

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

WEBSTER SCHOOL DISTRICT EMPLOYEES	:	
LOCAL UNION #1853, AFSCME, AFL-CIO,	:	
	:	
Complainant,	:	Case V
	:	No. 22789 MP-840
vs.	:	Decision No. 16275-A
	:	
WEBSTER SCHOOL DISTRICT,	:	
	:	
Respondent.	:	
	:	

Appearances:

Mr. Jack S. Bernfeld, District Representative, on behalf of Complainant.
Mr. Robert Klasnya, Employers Industrial Relations Council, on behalf of Respondent.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Webster School District Employees, Local Union #1853, AFSCME, AFL-CIO, herein Complainant, filed a complaint with the Wisconsin Employment Relations Commission, herein Commission, wherein it alleged that Webster School District, herein Respondent, had violated Section 111.70(3)(a)5 of the Municipal Employment Relations Act by discharging Greg Coffin, a member of the bargaining unit. The Commission thereafter appointed the undersigned 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. Hearing on said complaint was held at Webster, Wisconsin on April 25, 1978. Both parties thereafter filed briefs. Having considered the evidence and briefs, the Examiner makes the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. Webster School District Employees, Local Union #1853, AFSCME, AFL-CIO, is a labor organization, which at all times material hereto has been the exclusive collective bargaining representative of certain employees of Respondent, including Greg Coffin at the time of his discharge.
2. Webster School District, a municipal employer, operates a public school system. George St. Catherine is Respondent's Administrator.
3. Complainant and Respondent were parties to a collective bargaining agreement effective from July 1, 1976 through June 30, 1978, which contained the following pertinent provisions:

"Article IV - Grievance Procedure

. . .
STEP II
. . .

Any grievance not resolved by the Board may be submitted by the Union as a prohibitive practice before the WERC within the meaning of 111.70 3(a) (5).

. . .

Article VIII - Discipline - Discharge

The employer agrees to act in good faith in the discipline or discharge of any employee."

4. Coffin began working for Respondent as a bus driver in November 1976. In September or October, 1977 Coffin received, through the mail, a notice that his bus operator's license had to be renewed in December, 1977. Prior to the end of December, 1977, another bus driver gave Coffin a manual to study in preparation for taking the test to renew said license, and also, at a later date, reminded Coffin to renew his license.

5. On January 5, 1978, after driving his morning (from approximately 6:40 a.m. to 8:40 a.m.) and kindergarten (from approximately 11:00 a.m. to 1:00 p.m.) bus routes, Coffin received a notice in the mail that his bus operator's license had expired on December 31, 1977. Coffin arranged for another driver to take his afternoon bus route (from approximately 3:30 p.m. to 5:30 p.m.). The bus drivers frequently substitute for each other, but are expected to notify Respondent's office of that fact if said office is open. Upon learning from another bus driver that Coffin's license had expired, St. Catherine instructed one of the bus drivers to drive Coffin's routes until a replacement was found.

6. On January 10, 1978 Coffin and St. Catherine met and discussed Coffin's failure to renew his operator's license, the maintenance of his vehicle, an alleged consumption of alcohol between runs, and, a personal hygiene problem. During that meeting, Coffin said he had planned to quit after the end of that school year.

7. Coffin had renewed his bus operator's license by January 24, 1978 on which date he again met with St. Catherine. At that time, St. Catherine informed Coffin that his employment was terminated.

8. In November, 1977, at the request of St. Catherine, Complainant's steward had inquired of Coffin about his drinking alcohol during the day. Said steward then informed St. Catherine of Coffin's response, which was that he occasionally drank beer when he was off-duty. Prior to January 10, 1978, Coffin had not received any warnings or other disciplinary actions.

9. During the time interval between January 10 and 24, 1978, the Administrator talked to the teacher who, in November, 1977, had reported smelling alcohol on Coffin's breath during the day on between two and four different occasions. Said teacher also informed St. Catherine that a custodial employe had smelled alcohol on Coffin's breath on one occasion in October, 1977. Both the teacher and the custodial employe had observed Coffin smoking cigarettes in the school kitchen on several occasions, including some instances after a "No Smoking" sign had been posted in the kitchen, at which times he was visible to elementary students. In early December 1977, the same custodial employe had heard Coffin say that he might not renew his license. However, St. Catherine first learned of that remark in early April 1978. During the time period from January 10 to 24, 1978, St. Catherine also talked to the operator of the service station which serviced Respondent's school buses and was told the following: that one time the wheel lug nuts were loose on Coffin's bus; that Coffin's bus had been driven over 6,000 miles without an oil change or a grease job; and, that Coffin had hot-wired the electrical system on his bus once. Coffin testified that he had tightened the lug nuts after the tires were changed; that the motor oil was still clean after 6,000 miles; and, that the hot-wiring was necessary to operate the headlights. While the Respondent does not have a written policy with respect to the maintenance of its buses, it has had a practice of assigning to the drivers the responsibility for the general maintenance of their respective buses.

