

# OPS job classifications:

## Ontario can do **better!**



## Joint System Subcommittee (JSSC) Update #3

Updated March 23, 2007

### Questions & Answers on the JSSC, mediation, arbitration and the campaign to change CECBA

#### Q1. What is the Joint System Subcommittee?

The JSSC is a union-management committee whose purpose is to deal with classification grievances from members of the OPSEU bargaining unit in the Ontario Public Service. The JSSC was created in 1999, a few years after the Mike Harris government changed the *Crown Employees Collective Bargaining Act* to make it illegal for an arbitrator to rule on a classification issue.

In its original structure, the JSSC had three union representatives and three employer representatives. Where the parties did not agree on how a particular grievance should be settled, nothing happened and the grievance remained unresolved. This resulted in a massive backlog of grievances that eventually reached 8,132 cases.

The JSSC is covered under Appendices 7, 8, and 34 of the collective agreement. Full details about its workings are available in the OPSEU Q&A of Dec. 20, 2005. This document can be found at <http://www.opseu.org/ops/jssc/updatedec2005.htm>.

#### Q2. How did the JSSC change as a result of the 2005 round of OPS bargaining?

In 2005, OPSEU and the employer agreed to a new process for the JSSC, as follows:

- The employer agreed to pay two OPSEU members for 12 months to work with employer representatives to try to resolve the outstanding grievances.
- The union agreed to a moratorium on new classification grievances.
- The union and the employer agreed to work with a mediator “to assist in expediting consideration of the outstanding disputes and in resolving them.”

#### Q3. What was the outcome of the JSSC mediation process for the outstanding OPS classification grievances?

Between the start of mediation, in late 2005, and October 2006, the union and the employer signed several tentative settlements covering 1,502 grievances. Of these, 139 were to be re-classified; 13 were to receive a “lump-sum” payment but no reclassification; 671 were deemed to be properly classified; and 679 were referred the Joint Working Group (see Q14, below).

In the second half of 2006, the union and the employer had discussions around a further 2,252 grievances. Of these, 236 were to have been re-classified; 201 were to have received a “lump-sum”

payment but no reclassification; 5 were to be deemed to be properly classified; and 1,810 were to be referred to the Joint Working Group (see Q14, below). The tentative Memorandum of Settlement covering these grievances was never signed by the parties.

When talks broke off on Feb. 9, 2007, a total of 4,378 grievances had not been presented at all. Instead, the employer took the position that these grievors should all be deemed “properly classified” without ever being reviewed by the committee. At the same time, in cases where a grievor was to be reclassified, the employer refused to ensure the reclassification of non-grievors who do the same job. Finally, the employer insisted that unless the union accepted all of these conditions as part of a final “umbrella” agreement, none of the individual tentative settlements would take effect. These were terms the union could not agree to.

**THE JSSC MEDIATION PROCESS HAS ENDED WITHOUT REACHING A FINAL SETTLEMENT, AND WITHOUT THE MEDIATOR ISSUING A FINAL REPORT. AS A RESULT MEMBERS’ GRIEVANCES REMAIN OPEN AND UNRESOLVED.**

The chart below summarizes the status of the 8,132 outstanding classification grievances as of Feb. 9, 2007, when the JSSC mediation process broke off.

<b>Overview of the work of the Joint Systems Subcommittee as of Feb. 9, 2007</b>			
	<b>Signed MOS 2005-06</b>	<b>Unsigned MOS (Nov. 7, 2006)</b>	<b>Total</b>
<b>Total Grievances Referred to Mediation</b>			<b>8132</b>
<b>Grievances Addressed in Tentative MOS</b>			
“Properly Classified”	671	5	676
Referred to Joint Working Group	679	1810	2489
Reclassified	139	236	375
Lump Sum Payment	13	201	214
<b>Total – Grievances Addressed</b>	<b>1502</b>	<b>2252</b>	<b>3754</b>
<b>Total – Grievances Not Reviewed</b>			<b>4378</b>

**Q4. Why did the union withdraw from the JSSC process?**

Without an arbitrator involved in the process, the employer was able to use its power to say no at any time. At best, the employer was offering the union 589 “YESes” and 7,543 “NOs.” If OPSEU members had only had 589 valid grievances, this would have been all right. However, thousands of the grievances we put forward were very solid. In the end, we had no moral basis for writing off even one valid grievance, let alone thousands.

**Q5. Why did it take so long before the union decided to withdraw from the process?**

The OPSEU members on the committee put in a lot of hard work and long hours at the JSSC. They recognized that the process was deeply flawed, but without access to arbitration, there was no other alternative to try to have members' valid grievances heard and addressed. The union could not pull out of the process until we were absolutely sure that there was no hope of it working for us.

**Q6. What is the status of the grievances for which tentative settlements were reached?**

During mediation, the employer took the position that all tentative settlements depended on signing a final "umbrella" agreement covering all 8,132 grievances. That agreement was never signed, and the mediator was never able to issue a final report. Therefore, grievances for which a tentative settlement was reached remain unresolved but active.

This includes those grievances for which tentative settlements were actually signed. These settlements covered 1,502 grievances. Of these, 152 would have been re-classified or received a lump-sum payment, and 1,350 would have been deemed to be properly classified or else referred to the Joint Working Group (see Q12). For the 1,350, both of those options would mean, effectively, tearing up their grievances, even though many of them had a strong case for re-classification. In the end, we could not accept those terms. The 1,350 deserve the same consideration as the 152. We believe all grievances must be dealt with on their merits, not as part of a "horse-trading" arrangement.

