

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

<b>WON:</b>	<b>XXX</b>	<b>CONTRACT</b>	<b>1995-97</b>
<b>LOST:</b>		<b>CASE NO.:</b>	<b>15304</b>
<b>SPLIT:</b>		<b>VOLUME:</b>	<b>11-21</b>
<b>ISSUE:</b>	<b>DISCHARGE, USE OF EXCESSIVE FORCE</b>	<b>PROVISIONS:</b>	<b>ARTICLE IV, SECTION 9</b>
<b>ARBITRATOR:</b>	<b>GRENIG</b>	<b>LOCAL:</b>	<b>6</b>
<b>HEARD:</b>	<b>3/3-4/98</b>	<b>BARG. UNIT:</b>	<b>S&amp;PS</b>
<b>AWARD:</b>	<b>6/1/98</b>	<b>EMP. UNIT:</b>	<b>DOC-LHS</b>

The Grievant was a Youth Counselor at Lincoln Hills School in Irma, Wisconsin at the time of his discharge. In March of 1997, two offenders were involved in a fight in the hallway between their rooms. The Grievant and another counselor separated the two. The Grievant had one offender in what was described as a headlock. During the investigation, the Grievant admitted using a headlock on the offender but stated that he was not trying to hurt the youth. Because the hold the Grievant used was not included in their training, the Grievant was discharged for failing to follow policy and procedures, failing to comply with health and safety practices, and for threatening, attempting or inflicting bodily harm to another person.

It was the Employer's position that the Grievant misjudged the situation and used excessive force in controlling the offender. According to the Employer, the evidence clearly established that the Grievant was guilty of the acts for which he was discharged.

The Union argued that due to the violent action of the offender, the Grievant could not use the Principles of Subject Control (POSC) techniques to control the offender. It pointed out that other personnel involved considered attempting to control the offender with pepper spray. Finally, the Grievant did not choke the offender.

The Arbitrator concluded that, although there was no dispute that the Grievant used a headlock on the offender, there was no evidence that it was a choke hold as argued by the Employer. The offender's loud yelling disproved that point. He pointed out that there was no medical evidence that the Grievant injured or otherwise physically harmed the offender. Thus, there was no just cause to terminate the Grievant for use of excessive force. However, because the Grievant used an unauthorized hold to restrain the offender, there was cause to impose a lesser penalty.

The discharge was reduced to a three-day suspension.