

Glossary of Terms



arbitrary and capricious

A decision based on random or biased selection rather than on reason.

arbitration

A hearing on a dispute between the parties regarding the interpretation, application, or alleged violation of the collective bargaining agreement, which is held before a neutral third party

arbitrator

The neutral third party who hears the evidence in an arbitration hearing. The context in which the arbitrator makes the decision is described in 25.03, 25.05, 25.10 and 25.11 of the contract. The union and the state mutually agree to three panels of arbitrators – main, expedited and abuse. The union and state share equally the expenses of the arbitration.

burden of proof

The amount of proof which a party must demonstrate in order to successfully convince the arbitrator that a grievance is meritorious. Types of burdens of proof include 1) by a preponderance of the evidence, 2) by clear and convincing evidence, and 3) beyond a reasonable doubt.

collective bargaining

To negotiate in good faith at reasonable times with respect to wages, hours and terms of employment.

confidential employee

An exempt employee who deals with information to be used by the Employer in the collective bargaining process or who works in a close continuing relationship with persons directly participating in collective bargaining on behalf of the employer. Confidential employees are excluded from belonging to a union.

disparate treatment

Two individuals who are in the same situation, with a similar history, are treated unequally.

double jeopardy

In arbitration this is the prohibition against being disciplined twice for the same infraction, misconduct or transaction. The prohibition against double jeopardy means that the arbitrator may rule for the grievant where he/she determines that the employer has disciplined an employee more than once for the same offense. This principle stems from the reference to double jeopardy included in the constitution of the United States. (For example, where an employee is charged with excessive absenteeism, the employer may not give a one-day suspension and then after serving suspension remove the employee for the same occurrence of absenteeism that was the basis for the suspension.) This does not conflict with progressive discipline.

exclusive representative

The employee organization certified or recognized by SERB as representing a particular group of employees.

expedited arbitration

An arbitration in which the procedure of the hearing is shorter than a regular arbitration. Under the OCSEA state contract, each side is allowed only three witnesses. This procedure is primarily used for patient/client cases although the union and management may mutually agree to hear other matters in this fashion.

fiduciary employee

An exempt employee in a position of trust -- who usually handles financial matters on behalf of the employer.

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final and binding

Refers to a decision from which there is no further appeal and which the parties are required to follow unless application is made by any party to vacate the award pursuant to Ohio Revised Code 2711.10.

just cause

A standard used in discipline which requires the employer to not only prove guilt but also show that due process has been followed.

mediation

Intervention by a neutral third party in an attempt to resolve a dispute between two conflicting parties. The settlement reached is voluntary. Under the state contract's grievance mediation procedure, if a voluntary settlement is not reached, the grievance can proceed to arbitration.

National Labor Relations Board (NLRB)

Federal government body which administers the National Labor Relations Act for the private sector, not public. It has two principal functions: prevent and remedy unfair labor practices by the union or the employer and to conduct secret ballot elections to determine whether employees want to be represented by a union for collective bargaining.

non-traditional arbitration

An arbitration in which the procedure of the hearing is shorter than a regular arbitration. Under the OCSEA state contract, each side is allowed only one witness. This procedure is primarily used for suspensions, although the union and management may mutually agree to hear other matters in this fashion.

past practice

A repeated action by the parties that by its repeated use becomes an implied part of the collective bargaining agreement. To be binding, a practice must 1) exist for a reasonably long time, 2) occur repeatedly, 3) be clear and consistent, 4) be known to both management and the union, and 5) be accepted by both management and the union.

precedent

An action or decision that can be used as a

rule for future determinations in similar situations.

procedural defect

Not properly processing the grievance by not following the guidelines set forth in the collective bargaining agreement. Either management or labor can create procedural defects in processing grievances. Generally, management makes procedural errors by not dealing with discipline in a timely fashion or by not providing information, and labor, by filing grievances improperly or processing grievances in an untimely manner.

promotion

A movement to a position in a higher pay range. Employees under the State Contract who are promoted shall be placed in a step that guarantees them at least an increase of approximately four percent.

rebuttable presumption

An assumption (or belief) made by the employer that can be refuted (or challenged) by the employee with evidence to prove the assumption to be incorrect.

State Employment Relations Board (SERB)

A body that oversees the implementation and application of the Ohio public employee collective bargaining law. The Board has three members appointed by the governor. It is responsible for conducting representation elections and ruling on unfair labor practices.

stipulation

In arbitration, typically refers to agreement between the parties not to contest certain facts.

substantive arbitrability

An arbitration dealing with merits or facts involved in a dispute.

supervisor

Any individual who has the authority, in the interest of the public employer, to discipline, promote, transfer, lay off, to responsibly direct, to adjust grievances for employees.

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timeliness

Usually refers to the question of whether a grievance was filed or a duty required by the contract was acted upon within the appropriate time limits.

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Membership Involvement

As a steward, you will soon learn that certain concerns are shared by many members. When that comes about, to supplement the effect of a grievance and/or to add to a health and safety complaint, etc., it makes sense to get members together to determine a collective action to deal with a problem.

Working with a group and solving problems as a group shows management that you are not the only one who cares about the contract. It keeps you from being isolated or thought of as the troublemaker. Finally, when management has experienced effective collective action -- even if it's only signing a petition -- you will find your grievances get solved earlier and more to everyone's satisfaction.

Because members have to DO something in order to be successful, participation also indicates how important resolution of a problem is to the members. The cardinal rule is if people don't participate -- for whatever reason they come up with -- it is not important to them. If the members don't want it, you as a steward can go on to other things.

Getting it together

When you have found many employees with the same type of problem, it makes sense for you to call an informal meeting (on non-work time) to discuss the concern and how it may be resolved. Before the meeting, make sure you have talked -- or someone else has talked -- with each individual so you have an idea of the specific problem and that each person coming has some idea of what the solution might be and some idea of how to get the problem solved -- petition, wearing buttons, having a meeting with the supervisor,

etc. This kind of preparation is necessary so that the group can decide:

- *what the main components of the problem are*
- *how the problem could be resolved*
- *what a strategy or strategies are*
- *who is going to do specific tasks to make it happen*

Progress on specific tasks should be discussed at subsequent meetings. Members are accountable to each other for accomplishing their tasks.

Selecting a strategy

Select a strategy that:

1. Everyone -- or the majority -- feels comfortable with and will do.
2. Will be effective -- you and your members know the strength and weakness of your management. Use that knowledge to your benefit!
3. Is fun. Because there are no set strategies, use your creativity. For example, employees could bring in a birthday cake to "celebrate" their supervisor's inaction on an issue. Everybody gets a treat and the supervisor gets the point.

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4. Begin with small goals/tasks and build to larger ones.

It is inherent in the process of selecting a strategy that people really begin to narrow what it is they want. Further, in the process of pursuing an issue people become realistic about what can or cannot be achieved. If your group has pursued an issue and needs help -- ask for it! Perhaps people in other departments or agencies or other organizations have the same interest.

When can I talk to the members?

Your right to involve members and act collectively is protected by the collective

bargaining law. However, talking with people should be done on breaks, lunch or after work -- not during work.

BUILD! BUILD! BUILD!

Be patient, building membership support is a new idea to most people and it will take time to take hold. However, people will soon learn their concerns are dealt with more effectively by working together. It is of utmost importance to constantly communicate with everyone about progress. This builds solidarity -- no one feels left out.

Finally -- delegate tasks. When people put effort in their work, they appreciate the outcome much more!

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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 at HumanResources/ Compensation/ Classification Specifications(State), or the OCSEA Website 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

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Overtime

What is overtime?

Time in active pay status over 40 hours in a work week is overtime. A workweek consists of 7 consecutive 24 hour periods. It begins and ends on the same time of each work week. Article 13.01 defines a workweek as beginning on 12:01 a.m. Sunday and ending at 12:00 midnight the following Saturday. In order to receive overtime, a bargaining unit member must be in active pay status, which in Article 13 means eligible to receive pay and includes, but is not limited to, vacation and personal leave. (Sick leave, any leave used in lieu of sick leave and cost savings days for full time employees in Bargaining Units 6, 7, 9, 13 and 14 are not considered active pay status for overtime purposes.) Payment is at the rate of one and one half (1 1/2) times the regular rate of pay. Payment at the overtime rate can be made in compensatory time or money at the employee's choice.

Overtime must be approved by the supervisor. That is, a person cannot work overtime and expect to be paid if it is not first approved and/or assigned by the supervisor. (See Arbitration #146.) This is different than the federal law which allows a person to be paid if management is aware or should have been aware the employer is working overtime, regardless of whether management approves the overtime.

What is stand by pay?

A person is on standby when conditions are so restrictive that a bargaining unit member can't use time for their own personal use and is required to accept work when called to return to work. If a bargaining unit member is truly on standby pay, he/she can be disciplined if he/she doesn't respond. The pay is given because the employee is unable to use his/her time away from work to his/her own benefit. (For specific standards, see Arbitrations #100, #92 and #464.)

What is emergency paid leave?

The 2006 Collective Bargaining Agreement Article 13.15 defines 2 types of emergencies:

- 1) Weather Emergency – Weather emergency under 13.15 must be called by the Director of the Department of Public Safety. A declaration by the county sheriff that a level 3 emergency exists does NOT make it an emergency for the purpose of Article 13.15 of the Collective Bargaining Agreement.
- 2) Other than Weather Emergency may be called by the Agency Director.

However, under some circumstances, employees have received emergency pay if management acts as though an emergency is in effect (Arbitration #275). There have also been events, where even though management has said there was an emergency, arbitrators have not awarded emergency pay.

Arbitrator Rivera in Arbitration #299 further supports Arbitrator Graham's assertion in prior cases. She found for the employees expecting premium pay because the person in authority, a lieutenant in corrections in this case, said it was an emergency and ordered the employees to respond to the situation as if it was an emergency. (However, Arbitrator Rivera found escapes in a correction facility to be a normal and reasonably foreseeable occurrence.)

Employees directed to work during a weather or other than weather emergency will receive an \$8.00/hour stipend. The stipend provides an hourly bonus for all hours worked during a declared emergency. Also, the stipend will be figured into the hourly rate when computing the overtime rate for overtime hours worked during the 40-hour work week in which the emergency occurred.

Essential employees must work in emergency circumstances. Who is essential is determined by management. Essential

employees will be provided with an explanation and a card for use during a weather emergency. Further, any essential employee ticketed for being on the roadway during an emergency can expect assistance from the Office of Collective Bargaining when they present the documentation and request for assistance.

What is call back pay?

When an employee is called to return to work outside his/her schedule, the employee receives call back pay at a minimum of four hours of straight time or actual hours of overtime, whichever is greater. Under the 1994 fact finder's recommendation, if call-back abuts an employee's regular shift, there is **NO** call-back pay. However, note special provisions for ODOT. There is a minimum ½ hour at the overtime rate for work abutting the shift on snow and ice removal in ODOT. Call back is different from standby because the employee is not expected to be necessarily available for the call. Work performed at an employee's home is not considered a call back.

How is overtime distributed?

Many agencies addressed overtime in Appendix Q – Agency Specific Agreements. Also, review Agency overtime policy.

Under the contract, there is both voluntary and mandatory overtime.

Voluntary overtime is ascertained by a quarterly canvass. Volunteers are then put on a roster on a seniority basis. This roster should be posted. Overtime is then equalized among those who normally do the work. Who normally does the work is often a source of dispute between the state and the union. To resolve this dispute, the classification specification into which the duties fall determine the person(s) who does the work. That can sometimes be different than the person who has "normally" done the work. Nonetheless, the classification specification controls. Agency or local agreements may

further define which persons are eligible. *[In ODOT, it is the duties as defined in the classification specification and/or the position description.]*

Absent an agency or local agreement on overtime, the employer may rotate mandatory overtime among the bottom half of the seniority roster. Good faith attempts will be made to avoid the mandation of the same individual two days in a row.

Remember under Article 1.05, supervisors can be used to avoid mandatory overtime.

Language regarding agency or local overtime agreements gives the parties the flexibility to work out unique problems of that agency. These agreements should be well thought out and thoroughly discussed to prevent future grievances. The state has also tried to use these agreements to redefine the contract -- these agreements should be drafted to reflect a balance of operational need and fairness to the employees. Otherwise, the contract may be violated.

NOTE: Bargaining Unit 4 has an overtime agreement in Appendix P for the Ohio Veterans Home and Mental Retardation and Developmental Disabilities.

Overtime and setting of work schedule

There have been several arbitrations on changing work schedules to avoid the payment of overtime. Arbitration #32 reaffirms that management cannot change work schedules to avoid the payment of overtime.

Arbitration #169 decision defined the standard further. The arbitrator held that in order to be a clear violation of the contract, the rescheduling must be shown to be rescheduling **SOLELY** to avoid overtime. The contract includes this language. Arbitration #303 confirms management's flexibility to change work schedules. In evaluating grievances of this type, address the following questions:

1. What are management's stated reasons for changing scheduled hours of work?

2. In what ways do the effects of management's decisions to change work schedules NOT serve the operational needs of management? Can the same work product be performed under the prior schedule?
3. In what ways is the new schedule inefficient?
4. Has any member of management ever made statements which can be construed to indicate that management's decision to change scheduled hours of work was to avoid overtime payment? Do we have information that the changed schedule is in direct response to budget limitations? Work schedules, also, cannot be changed to avoid holiday pay. (See Arbitration #93.) The employer may direct an employee not to report to work on the holiday, but not to avoid holiday premium pay.

Flex time

The language on flex time is permissive. It is best dealt with through labor management and/or internal organizing. This language does not mandate that flex time policies be put in place or changed. Note however there is a new flex time policy issue which sets forth managements position on flex time.

Part-time employees

Under the state contract, the part-time employees' schedules, showing days and numbering hours, will be posted.

NOTE: This leaflet is for explanatory purposes only and does not reflect an official intent statement by the union.

References

Article 13; 13.01; 13.15; 1.05
Arbitration 32; 92; 100; 146; 169; 275; 299;
303; 464

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ODOT Agency Specific Agreement



Reporting In

The current reporting-in language specifies the number of miles of travel that may be required to reach a report-in location. Specifically, the report-in location for ODOT field employees shall be the particular project to which they are assigned or thirty (30), miles from the employees residence whichever is less. This will be the case even when employees are on temporary working assignment to construction.

Field employees for purposes of this Section will include Project Inspectors, Highway Technician 3's and 4's and other construction personnel assigned to construction projects who do not have the district office as a normal report-in location.

Highway Technicians 2's who are assigned to a construction project which is farther from home than their normal report-in location, shall be compensated for any additional travel time and/or mileage incurred.

This language supersedes all memoranda of understanding, amendments, letters of intent, or any other mutually agreed to provisions.

If employees live outside the District to which they are attached, the calculation of the above mileage and additional travel time will not start until they reach the District line.

Overtime Policy

In the prior agreements, as in this tentative agreement, Article 13.07 gives agency labor management teams the authority to negotiate agency specific overtime agreements, including where shifts are used. Also, the Highway Technicians overtime process is included in the contract.

Who Gets the Time

There has been a long-standing controversy about how to determine which people should be on overtime rosters. The

problems stem from broad classification

specifications which cover more than one agency. The result has been, that in many cases, management has picked its favorites to do the work. To resolve this problem, the language was changed to distribute hours on a rotating basis among those who normally perform the work. Overtime work which contains duties that are common to a classification series shall be equitably distributed among those employees within the appropriate series of the roster. The overtime policy shall not apply to overtime work which is specific to his/her classification/position description, or specialized work assignment, or when he/she is required to finish a specific assignment.

The contract, further provides that if an employee believes that construction assignments were made on the basis of favoritism, the employee can write a letter of complaint to his/her respective deputy director. If the response is not satisfactory, the employee can write a letter to the Agency Deputy Director of Labor Relations.

Highway Maintenance Workers/Highway Technicians have preference over all other employees for snow and ice removal overtime. New canvass language provides that Highway Maintenance Workers/Highway Technicians will be placed on the snow and ice removal roster first.

The current contract adds certain classifications whose classification specifications requires snow and ice control to the appropriate overtime roster. These employees will be called immediately following Highway Maintenance Workers/Highway Technicians.

There are two auxiliary overtime lists during snow and ice removal for ODOT employees who do not normally perform such work. The first roster is for all other Unit 6 ODOT employees who are qualified to perform such work. Project Inspectors are placed on the list before bargaining unit 6 employees. The second roster will be for all other ODOT

employees who are qualified to perform the work. These auxiliary lists are not grievable, but if there is a substantial improper bypass of an employee overtime opportunity on the list, an employee can write a letter of complaint to the Agency Deputy Director of Labor Relations. The agreement provides that Unit 7 employees have preference over non-Unit 7 in construction.

How Hours are Recorded

The new contract creates a new pilot district-wide electronic overtime roster that must be updated as soon as feasible after each overtime event, no later than each pay period. Also, snow and ice procedures are now a subject for district labor-management committees and, if unresolved, the issue may be submitted to the state-wide labor/management committee for resolution.

Overtime hours will be carried from project to project and assignment to assignment. Overtime opportunities worked outside an employee's position description and/or classification specification shall not be carried back to the employee's regular roster.

To resolve previous problems, if an employee is unavailable for any reason, he/she is charged with the hours refused. If an employee is on any type of leave and wants to be considered for overtime, they must inform the supervisor before they go on leave.

In construction, the State has made a commitment to equalize overtime hours.

Employees will carry back overtime from temporary working assignments.

Note: A bargaining unit member can be disciplined (if there are no extenuating circumstances) if an employee accepts overtime and does not report.

How the Roster is Maintained

Another provision establishes that people are not dropped from overtime rosters after three "no response" contacts. However, each time an employee is called for overtime and he/she is not available, the employee will be charged as if the employee worked the overtime offered.

Under the agreement, to equalize overtime to the greatest extent, newly hired, promoted, demoted or laterally transferred employees will be added to rosters in their new

work location, if they are qualified to do the job, with the highest number of hours plus one additional hour.

The contract eliminates the voluntary overtime canvassing and return from canvass. Employees still have the right to refuse voluntary overtime.

Overtime rosters are revised annually to diminish accumulated hour totals. The employee with the lowest number of hours within a classification series will be reduced to zero, and all other employees within the classification series on the same roster shall be reduced by the same amount of hours.

The agreement also provides that all Highway Maintenance Workers/Highway Technicians will be automatically placed on the appropriate roster for snow and ice control.

Overtime worked as an auxiliary snow and ice driver will not be carried back to the employee's regular roster.

Construction Overtime

In construction, Unit 7 employees have preference over non-Unit 7 employees on the project they are assigned. The new contract gives priority to bargaining unit 7 employees over non-bargaining unit 7 employees within ten miles of their assigned project.

Also, the contract provides that all construction project inspectors will be rolled-back in April of each year on a district-wide basis. The contract requires that ODOT make every reasonable effort to equalize construction overtime and to consider overtime equalization when making construction project assignments. Also, the letter process has been eliminated.

Contacting Employees for Overtime

Employees on an overtime roster must provide a telephone number. Employees are

able to leave a telephone number (other than their residence) where they can be reached.

The Agency will establish a phone log for verification of calls to employees for overtime. When there is a dispute concerning employees being contacted, the phone log will be used for verification.

Grievance Time Frames

The time frame for grieving an overtime violation begins the first day following the posting of the roster in which the alleged violation is first shown. This limits the liability of the Employer.

The contract provides grievance rights to those employees who are required by classification specification to be on a mandatory snow/ice auxiliary list.

Consistent Charged Snow and Ice Overtime Refusals

The contract provides that ODOT employees, whose classification specification requires the operation of heavy motorized equipment in order to remove snow and ice from highways and roadways, are expected to work overtime. Consistent charged refusals to work this "snow & ice" overtime may be grounds for discipline.

It is a condition of employment that Highway Maintenance Workers/Highway Technicians and certain other classifications work "snow & ice" overtime. ODOT has had the right to mandate that these employees work this overtime by inverse seniority since the 1986 Contract, but has rarely used that right. This provision is not new, it is a clarification of a right management has always had. It is important that ODOT employees provide snow and ice control when called upon to do so because it reduces the chances that management will give that work to intermittents or try to contract our snow and ice control work out to private employers.

This language requires that the agency proves consistent refusals have taken place before any discipline process can start, and must allow for extenuating or mitigating circumstances.

The Union filed a statewide grievance on the application of this language by the ODOT Districts. The arbitrator, at step 4, mediated the grievance successfully resulting in guidelines that afford fairness for our members. The agency cannot discipline any employee who works 75% of the snow and ice overtime opportunities. Stated another way, employees must refuse four overtime opportunities and 25% of the opportunities offered, before the agency can consider discipline. And again, the agency must allow for extenuating or mitigating circumstances.

The agency must abide by federal and state law, allowing employees to refuse overtime who possess CDLs who experience and can prove legitimate fatigue that in his/her judgment would make for unsafe operation of snow and ice equipment.

snow and ice overtime refusal should be coded as RL and shall not be included as refusals subject to discipline as long as the amount of leave taken is a minimum of eight (8) hours. These guidelines should be posted and/or made available to all employees covered under the agreement.

Auxiliary Volunteers

Qualified Employees denied opportunity to be placed on snow/ice auxiliary lists may file a grievance to Step 3.

Snow / Ice Operations

District Labor/Management Committees must meet by October 1 of each year to devise Snow/Ice operations shifts. If unable to resolve; issue is taken to Statewide Labor/Management Committee for resolution Employees cannot work in excess of 16 consecutive hours unless prior approval from appropriate management representative is obtained in advance.

Temporary Working Assignments

The temporary working assignment provision allows for bargaining unit members to know what positions are available for transfer. The contract enhances the role of seniority in this process and diminishes management abuse of the transfers. Also, automatic notice of temporary working assignments must be provided to the ODOT District Steward. Also, transferred employees are not limited to a 4% increase and will be placed in the proper step when placed into a classification with a higher pay range.

How Temporary Working Assignments are Made

Prior to the implementation of temporary working assignment a full list of positions to which transferred employees may be assigned shall be posted.

Employees who have been selected by ODOT for a temporary working assignment are canvassed in state seniority for order for the positions on the list, provided that the employees possess the minimum qualifications for the positions.

If a temporary working assignment is complete, the employee may first volunteer or then be assigned to a remaining temporary working assignment on the original list until the employee is needed in his/her original position.

Unit 7 employees on temporary working assignment shall have the right to request in writing to be assigned project work which becomes available prior to the completion of the temporary working assignment. Project Inspectors will be assigned project work prior to other employees to be placed on temporary working assignments unless waived in writing.

County Maintenance Shift Assignments

The contract provides that seniority shall be used when county maintenance shifts, which exceed ten working days, are established by ODOT. Qualified volunteers will be requested and, if there are more volunteers than shift positions, then state seniority will be the determining factor. If the need for volunteers is not met, then inverse seniority will be used to fill the vacant shifts.

Notice

Employees have five (5) days notice of the transfer.

Reporting In

Employees assigned as field employees shall have the field employee report-in location. Field employees are project inspectors or other construction personnel assigned to construction projects who do not have the district office as normal report-in location.

Employees who volunteer for a position that is farther than their normal report-in location shall not have additional travel time counted as hours worked. However those who are required to accept assignments farther than their normal report-in location shall have additional travel time counted as hours worked.

Temporary Working Assignment Protections Maintained

Under the language, those on temporary working assignment have the following protections:

- 1) If an employee works in a higher class, he/she receives the pay of that class.
- 2) No employee temporarily transferred as a temporary working assignment employee shall be transferred for more than 1250 hours unless mutually agreed to by the employee and the Agency Head or designee and ODOT District Steward.
- 3) Any employee on temporary transfer will be asked to work overtime only after all unit 6 employees have been asked.
- 4) Temporary working assignments may not be used to avoid filling permanent vacancies.

Call back

In the 1994 agreement, call back language was modified for employees called in for snow and ice removal. An employee called in for snow and ice removal to work a time period abutting his/her shift will be paid a minimum of one hour at the overtime rate of pay, but all employees may refuse this overtime.

The new contract increases the pay for the time worked that does not abut the regular shift where the employee does not work the full two and a half (2 ½) hours. The new language results in 15 minutes more pay.

Employees scheduled overtime of at least two hours that is cancelled by a contractor or the employer will result in the employee being guaranteed two hours of overtime for showing up.

Limitation to Permanent Relocation

The provision relating to permanent relocation in Article 17.09 does not apply to ODOT employees. However, if it appears that the transfer within a county has not been made for operational need, a grievance may be filed at Step 2 and taken to Step 3.

Allowances

Pay supplements under certain circumstances have been established for aircraft pilots and mechanics. Mechanics have been provided a tool and (where applicable) uniform allowance.

The agreement adds Auto Body Repair Workers to tool allowance and uniforms. Also, the agreement adds machinists and welders to uniform allowance. The uniform allowance is \$150 per year.

Cross Trainings

In each district the employer and the union may agree to cross training programs, but only where the union agrees.

Movement of Highway Technicians

Highway Technicians 1, 2 and 3 who apply for posted Highway Technicians 1 positions will be considered for a lateral transfer before the agency may hire an outside applicant.

A new expedited Highway Technician transfer process allows for movement from county to county and, if approved, from district to district once a year.

Highway Technician Memorandum of Understanding

New contract contains changes to Highway Technician Memorandum of Understanding on training and certifications designed to reward seniority.

A new classification was created, Highway Technician Equipment Specialist (HTES) which will initially be used on special project crews.

The Highway Technician Dispute Resolution Committee will continue to expedite resolution of disputes arising out of the Highway Technician Memorandum of Understanding, with unresolved disputes arbitrated within sixty (60) days.

Automotive Mechanic & Technician Committee

New contract creates Auto Mechanic and Technician Committee that explores funding sources for training for mechanics and review of classification series.

Highway Technician 4 Respiratory Testing

placed on leave without pay or demoted until

New contract protects job security for those HT4's who fail Respirator tests. Former language and arbitration decisions dealt harshly with employees who lost licenses, certifications and qualifications to perform essential functions of a job.

New contract gives employees who fail respirator tests up to ninety (90) days to obtain medical clearance for respirator usage. Failure to obtain medical clearance will result in demotion not discharge.

Safety on Construction Projects

The current contract establishes drug-free safety-sensitive construction work zones, which correspond to similar private sector required zones.

Testing will be in accordance with the rights contained in Appendix M and has been reviewed by the OCSEA legal staff. Testing will be limited to 10%.

Training will be provided for any newly identified construction safety-sensitive personnel.

Probationary Period

New-hires serve a one-year probationary period. This does not apply to current ODOT employees.

Suspension/Disqualification of Operators or CDL Licenses

All employees required to maintain operator's or CDL licenses who are suspended for less than 30 days will be required to utilize appropriate leaves and will receive a 5 day paper suspension with a two year last chance. Those suspended 30 to 120 days will be, at management's discretion,

license is returned and will receive a 10 day suspension and a three year last chance agreement. Upon return of driving privileges, the employee will return to original classification.

Those suspended over 120 days will be terminated. In the prior contract, employees suspended over 30 days would be terminated.

Memorandum of Understanding

New Contract lists all existing, operating MOU's

Non-permanent HT's or HMW

New contract creates new category of

ODOT temporary employees who pay union dues. This provision is designed to limit the use of temporary state workers.

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The State Contract Series

For use in understanding the state employees' contract

Bargaining Unit Work

(This handout deals specifically with the agreement between OCSEA and the State of Ohio.)

What is it?

In 1985, the State Employee Relations Board determined what duties properly belong to a bargaining unit. Certain other classifications with other duties have been added over the years to certain units; such as the IC staff hearing officers and the correctional sergeants/counselors. Specific classifications were excluded often because of their supervisory, managerial, confidential, or fiduciary nature. Positions of fiduciary nature as defined by ORC 124.11 are resolved by formal agreement between the Office of Collective Bargaining and the Executive Director of OCSEA. If no agreement is reached, the dispute will go to an arbitrator for final resolution. Once the status of the position is resolved, a joint petition will be filed with the State Employment Relations Board. SERB will decide disputes between the parties about whether an employee is a supervisor, confidential employee or a managerial employee. (See Arbitration #472.)

Article 1.05 of the contract is a further protection of the union's ownership of bargaining unit work.

However, it should be noted, that while there are duties that are distinctly bargaining unit and duties that belong solely to exempt personnel, there is also a gray area. Some duties are not so neatly divided. As a result, it is important to examine the amount of time being spent on duties in the bargaining unit. These duties need to be done on a regular basis and in a significant amount. It is also important to examine the position description and classification specification of the individuals both in and out of the bargaining unit to ascertain the extent of harm.



Article 1.02 provides that if we believe an existing exempt position (for other than judiciary duties) now performs only bargaining unit duties, we can petition SERB to change the unit to include the position(s). We can do this by filing a petition with or without agreement of OCB. If you come across such circumstances, please contact your assigned OCSEA staff representative.

Further, if bargaining unit duties are unilaterally assigned outside the bargaining unit by the employer, the action may constitute an unfair labor practice in violation of ORC 4117.01(A).

Article 1.05 has two important provisions. The first is that the amount of bargaining unit work that has been done by supervisors shall not increase -- in fact, it should decrease. This concept is extended by language later in the section to include new and revised classifications. To calculate this, the position description, actual work duties and classification duties in effect in July 1989 must be examined. In Arbitration #498, this argument was effectively used to protect work being done by a supervisor after the class modernization study.

The second provision is the delineation of when, in fact, supervisors can do bargaining unit duties. Some of these are logical supervisor tasks like instruction, cases of emergency, and for providing leave for bargaining unit employees. However, there are two situations when management can do bargaining unit work. The first is to avoid mandatory overtime and to release employees for union activities. The second is when the supervisor has some of these duties as part of his/her classification specification. The Union has four successful arbitration cases where the supervisor was doing bargaining unit work not in his/her classification specification. (See Arbitration #156; Arbitration #142, Arbitration #406 and

(Continued)

Arbitration #498.) In each case, the amount of bargaining unit work done by exempt personnel was substantial.

We take the position that 1.05 does not only apply to supervisors doing bargaining unit work, but also, our work being done by other bargaining units, i.e., other unions.

Overtime and bargaining unit work

Overtime opportunities are to be first offered to bargaining unit members before non-bargaining unit members work.

What tools are useful in evaluating a bargaining unit case?

To evaluate a bargaining unit work case, the following information is needed:

- a copy of the involved employees' (in and out of the bargaining unit) position description;
- a copy of the involved employees' classification specification;
- a table of organization -- past and present;
- testimony about the involved people's duties -- how often and under what circumstances do they perform the bargaining unit work in question.

NOTE: This leaflet is for explanatory purposes only and is not an intent statement of the union.

REFERENCES

Article 1.05
ORC 124.11
Arbitration 142; 156; 406; 472; 498

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The State Contract Series

For use in understanding the state employees' contract

Promotions, Lateral Transfers, Permanent Transfers & Permanent Relocations

Posting

Management has the right to determine whether or not to fill a position. Once it determines to fill the position, however, the contract provides that the employer must next determine what type of posting it will use.

Listed below are the three types of postings the employer may use. Each posting will state which type of posting the vacancy is:

- Permanent Transfer Postings -- movement to vacancy within the agency and same classification from one county to another or one institution to another.
- Promotional Postings -- movement to a higher pay range (including lateral transfer applicants and demotions).
- Permanent Relocation Postings -- movement of employee/position to another work location within the same headquarter's county. Relocations do not constitute filling a vacancy

Any type of posting must include an accurate description of the responsibilities of the position and of the skills required to accomplish those responsibilities. Responsibilities and skills can be higher than those of the more general classification specification--according to the Ohio Revised Code--as long as they are relevant to the job. Once the job is posted, the standard is set. The posting must meet the qualifications of the position description. In analyzing whether or not a person is qualified for a position, the posting must be carefully examined.

Posting Period

The posting period is 10 days for permanent transfers and for promotions. For the permanent relocation postings, the posting period is three work days. The postings should be accessible to the bargaining unit. The postings cannot be taken

down to circumvent the agreement.

Thus, the agency can only withdraw the posting because it does not intend to fill the position due to a good business reason, budgetary constraints or a reorganization. If background checks are required for certain positions, management must list it in the posting.



What is a Vacancy?

