CHAPTER VIII

CHANGING LIFE STYLES AND PROBLEMS OF AUTHORITY IN THE PLANT

I. HAIR AND BEARDS IN ARBITRATION

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Let it be admitted at once: I will be doing less than an imaginative Program Committee asked me to do. Let it also be noted, however, that I did not unilaterally cut the assignment down. I sought and obtained the Committee's consent, and the upshot is that there is agreement among us that the next two or three Program Committees ought to be smart enough to recognize that the areas I will be skipping are fruitful subjects for the ensuing two or three Academy meetings—and, at that, subjects which these Program Committees won't even have to dream up.

I was originally asked to do a paper on "new or changing patterns of plant rule and plant discipline problems, growing out of the 'new morality,' the 'new life style,' or the employment of the previously unemployed." The latter—the previously unemployed—is of concrete meaning and requires no definition. Not so with new morality and new life style. I certainly take the term morality to include its converse—but where does old immorality end and new immorality begin? New life style has the same problem—but I haven't been able to come up with the same sort of turn of a phrase.

The publishers of arbitration decisions have not yet provided us with neat dividing lines—or, indeed, with any topical headings which would pinpoint the industrial problems attendant on the new morality and the new life style. Perhaps this is so because of the old "tip of the iceberg" problem. Conduct or misconduct growing out of the new morality and the new life style may indeed have become a prime area of concern to management and

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the unions, taxing their skills and imagination and requiring their rethinking if successful approaches are to be found. But, by the time a new-morality or new-life-style case gets to arbitration, a narrow and restricted issue is likely to be presented, and arbitrators are likely so to dispose of it.

But neither this fact, nor the dearth of reported cases in some of the new-morality and new-life-style areas, nor the lack of the kind of convenient delineating which a researcher like myself would like to have found, can be taken to mean that the Program Committee erred in seeing new-morality and new-life-style problems as a worthwhile subject for our meeting. Recent years have obviously seen a great deal of passionate intensity and turmoil among the younger people. Real and persistent questioning of one or another old way of doing things is a fact of life these days. Not long ago there was the well-documented plan of a faction of the Students for a Democratic Society to infiltrate industrial plants and labor unions and "turn them around," and I think most would agree that there are changing patterns in attitude which bear directly on the workplace—in such forms as greater absenteeism, the lack of a feeling of interest or obligation toward good work, and the belittling of the functions of the foreman and the union steward.

What I am saying is that the iceberg itself surely exists and is not about to dissolve. Its many manifestations bear examination and could no doubt be extensively expounded upon by industrial relations managers, union officials, and sociologists who have studied the impact of the new morality and the new life style in the workplace.

But I am not a person who either has the first-hand experience or has made the studies, and I think I should stick to that which I am qualified to do. I consider it my proper function, in other words, to report on what has happened *in arbitration* with respect to new-morality and new-life-style cases. And I also think that, rather than seek to cover the waterfront—which would produce either a paper of inordinate length or, if kept to proper length, a paper of mere conclusionary generalities—the right way to go about it is to follow the case-study approach and thus to have a chance to look at some of the cases in their true perimeter.

This was essentially the reason that, upon my initial perusal of

reported cases, I proposed to the Program Committee that I confine my paper to one particular new-morality and new-life-style area. Based on what I can gather from my own experience and from some talks with others, I would say that there are four areas: (1) hair and beards; (2) drugs and pills; (3) intensified insistence on nondiscrimination; and (4) insubordination and other challenges to traditional precepts of managerial authority.

I am taking a stab at hair and beards, but I reiterate the hope that this will be merely the beginning of an Academy sequel. Tom McDermott has uncovered and reviewed a number of cases in other areas. He and I are agreed that the case material as to at least most of the other areas is only beginning to emerge, that significant holdings are on the horizon, and that a further and more concentrated look at the other areas will be a useful Academy undertaking.

I admit to some difficulty in viewing hair and beards as an area representing a conflict of vital rights on either side, and I think that the passions which have accompanied the discussions of long hair, sideburns, and beards—whether with reference to the workplace or outside it—have been excessive.

