

# ***AFSCME Council 24***

WISCONSIN STATE EMPLOYEE UNION, AFL-CIO

## *Arbitration Award Summary*

<b>WON:</b>		<b>CONTRACT:</b>	'99-'01
<b>LOST:</b>		<b>CASE NO.:</b>	19121
<b>SPLIT:</b>	<b>XXX</b>		
<b>ISSUE:</b>	Medical verification – cost, privacy	<b>PROVISIONS:</b>	ARTICLE XIII, SECTION 5
<b>ARBITRATOR:</b>	HERMAN TOROSIAN	<b>LOCAL:</b>	281
<b>HEARD:</b>	8/19/04	<b>BARG. UNIT:</b>	ALL
<b>AWARD:</b>	12/7/04	<b>EMP. UNIT:</b>	DOC – RGCI

The 6 Grievants in this case were employed as correctional sergeants and officers at Redgranite Correctional Institution. The State and WSEU Council 24 were in contract negotiations in Jan. 2003. Because the Employer feared call-ins due to lack of progress, it required employees who called in sick between 2/5/03 and 2/8/03 to get medical verification. All the Grievants called in sick on either 2/6 or 2/7 and got the required medical certificates. When the bills for the medical visits were submitted to the Employer, RGCI contacted the hospital's billing department to determine the exact nature of the charges, down to the actual test or service performed. The Employer did not challenge the Grievants' use of sick leave and covered only the costs of the office visit and physician's fees. The rest, including the costs of any testing done, was forwarded for payment by the employees' insurance carrier. The Employer never informed the Grievants of the investigation of their medical bills.

The Union argued that under Article 13/5/2A, the Employer should pay the entire cost of the medical bills. The Union argued that covering the "cost of the medical certificate" must include the costs of all testing necessary to decide whether an employee was sick. The Union also argued that the Employer violated the Grievants' privacy rights under Section 13/5/2A of their contract by obtaining specific information about their medical testing without the Grievants' written consent.

The Employer argued that its unchallenged practice for the past 22 years had been to pay only the cost of an employee's office visit and doctor's fee. The Employer pointed out that it did not require a diagnosis of an employee's medical condition; it insisted only on verifying that the employee was unable to work due to medical condition. The Employer also argued that it did not violate the Grievants' privacy rights in contacting the hospital billing department for payment information.

The Arbitrator concluded that the parties' longstanding interpretation of Section 13/5/2A of their contract was that the Employer was only obligated to pay the cost of the office visit and doctor's fee. The Arbitrator based this conclusion on his finding that for the past 22 years, the parties had maintained this policy and depended on previous arbitration decisions supporting the policy. The Arbitrator found that in the 14 years since the last relevant arbitration award, the Employer had not paid for anything but office visits and doctor's fees and had been subject to no related grievances. The Arbitrator also concluded that the Employer violated the privacy rights of the Grievants in requesting specific information from the Grievants' medical providers without showing that doing so was necessary in the course of administering Section 13/5/2A.

The Employer is to desist from obtaining medical information regarding employee medical bills without employee consent. Any inquiry into employee medical bills should be limited to determining the cost of an office visit and doctor's fee incurred in obtaining a medical certificate.