

Crown Employees
**Grievance Settlement
Board**

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

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

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



GSB# 2000-0965, 2001-0735, 2002-1019
UNION# 00D372, 2001-0602-0001 [01B250], 2001-0506-0015 [02A739]

IN THE MATTER OF AN ARBITRATION

Under

THE CROWN EMPLOYEES COLLECTIVE BARGAINING ACT

Before

THE GRIEVANCE SETTLEMENT BOARD

BETWEEN

Ontario Public Service Employees Union
(Walters *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

Ferina Murji
Counsel
Management Board Secretariat

HEARING

April 20, 2004.

Decision

By decision dated March 25, 2003, I issued an award (Crawford et. al. 2000-0965 et al) which dealt with some 85 outstanding grievances. These grievances related, broadly speaking, to the employer's use of underfill designations in the Transportation Enforcement Officer ("TEO") classification series.

In the context of those proceedings, the parties had agreed to a protocol to govern the use of the underfill designation with respect to the TEO2 position on a "going-forward" basis. Despite that agreement, however, they were unable to agree on the question of what compensation, if any, ought to be paid to the individual grievors. They consequently referred that question to me under the mediation/arbitration procedures set out in Article 22.16 of the collective agreement. I determined and directed that the employer pay to each grievor the sum of \$1,000.00 (less statutory deductions).

The three grievors whose grievances are now again before me were each part of the group of grievors whose grievances were disposed of by my award.

However, my award also contained the following (at page 3):

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 raise other issues, the grievor shall not be entitled to the benefits of this Order.

The union asserts that each of the grievances of the three grievors currently before me raises an issue(s) different from those resolved by my previous order. The employer disputes that contention and, as a preliminary matter, asks that I declare that the 3 instant grievors are bound by my prior award, are thereby entitled to claim the \$1000.00 payment from the employer, but nothing more.

Very briefly, the union described the “novel” aspects of these grievors’ claims as follows:

Prior to working as a TEO, Mr. Malloy was a Correctional Officer. From that position he was a successful applicant in a posting for a TEO position. The latter position is in a higher rated classification than the former and thus, asserts the union, Mr. Malloy ought to have benefited from the Pay Administration provisions of the collective agreement and, in particular, Article 7.1.2 thereof. Although the union does not dispute that Mr. Malloy was by no means unique in this regard (as compared with the other grievors covered by the Crawford decision for whom the TEO position also represented a promotion from their previous positions), it asserts that the issue is different from those dealt with by that decision.

A similar entitlement is asserted on behalf of the grievor Reville. In her case, however, the union also relies on the fact that the posting made no mention of any underfill assignment and asserts that the grievor had sufficient requisite current qualifications to have been immediately assigned to the TEO2 position and to have been paid at that rate.

Finally, in the case of the grievor Walters the union points to uneven regional practices with respect to the rates of pay for recently hired TEOs and to the deleterious impact this will have on his ultimate pension entitlement.

I have reviewed a variety of materials in coming to my determination in this matter: the submissions of the parties – both at the recent hearing and also (as I indicated to counsel I would do) in their submissions in full session during the course of the Crawford case; the terms of the parties’ “going-forward” protocol; the written outline of the positions intended to be advanced by the union in the Crawford case; the particulars provided in respect of the three grievors and, of course, my previous order in Crawford.

Having reviewed and considered those materials, I am satisfied that there is nothing so unique or novel about the circumstances of any of the three grievors at hand to warrant the conclusion that any of their grievances raise issues that are different from any of the issues resolved by the Crawford Order. It is abundantly clear that inconsistent regional practices were a central issue in the Crawford litigation. Similarly, the impact of the employer's alleged failure to either include the underfill designation on particular job postings or to fully consider individual qualifications rather than simply apply a blanket policy were issues clearly raised by the union in the Crawford case. And, finally, while the argument (rooted in Article 7.1.2 of the collective agreement) advanced on behalf of the grievors Malloy and Reville does not appear to have been previously articulated with the same specificity and precision, there is no question that the union relied on the Pay Administration provisions of the collective agreement in the earlier litigation. Further, and as already indicated, neither are these two grievors unique in their circumstances (i.e. employees for whom the move to TEO2 represented a promotion) – this description applies to a number of the full slate of grievors listed in the Crawford decision. I am satisfied that this, too, was an issue resolved by the previous Order.

In the circumstances, the employer's motion is granted. The grievors are entitled to the same remedy as that set out in the Crawford Order, i.e. a payment of \$1000.00 (less statutory deductions), no more no less. And they are not entitled to litigate their grievances any further as those grievances have already been determined under the terms of the Crawford Order.

Dated at Toronto this 28th day of April 2004.



Bram Herlich, Vice-Chairperson