By way of this feeling, let me relate the one direct experience I have had in this area—a beard case in a steel mill. I still remember my inner voice as the case unfolded at the hearing. I was not very impressed with either party's presentation. As I listened to management's exaggerated claims of safety hazards and interference with efficiency (allegedly because fellow employees were gawking rather than working, something which would surely fade as beards ceased to be spectacles), my inner voice said, "Why in the hell can't you let him wear it?" And as I listened to the grievant's tale of how much the beard meant to him—mostly, it appeared, because he was one in a group of friends, all of whom were bearded—my inner voice said, "Why in the hell can't you shave it off?" Indeed, I subsequently vocalized the questions in private conversations with each of the parties. The difficulty was that neither side shared my perspective and neither side felt it could reasonably give in. Thus the confrontation, and thus the need to decide an issue.

And so it has gone, I assume, at many another place. Whether or not you share my feeling that there has been a bit of overdoing

in the hair-and-beard area, the fact is that it is the one new-morality and new-life-style area on which plenty is to be found in the reported arbitration cases. Rather clearly, in other words, it seems to be an area of frequent and recurring industrial difficulty in the last few years. Let's proceed, then, with a look at some of the cases.

The Greyhound Case

The first case I propose to review is a *Greyhound* case decided by Arbitrator Robert E. Burns.[1] The question was whether the company had rightfully discharged the grievant for refusing to shave off a goatee. The grievant was a ticket clerk and thus in direct contact with the public. Also, however, in his private life the grievant was an amateur magician giving benefit performances before church groups and the like. He wished to keep his goatee as part of his stage image and thus in furtherance of his success as an amateur magician. It was a fact that the grievant's tonsure was otherwise in order, that his hair did not infringe on his collar, and that his sideburns were shorter than the allowable length (to the bottom of the ear). The goatee, the arbitrator noted, was "neat, short and obviously clean."

The arbitrator set the discharge aside, but on narrow and carefully circumscribed grounds. He gave recognition to the company's right to protect its legitimate business interests and, as a matter of right, to insist on the proper attire and appearance of its employees. But he also gave recognition to the grievant's legitimate off-duty interests. He held that, by proper balancing of the two interests, the company could not reasonably demand that the grievant shave off his goatee.

The opinion cites a number of arbitration decisions[2] in support of the double-barrelled proposition that an employer has the right to adopt rules regarding dress and appearance but that the rules "must reasonably relate to the employer's business; that rules with respect to hair and beards have different applications depending on whether or not the employee meets the public and

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[1] *Greyhound Lines, Inc., Greyhound Lines—West Division, and Council of Western Greyhound Amalgamated Divisions, Division 1225, Amalgamated Transit Union,* 56 LA 458 (1971).

[2] *Springday Co.,* 53 LA 627 (1969); *Hillview Sand & Gravel Co.,* 39 LA 35 (1962); *Badger Concrete,* 50 LA 901 (1968); *Manhattan & Bronx Surface Transit Operating Authority,* 70-1 ARB para. 3573; *United Parcel Service,* 51 LA 292 (1968).

whether health and safety of the employee and the public are involved."

The arbitrator did not go so far as to declare the company's rule—barring goatees—as inherently invalid. Indeed, he expressly noted that: "If it appears at some other time and some other place in the system that a goatee or other beard of an employee is objectionable to patrons or is damaging the image of the company with the public, such a case may be considered on its merits."

But he declined to accept the company's contention that it could validly enforce the rule in each and every instance. He knocked the company down when it came to what he considered too broad an approach:

> "Nor does the evidence show that customers in Sacramento were affronted by grievant's beard when they saw him at the ticket counter over the years. The company's prohibition against goatees is based on the conclusion that its employees should present the usual clean-shaven face to the customers (except for small mustaches and . . . sideburns). Moreover, the company argues, it operates in the states west of the Mississippi River, and the dress and appearance of the employees should be uniform throughout the system and be such that they do not offend patrons and customers in any part of the area served by the company even though beards may be acceptable in California or in the San Francisco Bay area. The difficulty with the contention is that rules which necessarily have an effect on the private life of employees are then based on the viewpoints of the least tolerant in an area comprising one-half of the United States."

These comments reflect the fact (my research indicates that it can safely be stated as a fact) that arbitrators will scrutinize the need which management asserts for hair-and-beard regulations. Hair-and-beard regulations are not accepted as a matter of unilateral managerial discretion. They must meet the test of reasonableness.

