

# **Grievance & Arbitration Seminar**

## **The Case of Dolly Pardone**

# Finding Facts

(Who, What, When, Where, Why)

## Fuming over Illness

- ◆ Effective January 1, 1998 Megacorp received a contract to take over the operation of the State Historical Archives and Records Department (HARD). Megacorp built a new HARD facility with nonunion labor. The new building has only been open for business since March of 1998. "Big Bill" Haywood works as a record's custodian at HARD. He is also a steward for the United Unions, Local 825. In September 1998 Big Bill saw a report lying on a desk in the Megacorp administrative office. The report mentioned inadequate air circulation in the building and a potential for illness.
- ◆ In May of 1999, Big Bill began receiving complaints of illness from HARD workers. Because the symptoms disappeared when they were not at work, employees thought the building caused health problems.
- ◆ In June of 1999, Big Bill sought help from the United Unions' health and safety staff in Washington, D.C. With the staff's guidance, Big Bill conducted a survey of the 500 HARD workers employed by Megacorp. Two hundred fifty employees responded and half of those reported health problems at work. Big Bill also conducted a walk around inspection of the building. He noticed areas with a moldy smell.
- ◆ On Wednesday evening, October 7th, Big Bill met with HARD employees at Local 825 offices. Everyone agreed that Big Bill should discuss the problem with management. Dolly Pardone, a union activist and record's custodian, volunteered to go with Big Bill.
- ◆ On Thursday, October 8th, Big Bill and Dolly went to Mr. Fumed, the HARD director, and complained of employee illness. Fumed told them that lots of employees smoke and he figured that was the cause of the problem. Fumed reminded Big Bill and Dolly that as of October 1st he had banned all smoking in the building. Fumed asked them to wait a few months to see if the ban on smoking would help.
- ◆ On Monday morning, October 12th, Dolly's supervisor, Lisa Doolittle, saw Dolly working on a union flier on her computer. On the next day, 10 HARD employees started wearing paper protective masks at work. The Union also put yellow tape across the front door. The tape said "DANGER KEEP OUT."
- ◆ On Thursday, October 15th, Dolly saw Fumed in the hallway. Fumed told Dolly that he did not appreciate what the Union was doing. Dolly told him they were taking action

because Fumed was not working on the problem. Then Fumed promised he would call someone to check out the problem. Dolly got angry at being put off by Fumed.

- ◆ On October 23rd, Fumed issued a letter charging Dolly with insubordination and rude and abusive language, threatening a supervisor, and unauthorized use of the HARD computer. She received a 10-day suspension.
- ◆ Big Bill talked to Fumed about the discipline on October 28th. Big Bill filed a written grievance with Fumed on November 4, 1999.
- ◆ Between November of 1999 and July of 2000, Big Bill and Fumed discussed several times what Megacorp planned to do about the illnesses. During these conversations Fumed would say, "I'm working on it." In July of 2000 Megacorp began replacing the ventilation system. As of the date of the arbitration, December 1, 2000, Megacorp has completed 1/3 of the work necessary to replace the ventilation system.

The Local 825 Collective Bargaining Agreement reads in pertinent part:

**Article 4. UNION RIGHTS . . .** Stewards may investigate and process grievances on paid status for reasonable periods of time during their normal working hours and may attend, on paid status, meetings agreed to by the parties for purposes of administering this Agreement. No steward shall be retaliated against for engaging in union activities. The Union shall provide management with a current list of stewards every three months.

**Article 5. DISCIPLINE.** The Employer shall not discipline or discharge an employee without just cause.

**Article 14. STEPS IN THE GRIEVANCE PROCEDURE.** Step 1. The Union or grievant shall attempt to resolve the matter informally with the immediate supervisor of the grievant within seven (7) calendar days of its occurrence. If a satisfactory solution is not reached within seven (7) calendar days after speaking with the immediate supervisor, the grievance may be submitted to Step 2 by submitting the grievance in writing to the Department Director. The Department Director shall respond within seven (7) calendar days. If a satisfactory solution is not reached within seven (7) days of the Department Director's response, the grievance may be submitted to arbitration at Step 3.

**Article 26. HEALTH AND SAFETY.** The Employer shall provide safe and healthy working conditions and practices; safe, healthy, and clean work sites and grounds; and a clean and safe area for employee meal and break periods.

**Article 27. NON-DISCRIMINATION AND NON-RETALIATION.** The Employer and the Union shall fully comply with all applicable laws and regulations regarding discrimination against an employee because of such person's race, religion, color, national origin, sex, age,

sexual preference, marital status, veteran's status, or disability. The Employer and the Union shall fully comply with all applicable laws and regulations regarding retaliation against an employee because of such person's union activities and efforts to promote a safe and healthy workplace.

