STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

BRUCE A. BEELENDORF, Complainant, vs. TEAMSTERS LOCAL 695 AND DAVID SHIPLEY AND THE CITY OF MADISON, TIMOTHY JEFFERY AND RONALD BARNES, Respondents.	Case 129 No. 38098 MP-1914 Decision No. 24251-A

Appearances:

Mr. Bruce A. Beelendorf, 1259 East Johnson Street, Apartment B, Madison, WI 53703, appearing on his own behalf.

Previant, Goldberg, Uelmen, Gratz, Miller & Brueggeman, S.C., by Ms. Marianne Goldstein Robbins, 788 North Jefferson Street, Milwaukee, WI 53202, appearing on behalf of Teamsters Local 695 and David Shipley.

Mr. Timothy C. Jeffery, Director of Labor Relations, City-County Building, 210 Martin Luther King Jr. Blvd., Room 401, Madison, WI 53710, appearing on behalf of the City of Madison, Ronald Barnes and on his own behalf.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Mr. Bruce A. Beelendorf having on January 6, 1987 filed a complaint and on February 2, 1987, filed an amended complaint with the Wisconsin Employment Relations Commission alleging that Teamsters Local 695 and David Shipley committed unfair labor or prohibited practices in violation of certain sections of Chapter 111, Stats., by failing to fairly represent him and that the City of Madison, Tim Jeffery and Ronald Barnes violated the just cause provision of the collective bargaining agreement in existence between the City of Madison and Local 695 by their disposition with respect to a grievance filed by Beelendorf; and the Commission having appointed Mary Jo Schiavoni, a member of its staff to act, as Examiner to make and issue Findings of Fact, Conclusions of Law and Order in this matter as provided in Sec. 111.07(5), Stats.; and the parties due to their own scheduling difficulties having agreed to waive the statutory time period for hearing said matter; and the hearing having been held on March 24, and June 11, 1987, in Madison, Wisconsin; and the parties having received the transcripts in this matter on September 21, 1987; and the parties having completed their briefing schedule after various postponements on November 11, 1987; and the Examiner, having considered the evidence and arguments of the parties and being fully advised in the premises, makes and issues the following Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

1. That Bruce A. Beelendorf, hereinafter referred to as Beelendorf or Complainant, is an individual who resides at 1259 East Johnson Street, Madison, Wisconsin, 53703.

2. That Respondent City of Madison, hereinafter referred to as the City, is a municipal employer employing various employes in the performance of its various functions with offices at 210 Martin Luther King Blvd., Madison, Wisconsin, 53710; that among its functions is the operation of a municipal transit system; that various classifications of its employes are included in various appropriate units and represented by various labor organizations for purposes of collective bargaining; and that in performing the latter function the City has a department of labor relations; that, at all times material herein the following named individuals have occupied and do occupy the positions set forth opposite their respective names and each of them is and has been, at all times material hereto, an authorized representative and agent of the City acting on its behalf:

Timothy C. Jeffery - Director of Labor Relations
Ronald Barnes - General Manager of Madison Metro
Bill Ray - Operations Manager of Madison Metro

3. That Respondent Teamsters Local 695, hereinafter referred to as the Union, is a labor organization and the exclusive representative of certain of the City's employes including the Complainant in a unit consisting of all drivers, office employes, and garage employes including mechanics, washers, janitors and helpers but excluding guards, supervisors, confidential, professional and managerial employes; that the Union's principal place of business is 1314 North Stoughton Road, Madison, Wisconsin 53714-1293; and that at all times relevant herein, the following named individuals were representatives of and agents acting on behalf of said Union:

Robert Rutland - Secretary/Treasurer
David Shipley - Business Representative
Christine Rupnow - Steward

4. That the City and the Union have been, and are, parties to collective bargaining agreements covering wages, hours, and conditions of employment for employes in the bargaining unit set forth in Finding of Fact 3 and that the most recent agreement covering the period from July 15, 1986 through July 14, 1988 contained among its provisions a grievance procedure culminating in final and binding arbitration which defines a grievance as follows:

ARTICLE VIII. GRIEVANCE AND ARBITRATION

A. Having a desire to create and maintain labor relations harmony between them, the parties hereto agree that they will promptly attempt to adjust all complaints, disputes, controversies, or other grievances arising between them involving questions of interpretation or application of the terms and provisions of this Agreement.

and the following clause relating to disciplinary action by the City:

ARTICLE XXIII. DISCIPLINE, SUSPENSION

A. The Employer shall not discharge or suspend any employee without just cause.

B. Discharge shall be only after written warning notices to the employee with a copy to the Union except for the following serious offenses:

. . .

6. Other misconduct of a seriuos nature acted on by the Employer and agreed upon by the Union after its investigation.

7. Permitting unauthorized person to perform operating duties.

8. No show for work for two (2) consecutive days or more without notice to the Employer except where the notice cannot reasonably be given.

9. Fighting (physical contact) on Employer premises or while on duty.

. . .

C. Suspension shall only be after written warning notice to the employee with a copy to the Union, except for the following serious offenses:

. . .

2. Misconduct resulting in a chargeable accident.

. . .

5. Conduct resulting in being charged with a morals offense may be cause of suspending an employee as a bus operator but not necessarily from all employment.

6. If an operator is asked to work on a discipline day off such discipline shall be stricken from the employee's record.

. . .

8. Willful refusal or failure to carry out a direct order or instruction.

D. Warning notices shall not remain in effect for more than nine (9) months.

E. An employee shall have the right to review his/her record at reasonable hours on his/her own time.

F. It is agreed that no disciplinary action would be taken by the Employer if an employee is taking such a controlled substance while on duty because of a prescription given to him/her and taken as directed by a licensed physician, provided the employee has notified the Employer in writing, including the warning label, if any.

G. Disciplinary action shall be taken within five (5) days, excluding Saturdays, Sundays and holidays, unless an investigation is required.

5. That in July of 1986, 1/ Beelendorf, in contemplation of requesting a leave of absence from the City, spoke with Union Steward Christine Rupnow; that he asked her whether stress would be a sufficient basis for securing such a leave; that Rupnow told Beelendorf he would have to request a medical leave of absence; that Beelendorf told Rupnow he did not think his doctor would certify a medical leave; that Beelendorf, with Rupnow accompanying him, did request a leave of absence from General Manager Ronald Barnes; that Beelendorf informed Barnes he was requesting the leave of absence due to depression, general job dissatisfaction, and because he wanted to pursue other opportunities; that Beelendorf, during this conversation, mentioned that he was currently under a doctor's care; that Barnes said he would investigate the feasibility of Beelendorf's request for a leave and discuss it with Operations Manager Bill Ray; that Barnes informed Beelendorf by memo on August 13 that his request was being denied; and that said memo stated:

> Following a thorough investigation and discussion with the Manager of Operations, I'm denying your request for a leave of absence for the period of August-December, 1986.
>
> At the current time, we will be understaffed in order to meet our school requirement and will be required to pay overtime until we could hire additional drivers. We are also transferring four drivers to the maintenance department, which will also cause a shortage of employees.
>
> I hope that you will be able to continue your education and seek the necessary medical assistance in dealing with your depression.
>
> If I can be of any further assistance, please contact me.

1/ All dates refer to 1986 unless expressly stated to the contrary.

6. That on August 26 and 27, Beelendorf used two days of sick leave because he broke his toe while off duty on August 24; that Beelendorf visited an orthopedic surgeon, Dr. Jack D. Heiden, on August 25, and obtained a return to work slip for August 27; that Beelendorf, prior to returning to work, consulted with Rupnow, as to whether he would be permitted to drive with a broken toe and whether he could claim worker's compensation for his injury; that Rupnow informed him that she did not believe the City would let him drive if he appeared with crutches and informed Beelendorf that she did not think he was eligible to receive worker's compensation because his injury was not job-related.

7. That Beelendorf reported for work without a shoe on Thursday, August 28 at 3:55 p.m. on crutches which he was utilizing to relieve the pressure from the broken toe; that Beelendorf left his medical release from Heiden at home; that Beelendorf in talking to a supervisor, Ann Chaney, informed her that he was reporting for work; that Chaney thought Beelendorf was joking and informed him that he was not scheduled for work that day because he had not informed Ron Brown the previous day that he intended to report for work; that another supervisor, Dick Buss, informed Beelendorf that he needed a release from a physician before he would be permitted to return to work because of the nature of his injury; that an argument ensued between Beelendorf and Buss as to whether Beelendorf was capable of driving; that the exchange between Beelendorf and Buss was heated; and that Buss took the position that Beelendorf was not coming back to work without a release and began to walk away.

8. That at no time during this conversation did Beelendorf inform Buss that he had in his possession a medical release, but rather Beelendorf continued to argue with Buss over the fact that he had not been notified of this policy when he called in sick; that Beelendorf continued to insist that he was capable of driving and did not want to lose a night's work; and that Operations Manager Bill Ray intervened at some point ushering Beelendorf into his office, suggesting that Heiden be called.

9. That Heiden could not be reached; that Ray and Beelendorf embarked on a discussion of Beelendorf's physical condition and the nature of the City's policy prohibiting him from returning to work without a release; that Beelendorf remained very upset about Ray's decision to refuse to let him drive that day and continued to assert his position that it was unfair for the City to impose this unwritten policy of which he was previously unaware upon his situation; that in the context of this discussion on policies, Ray stated to Beelendorf, "Why is it that nothing we do works for you?"; that Beelendorf then became very agitated "asked him where the fuck he got off insulting me when I came into his office to talk about a policy;" that Ray asked Beelendorf to stop using that language; that Beelendorf's response was "fuck you entirely;" that Ray gave Beelendorf a direct order to cease using that language and that Beelendorf launched into an emotional tirade by shouting that "they had been telling me all along that I was off duty, so he could take his fucking direct order and stick it up his fucking ass because I was not on duty and I wasn't going to let him talk to me like that"; that Ray then informed Beelendorf that he was suspended; and that Beelendorf then told Ray "to stick his suspension up his ass" and left the premises.

