Date: 20020417

File: 166-2-30176 to 30179

Citation: 2002 PSSRB 43

Public Service Staff Relations Act

Before the Public Service Staff Relations Board

BETWEEN

MARV BISAL, JANET ELLIS, LINA LAVERDIÈRE AND CATHERINE LAWSON

Grievor

and

TREASURY BOARD
(Veterans Affairs)

Employer

Before: Anne E. Bertrand, Board Member

For the Grievor: Yvette Michaud, Counsel

For the Employer: Harvey A. Newman, Counsel

Heard at Halifax, Nova Scotia,
July 10 and 11, 2001.

Introduction

[1] Four lawyer employees of Veterans Affairs filed same grievances alleging that they were not paid on the same pay scale as their colleagues though they had the same roles, responsibilities and classification levels. They wished to be paid at the top level of the rates of pay for LA-2 (Law Group, Level 2). The employer replied at the final level as so:

> *At the hearing, I had the opportunity to discuss at length with your representative, Mrs. Michaud, reasons why lawyers, such as yourself, although classified at the LA-2 Group and Level, are being paid in accordance with the LA-2 (I) pay rate while some of your colleagues occupying Area Advocate and District Pension Advocate are being compensated at the LA-2 (II) rate.*
>
> *Currently, the majority of the Area Advocates in Head Office are paid at the LA-2(II) pay rate. This difference in pay stems from the pay adjustments made following ratification of the 1990 LA collective agreement. This agreement provided pay adjustments to a newly introduced LA-2(II) pay rate for lawyers who were in the LA-2 scale of rates on* ***December 31st, 1989.*** *Notwithstanding the fact that Area Advocates and Pensions Advocates both classified at the LA-2 Group and Level, essentially perform duties of the same nature, most Area Advocates currently still benefits from the "grandfathering" effect created by the 1990 pay adjustments. I have also informed your representative that when an Area Advocate position is vacated, the new incumbent is to be compensated at the LA-2(I) rate.*
>
> *I understand that of equal concern to you are the differences in pay between the District Pensions Advocate and the Pensions Advocate positions. As I stated during the grievance presentations, it is my determination that the LA-2(II) pay rate may be used to recognize that District Pensions Advocates are assuming supervisory/managerial responsibilities and should be compensated accordingly.*
>
> *In light of the existing parameters set out in your collective agreement which establishes two different pay scales for lawyers classified at the LA-2 Group and Level, I am unable to allow this grievance.*

Signed, Simon Coakeley,

Assistant Deputy Minister

[2] At the hearing, the matter centred upon the interpretation of "pay notes" introduced in the parties' collective agreement of 1990. These pay notes allowed for the administration of pay adjustments for the employees in the law group when two rates of pay were first introduced for the LA-2 classification; however, these same pay notes were not repeated in subsequent collective agreements. Today, lawyers of different classification levels find themselves conducting the same work but are paid at different rates of pay as a result of a later reorganization in their workplace since 1995. The bargaining agent's position is that this matter is now a pay equity matter, while the employer argues this matter cannot establish a violation of the collective agreement for the reason that the grievors are paid at their attributed level and pay scale.

[3] The parties were allowed to adduce extrinsic evidence on the issue of ambiguity of the 1990 Appendix A pay notes subject to my later ruling on such. My ruling is found below.

[4] This case was heard along with a companion case 166-2-30596 (Michael, Jane) and the parties agree to adduce all relevant evidence of one into the other as applicable.

I FACTS

[5] At this hearing, the adjudicator received documentary evidence introduced by agreement between the parties, and also heard oral evidence from Roy Ridlington, Legal Advisor to National Operations Division of the Department of National Affairs, from Catherine J. Lawson, grievor, Pension Advocate, LA-2 at the Bureau of Veterans Affairs in London (Ontario), and from Janet Ellis, Senior Pension Advocate LA-2 at the Bureau of Pension Advocates in Vancouver, grievor. Rick C. McLeod also testified, and he is the Acting Chief Pensions Advocates.

[6] Prior to 1990, there were two classification levels in the Law Group, LA-1 and LA-2 (see Exhibit E-3, Appendix "A"). In 1990, a new collective agreement (Exhibit E-2) introduced two pay levels for LA-2, i.e., pay level LA-2(I) and pay level LA-2(II). It was

made clear at this hearing from both parties that LA-2(I) and LA-2(II) do not represent different classification levels but rather different pay scales. All four grievors are classified at LA-2.

[7] Explanatory pay notes were included in the 1990 collective agreement to administer these changes, and today, the employer and the bargaining agent quibble over their interpretation. The pay notes are reproduced below:

> *NOTES:*
>
> *PAY INCREMENT ADMINISTRATION*
>
> *The pay increment period for employees paid in the ten dollar ($10) step part of the LA-1 scale is six (6) months. The minimum pay increment shall be three hundred dollars ($300) or such higher amount that the Employer may determine, or if there is no such step, to the maximum of the pay range.*
>
> *The pay increment period for employees paid in the LA-1 scale not designated by ten-dollar ($10) steps is six (6) months.*
>
> *The pay increment period is twelve (12) months for employees paid in the LA-2(I) and LA-2(II) scales. The pay increment shall be to the next higher rate in the scale of rates.*
>
> *Part-Time Employees*
>
> *A part-time employee shall be entitled to receive a pay increment when the employee has worked a total of:*
>
> *(a) nine hundred and seventy-five (975) straight-time hours for LA-1 employees; or*
>
> *(b) nineteen hundred and fifty (1,950) straight-time hours for LA-2(I) and LA-2(II) employees;*
>
> *during a period of employment, provided that the maximum rate for the employee's level is not exceeded.*
>
> *PAY ADJUSTMENT ADMINISTRATION*
>
> *LA-1:*
>
> *An employee paid in the ten-dollar ($10) step part of the LA-1 scale shall be paid effective January 1, 1990 in the LA-1 "X" scale of rates of pay at a rate which is identical to the employee's rate of pay as of December 31, 1989.*

Effective January 1, 1990, an employee paid in the ten-dollar ($10) step part of the LA-1 "X" scale of rates shall be paid in the LA-1 "A" scale of rates at a rate which is 5.0% higher than the employee's rate of pay in the "X" scale of rates, rounded to the nearest ten dollars ($10) provided that the last step in the ten-dollar ($10) step part of the scale is not exceeded.

