

# Impact



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## Job competition grievances fall short for many members

The large majority of OPSEU members who grieved that MPAC unfairly gave their job to a co-worker have finally had their day in court. For most, the result fell short of expectations.

After MPAC began to implement its “Futures” restructuring project two years ago, scores of members grieved that the employer had violated the collective agreement by ignoring seniority when it filled positions for Property Assessor 5 and Customer Service

Representative positions. In January 2004, *OPSEU Impact* reported that 40 PA5 grievances and 112 CSR grievances would be dealt with in an expedited mediation/arbitration (“med/arb”) process before arbitrator William Kaplan.

Many grievances were withdrawn before med/arb began. Some positions involved multiple grievors with varying seniority. In those cases, junior grievances were dismissed because a grievance win could only give the job to the most senior employee.

In other cases, one individual was seeking more than one job or the same job in more than one location.

In the end, 92 grievances were resolved, either through negotiated settlements or through awards by the arbitrator.

The chart shows the results. For the 15 PA5 grievances resolved, one grievor accepted a settlement and five received a remedy issued by the arbitrator. Two people were awarded PA5 jobs but turned them down.

For the 77 CSR grievances, there were 27 settlements and 16 awards. In total, 43 out of 92 grievances, or 47 per cent, were not successful.

Type of grievance	Number of grievances	Number resolved by settlements	Remedies awarded	Unsuccessful grievances
PA5	15	1	5	9
CSR	77	27	16	34
Total	92	28	21	43

### Reviewing the process

Not all the successful outcomes in the CSR and PA5 grievances made grievors happy. In only 13 cases were grievors awarded the next available position. Many of the settlements were small; only eight provided more than \$1,000 in damages to the grievor.

Some members were unhappy with both the results and the process. OPSEU members on the Union-Management Committee met all day July 21 to review what happened.

Jennifer Reid, Tina Faibish, Ivan Herrington, Jamie Stata, and Peter Thompson met with OPSEU staff, including Cameron Walker, Administrator of Policy, Planning and Programs. Brother Walker is a veteran grievance expert and the Administrator responsible for OPSEU grievance staff and budgets.

In discussing the decisions made around the job competition grievances, your leadership team developed the timeline on page 2.

# Timeline:

## Key decisions around competition grievances

**January 2003:** In bargaining, the OPSEU bargaining team votes to drop the union's policy grievances on the job competition process but proceed with individual grievances. The rationale for this decision is two-fold: 1) the employer is offering specific contract improvements in return; and 2) if the policy grievance fails, it will make it virtually impossible for the individual grievances to succeed.

At the time, members have over 700 grievances in. The union estimates that to deal with them one by one would take at least six and probably 10 years. With the view that "justice delayed is justice denied," the OPSEU team agrees to an expedited mediation/arbitration process, with William Kaplan as the preferred choice of arbitrator. Kaplan seems a reasonable bet because of his past record on similar grievances.

**February 2003:** OPSEU members vote to ratify the new collective agreement; policy grievances dropped.

**May 2003:** Kaplan sets dates to deal with the grievances, starting in February 2004. General outlines of the process are agreed to.

**June 2003:** The employer sends 20 boxes of information to OPSEU as part of the required disclosure of how job competitions were decided. Review of the documents begins. The union asks grievors for their input.

**September/November 2003:** The union makes its submission to Kaplan on the legal basis of the grievances. The union says that the PA5 and CSR job competition process is fundamentally flawed. The union says job competitions should be based on a threshold of qualifications, skills, and seniority, and not interview scores. As a remedy, the union asks the arbitrator to award jobs to the most senior candidates with full back pay or, alternatively, to order that both competitions should be re-run.

The union is aware that the arbitrator will establish some kind of standard for determining "relative equality" among candidates (prior to the application of seniority).

**February 17, 2004:** The first day of hearings for PA5 job competitions is taken up with the employer's offer of settlement on six grievances. One member accepts an offer; five others do not.

**March 5, 2004:** Kaplan says that, except in "exceptional circumstances" (which he does not define), he will use interview scores to determine relative equality among candidates. This is the opposite of what the union wants, as the interview scores were what made the competitions unfair, arbitrary and unreasonable in the first place.

**March-May 2004:** PA5 and CSR job competition grievances go through the med/arb process. Grievors complain that they do not have early or easy access to their files so they can review them. Many feel they are "out of the loop" and not getting the information they need. Some grievors tell the OPSEU team that they feel they are not being listened to, and that OPSEU legal counsel is dismissive of legitimate concerns.

