

BEFORE THE ARBITRATOR

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In the Matter of the Arbitration :  
of a Dispute Between :  
: AMALGAMATED TRANSIT UNION, : Case 179  
LOCAL DIVISION 857, : No. 41719  
: and : MA-5442  
: CITY OF GREEN BAY (TRANSIT) :  
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Appearances:

Mr. Frederick J. Mohr, Mohr & Beinlich, S.C., Attorneys at Law, 415 South Washington Street, P.O. Box 1098, Green Bay, Wisconsin 54305, appearing on behalf of Amalgamated Transit Union, Local Division 857, which is referred to below as the Union or as Amalgamated.  
Mr. Mark A. Warpinski, Assistant City Attorney, City of Green Bay, City Hall, 100 North Jefferson Street, Green Bay, Wisconsin 54301, appearing on behalf of the City of Green Bay, which is referred to below as the City or as the Company.

ARBITRATION AWARD

The Union and the City are parties to a collective bargaining agreement which was in effect at all times relevant to this proceeding and which provides for final and binding arbitration by an arbitration board. The Union requested, and the City agreed, that the Wisconsin Employment Relations Commission appoint an Arbitrator to resolve a dispute reflected in a grievance filed on behalf of Steve Kurth, who is referred to below as the Grievant. Both parties waived those provisions of the collective bargaining agreement which provide for an arbitration board, and agreed that the grievance be resolved by a single arbitrator. The Commission appointed Richard B. McLaughlin, a member of its staff, to serve as the Arbitrator. Hearing on the matter was conducted in Green Bay, Wisconsin, on March 29 and June 7, 1989. Both days of hearing were transcribed. The parties submitted briefs and reply briefs by September 11, 1989.

ISSUES

The parties stipulated the following issues for decision:

Did the City have good cause to discharge the Grievant?  
If not, what is the appropriate remedy?

RELEVANT CONTRACT PROVISIONS

ARTICLE III

DISCIPLINE, SUSPENSION, AND DISCHARGE

(a) No member of the Amalgamated shall be disciplined or discharged by the Company without just and sufficient cause. Any member who is suspended or discharged and who later through investigation or arbitration is found not sufficiently guilty to warrant such suspension or discharge shall be reinstated in his/her former position with continuous seniority rights and shall be paid for all lost time at the regular rate.

(b) A written reprimand sustained in the grievance procedure or not contested shall be considered a valid warning. A valid warning shall be considered effective for not longer than a six (6) month period.

(c) When an employee is to be disciplined in any manner, including a discussion of the circumstances of accidents, a union official may be present if the employee so desires.

BACKGROUND

The Grievant was hired by the City in September of 1980 and discharged on January 3, 1989. The January 3, 1989, letter of discharge was written by Gary Gretzinger, the City's Transit Manager/Director, and reads thus:

We have completed our investigation of your handling of

fares and questioning of passengers and have determined that you, in fact, did violate Department policy on these matters. These recent violations, along with your history of violations, leave me no alternative but to terminate your employment with the City of Green Bay effective immediately.

The incidents which we considered in addition to the December 15, 1988 matter include,

- December 15, 1988 - Written warning - no interior lighting during non-daylight hours.
- December 9, 1988 - One day suspension without pay -third offense, within 6 months, of being discourteous to passengers.
- December 6, 1988 - One day at the bottom of the Extra Board - Failure to notify the Transit Office within 60 minutes prior to scheduled time of assignment when calling in sick.
- November 15, 1988 - Written warning - Questioning passengers their destination when boarding and requesting a transfer, being discourteous to passengers.
- September 1, 1988 - Written warning - Failure to follow prescribed route.
- September 1, 1988 - Written warning - no interior lighting during non-daylight hours.
- June 22, 1988 - Verbal warning - Questioning passengers their destination when boarding and not allowing holders of unlimited ride passes to ride around a route.

Termination of employment is further warranted with the accumulation of six (6) individual violations of the Transit Policy and Procedural Manual within six months.

It is obvious that our repeated warnings have not had the impact on your performance that we had hoped they would.

The background regarding these incidents is disputed, and will be organized under the dates noted in the termination letter. Background on the basis for the various instances of discipline and the resulting grievances will be separately summarized.

#### The June 22, 1988, Warning

This was a verbal warning confirmed in writing and signed by David Gerondale, the City's Transit Superintendent. That written confirmation, dated June 22, 1988, reads thus:

This report is only a means of documentation of the Verbal warnings issued to you on June 15, 1988. It was discussed, with you and your union representative (J. Gibbons) the complaint letters to which you responded regarding your asking passengers, upon boarding, their destination, your not letting holders of unlimited ride passes to ride around a route. Although your responses indicate that your questions and actions were a means to assist passengers, you were warned that you will not question or offer or tell a passenger to board a particular route unless the passenger request such information from you.

. . .

Regarding passengers riding around a route with a unlimited ride pass, anyone in the possession of a current pass can ride around. Furthermore, when they wish to do so you are not to designate their seating. The front seats are reserved for the elderly and handicap and you are not to force them to sit in the

rear of the bus. 1/

. . .

The City's policy regarding signed customer complaints is to show the customer complaint to the driver and require the driver to respond in writing. The customer complaint initiating this matter was written by Catherine Martynski, and reads as follows:

This is a complaint letter concerning the Driver of the U.W.G.B. bus that arrives downtown at 3:45. On tuesday June 7 1988 I rode the Smidt Park bus from curative workshop to Hoida Lumber, where I boarded the U.W.G.B. and rode downtown so I could catch the shawano bus home. When we arrived downtown the driver told me that I was not allowed to take the U.W.G.B. downtown to catch the shawano even though the Smidt Park is often late. On wendsday June 8 1988 he told me that I am not allowed to ride on his bus. On thursday June 9 1988 he slammed the door in my face so I could not board the bus. I buy a monthly bus pass every month and on the back of the pass it says "This pass must be used for unlimited riding during the month shown." The driver's name is (the Grievant) and I feel that something should be done about this! ! ! !

The Grievant's written response reads thus:

AT 3:28 A GIRL TRANSFERED FROM THE SCHMIDT PARK BUS TO THE U.W.G.B. BUS. AT THE TIME I THOUGHT NOTHING OF IT, BECAUSE IT WAS SOMEONE I HAD NOT SEEN BEFORE. SHE SAT ACROSS FROM ME; SO I NOTICED THAT SHE WAS STILL ON WHEN I ARRIVED DOWNTOWN.

I ASKED HER AT THIS TIME IF SHE CAME OFF THE SCHMIDT PARK BUS. SHE SAID "YES". I SAID "IF YOUR COMING DOWNTOWN YOU SHOULD STAY ON THE APPROPRIATE ROUTE

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1/ All quoted material is typed verbatim.

TO YOUR DESTINATION". THERE WAS NOTHING MORE SAID, BECAUSE SHE SAT UP FRONT AND WAS THE FIRST ONE OFF. I DID WONDER WHY SHE RODE DOWNTOWN ON THE U.W.G.B. BUS, SO I WATCHED HER. SHE WALKED WITH SOME PEOPLE SHE WAS TALKING TO, OVER TO THE KELLOGG BANK, AND TALKED THERE FOR ABOUT 2 MIN. THEN WALKED BACK AND WAITED FOR THE SHAWANO BUS. IN THE MEAN TIME THE SCHMIDT PARK BUS PULLED IN DOWNTOWN ABOUT 30 SEC. AFTER I DID.

THE FOLLOWING DAY, SHE DID THE SAME THING, I GUESSED THAT SINCE SHE HAD A HANDICAPPED PASS, SHE MAY NOT HAVE UNDERSTOOD WHEN/WHAT I TRIED TO EXPLAIN THE PREVIOUS DAY. SO I TOLD HER ON THE WAY DOWNTOWN THAT IF WAS GOING DOWNTOWN SHE SHOULD REMAIN ON THE BUS SHE WAS ON. (I TOLD HER THIS BECAUSE GETTING ON AND OFF BUSES THAT HAVE THE SAME DESTINATION WOULD, IN MY OPINION INCREASE HER CHANCES OF TRIPPING, FALLING, OR SPRAINING HER ANGLES ETC. WHILE BROADING OR ALIGHTING NUMEROUS TIMES ESPECIALLY IF THIS IS ALLOWED TO CONTINUE YEAR ROUND.)

I BELIEVE THAT TRANSIT INSURANCE WOULD AGREE WITH ME AND I BELIEVED THE MANAGEMENT OF THIS TRANSIT WOULD ALSO.

NOW TO ADDRESS A POINT SHE ATTEMPTS TO MAKE REGARDING MISSING THE SHAWANO BUS. IF THE SCHMIDT PARK BUS IS RUNNING THAT LATE IT WILL NOT MAKE TRANSFERS WITH THE U.W.G.B. I DO NOT EVER REMEMBER THE SCHMIDT PARK BUS MISSING TRANSFERS, NOT WHILE I WAS AROUND. I'M SURE YOU COULD VERIFY THIS WITH DENNIS S. AND/OR ROGER R.

I SAID THE BEST POINT FOR LAST, THE REMARK ABOUT THURSDAY AND MY CLOSING THE DOOR IN HER FACE, UP TO THIS POINT IT HAS BEEN LITTLE DISTORTIONS, BUT THE LAST PARAGRAPH IS AN OUTRIGHT MALICIOUS LIE!!

The Union received the written confirmation of the verbal warning, and did not file a grievance regarding the warning. Established Union procedure is that an employe must file a grievance at the first step, with the Union not playing any role in the processing of a grievance until the second step. The Grievant testified that he never received the written confirmation of the verbal warning until November 14, 1988, during the processing of a grievance discussed below. Gerondale testified that he placed the written confirmation in the Grievant's mail slot in June of 1988.