Effective January 1, 1990, an employee paid in the part of the LA-1 scale of rates not designated by ten-dollar ($10) steps, shall be paid in the LA-1 "X" scale of rates at a rate of pay which is identical to the employee's rate of pay as of December 31, 1989.

Effective January 1, 1990, an employee paid in the part of the LA-1 "X" scale of rates not designated by ten-dollar ($10) steps, shall be paid in the LA-1 "A" scale of rates at the rate of pay which is immediately below the employee's rate in the LA-1 "X" scale of rates.

Notwithstanding Notes 5(c) and 5(d), an employee whose position was classified at the LA-1 level on January 1, 1990, and who was paid on December 31, 1989 above the double barrier in the LA-1 scale of rates at a rate of pay of either $54,751 or $57,802, shall be paid, effective January 1, 1990 at a rate of pay which is 5.0% higher than the employee's former rate of pay (ie., $57,489 or $60,692). An employee who was paid at $57,489 on January 1, 1990, shall be considered for an annual increment (ie., to $60,692), subject to a "fully satisfactory" performance rating.

LA-2(I):

An employee whose position was classified at the LA-2 level on or after January 1, 1990, and who was paid on or after December 31, 1989 at a rate of pay in the LA-1 scale of rates, shall be paid in the LA-2(I) "A" scale of rates, other than an employee who is appointed to a position to which the LA-2(II) scale of rates applies.

LA-2(II):

Effective January 1, 1990, an employee paid in the LA-2 scale of rates on December 31, 1989 shall be paid in the LA-2(II) "A" scale of rates at the rate of pay which is immediately below the employee's rate of pay as of December 31, 1989.

At the discretion of the Employer, the rate of an employee

who is initially appointed, transferred or promoted during the retroactive period,

> *and*
>
> *(b) who was paid a rate in the part of the LA-1 scale not designated by ten-dollar ($10) steps or a rate above the minimum of LA-2(I) and LA-2(II).*
>
> *and*
>
> *(c) who, after application of the terms and conditions governing the application of pay pursuant to 15.01 and 15.03 would be paid a rate less than that shown immediately below the rate he was receiving prior to revision,*
>
> *may be increased to any rate up to and including the rate shown immediately below the rate he was receiving. Such an increase does not change an employee's increment due date.*

[8] These same pay notes were not repeated in subsequent collective agreements (see Exhibit E-1, dated May 25, 1999).

[9] Non-bargaining lawyers are excluded from the bargaining unit by virtue of paragraph (j) of the definition of "employee" and the definition of "managerial or confidential position" at subsection 2(1) and sections 5.1 and 5.2 of the *PSSRAct* (mainly employed by the Department of Justice) though they are imposed the same classification standards from LA-1 to LA-3. The classification LA-2 has two pay levels, A and B, and the LA-3 has three, A, B, and C. The lawyers in Justice have a different pay plan which also may allow for performance pay. The majority of lawyers in the federal public service are employed by the Department of Justice (approximately 2000 lawyers), whereas there are approximately 90 in the Law Group bargaining unit employed by some 35 separate departments or agencies.

[10] Prior to 1995, lawyers representing individuals who made claims under various legislation administered by the Department of Veterans' Affairs ("DVA"), somewhat likened to a legal aid service for pension and other claims to assist claimants in obtaining benefits, were hired as advocates in three separate agencies. These three agencies were the Bureau of Pension Advocates ("Bureau"), the Canada Pension Commission, and the Veterans' Appeal Board. The Bureau as a separate agency reported to the Minister of the DVA.

[11] Since 1995, the Bureau has become a Division of the DVA and the parties informed me that the Bureau gets its authority from the *Department of Veterans Affairs Act* instead of the *Pension Act*. Both the Canada Pension Commission and the

Veterans' Appeal Board ceased to exist and a newly created Veterans' Review and Appeal Board hears both review and appeals.

[12] The lawyers hired by the Bureau still worked for the Bureau but their work changed. Pension Advocates were classified at LA-1 and these lawyers pursued the claims at the initial level and at review, while Area Advocates were classified at LA-2 and they represented the claimants at the appellate or final level of their claims.

[13] Another re-structuring of the Bureau took place in 1997 with the designation of a new level of management entitled Regional Director of Pension Advocacy. The bargaining unit agreed to exclude these positions by agreeing to re-include District Pension Advocates previously excluded from the bargaining unit. Regional Directors were paid like those in the Justice Department (at LA-2(B)). With this re-structuring, Pension Advocates lost their work at the initial claim stage, but they maintained their role at the review level and were imposed the responsibility to represent claimants at the appellate level. In other words, Pension Advocates were now doing the same work as that of Area Advocates, and as that of District Pension Advocates, yet they were not paid the same salary. Pension Advocates were paid at the LA-2(I) level while the Area Advocates as well as the District Pension Advocates were paid at LA-2(II) level. In fact, in the employer's final level reply, it is stated that Pensions Advocates and Area Advocates do essentially the same work. The parties have been talking about this issue ever since these changes came into play, and today both agree that we are not dealing with a classification issue but rather a pay issue.

[14] Roy Ridlington became an Area Advocate for the Bureau in 1985 and he is classified as an LA-2 and paid at the LA-2(II) level. He has been part of the bargaining team for PIPS for their contract negotiations in 1986, 1988, 1989, 1991, 1997, 1999 and he is currently involved in negotiations to replace the current collective agreement.

[15] Ridlington explained that the bargaining agent always sought parity with the Department of Justice lawyers' pay – although the latter had performance pay and bargaining unit lawyers had allotment – nevertheless the top levels of pay matched. During negotiations of 1988, the employer provided to the bargaining agent a copy of the Personnel Management Manual, Chapter on Performance Pay Plans - Overview for the Law Group of the Department of Justice and other legal officers in the public service excluded from collective bargaining (Exhibit G-1). This explained how excluded lawyers were paid. These lawyers classified at the LA-2 level had two sub-levels of pay,

A and B, while the bargaining unit lawyers LA-2 at that time did not have sub-levels of pay. Parity was difficult to achieve for this reason. The Performance Pay Plans - Overview Appendix B indicates how a legal officer enter the different levels:

