



# **WORKING-OUT-OF- CLASSIFICATION INFORMATION PACKET**

2006-2009 CONTRACT LANGUAGE

# **WORKING-OUT-OF-CLASSIFICATION** **GRIEVANCES**

The Office of General Counsel receives many different questions from the membership regarding Working-Out-of-Classification (WOC) grievances. We hope this hand out will give a thorough explanation of the Article 19 contract language, WOC procedure and forms pertaining to WOC grievances. Included in this packet are copies of the WOC education fact sheet, grievance form, timeline extension form, and appeal to arbitration form.

## **Purpose of a WOC grievance**

The objective of the current working-out-of-class (WOC) language is to have employees work within their appropriate classifications and to secure employment in case of an abolishment.

Under the current language, the union has the right not only to arbitrate those grievances which involve a higher paying classification, but also to arbitrate grievances when employees perform duties in a classification with a lower pay range, , than that of an employee's current classification (at least 80% of the time). The arbitrator has the authority to issue a cease and desist order if the agency director fails to do so. Under certain circumstances, the parties may agree to reclassify an employee.

While recognizing that some jobs have changed over time, the parties also agree not to use Article 19 to pre-position employees.

## **Position Descriptions v. Classification Specifications**

The position description (PD) is a managerial document which can be altered by management. The duties listed in the PD must fall within the parameters of the classification specifications. The classification specifications are maintained by the Department of Administrative Services and specifically detail the purpose/function of each classification, as well as providing examples of the types of duties which should be performed by an individual in a particular classification.

## **20% v. 80%**

Under the current language of the contract, duties grieved in a WOC must be performed 20% or more of an employee's work time for classifications in a higher classification or 80% for the duties in a lower classification. The grievant must show that he/she performs duties outside his/her classification for the stated percentages in order to prevail in arbitration.

### **Initial Step – Filing grievance**

If an employee or the Union (local chapter) believes he/she is performing duties outside his/her classification, a WOC grievance should be filed after the grievant has performed those duties for 4 days. The grievance should be filed with the Agency Designee. The Designee is different for each agency. The Human Resources (HR) Dept. should be contacted regarding the Designee for a particular agency. The agency has 35 days to respond to the grievance. If the agency cannot provide a decision within the 35-day time line, the Agency Director or designee may request an extension. The extension must be signed by both the agency designee and Union representative.

If no extension is requested and the 35 day period has ended, the grievance needs to be appealed to the Office of General Counsel.

If the agency determines that an employee is performing duties within the classification concept and classification specification of a higher classification, 20% or more of the employee's time, for at least four working days, management may order that the duties be discontinued. This is known as issuing a *cease and desist order*. If management does not issue a cease and desist order the grievance should be forwarded to the Office of General Counsel.

Management may offer a reclassification of the employee. A reclassification settlement agreement requires the signature of the advocate or designee from the Office of General Counsel. A monetary award shall be made if duties are being performed in a classification which carries a higher pay range only, provided that the duties have been performed as previously specified i.e. 20% or more of the employee's time and for a period of four or more working days. The amount of the monetary award will be the difference between the employee's regular hourly rate of pay, and the hourly rate of pay at the applicable step of the higher pay range for the new classification. The applicable step shall

be the step in the higher pay range which is approximately four percent (4%) 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 (4%) increase, the employee will be placed in the last step of the higher pay range. The placement into the last step does not necessarily guarantee a four percent (4%) increase. **NOTE: A reclass is the exception, not the rule. Additionally, reclassifications must be signed by the advocate or designated person in the Office of General Counsel.**

## Appeal

Grievances which have not been settled under the procedure just described may be appealed to arbitration by the Union. "Union" refers to the OCSEA Office of General Counsel. It is only necessary for the chapter to appeal the WOC grievance to the OCSEA Office of General Counsel. The appeal should be made within 20 days of the end of the 35 day waiting period (unless an extension has been granted), or when a response to the grievance is issued, whichever is earlier. A request to appeal to arbitration should be sent to the OCSEA Office of General Counsel, Attention: Working-Out-of-Class, 390 Worthington Rd., #A, Westerville OH 43082-8331. You must send a legible copy of the grievance form. 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. Use of an "Appeal And Preparation Sheet" may be considered an improper filing.

The grievance must be detailed and refer to the specific classification to which the duties being performed belong. The grievant cannot grieve a number of different classifications within one single grievance. WOC grievances cannot be filed on behalf of a group of employees, they must be filed individually.

