STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

JAMES A. LEAVENS, Complainant, vs. CHIEF DONALD BLOEDORN and CITY OF WAUWATOSA, Respondents.	Case LXVI No. 28973 MP-1279 Decision No. 19310-D
LARRY G. GREENHILL, Complainant, vs. CHIEF DONALD BLOEDORN and CITY OF WAUWATOSA, Respondents.	Case LXVII No. 38284 MP-1930 Decision No. 19311-D
RICHARD F. MAIER, Complainant, vs. CHIEF DONALD BLOEDORN and CITY OF WAUWATOSA, Respondents.	Case LXVIII No. 38285 MP-1931 Decision No. 19312-D

Appearances:

Brendel, Flanagan, Sendik & Fahl, S.C., Attorneys at Law, 118 North Avenue, Hartland, WI 53029, by Mr. John K. Brendel, appearing on behalf of the Complainants.

Mr. Harold D. Gehrke, City Attorney, 7725 West North Avenue, Wauwatosa, WI 53213, appearing on behalf of the Respondents.

ORDER MODIFYING AND AFFIRMING EXAMINER'S FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Examiner Lionel L. Crowly having on November 9, 1982, issued Findings of Fact, Conclusions of Law and Order, with accompanying memorandum, wherein he concluded that the City of Wauwatosa and its Fire Chief Donald Bloedorn had committed a prohibited practice within the meaning of Sec. 111.70(3)(a)5, Stats., by discharging probationary firefighter James A. Leavens and that the City of Wauwatosa and its Fire Chief Donald Bloedorn had not committed such a prohibited practice by discharging probationary fire fighters Larry G. Greenhill and Richard F. Maier; and both Respondents City of Wauwatosa and Chief Bloedorn and Complainants Greenhill and Maier having timely filed petitions seeking Commission review of the examiner's decision; and the Commission having on April 10, 1984, issued an Order Modifying Examiner's Findings of Fact, Conclusions of Law and Order, wherein the Commission concluded that the parties' collective bargaining agreement did not entitle Complainants Leavens, Greenhill and Maier to Commission review of their claim that their terminations during a probationary period

violated the collective bargaining agreement and thus Sec. 111.70(3)(a)5, Stats., and therefore dismissed the complaint in its entirety; and the Complainants having sought judicial review of the Commission's decision; and the Court of Appeals, District I, having on July 9, 1986 issued its decision reversing the Commission's Order and remanding the matter to the Commission based upon the Court's conclusion that the Commission did have jurisdiction to hear the merits of the allegation that the contract had been violated; and the dispute between the parties as to the discharge of Complainant Leavens having been resolved during the pendency of judicial review proceedings so that only the complaints of Complainants Greenhill and Maier were remanded to the Commission; and the parties having filed supplementary argument with the Commission following the remand, the last of which was received on April 28, 1987; and the Commission having reviewed the entire record and the parties' briefs and being satisfied that the Examiner's Findings of Fact, Conclusions of Law and Order should be modified and affirmed;

NOW, THEREFORE, it is

ORDERED 1/

That the Examiner's Findings of Fact, Conclusions of Law and Order are hereby modified to read as follows:

1/ Pursuant to Sec. 227.48(2), Stats., the Commission hereby notifies the parties that a petition for rehearing may be filed with the Commission by following the procedures set forth in Sec. 227.49 and that a petition for judicial review naming the Commission as Respondent, may be filed by following the procedures set forth in Sec. 227.53, Stats.

227.49 Petitions for rehearing in contested cases. (1) A petition for rehearing shall not be prerequisite for appeal or review. Any person aggrieved by a final order may, within 20 days after service of the order, file a written petition for rehearing which shall specify in detail the grounds for the relief sought and supporting authorities. An agency may order a rehearing on its own motion within 20 days after service of a final order. This subsection does not apply to s. 17.025(3)(e). No agency is required to conduct more than one rehearing based on a petition for rehearing filed under this subsection in any contested case.

227.53 Parties and proceedings for review. (1) Except as otherwise specifically provided by law, any person aggrieved by a decision specified in s. 227.52 shall be entitled to judicial review thereof as provided in this chapter.

