

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

LARRY MAYER AND TOMAHAWK EDUCATION
ASSOCIATION,

Complainants,

vs.

UNIFIED JOINT SCHOOL DISTRICT NO. 1
CITY OF TOMAHAWK: BOARD OF EDUCATION,
UNIFIED JOINT SCHOOL DISTRICT NO. 1,
CITY OF TOMAHAWK,

Respondents.

Case V
No. 19282 MP-478
Decision No. 13766-A

Appearances:

Mr. Gregory A. Wilson, Staff Counsel, WEAC, appearing on behalf
of the Complainants.

Tinkham, Smith, Bliss, Patterson & Richards, Attorneys at Law, by

Mr. Peter L. Hessert, appearing on behalf of the Respondents.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Larry Mayer and Tomahawk Education Association having filed an amended prohibited practice complaint with the Wisconsin Employment Relations Commission, herein Commission, alleging that Unified Joint School District No. 1, City of Tomahawk, has committed certain prohibited practices within the meaning of Section 111.70(3)(a)1, 4 and 5 of the Municipal Employment Relations Act, hereinafter MERA; and the Commission having appointed Amedeo Greco, a member of the Commission's staff, to act as Examiner and to make and issue Findings of Fact, Conclusions of Law and Order as provided in Section 111.07(5) of the Wisconsin Statutes; and hearing on said complaint having been held at Tomahawk, Wisconsin on September 10, 1975, before the Examiner; and the parties having thereafter filed briefs which were received by February 11, 1976; and the Examiner having considered the evidence and arguments of counsel, makes and files the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. That Tomahawk Education Association, herein Complainant, is a labor organization and at all times material herein was the exclusive bargaining representative of certain teaching personnel employed by Unified Joint School District No. 1, City of Tomahawk: Board of Education, Unified Joint School District No. 1, City of Tomahawk.

2. That Unified Joint School District No. 1, City of Tomahawk: Board of Education, Unified Joint School District No. 1, City of Tomahawk, herein Respondent, constitutes a Municipal Employer within the meaning of Section 111.70(1)(2) of the Wisconsin Statutes; that Respondent is engaged in the providing of public education in the Tomahawk, Wisconsin area; that Ralph Johnson and Ernest Junker are employed by Respondent as Superintendent and High School Principal, respectively, and that at all times herein they have acted as Respondent's agents.

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3. That Complainant and Respondent were privy to a collective bargaining agreement for the 1974-1975 school year; that said agreement provides for a grievance procedure which culminates in advisory arbitration; and that said procedure defines a grievance as "a claim based upon the wages, hours and conditions of employment of a teacher or group of teachers."

4. That the 1974-1975 agreement also contained a section entitled "Dismissal, Nonrenewal, or Withholding of Increment"; that Section 1 therein provided that:

"Cause for dismissal, nonrenewal or withholding of an increment shall be recognized as inefficiency, willful and persistent violation of reasonable regulations of the school board or for other just cause";

and that Section 5.2 of Respondent's School Board policy, entitled "Professional Conduct of Instructional Personnel", a copy of which is distributed to all teachers, provides:

"The instructional personnel shall conduct themselves in a professional manner at all times and in all places.

Conduct that reduces the value of a person as a teacher in the system should be grounds for dismissal.

Teachers shall work in harmony with the entire staff and shall contribute to the welfare of the school system."

5. That Larry Mayer was employed by Respondent since 1967 as a social studies teacher; that during the 1973-1974 school year, Cindy Meyers was one of Mayer's pupils; that Ms. Meyers quit school on or about October 14, 1974 and at about that time left home; that Ms. Meyers thereafter moved in to live with her grandfather; that Ms. Meyers on or about January 17, 1975 1/ moved into Mayer's apartment and stayed there for the next several months; that Ms. Meyers and Mayer there engaged in sexual intercourse on several occasions; that Ms. Meyers was then 17 years of age and that Mayer was approximately 35 years old; that Ms. Meyers became 18 years of age in April, at which time Mayer married Ms. Meyers. 2/

6. That Ms. Meyers gave a written statement to the Lincoln County Sheriff's Department on or about February 27 wherein she admitted that she had been living with Mayer and that she had had sexual intercourse with him; that deputies from the Lincoln County Sheriff's Department arrested Mayer that day at the school where Mayer taught; the Lincoln County District Attorney on February 28 charged Mayer with statutory rape in violation of Section 944.10(1) of the Wisconsin Statutes. 3/

1/ Unless otherwise noted, all dates hereinafter refer to 1975.