10. That Beelendorf contacted Rupnow at about 4:40 p.m. by boarding the bus which she was operating; that he walked without crutches and was wearing two shoes; that he informed Rupnow he had been suspended and summarized the events leading up to the suspension; and that Rupnow assisted Beelendorf in the filing of a grievance over the suspension.

11. That on or around September 2, Beelendorf called David Shipley, the Union's Business Representative; that Shipley was upset because Beelendorf had delayed in contacting him; that Shipley listened to Beelendorf's account of the incident with Ray and requested Beelendorf to explain how to Beelendorf's thinking Ray had provoked the outburst; that Beelendorf raised his psychiatric history as a partial explanation as to why he became angry and offered to document the fact that he had been seeing a psychiatrist; and that at the conclusion of a forty-five minute conversation, Shipley said he would investigate and get back to Beelendorf.

12. That Shipley convinced Beelendorf that his job was in serious jeopardy as a result of the incident with Ray; that Beelendorf decided to investigate the possibility of attending a paralegal school in Denver immediately; that having made preliminary arrangements to attend, Beelendorf saw his psychiatrist, Dr.

Ralph D. Froelich, on September 4; that during his appointment, Beelendorf inquired as to whether Froelich could certify that he was not fit to work and Froelich informed Beelendorf that he would certify disability; and that Froelich did, pursuant to Beelendorf's request, agree that he would place Beelendorf on a short medical leave.

13. That having spoken with Shipley and Froelich, Beelendorf also met with Rupnow on September 5 in preparation for the first-step grievance meeting with the City and a predetermination hearing; that he discussed with her possible defenses to the discipline being imposed; that Beelendorf wanted Rupnow to argue against the suspension based upon a theory of his being off-duty at the time of the altercation and explained a possible stress defense based upon his psychiatric history; that Beelendorf gave Rupnow his medical return-to-work release slip from Heiden, but instructed her not to provide it unless the City directly requested it; that Beelendorf informed Rupnow that he would be satisfied if the matter dragged on a while because he had decided to attend a paralegal school in Denver and had arranged a four-week leave of absence with his psychiatrist in the event that he got called back to work before the course was over; that Beelendorf did not express an interest in attending either the first-step grievance meeting or the predetermination hearing on his suspension indicating that his presence might be potentially detrimental to his case because he thought he might become upset at the meeting.

14. That Rupnow and Ray had a brief first-step grievance meeting on September 5; that Rupnow brought up the fact that Beelendorf was off duty at the time of the incident; that Ray disagreed with Rupnow's views with respect to that defense; that Rupnow also stressed Beelendorf's emotional problems; and that Ray indicated he was aware of Beelendorf's problems and had been attempting to avoid a confrontation with Beelendorf.

15. That Rupnow and Shipley attended a predetermination hearing on September 8; that Beelendorf was in Denver at that time having declined to attend; that at the meeting the Union shared with the City a three-page typewritten document prepared by Beelendorf which expressed his version of the facts; that the Union and City representatives fully discussed this version of the facts as well as general policy regarding obscenities and the severity of Beelendorf's psychiatric problems; that at this meeting Shipley requested the City to remove the suspension and convert it to a medical leave until his treating physician certified that he could return to work; and that the City requested medical verification of Beelendorf's emotional condition and informed the Union that they might request Beelendorf to see their own physician.

16. That Beelendorf called Rupnow from Colorado; that Rupnow informed Beelendorf that Shipley was attempting to make a psychiatric/medical defense on his behalf and requested medical verification of Beelendorf's treatment by a psychiatrist; that Beelendorf instructed his wife to secure a letter from Froelich in order to prove to the City that he was under the continuous care of a psychiatrist.

17. That on September 12, Shipley sent the following letter to Beelendorf, who received it on September 16 or 17 with a carbon copy to Rupnow:

> Dear Sir or Brother:
>
> The City of Madison suspended your employment indefinitely by letter dated August 29, 1986 for an alleged act of insubordination and failure to follow a direct order on August 28, 1986.
>
> Teamsters Union Local 695 first became aware of the indefinite suspension when we received a copy of the August 29th letter on September 2, 1986 and again at 4:00 p.m. on September 2, 1986 when you called the Union and discussed the incident in explicit detail for nearly one (1) hour.
>
> September 5, 1986, Teamsters Union Local No. 695 received a letter from the City dated September 4, 1986 inviting the Union to attend a predetermination hearing on the incident scheduled to occur at 3:30 p.m. on September 8, 1986 in the City's M & A facility at 1101 East Washington Avenue.

I attended the predetermination hearing with Union steward Christine Rupnow and since you were noticeably absent, I inquired about the reason for your absence. Ms. Rupnow explained in Union caucus that you were attending para-legal training in Denver, Colorado and provided me with a three (3) page typewritten document detailing the incident in explicit terms. The City was also given copies of your statement of facts which were carefully reviewed for accuracy and compared to statements prepared by management and a witness. All versions of the incident, Union, City and witness, were determined to be relatively accurate with few exceptions.

The Union defended your position with great veracity for one and one-half (1-1/2) hours with little success. The City maintained they have exclusive control of employees conduct at the work place both on and off duty, in particular when supervisors are approached agressively, both verbally and/or physically. The Union defense of your position was ultimately and necessarily reduced to a plea for consideration of your state of mind, reminding the City Mr. Ray was quite aware that you have been under great stress for one and one-half (1-1/2) years and that during that same period of time, and continuous, you were seeting a psychoanalyst or phychiatrist on a regular basis.

The Union agreed to verify your illness by requesting that you provide the City with a complete and definitive statement of your medical treatment on a regular basis over the past one and one half (1-1/2) years, including a prognosis and any anticipated date on which you may be able to return to work. The City agreed to review any and all statements from your attending physician before reaching a decision on whether or not to rescind the indefinite suspension in consideration of a medical leave of absence.

Please contact your physician immediately upon receipt of this letter and advise him to provide the City with certification of your illness and your inability to work because of the illness, including any prognosis or anticipated date of recovery sufficient to allow you to perform the duties for which you were hired.

After considerable investigation of the August 28, 1986 incident, your subsequent grievance protesting suspension (including discussions you have had with the steward representatives and myself) and alleged arrangements you made with your physician to provide you with a medical leave prior to leaving for school in Denver, if in fact the suspension should be lifted in your absence, and without the same proclivity for deceit that others may have, it is my suggestion that you do not delay certification of your illness and your inability to work because of the illness. The Union has advised the City we will not seek compensation for work opportunity lost as a result of the suspension if consideration is extended by the City to rescind the suspension and covert your absence to a medical leave after review of medical certification received from your physician.

A copy of this letter has been sent via certified mail to your Madison address, 2730 Lynn Terrace, No. 4, Madison, Wisconsin 53705.

If you have any questions, please call me immediately.

18. That as a result of Rupnow's request, Beelendorf's wife secured and conveyed the following letter from Froelich to Rupnow:

September 15, 1986

To Whom It May Concern:
Regarding Bruce Beelendorf

Bruce Beelendorf has been under my psychiatric care since October 11, 1985.

At this time the approximate date of his return to work has not been determined.

Mr. Beelendorf's prognosis remains uncertain.

19. That Beelendorf responded to Shipley's letter with the following letter dated September 23:

I read with great interest your letter of Sept. 12, 1986. I wish to comment on a number of the facts contained in that letter.

From the account I received from Christine Rupnow of the meeting concerning my suspension, I learned that you did indeed defend my case with a great deal of tenacity. I sincerely thank you for the effort. However, I would like to clear up a number of issues which your letter raises.

First, I would like to address your comment upon the fact that I was noticeably absent from the meeting, as the implication is that there was a lack of interest on my part.

After the conversation on the phone with you, during which you informed me of the possibility of termination, I decided that my first concern had to be for a safety net in the event of such a situation. I inquired into the paralegal course (which I had already dismissed for the present) to see if it would still be possible to sign up and attend. Fortunately, the sign-up policy was a very liberal one and if I could get to Denver by Sept. 8, I could attend the job training provided by the class.

I discussed the situation with Steward Rupnow and we decided that my presence at the meeting was not critical to the outcome. I told her that I would be available at my Denver address by phone if necessary. We then went over the arguments that we felt to be critical to the case and I proceeded to make plans for the trip.

If it seems that my actions were not well advised, let me remind you that after eight years of driving bus at Madison Metro I have virtually no other marketable skills other than driving a bus. Therefore, it was acting against my own best interest to assume either that that (sic) a swift solution to my case was imminent, or that it would soon be resolved in my favor. And, since the meeting and the course started on the same day, the choice for me was quite clear.

Unfortunately, my presence in Madison was more important than I thought, both because of the direction that the hearing took and because of some misconceptions that may be lingering in your mind.

In particular I would like to address the fourth paragraph of page two (2) of the letter you sent to me. In fact, it was never the case that I had made "arrangements" with my physician prior to a leave to Denver. In both of my meetings with management, particularly the first one with Ron Barnes and Christine Rupnow in attendance, I emphasized that I was not requesting a medical leave, but rather a leave of absence. I mentioned the fact that I was under treatment for

emotional problems, and used that to plead my case, but at no time did I say I had any formal arrangements with my doctor. The closest I came to that was when I said that I had mentioned a leave to my doctor and that he indicated that it could be very good for me. At the time of the meeting with Bill Ray, which I believe to have been in July, I was considering a number of alternatives, one of which (and this was mentioned to Mr. Ray) was to attend the University of Wisconsin full time while I was on the leave of absence from the job. I will also add that I told him that while the primary reason of the leave was to remove myself from the cumulative pressures of the job, I was planning on taking some kind of classes so that I would have something positive to do during the leave.

