

BEFORE THE ARBITRATOR

In the Matter of the Arbitration  
of a Dispute Between

RICHARD C. PILLSBURY

and

OCONTO COUNTY (SHERIFF'S DEPARTMENT)

Case 126  
No. 52298  
MA-8903

Appearances:

Mr. Richard C. Pillsbury, on behalf of himself.  
Godfrey & Kahn, S.C., by Mr. Dennis W. Rader, on behalf of the County.

ARBITRATION AWARD

The above-entitled parties, herein "Pillsbury" and "County", submitted this matter to arbitration pursuant to the collective bargaining agreement between the County and Drivers, Warehouse and Dairy Employees Union, Local No. 75. Pursuant thereto, hearing was held on May 17, 1995, in Oconto, Wisconsin. The hearing was transcribed and the parties thereafter filed briefs which were received by July 31, 1995.

Based upon the record, I issue the following Award.

ISSUE

The parties have agreed to the following issue:

Whether the County violated the contract by terminating grievant Richard C. Pillsbury and, if so, what is the appropriate remedy? 1/

DISCUSSION

Pillsbury was employed as a part-time jailer in the County's jail, during which time he also transported prisoners. During his tenure, Pillsbury was never disciplined and was a model employe. At the time of his termination, he was the only male part-time jailer. Following his complaints over the way that he was being scheduled to work, Pillsbury met with the County's

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1/ The contract does not contain a "just cause" provision.

Law Enforcement/Judiciary Committee on June 8, 1994. 2/ At that time, the Committee directed Pillsbury to sit down with management so that his schedule could be set months ahead of time. Pillsbury subsequently did so and his schedule was fixed for June-July. Pillsbury at that time never indicated that he wanted time off for deer hunting in the fall. Regular part-time employees are not allowed to take vacation time for deer hunting season. Pillsbury took time off for the 1993 deer season, but there was no emergency at that time.

Pillsbury by letter dated October 19 informed Jail Administrator Joe Paluch:

"For your scheduling of the November part-time employees, I will be out of the area from 18 Nov. 27 Nov. 1994. Please do not schedule me for work during this time frame."

Paluch did not immediately respond to that request.

Paluch on November 10 learned that Larry Birr, a regular full-time employe, would be out from work in November because of a back problem. Paluch in a November 10 memo told Pillsbury to fill in for Birr and to check Birr's schedule which showed that he was slated to work on November 20, 21, 22, 26, 27 and 28.

By letter dated November 14, Pillsbury told Paluch, inter alia, that, "I will not call in, nor work the days of 20-22 and 26-27 November, 1994."

Pillsbury and Union Representative Michael Williquette met with Paluch on November 15, at which time Paluch told Pillsbury that he could be terminated if he refused to work Birr's schedule. Pillsbury at that time explained to Paluch several options as to how he, Pillsbury, could fill in for Birr without requiring Pillsbury to work during deer season.

Pillsbury earlier worked Birr's shift on November 8, 9, 10, 14, 15 and 16, but refused to do so on November 20, 21, 22, 26 and 27 because he went deer hunting. The County therefore had to schedule other employes to fill in for Birr. When he returned to work on November 28, Pillsbury was told to go home and he did not work on November 28 or on December 1, 2 or 3. The County suspended Pillsbury on December 7 and terminated him on December 22 effective at the end of his shift that day because of his failure to, in its words, make himself "available for work from November 18 through November 27".

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2/ Unless otherwise stated, all dates refer to 1994.

In support of his December 22 grievance, 3/ Pillsbury mainly argues that he was an excellent employee; that there "was no written policy or directive that governed the availability of part-time employees" such as himself; that management erred in not using other personnel to fill in for Birr; that he had previously complained about management's past use of part-time employees; that management failed to follow the directions issued by the County Board's Law Enforcement/Judiciary Committee in June; and that he "provided ample notice" to the County regarding his unavailability to work in the latter part of November. Pillsbury thus claims that his discharge was improper and that he should be reinstated with full back pay.

The County, in turn, contends that Pillsbury was required to "work now, grieve later"; that he received adequate warning that he would be terminated if he did not work in the latter part of November; that its actions in terminating Pillsbury were not "arbitrary or capricious"; and that it has the "right to utilize part-time persons in situations of emergency outside of the normal working time".

The resolution of this matter turns on one of the iron rules of the employer-employee relationship, i.e., "work now, grieve later".

This rule was best explained by Arbitrator Harry Schulman in Ford Motor Co., 3 LA 779, (1944). He there stated:

The employee himself must also normally obey the order even though he thinks it improper. His remedy is prescribed in the grievance procedure. He may not take it on himself to disobey. To be sure, one can conceive of improper orders which need not be obeyed. An employee is not expected to obey an order to do that which would be criminal or otherwise unlawful. He may refuse to obey an improper order which involves an unusual health hazard or other serious sacrifice. But in the absence of such justifying factors, he may not refuse to obey merely because the order violates some right of his under the contract. The remedy under the contract for violation of right lies in the grievance procedure and only in the grievance procedure. To refuse obedience because of a claimed contract violation would be to substitute individual action for collective bargaining and to replace the grievance procedure with extra-contractual methods. And such must be the advice of the committeeman if he gives advice to employees. His advice must be that the safe and proper method is to obey supervision's instructions

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3/ The Union apparently refused to proceed to arbitration after it represented Pillsbury in the underlying steps of the grievance procedure.

and to seek correction and redress through the grievance procedure.