A "vacancy" is a distinct set of duties that the employer intends to fill. A number of arbitration decisions (See Arbitration #297 and #242) indicate that a vacancy can exist even if a posting is not exhibited, as long as an individual is doing a distinct set of duties. This language does not include those positions identified through mutual agreement between the union and the agency as being subject to reorganization, changes in appointment category (type), or a movement that constitutes a demotion. (The language does, however, make clear that the permanent relocation of an employee through the 17.08 posting procedure does not constitute the filling of a vacancy. This is so because it is simply a redeployment of staff by seniority.) Additionally, the movement of an employee within the same facility does not constitute the filling of a vacancy, even if job duties are changed (if those duties are within the employee's classification specification).

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What is a Promotion?

A "promotion" is the movement of an employee to a posted vacancy in a classification with a higher pay range. A higher pay range is defined as a pay range in which the first or the last step has a higher rate of pay than the first or last step of the pay range to which the applicant is currently assigned. (Moving from a part-time position to a full-time position is not considered a promotion because the rate of pay doesn't change.) If the employer intends to fill the position by a promotion or lateral transfer, it will state on the posting that it is a "promotional posting". Lateral transfers are considered after it is determined that there are no qualified promotion applicants. Then demotion applicants are considered after lateral transfer applicants.

Selection Process for Promotions

This language relates to promotions, lateral transfers and, as a result of 1997 bargaining, demotions as well.

If the position is in a classification which is assigned pay range 27 or lower, selection for promotion is based on seniority, provided the employee possesses and is proficient in the minimum qualifications set forth in the class specification and position description. The employer must select the most senior bidder unless it can show that a junior bidder is "demonstrably superior". Demonstrably superior has been defined by Arbitrator Graham (See Arbitration #382) to mean "substantially better". Specifically Arbitrator Graham says:

"If neither the senior nor the junior applicant bring precisely the relevant qualifications to the position, the State must promote the more senior applicant unless it can show that the junior applicant has greater potential for success in the new position....That is that the State must bear the burden of showing a junior employee promoted over a senior employee is greater in rank or quality. In order to do so, it must show there exist a "substantial difference" in favor of the junior over the senior bidder.

This imprecise definition is more stringent than "relatively equal" but less demanding than "head and shoulders"."

If the position is in a classification which is assigned pay range twenty-eight (28) or

higher, the job shall be awarded to an eligible bargaining unit employee on the basis of qualifications, experience, education and active discipline. When these factors are substantially equal, state seniority will be the determining factor (See Arbitration # 707 and #707A).

Applicants for promotions are grouped into five prioritized groups with the applicants in the first group having priority over the second group. In the selection process, group two applicants have priority over group three applicants and so forth. All applicants must possess and be proficient in the minimum qualifications of the class spec and position description. The groups (from 17.05 A) are as follows:

- (1) Employees in the office, institution or county.
- (2) Employees in the geographic district as defined in Appendix J and in the same job grouping in Appendix I.
- (3) Employees in the geographic district of the agency.
- (4) All other employees of the agency. (Non-selection is grievable only to Step 3).
- (5) All other employees of the State. (Non-selection is not grievable.)

In Arbitration #405, the arbitrator decided that qualified employees of the state have a vested right to selection for promotions over outside applicants, even when those outside applicants may be demonstrably superior. Moreover, this same case determined that management cannot require the successful applicant to meet requirements beyond those contained in the class spec and position description.

Other arbitration decisions have clearly stated that the applicant must submit all the documents necessary to their application by the deadline. In fact, employees have lost promotions solely on the basis that they did

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not show to the employer that they met certain qualifications before the deadline for applications. In Arbitration #394, the employee's non-selection was upheld by the arbitrator because of such untimeliness.

A Word about Affirmative Action

Affirmative action can be used as a criteria for demonstrably superior. This requires management to provide statistical proof of the need for a particular gender or person of color to fill the position for affirmative action reasons. It is the position of the union that affirmative action can only be one criteria among others to meet the demonstrably superior standard. Other such criteria, which may be considered, are performance evaluations, absenteeism, testing results, skills, abilities, and experience, where the employer can show such a criteria is relevant to the posted position. In Arbitration #583, Arbitrator Graham says:

'Under the holding in Castle and Thomas (Arbitration #382) there is a presumption that the senior applicant is entitled to the position unless, to use the term of Arbitrator Rivera in Hade (Arbitration #541), something intervenes to "trump" his vastly superior seniority credit. Arbitrator Graham also makes reference to Arbitrator Rivera in Hade, and repeats that "Between two equally proficient candidates, affirmative action makes one candidate 'head and shoulders' over the other." He further finds that before affirmative action considerations are reached, the candidates must be determined to be "equally proficient" in other criteria.

What is a Lateral Transfer?

A "lateral transfer" is an employee requested movement to a posted vacancy within the same agency which is paid at the same pay range as the employee's current range. Lateral transfers can be from one classification to another or within the same classification so long as they are in the same pay range, agency, and the employee

possesses and is proficient in the minimum qualifications.

Lateral transfers are to be considered after promotional bidders have been considered. Where an agency has determined that a vacancy is other than statewide, consideration of requests for lateral transfers may be limited to institution, facility or geographic area where the vacancy was posted.

Special Restrictions for Lateral Transfers in Institutions

In institutions, no more than 30% of the employees may make lateral transfers out from one institution to another in a calendar year. This means that no more than 30% of the employees in an institution may laterally transfer from that institution in one calendar year. However, in Corrections, each newly activated institution can be required to fill up to 25% of their posted positions with lateral transfers from other institutions during the first 12 months providing there are sufficient applications. After the first year in these institutions, the process returns to that in other institutions.

What is a Permanent Transfer?

Permanent transfers were created under the 1992 contract. This gives management the ability to reorganize staff to meet the new mission of the agency with existing staff and without the necessity in some instances to lay off employees. A "permanent transfer" is the movement of an employee in the same classification to a posted vacancy within the same agency from one county to another or from one institution to another. The agency may determine to fill a position by the permanent transfer method, and the posting will state that it is for permanent transfer applicants only. The agency will post the position only in areas where there is an excess of employees in the posted classification.

Selection is by seniority among those agency employees who possess and are proficient in the minimum qualifications of the class spec and position description. Again, job groupings and the demonstrably superior

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standard do not play a role in the selection of applicants for permanent transfers. If no one bids on the permanent transfer, the employer cannot involuntarily move employees from one county or institution to another county or institution.

What is a Permanent Relocation?

A "permanent relocation" is the movement of an employee and his/her position to another location within the same headquarters county (the county in which the employee is employed). For operational needs, the employer may determine to re-deploy the staff by a permanent relocation. Operational needs dictated by a change in programs mandated by the legislature, a change in technology or changes in agency goals should be the basis of management's decision. The employer has the right to determine if there is an excess in staff in a particular area. The union does not have the ability to challenge management's evaluation of whether an excess exists.

When the employer desires to utilize the permanent relocation procedure, it will canvass the areas of excess employees by posting the opening for three workdays. The agency will relocate the senior bidder from an area of excess who possesses and is proficient in the minimum qualifications of the position description. If no one bids for the and is proficient in the minimum qualifications. In such cases of involuntary permanent relocation, the agency may move the least senior employee who possesses and is proficient in the minimum qualifications. The employee will retain preferential rights to return to the previous work site for one year, should a vacancy occur in his/her former work site in his/her position. The promotional selection process does not apply to permanent transfers.

Permanent relocations do not apply to the movement of a person and his/her position from one location in a building or complex of buildings to another location in the building or complex of buildings. For example, if someone was working for Deputy Director A on the 3rd floor and is reassigned to work for Deputy Director B on the 2nd floor this does not require the employer to use the permanent relocation procedure. Even if the person is moved to another building within a complex of buildings, the employer does not

have to use the permanent relocation procedure.

However, in those instances where there are two distinct separate locations separated by a distance within a county, if the employer wants to move a person and his/her position to another distinct location within the county, the employer must use the permanent relocation procedure.

Note: Permanent relocations cannot be done in institutions because pick a post agreements provide the vehicle to move institutional employees. Also, in ODJFS and ODOT, the employer must use the provisions of the agency specific agreement when there is a fluctuation in workload. ODOT agency specifics limit 17.09 protections in ODOT, with respect to permanent relocations.

What is An Inter-Agency Transfer?

This transfer describes employee movement to a vacancy in another agency to a higher/lower or same pay range. Employees requesting these types of transfers (approval is at management's discretion) retain step placement rights as if the transfer took place within the agency and the employee is permitted to transfer leave balances.

Testing

Civil Service exams administered by DAS may be given. In addition, there may be proficiency testing to determine whether the candidate meets minimum qualifications. Proficiency tests may also be used to rate candidates for selection per the criteria in Article 17.05. Note: Civil Service examinations are a prohibited subjected of bargaining.

Items Needed for Evaluating an "Article 17" Grievance

The following tools are needed for review when deciding whether or not there is a potential grievance:

(Continued)

- the posting -- all types
 - interview notes
 - applications of grievant & selected candidate
 - qualifications of those who were selected
 - classification specification
 - position description
 - test scores and examination conditions
 - table of organization
 - seniority list
 - relevant finding of Ohio Civil Rights Commission and/or Federal EEO
- personnel action
 - past employment history of involved parties including, in state government and outside state government, information on work assignments and duties
 - copies of test

References

Article 17
 Arbitration 242; 297; 382; 394; 405;541; 583;
 707; 707A, 937

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The State Contract Series

For use in understanding the state employees' contract



Sick leave

NEGOTIATING HISTORY

Sick leave benefits and how they are used have been a major area of dispute in bargaining over the years. The state sought major changes in the 1993-7 and the 1996-2000 rounds of bargaining that resulted in no agreement; and consequently, a fact finders recommendation was required. At the conclusion of both bargaining periods, the factfinder concluded that sick leave use by state employees was excessive and contract rights needed major changes to reduce the usage.

In the 1994-7 agreement, the factfinder recommended a sick leave grid that resulted in discipline if employees had six or more sick leave occasions in a 12-month period. In the bargaining for the 1997-2000 contract, we were successful in eliminating the very unpopular grid and other employer proposals aimed at reducing eligibility for sick leave as well as imposing more discipline for use. The fact finder for the 1997-2000 contract stated that the sick leave language needs to attack the problem with “intensity” in order to change behavior. He recommended that the second 40 hours of sick leave utilized within a calendar year period be paid at 70%.

In the 2000 round of bargaining, the state sought no changes in the language observing that sick leave use has been reduced. Savings were generated by the 30% reduction in the rate, fewer people using more than five days and the overtime payout reduction associated with filling in for those absent. The factfinder ruled that the generous disability benefit helped offset the 70% pay for the second week used, but that increased incentive of cash out for unused sick leave should be offered.

In the 2003 round of bargaining, the state noted that sick leave usage was once again up and in fact higher than it had been just before it implemented the 70% reduction in 1997. Therefore the state demanded that the payout be reduced to 50% for the second week. Fortunately the union prevailed in preventing that reduction and the matter did not go to fact finding. Additionally the union negotiated a clause that would allow for time spent in a hospital and time right before and after time spent in the hospital to be paid at 100% even if the time falls into the second week used – no 70% reduction will be imposed in this circumstance, as long as the individual with the illness is the employee, employee’s spouse or a child residing with the employee. Finally the union secured agreement that agencies or institutions can negotiate alternative payment plans than the 70%. This gives an agency the ability to mutually agree to pay employees more for the second week of sick leave than 70% if for example their overall sick leave utilization is down. Such agreements must have the blessing of the agency and the Office of Collective Bargaining and cannot violate the FMLA.

In the latest round of bargaining, the union negotiated a clause that allows for time spent in out-patient surgery and time contiguous (right before and right after) out-patient surgery to be paid at 100% even if the time falls into the second week used- no reduction to 70% will be imposed in this circumstance, as long as the individual with the illness is the employee, employee’s spouse or a child residing with the employee. Also, new language allows an employee to use sick leave to supplement their pay up to 100% if the employee is in the 70% pay status if the leave usage is for a pre-scheduled medical appointment and the employee has given the employer at least 30 days notice of the need for leave for this purpose.

* * *

Sick leave is a contractually defined benefit. It is to be used specifically for the illness of, injury of, ongoing treatment for, or medical appointments for the bargaining unit member or his/her immediate family. The definition for immediate family has been expanded to include step-parent, great-grandparent and step-sibling. However, in order to use sick leave for members of the immediate family, those people defined must be living in the employee's household unless the leave is taken properly pursuant to the Family and Medical Leave Act (which has a different definition of "family" than the contract – see fact sheet #252) and sick leave is being taken in lieu of unpaid leave. There is an exception to the requirement that members of immediate family live in the residence of the state employee. State employees may use sick leave to care for their children regardless of whether or not the child is currently living the same household. However, if the child is being cared for at home and both parents are state employees, only one parent may use sick leave. If the child is hospitalized both parents may use leave.

Sick leave cannot be taken at will by the employee; it must be taken within the limits listed in the contract. The employer has the right to monitor sick leave. Reasonable requirements regarding proof-of-illness or meeting call-in requirements have been determined to be contractual prerequisites to receiving sick leave (See Arbitration #178). Some requirements are spelled out in the contract; for example, where absences are for more than one day, employees can reach agreement on report in arrangements, but if no agreement exists, agency reporting procedures will apply. An employee must notify the State within a half hour of starting time, or 90 minutes, or in accordance with current practice in agencies where staffing requires advance notice. The employee, him/herself must notify the supervisor unless circumstances preclude personal notification.

While sick leave should not be denied if proper call-in procedure is followed and there is sufficient earned sick leave available, the employee may be required to produce medical evidence of the illness. A written note from the treating physician must be written and signed by the "physician or his/her designee".

This note, however, and any call in notification, does not require a statement of the specific illness -- only that the bargaining unit member was unable to work due to illness, and, if a qualifying FMLA condition, that the bargaining unit member was unable to work due to an FMLA illness or serious condition.

Sick Leave Policy

The contract defines proper use of sick leave and how it is authorized; and it defines disciplinary and corrective actions for inappropriate use. Where the employer concludes that sick leave is unauthorized or it is abused, the contract requires that the consequent discipline be corrective and progressive, keeping in mind any extenuating or mitigating circumstances. The contract also calls attention to alternative intervention strategies such as EAP.

Unauthorized use or pattern abuse is defined in the contract. Related discipline resulting from such violations should follow the just cause and other disciplinary requirements outlined in Article 24, as well as Article 29. Charges relating to sick leave violations need to take into consideration an employee's sick leave history and circumstances (see Arbitration #555) and the impact absences have on the operation of the agency (see Arbitrations #191, #198 and #217).

In Lieu of Time

When employees have exhausted their accrued sick leave, they may use accrued vacation, compensatory leave or personal days to cover their absence with the permission of the employer. Where such sick leave is needed and the absence is covered by the Family Medical Leave Act (FMLA), the employer is required to grant the leave time in lieu of sick leave. Each agency should establish a policy regarding the granting of discretionary leave in lieu or sick leave so that employees can be guided on how this time might be used and to help assure a consistent and fair consideration of requests.

Sick Leave Accrual and Conversion

Full time employees accrue 10 sick days (80 hours) per year and part time employees accrue sick leave based on a pro rata share of the hours they work. Sick leave is paid based on a defined usage period and depending on how much sick leave is used during the period. The usage and accrual period for sick leave begins with the pay period that includes December 1st each year.

A 12 month use period will be in effect for determining the rate of pay for sick leave used during these periods. For the first 40 hours of sick leave used during the usage period, such time will be paid at 100% of the regular rate of pay. Sick Leave used from 40.1 to 80 hours during the usage period will be paid at 70% of the regular rate of pay. Sick leave used in excess of 80 hours during the usage period will be paid at 100% of the regular rate of pay. However effective with the 2003 agreement, sick leave used between the 40.1 and 80 hours used for time spent in the hospital or immediately contiguous (next to) to the time spent in the hospital will be paid at 100% for the employee, employee's spouse or child (residing with the employee).

Effective with the 2009 agreement, sick leave used between the 40.1 and 80 hours used for time spent in out-patient surgery or immediately contiguous (next to) the time spent in out-patient surgery will be paid 100% when the individual undergoing the surgery is the employee, employee's spouse or child residing with the employee.

The same usage periods are used to determine eligibility for cash conversion of sick leave. Employees are eligible for cash

conversion of their sick leave accrual up to 80 hours for a usage period. The rates of payment are based on the number of hours that have been accrued and not used.

Number of Hours Subject to Conversion	% of Regular Rate
80	80%
72 to 79.9	75%
64 to 71.9	70%
56 to 63.9	65%
48 to 55.9	60%
47.9 and less	55%

Payment for converted sick leave is received after the usage period in the first pay received in December.

Employees can cash out sick leave at 55% for those who retire from state service.

Sick leave is not available for use until it appears on the employee's earning statement (pay stub) and on the date funds are available.

Effective with the 2009 agreement, sick leave requested at least 30 days in advance for pre-scheduled medical appointments for an employee, employee's spouse or child residing with the employee which would normally be paid at 70% may be supplemented with additional sick leave at the employee's request, if a physician's statement is submitted on the first day of return to work. The request must be on the RFL form.

References

Fact Sheet #252

Article 24, 29

Arbitration 178, 191, 198, 217, 555

Sick Leave Pilot Projects

The union and the state can jointly explore, design and implement sick leave policies at an institution, agency, or as otherwise agreed. Such joint efforts can result in changes to Article 29 including changes in the amount of payment for sick leave for the second week of use. However any changes must not violate the Family Medical Leave Act. The selection of the jurisdiction, the concepts and implementation will be by mutual agreement of the union and the state. The language permits different concepts to be deployed in different agencies where there is mutual agreement. The contract provides \$25,000 to assist with study and implementation, acknowledging that changing sick leave practices can be very complex.

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Seniority

OCSEA supports the use of seniority in selections for promotions, work assignments, order of layoff or recall, overtime and vacations because it is an objective yardstick, free from the influence of favoritism.

The Seniority Tribunal called for in the 2009-2012 contract is not intended to overturn previous seniority decisions made on the basis of time stamp on the employee's personnel action or a previous decision made based on the employees' social security number. Also no change can be made to a seniority decision made prior to October 1, 1994.

Although there was no direct impact on the way in which seniority was earned or used, the method for determining relative seniority status was changed as a result of the 1993-94 negotiations. Seniority "credits" replaced "dates" as the basis for ranking an employee's seniority. This change reduced confusion over the application of seniority, particularly for part-time employees and for employees who had intermittent status sometime in their state career. Articles 6, 16, and supplements in the appendix of the collective bargaining agreement spell out seniority provisions.

Seniority Credits

The system relies on the number of seniority "credits" an employee has accumulated. Full-time employees will earn one credit for each payroll period during which they held or had a right to return to a bargaining unit position (see Breaks in Service). Part-time employees earn .0125 credits for each hour worked up to a maximum of one seniority credit per pay period.

Thus, at the end of one year of service, a full-time employee will have 26 seniority credits while a part-time employee who worked one-half time will have 13 seniority credits.



Types of Seniority

State Seniority and Institutional Seniority are used to determine employee rights under the OCSEA contract. Other definitions of seniority have been deleted from the contract.

State Seniority reflects OCSEA Bargaining Unit seniority credits an employee has accrued since his/her last date of hire with the State. This is the type of seniority which is used in promotions, layoffs, recalls, overtime and vacation canvases.

Institutional Seniority reflects the total amount of seniority credits an employee has accrued since the last date of hire or transfer into a specific institution. Institutional seniority exists in DR&C, MH and MR. This is the type of seniority that is used for pick-a-post and work area assignments.

Breaks in Service

All seniority is based upon continuous service. However, seniority is NOT interrupted just because an employee is not on the payroll. If the employee has a right to return to the job, seniority continues to accrue in accordance with the OCSEA contract.

The following personnel actions **will** cause a break in seniority:

- Resignation, except when rehired to another state agency, board or commission within 60 days of resignation
- Removal for just cause (unless the removal is later settled or successfully arbitrated)
- Failure to return from a leave of absence
- Failure to respond to a recall from layoff

- Disability separation (see exception in next section)
- Disability retirement (see exception in next section)

Seniority is **not** interrupted by the following:

- Disability leave
- Disability separation with reinstatement rights still available
- Disability retirement with reinstatement rights still available
- Layoff if recalled or re-employed within 24 months from the day of layoff
- Rehire to another agency, board or commission within 60 days of resignation

Non-Bargaining Unit Service

Calculation of seniority for those, who were out of the bargaining unit and then returned to the bargaining unit, follows these rules:

1) If an employee was out of the bargaining unit and returned to the bargaining unit after December 1, 1991, his/her service time is counted as bargaining unit seniority, with restrictions in 16.01 and 16.02.

2) If an employee was out of the bargaining unit and returned to the bargaining unit after January 1, 1992, his/her service time prior to entry to the bargaining unit does not count towards seniority in the bargaining unit, with restrictions in 16.01 and 16.02; and all time worked prior to July 1, 1986 counts towards bargaining unit seniority.

Classifications accreted into the bargaining unit and time spent in non-bargaining unit interim positions and temporary working level assignments are exceptions to the above rules. (e.g. Corrections Sergeant)

Ties

Ties in State Seniority ranking (e.g. several persons hired during the same payroll period) will be broken in the descending order of the last four digits of an employee's identification number. (9999 is high, 0000 is low.) Any remaining ties will be broken by a toss of a coin or lot.

Ties in Institutional Seniority will be broken in the order of State Seniority.

(**Note:** Prior rankings already determined by date stamp or by last four digits of the

social security number were not altered by the conversion to the new seniority credit system.) Thus if an employee's seniority was determined by time stamp or the personnel action for hiring, or by social security number, the decision will not be overturned by the Tribunal.

Seniority Tribunal

Under the 2009-2012 contract there will be a Seniority Tribunal set up, just as there was in 1994 and 1995. The Tribunal will be made up of two OCSEA bargaining unit members, one OCSEA representative and one representative from the Office of Collective Bargaining.

The new contract states that effective April 1, 2009 all OCSEA bargaining unit employees shall be notified to review their seniority credits to determine if they are correct. This start date will be pushed back slightly because of the effective date of the new contract. The availability and design of the Seniority Credit Discrepancy Form (SDC) will be delayed by the starting date of the new contract. If an employee feels that their seniority credits are incorrect, they shall fill out a Seniority Discrepancy Form (SCD). The forms must be submitted no later than August 1, 2009. The Tribunal will start meeting by June 1, 2009 and will continue meeting until it reviews all of the timely submitted SCD's. Any SCD's submitted after August 1, 2009 will be resolved through the non-traditional arbitration (NTA) process. An employee who disagrees with the Tribunal's determination can appeal the Tribunal's decision back to the Tribunal if the employee has additional information to submit.

The Tribunal has the ability to review the seniority credits of a non-bargaining unit employee who comes into the bargaining unit. This review must take place within six pay periods of when the union is notified of the non-bargaining unity employee coming into the bargaining unit.

Seniority Roster

Quarterly seniority rosters are to be prepared and can be either on paper or on an electronic posting for affected employees, with a hard copy or electronic copy given to

the Chapter or Assembly President. An employee can check with his/her union leadership regarding concerns over his/her proper seniority date.

Also, seniority credits will appear on each employee's pay stub.

Initial Probationary Period

An employee in an initial probationary period shall have no seniority until completion of his or her probationary period. Upon completion of said probation, the employee will acquire seniority from his or her original date of hire.

References

Article 6; 16

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Performance Evaluations And Step Increases

Q. How did the new Ohio Performance Review System get put in place?

A. For the 2000-2003 contract, the Fact Finder awarded language to the state that links the results of your annual performance evaluation to step increases. Further, the Fact Finder's ruling creates the possibility of using evaluations to award merit based incentive pay in the future. The union argued strenuously against this new language based on arguments that the state would be unable to effectively administer such a system on a statewide basis and that the state's review system that was in place at the time of Fact Finding was not suitable to for the task of determining overall satisfactory or unsatisfactory performance. The Fact Finder acknowledged some validity to the union's arguments by recommending that the state develop a new performance review system and gave the state a deadline of July 1, 2001 to have the new system in place. The Fact Finder also addressed some of the union's concerns by adding language that says an overall unsatisfactory rating may be grieved to Step 4 of the Grievance procedure.

A copy of the Ohio Performance Review System Manual, forms, instructions and grievance and appeal procedures is available on-line at <http://www.state.oh.us/das/dhr/oprs.html>

Q. Does the Ohio Performance Review System have any effect on employees who are stepped out (already at the top step of pay)?

A. Yes. While employees who are stepped out don't risk losing a step increase if they get an overall unsatisfactory rating, unsatisfactory performance evaluations can be considered a factor in evaluating experience as a consideration for promotions (See Arbitrations #707 and 707A), and unsatisfactory performance evaluations can also be considered as a factor in the level of discipline administered for a discipline offense in the future.

Q. Does a bargaining unit employee have a right to have a union representative present during any part of the performance review process?

A. No. Performance reviews are not disciplinary in nature and therefore there is no right to have a union steward with you during any part of the process. If an overall unsatisfactory rating is given at the end of the review period, you have a right to a steward if a grievance is filed.

Q. Is the Ohio Performance Review System really different from the system used by the state prior to 2001?

(Continued)

A. Yes. It is a three phase system – Phase 1: Goal Setting; Phase 2: Performance Monitoring and Phase 3: Annual Performance Review meeting. The most significant difference is Phase 1: Goal Setting in the new system. Each individual employee and her/his supervisor are supposed to sit down and together determine the goals for the individual employee and the action steps that will be taken to achieve the goals, along with a timeline for the action steps.

Q. What should the goals that are set include?

A. Each goal should be specific, measurable, realistic, and within the employees control. A vague goal like “I will increase customer satisfaction” is not appropriate, while a goal like “I will increase the number of error free claims I submit for signature by 25%” is specific and has a measurement of success built in.

Q. Will all goals give me 12 months to get them completed?

A. Not necessarily. Some goals that you and your supervisor agree on may take only a few months to achieve.

Q. Are there different types of goals that are used in this system?

A. Yes. **Maintenance Goals** focus on improvements in efficiency or money savings or the maintenance of the current operation of your work unit. **Breakthrough Goals** provide *dramatic* improvement, and are the types of goals that are to be considered in awarding merit based pay in the future. Currently, only the Ohio Board of Regents has a merit based incentive pay program in place, therefore it is not in an employees interest to agree to Breakthrough Goals because you cannot receive a pay award for achieving them, while failure to achieve them risks receiving an overall unsatisfactory evaluation.

Q. Can I refuse to sign the goal setting form if I don't agree with the goals my supervisor wants me to achieve?

A. No. Failure to sign the forms will cause a loss of grievance rights if an overall unsatisfactory review is given at the end of the evaluation period. Each goal will be on a separate form, so if you disagree with a particular goal simply sign the form and write below your signature “I do not agree with this goal”.

Q. Will I still be evaluated on a goal if I don't agree with it?

A. Yes. But if you indicated on the goal setting form that you didn't agree, if you are given an overall unsatisfactory rating at the end of the review period, the goal itself can be disputed in any subsequent grievance if your original objection has merit.

Q. Are there a specific number of goals that an employee has to set?

A. No. But, because an unsatisfactory rating is determined by getting rated below target on a *majority* of goals, it is in your interest to always set more than three goals, and always an uneven number of goals.

Q. Will everyone in the same classification have exactly the same goals?

A. Not necessarily. While the goals for people in the same classification may very well be quite similar, an individual employee's work situation in their particular agency or work unit can have an effect on the type and level of goals that are agreed to by the employee and the supervisor.

Q. Once the goals are set, then what happens?

(Continued)

A. Phase 2: Performance Monitoring begins. This will be the longest of the three phases. During Phase 2, supervisors are supposed to observe performance, maintain documentation of performance and communication, communicate frequently, revise goals if necessary, give constructive feedback, and monitor the employees progress toward achievement of the goals set in Phase 1.

Q. Should an individual employee also monitor their progress toward achieving the goals or should it be left solely to the supervisor?

A. Review your progress toward achieving your goals regularly, and if you think there is a problem that will prevent you from achieving a goal, contact your supervisor and ask for help or indicate the need to modify the goal. Document your communication with your supervisor.

Q. When does the actual Performance Review Meeting to give me my rating take place?

A. Phase 3: Annual Performance Review meeting must be completed within 60 days prior to the employee's next scheduled step increase, or the employee's anniversary date if the employee is stepped out. The Review Meeting is an actual meeting and conversation between the individual employee and their supervisor. The Annual Performance Review is completed when the Agency Appointing Authority (or his/her designee)

has signed and dated the review form. If the review is not completed within the 60 days prior to the next scheduled step increase, the employee cannot be denied the step increase.

Q. If I don't agree with my overall evaluation or any of the ratings on individual goals and dimensions, can I refuse to sign the review form?

A. No. If you do not agree with anything the supervisor has written on the form, there is space provided for you to state why you disagree, and you can attach additional comments if you wish to.

Q. If I don't agree with my overall evaluation or any of the ratings on individual goals or dimensions, or if I don't like a comment my supervisor has written on the form, can I file a grievance?

A. Only an overall unsatisfactory evaluation (*below* target on an *majority* of goals and a *majority* of dimensions) can be grieved. Performance Evaluation grievances are filed at Step 3, and the final grievance review is Step 4. However, if you get an overall satisfactory but still disagree with the rating on an individual goal or dimension or a supervisor's comment, an appeal can be filed. Article 22.03 outlines the appeal procedure, and you should contact your union steward and chapter leadership for assistance in filing.

References:

Article 22
Article 36.03
Arbitrations #707, #707A



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Selected issues concerning the impact of criminal law on the discipline of the public employee



Sometimes public employees can be involved in situations where they can be criminally prosecuted, as well as punished by their employer, for their actions. For example, in cases involving theft, assault and patient or inmate abuse, a person can be disciplined by their employer and be punished through the criminal court system.

The two systems, criminal court and administrative action by the employer, are distinct and separate. They have different procedures and have different standards for proving innocence or guilt.

This leaflet is intended to give guidance regarding situations that happen at work that could potentially carry two separate penalties -- one from the employer and one from the criminal court system. However, it should be emphasized that OCSEA's expertise lies in protecting employee rights not criminal law. As a result, if a person is involved in an action with a potential criminal penalty, he/she should contact an attorney experienced in criminal law.

Ohio Highway Patrol Investigations

Any time the police or the Ohio Highway Patrol (OHP) are involved, there is a potential for criminal action. Because stewards are not responsible, nor trained, in representation for criminal activity, employees are urged to contact a private lawyer for representation when either the police or the OHP are involved. The employee should request that the investigation be postponed until the private lawyer is available.

In any case, except for cases involving the *Garrity Warning* explained below, employees do not have to give up their

constitutional rights to be free of self incrimination. Employees do not have to give details about an incident that may incriminate them with respect to criminal prosecution.

The OHP and the police will try to intimidate bargaining unit members. They may say that refusing to answer is yet another form of insubordination. It is not -- *if such an answer may incriminate the person questioned.*

It should be noted that if investigations conducted by the OHP or/and police are used in the decision to discipline employees, a copy of the investigation should be requested by the steward. If an employee has requested that a steward be present at a meeting with the OHP but is denied one, and if the information from the meeting is used to support discipline, then this denial should be raised as a procedural defect in the discipline. The denial of a steward in such a circumstance may also be grounds for an unfair labor practice.

Garrity Warnings

Only if the Employer states that what is said in a meeting will not lead to criminal charges, then the employee no longer has the right to silence. This is known as the "Garrity Warning." Therefore, if the employer does not provide a Garrity warning, ask for one. As a result, the employee must answer the questions put to him/her. An employee or the steward should insist that the Garrity Warning be provided in writing so that the employee has documentation that it was provided.

(Continued)

How Do These Rules Affect Witnesses?

If a person is a witness to an event, a person is required to state truthfully what he/she observed. A steward is no exception.

However, SERB has ruled that the steward has no duty to reveal to the employer facts learned during the course of an investigation. There is a distinction between being a witness to an event and obtaining information as a result of being a steward. If a steward is a witness to an event, he/she must state truthfully what he/she saw if asked or required by the employer.

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Requesting Written Documentation

In evaluating a grievance or an issue facing a local chapter, information is often needed from the employer and/or another organization involved. It is important to analyze a problem early to determine what information is required to understand the situation properly. It is also useful to request information early in the process, since certain documents and reports "slip away" over time.

Requests for information should:

- Be in writing.
- Cite the authority (i.e. 149.43 of the Ohio Revised Code, Section 25.09 of the collective bargaining agreement) that gives the right to request information.
- State a reasonable time line by which material should be received. The time frame chosen depends on how much effort is involved in getting the requested information. A standard required timeline is 10 days.