At this point the only arrangement that I have made with my physician is an open-ended one in which he has agreed to consider to delay my return to work if and when my dispute with the company is resolved.

At the time preceding my request for a leave I was attempting to stop an emotional crisis that I felt could easily be precipitated by the normal (or not so normal) stresses from the job, especially as were approaching the Fall with its attendant football games, drunks, and unruly teenagers. I don't think it out of place to mention that I was battered by teenagers last October, and that the possibility of more such incidents were weighing heavily on my mind.

As it turned out, the very denial of the leave and the indifferent attitude that characterized that denial had an effect that, although terrible, remains a matter which I choose to keep a confidential matter between my physician and me.

In fact, I must refuse all specific requests for confidential information on the grounds that (a) it is privileged information and (b) that whatever the consequences I don't wish to scatter the most intimate details of my life all over God's creation.

More important is the fact that my mental health plays only a small role in this affair. I have maintained that Bill Ray's knowledge of my problems, which date back to my August meeting with him, should have prevented him from making the provocative comment he made to me. He knew full well when he made that remark that its only purpose was to make a gratuitously negative comment against me. What made his derisive comment even worse is that it was a sarcastic parody of my problems that I had divulged to Mr. Ray with such candor and sincerity when I told him of the difficulties I was encountering everyday at the job.

These clarifications should speak for themselves. I do not believe that a defense of my actions can be viable unless it speaks to the initial provocation made by Mr. Ray. I will not accept the premise that because a man's dignity is wounded, the only acceptable reaction is bland acquiescence. Nor will I accept the premise that the only kind of person who becomes demonstrably outraged is one with serious mental disorders.

The most outrageous element of it all is, of course, the idea that the terms of the contract, i.e. terms of insubordination, can be applied to an off-duty employee, on or off the company grounds. I think that anyone with an imagination can see where this will lead. If Mr. Ray did indeed think that my conduct was not becoming to his office, then he had a

number of ways at his disposal to deal with it which citizens normally rely on. Let me remind you that I was not fired for becoming angry in Mr. Ray's office, but for insubordination while off-duty.

As I understand it, the Teamsters lawyer believes the company had the option to exercise the terms of the contract in this manner. The legal experts I have spoken to say otherwise. The unfortunate conclusion is that, legally speaking, I will eventually throw my lot in with those who will prosecute the notion that the contract is a document which has certain limits. I wish to inform you that I do not sanction any attempt to regain my job at the expense of my back-wages, nor will I endorse any attempt to regain my job by opening up my medical files.

I hope that you can respect my position, just as I can respect the complexities and difficulties of a grievance such as this for you. You may respond as you wish.

P.S. Congratulations on completion of the new contract.

20. That Beelendorf's grievance was discussed at a September 18 Union/Management meeting wherein the Union stated that it was willing to waive any back pay for time loss in exchange for a City decision to convert the suspension into a medical leave; that the September 15 letter from Froelich was submitted to the City by the Union; but that the City maintained that this letter was insufficient to support such a conversion and that additional information from Froehlich was needed; and that the Union suggested that the City contact Froelich directly.

21. That as a follow-up to the grievance meeting on September 22, Barnes asked Ray to instruct Beelendorf to have his doctor clarify the September 15 letter, specifically to state the nature of the illness and why Beelendorf was unable to perform his regular duties.

22. That on September 26, Shipley sent the following letter to Beelendorf:

Your grievance dated August 28, 1986 and filed with the Employer on September 2, 1986 has been quite thoroughly investigated and processed pursuant to the terms of the Labor Agreement between the City of Madison and Teamsters Union Local No. 695.

September 18, 1986 the Joint Labor/Management Grievance Committee discussed the grievance and the somewhat laconic report dated September 15, 1986 submitted to the City by Dr. Ralph D. Froelich. It was determined by the City that Dr. Froelich did not clearly certify your inability to perform the work for which you were hired and that they would seek further clarification from Dr. Froelich before any consideration would be given to converting your indefinite suspension to a medical leave of absence.

Union Steward Rupnow has advised the Union that in her telephone conversation with you subsequent to the September 18, 1986 Joint Labor/Management meeting you clearly expressed opposition to a request for further medical information from Dr. Froelich which would clearly certify your inability to work and further, that you objected to the Union's attempt to convert the disciplinary suspension to a medical leave of absence based on your assumption that this line of defense would have a dramatic effect on what you believe to be a prima facie case for summary judgement.

Based on the hearsay evidence contained in the dialogue of your telephone conversation with Ms. Rupnow subsequent to the September 18, 1986 Joint Labor/Management meeting, it is absolutely essential that you provide this Union with direct and concise answers to the following questions:

1. Is it your desire that Teamsters Union Local No. 695 continue to defend your actions occurring on August 18, 1986?

2. Do you object to the Union's line of defense (i.e., an attempt to convert the indefinite disciplinary suspension to a medical leave of absence)?

3. If the answers to questions one (1) and two (2) are both yes, what line of defense would you suggest the Union use to justify your actions of August 28, 1986?

4. When do you anticipate completion of your para-legal training in Denver, Colorado enabling you to return to Madison, Wisconsin to assist the Union with personal testimony regarding any new line of defense you may suggest.

5. In the event you have instructed Dr. Froelich that no further medical information or clarification is to be submitted to the City, and based on Dr. Froelich's statement dated September 15, 1986 which states in part that, "at this time the approximate date of his return to work has not be determined", what date do you anticipate that you will be available and medically certified able to perform the work for which you were hired?

If you have any questions, please call me immediately. The Union will ultimately determine the merits of your grievance and the extent to which the grievance will be processed.

23. That on September 30, Shipley responded to Beelendorf's September 23 letter as follows:

> Thank you for your letter dated September 23, 1986 received by the Union September 29, 1986 responding to the Union's letter to you dated September 12, 1986. There is however, a subsequent letter to you from the Union dated September 26, 1986 asking "Is it your desire that Teamsters Union Local No. 695 continue to defend your actions occurring on (sic) August 18, 1986?", corrected by letter to you dated September 29, 1986, and other questions that need to be answered before the Union can reasonably pursue a new line of defense established in your September 23, 1986 letter, i.e., Mr. Ray's conduct on August 28, 1986 characterized by you as "provocative", "gratuitously negative", "derisive" and a "sarcastic parody" of your problems at the work place divulged with "candor and sincerity".
>
> The Union has carefully reviewed your three (3) page statement and all other documents relevant to this case. Additionally, in your recount of the incident by telephone with me on September 2, 1986 you clearly identified the fact that with decided calculation you were attempting to anger Mr. Ray sufficiently to cause him to make uncontrolled comments and committments. Quite ironically, you used the same tact in our telephone conversation by soliciting a definitive and spontaneous answer from me on the Employer's right to issue a direct order to off-duty employees.
>
> Simply put Bruce, I feel your new line of defense is difficult if not impossible to prove given the vast amount of information available in this instant case and further, I feel you have seriously jeopardized the Union's efforts to restore your employment status by removing the medical leave of absence theme, which of course could be accomplished without subscribing to the premise that only persons with serious mental disorders become demonstrably outraged.

Let me remind you that this Union has not solicited an unqualified opening of your medical files but simply an unambiguous statement from Dr. Froelich certifying your inability to work because of a proven illness and your anticipated date of recovery sufficient to permit the performance of duties for which you were hired.

You have implied that you have access to legal experts who think differently than the Union's attorneys. I do respect your position and theirs, however, if you want the Union to withdraw please certify that desire in writing; otherwise I will continue my efforts to secure a fair and just disposition based on the available information and legal precedent. Be assured the grievance is not troublesome, complex or difficult.

If you have any questions, please call me immediately.

24. That in response to Shipley's letter of September 26, Beelendorf sent Shipley the following letter dated October 1:

I see at this time that you are in possession of my certified letter dated September 23, 1986. Although I address some of your concerns in that letter relevant to your correspondence of the 26th of September, 1986, I will restate my answers in this letter as a direct answer to your letter of September 26, 1986. The following are my replies to each of your questions, and in turn I will direct a number of questions to you.

Regarding your question number 1: Yes, it is my desire that Teamsters Local No. 695 continue to defend my actions of August 18, 1986. I believe that it is only through the Union's representation that an administrative remedy can be achieved. My case, when appropriately presented, is a strong one and one with which I am confident that we will ultimately prevail.

Regarding your question number 2: Yes, I do object to the Union's sole line of defense. I refer you back to my letter of September 23, 1986 which says that my state of mind at the time of the incident played an (sic) minor role in the affair. This line of defense is too weak to be viable. Other defenses must be fully explored.

I believe that an examination of any given moment of the incident will reveal either a just cause for my actions or a contributory cause on the part of management.

The following facts are fundamental to an affirmative defense of my grievance. First is Mr. Ray's comment to the effect that "you're not hapy with much of anything around here are you?" This remark was not only provocative apropos the problems that I had already informed Mr. Ray of, but it was an accurate expression of his attitude towards my past advocacy of employee rights and better working conditions.

Second, Mr. Ray's "direct order" was inappropriate being issued by management to an off-duty employee. It was inappropriately issued in a situation where the employee conduct was not serious enough to warrant a direct order and where management had at its disposal other less severe measures. As you have already pointed out in the pre-determination hearing, issuing a direct order to an off-duty employee is an act that would offend any red-blooded American, and this was certainly the act that provoked my single most profane outburst and the one which resulted in my suspension because of insubordination.

