

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

WON:		CONTRACT	1997-99
LOST:	XXX	CASE NO.:	15568
SPLIT:		VOLUME:	12-3
ISSUE:	DISCHARGE, MEDICAL	PROVISIONS:	ARTICLE IV, SECTION 9
ARBITRATOR:	IMES	LOCAL:	383
HEARD:	8/10/98	BARG. UNIT:	BC
AWARD:	9/14/98	EMP. UNIT:	U.W. STOUT

The Grievant had been a custodian at U.W. Stout for thirteen years and worked in a residence hall. In December of 1996, the Grievant ruptured a disk while picking up a fifty-pound bag of salt. Between December of 1996 and September of 1997, the Grievant was on and off of work because of his back condition. He was continuously under treatment and work restrictions. In September of 1997, the Grievant was sent to an Independent Medical Examiner for an evaluation. The IME concluded that the Grievant had reached the end of healing and would have permanent lifting restrictions. In October of 1997, the Grievant had a meeting with management in the company of his union steward. He was asked if he could perform the work required of a custodian. He responded "no" and was informed that he would be terminated for medical reasons.

The Employer maintained that, since the Grievant was not able to perform the duties of a custodian and since there were no other permanent positions in the same or lower pay range, the Grievant was medically terminated for just cause. That it made every effort to accommodate the Grievant's medical restrictions while he was recuperating. Finally, that it did everything reasonable to retain the Grievant.

The Union argued that there were other job openings which could have been offered to the Grievant. That he was not questioned about any other work he could do. The Union also asserted that the Employer failed to advise the Grievant of its policy to reasonably accommodate disabled employees and made no effort to comply with its policy with respect to the Grievant. Finally, the Union declared there was union animus toward the Grievant because he was the local president.

The Arbitrator noted that the evidence in the record corroborated the Employer's assertion that there were no permanent positions available at the time the Grievant was medically terminated. She also found no evidence of union animus as was alleged by the Union. The Employer's effort to accommodate the Grievant by giving him several light duty assignments, which complied with his work and hour restrictions while he was recuperating, contradicted the Union's assertion that he was terminated due to union animus. Finally, the Arbitrator noted that neither the contract nor any applicable law mandated the Employer to create a job for the Grievant.

The grievance was denied.