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Public Service Staff
Relations Act



Before the Public Service
Staff Relations Board

BETWEEN

**KELSEY HYMANDER and
DEBRA KIHARA**

Grievors

and

**TREASURY BOARD
(National Parole Board)**

Employer

Before: J. W. Potter, Vice-Chairperson

For the Grievors: Gail Owen, Public Service Alliance of Canada

For the Employer: John G. Jaworski, Counsel

Heard at Abbotsford, British Columbia,
January 15 to 16 and June 17 to 19, 2002.

DECISION

[1] This decision pertains to grievances filed by Kelsey Hymander and Debra Kihara on November 4, 1999 alleging a violation of Article 55 of the Program and Administrative Services (all employees) collective agreement (expiry date: 20 June 2000). This provision states (Exhibit G-8):

55.01 Upon written request, an employee shall be provided with a complete and current statement of the duties and responsibilities of his or her position, including the classification level and, where applicable, the point rating allotted by factor to his or her position, and an organization chart depicting the position's place in the organization.

[2] The grievors are Regional Communications Officers with the National Parole Board, and are classified at the AS-03 level.

[3] Each of the grievors filed a separate grievance on the above issue, and they were heard together and will be dealt with under cover of one decision.

[4] On May 26, 2000 the Public Service Alliance of Canada (the Alliance) referred these grievances to the Public Service Staff Relations Board (the Board) for determination. The parties attempted to resolve the dispute through mediation, but when all efforts failed, the Alliance wrote to the Board on August 24, 2001, and asked that the matter be set down for a hearing. January 15 and 16, 2002 were then set aside to hear the references to adjudication and the matter continued on June 17 to June 19, 2002.

Background

[5] Ms. Hymander began her career in the federal Public Service in 1985 and became a Regional Communications Officer with the National Parole Board in September 1997. At the time Ms. Hymander became a Regional Communications Officer, she was given a copy of her work description (Exhibit G-14) and she testified it was accurate at that point in time.

[6] Ms. Kihara began her federal Public Service career in 1976 and became a National Parole Board Regional Communications Officer in March 1989.

[7] In 1999 the grievors were trying to finalize a revised job description which would adequately reflect their duties. The employer was participating in this review as

well, and it formed part of a national initiative known as the Universal Classification System (UCS).

[8] In June 1999 the employer provided the grievors with an updated copy of their work description (Exhibit G-4), and then sent this document to classification in September (Exhibit G-5). Upon reviewing the document, the grievors felt it was lacking in some areas of their work, particularly as it pertained to their involvement with the media and the emotional support they provide to victims. Accordingly, they filed their grievances.

[9] On April 7, 2000 a further revision was made to the job description and it is this document which the employer says accurately reflects the duties of the Regional Communications Officer (Exhibit G-7). The grievors maintained their view that this job description was still not complete and therefore the provisions of the collective agreement were not being met.

[10] All parties agreed that the document in dispute is the work description identified as Exhibit G-7.

[11] The main focus of work for each of the grievors is to communicate with victims of crime, and the media, on issues surrounding parole hearings. Ms. Hymander testified she spends 80% of her time on this function, while Ms. Kihara said she spends 60-70% of her time on this aspect. Ms. Hymander spends 10-15% of her time representing the National Parole Board at workshops, and Ms. Kihara spends 20% of her time with this function. The remainder of the grievors' time is spent on duties such as training, responding to ministerial inquiries and decision-making aspects on issues surrounding a parole hearing.

[12] Each of the grievors discussed how she interacts with victims of crime when a parole hearing is scheduled and the victim wishes to attend. I also heard from Ms. Laura Glover, who was the victim of a sexual assault, and who related her experience in dealing with Ms. Kihara at a parole hearing. Ms. Glover stated that Ms. Kihara was a "purveyor of information" and provided her with "support" at the hearing.

[13] Ms. Hymander testified that in her view the job description identified as Exhibit G-7 does not adequately reflect the complexity of the job, nor does it adequately reflect the entire scope of the consequence of error.

[14] Ms. Kihara testified she has represented the National Parole Board at working group panel discussions at both Douglas College and Abbotsford College, in addition to the duties outlined above by Ms. Hymander. This representation of the Parole Board is, in Ms. Kihara's view, not adequately dealt with in her job description.

[15] After filing her grievance in November 1999, Ms. Kihara received a revised job description (Exhibit G-7) but there was no point-rating factor accompanying it. In addition, section 2 of the job description is titled Well-Being of Individuals, but it contained no narrative under this heading. Items that should be included there would be the well being of victims and the ability to designate someone as a victim. Also, the well being of offenders is part of Ms. Kihara's job and should be covered in section 2 as well, according to her testimony. Ms. Kihara stated that the job description was lacking detail in these two areas, in addition to what Ms. Hymander testified to, and therefore was not complete.

[16] Also lacking in the job description is a time breakdown spent on the various functions, as well as a reference to the various provincial statutes and regulations that the grievors need to know.

[17] The Executive Director of the National Parole Board, H el ene Chevalier, testified that when the grievances were filed in 1999, the role of the Regional Communications Officer was that of an observer at the parole board hearings. They would brief other observers, like the media and/or victims about what was happening at the hearing. Not all hearings have observers attend, as space may be limited.

[18] During the grievance process Ms. Chevalier stated the Parole Board sent out a memorandum to all Regional Communications Officers (Exhibit E-2) further explaining their role in dealing with media inquiries and providing victim support.