2/ For purposes of clarity, Ms. Meyer's maiden name shall be used herein.

3/ Section 944.10, entitled "Sexual intercourse with a child", provides:

"Any male who has sexual intercourse with a female he knows is not his wife may be penalized as follows:

(1) If the female is under the age of 18, fined not more than \$1,000 or imprisoned not more than 5 years or both; or

(2) If the female is under the age of 16, and the male is 18 years of age or over, imprisoned not more than 15 years; or

(3) If the female is under the age of 12, and the male is 18 years of age or over, imprisoned not more than 30 years."

7. That by letter dated February 28, Ralph Johnson, Respondent's Superintendent, informed Mayer that:

"This is to advise you that effective immediately, your employment by the Unified Joint School District No. 1 of the City of Tomahawk, et al. is hereby suspended, without pay, pending an investigation of the circumstances surrounding your arrest on February 27, 1975 and the subsequent charges brought against you.

Any communication with reference to this matter should be directed to Mr. Ralph Johnson, Superintendent of Schools.";

and that pursuant to said letter, Mayer was thereupon immediately suspended.

8. That on February 28, Mayer requested to meet with High School Principal Ernest Junker; that Mayer subsequently met with Junker on Saturday, March 1, at which time they discussed Mayer's situation; that Mayer there admitted that Ms. Meyers had been living with him since on or about January 17 and that in Mayer's words, they had engaged in "intercourse"; that Mayer stated that he originally believed that Ms. Meyers had been 18 years old and that he did not learn until after some time that she was only 17 years old; that Mayer asked Junker what he should do about the situation, to which Junker replied that neither Respondent's Board nor the community was going to accept that kind of behavior and that, as a result, Mayer should resign in order to protect his school record; and that Mayer stated that he did not want to resign, and that he wanted to return to school because he thought he could "knuckle it through".

9. That following Mayer's arrest, Ms. Meyers indicated to the police that she would not testify against Mayer in any criminal proceeding brought against him; and that because of Ms. Meyers' refusal to so testify, the District Attorney on or about March 7 dropped the criminal complaint against Mayer.

10. That by letter dated March 13, Superintendent Johnson advised Mayer that:

"This is to inform you that the School Board of Unified Joint School District No. 1 of the City of Tomahawk, et al. is considering your immediate dismissal as a teacher in the Tomahawk Public School System based on the circumstances surrounding your arrest on February 27, 1975, and the charges subsequently brought against you.

You are entitled to two conferences with Mr. Ernest Junker to discuss this matter, as well as one conference with both Mr. Ernest Junker and Mr. Ralph Johnson. You may contact Mr. Junker to set such meetings if you desire.

Please be further advised that the School Board will meet on March 25, 1975, at 7:30 p.m. in the Tomahawk High School Cafeteria, at which time you are entitled to a private conference with them regarding this matter. Any communication with respect to that meeting should be directed to Mr. Ralph Johnson, Superintendent of Schools."

11. That after receipt of said letter, Mayer agreed to waive his contractual right to meet with his principal regarding the proposed dismissal; that, instead, Mayer indicated that he wanted to immediately proceed to the third step of that procedure, under which he was entitled to meet with Superintendent Johnson; that Mayer subsequently

met with Johnson on March 24 to review his situation; that also present at that time were High School Principal Junker, UniServ Staff Representative Robert Arends, and teacher Peter Whiteneck; and that Mayer's situation was then discussed.

12. That Respondent's Board met in open session on March 25, at which time it considered whether to discharge Mayer; that Mayer was accompanied at that meeting by Charles Garnier of the Wisconsin Education Association who represented him; that Ms. Meyers' father appeared before the Board and there stated that his daughter had been living with Mayer, that Mayer was a "creep", and that his daughter and did not have permission to live with Mayer; 4/ that Ms. Meyers' February 27 statement to the police was then read in its entirety to the Board, including her admission therein that she had had sexual relations with Mayer; that Superintendent Johnson stated that he had investigated the matter, the results of which, including Mayer's March 1 admission that he had sexual relations with Ms. Meyers, had been reported to the Board; and that neither Mayer nor Garnier challenged the assertion that Mayer had had sexual intercourse with Ms. Meyers.