Gerondale testified that the meeting at which the complaint was discussed was attended by the Grievant and his Union Steward. During that meeting, according to Gerondale's testimony, the Grievant was "warned verbally of the procedure for being rude to passengers, telling them which bus to ride, where to transfer". 2/ Gerondale also stated that the Grievant's written response to Martynski's complaint, standing alone, stated sufficient discourtesy to warrant the warning.

The Grievant testified that he did not realize he had received a warning after the June 15, 1988, meeting. He summarized his understanding of the meeting thus:

To stop telling passengers when I'm on the Allouez bus, stop telling them to take the GB bus on Walnut Street. And I explained to Gary, and I tried to explain to Gary, "Well, I've got them all riding the GB now," you know, it's excellent. And he said you can't retrain these people. Most of them that live on that street up till Webster Avenue are handicapped. He said you can't retrain them. I said we've got them all trained. They

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2/ Transcript, second day of hearing (Tr. II) at 5.

are all riding the Allouez bus. I mean, the GB bus. The Allouez driver can go all the way down to the intersection and turn now. He doesn't have to stop along Walnut so he can make the next light. Which the Allouez bus, as these gentlemen can testify here, is really a pressure route. It has the highest amount of transfers and also the highest revenue. It is tough. And to relieve the pressure I would tell people to take the other bus, and he told me to stop doing that. 3/

He also stated that there had been limited discussion about questioning riders regarding a transfer.

The September 1, 1988, Warning

This warning is labelled as a verbal warning on a written confirmation signed by Gerondale on September 1, 1988. The written confirmation reads thus:

This report is to document the verbal warnings (2) issued to you the night of 8/31/88 at 9:30 PM.  
Item 1 - Failure to follow prescribed route. Your using the Main Entrance to U.W.G.B. verses the Southwest Entrance as posted.  
Item 2 - Failure to follow instructions for proper operation of equipment. No interior lights were on at time of observance, with at least one passenger, female front seat right side, on board at the time.

Gerondale testified that he made the observations which resulted in the two warnings while tailing the Grievant. He stated he was tailing the Grievant because he had received some complaints from other bus drivers that the Grievant was not following his prescribed route. Gerondale testified that the appropriate loop is set forth in a published transit guide, and that he was aware of no other drivers who did not follow that published route. Gerondale stated that the Grievant did claim, at the time of the verbal warning, that other drivers had trained him to drive only part of the loop. Gerondale tried, without success, to obtain the names of such drivers from the Grievant. Gerondale also testified that while it was not a violation of Transit policy for drivers to turn off their interior lights during inclement weather, the evening at issue here was a cool, clear evening. He stated he did not know of any driver who, except during inclement weather, operated without their interior lights on.

The Grievant testified that he would, in August of 1988, drive without his interior lights on in rural areas since the absence of outside lighting made the glare inside the bus intolerable. He also stated that on August 31, 1988, he had two riders on the bus at the time Gerondale stopped him and told him to turn on his interior lights. The Grievant testified that both passengers had asked him to keep the lights off, and that Gerondale specifically informed him to turn his lights on "when a customer is on the bus". 4/ Beyond this, the Grievant testified that Francis Poquette, the driver who initially trained him on the UWGB loop, specifically informed him that after 6:00 p.m., he could cut off that part of the loop which ran past a day care center. The Grievant further testified that a number of other drivers omitted that part of the loop, and that Gerondale had, roughly four years ago, observed the Grievant omitting that part of the loop, without raising any objection to the Grievant.

Two other drivers, Burt Parkman and Bobbi Juley, testified that the glare of the inside lights can pose a significant problem while driving at night. Dennis Morency and John Withbroe, the Union's Vice-President and President respectively, testified that other drivers will operate their buses without the

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3/ Tr. II, at 201-202.

4/ Tr. II, at 205.

interior lights on in certain situations. None of the testifying witnesses was aware of any instance in which a driver operated a bus without the interior lights on, was so observed by Transit management, and was not disciplined.

The November 15, 1988, Warning

This warning is dated November 15, 1988, but was signed by Gerondale on November 16, 1988, and reads as follows:

Resulting from the meeting held, with you and your Union representative (D. Morency), Nov. 14, 1988. The meeting was called due to the written complaint received stating that you continue to question passenger, upon boarding, as to their destination particularly when they request a transfer. Your written response and verbal remarks, during the meeting, you in fact do question passengers as the complaint stated. You received a verbal warning, on June 22, 1988, that this practice of questioning them was not a policy of Green Bay Transit and you were not to continue that practice.

. . .

This is a written warning. You will discontinue your practice of questioning passengers as to their destination, when boarding or at any time they are enroute irregardless if they request a transfer slip or not. It is the responsibility of the driver receiving the transfer to determine the validity of that transfer. It is not the driver issuing the transfer to determine if they are entitled to one. A fare paying passenger is entitled to a transfer, upon request, with no questions asked.

This written warning was prompted by the written complaint of a bus rider, Joseph Selissen. Selissen's complaint is dated October 29, 1988, and reads thus:

I stopped by the office to file a complaint on behalf of quite a few old people and also retarded ones and they told me to write you a letter. The driver in question I believe is (the Grievant) on the second shift of the Libal and De Pere run. I've been riding the buses for about 10 years and have never run across any driver as rude as he is to the people. He refuses to give transfers to people sometimes unless they tell him where they are going I don't think that is any of his business. The one man he refused told him to let him off and he was going to call the office and then he gave him a transfer. Some of the older women won't take the bus that he's on they take the Allouez DePere run. I don't think he owns or runs the Bus Co. I believe if it wasn't for riders he would not have a job. I don't mean to fire him but maybe you can give him a job in the garage working away from the public. He is a detriment where he is now to everybody.

The Grievant was shown Selissen's complaint and was asked to respond in writing. The Grievant did so in a statement dated November 8, 1988, which reads as follows:

The only time I question a passenger about a transfer, is when they get on downtown and ask for a transfer.

Since I am at the major transfer point, it seem suspicious as to where they will be transferring to, once I leave downtown.

A week a two ago a young man got on my bus downtown, and asked me if I go to Allouez Ave., I said yes that go across Allouez Ave & Libal sts. Then he proceeded to ask for a transfer.

As any driver would and should do, I asked him where he was going to transfer to. He said he was going to come back on this bus. I told him that he could not do that.

The he said he would walk to the top of hill and take the Allouez De Pere back. I told him that a

transfer is not good for a round trip.

If he asked for transfer again I would have given him one, and then proceeded to call the Allouez De Pere driver and tell him to watch for the individual in question.

I believe that I reacted in a responsible and professional manner. I also believe that the management will back up my actions in this event, and are thankful of my ability to stop someone from attempting to cheat the transit.

I do love the way that this person says he is writing for others. (especially - Ms. Larson.)

But I am sure we can see through this.

From now on 48 hrs is two working days. O.K.

If not, you had better tell me and I will notify the union.

Selissen is seventy-nine years old, and has used the Transit system for about ten years. He stated he had ridden buses driven by the Grievant about every afternoon over a two to three week period. He affirmed that his written statement accurately recorded his personal observations. He testified that the Grievant's behavior had caused him and certain other riders to take different routes to avoid the Grievant. He stated that his complaint centered on the Grievant's questioning passengers on transfers, telling riders where to sit and driving too fast. He stated the Grievant would tell elderly women and retarded riders where to sit, but would not do so with adolescent or young adult male riders. He acknowledged he did not know in fact how fast the Grievant drove.

The Grievant testified that he did not know Selissen before seeing his letter of complaint. That letter was, in the Grievant's estimation, vague and difficult to respond to. He also stated that:

You don't have to believe this, but I believe I have a photographic memory. I do not recall the gentleman. 5/

Ted and Mercedes Helinski each testified regarding the Grievant's conduct as a bus driver. Each rode a bus driven by the Grievant for roughly one year. Mr. Helinski is sixty-eight years old, and Mrs. Helinski is seventy-one. Each felt the Grievant was a capable and compassionate driver, who treated elderly riders extremely well.

#### The December 6, 1988, Discipline

Gerondale confirmed the December 6, 1988, discipline on a written form which reads as follows:

A driver who is sick and unable to report for his/her assigned run, must notify the Transit Office dispatcher no less than sixty (60) minutes before their scheduled sign-up time.

On today's date you were to report for work at 1:10 PM. You called in sick at 12:30 PM. Failure to notify the dispatcher less than one (1) hour prior to assigned run is disciplined with one (1) day at the bottom of the extra board on the first offense.

. . .

The one (1) day served at the bottom of the extra board will be on Tuesday December 6, 1988. Repeated cases within the next 12 months will be disciplined with two days at the bottom of the extra board.

The Grievant's normal driving hours at that time ran from 1:15 p.m. until 10:15 p.m. On the day he was disciplined, the Union had requested a meeting between the Grievant, his Union representative and Transit management. That meeting was set for 1:15 p.m., and the City had arranged for a relief driver to assume the first hour of the Grievant's assigned duty.

#### The December 9, 1988, Suspension

Gerondale suspended the Grievant without pay for December 8, 1988, and confirmed that suspension in writing on December 9, 1988, in a report which reads thus:

A discussion was held on Dec. 8, 1988 at 1:15 PM, regarding the written complaint from L. Summers. You stated the complaint is not warranted and the events mentioned never took place. Ms. Summers states you are denying the true facts of her letter. It is a matter of credibility. In light of the oral and written complaints received, I have previously given you the benefit of the doubt. However, the complaints continue which lead me to give more credence to Ms. Summers.

. . .

This being the third documented offense, of being discourteous to passengers, within the past six months I issue you this one (1) day suspension without pay. The one day suspension being Dec. 8, 1988. You will receive the minimum 2 hr. pay for attending the meeting called on that day. Repeated cases within the following twelve months will lead to further discipline which may include dismissal.

Linda Summers is the rider who authored the complaints which prompted the suspension. Her initial complaint is dated November 13, 1988, and reads as follows:

I am writing this letter to complain about one of your drivers. His name is (the Grievant) and he is currently on Libal-De Pere.

