

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

<b>WON:</b>	<b>XXX</b>	<b>CONTRACT</b>	<b>1995-97</b>
<b>LOST:</b>		<b>CASE NO.:</b>	<b>14465, 15626, 15627, 15628, 15629,</b>
<b>SPLIT:</b>			<b>15820</b>
		<b>VOLUME:</b>	<b>11-20</b>
<b>ISSUE:</b>	<b>230.36, TRANSFER</b>		
<b>ARBITRATOR:</b>	<b>TOROSIAN</b>	<b>PROVISIONS:</b>	<b>ARTICLE VII, SECTION 1 ARTICLE</b>
<b>HEARD:</b>	<b>4/7/98</b>		<b>XIII, SECTION 16</b>
<b>AWARD:</b>	<b>5/5/98</b>	<b>LOCAL:</b>	<b>18</b>
		<b>BARG. UNIT:</b>	<b>S&amp;PS</b>
		<b>EMP. UNIT:</b>	<b>DOC-DCI</b>

This case was heard under the expedited arbitration procedure contained in the Agreement and is, therefore, non-precedential.

At the time of the hearing the Grievant, a Correctional Officer at Dodge Correctional Institution, had been employed by DOC for approximately nineteen years. In May of 1994, the Grievant suffered a 230.36 injury while in training. His 230.36 benefits were discontinued in August of 1994 based on a release from an orthopedic surgeon he had been referred to by his attending physician. The Grievant did not return to work until late August on the advice of his attending physician. When he did return to work, the Grievant requested that the sick leave he had used in August be converted to 230.36 benefits. The Grievant continued to see his attending physician for his injury while he was at work. In June of 1997, the Grievant aggravated his injury while at rifle training. The Grievant again missed work and the Employer scheduled him for an AODA assessment. He missed the assessment and was suspended for three days. At the end of August 1997, the Grievant was released to return to duty with no restrictions by his attending physician. In October of 1997, a Control Sergeant position was posted. The Grievant applied for the position but it was awarded to a less senior employee.

The Employer argued that the Grievant's May 1994 injury was healed in three months and absences or injuries after that time were not related to the initial injury. The rifle training injury constituted a new injury not covered by 230.36. The Employer stated that the suspension was justified because the Grievant had missed three AODA assessments and had not notified the Personnel Manager of his absence.

It was the Union's position that the 230.36 injury incurred in May of 1994 stayed with the Grievant throughout the period in question. The Union argued that the rifle training should be covered under the provisions of 230.36 because it should be construed as "riot training" which is specifically listed as a 230.36 injury. Finally, the Union stated that the Grievant did not have a drug or alcohol problem but did suffer from stress caused by the Employer's treatment of him.

The Arbitrator concluded that the Grievant's absences in August of 1994 were due to his May 230.36 injury and to a later motor vehicle injury. Therefore, the absences should be treated as 50% 230.36 and 50% sick leave. Then the Arbitrator looked at the rifle training injury. Although he found that the rifle training was not covered under 230.36, he concluded that the injury was an aggravation of the 230.36 injury and again split the time off between sick leave and 230.36. Regarding the Grievant's time off of work due to a seizure, the Arbitrator could find no causal connection between the seizure and the May 1994 injury and, therefore, denied this grievance. The grievance relating to the written reprimand for overusing his sick leave was upheld by the Arbitrator because his previous determinations restored sick leave to the Grievant's balance. Therefore, he was not out of sick leave as alleged. Concerning the three-day suspension for not attending an AODA assessment, the Arbitrator concluded that there was no just cause because the Grievant's absence was due to a verified illness. However, because the Grievant did not follow the notification procedure he was instructed to use, he was given a written reprimand. Finally, the Arbitrator found that the Employer violated the contract when it selected a less senior employee over the Grievant for the Control Sergeant position. The record contained no evidence that the Grievant was not physically or emotionally fit to perform the duties. The Employer was ordered to offer the Grievant the posted position or a similar position and to pay and restore to him any difference in money and benefits he would have received had he been selected for transfer.