> *LA-2, SUB-LEVEL A*
>
> *Legal officers in this salary range are at an experienced working level. Individuals are capable of performing a number of fields or sub-fields of law and undertake complex assignments. Work is performed under general direction but with considerable freedom of action.*
>
> *QUALIFICATIONS*
>
> *Normally a minimum of 4 years of legal experience related to duties to be performed are required for entry into the LA-2, sub-level A.*
>
> *LA-2, SUB -LEVEL B*
>
> *Legal officers in this salary range are at the first level of management in the Law Group, or the first level specialist.*
>
> *This level is intended to provide an introductory level for managers and to enable credit to be given to those who are required to accept minor managerial responsibilities in addition to practitioner duties. It is also intended to provide senior managers with greater flexibility for increasing the effectiveness of the unit.*
>
> *Also assigned to this salary range are the senior legal officers of legal services units in departments and agencies where the program size and legal complexity are moderate. Specialist positions allocated to this salary range encompass senior level advisory or operational roles in which the legal officer receives general direction from a senior legal officer. Specialists have a depth of legal knowledge and expertise in a particular field of legal specialization and are recognized within the legal community as experts in their field.*

[16] Then in 1990, parity was achieved according to Ridlington, as the new collective agreement provided for two sub-levels of pay for the LA-2 classification, LA-2(I) and LA-2(II). All lawyers in the Bureau who were at LA-1 were moved to LA-2(I), and all of those at the level of LA-2 were moved to LA-2(II). Ridlington explained that an

agreement was reached that the Bureau advocates would be subject to the same policy in effect that the Justice Department in that after four years of employment, an employee in the Law Group classified in a position at level LA-1 should normally be promoted to level LA-2(I) (see Exhibit G-2). Again, this was done in an effort to seek parity between the bargaining unit lawyers and the excluded lawyers, as explains Ridlington that such has been the case for the past 15 years he had been involved in negotiations. Parity was and remains important in that the lawyers both excluded and included share a common classification standard. Seeking parity is not new and was also recognized in an arbitral award in 1991 by the PSSRBoard in *Professional Institute of the Public Service of Canada v. Treasury Board* (File No: 185-2-345) (see Exhibit G-3). A wage freeze, however, stopped the effect of those increases at that time.

[17] In 1997, the wage freeze was lifted and the parties again sought parity as in the current collective agreement.

[18] For his own part, Ridlington states he was moved from LA-2 to LA-2(II) in 1990 for two reasons: firstly, as a result of pay note 6 (*(6) LA-2(I):An employee whose position was classified at the LA-2 level on or after January 1, 1990, and who was paid on or after December 31, 1989 at a rate of pay in the LA-1 scale of rates, shall be paid in the LA-2(I) "A" scale of rates, other than an employee who is appointed to a position to which the LA-2(II) scale of rates applies*); and secondly, by reason of his duties at the appellate level for he was considered a first level specialist much like Justice lawyers at the LA-2(B) level (see the definition in the *Performance Pay Plans* Exh. G-1, at page B-10).

[19] Ridlington never believed that his movement to LA-2(II) meant that his status would remain fixed, and he was surprised to learn of the expression "grandfathering" in the employer final level reply in the present grievances.

[20] There is nothing in the pay notes which explain how one employee can move from LA-2(I) to LA-2(II), except according to Ridlington that it was understood the Bureau lawyers' classification would be concomitant with that of Justice lawyers, and that is why the letter of January 1990 (Exhibit G-2) states that the policy to move a lawyer after four years was confirmed. This is a classification issue which cannot be bargained, another reason why nothing to this effect is mentioned in the 1990 collective agreement. The pay notes were used to permit the movement of those employees to the higher classification based on scales of rate which could be part of

the collective bargaining process. In other words, movement from LA-2(I) to LA-2(II) is a matter of pay which can be negotiated but movement from LA-1 to LA-2 is a question of promotion which cannot be bargained. Consequently, a movement of LA-2(I) to LA-2(II) would be commensurate with Treasury Board policy akin to Justice lawyers LA-2(A) to LA-2(B). Having said that, Ridlington did admit that when a LA-2(I) is at the end of the pay increments, he or she must apply to be moved, or promoted to LA-2(II). There is no policy other than that reflected in the Justice lawyers' plan to move lawyers at LA-2(I) to LA-2(II), and Ridlington stated that the present grievances in that regard are alleging a violation of the policy as opposed to a violation of the collective agreement.

[21] Ironically, the successes bargained by the Law Group were used and adopted by excluded group over the years. Also noted is that the negotiations by the Bureau which translated into the implementation of two pay scales in the 1990 collective agreement was used by everyone in the Law Group, not just the lawyers in the Bureau.

[22] The grievor, Catherine Lawson, testified that after the 1990 contract was signed, she was moved automatically to LA-2(I) from an LA-1 at which she had been hired in 1982 as a Pension Advocate. Before the 1990 collective agreement, she had been told that a competition was required to move from LA-1 to LA-2, but that was not so following the bargain reached with the 1990 contract.

[23] Area Advocates were considered specialists and as such they were in line with LA-2(A) or LA-2(B) of the excluded group. In order to differentiate between these specialties, LA-2 was split into two scales of rates, i.e. LA-2(I) and LA-2(II), to adjust for those differences. Area Advocates were placed into the LA-2(II) pay scale after the 1990 contract came into effect.

[24] A problem arose later in 1995 when Pension Advocates were told they would no longer handle the first level claims and were imposed the appellate representations which the Area Advocates also did. Whereas Areas Advocates had been considered specialists due to their appellate work and had therefore been placed at the LA-2(II), from 1995 onward, Pension Advocates were now performing this same work, therefore could be considered specialists, but were paid at the LA-2(I) scale. Lawson, who was part of the negotiating team in 1997 and 1999, testified that this issue was raised with the employer in 1997; however, the bargaining agent was not successful.

[25] Then in 1999, the work of Pension Advocates was expanded to include Applications for Reconsideration, a task also performed by the Area Advocates. Lawson stated that this made it clear there was no longer any distinction between the work performed by Pension Advocates and that performed by Area Advocates, yet the two were not paid the same salary. As a result, Lawson wrote to Simon Coakeley, the Assistant Deputy Minister of the DVA, requesting that the LA-2(I) category be reclassified to LA-2(II) for the then 11 Bureau Pension Advocates at that classification (Exhibit G-4).

[26] The Assistant Deputy Minister Coakeley was Chief Pension Advocate at the time. The grievor, Janet Ellis, also joined with Lawson in making this request of Coakeley. The matter was discussed but to no avail. Four grievances were filed thereafter. The grievances were initially formulated as a classification matter as the grievors had been told by the employer it was so. The employer, however, replied that the matter was not a classification issue but rather a pay issue. Consequently, the grievances were amended to reflect this fact.

