



**COLLECTIVE BARGAINING CLARIFICATION LETTER
NO. 01-07-02**

TO: ALL LABOR RELATIONS OFFICERS AND PERSONNEL OFFICERS

FROM: STEPHEN V. GULYASSY, DEPUTY DIRECTOR

SUBJECT: **RETURN OF EMPLOYEE UPON FAILURE TO SATISFACTORILY
COMPLETE PROBATION** (PROMOTIONAL, LATERAL TRANSFER OR
TRIAL PERIOD); OCSEA CONTRACT

DATE: August 1, 2001

Clarification Letter No. 99-03-02 originally issued on March 25, 1999, is superseded by this letter.

**PLEASE NOTE THAT THIS CLARIFICATION LETTER APPLIES ONLY TO POSITIONS
AND MOVEMENTS COVERED BY THE OCSEA AGREEMENT.**

THE FOLLOWING ARE NOT COVERED BY THIS LETTER:

- **MOVEMENTS TO OR FROM POSITIONS EXEMPT FROM COLLECTIVE BARGAINING**
- **MOVEMENTS TO OR FROM POSITIONS COVERED BY THE TERMS OF OTHER COLLECTIVE BARGAINING AGREEMENTS**

Section 17.02 of the current Agreement with OCSEA defines the following terms:

- B. "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 step or the last step has a higher pay rate than the first or last step of the pay range to which the employee is currently assigned.
- F. "Lateral transfer"** is defined as an employee-requested movement to a posted vacancy **within the same agency** which is in the same pay range as the classification the employee currently holds. [Emphasis added]
- G. "Demotion"** is defined as the movement of an employee to a position in a classification with a lower pay range. A lower pay range is defined as a pay range in which the first or last step has a lower rate of pay than the first or last step of the pay range to which the employee is currently assigned.

Section 6.01 provides in pertinent part that:

"[d]uring a lateral transfer or promotional probationary period, the Employer maintains the right to place the employee back in the classification that the employee held previously if the employee fails to perform the job requirements of the new position to the Employer's satisfaction."

Section 6.02 provides:

Employees who are promoted or laterally transferred to a different classification shall serve a probationary period pursuant to Section 6.01.

Where a single classification involves work which varies substantially among different positions within the classification, the Employer may require employees who are laterally transferred in the same classification to serve a trial period equal to one-half of the regular probationary period for the classification, during a lateral transfer trial period, the employee may elect to return to his/her previous position or, if the employee fails to perform the job requirements of the new position to the Employer's satisfaction, the Employer may place the employee back in the position the employee previously held.

The Employer may require employees who are demoted pursuant to Article 17.04 to serve a trial period equal to one-half of the regular probationary period for the classification, during a trial period, the employee may elect to return to his/her previous position or, if the employee fails to perform the job requirements of the new position to the Employer's satisfaction, the Employer may place the employee back in the position the employee previously held.

This Office issues the following clarification regarding the return of employees to classifications held prior to a promotion, lateral transfer or demotion.

INTRA-AGENCY (within the same agency)

Employees who fail to successfully complete a promotional or lateral transfer probationary period shall be returned to the classification they held previously. This also applies to employees who are demoted and fail to successfully complete the trial period.

INTER-AGENCY (between agencies)

Employees who receive a promotion or demotion to a different agency who fail to successfully complete a probationary or trial period shall be returned to a position in their previous classification in the new agency. Employees are not entitled to return to the former agency unless the new agency lacks the authority to utilize the previous classification. (For example: if the promoted or demoted employee was previously a Juvenile Corrections Officer and did not satisfactorily complete probation in an agency that did not have and could not establish the Juvenile Corrections Officer classification, that employee would be returned to the previous Juvenile Corrections Officer classification at the former agency.)

Please note: Agencies do not have to accept transfers, demotions or promotions from another agency. Lateral transfers are only within an agency and step indicators do not change when an employee is laterally transferred.

In addition, the language of the OCSEA agreement does not prohibit employees from filing a grievance regarding the return to their previous position. However, it should be noted that the language is very clear. It states that the employee must perform to "the Employer's satisfaction." Therefore, such demotions or returns should be for good business reasons. And, unless the action is arbitrary and/or capricious, agencies should be able to justify their decisions at arbitration.

As always, please call (614-466-0570) or write your Labor Relations Specialist with any questions that you may have regarding this or other subjects.