

# ***AFSCME Council 24***

WISCONSIN STATE EMPLOYEE UNION, AFL-CIO

## *Arbitration Award Summary*

<b>WON:</b>		<b>CONTRACT:</b>	'01-'03
<b>LOST:</b>	XXX	<b>CASE NO.:</b>	19402
<b>SPLIT:</b>			
<b>ISSUE:</b>	230.36 Benefits	<b>PROVISIONS:</b>	ARTICLE XIII, SECTION 16
<b>ARBITRATOR:</b>	HERMAN TOROSIAN	<b>LOCAL:</b>	221
<b>HEARD:</b>	6/20/06 & 9/1/06	<b>BARG. UNIT:</b>	Tech
<b>AWARD:</b>	9/20/06	<b>EMP. UNIT:</b>	DOT – WI RAPIDS OFFICE

### **This is an expedited non-precedential award.**

The Grievant was working in the classification of “Engineering Technician 3” in 1984, when he fell on ice while performing work duties. He injured his back and received treatment. In 1997, the Grievant had back surgery which related to his 1984 injury. The Grievant was left partially disabled. The Grievant received 230.36 benefits for all the time he lost due to his back injury and surgery. Adjustments were made at work based on his work restrictions, but he continued to work in his original classification. On 12/9/02, the Grievant injured his back again while arising from a seated position at work. Surgery was performed on 12/12/02, and the Grievant filed for 230.36 benefits on 12/21. The Employer denied the Grievant’s request for 230.36 benefits, stating that the Grievant was not performing a hazardous duty and that the chair injury was a new injury, not an aggravation of a previous condition.

The Union argued that the Grievant was entitled to 230.36 benefits because he had a permanent partial disability for a previous 230.36 compensable injury and has never returned to full work status. His condition was not fully healed in 1997 and resulted in this re-injury. The Union argued that this situation was the same as one that occurred a few years previously when the Grievant re-injured his back while riding in a truck. In that case, the Grievant was awarded 230.36 benefits by arbitration.

The Employer argued that in 1997, the Grievant reached a healing plateau and needed no further treatment. The Employer believed that the injury the Grievant suffered while rising from a seated position was a new injury, not an aggravation of the previous injury. The Employer also argued that arising from a chair is not a hazardous duty as defined by the relevant statute, Wis. Stat. § 230.36. The Employer argued that in the previous case in which the Grievant was awarded hazardous employment benefits by arbitration, Grievant’s work (riding in a truck) did qualify as hazardous employment.

The Arbitrator found that in order to qualify for hazardous employment benefits under 230.36, the Grievant would have to suffer “further aggravation of a previous injury for which benefits ended,” and the aggravation would have to meet the qualifying provisions of Wis. Stat. § 230.36. The Arbitrator determined that the Grievant’s injury while arising from the chair was “further aggravation of a previous injury for which benefits ended,” but also found that the aggravation did not meet the qualifying provisions of the statute.

The grievance was denied.