(a) Proceedings for review shall be instituted by serving a petition therefore personally or by certified mail upon the agency or one of its officials, and filing the petition in the office of the clerk of the circuit court for the county where the judicial review proceedings are to be held. Unless a rehearing is requested under s. 227.49, petitions for review under this paragraph shall be served and filed within 30 days after the service of the decision of the agency upon all parties under s. 227.48. If a rehearing is requested under s. 227.49, any party desiring judicial review shall serve and file a petition for review within 30 days after service of the order finally disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing. The 30-day period for serving and filing a petition under this paragraph commences on the day after personal service or mailing of the decision by the agency. If the petitioner is a resident, the proceedings shall be held in the circuit court for the county where the petitioner resides, except that if the petitioner is an agency, the proceedings shall be in the circuit court for the county where the respondent resides and except as provided in ss. 77.59(6)(b), 182.70(6) and 182.71(5)(g). The proceedings shall be in the circuit court for Dane county if the petitioner is a nonresident. If all parties stipulate and the court to which the parties desire to transfer the proceedings agrees, the proceedings may be held in the county designated by the parties. If 2 or more petitions for review of the same decision are filed in different counties, the circuit judge for the county in which a petition for review of the decision was first filed shall determine the venue for judicial review of the decision, and shall order transfer or consolidation where appropriate.

(b) The petition shall state the nature of the petitioner's interest, the facts showing that petitioner is a person aggrieved by the decision, and the grounds specified in s. 227.57 upon which petitioner contends that the decision should be reversed or modified.

. . .

(c) Copies of the petition shall be served, personally or by certified mail, or, when service is timely admitted in writing, by first class mail, not later than 30 days after the institution of the proceeding, upon all parties who appeared before the agency in the proceeding in which the order sought to be reviewed was made.

Note: For purposes of the above-noted statutory time-limits, the date of Commission service of this decision is the date it is placed in the mail (in this case the date appearing immediately above the signatures); the date of filing of a rehearing petition is the date of actual receipt by the Commission; and the service date of a judicial review petition is the date of actual receipt by the Court and placement in the mail to the Commission.

FINDINGS OF FACT

1. That the Complainant James A. Leavens is an individual who was employed as a probationary firefighter by the City of Wauwatosa from January 2, 1981 to December 2, 1981 and resides at 510 Hawthorne Avenue, South Milwaukee, Wisconsin; that Complainant Richard F. Maier is an individual who was employed as a probationary firefighter by the City of Wauwatosa from January 2, 1981 to December 2, 1981 and resides at 240 East Jewell Street, Oak Creek, Wisconsin; and that Complainant Larry G. Greenhill is an individual who was employed as a probationary firefighter with the City of Wauwatosa from January 2, 1981 to December 3, 1981 and resides at 4918 West Medford Avenue, Milwaukee, Wisconsin.

2. That the City of Wauwatosa, hereinafter Respondent, is a municipal employer and has its offices loated at 7725 West North Avenue, Wauwatosa, Wisconsin; and that Donald Bloedorn has at all times herein been the Chief of the Fire Department of the City of Wauwatosa and has acted on its behalf.

3. That on December 19, 1980, Respondent and Milwaukee County entered into an agreement whereby Respondent agreed to provide fire protection for the County Institutions' property; that Milwaukee County thereafter laid off all its fire protection employes which included Complainants; and that the Respondent accepted applications from all of the County's former fire protection pesonnel to fill twelve positions created as a result of the Respondent's takeover of the fire protection responsibilities, and hired Complainants.

4. That the Respondent, City of Wauwatosa, and the Wauwatosa Firemen's Protective Association, Local 1923, International Association of Fire Fighters, herein Association, have, at all times material herein, been parties to a collective bargaining agreement which provides in relevant part as follows:

ARTICLE V - Probationary Period

An employee shall be probationary and without seniority rights for his first calendar year of service. Such probationary employee may be laid off, transferred, or discharged for cause at any time during such period without any recourse to the Grievance procedure. Thereafter, rights of seniority shall be retroactive to his date of original hire. In all other respects such employee shall be eligible for union membership and entitled to all benefits as such may provide.

5. That on December 2, 1981 at approximately 8:00 a.m., Chief Bloedorn met with Complainants Maier and Leavens and handed each of them a letter which stated as follows:

"For cause and without comment, effective 8:00 a.m. December 2, 1981, your services as a Probationary Firefighter with the

Wauwatosa Fire Department, Wauwatosa, Wisconsin are terminated.

