

AFSCME Council 24

WISCONSIN STATE EMPLOYEE UNION, AFL-CIO

Arbitration Award Summary

WON:		CONTRACT:	'01-'03
LOST:		CASE NO.:	20821, 20822, 20823
SPLIT:	XXX		
ISSUE:	Time for investigation of grievance	PROVISIONS:	Art. IV, Section 8
ARBITRATOR:	HERMAN TOROSIAN	LOCAL:	221
HEARD:	11/15/05	BARG. UNIT:	Technical
AWARD:	2/17/06	EMP. UNIT:	DOT – NCR

This is an expedited non-precedential award.

For the week ending 3/15/04, the Grievant was granted 12 hours without loss of pay to investigate and process a pending grievance to arbitration. Section 4/8/12 provides that a reasonable amount of time be designated to a Grievant for such a purpose. For the same week, the Grievant reported an additional 7 hours over the 12 hours previously allowed for the week. The Grievant therefore ended up with 42.5 hours for the week, and the Grievant claimed 2.5 hours of overtime. The Employer reduced the Grievant's time by 7 hours and denied his overtime pay.

The Union claimed that the Grievant advised his supervisor that additional time was needed. The Grievant and the Union Steward stated that in a chance meeting with the supervisor in the hallway, they informed the supervisor that they would be going over the 12 hours allowed and that they needed more time. The supervisor stated that they should let him know, and the Union Steward stated that that was what they were doing right then.

The Employer argued that the Grievant's statement to the supervisor that he needed more time was an update and not a request, and that the Grievant was therefore not entitled to more than the 12 hours for grievance investigation originally granted.

The Arbitrator stated that the Grievant was entitled to a reasonable amount of time to process a grievance to arbitration. The Arbitrator found that there was no evidence that the additional hours the Grievant reported were unreasonable, except for the overtime hours. The Arbitrator noted that the contract was silent on how a reasonable amount of time was to be determined and found that neither party had the unilateral right to determine what constituted a reasonable amount of time. The Arbitrator concluded that the parties must meet, discuss, and arrive at a determination of what constitutes a reasonable amount of time on a case-by-case basis. If the Union representative believes that he or she is entitled to more time than the Employer believes is reasonable, the Union must explain its reasons for requesting additional time. If there is no agreement, the Employer will determine how much time off with pay to allow, but its decision is subject to challenge through the grievance procedure and ultimately arbitration.

The Arbitrator concluded that the Employer should make the Grievant whole for loss of wages and benefits for 4.5 hours of grievance preparation reported by the Grievant but denied by the Employer. The Arbitrator also concluded that the Employer did not violate the collective bargaining agreement by not paying the Grievant overtime for the week ending 3/15/04.