13. That Mayer knew prior to the March 25 meeting that one of the issues at that hearing would center on his relationship with Ms. Meyers and that Mayer "assumed" that that was one of the reasons for his proposed dismissal; that in response to a question by Garnier, Respondent's Attorney, Peter Hessert, stated at the March 25 hearing that Mayer was being charged with "moral turpitude" and that the basis of that charge did not rest on Mayer's February 27 arrest and the subsequent criminal complaint lodged against Mayer, but rather, that "the facts behind the arrest and the complaint arguably do constitute an act of moral turpitude"; that later on in the proceeding, Hessert specifically asked Mayer, whether he understood "why the Board is considering dismissal tonight", to which Mayer replied, "I decline to answer that question".

14. That Respondent's Board decided on March 27 to immediately discharge Mayer because he had engaged in conduct which was "immoral and improper or at the very least, gave the appearance of impropriety . . ."; that Superintendent Johnson advised Mayer of that fact by letter dated March 31 wherein he stated that:

"This notice is to inform you that the School Board of the Unified Joint School District #1 of the City of Tomahawk, et al. voted at its meeting on March 27, 1975 to dismiss Larry Mayer as a teacher in the Tomahawk Public Schools. The Board also determined that he is entitled to receive no salary subsequent to February 27, 1975. Enclosed is a copy of the Findings of Fact and Conclusions of Law upon which these decisions are based."

15. That after receipt of said letter, a grievance was filed on May 8, over Mayer's discharge; that Respondent, by its Attorney Richard Tinkham, by letter dated May 14 replied that Mayer's discharge was for "cause" and that the action was final; that an appeal on Mayer's behalf was subsequently filed by May 19; that Respondent did not respond to that appeal within the contractually designated five-day period; that by letter dated June 2, Respondent was asked to submit Mayer's grievance to arbitration; that Respondent, through Attorney Hessert, by letter

4/ Earlier, Mrs. Meyers had indicated to Junker that she was worried that her husband "was going to be violent over the matter".

dated June 3 refused to submit that grievance to arbitration on the ground that there was no "basis for that grievance and denies that there is any basis in this matter for arbitration"; and that as of the instant hearing, Respondent has refused to proceed to advisory arbitration.

On the basis of the above and foregoing Findings of Fact the Examiner makes the following

CONCLUSIONS OF LAW

1. That Respondent's discharge of Larry Mayer was for "cause" and that, therefore, said discharge was not violative of Section 111.70 (3)(a) 1 and 5, nor any other section, of MERA.

2. That Respondent's refusal to process Mayer's grievance to advisory arbitration was violative of the contractual grievance arbitration procedure and was therefore violative of Section 111.70(3)(a) 1 and 5 of MERA.

Upon the basis of the above and foregoing Findings of Fact and Conclusions of Law the Examiner makes the following

ORDER

1. IT IS ORDERED that the complaint allegation relating to Respondent's discharge of Mayer be, and the same hereby is, dismissed.

2. IT IS FURTHER ORDERED that Respondent, its officers and agents, shall immediately:

(a) Cease and desist from refusing to comply with any of the terms of the collective bargaining agreement, including the provision therein relating to advisory arbitration.

(b) Take the following affirmative action which the Examiner finds will effectuate the policies of MERA:

1. Upon request, submit to advisory arbitration future grievances, if any, filed pursuant to the contractual grievance-arbitration procedure.

2. Notify the Wisconsin Employment Relations Commission, in writing, within twenty (20) days following the date of this Order, as to what steps have been taken to comply herewith.

