

# ***AFSCME Council 24***

WISCONSIN STATE EMPLOYEE UNION, AFL-CIO

*Arbitration Award Summary*

<b>WON:</b>		<b>CONTRACT:</b>	'01-'03
<b>LOST:</b>		<b>CASE NO.:</b>	20759, 21048
<b>SPLIT:</b>	XXX	<b>VOLUME:</b>	
<b>ISSUE:</b>	Suspension & reassignment - threats	<b>PROVISIONS:</b>	Article 4, Section 9
<b>ARBITRATOR:</b>	JAY E. GRENIG	<b>LOCAL:</b>	178
<b>HEARD:</b>	12/19/05	<b>BARG. UNIT:</b>	SPS
<b>AWARD:</b>	12/31/05	<b>EMP. UNIT:</b>	DOC – DCI

## **This is a non-precedential expedited award.**

On 9/3/04, the Grievant called the Dodge Correctional Institution and informed the shift supervisor that he had a problem and did not want to come to work the next day. When asked the reason, the Grievant stated that he hated Lt. D and would “beat the fuck out of” him and “bust his teeth” if he had to come to work, because Lt. D was cheating on his wife with the Grievant’s ex-girlfriend. Lt. D was the supervisor both of the Grievant and the ex-girlfriend. The Grievant was relieved of duty and told not to have contact with the other persons involved. The Employer then reassigned the Grievant to the Fox Lake Correctional Institution and gave the Grievant a 15-day suspension without pay. The suspension letter indicated that this was a last chance warning and that further work rule violations would result in termination of the Grievant’s State employment.

The Employer noted that the transfer and suspension were appropriate given that the Grievant threatened bodily injury to another in the workplace and contacted his ex-girlfriend after he was told not to have contact with others involved.

The Union argued that the Grievant attempted to contact his ex-girlfriend only after she tried to contact him twice. The Union noted that the ex-girlfriend was also instructed not to contact the Grievant, but was not disciplined for attempting to contact the Grievant. The Union also observed that supervisors should not date employees they supervise. The Union conceded that the reassignment may have been appropriate, but argued that the 15-day suspension was too severe. The Union finally noted that the Union and the Grievant never agreed to the last chance provision in the suspension letter.

The Arbitrator found that although the Grievant engaged in misconduct when he threatened his supervisor with bodily harm, the 15-day suspension was excessive and not progressive or corrective under the circumstances. The Arbitrator considered the 15-day suspension excessive because: 1 - it was coupled with the disciplinary reassignment to another institution; 2 - the incident arose in part as a result of Lt. D’s poor judgment in dating an employee he supervised who also happened to be dating another of the employees he supervised; and 3 - when a supervisor in another institution threatened to kill employees he supervised, the Employer merely reprimanded the employee. The Arbitrator also noted that the reference to a last chance warning in the suspension letter provided the Grievant with forewarning that future misconduct could result in additional discipline, including discharge, but was not the type of last chance agreement permitting the Employer to discharge the Grievant without regard to the just cause provision in the contract, because it was not agreed to by the Union and the Grievant.

The Arbitrator concluded that there was just cause for a 5-day suspension coupled with reassignment to another institution. The letter of suspension was not a last chance agreement, but serves to warn the Grievant that further misconduct could result in discipline or discharge. The Arbitrator ordered the suspension reduced and the Grievant made whole for lost wages and benefits resulting from the 15-day suspension.