BEFORE THE ARBITRATOR

In the Matter of the Arbitration
of a Dispute Between

NORTHWEST UNITED EDUCATORS

and

ST. CROIX FALLS SCHOOL DISTRICT

Case 36
No. 47462
MA-7277

Appearances:

Mr. Alan D. Manson, Executive Director, Northwest United Educators, appearing on behalf of the Union.

Weld, Riley, Prenn & Ricci, S.C., Attorneys at Law, by Mr. Stephen L. Weld, appearing on behalf of the St. Croix Falls School District.

ARBITRATION AWARD

On May 22, 1992, Northwest United Educators, hereinafter the Union, and St. Croix Falls School District, hereinafter the District or Employer, jointly requested the Wisconsin Employment Relations Commission to appoint a member of its staff to act as the impartial arbitrator involving a dispute concerning the discipline of a bus driver and chaperon for conduct relating to travel to a sectional boys basketball game. Hearing in the matter was held on October 19, 1992, at which time the parties were afforded the opportunity to adduce testimony and introduce documentary evidence. No stenographic transcript of the proceeding was taken, and the parties concluded filing post-hearing briefs by January 15, 1993.

ISSUE:

At the hearing, the parties were unable to stipulate to a statement of the issue. The Union proposed the following statement of the issue:

> Did the District violate the collective bargaining agreement by suspending employes Redlich and Carlson in March of 1992? If so, what is the appropriate remedy?

The Employer proposed the following statement of the issue:

> Did the District violate Article IX B. of the contract when it placed a letter

of reprimand in the files of the two grievants and suspended them pending an investigatory interview?

The undersigned believes the appropriate statement of the issue is:

> Did the District violate the parties' collective bargaining agreement when it suspended the grievants Redlich and Carlson from participating in extra duty assignments during the pendency of the Superintendent's investigation into an incident in March of 1992 involving the boys basketball sectional championship game in Altoona, Wisconsin, and upon completion of that investigation placing written reprimands in each grievant's file? If so, what is the appropriate remedy?

PERTINENT CONTRACT LANGUAGE:

ARTICLE IX - EMPLOYEE DISCIPLINE

. . .

B. No employee shall be disciplined or reduced in compensation without just cause nor after the completion of the probationary period, reduced in rank, discharged, or suspended without just cause.

BACKGROUND:

Most of the material facts to this dispute are not contested. In March of 1992, the St. Croix Falls High School boys basketball team was playing in the sectional championship game which they ultimately won and then went on to the state tournament. Grievant Redlich drove a bus load of students to the sectional games both on Friday and Saturday night. These games were held in Altoona, Wisconsin, a considerable drive from St. Croix Falls. On Friday, the route taken by the grievant was from St. Croix Falls to I-94 to Highway 53 and then into Altoona. On the way to the game, the bus stopped in Menomonie, Wisconsin, at the McDonald's located just south of I-94. On the return trip the driver, grievant Redlich, took the same route and stopped again at the McDonald's in Menomonie. While at the McDonald's, it was determined that the bus would stop there again on the way home from Saturday evening's game in Altoona. Therefore, the McDonald's in Menomonie was advised that the bus would be stopping there again late in the evening on Saturday.

Before leaving for Altoona on Saturday, the transportation supervisor suggested to the grievant Redlich that she drive Highway 8 to Barron, Wisconsin, then take Highway 53 to Altoona. His reasoning was that Altoona was north of I-94 on Highway 53 and he thought it might be shorter to take the route he was proposing, and thus suggested to the driver that she do so and see if in fact it was shorter. The grievant did take the Highway 8, Highway 53 route on the way to the game in Altoona, but did not return that way because arrangements had already been made the prior evening to stop at the McDonald's in Menomonie on the return trip home.