Dated at Madison, Wisconsin this 1st day of April, 1976.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

Amedeo Greco
Amedeo Greco, Examiner

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

Complainant primarily contends that: (1) Respondent's refusal to submit Mayer's grievance to arbitration was violative of the contractual grievance-arbitration procedure; and (2) that Respondent violated the contractual "just cause" standard in first suspending and then terminating Mayer. As to the latter issue, Complainant contends that Mayer was initially suspended only because of his February 27 arrest, that Respondent had no right to continue that suspension once the criminal charges against Mayer were dropped on March 7, that because those charges were so dropped, Respondent had no grounds for later terminating Mayer on March 27, that Respondent never accorded Mayer an opportunity to defend himself against the charge that he had had sexual relations with Ms. Meyers, and that Respondent can not now base its discharge of Mayer on that ground. Moreover, Complainant asserts that Mayer's off-duty conduct with Ms. Meyers had no adverse affect on his teaching and that, as a result, Respondent cannot discipline Mayer for such conduct.

Respondent, on the other hand, denies the complaint allegations and argues that: (1) it is not required to submit the grievance herein to advisory arbitration; (2) Mayer is estopped from proceeding herein because he elected to pursue his claim for unemployment compensation; (3) Mayer was accorded procedural due process prior to his termination; and (4) Mayer's conduct constituted just cause for dismissal.

In resolving these issues, the undersigned has been presented with some conflicting testimony regarding certain material facts. Accordingly, it has been necessary to make credibility findings, based in part on such factors as the demeanor of the witnesses, material inconsistencies, and inherent probability of testimony, as well as the totality of the evidence. In this regard, it should be noted that any failure to completely detail all conflicts in the evidence does not mean that such conflicting evidence has not been considered; it has.

Furthermore, it should be noted at the outset that neither party has argued that the substantive issue herein should be deferred to the contractual arbitration procedure. Accordingly, and because both parties have addressed themselves to the question of whether Respondent had "just cause" to discipline Mayer, it is appropriate to consider the merits of that issue in the instant forum.

With the foregoing in mind, the complaint allegations shall be discussed separately.

1. Did Respondent violate the contractual grievance-arbitration procedure by refusing to submit Mayer's grievance to arbitration?

As noted in paragraph 15 of the Findings of Fact, a grievance was filed on Mayer's behalf following his dismissal, a request was subsequently made that that grievance be submitted to the contractual advisory arbitration procedure, and Respondent thereafter refused to proceed to advisory arbitration. In its brief, Respondent defends its refusal to arbitrate on the ground that "refusal to arbitrate is a prohibited practice only when the arbitration is final and binding upon the parties . . .".

Respondent's contention to the contrary, it is well established that the duty to arbitrate is not obviated merely because the parties have contractually agreed to advisory arbitration. 5/ Accordingly,

since this defense is without merit, Respondent's refusal to submit Mayer's grievance to advisory arbitration was violative of Section 111.70(3)(a)5 and 1 of MERA. Inasmuch as the merits of that grievance are resolved herein, there obviously would be no purpose in now requiring Respondent to submit that matter anew to advisory arbitration. Accordingly, Respondent will not be ordered to do so. Instead, Respondent will be only ordered to submit future grievances, if any, to advisory arbitration, pursuant to the applicable contractual grievance-arbitration procedure.

2. Did Respondent violate the contractual "just cause" requirement when it first suspended and later discharged Mayer?

As noted above, Respondent asserts that Mayer is precluded from raising this issue before the Commission because, in its words, Mayer has "elected to pursue his claim for unemployment compensation". This contention is without merit, however, as the issue to be resolved herein - whether Respondent violated the contractual "just cause" requirement - is unrelated to the separate question of whether Mayer is entitled to receive unemployment compensation benefits under the statutory scheme. Accordingly, and because the Commission is not bound to unemployment compensation determinations, there is no merit to the allegation that Mayer is estopped from proceeding herein. 6/

As to the merits of Mayer's claim, Complainant first contends that Respondent violated the contractual "cause" requirement when it failed to accord Mayer certain procedural due process. Thus, Complainant argues in its brief that:

"Prior to the hearing herein, the only assigned reason for Mayer's discharge was the fact that he had been arrested and nothing else. This evidence regarding other possible reasons for Mayer's discharge is not now properly admissible. Mayer has only had an opportunity to respond to the 'discharge for the arrest' reason and nothing else."

