BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between	:	
WAUTOMA AREA SCHOOL TRANSPORTATION RELATED EMPLOYEES	:	Case 53 No. 45717 MA-6724
and	:	
WAUTOMA AREA SCHOOL DISTRICT	:	

Appearances:

Mr. Bruce Meredith, Staff Counsel, Wisconsin Education Association Council, 33 Nob Hill Drive, P.O. Box 8003, Madison, Wisconsin 53708, appearing on behalf of Wautoma Area School Transportation Related Employees, referred to below as the Union.

Mr. Edward J. Williams, Godfrey & Kahn, S.C., Attorneys at Law, 219 Washington Avenue, P.O. Box 1278, Oshkosh, Wisconsin 54902-1278, appearing on behalf of the Wautoma Area School District, referred to below as the Board, or as the Employer.

ARBITRATION AWARD

The Union and the Board are parties to a collective bargaining agreement which was in effect at all times relevant to this proceeding and which provides for the final and binding arbitration of certain disputes. The parties jointly requested that the Wisconsin Employment Relations Commission appoint an Arbitrator to resolve a dispute reflected in a grievance filed on behalf of Fred Bielmeier, who is referred to below as the Grievant. The Commission appointed Richard B. McLaughlin, a member of its staff. Hearing on the matter was held on May 6, 1991, in Wautoma, Wisconsin. The hearing was transcribed. The parties filed briefs and reply briefs by July 16, 1991. The Union submitted an editorial correction to its reply brief on July 26, 1991.

ISSUES

The parties stipulated the following issues for decision:

> Did the Employer have just cause for terminating the Grievant?
>
> If not, what is the appropriate remedy?

RELEVANT CONTRACT PROVISIONS

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,
>
> . . .

ARTICLE XXI - EVALUATION/DISCIPLINE

> . . . The Board agrees that no non-probationary employee shall be disciplined, suspended or discharged without just cause . . .

BACKGROUND

The January 8, 1991, Discharge

The Grievant's discharge was prompted by an accident which occurred on December 5, 1990. On the day of the accident, Thomas Yager, the District Administrator, issued the following memo to the Grievant:

> On December 5, 1990, while traveling south, southeast on Highway JJ you were involved in an accident at the junction of Highway Y. There were two (2) students on board the bus at the time.
>
> State Patrol Officer, Jeff Nett, stated at the scene that although he was not going to issue a citation, the accident report would indicate that you, the bus driver, were travelling too fast for conditions.
>
> Until I can fully investigate this accident, I am hereby suspending you with pay.
>
> Sheldon E. Wilcox, Transportation Supervisor, will keep you posted as to your work status.

In a memo to the Grievant dated December 17, 1990, Yager informed the Grievant that: "I will be recommending to the Board of Education your termination of employment". Attached to that memo was the following:

> REASONS FOR RECOMMENDED TERMINATION
>
> . . .
>
> 1. Driving too fast for conditions which resulted in a traffic accident on December 5, 1990, and
> 2. Prior disciplinary history which in conjunction with Item One above, warrants termination.

On January 8, 1991, the Board conducted a hearing on the matter, and accepted Yager's recommendation. The Board stated its conclusion thus:

> The Board concludes that on December 5, 1990 (the Grievant) operated a school bus transporting students too fast for conditions, that he lost control of the school bus, that he collided with an oncoming vehicle which had the right of way, and that his conduct in so doing, taken with his past history and disciplinary record, warrants dismissal from his employment with the School District.

The December 5, 1990, Accident

On December 5, 1990, the Grievant was driving the bus route he had been assigned since the winter of 1988. He was responsible for the transport of kindergarten students. The accident occurred at about 11:40 a.m. Jeffrey Nett, a State Trooper assigned to the Waushara County area, investigated the

accident, and filed an accident report on it.

The accident report contains a "PICTORIAL REPRESENTATION OF NARRATIVE" which depicts the placement of the two vehicles at, and after, the point of impact. The pictorial indicates the car driven by Ralph Talbot struck the left front portion of the school bus. The Talbot car was southbound on County Highway Y, and is depicted as striking the bus just over the center-line of County Y. Both vehicles are depicted as having ended, after the impact, near the shoulder of County Y in the north bound lane of traffic.

The "Narrative" section of the pictorial reads thus:

> Unit 1 (the bus) was eastbound on CTH JJ. Driver attempted to stop but slid into the intersection and in front of Unit 2 (the Talbot car). Unit 2 struck Unit 1. This intersection was plowed but the roadway was covered with snow and ice.

Nett completed an "ADDITIONAL INFORMATION" section of the accident report thus:

> This accident happened during clear weather, good visibility. The roads were plowed but the pavement was covered with hard packed snow and ice. There was no sand or salt visible on the surface. Both vehicles slid, the bus slid for 79 feet and the car slid for 50 feet. The bus was eastbound on CTH JJ. The stop sign at CTH Y was up and visible. Further to the west the junction of CTY Y sign was up and the yellow stop ahead sign was up and visible. I drove eastbound on CTH JJ and approached the accident scene. From my cruiser I could see the stop sign for about 845 feet. I talked with the school bus driver. He said he was going between 45-50 MPH. He said he began to down shift and applied the brakes, the wheels locked up and he killed the engine. He said he slid into the intersection. I told the driver I felt that 45 MPH was too fast on these roads.

Talbot and the Grievant also filed statements which were included on the Accident Report. Talbot's reads thus:

> Traveling south on Y. Speed approx. 15 - 20 as just crossed slippery bridge over Mecan. Appro(a)ching intersection with JJ saw school bus appro(a)ching from W. Bus braked an(d) slid thru stop and across intersection. I attempted to brake and also turn into ditch on East side of Y. Almost made it. Struck L.F wheel of school bus at approx 2-3 mph.

The Grievant's statement reads thus:

> I came up to the stop sign, put on my brakes, could not stop, front wheel would not turn. I was stop(p)ed when the car coming from my left hit my front wheel. I (was) going east on JJ, had t(w)o kids on the bus . . . I called the bus garage for Mr. Wilcox.

Nett indicated on the Accident report that the Grievant was travelling too fast for conditions, had failed to yield the right of way, and had failed to have the bus under control. He did not, however, issue any citation to the

Grievant.

