

BEFORE THE ARBITRATOR

In the Matter of the Arbitration  
of a Dispute Between

WAUTOMA AREA SCHOOL DISTRICT  
BOARD OF EDUCATION

and

WAUTOMA AREA SCHOOL TRANSPORTATION  
RELATED EMPLOYEES

Fred J. Bielmeier grievance  
dated April 19, 1990 re  
3-day suspension

Case 52  
No. 44394  
MA-6286

Appearances:

Mr. David W. Hanneman, UniServ Director, Central Wisconsin UniServ Council - South,  
PO Box 1606, Wausau, WI 54401-1606, appearing on behalf of the Union.

Mr. William G. Bracken, Director of Employee Relations, Wisconsin Association of  
School Boards, Inc., 132 West Main Street, PO Box 160, Winneconne, WI 54986,  
appearing on behalf of the District.

ARBITRATION AWARD

The parties jointly requested the Wisconsin Employment Relations Commission to designate the undersigned Arbitrator to hear and determine a dispute concerning the above-noted grievance arising pursuant to the grievance arbitration provisions of the 1988-90 collective bargaining agreement (herein Agreement).

The parties presented their evidence and arguments to the Arbitrator at a hearing held at Wautoma High School in Wautoma, Wisconsin, on October 25, 1990. The hearing was transcribed, and the parties presented their summations orally on the record. The Arbitrator received the transcript on November 5, 1990, marking the close of the record.

STIPULATED ISSUES

At the hearing, the parties authorized the Arbitrator to decide the following issues:

1. Did the District violate the just cause requirement of the Agreement by imposing a three-day suspension on Fred O. Bielmeier on March 27, 1990?

2. If so, what shall the remedy be?

PERTINENT PORTIONS OF THE AGREEMENT

ARTICLE II - MANAGEMENT RIGHTS

The Board possesses the sole right to operate the District and all management rights repose in it subject only to the provisions of this Master Contract and applicable law. These rights include, but are not limited to, the following:

. . .

D. To suspend or discharge for just cause.

. . .

FACTUAL BACKGROUND

The Grievant, Fred Bielmeier, has been a full-time District employe since 1978. He was elected Union president in 1987 and has been active in representing bargaining unit employes in that capacity.

The District action giving rise to the instant grievance dispute was a notice of suspension without pay issued to Grievant by District Transportation Supervisor Sheldon E. Wilcox on March 27, 1990. That memorandum read as follows:

On Monday, March 26, 1990, I observed that you did not make an under-the-hood pre-trip inspection of your bus prior to leaving for your morning bus route.

In a conference following the morning bus route, you, in the presence of the WASTRE representative, Daniel Bielmeier, admitted to me that this was true. However, you stated that you had made a complete inspection on Friday, March 23, 1990, when you had put fuel in the bus.

My directive to you, and to all bus drivers on March 13 and 14, 1990, states that "you are required to do your pre-trip inspection before each route or trip". A copy of this directive is attached to this memo. This directive also referenced not only the District Bus Driver Handbook but also the State of Wisconsin Bus Driver Handbook as they pertain to pre-trip inspections which you had received earlier. This directive also states "if you have any

questions see me".

Pre-trip inspections are a high priority item from both a safety and preventive maintenance standpoint in this District and the State of Wisconsin. The Wautoma Area School District references this topic on Page 1 of its Handbook and on page 3 of the State's Handbook. It is also referenced in the Bus Driver Job Description as items 2 and 7.

In addition, part of the rationale for housing the buses at the District Bus Garage rather than at the bus drivers' homes was to better monitor the carrying out of the pre-trip inspections. You were a part of that negotiations.

Therefore the District believes you have had a good and sufficient notice as to your responsibility in carrying out the required pre-trip inspection, and/or the opportunity to learn, if you did not.

As you have failed, on Monday, March 26, 1990, to carry out this duty and/or responsibility in a satisfactory fashion, you are hereby noticed that you are being suspended without pay for three (3) days (Wednesday, March 28; Thursday, March 29, and Friday March 30). You will also have to pay the health insurance premium for said three (3) days in the amount of \$12.69 on or before Friday, April 6, 1990. Christine Rebarchik, Payroll Bookkeeper, will assist you in this matter.

You shall return to your regularly assigned bus driving duties on Monday, April 2, 1990. Upon your return, please make sure you follow the pre-trip inspection check list which is attached to this memo.

It should be further noted that future violations of your work rules and/or directives shall result in the District taking additional disciplinary action which may include your termination of employment with the Wautoma Area School District.

In his grievance, Grievant asserted that the suspension violated the Agreement and requested that the abovenoted memorandum and suspension be rescinded and that Grievant be made whole.

#### POSITION OF THE DISTRICT

ISSUE 1 should be answered "yes." The Grievant admits that he did not check under the hood of his school bus before his first trip on the morning of March 26, 1990.

