

***AFSCME Council 24***  
WISCONSIN STATE EMPLOYEE UNION, AFL-CIO  
*Arbitration Award Summary*

<b>WON:</b>		<b>CONTRACT:</b>	'93-'95
<b>LOST:</b>	<b>XXX</b>	<b>CASE NO.:</b>	14137
<b>SPLIT:</b>		<b>VOLUME:</b>	
<b>ISSUE:</b>	Termination – patient abuse	<b>PROVISIONS:</b>	Art. 4, Sec. 9
<b>ARBITRATOR:</b>	JAY E. GRENIG	<b>LOCAL:</b>	892
<b>HEARD:</b>	2/11/97	<b>BARG. UNIT:</b>	T
<b>AWARD:</b>	5/28/97	<b>EMP. UNIT:</b>	DHFS - SWC

The Grievant was a Resident Care Technician at the Southern Wisconsin Center for the Developmentally Disabled. He was terminated on 11/14/95 for allegedly striking a resident . On 9/15/95, the patient became physically violent and the Grievant and 2 other RCTs subdued him. No injuries to the patient were observed after numerous contacts with RCT's and nurses. During the days following the incident, one of the other RCTs involved in the incident reported on 9/22/95 that the Grievant had punched the patient 8-10 times in the face and head. This RCT also later stated that on the day of the incident, the patient's face was red, his lip was swollen, and there was blood on his mouth. The Grievant testified that he had not punched the patient, but had used closed fists to keep control of the patient's head to avoid being bitten.

The Employer argued that the RCT who alleges that the Grievant punched the patient testified consistently and was corroborated by other witnesses, while the testimony of those denying the charge was inconsistent. The Employer also pointed out that the RCT reporting the misconduct came out with her statement despite the fact that her conduct during the incident (using her foot to stabilize the patient's face) was questionable. The Employer argued that the Grievant lied during the investigation and the arbitration hearing to cover up his behavior. The employer also noted that the patient stated that the Grievant struck him and that there was no conclusive proof that the Grievant did not injure the patient.

The Union noted that the Grievant was trying to subdue an aggressive resident under difficult circumstances and argued that the third RCT present during the incident did not see the Grievant punch the patient or observe any injuries to the patient. The Union also noted that the Employer did not provide any physical evidence that the patient was abused.

The Arbitrator applied the preponderance of the evidence standard of proof, noting that there is no reason why the standard of proof should vary depending on the reason for the employee's termination or the dispute resolution forum. The Arbitrator found the reporting RCT's testimony consistent and credible. The Arbitrator found the Grievant's testimony as well as that of the third RCT involved in the incident inconsistent and not credible. The Arbitrator noted that the RCT reporting the abuse provided even information that reflected poorly on her. The Arbitrator also noted that the blows may not have been heavy enough to cause visible damage to those having contact with the patient in the days following the incident. The Arbitrator found that the patient's answers to questions were reasonable and believable in light of his developmental level and corroborated the reporting RCT's testimony. The Arbitrator found no evidence that the reporting RCT had any bias or prejudice against the Grievant.

The Arbitrator denied the grievance.