Regarding your question number 4: I intend to return to Madison on or just after the weekend of October 18, 1986. At that time I will be willing to assist the Union in the defense of my case if it is warranted by the situation.

Regarding your question number 5: Unfortunately question number 5 first requires not an answer but an explanation. After I was suspended I met with Dr. Froelich to discuss the suspension and other matters. I expressed to him the effects that the incident and the uncertainty resulting from that incident were having on my emotional state. He knew that my suspension was an indefinite one and that I had been thrown out into the streets by Madison Metro with no other means to support myself. It was clear that if I did nothing about my state, the resulting emotional stress could well cause a backslide in my condition worse than that which I had already experienced in the recent weeks. Realizing that if I did attempt to do something positive and constructive with my time, such as seeking job training, I would be under the additional strain of worrying about Metro calling me back before I could finish such training. Dr. Froelich and I came to an understanding by which he would consider a short medical leave if the call-back to Metro came before the completion of any training. Thus both the effect of any unexpected call-back and the emotional burden of worrying about an abrupt call-back would be cushioned by the efforts of my physician.

This guarantee gave me piece of mind that I otherwise would not have had over the past six weeks and which you will recognize is justifiable under the circumstances.

Unfortunately, Dr. Froelich misunderstood the message that was conveyed to him. I only intended to request verification that I was under his care to remove that doubt from the minds of management. Apparently he thought that my call-back had commenced and that I was in need of a short medical leave. I will rectify the misunderstanding if it is necessary when I return.

I repeat here what I have said previously: my state of mind before, during, or after the incident should not be used as a defense for my actions. At no time was I incapable of doing my job and I know that Dr. Froelich would concur. My initial request to the company for leave of absence was preventative medicine and as I have said before it was done with only the most casual discussion with my doctor.

If you sense that my case is worth pursuing on the terms that I have mentioned here and elsewhere, please inform me. However, I do not wish to be blind to the best arguments my adversaries can offer. Therefore, will you please send me a synopsis of the specific strengths which the Teamster's attorney believes the company's case rests on?

I sincerely believe that the resources alloted to this grievance will benefit not just me but the entire bargaining unit. I respectfully request that you reconsider your present tactics so that the management is again put on the defensive concerning the rights and dignity of its employees.

Please note there is an error on page three of my letter to you dated September 23, 1986, eleven lines from the top, please substitute "suspended" for "fired".

25. That on October 8, Beelendorf responded to Shipley's letter of September 30 as follows:

As I have done in the two previous letters, I will begin this letter by addressing the content of your most recent correspondence to me.

In the Union letter of September 30, 1986 you state that I clearly identified the fact that I had, with "decided calculation" attempted to provoke Mr. Ray into making "uncontrolled comments and commitments". (sic) I categorically deny that I said this to you in our conversation of September 23rd and I had no intention that anything I said would lead you to this conclusion. The only element of that conversation which might approach your interpretation of the event was my explanation of why I persisted in questioning Mr. Ray in his office. I explained that I continued to question Mr. Ray's answers about his medical release "policy" because I wished to file a grievance on that policy and I sought to obtain from Mr. Ray an unambiguous statement on both the nature of the policy and the criteria by which it was applied.

I felt at that time that before I could proceed with a grievance I should know what rule was being applied so that I could approach my steward with substantial information. Further, I wished to obtain as many statements as I could about that policy from Mr. Ray in the hope that he would contradict himself--which indeed he did. I was concerned about the effect that this or any other unstated and ambiguous policy would have in the future on not only myself, but all other members of our bargaining unit.

I was deeply concerned that Mr. Ray would distort the issues involved with the medical release policy unless I could get him to make several lengthy statements regarding that policy. It was an attempt to to (sic) prevent an adversary in the grievance process from exploiting the vagueness of the rules.

However, I had no intent to provoke Mr. Ray to anger. Rather, I was motivated by a sense of outrage by the way that I was being forced to pay for the management's inept and inconsistent application of rules.

It is unfortunate that you accuse me of using psychological tactics to influence other people's behavior. I thank you for your confidence in my ability to manipulate not just one, but two people wish such unerring accuracy. Your confidence in me is misplaced however. With Mr. Ray I proceeded with my questioning in a firm but polite manner until he insulted me. If Mr. Ray was incited to uncontrolled comments and commitments it was because, as his past has shown, he has consistently resented anyone questioning his absolute authority over the working conditions at Madison Metro. But, as I have pointed out previously, managers acting on their policies should be expected to be accountable for those policies. They should not treat reasonable requests for clarification as hostile acts.

As for the antagonism that characterized our telephone conversation, I will not attempt to explain the origins of the reasons for the hostilities which marred our discussion. If it had not been mentioned in your letter, or the blame had not been placed on some nebulous idea of me as a manipulator, I would have considered it as an unpleasant, but minor aspect in our professional relationship.

My experience with any kind of dialogue concerning important issues is that hostility and antagonism can easily precipitate out of the highly charged atmosphere of such discussions. This is a much more reasonable description of my talks with both you and Mr. Ray.

However, not only have you chosen to use a negative and unprovable characterization of my intent, but you as my sole advocate in this dispute against Madison Metro have charged me

with something that even management hasn't accused me of. I can't understand your motives unless they are out of a genuine misapprehension of my character and motives.

These accusations, more than any unwillingness to release private and largely irrelevant medical information, are the elements that truly jeopardize my position in this dispute. Further, you speak of the "vast information on the subject" as if all aspects of the dispute have been explored, discussed, argued, and finally, decided.

As far as I can see the investigation has gone little further than the following: 1. my initial phone call to you Tuesday after the incident; 2. the predetermination hearing; 3. the rough chronology which I gave to Steward Rupnow as a working document, not a finished one; and 4. our exchange of certified mail.

I have been suspended over one issue, and that is the alleged act of insubordination as charged in the company notice. Apparently this is the issue on which you were saying I have no defense because of the "vast amount of information". (sic)

From our first telephone call to the Union's last letter, you have consistently maintained that my only meritorious defense is that concerning my mental health, despite my requests to follow other means. If the Teamsters are to adequately represent me in this dispute, it is essential that I receive an analysis from the Union as to why my case cannot be pursued by any other line of defense. This information must include citations from primary sources on which the lawyers or other agents in this dispute are relying.

This information need be only as much as is necessary, but it certainly must be comprehensive. If you are unable or unwilling to provide me with this information, then we will discuss whether Teamsters Local 695 should continue to represent me in my dispute with Madison Metro.

Because you and I cannot seem to agree upon what passes between us during our telephone calls, and even worse, you believe me to want to provoke you for some unknown reason, I think it is best if our communication continues to be carried out through the U.S. mail until we have defined the issues.

If we then agree upon a common method to prosecute this grievance to its successful conclusion, I hope we can work together in an environment free of the conflict of personalities which has obstructed our working relationship in the past.

Thank you for your time; respond as soon as practical.

Sincerely,

Bruce A. Beelendorf

P.S. Please forgive my short delay in responding. It was difficult to find a typewriter to use. My handwriting is virtually unreadable.

26. That, in the meantime, on October 10, Ray on behalf of the City, wrote the following letter to Froelich:

I am in receipt of your medical report dated September 15, 1986, regarding Mr. Bruce Beelendorf.

It raises some questions and I would appreciate your response to the following as soon as possible:

* What is the nature of Mr. Beelendorf's condition?

* Since he has been under your care since October 11, 1985, why do you feel he needs a medical leave of absence?

* What is the prognosis for his return to work?

* What type of rehabilitation will he need. (sic)

If you have any questions, please call me at (608) 267-8765.

27. That Beelendorf had a number of phone conversations with Rupnow in early October wherein he informed her that he disagreed with Shipley's handling of the grievance; and that Shipley met again with City officials including Barnes, Ray and Timothy Jeffery, the City's Director of Labor Relations, on October 16, 1986 and continued to urge that the City not await a response from Beelendorf's doctor but rather convert the disciplinary action to a one-week suspension and extended sick leave; and that the City indicated that it would consider this proposal.

28. That Beelendorf returned to Madison from Colorado and a side-trip to Washington D.C. on October 19; that he met with Rupnow on October 22; that he complained about the Union's failure to respond to his last two letters; that on October 29, Beelendorf decided to contact the City directly; and that he wrote the following letter dated October 29 to Barnes:

> As of today, my indefinite suspension for an alleged act of insubordination totals up to sixty-three calendar days. As I have been ready, willing, and able to return to work in my position as bus driver, I wish to know the reasons why, if any, that this suspension has not been lifted.
>
> Since the suspension was imposed in August, the company has neither informed me of the length of the suspension, nor have they indicated in any way that my suspended status would change in the near future. I'm sure that you know that the duration of this discipline is already disproportionate to the alleged act of insubordination, especially given the circumstances already acknowledged by both sides.
>
> Let me remind you, however, that I will continue to refuse to authorize the release of any private information from my psychiatrist. The only information that I have allowed to be released has been a statement from Dr. Froelich documenting the fact that I have been seeing a paychiatrist (sic) on a regular basis. This was my answer to the doubts that were expressed by certain parties to the pre-determination hearing of September 8, 1986 and was voluntarily supplied by me. I will continue to deny all other requests for psychiatric information of a confidential nature because 1) it is priviledged information and, 2) it is irrelevant to the dispute.
>
> If there are any decisions forthcoming on this case, please let me know as soon as practical. However, if it is the management's intention to keep my suspension an indefinite one, I am with this letter requesting a written document justifying the inaction. After weeks of remaining mute on the subject of my suspension, your communication will be most welcome.
>
> P.S. A copy of this letter will be forwarded to the offices of the Teamster's Local 695.
>
> cc: David Shipley

29. That on the same date, he also wrote to Robert Rutland, Secretary-Treasurer of the Union, as follows, but that said letter was not received until October 31, 1986 by the Union:

With this letter I wish to inform you that I consider the representation given by Business Agent David Shipley in dealing with my greivance (sic) with Madison Metro Bus Co. to be inadequate and I will outline in this letter the basis for this charge, as well as imply, to the unbiased eye the standards that I would have expected for a fair and effective prosecution of my case. I will then suggest a possibe remedy-though surely not the only one-which would have the effect of reviving a viable defense of my position by the Union.

