

BEFORE THE ARBITRATOR

In the Matter of the Arbitration  
of a Dispute Between

MAPLE SCHOOL DISTRICT EMPLOYEES  
LOCAL 1397-A, AFSCME, AFL-CIO

and

MAPLE SCHOOL DISTRICT

Case 33  
No. 51130  
MA-8492

Appearances:

Mr. James Matson, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, appearing on behalf of the Union.  
Coe, Dalrymple, Heathman, Coe & Zabel, S.C., by Mr. Edward J. Coe, appearing on behalf of the District.

ARBITRATION AWARD

The Employer and Union above are parties to a 1992-94 collective bargaining agreement which provides for final and binding arbitration of certain disputes. The parties requested that the Wisconsin Employment Relations Commission appoint an arbitrator to resolve the discharge grievance of William P. Culhane.

The undersigned was appointed and held a hearing on October 19, 1994 in Maple, Wisconsin, at which time the parties were given full opportunity to present their evidence and arguments. A transcript was made, both parties filed briefs, and the record was closed on December 28, 1994.

Issues:

The following are undisputed:

1. Did the District suspend the grievant for just cause?
2. Did the District discharge the grievant for just cause?

The Union's version of the third issue is:

3. If not, the Employer to restore the grievant to his position with the Employer and to make the grievant whole for any and all lost wages and benefits. Employer to remove from any and all records maintained by the Employer any and all references to this matter.

The Employer's version is:

3. If not, what is the proper remedy?

Relevant Contractual Provisions:

**ARTICLE 8 - DISCIPLINE-DISCHARGE**

**Section 1.** It is the intent of the Board to act in good faith in the disciplining of employees.

**Section 2.** The normal sequence for disciplinary action will be oral reprimands, written reprimands, suspensions and discharge. The sequence of disciplinary action shall not apply in cases which are just cause for immediate suspension or discharge.

**Section 3.** The employer agrees that no employee who has completed the probationary period may be disciplined, suspended or discharged except for just cause. Oral reprimands, as stated in Section 2, are excluded from the just cause standard.

Facts:

Grievant William P. Culhane was employed by the District for six years as a bus driver, earning no discipline and one commendation, for six years until he was discharged following a bus trip on May 7 and 8, 1994, during which he allegedly provided chewing tobacco and two kinds of alcoholic beverage to five students.

On the weekend in question, the grievant was the sole bus driver transporting a group of some twenty students, with two chaperones, to Eau Claire for purposes of a regional vocal music competition. The bus left on May 7th, and returned on May 8th, and the events in question allegedly occurred at the overnight stop at the Holiday Inn of Eau Claire. The competition itself took place at the University of Wisconsin-Eau Claire campus. During the day the grievant provided transportation to and from the competition, as well as two trips to and from a shopping mall in Eau Claire where the students were allowed some time off.

Much of the testimony is disputed. In essence, five boys were involved in the incidents in this matter. Four of them testified to the effect that the grievant agreed to their requests to obtain alcohol and chewing tobacco for them, while the fifth, with the grievant, testified to the effect that the grievant consistently refused the boys' requests. Significant sections of the transcript, representing the different testimony in this matter, are reproduced below. There is no dispute, however, that early in the week that followed the trip the story came out that some of the students on the trip had been chewing tobacco and drinking alcohol. The students were interviewed individually by School District personnel, as was the grievant. While all of the boys initially denied having had anything to do with tobacco or alcohol, four of them subsequently admitted

involvement with tobacco and alcohol, and the fifth admitted involvement with alcohol. Their respective versions of the facts have remained essentially unchanged since.

The following testimony, given by student Jack Raatz, is typical of the four students who claim that the grievant supplied the alcohol and tobacco involved:

16 Q. Was there an incident involving  
17 chewing tobacco while you were in Eau Claire on  
18 that trip?

19 A. Yes, there was.

20 Q. How did that start?

21 A. At the university in the morning we  
22 were talking about it, about asking Bill if he  
23 could get chewing tobacco for us.

24 Q. How did that all come about? Whose  
25 idea was it?

1 A. It was just, it was more or less a  
2 group idea to try chewing tobacco.

3 Q. Was this a group of five of you?

4 A. Yes.

5 Q. And were the five Paul Koenig, Jeremy  
6 McClure, Ryan Korhonen and Mark Mullozzi and  
7 yourself?

8 A. Yes.

9 Q. And all of the incidents related to  
10 tobacco and alcohol that day involved those same  
11 five guys, did it?

12 A. Yes, it did.

13 Q. Who asked -- strike that. Did  
14 someone ask Mr. Culhane about acquiring some  
15 chewing tobacco?

16 A. Yes.

17 Q. Who did?

18 A. Myself and Paul Koenig.

19 Q. And what was his response?

20 A. He wasn't sure what the brand we  
21 wanted was or where he could get it so I told him  
22 he could get it at any convenience store or gas  
23 station. And he said that he could get, he would  
24 get us chewing tobacco.