The basketball team won the Saturday night sectional final in Altoona which meant it would be going on to the state tournament in Madison the following week. On the way home from the game, grievant Redlich left Altoona on Highway 53 to I-94 and west on I-94. On the other side of Eau Claire, at the Highway 12 and I-94 interchange, the grievant turned off I-94 onto Highway 12 and drove Highway 12 to Menomonie. By taking Highway 12 from I-94 to Menomonie, the bus had to go through Elk Mound, Wisconsin. Elk Mound was the team which St. Croix Falls defeated in Altoona in the sectional final game that evening. The driver's explanation for turning off I-94 at the Elk Mound exit and proceeding on Highway 12 through Elk Mound to Menomonie was that as a high school student in St. Croix Falls, she recalled being on bus trips to athletic events where the bus returned through the hometown of the team which St. Croix Falls had played and presumably defeated. The Superintendent, Johnson, testified that he was told by a parent of a student who was on Redlich's bus that the driver asked out loud if the students wanted to return through Elk Mound and "show them who we are." The parent who so advised Johnson also testified that her son had told her the driver had made such a statement, whereas grievant Redlich denied making any such statement. Also, grievant Carlson testified that she did not hear the grievant make such a statement. There were three other parents sitting in the front of the bus who testified that they did not hear Redlich make any such statement.

The two grievants and the parents who were also on the bus trip that evening, all testified that the trip through Elk Mound was uneventful. They said they saw only one car with two people near it as they passed through town, the students did not yell obscenities or gesture obscenities nor was their behavior on the bus any different than they had exhibited in similar previous situations. The parents testified that the students were noisy and exuberant after the victory, but that was not unusual.

On the Monday following the Saturday game, the parent whose son had advised her that the bus had gone through the City of Elk Mound mentioned those facts to Ms. Greenquist, a teacher in the District and wife of the basketball coach. The parent was in contact with Ms. Greenquist by virtue of her substitute teaching in the District at that time. Ms. Greenquist was upset upon hearing of the incident, and went to the Superintendent and told him what she knew. Greenquist testified that she was upset that the bus had gone through Elk Mound because of the years of work that both she and her husband had done in promoting good relations with other school districts relative to athletic events. She believed because the bus drove through Elk Mound after the team's victory and was observed by citizens in Elk Mound, people in Elk Mound would talk about that fact thereafter; and this could create bad feelings among Elk Mound residents and students that might become the source of problems in future athletic contests between St. Croix Falls and Elk Mound. She stressed that for years she and her husband had worked at establishing good relationships with other schools against whom they competed in an attempt to make sure that the competitions remained good spirited and did not provide a source of confrontation between students.

After speaking with Ms. Greenquist, the Superintendent spoke with the Transportation Supervisor, Wheeler. He directed Wheeler to speak with Redlich to determine if she did in fact drive through Elk Mound on the return trip from Altoona as alleged. Wheeler spoke with Redlich and she confirmed that she had driven through Elk Mound on the return trip to St. Croix Falls. On the next day, Tuesday, drivers put their names on the blackboard in the transportation office if they were interested in taking the extra duty trip to the state tournament in Madison that week. Redlich put her name on the board. Wheeler, after confirming to Superintendent Johnson that grievant Redlich had driven the bus through Elk Mound was told by Johnson to suspend Redlich from driving on any extra duty trips until he, Johnson, had conducted an investigation into the incident. Thus, on Tuesday afternoon, Redlich was advised that she could not drive a bus to Madison for the state tournament.

Neither Wheeler nor the Superintendent discussed the incident with grievant Carlson, the paid adult chaperon on the trip, until the meeting after the state tournament that Superintendent Johnson called with the two grievants, NUE representative Manson, and the local union representative, Lumsden. Carlson had previously been told by the School Principal's secretary that she would not be permitted to chaperon any additional extra duty assignments including the state tournament until the investigation into the incident had been concluded.

There were two trips down and back to Madison, the site of the state tournament, because the students did not stay overnight between games. Both grievants were precluded from working those extra duty assignments by virtue of Johnson's directive.