For the reasons hereinafter noted, this contention is not supported by the record. Thus, at the very outset of the present controversy, Mayer was advised by Junker on March 1 that the community and Respondent's Board would never accept the fact that Mayer had been living with Ms. Meyers. Going on, Junker specifically advised Mayer that he should resign in order to protect his school record. Since Junker there alluded to Mayer's relationship with Ms. Meyers, Mayer was then put on notice that that relationship, as opposed to the mere arrest, could lead to disciplinary action. Additionally, Respondent notified Mayer in both its February 28 and March 13 letters that it was concerned with the "circumstances surrounding your arrest and the subsequent charges brought against you." The phrase "circumstances surrounding your arrest" is certainly broad enough to encompass the fact that Respondent was then concerned not only with Mayer's arrest, but rather, with the full factual background which led up to that arrest. While it may be true that the foregoing quoted phrase may be somewhat imprecise, it is also significant that Mayer never asked for clarification of its meaning. Moreover, Mayer admitted at the instant hearing that he "assumed" prior to the March 25 hearing that Respondent at that hearing would look into his relationship with Ms. Meyers and that Respondent would consider that relationship in determining whether to dismiss him.

6/ Briggs and Stratton Corp., Decision No. 9530-A, B (12/71).

Furthermore, the events at the March 25 hearing 7/ belie Complainant's claim that Mayer there did not know the basis of his proposed dismissal and that he was there precluded from responding to the charges against him. For, as noted in paragraph 13 of the Findings of Fact, it is undisputed that Garnier, Mayer's representative, specifically asked at the March 25 hearing for the basis for Mayer's proposed dismissal, to which Attorney Hessert replied "moral turpitude". Going on, Hessert made it absolutely clear that the basis of that charge did not rest only on Mayer's February 27 arrest and the subsequent criminal complaint lodged against Mayer, but rather, that in his words, "the facts behind the arrest and the complaint arguable do constitute an act of moral turpitude." In light of Hessert's response, it is absolutely clear that Mayer was expressly advised that Respondent was concerned with the question of whether he, Mayer, had had sexual relations with Ms. Meyers. Moreover, it is significant that when Hessert there asked Mayer whether he knew why the Board was considering his dismissal, Mayer replied, "I decline to answer that question." Since Mayer hardly would have responded that way had he in fact truly been in doubt as to the nature of the charges against him, Mayer's refusal to then ask for clarification can only be construed to reflect the fact that he knew full well why the Board was considering his dismissal.

In light of the above-noted considerations, the record therefore establishes, contrary to Complainant's allegation, that Mayer was disciplined for a reason in addition to his arrest, i.e., "moral turpitude", that Mayer knew or should have known of that reason as of the time of the March 25 hearing, and that Mayer there had an opportunity to respond to that charge. Accordingly, there is no merit to Complainant's claim that Respondent's dismissal of Mayer for "moral turpitude" was violative of the procedural requirements embodied in a "just cause" standard.

Similarly, there is no basis for holding that Respondent's initial suspension of Mayer prior to this dismissal violated any of these same procedural requirements. Thus, it is well settled that pending court determination of guilt, an employer can suspend an employee who is charged with an alleged serious crime committed away from company premises, when such an alleged crime has an adverse effect upon the employer's operation. 8/ Here, inasmuch as Mayer was arrested for having allegedly committed statutory rape against one of his former pupils, and since such a charge, if true, certainly would cast a shadow over Mayer's continued ability to teach, it follows that Respondent had the right to suspend Mayer following his February 27 arrest, at least until such time as the criminal charges against him were dropped on March 7. Moreover, as Mayer readily admitted to Junker on March 1 that he had had sexual relations with Ms. Meyers, and since for the reasons noted below such conduct affected Mayer's ability to teach, it must also be concluded that Respondent had the right to continue Mayer's suspension past March 7 for a reasonable period, pending the results of its investigation into the matter.

7/ The parties have agreed that a stenographic record of the March 25 hearing should be made part of the record herein.

8/ See, for example, Pearl Brewing Co., 48 LA 379 (1967), wherein Arbitrator Howard held that the employer therein properly suspended an employee charged with burglary and assault with intent to rape.

That being so, the next issue to be resolved is whether Respondent in fact had "just cause" to dismiss Mayer. As to that, it is undisputed that Mayer and Ms. Meyers lived together and had sexual relations with each other at a time when they were not married, that Ms. Meyers was then a minor, and that Ms. Meyers was formerly one of Mayer's pupils.