25 Q. What kind did you ask for?

1 A. Red Man.

2 Q. Did you give him any money?

3 A. Yeah; \$4.00.

4 Q. Where did you get the money to give

5 him?

6 A. From myself and three of the other

7 guys, Paul Koenig, Ryan and Mark.

8 Q. So one guy didn't kick in his buck?

9 A. Right.

10 Q. Did you give Mr. Culhane the money

11 immediately when he said he would get you some?

12 A. Yes; when I asked him, I gave him the

13 money.

14 Q. And he took it?

15 A. Yes.

16 Q. What did he do with it?

17 A. He just put it in his pocket at that

18 time.

19 Q. At that time did you have any

20 discussion with him regarding alcohol?

21 A. No.

22 Q. When did the subject of the chewing

23 tobacco come up again next?

24 A. We were, well, I asked him on the bus

25 on the way to the mall when he was going to get

1 it and he wasn't sure.

2 Q. Now when was this you went to the  
3 mall?

4 A. Around 8:00 o'clock.

5 Q. So this was after the performance and  
6 after the activities were over?

7 A. Yes; we were already into the motel  
8 when I asked him.

9 Q. Had you had any previous conversation  
10 with him about where his room was?

11 A. Yeah. As soon as we got to the motel  
12 I found him and I asked him what his room number  
13 was; he just showed me his key.

14 Q. Why did you ask him what his room  
15 number was?

16 A. To pick up the chewing tobacco.

17 Q. Did you tell him that is why you  
18 wanted to know his room number?

19 A. No; I just asked what the room number  
20 was.

21 Q. And he showed you the key?

22 A. Yes.

23 Q. Did it have the number printed on it,

24 did it?

25 A. Yes.

1 Q. You asked him about the tobacco on

2 the bus and he said he didn't have it yet. When

3 was the next time it came up after that?

4 A. We were in our room and I called down

5 to his room and he said he had got it.

6 Q. This is after you got back from the

7 mall then?

8 A. Yes.

9 Q. So it would have been sometime later

10 that evening?

11 A. Yes.

12 Q. Who was in the room with you at the

13 time?

14 A. I am not sure.

15 Q. Were there several of the guys at

16 least?

17 A. Yes.

18 Q. And he said he had it at that point,

19 right?

20 A. Yes.

21 Q. What did you do then?

22 A. The guys that were in the room, we

23 all went down to his room and from there two of

24 the guys were in the whirlpool and we told them

25 we were going to go get them and come back to his

1 room.

2 Q. So who got the two guys in the

3 whirlpool?



4 A. Everybody, the three of us that were  
5 in the room who called.

6 Q. So you told Mr. Culhane you were  
7 going to get the other two and then come back; is  
8 that what --

9 A. Right.

10 Q. And do you remember who it was that  
11 was in the whirlpool that you went and got?

12 A. I believe Ryan and Mark.

13 Q. And did you find them there?

14 A. Yes.

15 Q. Did you go back to Culhane's room?

16 A. Yes.

17 Q. What took place then?

18 A. In there a brown paper bag was  
19 sitting near the TV and we picked that up and in  
20 the brown paper bag was two pouches of chewing  
21 tobacco.

22 Q. What kind was it?

23 A. Red Man.

24 Q. Did you have any conversation with  
25 Mr. Culhane at that time?

1 A. No, just what he was doing;

2 nothing --

3 Q. Nothing related to the tobacco?

4 A. No.

5 Q. Did someone at that point spot a

6 bottle of vodka in the room?

7 A. Yes. Well, the vodka was in a bag

8 and it was above the door on a luggage rack.

9 Q. How did that come to your attention?

10 A. It was brought over to the group.

11 Q. By whom?

12 A. I don't recall.

13 Q. So somebody apparently took it off

14 the shelf and brought it to the rest of you?

15 A. Yes.

16 Q. And who pulled it out of the bag?

17 A. I don't recall.

18 Q. Did you have any conversation about

19 the alcohol, or the vodka at that time?

20 A. No. We were just surprised that he

21 got it.

22 Q. Did anybody ask him if it was for

23 you?

24 A. No.

25 Q. Did anybody ask him if you could take  
1 it?

2 A. No.

3 Q. Was he in a position where he could  
4 have seen that you had it in your hands?

5 A. Yes.

6 Q. And what did you do then?

7 A. From there I took a pouch of tobacco  
8 and put it in my pants; the vodka went in  
9 Jeremy's pants and Paul Koenig had a pouch of  
10 tobacco.

11 Q. Was this all done in front of Mr.  
12 Culhane so he could see it being done?

13 A. Yes; it was in the room.

14 Q. And did he make any objection to your  
15 taking those items?

16 A. No.

17 Q. So where did you go with them?

18 A. We went back up to our room. 1/

Three of the other students' testimony is substantially consistent with the above. There

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1/ See transcript pp 128-135.

are, however, relatively minor variances over such issues as whether the bottle of vodka was fully visible or was in a paper bag. In his further testimony, Raatz reflects his allegedly greater involvement with additional alcohol sought from the grievant, including conversations to which the other students were not privy:

16 Q. So then what did you do with the  
17 vodka?

18 A. After room check we went down to the  
19 pop machine and got four Mellow Yellows and with  
20 that we mixed the vodka up and the Mellow Yellow  
21 in glasses and drank that.