[27] In its final level reply dated August 16, 2000, the employer writes:

> *Currently, the majority of the Area Advocates in Head Office are paid at the LA-2(II) pay rate. This difference in pay stems from the pay adjustments made following ratification of the 1990 LA collective agreement. This agreement provided pay adjustments to a newly introduced LA-2(II) pay rate for lawyers who were in the LA-2 group and level, essentially perform duties of the same nature, most Area Advocates currently still benefit from the "grandfathering" effect created by the 1990 pay adjustments. I have also informed your representative that when an Area Advocate position is vacated, the new incumbent is to be compensated at the LA-2(I) rate.*

[28] When Lawson received this reply, it was the first time she had heard of the term "grandfathering", and she remarked that such a term was not included in the pay notes of the 1990 collective agreement.

[29] The year 1990 was the first time in which two pay levels for the LA-2 employees and pay notes were included in the collective agreement to effect those changes. When these changes were presented to the bargaining unit membership for ratification, Lawson states it was explained that LA-2(I) and LA-2(II) were to match the laywers at the Department of Justice in LA-2 (A) and LA-2(B) in an attempt to reach parity. As

Area Advocates were considered specialists, they would be paid at the LA-2(II). Today she indicates there is no longer a rationale for the split between these two scales of pay as the distinction no longer exists for Area Advocates's work and that of the Pension Advocates. Consequently, Lawson argues there should be no distinction in pay. Besides, Pension Advocates and Area Advocates do essentially the same work and receive the same training because such training is "on-the-job training".

[30] Lawson recognizes that in 1990, she was re-classified to a LA-2(I) position, and that there is no specific provision in the collective agreement which allows for an LA-2(I) employee to move automatically to LA-2(II); however, she points to a policy contained in the letter by the Chief Pensions Advocate (Exhibit G-2) which specifically states that:

> *...it is and shall be the policy of the Bureau of Pensions Advocates that an employee in the Law Group classified in a position at level LA-1 shall normally be promoted to level LA-2(I) after four (4) years of employment in line with the policy in effect at Justice Canada.*

[31] While the above policy speaks of movement from the LA-1 to the LA-2(I) position, and not from the LA-2(I) to LA-2(II), Lawson likened that policy to the movement between LA-2(A) (the working level, such as the Pensions Advocates) and LA-2(B) (the appellate level, such as the Area Advocates). She, however, is not cognizant of how employees at the LA-2(A) move to the (B) level, and her knowledge of the comparison with the classifications for lawyers in the Justice Department comes from the fact that her Law Group has always sought parity with those lawyers and if one employee did appellate type work, that employee ought to be moved to that pay level all the while by respecting the parameters in place for such movements to a higher level.

[32] In the same fashion that the collective agreement does not stipulate how a lawyer at the LA-2(I) moves to the LA-2(II) position, the Performance Pay Plan of the Personnel Management Manual for the Department of Justice (Exhibit G-1) neither states how a lawyer at the LA-2(A) moves to the LA-2(B) level. In this light, the grievor Lawson was unable to state how her grievance falls under the collective agreement apart from her understanding of the intent of the parties and the policy of 1990 above.

[33] Janet Ellis, a grievor in this matter, was first hired as an Area Advocate for the Bureau of Pensions Advocates in 1985, at the LA-2 level. The following year in 1986,

she was offered a position as Pensions Advocate for the Vancouver Office, which position meant a change in her classification to LA-1. She did not realize the implications of the change in her classification at that time.

[34] In 1990, with the implementation of the new collective agreement, Ellis was re-classified from LA-1 to LA-2, with her new title being that of Senior Pensions Advocate. Her understanding from her discussions with the chief negotiator (Lemieux) for the bargaining unit was that a policy would dictate movement between levels after four years (see Exhibit G-2 above). She understood that movement from one level to another required four years of service plus a satisfactory performance and two other barriers. The new collective agreement of 1990 allowed these movements to take place. Not only did the Law Group adopt the Department of Justice lawyers's pay scale, but also their structure of (A) and (B), that is that the (B) level equalled the (II) level of the Law Group because the latter were also specialists (i.e. Area Advocates were appearing before independent appeals tribunals).

[35] Ellis became both concerned and involved in the debate concerning the LA-2(I) and LA-2(II) when she saw her own duties change over time to resemble those of the Area Advocates while her position remained as a Senior Pensions Advocate. Ellis had occupied both positions so it was easy for her to see the similarities of the two positions. When she and her colleagues on the negotiation team raised this issue at negotiations in 1997, they were told that the matter was a classification issue and therefore could not be negotiated. Ellis reported the same evidence as Lawson in wanting to deal with this issue over the past years, i.e., as they were told it was a classification issue, they tried to deal with it at the managerial level only to finally result in the filing of grievances. When they did so, the employer promptly told them that it was not a classification issue but rather a pay issue. Also, there were discussions with the Assistant Deputy Minister Coakeley that some employees would be overpaid in other Departments if management allowed the movement from LA-2(I) to LA-2(II) as a natural progression.

[36] Ellis, like Lawson, had never heard before her grievance, the term "grandfathering" used to explain how the 1990 collective agreement was to be employed on certain employee movements between levels. The real issue she states is equal pay for equal work.

[37] The Department of Justice Performance Pay Plan provides that LA-2(B) will be for those legal officers who are at the first level of management or the first level specialist (see Exhibit G-1, page B10). To illustrate her claim that management too saw the LA-2(II) position as a first level specialist (equivalent to LA-2(B)), Ellis recalled that in 1995, she was asked to perform duties at a first level management on an interim basis. In order to do so, she was excluded from the bargaining unit and allowed to go to LA-2(B) position. In 1997, after the legislative changes, the District Pensions Advocates previously excluded were now re-included and they became LA-2 employees in the bargaining unit because management stated those employees now performed first level management functions (same as the wording used for those at the LA-2(B) level in Justice). It is for these reasons that Ellis believes that management is using the criteria set out in the Justice Performance Pay Plan to organize the Law Group advocates.

[38] Ellis also pointed out that while there is nothing in the collective agreement to state how one employee moves from LA-2(I) to LA-2(II), there is nothing in the contract either on how one moves from LA-1 to LA-2(I).

[39] Parity was sought in 1990 for lawyers in the Law Group vis-à-vis those in the Department of Justice. Today, Ellis seeks equity on the basis of equal pay for all lawyers doing the same type of work, and she cites the pay notes in the 1990 collective agreement as the basis of her grievance and on the fact that Area Advocates were moved to LA-2(II) same as those lawyers who are considered first level specialists in Justice.