Sincerely,

Donald E. Bloedorn
Chief of Department";

and that at that time the Chief verbally informed them of the reasons for their discharge as follows:

"You have failed to demonstrate an acceptable level of cooperation or an acceptable attitude for continued employment with the Wauwatosa Fire Department."

6. That on December 3, 1981 at approximately 8:00 a.m. Chief Bloedorn gave Complainant Greenhill a similar letter of termination; and that Chief Bloedorn verbally informed Complainant Greenhill that the reason for his termination was excessive use of sick leave.

7. That the basis for Chief Bloedorn's decision to terminate Greenhill was Greenhill's sick leave usage; that Greenhill had used all of his sick leave allotment as of November 5, 1981; that Greenhill did not report for duty on November 5, 1981 due to illness and was off the payroll for that date; that Chief Bloedorn met with Greenhill and his Union steward on a date after November 5, 1981 and stressed the importance of Greenhill's building up sick leave so that he would not be taken off the payroll; that approximately five workdays thereafter, Greenhill again did not report for duty due to illness and was off the payroll; that the reason for Greenhill's absence in each case was his own illness or the illness of a family member; and that the dismissal of Greenhill was based on no other factors.

8. That the basis for Chief Bloedorn's decision to terminate Richard Maier was Maier's attitude toward his employment; that Maier had previously been employed by the Respondent as a firefighter from August 1971 to August 1974; that thereafter, Maier became employed by Milwaukee County as a firefighter from August 1974 until January 1981; that sometime prior to January 2, 1981 Maier filled out an application for employment as a firefighter with the Respondent; that at this time Chief Bloedorn overheard Maier make a complaint to another applicant that he had previously been employed with the Respondent and quit once before and now was coming back at the bottom; and that Chief Bloedorn stated to Maier, in effect, that no one was forcing him to apply for the position and in response Maier indicated that he was doing so only for economic reasons.

9. That in March or April of 1981, Maier took part in fighting a fire at the Winding Roofing Company which involved his exposure, as well as all the other firefighters present, to hydrogen chloride fumes; that after the fire, the twenty-seven (27) firefighters present were given medical treatment at County General Hospital; that Maier thereafter contacted his own personal physician for additional medical evaluation; that Chief Bloedorn became aware of this fact and contacted Maier at his home; that the Chief's purpose in contacting Maier was to inform him that it was necessary to contact the Respondent for authorization to see his personal physician so that the proper forms could be completed so payment would be appropriately made to that physician; that during this conversation, Maier stated to Chief Bloedorn that he did not trust him and that ninety-nine percent of the firefighters did not trust him; that Chief Bloedorn directed Assistant Chief Pekel to speak with Maier concerning his attitude; that Assistant Chief Pekel did contact Maier and spoke to him concerning his attitude toward his job; that Maier informed Pekel that he had previously left the Respondent's Fire Department becauase he was not happy there, that his employment with Milwauee County resulted in greater pay and fringe benfits, that his present position with the Respondent's Fire Department resulted in a loss of these benefits, that he needed a job at the present time to support his family, and that he was looking around for another position; and that Assistant Chief Pekel noted in his evaluation of Maier that he had spoken to him concerning his attitude and marked his attitude as fair.

10. That on November 19, 1981 an impromptu meeting was held with Chief Bloedorn, Battalion Chief Lussier, Union President Gary Vukovitch and Union Secretary Donald Mohr; that at this meeting, Vukovitch indicated to Chief Bloedorn that something had to be done about the morale at Station No. 3, in that there was an attitude problem with Maier because he did not like his job; and that Maier was

always complaining that he did not want to be there and that he intended to quit as soon as he could find another job.

11. That Maier was dissatisfied with his position as a firefighter because of the loss of pay and benefits that he enjoyed at Milwaukee County and a perceived lack of future in his job and he expressed this dissatisfaction to other firefighters; and that Maier's attitude toward his job did affect the morale of his fellow firefighters.

12. That during the course of their employment, Maier and Leavens were asked to sign an insurance application form for life insurance to be provided by the Respondent; that Maier and Leavens questioned a statement which appeared on the bottom of the card and refused to sign the card; that on several occasions thereafter, Maier and Leavens were requested to sign the insurance form, however they failed to do so; that on August 10, 1981, David P. Moore, the Employment Relations Director for the Respondent, sent a memo to Chief Bloedorn recommending that the probationary periods of Maier and Leavens be terminated; and that Chief Bloedorn did not terminate Maier or Leavens on the basis of Moore's communication.