The District put Grievant and the other drivers on clear notice that safety inspection checks must be completed immediately before each trip commences. Such notice was given orally by the supervisor as well as in writing. Grievant's failure to perform his pre-trip inspection violated the State bus driving handbook, the District's bus driving handbook, the individual bus driving contract, the bus driver job description and Secs. 110.063 and 110.064, Stats. The requirement serves legitimate operational purposes of the District. It makes sure the vehicle is safe to operate, reducing the risk to the District and the students of costly and/or dangerous breakdowns.

The District investigated fairly and objectively and confronted Grievant with first-hand evidence of the instant violation. Grievant admitted that he did not perform the under-the hood portion of the pre-trip inspection on the morning in question. Then, without prejudging the matter, the District imposed an appropriate penalty. The instances of alleged disparate treatment cited by the Union all arose prior to the District's publication of clear notice on March 13, 1990 that it was going to be enforcing the pre-trip inspection requirement.

Grievant's knowledge of the condition of the bus when it was last driven is not a substitute for the required pre-trip inspection on the morning in question. For example, vandalism would most likely occur on the weekend.

Grievant admits that he knew of the requirement but that he did not raise his hood as required before his first trip on March 26. Grievant has previously been warned for failure to follow other District rules and regulations, and he is still subject to a last chance final warning probationary provision issued in a prior arbitration award. This is not a case of anti-union or anti-union-president animus.

Three days was a reasonable disciplinary penalty given the flagrant and serious nature of the offense and the Grievant's poor prior work record.

#### POSITION OF THE UNION

The District did not have just cause for imposing a three-day suspension in the circumstances. The Arbitrator should reduce the disciplinary penalty and make Grievant whole to the extent of that reduction.

Grievant does not feel he violated the rule at all because he had performed the under-the-hood check at the end of his use of the bus the preceding Friday; because he observed that the bus had not been used in the interim; because he observed no under-bus fluid leakage; and because the bus started and responded properly when the ignition key was turned. That fact that Grievant is a

trained bus mechanic as well as an experienced driver makes his judgment in that regard highly reliable.

In those circumstances, Grievant certainly did not intentionally expose the District to the risks the rule is intended to avoid. Grievant's testimony that he performed under-the-hood checks immediately in advance of all his other trips on the day in question shows that he has not flagrantly disregarded the rule.

The work rules contained in the District's Bus Driver Handbook are in some cases not capable of being complied with. There was no formal meeting in which the District's emphasis on pre-trip inspections was explained.

The evidence shows that other drivers have failed to perform pre-trip under the hood checks without being disciplined at all. Indeed, more serious violations have gone undisciplined or have resulted in lesser discipline than Grievant has received in this case. Significantly, it is undisputed that no harm came to the District as a result of the Grievant's admitted failure to check under the hood on the morning in question.

Grievant is the Union president and active on behalf of employees in dealings with the District. It appears to the Union that the District has singled out the Grievant for particularly severe punishment for a relatively minor offense for reasons unrelated to progressive discipline of Grievant himself.

## DISCUSSION

The evidence establishes that Grievant was on fair notice of the requirement that he check under the hood as a part of his inspection of his school bus immediately before driving that bus on a trip. Wilcox posted a written notice on March 13, 1990 as described in his abovenoted memorandum. The portions of the State of Wisconsin Handbook for School Bus Drivers specified in that notice include the following provisions:

p.1: School Bus Drivers are to . . . Check vehicle before each trip.

p.3: PRE-TRIP VEHICLE CHECK--There are three ways of avoiding costly school bus breakdowns. They are inspection, preventative maintenance and proper driving techniques. The school bus driver is responsible for pre-trip inspections and proper driving. The school bus inspection will be part of the driving test and will be scored.

p.4: For complete school bus inspection information, refer to the 'School Bus Driver's Pre-trip Vehicle Check' in the back of this

handbook.

The pre-trip vehicle checklist at the back of the State handbook reads, in part, as follows:

#### THE DRIVER'S PRE-TRIP INSPECTION

Each driver is required and may be held accountable, for making a pre-trip check of the bus to determine whether or not the vehicle is safe to operate on the highway. The following is a check list of items to be inspected. The number of items to be inspected will vary depending upon the size and type of bus being operated.

#### BEFORE ENTERING VEHICLE

- Look under bus for fluid leaks
- Check engine or loose wires, hose connections and belts
- Check oil level
- Check washer level
- Check radiator coolant level
- Check battery

Those provisions and the special written notice, "TO ALL BUS DRIVERS, you are required to do your pre-trip inspection before each route or trip," clearly put Grievant on notice that he was required to perform the various specified under the hood checks listed above on the day of and before each route or trip. Grievant acknowledged that he was aware of that requirement and that he had complied in all respects with it in advance of his other trips on the day in question.

The fact that the Grievant had performed those under the hood checks the preceding Friday does not fully meet the requirements or the purpose of the rule. Weekend vandalism could have affected the safety of belts or other under-the-hood components, and an under the hood check could have revealed those problems. Neither Grievant's mechanical expertise, nor his careful observation of the response to start up, nor his examination of the exterior, interior and ground beneath the bus fully served the same purpose as the under-the-hood portion of the required pre-trip inspection.

