

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

WON:		CONTRACT	1995-97
LOST:		CASE NO.:	15407
SPLIT:	XXX	VOLUME:	11-27
ISSUE:	DISCHARGE, ABUSE	PROVISIONS:	ARTICLE IV, SECTION 9
ARBITRATOR:	SHARON K. IMES	LOCAL:	892
HEARD:	5/12/98	BARG. UNIT:	TECH
AWARD:	8/20/98	EMP. UNIT:	DHFS-SWC

The Grievant worked as a Resident Care Technician (RCT) at Southern Wisconsin Center. In February of 1997, another RCT brought a male resident up to the second floor where the Grievant was working and instructed him to wait for her while she went to the restroom. According to the Employer, the Grievant motioned for the resident to come to her and "hurt me". The Grievant said that the resident simply wanted a treat and, when he found that she didn't have any, he returned to his seat. After the incident was reported, the Grievant was suspended with pay pending an investigation and, in April, she was terminated. The Bureau of Quality Assurance found that the incident did not meet the legal definition of abuse and, on appeal, the Grievant received Unemployment Compensation.

According to the Employer, its witnesses were "clear and precise in their testimony". It further stated that the decision to discharge the Grievant was based on the totality of her work record and history as well as the severity of the work rule violations.

The Union declared that the Employer had failed to prove the Grievant abused the resident and that was the charge made against her. According to the Union, it made no sense to encourage the resident to hurt her by tapping against her hip when the resident's aggressive tendencies were not to hit but to grab or twist clothing. Finally, even in the worst case scenario, the actions alleged did not constitute abuse as described in HSS 129.03

First, the Arbitrator found that the Employer's witnesses were more credible than the Grievant. However, she found that the testimony of one of those witnesses had been exaggerated at the hearing in order to further discredit the Grievant. The Arbitrator found that the incident had occurred but neither the investigation nor the evidence relied upon by the Employer supported a finding of abuse. Finally, the Arbitrator found that the Employer, in its summary, cited facts related to other incidents not relevant to the incident which resulted in the Grievant's discharge. Therefore, the Employer acted arbitrarily in reaching the conclusion to discharge the Grievant. The Arbitrator found that the Grievant had violated work rule one so that some discipline was warranted.

The discharge was reduced to a three-day suspension and the Grievant made whole less any monies earned in the interim.