13. That the discharges of Greenhill and Maier were not based on any concerns regarding the actual performance of their duties as firefighters with the Respondent; and that the Training Officer Pekel had evaluated each of the firefighters as average employes and recommended that they be retained as members of the Fire Department.

14. That pursuant to the July 9, 1986 Order of the Court of Appeals, District 1, issued in Case No. 85-2201, the merits of the instant complaint as to the discharge of Leavens need not be resolved.

On the basis of the foregoing Findings of Fact, the Commission makes and issues the following

CONCLUSIONS OF LAW

1. That the term "discharged for cause" in Article V of the collective bargaining agreement means that probationary employes are protected against arbitrary and capricious discharges.

2. That the Respondents' termination of Complainant Greenhill was for cause within the meaning of Article V of the parties' collective agreement, and therefore Respondents' action was not violative of Secs. 111.70(3)(a)5 or (3)(b)4, Stats.

3. That the Respondents' termination of Complainant Maier was for cause within the meaning of Article V of the parties' collective bargaining agreement, and therefore Respondents' action was not violative of Secs. 111.70(3)(a)5 or (3)(b)4, Stats.

4. That as the Respondents' terminations of Complainants Greenhill and Maier were not motivated by their exercise of rights provided in Sec. 111.70(2), Stats., Respondents' actions do not constitute violations of Sec. 111.70(3)(a)3, Stats.

On the basis of the foregoing Findings of Fact and Conclusions of Law, the Commission makes and issues the following

ORDER

That the instant complaints are hereby dismissed.

Given under our hands and seal at the City of Madison, Wisconsin this 21st day of October, 1987.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Stephen Schoenfeld
Stephen Schoenfeld, Chairman

Herman Torosian, Commissioner

CITY OF WAUWATOSA

MEMORANDUM ACCOMPANYING
ORDER MODIFYING AND AFFIRMING EXAMINER'S FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

The procedural history of this case has been recited in the preface to our Order herein and need not be repeated. The issue before us is whether Examiner Crowley correctly concluded that the discharges of probationary firefighters Greenhill and Maier did not violate the parties' collective bargaining agreement and thus did not violate Sec. 111.70(3)(a)5, or (3)(b)4, Stats.

THE EXAMINER'S DECISION

The Examiner concluded that the parties' collective bargaining agreement required that the discharge of a probationary firefighter be measured against an "arbitrary and capricious" standard. When applying this standard to the discharges of the two Complainants presently before the Commission, the Examiner concluded that neither discharge was arbitrary or capricious. In the case of Complainant Greenhill, the Examiner concluded that his discharge was based upon the belief of Chief Bloedorn that Greenhill's sick leave usage was excessive. As to Complainant Maier, the Examiner concluded that Chief Bloedorn's decision was based upon a concern that Maier's attitude toward his employment was having a negative impact upon the morale within the Fire Department.

POSITIONS OF THE PARTIES

The Complainants

Complainants Greenhill and Maier initially argue that Examiner Crowley erred when interpreting the term "cause" as establishing an "arbitrary and capricious" standard by which the discharges should be measured. Complainants assert that the phrase "cause" should be equated with and is the equivalent to "just cause" and that the reasons for the terminations are clearly not adequate to meet the "just cause" standard. Complainants assert in this regard that an examination of the bargaining history evidence in the record supports a conclusion that the word "cause" was added to the parties' contract to alter the traditional "rational basis" or "arbitrary and capricious" standard previously applied to probationary firefighters. However, Complainants submit that even if the "arbitrary and capricious" standard is applied to Complainants Greenhill and Maier, the terminations were violative of the parties' contract because they were based upon unsubstantiated hearsay and insufficient justification. As to Complainant Greenhill, Complainants assert that he had not only the right but the obligation not to work when sickness prevented him from effectively doing his job. Thus, under any standard, Complainants assert that the discharge of Greenhill cannot be sustained. As to Complainant Maier, the Complainants argue that Chief Bloedorn failed to conduct any investigation to determine the extent of Maier's alleged attitude problem and largely based the discharge upon hearsay information from union officials who were in no position to actually evaluate Maier.

