



Impact

News for OPSEU members at MPAC
from your leadership team
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OPSEU Board may boost funds for MPAC grievances

The OPSEU Executive Board is considering an increase in funding to handle grievances at MPAC.

The OPSEU leadership at MPAC made a presentation to the Board last week.

“We were very well received, I would say,” said Ivan Herrington, OPSEU chair of the Union-Management Committee (UMC) at MPAC. “We gave a brief overview of our history and the current grievance challenges we’re facing, and Board members certainly understood where we were coming from.”

Budget issues will be

addressed at the next OPSEU board meeting in January 2007.

Problems persist

The union has made good progress this year on tackling the grievance backlog at MPAC. Working with OPSEU Grievance Officer Stephen Giles, the UMC has dealt with more than 75 grievances.

But despite this success, problems persist – mostly related to classification issues, firings (five this year), and hiring practices.

“Our members have no confidence in MPAC’s half-baked hiring process,” said Herrington. “The emphasis on the Problem/Action/Result approach ignores skills, ability, experience, and qualifications when it comes to selecting successful candidates.

“When we go to mediation/ arbitration now, and there’s a single competition grievance, what we’re hearing is, ‘The [PAR] marks are the marks,’ “ he said. “Members have lost all faith in the fairness of the process. That’s why we need to challenge it.”

For the record:

No re-organization in the works, MPAC says

At the last two meetings of the Union-Management Committee, your OPSEU team has asked the employer if MPAC has any re-organization plans in the works. For the record, the employer says No.

Get ready for the 2007 BPS conference!

OPSEU locals at MPAC should plan to attend the OPSEU Broader Public Service conference June 1-3, 2007. Your leadership team at MPAC is planning important MPAC-specific educationals this year. Tentative topics include:

- overview of classification issues;
- clause-by-clause contract analysis for unit stewards;
- review of changes to the grievance procedure from the last round of bargaining; and
- the roles and responsibilities of unit stewards.

All locals with members at MPAC are urged to make it their New Year’s resolution to send a delegate to this important OPSEU event.

What does it take to win a classification grievance at MPAC?

By Stephen Giles, Grievance Officer, OPSEU

The issue of classification is addressed in Article 4. 01 (b) of the collective agreement between MPAC and OPSEU. It states: "The Union acknowledges that it is the exclusive right of the Employer to... hire, transfer, classify, assign, appoint, promote, demote, appraise, train, develop, layoff and recall employees..."

The fact that the classification of employees is explicitly stated to be an exclusive right of management sets a high legal threshold for any attempt to challenge or change a classification.

There is no language in the MPAC collective agreement that specifically addresses the review of an individual's classification.

The Legal Test

In the general jurisprudence on classification grievances, there are several key elements that the union must prove in order for such a grievance to succeed. These include:

1. Virtually all of the grievor's assigned duties must be those of an existing higher classification, i.e., almost all of the employee's time must be spent performing exactly the same core duties as those in the existing higher classification;
2. The grievor's duties must be fully within the domain of the higher classification, i.e., the core duties must all be in the higher classification only and not shared between the two classifications;
3. The level of accountability and responsibility assigned must be squarely within the higher classification, In other words, the work of the higher classification must have been assigned to the grievor by the employer with an expectation that the full range of those duties would be completed; and

4. Other factors may distinguish seemingly similar classifications and be relevant to the arbitrator.

In order to force the employer to move the employee to a higher classification, the union bears the onus of establishing, with evidence, the content of both the grievor's current classification and the higher-rated classification the grievor is allegedly performing.

The union does not discharge the onus placed upon it merely by establishing that the job as actually performed does not strictly agree with the grievor's existing job description. It is not enough that the existing job description has become outdated. The grievor must be regularly performing all the core duties of the higher classification.

It is important to remember that in classification cases it is the position and the work assigned that are assessed and classified, not the particular employee. The fact that the grievor's qualifications exceed the work assigned does not justify a reclassification. Further, an employee belief that the inherent value of his or her work is higher than that of others in the same classification will not be a legally relevant factor.

The adjudication of a classification grievance is essentially a factual determination. Classification grievances are inevitably decided on a case-by-case basis, and it is not ordinarily possible to consolidate or combine the hearing of such matters. OPSEU has arbitrated a "test" case classification grievance at MPAC related to the former Drafters' positions. In his decision, the arbitrator wrote:

We might begin by observing that the onus is on the union to establish that the employee has been wrongly classified; and the cases suggest that this burden can be a substantial one, because "in the real world" there will inevitably be some sharing of job functions as between coworkers performing related duties.

Not only is it difficult to describe “work” and keep job descriptions congruent with current work practices, but in any work group there will inevitably be some sharing of duties, regardless of what the job descriptions might say.

Arbitrator MacDowell followed the case law and adopted a very high threshold for classification grievances in MPAC. On the specific evidence before him, he ruled that:

- there was significant overlap between the duties of the two classifications;
- the grievor was not performing all the core duties of the higher classification;
- the grievor did not meet the same level of skill and responsibility of the higher classification; and
- even if the employee from the higher classification is not performing all of the core duties of their position, there is no entitlement of the lower classification to be upgraded.

OPSEU was not successful in this case, and it is quite clear we will not be successful in any classification grievance that does not meet the key criteria laid out above.

Facing discipline? Contact your unit steward FAST

If you are facing discipline in the workplace – or if you even *think* you may – contact your unit steward immediately.

MPAC has fired five OPSEU members this year. It is absolutely imperative to get the union involved in any disciplinary matter as early as possible. That’s the best way to guarantee that your rights are protected to the fullest.

It might even save your job.

In the last round of bargaining, one of the union’s top demands was to get a joint job evaluation process to fix the classification system. If classification issues remain a problem at MPAC, members should consider keeping that demand on the bargaining table in the next round.

Keep in touch!

To ensure a speedy response to your questions, your leadership team has divided up all MPAC offices in the province. If you have a question or a comment, please contact the member responsible for your office. Contact us by e-mail at work or at home, as follows:

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