For the last 26 months I have used the Green Bay Transit buses as my primary means of transportation. During all this time I've been treated with courtesy and kindness by all the drivers with the exception of (the Grievant). For reasons unknown to me he has hassled me since I first started riding.

The latest incident finally prompted me to complain. I'm tired of having to answer to him before I board his bus. On Thursday, 10 Nov. 1988 at 5:15 (the Grievant) was standing outside of his bus smoking a cigarette. I showed him my bus pass before I got on the bus and he asked me if I was going out to Allouez. I told him I was.

Now, let me explain. I live on Jackson right off of Walnut and frequently get off at that corner. When he drives Libal-De Pere he tells me I must take UWGB if I'm going home. Of course, if he's driving GB he tells me I'm supposed to take Allouez.

My sons, ages 7 and 10, also took his bus on



Thursday the 10th. They caught him at 4:15 to head out to Shirley Van's Dance Studio on Greene at Libal. As they boarded, showing their passes, he also asked them if they were going out to Allouez. They told him they were.

That's what finally did it. It's one thing to hassle me - I'm an adult and can take it. But, when he started picking on my kids that was just too much.

For the past two years it's been an ongoing series of incidents. There are just a few of the things he's pulled on me.

When I first started riding and still used tickets he gave me a "transfer" that I now realize was just the stub of the transfer above the cut. At that time I didn't know and used it to board another bus. The driver told me it was "good for nothing" and threw it away, but allowed me to stay on after I told him who gave it to me.

(The Grievant) has asked to move out of the front seat, not for an elderly or handicapped person, but for a younger female.

He's gone past me at regulation stops only screeching to a halt - when I wave my pass so that everyone on the bus is aware that I want to get on.

One day, about 5 weeks ago, I came in on Shawano/East Mason at 4:15. We were a bit late and the UWGB bus was pulling out as we pulled in. I didn't see any reason to ask GB to wait since Libal was across the street. I boarded the bus and sat in front, only because all the other seats were filled. About 3-4 minutes later (the Grievant) got on and in a voice loud enough for everyone to hear, told me I should have taken GB because it was still there when my bus came in.

It's always been my understanding that a bus pass allows me to ride any bus, at any time, as often as I want for the given month.

I don't see any reason we need to be questioned every time we attempt to board his bus. I also don't appreciate being left standing in the rain or being humiliated in front of other passengers. Believe me, there's no way we would ride with him if there were any alternatives.

I'm tired of his constant hassling of me and my sons. I've never done anything to him and find his attitude and behavior totally unprofessional. He uses his position to harass and intimidate people. This time he's chosen the wrong person because I'm not going to take it anymore.

The Grievant responded in writing on November 21 and 25, 1988. Those responses read thus:

I think I know who this lady is because of her remarks about boys, Greene Ave., and Dance classes.

There are two young boys who ride my bus to Greene Ave., and they have sat up front by me a few times. (When alone usually, but with her a few times also, when coming back from dance class) - (When I'm on route I do not mention seating unless an elderly or handicapped person about to board). That's how I know about the Dance classes, because the older boy has sat up front, and talked to me a few times. He's told me that he enjoys the dance classes and thinks they are fun.

If I ever gave this lady a stub transfer its because I ran out, and used the "Emergency" portion.

Also I have never knowingly passed up a passenger in 9 years of service.

At the beginning of this letter I said I thought I knew who this lady was, so Thursday I asked another

driver if I was correct, they said yes!

I do not like being hustled. By this I mean being made advances at, or being asked personal question by someone I hardly know or who hardly knows me.

While coming inbound on U.W.G.B. I have asked a couple of customers, at the light on Webster if they wouldn't mind moving up front. (Just to keep this lady from asking me personal questions.)

There are other drivers who have stated the same thing to me.

What I said was "where are you going Allouez!"

This states next I told her to take the U.W.G.B. And then when I went to the U.W.G.B. run I told her to take the Allouez De Pere. I realize she states that I haven't said anymore since I was on U.W.G.B. (which was this winter & spring). But beyond that I am calling her a liar. I have never told any passenger to take the Allouez De Pere rather than the Libal or U.W.G.B. because I know how demanding the Allouez De Pere route is.

I know the boys she mentioned because I talk to them when they sit up front by me, or rather they talk to me! Because of their talking me, I know about the dance classes and that the older boy not only enjoys the classes, but believes they are fun to participate in. (When I'm on route, I do not mention seating to anyone unless an elderly or handicapped individual is about to board.

If I ever gave this lady a stub transfer its because I ran out, and used the "Emergency" portion of the transfer. The driver issuing the transfer is suppose to ask the route she came from, and that driver should call me. Since she remembers the incident so well, she must remember who the driver was she gave it to. This will allow management to discuss with this driver the proper procedure used when receiving an "Emergency Transfer"!

I attempt to keep the front seat open for Elderly & Handicapped only while I'm downtown. Once I leave downtown I do not care who sits there unless an elderly & Handicapped person is about to board.

I have never went by a passenger knowingly in 9 years of driving. And if the bus screeched to a halt, it's because the brake where squeaking not the tires.

I did not even know who this lady was, till she mentioned the boys. I have nothing against this lady, but this letter seems to be filled with negative emotions and distortions.

Summers again complained in writing on December 2, 1988. That complaint reads as follows:

I have in my possession copies of two works of fiction written by (the Grievant) dates 21 Nov. and 25 Nov. 1988. At the time I sent my letter of complaint I knew he would receive a copy of it and have to reply to it in writing. I expected his reply to bear no resemblance to the truth, what so ever. He has not disappointed me. The absolute absurdity of some of his tales is incredible.

The man is obviously suffering from delusions of some sort. The idea that I would hustle him would be laughable if I didn't find it so completely repugnant! I have never made an advance toward him nor have I ever asked him a personal question. In fact - I don't remember ever asking him anything. I've only answered him as he's quizzed me about my destinations.

In his reply dated 21 Nov. 1988 he states, "While coming inbound on UWGB I have asked a couple of customers (at the light at Webster) if they wouldn't mind moving up front. (Just to keep this lady from asking me personal questions.)" As with most of his prattle, this has no relevance to me at all. The only time I've ever ridden inbound on UWGB, when he's been driving, has been from my corner on Jackson to Adams St. A total of five blocks. The same applies to outbound on GB, from the transitway to Jackson St.

I have never heard of an "Emergency Transfer". If such a thing really exists it seems only logical that the driver issuing the "Emergency Transfer" would have the responsibility of warning the passenger he gave it to by saying something to the effect, "I'm out of transfers - use this - if your driver questions it - have him call me".

I do remember who the driver was that I gave that "transfer" to. I don't know if he remembers it or not. It probably wouldn't stick in his memory like it does in mine because he wasn't the one made to feel like he was trying to board the bus with an illegal transfer. The only reason (the Grievant) could possibly have for trying to find out who that driver was is to try to transfer blame where none is due.

I asked my older son if he's ever sat up front and talked to (the Grievant). He says he's sat up front (and several times been asked to move) but the only time he's ever talked to him has been when (the Grievant) has questioned him.

(The Grievant) asked him why he always gets off on that corner and my son told him it was because he was going to dance class. (The Grievant) then asked him if he liked to dance and my son told him yes he did. That its fun.

Probably the only truthful point in his reply is that my son likes to dance. And that information was obtained by questioning a young boy who has been trained to respect his elders.

I have been told by (the Grievant) on many occasions that I should be on the opposite bus. i.e. 'GB when he's on Libal and De Pere when he's on 'GB. In my last letter I detailed a whole situation that happened less than two months ago. So I don't know where he got the bit about me stating that he hasn't told me that I should be on the opposite bus since the last time he was on the UWGB which was last spring.

He doesn't care how busy any other run might be. He simply does not want to stop along Walnut and will do anything he can to keep people from riding who live along that stretch. This complaint is not specific to me - I have heard him say the same thing to many different people on many different occasions.

As for his attempt to keep the front seat open for elderly and handicapped passengers - Ridiculous! I've never heard anything so absurd. His treatment of the elderly and handicapped passengers is absolutely deplorable. We all know who he wants in that front seat, some young innocent girl who's too naive to see right through him.

I really can not believe this man. To think that he has the audacity to call me a liar. His reply was nothing but a series of distorted incoherent falsehoods.

He has not spoken to me since he received my letter - but his behavior surely has not improved. Unfortunately, I still have to ride his bus and now he's making non-verbal attempts to intimidate me.

The first time I rode after he received my letter was on Thursday 17 Nov. at 4:15. My sons were with me. I won't let them ride his bus without me along anymore. It's just not safe.

As I got on the bus he stared and stared at me. As the saying goes - if looks could kill - I'd be dead. But, they can't so I stared right back. All the way out to Libal and Greene he kept staring at me in his rear view mirror. I didn't look away - just returned every stare. We received a ride home and were not subjected to anymore of his ugly looks that night.

On Tues. 22 Nov. we were on Shawano/East Mason at 4:15 when it stopped at the garage (inbound) to change drivers. We were late getting downtown and UWGB was gone.

Previous to my first letter and decision to take a stand against this man we would have walked home in this situation. But, I decided we have every right to take the Libal-De Pere bus even if we're only going home.

(The Grievant) was off his bus when we boarded - but he saw us get on. I guess he decided ugly looks were not going to scare me off because he tried something more concrete.

He knows where we live and as he approached Quincy Street he began to pick up speed. We rang, but he kept increasing speed as we moved up from our seats in the rear of the bus. (We always exit his bus from the front door because he's been known to shut us in the door.)

When he reached Jackson Street he slammed on his breaks causing my sons and I to have to grab for support to keep from being thrown to the floor.

Since I managed, just barely, to retain my upright position I looked and saw no cars or pedestrians to cause him to stop like that. It was, quite simply, another attempt to frighten or hurt us.

