specifically Customer Service Agents, Flight Attendants, Pilots and Security Officers.

8. The ordering of these new uniforms was begun system-wide in June 1989. At that time, photographs of the proposed new uniform, including component pieces and accessories, were posted at affected location. (Employer Exhibit 2)

9. In December 1989, typewritten regulations outlining updated Appearance and Uniform Standards for Maintenance, Ramp, and Cabin Service personnel were sent to all line stations for posting and distribution to affected employees. Included in these appearance standards was the requirement that by June 1, 1990, shoes and belts (or suspenders) worn with this new uniform must be black. (Employer Exhibit 4)

10. The new uniforms were shipped to employees at the address of record reflected on the UG100. Included in the uniform shipment to each employee was a booklet which demonstrated in visual and written format these new uniforms and the required accessories, including black shoes. (Employer Exhibit 4)

11. In December 1990, a brochure entitled "Ramp and Cabin Service Appearance and Uniform Standards) was distributed. No challenge to the black shoe requirement was made at any of those times. The brochure was given to all employees. This brochure stated that shoes worn with the new uniform must be black. (Employer Exhibit 3)

12. During the uniform transition period, City 2 Ramp Service management advised their employees that the "black shoe only" requirement would not be enforced for the first year of the new uniform, to enable employees to acquire black shoes in the course of normal shoe replacement.

13. The Employer's Appearance Guidelines are set forth in Personnel Regulations, Series 15-2. These guidelines state in part that

> "all uniformed non-public contact employees and other employees assigned to the duties of uniforms non-public contact employees are required to wear ...3) the proper color shoes, belt and other accessories, if appropriate, and safety shoes, if required." (Employer Exhibit 4)

14. Specific shoe requirements exist for all uniforms worn by the Employer’s employees throughout the world.

15. The Employee was first employed by the Employer on August 25, 1986 as an Airframe Maintenance Cleaner at the Maintenance Operations Center. No uniforms were required in this position.

16. On December 15, 1990, the Employee was awarded a bid as a Lead Cabin Serviceman at the City 2 terminal area. He began this job, which required that he wear the Utility uniform, on January 13, 1991. The Employee was advised on February 9, 1992 that he would no longer be allowed to wear any shoe color other than black with his uniform.

17. The Employee grieved on February 17, 1992, claiming the practice of requiring black shoes was arbitrary and in violation of Article 21, Paragraph F of the Mechanics' Agreement and requesting payment for half the purchase price of the shoes or stop making black shoes mandatory for Cabin Service employees.

18. With the exception of employees who must wear required safety shoes, no uniformed employee in any category is reimbursed for shoes which are required to be worn with the uniform.

19. The parties agree that the Employer is fully within its rights to require uniformed Utility Employees to wear black shoes. The parties do not agree on whether reimbursement for all or part of the cost of black shoes is required. That disputed fact is the core fact in this case.

20. Employee's grievance No. B01223-SFOMK, seeking reimbursement for the black shoes he was required to purchase, was denied at all steps of the grievance procedure.

21. Grievance No. B01223-SFOMK is now properly before the System Board for determination.

STIPULATED ISSUES

1. Is the Employer in violation of the Mechanics' Agreement by requiring employees in the Utility Employee classification to wear black shoes without reimbursing them for the cost of those black shoes?

2. If so, what should be the remedy?

POSITION OF THE UNION

The Union contends that the Employer is in violation of Article XXI, Paragraph F of the 1989-1994 Mechanics' Agreement. The Union contends that XXI-F is clear and unambiguous. The Employer is requiring employees covered by the Mechanics' Agreement to wear black shoes.

Whenever the Employer requires employees to wear standard items of uniform or other work clothes, the Employer must comply with the provisions of XXI-F. By not reimbursing the grievant and his co-workers for one-half the cost of the work clothes of black shoes, the Employer is in violation of XXI-F.

In support of its position the Union submitted various cases as authority. For all these reasons, the Union requests the Board to sustain the grievance and grant the relief requested.

POSITION OF THE EMPLOYER

The Employer contends that Article XXI Paragraph F has not been violated by not reimbursing for the black shoes that are to be worn with Employer's new uniforms. The Employer argues that the Union bears the burden of proving the Agreement was violated. The Employer maintains the Union has not met this burden. The Union's argument is without foundation in the Agreement itself, or in past practice, or in Employer regulations. The contract language relied upon by the Union (or other work clothes) first appeared in the 1945 Agreement -the very first collective bargaining agreement between the parties -- and has remained essentially unchanged since. That language does not specifically address shoes as a uniform item. The Employer has always required that the shoes worn with uniforms be of a specific color but has never reimbursed employees for them.

At no time in the past has the Union raised the issue of reimbursement to employees for shoes required to be a specific color - either in contract negotiations or by filing a grievance. With respect to the current uniform change, the Employer sought input from affected employees and the Union. The Article XIX-G references shoes for employees working with acids and chemicals, but that provision is not at issue in this case.

The Employer gave the Union an advance copy of its current Ramp and Cabin Service Appearance and Uniform Standards guidelines for the Union's information, review and comment. Black shoes were specified but the style of shoe was not. The issue of reimbursement for black shoes was not raised during this process. The Employer then delayed enforcing the black shoe requirement for over one year to allow employees with serviceable brown shoes to wear them out. The grievance leading to this arbitration was not filed until two years after the new blue uniforms went into effect and a year after the shoe color requirement was enforced. The Employer argued that none of the cases submitted by the Union are applicable to this case. The Employer cited a case that they felt was more on point. For all these reasons the Employer asked the Board to deny the grievance in full.

