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Federal Public Sector Labour Relations and Employment Board Act and *Federal Public Sector Labour Relations Act*

Before a panel of the Federal Public Sector Labour Relations and Employment Board

BETWEEN

PUBLIC SERVICE ALLIANCE OF CANADA

Bargaining Agent

and

TREASURY BOARD
(Correctional Service of Canada)

Employer

Indexed as
Public Service Alliance of Canada v. Treasury Board (Correctional Service of Canada)

In the matter of a policy grievance referred to adjudication

Before: Marie-Claire Perrault, a panel of the Federal Public Sector Labour Relations and Employment Board

For the Bargaining Agent: Michael Fisher and Anna Lichty, counsel

For the Employer: Alexandre Toso, counsel

Heard by videoconference,
August 4 to 6 and 12 to 14, 2020.

REASONS FOR DECISION

I. Policy grievance referred to adjudication

[1] On June 20, 2019, the Public Service Alliance of Canada ("PSAC") referred a policy grievance to the Federal Public Sector Labour Relations and Employment Board ("the Board") on behalf of Correctional Service of Canada (CSC) employees who work as supervisors, facilities management, and are classified at the GL-COI-11 group and level. Throughout the hearing, they were referred to as "COI-11s", but I will use the full classification, GL-COI-11s, to refer to them, as the position at issue is specific to the General Labour and Trades group. These employees work in CSC institutions and supervise tradespeople.

[2] The PSAC, as the bargaining agent, and the Treasury Board, as the employer, signed a collective agreement for the Operational Services Group with an expiry date of August 4, 2018 ("the collective agreement"). For the purposes of this decision, I will refer to the CSC as the employer, since the Treasury Board's authority has been delegated to it for the decisions at issue in this case.

[3] This case concerns a change to the work description that resulted in the GL-COI-11s no longer receiving the inmate training differential ("ITD"), which is a premium paid to recognize the additional effort and responsibility attached to training and supervising inmates employed in labour and trades positions in CSC institutions. The employer argued that this is not a proper policy grievance and moreover that it is in fact a classification grievance, over which the Board has no jurisdiction.

[4] In preparation for the hearing, I received the employer's submissions on this issue but decided that I needed more evidence to determine it. Therefore, the employer's objections will be dealt with in the analysis.

[5] The policy grievance was worded as follows:

> *WHEREAS the collective agreement entitles employees to be provided with a complete and current statement of the duties and responsibilities of his or her position. The employer has provided an incomplete statement of duties and responsibilities to employees in the GL-COI-11 classification by removing all references to the training of inmates.*
>
> *AND WHEREAS the collective agreement entitles employees to be provided an inmate training differential when the incumbent of*

> *the position exercises training control directly or indirectly through subordinate instructors of inmates. The employer has refused to provide the inmate training differential to employees who, directly and indirectly, exercise training control of inmates,*
>
> *AND WHEREAS the collective agreement restricts the Employer from entering into collective bargaining with respect to modifications to the Operational Services rates of pay related to classification review during the life of the present agreement. The employer has engaged in modifications to the Operational Services rates of pay related to classification review by unilaterally amending the GL-COI-11 job descriptions so as to remove the inmate training differential from their classification.*
>
> *The bargaining agent hereby grieves the employer's violations of the collective agreement, specifically Article 58, Appendices C and K, and all other related provisions of the collective agreement by refusing employees what the collective agreement entitles them to receive.*

[6] The bargaining agent asked for the following remedies:

> *i) A declaration that the Employer has contravened the collective agreement;*
>
> *ii) A declaration the Employer has exceeded its jurisdiction and acted in a manner that is arbitrary and in bad faith contrary to Article 58 and Appendices C and K of the collective agreement;*
>
> *iii) An Order that the Employer cease and desist from its ongoing violation of the Collective Agreement;*
>
> *iv) An Order that the Employer take immediate action to ensure that all duties and responsibilities related to inmate training are reinstated in the COl-11 job descriptions and said positions are classified at the appropriate level with corresponding ITD; and*
>
> *v) Any other remedies that an Adjudicator may deem just in the circumstances.*

[7] For the reasons that follow, I find that this is a proper policy grievance, and it is allowed.

II. Summary of the evidence

[8] The bargaining agent called four witnesses: Melanie Crescenzi, a labour relations officer with the Union of Security and Justice Employees ("USJE"), a component of the PSAC; Martin Roy, a former GL-COI-11; and Mathieu Lantagne and Barry Gower, both presently GL-COI-11s.

[9] The employer also called four witnesses: Michael Morgan, a classification specialist; Marc Bélanger, Regional Administrator of Technical Services at the time of

the events at issue; Cynthia Racicot, Assistant Commissioner for Integrated Services; and Ghislain Sauvé, Director General of Technical Services and Facilities.

[10] I found that generally, the evidence was not contradictory, and so, I will summarize it without attributing statements to any witness, unless doing so is important to understanding the different perspectives.

[11] All CSC institutions employ tradespeople to perform maintenance and repair work. They have different classifications, to reflect their trades and skill levels. They report to a GL-COI-11, who is responsible for assigning work and ensuring that it is carried out according to the appropriate standards.

