

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

GREENFIELD SCHOOL DISTRICT

and

**LOCAL 2, MILWAUKEE DISTRICT COUNCIL 48,
AFSCME, AFL-CIO**

Case #118
No. 55491
MA-10026

(Richard Narloch Discharge)

Appearances:

Podell, Ugent, Haney & Delery, Suite 200, 611 North Broadway, Milwaukee, Wisconsin 53202-5004, by **Mr. Alvin Ugent**, Attorney at Law, appearing on behalf of the Union.

von Briesen & Purtell, S.C., Attorneys at Law, Suite 700, 411 East Wisconsin Avenue, Milwaukee, Wisconsin 53202 by **Mr. James Korom**, appearing on behalf of the Employer.

ARBITRATION AWARD

Pursuant to the provisions of their collective bargaining agreement, Local 2 of Milwaukee District Council 48, AFSCME, AFL-CIO (hereinafter referred to as the Union) and the Greenfield School District (hereinafter referred to as the Employer or the District) requested that the Wisconsin Employment Relations Commission designate a member of its staff to serve as arbitrator to hear and decide a dispute concerning the District's decision to discharge Richard Narloch. The Commission designated Daniel Nielsen. A hearing was held on November 11, 1997 at the District's offices in Greenfield, Wisconsin, at which time the parties were afforded full opportunity to present such testimony, exhibits, other evidence and arguments as were relevant to the dispute. A stenographic record was made of the hearing, which was received by the undersigned on November 26th. The parties submitted briefs which were exchanged through the arbitrator on February 2, 1998. The record was held open for a period as the possibility of reply briefs was discussed, and was closed without the submission of replies on February 4, 1998.

Now, having considered the evidence, the arguments of the parties, the relevant contract language, and the record as a whole, the arbitrator makes the following Award.

I. ISSUE

The parties stipulated that the issue to be determined herein is:

Was the grievant discharged for just cause? If not, what is the appropriate remedy?

II. BACKGROUND FACTS

The District provides general educational services to the citizens of Greenfield in suburban Milwaukee. The Union is the exclusive bargaining representative for the District's blue collar employees. The grievant, Richard Narloch, was employed as a custodian in the middle school for 15 years until his last year of employment, when he became a utility truck driver working out of the high school.

The grievant was discharged for an incident on May 27, 1997. According to his supervisor, Steve Heun, he was meeting in his office with another employee, Joe Franitza, when the grievant entered the office. The grievant asked for help unloading a truck load of copy paper. Heun told him he was busy and could not help him. After he said this, he noticed the grievant moving towards him with a utility knife in hand. The grievant walked behind him, and put something to his throat. Heun told him that "threatening me is not going to get you anyplace -- people have been terminated for less", to which the grievant replied "this is not a threat, it's a promise." The grievant then left the room.

According to the grievant, he always carries a utility knife because his job involves opening cartons and packages. On the 27th, he needed to move two pallets of paper, as well as some tables and chairs, and he went to Heun's office to get help. When he entered the office, Heun was seated behind his desk talking to Franitza and the grievant walked over to within a couple of feet, across the desk from him. He said he needed some help and Heun told him he was busy and could not help him. As a joke, the grievant held his arm out to his side with the utility knife in his hand, and asked Heun "How would you like your mustache trimmed?" The blade on the knife was not extended. Heun looked up and smirked at him, and said "Is this a threat", noting that he could be terminated if he threatened a supervisor. The grievant replied "No, I'm not that stupid to jeopardize my job." After this exchange, Franitza said "Let's go and unload the truck" and the two of them went out and unloaded the paper.

After the grievant left Heun's office, Heun called his supervisor, Director of Buildings and Ground Bruce Saniter. He told Saniter that the grievant had held a knife to his throat. Saniter told him to have the grievant report to the District office immediately, and that he and Franitza should both prepare written statements of what occurred. Heun had the secretary tell the grievant to go to Saniter's office, and he prepared his written statement:

At app. 10:55 am on May 27, 1997 Richard Narloch came into my office requesting help unloading his truck with paper for the high school. I told Richard I'm busy right now and I can't always stop and help you unload something. Then he walked over to me and pulled out of his pants packet a utility knife and put it under my neck and I told him this will not get him any where. He said this is a promise. Joe Franitza was in my office when this happened.

