

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

WON:	XXX	CONTRACT	1997-99
LOST:		CASE NO.:	15886
SPLIT:		VOLUME:	12-6
ISSUE:	OUTSIDE EMPLOYMENT	PROVISIONS:	ARTICLE III, SECTION 1
ARBITRATOR:	VER PLOEG	LOCAL:	2748
HEARD:	11/19/98	BARG. UNIT:	PSS
AWARD:	2/9/99	EMP. UNIT:	DHFS-MMHI

This case was brought by Local 2748 on behalf of Staff Psychologists employed by the Wisconsin Department of Health and Family Services, Division of Care and Treatment Facilities. The dispute stemmed from the Employer's issuance of a memo which prohibited the Grievants from providing Chapter 980 (sexual predator) evaluations as part of their outside employment. The Grievants are psychologists hired to provide professional services at State care and treatment facilities administered by the Wisconsin Department of Health and Family Services. They have long been permitted to also pursue a private practice outside of their regular work hours. Part of their private practice included evaluations on civil commitments, competency to stand trial, juvenile delinquency and not guilty by reason of mental disease of defect. Since 1993, when Chapter 980 was enacted, the Grievants were also performing sexual predator evaluations. This continued until the Employer's memo was issued in 1998.

The Employer argued that its directive in this case had been thoughtfully arrived at, and there were good reasons to support this prohibition. Thus, it argued that the Union had not met its burden of proving that the work rule prohibiting outside Chapter 980 evaluations was arbitrary or unreasonable.

The Union protested this prohibition as unreasonable and arbitrary and asked for a remedy that would rescind the prohibition on Chapter 980 evaluations and make the Grievants whole for their lost employment opportunities in the private sector.

The Arbitrator found that, first, there was no dispute that the Grievants had for many years routinely performed Chapter 980 evaluations along with numerous other types of evaluations. None of the other types of evaluations were affected by the work rule being grieved in this case. Second, there was evidence that the existing conflict screening procedures applied to all outside evaluations and had been an accepted and appropriate way to address conflict concerns. Third the Employer offered no evidence that any problems had actually arisen from the Grievants performing outside Chapter 980 evaluations. Finally, the Arbitrator found that the Employer had failed to refute the evidence which suggested that there was an advantage to the State when its psychologists performed these outside evaluations.

The prohibition on private employment Chapter 980 evaluations was unreasonable and arbitrary. The Grievants were to be made whole for their losses to the extent that evidence offered substantiated those losses and was not speculative.

The Grievance was sustained.