22 Q. Did the group of you drink up all of  
23 the vodka?

24 A. Yes.

25 Q. After that was done did you have any  
1 discussion as to what to do with that bottle?

2 A. Somewhat. Nobody knew what to do  
3 with it so I just took it and threw it up on the  
4 roof.

5 Q. After that what took place?

6 A. From there we decided that we wanted  
7 more alcohol and I called Bill again.

8 Q. And what was that conversation? What  
9 did you say and what did he say?

10 A. I asked him if he could get us more  
11 alcohol and he wanted to know what kind and I  
12 couldn't think of nothing so I told him Zima; he  
13 didn't know what that was. So I asked Jeremy  
14 what he wanted and he said Blue 100 and from  
15 there Bill said he would go out and see if he

16 could get it.

17 Q. Did you take him any money?

18 A. I took down \$10.00 to him out of  
19 Jeremy's money.

20 Q. You took it down to Mr. Culhane's  
21 room?

22 A. Correct.

23 Q. And did he accept it?

24 A. Yes.

25 Q. Were you alone at that time?

1 A. Yes, I was.

2 Q. What happened next then?

3 A. From, when I gave him the money I  
4 asked when and where I should get it and he said,  
5 Wait 15 minutes and he would put it on a pop  
6 machine up above on top of a pop machine.

7 Q. Did he point out the pop machine he  
8 was referring to?

9 A. No. He just said there was one down  
10 the hall from his room and that is where he would  
11 put it.

12 Q. So what did you do then?

13 A. We waited and goofed around for a  
14 little while and decided to go check the pop  
15 machine to see if he had brought it back yet.

16 Q. Who went down to check the pop  
17 machine?  
18 A. I don't recall.  
19 Q. Did you go?  
20 A. Yeah, I went.  
21 Q. Did you find anything?  
22 A. No.  
23 Q. What did you do then?  
24 A. We just figured that he wasn't back  
25 yet and went back up to our room and waited and  
1 went down again.  
2 Q. What did you find that time?  
3 A. Nothing.  
4 Q. Were you along on that trip as well?  
5 A. Yes.  
6 Q. What did you do then?  
7 A. We just did the same; we went back up  
8 to the room and waited and a third time we went  
9 and checked.  
10 Q. What did you find the third time?  
11 A. Nothing.  
12 Q. And you were along on the third trip?

13 A. Yes.

14 Q. What did you do then?

15 A. From there we went back up to the  
16 room and I called and asked him what had happened  
17 and he said after 10:30 no wholesale (sic) was  
18 sold so from there he asked if we really wanted  
19 something, that one of us could come down and get  
20 the schnapps that he had been drinking.

21 So I said, yeah, sure. From there  
22 Jeremy went down himself and got the schnapps.

23 Q. And what did he come back with, a  
24 bottle?

25 A. No. In the ice bucket, he came back  
1 with ice and the schnapps in there.

2 Q. And what did you do with that?

3 A. We put it in the two glasses that we  
4 had and drank it. 2/

There is no dispute that the students did ask the grievant to obtain chewing tobacco for them while they were on the bus. (There is no allegation that they asked him to obtain alcohol for them while they were on the bus). Opposing testimony, denying that the grievant was in any way culpable, came from student Jeremy McClure:

12 Q. Who asked Bill to get chewing

13 tobacco?

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2/ See transcript pp 136-140.



14 A. I think it was Jack.

15 Q. And what did Bill say?

16 A. No.

17 Q. You heard that conversation?

18 A. Huh-uh. That is what they said to

19 me.

20 Q. They said that Bill had said no?

21 A. Yes.

22 Q. Who told you that? Jack?

23 A. Yes.

24 Q. What happened then? Was there any

25 more discussion on the bus about getting chewing

1 tobacco?

2 A. Not for a while.

3 Q. Was there -- do you remember what

4 time -- do you remember anymore discussion about

5 getting tobacco?

6 A. On the shuttle bus to the mall.

7 Q. On the bus trip to the mall?

8 A. Yes.

9 Q. What was said then?

10 A. They asked if Bill would buy them

11 some tobacco chewing tobacco.

12 Q. And what did Bill tell them?

13 A. No.

14 Q. Did you hear that conversation?

15 A. Yeah; I heard that one.

16 Q. Bill clearly said no?

17 A. Yes.

18 Q. Where were you seated?

19 A. I was in the first seat next to the,

20 across from the driver.

21 Q. And who asked Bill again to get the

22 chewing tobacco?

23 A. Jack Raatz.

24 Q. Did they ask to get anything else

25 besides chewing tobacco?

1 A. Alcohol.

2 Q. At that time in the bus?

3 A. Yes.

4 Q. What did Bill say about that?

5 A. He said, no, he can lose his job from

6 it.