We all have excellent balance and can walk up to the front of a bus (driven by any other driver) while it's moving or breaking to a stop without having to hold on to anything. But, this was ridiculous.

My seven year old was in front of me and it was all I could do to keep from smashing into him. It's lucky we expected something from him and our guard was up or one of us could have been seriously injured.

Just how much is a person supposed to take for the privilege of riding a bus? I pay for my bus passes like everyone else and I expect to be able to ride the buses without having to be afraid of what he's going to try next. The man obviously has severe emotional problems to do this type of thing to the very people that generate his livelihood.

In closing I'd like to say that his reply was about what I expected. He has no reason for any of the stuff he's pulled on me and so he has no recourse but to lie about it. He's so irrational, that even after I've told you all he's done he still has the impudence to continue to try to intimidate me.

I guess he didn't believe me when I said I wasn't going to take it any more. But, I do mean it. I have done nothing to deserve this type of treatment. You can expect to hear from me every time he does something intimidating or dangerous. He must be stopped - this has gone on for too long.

Summers testified that she relies on the Transit System as her primary means of transportation. Throughout the fall and winter of 1988 she held a monthly pass, which entitles the holder to unlimited travel. Her children had student passes. She testified that the Grievant repeatedly asked her, her children and other passengers about their destinations. She characterized the Grievant's questioning of other passengers as "(v)ery rude". 6/ The Grievant questioned her regarding her destination in her children's presence, and in the presence of other passengers, according to Summers. The manner of the questioning and her perception of that questioning were explored during Summers' cross-examination thus:

Q He didn't swear at you or anything?

A No.

Q Didn't use any bad language in front of your children?

A No.

Q Basically your objection is he would ask them where they were going?

A With the implication of all the times we weren't to be on his bus if they weren't going to a destination that he felt they should be riding they wouldn't be allowed to board.

Q You're assuming that him asking that question he was doing it to hassle you?

A Yes.

Q But you can only base that on your own feelings and not on anything he said?

A But nobody else did that. You ride with other drivers and they're not constantly questioning. It wasn't like he needed to give us a transfer because it was all done with passes. You can't say it was to find out whether the transfer was --

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6/ Tr. I, at 41.

Q Given the fact he asked your destination, isn't it paranoia about his motives?

A After riding a couple of years and these incidents and being a single female with two little kids I think I had a right to be.

. . .

Q Okay. And he never refused to let you on a bus, did he?

A No. He would just say it in front of everyone, you shouldn't be on that bus.

Q Do you remember how many times that occurred?

A I'd say at least a dozen. 7/

Gerondale testified that the primary reason for the Grievant's suspension was his questioning of Summers and her children. Gerondale testified that after reviewing Summers' statement and the Grievant's, he credited Summers, and determined a suspension was necessary. Gerondale did not interview her children.

Sheila Hanold lives with the Grievant, and testified that in the late Spring of 1988 she would board the Grievant's bus to bring him dinner. She stated she observed Summers riding his bus on two occasions, and that Summers was asking him questions in a tone of voice Hanold viewed as "flirtatious". 8/ She acknowledged she did not pay to ride the bus.

The Grievant testified that Summers never asked him to go out, but that she asked him personal questions, and acted in a manner which made him feel ill at ease, as if she was "hustling" him. He stated this occurred over a period from February of 1988 through May, when Hanold observed it and got upset with him. After that point, the Grievant "just shut up" 9/ and tried to ignore Summers. From that point on, the Grievant noted a change in her attitude. She

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7/ Tr. I, at 48-49.

8/ Tr. II, at 179.

9/ Tr. II, at 214.

became, in the Grievant's estimation, curt and combative in her conduct toward him. He acknowledged that he spoke with Summers' children about their destination and what they did, but stated that he did so to be friendly.

The December 15, 1988, Warning

Gerondale confirmed this written warning in a report dated December 16, 1988, which reads thus:

My observations on 12/15/88 of Bus #865 on the Libal-DePere route between the hours of 8:15 PM and 9:15 PM revealed that you were operating without the interior lights lighted. You have been previously warned, verbally on Sept. 1, 1988, of the Transit Policy regarding interior lighting of buses. Page 29 of the Transit Policy and Procedural Manual. The discipline code details for cases within 18 months, the second offense be a written warning.

. . .

This is your written warning. Interior lights are to be turned on at all times during non-daylight hours. Repeated violations, of this nature, within the next 18 months from this date, will be disciplined in accordance with the Transit Policy and Procedural Manual.

Gerondale testified that he followed the Grievant for about fifteen minutes on the evening of December 15, 1988. He noted the Grievant was driving without his interior lights on. He pulled alongside the right side of the bus when the bus stopped at a red light. Gerondale testified that he could see the Grievant through the passenger door, and that he could clearly see the sign of a gas station through the Grievant's windshield. Gerondale then called the Grievant on his two-way radio. Gerondale detailed their conversation thus:

. . . And I picked up the radio and I called his bus, and I informed him that we do operate with our interior lights on during non-daylight hours. And his response to me came back on the radio, he said well I don't have any passengers on. I said, well, it doesn't make any difference, we still operate with our interior lights on, passengers or not. And he says, "Well, we will just have to check into that." 10/

The Grievant acknowledged he did not have his interior lights on, and explained his reasons thus:

Two reasons. One is I didn't think there was anything wrong with it. And the second one, I had just spilled a cup of coffee coming back from DePere . . . It happened when the coffee fell, was at 6:00 o'clock. This was two hours later. I'm still having problems with moisture on the window. It's late. Going back to Green Bay there's very few people on the bus so I'd have the lights off. I didn't even think about it. I don't know what else to say. There was moisture on the window. 11/

The Grievant stated that Gerondale never pulled alongside the right side of his bus at the stoplight, and could not have seen his fogged windshield. On cross-examination, he testified that the coffee spilled at around 7:50 p.m. He acknowledged he did not report the spill or the fogged windshield to the Dispatcher when the spill occurred, and accounted for his conduct at the close of his shift thus:

Q With respect to the foggy windows, is there any reason why you didn't report that to the mechanics?

A No. I figured it would evaporate. It goes into the garage and over the period of night they park the bus, leave the door open.

Q Weren't you placing your fellow drivers at some risk then by not having this attended to

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10/ Tr. II, at 65.

11/ Tr.II, at 221-222.

overnight? That moisture could have just stayed there till the next day, couldn't it?

A No, I don't believe so. The buses go through a bus wash.

Q Isn't it true you indicated you didn't report this to the mechanics because you were done for the night and you could care less?

A No.

Q Isn't that what you said at the Unemployment Compensation Hearing?

A I don't think I said I could care less. I didn't report it to the mechanic.

Q I'd like to refer you to Page 99 of the transcript, and you were asked at that hearing while under oath, "You didn't report any of this to the mechanics when you brought the bus back, did you?" Your answer, "No. I was done for the night. I could care less." Do you recall making that statement?

A I thought I said it wasn't my concern.

Q Well, maybe you want to take a look at the transcript, Page 99, halfway down.

A I guess that's what I said. 12/

This point was further probed in cross-examination thus:

Q Isn't it true that at the third step of the Grievance you told Mr. Jadin that in fact you had reported it to the mechanic, and if he bothered to check he could have found it out?

A No. I remember saying something to the mechanic like, oh, I spilled coffee and that was it. I didn't, you know, say hey, you'd better clean that up because other drivers are going to be driving this tomorrow. I just assume that by morning it would all be evaporated.

Q Which of your versions of this is correct then, what you told Mr. Jadin or what you told the Hearing Examiner while under oath before the Unemployment Compensation Hearing?

MR. MOHR: Objection, argumentative.

MR. WARPINSKI: I'm just trying to probe which one of his statements is accurate.

ARBITRATOR: I think it's a fair question.

THE WITNESS: I don't mind answering that. Usually, at night I get along with the mechanics very well.

Q (By Mr. Warpinski): Excuse me. I don't think that that is being responsive. The question was which one of the statements is accurate, the one you gave to Mr. Jadin or the one you gave to the Hearing Examiner at the Unemployment Compensation Hearing?

ARBITRATOR: Do you understand the question?

THE WITNESS: Yes.

ARBITRATOR: Answer it.

THE WITNESS: In my talking to the driver or the mechanics, which I usually do every



night, I'm sure that I mentioned that I had spilled coffee down the front vent, down the defroster vent.

Q (By Mr. Warpinski): So, what you told Mr. Jadin was the truth, not what you said under oath?

A It was none of my concern, but I do think I told the mechanic about it.

Q You do recall being sworn to tell the truth at the Unemployment Compensation Hearing?

A Yes, I do.

Q And now you recall what you said in response to that question when you looked at the transcript, isn't that right?

A Yes. 13/

The December 16, 1988, Suspension

Gretzinger informed the Grievant of his suspension with pay in a letter dated December 16, 1988, which stated: "We have received complaints regarding your handling fares and are in the process of investigating this matter". Gerondale testified that he and Gretzinger asked Ann Schell, a Principal Planner for the Brown County Planning Commission, to take a bus ride on one of the Grievant's routes to observe his conduct. Gerondale described the purpose of using Schell and her instructions thus:

A We had received complaints, if you will, or advice that (the Grievant) was making change for passengers and the fact that we wanted to see if the fact of previous warnings and suspensions had curtailed his practice of questioning passengers upon boarding and requesting a transfer as to their destinations. So, Gary Gretzinger, our manager, and I were discussing the matter with our principal planner and she being a routine bus rider said, well, if you want me to go out and ride and observe his practice I will do that. This would be someone, a face perhaps unknown to him, so she would be able to view his operations as he would normally do so.

Q Do you recall specifically whether you told her to ask for change?

A Yes, we told her to board. We gave her a dollar bill . . . and said present this upon boarding to pay your fare and ask the driver for a refund for the 50 cents cash fare to see what his response would be.