[40] Rick C. McLeod is currently the Acting Chief of Pensions Advocate, and he has been the Associate Chief of Pensions Advocate since 1997. He first joined the Bureau of Pensions Advocates in Halifax in 1978, and held positions of District Pensions Advocate, Area Advocate and Senior Area Advocate, which last position was an excluded managerial position classified at LA-2(B).

[41] McLeod states that under his supervision are six Area Advocates (LA-2(II) all in Charlottetown), and these have no support staff nor supervisory functions.

[42] In Canada, there are 17 District Offices which include 37 lawyer positions (2 vacancies at the moment). The single Associate Chief Pensions Advocate has five Regional Directors of Pensions Advocacy (LA-2(B)) reporting directly to him or her. For

each region there is one Regional Director, and in total those Directors have 12 District Pensions Advocates (LA-2(II)) reporting. Pensions Advocates (LA-2(I)) report directly to the Regional Directors D.P.A. of Pensions Advocacy.

[43] From 1972 to 1995, the Bureau of Pensions Advocates was an independent agency where Area Advocates were only in Ottawa and District Pensions Advocates and Pensions Advocates were in the District offices of the various regions. Pensions Advocates prepared submissions for first and second levels of disability pensions applications and claims. Area Advocates were called upon to prepare and present appeals for claimants who were unsatisfied with the results obtained at the second level. This appeal level was the final level of process before the judicial review procedure in the Federal Court. District Pensions Advocates were excluded from bargaining unit because of their supervisory functions, and these were at the LA-2(A) level whereas others were at the LA-2(B) level.

[44] Prior to 1990, employees at the LA-1 position did not move to the LA-2 unless that position became available and the employee was the successful applicant. Therefore, Pensions Advocates could remain at the LA-1 level for years. Following the implementation of the 1990 collective agreement, all employees at LA-1 were moved to the new classification LA-2(I). Certain employees became LA-2(II) because they were Area Advocates who were LA-2 already. There were no Pensions Advocates paid at the LA-2(II) level. At that time, there were 7-8 Area Advocates, 20 Pensions Advocates and 17 District Pensions Advocates.

[45] In 1995, substantial changes were made in the processing of first level pension claims, and Pensions Advocates lost 20-30% of their work load. Appeals were added to their duties to relieve in the backlog of cases for Area Advocates. Eventually, by 1999, most District offices in Canada were conducting both first level reviews and appeals. Then that year, another type of review was added to Pensions Advocates, that of "re-consideration of decision" and for all intents and purposes, Pensions Advocates were doing essentially the same work as Area Advocates.

[46] Because of these changes, it is no longer considered that Area Advocates do "specialized" work. Everyone is a generalist, and consequently, the promotion of LA-1 is now academic says McLeod.

[47] There are no Pensions Advocates being paid at the LA-2(II) level, and McLeod states there is no policy regarding the movement from LA-2(I) to LA-2(II). Furthermore, he states that since 1990, some Area Advocates were hired and paid at the LA-2(II) level but because the employer was under a mistaken belief that secondment or acting positions of such were a classification issue, when in fact the Compensation specialist advised McLeod it was a pay issue. It was not until the filing of the grievances that the employer consulted Compensation and realized that the matter was not a classification issue. Therefore, up to and including the year 2000, when an Area Advocate was hired or placed into an acting position, he or she was paid at the LA-2(II) level.

[48] That is what took place in the companion case of the grievor Jane Michael (see 166-2-30596) explains McLeod. Michael was hired in the acting Area Advocate position; however, when the employer realized its mistake as having paid her at the LA-2(II) rate of pay, it dropped the "acting" position of Area Advocate and offered her instead the Area Advocate position as LA-2(I). All Area Advocates being hired today are hired at the LA-2(I) rate of pay.

[49] Having said this, however, the employer will not be reverting the current Area Advocates placed in 1990 at the LA-2(II) scale of rate to the LA-2(I) because the employer will allow those to remain at that pay scale. This is what is referred to the "grandfathering" aspect of this implementation, explained McLeod..

[50] The employer realizes that those legal officers are doing the same work and not paid accordingly, but says that such is a result of the legislative changes. Ironically, the LA-2(B) salary is the same as the LA-2(II) and yet there are cases where a Regional Director is supervising an Area Advocate both of whom are at the same salary level. Only positions with management functions can obtain a salary at the LA-2(B) or LA-2(II) level today, because the employer cannot justify that pay scale for Area Advocates nor for Pensions Advocates who are no longer considered specialists or who do not have first level management functions.

[51] Since the filing of the grievances, the acting positions of Area Advocates have been revoked and replaced with simply Area Advocates positions and associated pay reduced to the LA-2(I) level.

III – POSITION OF THE GRIEVORS

[52] The grievors allege that since the year 1990, all lawyers who work for the Bureau of Pension Advocates are classified at the LA-2 level, and it is therefore possible to have lawyers paid at the same classification level. All rounds of negotiations in the past regarding pay scales were in relation to parity for bargaining unit lawyers and Department of Justice lawyers. Those lawyers in the Department of Justice are classified at the LA-2 level, but receive different pay scales, LA-2(A) and LA-2(B). Thus, Pension Advocates and Area Advocates received different pay scales while remaining at the same classification level of LA-2 because they performed different tasks. Today, those advocates perform substantially the same work but are still paid at different pay scales. When Pension Advocates requested they be paid at the LA-2(II) same as the Area Advocates, they were refused and the Employer instead replied the Area Advocates were overpaid.

[53] The grievors introduced extrinsic evidence in these matters because they believe the pay notes of the 1990 collective agreement are not clear. In particular, pay note 6 is ambiguous, i.e. it lacks meaning without some explanation. Pay note 6 does not stipulate nor can one deduce from its reading that a movement from LA-1 position to LA-2 is a re-classification. Today, the employer is placing upon it its own interpretation, but it has not always done so. Furthermore, pay note 7 read plainly states that an employee at the LA-2 will now be paid at the LA-2(II) level, and there is no mention of a grandfathering clause or condition. Did the employer create a new rate of pay, and in so doing created a rate of pay which would go nowhere? According to the grievors, this interpretation cannot make sense.

