

AFSCME Council 24

WISCONSIN STATE EMPLOYEE UNION, AFL-CIO

Arbitration Award Summary

WON:		CONTRACT:	'95-'97
LOST:	XXX	CASE NO.:	15526
SPLIT:		VOLUME:	
ISSUE:	DENIAL OF TRANSFER	PROVISIONS:	ARTICLE VII, SECTION 1
ARBITRATOR:	Herman Torosian	LOCAL:	82
HEARD:	9/28/98	BARG. UNIT:	AS
AWARD:	11/20/98	EMP. UNIT:	UW-M

The Grievant was hired as a Program Assistant I at the University of Wisconsin-Milwaukee's main campus on 1/2/80. Effective 12/3/90, the Grievant was reassigned to UW-M's downtown campus because of his harassment of his former supervisor by threatening phone calls and mailings. The Grievant's supervisor at the time of his reassignment testified that the Grievant was informed that his reassignment to the downtown campus was not temporary. The Grievant insisted that he was not informed that the reassignment was permanent. In 6/97, the Grievant applied for transfer to a position on the main campus. The position was located across the street and one block away from where the harassed former supervisor worked. The former supervisor stated that she would resign if the Grievant returned to the main campus. The Grievant's transfer request was denied.

The Union argued that the reassignment should not be considered permanent because there was no such restriction in writing and the Grievant was not informed of such a restriction. The Union also argued that since the Grievant would be located a block away from his former supervisor and the harassment had been by phone and mail, there was no good reason to deny his transfer to the main campus. Finally, the Union argued that because the Grievant was physically and emotionally fit to perform the job and was the senior employee, he was entitled to the transfer under Article 7. The Union asked that the permanent transfer ban be lifted and that the Grievant be allowed to transfer to the main campus in the future if he so desired.

The Employer argued that it was justified in denying the Grievant's transfer because of his history of harassing his former supervisor over a two-year period while employed on the main campus. The Employer also noted that according to Article 7 language, the Grievant was not emotionally fit for the job. The Employer also asserted that the Grievant was informed that his reassignment was permanent. The Employer argued that the Union failed to show that the Grievant would not revert to past behavior if transferred back to the main campus and noted that the Grievant's transfer would cause the Employer to lose a valuable, trusted and long-term employee.

The Arbitrator noted that the Grievant met Article 7's criteria in being the most senior employee fit for and able to perform the job satisfactorily. The Arbitrator concluded that the Grievant was transferred because of his harassment of his former supervisor and concluded that the Grievant and the Employer had agreed that since the purpose of the transfer was to separate the Grievant from the former supervisor, the transfer would not be temporary. Although the agreement was not in writing, the Arbitrator found the Grievant's acting supervisor credible when he stated that he had informed the Grievant that the transfer was not temporary. The Arbitrator noted the Grievant's transfer was connected to the former supervisor's continued employment on the main campus and concluded that allowing the Grievant to transfer back to the main campus would increase the chance that the two would come into contact. However, the Arbitrator noted that the Grievant may be entitled to transfer back if and when the former supervisor discontinued her employment on the main campus.

The Arbitrator found that the Employer did not violate Article 7/1/2 of the agreement and denied the grievance.