

## ***AFSCME Council 24***

WISCONSIN STATE EMPLOYEE UNION, AFL-CIO

### *Arbitration Award Summary*

<b>WON:</b>		<b>CONTRACT:</b>	'03-'05
<b>LOST:</b>		<b>CASE NO.:</b>	019255, 019309, 020094
<b>SPLIT:</b>	<b>XXX</b>		
<b>ISSUE:</b>	DISCHARGE, ABSENCES AND MEDICAL VERIFICATION	<b>PROVISIONS:</b>	4/9 and 13/5
<b>ARBITRATOR:</b>	GEORGE R. FLEISCHLI	<b>LOCAL:</b>	48
<b>HEARD:</b>	1/19/05	<b>BARG. UNIT:</b>	T
<b>AWARD:</b>	5/4/05	<b>EMP. UNIT:</b>	DHFS – WMHI

The Grievant was employed as a Resident Care Technician at the Winnebago Mental Health Institute. Due to the Grievant's excessive absences, on 5/7/02 WMHI began requiring medical verification of each of the Grievant's absences. On 3/5/03, the Grievant returned to work from an absence. Because the Grievant's supervisor was not present when the Grievant returned to work, the Grievant submitted her medical slip the next day. The Employer deemed the medical slip incomplete and untimely, and issued a letter in lieu of a 3-day suspension. The Grievant later submitted a medical slip for a 4/10/03 absence from work. The Employer deemed this slip incomplete and issued a letter in lieu of a 5-day suspension. The Grievant submitted another incomplete medical slip on 3/7/04 and was terminated on 3/16/04.

The Employer argued that regular attendance of its employees is essential in order to ensure proper care for WMHI residents. The Employer pointed out that the reasonableness of the medical slip requirements was not challenged and stated that the 3/5/03, 4/10/03, and 3/7/04 medical slips did not comply with those requirements.

The Union argued that the Grievant should not be subject to the letters in lieu of the 3 and 5-day suspensions because the slips were timely and the Grievant and other WMHI employees had submitted incomplete medical slips for which they had not received discipline. The Union argues that since WMHI did not have just cause to impose the letters in lieu of the 3 and 5-day suspensions, the Grievant's discharge was unjustified. Further, the Union argued that the 3/7/04 slip complied with the employer's requirements.

The Arbitrator stated that it was within the Employer's contractual authority to require the kind of medical verification it required in this case. The Arbitrator went on to point out that while it is an employee's responsibility to conform to the requirements, the Employer must consistently and fairly apply the requirements. The Arbitrator sustained the letters in lieu of 3 and 5-day suspensions because they did not comply with WMHI's stated requirements. However, the Arbitrator concluded that the Grievant's discharge following her submission of the 3/7/04 medical slip was unjustified because between 5/03 and 3/04, WMHI accepted multiple incomplete medical slips from the Grievant without informing her that WMHI continued to insist on full compliance with medical slip requirements.

Equally important, the arbitrator ruled that the employer is **not** entitled to detailed medical information, often very personal in nature, to establish the medical basis for an absence. The employee's medical provider need only assure the employer that the absence from work was medically required. The arbitrator went to state that medical slips must contain the words "medical illness" when stating that the employee could not report to work. While requiring these words may seem formalistic, it is through the use of that phrase that a physician certifies to the employer that an employee's absence was medically justified.

The Employee is to be reinstated to her previous position and made whole for all losses of wages and benefits. Previous discipline stands at the letter in lieu of 5-day suspension, and the Grievant remains under the medical verification requirement. With another failure under the medical verification requirement, the Grievant will be subject to the next progressive discipline step, discharge.