The day after the incident resulting in my suspension I filed a grievance with Steward Chris Rupnow. The next three days after that was the Labor Day Weekend, during which I assumed normal Union business-and certainly normal Metro business-would be suspended.

On Tuesday, September 2, 1986, I contacted Mr. Shipley by telephone to inform him of the situation as suggested by a steward. Mr. Shipley spent an inordinate amount of time criticizing me for calling him so many days after the August 28 incident. After trying in vain to defend the delay on the grounds that I assumed it was appropriate to wait until business days to call him, I finally suggested that the bickering over the wait was irrelevant and that we should put it behind us so that we could discuss the situation at hand.

After a brief description of the incident involving Mr. William Ray and me (which can be found elsewhere), I asked him where he thought we could begin the defense. The subsequent conversation resulted in much heat, but no light. My attempts to justify my actions to Mr. Shipley were repeatedly met with criticism that I quite frankly told him sounded more like those of management, not of my union representative. At the conclusion of the telephone conversation I was left with the impression that there was, for all practical purposes, no sound defense for the allegations against me. He did not suggest a single possible approach to a meritorious defense of my position. His position since then has not altered in an substantial way, with the exception of the psychiatric defense-and I have pointed out the fatal flaw in that defense in my correspondence with him.

Soon after that I left town and all of our communications were carried out through registered mail, except for several telephone calls I made to Steward Rupnow. You are free, I am sure, to inspect both sides of the corespondence for yourself. I ask you to pay close attention to the contents of them.

My September 23rd letter identifies both the inadequacy of the line of defense the Union had taken at the hearing and at least two altenative (sic) positions which I tentatively suggested. I also warned that this line of defense would not be sanctioned by me, and that a stubborn refusal to research other lines of defense would ultimately lead me, out of the necessity to find adequate representation, to seek other sources of representation.

The September 26th letter from Mr. Shipley did not bear any mention of any line of defense other than the original one concerning the psychiatric report. Although I was frustrated, I fully answered all of the five questions put to me in that letter. While formulating that reply, another letter marked September 30, 1986 arrived.

Again, in this letter there was no indication that there was any forthcoming effort to explore other defenses. In fact, in that letter Mr. Shipley accused me of angering both him and Mr. Ray into making uncontrolled statements through premeditated tactics. Let me restate what I have said above:

He has had plenty of opportunities to reverse himself on anything he had done or said during that telephone conversation. However, with all of the benefits of the passage of time, he has done and said nothing that would indicate that there were, in fact, any statements that he made that originated out of anything other than his own habits and attitudes.

He has, thus, in a few short words, distorted the nature of the telephone call and accused me of something that even the company has not accused me of. That is, he suggested that I premeditated the altercation between Mr. Ray and me.

Consider the implications of that. He raised this not because he wished to prepare a more effective defense. He raises it in an attempt to discredit me and my attempts to obtain a credible defense-and still no meaningful details on why I cannot use a different defense.

I replied with two consecutive letters which you can read for yourself. In the last of the letters I requested of him that we continue to communicate by mail to avoid misunderstanding each other. This, I felt, would be the best way to facilitate cooperation without either our personalities or our differing philosophies jepardizing the case. I made it quite clear that I wanted a fair change to evaluate the Union position against an alternative defense. To that end, I requested that he if simply send an outline discussing why such a tactic would have no merit. (sic)

Although I requested that his reply be quick, it has been well over two weeks since he recieved (sic) the letter. It has been a week since I again requested a response, that time through Steward Rupnow (on the night of October 9, 1986) (sic)

Steward Rupnow suggested that the wait was because he did not know where to send the letter. To that I say that even if he did not believe me when I told him the date of my arrival in Madison, he could have used the same practice he had all along of sending a letter to both addresses. And, he surely could not be expecting me to contact him by phone after I requested that we communicate by mail. Even if he did not agree to these conditions, a short note in the mail to that effect would not have compromised him.

Finally, I find it unfortunate that I have to seek my own legal help and to speak to officers of another union to get some much needed advise. No one in my union, particularly Mr. Shipley, thought to inform me that I could at least attempt to apply for unemployment compenstion. It was the first thing the representative from the other union asked me after a discussion of my case. That in itself illustrates the low level of concern about my welfare and the unwillingness on Mr. Shipley's part to fully participate in redressing the wrongs done to me.

I believe the extent of my dissatisfaction is obvious from this letter without a numerical listing of my complaints. While Mr. Shipley stalls in his response to my requests, I am sitting here out of work. I had repeatedly suggested that we could continue to work together, although I finally had to temporarily confine our communications to the mail. At least it would have been a method that would have both minimzed (sic) mutual antagonism and put the responsibility on me to disprove the Union's basis for rejecting other defenses.

In this context, Mr. Shipley's continued silence is interpreted as a unilateral withdrawal of his representation of me-or at the very least, as his deliberate obstruction of the due process.

Although I confess that working with Mr. Shipley in the future would be very difficult, I am still willing to proceed with the Union's representation if it will display more than a token effort to pursue this case.

The unspoken fact of life here, which I will state here, is that the reason Mr. Shipley has failed as my representative is that he has a personal dislike of me. Ideally this should make no difference, but in practice it has created many serious obstacles to a fair hearing of my greivance (sic), obstacles that would otherwise not be there.

This letter makes no attempt to repeat the arguments that are stated in the record elsewhere. I assume that those letters will be read. I request a response as soon as is practical; if a full response is not possible soon, then I reqeust a specific date as to when such a response will be made. Any undue delays will be regarded as a tacit agreement that the statements made under this letter are substantially true. Thank you for your time.

P.S. I will send a copy of this letter to Mr. Shipley.

30. That on or around October 26, the City made a counter-offer for the settlement of the Beelendorf grievance; that it proposed a 10-day suspension instead of the week that the Union was advocating and a subsequent medical leave; that Shipley accepted this counter-offer on behalf of the Union; that Rutland by letter dated October 31 informed Beelendorf that his grievance was being processed in accordance with Article VIII of the Labor Agreement as expeditiously as possible; and that on the same date Shipley executed the grievance settlement disposition with the terms as outlined above and sent Beelendorf a copy of the settlement on November 3 along with the following letter:

Thank you for sending me copies of your letters to Mr. Ronald Barnes, General Manager, Madison Metro and Mr. Robert Rutland, Secretary-Treasurer, Teamsters Union Local No. 695. Obviously your para-legal training in Denver, Colorado and subsequent trip to Washington, D.C. have been completed, you have returned to Madison, and are anxious to return to work.

Your grievance dated August 28, 1986 protesting an indefinite suspension of employment with the City of Madison has been resolved by disposition dated October 31, 1986 (copy enclosed). You will be returned to active employment status upon certification from Doctor Froelich of your ability to perform the dutes for which you were hired and any subsequent examination, which may be required by the Employer pursuant to Article XXVII of the Labor Agreement.

If you have any questions, please call me.

31. That Beelendorf sent the following letters to Barnes and Rutland on November 14:

Dear Mr. Barnes,

I am afraid that your letter of 4 November 1986 will need some further clarification based on an error that I have discovered in the statement (part 2) of the disposition. Following is an explanation.

Regarding the management request in September for information concerning my fitness to work, I informed the Union that I unequivocally refused any kind of private disclosure of that nature. I did tell my steward that I would be willing to document the fact that I had seen a psychiatrist on a regular basis. The only purpose of this would be to remove the doubt

that had been raised by management during the pre-determination hearing. There had never been an effort on my part to establish a psychiatric defense.

I therefore requested from my doctor documentation certifying that I had been under his care for some time. Unfortunately, Dr. Froelich apparently wrote the letter some time after I requested it of him and (as I found out when I later spoke to him) he apparently confused the circumstances and added the second sentence which reads "At this time the approximate date of his return to work has not been determined." Since a third party picked this letter up for me, I was unable to proof it before it was delivered.

I learned of the mistake through Union correspondence. The Union related to me that the city had treated the letter as "inconclusive" and that no further action would be taken until more information was provided. I therefore did not attempt to correct the letter as it did not in any substantial way change my status, and (as the City irself (sic) admitted) it did nothing to substantiate the claim that I had been unfit to perform my duty. Also, it was clear to anyone reading his letter that it made no attempt to satisfy the request for information made by the Company.

I was quite surprised to discover in the disposition of 31 October 1986 that the letter was being used to justify the company's action of changing my status from "suspended" to "medical leave." As I have repeatedly told the Union, and as they should have informed the Company, this action has no basis in fact. At no time was I unfit to drive, and at no time did my doctor even issue an opinion to that effect. Be assured that I can provide substantiation for the truth of that statement when it becomes necessary.

I will not produce any statement under the terms of the disposition as it was presented to me if it is seen as approval of the terms of that disposition. The disposition is predicated on the false assumption that the September 12, 1986 letter from Dr. Froelich was intended as an affirmation that I had been unfit for work, and that the time on suspension subsequent to that letter could then be converted to medical leave. There was no such intention by my doctor to certify my inability to work because my doctor did not have that opinion.

