

Crown Employees
**Grievance Settlement
Board**

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**Commission de
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*des employés de la
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GSB#2003-0167, 2004-0111
UNION#2003-0999-0011, 2004-0108-0059

IN THE MATTER OF AN ARBITRATION

Under

THE CROWN EMPLOYEES COLLECTIVE BARGAINING ACT

Before

THE GRIEVANCE SETTLEMENT BOARD

BETWEEN

Ontario Public Service Employees Union
(Union et al/Lucan)

Union

- and -

The Crown in Right of Ontario
(Ministry of Community Safety and Correctional Services)

Employer

BEFORE

Randi H. Abramsky

Vice-Chair

FOR THE UNION

Richard Blair
Ryder Wright Blair & Holmes, LLP
Barristers and Solicitors

FOR THE EMPLOYER

Len Hatzis
Ministry of Government Services
Counsel

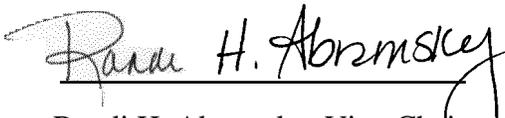
HEARING

April 20, 2009.

Decision

- [1] My initial award in this matter was made on January 4, 2007. I have heard submissions from the parties and have been engaged in mediation over a number of days concerning the manner of implementation of my award. As a result of the efforts and agreement of the parties, the agreement attached as Appendix 1 to this Order, reflecting the findings in my original Award, has been reached and is hereby issued as an order of the Board.

Dated at Toronto this 22nd day of April 2009.


Randi H. Abramsky, Vice-Chair

MEMORANDUM OF SETTLEMENT

BETWEEN

OPSEU
(Union/Lucan)

- and -

THE CROWN IN RIGHT OF ONTARIO
(Ministry of Government Services)
(Employer)

Whereas the Union filed a Policy Grievance dated March 27, 2003 (“the Policy Grievance”); and,

Whereas the Grievor filed three grievances dated March 8, 2004 and March 12, 2004 (2) (“the Lucan Grievances”)

And whereas the grievances raise issues concerning (1) whether unclassified employees should have hours paid by the Workplace Safety and Insurance Board (“WSIB”) count towards merit increases and; (2) whether unclassified employees should accrue attendance credits for any period of time in which the employee was in receipt of WSIB benefits or on an approved WSIB absence and; (3) whether unclassified employees who are subsequently appointed to the classified service should have their continuous service date adjusted to include any period of time in which the unclassified employee was in receipt of WSIB benefits or on an approved WSIB absence;

And whereas Vice Chair Abramsky of the Grievance Settlement Board (“GSB”) issued an Award on the above noted grievances dated January 4, 2007 (“the Award”);

And whereas the parties wish to settle on a full and final basis any and all of the remedial issues of any kind whatsoever that are in way related to the grievances and the Award on the following terms:

1. The Employer agrees to permit unclassified and/or seasonal employees who are or were, subsequent to February 1, 2005 appointed to the classified service to have their continuous service date adjusted to include a period of time in which the unclassified and/or seasonal employee was in receipt of WSIB benefits or on an approved WSIB absence. For greater clarity, the Employer shall recalculate the seniority of classified employees who:

- (a) Have previous unclassified (or seasonal) employment; and

- (b) Were in receipt of WSIB benefits or on an approved WSIB absence anytime during their previous unclassified (or seasonal) period of employment; and
- (c) Whose previous unclassified (or seasonal) service is included in the employees' seniority/length of continuous service in accordance with Article 18.1 (b), (c) or (d) of the OPSEU Collective Agreement.

The parties agree to utilize the Calculation Agreement as attached to this settlement, Appendix A, for implementation purposes.

