

## ***AFSCME Council 24***

WISCONSIN STATE EMPLOYEE UNION, AFL-CIO

### *Arbitration Award Summary*

<b>WON:</b>		<b>CONTRACT:</b>	'99-'01
<b>LOST:</b>	<b>XXX</b>	<b>CASE NO.:</b>	19251
<b>SPLIT:</b>			
<b>ISSUE:</b>	Termination – Fraternalization/abuse	<b>PROVISIONS:</b>	Art. 4, Sec. 9
<b>ARBITRATOR:</b>	HERMAN TOROSIAN	<b>LOCAL:</b>	126
<b>HEARD:</b>	1/6/04, 1/7/04	<b>BARG. UNIT:</b>	SPS
<b>AWARD:</b>	7/6/04	<b>EMP. UNIT:</b>	DOC-TCI

The Grievant was a Sergeant at Taycheedah Correctional Institution. On 12/26/02, a female inmate filed a complaint of misconduct against the Grievant. The inmate alleged that over the course of several incidents during the fall of 2002, the Grievant asked to see her breasts, grabbed his privates in front of her, asked her to strip and masturbate for him, and requested oral sex from her. The Grievant denied all allegations. After two separate investigations, the Grievant was terminated effective 5/6/03 for violating DOC Work Rules #2 – failure to follow policy/procedure; #3 – engaging in unauthorized activities; #6 – knowingly giving false information; #7 – making false/malicious statements about DOC employees or inmates; #13 – intimidating, harassing, or using abusive language in dealing with others; and #22 – requesting, retaining, or failing to report the offer of a bribe.

The Employer argued that the exhibits and testimony supporting a conclusion that the Grievant committed the alleged misconduct were consistent and believable. The Employer noted the seriousness of the charges and argued that there was just cause for the Grievant's discharge. The Employer argued that the Grievant's testimony was not consistent or credible. The Employer also noted that the Union did not provide any of the Grievant's co-workers to testify in support of his conduct and character.

The Union argued that the Employer's investigation was not fair and objective. The Union noted that 2 investigations took place and that the first cleared the Grievant. The Union argues that the second investigation began with a pre-determination of the Grievant's guilt. The Union noted that the Employer interviewed 20 inmates and none of the Grievant's co-workers. The Union further argued that the Employer did not produce substantial evidence showing that the Grievant actually engaged in the activities of which he was accused. The Employer noted that none of the Employer's witnesses could corroborate any of the direct acts of which the Grievant was accused and noted that the inmate's credibility was questionable. The Union noted that the inmate had a history of misconduct and untruthfulness, while the Grievant did not.

The Arbitrator stated that this case was one of credibility and that if the inmate was found to be credible in her allegations, the Arbitrator would have to conclude that the termination was for just cause. The Arbitrator found that the second investigation was more complete and thorough than the first and therefore had to be considered. The Arbitrator noted that both inmates and DOC staff may have reason to lie, and rejected the idea that inmates' testimony is inherently untruthful and DOC staff testimony is inherently untruthful. The Arbitrator concluded that there was no evidence of a motive for an inmate conspiracy to have the Grievant fired. The Arbitrator noted that the Grievant's testimony was in some instances completely contradictory to all other witness testimony. The Arbitrator found that none of the testimony the Grievant offered established that he did not engage in the alleged wrongful acts, while there was credible testimony corroborating the inmate's allegations.

The Arbitrator denied the grievance.