Let it be reiterated, however, that the arbitrator, rather than proceed broadly, relied on the particular facts before him. He relied on the findings that the grievant's goatee was neat and clipped, that the grievant's appearance was neither weird nor outlandish, that the company had failed to show that its business was hurt by *this* goatee on *this* ticket clerk at *this* location, and that the grievant was a person who made use of his goatee in his private life.

A Secondary Question

Let me digress here to a secondary question which comes up recurringly in hair-and-beard cases. The question is whether the "do as told and grieve later" principle should be applied. The question arose in the just-discussed *Greyhound* case.

It was obviously true that the grievant could have shaved off his goatee in compliance with the regulation and then tested his right to wear a goatee through the grievance procedure. The arbitrator declined to go that route. Once more, however, he went on narrow grounds. He held that the do-as-told-and-grieve-later principle could not reasonably be applied because of the use which the grievant made of his goatee in his off-duty hours—that there would have been an impairment of the "pursuit of his avocation as an amateur magician."

Another case in which the do-as-told-and-grieve-later question arose was decided by Arbitrator John W. Leonard.[3] The case involved three male employees who had been discharged for their failure to comply with regulations covering acceptable hair styles and sideburns. The discharges were reversed on the grounds of lack of uniform enforcement of the regulations—on the grounds, in other words, that the grievants had been subjected to discriminatory treatment. I parenthetically note that this is an instance of an arbitrator's applying an old-fashioned rule to a new-morality or new-life-style discharge case.

Leonard declined to apply the do-as-told-and-grieve-later principle. Indeed, unlike Burns in the *Greyhound* case, Leonard went on broad grounds. He held that, in genesis and purpose, this principle concerns the performance of work, that the grievants had not been given a work-performance order, and that that which they had been ordered to do—cut their hair and sideburns—could not be taken as being encompassed in the principle.

There is no attacking the logic, and there will be many among you who will agree. Hold on, though, if you think a solid piece of law has emerged, *i.e.*, that reliance by management on the self-help contention in hair-and-beard cases is no-go. There is another decision which reaches the contrary conclusion—and in rather

[3] *San Diego Gas & Electric Co. and International Brotherhood of Electrical Workers, Local 465*, 57 LA 821 (1971).

broad strokes and thus, I think, quite in conflict with the Leonard holding.

The arbitrator is Leo Kotin, and he had this to say on the matter: [4]

> "The remedy prayed for by the Union poses a question somewhat removed from the length of sideburns. That question involves the obligation of an employee to comply with a directive from a supervisor, except under conditions where safety or health may be endangered or where compliance may result in an irreparable loss. Neither of these circumstances are present here. The grievant apparently pondered the Company's request and then decided on his own that he need not comply. In response to the Arbitrator's question, he said that he refused to trim his sideburns because of what might be called principle.
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> "It is no denigration of the grievant's honestly held beliefs to point out that they do not, per se, constitute a valid basis for refusing to comply with an order. The reasonableness of the application of the rule in question (the rule covering sideburns) is not for the unilateral determination of any individual employee. The Agreement has provision for the assertion of such rights as the Union may claim. . . ."

It is true that the Leonard case involved the reversal of discharges, whereas in the Kotin case the grievant was an employee who had been told that he was being barred from work until such time as he shortened his sideburns and as to whom Kotin subsequently held that he was entitled to work without shortening them. Perhaps that's an adequate explanation for the difference in the two remedy holdings. I would prefer, however, not to be pressed for an elaboration. The more likely story is that two arbitrators disagreed. What comes to mind is the oft-stated comparison to a good horse race.

The Kellogg Case

The next case I want substantively to review is a further discharge case. The result is contrary to that in the *Greyhound* case. But the facts, too, are different—drastically so. My main purpose in putting this case alongside the *Greyhound* case is to make the point which I think has to be made: Hair-and-beard cases turn on their facts. Over and over again, the decisions go with the premise that the company has the right to establish

[4] *United Parcel Service and Teamsters, Local 396,* 52 LA 1068 (1968).

reasonable rules and regulations. The differences in result are a matter of differences in the factual situations.

