

## The State Contract Series

For use in understanding the state employees' contract



# Article 19 -- Working out of Class

## PURPOSE OF A WOC GRIEVANCE

The State of Ohio Classification Plan is built on pay ranges assigned to classifications according to duties performed. The objective of the current working-out-of-class language is to have employees work within their appropriate classifications. Under the current language, the union has the right to arbitrate those grievances which involve a higher classification (for at least 20% of the time) and also, to arbitrate grievances when employees perform duties in a classification with a lower pay range than that of the employee's current classification (for at least 80% of the time). Under certain circumstances, the parties may agree to reclassify an employee. However, reclassification is the exception, rather than the rule. While recognizing that some jobs have changed over time, the parties also agree to not use Article 19 to pre-position employees.

## Criteria for Filing

In order to file a WOC grievance the following criteria must be met:

--Duties outside of the classification must have been performed for four or more working days.

--Duties outside of the classification must meet the classification concept of the other classification and constitute a substantial portion of duties. Substantial portion is defined as taking 20% or more of the employee's time for higher classifications and 80% for lower classifications. (20% can be interpreted broadly, especially for duties that are not performed every day. For one day it would be one hour

and 36 minutes. For a pay period it would be the equivalent of two days. For a month, it would be the equivalent of four days.)

--The Grievant must be performing the duties at the time of filing. If the duties have stopped, you have received your remedy—a cease and desist. In other words, you cannot go back and seek back pay if the duties have stopped before you file.

## Classification Specifications

The position description (PD) is a managerial document, which can be altered by management. The duties listed in a PD must fall within the language of the classification specifications. The classification specifications are maintained by the Department of Administrative Services and specifically detail the series purpose, the class concept, and the job duties of each classification. The arbitrator makes his decision based on the language in the classification specifications.

The classification specification language can be obtained from the agency, from the DAS web site [www.das@ohio.gov](http://www.das@ohio.gov) at HumanResources/ Compensation/ Classification Specifications(State), or the OCSEA Website [www.ocsea.org](http://www.ocsea.org) at Toolbox.

## Deciding to File a WOC Grievance

The reason you should be considering filing a WOC grievance is that you feel you are performing duties you should not be performing because they are in a different

classification. The BASIC QUESTION is: What duties do you want taken away? That is the remedy you will request in a WOC grievance—to have management cease and desist from having you perform duties you are not being paid to do.

The following are not good reasons for filing a WOC grievance because they are not arguments the Arbitrator will accept to consider his decision:

The volume/amount of work has increased.  
Your performance evaluations are good.  
You feel you deserve a raise or a promotion.  
The duties have changed over time, (but are still in your current classification specification language.)  
Someone in a higher classification is doing some of the same duties as you (but your current class specification language says you can do it.)

Any of the above may be true, but the only argument that prevails is that you are assigned duties identified in the classification specification language outside your classification in a higher classification for at least 20% of your time or in a lower classification for 80% of your time.

Sometimes skills overlap in different levels in a series of classifications. If the duties are in your class specification language it is not considered working out of class—even if someone in a higher classification did the same duties.

To prevail at an arbitration when you are grieving the duties of a lead worker, you must have been assigned those duties by the agency and you must be responsible for assigning and monitoring the work of lower-level employees.

**\*\*\*You should not be filing a WOC grievance until you have obtained a copy of the class specification language for both positions and compared the duties listed.**

The OCSEA Officer of General Counsel will be glad to advise members on potential grievances.

## What Are The Steps in the WOC Grievance Procedure?

### Step 1—Filing the Grievance

If the Union or an employee believes that substantial duties have been assigned outside an employee's classification specification, a grievance may be filed with the Agency Director or designee after these duties have been performed for four or more days. **There is a special grievance form that must be used when filing a WOC grievance. Use of any other form has been deemed an improper filing of the grievance by the arbitrator.** Forms are available from chapter leadership, the OCSEA website, or from the OCSEA Office of General Counsel. WOC forms are also in the grievance guide.

**WOC grievances cannot be filed on behalf of a group of employees; they must be filed individually. Class action WOC's are denied with a procedural error.**

**The grievant must identify one classification to which the duties being performed belong. The grievant may not grieve a number of different classifications. WOC's identifying more than one classification are denied with a procedural error.**

On the grievance form list the duties you are performing from the higher classification. Do not list all the duties you perform. Do not just list all the duties from the higher/lower classification. Be specific about what duties you are performing from the classification specification language of the higher/lower classification.

\*\*\*The grievant does not need to send a copy of the grievance to OCSEA at this time.

The Agency has 35 days to respond to the WOC grievance. A written copy of the agency's decision is to be provided to the grievant and to OCSEA. At this point the Agency can find that you are working out of class and provide a remedy immediately. That remedy could be a cease and desist with a monetary back pay award or it could be a settlement to reclassify. The decision is entirely up to the Agency. Any settlement to reclassify must be signed by the Office of Collective Bargaining and the OCSEA Office

of General Counsel. (The Office of General Counsel will not sign the settlement agreement until they have checked with the chapter and the Staff Representative, to ensure that the reclassification does not harm another member.) An extension of the time limits at this step can be mutually agreed to, but the extension must be in writing.