Q Okay. And did you ask her to do anything else?

A We asked her to request of the driver, request a transfer. 14/

Schell confirmed the results of her observations in a letter to Gerondale dated December 16, 1988, which reads as follows:

On Thursday, December 15, at 3:15 p.m., I boarded the Libal-DePere bus at the downtown transit terminal. I presented the driver with a dollar bill and requested a receipt. The driver refused to give me a receipt and gave to me, instead, two quarters out of a tray on the dash of the bus. I did not observe where he placed the dollar bill and do not recall hearing the tone of the registering farebox.

Upon boarding, I also requested a transfer. The driver questioned my need for a transfer. I told him I needed it so that I could make a transfer. He asked if I was going to return downtown on the Allouez-DePere bus. At

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13/ Tr. II, at 252-253.

14/ Tr. II, at 71-72.

that time I got a bit short with him, and said yes and that he should just give me a transfer.

I sat in the side-facing seat behind the driver. Across from me were two people, an elderly woman and a teenage boy. After driving several blocks, the driver asked the boy his name. The boy replied, "Ray." The driver said, "Ray-buddy, would you do me a favor?" He handed the boy a piece of paper, approximately three inches square with some form line on it, and asked him to write his name and something on the paper. (Due to the noise level and where I was sitting I couldn't hear every word of the conversation.) He told Ray he would explain later. Ray followed the instructions and handed the paper and pen back to the driver. At that time, the driver told Ray he should ask him tomorrow and he would explain.

I alighted the bus in front of the DePere City Hall, at the intersection of Merrill and Broadway.

Schell testified that the letter accurately set forth her observations. She stated it was her first ride in a bus driven by the Grievant and that no other bus driver had ever questioned her regarding a request for a transfer. She stated that the Grievant initiated the questioning about the purpose of the transfer.

The Grievant testified that when Schell asked for a receipt he knew "it was a setup". 15/ He also stated that "(h)er whole statement is correct", 16/ with the exception that he did not refuse to give her a receipt. Rather, he did not give her a receipt because his receipt bag had been stolen from the locker room approximately eighteen months earlier. He acknowledged he did not report the theft to the City. The Grievant stated his understanding of how to handle transfer requests thus:

. . . I will usually ask them if I'm in the downtown area what bus are you going to transfer to? I'm going outbound, there's nothing out there. Where are you going, you know. Usually, I'll try to get them to say what bus they are transferring to. 17/

Later in his testimony, he testified he responded to Schell's transfer request thus:

Q What did you say to her when she asked you for a transfer?

A I said what, and then I'm reaching for the transfer and I'm thinking to myself, because they just reprimanded me about asking for a transfer. I did not. She states in her letter I asked her what she wanted the transfer for. I did not. I picked up the transfer, I started to say what, and then I said do you know that you can't use this transfer coming on the Allouez-De Pere back to downtown, back to the downtown area? That's all I did, I made a statement. 18/

The parties do not dispute that the Transit System operates on an exact fare basis, and went to an exact fare system based on a Union proposal. Each of the drivers who testified stated they will, on occasion, make change for a rider and will do so as a service to customers. Withbroe and Morency said Gretzinger was aware of this fact and had approved of it in certain circumstances. Gretzinger denied this.

#### The Grievances

The first grievance regarding the events summarized above was filed on November 23, 1988. That grievance states it was filed "(r)egarding disciplinary letters in his personnel file dated June 1988 and November 16, 1988 in regard to charges made by customers". Gretzinger responded to the grievance in a letter dated December 9, 1988, which denied both items alleged

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15/ Tr. II, at 225.

16/ Ibid.

17/ Tr. II, at 226.

18/ Tr. II, at 228.

in the grievance, and stated "the grievance filed regarding a verbal warning issued to the Grievant on June 22, 1988 is denied on the grounds that it was not filed within the time frame outlined in the working agreement".

The next grievance was filed on December 14, 1988. That grievance states it was filed "(r)egarding disciplinary letter in his personnel file dated December 9, 1988 in regard to a customer complaint".

The next grievance was filed on December 28, 1988. That grievance states it was filed "(r)egarding written warning letter dated December 16, 1988 regarding interior lights".

The final grievance was filed on January 3, 1989. That grievance states it was filed "(r)egarding letter of January 3, 1989 regarding termination of (the Grievant) due to handling of fares and other violations". The resolution sought by the grievance was: "To reinstate (the Grievant) to his position as bus driver, and remove all disciplinary letters from all personnel files".

The parties consolidated these grievances as they were processed through the contractual steps. Paul Jadin, the City's Personnel Manager, represented the City at the third step of the grievance procedure. Jadin stated he heard the Union arguments on the merits of the grievances at that meeting, and afforded the Grievant the opportunity to explain his conduct during the events underlying each grievance. He also stated he afforded the Grievant the opportunity to provide any information which might establish mitigating circumstances. Jadin testified that the Grievant responded thus:

He indicated that he has got things that he didn't want to share with me, and I made it very clear that the only way I could find in his favor is if he shared everything that could possibly serve to mitigate these circumstances or prove his innocence. And he simply said, well, I want to keep that secret for the time being. 19/

After the third step meeting, Jadin undertook an independent investigation of the underlying incidents. He stated that he interviewed Selissen, and determined him to be a credible witness. He described his further efforts thus:

I discovered several things that I think gave me reason to believe that all of the action taken against the Grievant was appropriate, primarily in that we had -- first of all with respect to Mr. Selissen -- we had an individual who certainly had no motivation to hurt (the Grievant) and also had a number of friends that I had hoped to follow up with to improve the quality of the investigation but who had expressed fear of retaliation. And I think that led me to believe that in fact we had a driver who, based on the testimony of that witness and the record, was intimidating and in fact incorrigible. 20/

He also stated he interviewed Summers, and questioned her regarding the Grievant's feeling that she had become embittered when he rejected her advances. Jadin stated he credited Summers' account and could see no reason why she would attempt to injure the Grievant. In a letter to Withbroe dated January 18, 1989, Jadin stated:

I am writing to advise you that I have decided to uphold the discharge of (the Grievant) from the Green Bay Transit Department. After a complete investigation, it is apparent that the City had just cause for this action.

. . . .

The Green Bay Transit Policy & Procedural Manual

The Transit maintains a manual which became effective on November 22, 1985, and which has been distributed to all bus drivers. The "INTRODUCTION" section of the Manual reads, in relevant part, as follows:

The bus driver rules, regulations, and procedures contained in this manual represent an update of the overall Green Bay Transit Policy and Procedural Manual developed in 1980. This manual deals specifically with bus driver work rules, bus operation, driver-passenger

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19/ Tr. II, at 117.

20/ Tr. II, at 114-115.

relationship, plus passenger conduct rules. A number of written and unwritten administrative policies and procedures have been added to the manual, along with a new discipline code for bus drivers.

. . .

The policies and procedures contained in this manual were developed as a joint effort of transit management, Amalgamated Transit Union Local 857 (ATU) representatives, the City Personnel Department, and the Brown County Planning Commission. The working conditions contained in this manual do not supercede any parts of the labor agreements between the Amalgamated Transit Union Local 857 and the City of Green Bay.

. . .

The discipline code referred to above appears at Section 9 of the Manual. That section contains a section headed INTRODUCTION, which reads, in relevant part, thus:

The discipline code penalties for infractions of the rules depend on the frequency of occurrence within a specified time period, the circumstances of the particular incident, the driver's length of service, and his/her performance record. No penalty may be more severe than that shown in the discipline code, but it may be lessened because of mitigating factors, as indicated. Any employee, who feels the disciplinary procedure has been applied unfairly, may utilize the grievance procedure provided in the Amalgamated Transit Union Local Division 857 Labor Agreement with the City of Green Bay.

. . .

The Code provides a detailed listing of types of conduct in which the City has a disciplinary interest, followed by separate columns headed: "First Offense"; "Second Offense"; "Third Offense"; "Fourth Offense"; "Fifth Offense"; and "Repeated Cases Within." The final column contains a time period which varies from 6 through 24 months, depending on the severity of the type of conduct involved. Section H of the Code reads as follows:

		<u>Fourth 21/ Offense</u>	<u>Fifth Offense</u>	<u>Cases Within</u>
H.	<u>GENERAL</u>			
	1. Any accumulation of four Written or more warning or dismissal of any individual or suspension violations	Suspension		6 months

The parties have cited a number of the descriptive sections of the Code. Included in those are the following:

1. GENERAL REGULATIONS AND PROCEDURES

. . .

G. SICK LEAVE

A driver who is sick and unable to report for his/her assigned run, must notify the Transit office dispatcher no less than sixty (60) minutes before the scheduled sign-up time.

. . .

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21/ Section H of the Code contains no entry under the columns headed First Offense; Second Offense or Third Offense.

L. ACCOUNTING

Drivers will be responsible for accurate accounting in recording passengers on the farebox, issuing and receiving transfers, handling refund skips, and making farebox readouts. Under the exact fare system, drivers should not handle cash fares, tickets, or passes unless authorized by the dispatcher.

. . .

2. WORK PROCEDURES AND RULES

. . .

D. ESTABLISHED ROUTES

Unauthorized deviation or detouring from established routes is prohibited, except when directed by a law enforcement officer, transit manager, or dispatcher.

Drivers must complete all scheduled trips, unless instructed by the Transit Manager or dispatcher.

. . .

F. TRANSFER CONNECTIONS

Drivers must make every effort to make transfer connections with connecting buses at the downtown Transitway. If delays are encountered which may disrupt transfer connections, the driver shall call the dispatcher if a passenger requests a connecting bus to wait at the Transitway. The passenger should be told that the connecting bus will wait only three (3) minutes beyond its scheduled departure time. The waiting connecting bus will stay at the Transitway for a maximum of three (3) minutes, and, if the bus with the transferring passenger is not in sight, the driver will call the dispatcher for instructions "before" leaving on the scheduled route.