# **United Unions Local 825**

"One Big Union for All Workers"  
1248 High Road  
Solidarity City, N.S. 00108  
500-825-2500  
Fax: 500-825-2501

February 23, 2000

I. M. Fumed, Director  
Historical Archives and Records Department  
2880 Hard Drive Road  
Solidarity City, N.S. 00115

Re: United Union's Arbitration of Discipline of Dolly Pardone

Dear Mr. Fumed:

In preparation for the upcoming arbitration hearing related to the discipline of Ms. Pardone, I am requesting that you provide me no later than April 1, 2000 any and all documents since January of 1998:

1. Relating to suspensions of HARD workers.
2. Relating to discipline of HARD workers for using office equipment.
3. Relating to discipline of HARD workers for insubordination or threatening a supervisor.
4. Relating to discipline of HARD workers for the use of rude and insulting language.
5. Relating to any air circulation or health problems at the HARD building.

In addition, please provide all documents which you intend to use at the hearing, as well as the entire personnel file of Ms. Pardone.

If you do not provide these documents, we will file NLRB charges for failing to give us information necessary to enforce the contract. We will also ask the arbitrator for her assistance in ordering you to provide these documents.

Sincerely,

William Haywood

**Megacorp**

**Historical Archives and Records Department**

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2880 Hard Drive Road  
Solidarity City, N.S. 00115  
500-295-2300  
Fax: 500-295-2301

October 23, 1999

Dolly Pardon  
4200 Big Mouth Road  
Solidarity City, N.S. 00125

Dear Dolly:

This is to inform you that you will be suspended from work for ten days starting December 1, 1999. The reasons for this action are:

1. On October 15, 1999, you used rude and insulting language during a conversation with me. Specifically, you referred to me as an "asshole" and threatened me with violence because you believed that I was not addressing a work issue adequately. Such language, particularly in the presence of other employees, sets a bad example for employee behavior and encourages disrespect for supervisory personnel. It also constitutes insubordination.
2. On October 12, 1999, Ms. Doolittle, your immediate supervisor, observed you using the office computer for non-office purposes. As an employee, you should understand that company equipment is to be used only for business purposes.
3. You have been orally reprimanded by Ms. Doolittle numerous times for aggressive and inappropriate comments to her.

I hope we have no recurrence of this behavior.

Sincerely,

I. M. Fumed

UU LOCAL 825  
WITNESS INTERVIEW SHEET

Investigator: Big Bill Haywood Home phone: 265-1412 Work phone: 295-2344

Incident being investigated: Discipline of Dolly Pardone

Date of incident October 23, 1999

Deadline for filing grievance \_\_\_\_\_ Grievance filed? yes \_\_\_ no \_\_\_

Person responsible for grievance deadlines: Big Bill Haywood

Witness name: Big Bill Haywood

Address 6244 Apache, Solidarity, City, N.S. 44125

Workplace \_\_\_\_\_ Home phone \_\_\_\_\_ Work phone \_\_\_\_\_

What witness knows from direct knowledge [attach extra sheet if necessary]:

In May 1999 five workers told me they were getting sick a lot. They thought it was the building because their problems disappeared when they went home. They had eye, nose, and throat irritation. When I heard this, I remembered that in the fall of 1998, I had seen a report in the Megacorp administrative office from some environmental firm. It was lying on a desk and marked "confidential." When no one was looking I flipped through it. The report mentioned "inadequate air circulating" in the building and identified the presence of molds in the archive documents which could "potentially cause illness." I did not do anything at the time because I did not really know much about it and no one was complaining. Also, I was afraid I would get in trouble for looking through a confidential report. I do not remember much else about the report except that it suggested replacing the ventilation system as an option.

In June of 1999 I called United Unions' health and safety staff in Washington, D.C. I told them about the complaints of illness. I knew there was no OSHA standard for indoor air pollution. The health and safety people told me to question all the employees in the building to see if they were getting sick, and if so, what kind of symptoms they had. I distributed a questionnaire to HARD workers in July. By September about half of the employees had sent it back. It only had three questions. First, whether they were having unusual health problems. Second, if so, what are they. Third, if they had symptoms, how long did they last after work. Half the employees responded and half of those reported eye, nose, and throat problems at work. These symptoms went away within a few hours of leaving work. Some employees – maybe about 15 – reported missing work several times a month. In September I also walked around the building and did notice a slight moldy smell in some areas. The smell seemed worse when the weather was warmer.