7 Q. Was it a serious conversation or was

8 it laughter or joking or how would you

9 characterize it?

10 A. I would have said serious.

11 Q. Was Bill pretty clear in his answer

12 to you?

13 A. Yes.

14 Q. What happened then after that in  
15 terms of this business of either alcohol or  
16 tobacco? What was the next time it came up?

17 Why don't I ask it this way then.  
18 After everybody got to the hotel did -- were you  
19 present when Bill -- did Bill show his room key  
20 to anybody?

21 A. I wasn't around when he did but I  
22 guess he showed it to Jack and Paul.

23 Q. And why did Bill, to the best of your  
24 knowledge why did Bill show his key to them?

25 A. If we left something on the bus.

1 Q. After that point what did you do  
2 after you checked in the hotel?

3 A. Well, we went to our rooms.

4 Q. Maybe we should get a couple things  
5 clear in terms of who was staying with who. Who  
6 were you staying with that evening?

7 A. I was staying with Jack, Paul, Ryan.

8 Q. Mark wasn't in the room with you?

9 A. No.

10 Q. And where was he at?

11 A. He was with the Charbonneaus.

12 Q. Charbonneaus. Is that the --

13 A. The Charbonneau triplets.

14 Q. Is that the same family as the

15 chaperone?

16 A. Yes.

17 Q. So what happened in your room then?

18 You were in the room with the other guys?

19 A. I did a flip off the bed and put a

20 hole in the wall.

21 Q. When did you do that?

22 A. Right after we got there.

23 Q. Why did you do that?

24 A. Something to do.

25 Q. In relationship to tobacco or

1 anything like that when did that come up for

2 discussion?

3 A. We went down to Bill's room.

4 Q. Who went down to Bill's room?

5 A. Me, Jack, Paul and Mark and Ryan, we

6 all went down there.

7 Q. All of you went down there?

8 A. Yes.

9 Q. Do you know what time that was about?

10 A. No.

11 Q. Any idea?

12 A. Between 7:00 and 8:00 maybe.

13 Q. And what did you do when you got to

14 Bill's room?

15 A. They asked him if he would buy, they

16 asked him again if he would buy stuff for them.

17 Q. Buy what for them?

18 A. Tobacco and alcohol.

19 Q. And what did Bill tell them?

20 A. He said no.

21 Q. What was Bill -- was this in Bill's

22 room; you went to his room?

23 A. Yes.

24 Q. What did Bill say? I mean was he --

25 maybe I'll rephrase it.

1 When you came into Bill's room, what

2 was Bill doing?

3 A. I wasn't the first one to come in, to

4 go in.

5 Q. Did you just, did you go into his

6 room then?

7 A. Yes.

8 Q. All five of you went in the room?

9 A. Yes.

10 Q. How long did you stay in Bill's room?

11 A. Five, ten minutes.

12 Q. And what went on during that five,  
13 ten minutes?

14 A. Kept asking him if he would buy for  
15 us.

16 Q. You asked him more than once?

17 A. Yes.

18 Q. Were you asking him or did others ask  
19 or --

20 A. All of us.

21 Q. And what did Bill say?

22 A. He said no.

23 Q. Did you see any alcohol in Bill's  
24 room?

25 A. The first person said he did but I  
1 didn't see any.

2 Q. You didn't -- so who said they saw --

3 A. I don't know. I just remember the

4 first person; I don't know who it was.

5 Q. They said they saw booze?

6 A. Yes.

7 Q. Where was it?

8 A. On the desk.

9 Q. But you didn't see it though?

10 A. Huh-uh.

11 THE COURT REPORTER: Is that a "No"?

12 A. No.

13 CONTINUED EXAMINATION

14 BY MR. MATTSON:

15 Q. So, but at no time did Bill offer to

16 buy any booze or tobacco for you?

17 A. No.

18 Q. Did he indicate willingness to do

19 that for you at all?

20 A. No.

21 Q. Did you see any booze on any shelves?

22 A. Nope. 3/

The differences between the testimony of McClure and that of the other students become even more pronounced after the "tobacco requests" incidents are completed:

12 Q. Where did you guys go then?

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3/ See transcript pp 166-172.



13 A. Back up to my room, to our room.

14 Q. What went on up in your room?

15 A. We had a quart of vodka.

16 Q. Quart of vodka?

17 A. I think it was a quart or a pint, one

18 or the --

19 Q. Which was it?

20 A. I have no --

21 Q. How big was it?

22 A. (Indicating) About that wide.

23 Q. Are you indicating like six inches

24 tall?

25 A. Yes.

1 MR. COE: I am having trouble hearing you.

2 THE ARBITRATOR: You need to speak up

3 loudly, and clearly.

4 MR. MATTSON: I am sorry. Okay.

5 CONTINUED EXAMINATION

6 BY MR. MATTSON:

7 Q. The question is: The bottle, how tall

8 was this bottle that was in your room?

