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May 21, 1998

HUMAN RESOURCES  
GREAT LAKES AREA

HOLLOWAY ADAIR

SUBJECT: Offensive T-shirts in the Workplace

This is in response to your April 15 memorandum regarding employees who wear T-shirts with offensive pictures or wording to work.

Attached is an analysis of the issue prepared by the law department. They advise against a general prohibition of these shirts by postal management, and recommend dealing with the wearing of these shirts on a case by case basis unless the wearing of the offensive shirts becomes pervasive.

If you have further questions regarding this matter, please contact Dan Magazu at (202) 268-3825.

A handwritten signature in cursive script, appearing to read "S. Pulcrano".

Sam Pulcrano  
Manager  
Contract Administration (APWU/NPMHU)

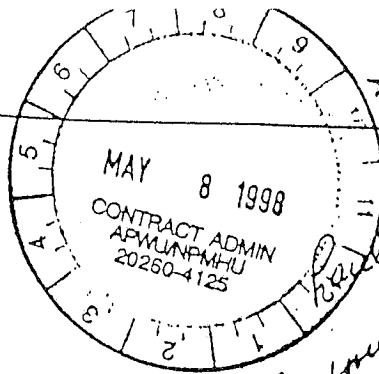
Attachment

bcc: Mr. Potter  
Mr. Bazylewicz  
Ms. Cagnoli  
Mr. DeMarco  
Mr. Ward  
Mr. Pulcrano (CA00239A)  
Mr. Valenti w/attachment  
Mr. Magazu  
HR Managers w/attachment  
Sr. LR Specialists w/attachment

File: Disciplinary actions in field  
Reading

Doc. ID: t-shirts.doc

LR2120:Dmagazula:20260-4125

UNITED STATES  
POSTAL SERVICEVICE PRESIDENT  
LABOR RELATIONS

May 6, 1998

JACK POTTER

RE: Offensive Wearing Apparel

This responds to your inquiry to Mary Elcano concerning a postal employee who is marketing T-shirts that are both vulgar and derogatory to the Postal Service. In response to advertisements being received at post offices for these T-shirts, Mary Elcano advised Postmaster General Runyon by memorandum dated April 9, 1998 that while First Amendment principles probably would not permit any attempt to stop the production or distribution of these T-shirts, advertisements sent to post offices and addressed to "any postal clerk" could be discarded. Subsequently, postal management on Long Island determined that the advertisements were being sent by a current postal employee. You have asked what actions, if any, the Postal Service can take to deal with this matter. In summary, while we do not believe that the employee can be disciplined for the marketing of these T-shirts, we believe that most of the T-shirts probably could be banned from the workplace.

#### Legal Background

Postal employees retain their rights under the First Amendment to engage in speech on matters of public concern. See Connick v. Myers, 461 U.S. 64 (1983). As such, the marketing or wearing of T-shirts is subject to First Amendment scrutiny. See Kelly v. United States Postal Service, 492 F. Supp. 121 (S.D. Ohio) (attempt to discipline postal employees for wearing politically inflammatory T-shirts held unconstitutional).

Accordingly, postal employees, as with other public employees, have certain constitutional rights that cannot be infringed upon by the employer. Messages on T-shirts relating to issues of public concern provide postal employees with some measure of constitutional protection. However, even a public employer, we believe, may prohibit shirts displaying obscene or highly inflammatory material which is inherently offensive to the general work population or which could create disciplinary problems.

Even separate from constitutional considerations, private sector employers do not have a completely free hand in dealing with the speech-related activities of its employees. The general rule that the National Labor Relations Board (Board) utilizes

is that employee conduct "that exceeds the bounds of legitimate campaign propaganda or is so disrespectful of the employer as seriously to impair the maintenance of discipline" can result in discipline without constituting an unfair labor practice. Southwestern Bell Telephone Co., 200 NLRB 667 (1972). In short, under Board law, an employee does not have an unqualified right to hold the employer's officials up to ridicule and contempt which has a necessary tendency to disrupt discipline in the plant. However, inasmuch as postal employees have certain constitutional rights, the Postal Service, as the employer, is somewhat more restricted in banning the wearing of shirts with slogans, unless they are genuinely inflammatory or could lead to disruption on the workroom floor. For instance, in Southwestern Bell Telephone Co., supra, a group of employees -- during negotiations -- wore shirts with the slogan that "Ma Bell is a Cheap Mother." In view of the controversial nature of the message, the Administrative Law Judge found, and the Board upheld, a finding that the employer could ban the wearing of apparel with this slogan.

### Discussion

Based upon these principles, we do not believe that it would be appropriate to discipline the employee who markets these T-shirts. At least some of the T-shirts would be viewed as related to issues of public concern such that the selling of such T-shirts generally implicates constitutional issues. Particularly to the extent that the T-shirts could be sold and worn off-duty, we are doubtful that disciplinary action against the employee would withstand constitutional, contractual or statutory (should the matter go before the Merit Systems Protection Board) review.

At the same time, it is clear that some, if not all, of the T-shirts being offered for sale are inherently offensive and inflammatory such that if they were to be worn on the workroom floor, the Postal Service's ability to maintain discipline could be impaired. For instance, the shirt with the "Postalfunken" slogan and the "P.T.F" shirt with the "F\*ck" language are examples of shirts with messages that incite disorder rather than the maintenance of legitimate discipline and management authority. The constitutional, as well as Board, approach would require a "T-shirt-by-T-shirt" analysis balancing the interests in free speech against the Postal Service's legitimate operational interests in controlling the workplace. The "S.O.S." T-shirt, for example, is not obscene, not a glorification of violence, and not necessarily a call to disorder. Even the local circumstances under which a particular T-shirt is worn could affect the balance of interests.

Thus, the banning of any of the T-shirts should be done on a case-by-case basis. Thus, if an individual employee wears a shirt to work with one or more of the offensive T-shirts, the employee should be asked to remove the shirt. If the employee refuses this management request, then discipline can be taken against this employee for

insubordination. This scenario should be contrasted to a general prohibition being issued to all employees by management that certain shirts with specific slogans are not to be worn. Indeed, inasmuch as we are not aware of any postal employee wearing any of the offensive shirts to work, a general prohibition emanating from Headquarters or an Area Office might have the undesired result of encouraging postal employees to unnecessarily test management's resolve. This confrontation perhaps can be avoided by dealing with the wearing of T-shirts on a case-by-case basis unless the wearing of the offensive shirts becomes pervasive.

If you have any questions concerning the above, please feel to contact Howard Kaufman (x3060) or myself (x3045):



Kevin B. Rachel  
Labor Relations Counsel

cc: Ms. Elcano  
Mr. Kappler  
Ms. Intrater  
Mr. Poole  
Mr. Friedman  
Mr. Butler