Ohio Revised Code: 149.43

This section of the Ohio Revised Code is the foundation of the right of individuals to get public documents in Ohio. This section provides that public records shall be available and copied for cost upon request during regular business hours. A public record is defined as any record kept by any public office, including state, county, village, township and school district units. Certain records having to do with criminal investigation and trial preparation, as well as some medical records, do not have to be made available. This section is particularly useful in getting documents dealing with financial records and personnel transactions. Financial records and personnel changes are the type of information needed in subcontracting cases and cases dealing with

seasonal & temporary employees. Requests for information should be in writing and be given to the person in charge of the specific information needed. Generally, information should be requested of the personnel department and/or the labor relations department of an agency. Recognize that if a request for information is made under ORC 149.43, costs may be assessed. It is usually just as easy to use the language of Article 25.09.

Requesting information through contract language

Article 25.09 of the contract provides the right for the union to request documents and witnesses from the state. Put the request in writing. Request information at any step of the grievance procedure. Management's failure to provide information can be a very effective procedural objection to add to a grievance and should be revised in writing to management as soon as trouble getting documents is experienced. Also, this specific contract language on requesting information supersedes any limitation in the Ohio Revised Code.

In an effort to resolve disputes about receiving information, the parties shall adhere to the following at all steps of the grievance procedure: The employer shall provide copies of documents, books and paper relevant to the grievance without charge to the union, unless the request requires more than ninety (90) minutes of employee time to produce and/or copy, at which time the union will be charged \$.10 per page.

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Patient Records

In cases dealing with inmate and or patient abuse, the medical and criminal histories of the inmate(s) or patient(s) may be needed to deal with the credibility of their testimony. These records should be requested through Article 25.09 of the state collective bargaining agreement. Because the grievance hearings are private in nature, the disclosure of this information does not hurt the patient or inmate to the same degree that not giving such information could hurt the grievant. Also, because the grievance procedure is a legitimate legal procededure, the Federal HIPPA law allows the disclosure of this type of information. Therefore, it is the position of the union that this information should be provided. Fully document in writing any objections to management refusal of a patient record pertinent to a grievance.

Highway patrol and local police records

In a variety of circumstances, the highway patrol and or the local police are involved in a situation. The report of the incident itself is public information and may be obtained through the Ohio Revised Code 149.43. There are certain exceptions which provide that certain law enforcement investigatory records are confidential and not subject to disclosure pursuant to the Ohio Revised Code 149.43.

When law enforcement official reports are relied upon in discipline situations, request this information under Article 25.09 of the contract.

Personnel Files

Clarifying language in Article 23.02 provides that reasonable requests to provide one copy of any documents in personnel files shall be honored at no charge.

Management Request for Information

As a general rule, it makes sense to comply with management's request for information. However, a specific right for management to request information **AT THE ARBITRATION LEVEL** is also a part of Article 25.03 of the state contract. However, notes and documentation prepared in anticipation of arbitration and in accordance with union representational duties are not subject to disclosure in labor-management settings and must be kept confidential unless properly waived by the bargaining unit member being represented or an issue of representation is raised and OCSEA must defend itself. Outside of the labor/management setting, the documents must be released if subpoenaed.

References

Article 23.02; 25.03; 25.09
ORC 149.43
Arb. #694

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LAYOFF – FREQUENTLY ASKED QUESTIONS



Q. Under what circumstances will a layoff occur?

A.

- ✓ Lack of funds
- ✓ Lack of work
- ✓ Efficiency of operations
- ✓ Abolishment of a position

Q. Will the union and/or the employee be notified in advanced when a layoff will occur?

A. Yes. The agency must notify the union before, or when, they submit their rationale to the Ohio Department of Administrative Services for a layoff. The notice to the employee must be hand delivered 14 days (or mailed 17 days) prior to the layoff.

Q. Can the union challenge the agency's decision to layoff employees?

A. Yes. If management does not follow the proper procedures according to state law and the collective bargaining agreement, the union can challenge the layoff. If the employer fails to properly implement the rationale and actions it forwards to DAS for approval, it may be grievable.

Q. What is a paper layoff?

A. A paper layoff is figuring out on paper who will bump into what position before the actual layoff takes place. Employees facing potential layoff will receive an Order of Displacement form to fill out and return to indicate their willingness to exercise their displacement and bumping options. This form is used during the paper layoff process to help assure employee rights are properly protected, and it helps the union and management move quickly to assist employees who do not have displacement options.

Q. Is early retirement possible when a layoff occurs?

A. Yes. If 50 or more employees are laid off in a state institution (or employee unit) or the number laid off exceeds 10% of the employee population at the institution (or employee unit), then the agency must establish an early retirement program.

Q. Can an employee fill a posted vacancy if he/she is going to be laid off?

A. Yes if the position is in the same classification and the employee is qualified to perform the duties. An agency can also make other vacant positions available for displaced employees.

Q. Who can a laid off employee bump?

A. The employee can bump a least senior employee if they are qualified to perform the job duties of the position he/she is bumping into. The employee must follow the bumping sequence below by displacing the least senior person within the same or related class series (job groups as defined by Appendix I) within the same office, institution or county. (Article 18.04)

1. Bump the least senior person in the same classification title.
2. Bump the least senior person in a classification in the same or equal pay range as the current classification the employee is in. If there is more than one such classification the choice will be ordered by seniority with the least senior person being displaced.
3. Bump the least senior person in the next lower classification title in the classification series.
4. Bump the person with the least state seniority in the same or equal pay range in descending order. In this case remaining

(Continued)

classifications in your job grouping would be organized by pay range with a displacement alternative if you had more seniority than the least senior person holding the classification.

5. If the order of displacement offers no displacement rights the employee may then displace into the geographic jurisdiction (defined by Appendix J) using the same displacement sequence that is outlined 1-4 above. (Article 18.05) Employees have the right to maintain their appointment type (i.e., full-time, part-time) in the first two priority locations they identify in the geographic area providing they have enough seniority.

6. If no displacement option exists above, the person may displace within the geographic jurisdiction into a classification the employee held within the past 5 calendar years within the agency. (Article 18.06)

Q. Do I have to take a part-time position in my office, county or institution (Article 18.04) before I am allowed to displace into the geographic jurisdiction (Article 18.05)?

A. No. If no full time positions are left for you to bump into and the only position available as an option is part-time, you do not have to take it before displacing a least senior employee in the geographic jurisdiction if you do not want part-time work.

Q. If I do not meet the qualifications of the position description of the least senior person – what happens?

A. You may displace the next least senior person in the classification where you are able to perform the duties.

Q. If I do not have any options to bump in my office, institution or county, do I have any choices with respect to different locations in the geographic jurisdiction?

A. Employees will be given an opportunity to prioritize the locations for displacement in the wider geographic jurisdiction providing they have more seniority than the least senior employees at other work locations. Prior to displacement in the geographic jurisdiction the employee will be given seniority lists to help them determine what displacement opportunities exist. Final displacement choices will also depend on the choice exercised by other laid off

employees who have more seniority.

Q. Will I be required to displace into a vacancy?

A. It depends. Employees displacing in the office, institution or county may select between a vacancy and a position occupied by an employee. Employees are encouraged, however, to displace into vacant positions as such action can avoid a subsequent displacement of other employees. Available vacancies must be filled before an employee can bump into the geographic jurisdiction. Employees who bump into the geographic jurisdiction (Appendix J) will be required to displace into a vacancy if one is available before they can bump the least senior employee.

Q. Can the bumping procedure and requirements be altered?

A. Yes. Per Article 18.17 the agency and union representatives involved in a particular layoff can agree to alter the procedure. Questions about possible alterations should be directed to your chapter president and the staff representative assigned to your chapter.

Q. How long will a laid off employee have recall rights or reemployment rights?

A. An employee, whose classification is changed as a result of bumping and displacement or who is laid off, has recall rights or reemployment rights for 24 months from the date of layoff.

Q. What is the difference between recall and reemployment?

A. Recall is the return to the same, similar or related class series in the same agency. Reemployment is the return to the same classification in a different agency.

(Continued)

Q. If I bump under Article 18.05 but my classification doesn't change, do I have recall rights back to my original office, county or institution?

A. No, but under article 18.12 if you submit a bid/apply for a vacancy in your original office, county or institution, you will have a right to fill that vacancy before it can be filled by promotion or transfer per Article 17.

Q. If I am out on sick leave, military leave, leave without pay or disability leave, can I still be laid off?

A. Yes. Employees who are on sick leave, military leave, leave without pay or disability leave will not have their date of layoff extended by the leave.

Q. If I choose to be laid off rather than exercise any of my displacement options, will I still be eligible for unemployment payments?

A. Yes.

Reference:

Article 18

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Layoff And Inter-Agency Merger – an overview

Attached are components of the lay-off/abolishment fact sheet.

Caution: remember that the most effective way to fight a layoff is **BEFORE** it happens. Making sure there is adequate money for services and that these services are done by people in our bargaining unit are political concerns which require all of us to be involved in lobbying, community outreach and political campaigns.

Management does have the right, under our contract and under state law, to lay people off and to abolish positions. If they decide to do so, however, they must act in conformance with our collective bargaining agreement. Thus, grievances under Article 18 are almost always concerned with the procedural aspects of the layoff, rather than whether or not the layoff can occur. Although we have occasionally been successful in reversing layoffs because management did not do a good job in substantiating the reasons for the layoff, chances of success on this front have been substantially reduced. If management has made errors which we can prove, either in substance or procedure, and the error results in significant harm to an individual, then the grievance may result in reinstatement and/or a monetary award.

The Union has prevailed in cases where the Employer has failed to properly implement the layoff or has eroded the bargaining unit by its actions (see Arbitrations #454, #499, #340, and #478). Likewise, the Employer has prevailed when the Employer has shown that a proper implementation of the layoff was executed, that the redistribution of work was valid or that the abolishment was necessitated by budgetary reductions beyond the state's control (see Arbitrations #340, #476, #485 and #839).

There are four parts to this layoff handout: (1) a handout on the basis of layoff and how to fight the agency rationale, (2) a handout on notice requirements to the employee, (3) two flow charts: one on displacement rights; and the other on recall rights, and finally, (4) a summary of important points to know about layoffs.

Inter-Agency Merger

The union shall be included in discussions of inter-agency mergers. The union will have a role in discussing bargaining unit members continued employment and other effects on their membership.

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Basis for Layoff

The Ohio Revised Code 124.321 specifies three ways that an employee can be laid off: layoff for lack of funds, layoff for lack of work, and layoff as a result of abolishment. The employer has the burden of proof in a layoff (see Arbitrations #311, #280, and #310).

Types of Layoff

Layoff can be for lack of funds. "**Lack of funds**" means that an agency has a projected or current deficiency of funding to maintain current or sustain projected levels of staffing and operations. For employees whose paycheck is paid by warrant of the Auditor of State, the Director of Budget and Management is responsible for determining whether a "lack of funds" exist.

An employee can be laid off for lack of work. "**Lack of work**" means a current or projected temporary decrease in workload, expected to last less than one year, which requires a reduction of current or projected staffing levels. For employees paid by the warrant of Auditor of State, the Director of the Department of Administrative Services determines "lack of work".

There is also layoff due to abolishment. "**Abolishment**" can occur for one only or a combination of the following reasons: a reorganization for the efficient operation of the appointing authority, for reasons of economy or for the lack of work. Appointing authorities have to file a rationale and supporting documentation to the Director of Department of Administrative Services when abolishing positions.

Challenging the Rationale

The following are questions to ask regarding the reasons management gives for layoff or abolishment:

- Did the State accomplish objectives stated in the letter of rationale?
- Do we have proof that work reorganization is not economical or efficient?
- Are there any mandated programs or responsibilities that will not be carried out as a result of the layoff or abolishment? (For example does an institution affected by abolishment or layoffs now fail to meet federal certification requirements?)
- Is the work that was previously done by the bargaining work being contracted out? Is there erosion of the bargaining unit by supervisors or other non-bargaining unit positions?

Documents Related to the Rationale

To evaluate the merits of a layoff or abolishment, a number of documents should be requested pursuant to article 25.08 of the collective bargaining agreement. To evaluate the Employer's position, specific budget information for affected programs -- pre and post -- layoff, the agency rationale, proof that either (or both) the Office of Budget and Management or the Department of Administrative Services have approved the layoff should be requested. Other documents that may be helpful, depending on the basis for layoff or abolishment, are: overtime rosters, attendance sheets, tables of organization, work orders, records of subcontracting (contracts), classification specification, position description and any other documents that the employer uses to support its argument.

Notice Requirements

Notice to the Union: The agency shall submit notice to OCSEA, no later than the time when the agency submits its rationale to DAS. The Union has the ability to discuss layoff prior to the date of paper layoff.

Notice of Layoff/Abolishment to the Individual

The following is a list of information to be included in the notice:

Note: notice must be hand delivered 14 days in advance of layoff, or mailed 17 days in advance of layoff.

- | | |
|--|---|
| √Reason for layoff or displacement | √Statement advising the employee of the right to reinstatement or reemployment |
| √Effective date of layoff or displacement | √Statement that employee is responsible for maintaining current address |
| √Accumulated seniority | √Statement that the employee may have option to convert accrued unused leave, if such opportunity exists |
| √Appeal rights | √For employees of state agencies, boards or commissions, a statement that s/he has an option to select the counties within the layoff district where the employee desires to be on the recall/reemployment list |
| √Statement advising employee that s/he may have the right to displace another employee and that employee must exercise bumping rights within 5 days. | |

Notice of Paper Layoff

Where the state shall conduct a "paper layoff" as required by Article 18.03, the following notice requirements shall be met:

- The agency establishes a time period during which employees will be assigned their displacement option, before formal notice is given to affected employees. No specific time period is identified by the contract. The union will be notified in advance of this time period.
- Potentially affected employees will have five working days to complete and return order of displacement forms on which they can identify their desire or refusal to exercise displacement options.

Notice of Recall or Reemployment

The notice must contain:

- Statement that refusal of recall shall result in removal from agency recall list
- Statement that refusal of reemployment shall result in removal from jurisdictional recall list

Important Points to Know About Layoff and Abolishment

- An employee will receive an Order of Displacement Form to fill out and has 5 days from the date of notice to indicate acceptance or refusal of displacement options and return the form.
- Posted vacancies in the affected geographic jurisdiction can be filled by an employee who has been laid off or had his/her position abolished.
- Article 18.04 provides that an affected employee can bump a least senior employee in the same classification, then other classifications in an equal pay range and then other classifications in lower pay ranges in their job grouping as identified by Appendix I provided that the affected employee is qualified to perform the duties. If there is no opportunity for bumping under Article 18.04, an affected employee can bump a least senior employee using the same order of classifications used in Article 18.04 in the geographic area as defined by Appendix J. Employees shall bump into vacant positions if they are available before displacing a person provided that the affected employee is qualified to perform the duties. Employees have the right to bump an employee or bump into a vacancy in their service appointment type in their first two priority locations in the geographic area provided they have more seniority. (See Arbitration #529 for the standard which defines “qualified to perform the duties”.)
- Those who have the ability to displace another employee under Article 18.04 cannot displace someone under Article 18.05.
- If an employee is unable to fill a vacancy or displace through the processes outlined in Article 18.04 or Article 18.05, then the employee can bump another classification which he/she previously held if an employee is qualified to perform those duties and has held that position within the last 5 years within the affected agency
- Management must give notice to the employee affected (not the union) 14 days in advance if hand delivered; 17 days in advance if sent through the mail.
- Recall rights are for 24 months.
- Recall rights are based on state seniority.
- Re-employment means appointment to another agency. Re-employment rights are for 24 months.
- Refusal of re-employment results in removal of the name of employee from the jurisdictional recall list.
- Employee is responsible for maintaining a current address with his/her appointing authority.
- Basis for recall rights in terms of position is determined from position first displaced from.
- Accepting or declining a position, when recalled, must be in writing before the next person can be recalled.
- The union and the agency may agree, in writing, to place an employee to be laid off in an existing vacancy which may not be otherwise available through employee's displacement rights.
- The union and the agency may agree, per Article 18.17, to alter the bumping procedure in a particular layoff situation.

LAYOFF FLOW-CHART

COMMENTS



Layoffs can occur for two reasons: through lack of work (defined as being expected to last less than a year) and/or through lack of funds (which has no time limits).

Job abolishments can occur as a result of reorganization for one or more reasons: through lack of work (see above), efficiency of operations, or economy (e.g., privatizing a service) and/or efficiency.



Temporary, intermittent, seasonal, and part-time employees in "non-laid off" designated classifications that were not eliminated can continue to be employed.



Employees who are on sick leave, military leave, leave without pay, or disability will not have their date of layoff extended by the leave. Employees on disability will receive pay until their disability leave ends. (OAC 123:1-41-21).

PROCESS

Decision & Rationale

In the first step, management makes a decision to proceed and must provide a *rationale* that the layoffs/abolishments will occur due to lack of work, economy or efficiency. (Ohio Revised Code 124:321; Ohio Administrative Code 123:1-47 & 1-41-02). Management must file documents on the rationale with DAS. No later than Management's submission of rationale to DAS, the Union shall be provided an opportunity to discuss layoff.



Early Retirement Consideration

An early retirement incentive plan must be established: if within a six-month period in either a state institution or an "employee unit" the number of people to be laid off is 50 or more, or the number laid off exceeds 10% of the employee population at the institution or "employee unit."



Classifications Identification

The appointing authority decides what classifications and number of employees in each classification will be laid off (ORC 124:322; OAC 123:1-41-06)



Management must notify each employee prior to the layoff. This notice must be given at least 14 calendar days in advance if the notice is hand-delivered, or 17 calendar days if the notice is delivered by certified mail. These layoffs can be conducted without formal notice or negotiations with the union. (OAC 123:1-41-10)

ARTICLE 18.03 REQUIRES THE AGENCY TO CONDUCT A "PAPER LAYOFF" EXCEPT WHERE A FUNDING SOURCE REQUIRES AN IMMEDIATE REDUCTION IN POSITIONS. POTENTIALLY AFFECTED EMPLOYEES WILL BE GIVEN FIVE WORKING DAYS TO COMPLETE A FORM THAT WILL INDICATE THEIR ORDER OF DISPLACEMENT OR GEOGRAPHIC DISPLACEMENT PRIORITY (18.05) WHERE APPLICABLE. THE UNION WILL MONITOR THE DISPLACEMENT PROCESS THROUGH CONTRACTUALLY REQUIRED STEWARD OVERSIGHT. ONCE THE "PAPER LAYOFF" IS COMPLETED, EMPLOYEES WILL RECEIVE NOTICE AS REFERENCED ABOVE.

COMMENTS



Supervisors can bump into a bargaining unit following the ORC and the OAC. Once in the bargaining unit they follow bargaining unit rules. As with other bargaining unit employees, seniority and qualifications to perform duties matter, not retention points. (Arbitration #336)



An employee cannot displace another when special minimum qualifications such as bona fide occupational qualifications exist unless the person meets these minimum qualifications for the position or classification. (ORC 124.324(D))



FEDERAL STATUTORY GUIDELINES THAT FURTHER DEFINE DISPLACEMENT AND RECALL RIGHTS CAN SUPERCEDE STRICT SENIORITY (Arbitration #390).



Limits to bumping: There shall be no inter-unit bumping except in those cases allowed by current administrative rules or where a class series overlaps more than one unit (Contract Art. 18.05 & 18.08)



The agency and the union may agree, per Article 18.17, to alter the bumping procedure in a particular layoff situation.

PROCESS

ABOLISHMENT OR LAYOFF OCCURS

Employee has option to fill existing vacancies in classification in such vacancies the employer chooses to fill

Employee can fill vacancy in equal pay or lower pay in classification groupings in Appendix I of contract. (OAC 123:1-41-05)

Employee can use bumping rights as outlined in Contract Art. 18.04

- Use Appendix I options:
- A. Bump the person with the least state seniority in the same classification
 - B. Bump the person with the least state seniority in a classification in the same or equal pay range
 - C. Bump the person with the least state seniority in the next lower classification in the classification series where you were displaced
 - D. Bump the person with the least state seniority described in C. above in descending order by pay range and lease senior employee
 - E. If the employee is not qualified to displace the least senior employee, they can displace the next least senior employee.

If employee has the opportunity to bump under Appendix I options, he or she must take it unless the position is a lower appointment type. If employee does not have bumping opportunities under 18.04, they can bump into job groupings in the larger geographic area. (Appendix J)

Employee can use bumping rights as outlined in Contract Art. 18.05

- Bump the person with the least state seniority in the same classification
- Bump the person with the least state seniority in a classification in the same or equal pay range
- Bump the person with the least state seniority in the next lower classification in the classification series where you were displaced
- Bump the person with the least state seniority described in C. above in descending order by pay range and lease senior employee
- Employees shall first displace into available vacancies in the classification order described above
- If the employee is not qualified to displace the least senior employee, they can displace the next least senior employee.

Employees shall prioritize work locations as reflected in Appendix J (Geographic Areas). For the first two priority locations, using the same order of displacement in section 18.04, full-time employees shall displace full-time employees and then if no such position is available, other lesser appointment types. Other than full-time employees who cannot displace in their appointment type may displace a full-time and then other lesser appointment type providing they have enough seniority. Providing they have more seniority, employees will have a right to remain in their appointment type in the first two priority locations, thereafter they must displace the least senior employee regardless of appointment type.

Employee displaces to position previously held if he or she is qualified to perform duties and has held this position within the last five years (Section 18.06)

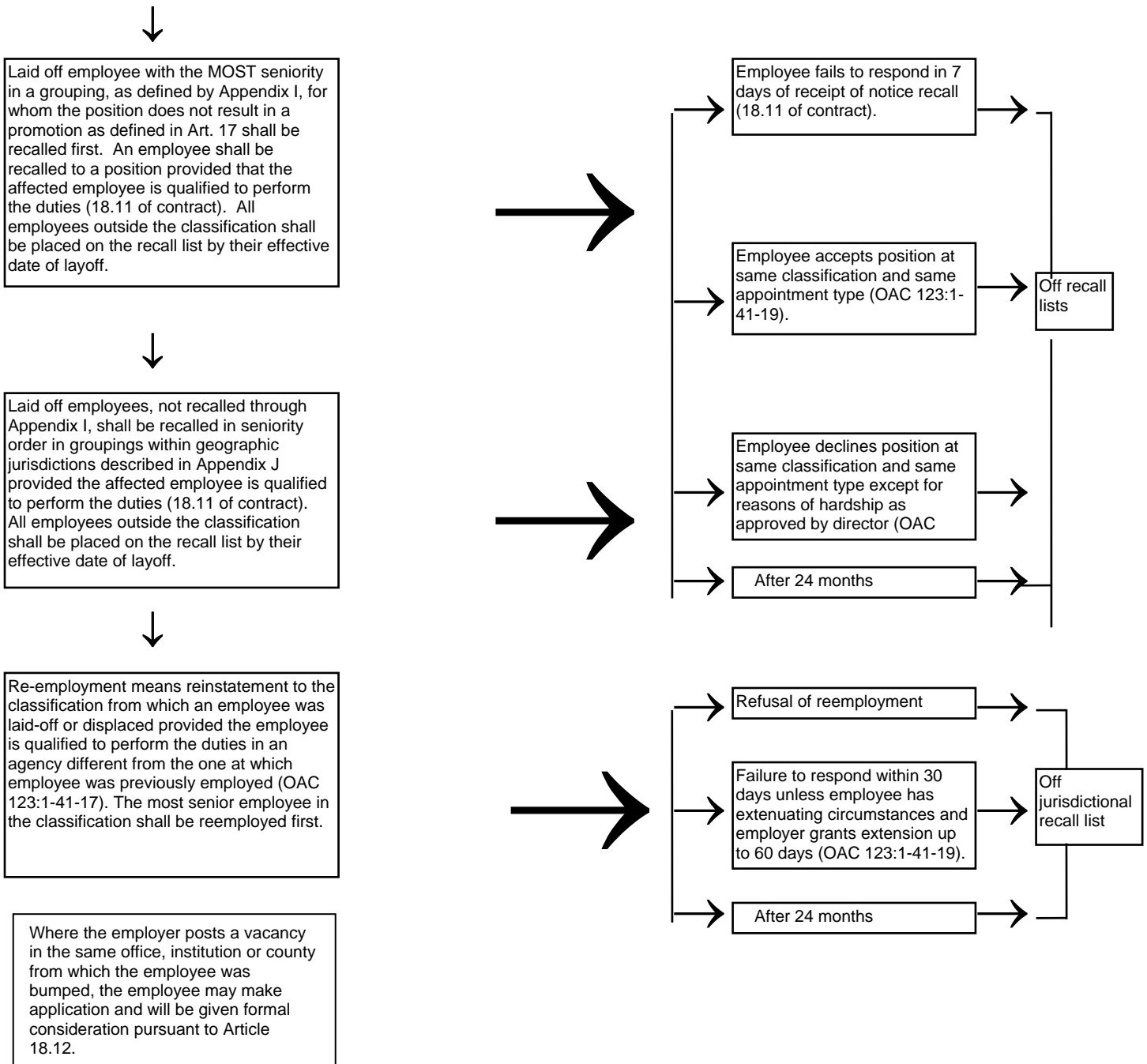
Employee can continue to bump into the next previously held position if qualified to perform duties and has held this position within the last five years. (Section 18.06)

Employee may bump into Seasonal, Intermittent, Temporary positions following Section 18.07

The Union and the State can agree to move a laid off employee to vacancy in another classification outside their job grouping. Such agreements will be made on a case-by-case basis. This may occur before or after the bumping process begins. This placement shall not result in the promotion of the affected employee. (Article 18.14)

Recall and Re-Employment Rights

Agency makes a decision to fill a vacancy or to recall employees in a laid-off class.



References

Article 17, 18, 25.08

Arbitration 280, 310, 311, 336, 340, 390, 454, 476, 478, 485, 499, 529, 839

ORC 124-321; 124-322; 124-324

OAC 123:1-47; 123:1-41-02; 123:1-41-05; 123:1-41-06; 123:1-41-10; 123:1-41-12; 123:1-41-17; 123:1-41-19

Appendix I, J

Amended House Bill 706

Senate Bill 99



Weingarten Right

This fact sheet discusses when a steward should be present in the investigatory phase of the discipline process. A bargaining unit employee should never give up his/her right to a steward.

Under the contract

Section 24.04 of our collective bargaining agreement provides that if a person has a **reasonable** belief that a meeting with management will lead to a disciplinary action, that person can request a steward. Note that under this language management does not have to provide a steward **unless a steward is requested by the employee**. (If the agency has a past practice of requesting a steward for discipline meetings, like ODJFS, then the agency makes sure a steward is provided).

Supreme Court decision

The language in the contract comes directly from the 1975 Weingarten decision by the U.S. Supreme Court. That decision provides for union representation at investigatory interviews that are believed to lead to discipline.

There are a number of components to this decision. First, the employee must request a steward. If the supervisor simply says to the employee that they are going to have a little talk, there is no right to a steward. But if this "little talk" is a mask for a disciplinary meeting -- then the employee should stop the meeting and request a

steward. It is a violation to punish the employee for making this request.

Second, after the request has been made, the management representative must either end the conversation or delay the meeting until a steward is available or ask the employee if he/she wants to continue the conversation without steward representation. If the employer refuses to provide representation at the request of the employee and discipline arises out of the events at issue, then the employer has committed a major procedural error that will likely mitigate the punishment that was a result of the alleged wrong doing (see Arbitration #799). NOTE: You are not entitled to choose the steward you want.

Why is a steward helpful?

A steward should meet with the employee in a pre-interview consultation prior to the interview. In this meeting, the steward will ask the employee his/her side of the story and also request any documentation/evidence the employee has to corroborate his/her position.

The steward has a right to ask the supervisor, as well as to ask the employee, in private what this interview is all about prior to the meeting. In the interview, the steward can make sure the employee only answers questions asked. The steward can keep tempers under control and help clarify questions from the supervisor. Clarifying the questions is particularly important when the employee is afraid, nervous, or not effective at explaining his/her actions.

(Continued)

Can I refuse to answer my supervisor's questions?

The only time a bargaining unit employee can refuse to answer questions is if criminal actions are involved. Only in cases involving abuse, theft, or some physical harm in which the employee could be prosecuted for, should he/she refuse to answer. In criminal matters, the employee should consult private counsel. However, if the employer guarantees a bargaining unit employee that the employee's statements cannot be used in a criminal proceeding and orders the employee to answer the questions, then the employee must answer the questions. The employee, however, should request that the employer's

guarantees be reduced to writing and provided to him or her or his or her representative(s). It is always a good policy to tell the truth. In the end the truth generally comes out and a person only appears to be more in the wrong by not being honest.

Note: OCSEA does not represent employees in criminal matters only in employment. Admissions made at administrative hearings in the course of the discipline processes may be used at a criminal court hearing.

Reference

Article 24.04
Arbitration #799

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The State Contract Series

For use in understanding the state employees' contract



Tips for Handling Pre-Discipline Meetings

- The first thing to do when you receive the pre-disciplinary packet is to make sure the alleged rule violations are accurate and match the Employee Code of Conduct or Agency Discipline Grid. More times than you can imagine, the number for the violation does not match the actual violation or it might have noted the wrong disciplinary sanctions. This is on the cover page of the pre-disciplinary packet. [This is a procedural error and should be noted as such.]
- Read the packet closely. Any discrepancies should be investigated. You have the right to take union time to investigate and prepare for the pre-disciplinary meeting.
 - Question witnesses that management has listed in the packet.
 - Question people that the employee has worked with that are not noted as witnesses. You may want to use them in the pre-disciplinary meeting as a witness for the employee. Most of the time, management only uses witnesses that will testify against the employee, if they use any at all.
 - Be sure to submit a written request to the Labor Relations Officer for any employee you would want to use as a witness. Please note witnesses are not often used at Pre-Disciplinary meetings, but are only used for mediation, arbitration and sometimes 3rd step grievance hearings. If management will not allow your witness to testify at the meeting, submit a written statement from your witness at the meeting. **Be ready to use the employee if you request them.**
- You may need to request some documents to get the whole picture.
- Request any documentation you need for the pre-disciplinary meeting **in writing**. [If you do not receive the requested documents prior to the meeting, this is a procedural error and should be noted as such.]
- The employee has the right to meet with you prior to the pre-disciplinary meeting to go over any materials or witnesses that you plan to use.
- When the pre-disciplinary meeting starts, there is usually a pre-set procedure that is used.
- Normally, the hearing officer reads the alleged rule infractions and then the possible sanctions if just cause is determined.
- Next the hearing officer reads the facts from management's investigations.

- The management representative will then present arguments as to why and how the violations have occurred. Remember, anything that management's representatives say in this meeting must be included in the pre-disciplinary packet. [If they discuss anything that is not in the packet, this is a procedural error and should be noted as such.]
- The employee will get a turn to ask questions, comment, refute or rebut any part of management's statements. Often employees make statements at the pre-disciplinary meeting that they cannot support later on or that they may regret because pre-disciplinary statements may be used later in arbitration. **Be sure the employee knows that what is said in the meeting becomes part of the record.**
- Next, it is the Union representative's turn. Start out by pointing out any procedural errors that have occurred up to this point.
- Submit any documents that you have into the hearing record to rebut management's evidence. Make sure you have enough copies of all documents for all the parties.
- Point out:
 - any discrepancies that you have found in the documents supplied in the Pre-D packet,
 - arguments to support the employee,
 - evidence of mitigating circumstances, and
 - any issues regarding management's handling of the same type of alleged infractions in the past.
- Call any witnesses that you have been authorized to use. Remember that management representatives will also have the right to question the witness. The same is true for any witnesses that management brings in. Usually, management doesn't bring witnesses to a pre-disciplinary meeting because they would much rather take a statement and submit it. Raise the fact that the union would like the opportunity to discuss the statement with the witness. If you have not received authorization to bring your witnesses in, submit a written and signed statement from them.
- If any procedural errors have occurred in the pre-disciplinary meeting itself, before the meeting ends, tell the hearing officer to note those errors into the meeting record.

Reference

Article 24.05

4/09

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The State Contract Series

For use in understanding the state employees' contract



Subcontracting

Article 39 of the collective bargaining agreement deals with subcontracting. Subcontracting means to assign work to people not employed by the State of Ohio. That is, the paycheck of those who are doing the subcontracting is signed by someone other than an official of the State of Ohio.