A denial notification will also include information about why the agency did not feel you were working out of class. This information will help you plan for your grievance hearing.

### **Step 2—Appealing the Grievance**

If the WOC grievance has not been resolved through the first step of the procedure, the WOC grievance may be appealed to arbitration within 20 days of the Step 1 answer. If the Agency does not respond within the 35 days the grievant may automatically submit an appeal.

Notice of the request to appeal to arbitration should be sent to the OCSEA Office of General Counsel, Working-Out-Of-Class, 390 Worthington Rd., Suite A, Westerville Ohio 43082-8331.

**The grievance form must be attached to a Working-Out-Of-Class “Appeal to Arbitration” Form. This is the only form to be used to appeal a WOC grievance. Use of an “Appeal and Preparation Sheet” may be considered an improper filing.**

The OCSEA Office of General Counsel will make the demand for arbitration. It is important that you send notice of receipt of the first step answer with the appeal form, along with any supporting documents.

You will receive a letter notifying you that we have forwarded your grievance on for arbitration. A copy of that letter will be sent to your chapter president and your Staff Representative.

\*\*\*Unless the Office of General Counsel receives the appeal form, no request for arbitration can be made.

### **How the grievance proceeds**

All working-out-class grievances are reviewed by the advocate from the OCSEA Office of General Counsel to ensure that the 20% or more standard and four day standard can be demonstrated before an arbitrator. The advocate will contact the grievant to discuss the merits of the WOC grievance and secure the evidence needed to prove the merits of the case.

If the advocate determines that the grievance has merit and there is evidence to support the grievant’s position, the WOC grievance will then be scheduled for arbitration. Arbitration dates are scheduled mutually by the arbitrator, the OCB designee, and the OCSEA advocate at least two or three months in advance. At least two hearing dates are scheduled each month. The schedules are also impacted by the availability of the management’s advocates. (A general rule of thumb is that the arbitration will not be scheduled any sooner than 3 months from the time you first file the grievance.) Approximately two weeks before the hearing date, you will receive a hearing notice letter in the mail, telling you the date and time to appear.

If it is determined that the grievance is without merit and should be withdrawn, the advocate will contact the grievant via telephone regarding that determination and a follow-up letter will be sent. A copy of that letter will also go to the Chapter President and the Staff Representative.

### **Step 3—The Grievance Hearing**

The WOC hearing is held before an impartial arbitrator and lasts for approximately one hour. Present at the hearing shall be a union representative (advocate) from the Office of General Counsel and the grievant (s) whose duties are being challenged, the management representative or agency advocate, any witnesses management may choose to use (e.g. your supervisor) and an agency designee from the Office of Collective Bargaining. Although a WOC grievance must be filed individually, a group of grievants in the exact same situation may have their hearing at the same time. (In a case of multiple grievants, we usually ask that two grievants be present.)

Both the union and management advocates give a short opening statement. Then the arbitrator discusses the nature of the work you perform and asks you to identify those duties you think are in the higher classification. Then management will discuss why they think you are not working out of class. The hearing is low-key and conversational. Both sides can ask and answer questions back and forth. After the arbitrator feels he has the information he needs, he will explain his reasoning using the specific language from the classification specification language. He then writes out his decision and provides copies to all parties.

### **What type of award is possible?**

The remedy requested at a WOC grievance is a cease and desist order and back pay. If the arbitrator finds that you are doing duties in the higher classification for at least 20% of your time (or in a lower classification for 80% of your time) he will order management to "cease and desist." That is, management may no longer assign those duties to you.

The monetary award for back pay is computed for the four days prior to the filing of the grievance up to the date of the hearing. The applicable step shall be the step which is approximately four percent higher than the current step rate of the employee. (If a step does not exist in the higher pay range that guarantees the employee approximately a four percent increase, the employee will be paid based on the last step of the higher pay range. The placement into the last step does not necessarily guarantee an approximately four percent increase.) When lower classification duties are being performed, there is no monetary award.

Sometimes, when a grievance is upheld by the arbitrator, management will ask for a

30-day stay. That gives them time to decide how to implement the cease and desist order. The union and the grievant must agree to the 30-day stay. The grievant is paid at the higher rate until the Agency makes its final decision. Sometimes the 30-day stay leads to a reclassification; other times the cease and desist is implemented.

If a settlement agreement with reclassification is negotiated, the agreement must be signed by both the Office of Collective Bargaining and OCSEA Office of General Counsel. The agreement will not be signed until the chapter President and the Staff Representative have made sure that the reclassification does not harm another union member.

**\*\*\*The arbitrator does not have the authority to reclassify the employee.**

### **Holding Classifications**

Employees in holding classifications can file Article 19 grievances when the duties performed are in a higher classification. The documents considered in such a case are:

- Employee's current position description
- Classification specification in effect at the time (non-holding equivalent class)
- Classification specification containing higher duties.

### **Reference**

Article 17,19,19.01,25.08

Printed In-House by  
OCSEA



Revised 04/09

**OCSEA**  
**AFSCME LOCAL 11 AFL-CIO**