While the union tries to protect the confidentiality of grievors' information, the employer gives incumbents full details on grievances, without telling them that the information is confidential. Kaplan scolds the employer for doing so, but the damage is already done.

**July 2004:** The union presents its case on the "no vacancy" grievances, where a number of members have grieved that the employer (basically) changed the name of their position in order to post it and then offer it to another employee. Arbitrator Kaplan rules that the old positions and the new positions are not sufficiently similar to support the union's case. He dismisses all the grievances.

# The team's view

Your elected union representatives on the Union Management Committee at MPAC have listened to members and thought a lot about what happened with the job competitions for the PA5 and CSR positions. In looking at the decisions the union made at various points, we believe that the big decisions we made were the right ones.

It made sense to agree to an expedited med/arb process. As a leadership team, there was no way we could agree to making members wait six or even 10 years to have their cases heard.

It also made sense to make William Kaplan the union's choice as an arbitrator. While all arbitrators must take a fair, balanced approach – otherwise they would never get work – we knew that Kaplan had a record of at least understanding the arguments we would be putting forward.

The arguments the union submitted to Kaplan were also correct. We argued what we had argued all along: that the competition process was seriously flawed, and that the fair solution was to place senior employees in jobs or, failing that, to run the competitions over again (but this time to do them right).

The big problem arose when Mr. Kaplan decided to use the interview scores as the basis for deciding “relative equality” among job applicants. To a large extent, a lot of our geese were cooked as soon as this decision was made.

## **Serious concerns**

We have some serious concerns about the way our side of the table operated just before and during the med/arb process. We recognize that the union did everything in its power to maintain the confidentiality of employee files, but this turned out to be meaningless when the employer showed no interest in doing the same. We feel that we should have negotiated a detailed communication plan with the employer before med/arb started so that our members were better informed about what was going on with their grievance(s) at all times.

At the same time, some members did not

take responsibility for communicating with the union even when given the opportunity, so there is definitely more than one side to that story.

We also have concerns about the legal representation we received. Some members reported feeling rushed into decisions. Some felt their voices were not being heard. Your OPSEU leadership team strongly feels that (even in an expedited process) there has to be a balance between speedy resolution of grievances, careful consideration of the merits of each case, and member comfort with the process.

It is doubtful whether a different process would have changed any of the outcomes of the grievances themselves. However, it is certain that a different process would have made members feel a lot better about themselves, their work, and their union.

Cameron Walker, the head of OPSEU's Policy Planning and Programs Division, has heard what your team had to say and promised to take action on our concerns.

## **Looking ahead**

In the last couple of years, the PA5 and CSR job competitions have caused a lot of stress, anger and frustration in virtually all our MPAC offices.

It is important to remember where these stresses came from.

It was our employer, MPAC, that created the “Futures” program. It was MPAC management that created a job competition process that pitted employees against each other, driving down morale. It was MPAC management whose poorly-conceived restructuring threw the whole organization into chaos. It was MPAC management who damaged the reputation of property assessment in all of our communities.

MPAC staff are still suffering from these and other blows.

As union members, our job is not to worry about these problems; our job is to do something about them. And that is what we are going to do.

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OPSEU members at MPAC want a strong union that can stand up to a bad boss. We need a stronger collective agreement. Strengthening our union and our contract are the twin goals of our work in the months ahead.

Two representatives of your leadership team will make a presentation to the OPSEU Executive Board next month to seek funding for the plan we developed July 21. While we are still hashing out the details, our initial focus will be on supporting local union leadership in every workplace, increasing communication across workplaces, providing mobilizing support in critical spots, and rebuilding morale wherever our members work. If all goes according to plan, a member of your leadership team will visit every MPAC workplace this fall.

Without the work of OPSEU members, MPAC is nothing. It's time we started to assert ourselves to win the respect we all deserve.

Please send us your comments at the e-mail addresses listed below.

In solidarity,

Your OPSEU Union Management Committee members: Jennifer Reid, Tina Faibish, Ivan Herrington, Peter Thompson and (from the Sector Executive Committee) Jamie Stata.

## More grievance dates scheduled

The last group of Futures competition grievances heads to mediation/arbitration in the spring of 2005. Approximately 35 grievances are slated, involving Property Inspection Analysts, Customer Contact Specialists, Customer Service Clerks, Admin Clerks - Property Values, Municipal Relations Assistants, and Office Administrators.

About 25 layoff grievances are also scheduled, relating to layoffs that occurred in March 2003.

Dates for the med/arb are April 5-6, 2005 and May 30-31, 2005.

## Keep in touch!

To keep in touch with your OPSEU leadership team, contact the member responsible for communication with your office. Contact us by e-mail at work or at home, as follows:

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