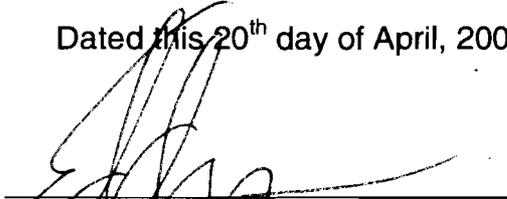
2. In the case of employees who were appointed to the classified service on or prior to February 1, 2005, who have filed a grievance with an effective date of February 1, 2005 or earlier raising in whole or in part the third issue noted in the preamble (seniority for an unclassified or seasonal employee associated with an approved WSIB absence or for a period of time in receipt of WSIB benefits or on an approved WSIB absence), the Employer agrees to adjust their continuous service date to include the period of time on WSIB benefits or on an approved WSIB absence prior to their appointment to the classified service in the same manner as it is adjusted in paragraph one.
3. The Employer agrees to compensate any employee for lost vacation benefits, as a result of not having their continuous service date adjusted in accordance with paragraph 1 and 2.
4. The parties agree that in accordance with the Award, any and all unclassified (or seasonal) employees are not entitled to earn or accrue attendance credits for any period of time in which the employee was in receipt of WSIB benefits or on an approved WSIB absence. The Collective Agreement (January 1, 2005 to December 31, 2008) at Articles 31A.8.1 and 32.16.1.1 details the issue of attendance credits for unclassified (or seasonal) employees.
5. The Employer agrees that it shall not seek to recover any money from an unclassified (or seasonal) employee who already received attendance credits for any period of time in which the employee was in receipt of WSIB benefits or on an approved WSIB absence.
6. The parties agree that in accordance with the Award, in the event an unclassified (or seasonal) employee is in receipt of WSIB benefits or on an approved WSIB absence, the hours paid by WSIB shall not count towards merit increases. The Collective Agreement (January 1, 2005 to December 31, 2008) at Article 31 A.2.2 and 32.6 details the issue of merit increases for unclassified (or seasonal) employees.
7. The Employer agrees that it shall not seek to recover any money from an unclassified or seasonal employee who may have already received merit increases for any period of time in which the employee was in receipt of WSIB benefits or on an approved WSIB absence.
8. The parties agree that any grievances, even apart from those referred to in this settlement that solely raise one or more of the issues detailed in the preamble to this settlement are settled on a full and final basis and are withdrawn upon execution of this settlement. To be clear, the terms of this settlement will be applied to all similar grievances filed. All known grievances are attached hereto as Appendix B.

9. The parties agree that this settlement satisfies all claims, demands, actions, causes of action of any sort in any way related to the subject matter of the above noted Policy and Lucan grievances and any grievance (even in addition to those referred to in this settlement) that solely relates to one or more of the three issues described in the preamble to this settlement including but not limited to claims, monies and/or termination pay associated with individuals who are no longer employees of the Employer as of the date of the Award. The parties agree to release the Employer, its agents or representatives from any and all such claims, demands, actions or complaints or differences in any way related to the subject matter of the Policy and Lucan grievances and any grievance that solely relates to one or more of the three issues described in the preamble to this settlement, including but not limited to all claims under the *Human Rights Code*, the *Employment Standards Act* and the *Public Service Act* and all claims, demands by individuals no longer employed by the Employer as of the date of this Settlement associated with termination pay and vacation entitlements. To be clear, with respect to affected grievors, any adjustments for termination pay applicable to any grievor who has filed a grievance that predates the Award and has left the Ontario Public Service shall be payable and these individuals shall be compensated for any termination pay owed.

10. The Union agrees to issue a communication (a) outlining the relevant portions of this settlement (paragraphs 1-6) to those members who could be potentially affected by these portions of the Settlement, and (b) requesting that members who believe their seniority is affected by the Award, to approach their managers and provide supporting documentation where available. The Employer agrees that upon the completion of steps (a) and (b), if requested, it will provide an opportunity for the member to review the Employer's relevant documentation in this context.

11. The parties agree that GSB Vice-Chair Abramsky shall remain seized of any dispute between them regarding the interpretation and implementation of this agreement.

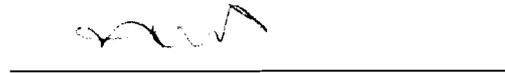
Dated this 20th day of April, 2009 at Toronto, Ontario.



