

AFSCME Council 24
WISCONSIN STATE EMPLOYEE UNION, AFL-CIO
Arbitration Award Summary

WON:
LOST: XXX
SPLIT:

CONTRACT: '01-'03
CASE NO.: 19899, 20004, 20377

ISSUE: Sick leave & traded shifts
PROVISIONS: Arts. III, IV, XVI 1, local agreements

ARBITRATOR: JAY E. GRENIG
LOCAL: 178
HEARD: 12/13/05
BARG. UNIT: SPS
AWARD: 1/7/06
EMP. UNIT: DOC – DCI

This is a non-precedential expedited award.

On 11/2/03, the Grievant called in sick for his regular shift of 10:00 p.m. to 6:00 a.m. He had earlier traded for second shift (2:00 p.m. to 10:00 p.m.) on 11/3/03. When he reported for the second shift, the Employer sent him home, although the Grievant had a return-to-work slip indicating that he could return to work after 10:30 a.m. on 11/3. Another Grievant called in sick on 1/23/04 for third shift (10:00 p.m. to 6:00 a.m.). When she arrived for the 1/24 second shift she had traded for, she was told she could not work the shift. Another Grievant reported for work at 10:00 p.m. and went home sick at 11:30 p.m. on 10/28/03. Although she had a return-to-work slip releasing her to work on 10/29 at 2:00 p.m., the Employer sent her home.

The Union argued that the proposed addendum to the Local 178 Local Agreements was not in effect given the absence of a successor agreement. The proposed addendum stated that sick leave runs from shift to shift and that officers who called in sick were not to assume trade responsibilities during the 24-hour period beginning with the start of the normally scheduled shift. The Union insisted that had the proposal been submitted for ratification, it would not have been accepted. The Union argued that sick leave runs shift to shift, for an eight hour period. The Union also argued that if an Employer refuses to permit an employee to work his or her scheduled forty hours, the Employer engages in a lockout in violation of the collective bargaining agreement.

The Employer argued that it acted in accordance with the amended Local Agreement. It also argued that the amendment made official what had been the practice for 25 years. The Employer pointed out that the Union accepted the benefit of the other provisions in the 2001 agreement and waited over two years before challenging the sick leave provision

The Arbitrator denied the grievance for two reasons. First, the Arbitrator found that in 2001, the parties met and reached an agreement that was made an addendum to the Local Agreement in accordance with the procedure set forth in Local Memorandum of Understanding #1. The Arbitrator found that the addendum did not contradict or vary the terms of the Labor Agreement, but merely clarified the parties' mutual intent with respect to Art. VI, section 2 of the Local Agreement. The Arbitrator also noted that the Union did not express disagreement with the memorandum until more than two years later. Second, the Arbitrator found that even in the absence of the addendum to the Local Agreement, in denying the grievances, the Employer acted in conformity with a past practice that was unequivocal, clearly enunciated and acted upon, and readily ascertainable over a reasonable period of time as a fixed and established practice by both parties. The Arbitrator found the past practice binding on the parties. The Arbitrator also found that the Employer's actions did not constitute a lockout, since they did not involve an employer's shutting down an operation or plant and preventing a group of workers from working in order to bring pressure on them to accept the employer's terms or conditions of employment.

The Arbitrator denied the grievance.