

IN THE MATTER OF AN ARBITRATION

BETWEEN:

The Municipal Property Assessment Corporation

- and -

OPSEU

(No Vacancy Grievances)

Before:

**William Kaplan
Sole Arbitrator**

Appearances

For the Union:

**Peggy Smith
Eliot Smith
Barristers & Solicitors**

**Anne Lee
Grievance Officer, OPSEU**

For the Employer:

**Douglas Gray
Hicks Morley Hamilton Stewart Storie LLP
Barristers & Solicitors**

**Daniel Fogel
Hicks Morley Hamilton Stewart Storie LLP
Barristers & Solicitors**

This matter proceeded to a hearing in Toronto on July 5, 2004.

Decision

In May 2001, the employer announced a major reorganization. At issue in this case are numerous grievances taking issue with the employer's decision to discontinue certain jobs, followed by the creation of new jobs and the posting of positions. Those grievances proceeded to a process of expedited mediation/arbitration, as agreed to by the parties. Detailed briefs and supporting case law were filed and have been carefully reviewed. It is clear that the task at hand requires a comparison of positions and not people. The positions, and their best case comparators, were set out in the union brief and the list is appended to this award. There was no need to call *viva voce* evidence given the comparison of positions.

On the union's theory of the case, the union would have to prove that the jobs are sufficiently similar for all intents and purposes that they are the same job. Put another way, that there was no reorganization and that there were no material differences between the old job and the new one. Simply put, that there was "no vacancy." That theory was rejected outright by the employer. However, no decision need be made on this point as I am satisfied, having studied the materials advanced by the union, together with the relevant authorities, that the none of the jobs being compared are sufficiently similar. The union's contention, advanced with its strongest comparisons, therefore, cannot, on the facts, be maintained. Moreover, it should be noted that the evidence establishes that the employer acted with a *bona fide* business purpose in its reorganization. Accordingly, all of the no vacancy grievances must be dismissed. The remaining outstanding job competition grievances that have not yet proceeded to a hearing may now be scheduled at a time convenient to the parties.

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No Vacancy Grievances—MPAC
Appendix 1

Ellot, Smith

VACANCY	OLD POSITION
Senior Valuation Analyst PA5	Senior Property Assessor PA4
Case Management Analyst PA5	Senior Property Assessor PA4
Property Inspection Analyst PA3	Neighbourhood Functional Assessor PA3
Land Parcel Unit Clerk AD8	Drafter 2
Municipal Relations Assistant AD8	Senior Assessment Clerk AD10
Quality Assurance Clerk AD8	Senior Assessment Clerk AD 10
Data Verification Clerk AD7	Assessment Clerk AD7
Customer Service Clerk AD7	Assessment Clerk AD7
Customer Service Contact Specialist AD7	Assessment Clerk AD7
Administrative Clerk AD6	Central General Clerk AD 8
Customer Contact Associate AD4	Assessment Clerk AD7
Data Entry Clerk AD3	Assessment Clerk AD7
Central General Clerk AD3	Assessment Clerk AD7

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DATED at Toronto this 13th day of July 2004.



William Kaplan