After the state tournament, Superintendent Johnson scheduled a meeting to interview the two grievants. Also in attendance at that meeting were the grievant's union representatives Manson and Lumsden, as well as Wheeler. During the meeting, Johnson asked Redlich if she had driven through Elk Mound and if so, why. Redlich advised the Superintendent that she had driven through Elk Mound, and the reason that she did so was her recollection of being a student at St. Croix Falls and being on bus trips following athletic events where after the game the bus drove through the hometown of the opponent. The Superintendent advised both grievants as to his thoughts on why that was a bad idea. Subsequent to that meeting, Johnson prepared written reprimands which he placed in each grievant's file. In the case of Carlson, the reprimand reads as follows:

> Dear Judy:
>
> As the chaperon of the bus returning from the championship game held at Altoona on Saturday, March 14, 1992, your lack of appropriate action clearly exhibits poor judgment. It seems to me that, as the chaperon, you should have encouraged the driver to remain on the established route. Your lack of action implies consent to an

action taken by a driver that lacks good judgment.

I recognize the fact that you can not (sic) control the bus driver. I do, however, expect that you will speak up when an action is inappropriate.

In the case of Redlich, the reprimand was as follows:

Dear Karry:

Please be advised that I believe your diviating (sic) from I-94 to go through Elk Mound on Saturday, March 14, 1992 following the championship game at the Altoona sectional exhibited poor judgment on your part. My reason for this reaction is based on:

1. Traveling on a two-lane highway is less safe and slower than maintaining travel on the Interstate.

2. What happened when you were a student does not justify your action.

3. Though our team finished first, it is not appropriate to gloat.

4. The action portrays a poor image of our students, staff, school, and community.

5. Your action could lead to further repercussions at future activities involving Elk Mound.

A variety of excuses justifying your actions were discussed. It seems to me that plain, ordinary common sense could have eliminated any confrontation generated by your poor judgment. Future actions of this nature will not be tolerated and will result in further disciplinary action.

The Superintendent took no further action in the matter and the grievants were not offered extra duty assignment trips to compensate for the two lost extra duty assignments traveling to the state tournament in Madison. Thus, the penalty imposed by the District upon the grievants for driving through Elk Mound on the evening of the sectional championship game in Altoona was a written reprimand and the monetary compensation lost as a consequence of their being denied the opportunity to drive and/or chaperon on the two trips to Madison for the boys state high school basketball tournament.

PARTIES' POSITIONS:

Northwest United Educators contends that the Employer violated the just cause provision of the collective bargaining agreement by its suspension of bus driver Redlich and chaperon Carlson. It contends the suspensions consisted of discipline in the form of a written reprimand, a reduction in rank, and not being eligible to drive or participate in extra trips, and the loss of compensation by being denied two opportunities for working on extra trips to Madison for the state tournament. The Union believes that the basic tenets of just cause are lacking in this case. It contends that it is undisputed that there was no warning by the Employer of its desire to have bus drivers not drive through the towns of opposing athletic teams. In fact, there is undisputed evidence that this practice has been in effect in the District in the past. Bus driver Redlich was following the normal procedure of arranging her own route in connection with the trip between Altoona and Menomonie. The trip was made without incident and the students on the bus did not behave in an unruly manner. By choosing her own route the driver was following the rule then in effect within the department, and she did not violate any of those rules or other orders of the Employer in choosing to drive through Elk Mound.

With respect to the discipline of the chaperon, the Union argues that she was not responsible for the route chosen by the bus driver and that she discharged all of her responsibilities with respect to the chaperoning of students on the bus in an appropriate manner.