The Grievant's Work Record

The Grievant was hired by the Board in March of 1978, and has served the Board as a Mechanic and as a Bus Driver. Three of his evaluations as a Bus Driver were entered into the record. The first was dated June 2, 1986; the second was dated May 29, 1987; and the third was dated May 31, 1990. The second and third had been completed by Sheldon Wilcox, the current Transportation Supervisor. Each form is based on the following point system: 1 - Poor; 2 -Needs Improvement; 3 - Average; 4 - Good; and 5 - Excellent. None of the evaluation forms contains a score of less than three on any listed factor.

The Grievant's personnel file includes a number of recorded instances of discipline. The first is a written reprimand from Dick Getchius, then an Administrative Assistant, dated September 23, 1980, which states:

> I have received information that you failed to complete an assignment on extra-curricular driving on September 18, 1980 . . .
>
> It is expected that when a driver has indicated that he will perform a driving assignment, he performs it as scheduled or gives sufficient notice that he is unable to complete the assignment so another driver may be called.

The Grievant did not grieve this reprimand.

Getchius issued another written reprimand to the Grievant, dated June 14, 1982, which states:

> As a result of our conference and a thorough check of your pay records, it was found that there were discrepancies in your time sheets.
>
> 1. There were 5 athletic routes . . . that were claimed twice on the time sheets and paid twice in the payroll records . . .
>
> Your explanation of filling in a request for payment more than once on the same athletic routes was that you had not received the payment on the check following the trip. This should have been in a separate letter to the Bookkeeping Office which would have prevented processing the time sheets and paying twice on those occasions.
>
> There is no excuse for claiming payment for more hours than (a) person actually has worked. The Board places a trust in bus drivers expecting (them) to fill in time sheets accurately . . .

The Grievant did not grieve this reprimand.

In a memo from Donald Beseler dated March 2, 1984, the then incumbent District Administrator, the Grievant received a one day suspension for "driving a school vehicle . . . for personal reasons." The Grievant did not grieve the suspension.

In a memo from Yager dated January 15, 1986, the Grievant received a five day suspension for the following conduct:

> 1. Your action of backing up a bus on school property is a practice universally unacceptable except in emergency situations or when no other alternative is available. You compounded this problem by not watching the rear while backing up. If you had pulled forward, and there was room to do so, this accident would not have happened.
>
> 2. Your failure to call the police to the scene of the accident immediately . . .
>
> 3. Your failure to report the accident to your employer in a timely fashion . . .

The January 15, 1986, memo warned the Grievant that: "you . . . are being put on notice that any future violation of the rules, regulations or policies of the District that govern your employment will result in the termination of your employment with the Wautoma Area School District." The Grievant did not grieve this suspension.

In a memo from Wilcox dated January 29, 1987, the Grievant was reprimanded for changing oil on a bus "which was in a raised position without the protection of jack stands". The Grievant did not grieve this reprimand.

In a memo from Wilcox dated April 25, 1987, the Grievant was reprimanded for failing to turn in a "trip form" in a timely fashion. The Grievant did not grieve this reprimand.

On November 17, 1987, the Board discharged the Grievant. The Grievant filed a grievance on his discharge. The Union processed the matter to arbitration before Arbitrator Barbara Doering who, on June 22, 1988, issued a decision which included the following:

BACKGROUND

. . .

> The grievant was discharged on 11-17-87 for obtaining sick leave under false pretenses on 3-16-87 along with consideration of his past disciplinary record. The reason the discharge was so widely separated in time from the precipitating event, was that the grievant's use of sick leave on a day when he made a court appearance to contest a speeding ticket in a town 60 miles away only came to light in early November upon receipt of the driving abstract from the State.
>
> . . .
>
> The grievant responded that he had called in sick because he was suffering from mental stress on the day in question and did not in fact feel well . . .

DISCUSSION

. . .

In the arbitrator's opinion the discharge must be upheld with respect to the garage work which, timewise, coincided precisely with the court appearance when the grievant was allegedly sick, and for which stress over a speeding ticket was not even arguably an excuse for claiming sick leave. The grievant should, however, be reinstated without back pay and with one more Last Chance/Final Warning to his bus driving route in the fall . . .

AWARD

. . .

> 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.

. . .

The Board did not appeal this decision.

In a memo from Wilcox dated November 21, 1988, the Grievant received a reprimand which states:

> This memo is to confirm our oral conference on Wednesday, November 9, 1988, when I found you engaged in conversation with the mechanics on duty.
>
> At that time, I told you that you were not to disturb the mechanics while they were on duty. Your reply was that you had to find out if Robert Semrow was a paying union member. I then told you that union business is not to be conducted with other employees while they are on duty . . .

The Grievant did not file a grievance regarding this memo. He was, at the time, President of the Union.

In a memo from Wilcox dated November 21, 1988, the Grievant received a reprimand which states:

> At approximately 8:30 a.m. on Tuesday, November 15, 1988, I asked you to come into my office to discuss a complaint which occurred on Friday November 11, 1988, that students on your regular afternoon bus route used abusive and vulgar language directed toward utility workers at a construction site . . .
>
> During our discussion, you admitted that your bus had been detained for approximately 15 minutes at the construction site and that students did shout out the windows but you denied that vulgar or offensive language was used. At the end of the meeting, I informed you that you are required to control students, if they should be offensive to the public which does

include workers who may be detaining them.

The Grievant did not file a grievance regarding this memo.

In a memo from Wilcox dated December 12, 1988, the Grievant received a reprimand which states:

> On Friday, December 9, 1988, I received a bus driver's timesheet from Carole Hardy for the pay period of November 28 through December 9, 1988. On said timesheet, you added two and one-half (2 1/2) hours of extra driving time for November 29, 1988.
>
> . . . I am not disputing the time which was added. Mrs Hardy did, of course, return to the Bus Garage with you and the times match.
>
> However, I must call your attention to the fact that it is improper for you to alter another bus drivers timesheet . . .

The Grievant did not file a grievance regarding this memo.

