

Crown Employees
**Grievance Settlement
Board**

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**Commission de
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*des employés de la
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GSB#0965/00; 1020/00; 0735/01; 0748/01; 0284/02; 0285/02; 0286/02; 0287/02; 0288/02; 0289/02; 0290/02; 0291/02;
0292/02; 0293/02; 0294/02; 0295/02; 0296/02; 0981/02; 1019/02; 1494/02
UNION#000D369; 00D368; 00D370; 00D371; 00D372; 00D373; 00D374; 00D375; 00D376; 00D377; 00D378; 00D379;
00D380; 00D381; 00D382; 00D391; 01B250; 02A358; 02A363; 02A364; 02A365; 02A366; 02A367; 02A368; 02A369;
02A370; 02A461; 02A462; 02A478; 02A479; 02A480; 02A481; 02A482

IN THE MATTER OF AN ARBITRATION

Under

THE CROWN EMPLOYEES COLLECTIVE BARGAINING ACT

Before

THE GRIEVANCE SETTLEMENT BOARD

BETWEEN

Ontario Public Service Employees Union
(Crawford *et al.*)

Grievor

- and -

The Crown in Right of Ontario
(Ministry of Transportation)

Employer

BEFORE

Bram Herlich

Vice-Chair

FOR THE UNION

Ed Holmes
Ryder Wright Blair & Doyle
Barristers and Solicitors

FOR THE EMPLOYER

Carol Ann Witt & Stephen Patterson
Counsel
Management Board Secretariat

HEARING

September 30, 2002; January 17, February 6
& 21, March 3 & 4, 2003.

AWARD

The grievances which comprise GSB File No. 0965/00 are some dozen in number. Those grievances, however, were but the front edge of a formation of some 85 grievances each raising similar if not identical issues.

The parties agreed to consolidate all of these grievances to be dealt with together in the course of these proceedings. Attached as Appendix "A" to this decision is a listing of all of the grievances determined by this award.

Thus, the parties agreed that jurisdiction be conferred upon me to dispose of all of the grievances listed in Appendix "A". They also explicitly agreed that these proceedings were to be conducted under the terms of Article 22.16, the "Mediation/Arbitration Procedure" provisions of the collective agreement. As a consequence, unless the parties otherwise agree, this decision will have no future precedential value.

The parties also requested that I issue a concise and expeditious award without reasons.

Although there may be an issue as to what extent the grievances actually disclose this intention, the union asserted that these grievances challenge the propriety of the implementation of various aspects of the employer's "underfill" policy in relation to the Transportation Enforcement Officer ("TEO") classification series. More specifically, but without getting into any intricate detail, the employer has been including a notation in its postings for new or vacant TEO 2 positions (and there have been a significant number of such postings in the last few years) indicating that "less qualified applicants will be considered on an underfill basis". Further, when such an underfill hiring has been effected (and, again, there have been a significant number of such appointments over the last few years), the employer has remunerated the successful "underfills" in the TEO 2 competitions at the lower TEO 1 rate – at least until such time as they were viewed as having become fully qualified for the TEO 2 position.

During the course of these proceedings the parties were successful in drafting and executing a Memorandum of Settlement which included a protocol to govern the future filling of TEO positions.

However, while they were thus effectively able to resolve the issues raised by these grievances on a “going-forward” basis, they were not able to agree on the amount of compensation to be received by each of the grievors.

Having reviewed the documentary materials filed in these proceedings and having considered the able submissions of the representatives of the parties, I hereby direct the employer to pay the sum of \$1000.00 (less any statutorily required deductions) to each of the grievors listed in Schedule “A”.

I note, further, that while the parties were confident that following the consolidation of all these various grievances, there were no other outstanding grievances raising the same issues as those resolved by this Order, neither could they be absolutely certain in that regard. However, the parties clearly wished to extinguish any need for further litigation of the issues resolved by their protocol and this Order.

In those circumstances and having further regard to the joint submissions of the parties on this point, I hereby direct as follows.

Any grievor listed in the attached Schedule “A” who takes the position that his/her grievance raises issues different than those resolved by this order and who wishes to pursue those issues is hereby directed to so advise the union within 30 days of the date of this order and to waive any entitlement to a payment under the terms of this Order, pending a hearing into the merits of their grievance. Within 15 days of being notified of any such claim, the union will, in turn, notify the employer.

It shall be open to either party at a hearing into any such claim to argue that the grievance raises the same issue as that resolved by this Order and if that is found to be the case, the grievor shall be entitled to the benefits of this Order. In the event it is found that the grievances raises other issues, the grievor shall not be entitled to the benefits of this Order.

Finally, and again having regard to the agreement of the parties on this point, I hereby direct that any employee, other than those listed on Appendix “A”, who has filed a grievance in writing through

the Union prior to the date of this Order shall, where the grievance raises the same issues as those resolved by this Order, be covered by the terms of this Order.

I repeat, that under the terms of this Order, the employer is hereby directed to pay the sum of \$1000.00 (less any statutorily required deductions) to each of the grievors listed in Appendix "A".

Dated at Toronto this 25th day of March 2003.



