

# ***AFSCME Council 24***

WISCONSIN STATE EMPLOYEE UNION, AFL-CIO

## *Arbitration Award Summary*

**WON:**  
**LOST:**           **XXX**  
**SPLIT:**

**CONTRACT:** '01-'03  
**CASE NO.:** 21367

**ISSUE:**           Information Requests – Costs           **PROVISIONS:** ARTICLE IV, SECTION 8

**ARBITRATOR:** HERMAN TOROSIAN           **LOCAL:** 221  
**HEARD:** 11/15/05           **BARG. UNIT:** Tech  
**AWARD:** 11/21/05           **EMP. UNIT:** DOT – NCR

**This is an expedited non-precedential award.**

The Grievant, a union steward, requested certain records prior to Step 2 of the grievance procedure that the Union believed would show how much overtime was being performed by consultants hired by the DOT. Whether these consultants were working overtime normally performed by bargaining unit employees was the subject of a grievance that ultimately went to arbitration. The Employer did not provide the documents requested because they were not in the Employer's possession, but were in the possession of the consultant firm. Not more than two weeks before the scheduled arbitration hearing, the Employer advised the Union that the documents could be retrieved from the consultant firm if the Union would pay the \$900 fee the consultant required. The Union did not have enough time to seek approval of the \$900 fee or enough time to review the documents for the upcoming hearing.

The Union argued that under Section 4/8/3 of the contract, the Employer was required to make the requested documents available by providing them to the Union.

The Employer argued that it was not contractually required to provide the requested records and documents because they were not the property of the state and therefore were not readily available. The Employer stated that the requested material was the property of and was in the possession of the consultant firm hired by the state, and the Union could have retrieved the material for \$900.

The Arbitrator noted that the contract required the Employer to provide "all documents and information available if requested." The Arbitrator noted that the usual interpretation of the contract language is that material is available if it is in the possession or control of the Employer. The Arbitrator noted that the material in question here was contractually available to the Employer through its contract with the consultant firm, but also noted that if more than a nominal number of copies was requested, the cost of acquiring them would fall on the requesting agency. The Arbitrator also noted that the \$900 cost of acquiring the documents in this case was greater than the \$50 limit up to which the Employer must automatically provide the documents requested under the collective bargaining agreement.

The Arbitrator concluded that the Employer was not required to provide the documents requested by the Union because of the cost of obtaining them and did not violate the collective bargaining agreement by not paying the \$900 to retrieve the documents requested by the Union. The Arbitrator also noted that the Employer did not timely address the Union's request for documents and information as it was required to by failing to advise the Union that it could acquire the requested material by paying \$900. The Arbitrator stated that the parties must in the future act consistently with the reasoning of this award to be in compliance with Sections 4/8/3 and 4/8/8.