

October 29, 2014

Members of the OPSEU Corrections Division (and posted to website)

Dear Sisters and Brothers:

Re: Proposals for Stand-Alone Corrections Bargaining Unit and to Expand the Corrections Bargaining Unit

At its meeting on September 17 & 18, 2014, the OPSEU Executive Board directed President Thomas to form a sub-committee of the Board and, on their behalf, develop and send a communication to all members of the Corrections Division. The purpose of the communication was to clarify the factual points that determine what OPSEU will do during upcoming bargaining.

This memo resulted from consultations with the Executive Board, the President's Office, OPSEU staff and OPSEU leaders, including members of the MERC and the Corrections bargaining team.

This communication should be carefully read and considered by all members of the Corrections Division. We have asked that all documents referred to here also be posted on the OPSEU website.

The Corrections Division and the OPS Unified Division are at a critical point in their shared history. There are two proposals to expand the correctional bargaining unit, the outcome of which has caused a division among the members of the Corrections Division.

You should all be familiar with the two proposals:

1. One proposal would remove the Corrections Division from the OPS central collective agreement and establish a stand-alone central collective agreement for Corrections only.
2. The other proposal would expand the Corrections Division to include other MCSCS and MCYS employees, such as OADs, Nurses and Maintenance positions.

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These proposals threaten to weaken and derail the Corrections Division and the OPS Central, Unified and Corrections bargaining teams, thereby keeping all members from achieving the best results possible at the bargaining table.

The proposals to expand the correctional bargaining unit are poorly understood by many OPSEU members and leaders. It is crucial that all members get informed, with the facts, so that we can move towards unity, rather than conflict, during bargaining.

Both were raised by the Employer during the last round of bargaining. The Employer has not, at any time, committed to either proposal or made either into a firm offer to OPSEU. All they have done is suggested that government can hold non-binding discussions and indefinite internal reviews about each.

OPSEU members must remain wary of bargaining nothing more than empty promises. There is no sign that the Employer is any more committed to the proposals in the fall of 2014, than they were then.

Based on research into this issue, neither proposal is in the interests of the Corrections Division or the OPS generally for the main reasons set out below:

1. The proposals were raised by the Employer to distract and undermine the solidarity and determination of the Corrections Division and its bargaining team. Based on past experience and their ongoing record on many issues of interest to Corrections members, no one can believe the Employer is on this occasion trying to do us a favour.
2. Both proposals would fracture the OPS and central bargaining. Across the labour movement we can see that smaller bargaining units do not have more leverage in collective bargaining, or achieve better results. Prime Minister Harper has shown this in the federal sector. The present bargaining structure is balanced, with a central team with Corrections and Unified members bargaining the OPS central agreement. The Unified team and the Corrections team each also bargain category agreements that address the demands and issues of the categories, not by Ministry or work location, but by classification.
3. The proposals risk existing rights, like the right to apply for positions or to be accommodated during disability outside of an employees' home Ministry. By dividing the central agreement, the Employer would effectively force the Corrections Division to bargain again for the rights they already have now. Or, once the central agreement

was divided, they could find that the OPS (non-Corrections) were unwilling to grant Corrections members access to other Ministries and positions.

4. The proposal for a stand-alone correctional central agreement would require amendments to the *Crown Employees Collective Bargaining Act (CECBA)*. There is no guarantee that the Ministry can convince the Liberal government to make these changes. Also, once *CECBA* is opened for legislative review, the government or a legislative committee could drastically reduce or change members' current rights on issues unrelated to the configuration of the bargaining unit. OPSEU members in the CAAT Divisions went through this when the *Colleges Collective Bargaining Act* was amended in 2008. Considerable losses resulted.
5. The proposal for a stand-alone correctional central agreement cannot be legally achieved in any way other than through an amendment to *CECBA*. An agreement between the Employer and Union or an Order in Council by Cabinet would not be sufficient to accomplish this. To be certain, OPSEU has sought legal opinions from experienced counsel, including one who was hand-picked by the Corrections MERC. The consistent conclusion every time was that an amendment to *CECBA* is the only lawful route to a stand-alone collective agreement for the Corrections Division.
6. Both proposals would make the Corrections Division easier to privatize. The government is regularly lobbied by private correctional firms, mostly from the United States. This government has made a commitment to liquidate assets where possible. The risk of privatization is clear and present.
7. Both proposals would make it easier for government to abolish the right to strike for the Corrections Division. While some Corrections members may want a return to interest arbitration, the government could legislate an arbitration system that is not balanced or fair. Under such legislation OPSEU members could end up with neither the right to strike, or any way to achieve monetary or non-monetary improvements through arbitration. This would leave the Employer with greater powers and the members with little they could then do to counter this power. Such legislation to do away with fair interest arbitration has been prepared by the Progressive Conservative Party for the day they return to office.