The case at hand involves the Kellogg Company and Local 252 of the American Federation of Grain Millers. The arbitrator is John C. Shearer.[5] Kellogg makes something called Product 19 and other assorted breakfast foods, and Kellogg is understandably horrified at the thought of finding an unaccountable hair in its product—and even more horrified at the thought that a customer will find it.

In early 1970, after first notifying the union that it would do so, Kellogg issued a set of "Plant Regulations Regarding Hair, Mustaches and Sideburns." They incorporated the following by way of general orientation:

> "For many years on a company-wide basis, we have maintained, through necessity, high standards of sanitation and personal grooming. Recent government regulations require each of us to exercise even more caution in guarding against sources of possible food contamination.
>
> "We each know it is repulsive to find loose hair in food, so we have a common objective. Like other things in life, it is a matter of degree. Obviously, it is impractical to cover eyebrows, eyelashes or hair on the arms. However, the risk of loose hair falling into food is at least 100% greater when it requires regular brushing, combing, or other grooming."

The regulations additionally stated that: "Our objective . . . is not to deter individuality" and "we know we can count on everyone's co-operation in these essential regulations."

Specifically, the regulations required male employees to keep their hair from growing beyond the back of collars (hairnets had always been required for female employees), not to wear beards at all (including Vandykes and goatees), and to confine sideburns to a width no greater than the upper part of the sideburns and to a length which would not extend them below the earlobes.

The grievant was a 24-year-old male employee. He did shave off his beard and he did cut his hair to regulation length, but he steadfastly refused to shorten his sideburns. They extended about a quarter inch below his earlobes. The grievant was first duly warned and then discharged when he still refused to comply with the rule covering sideburns.

[5] 55 LA 84 (1970).

It is obviously arguable that a quarter inch makes no great difference and that sideburns which extend to a quarter inch below the earlobes are not demonstrably any greater a sanitation risk than are sideburns which extend exactly to the end of the earlobes. Instead of so proceeding, however, Arbitrator Shearer accepted the company's argument that it had to draw the line somewhere, and he then simply stated that: "The rule with respect to sideburns is clear and unambiguous. With respect to the nature of this industry . . . , the prescribed length seems to this arbitrator to represent a reasonable compromise between sanitation considerations and personal preferences."

The union contended broadly that the regulations were a subterfuge by which Kellogg sought to regulate the personal appearance of employees for the sake of esthetics rather than for the protection of product quality. Shearer's response was as follows:

> "The arbitrator finds persuasive the Company's contention that its regulations reflected its growing concern for protection of its products against hair contamination rather than any intent to regulate employees' appearance, as such. The trend among its male employees toward longer hair and more facial hair resulted in an appropriate Company response in underscoring long-standing regulations and in initiating other specifications such as the length of sideburns. The Union has not successfully demonstrated that this regulation on sideburns was a subterfuge for an unjustified infringement of personal rights.
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> "Although the Union is certainly correct that hair styles have changed considerably over recent years, the Union's related contention that Company regulations should reflect changed styles is not persuasive in this case. Although hair styles have changed, sanitation needs have not. In pressing the Company to accommodate changing styles, the Union would, in effect, urge the Company to adopt the very policy which the Union properly seeks to guard against in this case: regulations based on considerations of appearance rather than of sanitation."

The discharge was thus upheld. I have given the reason for putting this case alongside the *Greyhound* case, but I think the case is also noteworthy because it indicates how far arbitrators will go in respecting the nature of the industry. This was a tough set of rules, but the reasonableness of a rule is not tested by its stringency alone. A lenient rule may fall where a corresponding need in terms of protecting the company's legitimate business interests has not been demonstrated. Conversely, a tough rule

will stand where the company's legitimate business interests have been shown to require it. Perhaps, too, the arbitrator was influenced by the way the company went about issuance of the regulations—the prior notice to the union and the soft and explanatory tone in which the regulations were stated. I think most of us would admit that it is the kind of nuance which can spell the difference. But the significant feature to me is that this is another case which turned on the reasonableness of the rule in the light of a balancing of the conflicting interests. We here see it in connection with new-morality and new-life-style problems. But it's really old stuff. I remember Ralph Seward, years ago, turning down the Steelworkers on a health claim involving the recurrent opening of large doors in a slab mill in the winter time. It was indeed very cold and drafty when those doors opened. But Seward dismissed the claim, and he said in part that he had to give due regard to the nature of the steel industry and that he could not treat the door-opening problem in the same way as he might treat it, for example, in the clothing industry.