Passenger transfers between routes, outside of downtown, will be made where possible. The dispatcher should be contacted when a passenger requests a transfer to another bus outside of downtown Transitway. The passenger requesting the transfer should be informed of where and when to catch the other bus.

. . .

L. BUS MECHANICAL PROBLEMS WHILE OPERATING

When a defect that affects the safe operation of a vehicle is detected, the driver should contact the dispatcher immediately. The dispatcher will talk to the Transit Maintenance Supervisor and

arrange for a bus change or necessary corrective action, as warranted. Radio contact should be maintained with the dispatcher until such time as a bus change decision is made.

. . .

3. BUS OPERATION

. . .

P. INTERIOR LIGHTS

Interior lights are to be turned on at all times during non-daylight hours. Exceptions are fog and severe weather conditions to minimize glare, but the lights must be used when passengers board or alight. Interior lights should be used during daylight hours, if weather conditions warrant.

. . .

5. DRIVER CONDUCT AND PERSONAL APPEARANCE

A. GENERAL

As employees of an organization providing a public service to the community, Green Bay Transit System personnel have an obligation to conduct themselves in a manner befitting the public trust. Drivers are to be courteous to passengers and fellow employees alike and to conduct themselves in a respectful and civil manner at all times.

. . .

6. DRIVER - PASSENGER RELATIONSHIP

A. PUBLIC IMAGE

The bus driver is a major factor in the creation of a good public image of the Green Bay Transit System. To a majority of passengers, the driver is the sole representative of the Green Bay Transit System. Therefore, genuine courtesy and a friendly helpful attitude toward passengers will help build a good public relation's image of the Green Bay Transit System, increase ridership and system revenues, and make the driver's job easier. Pedestrians, motorists, and especially passengers, should be treated with the utmost courtesy and respect. Drivers should take special care in moving from a stop after an elderly or handicapped person has boarded the bus.

. . .

8. FARE COLLECTION AND IDENTIFICATION

A. EXACT FARE SYSTEM

All boarding passengers must pay a fare consisting of either exact cash, tickets, or a valid monthly pass. Drivers should not handle change, tickets, or passes, unless authorized by the dispatcher.

B. REFUND SLIPS

Refund slips are to be carried by drivers, while on duty, and turned into the Transit office after his/her work shift.

Passengers who deposit cash, in excess of the proper fare, should be offered a refund slip for the amount of the over-deposit.

Refunds can also be obtained in person at the Green Bay Transit office. Refunds for elderly and handicapped passengers may be obtained from the Transit office by mailing a stamped, self-addressed envelope.

. . .

Further facts will be set forth in the Discussion section below.

THE PARTIES' POSITIONS

Noting that the City bases the Grievant's discharge on its "allegation that the grievant had six (6) infractions of the disciplinary code within six (6) months", the Union argues that each alleged infraction must be examined "to see if the City's actions were appropriate". The first incident occurred on June 22, 1988, and, according to the Union, is based on the City's acceptance of a citizen complaint "without further verification after driver explanation". Contending that the City's reliance on the unverified complaint "is inherently unfair", the Union concludes that the discipline issued by the City for the June 22, 1988, complaint can not be considered any basis for the Grievant's discharge. The next instance of discipline occurred on September 1, 1988, and, according to the Union, manifests the City's disregard of "substantial mitigating factors". Specifically, the Union argues that the Grievant was informed that he could skip the loop on the UWGB route; that "other drivers on that route were doing the same thing"; that Transit management was aware of the Grievant's skipping the loop long before disciplining him for doing so; and that other drivers run their buses without using interior lights in rural areas. The next instance of discipline occurred on November 15, 1988, in response to Selissen's complaint, and, according to the Union, "is completely unwarranted". Specifically, the Union argues that: "A close examination of Mr. Selissen's actual sworn testimony would indicate that none of the things that he complained about were in violation of any written policy or procedure". The Union notes that the next instance of discipline occurred on December 6, 1988, and concerns "an alleged violation of the sick leave notification policy". The Union argues that "there is some confusion as to what "sign-up time" means", and that "drivers believe sign-up time constitutes the time just prior to their scheduled driving time". Because the Grievant called in within one hour of his scheduled driving time, it follows, according to the Union, that this discipline can play no role in justifying his discharge. The Union notes that the next instance of discipline occurred on December 9, 1988, and is based on the Summers' complaint. The Union asserts that none of the four separate allegations made by Summers has been proven to be anything more than the complaints of "a spiteful woman". The Union contends that with the next item of discipline, which occurred on December 15, 1988, "Management's elongated attempt to selectively discipline came to a head". Specifically, the Union argues that the City "set up" the Grievant, and used Schell to "entrap" him. A review of the record establishes,

according to the Union, that this instance of discipline was inappropriate since the Grievant's conduct was "reasonable" and "within the bounds of allowability of the policy manual". The Union concludes that the record, viewed as a whole, does not support the Grievant's discharge, and summarizes this point thus:

First, there was not a serious offense among any of the instances involved. Secondly, all of the instances involved had mitigating factors and many of them would not even seem to be grounds for discipline at all. Thirdly, the violation of which the grievant is accused are predominately practices utilized by other drivers, none of whom have been disciplined. Finally, management has given the maximum discipline in each and every one of these instances even though it is required to consider mitigating factors under its disciplinary code.

As the remedy appropriate for the City's "outrageous" conduct, the Union requests that "the grievant . . . be reinstated to his employment with back pay from the date of termination".

After a review of the record, the City contends the Grievant committed nine offenses from June 22, 1988, through December 16, 1988. Noting that the parties have "(c)ontractually and by past practice" incorporated the Manual's provisions into the collective bargaining agreement, the City concludes that the Manual's "schedule of discipline . . . does not supercede any provision of the contract". The contract's requirement of "good cause" is defined, according to the City, by the following seven part test:

- a. Did the employee know the rule and the consequence?
- b. Is the rule reasonable?
- c. Did the employee disobey the rule?
- d. Was a fair investigation conducted?
- e. Is there proof that the employee is guilty?
- f. Has the rule been consistently applied?
- g. Does the penalty match the offense?

Contending that the Manual was generally distributed; that the Grievant does not deny receiving it; and that the Grievant received and failed to grieve a number of instances of discipline, the City concludes that there can be no doubt that the Grievant knew of the Manual's provisions and their consequences. The reasonableness of the rules at issue here are established, according to the City, by logic, bargaining history and common sense. Beyond this, the City argues that there can be no doubt that the Grievant violated the rules on June 22, September 1 and December 6, 1988, since he did not grieve those disciplinary actions. Contending that the Grievant "has offered no reply" to Selissen's testimony, the City concludes the November 15, 1988, disciplinary action has been established. The December 9, 1988, disciplinary action has been established by Summers' credible testimony, according to the City. The disciplinary actions of December 16, 1988, are established, the City argues, by the Grievant's incredible testimony accounting for the underlying incidents as contrasted to the credible testimony of the City's witnesses. The City characterizes the record on the propriety of the City's investigation of the various incidents thus:

Each of the separate incidents that occurred within the six month period beginning June 22, 1988, and ending on December 16, 1988, was fairly and thoroughly investigated. At each step along the way, (the Grievant) was given an opportunity to present information to the City which would clear him of any liability. In fact, (the Grievant) was asked under oath . . . whether he had any other information to explain his conduct. He testified he had none.

Asserting that the Grievant has failed to grieve four of the nine offenses and that the remaining five have been proven and underscored by the Grievant's lack of credibility, the City concludes that it has offered proof that the Grievant



is guilty. Because no Union witness testified that any employe had not been disciplined when a rule violation became known to the City, it follows, according to the City, that it has consistently applied its rules. Finally, the City contends that although the penalty imposed on the Grievant is severe, "(a)nything short of a dismissal would make a mockery of the rules and procedures as well as the scheme of progressive discipline". In the alternative, the City argues that severe discipline must be meted out to the Grievant and that he "should not be allowed to return to the workplace until it has been certified that he is capable to perform the jobs within the parameters defined by management". Beyond this, the City contends that any back pay award must be reduced by his earnings during the period of his dismissal.

In reply to the City's brief, the Union notes its agreement with the City's seven-factor analysis by stating "such a test is appropriate under the circumstances in this case". Regarding the first test, the Union contends that "specific rules are ambiguous and contradictory as set forth in the Manual". Specifically, the Union notes the Grievant was instructed not to talk to passengers, but the Manual requires drivers to be friendly, helpful and courteous to passengers, thus putting the Grievant "in a catch-22 position". The Union notes similar inconsistencies exist regarding following prescribed routes and running with interior lights on. These inconsistencies and the City's failure to apply the rules uniformly establish that the rules are unreasonable, according to the Union. Acknowledging that the Grievant "perhaps" disobeyed the rules, the Union argues: "Although there may have been a technical disobedience of a rule, such disobedience could not be avoided and certainly should not have been grounds for discipline under these circumstances". Beyond this, the Union asserts that "(p)erhaps the most striking deficiency in the employer's termination is its failure to fairly conduct an investigation in regard to many of the actions . . . complained of". A review of the record reveals, according to the Union, that the Grievant "was set up to be terminated and management went through the motions of manufacturing violations so that they could attempt to justify their outrageous conduct". Noting that there is some proof the Grievant violated the City's rules, the Union argues that the record demonstrates this proof is insufficient to support all the various allegations brought forth by the City. The next standard concerns the consistency of the City's application of its rules. The Union characterizes the record on this point thus:

The inconsistent application to the rules to (the Grievant) is the most egregious part of this outrageous attempt by management to terminate an employee. Consis-tently, on every offense charged management selectively chose (the Grievant) and put blinders on regarding all other employees.

Finally, the Union contends that the City has consistently failed to match the offenses alleged against the Grievant with the sanction imposed, and that its termination of the Grievant is "unjustified". The Union requests that the Grievant "be reinstated with full back pay".