Members also want to know whether either of the proposals could be accepted by OPSEU, in light of the decisions that were reached at Convention 2014.

Members of the Corrections Division brought two resolutions forward to Convention on these issues:

1. Resolution C6 asked OPSEU to create a Correctional Public Services Division (CPSD), with its own central collective agreement separate from the OPS Division.
2. Resolution C7 asked OPSEU to broaden the scope of the correctional bargaining unit to include all OPSEU members with headquarters at Correctional Services worksites.

Both resolutions were ranked as priorities by the Resolutions Committee. They were brought to the floor of Convention for discussion. **Both resolutions were defeated.**

Under the Constitution, Convention is the governing body of OPSEU. There is no higher authority within this union. This democratic decision directed OPSEU not to create a stand-alone correctional agreement, or to expand the current correctional bargaining unit. This Convention decision has significant force and effect. **The defeat of the resolutions means that OPSEU's bargaining teams are unable to table any demand that would move forward with either proposal.**

Further, if the Employer tables such a demand, then OPSEU bargaining teams are prohibited from accepting the Employer's proposal. This can only be altered if the direction of Convention is reversed. Under the OPSEU Constitution, the direction of Convention can only be reversed by a future Convention, or by a two-thirds majority of the Executive Board, by roll call vote.

There are also other legal restrictions that cannot be ignored or minimized. One is the fact that CECBA and the Ontario Labour Relations Act prohibit the parties in collective bargaining from taking to impasse any demand that is contrary to legislation or that would change the scope of the bargaining unit. This means that, if either proposal were tabled, the parties would be required to withdraw it before commencing a strike or lock-out. To do otherwise would amount to bargaining in bad faith and be subject to sanction by the Ontario Labour Relations Board.

As a result, neither of the proposals can be an issue in any strike or lock-out. **The Corrections Division cannot go on strike to force the Employer to agree to a stand-alone collective agreement or an expanded correctional bargaining unit.**

For all these reasons, it is not in the interests of the Corrections Division to continue to discuss or pursue a stand-alone bargaining unit or any expansion to the correctional bargaining unit at this time.



This looks like an extremely difficult round of bargaining. For over a year, the Employer has been making strike plans, including building accommodations for replacement workers. This is before we have even met with the Employer at the bargaining table. The Ministry may want nothing more than to undermine and disrupt our right to collective bargaining. The Employer may also want to use the Ontario Labour Relations Board to minimize the numbers of correctional essential service workers and then to force us out on strike.

This should be a time of unity and strength in the Corrections Division. As we head into bargaining, let's show the Employer that they face a united Corrections Division, solid and determined to fight together for real gains for every member.

Please consider this information carefully and discuss it with OPSEU members in your workplace. If you have questions, demand answers. You have the right to know where your leaders stand on these issues and how your rights, and those of other members, could be affected.

Please contact your local leaders, your bargaining team or your Executive Board members if you wish to discuss these proposals further.

In solidarity,

Original signed by:

Warren (Smokey) Thomas
President

Glen Archer, Executive Board Member

Mike Bisailon, Executive Board Member

Gord Longhi, Executive Board Member

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Carl Thibodeau, Executive Board Member

Original signed by:

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