

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

WON:	XXX	CONTRACT	1995-97
LOST:		CASE NO.:	323-64-94, 323-36-95, 323-10-96
SPLIT:		VOLUME:	11-14
ISSUE:	READING ON BREAKS	PROVISIONS:	NEG NOTE 7
ARBITRATOR:	TOROSIAN	LOCAL:	163
HEARD:	10/8/97	BARG. UNIT:	S&PS
AWARD:	1/9/98	EMP. UNIT:	DOC-TCI

These cases involve the reading of non-work related material by officers on "modified B breaks". In 1977, as a result of a precedential arbitration, the Employer and the Union negotiated different types of rest breaks for different posts at the institutions. In 1985 the parties renegotiated the language and settled on three types of breaks: A Break-Reduction of Activity; B Break-Post is Relieved; Modified B Break-Reduction of activity at workstation. There was a practice of Correctional Officers reading non-work related material while on "reduced activity". In 1995 and 1996 the three instant grievances were filed when the Employer refused to permit the reading of non-work related material on posts with a Modified B Break.

The Employer argued first that the directive issued at TCI was not a work rule because it did not apply to the agency as a whole. Second, the rest break agreement contained no language with respect to the reading of non-work related materials at TCI posts. Finally, the Employer claimed that it was only reinforcing a directive that had been issued in numerous post orders.

The Union acknowledged that the reading of non-work related materials was not permitted on B Breaks and that posts with B Breaks were not at issue here. But, stated the Union, posts with Modified B Breaks had been allowed to read the disputed materials at least until December of 1994 when the Employer violated what was allowable for Modified B Breaks. The Employer also violated the contract when it changed the practice at the posts without the consent of the Union.

The Arbitrator could not resolve the dispute by looking only at the contract language. This was because there were no specifics regarding what "reduced activity" meant. He therefor looked at the uncontested testimony of the Union's witness who had participated in the negotiations on the rest breaks. That testimony indicated that the term "reduced activity" included the ability to drink coffee, smoke a cigarette, put their feet on the desk, and read non-work related materials such as newspapers and books. The Arbitrator noted that the Employer's management rights in the area of rest breaks had been severely restricted and thus, whatever action taken by the Employer must be exercised consistent with other provisions of the parties' agreement. Finally, the Arbitrator found that the breaks in question were Modified B Breaks and not B Breaks as argued by the Employer.

The Employer violated the parties' local agreement and Negotiating Note 7 of the collective bargaining agreement by not allowing officers to read non-work related materials while on Modified B Breaks.

The grievances were sustained.