Please note that the City in September did not ask for the same thing it is asking for now. At no time during that suspension did it ask for certification that I was able to work. If the City had asked for that, I would have been able to provide that at any time, if they had had just cause as to why I should have been called upon to certify that I was fit to work.

Instead, the City requested certification of my <u>inability</u> to drive and continued to treat the suspension as a disciplinary action. I emphasize again, that it was a suspension with no possibility of its being lifted based on my fitness to drive.

Now, retroactively, the parties are saying that the letter suddenly "appears" to make me eligible for medical leave for treating that letter as inconclusive for almost two months. I am having difficulty with how that letter can be resurrected, especially after I explained its invalidity to my representatives, and the Company disregarded it as inconclusive (and rightfully so).

I presently have a statement from my doctor not that I am now able to work, but there never was a question of my ability to work in the first place. When it becomes necessary, the Company shall recieve (sic) that statement.

However, we should come to some kind of agreement as to what that would mean. If I had been given the chance of certifying myself as able to work in September, I could have returned to work. I could not return to work, unfortunately, because I was not given that chance.

Any statement with which I provide the City will document that fact that I was able to perform my duties at any time relevant to this dispute. If you wish me to submit such documentation, it will be with the understanding that it invalidates the grounds by which the disposition of 31 October 1986. As you can see, it would be invalidated not only by agreement, but by the contents of the letter for various reasons.

If the City wishes, it can maintain the position that a medical leave can be offered retroactively. However, I will expect the full benefits of my retroactive certification of fitness. That would include full recovery of backpay from the end of the suspension of two weeks.

Under the circumstances, I respectfully request that you change the discription (sic) of my absense (sic) from work from "sick leave" to the former "suspended." "Sickness" is not only a distortion of my state of health, but casts a shadow on my reputation. If you continue do (sic) use this description, I expect that you will be able to base it on a well documented medical fact. You will find that Dr. Froelich's letter will not substantiate the continued description of my state as "sick": as the company itself has admitted, it is so vaguely worded as to be inconclusive.

I will hold Madison Metro reponsible for the further description of my state of mind as sick. Please consider yourself on being on notice tht I will not tolerate the further description of myself as "sick" on the booking sheet which has been posted in general view of the drivers. I also wish that a retraction of the use of the word "sick" be posted.

I will welcome any reasonable offers which will eliminate the necessity to pursue these matters by other means. In any case, I request that you will withdraw any agreement which perpetuates the notion that I was unfit for duty which has no basis in fact. Respond as quickly as practical.

P.S. Thank you for the time you spent with me on 13 October in your office. I hope it clarified the contents of this letter as well as some of the details of the 28 August incident. BB

Robert Rutland, Secretary-Treasurer
Teamsters Local 695
1314 N. Stoughton Rd.
Madison, WI 53714-1293

Dear Sir and Brother:

I have received your letter of 31 October 1986. Your two sentence letter was a response to the three page outline I made of a charge of a failure to represent on the part of Mr. Shipley. It contains neither an acknowledgment of my claims, nor even a denial of that account. The above mentioned letter of 31 October 1986 remains, in effect, unanswered.

Subsequent to your receipt of that letter, an effort by Teamsters 695 was made to settle the dispute with the Madison Metro Bus Co. This effort, and the agreement reached, was

contrary to everything I articulated in that letter. It was made without my knowledge or consent on any aspect of the negotiations.

This disposition was based in part on the assumption that Dr. Froelich's letter of 15 September 1986 was intended to certify my inability to work. The Union has letters from me which specifically deny that claim, and I told Steward Christine Rupnow on several occasions (by phone and in person) that the assumption had no basis in medical fact. In spite of that, the Union negotiated the 31 October 1986 disposition with Madison Metro based on an assumpion that it knew to be totally false: that my doctor had at any time diagnosed me as being unfit to perform the duties for which I was hired.

With this letter I wish to inform you that I accept neither the terms of the Disposition of 31 October 1986, nor the grounds by which it was established. I will also notify the Company of this decision.

As the disposition was entered into in bad faith by at least one party to that agreement, I request that the Union negotiate with the Company to withdraw the agreement. This withdrawal will be based on my claim that there is no factual or medical basis for the assumption that I was at any time certified as unfit to perform my duties as a bus driver.

If the Union wishes to persist in maintaining, contrary to all of my correspondence, that the intention of the 15 September 1986 letter was to be a certification of an illness, be assured that I have a letter from my doctor that puts that to rest. I have already fully explained the letter in my 1 October 1986 correspondence to you under answer number five (5); in paragraph four of that section I explicitly state "At no time was I incapable of doing my job and I know that Dr. Froelich would concur." I also offered to rectify the misunderstanding if it were necessary; no one to this date has requested either orally or in writing that there was any urgent necessity to do so.

In fact, the only communications I have received from the Union were several rather terse letters informing me that it had gotten my certified mail. I also received notification of the disposition with a cover letter. This cover letter does little more than state through insinuation that my availability for work had been an issue. If it is the intention of the Union to make this an issue, it is doing so a couple of months too late. A review of the correspondence will show that this was at no time a subject raised openly to discussion; it will also show that there is no indication that I myself thought that anything should obstruct the process of grieving this dispute on the issues.

If the Union wished to reply to this letter, please be advised that I will treat all further innuendo as further attempts to obstruct a fair hearing of this case. It also may have its own private speculations as to my motives (e.g. Mr. Shipley's contention in the 30 September letter that I was bating Mr. Ray). However, like the other issues that are only now coming out, there is a disingenuous air about them appearing so long after our initial communications. I will welcome any opportunities to process this grievance based upon the issues and carried out in a spirit of cooperation.

Finally, I would like to inform you that I am circulating a petition to the effect that this grievance pursue the real issues involved in the dispute. I am getting a very good response and will pass it along as soon as I get a substantial number of signatures.

32. That Beelendorf received the following letter dated November 19 from Shipley:

> I have read your correspondence to Mr. Ronald Barnes, Transit General Manager, dated October 29, 1986 and November 14, 1986 as well as your correspondence to Mr. Robert Rutland, Secretary-Treasurer, Teamsters Union Local No. 695, of the same dates.
>
> This letter is to advise you that the October 31, 1986 disposition of your August 28, 1986 grievance is irrevocable and binding on the Union, the Employer and you. Your efforts to petition the bargaining unit for support for a "fair hearing" is simply an exercise in futility and will be treated as such by this Union.
>
> Teamsters Union Local No. 695 considers the disposition of your grievance exceedingly generous under the circumstances involved in your August 28, 1986 confrontation with this Employer and further, if in fact you have a letter from Doctor Froelich which certifies your ability to perform the work for which you were hired I would recommend you submit such certification to the Employer immediately.
>
> If you have any questions, please call me.

and the following letter dated November 21 from Barnes:

> I am writing in response to your letter of November 14, 1986.
>
> I investigated your request and the disposition that you received with my letter of November 4, 1986, was jointly agreed upon by your union representatives and management based on information you provided. That disposition is irrevocable and you will continue to be classified as ill until Doctor Froelich releases you to return to work.
>
> If you have any questions concerning the above, please advise.

33. That Beelendorf applied for unemployment compensation benefits in November; that Froelich provided the following letter for the Job Services Division/ Unemployment Compensation Bureau and indicated that "As of 10/26/86 the Claimant was physically able to work full-time without any medical restrictions":

> 11/13/86
>
> To whom it may concern;
>
> Bruce Beelendorf has been a patient under my care since 1985. I last saw him on Sept. 4, 1986. At that time he was having difficulties at work but was not medically disabled. At Mr. Beelendorf's request I wrote a letter on September 15 indicating that he could return to work. This letter did not imply that he had been previously disabled other than from his post traumatic stress disorder in 1985.

34. That Ray, on behalf of the City, having reviewed Beelendorf's unemployment compensation claim file, then sent Beelendorf the following letter on December 3:

> Is is my understanding you are medically able to return to work.
>
> You are required to submit a release for work from Dr. Froelich to my attention by Friday, December 12, 1986. Failure to comply will subject you to be examined by the Company doctor to determine your ability to return to work.
>
> If you have any questions, please call me at 267-8765.

35. That thereafter on December 17, Ray sent Beelendorf the following letter:

> In reference to my letter of December 3, 1986, I have not received a release for work certificate from Dr. Froelich.
>
> You have been scheduled to report to Dr. Paul Miller for an examination to determine your ability to return to work. Your appointment is a 4:30 p.m. on Tuesday, January 6, 1987, 5534 Medical Circle.
>
> Please make a note of this date on your calendar. Madison Metro will be responsible for Dr. Miller's costs. Please fill out the enclosed medical consent form and give it to Dr. Miller when you report.

and subsequently received a medical report from Miller on January 12, 1987 certifying Beelendorf's ability to return to work.

36. That on January 13, Ray instructed Beelendorf to return to work on January 14, 1987.

37. That Beelendorf refused to provide a medical release or certification of his ability to return to work from the date that he was informed of the grievance settlement disposition until he complied with City's orders to see Miller on January 6, 1987; and that he could have returned to work at any time after November 3, by providing information to the City that he was in fact able to work and suffering from no continuing emotional impairment precluding him from returning to active employment.

38. That Beelendorf's refusal to provide said information was predicated upon his resolution to act in contravention of the grievance settlement disposition; and that he did not wish to appear to be complying with any of the terms of said disposition because he was continuing to protest the disposition.

39. That Shipley, acting on behalf of the Union, settled the grievance in accordance with the City's counter offer, nothwithstanding Beelendorf's objections, because he concluded that the City's offer was reasonable under the circumstances; that Shipley believed the medical defense as a mitigating factor was the only viable defense to the discipline imposed; that Shipley felt that the City might not be able to prevail in terminating Beelendorf but might succeed in imposing a three to six-month suspension upon him; that Shipley also considered Beelendorf's unavailability for work during a great portion of the time in controversy; and that Shipley's decision to accept the City's counter offer was made in good faith.

