

AFSCME Council 24

WISCONSIN STATE EMPLOYEE UNION, AFL-CIO

Arbitration Award Summary

WON:		CONTRACT:	'01-'03
LOST:	XXX	CASE NO.:	21282
SPLIT:			
ISSUE:	Transfer, alternative work patterns	PROVISIONS:	Art. IV § 1; Art. VI § 15
ARBITRATOR:	HERMAN TOROSIAN	LOCAL:	1941
HEARD:	8/23/06	BARG. UNIT:	AS
AWARD:	9/21/06	EMP. UNIT:	DWD – DVR

This is an expedited, non-precedential award.

After an outside audit determined that the current distribution of north-central Wisconsin DVR employees was failing to maximize client service levels, the DVR planned to redistribute its employees, including transferring the Grievant's position from Rhinelander to Wausau. The Grievant suffered from multiple sclerosis and requested a disability accommodation allowing her to work fewer days from the Wausau office. On 3/24/05, the DVR informed the Grievant that she had to begin working full time in Wausau on 5/2/05. Upon the DVR's denial of the Grievant's request for a disability accommodation, the Grievant filed a complaint with the EEOC. The EEOC dismissed the Grievant's complaint on 6/16/05.

The Union argued that the grievance was timely because there was a possibility of resolving the problem until the 5/2/05 deadline, after which the Union would have 30 days to file the grievance. The Union noted that it contested the DVR's refusal to consider the Grievant's request for an alternative work pattern (AWP), not the transfer of the Grievant's position. The Union noted that the small amount of face-to-face clientele contact in the Wausau office allowed for the Grievant to perform her duties from a remote location without an impact on the DVR's operation. The Union argued that section 6/15 of the contract required the DVR to make reasonable efforts to implement AWP's. The Union argued that the DVR refused to make reasonable efforts to implement an AWP for the Grievant, which the Grievant required because commuting was difficult due to her multiple sclerosis, moving would be a hardship due to her husband's disability, and moving would be a financial burden.

The Employer argued that the grievance was not timely because the grievance was not filed within 30 days from the time the Grievant became aware of the cause of the grievance, which the DVR stated as 3/24/05, when the Grievant was informed that she must work full-time in Wausau by 5/2/05. The DVR further argued that even if the grievance was timely, the DVR did not violate the contract by assigning the Grievant to the Wausau office full-time because there was an operational need for the move. The DVR also noted that it had been and still was willing to pay the Grievant's moving expenses and noted that despite the Grievant's disability, there was no reason why she could not move to Wausau. The Grievant's actual job did not require travel.

The Arbitrator found the grievance timely because the cause of the grievance occurred on 5/2/05, when the Grievant began working full-time in Wausau. Before this date, there was still a chance of working out an agreement. The Arbitrator noted that at no time prior to the processing of her grievance did the Grievant request an AWP and noted that the DVR had the unfettered right to assign the Grievant to the Wausau office to increase face-to-face contact with the DVR's clientele. The Arbitrator noted that although the DVR did not violate the contract, face-to-face clientele contact, which was stated as the reason for the Grievant's transfer, was minimal in both offices and only slightly greater at the Wausau office. The Arbitrator stated that if the number of hours of face-to-face contact does not increase significantly in the near future, the DVR would have to make a serious and reasonable effort to honor the Grievant's request for an AWP.

The Arbitrator denied the grievance.