

Crown Employees
**Grievance Settlement
Board**

Suite 600
180 Dundas St. West
Toronto, Ontario M5G 1Z8
Tel. (416) 326-1388
Fax (416) 326-1396

**Commission de
règlement des griefs**
*des employés de la
Couronne*

Bureau 600
180, rue Dundas Ouest
Toronto (Ontario) M5G 1Z8
Tél. : (416) 326-1388
Télééc. : (416) 326-1396



GSB# 2095/02
UNION# 2002-0999-0028

IN THE MATTER OF AN ARBITRATION

Under

THE CROWN EMPLOYEES COLLECTIVE BARGAINING ACT

Before

THE GRIEVANCE SETTLEMENT BOARD

BETWEEN

Ontario Public Service Employees Union
(Union Grievance)

Grievor

- and -

The Crown in Right of Ontario
(Ministry of Public Safety and Security)

Employer

BEFORE

Felicity D. Briggs

Vice-Chair

FOR THE UNION

Scott Andrews, Grievance Officer &
Barry Scanlon, MERC Co-Chair
Ontario Public Service Employees Union

FOR THE EMPLOYER

Linda Elliott
Senior Transition Specialist
Ministry of Public Safety and Security

HEARING

July 11, 2003.

DECISION

In an effort to resolve various grievances the parties signed two Memoranda of Agreement/Settlement on June 16th 2003. The agreements which were entered into without prejudice were prefaced by the following at page 2:

The parties agree to the following settlement of Ministry Union policy grievances in part, Union policy grievances, individual and group grievances, which will be listed and co-signed, regarding Article 31A.15 (Conversions) and Article 6 (Posting and filling of positions) except individual competition grievances, with regard to all Correctional Officer positions at decommissioned/non-decommissioning Institutions. All such grievances filed up to the date of signing of this Agreement are settled by virtue of the Agreement. The parties will list these grievances at Appendix A and will finalize this list no later than August 31, 2003.

Generally speaking, the agreements provide a process for the filling of classified Correctional Officers positions at various individual institutions. Included in Part A: Miscellaneous were the following provisions:

6. For the purpose of unclassified seniority calculation, seniority will be calculated in accordance with Appendix 24 back to the first break in employment which is greater than thirteen (13) weeks.
7. The parties agree that they will request that Felicity Briggs, Vice Chair of the Grievance Settlement Board be seized with resolving any disputes arising from the implementation of this Agreement.

This decision deals with implementation disputes arising from the above agreements.

Appendix 24 of the collective agreement states:

Re: Seniority for unclassified employees within Correctional Institutions

This will confirm our agreement reached during negotiations that unclassified employees employed within Correctional Institutions shall be entitled to have their service counted towards the accumulation of seniority, based upon 1732.75 straight-time hours or 1912 straight-time hours, as applicable, counting as equivalent to one year's service, or pro-rated to the equivalent of less than one year as appropriate. Such seniority may be used, at an institution level only, by such an employee for the purpose of competitions, layoffs, and transfers as provided in the collective agreement.

It was agreed by the parties to put three questions to me for determination. During the course of the hearing the parties agreed to resolve two of the three outstanding issues.

For the purposes of implementation of the above noted agreements, the parties have agreed to the following:

Question # 1

For the purposes of calculating straight-time hours for unclassified employees under Appendix 24 for this agreement the parties have agreed that authorized leaves granted to unclassified employees during their unclassified employment will be treated as follows:

(A) Paid bereavement or paid sick leave: **Credit** paid hours toward unclassified seniority.

(B) Unpaid sick leave:

(i) scheduled shifts: **Credit** number of hours in the scheduled shifts missed due to illness

(ii) other periods: utilize "Leave Formula": "Calculate employee's average weekly hours from the last day the employee worked before going on the

leave going back 13 weeks. **Credit** weekly average over the 13 weeks for each week of leave.”

Medical documentation as per the collective agreement will be required.

- (C) Pregnancy leave, parental leave, military leave, jury duty leave, union leave or WSIB leave: Leave Formula : “Calculate employee’s average weekly hours from the last day the employee worked before going on the leave going back 13 weeks **Credit** weekly average over the 13 weeks for each week of the leave.
- (D) Other authorized leaves such as vacation leave, statutory holiday leave, special leave, leave without pay: **No Credit**, however period on these authorized leaves shall not be considered a break in service.

Question #2

There were two legal strikes in which unclassified employees may have been involved: the first occurring in 1996 for a period of five weeks and the second in 2002 for a period of 54 days. In some cases unclassified employees, due to the luck of the draw, worked almost full time hours for the period of the strike to perform essential services. Other unclassified employees worked very few, if any, hours. The parties have agreed for all purposes of determining straight time hours for unclassified employees immediately prior to and after each strike will all receive forty (40) hours per week for the periods from February 26, 1996 until March 31, 1996 and from March 11, 2002 until May 5, 2002 regardless of the actual hours they worked during that period.

Question #3

The parties failed to resolve the third question. The following example was provided:

An individual becomes an unclassified employee for one year (period A) and then becomes a classified employee for three years (period B). The individual resigns as a classified employee but immediately rejoins the OPS as an unclassified employee and remains an unclassified employee at an institution for four years to date (period C).

For the purposes of implementation of this agreement does period A and B constitute part of the individual's unclassified seniority in accordance with the terms of Appendix 24?

In my view, the answer to this question must be - no. None of the seniority accumulated during the employee's earlier unclassified or classified service would be taken into account because the employee **resigned** from their employment after period B.

Although I appreciate that it might be frustrating to some employees to move seamlessly from period B to period C in the above example, there are contractual consequences to tendering a resignation.

Dated at Toronto this 17th day of July, 2003.



Felicity D. Briggs

Vice-Chair