

AFSCME Council 24

WISCONSIN STATE EMPLOYEE UNION, AFL-CIO

Arbitration Award Summary

WON:	XXX	CONTRACT:	'05-'07
LOST:		CASE NO.:	21973
SPLIT:			
ISSUE:	WORKPLACE SMOKING BAN	PROVISIONS:	3/1; 4/3; 6/10; 11/7
ARBITRATOR:	JAY E. GREINIG	LOCAL:	163
HEARD:	9/12/06	BARG. UNIT:	All
AWARD:	9/28/06	EMP. UNIT:	DOC - KMCI

Since at least 1982, rest break agreements between the Union and KMCI have provided that employees may smoke on their breaks without leaving the workplace. In 1984, the WI Clean Air Act went into affect, banning smoking in state-owned buildings but allowing an exception for the designation of smoking areas within prisons. Union employees at KMCI retained their right to designated smoking areas within the prison under negotiated agreements through 9/23/05, when the Deputy Secretary of the Department of Corrections banned all tobacco products from all DOC correctional facilities, including tobacco use by DOC employees. On 10/11/05, KMCI notified all staff that KMCI was to become tobacco-free on 5/1/06.

The Union argued that under federal labor law, smoking policies are working conditions and that under collective bargaining agreements, Union employees have retained the right to smoke on their breaks since 1982. The Union argued that the 9/23/05 memorandum banning all tobacco products from DOC facilities cites no law requiring the provision. The Union argued that Item 12 of the 1982 collective bargaining agreement, allowing smoking during breaks, remains in effect absent mutual agreement to modify it.

The Employer argued that during the past 23 years, it has unilaterally made changes to employee rest break practices regarding smoking, so there was no binding past practice regarding smoking. The Employer also pointed out that the Union did not ask to negotiate issues raised by the 9/23/05 letter banning tobacco products from DOC facilities and stated that the Clean Air Act allowed the Employer to limit where smoking occurred in and around the prison. Furthermore, the Employer argued that the Arbitrator should uphold the employer's right to ban smoking in the interest of safeguarding property and employee health.

The Arbitrator stated that the 1982 bargaining agreement allowed for smoking on breaks, that in 1983 KMCI agreed that the practice established by the local agreement would continue, and that in 1986, after the WI Clean Air Act passed, KMCI and the Union agreed that absent mutual agreement, rest breaks, including the right to smoke, should remain as locally negotiated. The Arbitrator found that based on the parties' agreement as begun in 1982 and developed through 1986, since which date no mutual agreement had occurred, the Employers' unilateral imposition of the tobacco ban violated the parties' agreement. The Arbitrator concluded that based on the parties' agreement and the results of previous arbitrations regarding smoking bans, the Employer had authority to make reasonable rules regarding designated smoking areas, but under the 1986 settlement agreement, KMCI had no authority to completely ban smoking facility-wide during rest breaks.

The grievance was sustained - Union employees may continue to smoke in designated smoking areas.