Under the state contract, bargaining unit work can be contracted out. While there is a clause that the State "intends" to utilize bargaining unit members to do work that they normally perform, for reasons of greater efficiency, economy or other related reasons the **employer can subcontract work.**

Fighting Subcontracting

A violation of Article 39 can occur even though bargaining unit employees are not displaced.

There are many ways to fight improper subcontracting. Many unions have chosen to fight the issue through publicity. The major thrust of these campaigns has been to show that in the long-run, using permanent employees is cheaper and provides for better, more stable service. Unions have also been able to show links between politicians advocating the subcontracting and the recipient of the award.

In order to make such arguments, research is necessary into the company that is receiving the subcontracting and its track record. Budget information should be requested to determine if the State is really saving money. Often times, subcontracting gives a short-term savings, but long term costs are not estimated or factored into the evaluation. Other factors such as quality and other customer expectations need to be evaluated., Issues of accountability and contract monitoring should also be evaluated.

Research should begin as soon as it appears that subcontracting is beginning to occur. Immediately try to verify the rumor and request documentation. If contracting out results in layoffs of bargaining unit members, then the Employer shall provide the Union with not less than 120 days notice of such action. This notice gives the Union some time to research and advance alternatives to contracting out.

Subcontracting can also be fought through the grievance procedure. In such a grievance, the management rationale for contracting out -- efficiency and economy -- has to be challenged. This was effectively done in arbitration case #489 when the State failed to prove that contracting out of "loop" detector repair was cheaper or more efficient. The Union was able to demonstrate that it cost the State \$34,000 more to have a subcontractor do the work than if a state employees had done the work.

It is important to note that the best protections from contracting out are effective and efficient workplaces that make public services competitive with private vendors. If the employer decides to contract out, the union can enforce/evoke Article 39; and if a violation exists, we can arbitrate.

Arbitrators have said that management does have the right to subcontract subject to the standards of reasonableness and good faith. There are 10 basic factors that arbitrators look at to determine reasonableness and good faith on the part of Management when they make a decision to subcontract:

1. What is the past practice on contracting out? Has the State subcontracted this work in the past?

(Continued)

2. What is management's justification for subcontracting? Is there a sound business reason for subcontracting? Is it more efficient? Does it save money? Are there programmatic benefits which Management derives from this subcontracting?

3. What is the effect of the subcontracting on the union or bargaining unit? Is Management subcontracting to discriminate against the union and to destroy the integrity of the bargaining unit?

4. What is the effect of subcontracting on union employees? Are union employees being discriminated against? Are they being displaced (laid off)? Are union members being deprived of jobs previously available to them? Do employees lose regular earnings? (Lost overtime is not normally considered if the contract does not contain overtime guarantees.)

5. What is the type of work involved in the subcontracting? Is the work normally done by the bargaining unit employees or is it the kind of work in the public sector which is frequently subcontracted? Is the work of a marginal or incidental nature to what bargaining unit employees do or is it an integral part of what they normally do?

6. Do bargaining unit employees possess the skills to perform the work which is to be subcontracted?

7. What is the availability to Management of equipment and facilities needed for the work? Are necessary equipment and facilities present and available? If not, then that may lead an arbitrator to believe that subcontracting is permissible and reasonable.

8. What is the regularity of the subcontracting? Is this work frequently subcontracted or is it just done on an occasional basis? If it is done on an occasional basis, why couldn't bargaining unit workers do it all the time? Conversely, if the work is done occasionally, then the arbitrator can also hold that there is not great harm to the Union.

9. What is the duration of the subcontracted work? Is the subcontracting temporary or permanent?

10. Are there any other unusual circumstances involved? Is there an

emergency or time limit which Management must meet? Is there a strike going on which makes it impossible for bargaining unit workers to do the work?

The standards to determine whether an Article 39 violation exists have been clarified to some extent by arbitration #514A. First, the Union must show that contracted-out work would have been normally done by bargaining unit employees during the collective bargaining agreement period. The burden then shifts to the Employer who must show by preponderance of the evidence that the decision was rationally based on greater economy, greater efficiency or greater program benefits or other related factors. Once the Employer has shown a rational basis for the decision, the burden shifts to the union who must show that the decision was erroneous, done in bad faith or not in the public interest. The employer has a burden to show its decision to contract out is rational or made in good faith (#514, #514A).

What remedies are available?

In a contracting out case, the Union seeks to preserve its bargaining unit work and to make sure that no bargaining unit employees are laid off.

In terms of the union's preservation of bargaining unit work, an arbitrator only decides whether subcontracting is proper or improper. In some cases, arbitrators have awarded monetary damages to the Union for lost work -- either at straight time or a time and a half rate.

The proper measure of the remedy is what bargaining unit employees would have been paid rather than what the subcontractor was paid. The Union, in order to get money as a remedy, must demonstrate that there was a monetary loss. Another remedy that the arbitrator can give is a cease and desist order for Management to not subcontract or to cancel the subcontract. (Every time a new contract is let, there is a new event.)

If bargaining unit employees are displaced, then the employer must follow the additional standards and procedures

(Continued)

of layoff as outlined in Article 18 of the contract. (For more information, please see the Fact Sheet #190 on layoffs.)

There is one additional provision in the case of subcontracting. In the event of subcontracting, the contract provides that employees can receive additional training to perform work in any vacancy s/he fills. The employer will provide training as long as the needed training can be successfully completed in a reasonable length of time. The training shall be provided during working hours at the employer's expense.

Privatization is a Political Decision

The size of government or who should perform services traditionally performed by public employees is a political decision as well as one that is influenced by cost or quality. Legislative views about the value of public service is reflected in legislation that appropriates dollars for services or determines whether services are public, private or should not be provided at all. A majority of subcontracting decisions are rooted in political preference about who should perform public services. Know the views of your legislators. It is important that OCSEA educate legislators about the value of public services. Which legislator you vote for may be directly related to who performs the service and member employment security.

Notice

1. 120 Day Notice

If contracting out results in layoff, then the Employer shall provide advance written notice of not less than 120 days to the Union.

Upon request, the Employer shall meet with the Union to discuss the rationale and to give the Union the opportunity to discuss alternatives. The 120 day period sometimes can provide ample time for the union to collect the facts that resulted in the contracting out decision and then prepare alternative, efficient ways to have the work done using bargaining unit employees.

2. Notice through agency websites

The state's technology plan requires state agencies to provide public documents including requests for proposals (RFPs) and Invitations to Bid (ITBs) on their websites. Proposed and existing contracts for services will be available through the website. Find your agency's website to get advance notice of proposed contracting out and to obtain additional information on employer requirements. Such advance notice can help provide needed time to address the union concerns or to develop a strategy.

Contracting In

The Union has an opportunity to demonstrate that bargaining unit work that has been previously contracted out or proposed for contracting out can be done better, more effectively or more cheaply by bargaining unit employees. A union's contracting in proposal must compare the cost and other factors that were relevant to the agency's decision to contract out. The union then develops a practical plan about how, in the alternative, it is more efficient, economic and a better business service to use bargaining unit employees. Timelines, scope and quality of services can sometimes be as important as price. Article 39.02 calls to the employer's attention the right to collect the facts to make the analysis.

Under Article 39.03, the union and the state may select 3 agencies in which the parties will jointly examine agency contracting practices and develop strategies for alternatives to contract out.

IT Contracting Out

Article 8.05D is a separate Labor Management committee that will focus on identifying the causes that underlie agency decisions to contract out IT services. The committee will be reviewing factors relating to cost, quality, program requirements, workforce skills and other factors that

(Continued)

influence contracting out. The committee will review IT personal service contracts and will review cost-benefit analyses and other approaches that can be used to increase the use of bargaining unit employees to meet state IT needs.

References

Article 18, 39
Arbitration 489, 514, 514A
Fact Sheet 190

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The State Contract Series

For use in understanding the state employees' contract

Drug & Alcohol Testing

What is the policy?

Both OCSEA and the state agreed to a drug policy that recognizes that:

- 1) use of drugs and/or alcohol which cause impairment on the job may pose risks to the Employer as well as other employees;
- 2) abuse of drugs and/or alcohol is a treatable illness.

The policy does not change or diminish rights under discipline for just cause in Article 24 or employee assistance programs described in Article 9 and Article 24. What the policy does is strengthen testing procedure protections.

Discipline

Bargaining unit members will continue to be encouraged to deal with drug and or alcohol abuse problems through the Employee Assistance Program in Article 9 or through a program currently provided by existing health benefits. There is specific language to protect people from being discriminated against with regard to job security or promotion because of his/her request for help. However, if the problem results in on the job problems, discipline could result under the standards of just cause.

Also note: In the event in which an employee is confirmed by testing (following the appropriate procedures) to be under the influence or using alcohol or other drugs while on duty, the employee may be given the opportunity to enter into and complete a substance abuse program certified by the Ohio Department of Alcohol and Drug Addiction Services, if this is the first time an employee has tested positive, generally within the last 5 years. No discipline shall be imposed in cases where the employee and

the employer have entered into a voluntary Employee Assistance Program Participation



Agreement in which the employer agrees to defer discipline as a result of employee participation in the Ohio Employee Assistance Program treatment program. However, employees on their initial probationary period who test positive for drugs or alcohol from either a random or reasonable suspicion test shall not be eligible for a last chance or EAP agreement. The probationary employee shall be terminated on the first occasion in which they test positive for alcohol or other drugs. Last chance agreements shall not be effective for longer than 5 years. If there are further violations, discipline will be imposed in accordance with Article 24 of the collective bargaining agreement.

An employee who tests positive may be assigned to non-safety sensitive duties. However, no other employee may be displaced for a pick-a-post assignment as a result of that employee's assignment to other duties. If the employee is sent home after notice is received by the Employer that the employee tested positive, the employee shall be placed on administrative leave with pay pending notice of disciplinary action. If the employee does not waive the 72-hour predisciplinary hearing requirement s/he shall be placed on administrative leave without pay and may use any appropriate leave accruals to cover the time off. If the person refuses treatment, just cause standards for discipline would still apply.

Finally if an employee refuses to undergo a properly ordered test, he/she may be subject to discipline for insubordination. The discipline must be administered in accordance with Article 24.

(Continued)

When can the Employer test

An employee may be required to submit to drug testing when the Employer has reasonable suspicion that the employee is under the influence of drugs or alcohol when he/she comes to work or his/her job performance is impaired by alcohol or drugs while at work. This can mean that a person appears to be under the influence or that his/her job performance is impaired. Examples of this are:

- 1) Aberrant or unusual on duty behavior,
- 2) Physical indications of intoxication,
- 3) Involvement in an on the job accident resulting in personal injury requiring immediate hospitalization or significant (over \$2000) property damage if reasonable suspicion exists

Before jumping to the conclusion of substance abuse, a supervisor is expected to consider alternative explanations for the behavior, such as fatigue, side effect of prescription or over the counter drugs or reaction to fumes or smoke.

B.U. CLASS # TITLE

4	44213	ACTIVITY THERAPY SPECIALIST 1
4	44214	ACTIVITY THERAPY SPECIALIST 2
6	65312	ADVANCED EMERGENCY MEDICAL TECHNICIAN -AMBULANCE
6	54211	AIRCRAFT ATTENDANT
6	30762	AIRCRAFT MECHANIC 2
6	54221	AIRCRAFT MECHANIC TECHNICIAN
14	54231	AIRCRAFT PILOT 1
14	54232	AIRCRAFT PILOT 2
6	54451	AMBULANCE OPERATOR
7	21581	AMUSEMENT RIDE AND GAME INSPECTOR 1
7	21582	AMUSEMENT RIDE AND GAME INSPECTOR 2
7	26531	ARSON INVESTIGATORS
7	24941	AVIATION SPECIALIST 1
7	24942	AVIATION SPECIALIST 2
7	24121	BOILER INSPECTOR
6	54541	BOILER OPERATOR 1
6	54542	BOILER OPERATOR 2
7	24421	BREATH ALCOHOL TESTING INSPECTOR
6	53230	BRIDGE AND LOCK TENDER

Reasonable suspicion must be documented in writing. It also must be supported by one other person besides the person asserting that reasonable suspicion exists. The immediate supervisor of the person asserting that reasonable suspicion exists must also be contacted to confirm a test is warranted based on the circumstances.

Finally, the written documentation must be presented to the employee and the agency head as soon as possible. A copy of the written documentation will only be released to individuals designated by the affected employee.

Testing for Employees Performing Safety Sensitive Functions

Testing of employees who perform safety sensitive functions is required by federal law and regulation. The following classifications are considered to be safety sensitive positions. Employees in these classifications shall be subject to random testing as described above.

B.U. CLASS # TITLE

3	6531	CORRECTION OFFICER
6	54421	DREDGE OPERATOR 1
7	24341	CUSTOMER SERVICE SPECIALIST 1 PUBLIC SAFETY CUSTOMER SERVICE CENTER ONLY
7	24342	CUSTOMER SERVICE SPECIALIST 2 PUBLIC SAFETY CUSTOMER SERVICE CENTER ONLY
6	54422	DREDGE OPERATOR 2
7	24332	DRIVER'S LICENSE EXAMINER 2 (LEAD WORKER)
7	24331	DRIVER'S LICENSE EXAMINER 1
7	24332	DRIVER'S LICENSE EXAMINER 2 (CDL)
7	24131	ELECTRICAL INSPECTOR
7	24145	ELEVATOR INSPECTOR
7	24140	ELEVATOR INSPECTOR TRAINEE
4	65311	EMERGENCY MEDICAL TECHNICIAN-AMBULANCE
7	26521	FIRE SAFETY INSPECTOR
4	44211	GENERAL ACTIVITIES THERAPIST 1
4	44212	GENERAL ACTIVITIES THERAPIST 2
7	33343	HAZARDOUS MATERIALS COORDINATOR
7	23161	HAZARDOUS MATERIALS INVESTIGATION SPECIALIST 1
7	23162	HAZARDOUS MATERIALS INVESTIGATION SPECIALIST 2
7	64921	HAZARDOUS MATERIALS SPECIALIST
7	24151	HIGH PRESSURE PIPING INSPECTOR
4	44111	HOSPITAL AIDES
6	22551	LOCK AREA TECHNICIAN
7	23111	MOTOR CARRIER ENFORCEMENT INSPECTORS
7	24123	NUCLEAR BOILER INSPECTOR
4	44310	OCCUPATIONAL THERAPY ASSISTANT
4	42741	PHARMACY ATTENDANT
3	44141	PSYCHIATRIC ATTENDANT
7	23181	PUBLIC UTILITIES GAS PIPELINE SAFETY COORDINATOR INVESTIGATOR
7	23311	RAILROAD INSPECTOR 1
7	23312	RAILROAD INSPECTOR 2
7	23313	RAILROAD INSPECTOR 3
4	44112	THERAPEUTIC PROGRAM WORKER
3	46611	YOUTH LEADER (BLIND/DEAF SCHOOL)

Testing for new classifications listed will not commence until such time as employees are provided notice and training. Safety sensitive functions include the following:

- 1) All time spent driving a commercial motor vehicle
- 2) All time spent on employer or public property waiting to be dispatched, unless the driver has been relieved from duty by the employer
- 3) All time (other than driving time) in or on any commercial vehicle

- 4) All time spent inspecting, servicing, or reconditioning any commercial vehicle at any time
- 5) All time spent loading or unloading a vehicle, remaining in readiness to operate a commercial vehicle or giving receipts for shipments loaded or unloaded
- 6) All time spent repairing, obtaining assistance for or standing by a disabled vehicle

A commercial motor vehicle includes any of the following vehicles:

- 1) A vehicle with a gross combination rating of 26,001 or more pounds, including a towed unit with a gross vehicle weight rating of 10,000 pounds or
- 2) A vehicle with a gross vehicle weight rating of 26,001 or more pounds or
- 3) A vehicle that is designed to transport 16 or more passengers including the driver, or
- 4) A vehicle that is of any size and is used to transport hazardous materials as defined by the Hazardous Materials Transportation Act.

Employees, who perform safety sensitive duties, are subject to the following types of tests:

- 1) Pre-employment -- this includes testing prior to promotion, transfer or demotion into a position that requires the performance of safety sensitive functions.
- 2) Post-accident testing when any of the following circumstances occur:
 - a) A person dies
 - b) If the employee is cited and a person is injured and immediately receives medical treatment arising from the scene of an accident
 - c) If the employee is cited and one or more vehicles were disabled and had to be towed away.
- 3) Random
- 4) Reasonable suspicion
- 5) Return to duty
- 6) Follow-up testing

Random Testing of DR&C, DYS and other "Care and Custody Agencies" Employees

The fact finder in the 1997 negotiations awarded the state's position to randomly drug test DYS employees and DR&C employees who have direct contact with youths, inmates or parolees. Subsequent negotiations have added other "care and custody" classifications such as Therapeutic Program Worker to the random testing pool.

The State will only reinstate an employee after the employee tests negative on a return to duty test and has seen a substance abuse professional who has determined appropriate treatment needed by the employee. It is also expected the

employee will be required to be subject to follow-up testing to ensure the employee remains drug-free.

Employees on their initial probationary period who test positive for drugs or alcohol from either a random or reasonable suspicion test shall not be eligible for a last chance or EAP agreement. The probationary employee shall be terminated on the first occasion in which they test positive for alcohol or other drugs.

Testing Procedures and Protocols

Procedures and protocols for the collection, transmission and testing of the employees' samples shall conform to the methods and procedures provided by federal regulations pursuant to the Federal Transportation Employee Testing Act of 1991.

The random testing pools for DYS, DR&C and other "care and custody agency" employees who are subject to testing shall be maintained on a statewide basis that includes all employees of that agency who are subject to testing. The random testing pools for employees who are subject to drug and alcohol testing based upon the performance of safety sensitive functions shall be maintained as a separate pool on a statewide basis. The random testing pools shall be administered by the Drug Free Workplace Services Program of the Department of Administrative Services. For DYS, DR&C and other "care and custody agency" employees the percentage of employees to be tested annually will be up to 30% of the random testing pool. During the last year of the agreement, the percentage of employees to be tested annually can vary from 10% to 30% of the average total of the random testing pool. Twenty-five percentage of employees who perform safety sensitive duties must be randomly tested for alcohol each year and 50% must be randomly tested for drugs each year.

Any DR&C, DYS and other "care and custody agency" employee, whose name is selected to be randomly tested, must be tested within seven (7) days after the agency receives notice of the employee's selection from the pool.

Employees will be responsible for the costs associated with any return to duty or agency follow-up tests required. The employer is responsible for the costs associated with all random and/or reasonable suspicion testing.

The employee must be paid wages for any time associated with the actual testing and/or travel time necessary to be tested.

Union Rights

Employees have the right to consult with a union representative if one is available within one hour prior to testing as long as the employer claims reasonable suspicion for the testing.

The union representative may accompany the employee to the specimen collection site. Random testing is not subject to specific union representation prior to and during testing.

The union has the right to inspect and observe any drug testing laboratory with which the State has contracted. If the employee has authorized the release to the union representative in writing, the union may inspect the test results. The union has the right to audit the employer's sampling and testing procedures.

Drug Free work place notification

Under the federal Drug Free Work Place Act, employees who are convicted of a violation of any federal or state criminal

drug statute, provided that the conviction occurred as a result of activity at the workplace, must report said conviction

within five days after he/she is convicted. Failure to do so may result in disciplinary action although an employee may be referred by the Employer to EAP in lieu of discipline, other than during a initial probationary exception.

Rebuttable Presumption

House bill 223, also known as the rebuttable presumption law, puts the burden of proof on employees to prove that alcohol or drugs in their systems were not the proximate cause of a workplace injury. This legislation is intended to curb substance abuse in the workplace.

The new law allows employers to ask for disallowance of a workers' compensation claim filed by an employee who tests positive on a qualifying chemical test. The law also applies if the injured employee refuses the test. For the claim to be allowed the injured employee must produce sufficient evidence to prove that being intoxicated by alcohol or being under the influence of any of nine controlled substances (not prescribed by the employee's physician) did not cause the injury.

The law took effect on October 13, 2004. (Cross Reference, Fact Sheet No. 253 – Workers' Compensation Questions and Answers)

References

Article 9, 24
Appendix M

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OCSEA Constitutional Requirements for Subordinate Bodies

Dues:

Each active chapter shall receive a quarterly refund equal to 9% of member and fair share fee from people covered by the chapter or a minimum of \$900 for chapters with less than 50 members and \$1100 for chapters with 50 or more members.

Each assembly and district receives 1% of member dues from people covered by each respective assembly or district, but not less than \$500, also on a quarterly basis.

Rebates:

Quarterly rebates are paid to subordinate bodies who are in active status and who submit properly signed quarterly financial reports including copies of all bank statements and copies of all meeting minutes to the Comptroller. Further, the chapter must hold at least one regular membership meeting and one executive board meeting per quarter. District councils and assemblies must hold at least one meeting per quarter.

Rebates are to be kept in financial institutions that are federally insured. The Comptroller's signature is to be on all accounts. The board policy provides that she is the last person to sign the proper paperwork and thereafter she mails the materials to the financial institution.

Subordinate bodies shall adhere to the financial standards code of AFSCME.

The financial records of the subordinate bodies are subject to review by the Comptroller who reports the results to the OCSEA Finance Committee and the Board of Directors. (Article VI of the By-laws provides for an audit at least every two years).

NOTE: No loan shall be made to officers, agents or members of the Union; and no business or financial transaction involving an officer, agent, or employee of the Union or their spouse, children, parents or other family



member shall conflict with the fiduciary responsibility of such persons of the Union. The collective bargaining law mandates a penalty for loans.

Officers:

(This is outlined in Article IV of the Subordinate Body Constitution)

Officers are to be elected from the membership. The Executive Board shall consist of a president, vice president, secretary and/or treasurer and a minimum of three elected executive board members.

Officers and Executive Board members shall be nominated from the floor at a regular or special meeting called for that purpose and only after having given at least 15 days notice to membership prior to that nomination meeting. A member may nominate themselves.

Requirements for office for subordinate bodies are the same as for Board members as set forth in Article IV, Section 3 of the OCSEA Constitution except, lifetime and retired members, as well as active members, may serve as officers except president or vice president. Also, as in the case with OCSEA board members and state officers, the candidates must be active members of the union for a period of at least two (2) continuous years immediately prior to election or appointment.

Voting on the office shall take place by secret ballot. All active members shall be notified of the nomination and election by mail at least 15 days prior to date of the election meeting. The process for the election is covered by Article 5, Sections 2 and 3 of the Subordinate Body Constitution and the AFSCME Election Manual.

(Continued)

The term of office is 3 years. Officers can succeed themselves in office.

How Business is Run:

No business of the subordinate body shall be conducted without a quorum present.

A quorum for a chapter shall be a majority of chapter officers and executive board members. A quorum for a district council shall be a majority of council officers plus representation of 35% of the active chapters within the council. A quorum for an assembly shall be a majority of the officers and three other delegates representing at

least 2 separate chapters which make up the assembly.

No funds shall be spent without prior approval of the Body or its Executive Board and the vote shall be recorded in the minutes.

All checks and financial reports shall be signed by the President and the Treasurer. An alternate may be designated by the Body in the event either (or both) is incapacitated.

Note: Subordinate body funds may not be spent on political activities. Further, union funds cannot be spent on campaign materials or activities associated with subordinate body elections.

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Disability Leave: Questions & Answers

Q What is the eligibility criteria?

A You must have completed one year of continuous state service and be a permanent full-time or part-time employee or established term regular or established term irregular employee having worked (or in active pay status i.e., vacation, (sick leave does not count). 1500 or more hours within the 12 months before your disability.

To be eligible for disability leave benefits, you must be: 1) in active pay status on approved sick leave, or 2) on approved disability leave; or 3) on approved leave of absence without pay for personal medical reasons or 4) disability separated.

You will not receive disability benefits for a prior Workers' Compensation injury. You may be eligible to receive disability benefits if you file an initial disability claim within 20 days of the Bureau of Workers' Compensation denial of an initial Workers' Compensation claim.

You may be eligible to receive benefits for up to 12 weeks as an advance if you have filed a claim for Workers' Compensation and the claim has been denied by the Bureau of Workers' Compensation.

You are not eligible for benefits for injuries incurred in the act of committing a felony, participating in a riot or self-inflicted injuries including attempted suicide.

Alcohol or other drug addiction diagnoses may be covered if the employee receives treatment from a mental health and/or alcohol and other drug addiction program, and it is determined that such a treatment program prevents the employee from working as documented by the treatment provider.

Eligibility for disability for mental illness must be determined by a licensed mental health professional through United Behavioral Health, which currently administers mental health services under the employee health plan.

Q How do I apply for disability leave?

A By completing the "Application for Disability Leave Benefits" form (ADM 4310). All sections of the application must be completed or your application may be denied. You and your physician are each responsible to complete a section of this form. Urge your physician to provide complete, specific and detailed information including testing results. This form is available through your Personnel/Payroll Office.

Q Where do I file my claim for disability and what happens next?

A Return all four pages of your form to your Personnel/Payroll Office **within 20 days of your last day worked or your benefit may be denied.** In the event you are unable to meet the deadline, a statement indicating the extenuating circumstances preventing you from meeting the deadline must be attached to the application. Your representative or a family member may file on your behalf if you are unable. The employing agency will then complete an Appointing Authority statement and within five days will send the claim along to the Department of Administrative Services (DAS) Benefits Administration Section for processing. Some agencies may

approve routine claims for a standard recovery period but denials may only be done by DAS.

Q Am I obligated to tell my supervisor that I'm filing for disability?

A Yes. Your supervisor is entitled to know if you're going to be off work, and in order to be on authorized pay status, you must complete leave request forms. Although you are obligated to notify your supervisor of your absence and complete leave forms, you may keep the nature of your disability confidential. Your personnel office is required to handle information regarding your claim in a confidential fashion or face possible disciplinary action.

Q What can I do to ensure my claim is processed quickly and without unnecessary delay?

A Complete and return the application as soon as possible. Stress the importance of providing complete and detailed information on the application with your doctor. If your disability is expected to exceed the date for which your claim has been approved, fill out a Supplemental Report: Disability Leave Benefits form (ADM 4311) as soon as you are aware you will exceed your approved date.

Call your personnel/payroll office to see if your application has been sent to DAS in the appropriate time frame. Call to see if your application has been received by DAS.

Make arrangements to pick up your application or any additional information from your doctor's office and mail the information in yourself. If mailed, mail it by certified mail - return receipt requested. If it is hand delivered, have an extra copy date stamped for your records.

Keep a separate file that contains copies of your application, additional

information, any correspondence mailed or received about your claim and sheets of paper to jot notes of conversations about your claim.

Q How long will it take before I know whether my application has been approved and when will I get my check?

A Once personnel is notified, it is put on the next payroll. Altogether you can expect to wait 5-6 weeks from the beginning of your disability to receive a check. If you are experiencing a financial hardship, you may request a special check from your personnel/payroll office by showing evidence of the hardship such as utility shut-off notices, delinquent payment notices, etc. A special check can be prepared earlier than the normal payroll cycle, but this process is reserved for financial hardship cases. In some cases employees have returned to work before they receive a check for their disability benefits. Incomplete information and appeals of denials add more time to the processing. DAS will send you and your payroll/personnel office a letter when they've reached a decision on your claim. This usually takes about two weeks after the claim is received by DAS.

Q How will I get paid during the waiting period and until I get a disability benefit check?

A You will have to rely on your various leave balances. You must complete a request for leave form showing the types of leave you want to use, otherwise you will receive no pay.

Q How does being on disability affect service time, step increases, longevity increases, pay raises and probationary periods?

A Length of service for retirement and state seniority is not affected by disability. Likewise, service time for step and longevity

(Continued)

Increases is not affected by disability leave.

Pay raises and step increases that would have occurred during disability will be received when you return from disability leave. Since step increases are given when the step indicator on your paycheck reads 26, you will want to make sure that your step indicator is appropriately adjusted once you've returned from leave. Your step indicator should have increased by one number for each pay period you were on disability leave.

Q How does disability leave affect vacation leave, sick leave and personal leave?

A Vacation and personal leave will not accrue while you are on disability. Sick leave you would have accrued during your disability will be credited upon your return to work.

Q What about my health insurance?

A If you are in a pay status, your health insurance will continue. While you are in a no pay status and during the time you receive disability benefits, your share and the employer's share of your health insurance benefits will be paid by the State. If your claim for disability benefits is later denied, you must repay the State for premiums paid on your behalf.

Q What is the amount of the disability benefit and how long can I get it?

A The disability lifetime benefit is a maximum of 12 months. Disability is paid at 67% of the employee's base rate.

Q What is the "waiting period" and how long is it?

A A waiting period is the period of time you must wait before you will receive the disability benefit. The waiting period is 14 days. You do not have to wait for this period to be over to file for disability, but you won't receive the disability benefit until it has passed. Your waiting period begins the day your disabling condition occurred. Your

disability leave benefit will start with the first scheduled workday following the 14 day waiting period.

Q What happens when my lifetime disability leave is exhausted/maxed out and I am still disabled or I become disabled after I have reached the maximum allowable benefit?

A If you have exhausted all paid leaves (including disability leave, sick, vacation and personal leave) you may apply for an unpaid medical leave of no longer than 1 year pursuant to Articles 31.01(c) and 31.03 of the contract. The state must honor this request. The state may disability separate you at any point if it believes that you will never be able to return to your job. If it has not already done so after you have been off for two years or have reached your maximum allowable disability benefit (which ever comes first), the state will disability separate you.

Q Will I be reimbursed for any sick, personal or vacation leave I used during my disability?

A Yes, if disability is approved and you used these leaves after your 14 day waiting period. Any leave used during the waiting period will not be reimbursed. You will see this leave reimbursed on your first disability check stub.

You may supplement your disability benefit to make up the difference between your 67% benefit and 100% of your pay. You will not be reimbursed for leave used to supplement disability.

Q What about PERS retirement contributions?

A The state will continue to contribute their portion and your portion will be deducted from your disability checks. After being on disability for 3 months, the state will pay both the state's and your share of

(Continued)

PERS contributions.

If you are receiving disability as an advancement of Workers' Compensation, you will be entitled to have any PERS contributions deducted from your disability check reimbursed. Since PERS gives service credit for Workers' Compensation illnesses or injuries, you can have those contributions refunded by contacting payroll to have them complete a "Payroll Deduction Refund/Adjustment Request" form to be sent in to DAS payroll. DAS payroll will then make the request to PERS to have the contributions refunded.

Q Do I have any rights if my disability is denied?

A Yes. If your benefits are denied, you will receive a letter telling you why your benefits are denied. If your claim is denied, you may file an appeal within 30 days.

If your benefits are denied due to a medical reason, you may provide additional medical information (within 20 days of the date you were notified of the determination) without waiving your right to an appeal. If, after DAS has reviewed the additional information, your benefits are still denied, you will still have the opportunity to file an appeal.

Appeals must be filed in writing. An appeal of a denial due to technical reasons will be reviewed and decided by the director of DAS. An appeal of a denial due to a medical question will be handled by obtaining a medical opinion from a third physician. If you so request, the third party physician can be mutually agreed to by your doctor and DAS.

Q I am scheduled for surgery. Can I submit a disability claim now so it can be processed?

A Yes, but you can file for disability no sooner than 2 weeks before your first day off of work.

Q I received a letter from the disability section approving only a portion of the time that my doctor wants me to remain off work. What should I do?

A You should submit additional information from your doctor demonstrating the medical necessity for the additional time. This should include information about difficulty in recovery, tests, complications or any other information that confirms the need for you to remain off work. Except for "confidential" claims, this information should be submitted to your personnel/payroll office.

Q How are later disabilities handled? When is a claim considered the same claim, and when is it considered a different claim?

A If you suffer another unrelated disability while currently on disability, it will be considered the same claim. A new waiting period will not have to be served.

If after returning to work, you suffer an unrelated disability, it will be considered a new claim. A new waiting period will have to be served.

If after returning to work, you suffer a related disability (requiring you to be off work for 14 days or more) and have been back at work for six months or less, it will be considered the same claim, and you will not have to serve another waiting period. However, if you were back to work for more than six months under the same circumstances, you would have to serve a new waiting period because it would be considered a new claim.

Q Can I file a claim for disability if I suffer a work related injury?