Franitza also wrote out a statement:

On 5/27/97 at about 11:00 I was in Steve's office going over some paper work (work orders and building usage requests) when Rick Narloch came into the office and said he needed help unloading paper off of his truck. Steve said he didn't have any help for him at this moment or something very close to that statement. Rick then had a miniature key chain utility knife and put it under Steve's neck with the blade extended. Steve said something like threatening me will get you terminated and Rick said it's not threat, it's a promise. Then I went to help Rick unload the paper off his truck. I'm pretty sure that all of this was meant in fun, at least in my opinion it was.

I was told to write what I saw in the office during that time, so I have done what I was told to do. However, I really don't like to do this so it is under protest that I hand in this paper. 5/27/97 11:31 p.m.

The grievant went to Saniter's office and was told that he was being suspended with pay. Later that day, Saniter wrote out a memo, purporting to record what the grievant told him about the incident:

...

At about 11:15 a.m. Richard appeared back at the District Offices at which time in my office I asked Richard what happened at High School in Steve's office. He replied he was just fooling around and he meant no real harm. I asked him if he had a utility knife on him and he showed it to me. It was a small utility knife on a chain that he stated he used to cut open boxes. (reasonable because of his job) It was about 3-4 inches long with a retractable blade 2 inches long.

He stated that he was no closer than 4 or 5 feet to Steve when he opened the knife. He denied holding it anywhere near Steve's neck.

He was informed that the incident was really poor judgment on his part and that he was suspended, effective immediately.

...

Heun swore out a complaint against the grievant and on May 29th he was charged with a municipal ordinance violation for disorderly conduct while armed. That same day, Saniter sent the grievant a letter directing him to submit a written statement describing the events in Heun's office. The grievant sent the statement to Saniter on June 2nd:

On May 27, 1997 at 10:45 a.m. I walked into Steve Heun's office and stood by the side of his desk and Joe was sitting behind me by the door. I said I need help with a pallet of paper, and Steve said joking you had enough help today. I just said in a joking manner how would you like your mustache trimmed and he smiled and said is this a threat and I said no, I was standing at the side of his desk about a foot away with my fist closed and exacto knife locked in the closed position. I said I am not that stupid to jeopardize my job. There was never any intent on my part to do bodily harm whatsoever, and it never crossed my mind. I was just joking around as we sometimes do. As I value my job very much and realize this is a serious situation and don't take this lightly against me. all my union brothers and sisters all know I joke around and would never harm anybody, they tell me I am a funny person to be around. Joe and I then left and walked to the truck to unload pallets of paper. At this point I opened the exacto knife about 1/8 of an inch to cut plastic off of boxes. I use and carry this exacto knife every day, whatever I have to cut open. I think Steve has something against me and has fabricated this out of context to put a feather in his hat. Other employees have said he acts strange at times. All my union brothers and sisters can't believe this and are 100% behind me as they know my nature for the past sixteen years. Steve has a tendency to thrive on things like this and make other [unintelligible copy].

For the past seven days this has been a trauma for me and my family as I've been very sick over this matter. I am truly sorry for this matter and apologize to everyone involved. When we were done unloading Joe came running out and said report to central office, I asked who said and he said Steve. I was suspended 11:10 a.m. by Bruce Saniter with pay for the rest of the day. I then contacted Mel (Union steward) at 11:15 a.m. and told him about the situation and went home. Bottom line for me is I cannot joke around with Steve because nobody knows what mood he's in. Again, I am very remorseful in this matter. /s/ Richard Narloch 6/2/97

The District Superintendent, John Hedstrom, conducted a hearing with the grievant on June 3rd. During that session, the grievant repeated that the knife was never opened. According to Hedstrom and Saniter, he also repeated his earlier claim that he never got closer than four or five feet from Heun.