However, the severity of the offense is mitigated by several factors. Wilcox allowed Grievant to proceed with his trip on the morning in question without having done an under-the-hood check, rather than stopping him and causing the check to be completed before Grievant drove away from the garage. Wilcox seems, therefore, to have considered it more important that Grievant be permitted to clearly violate the under-the-hood requirement than it was to make sure that the under-hood checks were made before Grievant's bus left that morning. The District's

contention as to the seriousness of Grievant's rule violation is thereby undercut somewhat because its supervisor could have avoided the risk of harm posed to the District by that violation and failed to do so.

The District's contention as to the seriousness of Grievant's rule violation is also undercut by the fact that Wilcox did not express concern or (apparently) investigate any further when informed on March 27 that occasional substitute driver (and school principal) Richard Getchius had not performed a full pre-trip safety check on the bus he drove that day, which was after the March 13 notice was posted. [tr. 100-101, 72-73]. While Getchius is not a regular driver, and while his position as school principal may affect the extent to which Wilcox would have felt comfortable insisting that Getchius properly perform the required pre-trip inspection, there appears to have been something of a double standard in effect as regards the importance of a pre-trip check in Grievant's situation as compared with Getchius'.

The foregoing, combined with the facts that Grievant had not previously been observed or disciplined for failing to perform pre-trip inspections and that the District did not experience actual harm all tend mitigate the seriousness of the Grievant's violation.

On the other hand, Grievant's prior work record justifies a more stringent disciplinary penalty than would otherwise be appropriate for an employe with a more favorable disciplinary record. Grievant was, as of the date in question, on a "Last Chance/Final Warning" imposed as a condition of his reinstatement in a 6-22-88 grievance arbitration in which the arbitrator found Grievant to have been "attempting to obtain sick leave under false pretenses." Specifically, that arbitrator stated:

The Last Chance/Final Warning shall mean that the grievant shall be subject to discharge for any further incident of failure to make the District aware, at the time of the incident, of any driving mishap or infraction (either in a private vehicle or in a school bus). He shall also be subject to discharge for any additional infraction involving dishonesty. Further, for a period of two years the Last Chance/Final Warning shall also be in effect with respect to any major rule violation or incident (including the driving record if the District deems future driving incidents sufficiently serious.)

The last Chance/Final Warning shall not mean that reprimands or suspensions for lesser violations are a waiver of jeopardy on the matters to which the Last Chance/Final Warning pertains.

In addition, Grievant's record also contains the following:



a 9-23-80 written reprimand for failing to perform an extra-curricular route after agreeing to perform it;

a 6-14-82 written reprimand for filing time sheets indicating more hours than actually worked;

a 3-2-84 one-day suspension for using school vehicle for personal business;

a 1-15-86 five-day suspension for causing an accident, failing to call police and failing to report accident to supervision, with a warning that future violations of rules, regulations or policies will result in termination;

a 1-29-87 written warning for changing oil in a bus in a raised position without the protection of jack stands, contrary to posted safety rules and oral and written directions;

a 4-25-87 written reprimand for failure to turn in trip sheet in a timely fashion;

and an 11-10-87 suspension and ultimate discharge (with respect to which Grievant was reinstated on September 1, 1988 by arbitration award, without back pay and with the abovenoted Last Chance/Final Warning).

Grievant's failure to perform the under the hood check on March 26, 1990 was not a "further incident of failure to make the District aware, at the time of the incident, of any driving mishap or infraction." Nor, in the Arbitrator's opinion, was it a "major rule violation or incident" within the meaning of above-quoted prior arbitration award.

Nevertheless, the Last Chance/Final Warning and the 1-15-86 warning should have caused Grievant to conduct himself in all respects in careful conformity with the requirements of the District's rules. Especially so with respect to the pre-trip inspection rule, since special attention was called to it by the March 13 posted written notice. Grievant's abovenoted disciplinary record is materially worse than that of the other employes in the unit who received lesser discipline for various offenses. Grievant's record therefore provides a basis for the imposition of more than a written warning for the instant violation, even though his other offenses did not involve the pre-trip inspection requirement.

In all of the circumstances, the Arbitrator concludes that the District had just cause to impose a one-day disciplinary suspension, but that a threeday suspension was excessive.

Accordingly, the Arbitrator has directed that the last two of the suspension days be rescinded, and that the Grievant be made whole for the losses he experienced as regards those two days.

DECISION AND AWARD

For the foregoing reasons and based on the record as a whole it is the DECISION AND AWARD of the undersigned Arbitrator on the STIPULATED ISSUES noted above that:

1. The District violated the just cause requirement of the Agreement by imposing a three-day suspension on Fred J. Bielmeier on March 27, 1990, but it had just cause to impose a one-day suspension in the circumstances.

2. By way of remedy for the violation noted in 1, above, the District shall make Bielmeier whole for the losses he experienced by reason of the second and third days of the instant suspension.

Dated at Shorewood, Wisconsin this 3rd day of February, 1991.

By Marshall L. Gratz /s/  
Marshall L. Gratz, Arbitrator