9 A. About six inches.

10 Q. Could you show us on the table so I  
11 have an idea. And how wide was it?  
12 A. Like that.(indicating)  
13 Q. That is approximations?  
14 A. Yes.  
15 Q. Where did that bottle come from?  
16 A. Iron River.  
17 Q. Where was that again?  
18 A. Iron River.  
19 Q. How do you know that?  
20 A. Cause I got it.  
21 Q. You got the bottle in Iron River?  
22 A. Yes.  
23 Q. Who did you get it from?  
24 A. I just got it.  
25 Q. And you just got it. Somebody bought  
1 it for you?  
2 A. Yes.  
3 Q. Do I indicate a reluctance to  
4 identify the person by name?  
5 A. No.  
6 Q. Now this bottle came from Iron River  
7 you said?

8 A. Yes.

9 Q. How did it get to Eau Claire?

10 A. I brang it with me.

11 Q. How did you bring it with me?

12 A. In my bag.

13 Q. What kind of bag did you have?

14 A. McGregor duffle bag.

15 Q. And in there, you hid it in there

16 somewhere?

17 A. Yep.

18 Q. And then is this the first time you

19 brought the bottle out was in the room then?

20 A. Yes.

21 Q. And what did you do then?

22 A. Drank it.

23 Q. Who all drank it?

24 A. Me and Jack drank most of it and Ryan

25 and Paul had a little bit.

1 Q. What about Mark?

2 A. He didn't have none.

3 Q. Mark didn't have any?

4 A (no audible response)

5 THE COURT REPORTER: Was that a "No"?

6 THE ARBITRATOR: Were you saying "No" when

7 you shook your head?

8 A. No.

9 CONTINUED EXAMINATION

10 BY MR. MATTSON:

11 Q. The question was: Did Mark have any

12 alcohol?

13 A. No.

14 Q. So you drank, you brought the bottle

15 from Iron River?

16 A. Yes.

17 Q. And you and three of the other guys

18 drank that bottle of, was it vodka you said?

19 A. Yes.

20 Q. Do you remember what kind of vodka it

21 was?

22 A. No.

23 Q. When you were finished with the vodka

24 what did you do with the bottle that is?

25 A. Put it under the bed.

1 Q. Put it under the bed?

2 A. Yes.

3 Q. Is that where it stayed?

4 A. Huh-uh; no.

5 Q. What happened to the bottle

6 afterwards?

7 A. Threw it up on the roof.

8 Q. Who threw it up on the roof?

9 A. I can't remember.

10 Q. Did you throw it on the roof?

11 A. Maybe. I don't know.

12 Q. But you are saying you brought the

13 bottle?

14 A. Yes.

15 Q. When the bottle was done when you got

16 done drinking it what did you do then?

17 A. What was the question?

18 Q. When you got done drinking the vodka

19 when it was all done, you had drank it all up,

20 what happened then?

21 A. We called Bill and asked him, begged

22 him again if he would get us some more.

23 Q. And who called Bill?

24 A. Jack.

25 Q. And what did Bill -- what did Jack

1 indicate Bill said?

2 A. No.

3 Q. What was Jack's reaction to that?

4 A. I don't remember.

5 Q. What happened then?

6 A. Well, I went down to Bill's room by

7 myself and I went in through the window.

8 Q. You did what?

9 A. Went through the window.

10 Q. Can you describe where the window was

11 and how you got into the window?

12 A. It is on the first floor and it

13 opens, there is usually stoppers there and it

14 stops so it can't get that far open but you can

15 break those off.

16 Q. Is that what you did?

17 A. Yes.

18 Q. Did you go -- I take it you went

19 around the outside of the hotel?

20 A. Yes.

21 Q. And then you left through the window?

22 A. No; I went out the door.

23 Q. You went in through the window to get

24 into the place?

25 A. Yes.

1 Q. So you essentially you broke into

2 Bill's room?

3 A. Yes.

4 Q. Was Bill in the room?

5 A. No.

6 Q. Was it dark in the room?

7 A. No.

8 Q. There was a light on?

9 A. Yes.

10 Q. And what did you do when you got in

11 Bill's room?

12 A. I went to his dresser.

13 Q. Why did you go there?

14 A. Because when I was in there the first  
15 time I heard a clanking in his drawer because he  
16 was shutting it when we walked in.

17 Q. And what was in that drawer?

18 A. A liter of peppermint schnapps.

19 Q. And what did you do then?

20 A. I took a bucket, dumped it into a  
21 bucket.

22 Q. Dumped the schnapps into a bucket?

23 A. Yes.

24 Q. What kind of bucket?

25 A. An ice bucket.

1 Q. Was there ice in the ice bucket?

2 A. Yes.

3 Q. And did you, what did you do with the  
4 bottle?

5 A. I can't remember.

6 Q. Did you throw it away or just leave  
7 it or --

8 A. I can't remember.

9 Q. You can't remember?

10 A. No.

11 Q. So then you walked out, you opened  
12 Bill's door leading out in the hall and walked



13 out the front?

