

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

WON:	XXX	CONTRACT	1997-99
LOST:		CASE NO.:	15979, 15980, 15981
SPLIT:		VOLUME:	12-8
ISSUE:	DISCHARGE, ABUSE	PROVISIONS:	ARTICLE IV, SECTION 9
ARBITRATOR:	GRENIG	LOCAL:	116
HEARD:	11/1-2/98, 12/1/98	BARG. UNIT:	TECH
AWARD:	3/13/99	EMP. UNIT:	DHFS-NWC

The three Grievants in this case were Resident Care Technicians at the Northern Wisconsin Center for the Developmentally Disabled. In March of 1998, the three RCTs were involved with a disruptive resident. He was sent to his room but still would not quiet down. He was then taken outside but refused to put his coat on and then took off his shoes and socks. As he calmed down, one of the Grievants got the resident to put his coat on. The unit supervisor was advised of the situation by an LPN and she directed that the resident be brought inside. This direction was immediately complied with. The Employer investigated the incident and later discharged the Grievants for insubordination and resident abuse.

Although recognizing that residents had been taken outside when they became agitated, the Employer argued that the situation in this case was different because it was cold outside and the resident was not adequately dressed for the cold. The Employer asserted that the offenses were significant and the Grievants never indicated remorse or regret for their actions.

The Union contended that the Employer had not met its burden of proving that any of the Grievants was insubordinate, negligent, or refused to carry out properly promulgated orders. According to the Union, there was no direct order made to any of the Grievants. It pointed out that the LPN never spoke directly to the Grievant who was with the resident. The Union said that there was no proof that abuse occurred. It stated that there was no proof that the resident had been abused, struck or deliberately caused to suffer mental anguish or injury.

First, the Arbitrator found that the Employer had failed to establish that the Grievants knew or should have known that taking a resident outside in cold weather was deemed to be resident abuse. The evidence indicated that RCTs, including one of the Grievants, had taken other residents outside to calm them down, even in cold weather. Therefore, even though they violated the resident's treatment plan, the Grievants did not abuse the resident nor did they violate health and safety rules. The Arbitrator also found that none of the Grievants had been insubordinate. One Grievant could not leave her post to bring the resident inside. The second Grievant consulted with her supervisor as to what action to take. That supervisor directed the third Grievant, who had been with the resident constantly, to bring the resident inside. That directive was complied with immediately.

The termination of all three Grievants was reduced to three-day suspensions for violating the resident's treatment plan.