40. That Beelendorf did, effectively, exhaust his internal union remedies after receiving the November 19 letter from Shipley.

41. That the Union did not act arbitrarily, discriminatorily, capriciously or in bad faith in either the processing of or settlement of Beelendorf's grievance relating to his suspension.

CONCLUSIONS OF LAW

1. That Bruce Beelendorf is a municipal employe within the meaning of Section 111.70(1)(b), Stats.

2. That Teamsters Local 695 is a labor organization within the meaning of Section 111.70(1)(j), Stats.

3. That the City of Madison is a municipal employer within the meaning of Section 111.70(1)(a), Stats.

4. That Respondent Teamsters Local 695 did not violate its duty of fair representation with respect to the processing or settlement of Complainant Bruce Beelendorf's grievance over his indefinite suspension inasmuch as its actions were within the broad latitude available to said Union for discharging its statutory duties, and accordingly, did not violate Section 111.70(3)(b)(1), Stats., nor any other provision of MERA.

5. That this Examiner, having found that Respondent Teamsters Local 695 did not violate its duty of fair representation, lacks jurisdiction to consider allegations that Respondent City of Madison violated Section 111.70(3)(a)(5), Stats.

ORDER

That the instant complaint be, and the same hereby is, dismissed in its entirety. 2/

Dated at Madison, Wisconsin this 27th day of January, 1988.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Mary Jo Schiavoni
Mary Jo Schiavoni, Examiner

2/ Any party may file a petition for review with the Commission by following the procedures set forth in Sec. 111.07(5), Stats.

Section 111.07(5), Stats.

(5) The commission may authorize a commissioner or examiner to make findings and orders. Any party in interest who is dissatisfied with the findings or order of a commissioner or examiner may file a written petition with the commission as a body to review the findings or order. If no petition is filed within 20 days from the date that a copy of the findings or order of the commissioner or examiner was mailed to the last known address of the parties in interest, such findings or order shall be considered the findings or order of the commission as a body unless set aside, reversed or modified by such commissioner or examiner within such time. If the findings or order are set aside by the commissioner or examiner the status shall be the same as prior to the findings or order set aside. If the findings or order are reversed or modified by the commissioner or examiner the time for filing petition with the commission shall run from the time that notice of such reversal or modification is mailed to the last known address of the parties in interest. Within 45 days after the filing of such petition with the commission, the commission shall either affirm, reverse, set aside or modify such findings or order, in whole or in part, or direct the taking of additional testimony. Such action shall be based on a review of the evidence submitted. If the commission is satisfied that a party in interest has been prejudiced because of exceptional delay in the receipt of a copy of any findings or order it may extend the time another 20 days for filing a petition with the commission.

CITY OF MADISON

MEMORANDUM ACCOMPANYING FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Complainant Beelendorf filed the instant complaint on January 6, 1987 alleging that Respondent Union breached its duty of fair representation by the processing and settling of a grievance with respect to a disciplinary suspension imposed by City. He also alleged that the City acted arbitrarily in settling his grievance with Union. On February 2, 1987, he filed an amended complaint wherein he alleged the City deprived him of his contractual and legal rights by placing him on involuntary medical leave pursuant to a settlement of his grievance. Both Respondents filed answers to the complaint as amended.

Complainant's Position

Complainant makes a number of contentions with respect to the Union's actions in the handling of his grievance. Beelendorf claims that Shipley was hostile and abusive toward him during his initial September 2 conversation with Shipley. Specifically, he asserts that Shipley responded unsympathetically to his allegation that Ray provoked the August 28 incident by insulting him. While conceding that he did mention to Shipley that his experience with depression may have left him with greater sensitivity to the City's management style, Beelendorf disputes Shipley's claim that he raised his medical condition as a mitigating excuse for the language Beelendorf used during the August 28 incident. Rather Beelendorf maintains that after Shipley heard the particulars, he repeatedly and adamantly told Beelendorf that Beelendorf was wrong and without a defense to his actions. According to Beelendorf, only in this context did he raise his medical history in an attempt to explain to Shipley how personal the alleged insult by Ray had been.

Beelendorf stresses, this September 2 phone conversation with Shipley, established a genuine fear that his interests would not be represented fairly by Shipley because Shipley was not committed to a defense based on the real issue of employer provocation. Beelendorf points out that his actions to secure paralegal job training in Colorado were premised upon very real fears that his continued employment with the City was in jeopardy.

Beelendorf maintains that his nonattendance at the September 8 pre-determination hearing was based upon advice from Stewards Rupnow and Ruth Studola. He stresses that the Union had recourse to two addresses and two telephone numbers by which it could either directly communicate with him or leave a message.

Beelendorf faults Shipley for failing to contact him prior to the September 8 meeting. Moreover, according to Beelendorf, Shipley and Steward Rupnow were placed on notice as to his continuous displeasure with the Union's resort to the psychiatric defense as the only defense. He points to the detailed letter exchange between Shipley and himself as the best evidence of his position on the Union's continuing to pursue the medical defense against his wishes.

Beelendorf explains his arrangement with Froelich as being an agreement whereby Froelich would consider a request for a medical leave if/and/or when the dispute with the City was resolved. Beelendorf admits that by September 18, he refused to cooperate in a medical defense and/or to provide the Union with additional medical information to be utilized in that defense. From that time and throughout the remainder of his correspondence with Union, Beelendorf stresses that he reasonably assumed the Union would discontinue or suspend use of the Froelich letter until it could be clarified. He cites the Union's continued use of the Froelich letter as arbitrary behavior on its part <u>especially</u> when it coupled this act with its silence in communicating with him about its intentions to settle said grievance. Beelendorf argues that questions raised by the Union in its September 26 letter were a sham designed to give the appearance of cooperation with his wishes when in fact the Union was proceeding in secret to settle the grievance with a spurious medical defense.

Beelendorf stresses that he contacted Rupnow and ultimately Rutland to request a response from Shipley to his October letters. He argues that the Union's decision not to answer his letters was an openly contemptuous act which ignored his desire to promote cooperation with the Union. Beelendorf argues that the October 16 proposal by the Union and the October 31 disposition were actions taken in direct contradiction to his express wishes and were a failure on the Union's part to fairly represent him. He further cites as evidence of this failure the Union's response to his request that the disposition be withdrawn. Accordingly, Beelendorf maintains that the Union has shown a reckless disregard for its duty to represent him by the actions outlined above.

He argues that the City by cooperating in this matter with the Union in settling the grievance was violating his contractual rights because the City has an obligation to act only upon unambiguous information from a recognized authority, i.e., a physician. According to Beelendorf, the City in its haste to settle a troublesome grievance exhibited a reckless disregard for his rights.

Union's Position

The Union maintains that Beelendorf must demonstrate by a clear and satisfactory preponderance of the evidence that the Union's conduct was discriminatory, arbitrary, or in bad faith. It stresses that the overwhelming evidence establishes that the Union's decision was both considered and well-reasoned. It points out that Beelendorf admits that he repeatedly used abusive language to Ray in spite of repeated requests by Ray to cease using such language. It argues that the use of abusive and profane language to a supervisor is grounds for severe discipline including suspension and even termination. The Union claims that Beelendorf does not seriously contend otherwise. Moreover, the Union asserts that Shipley's conclusion regarding Beelendorf's off-duty status as not being a mitigating factor with respect to the incident which gave rise to the discipline is consistent with the vast majority of arbitral precedent. The Union argues that under the parties' collective bargaining agreement, Shipley determined that the City could not successfully discharge Beelendorf but would likely persuade an arbitrator that a lengthy suspension was warranted. Given this analysis, the Union asserts, it would have been justified in refusing to process the grievance further, but instead sought to settle it on the best terms possible. It stresses that it was Beelendorf himself who informed the Union via Rupnow that he was under a psychiatrist's care and that, through Rupnow, Shipley was aware that Beelendorf would be unavailable for work throughout the month of September and much of October having arranged a medical leave with his doctor. Given knowledge of these facts, it argues that Shipley's pursuit of a settlement whereby Beelendorf's suspension would be reduced and the remaining time converted to a medical leave until he obtained a release from his physician was not only reasonable but by far the most favorable disposition attainable for Beelendorf.

While acknowledging that Beelendorf disagreed with the settlement disposition, the Union maintains that the fact that it takes a position contrary to that of the Complainant is simply not evidence that it has breached its duty of fair representation. According to the Union, there is not one iota of evidence that it reached its conclusion to settle Beelendorf's grievance based on anything other than Beelendorf's best interests. It urges that the claim against the Union be dismissed.

The Union also urges that the claim against Shipley be dismissed inasmuch as Shipley was acting as an agent of the Union at all relevant times. It points out that Section 301 of the LMRA, which the state has followed with respect to legal precedent for duty of fair representative cases, has consistently been interpreted to exclude a cause of action against individual members or officers of a union.

City's Position

The City contends that it had just cause for disciplining Beelendorf because his conduct was such that there is not a shred of justification for his actions. The evidence, it submits, establishes the Beelendorf hurled obscenities at Ray without provocation and continued to do so in the face of a direct order to stop.

The City stresses that the appropriateness of the 10-day suspension is buttressed by the fact that prior to the August 28, 1986 incident, Beelendorf had been issued a previous letter of warning for using unacceptable language. The City also contends that it acted properly when it placed Beelendorf on medical leave from September 12, to January 14, 1987 because it was Beelendorf who refused to cooperate by providing the requested medical release which would have enabled him to return to active employment. It avers that it had no choice but to continue the medical leave status which was initially caused by Froelich's September 15 letter until it was able to clearly establish that Beelendorf's medical condition had sufficiently improved to allow him to return to active duty.