In rebuttal to the City's arguments herein, Complainants assert that while there may be an inconsistency between the normal concept of probationary employes and the concept of "cause" for termination, the parties herein bargained an agreement which applied the term "cause" to probationary employes and thus granted them far greater protections than are normally available to such individuals. Complainants argue that the contract speaks for itself and that the testimony of the City's negotiator as to the meaning of the word "cause" was given inappropriate weight by the Examiner.

Given the foregoing, Complainants asked that the Commission reverse the Examiner and conclude that the discharges violated the collective bargaining agreement and Sec. 111.70(3)(a)5, Stats. and that the Complainants be reinstated with back pay and benefits.

The Respondents

Respondents initially argue that the Court of Appeals decision should be read as having affirmed the Examiner's interpretation of the term "cause" as being akin to "arbitrary and capricious." Thus Respondents argue that the sole reason for the remand to the Commission was to subject the Chief's decision to terminate Greenhill and Maier to review under an arbitrary and capricious standard.

Respondents argue that to apply a "just cause" standard to probationary employes would be illogical as it would destroy the essential distinction between a probationary and a permanent employe. Respondents assert that a review of judicial decisions regarding the termination of probationary employes demonstrates that the criteria by which such discharge decisions are examined is typically a "good faith" standard. Respondents urge the Commission to conclude that a "good faith" or "arbitrary and capricious" standard is the proper basis upon which to review the Examiner's decision.

Applying that standard, Respondents argue that it is clear from the record that the Chief's decision was a "good faith" determination. Respondents urge the Commission to affirm the Examiner's conclusions that the discharges at issue were not "arbitrary and capricious" and thus that Respondents did not violate the contract by terminating Complainants Greenhill and Maier.

DISCUSSION

Contrary to Respondents' assertion herein, the Court of Appeals decision explicitly stated at Note 22 that the Court was not reaching "the merits of whether Greenhill and Maier were discharged for cause, and whether the examiner correctly construed the phrase "for cause"." Thus, our review of the Examiner's decision focuses on whether he properly interpreted the phrase "for cause" as used in the parties' collective bargaining agreement and whether the discharges were violative of the appropriate contractual standard.

In his decision, the Examiner recited the following rationale for his determination that the term "for cause" should be interpreted as establishing an "arbitrary and capricious" standard for review of the Complainants' discharges.

> The Complainants contend that the words "for cause" in the probationary article of the contract mean just cause, as that term is commonly used in collective bargaining agreements. The undersigned rejects the Complainants' position for two reasons. First, it must be noted that the proviusion referred to appears in Article V related to probationary employes. The term "probation" or "probationary employes" has an established meaning in the collective bargaining relationship. The meaning of a probationary period is that it is a time of trial so that an employe can prove that he/she is suitable and fit for the position he/she occupies and a probationary employe may be released from employment without the employer having to prove just cause for such release. 10/ To hold otherwise would grant to probationary employes the same righs as employes who have completed their probationary period. There would be no reason to refer to these employes as being on probation. The express language of the agreement provides that probationary employes gain no seniority until completion of a calendar year of service, which suggests that the probationary employe is not entitled to the same consideration as an employe with seniority. Therefore, a plain reading of the contract supports the conclusion that the parties did not agee to a just cause standard for the termination of probationary employes.
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> Second, the negotiating history supports the conclusion that a just cause standard was not agreed to by the parties for the discharge of probationary employes. The Respondent's chief negotiator testified without contradiction that the words "for cause" were added to the probationary language solely to prevent discharges of probationary employes on the whim or caprice of the Fire Chief. In light of this evidence, it must be concluded that the words "for cause" were not to be equated with the term "just cause", and therefore, the undersigned will not apply the just cause standard to the Complainants' discharges.
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> Turning then to the meaning of the contractual language "for cause", the undersigned concludes it means that the standard to be applied to the discharge of probationary employes is the arbitrary and capricious standard. The