In a memo from Wilcox dated March 22, 1989, the Grievant received a reprimand which states:

> On Wednesday, March 15, 1989, I had a conference with you . . . concerning your passing a vehicle with the school bus. It was the opinion of the complainant that you had passed a vehicle driving too fast for conditions.
>
> During our conference you stated you had passed a garbage truck which did not allow you enough room and you had to use some of the shoulder area in the road. You further stated that you were driving at a speed of only about 20 miles per hour.
>
> Also during said conference, I informed you that all posted speed limits must be followed exactly and, at no time, was speeding allowed . . .
>
> Therefore, you are hereby directed to abide by all posted speed limits in the future . . . Failure to comply with this directive may result in disciplinary action being taken by the administration.

The Grievant did not file a grievance regarding this memo.

In a memo from Wilcox dated January 11, 1990, the Grievant received a reprimand which states:

> On Monday morning, January 8, 1990, . . . Officer Jeff Munsch . . . clocked you at 38 mph in a 25 mph zone . . . As a result of your actions, Office(r) Munsch issued you a warning ticket for speeding . . .
>
> The Wautoma Area School District hereby gives you notice that any future speeding violations while operating a District owned vehicle will not be

> tolerated and will result in further disciplinary actions which may include the termination of your employment with the District.

The Grievant did not file a grievance regarding this memo.

In a memo from Wilcox dated March 27, 1990, the Grievant received a three day suspension for failing to "make an under-the-hood pre-trip inspection of your bus prior to leaving for your morning bus route." The Grievant filed a grievance on his suspension. The Union processed the matter to arbitration before Arbitrator Marshall Gratz who, on February 3, 1991, issued a decision which included the following:

> DISCUSSION
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> . . .
>
> 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 Greivant drove away from the garage . . .
>
> 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 . . .
>
> 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 (to) 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 . . .
>
> In all of the circumstances, the Arbitrator concludes that the District had just cause to impose a one-day disciplinary suspension, but that a three-day 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.
>
> . . .

The Board's Handling Of Accidents Prior To December 5, 1990

Evidence was adduced regarding the following accidents which occurred between January 1, 1980, and December 5, 1990:

Date	Bus Driver	Discipline
1/5/84	Ruth Wilcox	None
1/11/85	Sheldon E. Wilcox	None
11/13/86	Robert Waraxa	Letter of Reprimand
4/10/87	Doug Timm	None
11/20/87	Brian Ronspies	None
4/8/88	Darlene Seehaver	Two Day Suspension
12/21/88	Carole Hardy	Letter of Reprimand
1/2/90	Daniel Bielmeier	None
1/17/90	Wilma Grossman	None
3/12/90	Ruth Wilcox	None

The DPI Accident Report for the January, 5, 1984, accident states that Wilcox "after stopping at stop sign because S. bound vehicle decided to turn R. driver did not see involved vehicle directly behind vehicle turning R."

The DPI Accident Report for the January, 11, 1985, accident states that "bus was stopped in line at a STOP sign . . . Vehicle approached from behind and struck bus in rear."

The DPI Accident Report for the November, 13, 1986, accident states:

> Buses were parking to load high school students. Robert J. Waraxa did not allow enough space to enter his parking area and caught the left front bumper on Bus #11 . . .

The Wisconsin Motor Vehicle Accident Report for the April 10, 1987, accident contains the following "Narrative":

> I picked up two students and started out again when I glanced into my rear view mirror and saw a student standing in the back of the bus with a baseball bat cocked in his right hand. I immediately stopped the bus and shouted at the student. In the process of stopping the bus, another student apparently struck the seat in front of him chipping one of his teeth . . .

The DPI Accident Report for the November, 20, 1987, accident states:

> While turning left off Elm Street onto Oxford Street, the rear bumper of the bus swung into the rear bumper of the auto in the intersection. This intersection is very busy at that time (3:35 p.m.) of the day.

The DPI Accident Report for the April, 8, 1988, accident includes the following "Narrative":

> Bus Driver backed into private drive to turn around and struck a trailer (no damage to trailer) . . .

Wilcox more specifically detailed the facts surrounding the accident in a memo to Seehaver dated April 8, 1988, which states:

> 1. Bus 9 struck a parked semi-trailer on personal property . . .
> 2. You, as bus driver of Bus 9, did considerable damage to the rear end of said bus.
> 3. You, as bus driver of Bus 9, did not notify the

Waushara County Sheriff's Department of this accident.

4. You, as bus driver of Bus 9, did not notify me, as the Transportation Supervisor, of this accident promptly.
5. You continued on the bus route picking up students with a bus that had several lights in the back missing and an emergency door which could not be opened.
6. You did not leave a note at the scene of the accident telling the owner of the semi-trailer the necessary information and to contact the District.

Wilcox concluded that Seehaver had been "negligent in not following accepted procedures in the event of an accident, in failing to exercise sufficient care in making your turnaround and in failing to get assistance by having a bus brought to the scene in order to continue your bus route." Characterizing the violations as "serious", Wilcox suspended Seehaver for two days. Seehaver was eventually discharged by the Board in June of 1989 for displaying a lack of judgement regarding safety.

The DPI Accident Report for the December, 21, 1988, accident states:

> Student reported she was getting off the bus when the bus-driver closed the door on her foot. Student reported her shoe was ripped from her foot and her foot was bruised and scratched. Bus-driver says she did not close the door on Kelly's foot and was unaware anything happened.
>
> It appears after reviewing the possibilities of what might have occurred at the drop-off point . . . that the driver may have started forward on the steep incline prior to (the student) being clear of the passenger door and the door closed accidently-or-the driver closed the door prior to the student being clear from the bus because of an approaching semi-trailer.

Yager investigated this accident and issued Hardy a written reprimand in a memo dated January 3, 1989. The reprimand addresses Hardy's use of profanity and ethnic slurs while students were present as well as the circumstances of the accident.

The DPI Accident Report for the January, 2, 1990, accident states that "student tripped and fell on the steps with injury to her left knee."

The DPI Accident Report for the January 17, 1990, accident states:

> Driver lost control on ice covered town road and went into the ditch. Damaged was confined to the underside of the bus from striking stumps and etc. in the ditch.

The DPI Accident Report for the March 12, 1990, accident states: "Bus driver was stopped for the stop sign at the intersection, driver of the auto struck the bus from behind."