Argument for the Grievor

[19] Consequence of error is not contained in the job description, and it should be, as evidenced by the Administrative Services Group classification standard under the title Decision Making (page 12).

[20] The job description (Exhibit G-7) is silent on the complexities of the work insofar as section 2, Well-Being of Individuals, has no narrative. The evidence indicated that the Regional Communications Officers educate, facilitate and provide for the well being of victims at hearings, and this should be reflected in section 2.

[21] A breakdown of time spent doing various duties should be included in the job description. In addition the grievors should receive a point rating for the job description, as provided for in the collective agreement.

[22] The representative referred to the following decisions:

Jarvis et al, 2001 PSSRB 84 (29603 to 29619);

Foreman (Board file 166-2-27344).

[23] The adjudicator should remain seized of this case if the parties cannot negotiate a settlement within three months following the decision.

Argument for the Employer

[24] Firstly, the employer agrees to send the job description (Exhibit G-7) to classification and provide the grievors with the resulting point rating.

[25] The grievors have the burden of proof to show that the job description is not complete, and they have failed to do so.

[26] Insofar as consequence of error is concerned, this is a term used in classification and classification issues are outside the purview of an adjudicator appointed under the *Public Service Staff Relations Act*. Notwithstanding that, the issue is explained in section 11 of the job description.

[27] All of the duties which each grievor testified to are duties they do perform. They are also covered fully in the job description, in one location or another. Work

with the media is referred to 23 times in the job description, and 42 references are made to work with victims.

[28] With respect to well-being of others, the description of this is found throughout other sections of the job description.

[29] Counsel referred to the following decisions:

Jaremy et al and Currington et al., 2000 PSSRB 59 (2862 and 29291);

Fedun and others (Board files 166-2-28278 to 28288);

Hughes, 2000 PSSRB 69 (29452);

Jarvis, 2001 PSSRB 84 (29603 to 29619);

Kerwill, 2000 PSSRB 91 (29055).

Reply

[30] No where does it say that duties performed cannot appear in the job description more than once; consequently section 2, Well-Being of Others, should be more complete.

Decision

[31] The collective agreement provision which the grievors claim has been violated reads:

55.01 Upon written request, an employee shall be provided with a complete and current statement of the duties and responsibilities of his or her position, including the classification level and, where applicable, the point rating allotted by factor to his or her position, and an organization chart depicting the position's place in the organization.

[32] There was no dispute that the job description, identified as Exhibit G-7, had not been sent to classification at the time of the adjudication hearing. Therefore a point rating allotted by factor, and the classification level were not attached to the job description. As the collective agreement states that both of these shall be provided to the employee upon request, and as they were not provided at the time of the hearing, this aspect of the grievances is sustained.

[33] However, with respect to remedy, this issue is now moot as the employer agreed to send the job description to classification for a review. I was informed by way of letter dated July 11, 2002 that this has now been done. Therefore nothing further needs to be addressed with respect to this aspect of the grievance.

[34] The other alleged violation of the collective agreement concerns job content, and the grievors' contention was that it was not complete.

[35] Ms. Owen argued that the job description did not contain a section titled consequence of error. Mr. Jaworski argued that this was simply a classification term and classification issues were outside the adjudicator's jurisdiction to deal with.

[36] While classification issues may be outside the adjudicator's jurisdiction, the collective agreement states that job descriptions shall be complete. If they lack a specific area, they are not complete, and therefore the adjudicator could rule on that issue.

[37] In this case, I do not believe consequence of error needs to be a separate area in the job description as Ms. Owen advanced. The fact it is mentioned in the classification standard is not reason, in and of itself, to say it must be included in a job description. It is mentioned in the classification standard under a heading "Notes to Raters" and is a characteristic which would be considered by someone rating the position. I have no jurisdiction to rate the position, and I find the lack of reference to this in the job description does not mean the job description is not complete.

[38] The next area raised by Ms. Owen as lacking was with respect to section 2, Well-Being of Individuals. It contains no narrative. This, in my view, indicates the job description is not complete. Ms. Owen argued that there is nothing to prevent mentioning a duty more than once, and duties could be listed under section 2 even though they are listed elsewhere. Mr. Jaworski said there was no need to list duties under section 2 if they were already listed elsewhere.

[39] In my view, in order for the job description to be complete, a narrative should be included in section 2 outlining the grievors' responsibilities with respect to the Well-Being of Individuals. Ms. Hymander testified that the Regional Communications Officers can designate individuals as victims, if they meet the established criteria. This

designation can contribute to an individual's well-being and should, therefore, be included in this section of the job description.

[40] With respect to all other issues concerning the content of the job description, I find it sufficiently describes the grievors' work with respect to issues like dealing with media, victims and offenders. This is, by far, the major portion of their work. Perhaps some time distribution could be included in the job description, but that is format and I do not believe I have any jurisdiction to decide format.

[41] In summary, to the extent the job description did not provide a point rating and classification level as required by the collective agreement, this aspect of the grievances is sustained. However, now that this has been rectified, nothing further need be done.

[42] To the extent section 2 of the job description, Well-Being of Individuals, contains no narrative, the job description is not complete. The grievors were responsible for designating individuals as victims if certain criteria were met. This should be included in this section. Accordingly, the grievances are allowed in part.

[43] All other aspects of the grievances are denied as the job description, in my view, is complete with respect to the duties the grievors were performing at the time they filed their grievances.

**Joseph W. Potter,
Vice-Chairperson.**

OTTAWA, August 7, 2002.