

AFSCME Council 24

WISCONSIN STATE EMPLOYEE UNION, AFL-CIO

Arbitration Award Summary

WON:		CONTRACT:	'97-'99
LOST:		CASE NO.:	16715
SPLIT:	XXX	VOLUME:	
ISSUE:	Termination – Inmate Abuse	PROVISIONS:	Art. 4, Sec. 9
ARBITRATOR:	HERMAN TOROSIAN	LOCAL:	15
HEARD:	12/2/99	BARG. UNIT:	SPS
AWARD:	3/17/00	EMP. UNIT:	DOC – EAS

The Grievant had been employed for 11 months as a Youth Counselor 1 at the Ethan Allen School. He was ultimately terminated effective 5/28/99 as a result of an incident that took place on 5/12/99. The Grievant was relieved of duty with pay effective 5/12/99 pending investigation of the incident. The Grievant was terminated effective 5/28/99 for violating work rules A12 – threatening, attempting, or inflicting bodily harm to another; A1 – insubordination, disobedience, or failure to carry out assignments or instruction; and A2 – failure to follow policy/procedure. The Employer alleged that the Grievant had used excessive force in attempting to force a resident to allow staff to close the chute into his room, including kicking the resident's arms and attempting to close the chute door on the resident's arms. The Grievant had no previous discipline.

The Employer stated that it had met its burden of proof and asserted that just cause supported its decision to terminate the Grievant's employment. The Employer argued that the Grievant's discipline was consistent with that imposed in other incidents of the of excessive force used on residents. The Employer argued that the Union's attempt to show inconsistency in the Employer's disciplinary actions failed, as the Union presented cases from other institutions and the physical force involved was different from that in this case. The Employer argued that the Union failed to prove that the discharge of the grievant was not appropriate.

The Union argued that the Employer did not properly train the Grievant to handle the situation in this case. The Union also argued that the facility was improperly staffed at the time of the incident and that the Grievant was not properly supervised. The Union also argued that the Employer treated the Grievant more harshly than other employees in similar circumstances. The Union argued that the Grievant was accused of violating DOC work rules, not just Ethan Allen work rules, and argued that these rules should be applied uniformly. The Union also noted that the resident did not suffer physical injury.

The Arbitrator concluded that since the critical facts surrounding the incident were not in dispute, he had no doubt that the Grievant's conduct violated Work Rules A1, A2, and A12. The Arbitrator also noted that all work rules were provided to employees upon hire and were part of new employee training. The Arbitrator found that the Grievant's physical force was unnecessary, as physical contact is allowed only when there is imminent danger to the employee or to others. The Arbitrator found that the Grievant's conduct was serious enough to warrant discharge unless the Employer had treated similar past cases differently. The Arbitrator found that the Employer had imposed lesser discipline in the past on other employees charged with similar conduct and therefore found that termination was not appropriate in this case.

The Arbitrator ordered that the termination should be reduced to a thirty day suspension and that the Employer should make the Grievant whole for any benefits lost beyond the thirty day suspension.