On Wednesday evening, October 7, I called a meeting of HARD employees at Local 825 offices. About 100 came. Local 825 has 50 dues paying members. I suggested that we bring up the survey with Mr. Fumed. Everyone agreed that I should see him as soon as possible. Dolly Pardone, a union activist, volunteered to go with me. I had worked with her on a number of grievances over the past year. She is not listed on the last steward list I gave Fumed about 10 months ago, but since then she has gone with me to about three grievance meetings attended by Fumed. I usually give Fumed a steward list every year or so, when enough stewards have changed to make the list very outdated. Fumed has never mentioned anything about not having current steward lists. He normally dealt with anyone on union business who claimed to be a steward.

On Thursday, October 8, Dolly and I went to see Fumed. We told him that employees were getting sick at work. Dolly said that this could violate the health and safety language in the contract. We told him about the survey, but did not show it to him. I said that I also thought that something was wrong with the ventilation system. I told him I remembered a report about it a couple of years ago. He said he had never heard of a report. Fumed told us that lots of employees smoked cigarettes and then blamed smoking for the problem. Dolly and I could not believe it. Fumed reminded us that as of October 1 he had banned all smoking in the building. Dolly said that it was ridiculous even to consider smoking as the problem. Fumed asked us to wait a few months to see if the ban on smoking would help. He also said he would discuss the issue with his boss when he got a chance. I asked what that meant. He said, "Well I am worried about people's health also, even though the union might find that hard to believe." Dolly said to him, "You sure don't act like you're worried about our health." He looked at her kinda weird and said something like, "Now don't go getting ants into your panties, Dolly. I will look into it."

On Tuesday, October 13, Dolly and I got to HARD early. We were wearing paper protective face masks. The day before Dolly and I had distributed a flier asking people to wear the masks to complain about the illness. That morning Dolly and I put yellow tape across the front door. It said, "DANGER KEEP OUT." Ten other workers were also wearing masks.

On Thursday, October 15, Dolly told me she ran into Fumed and told him what an asshole he was and that the union should kick his ass. She said she had been pretty cool about it even though he had been provoking her. On October 28 I went to talk with Fumed about Step 1 of the grievance for Dolly. Two or three other times I had talked to Fumed at Step 1 when he had signed the disciplinary letter. He never raised that as an issue. On November 4 I filed the written grievance.

Signed: Big Bill Haywood

**UU LOCAL 825  
WITNESS INTERVIEW SHEET**

Witness name           Dolly Pardone  
Address                4200 Hickox  
Workplace             Home phone 631-4589                   Work phone 255--2300

What witness knows from direct knowledge [attach extra sheet if necessary]:

On Wednesday evening, October 7, I went to a union meeting at Local 825 offices. Big Bill called it. He is the chief steward for Local 825. Big Bill talked about health problems at the HARD building. It made me very mad. When people decided he should go talk to Fumed about it, I volunteered because I thought he might need help. I had helped him on grievances with Fumed before and I realized how much Fumed hated the union.

On Thursday, October 8, we want to see Fumed. We told him that people were getting sick at work. Fumed told us that lots of employees smoked cigarettes and then blamed smoking for the problem. Big Bill did not seem upset, and I could not believe what Fumed was saying. Fumed told us that as of October 1 he had banned all smoking in the building. He told us that we needed to wait a few months to see if the ban on smoking would help. He said he would not do anything until he saw if the smoking ban helped. I got real upset and he said to me, "Now little lady, just don't get yourself all hot and bothered. I'll look into it." I felt humiliated. A number of times before that Fumed had given me lecherous looks and I thought he was quite a pig.

On Monday morning, October 12, I drafted a grievance on the company computer concerning the health and safety problem. I had used the computer before that for union work and Ms. Doolittle had never said anything about it. I may have also worked on a flier that day during my break. Lots of my co-workers use their computers for personal letters and e-mail. We have never been told not to. Big Bill and I distributed a flier at the end of the shift. The next morning a few of us wore paper masks and Big Bill and I put up a yellow tape saying "DANGER KEEP OUT" across the front door.

On Thursday, October 15, I confronted Fumed in the hallway. I asked him why he did not ever want to protect his workers. Fumed looked at me in that sexist way and said, real sarcastic like, he did not appreciate what the "damn union" was doing. I said that we were acting because Fumed had "put us off." I told him that I had drafted a grievance. Then Fumed said that he would get someone to come in to check out the problem if I did not file a grievance. He also said we were a bunch of "whiners." I got angry. I pointed my finger at him and said, "Yeah right, asshole. The Union should kick your ass." The only one near us was way down the hallway and I do not think she could have heard our conversation. I am not sure she was an employee because I saw her looking up some records later and I have not seen her in the office since then.

