

OFFICIAL

STATE OF WISCONSIN

BOARD OF PERSONNEL

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EARL DUTTON, **

Appellant, **

vs. **

ORDER

JOHN P. WIECZOREK, DIRECTOR **
MONROE COUNTY DEPARTMENT OF **
PUBLIC WELFARE, **

Case No. 73-33

Respondent. **

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The Board having entered its Findings of Fact, Opinion and Conclusions of Law in this matter, hereby makes and files the following Order:

1. It is ordered based upon the records on file herein the action of the respondent, John P. Wieczorek, in terminating the appellant's employment was for just cause and is hereby ratified and affirmed.

2. It is further ordered the appellant's appeal from his dismissal be and the same is hereby dismissed on its merits.

Dated at Madison, Wisconsin this 12th day of June, 1973.

STATE PERSONNEL BOARD, By



William Ahrens, Chairman

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EARL DUTTON,

**

Appellant,

**

vs.

**

FINDINGS OF FACT
AND
CONCLUSIONS OF LAW

JOHN P. WIECZOREK, DIRECTOR
MONROE COUNTY DEPARTMENT OF
PUBLIC WELFARE,

**

**

Respondent.

**

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Hearing was held in this matter by the State Personnel Board on May 10, 1973, at the Monroe County Courthouse Annex, Sparta, Wisconsin, with the following Board members present: William Ahrens, Chairman, John Serpe, Percy L. Julian, Jr., and Susan Steininger. Charles Brecher was absent. The appellant appeared personally and by his attorney, Steven L. Abbott; and the respondent appeared by Michael J. McAlpine, Assistant District Attorney, Sparta, Wisconsin. The Board having reviewed the transcript of the matter, together with all exhibits admitted during the hearing and the brief of the parties, enters the following Findings of Fact and Conclusions of Law. This hearing was conducted under such statutory provisions, and the Board issues the following:

FINDINGS OF FACT

1. That the appellant, Earl Dutton, age 49, was employed by the Monroe County Department of Public Welfare as a Case Aid 1.
2. That the appellant's appointment was under the County Merit System and that the appellant had completed his probationary period and was a permanent employe as defined by the County Merit System rules.
3. That the respondent, John P. Wieczorek, was the Director of the Monroe County Department of Public Welfare and responsible for the administration of the County Welfare Department as well as the supervision of its employes.

4. On January 17, 1973, John P. Wieczorek, the respondent, as Director of the County Welfare Department and as the appellant's supervisor, notified the appellant by letter that he was suspended as a Case Aid 1, effective January 17, 1973, until February 14, 1973. This suspension was without pay and pending further action and investigation of appellant's conduct resulting in his arrest by the Wausau Police Department on a criminal charge of contributing to the delinquency of two minor boys. This letter alleged that the appellant, on the evening of January 15, 1973, transported by automobile a minor boy 13 years of age to Wausau, Wisconsin, which resulted in the arrest of the appellant and the initial filing of such criminal charges.

5. The Monroe County Public Welfare Board held a hearing on February 14, 1973, at which time the appellant and his attorney, Steven Abbott, were present as well as the respondent, John P. Wieczorek and Attorney Michael J. McAlpine.

6. As the result of the hearing held February 14, 1973, the Board by formal action elected to terminate the appellant's employment as a Case Aid 1 and notify him in writing of the reasons therefor.

7. On February 14, 1973, the Monroe County Welfare Board, under the signature of its Chairman, Vice-Chairman, and Secretary, prepared a written notification addressed to the appellant advising him that based on the evidence of the hearing held that date that his employment was terminated. The stated reasons therein were that 1) he was convicted after a plea of no contest on a reduced charge of disorderly conduct, 2) he exercised poor judgment, portrayed a negative image in the community, which had an adverse effect on the department's operations, 3) the nature of this conduct and behavior rendered the appellant unsuitable to continue his employment. Further, such notification advised him that he had the right to appeal this action to the State Personnel Board.

8. The appellant, by his attorney, filed a timely written notification of appeal to the Personnel Board, dated February 21, 1973.