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

THE PARTIES' POSITIONS

The Board's Initial Brief

After a review of the factual background to the grievance, the Board contends that Nett's and Yager's investigations each demonstrated that the Grievant was driving too fast for conditions on December 5, and lost control of the bus, causing the accident which prompted his termination. Urging that the Grievant was familiar with his route, the District contends that his failure to drive defensively violates The Wisconsin Handbook For School Bus Drivers, a publication the Grievant relied on in the Doering arbitration. Beyond this, the Board asserts that the Grievant's failure to use extra care in light of road conditions violated the Board's Bus Driver Handbook. Beyond this, the Board asserts the Grievant's driving on December 5, arguably violated Secs. 346.18(3); 346.57(2), (3) and (5); and 346.46, Stats.

The Board's next major line of argument is that the Grievant's disciplinary history is a significant consideration. More specifically, the Board contends that the Grievant received a written reprimand, on January 11, 1990, for speeding, and another written reprimand, on March 22, 1989, for driving too fast for conditions. Since the Grievant's off-the-job driving record includes two convictions and one warning letter for speeding, the District concludes that "the Grievant has a 'hot foot.'" Beyond this, the

Board notes that the Grievant received a five day suspension on January 15, 1986, "as a result of a bus/car accident." That faculty members, and members of the public have also lodged complaints regarding the Grievant's driving establishes, according to the Board, that the Grievant's disregard of Board and State rules and regulations has been on-going and irremediable.

The Board asserts that viewed against this background, the Grievant's conduct on December 5 demonstrates "his persistent pattern of speeding and other risky driving which risks the safety of the children of the School District who he is transporting."

The Board then notes that "(o)ne standard recognized by arbitrators to determine whether or not an arbitrator should substitute his/her judgment for that of the employer in reviewing matters of discipline has been identified by Arbitrator Carroll R. Daugherty in Enterprise Wire Co., 46 LA 359 (1966). A review of the record establishes, according to the Board, that discharge is warranted under the seven Daugherty standards.

More specifically, the Board notes that the Grievant's personal driving history and his disciplinary history establish that he had been amply forewarned that speeding or driving too fast for conditions could result in his termination.

Beyond this, the Board argues that relevant District rules were reasonably related to its business of transporting students safely to and from school. The Board asserts that "(i)t is universally recognized that safety is of paramount concern in the operation of school buses transporting school children."

The Board asserts that the third Daugherty standard has been proven, since "the Employer was meticulous in providing a fair, impartial and objective investigation before it issued its Findings of Fact, Conclusions and Order of Termination for just cause." Beyond this, the Board contends a review of its investigation amply demonstrates that the fourth and fifth Daugherty standards have also been met.

Asserting that the Board has applied its rules, orders and penalties even-handedly without discrimination to all employes, the Board concludes that the sixth Daugherty standard has been met. Contending that the Union has attempted to relitigate the Grievant's past reprimands, and has mischaracterized the Board's handling of other driver accidents, the Board asserts that the record establishes that:

> The Employer judges each disciplinary action based upon the individual fact situations surrounding the incident. As to the severity of the discipline, the Employer looks to the employee's prior disciplinary record to ascertain whether progressive discipline exists.

The Board concludes that the Grievant received the sanction any similarly situated employe would have received.

The final Daugherty standard has been met, according to the Board, since the sanction of discharge was related both to the seriousness of the Grievant's conduct on December 5, and to his demonstrably poor work record. The record establishes, according to the Board, that the Grievant has proven unable to learn from his mistakes and from the Board's progressive discipline.

Viewing the record as a whole, the Board asks that "the grievance be

denied."

The Union's Initial Brief

After a review of the factual background to the grievance, the Union notes that "this case primarily draws its essence from the two prior arbitration awards". Those awards, and the Board's own past practice establish, according to the Union, that the Board lacked just cause to discharge the Grievant, but should have imposed a lesser penalty. More specifically, the Union asserts that once the "Doering imposed additional probationary period passed, the District no longer could fire (the Grievant) without meeting the traditional just cause standards." Acknowledging that the Grievant received two written reprimands during this period, the Union asserts that those warnings were "highly questionable", and did not lead to further discipline. The absence of further discipline is significant, the Union contends, for "while (the Grievant's) prior discipline has some bearing on this proceeding, his successful completion of his probationary period reduced substantially the District's ability to use discipline occurring prior to and during his probation period to independently justify its decision to terminate (him)."

The Gratz arbitration award must be viewed against this background, and that award, according to the Union, "(s)ubstantially undermines the District's case for termination." Noting that the Board terminated the Grievant before the Gratz award was issued, the Union concludes that "(i)t is highly unlikely that this termination would have occurred had the District known of Gratz' decision since both the outcome of the Gratz award as well as his rationale substantially undermined the District's basis for termination." The Union contends that Gratz discounted the severity of the offense before him, noting "something of a double standard" in the Board's assessment of the significance of the underlying incident. Beyond this, the Union notes that Gratz' reduction of the suspension from three days to one day, precludes any conclusion that the Grievant had committed a "significant breach . . . of established safety procedures" which, "under a clear progression of progressive discipline" would mandate termination in this case. Rather, the Union argues that "given the substantial reduction in . . . penalty, progressive discipline now requires an intermediate step of discipline, absent proof of a serious act of misconduct." Beyond this, the Union urges that the Gratz award indicates that the Grievant has been "subject to increased scrutiny" which, in light of the Board's own practices, can not support the penalty of discharge.

Characterizing the Grievant's accident as "rather straight forward and understandable to anyone who has driven on Wisconsin roads in the winter time", the Union asserts that the Board totally ignored certain mitigating factors. This conduct is especially significant in light of the Board's past practice in dealing with accidents, according to the Union. The Board's past conduct regarding six accidents establishes a spectrum of responses from no discipline to a two day suspension. The Union contends that the Grievant's accident most clearly parallels Grossman's, and the Union notes that Grossman received no discipline. Asserting that the "Arbitrator is not free to impose his own view of proper managerial practice . . . (and) must operate from the District's frame of reference", the Union argues that a two day suspension is the maximum penalty the District can objectively claim for the Grievant's accident. Given the result in the Gratz award, the Union asserts that "a three day suspension would be the greatest penalty which could be assessed because of the accident."