In reply to the Union's brief, the City contends that the Union's assertion that the City consistently selected the most severe discipline available ignores that "in some cases the most severe discipline is the only realistic discipline available". Specifically, the City contends that it attempted to modify the Grievant's behavior with the imposition of progressively more severe sanctions. Accepting the Union's arguments would produce to nothing more than "a continuous stream of oral warnings", according to the City. Beyond this, the City contends that the nature of each offense can not be considered a mitigating factor here, since the contract anticipates dismissal for a given number of offenses over a six month period, and since a pattern of rule violations can warrant a dismissal. The record demonstrates, according to the City, that its attempts to change the Grievant's conduct failed, and that "(b)y his conduct, (the Grievant) has proved to be incorrigible". That the hearing revealed further rule abuses demonstrates, the City contends, that the Grievant has a "cavalier" attitude toward the rules which, under the circumstances presented here, warranted his discharge.

## DISCUSSION

The stipulated issue questions whether there was cause for the Grievant's discharge. To address this issue, it is necessary to establish which items of discipline are in issue, and the standard for reviewing them.

The Union has filed four grievances. The November 23, 1988, grievance questions the warnings based on the Martynski and Selissen complaints. The December 14, 1988, grievance questions the warning based on the Summers complaint. The December 28, 1988, grievance questions the December 15, 1988, warning for running without interior lights. The final grievance questions the discharge itself, calling specific attention to action based on Schell's observations.

Section (b) of Article III places the merits of the remaining ungrieved disciplinary incidents beyond inquiry. Those incidents are the warnings of September 1 and December 6, 1988. The December 6, 1988, warning both notified the Grievant of the sanction of "one (1) day served at the bottom of the extra board", and warned him that repeated cases within a twelve month period would be subject to further sanctions. This and the September 1, 1988, warnings each constitute a "not contested . . . written reprimand" within the meaning of Section (b) of Article III. As such, those reprimands "shall be considered a valid warning", and thus are not subject to independent review here.

The standard appropriate for reviewing those items of discipline at issue here has been agreed to by the parties. That standard is rooted in Enterprise Wire Co., 46 LA 359 (Daugherty, 1966). The City's statement of the relevant standards was advanced in the City's brief, and is noted above. The Union agreed to the analysis in its reply brief. The City's statement of the relevant standards does not adopt the Daugherty standards verbatim, and whether or not the Daugherty analysis is the definitive statement of a just cause analysis is, then, not posed here. In this case, the parties who agreed to the just cause provision have also agreed to how that provision is to be interpreted. This agreement must be honored, and will structure the discussion here.

### a. Did (the Grievant) know the rule and its consequence?

This aspect of the analysis is common to each of the grievances at issue, and can not be considered in doubt here. The Union assisted in the development of the disciplinary code, which was put into writing and distributed as a Manual to all drivers, including the Grievant. The Union does not question that the Grievant has the Manual, but questions whether specific provisions of the Manual are "ambiguous and contradictory". This assertion questions the reasonableness of the rules, a point addressed below. On the present record it cannot be said that the Grievant was unaware of "the rule or its consequence".

### b. Is the rule reasonable?

The Union's arguments focus ultimately on Section H, but primarily address the reasonableness of the rules underlying the individual violations which the Grievant accumulated under Section H. A review of the rules in issue establishes that those rules can not be considered unreasonable as written. The closer issue is whether those rules were reasonable as applied to the Grievant. This issue is addressed in the application of the remaining five factors.

On a general level, discussion of the rules questioned here must start with the fact that the Manual was a joint effort of the City and the Union. This makes a finding that the rules are unreasonable on their face a difficult one, since the parties have, presumably, found the rules reasonable.

The more specific questions are posed by the individual grievances. As argued by the Union, the November 23 and the December 14, 1988, grievances, as well as part of the January 3, 1989, grievance question whether "the direction given to (the Grievant) not to question passengers about their destination is directly contrary to the direction of the Policy Manual to be friendly . . ." This contention poses the final sentence of Rule 2.F. against the provisions of

Rule 6.A. This contention does not call into doubt the reasonableness of either rule as written. A driver ought to be able to inform a passenger of where to catch another bus without being discourteous. Rather, the issue posed here is factual and turns on whether the Grievant was helping or intimidating passengers. As noted above, resolution of this issue turns on the application of the remaining factors.

The December 28, 1988, grievance, as argued by the Union, questions whether "the general direction to drivers to drive safely goes contrary to the interior light rule under certain circumstances". Here too, the issues posed do not call into doubt the reasonableness of Rule 3.P. as written, but pose factual issues. The safety considerations to both passengers and to drivers of Rule 3.P. is self-evident. At most, the record questions whether the Grievant's windshield was fogged on December 15, 1988, and whether the fact that drivers find the glare of the interior lights a nuisance should constitute a mitigating factor in assessing the Grievant's discipline. Both of these factual issues are better addressed under the factors which remain to be discussed.

The January 3, 1989, grievance, as argued by the Union, questions whether the exact fare system noted in Rules 1.L., 8.A. and 8.B., "is so unreasonable that it is not followed by the drivers and even management has given their blessing for the occasional disregard to this rule". Here again, the issues posed are factual in nature. The record establishes that the exact fare system was originally proposed by the Union to enhance driver efficiency in completing routes and safety from robbery. The record also establishes the exact fare system can favorably affect the City's insurance premiums. The rule as written, then, can not be said to be unreasonable. Whether management has permitted occasional rule violations and whether driver practice should constitute mitigating considerations in the Grievant's discipline are factual issues addressed below.

Because the reasonableness of the rules underlying the individual violations which are accumulated under Section H has been established, the reasonableness of Section H, on its face, can not be seriously challenged. Section H provides a check against repeated instances of improper conduct which occur under separate disciplinary headings. Because Article III, Section (b), makes a written reprimand effective for only six months, and because good customer relations are essential to the Transit System, such a check is a reasonable means of assuring quality in the provision of transit services. Potential abuse of the catch-all nature of Section H is provided in the introductory section of the disciplinary code, which provides that any discipline stated in the code can be lessened by certain mitigating factors, and is subject to the formal grievance procedure. Thus, the reasonableness of Section H as written has been established here. The reasonableness of its application to the Grievant turns on the remaining factors.

c. Did the employee disobey the rule?

e. Is there proof that the employee is guilty?

As argued by the parties, these two factors are so closely related that they are most efficiently addressed with a single discussion. As argued by the parties, the factors pose substantive issues regarding the Grievant's conduct rather than procedural issues regarding the City's investigation of the Grievant's conduct.

#### The November 23, 1988, Grievance

This grievance questions the June 22 and November 15, 1988, warnings. A preliminary issue is posed regarding the timeliness of the Union's attempt to question the June 22, 1988, warning. If, as the City asserts, the Grievant received the warning sometime shortly after June 22, 1988, then the grievance has not been timely filed. If, as the Grievant asserts, he did not receive the warning until November 14, 1988, then the grievance has been timely filed.

Standing alone, the Grievant's assertion that he did not realize he had been verbally reprimanded at the close of the June 15, 1988, conference is not persuasive. A union steward was present for that meeting, during which the Grievant's direct supervisor informed him to stop telling passengers which bus to take. It is impossible to conclude he did not understand he had received a verbal warning.

The difficulty posed here is that the issue is not whether the Grievant appreciated the disciplinary significance of the meeting, but when he received notice of the written confirmation of the warning. The problem of actual receipt of the confirmation is posed by Gretzinger's termination letter, which points to the date of the written confirmation as the effective date of the warning. Both parties' arguments underscore this by focusing on June 22, 1988, as the effective date of the warning. This reflects the significance of "written" reprimands under Article III, Section (b). Thus, the Grievant's receipt of the June 22 confirmation is the significant point here.

Inexplicably, however, Gerondale waited one week to confirm the verbal warning, and decided to "mail" the warning to the Grievant. While there is considerable persuasive force in the City's assertion that the Grievant's testimony should not be credited regarding his failure to receive the warning until November of 1988, for the City to have posed a direct credibility determination on this point, it had only to personally and promptly issue a written confirmation of the earlier verbal reprimand. It did neither, and the confusion in the record on this point can not persuasively be resolved against the Grievant. The sole clearly established date of receipt of the June, 1988, warning is November 14, 1988. Thus, that warning was timely challenged by the Union's November 23, 1988, grievance.

The substantive issues on the June 22, 1988, warning are more easily dealt with than the procedural. The Union correctly observes that the bulk of Martynski's allegations are unproven. However, Gerondale based the reprimand on the Grievant's questioning of a rider holding an unlimited pass. Neither the questioning, nor the aggressive nature of that questioning can be considered in doubt. The Grievant's written reply establishes that he instructed Martynski on which bus she "should" take. His testimony establishes that he thought it appropriate to "train" a handicapped rider holding an unlimited pass to take a bus more convenient for him. This evidence, standing alone, is sufficient to establish an unwarranted degree of driver interference in the personal affairs of a rider holding a pass. It follows that the Grievant disobeyed established Manual rules on driver courtesy and that the City has adequate proof of his guilt.

Contrary to the Union's assertion, the City has, through Selissen's testimony, proven the Grievant's continuing questioning of certain riders, in violation of Manual rules. The Union persuasively points out that Selissen's testimony will not support his assertion that the Grievant exceeded the speed limit. However, Selissen affirmed the accuracy of his written complaint in testimony which establishes that the Grievant's treatment of elderly and handicapped riders was deeply offensive to Selissen. Selissen credibly testified that he and other riders changed buses to avoid the Grievant. His credibility is enhanced by the fact that he had no apparent bias against the Grievant. Beyond this, his testimony stands un rebutted. The Grievant's assertion that he possesses a photographic memory and can not recall Selissen riding the bus is entitled to no weight. Ted and Mercedes Helinski were credible witnesses, but their testimony establishes only that the Grievant was capable of properly performing his duties. Their testimony does not impact Selissen's account. That the Grievant was capable of treating elderly passengers well on certain occasions does not address his inability to do so in the instances related by Selissen. Here too, the City has proven the Grievant disobeyed a known rule, and has done so with adequate proof of his guilt.