Bram Herlich, Vice-Chair

APPENDIX "A"

	Grievors	OPSEU #	Grievance Date	GSB #
1	Crawford, David	00D369	12-Aug-00	0965/00
2	Leitao, Antonio	00D370	11-Aug-00	0965/00
3	Dietz, Jennie	00D371	11-Aug-00	0965/00
4	Walters, Robert	00D372	11-Aug-00	0965/00
5	Brousseau, Debbie	00D373	12-Aug-00	0965/00
6	Ricketts, Gord		11-Aug-00	0965/00
7	Dotzko, Shaun	00D374	11-Aug-00	0965/00
8	Dodwell, Hugh	00D375	11-Aug-00	0965/00
9	Steele, Mike	00D376	12-Aug-00	0965/00
10	Ferlatte, Steven	00D377	10-Aug-00	0965/00
11	Armstrong, Gary	00D378	11-Aug-00	0965/00
12	Delmore, Amy	00D379	11-Aug-00	0965/00
13	Saunders, Susanne	00D380		0965/00
14	Barkley-McKeeman, Laura Ann	00D381	11-Aug-00	0965/00
15	Card, Bryan	00D382	15-Aug-00	0965/00
16	Cameron, Carolyn	00D391	12-Aug-00	1020/00
17	Cormier, Chantal	00D391	11-Aug-00	1020/00
18	Donohue, Travis	00D391	11-Aug-00	1020/00
19	Dufour, Michael	00D391	11-Aug-00	1020/00
20	Stewart, Joann	00D391	12-Aug-00	1020/00
21	Thomas, Stephen	00D391	12-Aug-00	1020/00
22	Vanwieren, Kenneth	00D391	12-Aug-00	1020/00
23	Bedard, Brian	00D391	11-Aug-00	1020/00
24	Hickey, Michael	00D391	28-Aug-00	1020/00
25	Reville, Millie	01B250	14-Jun-01	0735/01
26	Sheriff, Scott		21-Jun-01	0748/01
27	Group - Grice, Brent	02A358	30-May-02	0284/02
28	Group - Armstrong, Daniel	02A358	30-May-02	0284/02
29	Group - Sheriff, Matt	02A358	30-May-02	0284/02
30	DiMola, Frank	00D369/368	6-May-02	0285/02
31	Hames, Brian	00D369/368	6-May-02	0286/02
32	Stasiw, Roman	00D369/368	6-May-02	0287/02
33	Peios, Peter	00D369/368	7-May-02	0288/02
34	Kasello, Karl	02A363	11-Jan-02	0289/02
35	Jamieson, Gary	02A364	21-Dec-01	0290/02
36	Gee, John	02A365	4-Jan-02	0291/02
37	Jansen, Mike	02A366	4-Jan-02	0292/02
38	Stewart, Corey	02A367	4-Jan-02	0293/02
39	Egan, R.	02A368	4-Jan-02	0294/02
40	Johnson, Ivor	02A369	4-Jan-02	0295/02
41	Ventura, Dan	02A370	4-Jan-01	0296/02

42	Deisley, Jim	02A461	22-May-02	
43	Middleton, Randall	02A462	21-May-02	
44	Group - Rei, Sandra		4-Jan-02	
45	Group - Leeman, Jason		4-Jan-02	
46	Group - Byham, Chuck		4-Jan-02	
47	Group - Powrie, John		4-Jan-02	
48	Group - Rainville, Serge		4-Jan-02	
49	Austin, Chris	02A478	27-May-02	
50	McDonald, Ryan	02A479	29-May-02	
51	Pask, William	02A480	28-May-02	
52	Wootton, Ken	02A482	27-May-02	
53	Wootton, Jeff	02A481	23-May-02	
54	Jones, Scott		3-Jun-02	0981/02
55	Malloy, Daniel		27-Dec-01	1019/02
56	Group - Bonner, Mark		10-May-02	1494/02
57	Group - Grieves, Mike		14-May-02	1494/02
58	Group - Hudak, Joe		14-May-02	1494/02
59	Group - Reid, Linda		13-May-02	1494/02
60	Group - Wild, Brent		11-May-02	1494/02
61	Group - Whan, Stephen		13-May-02	1494/02
62	Group- Perisic, Sandi		13-May-02	1494/02
63	Group - Pailey, Marnie		13-May-02	1494/02
64	Group - Greenidge, Tyrone		16-May-02	1494/02
65	Yalaka, Frank		22-Jul-02	
66	Varrall, Mathew		27-Mar-02	
67	McEwan, Rodney		27-Mar-02	
68	Davies, Chris		27-Mar-02	
69	Dolenec, Susan		27-Mar-02	
70	Curran, Joe		26-Mar-02	
71	Harding, Glenn		26-Mar-02	
72	Virgoe, Derek		26-Mar-02	
73	Kirchner, Jim		26-Mar-02	
74	Leadley, Robert		27-Mar-02	
75	Mercanti, David		27-Mar-02	
76	Sharpe, Heather		26-Mar-02	
77	Peshko, Michael		8-Apr-02	
78	Gallagher, Ian		30-Mar-02	
79	Alexander, Brent		8-Apr-02	
80	Mills, Michele		30-Mar-02	
81	Eustace, Erik		8-Apr-02	
82	Halliwell, Dave		3-Apr-02	
83	Ansara, Harry		3-Apr-02	