10. The personal hygiene problem related to an unspecified date when Coffin failed to change his farm clothes before driving his bus route and a

student complained about the smell. The Administrator had learned about said incident in November, 1977.

11. During the negotiations culminating in the labor agreement pertinent hereto, the Union had proposed language providing that non-probationary employes would "be disciplined or discharged for just cause only". In the negotiations for a successor to said agreement, the Union again proposed language requiring discipline or discharge to be for "just cause", and, the deletion of the language in Article VIII.

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

CONCLUSIONS OF LAW

1. Coffin did not voluntarily terminate his employment with Respondent, but rather, he was discharged.

2. Complainant has not succeeded in establishing just cause as the contractual standard for reviewing Respondent's discharge of Coffin.

3. Respondent's decision to discharge Coffin was made in good faith, as required by the contract, based on Coffin's failure to timely renew his bus operator's license and the fact that other employes had smelled alcohol on his breath during time intervals between his bus runs. Accordingly, Respondent did not violate Section 111.70(3)(a)5 of the Municipal Employment Relations Act by discharging Coffin.

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

ORDER

That the complaint filed in the instant matter be, and the same hereby is, dismissed.

Dated at Madison, Wisconsin this *26th* day of September, 1978.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By *Douglas V. Knudson*
Douglas V. Knudson, Examiner

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

Complainant primarily alleges that Coffin was discharged, which act violated the "good faith" standard in the contract. Respondent asserts that Coffin voluntarily quit when he allowed his bus operator's license to expire, and further, that it had a "good faith" basis for then refusing to re-employ him.

The record is clear that the Union has attempted, without success, to negotiate the standard of "just cause" for discipline into the labor agreement. Therefore, the present contractual standard, i.e., good faith, must be viewed as being less limiting, or restricting, to the Respondent than is the standard of "just cause". Good faith basically consists of an employer's mental attitude at the time it takes an act. While good faith may be one of the elements of just cause, it is not the sole component. Just cause encompasses the validity of the basis on which the employer acted in addition to the employer's state of mind when the decision to act was made.

The Respondent argues that Coffin voluntarily terminated his employment when he became unavailable to work by failing to timely renew his operator's license. Although Coffin had stated to other employees that he was not sure he would renew his license, prior to January 10, 1978 he had not told Respondent that he was planning to quit. In light of his actions to renew his license subsequent to January 5, 1978, it must be concluded that he did not plan to quit on that date, even though he had acted irresponsibly in allowing his operator's license to expire. Coffin had arranged for another driver to cover his bus routes until he could renew his license. While such substitution by the drivers for each other is common, it is understood by them that the Respondent is to be informed of the substitutions, especially when the need for it arises during the Respondent's normal office hours, as occurred herein. Coffin did not so inform the Respondent, apparently because he planned to renew his license and resume his driving duties. Thus, it must be concluded that Coffin did not voluntarily terminate his employment with the Respondent, but rather, he was discharged.

In weighing the basis for Coffin's discharge, it should be noted that prior to January, 1978, St. Catherine was aware of some of the factors for which Coffin was discharged, but had not taken any disciplinary actions with respect thereto. The most serious allegation against Coffin is that other employees had smelled alcohol on his breath during the time intervals between his runs. Coffin testified that occasionally he would drink a beer with his lunch, but never when he was on duty. Why St. Catherine failed to act more strongly about this issue, upon learning of it in November, 1977, is puzzling. Albeit, the smell of beer on the breath of a school bus driver was cause for serious concern by Respondent, which, coupled with Coffin's irresponsibility in failing to renew his license, was a sufficient basis for the Examiner to conclude that Respondent acted in good faith when it discharged Coffin. The smell of alcohol on Coffin's breath during the day and the concern over Coffin's manner of maintaining his buses were worrisome to Respondent, since said concerns directly related to Coffin's responsibility for the safe transportation of students. When Respondent determined that Coffin's behavior could jeopardize student safety, it made said judgment in good faith.

Respondent filed a motion requesting that the hearing be reopened to permit it to enter additional evidence concerning Coffin's use of alcohol. Although the undersigned may have been in error when he sustained Complainant's objection to the entry of such evidence at the hearing, inasmuch as the evidence already in the record is sufficient to sustain Coffin's

discharge, Respondent's motion to reopen the hearing is not essential to the case and is denied.

Dated at Madison, Wisconsin this *26th* day of September, 1978.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By *Douglas V. Knudson*
Douglas V. Knudson, Examiner