The WOC appeal should include:

1. list and description of all the duties the employee is performing which are believed to be not appropriate to the classification to which the employee is currently assigned
2. describe the amount of time spent performing duties
3. reference to the classification specification to which these duties belong

4. Position description (P.D.): if there is a dispute concerning the P.D., specifically state the discrepancies and send to OCSEA Office of General Counsel with grievance paperwork.
5. legible copy of the original grievance form
6. copy of management's response

The grievant will receive a letter from the Office of General Counsel confirming the WOC was received at OCSEA Central Office and instructing the grievant to contact the advocate to discuss the grievance. (Sample of letter included in packet.)

All Working-Out-of-Classification grievances are reviewed by an OCSEA Office of General Counsel advocate 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 it is determined that the grievance is without merit and should be withdrawn, it will be reviewed by the Office of General Counsel. The advocate will then contact the grievant via telephone and a follow-up letter will be sent. A copy of that letter will also go to the Chapter Representative and the Staff Representative. The letter will detail the information discussed in the phone conversation, along with any additional information necessary, and will be accompanied by a withdrawal form. A return date for the signed withdrawal form will be stated in the letter. If the form is not returned or postmarked by the stated date, a withdrawal form will be completed and signed by the advocate and placed in the file. The grievance will be closed and filed. OCB will be given notice of the withdrawal. (Sample of letter included in packet)

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. Only grievances which involve the employee being required to perform duties of a classification which carries a higher pay range will be forwarded to arbitration.

## **Arbitration – What happens?**

The WOC hearing is held before an impartial arbitrator and lasts for approximately one hour. The arbitrator's fees are equally paid by both parties to ensure neutrality. Present at the arbitration are an advocate from the Office of General Counsel, the grievant or the employee whose duties are being challenged, a management representative and agency designee who will present their arguments to the arbitrator. The Union will present its position first. The

agency will follow with its opening statement. The arbitrator will then begin questioning the grievant about his/her duties. He will also discuss the grievant's duties with the grievant's supervisor, or representative from management. The arbitrator will issue a binding bench decision at the conclusion of the hearing, which will identify if the employee was working out of classification and for what period of time. If the arbitrator determines that the employee is performing duties outside of the grievant's classification, the arbitrator will order the Employer to immediately discontinue assigning the duties.

This proceeding is non-adversarial, cordial and is not meant to a personal attack upon either the grievant or his/her employer. **Note: The employee can only receive a cease and desist order, and back pay. THE ARBITRATOR DOES NOT HAVE THE AUTHORITY TO RECLASSIFY AN EMPLOYEE. If management offers a reclassification at the time of the arbitration the Union must investigate the reclassification to insure that it is in compliance with the contract.**

## **Holding Classes**

Grievances may be filed and processed for those alleged duties performed by an individual in a holding classification which are contained in a classification which carries a higher pay range than the employee's current classification. At no time will an employee in a holding classification suffer a loss of their rights and benefits.

## **Pre-positioning**

The changes in an employee's duties should be a natural progression and change over time. There are many times when the Union feels that pre-positioning has occurred. However, to argue that an employee was pre-positioned the Union must have proof.)

## WOC Appeal Review Procedure

- When a WOC is appealed to OGC, the demand has been made, and folder created, the WOC advocate will assess the grievant's duties comparing them to the classification specifications of his/her current class to those of the grieved class.
- If the advocate determines that the grievance is without merit and should be withdrawn, it will be reviewed by the OGC. The advocate will then contact the grievant via telephone and a follow-up letter will be sent. A copy of that letter will also go to the Chapter Representative and the Staff Representative. The letter will detail the information discussed in the phone conversation, along with any additional information necessary, and will be accompanied by a withdrawal form. A return date for the signed withdrawal form will be stated in the letter.
- If the form is not returned or postmarked by the stated date, a withdrawal form will be completed and signed by the advocate and placed in the file. The grievance will be closed and filed. OCB will be given notice of the withdrawal.

# WORKING-OUT-OF-CLASSIFICATION TIME LINE EXTENSION

The parties do mutually agree to extend the time lines of Working-Out of-Classification grievance #A \_\_\_\_\_

The time lines are extended at \_\_\_\_\_ level until

\_\_\_\_\_.

Date

\_\_\_\_\_  
Union Representative

\_\_\_\_\_  
Date

\_\_\_\_\_  
Management Representative

\_\_\_\_\_  
Date

## **WOC GRIEVANCE WITHDRAWAL FORM**

I, \_\_\_\_\_ hereby authorize OCSEA AFSCME, Local  
11, AFL-CIO to withdraw WOC grievance No. \_\_\_\_\_  
from arbitration. Grievance Number

Signed:

\_\_\_\_\_  
Grievant

\_\_\_\_\_  
Date

\_\_\_\_\_  
OCSEA Representative

\_\_\_\_\_  
Date