#### The December 14, 1988, Grievance

Viewed from the perspective of the record as a whole, the credibility determination underlying the Summers' complaint is not as close an issue as when viewed from the perspective of the evidence available to the City at the time of the discipline. The latter perspective is the significant one here, however, and the record on this point poses troublesome issues. As with Martynski's complaint, the City did not investigate the bulk of the allegations made, but chose to ground the discipline on the narrowest basis possible -- the Grievant's questioning of a pass-holder regarding their destination.

Though close issues are posed, the record supports a conclusion that the Grievant continued to question a passholder in a discourteous fashion, in violation of Manual rules. This conclusion rests, of necessity, on crediting Summers' account over the Grievant's. The balance apparent in her account and her demeanor as a witness ground this conclusion, but the conclusion has not been reached without difficulty. Harold was a credible witness, and her testimony establishes that Summers conversed with the Grievant. Jadin's testimony corroborates this point. Summers' December 2, 1988, letter, however, asserts she never conversed with him. Against this inconsistency, however, must be placed the rest of her account and the Grievant's testimony. Contrary to the Union's assertion, her testimony does not manifest unfounded stridency.

Summers was afforded repeated opportunities to embellish her account in a way damaging to the Grievant, yet declined to do so. This can be seen in a series of responses to questions which sought to qualify certain statements she attributed to her children as excited utterances:

Q Let's back up to just your children. On those occasions when they went by themselves out to the dance studio, you then arranged to arrive there sometime after they did?

A I'd usually be on the following bus.

Q And when you arrived were these events reported to you?

A Yes.

- Q Immediately after your arrival?
- A Well, when they, you know, came out of their lessons. They were probably still dancing when I arrived there.
- Q Did your children appear to be upset by this?
- A A little bit. 22/

Her response is insufficient to establish an exception to the hearsay rule, but is sufficient to establish a sense of balance in her account. Similarly, when offered the opportunity to embellish on her conclusion that the Grievant treated elderly and handicapped riders with disrespect, she declined to relate specific conversations, acknowledging she could not recall the conversations in detail. This balance is inconsistent with the Union's characterization of her as a spurned woman, seeking only revenge for a personal humiliation.

The strength of Hanold's testimony and the inconsistency within Summers' set the stage for the Grievant to subvert Summers' credibility with his own account. Significantly, his testimony failed to do so. That testimony is itself not without inconsistency. His written account initially indicates he had difficulty recalling her identity. His testimony stands in marked contrast, revealing a vivid and detailed recall. Beyond this, his assertion that Summers felt so aggrieved by his failure to reciprocate her advances that she deliberately sought to hurt him stands without corroboration. By his own account, those advances were casual and indirect. What support there is for his assertion lies in Hanold's testimony. That testimony, though credible, is insufficient to establish a basis for the degree of vindictiveness asserted by the Grievant.

In sum, the record on this point, standing alone, presents certain close issues. The record will unequivocally establish that Summers held a monthly pass and that the Grievant questioned her regarding her destination, in spite of prior warnings and in violation of the Manual. The closer point is whether the questioning was friendly or intimidating in nature. I am satisfied that the record supports Gerondale's crediting Summers' account over the Grievant's, and thus that the questioning was intimidating in nature.

#### The December 28, 1988, Grievance

The Grievant's account of the events of December 15, 1988, is the most damaging factor in assessing his credibility as a witness. His account of those events is so internally inconsistent that it can not be summarized without quoting it at length, as has been done above.

By his own account, he first informed Gerondale that he did not have his lights on because he had no passengers on board. This presumes he thought his earlier warning was effective only if passengers were on board. His testimony also has him driving in from De Pere with customers aboard an unlit bus. This account makes the spilled coffee, not the substance of Gerondale's earlier warning, essential to the veracity of his account. In spite of this, the Grievant varyingly accounted for when the coffee was spilled and to whom, if anyone, he reported it. The marked inconsistency of this account stands as its own refutation.

In this instance, Gerondale's direct observations stand unrebutted, given the lack of credibility of the Grievant's testimony. It follows that the City has demonstrated the Grievant's violation of a work rule, and has done so with adequate proof.

#### The January 3, 1989, Grievance

The Union's assertion that Schell was improperly used to entrap the Grievant is unpersuasive. It is admittedly difficult for Transit management to observe a driver's conduct, and it can not be reasonably asserted that the sole check on quality available to Transit management is customer complaints.

Schell's testimony and written account of her observations establishes the Grievant initiated the questioning on the purpose of her transfer. The Grievant's testimony does nothing to rebut Schell's account. His knowledge that he was being "set-up" makes his conduct inexplicable. By his own account, in the knowledge of his prior warnings, he initiated the questioning of the transfer. Nor can his assertion that he sought only to assist Schell withstand scrutiny. Even ignoring the apparent inconsistency of his desire to assist a person he felt was setting him up, his testimony is again marked by inconsistency. He initially affirmed the accuracy of Schell's written account, which notes his questioning her regarding the transfer, only to later assert he

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22/ Tr. I, at 31-32.

never questioned her, but simply made a statement.

The record on this point is sufficient to establish that the City has proven a rule violation and has done so with adequate proof.

d. Was a fair investigation conducted?

The record establishes that the City's investigation preceding Step 3, if minimal, was fair. Regarding each of the rider complaints at issue here, Transit management interviewed the complaining rider, reviewed their written complaint, then afforded the Grievant an opportunity to respond in writing. In each case, Transit management investigated the bare minimum of the allegations made and determined that the bare minimum was a sufficient basis to discipline the Grievant. Each such determination demanded crediting one of the two accounts, and on the record posed here the two accounts form a sufficient basis to act upon.

The remaining instances of discipline involve the direct observations of City management personnel. In each such case, no significant corroborative evidence was available, since the observations inevitably pitted the testimony of the management personnel against the Grievant. That the City relied on the accounts of its own personnel can not be faulted here.

The City's investigation at Step 3 was more thorough, and afforded the Grievant an opportunity to offer proof regarding mitigating circumstances. That he chose not to do so can not be held against the City.

Viewed as a whole, the record will not support the Union's assertion that the Transit management was out to terminate a blameless employee. Rather, the record establishes that the Grievant, by his own conduct, put his job at risk.

f. Has the rule been consistently applied?

The Union has made a number of forceful contentions here, but the record will not support a conclusion that the City behaved toward the Grievant in a manner inconsistent with its behavior toward other employees. The most questionable aspect of the City's conduct concerns Schell's testing the Grievant on making change. On the present record, it is impossible to determine if Transit management knew of, and acquiesced in, driver practice regarding making change. At a minimum, however, the record affords some reason to believe the Grievant was singled out for observation. This possibility makes it impossible to grant any weight to the change making incident in assessing the Grievant's conduct. Beyond this, the record will support a conclusion that drivers operate without lights in certain circumstances. The record will not, however, offer any support for a conclusion that Transit management was aware of the practice or failed to discipline any employee when made aware of the practice. Beyond this, while other drivers indicated they may question passengers on occasion, no testimony indicates any driver questioned passengers as insistently or aggressively as the Grievant. Because no other driver has accumulated the number of violations totalled by the Grievant in a six month period, it is impossible to conclude that his discharge was in some sense discriminatory. Thus, while the record does contain evidence indicating the Grievant may have been singled out for observation regarding making change, the record will not support a conclusion that Section H of the Manual has been inconsistently applied to the Grievant.

g. Does the penalty match the offense?

As preface to this point, it is necessary to note that even disallowing the first and last incidents at issue here the Grievant had accumulated a sufficient number of violations during the six month period to warrant discharge under Section H. The issue posed here is thus not whether discharge can be warranted under Section H, but whether mitigating factors have been demonstrated which warrant a less severe penalty.

On this point, the Union's assertion that each of the offenses alleged against the Grievant is minor and should not be considered sufficiently serious to warrant discharge is persuasive only to the degree the Grievant's account of those incidents is credited. Because the Grievant's account of those incidents can not be credited, the Union's case for mitigating the penalty must fail.

A review of the Grievant's testimony establishes a consistent pattern of his denial of any significant wrongdoing and an unwillingness to modify his conduct in any significant way. By his own account, he was, when Schell boarded the bus in December of 1988, still attempting to "train" passengers. By his own account, he was operating a bus in December of 1988 without lights while passengers were on board. His attempt to bolster that account with the assertion of a fogged windshield can not be credited.

The testimony of Mr. and Mrs. Helinski, Parkman and Juley offers reason to believe the Grievant can function effectively as a driver. His nine years of experience underscore that conclusion. These are the strongest mitigating factors contained in the record. If the Grievant had evidenced in his testimony some reason to believe he understood the discipline he had received and was attempting to modify his conduct accordingly, those mitigating factors noted above could be given great weight. However, the Grievant's testimony establishes he perceived each instance of discipline as a right/wrong situation in which he was inevitably right. The record offers scant support for this

perception. Thus, the City, at the end of the eight instances of discipline presented here had no reasonable basis to conclude the Grievant would modify his behavior, and had reason to believe his retention would assure continuing violations, including the continued intimidation of certain riders. Against this background, it must be concluded that the City had a reasonable basis to believe the Grievant was an employe whose conduct could not be modified by progressive discipline. Accordingly, it must be concluded that the penalty matched the offenses.

AWARD

The City did have good cause to discharge the Grievant.

The grievance is, therefore, denied.

Dated at Madison, Wisconsin this 6th day of October, 1989.

By \_\_\_\_\_  
Richard B. McLaughlin, Arbitrator