A If you suffered a work related injury, you should file for Workers' Compensation, Salary Continuation, or Occupational Injury Leave (OIL). If you work in certain agencies and suffer an injury inflicted by a ward of the State, you may be eligible to receive benefits for up to 960 hours under the Occupational Injury Leave (OIL) program. You must first file for occupational injury leave. You also need to file a Workers' Compensation claim. If you suffer a work related injury that does not involve a ward of the state, you may be eligible to receive up
(Continued)

to 480 hours of Salary Continuation. You may also be eligible to receive Salary Continuation if your OIL claim is denied.

If you are disapproved for OIL or Salary Continuation, you may file for Disability and Workers' Compensation at the same time. You must file for Disability within 20 days of the time you were denied OIL or Salary Continuation and you must also file a Workers' Compensation claim.

Q Can I be required to return to work while on disability?

A In the event your physician indicates that you are able to return to work on a part time basis or to participate in a Transitional Work Program as developed by the union and management, you will be required to return to work under those conditions.

Q Do I have a right to return to my previous job after I am disability separated?

A You have the right to reinstatement to a position for two (2) years from last date *worked*.

Q How do I apply for reinstatement?

By making a written request to the appointing authority no more than once every three months and no later than three (3) years from last date worked. Your request must be accompanied by medical evidence you are capable of performing the essential portions of your job duties.

Q What happens after I apply for reinstatement?

A The appointing authority shall either reinstate you or require you to take a medical and/or psychological exam to certify you are able to return to work.

Q Can I grieve my disability separation?

A Disability separation or denial to reinstate from an involuntary disability

separation is not grievable but can be appealed through the State Personnel Board of Review. OCSEA does not represent employees at the State Personnel Board of Review.

Q How does disability separation affect my health insurance?

A. While on disability separation the state no longer pays your health insurance. To continue health care coverage, you must pay the premiums. You can do this for only 18 months after which you will need to find health insurance through some other means.

Q How does disability separation affect my vacation, sick, and personal leave?

A Employees do not accrue vacation, sick or personal leave while on disability separation.

Q How does being on disability separation affect my service time for step increases, longevity, retirement, and pay raises.

A Length of service time for step increases, longevity, retirement, and pay raises will stop when you go on disability separation.

Q What about retirement contributions?

A No contributions are made by the state and the employee cannot make contributions either, therefore no service credit is granted for time off on disability separation or on extended medical leave.

Q May I file for disability retirement from disability separation?

A Yes, if you have five (5) years of contributing service credit.

(Continued)

Q Do I have reinstatement rights from disability retirement?

retirement system. You have reinstatement rights to your position for five (5) years from last day *worked*.

A Yes, if you are disability separated and granted disability benefits by a state

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Salary Continuation and Occupational Injury Leave Questions & Answers

Q: What are the eligibility requirements for OIL and for Salary Continuation?

A: To be eligible for OIL you must be an employee of the Department of Rehabilitation and Corrections, Youth Services, Mental Health, Mental Retardation and Developmental Disabilities, Ohio Veteran's Home or Schools of the Deaf and Blind and have suffered a physical or psychological (if approved for Workers' Compensation) injury inflicted by a ward of the state. You are eligible as soon as you become an employee of one of these departments. The injury cannot be the result of an accident, misbehavior or negligence on your part. You will be disqualified from receiving benefits if you engage in a similarly demanding occupation for wages or profit.

Salary Continuation is a salary replacement for all state employees covered by the OCSEA contract. The injury cannot be the result of an accident, misbehavior, or negligence on your part. You will be disqualified from receiving benefits if you engage in a similarly demanding occupation for wages or profit.

Q: How do I apply for salary continuation (S/C) or occupational injury leave (OIL)?

A: The forms for Occupational Injury Pay Application/Employee and salary continuation are available from your personnel/payroll officer. You must complete the front section of the application and your attending physician must complete the back section. Also, you must apply for Workers' Compensation at the same time.

Q: What kind of information do I provide?

A: In both the applications you must provide a detailed statement of the cause and circumstances of your injury. **Important for OIL: your statement must show that the injury occurred in the line of duty, was inflicted by a ward of the state, and was not the result of an accident, misbehavior or negligence on your part.**

Your physician must provide a detailed account of your diagnosis, complications, test results, restrictions, etc. The more detail you and your physician supply, the less trouble you'll have with the processing of your claim.

Be sure to check the box denoting whether the application is an "original" or an "extension" application.

Q: Where do I turn in the application?

A: The application is submitted to your person el/payroll officer. The sooner the forms are submitted, the sooner the process gets started. If you are unable to submit these forms personally, a member of your family or your representative may submit them for you. **Be sure to keep a copy of your application and have it date-stamped for your records** in case there is any question in the future regarding the date you filed.

Q: How are the forms processed?

A: Once the forms are submitted to personnel/payroll, they are sent to your appointing authority. Payroll completes a separate form, a calendar of wages, to show the number of hours to be paid for each day

of your absence. In addition to this calendar, the appointing authority also completes the Appointing Authority Report (ADM-4723) which includes a recommendation to the Department of Administrative Services for denial, approval, or investigation of the application.

Remember, this is only a recommendation. Approval or denial is left to DAS.

The appointing authority has 5 days to complete, your OIL or S/C application, along with the calendar of wages paid, and submit it to the central office of the agency involved and then on to the Department of Administrative Services, Office of Benefits Administration.

Even if the appointing authority recommends disapproval, the application must be sent to DAS for their decision.

Q: Do I need to file for Workers' Compensation?

A: Yes, you must file a Workers' Compensation claim **in addition** to your OIL or S/C application. You need to file this so your physician, medication and other medical expenses are paid by Workers' Compensation. You will not receive Workers' Compensation payment of wages for the same time you will receive OIL or S/C, but this will start payment for medical expenses. You will then have a claim on file in the event your recuperation time goes longer than the amount of time allotted by OIL.

Q: Should I file for State Employee Disability?

A: You should not file for State Employee Disability unless you've been informed that your application for OIL and/or S/C and for Workers' Compensation has been denied. You have 20 days after you receive notification of denial of Workers' Compensation to file for a claim under the disability program. Filing for disability before you receive denial of OIL and/or Workers' Compensation will only slow the processing of all applications.

Remember, if you disagree with the DAS decision that you are not entitled to OIL or S/C, you may appeal.

Q: Is there a time limit for filing?

A: Yes, you must file within 20 days of the incident giving rise to the injury. It will help you obtain Benefits if you have filed an incident and/or accident report and have medical documentation that this subsequent disability was caused by your inflicted injury.

Q: Is psychological illness covered by OIL and/or Salary Continuation?

A: Yes, if the psychological condition has been made part of the workers' compensation claim.

Q: How much money will I receive?

A: Both OIL and Salary Continuation leave is paid at 100% of the employee's total rate of pay.

Q: What is maximum length of time for which I can receive OIL or salary continuation?

A: If the injury warrants it, you may receive OIL for a total of 960 hours (nearly 6 months) or 480 hours for salary continuation. In the case of surgery for exacerbation of a previous injury, you can apply for additional benefits by filing an application for an extension of benefits, if you haven't already exhausted your benefits. You will have to show that this injury or surgery is causally related to your original benefit application.

Q: If I file for benefits, do I have to tell my supervisor?

A: You should inform your supervisor anytime you are not coming to work when expected. The filing of forms does not automatically notify your employer that you won't be there.

Q: How long will it take before a decision is reached on my application?

A: Once the application is received by DAS, a decision is usually reached within the week. Of course, this depends on the number of claims filed at the time you turn in your application (there are peaks and lulls in claims filing). Keep in mind that the appointing authority is responsible for sending the claim form to DAS within 5 days. Failure to forward the application within 5 days is grievable.

Q: How will I know if my appointing authority has sent my application on to DAS?

A: You can call personnel/payroll and check on the status of your application, or you may call the Benefits Section of DAS (614-466-6205) to see if the application has been received.

Q. How will I know if a decision is reached on my application?

A: After a decision is reached, you will be notified by a letter from DAS. A copy of this letter is also sent to your agency's payroll/personnel officer. This letter authorizes payment for Occupational Injury Leave or Salary Continuation. This will cause a check to be issued to you at the end of each bi-weekly pay period until your approval date expires.

Q: What should I do about being paid until my application is processed?

A: You may use your accrued leave. After OIL or S/C is approved, your leave balances will be restored to reflect the leave time you've used. However it is the intent of the new procedures that pay will not be missed.

Q: What do I need to do to return to work?

A: If you are returning earlier than your physician indicated on your application, you will have to obtain a release slip from your doctor and present it when you return.

Q: How does being on OIL or S/C affect my step increases?

A: It doesn't affect your step movement.

Q: Does OIL or S/C have any effect on my service time?

A: No.

Q: Are my various insurances paid and my retirement contributions made while on OIL or S/C?

A: Yes. As usual, you pay your portion and the State pays their portion.

Q: Will I accrue leave while I'm receiving payments under the OIL or S/C program?

A: Employees receiving OIL or (S/C) shall accrue sick leave and personal leave, but not accrue vacation leave.

Q: What are my appeal rights if I am denied OIL or S/C?

A: Appendix K contains a new appeal process. You have 20 calendar days to appeal. As soon as you are informed that benefits have been denied you should apply for Disability.

Q: What if my doctor says I can't return to work until June 30, but my benefits are only approved through June 10? Will I be paid from June 10 through June 30?

A: No, not automatically. You should file another application marked "extension" and submit the information to confirm your doctor's belief that you will still be disabled until June 30.

Q: What if I remain disabled after exhausting the 960 hours of OIL or 480 hours of Salary Continuation?

A: You should activate your Workers' Compensation lost time claim you already filed by filing Form C-84 with BWC.

A: You should contact your local stewards or officers. If they need assistance, they can depend on the resources of the Union staff.

Q: If I have further questions about my OIL leave who should I contact?

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The State Contract Series

For use in understanding the state employees' contract



Family and Medical Leave Act: Important Points

What is it?

The Family and Medical Leave Act (FMLA) requires employers to offer eligible employees no less than 12 weeks (480 hours) of **unpaid** leave per year.

This federal law—incorporated into our contract—generally does not provide OCSEA members with additional leave benefits, but can supplement the paid leave benefits currently secured by our collective bargaining agreement. The primary benefit of FMLA to OCSEA members employed by the state of Ohio is protection from discipline for alleged mis-use of paid leave benefits.

In most cases when you use FMLA leave, employees have to follow all their employer's normal procedures for taking paid leave, including the application procedure and call-off procedures. Under the law and our collective bargaining agreement, the employer is allowed to also require employees to take paid leave concurrently (at the same time) with the unpaid FMLA leave. The State of Ohio requires that first, sick leave, then personal leave, then vacation leave balances must be exhausted before any remaining available unpaid FMLA leave will be granted. The employer cannot force you to use compensatory time concurrently with unpaid FMLA leave.

Who is eligible?

Any employee who has worked for the employer for at least 12 months in the last eight years, and who has worked for the employer at least 1,250 hours in the last year is eligible to take FMLA leave (subject to some restrictions).

Under What Circumstances Can I Use FMLA?

FMLA can be used for the following reasons:

1. For incapacity due to pregnancy, prenatal care or child birth;
2. To care for the employee's child after birth, or placement for adoption or foster care;
3. To care for the employee's spouse, employee's son or daughter, or employee's parent, who has a serious health condition; or
4. For a serious health condition that makes the employee unable to perform the employee's job.

A serious health condition is an illness, injury, impairment, or physical or mental condition that involves either an overnight stay in a medical care facility, or continuing treatment by a health care provider for a condition that incapacitates either the employee or the employee's son, daughter, or parent. The continuing treatment requirement may be met by a period of incapacity of more than 3 consecutive calendar days combined with at least two visits to a health care provider or one visit and a regimen of continuing treatment, or incapacity due to a chronic condition. Other conditions may also meet the definition of continuing treatment.

How do I request FMLA leave?

Employees must provide employers with 30 days advance notice of their need to take FMLA leave when their need for leave is foreseeable. When employees are unable to give 30 days notice they must provide notice as soon as practicable.

When giving notice employees must provide sufficient information for the employer to know the requested leave may qualify for FMLA. They should also provide the anticipated timing and duration of leave, if known. Simply calling in "sick" is usually insufficient; more information should be provided.

Once an employee requests FMLA by name, or the employer has enough information to know the employee is taking leave for an FMLA-qualifying reason (the reason for the leave meets one of the 4 reasons above), the employer generally has five business days to designate the leave as FMLA and inform the employee that the leave is being counted toward the unpaid FMLA leave balance along with the paid leave (if any) being used.

Medical Documentation

The employer can require employees to submit medical documentation of their need for FMLA leave. This is called a medical certification. If the employer has reason to question the certification, he/she may at the agency's expense require a second examination by a doctor of their choice who does not work for the employer on a regular basis. A third opinion may be obtained from a doctor who is mutually selected by the employee and the employer, at the employer's expense.

An employer may request recertification no more often than every 30 days and only in connection with an absence by the employee, unless the employer receives information that casts doubt on the employee's need for leave.

If the medical certification indicates that the minimum duration of the condition is more than 30 days, an employer must wait until that minimum duration expires before requesting a recertification, unless the employer receives information that casts doubt on the employee's need for leave. In all cases, however, an employer may request a recertification every six months in connection with an absence by the employee.

Use of Leave

An employee can take up to 12 weeks FMLA leave in any form necessary. FMLA leave can be taken for any length of time, from one 12-week block to increments smaller than an hour. It can also be taken intermittently for serious health conditions which only require the employee to miss work occasionally.

Military Leave

In addition to the above, FMLA is available to eligible employees called to active duty status in the National Guard or Reserves or with a spouse, son, daughter, or parent on active duty status. Reasons qualifying for leave may include attending certain military events, arranging for alternative childcare, addressing certain financial and legal arrangements, attending certain counseling sessions, and attending post-deployment reintegration briefings.

FMLA also permits eligible employees to take up to 26 weeks of leave per 12 month period to care for a covered servicemember who has a serious injury or illness incurred in the line of duty that may make the servicemember medically unfit to perform his or her duties, subject to certain restrictions.

Enforcement

If you think your employer has improperly denied your request for FMLA leave, contact the Department of Labor:

Cleveland (216) 522-3892
Columbus (614) 469-5677
Cincinnati (513) 684-2942
Akron (216) 375-5820

You—not your steward or staff representative—are responsible for filing your claim with the Department of Labor. In addition, a grievance may also be filed pursuant to our collective bargaining agreement. If you think the employer has improperly denied your leave, or incorrectly designated your paid leave as FMLA, you should contact your steward or staff representative immediately.

Reference

Article 31.06



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WORKERS' COMPENSATION QUESTIONS AND ANSWERS



NOTE: All local government employees should reference their negotiated contracts or local ordinances as to how benefits are affected while on Workers' Compensation

Q What is an injury?

A Definition of injury

Ohio Revised Code (O.R.C.) §4123.01(C) defines an injury as "...any injury, whether caused by external accidental means or accidental in character and result, received in the course of, and arising out of, the injured employee's employment." "Injury" does not include:

- (1) psychiatric conditions unless there is a physical injury or occupational disease;
- (2) injury or disability caused primarily by the natural deterioration of tissue, an organ or part of the body;
- (3) sports/recreation injury where a waiver has previously been filed

MEDICAL ONLY AND LOST TIME CLAIMS

What is a medical only claim?

- ◆ A medical only claim occurs when there are 7 or fewer days of lost time;
- ◆ Medical only claims remain open for six years from the date of injury, if no compensation has been awarded. Claims occurring on or after 10/20/93 remain open for 6 years from the last date of payment of medical benefits.

What is a lost-time claim?

- ◆ Claims that result in time lost from the job beginning the 8th day.

- ◆ Lost-time claims remain open for ten years from the last date of payment of either compensation or medical benefits.

How to file the medical-only or lost time claim:

Since the implementation of the Health Partnership Program (3/1/97), new claims may be filed either via the health care provider or with the assistance of the employer through the employer's managed care organization (MCO). Every effort is being made through this process to be sure that work related injuries are being reported to BWC immediately.

- ◆ All claims are now filed using the single page form **FROI-1 First Report of Injury, Occupational Disease or Death**.
- ◆ All claims may be filed through the MCO for the employer.
- ◆ Via telephone by calling BWC's automated customer service line 1-800-OHIO-BWC or 1-800-644-6292 using Option 1.
- ◆ Online at www.ohiobwc.com

Applications may also be filed in your local Customer Service Office. By filing the forms in person at the Bureau's Central Office in Columbus or at one of the District Service Offices (in order to ensure expedient handling and processing, the applications should be filed with the Service Office that has responsibility over the claimant's geographic location). Ask that an extra copy be date-stamped by the clerk at the same time she/he stamps the one you are submitting and the one you keep for your files. If you must file by mail, mail return receipt requested and

(Continued)

attach a request that the date-stamped extra copy be returned and include a stamped, self-addressed envelope.

Q What are the time limitations for filing a claim?

A In all cases of injury or illness, (illness being a one time event) claims must be filed within two years from date of injury. In all cases of death resulting from injury, the time limit is also two years to file claim from date of death. Where death results from causes other than the injury, an application for benefits not received during the life of the employee may be made by a dependent within one year after the death.

Q What happens after the claim is filed?

A The injured worker and the employer are notified of the claim number by the Bureau. Keep this number as you will need it when you call about your claim. A computer generated letter is also sent to the claimant acknowledging receipt of the claim and may request additional information that the Bureau needs prior to processing the claim. In lost time cases, the claimant will also receive a Physician's Report Form, that needs to be filled out by the attending physician and returned as soon as possible. A routine check is made to see whether there is already a claim on file. If all the necessary information is provided, and the claim form is properly filled out and meets the requirements of the Workers' Compensation Act, the claim will be held in the district office that maintains the claim file. If additional information is needed, compensation will not be paid during this review.

Q What needs to be done with the Physician Report?

A The claimant should take the form to the doctor immediately. Ask the doctor to fill out the form as soon as possible. The quick return of the form to the Bureau will speed up the allowance of the claim and the payment of

compensation to the claimant. It will also expedite payment of the doctor bill.

Q Can anyone examine a claim file?

A No, the Bureau takes the position that claim information cannot be given to anyone other than the parties to the claim and their representatives. Persons who are interested in claim information for other purposes are not allowed to examine a claim file, unless they have obtained a release of information, signed by the claimant, bearing the correct claim number, recent date (no more than 60 days), and specifically addressed to the Bureau.

Q Do I always have to go to a local service office or call the BWC customer service line to review the status of my claim file?

A No. Once you have received your claim number, you can review your claim file over the internet by accessing the BWC website at <http://www.bwc.state.oh.us>

Q May I receive disability leave as an advancement on my Workers' Compensation claim?

A A State of Ohio employee incurring an injury or illness in the course of performing job duties or arising out of any employment covered by Workers' compensation may receive, as an advancement, disability leave benefits. To be eligible for such advancement, an employee must have been denied an initial claim for Workers' Compensation lost time wages.

The employee must file a claim for disability leave benefits and a copy of the Bureau of Workers' Compensation order within twenty (20) days of the notification by the Bureau of the denial of an initial claim for Workers' Compensation benefits. Disability leave benefits may then be advanced for a period of up to twelve (12) weeks or until the employee has been awarded benefits by the Bureau of Workers' Compensation, whichever

is earlier. Advancements may be made only on initial Workers' Compensation claims. All disability leave benefits received by the employee as advancement, must be reimbursed by the employee to the disability leave benefits program if the employee has been awarded weekly wage payments by the Bureau of Workers' Compensation or the employee has been paid a lost time wage settlement for the same time period for which the advancement was made.

Q What can I do to ensure my claim is processed quickly and without unnecessary delay?

A The single most important thing is to fill out the form completely and properly by yourself, the employer and physician. Stress the importance of providing complete and detailed information on the application with your physician.

Q Will I get paid during the waiting period until I get a Workers' Compensation benefit check?

A You may use any leave balances you have during this time.

Q Can my employer legally mandate that I use my leave balances during my waiting period for Workers' Compensation?

A Legally NO.

Q Do I have the right to buy back any sick, personal, vacation leave or compensatory time balances used pending determination of a Workers' Compensation claim?

A The employer shall allow the employee to buy back those leave balances within two pay periods after the Workers' Compensation award is granted in accordance with Article 34.02 of the Union Contract.

Q May I use leave balances to supplement Workers' Compensation?

A You may utilize sick leave, personal leave or vacation to supplement Workers' Compensation up to one hundred percent (100%) of your rate of pay. If you are receiving a Workers' Compensation lost time benefit for a psychological illness which arose from a physical injury received by a client, inmate, resident, student or patient and you work in an institutional agency, you can supplement Workers' Compensation with OIL up to 100% of your regular rate. The total amount of OIL you can use to supplement Workers' Compensation is 60 hours and is within the total limit of 960 hours.

Q What happens to my health insurance?

A In accordance with OCSEA negotiated benefits in Article 34.01 of the Union Contract, employees who have a Workers' Compensation claim pending or are receiving Workers' Compensation benefits shall continue to be eligible for health insurance at no cost to the employee not to exceed 24 months. This means the employee does not have to make his/her premium co-pay during this time.

Q What about PERS retirement contributions?

A Neither the employer nor the employee makes contributions to PERS retirement while the employee is receiving Workers' Compensation. The employee does, however, receive service credit for Workers' Compensation time. You may want to check with PERS [(614) 466-2985 or (800) 222-7377] to verify that your agency has filed the proper service credit form with PERS for you.

Q Do employees accrue any vacation, personal or sick leave credits while on Workers' Compensation?

A Employees on approved leave of absence or receiving Workers' Compensation shall be credited with those sick or personal leave hours which normally would have accrued during their Workers' Compensation leave upon their approved return to work. Vacation leave will not accrue while on Workers' Compensation.

Q How does being on Workers' Compensation affect my seniority, longevity and step increase?

A Length of service for state seniority, longevity and step increases is not affected by Workers' Compensation, e.g.:

1. Seniority credit - Seniority credits shall accrue while on leave for periods of Worker's Compensation (up to three years).
2. Pay raises, longevity and step increases are credited to the employee while on Workers' Compensation, however, the employee shall not receive the benefits until the employee returns to the state payroll.

Q Do I have any rights if my Workers' Compensation claim is contested?

A Yes, you have the right of appeal. **BWC must receive an appeal in writing.** You can file an appeal with the Notice of Appeal (IC-12) or send a written document to BWC with the following pertinent information:

- The name of the injured worker and employer;
- The claim number;
- The date of the order being appealed;
- The reason for the appeal.

Also, sign and date the appeal. File the appeal by mail, fax or in person at the local

BWC customer service office of the Industrial Commission of Ohio (IC).

The time frame for filing an appeal is generally 14 days after you receive the order. The time frames are spelled out on the order. You can appeal any BWC decision as long as it is within the appropriate time frames.

Q How can the employer's suspicion of drug or alcohol use effect my claim?

A House Bill 223, also known as the rebuttable presumption law, puts the burden of proof on employees to prove that alcohol or drugs in their systems were not the proximate cause of a workplace injury.

The new law allows employers to ask for disallowance of a workers' compensation claim filed by an employee who tests positive on a qualifying chemical test. The law also applies if the injured employee refuses the test. For the claim to be allowed the injured employee must produce sufficient evidence to prove that being intoxicated by alcohol or being under the influence of any of nine controlled substances (not prescribed by the employee's physician) did not cause the injury. This law took effect on October 13, 2004. (Cross Reference, Fact Sheet No. 221 – Drug & Alcohol Testing)

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OCSEA Dues

Although dues amounts and obligations are spelled out in the OCSEA and AFSCME International Constitutions, there are frequent questions regarding the administration of dues, particularly for employees on leave or disability and regarding the union's obligation to persons who may have stopped paying dues. The following information is intended to ensure a uniform understanding of existing policy in this area.

Dues Rate

The dues rate for all OCSEA members is the same, whether they are in active payroll status or not: 1.25% of the employee's regular base rate of pay. Thus, employees who wish to continue active membership status while not on the payroll must pay dues at the same rate as if they were a regular employee. (See Article XIV Dues of the OCSEA Constitution) Employees recalled from temporary, seasonal layoff or returning from leave of absence shall resume payroll deduction of dues or fair share fees whichever was in effect prior to interruption of payroll status.

Maintenance of Membership

Employees, who are members on the effective date of the agreement or become members during the course of the agreement, will be members for the life of the contract.

However, during a 30 day period, commencing 60 days prior to the end of the agreement, employees can terminate their membership by giving a written notice to OCSEA Central Office.

- Certain rules apply to those that have a Grievance pending, are out of Workers Comp., Disability or military leave.



Cash Payment

To maintain membership while not on payroll deduction, members must remit their dues to the OCSEA Comptroller by check or money order in advance of the period to be covered by the dues.

Representation Rights

As exclusive representative, OCSEA has a legal obligation to fully represent all bargaining unit employees, members and non-members alike. Thus, an employee on leave or disability, who has allowed their dues to lapse, is entitled to the same level of union representation as a member who has maintained dues payments. Membership is not a condition of representation by the union.

Holding/Eligibility For Office

Continued payment of full dues is a condition for continuing to hold office in the union while not on the public employer's payroll. Further, there are constitutional eligibility requirements which may prevent an employee, who is no longer actively employed by the public employer, from continuing to hold office or maintain membership. Consult with the Executive Director's office for information on particular situations in this regard.

Voting Rights

Only members in good standing (current in payment of dues) are entitled to vote on union business, including election of officers and contract ratification.

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BEREAVEMENT LEAVE

Article 30.03 provides for three (3) consecutive days of leave with pay at regular rate for death in the employee's immediate family. (Employee must provide a death certificate in the case of a still-birth.) This is a benefit in addition to sick leave. The contract says that the employer may request verification of the death. The Employer may grant vacation, sick leave or personal leave to extend bereavement leave.

What is immediate family?

The main dispute between the state and the union in the past with respect to bereavement leave is the definition of immediate family. Article 30.03 of the contract defines immediate family as spouse or significant other, child, step-child, grandchild, parent, grandparent, brother, sister, mother-in-law, father-in-law, son-in-law, daughter-in-law, sister-in-law, brother-in-law, step-parent, grandparent, step-sibling or legal guardian or other person who stands in place of a parent. The contract defines significant other as a person who stands in place of a spouse and who resides with the employee. The parents and brothers and sisters of a significant other are not 'in-laws' in the definition of family in Article 30.03.

Other definitions have been generated through the grievance process. A recent fourth step response from the Office of

Collective Bargaining further defines the meaning of "sister." It says that "sister" includes half-sister, but does not include step-sister. Likewise, in the opinion of the union, brother includes half-brother but does not include step-brother. As Arbitrator Drotning noted in an award, this section must be applied with a fairly strict and literal interpretation of the language: "In conclusion, because of the large number of employees involved and the extended familial relationships in today's society, Article 30.03 must be interpreted precisely and literally. It is impossible to base bereavement leave considerations on the quality of a particular personal relationship, but these decisions must rest primarily on legal and narrow definitions of the relationship between the employee and the deceased."

Reference

Article 30.03

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MILITARY LEAVE

ACTIVATION

There are essentially two types of military leave:

- Federal Duty pursuant to Executive Order by the President because of an Act of Congress or Governor's Order pursuant to ORC Section 5919.29 – employees serving in the uniformed services, called to federal duty because of an Executive Order of the President, because of an Act of Congress, or because of a Governor's directive pursuant to ORC Section 5919.29. Employees on this type of leave are paid by the federal government. This duty includes, but is not limited to the following: annual training, weekend drills, schools or other training, and most recently, Ohio National Guard members on airport security duty or reservists called to active duty.
- State Active Duty pursuant to Governor's Proclamation – employees serving in the Ohio National Guard, called to state active duty by the Governor. This occurs infrequently and is most often in response to disasters or civil unrest. See, ORC Section 5923.21. Employees on this type of leave are paid by warrant of the Auditor of State.

Q: I have been called to report to my unit. What do I need to do to request leave?

A: To process the leave request, please submit a copy of your orders to your human resources office. A letter on military unit letterhead, signed by your military commander, may be submitted as a **temporary** document in lieu of the orders. Once you have your official orders, it is your responsibility to provide a

copy of the orders to your human resources office.

If you are unable to provide a copy of your orders or a letter from your commander, you must use your available leave or be placed on a leave of absence.

Q: Will I be taken off payroll once I am activated?

A: No.

Q: I am a temporary employee. Am I entitled to military leave?

A: No, only permanent employees are eligible for military leave.

MILITARY LEAVE HOURS

Q: How many hours of military leave is a state employee entitled to receive each year?

A: Permanent public employees are entitled to a leave of absence from their respective positions without loss of pay for periods up to one month for each calendar year in which they are performing service in the uniformed services. A month means 22 eight-hour workdays or 176 hours within one calendar year.

Q: What happens when I have exhausted this calendar year's 22 work days or 176 hours?

A: Once you have exhausted all 22 work days or 176 hours in a calendar year, you may be placed on a leave of absence or

use your available vacation, personal or comp time balances. After exhaustion of all balances you will be placed on a leave of absence without pay and a pay differential as set forth in Ohio Revised Code 5923.05(B).

Q: I have a balance of military leave hours. Can I carry forward those hours to the next calendar year's allotment of 176 hours?

A: No, unused hours are lost.

INSURANCE COVERAGE

Q: Will I continue to have benefits for myself and my family?

A: Dental, vision and life insurance premiums will be paid by the agency as long as you remain on the payroll. You will continue with your existing family or single coverage for dental vision and life insurance.

Amended Substitute Senate Bill 164 provides for employees called to Federal Duty, that the State of Ohio will continue to pay the employer's share of health insurance and the employee will still be responsible for his/her share of insurance.

Employees on State Active Duty will be responsible for both the employee and employer's share of the insurance. See, ORC Section 5923.051.

Employees who choose to carry a State of Ohio sponsored health plan may pay for their share using the following options:

1. Make a direct pay to their employer
2. Payment will be automatically deducted from earnings that the employee receives during the payroll period, by
 - a. From usage of military leave (176 hours per year).
 - b. From his/her military leave differential as provided in SB 164.

c. From available leave balances: vacation, personal and comp time, until exhausted.

An employee will not be permitted to use 8 hours of paid leave per pay period or alternate between paid and unpaid status. Once an employee has depleted all the paid leave that he or she has elected to utilize, he or she will be placed on unpaid status.

3. Receive an advancement of money (up to \$1500 per calendar year) to cover the employee's share of health care. Agencies will track the amount of money advanced, then recoup this money once the employee receives a payment from the agency.

Q: Can I use my available leave balances while I am activated to make my health insurance premium payment?

A: Vacation, personal and comp time balances may be used. Employees will not be permitted to use 8 hours of paid leave per pay period or allowed to jump back and forth from paid leave to "no pay" status. Example: An employee may not use eight hours of vacation for the first payroll the next month. An employee may not spread out a remaining balance of 40 hours of vacation leave by taking 8 hours over 5 pay periods. If the employee has elected to take those 40 hours of vacation, it will be used in a lump. Sick leave may not be used.

Q: While on leave without pay, who pays for my health insurance?

A: Amended Substitute Senate Bill 164 provides for employees called to Federal Duty, that the State of Ohio will continue to pay the employer's share of health insurance and the employee will still be responsible for their share of insurance. Employees on State Active Duty will be responsible for both the employee and employer's share of the insurance. See, ORC Section 5923.051.

Employees who choose to carry a State of Ohio sponsored health plan may pay for their share using the following options:

1. Make a direct pay to their employer
2. Payment will be automatically deducted from earnings that the employee receives during the payroll period, by
 - a. From usage of military leave (176 hours per year).
 - b. From his/her military leave differential as provided in SB 164.
 - c. Use of available vacation, personal or comp time balances.
3. Receive an advancement of money (up to \$1500 per calendar year) to cover the employee's share of health care. Agencies will track the amount of money advanced, then recoup this money once the employee receives a payment from the agency.

Q: I have exhausted all 176 hours of military leave with pay and available leave balances. How can I continue my health coverage?

A: Employees who choose to carry a State of Ohio sponsored health plan may pay for their share using the following options:

1. Make a direct pay to their employer
2. Payment will be automatically deducted from earnings that the employee receives during the payroll period, by
 - a. From usage of military leave (176 hours per year).
 - b. From his/her military leave differential as provided in SB 164.
3. Receive an advancement of money (up to \$1500 per calendar year) to cover the employee's share of health care. Agencies will track the amount of money advanced, then recoup this money once the employee receives a payment from the agency.

Q: Do I have to enroll in the military's health plan?

A: No. After 31 days of active military service, you are automatically enrolled in Tricare, the military health care plan.