The Union also contends that the Employer ignored the tenets of just cause by imposing the discipline prior to the completion of their investigation. This discipline resulted in a loss of compensation in that the driver and chaperon were denied the opportunity to work on the two trips to Madison for the state tournament. While the Union acknowledges that the "no gloat" policy of the administration may be desirable and even admirable, before it can be legitimately applied in a fair and appropriate manner it must be publicized to all of the employes in a manner in which the details of how that policy affects working conditions are clearly spelled out. In the instant case that was not done, at least not prior to March 14, 1992. No one told the six year veteran bus driver who was a former student from St. Croix Falls that driving a bus through the hometown of a recent athletic competitor was to be avoided. Thus, it is unreasonable to expect a veteran bus driver to intuit the specific desires of a Superintendent who has not made his wishes clear with respect to not gloating in connection with athletic events. The Union believes that this is a very simple case. The administration should have made clear to its drivers that they were not to choose routes going through the hometowns of athletic opponents. Had it done so, and then had bus driver Redlich driven through Elk Mound, this discipline might have been appropriate. However, the Employer in this case failed to provide that warning. Consequently, the Union requests that the Employer's action in this case be found to be without just cause and the records of the suspension of bus driver Redlich and chaperon Carlson be expunged from their files and that they be made whole for any losses suffered as a consequence of these suspensions. Further, the Union requests that the Arbitrator retain jurisdiction in this case should he grant this grievance, pending a

mutually satisfactory agreement as to any make whole remedy.

The Employer argues that in the first instance the Union's concern relative to the District's temporary suspension of the two grievants from extracurricular assignments is misplaced. It believes that the decision of the Superintendent to preclude the two grievants from working extracurricular assignments while the investigation was incomplete and ongoing was appropriate. Mr. Johnson took the most reasonable step he could given the time constraints he was under and the unavailability of the requested Union representative. Thus, he temporarily suspended the bus driver and chaperon from driving and chaperoning the extracurricular bus pending the investigatory interview. The bus driver continued to drive her regular bus route and the chaperon still held her regular cooking job. Thus, neither the chaperon nor the bus driver were deprived of their regular compensation as a result of the temporary suspensions. They lost the opportunity to travel to Madison as a bus driver and chaperon. The District requests that the Arbitrator retain jurisdiction so that additional information can be provided if the Arbitrator finds that the District violated the collective bargaining agreement in suspending the grievants from extracurricular assignments.

The Employer also contends that it did have just cause to impose some type of discipline against the chaperon and driver, and that the discipline imposed in this case was reasonable under the circumstances. The District acknowledges that it does not have mandated routes. However, it argues that it is not required to have specific policies and procedures governing every conceivable situation. It cannot possibly do so. The District cites the undersigned to a decision in Weyerhaeuser School District, Dec. No. 46985 (8/92) wherein the arbitrator stated:

> The District has the right to require bus drivers, such as the grievant, to use reasonable care in transporting children without defining all of the conduct which constitutes reasonable care."

In this case the District believes it was not necessary to have a policy encouraging the use of the safest routes. In this case the bus driver exercised poor judgment in taking the Elk Mound exit because the Highway 12 route to get to the Menomonie McDonald's was longer and more time consuming than staying on I-94. Further, the route chosen by the driver was less safe than staying on the Interstate because common sense would tell a person that traveling on a familiar, four lane, limited access road is safer than traveling on an unfamiliar two lane road. The District concludes that a reasonable person given the same circumstances would not have left the four lane Interstate to travel on Highway 12, and thus, it is obvious that the driver in this case exercised poor judgment in choosing a route which took longer and was less safe than the alternative.

The chaperon's failure to comment to the driver regarding the route selected was inappropriate. It is the District's position that the chaperon should have encouraged the bus driver to remain on the Interstate. By not making such a recommendation the chaperon implied consent

to the actions taken by the bus driver. While it was the responsibility of the chaperon to watch over the activities on the bus to make sure that no misconduct occurs, the chaperon's silence failed to carry out this duty. Finally, the District contends that the Arbitrator can only set aside the letters of reprimand and temporary suspension of the grievants if there has been an abuse of discretion by the District. The District contends that a review of the relevant legal authority demonstrates that whether an employer has "just cause" to discipline an employe will depend upon the facts of each case. In this case the record unequivocally establishes that the District had just cause to place letters of reprimand in the grievants' files. Further, the District contends that it also had the right, even the duty, to not give grievants extra driving or chaperoning responsibilities while the investigation was ongoing. Thus, the District concludes that it acted reasonably in this case, and the Arbitrator should therefore not substitute his judgment for that of management.