I have been a record's clerk at the public desk for 10 years and I have never been disciplined before. When Megacorp came, everything changed. I have had shouting matches with Ms. Doolittle, my immediate supervisor. She is really dumb. But my performance appraisals have been satisfactory. Twice in the past year I told Ms. Doolittle that I thought Fumed was looking a little too hard at my body and it made me feel uncomfortable. Both times Ms. Doolittle asked me if she should do anything, but I said no. No one in management has ever talked to me before I received a letter about my 10-day suspension.

Signed: Dolly Pardone

Megacorp

**Historical Archives and Records Department**

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2880 Hard Drive Road  
Solidarity City, N.S. 00115  
500-295-2300  
Fax: 500-295-2301

July 23, 1998

Treena Lott  
1444 Rough Road  
Solidarity City, N.S. 00122

Dear Ms. Lott:

This is to inform you that you will be suspended from work for 3 days starting August 1, 1998.  
The reasons for this action are:

1. On April 1, 1998, you requested reimbursement for mileage to a training conference in Santa Fe.
2. On May 15, 1998, you admitted in my presence that you did not attend that conference.

I hope we have no reoccurrence of such behavior.

Sincerely,

I. M. Fumed

**Megacorp**

**Historical Archives and Records Department**

2880 Hard Drive Road  
Solidarity City, N.S. 00115  
500-295-2300  
Fax: 500-295-2301

October 28, 1998

George W. Shrub  
108 Cheat Boulevard  
Solidarity City, N.S. 00122

Dear Mr. Shrub:

This is to inform you that you will be suspended from work for 5 days starting December 1, 1998. The reason for this action is:

On August 23, 1998, you used the office e-mail for personal purposes. Although we have no written rules about it, you should realize that you cannot use company property for personal business.

I hope we have no reoccurrence of such behavior.

Sincerely,

I. M. Fumed

Megacorp

## **Historical Archives and Records Department**

2880 Hard Drive Road  
Solidarity City, N.S. 00115  
500-295-2300  
Fax: 500-295-2301

November 14, 1998

### **CONFIDENTIAL**

John Friendly  
The Ventilation Experts, Inc.  
Post Office Box 2225  
Solidarity City, N.S. 00505-2225

Dear John:

I have noticed for quite some time that we may have some kind of indoor air circulation problem at the new Megacorp building in Solidarity City. The current air system does not seem adequate to remove odors in the air. This could be a particularly serious problem with mold developing on valuable documents in the archives.

Megacorp is responsible for safely maintaining all documents in the archives under our contract with the State. We did not anticipate this kind of problem and I am worried about the expense that replacing the ventilation system might involve. I have heard many a "horror story" about it costing hundreds of thousands of dollars. Could you give me a call to discuss the costs involved in replacing the ventilation system and other alternatives we might have?

Sincerely,

I. M. Fumed

**12/2/98**

*Headquarters says we cannot spend money on a new HVAC right now. JMF*

**Megacorp**

**Historical Archives and Records Department**

2880 Hard Drive Road  
Solidarity City, N.S. 00115  
500-295-2300  
Fax: 500-295-2301

January 17, 1999

To all HARD supervisors:

This is to remind you that it is the policy of Megacorp that HARD employees may not use company computers for their personal affairs.

Sincerely,

I. M. Fumed

## **TO ALL HARD WORKERS**

HARD work can be dangerous to your health. Management cares more about money than us. Wear your paper protective masks tomorrow, October 13th, to protest unsafe working conditions.

Keep the Union informed about your illnesses. If you are seeing doctors, let us know what they are telling you. Call Dolly at ex. 825.

**Local 825**  
**Fighting for your health**

**STANDARD GRIEVANCE FORM**  
**United Unions, Local 825**

GRIEVANCE OF Dolly Pardone

DATE OF OCCURRENCE October 23, 1999

STEP 1 (Oral step with supervisor)

Date of meeting: 10/28/99

Result: Grievance denied

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STEP 2 (Written step with department director)

Date: 11/4/99

Problem: On October 23rd Dolly Pardone was disciplined without just cause when she received a 10-day suspension.

Contract sections violated: Articles 4, 5, 14, 26 & 27

Remedy requested: Repeal discipline

Response: Denied

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STEP 3 (Demand for arbitration)

Date: November 11, 1999

Issue referred: On October 23 Dolly Pardone was discriminatorily (sex) disciplined without just cause when she received a 10-day suspension and in retaliation for her safety concerns and union activities.

Contract sections violated: Articles 4, 5, 14, 26, & 27

Remedy: Remove discipline, expunge her personnel file of every reference to the discipline, give her back pay, restore all related benefits and make her whole in every way.