Q: Who pays for my claims if I continue my State of Ohio health coverage and I am automatically enrolled in the military plan?

A: The state health plan pays first because it is the primary health care insurance plan.

Q: What happens to my supplemental life insurance policy while I am on active duty?

A: If you wish to continue your coverage, you must contact Prudential to make arrangements for direct payments. Your rate will not change unless you enter a new rate level based on your age. If you do not continue coverage, you may enroll again at any open enrollment period.

Q: I am currently enrolled in Long Term Care. How can I continue coverage?

A: You will need to contact Aetna to make arrangements for paying the premium directly to them. Aetna's number is 1-800-537-8521.

OTHER TYPES OF LEAVE

Q: I am currently on disability/workers' compensation/occupational injury leave and I have been called up. Will my benefits be stopped?

A: Further clarification is being sought and the answer may be provided on a case-by-case basis. However, benefits will continue if military job duties are not in conflict with approved medical documentation on file. Continued medical documentation will be accepted from an authorized military physician.

Q: I am currently on an approved leave of absence and have been activated. Is my leave terminated?

A: Your approved leave is terminated when you report to duty. You must notify your agency's human resources office of this change in status.

REINSTATEMENT/RECALL RIGHTS

Q: What documents are required to be reinstated to my position?

A: To be entitled to reinstatement/reemployment, you must receive a certificate of satisfactory service or general discharge (e.g., under honorable conditions).

Q: When will I be reinstated upon completion of active duty?

A: You must apply for reinstatement after you return from uniformed service leave to your agency, within the period set forth below:

For reinstatement from leaves of less than 30 days: Immediately upon release from duty, you will be returned to the same or similar position within your former classification. Your agency must allow for travel time and eight hours of rest;

Leaves of 31 to 180 days: Reinstatement within 14 days of completing uniformed service requirement;

Leaves of more than 180 days: Reinstatement within 90 days of completing uniformed service requirement.

Q: Once I ask for reinstatement, do I get my old position back?

A: Upon return from a period of duty in the uniformed services lasting 90 days or less, you will be returned to the same or similar position within your former classification. If the period of duty lasts more than 90 days, you may be placed in

any position of equivalent status, seniority and pay, regardless of the duration of duty. If the appointing authority demonstrates to the director of Administrative Services, that reinstatement is impossible or would impose undue hardship, you will be assigned to another position with like seniority, status and pay or the nearest approximation thereof consistent with the circumstances of the case.

Q: I am currently laid off and have been called to active duty. What are my rights?

A: If you could have been recalled while on active duty, you are entitled to a working position upon release from active duty if you have applied for reinstatement.

Q: If my agency has a layoff while I'm on active duty, can I be laid off?

A: You cannot be laid off while you are on military leave. When you return to work, you may be subject to layoff.

PAY INCREASES

Q: Will I get any pay increases while on active duty?

A: Yes, you will be entitled to receive any pay increase(s) while on active duty. For the Military Leave Differential calculation and for the payment of the 176 hours of military leave per calendar year, the agency will move the employee's step indicator and calculate service time each pay period. This will allow you to get step increases and longevity increases, plus receive the annual pay table increase and any other pay changes you would have received if you had been working.

Q: If I am on active duty during the December conversions of leave balances, am I eligible to convert my leave balances to cash?

A: Yes, as long as you are in active pay status.

WITHHOLDING

Q: Child support is being withheld from my pay. Will the state continue to withhold it?

A: As long as you are in an active pay status, all of your attachments will be withheld.

Q: What taxes are withheld?

A: As long as you are in active pay status all taxes, including federal, state and local taxes will be withheld according to the law.

Q: What is Military Differential Pay?

A: Due to SB 164, the Ohio Revised Code authorizes the payment of a supplement to those employees who are called to Federal Duty as a result of (1) a Presidential Executive Order or (2) an Act of Congress for a period in excess of 31 days or (3) because of an order to perform duty issued by the governor. Each employee who qualifies pursuant to the above shall be paid the difference between the employee's gross monthly wage or salary as a State of Ohio employee and the sum of the employee's gross uniformed pay and allowances received that month. The supplement is calculated by determining the difference between your monthly gross state wage or salary and the sum of your monthly gross military pay and allowances. A worksheet has been provided by DAS to all agency payroll officers. You will need to supply this information to the agency payroll office to receive any differential pay.

Medicare, federal, state, municipal and school district income tax and attachments will be withheld as applicable. No deductions, however, will be made for retirement systems, union dues, fair share fees or voluntary deductions.

RETIREMENT SYSTEMS

Q: What is the status of my retirement system contributions?

A: Up to 10 years of free service credit may be granted to a member who, after at least one year of contributing service, leave public employment for active duty in the armed forces and returns within two years after discharge to a position covered by Public Employees Retirement System (PERS), State Teachers Retirement System (STRS), School employees Retirement System (SERS), Ohio Police and Fire Pension Fund (OP&F), the Highway Patrol Retirement System (HPRS) or Cincinnati Retirement System (CRS).

A member must establish one year of service credit upon returning to public employment and must furnish a copy of the discharge or separation from the armed forces.

For more information, please contact your agency's Human Resources Office.

LEAVE ACCRUAL

Q: What types of leave accrue during the 176 hours of paid military leave?

A: Both exempt and bargaining unit employees accrue all forms of leave – sick, vacation, and personal until their 176 hours of paid military leave expires.

Q: After the initial 176 hours of paid military leave does any type of leave accrue?

A: Exempt employees do not accrue sick, vacation, or personal leave.

Employees covered under the OCSEA, OSTA, 1199, and FOP contracts only accrue sick leave while on unpaid military leave. These employees do not accrue any other forms of leave.

Employees covered under the SCOPE contract do not accrue any form of leave while on unpaid military leave.

FMLA ELIGIBILITY

Q: Does my time on military leave count toward my eligibility for Family Medical leave?

A: Yes, time on military leave (paid and unpaid) is included in calculating both the 12 month service requirement and the 1,250-hour work requirement for purposes of the Family Medical Leave Act

REFERENCES

ORC 5919.29; 5923.21
Arbitration #763
Article 30.02; 31.01E
Amended Substitute Senate Bill 164
OAC 123:1-34-05
Federal Law-USERRA 38USC 4301-4333
[Http://das.ohio.gov.hrd.military.leave/index.htm](http://das.ohio.gov.hrd.military.leave/index.htm)

For Additional Information:

Ohio Department of Veterans Services

77 South High Street
7th Floor
Columbus, Ohio 43215
Phone # 614-644-0898
Fax # 614-728-9498
877-OHIOVET (877-644-6838)
ohiovet@dvs.ohio.gov

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Your Rights as a Steward -- Collective Bargaining Rights

Section 4117 of the Ohio Revised Code gives you the right to participate in union activities without coercion or interference from the employer. The employer cannot discriminate against you because of your participation.

§4117 also provides that the union represent all employees regardless of membership status. Grievances and/or potential problems brought to a steward must be thoroughly investigated. Decisions made and actions taken to resolve problems or file grievances must be based on facts with no regard to personality, chapter politics, race, religion or gender or any distinguishing aspect about the individual other than the merits of the facts brought forth. A good way to protect yourself is to keep records on each issue/grievance brought before you. As required by Board Policy, also take grievances to the chapter grievance committee for review.

Being a steward requires a delicate balancing act between your responsibilities as an employee and your rights and responsibilities as a union representative. As an employee, and in your role as a steward, it is good practice to be respectful of the employer. However, when functioning as a steward, you are an equal to the employer. This means that they too must treat you with respect and respond to your requests. Your firmness in demanding this respect will go a long way in ensuring fairness for the members you represent.

Provisions in the State Contract

The contract provides that the state will recognize a reasonable number of stewards. Your chapter president is required to notify each employer (agency representative, normally the labor relations person) of your status as a Steward. Also, if specific notices of discipline are to be sent to a steward, the chapter president must notify the agency representative of that

steward and his/her address. There are forms available for these purposes in the Grievance Guide.

You are allowed access to bargaining unit employees in the work site. You and your grievant and/or witnesses have a right to meet on state time. However, according to Article 25.07 a person must notify his/her supervisor and make arrangements to leave the work area and provide notice of location. Questions about the intent of the meeting or names of the people in the meeting are not appropriate. The employer should provide a space for meeting as well. The time should be a compatible time to the employees, the steward and their respective supervisors unless there is a significant operational need. Such problems should be rare.

Section 3.02 provides that stewards, who are housed in the same building or facility, have the right to cross agency lines.

Union stewards and leaders pursuant to Article 3.11 of the new collective bargaining agreement must now complete a log or form when they are on union business as described in Sections 3.02 and 3.10 of this Article. The union must verify the member's attendance for any meeting requested under Article 3.10 union leave.

Local Government or Independent State Agencies

Please check appropriate sections of your contract.

References

Article 3.02, 3.10, 3.11
ORC 4117

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Helpful PDQ Tips

Read over the entire questionnaire first.

Make a list (for your own use) of the things you do at work (i.e., types of contacts, working conditions and type of equipment used to perform your job). When you complete the PDQ, refer to these lists and make sure all the items on the list are on the PDQ somewhere.

Consult with other employees within the classification. They may provide insight into areas you may have omitted. Any changes resulting from the information from the completed PDQ will impact all employees of the classification. Each employee needs to complete their own PDQ.

Do questions #7 & #8 last. Question 7 should explain all the duties you are required to perform. Question 8 should total 100% of your time when you are complete. Stretch the meaning of each question that doesn't exactly fit your job. Try to make the question apply to your job. Answer all questions.

Do not copy PDQs from one another.

Don't be shy when you do the position description on Page 1! This is your opportunity to shine. Emphasize difficult, stressful, emotional, and dangerous situations. Brag about yourself! Do not downplay what you really do. For example, do not say you type letters when you really edit and/or write letters.

Express your duties in terms of numbers. For example:

- ◆ I am the clerk typist for five (5) people.
- ◆ I receive, open, time stamp and route all incoming mail.
- ◆ I work with thirty (30) clients a day.
- ◆ I attend to thirty (30) residents on a ward.
- ◆ I do all the carpentry for three (3) state parks.

Everyone must complete a PDQ.

Always keep a copy of your completed PDQ.

Reference

Article 36.05

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Classification Review Factsheet

The State of Ohio can make changes in classification specifications. These changes may be anything from changes in duties to changes in pay ranges. Each change in a classification specification is built upon employee input. This fact-sheet will familiarize employees with the process of classification changes pursuant to Article 36.05 of the contract.

State Generated Changes

The State of Ohio can create, change the pay range, authorize advanced step hiring if needed for recruitment purposes and issue/modify specifications. The agency head or designee will meet with DAS and OCB to review all proposed changes to the classification specifications. Once this meeting has taken place, then local discussions at the labor management committee may begin. More than one labor management committee or ad hoc committee meeting will probably be required to complete discussions.

Management may request the employees to complete a Position Description Questionnaire (PDQ) or use another method to obtain information regarding an employee's duties. Members of the labor management committee should request any supporting documentation that will be submitted to DAS for recommendations to change the classification specifications and/or the pay range. If everyone is in agreement with the proposed changes, the OCSEA Office of General Counsel (OGC) and DAS should be notified in writing. The Office of Collective Bargaining will send to the Union the final proposed changes to the classification specification for final approval. The Union has 45 days to respond back to the Office of

Collective Bargaining whether or not we are in agreement about the changes.

If the Agency's labor/management committee cannot reach a final agreement on the proposed changes, then the OGC should be informed of the areas of disagreement and possible resolutions. Once the final proposal is sent by OCB to the Union, an attempt will be made to resolve the dispute. If the dispute cannot be resolved and management implements the new changes, the OGC may make a demand for arbitration to protect our timelines under the contract to change the classification.

Joint Review

There shall be a joint committee of management and the union to review classification issues which may be a segment, a series, or portions of the class plan. The OCSEA Classification Review Committee, which is made up of five members, will make recommendations to the joint committee of what classification segment/series should be reviewed.

Once the joint committee has made the determination of a classification segment/series to be reviewed, the committee will appoint up to five members each to act as subject matter experts to determine changes to the classification. The purpose of such reviews is to determine the state's business needs, to have employees placed in the proper classification along with proper compensation and to maintain Bargaining Unit integrity.

The committee will develop a proposal that includes: a rationale for change, creation, modification, deletion and/or replacement of the existing classification, an allocation and transition plan.

Once the review is complete a recommendation will be made for the appropriate pay range to the classification, along with any necessary allocations for employees to another classification. If an employee is allocated in a classification with a higher pay range they will be placed in the higher pay range that will give them an approximate 4% pay increase. If an employee is placed in a pay range with a lower classification, the employee will be allocated to the appropriate classification and will be placed in the new pay range in the step that is equal to their current step or that provides the least amount of increase. The employee has 60 days from the date of the notification to appeal the decision by using the Working out of Classification (WOC) process. If the joint committee cannot agree to a pay range for the new classification, the Union may appeal the determination directly to Step 5 of the grievance procedure within 30 days of such notification. All pay adjustments will be implemented the fiscal year following the review.

Discontinuation of the Joint Committee:

If the Union and the Employer cannot mutually agree to the classifications to be reviewed, the Union will select the classifications to be reviewed using the traditional language that allows the Union to select up to eight classifications per year. This review will require that Position Description Questionnaires (PDQ) be completed by employees.

The State must complete the review within 180 days of the initial request for classifications with less than 200 incumbents. If a classification holds more than 200 incumbents, a separate timeline will be set. DAS will send out PDQs to all incumbents that hold the classification being reviewed. Each employee must complete his/her own PDQ. If a PDQ is not completed, the individual will be assigned to the appropriate classification and pay range

based on the supervisor's review. Prior to the distribution of PDQs, the union and state will conduct a joint training on how to complete a PDQ. The union has the right to request an appeal of the pay range determination directly to Step 5 of the grievance procedure within 30 days of receipt of written notice of DAS's determination. Also, the Classification Review Committee will review all unresolved classification changes to determine if classification grievances will be arbitrated.

If the PDQ indicates an employee is performing the duties of a lower classification, the employee will be allocated to the appropriate classification and will be placed in the new pay range in the step that is equal to their current step or that provides the least amount of increase. The employee has 60 days from the date of DAS's findings to appeal the decision to OCSEA's Office of General Counsel (OGC). You can only appeal this decision if you complete your own PDQ. The appeal must be filed in accordance with Article 19 (WOC).

If a classification receives a pay increase, the employees will be placed in the higher range and the step that allows for an approximate 4% increase. Pay adjustments will be made effective at the beginning of the fiscal year (July) after the DAS's findings are due.

PDQ: Position Description Questionnaire

The PDQ is designed to obtain information from employees and their supervisor about the job performed and the environment in which it is performed. The PDQ asks questions about an employee's job and influences on their job duties. If an employee is selected to complete a PDQ, it is important that he/she provide a complete and accurate description of his/her job. The information from the PDQ will be used to **ensure that the proposed changes of a classification are proper.**

Reference Article 36.05

(For more information regarding PDQ's see the Factsheet # 290 A (Helpful PDQ tips.)

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Quality Services through Partnership (QStP)

QStP or today's Quality Program is a labor-management initiative that has been embraced by the state of Ohio since 1991.

Quality Principles

1. **Be customer-driven. Meeting or exceeding customer needs and expectations has top priority.**
Customers are our reason for being! The customer can be internal (inside state government) or external (outside state government).
2. **Improvement is an ongoing process that emphasizes prevention and problem-solving.** This is a journey! It's a process of continuous improvement during which we constantly ask: "How can we make it better?"
3. **Quality improvement involves all employees, and it requires teamwork.**
This means that union and non-union employees are truly empowered to develop solutions to problems. Employees will become more involved in the decision-making process. A major emphasis will be placed on teamwork. Finger-pointing is replaced by cooperation and mutual respect.
4. **Decision-making at all levels is based on facts and data.** Decisions by intuition and "knee-jerk" reactions

are to be replaced by informed decision. This requires gathering and analyzing data. It calls on people to "peel back the layers" as they explore why a problem may be occurring.

Why Be Involved in Quality

Just as business must change to meet the needs of a global information economy,

so must state government become more

flexible, innovative, and responsive. Our customers, the citizens of Ohio, expect more than the old bureaucratic way of doing things.

The union wishes to be part of the solution. When government does not provide efficient and effective services the image of public service suffers and employees become less valued. Our jobs become jeopardized, Quality permits the Union and employees at all levels to redesign the systems that in the past were designed by management. Quality includes those who are closest to the customer and know the most about the work to improve the services to the customer and to improve the quality of their work life.

Structure

Currently there are two networks that drive Quality:

The Ohio Quality Network

This is a group made up of labor and management representatives from agencies throughout state government. The group meets monthly to discuss:

- How Quality is being used within their agencies.
- How they can share best practices or new ideas from agency to agency.
- How they can support each other in providing guidance to their agencies.

The Union Quality Network

This is a group of union quality coordinators and advocates that meets once a month support the Union's Role in Quality, which is;

1. Design a better system that provides improved public services.
2. Increase workers' voice and involvement.



3. Identify problem areas or prevent serious problems that lead to contracting out or other issues that affect employment security.
4. Develop practices and relationships that provide opportunity to show how the union can add value and contribute to effective government.

Efficiency and Continuous Improvement

The State of Ohio is engaged in an Efficiency and Continuous Improvement Initiative to identify ways to save tax dollars and still provide world-class customer service. One part of this initiative is the Employee Feedback Program. Each Agency encourages its members to submit suggestions that will save money or time, improve processes, eliminate duplication, and improve customer service. Each agency has an Agency Review Team made up of management and labor to review the suggestions and move them forward for investigation and implementation. State employees can make their suggestions through the government website www.ency.ohio.gov.

Training

According to the OCSEA Contract, training for all managers, supervisors, employees and union members in the concepts, skills and techniques of the quality processes and procedures will be

conducted at the Employer's expense. This training can be achieved in different ways throughout state agencies.

- New employees should be provided with basic quality training within the first six months of their employment.
- Additional quality training is offered that will prepare employees to work in teams to improve work processes.
- Facilitation training is available for employees who wish to learn this valuable skill.
- Conferences and training events are other ways to improve your quality skills. One of these training events is the Pathways to Excellence Event, sponsored by the Ohio Quality Network three times a year. At these events you will network with other quality advocates, hear speakers talk about new quality initiatives, and attend workshops to learn more about process improvement.

If you are interested in finding out more about involvement in Ohio's quality initiative, please go to the OCSEA Quality WEBSITE at: www.ocsea.org/quality or call 1-800-969-4702 ext. 2614.

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ARTICLE 37 – UET

Frequently Asked Questions

CAREER IMPROVEMENT PROGRAM (CIP)

Q: How do I qualify?

A: You must be an eligible state bargaining unit employee on the start date of the term to apply for tuition assistance.

Q: What courses can I take?

A: College Credit Voucher Program (CV) and College Reimbursement Program (CR) - Any college-credit course at a regionally accredited school that is related to any job in state service is acceptable. Regional accreditation is accepted from organizations such as North Central Association of Colleges and Schools. See your school's directory for course information. Vouchers may also be issued for pre-approved courses from career colleges listed on the UET website. UET will pay for a course only once.

Vocational Education Program (VE) - Only pre-approved courses listed in the Vocational Education Program section of this website are eligible. UET will pay for a particular course only once.

Specialty Education (SE) - Only the courses listed in the Specialty Education section of the UET website are eligible. UET will pay for a course only once. Updates for eligible classes and additional information can be found online at www.UedTrust.org.

Q: How do I sign up?

A: You can apply online or download application forms by clicking the "Applications" link on the UET website. Also, you can mail your paper applications to UET, P. O. Box 3270, Westerville, OH 43086. For customer service, contact the UET office by email: at Support@UedTrust.org or by phone at 1-(866) 436-7900.

Q: Will my supervisor support me?

A: The program is set up to allow you to shape your future without the involvement of your supervisor. You deal directly with the UET staff. All information regarding your participation in UET programs is confidential to the

maximum extent of the law. However we encourage you to discuss your career opportunities with your supervisor.

Q: What about grades?

A: Grades are not used to determine eligibility. However, you will receive payment for a particular course only once.

Q: What if class meets during my work hours?

A: Provision of release time will be up to each agency.

Q: What does the program cover?

A: CIP covers the cost of tuition, lab fees and computer technology fees.

Q: What is not covered by CIP?

A: CIP does not pay for:

- Application, registration, certification, or test fees.
- Any one-time mandatory or non-mandatory fee.
- Meals or recreational fees.
- Telecourse or self-instructional fees.
- Transportation or parking.
- Late registration or drop fees.
- Other fees not directly linked to instructions.

Special Note: CIP will not pay for any costs that have been paid by other sources. All costs not listed in the directory will be paid at the discretion of UET.

Q: Does my \$3,500 accumulate year after year if I don't use it?

A: No. However, you will have \$3,000 for tuition assistance available to you for courses which start during each fiscal year of your eligibility.

(Continued...)

COMPUTER APPLICATION TRAINING (CAT)

Q: Who is eligible for CAT benefits?

A: All eligible State of Ohio bargaining unit employees are eligible.

Q: What schools or institutions can I attend?

A: You may attend any school that actively participates in the CAT program. For a complete list of participating schools visit the UET website.

Q: What if class meets during my work hours?

A: Provision of release time will be up to each agency.

Q: What exactly does the program cover?

A: The CAT program will pay for your instructional fee and instructional materials.

Q: What is not covered by the CAT program?

A: CAT does not pay for:

- College credit computer courses.
- Application, registration, certification and test fees.
- Any one-time mandatory or non-mandatory fee.
- Hardware and commercial software.
- Meals or recreational activities.
- Telecourse or self-instructional fees.
- Transportation or parking.
- Late registration, add/drop fees.

Special Note: The CAT program will not pay for any costs that have been paid by other sources. All costs not listed in the directory will be paid at the discretion of UET.

Q: How is this program separate from CIP?

A: CAT provides \$750 per fiscal year for non-college credit computer-training classes. CIP allows up to \$3,500 per fiscal year for college credit or vocational courses.

Q: Am I eligible for both CAT and CIP?

A: Yes. But because they are separate programs, funds from the two programs may not be combined in any way.

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For additional information or questions, visit the UET website at www.uedtrust.org, or contact UET at 1-(866)-436-7900 or by e-mail at Support@UedTrust.org.
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PROFESSIONAL ENHANCEMENT PROGRAM (PE)

Q: Who is eligible for PE benefits?

A: All eligible State of Ohio bargaining unit employees are eligible to participate.

Q: What Training Can I Take?

A: Any conference, seminar, or short-term training event related to state of Ohio jobs that is awarded credentials from a regionally accredited institution, professional society, government agency or by the Independent Third Party Review Panel. Courses covered by CIP or CAT do not qualify for PE.

Q: How much financial assistance may I receive through PE?

A: You can receive up to a total of \$1,000 per fiscal year through PE.

Q: What if the event is scheduled during my work hours?

A: Provision of release time will be up to each agency.

Q: When should I apply for my training event?

A: Please allow 30 days before the registration deadline for processing your application.

.....

CAREER COUNSELING

Q: Who can call?

A: Any eligible State of Ohio bargaining unit employee may use the career counseling service.

Q: How do I contact a career development counselor?

A: You may call 1-(800)- 980-6973 or you may communicate with a counselor via e-mail at career@pickawayross.com.

Q: Would anybody have access to my files or monitor my progress?

A: No! Your files are absolutely confidential. Nobody will have access to your files except your career counselor who will be assisting you.

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Reference

Article 37



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Article 15: Help for the Dislocated and the Disabled Worker Questions & Answers



Q What is the mission for Article 15?

A In 1991, Article 15 was established to provide assistance to workers facing layoff. It was started to mirror the system that private sector workers have had when faced with major layoffs. It has also expanded its mission to help disabled workers get back to work through transitional work programs.

Q What has it accomplished?

A Since it's inception, the Article 15 Committee has helped with layoffs as a result of the closing of institutions in the Department of Rehabilitation and Corrections, Department of Youth Services and the Departments of Mental Health and MRDD, the abolishment of the Department of Liquor Control and the Student Loan Commission, as well as, smaller layoffs in the Department of Administrative Services, Ohio Department of Natural Resources, and Ohio Civil Rights Commission among others.

Q How is it run?

A The Joint Statewide Employment Security Committee, a labor management committee, oversees the work of Article 15. The committee consists of five management and five labor members and a neutral chair. Jim Cowles of the Columbus Area Labor Management Committee is currently serving as the neutral chair.

Q How does the dislocated worker program work?

A The dislocated worker obtains information and services through a regional worker adjustment committee (RWAC). Each of Ohio's 88 counties are assigned to one of the six RWAC's which are designated as the North, Northeast, Northwest, Southeast, Southwest, and Central Ohio committees. The geographic maps are described in the attached list. Through

the committees, information is provided to the dislocated worker about unemployment insurance, resume writing, locating job search skills, and employment opportunities. Assistance also includes stress management courses and EAP.

Each RWAC has both a labor and management liaison who serves on the Ohio RWAC Steering Committee. These liaisons also serve as contact persons for questions and information on how to contact them is included.

Q How can the dislocated worker program be accessed?

A You can access information by calling the labor and management liaisons for your regional area on the attached list.

Q How does the transitional work program for disabled employees work?

A The transitional work program, called "light duty", is a joint labor management venture that permits an employee, while in recovery, to return to work with temporary restrictions. While the goal is to return to his/her original job: working in another position prevents the employee from further financial loss. The transitional work program can cover workers comp, disability or both.

Q How can you get a transitional work program started in your area?

A These programs are developed on an agency basis. Usually the agency health and safety committee develops an implementation plan. Assistance for implementation of such committees is currently available through the Department of Administrative Services. If you want to find out what is available in your agency, contact your union steward.

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RWAC REGIONAL LABOR LIAISONS AND COUNTIES

Central Ohio RWAC

Cynthia Robertson (Taxation) Liaison 614-728-8394 Debbie King (ODJFS) 614-466-9870
Gloria Pegues (Commerce) 614-728-3203 Ladonna Taylor (Education) 614-466-0438

Champaign	Fairfield	Hocking	Madison	Perry
Clark	Fayette	Knox	Morgan	Pickaway
Coshocton	Franklin	Licking	Morrow	Ross
Delaware	Greene	Logan	Muskingum	Union

North RWAC

Nina Bey-Jones (RSC retiree) LIAISON 216-481-2278 Quida Higbee (ODJFS) 216-832-5797
James Larocca (Lottery) 216-225-5973

Ashland	Erie	Huron	Medina	Summit
Cuyahoga	Holmes	Lorain	Richland	Wayne

Northeast RWAC

Larry Cremeens (ODJFS) LIAISON 330-491-2638 Tim Watson (MH) 740-680-2490
Cheryl Brown (BWC) 330-797-0476

Ashtabula	Columbiana	Harrison	Mahoning	Trumbull
Belmont	Geauga	Jefferson	Portage	Tuscarawas
Carroll	Guernsey	Lake	Stark	

Northwest RWAC

Donna Westrick (Industrial Commission) LIAISON 419-245-2790
Kathy Newton (ODJFS) 419-783-3484

Allen	Hancock	Marion	Putnam	Williams
Auglaize	Hardin	Mercer	Sandusky	Wood
Crawford	Henry	Ottawa	Seneca	Wyandot
Fulton	Lucas	Paulding	Van Wert	

Southwest RWAC

Gretchen Genung (ODJFS) LIAISON 513-731-9800 Judy Graham (MH) 937-258-0440
Carol Bird (ODJFS) 513-551-1903 Michelle Hunter (MR) 937-233-8108

Adams	Clermont	Hamilton	Montgomery	Scioto
Brown	Clinton	Highland	Pike	Shelby
Butler	Darke	Miami	Preble	Warren

Southeast RWAC

Stephen Carson (ODJFS) LIAISON 740-568-9065 Cindy Bobbitt (ODJFS) 866-882-9500
Beth Sheets (MR) 740-645-3246

Athens	Lawrence	Noble
Gallia	Meigs	Vinton
Jackson	Monroe	Washington

(Revised 4/10/08)

REGIONAL WORKER ADJUSTMENT COMMITTEES

CENTRAL

Cynthia Robertson (Taxation) LIAISON 614-728-8394
Ladonna Taylor (Education) 614-466-0438
Debbie King (ODJFS) 614-466-9870
Gloria Pegues (Commerce) 614-728-3203

NORTH

Nina Bey-Jones (RSC retiree) LIAISON 216-481-2278
James Larocca (Lottery) 216-225-5973
Quida Higbee (ODJFS) 216-832-5797

NORTHEAST

Larry Cremeens (ODJFS) LIAISON 330-491-2638
Tim Watson (MH) 740-680-2490
Cheryl Brown (BWC) 330-797-0476

NORTHWEST

Donna Westrick (Industrial Commission) LIAISON 419-245-2790
Kathy Newton (ODJFS) 419-783-3484

SOUTHWEST

Gretchen Genung (ODJFS) LIAISON 513-731-9800
Judy Graham (MH) 937-258-0440
Carol Bird (ODJFS) 513-551-1903
Michelle Hunter (MR) 937-233-8108

SOUTHEAST

Stephen Carson (ODJFS) LIAISON 740-568-9065
Cindy Bobbitt (ODJFS) 866-882-9500
Beth Sheets (MR) 740-645-3246

(Revised 4/10/08)



Fighting Contracting Out – Tips for a Quick Response

Contracting out of state jobs and the privatization of state services are problems that effect every OCSEA member. The transfer of tax dollars from the public sector to private companies is a trend that will continue unless OCSEA members are vigilant in identifying what work is being considered for privatization by management and the legislature and acting to prevent job loss. Here are some things to watch out for and steps you can take to organize with your union brothers and sisters to stop the sale of government services to greedy corporations:

Early warning signs:

- Budget problems or fiscal restructuring.
- Hostile labor-management relations.
- Vendors visiting worksites.
- Frequent complaints about problems of high cost or poor quality of services by public officials or top management.
- An “efficiency study” by a private company or other institutions.
- Legislation that is hostile to public services.

Quick Action:

- Review agency websites for requests for proposals (RFPs) or an invitation to bid (ITB).
- Notify union stewards, chapter presidents, and staff representatives.
- Gather information about the contracting out and find out who, what, when, how, and why. Take detailed notes at meetings or gatherings about the contracting out.
- Compile any documents such as letters, memos, and reports about the possible contracting-out.
- Demand a cost effectiveness study to be done before the management makes any decisions about contracting-out.

Things to say to management:

- Both management and Union employees are accountable for the positive image of government services. Contracting out provides a negative image about government services.
- Poor quality service may be received from private contractors. Because a private contractor is profit driven, they have an incentive to cut corners and reduce quality.
- Focus on long-run cost efficiency instead of short-run alleged savings. Private contractors have been known to “low ball” their bids and raise prices later. It might be too late to change back to public service delivery once the state gets rid of equipment and expertise.
- Accountability and flexibility and confidentiality have to be considered.
- Contract monitoring and administration may be inadequate and will incur additional costs.
- Decreased morale of in-house employees can impact delivery of other services.

What to do when the service is already contracted out?

- Monitor the contractor’s work. Demand information about cost and other quality measures.
- Gather and document information about the contracted-out work.
- Inform your union leaders about the information and prepare bids for contracting in the work. (See Article 39.02.)

(Continued)

The union has a variety of resources to help you in the anti-privatization battle. By working with your local leadership, you can figure out the best plan for stopping privatization and contracting out at your particular workplace or agency.

Additional Steps to Consider

Sometimes the fight against contracting out needs to extend beyond your workplace. Often, cost numbers alone don't tell the whole story about the value of the services you provide to the local community and taxpayers. Developing relationships with the media and other organizations (unions, community groups, churches, business organizations, etc) in your area that are interested in public services can provide you with friends to help in the fight. Prepare to act quickly when contracting out is threatened by:

- Develop contact lists of local radio, TV and newspaper media outlets.
- Draft a Letter to the Editor, Q&A or Talking Points sheet about the service to be contracted out and about all the services your members deliver.
- Talk to management about media tours and open houses for your facility or worksite to educate the media and public about what you do.
- Identify radio talk shows that allow call-in reports and questions from listeners.

- Recruit volunteers from the chapter who are willing to talk to the media and community groups about the value of keeping public services public.
- Talk to OCSEA members from other agencies and ask them to help.

Taking the above steps will help you to act quickly when a particular service is threatened to mobilize both OCSEA members and community residents to fight back. Chapter leadership, staff representatives and the OCSEA Public Affairs department can help you prepare materials and develop a communications plan for your area.