DISCUSSION:

The only facts in dispute in this case are whether the grievant, Redlich, asked the students on her bus on the evening of the sectional boys basketball finals whether they wanted to drive through Elk Mound, the hometown of their vanquished opponent. Both grievants and the adults who were on the trip deny that grievant Redlich made such an inquiry of students or that she made any statement to students as to why they were going through Elk Mound. The only basis for the claim that such a remark was made was the hearsay testimony of the mother of one of the students who was on the bus, stating that her son had indicated to her that grievant Redlich had made such a statement or asked that question of students. Clearly, the uncontroverted direct testimony is that such statements or questions were not made, and thus, the undersigned cannot credit the hearsay testimony in the face of such direct testimony. Further, the motivation of the driver in taking the Elk Mound route is not contested. She acknowledges it was her idea and admits that it was precipitated by experiences she had as a student at St. Croix Falls. It is also clear that her motivation was squarely in conflict with Ms. Greenquist and her husband's history of stressing good sportsmanship and promulgating a good school image.

The undersigned does not believe that the motives of Ms. Greenquist and her husband are in any way questionable; in fact, they are laudable. The Superintendent's support and endorsement of those ideals is also laudable. The real crux of this dispute, however, lies in whether or not Redlich's decision to drive through Elk Mound, and Carlson's silence in the face of that decision, warranted disciplinary action being taken against them. The evidence in this case leads me to conclude that it did not.

First, neither grievant had ever been told by anyone in the administra-tion or, for that matter, by any coaches or other athletic department personnel that driving through the town of a vanquished athletic opponent after an athletic event was inappropriate conduct. One can appreciate that Redlich, once having been a student at St. Croix Falls High School and now being involved in school events to the extent of attending the game and driving the happy and excited students home,

could get caught up in the emotion of events and make the decision she made. While others, such as Ms. Greenquist and the Superintendent, were understandably upset by those actions because of their position and knowledge of the District's efforts to do nothing to offend opponents, it is not equally as understandable why grievant Redlich or Carlson should have been expected to be as sensitive to that point of view. In the undersigned's opinion, to establish just cause to discipline Redlich and Carlson the District must show they had foreknowledge that their conduct in this instance was inappropriate because it was contrary to administration and District philosophy and expectations for employes. While it may have seemed obvious to some, it was not obvious to the two grievants. Indeed, the District does not contend nor did anyone testify that the grievants knew or should have known of the District's expectations in that regard.

Most, if not all incidents of disciplinary action, occur when an employe knew or should have known that the conduct giving rise to the discipline was inappropriate. In matters where it is not reasonable to assume that the employe knows or should know what the employer's expectations are, the employer is charged with the responsibility of so advising employes. Work rules are published and disseminated to employes so that they know the standard of conduct to which they are being held. It is a generally accepted principal of employe discipline that an employe cannot be disciplined for failure to adhere to a standard of conduct of which he/she is ignorant. In this case, that appears to be exactly what occurred.

The grievants were never directed to not do what they did either in specific or generic terms. Furthermore, the undersigned does not believe that it can be presumed that they knew doing so was against District policy. There is no evidence that the Greenquists' expectations or philosophies were ever communicated to the grievants or any other drivers or chaperons. Therefore, such a presumption is not reasonable in this case, as it would be had Ms. Greenquist been driving the school bus. Thus, it was incumbent upon the District to make drivers and chaperons aware prior to taking disciplinary action against them for a violation of this expectation. Because Ms. Redlich was not advised as to the District's expectations in this regard, the District did not have just cause for taking disciplinary action against her. It would, however, have been appropriate to call her in and advise her of the District's expectations in the future.

