

AFSCME Council 24

WISCONSIN STATE EMPLOYEE UNION, AFL-CIO

Arbitration Award Summary

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| WON: | | CONTRACT: | |
| LOST: | | CASE NO.: | 14053 |
| SPLIT: | XXX | VOLUME: | |
| ISSUE: | Suspension – verbal inmate abuse | PROVISIONS: | Art. III; Art IV §§ 3, 9 |
| ARBITRATOR: | Jay E. Grenig | LOCAL: | 18 |
| HEARD: | 5/12/96 & 6/4/96 | BARG. UNIT: | SPS |
| AWARD: | 7/23/96 | EMP. UNIT: | DOC – WCI |

The Grievant was employed as a Correctional Officer II at Waupun Correctional Institution. On 10/12/95, the Grievant was notified that he was being suspended for 10 days without pay. The suspension was imposed as a result of a situation arising on 8/2/95. An inmate alleged that on this date while the inmate was talking with another officer in the cafeteria, the Grievant interrupted and called the inmate a “snitchin’ mother fuck.” When interviewed, the Grievant denied making the statements and stated that he did not recall speaking with the inmate. During the investigation two other officers and one other inmate testified that a conversation between the Grievant and the allegedly threatened inmate did take place in the cafeteria on 8/2. On 10/12/95, the Grievant was notified that he was being suspended for 10 days without pay for violating Work Rules #2 – abusing/causing mental anguish to an inmate; and #7 – failing to provide accurate and complete information when required.

The Employer argued that the testimony of two coworkers confirmed that the Grievant had talked with the inmate on August 2. The Employer also argued that the Grievant’s act was egregious and warranted a significant penalty. The Employer argued that the Grievant interfered with an ongoing investigation and asserted that the Grievant was not treated differently from other employees in similar situations.

The Union argued that the testimony of the inmate and another officer were inconsistent with each other and stated that the Grievant would not be foolish enough to cause a disruptive situation by calling the inmate a snitch. The Union noted that the Grievant did not recall whether he spoke to the inmate. The Union asserted that the Grievant did not know that the inmate was a witness in a disciplinary proceeding involving other officers and stated that the Grievant had a habit of joking around with inmates. The Union argued that the evidence failed to show that the Grievant tried to intimidate the inmate and argued that the inmate was untruthful. The Union argued that progressive discipline was not properly imposed because the Grievant was not given an opportunity to improve his behavior.

The Arbitrator concluded that there was not just cause for a 10-day suspension because the evidence failed to establish that the Grievant violated Work Rule #2. The Arbitrator did state that there was just cause for a shorter suspension for the Grievant’s violation of Work Rule #7. As for Work Rule #2, the Arbitrator found that the only evidence that the Grievant threatened the inmate was the inmate’s own statement. The Arbitrator found that because no credible evidence supported the inmate’s claims, the Employer did not sustain its burden of proving the Grievant violated Work Rule #2. As for Work Rule #7, the Arbitrator found that the Grievant’s claims that he did not have and did not remember a conversation with the inmate on August 2 lacked credibility in light of testimony from two other officers and two inmates that such conversation did take place.

The Arbitrator reduced the Grievant’s 10-day suspension to a 3-day suspension without pay and ordered the Employer to make the Grievant whole for lost wages and benefits for the difference between the 3- and 10-day suspensions.