The United Parcel Case

The last case to which I want to give in-depth review is one which Leo Kotin decided and which I have already referred to in connection with the discussion of the do-as-told-and-grieve-later question.[6] The essential facts were as follows: The grievant was one of a group of drivers doing delivery work for United Parcel Service. The company had issued a set of "Rules and Regulations for Driver Appearance." Two of the rules were these:

> "Drivers will have conservative and frequent haircuts.
>
> "Well trimmed mustaches are acceptable but not goatees or beards."

Sometime after the issuance of the rules, problems arose over the appearance of some of the drivers, the grievant among them. In the opinion of the company, their sideburns were of a length inconsistent with the intent of the rules. There followed a meeting of supervisors in which a standard for the allowable length of sideburns was adopted. The standard was this: "Sideburns should not reach beyond the mid-point of the ear." Unlike his fellow employees, the grievant did not shorten his sideburns. He was warned about it, still refused to shorten them, and then was

[6] *Supra* note 4.

ordered to stay home until such time as he would be willing to live up to the standard.

For a number of reasons, I want to quote extensively from the opinion. One reason is that the case is one of the early ones in the hair-and-beard area (it was decided in 1968) and that I think Kotin did a magnificent job in his general discussion of the problem and the considerations which inhere in it. Moreover, at least as I read it, the opinion has some nifty tongue-in-cheek humor. Kotin has given us good literature. A second reason is that the holding in the case turns on another old-fashioned test—namely, that rules must be clear and may fail of enforcement if vague. Contrast Kotin's turndown of the company in his case with Shearer's statement in the *Kellogg* case that "the rule with respect to sideburns is clear and unambiguous." A third reason is to point up once again the important underlying part which the nature of the industry plays in hair-and-beard cases. As you will see, the Kotin case is concerned with an excessive length of three eighths of an inch, whereas in the *Kellogg* case it was a matter of one quarter inch. We agree that's not much of a difference when it comes to sideburns. And though in the one case there is reliance on the fact that the rule was clear and unambiguous while in the other case there is reliance on the fact that the rule was imprecise, I think it takes but a little reading between the lines to recognize that the fact that in the one case the company was engaged in food processing, while in the other the company was engaged in delivering parcels, had a lot to do with the difference in the result of the two cases. If we can accept that instinct and gut reactions play a part in deciding cases, it would not surprise me if many an arbitrator's answer to the question of "What—a mere one-quarter inch?" would be "Damn right, when it comes to the food industry" and, likewise, would be "Come off it" when the same sort of extra length is presented as grounds for barring employment in an industry which lacks the good cause for making a federal case out of such extra length.

Whether or not so influenced, Kotin expressed himself far more graciously. Here are portions of his discussion:

> "The instant case is one of an increasing number being referred to arbitration, which involves the accommodation of the employer-employee relationship to substantial changes in social values as they apply to personal appearance. The proliferation of beards, mustaches, sideburns, and long hair among individuals who reflect the

entire spectrum of occupations, professions, and group identifications is obvious. The range might well be depicted in the difference between the unshorn, unkempt and unwashed hippy and the successful company executive who suddenly appears at his office with the beginnings of a hirsute adornment, tenderly cared for until it matures to the proportions sought by the wearer. In the presence of these changing values, the maintenance of an image, essential to the prosperity of a company serving the public, poses many complications vividly reflected in the instant issue.

"Companies providing a service to the public still have the right to protect their image. To the degree that that image is based on the appearance of its employees dealing with the public, the company has the right to establish rules and standards of personal appearance. This right has long been recognized by unions. The right, however, is not absolute. Its exercise in any specific manner may be challenged as arbitrary, capricious or inconsistent with the objective for which the right is being exercised. It is readily apparent that in a period of radical changes in the manner of dress, hair grooming, etc., the instances of honest differences of opinions are more frequent and involve emotional reactions. This consequence is inevitable in view of the strong, personal value judgments involved and the absence of precise indices that can be uniformly applied.