[54] In an attempt to explain the intent of pay note 6, i.e., that efforts have been made for many years for the lawyers in the bargaining unit to reach parity with the lawyers in the Department of Justice, the grievors presented the exchange of letters between the bargaining agent and the employer on the establishment of a policy to promote LA-1 legal officers to LA-2 after four years of service, commensurate with the Department of Justice's approach on promotions (Exhibits G-2 and E-4). Efforts to reach parity between bargaining and non-bargaining lawyers was evident in a 1991 decision *Professional Institute of the Public Service of Canada v. Treasury Board*, supra.

[55] Area Advocates were considered specialists in 1990 and placed at the LA-2(II) level for that purpose. After the 1995 and 1997 legislative changes imposing new

duties and new structure to the Bureau of Pensions Advocates, the District Pensions Advocates were de-excluded and were placed at the bargaining unit level of LA-2(II) due to their acquiring managerial functions. For Area Advocates, however, management no longer considered them specialists but rather generalists, and consequently felt that the Area Advocates were overpaid at the LA-2(II) level. To justify those already placed at that level, the employer stated they were "grandfathered" into that pay scale and would not be reduced to a lower level of pay. All of this new "interpretation" took place after the filing of the grievances as remarked by the grievors. The employer today is reneging on its contract with the union, and is doing so by unilaterally changing the interpretation of the 1990 collective agreement.

[56] The grievors argue that it is misleading for the employer to state that movement from LA-2(I) to LA-2(II) is a re-classification issue because it is not. Movement from LA-2 to LA-3 in the Department of Justice is a re-classification but not (I) to (II) scale of rates. The collective agreement needs not stipulate how one moves to (I) to (II) because that is done through a description of duties and whether the employee is able to perform those duties.

[57] The grievors wish to be established at the LA-2(II) scale of rates because they consider themselves specialists and as per the intent of the 1990 collective agreement, specialists then were placed at the LA-2(II) level.

[58] If the employer's position is maintained, the grievor argue that the employer is effectively creating two classes of lawyers in the federal public service, those in the bargaining unit being unfairly discriminated against. Furthermore, the grievors allege that the inequities of this situation contravenes section 8 of the *Public Service Staff Relations Act*, and Article 36 of the LA Group collective agreement.

IV – POSITION OF THE EMPLOYER

[59] The employer takes the view that Area Advocates were entitled to be paid at the LA-2(II) scale of rates as a result of the 1990 collective agreement. The conditions which existed then are no longer applicable, and the clear distinction for paying an Area Advocates at a higher level no longer exists today. The employer has the right to review these positions but has opted not to do so, instead providing for the "grandfathering" of those Area Advocates already at that level of pay. Having said this, management has adopted an approach to change newly filled positions of Area

Advocates at the LA-2(I) level of pay, all within management's rights to do so in accordance with Article 5.01 of the collective agreement: the employer retains all rights not specifically abridged, delegated or modified.

[60] The employer argues that the grievors must establish that the collective agreement has been violated in order to be entitled to be paid under the collective agreement at the LA-2(II) level, and that has not been done.

[61] Further, the employer takes the position that there is no ambiguity in this case, and if there were, there was no real extrinsic evidence introduced to explain the changes brought to the 1990 contract. The only evidence heard was that an employee at LA-2(II) was considered a specialist level but nothing was introduced to show that somehow this amended the collective agreement. Past practice evidence introduced in this case only showed that Area Advocates were paid at the (II) level and Pensions Advocates at the (I) level and nothing more.

[62] Article 15 of the collective agreement points out that an employee is entitled to be paid for services rendered at the pay specified for the classification of the position to which he [or she] is appointed. In other words, it is the position which governs the pay. The position is LA-2, i.e., the classification, whereas the (I) and (II) are different levels of pay. The employer adds that it is obvious from the evidence that the parties intended that LA-2(I) and LA-2(II) be different classifications, but we know from a historical context that pay notes were introduced in 1990 to indicate which employee would fall in these two scale of rates by having the employer determine who would fit in those categories. When reading pay note 6, is it clear that for an employee to be paid at the LA-2(II) scale of rates, he or she must be "appointed" to such a position. According to the employer, this obviously meant new positions that management would determine.

[63] In other words, the pay notes are clear in that an employee at the LA-1 classification at the end of 1989 who was re-classified to the LA-2 position was to be paid at the LA-2(I) salary unless that employee was appointed to a position to which LA-2(II) rate applied. Easy formula to use argues the employer. Nothing has changed in this context because the employer has not abdicated in the collective agreement its right to move (I) to (II), therefore remaining management's prerogative to do so. To be paid at the LA-2(II), the employee must be appointed to such a position by the employer, and not by an adjudicator by reason of inequity.

[64] The employer adds that pay note 7 provides for this easy determination: an employee who was paid at the LA-2 scale of rates on December 31, 1989 would be paid at the LA-2(II) scale of rates after January 1, 1990.

[65] The employer argues that this case has huge implications by virtue of the fact that there are no longer any LA-1 classifications in the Bureau, all being at the LA-2 levels. If this case adopts the position of the grievors, all lawyers will be paid at the LA-2(II), an equivalent salary to first level managers and that cannot be right.

[66] In order to move from LA-2(I) to LA-2(II), the evidence has shown that one must apply because such is considered a new position. Nothing in the collective agreement provides for the movement of LA-2(I) to LA-2(II). This has nothing to do with inequities. One must be appointed to the new position, and if the new position is determined to be at the LA-2(II) rate of pay, that is the salary the successful candidate receives. The Regional District Pensions Advocates are currently paid at the LA-2(II) because they were appointed to that position.

[67] There is no violation of the contract and management has acted in good faith and in a respectful manner. Assuredly, there were confusing times after the changes were implemented in 1995, but management has the right to review its workforce and has done so in relation to Area Advocate positions.

[68] The employer's representative adds that there is nothing unusual nor discriminatory about having different classes of lawyers; for instance, there are those in the LA-1, LA-2 and LA-3 classes.

IV – ISSUES

[69] Does this case represent a pay issue or a classification issue? Are the pay notes found in the 1990 collective agreement ambiguous such that extrinsic evidence need be introduced? Is there a violation of the collective agreement.

V – DECISION

[70] I found these grievances to be somewhat difficult to resolve, mainly because the evidence and the arguments presented by the parties do not consistently maintain that the LA-2(I) and LA-2(II) are the same classification but different pay scales. This confusion stems from the parties intent in the past ten years to treat those paid at the

LA-2(II) to be of a different classification than those at the LA-2(I), as admitted to by the employer.

[71] Having said this, however, my task is to deal squarely with the issues of this case within the realm of my powers. The grievors allege that the collective agreement has been violated and I must determine whether that is so.