With respect to grievant Carlson, the undersigned finds that first, she was not the driver of the bus; second, she did not make the decision to take the Highway 12 route through Elk Mound; and, third, like grievant Redlich, it was not shown that she knew or should have known of the District's philosophy and/or expectations of chaperons participating in school athletic events. The reason it was inappropriate for the District to take disciplinary action against the bus driver, apply as well to Carlson. Thus, the District did not have just cause to discipline Carlson for failing to "speak up when action is inappropriate."

With respect to the District's claim that the driver took an unsafe route when she exited I-94 onto Highway 12 to travel through Elk Mound en route to Menomonie, the undersigned

concludes this is nothing more than unsubstantiated conjecture. As such it surely cannot form the basis of disciplinary action against the grievants.

The disciplinary action in this case amounted to written warnings being placed in the employes' personnel files and denying them the opportunity to drive and/or chaperon the bus trips associated with the boys basketball team's participation in the state high school tournament. The standard remedy in disciplinary action cases where the employer does not establish just cause for taking such disciplinary action is to make the employes whole, i.e., put them in the position that they would have been, but for the employer's actions. In this case, making the employes whole requires that the District remove the written warnings from their personnel file and clear their record of any reference to the disciplinary action. It also involves making the employes whole for any financial loss they incurred as a consequence of Superintendent Johnson's decision to not allow them to drive bus and/or chaperon on the two trips to Madison for the boys state high school basketball tournament. The testimony established that with respect to bus driver Redlich, that would have meant two trips down and back to Madison at the appropriate hourly rate and reimbursement for expenses incurred. Because she did not make those trips, she incurred no expenses, and is not entitled to any remuneration in that regard. There was no testimony concerning the manner in which Ms. Carlson would have been compensated for chaperoning trips to the state tournament. Consequently, the undersigned is unable to be specific with respect to the remedy in her case other than to note that the District should make her whole by paying her what she would have earned in wages had she been permitted to chaperon on the two trips to the state high school boys basketball tournament. Because she did not make the trips as chaperon she incurred no expenses as a result, and is not entitled to any remuneration for expenses.

With respect to the District's claim that it had both the right and the duty to suspend the grievants pending Johnson's investigation of the incident, the undersigned agrees that it has the right and the responsibility to investigate incidents of alleged misconduct prior to disciplining employes. However, while it may suspend employes pending investigation, if it ultimately turns out that employes did not engage in misconduct, the consequences of the District's decision to suspend pending investigation must be borne by the District. To conclude otherwise would, in essence, be to permit the District to act adversely to the grievants' interest under the guise of investigation resulting in harm to the grievants. That is why, in many instances where employes are suspended pending investigation into misconduct, they are suspended with pay. In this case, that means that the economic effects of Johnson's decision to preclude Redlich and Carlson from driving and chaperoning trips to the state tournament in Madison are the responsibility of the District, and thus, they must make the employes whole for the losses incurred as a result of their suspensions from extra duty trips pending further investigation. The reasons for the delay in completing the investigation do not in any way alter the conclusion that the responsibility for the consequences of such temporary suspensions fall to the Employer if, as in this case, it turns out the employes did not engage in any misconduct. Many would conclude that this is a small price to pay for management acting responsibly.

Both parties, for different reasons, request the undersigned to retain jurisdiction of this matter should he sustain the grievances. Consistent with those requests, the undersigned will retain jurisdiction in this matter for sixty days from the date of this Award.

Based upon the foregoing and the record as a whole, the undersigned enters the following

AWARD

The District did violate the parties' collective bargaining agreement when it issued written reprimands to grievants Carlson and Redlich relative to their conduct in taking an alternative route back to St. Croix Falls from Altoona following the boys sectional basketball finals. Therefore, the District shall immediately remove the written reprimands and all other material relative thereto from their personnel file, and make them whole consistent with the preceding discussion.

Dated at Madison, Wisconsin this 15th day of April, 1993.

By Thomas L. Yaeger /s/
Thomas L. Yaeger, Arbitrator