[12] Institution size varies throughout the country, and consequently, so do each institution's needs for tradespeople. In 2014, the CSC significantly restructured its technical services. In some regions, the tradespeople reported to GL-COI-11s; in others, it was to GL-COI-13s, which is a higher classification. Some regions shared the tradespeople between institutions as there was not enough work in a small institution to justify a full panoply of skilled or semi-skilled tradespeople.

[13] The CSC reorganized the structure so that by 2016, tradespeople reported only to GL-COI-11s. Each institution would have two GL-COI-11s reporting to a GL-COI-13, who would be responsible for two institutions (I am simplifying the model to clarify reporting structures; some regions may have clusters of several institutions, and there may be a varying number of GL-COI-11s in the institutions, according to their sizes). The GL-COI-13, whose title is "Chief of Facilities", supervises the work of the GL-COI-11s and is responsible for budgeting for facilities and technical services.

[14] An essential part of maintenance and repair work in CSC institutions is the employment of inmates, which serves two main purposes. According to all the witnesses, first and foremost is providing inmates with the possibility of acquiring skills that could serve them when reintegrating into society. The second purpose is providing a workforce, since the tradespeople would not be able to do all the work by themselves. According to Mr. Gower, this has been clearly highlighted by the COVID-19 experience — with inmates unable to attend to their duties because of the CSC-wide confinement policy, a significant amount of maintenance and repair work could not be carried out.

[15] Tradespeople who train and supervise inmates by teaching them skills and ensuring the quality of the work performed receive the ITD as part of their pay. The ITD is provided for in the collective agreement (see Annex C of Appendices B and C).

[16] The work of the GL category (to which the GL-COI-11s belong) is assessed by a classification committee, which attributes points to the different aspects of the work, including supervisory and inmate training responsibilities. The working document on which the assessment is based is a classification standard dated May 1971. The introductory paragraphs describe its purpose as follows:

> *This standard describes the rating plans to be used to evaluate positions allocated to the General Labour and Trades Group. It consists of an introduction, definition; of the Operational Category, the occupational Category, and sub-groups, a basic point-rating plan for all positions in the group, a supervisory rating plan for all supervisory positions, an inmate training rating plan for Canadian Penitentiary Service positions in the group element profile guides, and bench-mark position descriptions.*
>
> *[All] positions in this group will be evaluated using the basic point rating plan. Canadian Penitentiary Service positions that have a continuing responsibility to instruct, motivate and relate to inmates will also be evaluated using the inmate training rating plan.…*

[17] The classification standard enables the classification committee to evaluate a position and determine the training rating to determine the amount of the ITD, based on the nature of the responsibilities and the number of inmates supervised. The classification standard specifies the following:

> *Canadian Penitentiary Service positions that have a continuing responsibility to instruct, motivate and relate to inmates will also be rated under the inmate training plan. An inmate training differential will be applied to each of these positions included in the General Labour and Trades Group, its amount being determined by the rating of the position under the inmate training plan.*

[18] The classification standard clearly states as follows that a position may have both supervisory and inmate training duties:

> *In Canadian Penitentiary Service positions where both the supervisory and inmate training differentials would apply, the differential sum for each will be calculated using the rate for the basic level, added directly to that basic rate, and will not be compounded.*

[19] A component of the classification standard is the "Inmate Training Rating Plan", which is defined as follows: "This plan is used to measure the continuing responsibility that the incumbent of the position assumes for the training of inmates in terms of the nature of the training responsibility and number of inmates trained."

[20] The following definitions are given for "Nature of Training Responsibility" and "Number of Inmates Trained":

> *"Nature of Training Responsibility" refers to the actions taken singly or collectively and progressively to establish communications with inmates, to motivate them towards self-improvement, to encourage in them a pride of accomplishment, to train them in specific skills, and to assist them in a better self-understanding.*
>
> *"Number of Inmates Trained" refers to the relative size of the inmate group for which the incumbent of the position exercises training control directly or through subordinate instructors.*

[21] In turn, the responsibility thus measured determines the level of the ITD. There are 5 levels of responsibility, rated from A to E, and 3 levels for the number of inmates, from 1 to 3. Each level is a combination of a letter and number and entitles the incumbent to a given percentage added to the salary. Until the change of direction, the GL-COI-11s had been assessed at level D2, entitling them to a 15% premium.

[22] I note that the classification standard has been rescinded and that the Treasury Board has proposed that the ITD no longer be a premium and part of salary but rather, an allowance. For the purposes of this decision, the ITD in its old form, forming part of salary, and the 1971 classification standard both apply, since they were part of the process that led to this grievance.

[23] Until March 2018, the GL-COI-11s received the ITD. Suddenly, in February 2018, they were informed that they were no longer entitled to the ITD, as a classification committee had determined that they had no inmate training responsibilities. GL-COI-11s who had been receiving the ITD were "red-circled", meaning that following the Treasury Board policy to maintain salary for a given position despite a downward classification, they would continue to receive the equivalent amount of salary. However, persons appointed to the position after that date, such as Mr. Gower and Mr. Lantagne, or people in the position in an acting capacity, were not entitled to the ITD.