"This ever present problem attends the application of the Company's Rules. The requirement that drivers have 'conservative and frequent haircuts' establishes no specific standard as to how often the hair should be cut or what is a 'conservative' haircut. Similarly, there can be substantial conflict as to what constitutes a 'well trimmed mustache.' It is obvious that the enforcement of the Company's Rules entails a high degree of subjective judgment. Appearance does not readily lend itself to mathematical or linear definition. One cannot determine on the basis of a commonly recognized and accepted standard, what constitutes a proper crease in trousers. A 'well trimmed mustache' may encompass a narrow adornment on the upper lip or a full mustache, neatly curled and waxed at the end. The same area of uncertainty, it would appear to the Arbitrator, applies to the length of sideburns. Since personal judgments are inevitably involved in an issue such as is posed here, the Arbitrator expresses his view that, as to this time, unduly long sideburns tend to draw unfavorable attention from a substantial segment of the public. The Union arguments at the hearing, while not clearly expressing this same view, support the reasonable inference that the Union agrees.

"There remains, then, the underlying question, 'When are sideburns too long?' The Company, in the interest of uniform application of this rule, has adopted what it deems to be an exact, readily applicable standard, namely, the mid-point of the ear. At the hearing, it was stipulated that the grievant's sideburns were approxi-

mately three-eighths (⅜'s) of an inch below the mid-point. It is submitted that the exact mid-point cannot be determined with mathematical certainty. . . . At most, the mid-point is a guide rather than a fixed rigid index. Implicit in the absence of a fixed mathematical index is the presence of an area of tolerance. Within this tolerance, the decision must rest on the determination of whether the employee's appearance defeats the legitimate objectives of the Company in maintaining its public image and the specific rules established to facilitate the achievement of these objectives. It would appear to the Arbitrator that three-eighths of an inch of sideburns . . . is well within the range of tolerance. Of greater significance is the appearance of the grievant at the hearing with the 'illegal sideburns.' The Arbitrator found nothing that would provide a derogatory reaction from the public against either the driver or the Company he represents."

Other Cases

I think I have provided suitable samples. I have chosen an in-depth treatment of but a few cases rather than a cursory review of many cases because I think that's the better way for an orientation of the problem. But, as I have indicated, there are many other reported cases in the hair-and-beard area. Now that the orientation is behind us, a brief look at some of them—to broaden the horizon and to get a bit more of a "feel" for the hair-and-beard area—will be useful.

There is a case involving a driver whose job it was to deliver truckloads of concrete mixes to construction contractors in eastern Wisconsin. He grew a beard and was ordered to shave it off. The company relied on what it thought would be adverse reactions to the beard by customers. The arbitrator declined to accept this, finding it "hard to conceive how the business of a redi-mix company could be damaged by employing drivers who wear beards." [7]

There is a case involving a ticket agent for a bus company in Philadelphia. He was discharged, after repeated warnings, for his long hair style. The hair extended over his ears and below the collar. Here, the arbitrator accepted the company's argument that it was in a competitive business and that its image was hurt by the grievant's long hair.[8] Query whether Burns, the arbitrator

[7] *Arrow Redi-Mix Concrete, Inc., and Drivers, Warehouse & Dairy Employees, Local 75,* 56 LA 597 (1971), George R. Fleischli.

[8] *Safeway Trails, Inc., and Amalgamated Transit Union, Division 1112,* 57 LA 994 (1971), Frank J. Dugan.

in the *Greyhound* case, would have come out the same way. Certain it is, however, that the Philadelphia case was without a special goatee-magician wrinkle.

There is a case involving a plant protection officer in eastern Ohio who grew a beard while on sick leave and who kept it on when he came back to work. The company had a rule requiring all plant protection officers to be "clean shaven" (though allowing small, neatly trimmed mustaches and sideburns). The arbitrator accepted the rule as not unreasonable in the light of the company's concern that appearance is an important part of gaining the respect of others, that respect of others is a particularly significant feature for the effective performance of police work, and that the wearing of a beard might therefore mar proper dealings by plant protection officers with employees at the plant. Additionally, the arbitrator gave some weight to the company's argument that plant protection officers stationed at the plant gate had direct contact with the public and that the company was rightfully seeking to protect its image as an orderly, efficient, and disciplined organization.[9]