14 A. Yes.

15 Q. Just walked back to your room then or

16 what?

17 A. Yes.

18 Q. When you got back to the room what

19 did you do?

20 A. Drank the bottle -- or not the bottle

21 but the alcohol.

22 Q. And did you drink all that was left

23 in that ice bucket?

24 A. Yes.

25 Q. How many people drank out of that?

1 A. Three.

2 Q. Only three?

3 A. Yes.

4 Q. Who drank that?

5 A. Me, Jack and Mark.

6 Q. Mark drank some then?

7 A. Right.

8 Q. What happened when you were done

9 drinking the vodka -- or I mean the peppermint

10 schnapps -- excuse me?

11 A. Me and Jack arm wrestled.

12 Q. Did you have chewing tobacco?

13 A. No.

14 Q. Did you have any chewing tobacco that

15 night?

16 A. No.

17 Q. You didn't bring any chewing tobacco

18 down?

19 A. I don't chew.

20 Q. And nobody else to the best of your

21 knowledge brought any chewing tobacco there?

22 A. Not that I know of.

23 Q. Did you see any chewing tobacco?

24 A. No.

25 Q. So you had, originally you had

1 wanted, you and the other boys --

2 A. I didn't want it. They did.

3 Q. But they never got it?

4 A. Huh-uh.

5 THE COURT REPORTER: Is that a "No?"

6 A. No.

7 CONTINUED EXAMINATION

8 BY MR. MATTSON:

9 Q. At any time did Mr. Culhane offer to

10 buy you either booze or chewing tobacco?

11 A. No.

12 Q. Did he always refuse to do that?

13 A. Yes. 4/

The grievant himself described these latter incidents in the following terms:

4 Q. And about what time did they come to

5 your room?

6 A. Prior to 10 after 10:00, between

7 quarter to and 10:00 o'clock I suppose.

8 Q. And what did they do when they came

9 to your room?

10 A. They knocked on the door and I opened

11 it and assumed that is what, they wanted

12 something out of the bus but when they walked

13 in --

14 Q. They walked into your room?

15 A. Well, I backed up, you know, to open

16 the door cause it opened in.

17 They came in and I went and sat on

18 the edge of the bed and I had that bottle of

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4/ See transcript pp 173-182.

19 peppermint on the dresser and they caught me by  
20 surprise so I opened the drawer and put it in  
21 there. Too late; they had seen it already.

22 Q. Who came to your room?

23 A. Jack, Paul, Ryan, Mark; I think there  
24 was the whole five that were here.

25 Q. Was Jeremy with them?

1 A. I believe, yes, he was.

2 Q. Was there a bottle -- you heard

3 testimony earlier there was a bottle either in a  
4 bag or laying on its side or standing upright in  
5 some manner on a top shelf. Was there any such  
6 bottle?

7 A. Not that I saw, not to my knowledge.  
8 I didn't put it there.

9 Q. Did you ever put it there?

10 A. No, I didn't.

11 Q. Did you ever buy it or have any  
12 knowledge of it being there?

13 A. No.

14 Q. Did you ever see it there?

15 A. No.

16 Q. Did you ever see the boys take it  
17 from there?

18 A. No.

19 Q. When the boys saw you had been  
20 drinking or at least had in possession a bottle  
21 of peppermint schnapps what did they say to you?

22 A. One of them, somebody, Paul I believe  
23 said, Can we have some.

24 And I said, No; I said, No, no way.

25 Q. Did you take them seriously at that  
1 time?

2 A. No, I didn't, no.

3 Q. Did you ever -- go ahead; what else  
4 did they say to you?

5 A. After they said, Can we have some and  
6 I said, No way, they asked about some chewing  
7 tobacco and --

8 Q. What did you say?

9 A. Well, I said just, you know, I can't;  
10 I'll lose my job; it is against the law; you  
11 know, I was pretty adamant about it.

12 Q. Did you give them any of that  
13 peppermint schnapps?

14 A. No; I did not give them any.

15 Q. Did you give them any indication that  
16 you would go out and buy any tobacco or alcohol  
17 for them?

18 A. No.

19 Q. Did they, what did they do after you  
20 told them no?

21 A. They all left the room.

22 Q. Did they ask you several times?

23 A. Well, not, they weren't badgering me  
24 about it. There was different comments made  
25 about why can you sit in here and drink and we  
1 can't.

2 Q. They made those kind of comments to  
3 you?

4 A. Yes; sure.

5 Q. And basically how did you respond to  
6 those kind of comments?

7 A. I just brushed them off. I mean they  
8 are just boys, kids. They weren't breaking any  
9 law by asking me if they can have a drink. I  
10 mean I don't, not to my knowledge they weren't

11 anyway; they were just being kids.

12 Q. So they left your room after this?

13 A. Yes.

14 Q. How long were they in your room

15 again?

16 A. Five minutes tops.

17 Q. This all happened before you went to

18 the lounge?