**Q7. Can't the employer simply reclassify positions covered by the tentative settlements?**

Yes. The employer has the power to reclassify any employee at any time. Where the employer has already agreed that certain individuals should be reclassified – whether in a signed or unsigned tentative settlement – the union believes those individuals should be reclassified. While the union cannot agree to do this at the expense of other grievors, there is nothing stopping the employer from making these classification changes now – or addressing the thousands of other valid classification problems members have identified.

In fact, on March 13, the employer notified OPSEU that it plans to proceed with financial settlements for 152 members who were to be reclassified or receive a lump sum under the tentative settlements that were signed by the parties before October 2006.

All members with outstanding classification grievances should point this out to their managers and ask them to take the steps necessary to ensure the members' positions are reclassified appropriately.

**Q8. If a mediator was involved in the JSSC, why didn't he just issue a ruling when the parties could not agree on a particular grievance?**

A mediator is not an arbitrator. An arbitrator is a judge; a mediator is a helper. The JSSC mediator, Gerry Lee, could not issue decisions on our grievances because it is against the law (see Q1).

**Q9. What happens to my grievance now?**

The status of your grievance is the same as it was before this latest process began. Your grievance is not settled. The union's goal remains the same, namely, to see that all classification grievances are resolved based on their merit.

**Q10. What happens to the JSSC process now?**

The process is suspended indefinitely while the union campaigns for a political solution (see below). In the meantime, OPSEU will be filing a policy grievance over the employer's failure to live up to its obligation to deal fairly with ALL outstanding classification grievances, under Appendix 34 of the collective agreement.

**Q11. What action is the union recommending?**

The JSSC process, created in 1999, is fundamentally flawed. Without the right to send grievances to arbitration, there is no evidence to suggest that the JSSC will suddenly begin working to the satisfaction of OPSEU members. The union is recommending that all members join in our campaign to change the *Crown Employees Collective Bargaining Act* (CECBA) so that arbitrators can once again rule on classification issues.

The union campaign will begin with member education, regional meetings, a postcard campaign, lobbying of MPPs, and injection of this issue into the 2007 provincial election campaign.

**Q12. What changes are required to CECBA?**

A couple of very small changes to Sections 51 and 52 of CECBA would allow arbitrators (once again) to reclassify Crown employees.

**Q13. What is the Joint Working Group (JWG)?**

The Joint Working Group, sometimes called the Job Evaluation Project, is a project outlined in Appendix 34 of the collective agreement to create a new classification system for the entire OPS. This is a separate process from the JSSC. Article 12.b. of the Appendix says that grievances referred to the Joint Working Group "will be considered closed." If the union had agreed to refer grievances to the Joint Working Group, the grievors involved would have lost the possibility of any retroactive pay related to their grievance.

ALL OPSEU positions in the OPS will be eventually be reviewed as part of the Job Evaluation Project – including the positions of ALL members with classification grievances. For more information on the JWG, see <http://www.opseu.org/ops/jobevaluation.htm>.

**Q14. When the new classification system is in place, how will disputes be settled when an employee feels wrongly classified in the new system?**

Under CECBA, if people are wrongly classified under the new system – or if changes in their jobs mean their new classifications become out of date – the only method we will have for settling disputes is the one we have now – and it doesn't work. That is why it is so important to change the law to allow arbitrators to rule on classification grievances.

So, the campaign to change CECBA and restore arbitration matters to ALL OPSEU members in the OPS, not just those with outstanding classification grievances.

### **Q15. Who is making decisions for OPSEU around the JSSC?**

The OPSEU members on the JSSC are Moira Cowan (Local 108) and Lynda Ferguson (Local 629). The JSSC is a sub-committee of the Central Enforcement and Renewal Committee (CERC). The CERC is the OPSEU member leadership team for the Ontario Public Service. Its members are: Eric Morin (chair, Local 635, Ministry of Natural Resources); Kathleen Demareski, (vice-chair, Local 340, Ministry of Finance), Rhéal Delaquis (Local 453, Ministry of the Environment), and Mike Grimaldi (Local 211, Ministry of Labour). CERC and JSSC members have been assisted by these OPSEU staff: Marg Simmons, Job Security Officer; Brian Gould, OPS Supervisor; Pam Doig, Administrator of Local Services; and Randy Robinson, Executive Assistant to President Casselman. Decisions of this group have been made by consensus.

### **Q17. Who can I contact for more information?**

Members may contact:

- **Moira Cowan (member):** 1-800-268-7376 ext. 8210; [mcowan@opseu.org](mailto:mcowan@opseu.org)
- **Lynda Ferguson (member):** 1-800-268-7376 ext. 8215; [lferguson@opseu.org](mailto:lferguson@opseu.org)
- **Marg Simmons (staff lead):** 1-800-268-7376 ext 8643; [msimmons@opseu.org](mailto:msimmons@opseu.org)

For campaign information, members should contact Myles Magner, OPSEU Campaigns Officer, at 1-800-268-7376 ext. 8777 or [mmagner@opseu.org](mailto:mmagner@opseu.org).

### **Q17. How can I help support the campaign to change CECBA?**

Your support, and that of your coworkers, will be crucial to ensuring ALL OPS employees have a way to ensure their jobs are properly classified, and they receive the right pay for the important work they do. Here is how you can help:

- For more information about the JSSC mediation process and updates on the campaign to change CECBA please visit: <http://www.opseu.org/ops/jssc/index.htm>.
- To send an e-mail to your MPP, go to: <http://www.opseu.org/ops/jssc/sendmppemail.htm>.
- To find out about information meetings in your region or to help lobby your MPP, please contact your OPSEU Executive Board Member.
- Pick up a campaign flyer from your OPSEU steward or local president and sign a special postcard to Dalton McGuinty. Flyers and postcards will be available in early April.



*Authorized for Distribution: Leah Casselman, President*