I enter two comments on this case: One—a matter of tangential interest—concerns the fact that the grievant himself went with the principle of do as told and grieve later. When he came back from sick leave, management refused to let him go to work. He went home, shaved off the beard, and came to the plant the next day—going to work and filing the grievance which tested his right to wear a beard. The other comment concerns the outcome of the case. I happen to hold great respect for Dick Mittenthal's work, and I certainly do not mean to say that his decision was wrong. Indeed, I doubt that there is such a thing as a wrong or right answer in a case of this sort; it goes back to Kotin's observation that "personal judgments are inevitably involved." But I venture to say that the case is one on which there would be widespread disagreement among arbitrators. I think it is a case which would give most of us a hard time. On the one hand, there was the fact of the existence of a rule, apparently long observed by the grievant's fellow plant protection officers. Why *should* the grievant be an exception? But, on the other hand, it was not an outlandish beard which the grievant had grown, but rather, as

[9] *Youngstown Sheet & Tube Co. and United Steelworkers of America, District 26,* Steelworkers Arbitration Awards, Rep. 270 (1971), Richard Mittenthal.

the opinion gives it, a "small, neatly trimmed beard which was very much like a goatee." In that context, I think that quite a few arbitrators might have been left unimpressed with the company's police-work and image arguments.

There is a case with humorous overtones, and yet perhaps of significance.[10] It involves a man who applied for a summer job while wearing shoulder-length hair and a full beard. He was told that the company had a rule against long hair and beards, and he later returned to the employment office with a clean-shaven face and with hair which apparently was cut to proper length. He was hired for the summer job he was seeking. The fact was, however, that he was wearing a wig. Supervision learned about it in mid-summer. Our man was given 24 hours to cut his hair, and he was fired when he refused to do so. Arbitrator Forsythe reversed the discharge, in effect saying that a wig which contained the hair at reasonable length was the equivalent of hair which was itself of reasonable length.

The last case I want to present involves a route salesman for Pepsi Cola.[11] In response to complaints which it had received from some of its customers concerning the hair styles of some of its salesmen, the company had issued revised rules governing hair, sideburns, and beards. The grievant was discharged for his noncompliance with the revised set of rules. The union took Pepsi Cola up on its "Now" slogan and argued that the grievant's preferred style of hair, sideburns, and mustache was quite in line with that of the Now generation. The arbitrator, Marlin Volz, was not persuaded.

I have chosen to close with this case because the Volz opinion has observations which go to approach and which are fundamental in terms of what most arbitrators seem to be doing in the hair-and-beard area. I give three quotes by way of highlights.

1. "The grooming code represents a middle ground between the concern of the Company to protect and improve its image with the public and the preference of an employee for self-expression and individuality through hair styling. It grants him considerable latitude. It allows, within moderation, sideburns, mustaches, beards, and reasonably long hair. An employee's right to personal expression was not unreasonably curtailed."

[10] *Production Finishing Co. and Local 155, UAW,* 57 LA 1017 (1971), E. J. Forsythe.

[11] *Pepsi Cola General Bottlers, Inc., and Brewery & Soft Drink Workers, Local 20,* 55 LA 663 (1970).

2. "The grooming code was not based upon arbitrary or unrealistic standards outmoded by current mores but was predicated upon a legitimate and justifiable interest to preserve and promote successful operations through the maintenance of a popular public image. The economic well-being of the Company is, of course, vital to the employees as well as to management. . . ."

The third quote requires a preliminary comment. Volz dealt with the union's contention that Pepsi Cola's grooming code violated the grievant's constitutional and civil rights to self-expression. I have not previously pointed it up, but this contention appears frequently in the hair-and-beard cases. Volz answered it as follows:

". . . the interest of employees in the individuality of their personal appearance is a factor which must be weighed and balanced in determining the reasonableness of the Company's rules and regulations relating thereto. However, where such rules and regulations, as here, are reasonable, an employee has no constitutional or other right to defy or violate them except at his own risk. He may have a constitutional right to self-expression, but he has no constitutional right to continued employment in clear violation of reasonable Company rules."

Summary and Assessment

What may appropriately and legitimately be said by way of concluding remarks? I want first to summarize the several editorial comments already woven into the review of the cases and then go on to a comment of a general-assessing nature.

