

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

|                    |                     |                    |                              |
|--------------------|---------------------|--------------------|------------------------------|
| <b>WON:</b>        | <b>XXX</b>          | <b>CONTRACT</b>    | 1997-99                      |
| <b>LOST:</b>       |                     | <b>CASE NO.:</b>   | 16545                        |
| <b>SPLIT:</b>      |                     | <b>VOLUME:</b>     | 12-12                        |
| <b>ISSUE:</b>      | <b>OVERTIME PAY</b> | <b>PROVISIONS:</b> | <b>ARTICLE VI, SECTION 2</b> |
| <b>ARBITRATOR:</b> | <b>GRENIG</b>       |                    |                              |
| <b>HEARD:</b>      | 8/12/99             | <b>LOCAL:</b>      | 6                            |
| <b>AWARD:</b>      | 8/21/99             | <b>BARG. UNIT:</b> | S&PS                         |
|                    |                     | <b>EMP. UNIT:</b>  | DOC-LHS                      |

This case was heard under the expedited arbitration procedure contained in the Agreement and is, therefore, non-precedential.

The Grievant was a Youth Counselor at Lincoln Hills School. In the summer of 1998, criminal charges were brought against him for battery to a minor and disorderly conduct. The Grievant was placed on administrative leave for a period of about six months until the criminal proceedings had been resolved. During this time, the Grievant was not allowed to work or be paid for the overtime he normally would have worked and the instant grievance was filed.

The Employer stated that it was protecting its interests during the pendency of the criminal charges. Acknowledging that the Grievant had not been convicted of a felony, the Employer noted that he was still found in the wrong. According to the Employer, the Grievant was seeking to penalize the Employer for acting responsibly.

The Union argued that it was unfair to treat the Grievant differently because he was on administrative leave. The Union stressed that the felony charge against the Grievant was dropped and he pled guilty only to a misdemeanor. It stated that the Grievant should have been compensated for the overtime he missed as a result of being placed on administrative leave.

The Arbitrator noted that, while the offense of battery to a minor would appear to be job-related, the evidence did not establish that disturbing the peace was a job-related offense. More importantly, the evidence failed to disclose that the Employer ever conducted an investigation, hearing, or other proceeding to determine whether there was just cause to discipline the Grievant.

Because the Employer never determined that there was just cause to discipline the Grievant, it was a violation of the collective bargaining agreement to deprive the Grievant of benefits, including the opportunity to work overtime, to which the Grievant was entitled.

The grievance was sustained.