The Union's next major line of argument is that the District has exaggerated the significance of the Grievant's past work record. The Union notes that it has not attempted to show that the Grievant was "a completely innocent victim of malevolent supervisors", or that the principles of Muskego-

Norway establish the basis for overturning the Board's termination. Rather, the Union argues that the Grievant "has been subject to a double standard", which made "it . . . much more likely that (the Grievant would) be disciplined more often than others". This double standard, while having some basis in fact, essentially produced a "self-fulfilling prophecy":

> The unfortunate fact is that, for a number of appropriate and not so appropriate reasons, (the Grievant) was not liked and his conduct became subject to greater scrutiny. As his conduct became subject to greater scrutiny, more violations were found and the violations which were found were judged more severely.

As a result, according to the Union, the Board placed "too much emphasis . . .on rather trivial work rule violations", and "too little attention . . . to "the Grievant's) consistently positive evaluations".

The Union asserts that the essential issue posed here involves "the legal sufficiency of the actual triggering events" of the discharge, not the Grievant's work record. The Union concludes that under the principles set by the Doering and Gratz discharges, and viewed against the background of the Board's own conduct regarding past accidents, the Grievant's discharge can not be affirmed.

The Board's Reply Brief

The Board argues initially that the Grievant has made it to his third arbitration hearing through the Union's skill in advocacy, but that such skill can not mask the fact that the grievance is without support in fact or law. More specifically, the Board denies any discipline it has meted out to the Grievant is based on the Board's attitude toward him or on a cost/benefit analysis. Beyond this, the Board contends that any contention that it has exaggerated the Grievant's work record "finds no basis in the facts of the record". A more accurate characterization of that record, according to the Board, is that "by his own conduct (the Grievant) should be estopped from arguing that the leniency extended to him should now be the sword with which to impale his Employer." The Board also specifically rejects the Union's attempt to focus not on the December 5, accident, but on the Grievant's total number of miles driven. Beyond this, the Board accuses the Union of attempting to re-litigate the Grievant's past, ungrieved, reprimands, and asserts that the Union has mischaracterized the import of the Gratz award.

The Board's next major line of argument is that the Union has attempted to "(h)ave the Arbitrator adopt a bizarre test for just cause and a new burden of proof", which departs from the established Daugherty tenets. Those specific tenets and related arbitral authority establish, according to the Board, that:

> (1) given the same proven offense of two or more employees, their respective records provide a proper basis for imposition of varying degrees of discipline; and (2) the burden is on the Union to demonstrate that the penalty issued to the grievant was arbitrary in its severity by showing the comparability of work records of the other employees.

The record amply demonstrates, the Board concludes, that the Grievant's work record is the worst encountered by the Board.

The Board's next major line of argument is that the Union selectively focuses on Doering's last chance warning to shield review of the Grievant's

work record. The Board specifically notes that Yager could have, but did not, terminate the Grievant when he committed at least two disciplinable offenses during the last chance warning period. To ignore the Grievant's work record prior to the expiration of the last chance warning period would, according to the Board, "attempt to impale the Employer on the sword of leniency" extended to the Grievant; would set an unpersuasive labor relations precedent; and would violate established tenets of labor law.

The Board's next major line of argument is that "(t)he Union's heavy reliance on the Gratz arbitration award is based on unfounded speculation and ignores the fact that (the Grievant) was reprimanded for excessive speed in January 1990 when he was informed that further conduct could result in his termination." Noting that it has denied basing the discharge on the specific form of discipline litigated before Gratz, and further noting that the January reprimand was not referred to by Gratz, the Board concludes that the discharge at issue here concerns the results and conclusions of Yager's investigation of the December 5 accident.

The Board then argues that "(t)he Union blithely ignores arbitral authority, the definition of past practice and simple logic when it cavalierly suggests that the District has created a past practice of leniency toward bus driving accidents."

Contending that the essence of this matter is the "safe driving of the District school bus drivers", and that the Union has, through a series of arguments, demonstrated a "callous indifference to the safety of students being transported on District school buses", the Board urges that the focus of the arbitration be the Grievant's conduct on December 5 and his work record.

While stressing its conviction that the grievance must be denied, the Board argues in the alternative that any back to work order should not include any provision for back pay.

The Union's Reply Brief

In reply to the Board's brief, the Union initially asserts that the Board has attempted to "make a relatively simple accident appear more complicated and severe." The record, stripped of all surplusage, establishes, according to the Union, that the Grievant "was driving slightly too fast for conditions and therefore slid through the stop sign by several feet". This fact, the Union contends, makes the Grievant "subject to legitimate criticism and discipline". The significance of the fact must, according to the Union, "be measured by the officer's report and actions and, most importantly, by its comparison to how the District handled other accidents."

The Union characterizes the essence of the Board's case as an attempt to gloss over the seriousness of other employe's accidents while emphasizing the seriousness of the Grievant's. Such a case represents, to the Union, "good advocacy" which is "not fair to the record". More specifically, the Union asserts that Wilcox' claim that Seehaver's accident was less severe than the Grievant's "is completely pretextual and enforces the concept of a double standard." Similarly, the Union contends that the Board viewed the hostility of the parent's account of the Hardy accident as a mitigating factor in her case, but failed to regard the hostility of parent complaints as anything but meritorious when applied to the Grievant. Wilcox' account of the mitigating factors in the Grossman accident is also unpersuasive, according to the Union, and establishes that:

> The union does not deny that more significant discipline can be imposed on individuals with an

> inferior work record; however, a person's prior work record does not in any way change the seriousness of the event . . . The District's use of (the Grievant's) record to evaluate the seriousness of accidents as opposed to the seriousness of the discipline to be imposed is completely inappropriate and only confirms the essence of the union's double standard case.