### *Purpose of Grievance Procedure*

Some men apparently think that when a violation of contract seems clear, the employee may refuse to obey and thus resort to self-help rather than the grievance procedure. That is an erroneous point of view. In the first place, what appears to one party to be a clear violation may not seem so at all to the other party. Neither party can be the final judge as to whether the contract has been violated. The determination of that issue rests in collective negotiation through the grievance procedure. But, in the second place, and more important, the grievance procedure is prescribed in the contract precisely because the parties anticipated that there would be claims of violations which would require adjustment. That procedure is prescribed for all grievances, not merely for doubtful ones. Nothing in the contract even suggests the idea that only doubtful violations need be processed through the grievance procedure and that clear violations can be resisted through individual self-help. The only difference between a "clear" violation and a "doubtful" one is that the former makes a clear grievance and the latter a doubtful one. But both must be handled in the regular prescribed manner.

### **Universality of Problems**

#### *Need for Adjustments*

Some men apparently think also that the problems here involved are evils incident to private profit enterprise. That, too, is a totally mistaken view, as a moment's reflection will show. The problems of adjustment with which we are concerned under the contract are problems which arise and require adjustment in the management of an enterprise under any form of economic or social organization. Any enterprise -- whether it be a privately owned plant, a governmentally operated unit, a consumer's cooperative, a social club, or a trade union -- any enterprise in a capitalist or a socialist economy requires persons with authority and responsibility to keep the enterprise running. In any such enterprise there is need for equality of treatment, regularity of procedure, and adjustment of conflicting claims of individuals. In any industrial plant, whatever may be the form of political or economic organization in which it

exists, problems are bound to arise as to the method of making promotions, the assignment of tasks to individuals, the choice of shifts, the maintenance of discipline, the rates of production and remuneration, and the various other matters which are handled through the grievance procedure.

### *Incidents of Human Organization*

These are not incidents peculiar to private enterprise. They are incidents of human organization in any form of society. On a lesser scale, similar problems exist in every family: Who shall do the dishes, who shall mow the lawn, where to go on a Sunday, what movie to see, what is a reasonable spending allowance for husband or daughter, how much to pay for a new hat, and so on. The operation of the union itself presents problems requiring adjustment quite similar to those involved in the operation of the company -- problems not only in the relations of the union to its own employees but also in the relations between the members of the union. Anyone familiar with seniority problems knows that the conflict of desires within the union is quite comparable to that between the union and the company. And any active member of Local 600 knows that the frictions and conflicts within a large union may be as numerous and difficult as those between the union and the company. Such "disputes" are not necessarily evils. They are the normal characteristics of human society which both arise from, and create the occasion for, the exercise of human intelligence. And the grievance procedure is the orderly, effective and democratic way of adjusting such disputes within the framework of the collective labor agreement. It is the substitute of civilized collective bargaining for jungle warfare.

### *Need of Authority in Industry*

But an industrial plant is not a debating society. Its object is production. When a controversy arises, production cannot wait for exhaustion of the grievance procedure. While that procedure is being pursued, production must go on. And some one must have the authority to direct the manner in which it is to go on until the controversy is settled. That authority is vested in supervision. It must be vested there because the responsibility for production is also vested there; and responsibility must be accompanied by authority. It is fairly vested there because the grievance procedure is capable of adequately recompensing employees for abuse of authority by supervision.

. . .

All of that was true then and all of it is true now. That is why -- absent contract language to the contrary which does not exist here -- Pillsbury was required to work on November 20, 21, 22, 26 and 27, as directed. Since Paluch warned Pillsbury on November 15 that he could be fired if he did not report to work on those days, the County did not violate the contract when it carried through on that threat.

Pillsbury is correct in pointing out that the County could have adopted some of the alternatives he proposed which, if adopted, would have avoided the problem found here. But, the County was not obligated to follow another course since its actions were permitted under the contract and since its insistence on scheduling Pillsbury on the days in question was based on valid management objectives of trying to avoid overtime and/or unnecessary scheduling of other employes.

There also is no merit to Pillsbury's claim that the County's action contravenes the directives issued by the County's Law Enforcement/Judiciary Committee in June. Pillsbury asserts that the Committee then decided that his work schedule should be based on his availability. In fact, there is some question over exactly what was then decided. Nevertheless, one point is clear: according to Gerald Beekman -- whose testimony I credit -- the Committee never decided that Pillsbury could not be scheduled in emergency situations. That being so, there is no basis for finding that Pillsbury's refusal to work was justified by what happened in June.

In this connection, former Sheriff Kenneth Woodworth testified he had "mixed feelings" as to whether Pillsbury should have been scheduled to work during deer season because he did not think it was fair for a part-time employe to be "100 percent available at all times. . ." to work. However, the fact remains that Pillsbury was scheduled to work during that period and that the County had the contractual right to do so. His failure to work therefore enabled the County to impose the discipline it meted out here.

Lastly, Pillsbury complains that the County waited about 15 days after his December 7 suspension before firing him on December 22. That delay, though, was reasonable given the County's need to fully and fairly investigate this matter before making its final discharge decision.

In light of the above, it is my

#### AWARD

That the County did not violate the contract when it discharged grievant Richard C. Pillsbury; his grievance therefore is denied.

Dated at Madison, Wisconsin, this 8th day of September, 1995.

By Amedeo Greco /s/  
Amedeo Greco, Arbitrator