[72] Let's review the facts. The employer and the bargaining agent made a deal in 1990 that the members of the Law Group bargaining unit would be elevated to new classifications and commensurate pay rates. Pay notes were written into their 1990 contract to effect those changes. I note that there is no mention in the pay notes that this is one time event, nor a mention of a "grandfathering" for certain employees to be paid at a special rate of pay by virtue of their then current. Interestingly, the pay notes were not repeated in later contracts, but their effects have remained throughout successive collective agreements and Pensions Advocates continued to be paid at the LA-2(I) rate while the Area Advocates continued to be paid at the LA-2(II) scale of rates notwithstanding the changes in their duties.

[73] New legislation and a series of re-organizations brought many changes to the work performed by both Area Advocates and Pensions Advocates, which changes eventually led to there being no distinction between the duties performed by both Pensions Advocates and Area Advocates. Employer was and is fully aware that these two types of advocates perform the same work and yet are not receiving the same pay. When this issue surfaced, the employer informed the bargaining agent that it was a classification issue. When the parties were unable to resolve this dispute, the present grievances were filed. Then, the Employer obtained advice from the Compensation Unit only to be told that the Employer had made a mistake in paying the Area Advocates at the LA-2(II) scale of rates when it ought to have paid them at the LA-2(I) scale instead.

[74] The employer informed the bargaining agent that the grievances were in reality a pay issue, and went on to notify the bargaining agent that future Area Advocates would no longer be paid at the LA-2(II) scale of rates, but rather at the LA-2(I) level.

[75] While not much evidence was given at this hearing concerning the job description of an Area Advocate and that of a Pensions Advocate, both parties agree

that today these employees essentially perform the same work. Yet, they are not paid the same wages.

[76] I point out that there is no description of the classification of LA-2 in the collective agreement.

[77] In the first instance, I will rule on the question of the alleged ambiguity of the pay notes found in the 1990 collective agreement.

[78] The grievors argue that the pay notes must be ambiguous for the reason that the employer is now changing their interpretation and hence their application. Yet, for 10 years, both parties seemed to acknowledge that Area Advocates were paid at the LA-2(II) level without question.

[79] I disagree. The pay notes are not ambiguous. They can be read easily and applied to the facts which existed at the time. They are repeated below for this analysis:

> *PAY ADJUSTMENT ADMINISTRATION*
>
> *(5) LA-1:*
>
> *(a) An employee paid in the ten-dollar ($10) step part of the LA-1 scale shall be paid effective January 1, 1990 in the LA-1 "X" scale of rates of pay at a rate which is identical to the employee's rate of pay as of December 31, 1989.*
>
> *(b) Effective January 1, 1990, an employee paid in the ten-dollar ($10) step part of the LA-1 "X" scale of rates shall be paid in the LA-1 "A" scale of rates at a rate which is 5.0% higher than the employee's rate of pay in the "X" scale of rates, rounded to the nearest ten dollars ($10) provided that the last step in the ten-dollar ($10) step part of the scale is not exceeded.*
>
> *(c) Effective January 1, 1990, an employee paid in the part of the LA-1 scale of rates not designated by ten-dollar ($10) steps, shall be paid in the LA-1 "X" scale of rates at a rate of pay which is identical to the employee's rate of pay as of December 31, 1989.*
>
> *(d) Effective January 1, 1990, an employee paid in the part of the LA-1 "X" scale of rates not designated by ten-dollar ($10) steps, shall be paid in the LA-1 "A" scale of rates at the rate of pay which is immediately below the employee's rate in the LA-1 "X" scale of rates.*

> *(e) Notwithstanding Notes 5(c) and 5(d), an employee whose position was classified at the LA-1 level on January 1, 1990, and who was paid on December 31, 1989 above the double barrier in the LA-1 scale of rates at a rate of pay of either $54,751 or $57,802, shall be paid, effective January 1, 1990 at a rate of pay which is 5.0% higher than the employee's former rate of pay (ie., $57,489 or $60,692). An employee who was paid at $57,489 on January 1, 1990, shall be considered for an annual increment (ie., to $60,692), subject to a "fully satisfactory" performance rating.*
>
> *(6) LA-2(I):*
>
> *An employee whose position was classified at the LA-2 level on or after January 1, 1990, and who was paid on or after December 31, 1989 at a rate of pay in the LA-1 scale of rates, shall be paid in the LA-2(I) "A" scale of rates, other than an employee who is appointed to a position to which the LA-2(II) scale of rates applies.*
>
> *(7) LA-2(II):*
>
> *Effective January 1, 1990, an employee paid in the LA-2 scale of rates on December 31, 1989 shall be paid in the LA-2(II) "A" scale of rates at the rate of pay which is immediately below the employee's rate of pay as of December 31, 1989.*
>
> *(8) At the discretion of the Employer, the rate of an employee*
>
> *(a) who is initially appointed, transferred or promoted during the retroactive period,*
>
> *and*
>
> *(b) who was paid a rate in the part of the LA-1 scale not designated by ten-dollar ($10) steps or a rate above the minimum of LA-2(I) and LA-2(II).*
>
> *and*
>
> *(c) who, after application of the terms and conditions governing the application of pay pursuant to 15.01 and 15.03 would be paid a rate less than that shown immediately below the rate he was receiving prior to revision,*
>
> *may be increased to any rate up to and including the rate shown immediately below the rate he was receiving. Such an increase does not change an employee's increment due date.*

[80] The heading for these notes is "*Pay Adjustment ...*" , and the notes have been referred to by the parties as "*pay notes*". The use of the verb "paid" is evident in all of

the pay notes, all of these factors suggesting that these notes were to effect changes in pay for these advocates. Furthermore, the use of the words "*level*" and "*scale of rates*" does point again to the notes suggesting how the advocates of certain levels would be paid, i.e., level referring to classification level such as LA-2, and scale of rates referring to salary such as LA-2(I) and LA-2(II).

[81] Moreover, the formula in pay note 6 is simple to use: those advocates paid at the LA-1 scale of rates on December 31, 1989 and classified at the LA-2 level on or after January 1, 1990 were paid at the LA-2(I) scale of rates, except for those advocates who would be placed by the employer (***appointed***) to a position to which the LA-2(II) scale of rates applied. Clearly the employer retained its right to determine which position would attract a pay at the LA-2(II) scale of rates.