The Union's next major line of argument is that the Board has exaggerated the Grievant's work record, which does not support the sanction of discharge if properly viewed in light of the Gratz' award and the Board's past handling of accidents. The "primary focus" of this matter is, according to the Union, "the relative seriousness of (the December 5) accident". Only after this point is fully addressed, the Union contends, does the Grievant's work record become relevant. The Union concludes that, all rhetorical ploys to the side, the December 5 accident "would have given the employer sufficient basis to terminate him if that employer had a strict code regarding penalties for accidents." Since no such code has been demonstrated here, it follows, according to the Union, that recourse to the Grievant's work record is irrelevant. If such recourse is made, the Union concludes that the record establishes that "he is a fundamentally competent employee who persists in getting himself in trouble both because of his own unrepentant attitude as well as the District's desire to accumulate evidence in order to terminate him.

Beyond this, the Union contends that the Board's attempt to relitigate the Gratz award is both legally and factually flawed. Viewed in the appropriate light, the Union contends that:

> The actual issue in this case is relatively narrow. Was (the Grievant's) accident a sufficient basis to terminate him given his prior disciplinary record, the Gratz arbitration award, and the general seriousness which the District treated accidents?

The Union concludes that "the Arbitrator must modify the discipline to conform to the District's own practices . . . (t)he most appropriate discipline would be to re-impose the additional two days of suspension rescinded by Gratz."

DISCUSSION

The stipulated issue focuses on the just cause provision of Articles II and XXI. Just as parties to an agreement can agree on just cause, those parties can agree to the standards defining just cause. That both the Union and the Board cited the seven Daugherty questions to Doering indicates the parties have shared an understanding on those standards. Only the Board has used the standards here, but the Union's arguments are addressable from that structure. Because of the parties' mutual use of the Daugherty standards in the past, and because that understanding has not been rejected since, the following discussion is structured by the seven questions articulated by Arbitrator Daugherty in Enterprise Wire Co.

I.

Did the (Board) give to the employee forewarning or foreknowledge of the possible or probably disciplinary consequences of the employee's conduct?

There is essentially no dispute on the application of this standard. The Grievant was discharged for driving too fast for conditions on December 5, 1990, considered in conjunction with his prior history of discipline. The record establishes that he had been forewarned on each point.

That the Grievant was forewarned of the need to exercise care in winter driving conditions can not be doubted. The Wisconsin Handbook for School Bus Drivers has been cited by each party in the Doering and Gratz decisions. That handbook expressly counsels drivers to drive defensively in winter weather conditions. Under the "WINTER WEATHER" section, the handbook cautions that "The best defense for skidding is avoidance", and further cautions against locking the wheels while braking. That the Grievant was aware of such considerations in the absence of this publication is not really in doubt, since he was an experienced driver. In sum, that the Grievant was aware that he risked discipline for not keeping his bus under control in winter driving conditions has been established.

This prefaces the more specific inquiry sought by the first standard, which focuses on the Grievant's awareness of the disciplinary consequences of his exercise of poor driving judgement. This point can not be considered in doubt given the discipline the Grievant received on January 11, 1990, March 22, 1989, and January 15, 1986. The Doering award specifically notes that "(e)ven the Union admits that the grievant was 'worried that a conviction would jeopardize his ability to drive as a school bus driver.'" On balance, the record establishes that the Grievant was well aware of the disciplinary potential of failing to control his bus. That he was aware that the totality of his work record could itself enter into the issuance of discipline has also been established. As early as the January 15, 1986, suspension, the Board had advised the Grievant it considered his work record a valid factor to consider in the imposition of discipline. Both Doering and Gratz expressly agreed, thus underscoring that the Grievant had been forewarned that the totality of his work record could impact the discipline imposed on him.

II.

Was the (Board's) rule or managerial order reasonably related to (a) the orderly, efficient, and safe operation of the (Board's) business and (b) the performance that the (Board) might properly expect of the employee?

There has been, and can be, no dispute that the Board's requirement that the Grievant maintain control over the bus which conveyed kindergarten students to and from school is reasonably related to the orderly, efficient and safe operation of a school district.

Nor can the Board's disciplinary interest in the Grievant's performance on December 5, 1990, be doubted. It can be noted that Nett did not cite the Grievant for his conduct. Nett did, however, specifically inform the Grievant that he had driven too fast for conditions, and did incorporate that opinion into the accident report. The Board could reasonably expect not just that the Grievant avoid conduct which resulted in a citation, but that he drive on December 5, 1990, in a fashion which accounted for the slippery road conditions. That he had driven the same route the two previous winters underscores the reasonableness of the Board's expectation.

III.

Did the (Board), before administering discipline to (the Grievant), make an effort to discover whether the employee did in fact violate or disobey a rule or order of management?

In the December 5, 1990, memo, Yager suspended the Grievant with pay "(u)ntil I can fully investigate this accident". At the time he issued this memo, Yager had spoken with Talbot, the Grievant and Nett at the accident scene. After December 5, Yager again spoke to the Grievant regarding the

Grievant's view of the circumstances surrounding the accident. He also reviewed the Grievant's disciplinary history. Thus, before recommending the Grievant's discharge, Yager had made an effort to discover whether the Grievant had violated a rule or order of management.

IV.

Was the (Board's) investigation conducted fairly and objectively?

The Union focuses not on the objectivity of the investigation of the December 5, 1990, accident, but on the objectivity of the process by which the Grievant's disciplinary history was created and evaluated. This contention is best addressed under the remaining standards. The record affords no persuasive basis to question the objectivity of Yager's investigation.

V.

At the investigation did the "judge" obtain substantial evidence or proof that the employee was guilty as charged?

There is no doubt that Yager had obtained sufficient evidence to establish that the Grievant had driven too fast for conditions when approaching the intersection of County Y and JJ on December 5, 1990. Nett's accident report, standing alone, established this point.

The more closely disputed point is whether Yager's review of the Grievant's disciplinary history, viewed in conjunction with his December 5, 1990, accident, and weighed against the accidents of other employes, warranted discharge. This point is best addressed under the remaining standards.

VI.

Has the (Board) applied its rules, orders, and penalties evenhandedly and without discrimination to all employees?

With this question, the essential points of dispute come into focus. The discrimination alleged by the Union is subtle. The Union urges that because of a history of personal hostility between the Grievant and Board managers, those managers have, for non-performance based reasons, come to view the Grievant as a poor employe. This view has caused them to discipline the Grievant for conduct which would be tolerated from other employes, and to evaluate disciplinable conduct by the Grievant as more serious than similar conduct by other employes. This started a self-fulfilling prophecy by which the managers' view of the Grievant created the poor work record on which the Board seeks to base his discharge.

