

## *AFSCME Council 24*

WISCONSIN STATE EMPLOYEE UNION, AFL-CIO

### *Arbitration Award Summary*

<b>WON:</b>		<b>CONTRACT:</b>	'97-'99
<b>LOST:</b>		<b>CASE NO.:</b>	15595, 15596
<b>SPLIT:</b>	<b>XXX</b>	<b>VOLUME:</b>	
<b>ISSUE:</b>	Termination – inmate abuse	<b>PROVISIONS:</b>	Art. 4, Sec. 9
<b>ARBITRATOR:</b>	CHRISTINE VER PLOEG	<b>LOCAL:</b>	
<b>HEARD:</b>	8/17/98 – 8/19/08; 9/15/98	<b>BARG. UNIT:</b>	SPS
<b>AWARD:</b>	12/31/98	<b>EMP. UNIT:</b>	DOC – OCI/WRC

The Grievants were employed as Correctional Officers. It is undisputed that while the 2 Grievants were transporting an inmate between the Wisconsin Resource Center and Oshkosh Correctional Institution on 9/24/97, the inmate became combative. The Grievant driving the van ordered the other Grievant to restrain the inmate in the back seat, which he did. The inmate claimed that he did not become combative until one of the Grievants called him a nigger, while the Grievants claim that they used proper procedure in dealing with the uncooperative inmate. On 11/6/97, both Grievants were terminated. The Grievant who restrained the inmate was terminated for allegedly verbally abusing and battering the inmate, lying during the investigation, and failing to use a seat belt and spit mask on the inmate. The Grievant who drove the van was terminated for not following DOC procedures for dealing with an altercation between a correctional officer and an inmate, lying about the incident, and failing to use a seat belt and spit mask on the inmate.

The Union stated that the Grievants' conduct during the incident did not violate the Employer's work rules, was not abusive, and did not provide a basis for discharge. The Union requested that the Grievants be reinstated to their former positions as first shift transportation officers at WRC. The Union argued that the inmate was Hispanic, not black, and that the Grievant accused of calling him a nigger had never in 7 years of service been accused of using racially hostile language. The Union argued that if the inmate was as disruptive as the Employer says he was, then the Grievants should not have left the OCI without additional assistance.

The Employer stated that even if the grievances were sustained, the Grievants would not be reinstated to inmate contact positions. The Employer argued that the inmate was not combative when leaving OCI.

The Arbitrator noted that the Employer had the burden of proving it had just cause to discharge the Grievants. The Arbitrator concluded that there was not sufficient evidence to prove that Grievant used racially hostile language toward the inmate. The Arbitrator concluded that the evidence indicated that the inmate was behaving disruptively when leaving OCI. The Arbitrator found that the Grievants were not negligent in failing to seat belt the inmate because the inmate refused and could have removed the seat belt on his own. The Arbitrator concluded that the Grievants had been told not to use spit masks. The Arbitrator concluded that the nature of the inmate's injuries and the Grievant's multiple calls for help during the trip indicated that the inmate was the aggressor during the altercation. However, the Arbitrator concluded that the Grievant did use excessive force in restraining the inmate. The Arbitrator concluded that the Grievant driver's order that the other Grievant should join the inmate in the rear seat was poor judgment warranting discipline, without which the later events would not have occurred.

The Arbitrator ordered that the Grievants should be reinstated, that their discharges be reduced to 30-day suspensions, and that they be made whole for all wages and benefits lost beyond the suspensions. The Arbitrator deferred the question of to what positions the Grievants should be reinstated, citing lack of information about the effects of such a decision on the collective bargaining agreement.