9. The Board, in reviewing the testimony and applying the required burden of proof to a reasonable certainty, by the greater weight of the credible evidence,¹ finds the following facts to be true and correct:

a. That on Monday evening, January 15, 1973, Earl Dutton was operating his automobile in Monroe County and at the request of one Donnie Y____, a 13-year old minor boy, provided him with automobile transportation to Wausau, Wisconsin.

b. That the said Donnie Y____ was at the time receiving custodial supervision from the Monroe County Welfare Department, although the appellant was neither responsible for, nor aware of, such supervision.

c. The said Donnie Y____ requested the appellant, Earl Dutton, to transport him from Sparta, Wisconsin to Wausau, Wisconsin. At the time of this request Donnie represented that he wished to go to Wausau for the purpose of visiting his brother, who was 15 years of age, to give him some money.

10. That the appellant and Donnie left Sparta in his automobile between 10:00 and 11:00 p.m. for Wausau, approximately 115 miles away, and arrived there approximately 4:00 a.m. on the morning of January 16.

11. When the appellant and Donnie arrived at Wausau they were initially stopped by Wausau Police Patrolman Derke and Officer Derke interrogated both the appellant and Donnie and released them. Shortly after this release Patrolman Derke received instructions from his department to stop the appellant and bring him and Donnie in for questioning.

12. Patrolman Derke stopped the appellant's automobile. Donnie had left the appellant's automobile and was later apprehended by another Wausau Police Officer.

13. After apprehension Donnie was held for a period of time and released into the custody of others. The appellant, Earl Dutton, was criminally charged with contributing to the delinquency of a minor and was thereafter released

¹ Reinke v. Personnel Board, 53 Wis. 2d 123(1971).

from custody upon posting of bond.

14. The appellant, Earl Dutton, returned to Sparta mid-afternoon on January 16 and reported for work at 8:00 a.m. the following day. Upon reporting for work, Curtis Moe, County Basic Services Supervisor, together with respondent, John P. Wiczorek, held a conference with the appellant for the purpose of interrogating him regarding the Wausau trip and the resulting apprehension and arrest.

15. As the result of the conference with Dutton on January 17, the respondent by letter advised the appellant that he was being suspended without pay pending a hearing before the County Welfare Board on February 14, 1973. This notification alleges the exercise of poor judgment in transporting a minor boy from Sparta to Wausau and that the boy was 13 years of age, a truant from home, and had a delinquency record in which the County Welfare Department personnel had prepared background information to the court.

16. That the hearing was held on February 14, 1973, for the Welfare Board. As the result of such hearing, the Board unanimously agreed to terminate the appellant and prepared a written notice of such termination. The stated reason for such dismissal was his conviction on a charge of disorderly conduct reduced from the original charge of contributing to the delinquency of a minor and that his conduct in transporting a 13-year old boy under the circumstances exercised poor judgment and had adverse effects upon the Welfare Department within the community.

17. Such written notice of termination February 14, 1973, was signed by the Board Chairman, Vice-Chairman, and Secretary and given to the appellant.

18. The appellant timely appealed from such termination action by a letter of February 21, 1973.

19. That the appellant's conduct in transporting a 13-year old to a distant city, late at night, without parental permission, showed a lack of good judgment,

which adversely affected his ability to work effectively in his position and prevented him from having the creditability and acceptability, required by the position, with his clients, who are children and their mothers and fathers.

20. We made no finding with respect to whether in all instances, a public employe may be dismissed merely because he has been convicted of a crime. In this case, however, we find there is a strong nexus between actual conduct, which was the basis of the conviction, and the requirements of his job.

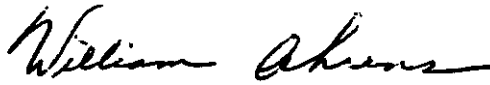
CONCLUSIONS OF LAW

1. That the action of the respondent in discharging the appellant upon the recommendation of the County Welfare Board be and is hereby sustained.

2. That the appellant's appeal from his dismissal be and the same is hereby dismissed on its merits.

Dated at Madison, Wisconsin this 12th day of July, 1973.

STATE PERSONNEL BOARD, BY



William Ahrens, Chairman

Member Brecher did not participate in the hearing and did not participate in the decision.