As to the summary, I think the noteworthy points are these:

Companies clearly do not have the right which, for all I know, they may have had a generation or so ago—simply to declare long hair and beards out of bounds and fire those who will not conform to the proscription.

Even more moderate rules are not imposable as an outright, unilateral management right. The rules are subject to challenge by unions and scrutiny by arbitrators.

There is an awareness among arbitrators of changing times and changing hair-and-beard styles, and arbitrators will not permit what they consider unwarranted interference with a person's preference as to hair-and-beard style.

Arbitrators do not, however, buy the broad argument that the exercise of preference as to hair-and-beard style should be ac-

cepted as a constitutional or civil right to self-expression. To the contrary, where they consider the particular rule reasonable they simply turn the argument around by saying that a person has no constitutional right to continued employment if he violates a reasonable condition of employment. They echo the famous Holmes dictum that a man had a right to engage in politics, but he did not have a right to be a Boston policeman.

Whether or not any particular hair-and-beard rule meets the test of reasonableness depends on a number of considerations. The nature of the industry plays the most significant role. Subcriteria are health or safety factors, the employee's exposure or nonexposure to the public, and the legitimacy of the particular image concern which the company is expressing.

Hair-and-beard rules must be clear and are likely to be in trouble if vague or overly broad.

Hair-and-beard rules must be capable of uniform application and must, in fact, be uniformly applied. Discriminatory treatment may become the ground for reversal of disciplinary action.

Yet, a rule, though not generally questioned, may fail of application in a particular case of unusually compelling circumstances. This is what the goatee-magician case amounts to. The employee's legitimate off-duty interests were put alongside the company's legitimate business interests, and the outcome of the case was a matter of weighing and balancing the conflicting interests.

My assessing comment goes to the role we arbitrators seem to be playing in this particular new-morality and new-life-style area. It may be a somewhat different role in one or another of the other areas. When it comes to drug-and-pill cases, for example, is the direction one of concern for rehabilitation or of expanding corrective-discipline notions as compared to reliance on the traditional standard of the employee's fitness to perform the work? Similarly, as a matter of the recognition of a fact of life in the current era, is there more tolerance of absenteeism? Is there a change in what is and what is not considered abusive conduct toward a supervisor? I don't know—and, to allude to it once more, I think a search for the answers is worthwhile. But when it comes to the hair-and-beard area, it seems to me that it can fairly be said that we're not out front and that ours is an essentially

conservative role. We are letting the cases turn on their facts, and we're going with reasonableness, quite as we always have in regard to any shop rule. I have found no decision which says that the reasonable course is to let an employee decide for himself how long to let his hair grow and whether he wants to grow a beard and what kind of beard he wants to wear. In overview terms, it is correct to say that neither any new arbitral law nor any departures from established arbitral standards and principles have emerged in the hair-and-beard area.

Some will raise the question of whether it should be otherwise. They will wonder about wisdom and the need for greater sensitivity, and they will argue that there is little chance for ameliorating some of the conflicts in our society if arbitrators show themselves to be establishment people.

My own guess is that the decisions in the hair-and-beard area will not change course. I doubt that preference as to hair-and-beard style will engender compelling compassions or be seen as the sort of sociopsychological phenomenon which requires a drastic reorientation as to plant life. This is not to say that we're out of tune with gradualism; we haven't been and we won't be. But I think that, when we're up against any particular hair-and-beard case, we will continue to be as concerned for reasonable rules and regulations as for self-expression.

Lest someone will charge that these remarks—or, for that matter, my own hair style—reveal a prejudice, I add that I share offices with a long-time friend and a valued colleague who wears a generous walrus mustache and who, not long ago, was wearing a sizable beard. By the way, the one hair-and-beard experience he was able to share with me concerned, not a case he had arbitrated, but the occasion when *he* was asked, by his then-principal clients, to take off the beard. I do not know how much soul-searching went into it, but the fact is that he complied with the request.

II. DRUGS, BOMBS AND BOMB SCARES, AND PERSONAL ATTIRE

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In his paper on "Hair and Beards in Arbitration," Rolf Valtin has pointedly expressed the difficulties that arise when attempt-

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