Sometimes, the contracting out threat comes from the legislature and not the managers and administration of your agency. Fighting legislative threats requires additional approaches beyond bidding for work and public relations. A strong and informed legislative committee at your assembly and/or chapter level can be the focal point for getting information out to members and activating phone calls and letters to elected officials at appropriate times. The OCSEA Legislative and Political Affairs department can help you to set up committees to monitor legislative activity around privatization and contracting out.

Finally, the OCSEA Education and Development Department has classes available on fighting privatization, preparing bids to contract-in, and developing coalitions that can be taught at whatever time and place you need them.

Reference

Article 39.02



Listening Skills

If an employee comes to you with a problem, listen first. You will save time in the long run. Often, if the person has an opportunity to tell the whole story, the solution comes to light during the course of conversation. Also, some people just want to get a problem off their chest and you can provide the sounding board for this need. In some instances, you will have advice that may prevent the need for a formal grievance by helping the worker to handle the situation. Or, you may find that the person is complaining about something that happened much earlier and is no longer within the time limits allowed for a grievance. In the long run, you don't save time by immediately telling the member to file a grievance without first hearing what the person is concerned about.

Listening to management personnel is important, too. Not only will you learn more about the intent, authority and purpose of management decisions, but also, you will have time to sort out points that need to be stressed and decide strategy to be used. Particularly when talking with the boss, it is wiser to allow that person to do a lot of the talking.

The following suggestions for improving your listening skills are provided by the Institute of Labor Education and Research, New York:

1. **Stop talking --**
You can't listen while you are talking.
2. **Empathize with other person --**
Try to put yourself in the speaker's place so that you can see what he/she is trying to get at.
3. **Ask questions --**
when you don't understand, when you need further clarification, when you want to show you are listening. But

don't ask questions that will embarrass the person or show the person up.

4. **Don't give up too soon --**
and don't interrupt; give the person time to say what he/she has to say.
5. **Concentrate on what the person is saying --**
Actively focus your attention on the words, ideas, and feelings related to the subject.
6. **Look at the other person --**
Face, mouth, eyes, hands will all help to communicate with you.
7. **Leave your emotions behind (if you can) --**
Try to push your worries, your fears, your problems, outside the meeting room. They may prevent you from listening well.
8. **Control your anger --**
Try not to get angry at what you hear; your anger may prevent you from understanding what is said.
9. **Get rid of distractions --**
Put down any papers, pencils, etc. you have in your hands; they may distract your attention.
10. **Get the main points --**
Concentrate on the main ideas and not just the illustrative material; examples

(Continued)

and statistics, etc. are important, but usually are not main points. Examine them only to see if they prove, support, or define the main ideas.

11. Share responsibility for communications --

Only part of the responsibility rests with the speaker; you as the listener have an important part too.

12. React to ideas, not to the person --

Don't allow your reactions to the person to influence your interpretation of what he/she says. The ideas may be good even if you don't like the person.

13. Don't argue mentally --

It is a handicap to argue with the person mentally as he/she is speaking.

This sets up a barrier between the two of you.

14. Use the difference in rate --

You can listen faster than he/she can talk, so use this rate difference to your advantage by: anticipating what is going to be said, thinking back over what has been said, evaluating the development, etc. Rate difference: speech rate is about 100 to 150 words per minute: thinking is 250 to 500 words per minute. Be sure to use this time lag to reflect on what you are hearing, rather than using it to prepare your response -- you can't listen if you're talking, even if you're only talking in your head and not out loud.

Adapted from: Steward's Manual: Teamsters for a Democratic Union, Detroit, Michigan

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OCSEA DUES



Where it goes

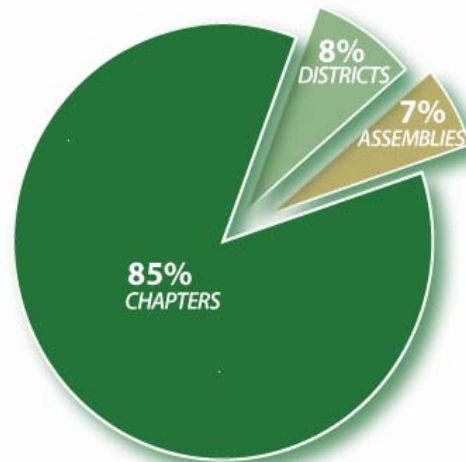
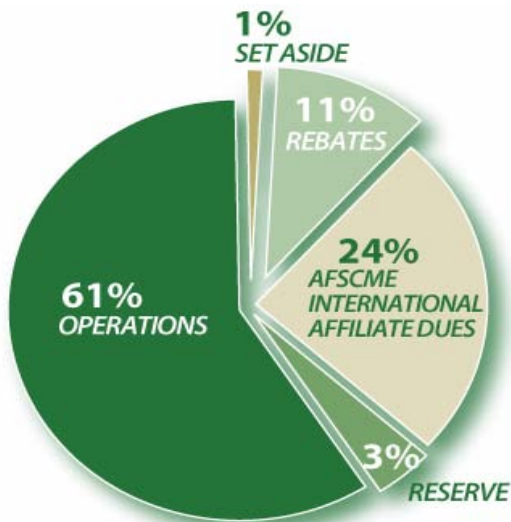
OCSEA budget comes entirely from membership dues. Union dues are paid as a percentage of an employee's base salary. Currently, the percentage is 1.25%. Fair share fees are the same. Here is how that money is used.

Total Budget

OCSEA dollars are divided among five categories, the biggest of which provides direct services to the members. These services are called the Operations Budget and account for nearly two-thirds of OCSEA's total spending. The balance of OCSEA's budget pays for such things as national representation and services provided by AFSCME, membership in the Ohio AFL-CIO, affiliations with various coalitions, legally required set-asides and rebates to OCSEA's Chapters, District Councils and Assemblies.

Rebates

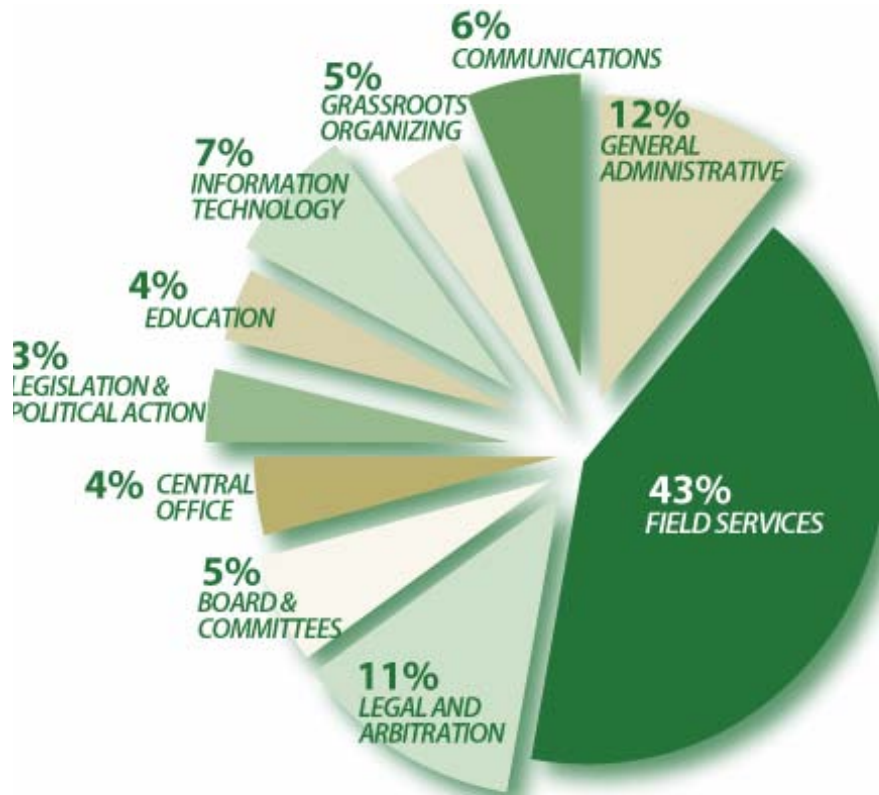
A portion of your dues goes directly to fund the union's front-line organizational bodies, its Chapters, District Councils and Assemblies. These "rebates" account for 11 percent of OCSEA's total budget. The largest portion of the rebates goes to the union's 160 chapters, districts, and assemblies. The Subordinate Body funds are used to purchase office supplies, to provide training, to attend workshops, to print newsletters, to take care of union-related grievance expenses and to cover any other needs the Subordinate Body may have.



Operations Budget

The Operations Budget covers 61% of OCSEA's total budget. It is used for services such as contract negotiations, arbitrations, lobbying, legal services, education programs, conventions, conferences, publications, rent, utilities and supplies.

*No union dues can be used for partisan political activities including contributions to particular candidates.



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OCSEA Structure

Navigating your way around OCSEA can be a little confusing at times. OCSEA is a large organization with over 32,000 members, who work in sites throughout Ohio, and its structure takes some getting use to. The following are answers to the questions new employees often ask about the union's structure.

What is AFSCME?

AFSCME stands for the American Federation of State, County, and Municipal Employees. It is a nationwide organization with 1.3 million members, making it the largest public employee union in the United States and second largest union in the AFL-CIO. OCSEA affiliated with AFSCME in the early 1980's and because of this affiliation OCSEA was officially designated as "Local 11" of the national union.

AFSCME provides valuable skilled staff, research, experience and resources for OCSEA and Ohio public workers. Besides giving us a voice in Washington, AFSCME provides expert assistance in areas in such as safety and health, public policy, economics and budget analysis, political action, labor law, union organizing and contract negotiations. Nationally, AFSCME staff is among the top in their fields of expertise.

AFSCME's policies are set at national conventions held every two years, and its national officers are elected at alternate convention to four-year terms. OCSEA Local 11 sends delegates to these conventions to represent our views.

Who governs OCSEA?

The overall guidance to OCSEA comes from its 31-member Board of Directors. Beginning in 1998, board members are elected for three-year terms and any member

in good standing can run. Board members deliberate and vote on union policies, set its budget and oversee nearly every aspect of OCSEA operations. The Board meets every two months and it is led by state officers who are elected to four-year terms at the union's biennial conventions.

Board members are also responsible for attending chapter meetings and keeping members informed of the union's statewide plans.

OCSEA Statewide President is Ronald C. Alexander; its Vice President is Eddie L. Parks; and its Secretary-Treasurer is Kathleen M. Stewart. These three officers form OCSEA's Executive Committee and, together with the union's Executive Director, lead the day-to-day functions of the organization.

What is an OCSEA Chapter

The Chapters of OCSEA are the grass-roots of the organization. Every employee in one of the union's bargaining units is assigned to one of the union's Chapters based upon place of employment or residence. If you have a problem or if you want to become more involved in the activities of OCSEA, the Chapter is where to begin.

Chapters are created along lines of "common interest" such as the employees of a specific agency (if there are enough), institution or geographic location. For example, all of the employees at a state prison will belong to the Chapter.

Each Chapter meets regularly to discuss problems, plans, and programs. Most Chapters also plan regular social activities. Each has its own set of officers and union stewards, and each chapter sends a number of delegates to the union's biennial state convention.

What is a District Council?

For administrative and governance purposes, OCSEA has divided the state into nine districts and each OCSEA Chapter is assigned to one of these districts. Within each district is a District Council that discusses common matters of importance to that area and to all of the members and chapters within the District. Each Chapter in the district is entitled to send delegates to the District Council.

District Councils typically plan district-wide educational programs and organize the union's political action efforts through District Grassroots Committees.

What is an Assembly?

"Assemblies" bring together employees from across the state that work in the same agency or department. Each Chapter with members in the agency that has an assembly is entitled to send delegates to the Assembly meetings.

Assemblies meet at least quarterly and are an important forum for discussing and responding to problems in a particular agency. Assembly meetings are usually

open to any OCSEA member employed by the particular department.

Although not every Agency has its own assembly, the number that does is fairly extensive and includes most of the larger agencies. Check with your OCSEA Chapter for more information about whether an assembly exists for your department.

Assemblies exist in Rehabilitation Services Commission, Ohio Department of Transportation, Mental Health Services, Local Government, Rehabilitation and Corrections, Ohio Department of Jobs and Family Services, Bureau of Workers Comp, Taxation, Natural Resources, Agriculture, EPA, Adjutant General Fire Fighters and Industrial Commission.

What does the union staff do?

Although OCSEA has an excellent group of stewards plus officers elected in each of its Chapters, District Councils and Assemblies, these union leaders can't do it all. OCSEA and AFSCME maintain a staff of specially trained professionals who work with the Union leadership handling the legislative, accounting, data processing, arbitration, legal, education, communication and administrative matters of OCSEA. OCSEA staff representatives are organized into agency teams in agencies with at least 1,000 members. The REACT staff team works with agencies with membership less than 1,000.

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OCSEA -- A Brief History



The **Ohio Civil Service Employees Association** was formed on April 15, 1938, by James Bowman, a Department of Liquor Control employee from Cleveland, who lost his job for political reasons. Frustrated by the lack of rights, protections, compensation and benefits for public workers, Bowman sought to eliminate the "spoils" system where politics dominated hiring. He wanted to foster the careers of Ohio public employees, and he dreamed of an organization that would fight for state employees' rights.

Early victories

Bowman tragically died shortly after establishing OCSEA, but others quickly filled his shoes and turned OCSEA into an effective organization that has been behind nearly every pay raise, benefit improvement and retirement increase in the last five decades.

In 1943, OCSEA won the first across-the-board pay increase for state employees, resulting in a 10% raise. In 1947, OCSEA conducted the first broad study on employee classifications, job descriptions and salary schedules. The result was the first comprehensive list of public employee jobs and the creation of uniform pay schedules, the latter ending pay differences in similar jobs that were as large as 210%.

A major OCSEA undertaking involved the 40-hour work week. In 1941, hospital aides were working 72 hours a week. Although "female labor laws" that were on the books during those years stated that a woman couldn't work more than 48 hours a week, the state managers routinely violated this rule. Finally, in 1955, OCSEA helped to pass a law that for the first time gave

public employees the right to a 40-hour work week.

Membership

Records show that a few months after OCSEA's start, 150 members were paying \$1.00 annual dues. In 1944, OCSEA crossed the threshold of having over 5,000 members for the first time. In 1947, OCSEA's 10,000 members made it the second largest public employees union in the United States.

By 1975, OCSEA had 26,000 members, but membership leveled off as OCSEA faced increased competition from rival unions and employee organizations. After affiliation with AFSCME and subsequent victories in state bargaining unit elections, OCSEA membership grew to 38,000.

Collective Bargaining

In the early years, OCSEA leaders became frustrated by the legal battles, needed in the civil service fight. Legislative changes were just as frustrating because pay raises and employee policies could be reversed by a simple re-vote or change in administration.

In the 1960's, OCSEA began looking seriously at collective bargaining as a solution. Slowly, OCSEA gained members-only contracts for employees in a number of departments such as ODOT, MH and MR. But even these contracts were of limited scope. The demand for full-scale public employee collective bargaining grew. first collective bargaining legislative
(Continued)

proposal. Several such bills were passed by the General Assembly only to be vetoed by Gov. James Rhodes. Not to be defeated, OCSEA kept up the pressure. A new bill was successfully introduced in 1982 and signed into law by Gov. Celeste, July 6, 1983.

Affiliation with AFSCME

Even before 1983, OCSEA leaders had the foresight to see that collective bargaining was coming and that the association would need additional support to make the transition to a new era. In 1982, OCSEA investigated several of the United States' leading unions including the Teamsters, SEIU, AFGE and CWA. Eventually, OCSEA settled on AFSCME, which had superior public employee experience and the ability to permit a large degree of autonomy for its affiliates. OCSEA formally affiliated with AFSCME on May 14, 1983.

First statewide contract

After OCSEA members won the right to collective bargaining, they embarked on one of the largest organizing drives in union history. In April, 1984, OCSEA was the first union that formally filed to represent state employees, submitting petitions to represent over 40,000 workers. OCSEA/AFSCME led the first large-scale organizing campaign in the nation to use TV and radio advertising, opinion surveys, "focus groups" and direct mail to convey that OCSEA was "The Strongest Voice for State Employees Rights."

Although other unions also sought to represent state workers, OCSEA/AFSCME emerged as the clear winner. In 1986, OCSEA entered the first state-wide contract negotiations affecting over 32,000 employees. The first contract went into effect that year.

1986 marked the first time that state employees had a comprehensive contract that would govern every aspect of their working lives, an accomplishment that was only possible due to the immense effort that stretched back nearly five decades to James Bowman and his original dream of an organization that would fight for public workers.

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Be Politically Active -- Protect Your Job Rights

As a public employee, you can be politically active within the boundaries set out in Ohio Administrative Code 123:1-46-02. It is important to be active in political and legislative issues because so much of your work life can be shaped by the state legislature.

DO:

- Register to vote
- Actively work to register others
- Vote
- Wear political buttons and badges, except not at work
- Put political stickers on your personal automobile
- Display political materials at your home
- Attend political rallies
- Sign nominating petitions in support of individuals
- Voluntarily contribute to political candidates or organizations
- Circulate **nonpartisan** petitions or petitions stating views on legislation
- Express your opinion
- Talk to OCSEA/AFSCME members about the importance of voting
- Contribute to the AFSCME PEOPLE Committee through voluntary payroll deductions
- Serve as a poll worker for your County Board of Elections
- Educate legislators and local elected officials about your workplace and what you do
- Invite legislators and local elected officials to union meetings.
- Participate in labor to labor walks in support of candidates or issues
- Participate in labor to labor phone banks in support of candidates or issues

DON'T:

- Be a candidate for public office in a partisan election
- Serve in an elected or appointed office in a partisan political organization
- Write for publication or make speeches on behalf of a candidate
- Solicit funds on behalf of a candidate for partisan office
- Volunteer to pass out partisan literature at the polls on election day
- Circulate nominating petitions

Reference

OAC 123:1-46-02
ORC 124.57



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OCSEA – WHERE WE’VE BEEN

📅 **1938**

- ✓ OCSEA founded

📅 **1943**

- ✓ 1st across-the-board \$ increase for state employees

📅 **1945**

- ✓ 2-week vacation for all employees

📅 **1949**

- ✓ Establish 1st standardized list of jobs
- ✓ Establish uniform pay schedules

📅 **1955**

- ✓ Gain 40 hour work week

📅 **1961**

- ✓ Win right to overtime

📅 **1975**

- ✓ Martin Luther King’s birthday added to holidays

📅 **1983**

- ✓ Ohio Collective Bargaining Law passed
- ✓ Guarantee the right to belong to the union
- ✓ OCSEA affiliates with AFSCME

(continued)

📅 1986

- ✓ 1st contract negotiations
- ✓ 7% pay increase plus \$450 bonus
- ✓ 1st grievance /arbitration system
- ✓ Seniority established
- ✓ Right to refuse unsafe work
- ✓ 10 days sick leave
- ✓ Occupational Injury Leave (OIL)
- ✓ 22¢ a mile travel reimbursement
- ✓ Portal-to-portal \$ for field employees
- ✓ Guarantee of 17 weekends off for MH/MR and OVH employees
- ✓ End split shifts for fulltime employees
- ✓ Standardized system for posting/filling vacancies
- ✓ Standardized layoff and bumping system
- ✓ Union bulletin boards
- ✓ 1st limits to use of temporary and seasonal employees
- ✓ Right to review personnel file
- ✓ Create Employee Assistance Program (EAP)
- ✓ Progressive discipline system
- ✓ Discipline only for just cause
- ✓ Annual eye exam
- ✓ Regular breaks for VDT operators
- ✓ Asbestos inspections/abatement in state workplaces
- ✓ Annual inspection of state vehicles
- ✓ Water/restrooms available to all employees
- ✓ Guaranteed health benefits and management contribution of 48% of premium
- ✓ 1st contracting out restrictions
- ✓ Protections against working out of classification
- ✓ 1st AFSCME MasterCard® offered

📅 1987

- ✓ 5% pay increase
- ✓ Additional millions in \$ increases from 1st statewide review of job classifications for sex-based wage discrimination
- ✓ 1st OCSEA member-only discounts offered

📅 1988

- ✓ 7% pay increase
- ✓ Mental Health Act creates SOS program – preventing layoffs

📅 1989

- ✓ 4% pay increase
- ✓ Health insurance – increase management's contribution to 85%
- ✓ Establish dependent day care accounts and subsidies
- ✓ Establish shift differentials of 35¢
- ✓ 3 weeks of vacation after 5 years
- ✓ Hostage leave for all DRC and DYS employees
- ✓ Pick-a-post established for DRC employees
- ✓ Les Best Scholarships created

continued)

📅 **1990**

- ✓ 4% pay increase
- ✓ OCSEA Education Department created

📅 **1991**

- ✓ 4% pay increase
- ✓ OCSEA offers free captivity insurance to all prison system members

📅 **1992**

- ✓ PETE established
- ✓ Increase management's health insurance contribution to 88%
- ✓ Quality committees established to aid job security (QStP established)
- ✓ Limits and notices on contracting-out
- ✓ Preferred Provider Organization created to contain health insurance costs
- ✓ Protection against using non-permanent employees to reduce work hours of regular employees
- ✓ Hepatitis B immunizations provided
- ✓ "Paper Layoff" system created to offer employees more options
- ✓ Quality standards established for HMOs
- ✓ OCSEA Benefits Trust created for life, vision and dental benefits
- ✓ Assistance for dislocated workers

📅 **1993**

- ✓ 5% pay increase
- ✓ After OCSEA report of Lucasville prison riot, 906 corrections officers added
- ✓ 1st contract for corrections sergeants
- ✓ Ohio public employees get OSHA protection
- ✓ 1st PETE class has recognition ceremony
- ✓ Union and management jointly hire first QStP Director

📅 **1994**

- ✓ 3% pay increase
- ✓ Establish 120-day notice for contracting-out
- ✓ Right to demonstrate contracting-in benefits
- ✓ Mediation included in grievance procedure
- ✓ Guarantee of union role in all Quality initiatives
- ✓ Career and Education Committee established
- ✓ Right to propose pay range review for 10 job classifications per year
- ✓ Medical co-payment reduced to \$5 per office visit
- ✓ Disability waiting period reduced to 14 days

(continued)

📅 **1995**

- ✓ 4% pay increase
- ✓ OCSEA crafts 1st Strategic Plan and Mission Statement
- ✓ OCSEA wins 1st seat on PERS Board
- ✓ 1st web page and e-mail system for union news
- ✓ OCSEA wins 1st seat on State Employee Credit Union Board
- ✓ OCSEA Benefits Trust improves vision coverage

📅 **1996**

- ✓ 3% pay increase
- ✓ OCSEA Extras (discount program) announced
- ✓ 1st Horizon Award winner honored
- ✓ 1st Leadership Academy
- ✓ Travel information centers saved – preventing layoffs
- ✓ 1st OCSEA work site Town Meeting
- ✓ 1st OCSEA radio and billboard campaign aimed at the public
- ✓ OCSEA Benefits Trust obtains enhanced life insurance and enhanced dental coverage

📅 **1997**

- ✓ 3% pay increase
- ✓ Workforce Development negotiated to provide employment security
- ✓ Workforce Development's Tuition Assistance Plan (TAP) rolls out - \$1000 reimbursement or voucher for college credit courses
- ✓ Working Solutions benefit added to OCSEA Benefits Trust
- ✓ Hostage leave eligibility expanded to entire workforce
- ✓ Right for investigation of unsafe practices in institutions
- ✓ Expanded VDT protections
- ✓ TB testing according to CDC guidelines
- ✓ OIL filing period lengthened
- ✓ New seniority protections
- ✓ Employees able to bid for demotion in order to reach a job series with greater upward mobility and career ladder
- ✓ New prevention and wellness benefits, including tetanus and annual influenza immunizations for adults
- ✓ Occupational therapy and chiropractic services coverage added
- ✓ Improved adoption leave options
- ✓ Improved travel and lodging reimbursements
- ✓ Added protections for holiday schedules
- ✓ OCSEA Benefits Trust improves vision coverage

(continued)

📅 **1998**

- ✓ 3% pay increase
- ✓ Workforce Development Career Counseling hotline available
- ✓ Workforce Development Computer Enrichment Training (CET) program begins - \$500 for computer courses
- ✓ OCSEA Benefits Trust develops "Disability Gap" insurance

📅 **1999**

- ✓ 3% pay increase
- ✓ 1st Privatization Conference
- ✓ 1st Stewards Academy
- ✓ Workforce Development TAP adds vocational training option
- ✓ Workforce Development's Professional Development Program offers \$300 for conference or seminar trainings
- ✓ Workforce Development increases benefits from TAP, CET and Professional Development Program to a combined total of \$4250 per fiscal year.
- ✓ Workforce Development offers interest-free computer loan program for up to \$2500 to purchase computer hardware and software

📅 **2000**

- ✓ 3% pay increase
- ✓ Improved travel and lodging reimbursements
- ✓ New prevention and testing benefits including disease management and dietician coverage
- ✓ Increased cash out for sick leave at retirement by 5%
- ✓ Added shift differential and sick leave accumulation for employees on Occupational Injury Leave
- ✓ Established new Workers' Compensation hearing rights
- ✓ Launched interactive web site for members (www.ocsea.org)
- ✓ Negotiated an agreement to protect the employment statuses of OCSEA members affected by the OBES/Human Services merger into ODJFS
- ✓ Secured additional funding for Benefits Trust

📅 **2001**

- ✓ 3.5% pay increase
- ✓ Increased Workforce Development Tuition Assistance Plan benefit to \$3,000 annually
- ✓ Added step for employees paid at pay ranges 32-36
- ✓ Negotiated merit pay for employees working on special Y2K-like projects

(continued)

📅 **2002**

- ✓ 4% pay increase
- ✓ Organized and received collective bargaining rights for State Fire Fighters
- ✓ Created Workforce Development pre-retirement training program
- ✓ Increased Workforce Development Professional Development Program (PDP) benefit to \$1,200 annually

📅 **2003**

- ✓ Increased sick leave payment to 100% for any usage associated with hospitalization
- ✓ Secured additional funding for Benefits Trust
- ✓ Organized and received collective bargaining rights for 150 contract IT employees at ODJFS
- ✓ Elected first-ever labor majority to the Ohio Public Employees Retirement System Board
- ✓ Defeated a legislative attempt to weaken civil service protections for state employees
- ✓ Created a forum to advance the interests and job security of state IT employees
- ✓ Created Workforce Development Career Development Workshops
- ✓ Launched E-Action, a web-based interactive site that directly links members with state legislators
- ✓ Implemented a New Employee Orientation program
- ✓ Increased the participation of members voting on the state contract to 78%

📅 **2004**

- ✓ 2% lump sum bonus
- ✓ Established the State Institutional Closure Commission to provide legislative oversight of executive decisions to abolish institutions
- ✓ Launched unprecedented voter registration drive aimed at union households that increased OCSEA members registered to vote to 70%
- ✓ Prevented legislative attempt to privatize IT work performed by state employees
- ✓ Created new ODOT Highway Technician classification series expanding the career path for highway workers
- ✓ Increased Workforce Development Tuition Assistance Plan (TAP) to \$3,500 annually
- ✓ Achieved 83% chapter participation in political mobilization activities
- ✓ Worked in coalition with Ohio labor organizations to pass a discount drug purchasing program (Ohio's Best Rx) for seniors and low income Ohioans
- ✓ Won an Ohio Supreme Court case granting collective bargaining rights for employees of the Ohio School Facilities Commission

📅 **2005**

- ✓ 4% pay increase
- ✓ Negotiated increased healthcare coverage with the addition of the flexible spending account options

📅 **2006**

- ✓ 3% pay increase
- ✓ \$5 per employee additional funding for Benefits Trust
- ✓ Union takes over operation of Workforce Development
- ✓ Expanded promotional rights to employees bidding in a geographic district
- ✓ Gained layoff rights for employees by appointment type
- ✓ Extended military duty pay supplement beyond 22 days, and permits leave accruals during initial period
- ✓ Gained right to use unpaid pregnancy leave for up to six months

📅 **2007**

- ✓ 3.5% pay increase

📅 **2008**

- ✓ 3.5% pay increase

📅 **2009-2012**

- ✓ Service years in other political subdivisions count toward vacation accruals
- ✓ IT classifications retooled, including pay scales, process for change and disputes
- ✓ Elimination of fines
- ✓ Improvements in health care benefits, including elimination of mandatory mail-in drug program, elimination of co-pays for wellness visits, screenings, immunizations and insulin
- ✓ Increased sick leave payment to 100 percent for usage associated with out-patient surgeries or recovery times from out-patient surgery
- ✓ Travel reimbursements based on General Service Administration guidelines

📅 **2009-2012 continued**

- ✓ Same mileage reimbursement as exempts
- ✓ Salary continuation for employees injured on job
- ✓ OIL appeal process
- ✓ Parity clause, meaning if other employees receive a better benefit, OCSEA also receives it
- ✓ Intermittents come into bargaining unit

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Legislative and Political Action

Public employees have always had a special interest in what goes on in the White House and Congress, as well as what goes on in our Governor's office and the state legislature. This is where new public service programs are started and the continuance of existing programs is debated. And, this is where the rights of public employees – rights to such things as funding for agency budgets, a safe workplace, a contract, decent retirement benefits and political freedom – get decided.

OCSEA and AFSCME believe it is important to make the views of public employees known to the politicians and elected officials who make these decisions. And, what happens to programs and issues of interest to OCSEA members in the Ohio General Assembly is a direct result of how our members vote during elections. Therefore, the union has made it a priority to develop legislative and political action activities among its members. The following outlines some of the ways the union meets these priorities.

PEOPLE

PEOPLE is AFSCME's legislative and political action committee. It stands for Public Employees Organized to Promote Legislative Equality.

of millions of dollars yearly to get politicians elected who are sympathetic to their views. But AFSCME's PEOPLE is *our* voice. It allows us to be heard on issues of importance to us. We are not only the workers who perform vital public services – we are also the advocates for quality services, safe and reasonable working conditions, justice and economic freedom for all.

AFSCME's PEOPLE raises money to carry this message to our national, state and local political leaders. PEOPLE also supports "get-out-the-vote" efforts, conducts phone banks and helps recruit campaign workers.

PEOPLE makes it possible for public workers to elect politicians regardless of political party who are sensitive to maintaining vital public services and who believe in dealing with public workers fairly.

You can join PEOPLE and get involved now by making a voluntary PEOPLE contribution in one of three ways: by making a one-time donation, by signing a payroll deduction card for PEOPLE, or by arranging for automatic electronic funds transfer from a bank account. Volunteers are also needed to help organize PEOPLE fundraising events and other political action and legislative activities (see below).

Anti-union corporate political
action committees contribute hundreds

(Continued)

OCSEA District Grassroots Committees (DGC)

With over 32,000 members located in every legislative district in every corner of Ohio, OCSEA members are a tremendous reservoir of political and legislative muscle.

To make this promise of political clout a reality, OCSEA has developed a network of 9 District Grassroots Committees based on the current OCSEA district structure to combine the energy and enthusiasm of union members, in the regions where they live and work.

These Committees also screen candidates for local, state, & federal offices and make endorsement recommendations to the Statewide Endorsement Committee in every even numbered year. The DGC's consider local government races in the odd numbered years as well.

The Committees help elect OCSEA/AFSCME-endorsed candidates at the national, state, and local levels. They also help pass or defeat statewide

initiatives that affect public employee interests. In addition, the DGCs perform voter registration and education drives and help mobilize members to lobby on issues.

Legislation

One of the most important pieces of legislation to be enacted every legislative session is the state's budget. The budget process is significant to all OCSEA members because it decides the funding for agency programs and services that we deliver. The OCSEA legislative program seeks out agency assessment and recommendations of our members through our field staff. Additionally, non-budget agency-related legislation is distributed to our agency leaders for input in the same manner.

For more information about PEOPLE and the OCSEA District Grassroots Committees, contact the OCSEA Governmental Affairs Department at 614-865-2644.

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FAIR SHARE REBATE

Question & Answer



Q. What is a fair share fee payer?

A. Employees of the State of Ohio, Auditor of Ohio, Treasurer of Ohio and the Franklin County Department of Job and Family Services who have a job in a bargaining unit position but are not members of OCSEA pay a fee for representation equal to the amount of union dues paid by OCSEA members.