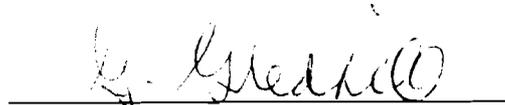
For the Union



For the Union



For the Employer



For the Employer

Appendix A

Calculations of WSIB Continuous Service

MEMORANDUM OF UNDERSTANDING

BETWEEN:

**ONTARIO PUBLIC SERVICE EMPLOYEES UNION
(Union)**

And

**THE CROWN IN RIGHT OF ONTARIO (MINISTRY OF GOVERNMENT SERVICES)
(Employer)**

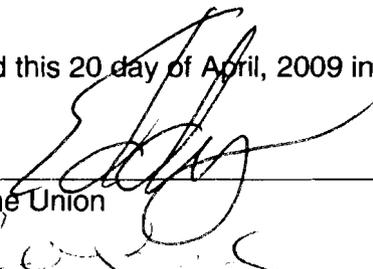
1. The Parties agree that the period(s) of approved WSIB leave taken by an employee during his or her unclassified service immediately prior to appointment to the classified service back to the first break in employment that is greater than 13 weeks, shall be included in the continuous service date ("CSD") calculation.
2. In determining the CSD credit for the period(s) of approved WSIB leave while employed as an unclassified employee, the Parties agree to apply the following formula:
 - a) The total number of weeks of approved WSIB leave shall be determined and the employer shall count backwards an equal number of weeks immediately preceding the beginning of the approved WSIB leave. The employer will then review these work weeks to determine how many full-time work weeks are to be credited for the period of the approved leave.
 - b) When calculating the work weeks backwards, if the employee has not been employed the equal number of work weeks as the absence, the employer will determine the percentage of work weeks where the employee worked full-time hours during their employment and shall credit the employee with the same percentage of work weeks during the approved leave.
 - c) Partial weeks will be included in the calculation such that hours absent on approved WSIB leave shall be combined with hours worked to determine whether the work week is a full time week worked for CSD purposes.
3. a) For the purposes of calculation under paragraph 2, where the period immediately preceding the leave in question includes a period of approved WSIB leave, the weeks included as full time weeks worked for the calculation shall include the weeks already calculated in accordance with paragraph 2 for the earlier approved WSIB leave, if any.

For example, where an employee has worked 6 out 10 weeks full time, and is then absent for ten weeks on an approved WSIB leave, that employee shall be credited with six weeks of continuous service in respect of the first approved WSIB leave. If the employee, after a return to work, is subsequently absent on approved WSIB leave for 20 weeks, and the period of time immediately preceding that subsequent leave which is reviewed to calculate continuous service overlaps the earlier WSIB leave, the employee would be deemed to have worked 6 full-time weeks during the period of the earlier 10-week WSIB leave for the purposes of calculating the number of full-time weeks in the second leave.

b) Weeks of full time service attributed to WSIB leave shall be deemed to have occurred in equal distribution across the period of WSIB leave. For example, in the case of a 20 week approved WSIB leave in which an employee who, pursuant to the calculation in Paragraph 2 is entitled to a credit of four full time weeks for CS purposes, the four weeks shall be deemed to have occurred in weeks 5, 10, 15, and 20 of the approved leave. Where the weeks do not fall evenly, they shall be deemed to occur in the next week. For example, in a case of a 17 week approved WSIB leave in which an employee who, pursuant to the calculation in Paragraph 2 is entitled to a credit of three full time weeks for CS purposes, the three weeks would be initially deemed (by dividing 17 weeks by three weeks) to fall at weeks 5.6, 11.2, and 17. However, in this example, the weeks would be then moved to the next weeks within the approved leave and deemed to fall at 6, 12, and 17 respectively.

4. In the case of employees who are absent on WSIB leave for "blocks" of contiguous partial weeks (more than one partial week in a row during which the employee works some hours but is on approved WSIB leave for other hours, including, but not limited to, employees on work-hardening or similar gradual return-to-work protocols), the number of full time weeks worked will be calculated in the same manner as paragraph 2 c) and, where applicable, 3 above.
5. In the case of partial week absences, the parties agree to amend the records to include any work week hours approved by WSIB to determine the full-time work weeks pursuant to paragraph 2 c) above.
6. The Parties agree that no employee shall have their CSD reduced as a result of these calculations.
7. Should the relevant provisions of the Collective Agreement or other applicable Acts or Regulations be amended, the Parties shall incorporate the amendments into this memorandum.
8. With the consent of both Parties, this settlement may be amended at any time.

Dated this 20 day of April, 2009 in Toronto, Ontario.



For the Union


For the Union



For the Employer


For the Employer