The grievant was terminated on June 4th. The instant grievance was thereafter filed. It was not resolved in the lower steps of the grievance procedure and was referred to arbitration. At the arbitration hearing on November 11th, in addition to the facts recited above, the grievant testified that he had often joked around with Heun and others, and that the events in Heun's office were nothing but an attempt at humor. He disputed Saniter's claim that they had discussed the incident at all on the 27th, and said that Saniter summarily suspended him without asking about what happened. He denied telling Saniter or Hedstrom that he never came closer than four or five feet from Heun. He expressed the opinion that Saniter, Hedstrom, Heun and Franitza were all lying at points during their testimony, but did not know why.

Additional facts, as necessary, are set forth below.

III. POSITIONS OF THE PARTIES

A. The Position of the Employer

The District takes the position that the grievant was discharged for just cause. He placed an open blade at his supervisor's throat, verbally threatened him, and then lied about it under oath. The grievant's attempt to characterize this as a joke cannot be accepted. He did not appear to be joking, and neither Heun nor Franitza observed anything about his manner or tone to suggest humor. Moreover, the grievant's version of events is flatly contradicted by every other witness. While the grievant claims he jokingly offered to trim Heun's mustache, Heun and Franitza both deny he said that, and the grievant did not report this alleged comment to Saniter when they met shortly after the incident. The first time the mustache comment was mentioned was in the grievant's written version of events, prepared ten days after the incident. Plainly this joking

comment is an after the fact invention, designed to put an innocent light on the grievant's actions.

Page 6
MA-10026

The grievant also lied about his movements and the condition of the knife blade. The grievant claims he was across the desk from Heun, and that he held the utility knife out with its blade closed. Both Heun and Franitza said he went behind Heun and put the blade to his throat. Franitza observed that the blade was fully extended. The discrepancies between Franitza's recollections and the grievant's version are impossible to reconcile, and they cannot be attributed to some complex conspiracy between supervisor Heun and bargaining unit member Franitza. Franitza left the office with the grievant. Heun reported the incident while Franitza was helping to unload the truck, and Franitza was ordered to prepare a written statement immediately thereafter. He wrote the statement within 45 minutes of the incident. There was no time for Heun to somehow coerce him into a plot against the grievant, and no time for the two of them to coordinate their stories. The stories of Franitza and Heun coincide because they are the truth, and the grievant's story conflicts with theirs because he is lying.

The fact that the grievant has lied throughout is, in and of itself, grounds for termination. There is no right to lie to the employer when an investigation is underway, and many arbitrators have sustained discharges for similar acts of dishonesty. The District points out that if the grievant's version of events is credited, it means that his fellow bargaining unit member Franitza is committing perjury and is exposed to discipline. His dishonesty not only violates his duty to his employer, but endangers his co-worker, and the District questions the Union's decision to support him at the expense of another bargaining unit member.

The District cannot ignore the grievant's actions, and the arbitrator likewise cannot excuse them in the name of a last chance. Violence is an increasing problem in the workplace, and employers are increasingly called upon to respond to threats by workers. Employers have responded with termination, both as a penalty for the conduct and as a safety measure for the remainder of the work force. The clear trend in reported arbitration cases is to support the employer's right to discharge employees who make direct threats to others. Even where there is some question of the actual subjective intent of the employee, and where the grievant has long service and a clean record, arbitrators have found that simply uttering a threat of physical violence against a specific target is grounds for summary termination. The District stresses that the arbitrator in this case may not substitute his judgment as to penalty for that of the employer unless he first determines that the employer's decision was wholly outside the range of reasonable penalties. A review of arbitral thinking on the subject of threats and violence discloses that discharge is the norm in these cases, and the arbitrator should therefore defer to the District's decision. For all of these reasons, the grievance should be denied.