Q. What is a Fair Share Rebate?

A. Fair Share fee payers can apply annually for a rebate of a portion of the fee they pay. The rebate amount is based on the amount of money spent by chapters, districts, assemblies, OCSEA central office, and AFSCME International that is for 'non-chargeable' expenses. Since January 2005 the rebate is paid out in four quarterly payments rather than one year's payment in advance in order to ensure that those receiving payment remain eligible throughout the year. The application process is sent annually by OCSEA to fair share fee payers listed in the OCSEA database in the last quarter of the year.

Q. What are Non-chargeable expenses?

A. Expenses for certain political activities, ideological activities and activities for members only are considered non-chargeable. Examples

of such political activities include mileage reimbursement and expenses to work on "Get Out the Vote" activities; or to attend a candidate-screening meeting. Examples of ideological activities include donations to charities; sign-up fees for a United Way golf outing; and attendance at a conference that deals with a topic unrelated to union activities such as women's issues or Solidarity Day rallies. Examples of activities for members-only include Helping Hand; softball team sponsorship where the team can only be made up of union members; and scholarships for union members.

Q. What are Chargeable expenses?

Expenses related to enforcement of a contract, costs related to doing union business as required by the OCSEA Constitution and training or conference costs related to union or contract issues are considered chargeable and are not included in the calculation of a fair share rebate. Examples of contract enforcement expenses include steward's expenses; mileage and postage for grievance filings and hearings; cost of copies needed for grievance processing; costs for contract ratification procedures; and costs to impact bargain or negotiate a Memorandum of Understanding during the term of an existing contract.

(Continued)

Examples of costs related to doing union business include meeting expenses such as hall rental, refreshments, release time and mileage reimbursement for officers and delegates to attend a meeting; postage and copy costs for meeting notices, copies of minutes, checks, computer supplies, etc.; phone and pager expenses for equipment used to conduct union business; and expenses related to the election process for officers and delegates. Examples of training or conference expenses include all costs associated with the OCSEA biennial convention; steward and leadership trainings; and arbitration/grievance training.

Q. How are Chargeable and Non-chargeable expenses tracked?

A. OCSEA central office has always tracked expenses in the operations budget by chargeable and non-chargeable categories. Historically all chapter, district and assembly rebate expenditures were assumed to be non-chargeable and no separate tracking of

activities at the subordinate body level were required. Due to the fact that subordinate bodies do expend monies on contract enforcement and constitutionally required activities (chargeable expenses), beginning in January 2005 subordinate bodies have been required to track chargeable and non-chargeable expenses separately. The OCSEA Secretary-Treasurer and the Comptroller will be available to train subordinate body officers on how to track expenses properly. Subordinate Body Officers can call 1-800-969-4702 to contact the Comptroller at ext. 4730 and the Secretary-Treasurer at ext. 4728 for guidance.

Q. Where does the Fair Share Rebate money come from?

A. Beginning in January 2005 the chapter rebates have been reduced by the rebated percentage for each fair share fee payer requesting a rebate before the rebate is sent out by the OCSEA Comptroller. On average, each chapter will pay \$11.44 for each fair share rebate requested.

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Discrimination

Identifying Discrimination

As a union, OCSEA fights hard against discrimination in the workplace. A steward can set a strong example by calling people on sexist or racist jokes and gender or race-specific comments, as well as other subtle behaviors that make people of color, women or handicapped people uncomfortable. Discrimination is one tool that management uses to divide the bargaining unit. Remember, it is the role of the steward to bring the entire bargaining unit together.

Do I have to go to the agency EEO officer?

The answer is NO.

The Ohio Civil Rights Commission

The Ohio Civil Rights Commission is a state agency that enforces the state's discrimination laws. A charge must be filed with the commission within six months after the alleged unlawful discriminatory practices are committed. However -- it is advisable to contact OCRC promptly when discrimination is suspected. First, there is an attempt to resolve the situation and then an investigation takes place. If the investigation suggests that discrimination has taken place, then the OCRC will attempt to resolve the matter by informal discussion. If that is unsuccessful, then a hearing is set before the commission. The Attorney General will represent the commission at the hearing and present evidence in support of the complaint. If the commission finds discrimination, then it

will order the employee to cease and desist. The commission can also take action

including reinstatement and back pay. The act of the commission may be enforced by the Attorney General's office through the court of common pleas. For more information call OCRC at 1-888-278-7101.

Please note that as a general rule filing with OCRC is a prerequisite to a subsequent private suit.

Federal Equal Employment Opportunity Commission

A complaint can be filed with the EEOC within 300 days from the date of the violation, but it is advisable to contact EEOC promptly when discrimination is suspected. An employee can contact the EEOC at 1-800-669-4000. EEOC will then send you a questionnaire from which EEOC drafts a complaint. The employer is notified within ten days. EEOC first makes an attempt at resolution. If that is unsuccessful, a more thorough investigation takes place. If it is determined by the Director that discrimination has taken place, then another attempt at conciliation is made. If that is unsuccessful, the complaint is referred to EEOC Legal Department for action, or you may file suit in Federal Court.

If you file with either OCRC or EEOC, the charge is automatically filed with the other agency.

Will OCSEA represent a person through these administrative procedures?

The staff of OCSEA only represents employees with respect to the specific

(Continued)

purview of the collective bargaining agreement. If legal counsel is needed on the above issues, a person will have to obtain it outside of OCSEA. You do not need legal counsel in the administrative proceedings.

They were specifically developed to avoid the need for legal counsel until you get to court.

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Fair Labor Standards Act:

Another Approach to the Overtime Issue

What is the Fair Labor Standards Act?

The Fair Labor Standards Act (FLSA) is the federal law which mandates a minimum wage of \$6.55 per hour, rising to \$7.25 per hour on July 24, 2009. The FLSA requires the minimum wage already referred to and also the payment of time and a half for overtime, if an employee is not otherwise exempt. The FLSA also includes record keeping requirements for employers and protects minors from having to work excessive hours or having to work in dangerous occupations.

Which OCSEA members are covered?

All OCSEA members are covered by the FLSA. [However, state employees cannot file individual suits based on the FLSA in federal or state courts because the courts have determined that the state is immune from suit by individual plaintiffs.] You can still file a complaint with the United States Department of Labor (see "Who enforces the Act?" below). The primary group of employees exempt by law are certain executive, administrative or professional employees who meet certain criteria in terms of job duties and salary. There are also other categories of employees who are exempt from minimum wage, overtime, or both.

Who enforces the Act?

The FLSA is enforced by the United States Department of Labor, Wage-Hour Division. In Ohio there are area offices in Columbus, Cleveland, and Cincinnati. There are also field stations located in other smaller cities. If you believe that your wages have been paid improperly under the FLSA, you should contact one of the area offices in

Cleveland (216)357-5400, Columbus (614)469-5678, or Cincinnati (513)684-2908.

What remedies are available?

There are several remedies available to you under the FLSA. First, the Wage and Hour Division may conduct an investigation of the employer and supervise the payment of any back wages it finds due. Second, the Secretary of Labor may bring a court action for back wages and an equal amount as liquidated damages. So in other words, the Secretary of Labor can sue for twice what is owed to you in back wages. (The courts are currently holding that an employee may not file private suits.) The Secretary of Labor may still file a court action to obtain an injunction to restrain any person or employer from violating the FLSA.

How can the FLSA be used in overtime situations?

For overtime purposes, the FLSA makes the employer choose a period of time called a workweek. A workweek is a period of 168 hours during seven consecutive 24 hour periods. It can begin on any day of the week and any hour of the day established by the employer. Under Article 13.01 of the collective bargaining agreement between OCSEA and the State of Ohio, the workweek commences with the shift that includes 12:01 a.m. Sunday of each calendar week and ends at the start of the shift that includes 12:00 midnight the following Saturday. If during that period of seven consecutive 24 hour periods you work more than 40 hours and you are not otherwise exempt, then management must pay you time and one half. The FLSA prevents employers from averaging the number of hours worked by any employee

over a two week period and then figuring overtime after 80 hours. For example, if an employee works 60 hours the first week of a payroll period and only 20 hours the second week, the employee has worked a total of 80 hours. Under the FLSA management will be required to pay for 20 hours at time and a half that first week. Management cannot average together the 60 hours from the first week and 20 hours from the second week and pay just straight time for the 80 hours worked during the two weeks. This is true for State employees even though they are paid on a bi-weekly basis.

The FLSA does not require prior approval by management before overtime is worked (however, if management tells you not to work overtime, you are insubordinate if you do work it and could be subject to discipline). Because of that requirement, which is different than the state contract, Stanley Tyirich (Arbitration #146) lost his overtime case in arbitration but was able to get compensation for overtime worked under

the FLSA by contacting the U.S. Department of Labor Wage and Hour Division area office.

Will OCSEA represent you in a FLSA action?

No. OCSEA only represents bargaining unit employees with respect to the grievance procedure unless OCSEA makes a formal decision to take such action it deems necessary outside the collective bargaining act in order to address a systemic issue.

Are you protected if you file a complaint?

If you file a complaint under the FLSA, management is prohibited from firing you or in any other manner discriminating against you for filing a complaint or for participating in legal proceedings under the FLSA.

Reference

Article 13.01
Arbitration # 146



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SEXUAL HARASSMENT

What it is:

Any UNWANTED sexual advance, request for sexual favors or any other verbal or physical conduct of a sexual nature, particularly when:

- submission to the conduct is either an explicit or implicit term of employment.
- submission to or rejection of the conduct is used as a basis for employment decisions affecting the person who did the submitting or rejecting.

Or:

- the conduct has the purpose or effect of substantially interfering with an individual's work performance or creates an intimidating, hostile, or offensive work environment.

What is a hostile work environment:

- it is not necessary that the sexual harassment be so offensive that a reasonable person's psychological well-being could have been seriously affected
- generally must be more than one sexually offensive comment
- it is not necessary that the employee is injured economically

What it can include:

- UNWANTED sexually directed behavior
- assault
- physical abuse (touching, pinching, cornering)

- verbal abuse (propositions, lewd comments, sexual insults)
- visual abuse (leering or display of pornographic material designed to embarrass or intimidate an employee)
- other conditions that lead to a sexually hostile work environment

Sexual harassment is illegal

Sexual harassment is illegal discrimination covered by Title VII of the Civil Rights Act and Ohio's laws against discrimination. It subjects the worker to adverse employment conditions having nothing to do with job performance. Often it is accomplished by threats of adverse job actions or promises of raises or promotions.

Federal guidelines state that management is responsible and liable for the actions of its employees, or even non-employees (such as customers), if it knew or should have known of the problem. Management must take immediate and appropriate corrective action. Under Ohio law supervisors are responsible for their actions and a right of action can be brought directly against the supervisor as well as your employer.

What to do if you are sexually harassed on the job:

- Don't think it is your fault.
- Object. Speak to the harasser and be specific about what behavior you find objectionable

(Continued)

- Speak to your coworkers. Ask if anyone else has had a problem with the harasser.
- Keep a log. Write down what happened, exactly what was said, the names of any witnesses, the date, time and location of the incident. Save any letter, cards or notes in a secure place, preferably at home.
- Tell your harasser in writing that you object to the behavior. Be specific, and keep a copy of the letter.
- Speak to your supervisor. If the harasser is your supervisor, speak to his/her supervisor. Bring your log and any documentation that you have.
- Speak to your union steward, agency EEO officer, or labor relations or personnel official. Your union steward should be able to assist you with the above steps.
- File (within 30 days of the most recent incident) with:

State EEO Division

Ohio Department of Administrative Services
65 E. State Street, 8th Floor
Columbus, Ohio 43215

- File (within six months of the alleged violation) at:

Ohio Civil Rights Commission

Columbus (614) 466-5928
Cleveland (216) 787-3150
Cincinnati (513)-852-3344

- File (within 300 days from the date of the violation) with:

Equal Employment Opportunity Commission

Cleveland (216) 522-2001
Cincinnati (513) 684-2851

- File charges with the police if you were assaulted or raped.

If you file within six months with either OCRC or EEOC, it will be dual filed with both agencies at the same time.

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The State Contract Series

For use in understanding the state employees' contract

How to Make a Healthy and Safe Work Environment



Using the contract

Article 11, Sections 11.01 and 11.03 of the contract state that an employee shall report unsafe conditions and safety and health violations to his/her supervisor. If the supervisor does not deal with the problem, the employee should contact an agency health and safety designee. If the employee does not know who that is, contact a member of the Health and Safety Labor Management Committee or a steward.

That person has five days to deal with the problem or explain why the problem cannot be abated quickly. There are several specific contract articles that discuss particular types of problems and one article that provides for a Labor/Management Committee to also deal with those problems.

Workplace Violence

Article 11.04 requires agencies to develop practices and procedures aimed at preventing job related violence and make it a responsibility of the health and safety committee. They will be guided by OSHA guidelines that speak to worksite analysis and hazard prevention and control, training and education, as well as other program elements. Please refer to the "Sources of Information" for valuable resources.

CPR

All direct care and custody staff in the Department of Rehabilitation and Correction are required to be certified in cardiopulmonary resuscitation (CPR) as well as first aid. The issue of what equipment (i.e., masks, gloves, mouthpieces, etc.) will be utilized will be addressed by the DR&C Health and Safety Committee. If no agreement can be reached, then OCSEA can arbitrate the issue. Also, management of DR&C stated during bargaining that CPR does not need to begin

until the area surrounding where the CPR is to be given is secured.

Public Employees Risk Reduction Program (PERRP)

The Ohio Public Employee Safety and Health Act like the federal law requires each public employer to provide a safe workplace and to comply with Ohio OSHA Standards (ORC Section 4167.04(A)). The act establishes a committee consisting of 8 employer and 8 employee representatives that adopt rules of administration of the act and establish safety standards. The committee must adopt as a rule and as an Ohio standard every federal occupational safety and health standard adopted by OSHA.

Like OSHA, the PERRP provides for inspections/citations, standards for toxic materials and harmful physical agents and rights to refuse unsafe work assignments. The specifics of the situation and the related right reflected in the contract or PERRP requires an evaluation of which avenue is most advantageous. Your staff representative should be consulted regarding the appropriateness of a grievance or complaint under the law.

Administrative Agencies:

Public Employment Risk Reduction Program
 13430 Yarmouth Drive
 Pickerington, OH 43147
 ohioabc.com
 Phone: (614) 644-2246
 (800) 671-6858
 TTY/TDD: 1-800-750-0750
 Fax: (614)644-3133
 Refusal to Work Pager: (614) 731-4380
 Fatality/Multiple Hospitalization Report Pager:
 (614) 731-4380

(Continued)

National Institute for Occupational Safety and Health (advisory) (513) 684-4287
4676 Columbia Parkway
Cincinnati, Ohio 45226
www.cdc.gov/niosh

Environmental Protection Agency (advisory & enforcement)
(federal and state) (614) 644-3020
122 S. Front St.
Columbus, Ohio 43215 www.epa.state.oh.us

appropriate local and state health departments
appropriate fire departments

Sources of information

There are many sources of information on health and safety issues, some of which are listed below.

Federal OSHA and U.S. Department of Labor
200 North High Street, Room 620
Columbus, Ohio 43215
(614) 469-5582 www.osha.gov

OSHA General Industry Standards (U.S.)
Department of Labor
200 North High Street
Columbus, Ohio
(614) 469-5582

OSHA Regional Office
(Regional offices provide technical assistance, education and distribution of publications. Contact the Labor Liaison in this Regional Office for Ohio.)

Region V: IL, IN, MN, MI, OH, WI
230 South Dearborn Street
32nd Floor, Room 3244
Chicago, Illinois 60604
(312) 353-2220

OSHA Construction Standards
Government Bookstore:
Ohio: (614) 469-6955
Illinois: (312) 353-5133

AFSCME International Fact Sheets
AFSCME International
Research Department
1625 L Street Northwest
Washington, D.C. 20036
(202) 429-1215

www.afscme.org
www.afscme.org/publications/1706.cfm
Good overview of cause/effects of violence, risk factors, prevention and post-incident procedures.

National Safety Council
1515 Bethel Rd. #110
Columbus, Ohio 43220
(614) 324-5934
www.nsc-centralohio.org

Industrial Commission
30 W. Spring St.
Columbus, Ohio 43215
(800) 521-2691
www.ic.state.oh.us

Guidelines for Preventing Workplace Violence for Health Care and Social Service Workers,
U.S. Dept. of Labor, OSHA, 1996.

Health and Safety in the Workplace
An AFSCME Handbook, 1992. Excellent resource guide pertaining to collecting information on hazards, OSHA coverage, safety and Health committees and negotiating for job safety and health.

Workplace Violence
NIOSH Publications
4676 Columbia Parkway
Mail Stop C-13
Cincinnati Ohio 45226-1998

AFSCME has excellent health and safety experts who can assist us and can be contacted through the staff representatives. Depending on the nature of the problem, local environmental groups may be contacted. Health and safety problems affect many people and are great issues to involve lots of people. People can sign petitions, wear buttons, make a stand at lunchtime to "sell" the bad water, etc.

References

Article 11.01; 11.03; 11.04
ORC 4167.04(A)

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What is an Unfair Labor Practice?

An unfair labor practice is a violation of 4117.11 of the Ohio Revised Code. While both the employer and the union can commit an unfair labor practice, this fact sheet will describe employer unfair labor practices and how OCSEA deals with them. Whether the employee should file an unfair labor practice or a grievance on a particular situation depends on the specifics of the situation. SERB will defer to the grievance procedure in those instances in which it determines the charge raises a contractual claim that can be resolved through the grievance procedure.

Types of unfair labor practices

There are eight types of unfair labor practices:

1. Interfering with employee rights. Specific rights granted by the law are the right to join (or not join) and participate in an employee organization of their choice; the right for employees to act in a collective fashion; the right of employees to be represented by an employee organization if a majority of employees have indicated this desire and the organization has been certified by SERB; the right to bargain; the right to present grievances; and the right to select representatives.
2. Refusal to bargain. Refusal to negotiate in good faith over wages, hours and terms and conditions of employment with the union. This can include the employer's unilateral change of terms and conditions of employment.
3. Grievance processing and fair representation. This provision requires collective bargaining agreements to have grievance procedures and that grievances must be adjusted according to the contract. An employer cannot repeatedly fail to process grievances timely and/or to process requests for grievance arbitration.
4. Lockout. A lockout occurs when the employer denies access to the workplace or in other ways acts to prevent employees from doing their duties in order to get employees or their union to capitulate or agree to a compromise to the employer's terms in a labor dispute.
5. Causing an unfair labor practice. Causing an employee representative to commit an unfair labor practice. For example, a supervisor directing a steward to answer a question about an employee he/she was representing. If the steward answered, it would be a breach of his/her duty to represent.
6. Forming a company union or interfering with the formation or administration of an independent union. But a public employer may allow a union to use the employer's facilities for membership or other meetings or allow a union to use the employer's internal mail system.
7. Discharging or discriminating against an employee because he/she has filed charges or given testimony under the Collective Bargaining Act.
8. Discriminating or retaliating against an employee who is exercising his/her rights.

(Continued)

How does OCSEA file ULP's?

To preserve priorities of the organization, it is the OCSEA policy that ULP's are filed through OCSEA Central Office. Unfair labor practices can be quite technical and they are most effectively prepared by the legal staff. If you think your employer has committed a ULP, contact your staff representative. When a ULP charge is filed, SERB requires a detailed account of local union and grievance history. Please be prepared to provide this information to the staff drafting the complaint.

What are the time frames to file an unfair labor practice?

The charge must be filed with SERB within 90 days of the last occurrence of action which is alleged to be an unfair labor practice. There is a standard form, although it is not mandatory that it is used. All charges must be in writing and signed, and must include required information. All charges must be served upon the party against whom the charge is filed.

What is the process involved?

After an unfair labor practice has been filed, a questionnaire is submitted to each party to complete. The information required is much more detailed than that given in the initial charge. One of SERB's staff completes an investigation and makes a recommendation to the actual SERB Board. If the Board decides there is no basis for the charge, the unfair labor practice is dismissed. If the Board believes there is basis for the charge, they make a finding of probable cause and a hearing for the parties is set. At the hearing, parties present evidence. An administrative law judge/hearing officer makes a recommendation for a final Board decision. Only the State Employment Relations Board can uphold an unfair labor practice complaint.

If the employer is found to have committed a ULP and the employer is ordered to cease and desist those actions, SERB can take the affirmative action including reinstatement and back pay. Also, the employer could be required to bargain with a union over terms and conditions of employment that the employer has unilaterally changed and circumstances can be ordered returned to what existed prior to the unfair labor practice charge while the parties bargain.

REFERENCES:

ORC 4117.11



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Informational Picketing Fact Sheet

Sometimes normal problem-solving and grievance procedures don't work. The issue may be too serious, the employer too arrogant, our members' patience may have worn too thin or some combination of these factors and requires a different approach.

Developing public support to shame management into correcting problems can be an effective tool when traditional solutions don't work. A typical way for unions to apply this strategy is through an informational banner or picket line. Informational picketing is not a strike. Employees do carry signs, however, and distribute informational leaflets which highlight the employer's misdeeds and ask for public support for the union's position. Public relations is an important aspect of this tactic.

Used properly, this tactic can be an effective way to achieve union goals. If not used wisely, and sparingly, however, informational pickets can actually backfire. They can be ineffective, turn public opinion against the union, and--if legal requirements aren't followed carefully--informational pickets can actually lead to Unfair Labor Practice findings against the union.

GUIDELINES

CONSULTATION. OCSEA Chapters and subordinate bodies should not engage in informational picketing or call membership or public rallies without first consulting their Staff Representative or the OCSEA Operations Director. This consultation is important for both tactical and legal reasons.

NOTICE. Under Ohio law, there are restrictions and procedures which must be

followed to conduct a legal picket. The union is required to provide notice of its

intent to picket (or rally) to both the employer and the State Employment Relations Board (SERB) at least 10 days before the picketing starts. The notice must be legally "served" and must include the date and time when picketing is to begin, identify the public employer who will be picketed (including the address of the employer and the address where the picketing will occur). This notice must also include the name and address of the union doing the picketing, a general description of the classifications or bargaining unit involved in the picketing, and information regarding the contract which is in effect.

Members are highly encouraged to process a request for an Informational Picket through OCSEA central office. The office of General Counsel and your staff representative can work to ensure all the legal dots and lines are met. SERB has developed a form to use for such notices. However, failure to adhere to all the requirements may subject the picketers to a ULP by the employer.

PROCEDURES. Employees must be on their own time when picketing, either off duty, on approved vacation or compensatory leave or on an unpaid lunch break.

Picketers must respect property rights and not trespass, block traffic or create a public disruption. It is NOT legal for a union to try and stop people (either the general public, other employees or delivery drivers, etc.) from crossing an informational picket and entering the workplace. Activity of this nature can constitute a secondary boycott and expose the union to unfair labor

(Continued)

practice charges and potential damages. Threats and coercion of any kind must always be actively discouraged.

Picket areas should be selected for their public visibility, but also to ensure the safety of the members engaged in the picketing. Picketers should not trespass on the employer's or other's property, and it is illegal to picket a public official's home. Sidewalks and main entrances are traditionally good picket sites. Where vehicular traffic is present, one person should be placed in charge of traffic safety for the picketers.

References

ORC 4117.11(B)(5)+; 4117.11(B)(8)

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Talking with Management

To resolve the non-grievance

Sometimes a bargaining unit employee comes to a steward with a problem that is not a grievance, does not fall within the purview of other administrative agencies, and is not a shared problem, but is something that could be resolved by management. Rather than dismissing the problem, it makes sense to discuss this situation with management. By doing this, the steward keeps the bargaining unit member focused on the fact that management is responsible for workplace conditions. It also maintains a steward's rapport with the bargaining unit.

In Labor/Management Committees

Article 8 and Article 11 spell out labor management and health and safety labor management committees. Their general purpose is to discuss problems or potential problems shared by a number of bargaining unit members **or a number of management members**. These committees require a special art of listening because to prepare for these meetings the L/M Committee member has to figure out what the interests of management are and has then to convince management to do as he/she wishes. How successful they are is often directly dependent on how powerful management perceives the local chapter to be.

Here are some hints for more successful meetings:

1. Make sure the concerns you bring are widely shared by the bargaining unit. Bringing concerns of one individual is not appropriate.
2. Make sure you understand the nature of the concern thoroughly -- as well as the solution -- that the bargaining unit wants. Is the bargaining unit willing to compromise?
3. Bring evidence to support your position. Management is more willing to solve a problem if they see facts. Facts may dispel harmful perceptions they might have.
4. Make sure your concerns are specific and can be solved by the committee. An issue which is a statewide policy cannot be solved, for example, by an agency committee. Also, committees work best with a sense of accomplishment. There will be arguments and conflicts, but in this arena, it is best to bring topics and concerns whose resolution both sides can benefit from.

Reference

Article 8; 11

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Fact Finding

Although there are many myths and misunderstandings about the bargaining process, the subject that causes the most confusion is “fact finding.” Unfortunately, misunderstandings about fact finding often influence how members vote on the proposed contract. Thus, it is very important for members to be clear on the fact finding process before they make up their minds how to vote.

It’s the Law

First, the general rules that guide public employee negotiations are established by Ohio law. The law allows the Union and management to submit issues on which they cannot agree to a fact finder. This occurs after negotiations – including mediation – have failed and an “impasse” is formally declared.

Mediation involves bringing in a neutral “mediator” – a respected expert in labor relations – who tries to help settle disputes by resolving misunderstandings, setting goals, scheduling meetings and lending independent perspectives to the two sides.

Ultimately, a mediator can only go so far, either because the sides refuse to bargain and compromise any further, or because time runs out. That’s when a fact finder comes into play.

Fact Finding as a Last Resort

Fact finding makes sense only as the last resort and safety net to avoid the dangers of a strike. OCSEA leaders attempt to minimize the number of issues presented to the fact finder. Sometimes this doesn’t go according to plan. In the past, management has refused to discuss many issues during both regular bargaining sessions and mediation. This has left many unresolved

and important issues – like sick leave – for the fact finder to resolve.

“Recommendations?”

Not Really

The way fact finding works is far different than bargaining or mediation, and is a poor substitute for direct negotiations because of the uncertainty of involving an outsider. There is no prioritizing. There is no grouping of issues. There is no give-and-take. The fact finder can pick either management’s position, the Union’s position, or a compromise in between.

The fact finder conducts what amounts to a hearing where, issue by issue, each side presents documentation and witnesses to support its respective position. Typically, the fact finder is swayed by “facts” – documented information such as employment statistics, budgets and contract settlements elsewhere in government and the parties’ prior collective bargaining history. The fact finder also looks at patterns and comparable data from the private sector and public employers for guidance.

As with the mediator, both sides look for a fact finder who is fair and has a great deal of familiarity with the issues.

The law requires that the fact finder issue “recommendations” to settle the disputes. The law then makes these recommendations binding on the two sides unless one or both sides votes to reject the recommendations (NOTE: Rejection of the recommendations also means rejection of all of the tentative agreements reached prior to fact finding.)

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Here's the rub: In order to avoid strikes, the Ohio General Assembly defined reject in a way that makes it nearly impossible for union members to reject the recommendations. In order to turn down the recommendations, 60 percent of all union members – not just those voting to reject – must vote against the recommendations. This situation generally makes the so-called recommendations the final word on the contract.

If Rejected, Then What?

Union research shows that many members vote against the proposal because they mistakenly think that turning down the recommendations automatically leads to renewed bargaining. If OCSEA members were to vote to reject the recommendations and tentative agreements, continued bargaining and mediation could theoretically happen, but only if management would agree to go back to the negotiating table.

The only required step is that the two sides participate in "conciliation" only for those employees for whom striking is illegal: Firefighters, Correction Officers, Correctional Sergeants/Counselors, Juvenile Correction Officers, Shooting Range Attendants, Psychiatric Attendants, Psychiatric Attendant Coordinators, Security Officer 3, Security Technician 1, Security Technician 2, Youth Program Specialists, and employees all at the School for the Deaf and the School for the Blind. The language in the current contract would remain in effect until the conciliator's report is issued and implemented as the new contract for this group of employees. For additional information about "conciliation" see Fact Sheet #902.

It's for this reason that when OCSEA members vote on the fact finder's recommendations and tentative agreements, a "NO" vote also is a strike authorization vote (except for those positions listed above). With a strike authorization in hand and a membership ready to hit the streets, union negotiators could have the leverage needed to bring management back to the table to resume bargaining.

If management will not go back to the negotiating table, OCSEA members would go out on strike (except for those classifications listed above who are prohibited from striking and subject to conciliation). Any members who continued to work would not have the current contract language in effect – management's 'last best offer' would be implemented as the contract until OCSEA members on strike are able to get management to go back to the negotiating table and agree to language that is acceptable to the union members. Management's 'last best offer' is whatever they propose to the union after union members reject a contract – they can go back to their original proposals on anything that was opened during negotiations and they do not have to abide by any tentative agreements or fact finder's recommendations as their offer.

Fact Finding and the related rules can seem to be complex. But, by keeping in mind that fact finding is really the last resort in the process to get a new contract, members can make sure that they are making their votes count the most when the contract voting process begins.

Can Management Reject the Fact Finder's Report?

Yes, recent changes to Ohio's Collective Bargaining Law make it easier for management to reject the Fact Finder's report.

In December, 2002, an attack was made on the Collective Bargaining Law that gave the Controlling Board, rather than the General Assembly, the power to reject a fact finder's report during union contract negotiations with the State of Ohio.

The Controlling Board consists of just six members of the General Assembly plus one member hand-picked by the Governor who holds no elected position. Furthermore, the Board, like the General Assembly, is politically stacked against unions and has no expertise in labor relations.

When the Collective Bargaining Law was written, the idea was to make it difficult for both unions and the state to reject a contract:

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the union and the General Assembly needed a 60 percent super majority to reject the fact finder recommendations.

Now, the fate of our state contract could be in the hands of just seven people.

References:

ORC 4117.14
Fact Sheet #902



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Conciliation



What is Conciliation?

Employees in safety-sensitive positions are prohibited from striking under the law. Instead, when a fact finder's recommendations are rejected, the law requires that the dispute be submitted to a neutral conciliator for final resolution. Conciliation is a final and binding arbitration where the employer and the union present their last best offers on unresolved issues.

The contract articles that are presented to the conciliator are not limited to only the issues covered in the fact finder's report. If the fact finder's report, which incorporates all of the parties tentative agreements, is rejected by one or both parties, either party can take its last best offer to the conciliator regarding any issue it had raised during negotiations even if the issue had not gone to a fact finder. For example, if the employer originally proposed to add new language allowing 12-week furloughs but withdrew the proposal during bargaining, they could choose to renege from their tentative agreement on that issue and re-submit the furlough proposal to the conciliator. Another example would be if the union originally proposed to increase the percentage paid for the second week of sick leave used from 70% to 80% or 90% depending on circumstances but withdrew the proposal during bargaining, they could choose to ignore their tentative agreement on that issue and re-submit the sick leave payment proposal to the conciliator.

Which employees are prohibited from striking?

Basically, all public safety employees are prohibited from striking under Ohio's Collective Bargaining Law and must use conciliation. In OCSEA, the following employees are considered prohibited from striking against their employer: Firefighters, Correction Officers, Correctional

Sergeants/Coun

selors, Juvenile Correction Officers, Shooting Range Attendants, Psychiatric Attendants, Psychiatric Attendant Coordinators, Security Technician 1, Security Technician 2, Youth Program Specialists, and all employees at the School of the Deaf and the School for the Blind.

What does the conciliator do?

A conciliator selects either the proposal of the employer or the union on each proposal either party has submitted. Unlike fact finding, in conciliation, the conciliator is required to pick either the union's or the employer's offer and **not** a compromise between them.

When selecting the employer's offer or the union's offer, the conciliator bases his or her decision on the following:

- Past Collective Bargaining Agreements
- Comparison of other public and private employers doing comparable work
- The interests and welfare of the public
- The ability of the employer to pay
- The parties' stipulations
- The authority of the employer

How does conciliation work?

Take for example roll call pay. Suppose at conciliation the employer's position is to eliminate roll call pay altogether and presents evidence to support its argument. The Union's position is to leave roll call pay as is and supplies the conciliator with evidence supporting its argument. Given this hypothetical situation, the conciliator can only pick one offer or the other. The conciliator has no authority to find middle ground between the two issues.

Whichever offer the conciliator chooses, it is final and binding on both parties.

The award has the same legal effect as an arbitration award.

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