

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

WON:	XXX	CONTRACT	1995-97
LOST:		CASE NO.:	15534
SPLIT:		VOLUME:	11-39
ISSUE:	MEDICAL DISCHARGE	PROVISIONS:	ARTICLE IV, SECTION 9
ARBITRATOR:	VER PLOEG		
HEARD:	2/8/00	LOCAL:	1218
AWARD:	4/13/00	BARG. UNIT:	TECH
		EMP. UNIT:	DNR-SFH

In October of 1992 the Grievant, a Fish Propagation Technician at the Spooner Warmwater Hatchery, was severely injured while at work. As a result of his injuries, the Grievant was left with several permanent restrictions on his ability to work. From that time until March of 1997, numerous assessments, evaluations and recommendations were made as to the Grievant's ability to return to his job. He was also offered a position as a program assistant with the Department. In March of 1997, because the Grievant had failed to choose one of the four options offered by the Department to resolve the issue, the Employer discharged the Grievant because of inability to perform the available jobs in the Department.

The Arbitrator noted that the question of whether the Employer had just cause to discharge the Grievant turned entirely on the question of whether it failed to reasonably accommodate his medical restrictions. She found that it was beyond dispute that the Grievant was unable to continue in his original job because of his medical restrictions. However, it was highly relevant that, at the same time it was evident that the Grievant could not continue in his old job, the Employer had plans to create a similar, and possibly less demanding, position at the Grievant's work site. The Arbitrator found that it was apparent that the Employer never considered the Grievant for that new position and its failure to undertake this effort represented a failure to fulfill its duty to reasonably attempt to accommodate the Grievant's medical restrictions.

Because there were a number of unanswered questions pertaining to the disposition of this case, such as: Did the new position actually materialize and what did it entail and; Could the new job's physical demands be accommodated to meet the Grievant's medical restrictions, the Arbitrator could not make a final determination. If the evidence demonstrated that the new job could not accommodate the Grievant's medical restrictions, then there was no job appropriate for the Grievant. However, if the evidence demonstrated that the Employer should have given the Grievant the opportunity to accept the new job, further questions had to be answered in order to fashion a suitable remedy.

The grievance was remanded to the parties for further evidence and argument of the question of remedy.