Wisconsin Supreme Court has defined capricious to mean an action which is either so unreasonable as to be without a rational basis or the result of an unconsidered, willful and irrational choice of conduct. 11/ This may be referred to as the "rational basis" test which means that there must be reasons for the termination. The Respondent in this case argues that there are reasons for the discharges, and that as long as there is any reason, a discharge decision is not arbitrary and capricious. The undersigned cannot agree that any reason is sufficient to establish that a discharge is not arbitrary and capricious. Rather, there must be a fair and legitimate reason for the termination. Otherwise, the employer could say the reason for termination was because the employes parted their hair on the wrong side or a similar reason which could be arbitrary and capricious; essentially, a result the parties agreed would violate the agreement. The standard which must be applied in the instant cases is not whether the Respondent had sufficient reasons to support a discharge of the Complainants, i.e., "just cause", rather the standard is whether they had legitimate reasons to terminate the Complainants and in fact terminated them for those reasons. The determination must end if legitimate reasons are found, as the undersigned cannot weigh the sufficiency of them to support a discharge. Applying this test to the facts of each case, it must be determined whether "cause" existed for the discharge of fire fighters Greenhill, Leavens, and Maier.

10/ San Jose Mercury News, 48 LA 145 (Burns, 1966); Pullman-Standard, 40 LA 757 (Sembower, 1963).

11/ Town of Pleasant Prairie v. Johnson, 34 Wis. 2d 8, 148 N.W. 2d 27 (1967).

We find the Examiner's rationale to be persuasive and therefore will proceed to the review of the discharges of Greenhill and Maier against an "arbitrary and capricious" standard.

In his decision, the Examiner stated the following as to the discharges of Greenhill and Maier.

> In the case of Greenhill, the evidence established that Greenhill did go off the payroll due to his use of sick leave. There is no question that he had legitimate illnesses for each of the instances he used sick leave. The evidence established that when he first went off the payroll, he was admonished by the Fire Chief to use his sick leave carefully. Shortly thereafter, Greenhill went off the payroll again. The undersigned concludes that the Chief determined to terminate the Complainant on the basis of his sick leave usage. The undersigned concludes that the discharge was "for cause". The reason is legitimate as an Employer has a right to expect regular attendance by its employes even where absences are due to legitimate illnesses. The undersigned also finds that Greenhill's discharge was for the reason given, i.e., use of sick leave. While the undersigned may not agree with the Chief's decision to terminate firefighter Greenhill, the undersigned cannot conclude that the discharge was arbitrary and capricious. Therefore, the discharge of firefighter Greenhill did not violate the collective bargaining agreement.
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> Turning to firefighter Maier, the Chief's reason for his termination was his attitude toward his job. The evidence established that Maier was dissatisfied with his job. The Chief was aware that Maier expressed his dissatisfaction with his job to other employes and to the Chief himself. The Chief had the Training Officer discuss this attitude with Maier. While Maier was dissatisfied with his job because it involved a loss of pay, benefits and status, this does not excuse his actions. Life is not always fair to everyone and the

> Respondent was offering Maier the same opportunity it had offered to the other former employes of Milwaukee County. The undersigned credits the testimony of Chief Bloedorn that Gary Vukovitch told him that firefighter Maier was making complaints to other employes about his situation and this did affect the morale of the other firefighters. Maier admitted he made comments about a loss of pay and no chance for advancement. An employer is not required to retain a malcontent in its employment to harm the morale of its employes. Therefore, the reasons expressed by the Chief for his termination of firefighter Maier were legitimate and the discharge was for these reasons. The undersigned concludes that the termination of firefighter Maier was not arbitrary and capricious and did not violate the collective bargaining agreement.

Our review of the lengthy record in this matter satisfies us that the Examiner has correctly identified the basis upon which Complainants Greenhill and Maier were terminated. We are also satisfied that the Examiner correctly concluded that Chief Bloedorn's decision to terminate Greenhill because of a concern regarding the number of days he had been absent from work due to illness was not "arbitrary and capricious." We also conclude that the Examiner correctly found that the discharge of Complainant Maier due to concerns that his attitude was having an adverse impact upon morale was not "arbitrary and capricious." Therefore, we have affirmed the Examiner's Findings and Conclusions in that regard. We have modified his Findings, Conclusions and Order only to reflect the fact that the parties' dispute as to Complainant Leavens has been resolved and thus is no longer before us. 2/

Dated at Madison, Wisconsin this 21st day of October, 1987.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Stephen Schoenfeld
Stephen Schoenfeld, Chairman

Herman Torosian, Commissioner

2/ While Complainants have not taken specific issue with the Examiner's determination that the terminations at issue herein were not violative of Sec. 111.70(3)(a)3, Stats., we have, as evidenced by our Conclusions of Law herein, affirmed the Examiner's dismissal of the complaint in that regard as well based upon the record herein.