

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

WON:		CONTRACT	1995-97
LOST:		CASE NO.:	15857
SPLIT:	XXX	VOLUME:	11-23
ISSUE:	WORK RULES, FRAGRANCES	PROVISIONS:	ARTICLE XI, SECTION 7
ARBITRATOR:	GRENIG	LOCAL:	145
HEARD:	6/18/98	BARG. UNIT:	TECH-ASU
AWARD:	6/29/98	EMP. UNIT:	DWD-DUI

This case was heard under the expedited arbitration procedure contained in the Agreement and is, therefor, non-precedential.

This grievance involved employees at the Unemployment Insurance Benefit Center. The employees in question worked in cubicles in an open area. The general public does not have access to the work area. In November of 1996, an employee began to complain about becoming ill from scents. She provided medical certification of her sensitivity. The supervisor had asked the other employees for voluntary compliance with the request to avoid the use of perfume. When total compliance was not forthcoming, the Employer issued a document, referred to as a work instruction, prohibiting the wearing of fragrances on the premises.

The Employer asserted that it had the right to adopt reasonable work rules. According to the Employer, the April memorandum was a reasonable response to a reasonable accommodation request.

The Union argued that the Employer's action was not a reasonable accommodation because it placed an undue hardship on other employees. The Union also contended that the no fragrance policy could not be administered properly. Finally, the Union noted that it was not given the required seven-day notice of a new work rule.

The parties agreed that the employee making the complaint was disabled within the meaning of the Americans with Disabilities Act (ADA). The question was whether the work rule was reasonable. Because these employees did not come in contact with the public, the Arbitrator found that the work rule banning perfume, cologne, after-shave or scented lotions or hair-spray at work to be reasonable. He also found the prohibition against the use of scented hand lotions at work to be reasonable. However, under the circumstances described in the record in this case, it was unreasonable for the Employer to apply the rule to prevent employees from wearing clothes that may have come into contact with fragrance or been washed in detergent with a fragrance. It was also unreasonable for the Employer to apply the no fragrance rule so as to dictate which detergents, soaps or shampoos employees could use at home.

The grievance was upheld in part and denied in part.