The Board's motivation in disciplining the Grievant in the past or in January of 1991, is not the ultimate determination required here. As preface to this, it should be noted that the Union does not argue that the discharge was based on anti-Union hostility. Doering specifically rejected such an argument. The Union does not seek, and the record would not support, a different conclusion here. The Union's contention does not put the Board's motivation directly in issue in that fashion. Rather, the Union seeks strict scrutiny of the Board's conduct, arguing that the Board's hostility toward the Grievant has led the Board to discharge the Grievant for conduct which would not have resulted in the discharge of another employe.

The core of the Union's argument is, then, that the Board's discrimination toward the Grievant is objectively established by the imposition of unwarranted discipline, and by the exaggeration of the disciplinary

significance of the December 5, 1990, accident.

Although the Union's argument is eloquently stated, it lacks persuasive support in the record. Initially, it must be stressed that the Grievant did not grieve the bulk of the discipline meted to him. That discipline stands as issued.

Nor can it be said that the Board has overblown the significance of the discipline preceding the Gratz award in an attempt to single the Grievant out for punishment. The bulk of the Grievant's disciplinary history is traceable to his own conduct, and is not amenable to the sort of exaggeration urged by the Union. For example, the September 23, 1980, reprimand for failing to complete an agreed upon route can not be meaningfully attributed to the judgement of Getchius. Nor can the June 14, 1982, reprimand for claiming payment twice for athletic routes. The March 2, 1984, reprimand for personal use of a District vehicle is traceable directly to the Grievant's conduct, not to supervisory judgement. The five day suspension on January 15, 1986, flows directly from the Grievant's conduct in causing and failing to report an accident. The discharge decided by Doering was based on the Grievant's use of sick leave to make an appearance in court. This decision was the Grievant's, not his supervisors.

Even those instances of discipline preceding the Gratz award which can be viewed as based on the subjective conclusion of the Grievant's supervisors has not been overemphasized by the Board. The January 29 and April 25, 1987, warnings turn, in significant part, on supervisory discretion. Doering, however, specifically noted that the Board had not sought to overemphasize the significance of these incidents:

> Neither of the early '87 infractions for which the grievant received reprimands were of a sort to justify discharge. The District acted properly in not over-blowing these subsequent minor infractions . . .

Doering characterized the Grievant's record as "good in the matter of attendance, (but) hardly exemplary in other regards."

The Union persuasively notes that Gratz concluded that Wilcox overplayed the disciplinary significance of the Grievant's failure to make a pre-trip under the hood inspection. This must, however, be tempered by Gratz' statement that the "Grievant's prior work record justifies a more stringent disciplinary penalty than would otherwise be appropriate".

Nor does the Board's conduct since the Gratz award display the sort of discrimination urged by the Union. The speeding reprimands of March 22, 1989, and of January 11, 1990, can not be meaningfully traced to Wilcox' discretion. The March 22, 1989, reprimand indicates Wilcox accepted the account of the truck driver over the Grievant's. This exercise of discretion can be acknowledged, but leaves standing the fact that the truck driver thought enough of the Grievant's rate of speed to formally complain about it. Both warnings are ultimately based on the Grievant's inability to control his own conduct, and bear directly on the lack of judgement manifested on December 5, 1990.

In sum, viewing the Grievant's disciplinary history, standing alone, will support the Union's view that Board management and the Grievant did not get along. There is some indication, especially in the Gratz award, that this hostility has entered into the Board's assessment of the Grievant's conduct. However, the bulk of that disciplinary history is traceable not to the exercise of managerial discretion, but to the Grievant's own conduct.

More significantly, three other factors indicate that the Grievant has not been the victim of unnecessary discipline. First, the record establishes that the Board did not discipline the Grievant at every opportunity. His speeding was sufficiently well known that the Board had received complaints from parents and teachers. Such complaints were not used by the Board as more fodder for the Grievant's file. Significantly, Yager noted that he refrained from disciplining the Grievant for misrepresenting his reasons for requesting emergency leave, and for double billing the Board for three bus routes. The emergency leave incident occurred within the Doering imposed Last Chance/Final Warning period. Without regard to the underlying merit of these claims, this is not the conduct of an employer seeking to rid itself of an unwanted employe.

The second factor is that Wilcox and his predecessor evaluated the Grievant's performance as satisfactory or better. This is hardly the conduct of management making a paper record with which to bury the Grievant. Rather, it appears that the Grievant's supervisors regarded him as a competent driver whose conduct, on specific occasions, betrayed a lack of judgement.

The final factor is that the record offers no persuasive basis to question Wilcox' conclusion that no other unit employe has as extensive a history of discipline as the Grievant. This denies the Grievant any persuasive basis of comparison to base a conclusion of discrimination on. Whatever may be said of the District's attitude toward the Grievant, it is implausible that Wilcox or other supervisors would refrain from disciplining other employes to make a record against the Grievant. It is more probable that other employes have not engaged in the sort of conduct which appears in the Grievant's work record.

The remaining basis of the Union's argument is the most troublesome, and concerns the Board's treatment of other drivers who had accidents. The Union focuses on the Grossman, Hardy and Seehaver accidents.

The force of the Union's arguments is rooted in the Hardy and Seehaver accidents. The Grossman accident was treated by the Board as due to driving conditions, not driver error. It is impossible to know, and unnecessary to decide, if this conclusion was accurate. The point at issue here is whether there is a basis to conclude the Board failed to treat the Grievant even-handedly. While the Union attempts to portray the December 5, 1990, accident as due to conditions, not driver error, this portrayal has been rejected above. Whether Grossman should have been regarded as committing driver error is irrelevant here. The Board did not do so. This conclusion renders the difference between the sanctions imposed on her and on the Grievant explainable on an other than discriminatory basis.

This is not, however, necessarily true of the Hardy and Seehaver accidents. Each was due to driver error, and neither resulted in discharge. The Union contends this establishes that the Board was incapable of evaluating the Grievant's conduct as it did other employes, and inevitably treated the Grievant more harshly, for reasons not related to his conduct. The Board contends the difference in sanction is traceable to the Grievant's history of misconduct. These conflicting contentions preface the review of the final Daugherty standard.