In its brief, Complainant relies on the general arbitrable rule that "off duty misconduct by an employe does not generally come within the purview of the employer", and argues, therefore, that Respondent cannot discipline Mayer for the above-noted off-duty conduct. In support thereof, Complainant cites two cases: Fisher v. Snyder, 476 F2d 375 (CA 8, 1973), and Reinhardt v. Board of Education of Alton Community United School District No. 11, Madison and Jersey Counties, 19 Ill. App. 481, 311 NE 2d 710, (1974). In Fisher, supra, an unmarried teacher was discharged ostensibly for engaging in sexual misconduct, such alleged misconduct being evidenced by the fact that she allowed male guests to stay overnight in her home. In Reinhardt, supra, the employer discharged a teacher who was married one month and who was then eight and one-half months pregnant. The dismissals in both cases were overturned, primarily on the grounds that the private sexual conduct of said teachers was unrelated to their work performance.

Without going into the question of whether those cases were properly decided, it suffices to say for present purposes that those factual situations are readily distinguishable from the particular facts herein, as the instant case involves much more than the private sexual conduct of a teacher vis-a-vis another consenting adult. ^{9/} Thus, Mayer had sexual relations with Ms. Meyers, a minor, who under Wisconsin law was presumed to be incapable of freely giving her consent to such activity. ^{10/} There is no question, then, but that such conduct is markedly different from those situations where adults knowingly consent to certain sexual conduct away from their employment. Furthermore, it must be remembered that Ms. Meyers was formerly a pupil in Mayer's class and that, as a result, Mayer was entrusted to a teacher-pupil relationship with Ms. Meyers, one which directly arose in the context of his employment status. Once in that role, Mayer either knew or should have known as a professional teacher that that relationship was entrusted to him by Respondent and the community, and that both expected, and rightfully so, that he would conduct himself in such a manner as to not take advantage of that situation. Here, by living with Ms. Meyers for several months, and by engaging in sexual conduct with her at a time when she could not lawfully give her consent to such conduct, it is readily apparent that Mayer failed to conform to the high ethical requirements embodied in teacher-pupil relationship.

Taken together, the foregoing establishes that Mayer engaged in conduct which was violative of the generally accepted moral code and that he did so with a former pupil who was entrusted to his care. In such circumstances, there is no merit to Complainant's allegations that Mayer's off-duty conduct did not have any adverse effect upon his teaching, as there is no question but that Mayer's retention as a teacher could easily serve to undermine the educational process. For, if Mayer himself was unable to follow the dictates of well accepted moral standards,

^{9/} As the ultimate disposition herein rests on the particular facts of this case, it is unnecessary to decide whether the holdings in the cited cases should be followed.

^{10/} See Section 944.10 of the Wisconsin Statutes, supra.

why should the public believe that Mayer would be capable of teaching other standards to his pupils? Additionally, how can students be expected to follow any standards where Mayer had graphically indicated to them that such standards are to be broken at will? Furthermore, what lesson is there to be learned if a teacher is left undisciplined for engaging in the kind of conduct herein? Lastly, what of Ms. Meyers' parents who entrusted their child to Mayer's care, only to subsequently learn that Mayer had betrayed the special trust bestowed upon him by virtue of a teacher-pupil relationship. When all these factors are considered, can there be any doubt that Mayer's conduct with Ms. Meyers substantially impaired his continued effectiveness as a teacher and that his retention as a teacher could tend to undermine public confidence in the education process? 11/ Hardly.

Accordingly, and because Mayer was guilty of "moral turpitude", as charged, the undersigned finds that Respondent had just cause to discipline Mayer and that, therefore, its suspension and discharge of Mayer were not violative of the contractual "just cause" standard. 12/ As a result, this complaint allegation is dismissed in its entirety.

Dated at Madison, Wisconsin this 1st day of April, 1976.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Amedeo Greco
Amedeo Greco, Examiner

11/ See State ex rel. Gudlin v. Civil Service Commission, 27 WIS. 77, 133 NW 2nd 799 (1965) wherein the Court held that certain conduct which undermines public confidence constitutes a valid ground for the dismissal of a public employe.

12/ Even assuming, arguendo, that Mayer's subsequent marriage to Ms. Meyers after his discharge was a mitigating factor which should be considered, I find that, on balance, such a factor is insufficient to reverse or modify Mayer's discharge.