B. The Position of the Union

The Union takes the position that the discharge was not supported by just cause, and that the grievant must be reinstated. The grievant has a history of being a jokester, and this entire incident is simply a failed attempt at humor that has been blown completely out of proportion. Perhaps it was not funny to Mr. Heun, but there is no reason to believe that the grievant, a 16 year employee with a good record, no history of violence and no reason for animosity to Heun, would suddenly make a sincere threat to his supervisor. If the arbitrator believes that the grievant was made so angry by Heun's refusal to help him that he put a knife to his supervisor's throat, in front of a witness, then the arbitrator must also believe that he is insane. There is no basis for such a conclusion. Instead, the only reasonable conclusion on these facts is that the grievant was joking, and intended no harm. If the arbitrator believes that some disciplinary message must be sent to him, aside from the embarrassment and other suffering he had endured to this point, a reprimand would more than satisfy the purposes of corrective discipline.

IV. DISCUSSION

A. Credibility

The initial question in this case is which version of events in Heun's office should be credited. Heun describes his subordinate walking behind him and holding a knife to his throat in an apparently serious attempt to intimidate him -- an attempt that left him shaken and fearful. For his part, the grievant describes a humorous encounter, in which he stood across the desk from Heun and held out a closed knife, asking the supervisor if he wanted his mustache trimmed, a question that both men understood to be a joke. The two versions cannot be reconciled with one another, nor can the differences be attributed to differing views of the same events. One of the men is lying about what happened on May 27th. The great weight of the evidence demonstrates that Heun is telling the truth, and the grievant is lying.

The only way in which the grievant's version can be credited is if the arbitrator assumes that Heun, for some reason, had decided to get rid of him and invented the knife to the throat story as the vehicle to accomplish this end. Heun must have made this decision during or immediately after the incident, since he called his supervisor and reported the knife to the throat version as soon as the grievant left this office. This would have been a peculiar and risky decision. Heun named Joe Franitza as a witness and it had to have been clear to him that his superiors would insist on speaking with Franitza. If he invented the story, Heun had to be counting on Franitza to corroborate an outrageous accusation against a fellow bargaining unit member, one whom Franitza had no apparent grudge against. However, Franitza left the office with the grievant, and Heun had no chance to confer with him before making the report to Saniter. Thus Heun's confidence in Franitza's support had to be purely an act of faith. This is, to put it mildly, implausible.

It is equally implausible to suppose that Franitza would enter into this conspiracy. He and the grievant were on good terms, and he had nothing to gain by causing trouble for the grievant. Neither his written statement nor his testimony at the hearing seemed slanted against the grievant, and there is no evidence at all to explain why he would align himself with Heun in a pointless effort to have the grievant fired. Yet Franitza's version of the incident is completely consistent with Heun's and completely inconsistent with the grievant's. Franitza testified that the knife blade was fully extended, and that the grievant went behind Heun and held the blade to his throat. He recalled the same "it's not a threat -- it's a promise" comment that Heun related. He did not recall any mention of trimming Heun's mustache, and he did not observe any of the joking that the grievant said surrounded this incident. Franitza did say that he assumed the grievant was not serious, but he explained that he reached this conclusion because no one in his right mind would do what the grievant had done.

The grievant's version is further undermined by the testimony of Bruce Saniter, who met with him shortly after the incident. According to Saniter, the grievant described what happened, making no mention of trimming Heun's mustache, and conceding that the knife blade was out during the incident. He also claimed that he did not come any closer than four feet from Heun with the knife. Saniter said the grievant subsequently told a different story in his written statement, contending that he held the knife out with the blade closed from a distance of one foot, while making a joking reference to trimming Heun's mustache. The grievant for his part denies ever discussing the substance of the incident with Saniter on May 27th, and claims that their meeting was limited to an announcement by Saniter that he was suspended and should go home. Saniter prepared written account of their meeting on the 27th, in which he recounts the grievant's version of events. Thus, if the grievant is telling the truth, Saniter must have invented the written summary as part of the overall conspiracy against him. The details in Saniter's report are damaging to the grievant's current version of events, but do nothing to directly prove his guilt. If he was going to invent the summary anyway, it would have been more efficient to include some type of confession or a particularly damning admission.