Before that review, it is necessary to note the variance of Board response does not, standing alone, establish the sort of discrimination questioned by this standard. This is not to say the Union lacks support in the record for its contention. It is troublesome that the Grievant received a five day suspension for not reporting an accident while Seehaver received a two day suspension. However, each accident and the resulting employe response was unique, and the record can not be said to indicate a clear pattern of leniency

toward other employes and harshness toward the Grievant. It is as difficult to compare Seehaver, Hardy and Grossman to each other as to compare any or all of them to the Grievant. At most, it can be said the Board has responded to accidents on a case by case basis, with varying results. The ultimate point of distinction between these responses rests on the Board's assessment of the impact of the Grievant's disciplinary history on his accident. The validity of that assessment must now be addressed.

VII.

Was the degree of discipline administered by the (Board) . . . reasonably related to (a) the seriousness of the employee's proven offense and (b) the record of the employee in his service with the (Board)?

The Union persuasively argues that what constitutes "reasonably related" must be defined by the parties, not imposed by arbitral fiat. The Union effectively argues that whatever case could be made for sanctioning the December 5, 1990, accident with discharge has been undermined by the Board's handling of past accidents. The Board's handling of the Grievant's January, 1986, accident as well as its handling of the Seehaver and Hardy accidents, does establish that the seriousness of the proven offense on December 5, 1990, can more reasonably be related to a suspension than to a discharge.

The Board did not, however, base the sanction of discharge on the December 5, 1990, accident standing alone. The seventh standard, as well as the Doering and Gratz awards, expressly recognize the validity of this approach. Daugherty put the point thus:

> A trivial proven offense does not merit harsh discipline unless the employee has properly been found guilty of the same or other offenses a number of times in the past.
>
> . . .
>
> Given the same proven offense for two or more employees, their respective records provide the only proper basis for "discriminating" among them in the administration of discipline for said offense. 1/

The December 5, 1990, accident can not be dismissed as "trivial". The Grievant did not simply slide a few feet into an intersection. The bus was, at the point of impact, at least up to the center line of the intersecting road. The Grievant's slide forced another driver into an oncoming lane of traffic. Talbot stated he was attempting to reach the shoulder of the opposite lane of traffic. The risk the Grievant's skid exposed each driver and the students to is apparent and significant.

Beyond this, the Grievant is the only driver who has been involved in more than one accident due to driver error. He has received two convictions for speeding in his personal vehicle. He has, on separate occasions, been warned by a police officer and by Wilcox for speeding in a school bus.

The purpose of progressive discipline is to sanction inappropriate behavior in a manner which provides an incentive to an employe to modify that behavior. The Grievant was provided with ample opportunity to modify his

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1/ 46 LA at 364.

driving conduct regarding bus speed. He has failed to do so. The principle of progressive discipline does not obligate an employer to tolerate inappropriate behavior indefinitely. The Board reasonably concluded that the December 5, 1990, accident, viewed in conjunction with the Grievant's disciplinary history, established that the Grievant was not modifying, and would not modify, his driving habits. Against this background, the sanction of discharge was reasonably related to the seriousness of the December 5, 1990, accident and the Grievant's record of service to the Board. The final Daugherty standard has thus been met.

Before closing, certain arguments, persuasively made by the Union, should be touched upon. The Union asserts that the Gratz award set the stage for an additional suspension before discharge. This point is persuasive in the abstract, but unpersuasive on the facts posed here. The parties do not have an established system of progressive discipline which requires two suspensions before discharge. Beyond this, my reading of the Gratz award is that it set the stage for an additional suspension for the level of offense Gratz considered. The December 5, 1990, accident was significantly more serious than the neglected under the hood inspection considered by Gratz. Nor does the Board's handling of other drivers indicate a suspension was warranted. As noted above, only the Grievant has faced two accidents due to driver error, and only the Grievant has the sort of disciplinary record posed here.

The Union has forcefully argued that the Grievant has faced a level of Board hostility unknown to other employes. This is regrettable, but irremediable here. The record establishes that the Grievant's inappropriate conduct has played a significant role in the creation of any such hostility. More to the point, the record shows that the Grievant has been judged on the basis of his conduct. On balance, the Union's focus on the Board's attitude toward the Grievant is less an explanation of, than an unproven alibi for, the Grievant's conduct. The following exchange during the Grievant's testimony on the December 5, 1990, accident typifies the record on this point:

> Q Do you feel you made some driving errors in that situation?
>
> A At that instance I did because I had slid through the stop sign.
>
> Q And so you accepted there's something you probably could have done to stop, in retrospect?
>
> A Yeah. Took the other road, went around the other way.
>
> Q Well, other than that . . .
>
> A I (would) imagine there is, yes, there is. Probably a lot of things you could have done. You could have slowed right down to a slow crawl if you knew the roads from the sun shining on that patch of intersection and it was very slippery. I couldn't even hardly back the bus up after I did get it started . . . 2/

Although afforded two unrestricted chances to recount his assessment of what he

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2/ Transcript at 165-166.

could have done to avoid the accident, the Grievant chose to fault the conditions, avoiding any real review of his own conduct. Talbot, with the right of way, having noted the icy conditions, approached the intersection at 15 to 20 m.p.h. The Grievant, without the right of way, driving on a down-grade, approached the obstructed-view intersection at 45 to 50 m.p.h. The testimony cited above indicates no more balanced judgement after the accident, with the benefit of hindsight, than that which led to the accident. No supervisory pressure accounts for this testimony.

The Board concluded that the Grievant was unable to modify his conduct in response to progressive discipline. The testimony noted above played no role

in that review. It does, however, manifest the Grievant's unwillingness to learn from his own mistakes. From the record before it, the Board could reasonably conclude that the Grievant was unlikely to modify his behavior.

AWARD

The Employer did have just cause to terminating the Grievant.

The grievance is, therefore, denied.

Dated at Madison, Wisconsin, this 16th day of September, 1991.

By _____
Richard B. McLaughlin, Arbitrator

RBM/sh
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