ANALYSIS

The Union has made two allegations that it must prove by a preponderance of the evidence: that the Employer is misinterpreting and misapplying Article XXI, Paragraph F. Specifically, the Employer is misinterpreting the meaning of the phrase "other work clothes." The Union contends that the phrase "other work clothes" is clear and should be interpreted to include black shoes that are required to be worn with the new uniforms. Second, the Employer is misapplying the language of Article XXI, Paragraph F by not reimbursing employees for the required black shoes. Under the Union's interpretation reimbursement for those shoes is required.

The analysis of the facts, evidence and arguments of this case must follow a certain, logical analytical pattern. If the Union's interpretation of the phrase "other work clothes" is correct, then it follows that reimbursement for black shoes is required. On the other hand, if the Union cannot prove that its interpretation is correct, or if the Employer can prove the Union's interpretation is

incorrect, then it follows that the Employer is not required to reimburse employees for black shoes.

Therefore the starting point for the Board's analysis of this case is the meaning of the phrase "other work clothes." The Board must determine if that phrase specifically includes shoes of a specific color, or if the Union's interpretation can be inferred from the phrase or if that practice supports the Union's interpretation. Does the phrase "other work clothes" specifically state required shoes? Obviously it does not. The parties have demonstrated that they know how to list specifics and they did not list shoes. Thus, the majority of the Board finds XXI-F does not specifically mention shoes.

Can the Union's interpretation be inferred from the language of XXI-F? To analyze this question the phrase "other work clothes" must be analyzed in context. The phrase in question is the last item in a series -- "standard caps..., coveralls, or other work clothes." All of the other items in this series refer to clothing or garments. Does clothing include shoes? The majority of the Board thinks it does not.

Shoes are defined as "external coverings for the human foot, usually of leather and consisting of a more or less stiff or heavy sole and a lighter upper part..." (Webster's Encyclopedia Unabridged Dictionary of the English Language). Clothes, on the other hand, are defined as "cloth formed by weaving, felting, etc. from wool, hair, silk, flax, cotton or other fibers" (Webster's, op. cit.). Shoes and clothes have different meanings in common ordinary usage, also. Thus clothes and shoes have separate and distinct meanings, whether one looks at their formal definitions or their common and ordinary usage. The majority of the Board finds that the interpretation urged by the Union cannot be inferred from the language of Article XXI.

Does past practice support the Union's interpretation? Obviously not. The record contains undisputed evidence that this phrase has been in every Mechanics' Agreement between the parties since 1945. There is also undisputed evidence that the Employer has required shoes to be color coordinated with uniform colors since 1945. And there is further undisputed evidence that the Employer has not reimbursed for those color matching shoes in the period since 1945. Finally, there is undisputed evidence that the specific shoe color requirement and that lack of reimbursement has never before been challenged - either during negotiations or by a grievance. The majority of the Board therefore finds that past practice is inconsistent with the interpretation urged by the Union.

Finally, the majority of the Board is not persuaded by the cases cited by the Union. None of those cases specifically deals with the central issue before this Board. In one case, a delivery driver made deliveries to retail-merchant customers in short pants and without a shirt. The customers complained about his appearance and the Employer required him to wear long pants and a shirt while on duty. The employee grieved seeking reimbursement for an Employer required "uniform." The Arbitrator determined the employer did not require the driver to wear a "particular type of uniform" and denied reimbursement for the required long pants and shirt.

The majority of the Board does not find this case to be directly applicable to the case before us. To the extent it is applicable, it supports the Employer's position more than it supports the Union's position.

In the second case, the hospital prohibited a psychiatric assistant from wearing jeans while at work. The employee grieved seeking paid uniform allowance claiming that contract language provided for paid uniforms if the hospital requires or suggests apparel of a particular pattern, color or design. The Arbitrator found a difference between requiring and prohibiting certain

apparel and further found that the contract did not prohibit the wearing of specific apparel and that past practice supports the prohibition of jeans without incurring liability for uniform allowances. This case is not applicable to the fact pattern in the black shoes case.

In the third case, the Employer had previously required male employees to wear blue shirts and had provided those blue shirts without charge. The Employer changed to white shirts but no longer provided them without charge. The Arbitrator ruled that past practice would require the furnishing of white shirts without charge when the employer changed to a new dress code requiring white shirts. In the case, Employer 2 supports the position that a longstanding, relied upon past practice should not be disturbed. If that proposition were applied to the black shoe situation, it would mean that the Employer in the current situation could continue to require specific colored shoes without reimbursing employees for them. Thus this case is also more supportive of the Employer's position than the Union's position.

In the final case submitted by the Union, the central issue dealt with a Employer rule requiring ground employees in 25 job classifications to wear steel-toed safety shoes on the job. Under that rule the Employer was to pay one-third of the purchase price of these safety shoes and individual employees would pay the remainder. The Union challenged the reimbursement formula and sought an order requiring the employer in this case to pay the full costs of any safety shoes required. Safety shoes are not at issue in the case before the current Board so this case is not applicable.

The Employer submitted one case to support its position. In that case the Board held that the requirement to wear dark work shoes applies uniformly to all employees and that such shoes do not become an "item of uniform." While that case is closer to the facts of the case before the

current Board, the majority of this Board finds that there was different contract language involved so the majority did not base its decision entirely on this case.

For all the reasons set forth above, the majority of the Board finds that the Union has not met its burden of proof, and will enter an award denying the grievance.

AWARD

After careful consideration of all oral and written arguments and evidence, and for the reasons set forth in the opinion that accompanies this award, it is awarded that:

1. The Employer is not in violation of the Mechanics' Agreement by requiring employees in the Utility Employee classification to wear black shoes without reimbursing them for the cost of those black shoes.

2. The grievance is denied. Respectfully submitted on this the 30th day of March 1994 by John H. Abernathy