In order to credit the grievant, the arbitrator must conclude that Heun, on the spur of the moment, invented the knife to the throat story, hoping that Franitza would for some reason go along with it. Franitza, for no reason at all, immediately agreed to adopt this as his story, although it is not clear when Heun had a chance to coordinate it with him. Saniter then entered into the conspiracy by fabricating notes of a conversation that never happened, notes that do not show guilt by the grievant but merely establish a baseline story for him that is inconsistent with the real facts. None of these suppositions make any sense, and the conspiracy suggested by the grievant is too pointless, too fast moving and too elaborate to be plausible. The more reasonable conclusion, and the one that I draw, is that Heun, Franitza and Saniter are accurately recounting events.

B. Just Cause for Discharge

The Union's primary argument in this case is that the grievant had absolutely no reason to go after his supervisor, and was simply joking around in Heun's office. I agree that putting a knife to a supervisor's throat in response to the supervisor refusing to help unload some boxes would be a completely unnatural response. However, the evidence establishes that it was the response chosen by the grievant, and none of the surrounding circumstances suggest it was part of a humorous exchange. Heun and Franitza both said that there was no levity in the office and that the grievant was not smiling, laughing or teasing when he brandished his knife. In particular, both men recalled him responding to Heun's caution that a threat would not accomplish anything other than getting him fired by saying "It isn't a threat -- it's a promise." Those words cannot be taken as a joke when they are uttered by a man standing with a knife to another man's throat.

The grievant's own testimony is inconsistent with the notion that everyone was treating this as a joke. While his initial version of the conversation in the office ends with the mustache trimming comment (Transcript, page 133), he subsequently conceded that Heun asked whether he was threatening him (Tr. pg. 138) and told him he would be terminated (pg. 154 and 155), and that he told Heun he wasn't stupid enough to put his job in jeopardy (pg. 138 and 154). If the conversation had taken that turn, it should have been fairly obvious that Heun was not getting the joke, yet the grievant said nothing to make it clear that he was just kidding around. All of the objective evidence indicates that the threat to Heun was made seriously.

It is not possible to determine the subjective intent behind statements or actions with absolute certainty. Different people express themselves differently, and even the meaning of a clear statement may be distorted by a poor choice of words. The fact that one cannot know what a person really meant does not mean that a comment or action has no consequences. People are held to intend by their statements and actions what a reasonable person, under all of the circumstances, would understand them to have meant. In this case, a reasonable person would have perceived a serious threat, even though the grievant now claims to have been joking. The only things supporting this claim are his testimony about his subjective intentions and the fact that the conduct itself was so outrageous and out of proportion that it is hard to explain as the serious response of a rational person. In order to find that the grievant was not threatening his supervisor, the arbitrator must accept his word that he was joking, over the objective evidence that says he was not. Any chance of accepting his claim that he simply used poor judgment in an attempt at humor was ended with his decision to lie at the arbitration hearing. If his actual conduct was intended innocently, he should have defended that conduct, rather than inventing a different and more ambiguous scenario. Having lied about his physical actions, the grievant cannot receive the benefit of the doubt about his subjective intent.

The grievant is a sixteen year employee with a clean record, and the Union urges that this should weigh in his favor. Threatening harm to a supervisor in the performance of his duties is a cardinal offense in any work place. Here the grievant backed up his threat by actually holding a blade to his supervisor's throat. There is no amount of good service that can mitigate this conduct, and no employer can be expected to tolerate it. Accordingly the grievance is denied.

On the basis of the foregoing, and the record as a whole, I have made the following

AWARD

The grievant was discharged for just cause. The grievance is denied.

Signed this 29th day of June, 1998, at Racine, Wisconsin.

Daniel J. Nielsen /s/

Daniel J. Nielsen, Arbitrator

