

AFSCME Council 24

WISCONSIN STATE EMPLOYEE UNION, AFL-CIO

Arbitration Award Summary

WON:		CONTRACT:	'99-'01
LOST:		CASE NO.:	17698
SPLIT:	XXX	VOLUME:	
ISSUE:	Termination – criminal battery	PROVISIONS:	Art. 4, Sec.9
ARBITRATOR:	HERMAN TOROSIAN	LOCAL:	3394
HEARD:	1/30/02	BARG. UNIT:	SPS
AWARD:	4/8/02	EMP. UNIT:	DOC – CCI

The Grievant had been employed as a Correctional Officer II at Columbia Correctional Center and had about 13 years of seniority. The Grievant was alleged to have struck another correctional officer three times in the face at an after hours party at the home of a third correctional officer. The Grievant was charged with battery on 1/9/01, and was discharged effective 1/30/01 for violating Work Rules #2 – failure to follow policy/procedure; #11 – violating a criminal statute/ordinance; and #12 – threatening, attempting, or inflicting bodily harm to another. The Grievant was convicted of battery on 7/27/01.

The Employer argued that the Grievant's conduct in the incident was serious and was related to and negatively impacted his job performance. The Employer argued that because of these facts and the fact that the Grievant lied about how the victim sustained his injuries, termination was the proper penalty. The Employer noted that the Grievant's claim that he did not instigate the incident was not credible. The Employer further argued that this penalty was consistent with those imposed in similar situations.

The Union argued that the reasons for the Grievant's alleged off-duty conduct were not job related as required by Equal Rights guidelines and the Employer's policies. The Union further argued that the Grievant was consistent in stating that he was only reacting to the other correctional officer striking him first. The Union noted that the alleged victim was not aware of what was going on that night and further noted that only one of the witnesses said she saw blows struck. The Union argued that all witness testimony was questionable given the drinking and dark surroundings. The Union also argued that work rules were not applied consistently. The Union argued that the Employer did not carry its burden of proof and failed to conduct a fair and complete investigation.

The Arbitrator concluded that it was undisputed that an altercation had taken place between the Grievant and the other correctional officer. The Arbitrator concluded that the Grievant was responsible for his involvement in the altercation, as there was no reason for it to occur. The Arbitrator credited testimony that the other correctional officer was inebriated and helpless and concluded that there was no reason for the Grievant to strike him. However, the Arbitrator cited Wisconsin law stating that off-duty conduct is subject to workplace discipline only if there is a nexus between the conduct and the employee's job. The Arbitrator concluded that there was no nexus in this case. The Arbitrator stated that speculation was not enough to dispel the belief that all involved in the incident could continue to act as professionals at work. The Arbitrator also noted other similar incidents in which CCI continued to employ workers who had committed statutory criminal violations. The Arbitrator concluded that the termination was not for just cause but noted that the Grievant's conduct was serious and caused the Employer to lose the services of another employee for 12 days.

The Arbitrator ordered the Employer to reinstate the Grievant, convert his discharge to a 21-day suspension, and make him whole for all lost wages and benefits beyond the suspension.