19 A. Yes.

20 Q. How long were you at the lounge?

21 A. Less than half an hour.

22 Q. Was there any phone calls in that

23 first period of time that you are in your room

24 from the time you bought the booze to the time

25 you walked down to the lounge?

1 A. No.

2 Q. There was no calls?

3 A. No.

4 Q. The only interaction with these boys

5 was their coming to the, to your door?

6 A. Yes.

7 Q. So you were down at the lounge how

8 long again?

9       A.   Probably the whole trip round trip  
10 took half an hour; I was back in my room by  
11 10:30.

12       Q.   By 10:30?

13       A.   Uh-huh.

14       Q.   What happened when you got back to  
15 your room?

16       A.   I was going to drink the rest of my  
17 drink and I got ready for bed more or less; I  
18 took most of my clothes off and laid on the bed  
19 and watched TV.

20       Q.   Did you finish your drink?

21       A.   Yes, I did.

22       Q.   Was it in a cup?

23       A.   Yes; it was in that plastic cup.

24       Q.   Was there an ice bucket in your room?

25       A.   Yes. I mean I went and got ice, yes.

1       Q.   Was the ice bucket there when you  
2 came back?

3       A.   I wouldn't know. I never had another  
4 drink after that.

5       Q.   You finished your drunk (sic) and then what  
6 did you do?



7 A. I laid on the bed and watched TV.

8 Q. What time was that about?

9 A. Quarter to 11:00, 20 to 11:00.

10 Q. Did you receive any more phone calls

11 then?

12 A. Yes.

13 Q. Who called you?

14 A. Jack.

15 Q. And what --

16 A. I believe it was Jack. I didn't know

17 his voice at that time.

18 Q. And what did he ask you?

19 A. He asked for more booze and I never,

20 it never dawned on me why he said, "more"; I mean

21 I would have no reason to, and I adamantly told

22 them no.

23 Q. Did he, was he persistent in asking?

24 A. Yes; at that time he was.

25 Q. What time again was that phone call?

1 A. Between 10 and 5 to 11:00.

2 Q. Was there any more than one phone

3 call during that second time that you came back

4 from the lounge?

5 A. No.

6 Q. What happened after you finished your  
7 drink?

8 A. It was right around 11:00 o'clock and  
9 I kind of like, if I drink during my school year  
10 I will not have any more to drink after between  
11 12 hours that I drive. It is just a personal  
12 rule I set for myself and I had been told we  
13 weren't going anywhere until 11:00 o'clock and  
14 11:00 o'clock I shut the lights off and went to  
15 sleep.

16 Q. There was no other phone calls?

17 A. No.

18 Q. Did they ever come back to your room  
19 again?

20 A. No.

21 Q. Did you at any time do any indication  
22 that you were willing to buy either tobacco or  
23 alcohol for them?

24 A. Well, I don't know what you mean by  
25 an indication. If I didn't threaten to turn them  
1 in, I suppose that could have been conveyed as an

2 invitation, yes.

3 Q. But you never, you didn't say, Yes,  
4 I'll buy you some booze or -- you heard some  
5 testimony earlier that there would be a bottle  
6 left on top of a vending machine. Did you ever  
7 make that offer to them?

8 A. No.

9 Q. That never happened?

10 A. To my knowledge that never happened.

11 Q. In no way did you ever communicate to  
12 them that you were going to go out and buy them  
13 alcohol?

14 A. No.

15 Q. And you did not at any time during  
16 this trip have any possession of chewing tobacco?

17 A. Oh, no.

18 Q. Okay. When you said you quit  
19 drinking at 11:00 and the reason was you said it  
20 was a personal standard of yours not to drink?

21 A. Yes.

22 Q. Did you talk to the boys about binge  
23 drinking or doing that kind of drinking during  
24 the summer?

- 25 A. Binge drinking?
- 1 Q. Yeah; or anything like that?
- 2 A. No.
- 3 Q. So you went to bed then about a
- 4 little after 11:00 you said?
- 5 A. Yes.
- 6 Q. Did you leave your hotel room for any
- 7 other reason that night?
- 8 A. No. 5/

Following questioning the students, the District caused the roof above the boys' room at the hotel to be investigated, and a Fleischmann's Vodka bottle, sized at 200 milliliters, was retrieved. This was identified by several of the witnesses as the bottle allegedly involved.

It is not significantly a subject of dispute that providing alcohol and/or tobacco products to minors is a dischargeable offense; this case is tried by the parties entirely on the question of whether the grievant in fact did so, or was falsely accused by four of the five students.