In sum, the City maintains that it has acted responsibly, fairly and without violating state law. It requests that the claim against the City be dismissed in its entirety.

DISCUSSION:

Although Complainant represented himself and did not use the standard terms of art in his pleadings, it is clear from both the pleadings and evidence adduced at hearing that Complainant is charging that the Union and its officer David Shipley have violated their duty of fair representation toward him and that the City and its agents Timothy Jeffery and Ronald Barnes have breached Complainant's contractual and statutory rights. However, before the Commission will consider whether it will exercise jurisdiction over the breach of contract claims against the City and its agents, it must first decide whether the Union breached its duty of fair representation with respect to the Complainaint. 3/ Specifically, Complainant Beelendorf alleges that the Union and its agents violated its duty of fair representation by the processing and settlement of a grievance filed over an indefinite disciplinary suspension issued to the Complainant as a result of an incident occurring on August 28.

All parties acknowledge that the standard for evaluating the Union's conduct in processing grievances is that set forth in Vaca v. Sipes 4/ as discussed by the Wisconsin Supreme Court in Mahnke v. WERC, 5/ As the Wisconsin Supreme Court said:

> . . . (Vaca v. Sipes, 386 U.S. 171, 87 Sup. Ct. 903, 17 L. Ed. 2d 842 (1967)) . . . provides that suit may be brought subsequent to an arbitrary, discriminatory or bad faith refusal to arbitrate by the union. Vaca also requires the union to make decisions as to the merits of each grievance. It is submitted that such decision should take into account at least the monetary value of his claim, the effect of the breach on the employee and the likelihood of success in arbitration. Absent such a good-faith determination, a decision not to arbitrate based solely on economic considerations could be arbitrary and a breach of the union's duty of fair representation.
>
> This is not to suggest that every grievance must go to arbitration, but at least that the union must in good faith weigh the relevant factors before making such determination. 6/
>
> -Mahnke, at page 534.

3/ U.W. - Milwaukee (Housing Department). (sub. nom. Guthrie v. WERC), Dec. No. 11457-H (WERC, 5/84); and School District of West Allis - West Milwaukee, Dec. No. 20922-D (Schiavoni, 10/84) aff'd by operation of law, Dec. No. 20922-E (WERC, 10/84).

4/ 386 U.S. 171, 87 Sup. Ct. 903, 17 L.Ed. 2d 842 (1967).

5/ 66 Wis. 2d 524 (1975).

6/ Mahnke, at 534; also Wisconsin State Employees Union, Council 24, AFSCME, AFL-CIO, Dec. No. 21854-A (Nielsen, 9/84) aff'd by operation of law (WERC, 10/84).

Thus, Mahnke requires a union to rationally, and in good faith, analyze a grievance. It further requires that when challenged by an individual, the Union's decision with respect to said grievance must be put on the record with sufficient detail to enable the Commission and reviewing courts to determine whether the union has made a considered decision through reviewing the relevant factors as applied to the grievance and that this weighing process was not done in a perfuntory or arbitrary fashion. 7/ As long as the union exercises its discretion in good faith with honesty of purpose, the collective bargaining representative is granted broad discretion in the performance of its duties. 8/ Furthermore absent a showing of arbitrary, discriminatory or bad faith conduct, a union need not carry a grievance through all steps of the grievance procedure or press it to arbitration, 9/ nor will the Commission sit in judgment over the wisdom of union policies and decision-making relative to the disposition of grievances. 10/

As the Union correctly notes, Complainant has the burden of establishing his case by a clear and satisfactory preponderance of the evidence and absent such proof the Commission has refused to draw inferences of perfunctory or bad faith grievance handling. 11/

The undersigned, after a thorough evaluation of the underlying facts, is compelled to conclude that Complainant Beelendorf has not met his burden of proof. The Union, by Shipley, advised him to act promptly in filing a grievance. While admittedly not sympathetic toward Beelendorf's view of the underlying facts resulting in the suspension which are by and large uncontested, i.e. that management somehow insulted or provoked Beelendorf into obscenities and insubordination, nonetheless it undertook a thorough investigation of all the facts and mitigating factors to be considered in deciding how best to process the suspension grievance. The detailed correspondence between Beelendorf and Shipley, the best evidence of the communications between the Complainant and the Union in the view of the undersigned, establishes that there was initial cooperation on Beelendorf's part in providing at least to a limited degree, medical and psychological information as a mitigating factor for his actions.

This same detailed exchange of correspondence reveals that at some point relatively early in the exchange as indicated by Beelendorf's September 23 letter, Beelendorf and the Union began to part company as to how best to process the grievance. The Union, by its September 26 letter to Beelendorf, asked for other ideas with respect to defending Beelendorf and then in its September 30 letter of response rejected them as unfeasible. By the first week of October it was clear to both Beelendorf and Shipley that the Union had its views as to the appropriate prosecution and settlement disposition of the grievance while Beelendorf had his own and that these viewpoints differed significantly.

Contrary to his assertions, Beelendorf was kept informed by Rupnow in early October and on October 22 of what continued to be the Union's position with respect to the appropriate settlement of his grievance. Simply put, Complainant and the Union continued to disagree from that time, up to the settlement disposition, and at all times thereafter.

The record is replete as to Rupnow and Shipley's belief that the medical defense was their best, in fact, only defense. Beelendorf did not provide them with any other substantive research which would suggest otherwise. The issue before the Examiner is not whether Rupnow's and Shipley's belief is true, correct or even justified, although the evidence adduced at hearing certainly tends to support the inference that this belief on the union representatives part as to the

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7/ School District of West Allis - West Milwaukee, supra, at 28.

8/ Ibid; also Bloomer Jt. School District No. 1, Dec. 16228-A (Rothstein, 8/80).

9/ Ibid, at p. 28; also City of Appleton, Dec. No. 17541 (Schoenfeld, 1/80).

10/ Ibid, at 28.

11/ Ibid, at 28; also Marinette County, Dec. No. 19127-C (Houlihan, 11/82) aff'd Dec. No. 19127-D (WERC, 12/82); Wisconsin State Employees Union, Council 24, supra.

likely outcome of the case before an arbitrator was realistic. Rather, the real issue is whether or not the Union's decision as to the appropriate settlement disposition falls within the broad latitude afforded to a union in the performance of its representational duties. Absent evidence of bad faith, arbitrariness, capriciousness or discriminatory intent, it is clear that this decision on the part of the Union to settle Beelendorf's grievance with a 10-day suspension and a subsequent indefinite medical leave, even though it was undertaken without his consent, falls within that latitude.

The letter exchange between Beelendorf and Shipley belies any contention that the Union's actions were arbitrary or capricious. There is no real evidence of any personal hostility on Shipley's part other than Beelendorf's testimony that he "felt" great hostility from Shipley because Shipley did not agree that Ray had provoked Beelendorf's obscenities. This testimony by Beelendorf cannot in and of itself support a finding that Shipley was personally hostile, absent additional evidence such as motive or ancillary remarks to others, etc. Moreover, Beelendorf's testimony is not credited, over that of Shipley, as buttressed by that of Rupnow. Shipley stated that he personally bore Beelendorf no malice.

Complainant makes much of the fact that Respondent Union essentially "settled the grievance out from under him." He ignores the fact that it was he who met with Rupnow on October 22 and wrote to both Respondents Union and City on October 29 about why he was being retained on indefinite suspension and inquiring as to the status of his case. Additionally, fully a month had passed before the October 31 execution date of the settlement disposition with no real change in either Beelendorf's or the Union's position.

Complainant has failed to demonstrate the requisite evidence of bad faith. He points to a number of actions by Shipley as evincing bad faith. He points to Shipley's failure to contact him prior to the September 8 pre-dispositional hearing. This failure does not in any way support Complainant's contention given the Complainant's continuous communications with Rupnow prior to September 8. Beelendorf also points to the Union's continuous reliance upon the Froelich letter in the face of Beelendorf's strong opposition as evidence of its arbitrary behavior or bad faith dealing. This assertion on his part must also be rejected because Beelendorf was fully aware of the Union's theory with respect to defending his case from September 26 and thereafter. Moreover, he essentially refused to cooperate with the Union's request to provide information with respect to alternative theories.

Given Beelendorf's voluntary absence from the state to pursue paralegal training and his intimation to Rupnow that his physician would consider a medical leave to cover this period, it is difficult to conclude that the Union's position as to the conversion of part of the indefinite suspension to unpaid medical leave was unreasonable. While it may or may not have been the best decision, it is not the function of this Examiner to second guess the Union's decision where no evidence of bad faith dealing has been adduced.

Beelendorf is correct in his assertion that the Union's October 16 proposal and its execution of the October 31 disposition were in direct contradiction to his express wishes. When, however, all of the underlying facts of the incident resulting in his suspension are considered there is simply no persuasive evidence to suggest that the Union was acting in bad faith. The undersigned does not find arbitrary, capricious, discriminatory or bad faith conduct on the part of the Union in processing or settling Complainant Beelendorf's suspension grievance and finds that Respondent Union did not breach its duty of fair representation toward Complainant.

Having so concluded, the Examiner is without authority to consider Complainant's breach of contract claims against Respondent City. Moreover, no evidence was adduced at hearing to suggest that the named-individual Respondents were acting in any manner other than as agents of the respective Respondents. Accordingly, the complaint is dismissed in its entirety.

Dated at Madison, Wisconsin this 27th day of January, 1988.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Mary Jo Schiavoni
Mary Jo Schiavoni, Examiner