

# *AFSCME Council 24*

WISCONSIN STATE EMPLOYEE UNION, AFL-CIO

## *Arbitration Award Summary*

<b>WON:</b>		<b>CONTRACT:</b>	05-07
<b>LOST:</b>		<b>CASE NO.:</b>	22486 & 22487
<b>SPLIT:</b>	<b>XXX</b>		
<b>ISSUE:</b>	REASSIGNMENT	<b>PROVISIONS:</b>	Art. 4, Section 9
<b>ARBITRATOR:</b>	Christine D. VerPloeg	<b>LOCAL:</b>	509
<b>HEARD:</b>	3/7/07	<b>BARG. UNIT:</b>	SPS
<b>AWARD:</b>	3/17/07	<b>EMP. UNIT:</b>	DOC – WSPF

### **This is an expedited, non-precedential award.**

The Grievant was employed as a Correctional Officer at the Wisconsin Secure Program Facility in Boscobel, Wisconsin. On August 4, 2006, the Employer issued a written warning to the Grievant and reassigned her from her mailroom position for allegedly opening inmates' legal mail on numerous occasions. The letter of reprimand stated that on 7/13/06, the Department of Corrections Legal Counsel alerted the Boscobel facility that the Grievant had on 25 occasions opened inmates' legal mail. Investigation indicated that each of the envelopes was marked inadvertently opened and carried the Grievant's initials. Work schedules indicated that the Grievant was working on all the days in question and was the only individual processing mail having the initials marked on the envelopes. The facility based its discipline on Work Rules #2 – failure to follow policy or procedure; and #4 – negligence in performance of assigned duties.

The Employer argued that the Grievant had been admonished repeatedly about opening inmates' legal mail but failed to improve her performance. The Employer noted that one inmate had filed a lawsuit against the DOC due to the Grievant's repeatedly opening his legal mail. The Employer also indicated that the Legal Counsel indicated that the inmate had a strong case. The Employer argued that the parties' contract did not restrict the DOC's right to transfer the Grievant from a position for which she was not qualified. The Employer argued that it had just cause to reassign the Grievant and to issue the written reprimand to her.

The Union argued that the application of this discipline to the Grievant was arbitrary and capricious. The Union argued that neither the reassignment nor the written reprimand was for just cause. The Union noted that the discipline letter stated no previous work rule violations in the previous 12 months for the work rules stated in the letter. The Union argued that the discipline was punitive rather than progressive. The Union argued that the Grievant was not given a chance to correct her actions. The Union noted that no union representative was present at informal meetings that were cited in the letter of reprimand. The Union also argued that the Grievant suffered disparate treatment in this discipline because other employees had not been disciplined for the same actions.

The Arbitrator found that the Employer had just cause to issue the written reprimand but lacked just cause to reassign her from her mailroom position, which constituted a substantial penalty because it took the Grievant many years to earn the position. The Arbitrator found that although the Grievant's supervisor had admonished her concerning her opening inmates' legal mail, the Grievant was not placed on notice that her failure to improve could lead to written or other discipline. The Arbitrator found that the Grievant should have had the ability and incentive to improve and found that there was just cause to discipline her. The Arbitrator stated that if the Grievant does not improve, she will be subject to additional progressive discipline.

The Arbitrator upheld the written warning but stated that the Grievant should be returned to her mailroom position.