

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

WON:	XXX	CONTRACT	1995-97
LOST:		CASE NO.:	97-2198
SPLIT:		VOLUME:	11-38
ISSUE:	TRANSFERS	PROVISIONS:	ARTICLE VII, SECTION 1
ARBITRATOR:	GRENIG		
HEARD:	11/5/99	LOCAL:	1942
AWARD:	12/19/99	BARG. UNIT:	TECH
		EMP. UNIT:	UWHC

The Grievant was a Diagnostic Radiological Technician with twelve years of seniority with the Employer at the time of the incident leading to his discipline. In 1997, the Grievant and several other male employees were accused of sexually harassing female employee in Angiography. As a result, the Grievant was given a written reprimand and transferred to a different department. After that the female who made the charges took different job assignments within the hospital. The Employer has since posted a number of vacant positions in Angiography but has not allowed the Grievant to transfer to these positions.

The Employer stated that it had a good reason to reassign the Grievant due to an evolving sexual harassment lawsuit by female co-workers. The Employer argued that the reasons for transferring the Grievant were still operative when he asked to be returned to Angiography three months later.

The Union argued that the Grievant never waived his right to transfer under the contract. Referring to the Grievant's past record, the Union stated that this was not a case where his past record indicated the unsatisfactory conduct would continue or had continued. The Union also stated that this was not a case where the Grievant's transfer would inevitably interfere with the successful operation of the hospital.

The Arbitrator found that transferring the Grievant away from the work areas of the victims who complained of the harassment was a reasonable response to the Grievant's conduct. However, the Employer did more than transfer the Grievant away from the employees he was charged with harassing. The Employer attempted to make the transfer permanent and deprive him of his contractual transfer rights. The Arbitrator noted that Arbitrator Vernon, in a similar case, stated that permanently excluding an employee from exercising transfer rights was "too severe".

The Arbitrator ruled that the involuntary transfer and the denial of a transfer two months later did not violate the contract. However, the Employer could not permanently deny the Grievant his transfer rights.

The Employer was directed to permit the Grievant to exercise his transfer right effective with the date of the award.