[82] I therefore conclude that the pay notes are not ambiguous such that extrinsic evidence need be introduced to effect their interpretation. I do wish to add that the 1990 collective agreement pay notes were not repeated in subsequent collective agreements, and I do not believe that the grievors can grieve on these expired notes, though I recognized their effects were continued in the ensuing years.

[83] Having so found, I now turn to what I believe to be the real issue today: not the ambiguity of the pay notes but rather the employer's very real problem that Pension Advocates and Area Advocates today perform the same work but are paid at different scales of rate. This issue is a pay issue.

[84] As Ridlington pointed out during his evidence, the classification issue between LA-1 and LA-2 could not be bargained and that is why nothing to this effect was mentioned in the 1990 collective agreement, whereas pay scales for LA-2 advocates could be bargained. The pay notes were used to permit the movement of those employees at LA-1 to a higher scale of rates which could be part of the collective bargaining process. Movement from the different pay scales of LA-2(I) to LA-2(II) was a matter of pay which could be negotiated.

[85] I agree. The new scales of rates in 1990 came as a result of the parties seeking parity, i.e., that both sides wished for the Law Group bargaining unit to reach parity with lawyers in the Department of Justice, such lawyers not being part of any collective agreement yet having similar standards for classification and promotion. A policy of the employer shows that the employer recognized the importance of the bargaining

unit seeking parity. That policy explained how an advocate at the LA-1 progressed normally to the LA-2(I) level after four years of service. I must point out, however, that this policy does not go on to state that the LA-2(I) Pensions Advocates move to the LA-2(II) level after so many years. Consequently, that policy is of no assistance to deal directly with the present grievances apart from its illustration of the parties' efforts in seeking parity. Furthermore, that policy exists outside of the parties' collective agreement, and after reviewing *Arbitrability* at paragraph 4.1300 in Brown & Beatty's *Canadian Labour Arbitration*, I do not believe I can adjudicate on such a matter.

[86] The employer maintains that in order for an advocate in the Law Group to move from LA-2(I) to LA-2(II), he or she must apply because such is considered a new position. One must be appointed to the new position, and if the new position is determined to be at the LA-2(II) scale of rate, that is the salary the successful candidate receives.

[87] The discussions between the parties which led to the 1990 collective agreement made it such that Area Advocates were considered specialists and would be paid at the LA-2(II) scale of rates to reflect such specialty. There is nothing in the collective agreement, however, which explains this. The parties governed themselves accordingly, and when an employee was hired as an Area Advocate, he or she was paid at the LA-2(II) scale of rates. Similarly, when a Pensions Advocate was acting in an Area Advocate position, that Pensions Advocate was paid at the higher LA-2(II) salary. Clearly, the employer has always considered the Area Advocate position to be paid at the higher LA-2(II) level.

[88] The changes in the duties performed by the Pensions Advocates and those of the Area Advocates with time became undistinguishable, and the line which separated these two positions no longer exists. Faced with this, the employer has chosen to re-organize its work force and to have both Pensions Advocates and Area Advocates remunerated at the same scale of rates, that of LA-2(I).

[89] The employer states that in the future, it intends to pay an Area Advocate at the lower salary level of LA-2(I) as that of the Pensions Advocates, and it has given notice to the bargaining agent that it shall do so from now on. That is the prerogative of the employer. There is much jurisprudence on the right of an employer to organize its workforce at it sees fit as long as it does so without violating the provisions of the collective agreement (please refer to Brown & Beatty, *Canadian Labour Arbitration* (3rd

Ed.) in Chapter 5: *Organization and Direction of the Work Place*, and in particular, paragraph 5:2000 Distribution of work within the bargaining unit).

[90] The grievors could not show me which provision of the collective agreement the employer is alleged to have violated in these cases. The grievors do raise the obvious inequities of their situation and maintain that if the employer's position is continued, the advocates in the bargaining unit are being unfairly discriminated against. Furthermore, the grievors allege that the inequities of this situation contravene section 8 of the *Public Service Staff Relations Act*, and Article 36 of the LA Group collective agreement, to which I will refer later.

[91] An adjudicator has no jurisdiction over classification issues, unless the employer has accepted to include them in the collective agreement, as per section 7 of the *PSSR Act,* and see *Public Service Alliance of Canada v. Canada*, [1987] 2 F.C. 471 (F.C.A.); *Public Service Alliance of Canada v. Treasury Board*, (1986) 76 N.R. 229 (F.C.A.). I do not believe this is such a case here. The pay rates are usually linked to the classification of the position occupied by the employee. The issue of whether the grievors would be entitled to "acting pay" might have had an application, but such was not argued by the grievors.

[92] The parties in the present matters have conducted themselves on an understanding, that of one classification for different advocates, and that Area Advocates commanded a higher rate of pay due to their specialized duties. That understanding was not written into the parties' contract, however, and the pay notes do not reflect such an understanding.

[93] In their final arguments, the grievors raised the violation of section 8 of the *Public Service Staff Relations Act* and Article 36 of the LA Group collective agreement in support of their claim for redress. The proper process to raise a violation of section 8 is to file a complaint under section 23 of the *PSSR Act*, where members of an employee organization can complain of the employer's reprisals. I am an adjudicator appointed pursuant to sub-section 95(2) of the *PSSR Act* and sub-section 91(1) of the *Act* does not allow me to entertain complaints under section 23. I am therefore unable to deal with such allegations and perhaps the grievors may wish to consider that alternative administrative procedure for redress.

[94] As for the alleged violation of article 36 of the collective agreement, that article provides that there will be no discrimination exercised or practised against employees by reason of age, race, creed colour, or other factors including membership or activity in the Institute. I am uncertain as to the specifics of the allegations by the grievors as no evidence was led to establish discrimination in this regard, and how the discrimination is tied to another violation of the collective agreement. In other words, how can the grievors argue discrimination by the employer for paying Pensions Advocates at the LA-2(I) scale of rates, and when there is no provision of the collective agreement which is being breached by virtue of such salary payments.

[95] The employer believes that these grievances are not arbitrable as they do not point to a violation of a provision of the collective agreement. I agree. This decision, however, does not purport to comment on the merits of the grievors' claim that they perform the same work as Area Advocates but for which the grievors were paid at a lower rate. My decision is based on whether the grievors could establish a violation of the collective agreement in order to obtain redress, and they have not been able to prove same.

[96] On the basis of the foregoing, I must deny the grievances.

ISSUED at Fredericton, New Brunswick, this 17th day of April, 2002.

ANNE E. BERTRAND
Member
PUBLIC SERVICE STAFF RELATIONS BOARD