#### The Employer's Position:

The Employer contends that the four students should be believed, and that the grievant and McClure should not be believed. In essence, the Employer contends that the testimony of the students could not easily have been arranged to be so similar without becoming entirely too identical to be believable, and that the four students had good reputations for veracity. The District contends that by contrast, McClure's testimony and his earlier statements to District officials were given in terse and relatively uncooperative statements, that McClure admitted that he was trying to protect someone, that he did not identify any individual as allegedly having purchased the vodka for him in Iron River, and that both his and the grievant's testimony generally lacks credibility. The District notes that in the testimony of the majority of the students the only

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5/ See transcript pp 223-231.

significant inconsistency is in respect to the placement of the bottle of vodka located on the shelf over the clothes rack, and that this type of inconsistency is characteristic of multiple witnesses' accounts of the same events and does not significantly damage the students' credibility. The District contends that the grievant, meanwhile, clearly maintained a companionable demeanor with the students, and this suggests that he left himself open to being talked into obtaining tobacco and alcohol products on the students' behalf. The District further contends that there is an inconsistency in the grievant's and McClure's testimony in that according to the grievant's testimony, after the telephone call from Raatz at which alcohol was last requested, he remained in his room throughout -- yet McClure testified that the room was empty when he allegedly climbed through the window to steal the schnapps. The District requests that the four students be credited over the grievant and McClure, and that the pre-discharge suspension and the discharge itself be upheld.

### The Union's Position

The Union contends that the most that is proved here is a lack of good judgement by the grievant and a friendly relationship with the juveniles involved. The Union argues that the four boys accusing the grievant have admitted that they lied at first about whether drinking even occurred, and that inconsistencies in their testimony include not all of them seeing cash allegedly handed to the grievant and not all of them hearing the alleged conversation in which the grievant supposedly agreed to purchase tobacco. The Union contends that the mere fact that there are more witnesses against the grievant than for him should not be given controlling weight here, because there is evidence that these boys have lied in the investigation and because they apparently wish to escape blame themselves so far as possible. The Union contends that there is no conspicuous reason here, in particular, why McClure should take blame on himself, including for theft, on the grievant's behalf. The Union further notes that the school principal's notes of Mullozzi's confession have disappeared, and that there is good reason to believe the grievant's and McClure's testimony to the effect that the grievant simply refused to supply the boys with either tobacco or alcohol. The Union requests that the discharge and suspension be overturned, and that the grievant be made whole for lost benefits and wages and his record cleared.

## Discussion

It is clear, to begin with, that if the District meets its burden of proof to the extent that the grievant is found to have obtained tobacco and alcohol products to give to minors during a school bus trip, discharge is not a disproportionate penalty for such an offense. This is, indeed, not even argued by the Union, and a Union witness conceded that if the conduct occurred, the penalty is appropriate. This matter therefore turns entirely on which witnesses are believed.

The Union makes a fair point in contending that the sheer numbers of witnesses cannot be enough to dispose of the question. Here, it is evident that the four boys engaged at some level in collusion, at least initially, and there is no conspicuous reason for McClure to fabricate a story on the grievant's behalf.

At the same time, however, there is no conspicuous reason for the four boys to fabricate a story to implicate the grievant, particularly as they themselves had already been punished by a three-day suspension from school for their part in the events of that weekend. Having reviewed the record, moreover, I find the inconsistencies between the four boys' respective testimony as to these events to be minor, as argued by the District. I also find that in at least one critical respect, the testimony of McClure and the grievant is simply not credible.

This is because all of the witnesses place the last telephone call from Raatz to Culhane at about the same time, and even Culhane places that telephone call after he returned from the motel's lounge. He testified that he did not leave the room thereafter. But McClure testified that he went to Culhane's room after Raatz's last telephone call, climbed in through the window, and found the room empty. McClure's testimony clearly must refer to the period in which the grievant was in the lounge; the grievant's timing would place this event after he returned from the lounge. Both cannot be true.

The motivation that might lead a discharged employe to lie to attempt to retrieve his job is an obvious one. The motivation for a third party witness to take blame upon himself in order to protect such an employe is less clear, and while I can only speculate as to that motivation, some discussion is necessary. There is testimony that McClure is somewhat more isolated from the school life than the other four boys, and I conclude from this and from the record generally that there is at least one explanation of his testimony which would make it understandable. That is to the effect that he was, indeed, protecting someone, as he told District officials upon first being interviewed. It is possible that McClure's perception of the situation is that he would not be punished significantly for taking the blame upon himself, and that he could not see any justification for the grievant to lose his job based on the "tale-telling" of boys who, after all, had talked the grievant into committing the offense for which he was discharged. This is a position which I find difficult to condemn entirely; likewise, it is difficult to be entirely sympathetic to the four other student witnesses, given that their conduct ultimately brought matters to their present state.

But one of the distinctions between a juvenile and an adult is that the adult can be and must be held to a higher standard of responsibility. In this instance, the District has sustained its burden of proof that the grievant was in fact culpable in these incidents. I must therefore find that contrary to his and McClure's testimony, the grievant did supply five juveniles with tobacco and alcohol products, contrary to law and to reasonable expectations of him as an employe.

For the foregoing reasons, and based on the record as a whole, it is my decision and

AWARD

1. That the suspension and subsequent discharge of the grievant were for just cause.
2. That the grievance is denied.

Dated at Madison, Wisconsin this 16th day of March, 1995.

By Christopher Honeyman /s/  
Christopher Honeyman, Arbitrator