[24] I note that the employer continues to pay the ITD to GL-COI-11s employed in healing lodges, a category of CSC institution for indigenous inmates. This was explained at the hearing by the fact that in healing lodges, which are small institutions, there are fewer tradespeople; therefore, GL-COI-11s have to take on more hands-on responsibilities, both in carrying out maintenance and repair tasks and in supervising inmates directly.

[25] Ms. Crescenzi testified that in her exchanges with the employer, particularly with Mr. Sauvé, it was made clear that the employer had determined that the GL-COI-11s should not receive the ITD, since with the new structure, the GL-COI-13s would not receive it (they had received it previously). If the GL-COI-11s continued to receive it, they would earn as much as the GL-COI-13s, given the respective salary scales, which was a situation that Mr. Sauvé found intolerable.

[26] At the hearing, Mr. Sauvé did not deny Ms. Crescenzi's view of events. He admitted that he found it problematic that GL-COI-11s would earn as much as GL-COI-13s, since it would hurt the recruitment of GL-COI-13s; why accept more responsibility for the same pay? However, he went on to explain that his questioning of the salary situation led to an exercise under which the regional administrators of technical services ("RATS") re-examined the GL-COI-11s' work description, and concluded that GL-COI-11s were not directly responsible for inmate training and therefore were not entitled to the ITD.

[27] Mr. Bélanger confirmed that the RATS had been asked to consider whether supervisors should receive the ITD, with a special emphasis on supervisors in facilities management. This exercise was done some time in 2017, in the year before the decision to remove the ITD was implemented. Mr. Bélanger, who works in the CSC's Atlantic region, does not supervise the work of GL-COI-11s, who report to GL-COI-13s. The GL-COI-13s report to a regional manager who reports to Mr. Bélanger. At one point in his career, Mr. Bélanger was a GL-COI-13 for three years.

[28] On July 19, 2016, a new work description ("the 2016 work description") was provided to the bargaining agent. It did not see any objectionable changes in the new description and did not challenge it.

[29] Then, in February 2018, the employer notified the bargaining agent that the work description had again been changed ("the 2018 work description") and that a

classification committee had determined that GL-COI-11s were no longer entitled to the ITD, effective March 2018. Contrary to the first change, and according to Ms. Crescenzi, contrary to the usual practice, the bargaining agent was never informed of the second work description and had no opportunity to comment on it, despite the fact it led to a change to the ITD entitlement.

[30] The bargaining agent did not deny that the employer is responsible for assigning work and classifying positions. According to Ms. Crescenzi, the issue was that the job description had been changed but that the GL-COI-11s were still carrying out the same work. Their work had always involved indirectly supervising and training inmates; no explanation was provided as to why suddenly, those duties no longer entitled them to the ITD.

[31] The employer's action also raised an additional concern for the bargaining agent, according to Ms. Crescenzi, which was that if the employer could change the working conditions at will, by altering the work description and getting rid of the ITD, would employees at other groups and levels also see their ITDs disappear? She emailed the following to Mr. Sauvé on July 4, 2018:

> *We just want to follow up on our discussion of May 31, where we raised the question of how the Classification department could determine that the COI-11s are not entitled to the ITD given that the definitions of "Nature of Training Responsibility" and "Number of Inmates Trained" contained in the Standards continue to apply to their current work. We look forward to receiving some clarification on this.*
>
> *We've also, further to our discussion, reached out to the membership to gather their comments/concerns regarding the removal of ITD and we're hoping to be in a position to share these with you at our next meeting.*
>
> *We would also like to take this opportunity to raise further concerns that have been brought to our attention regarding the review of ITD. Many of our members have advised that they are being told that management is undertaking a general review of the ITD and that their job descriptions will be undergoing the same exercise as what was done with the COI-11 (changing the job descriptions to remove ITD). There is talk of this being undertaken for Corcan, Facilities Management, Food Services and Material Management. It was our understanding that the removal of ITD for COI-11 was a unique review and was done to address the issue of COI-13s earning less than COI-11s (if ITD were to remain). Can you please confirm whether this is actually what is being done –*

> *that is, is CSC undertaking a review exercise which can result in the removal of ITD for other classifications?*

[32] The employer answered that as new job descriptions were developed, they would be submitted to classification committees. There were no impending reviews for the jobs that Ms. Crescenzi raised in her email. As to the first part of the email, in which she asked for an explanation of why the classification standard, with its definitions, no longer seemed to apply, the answer was that the GL-COI-11s did not directly train inmates and thus were not entitled to the ITD. At the hearing, the employer's witnesses all insisted on the absence of "direct training", even though the classification standard's definitions clearly allude to indirect training and a more general, motivational interaction with inmates.

[33] In August 2018, Mr. Sauvé asked Mr. Morgan how to answer the first paragraph of the email. Mr. Morgan answered with the following in an email dated August 17, 2018:

> *A classification evaluation committee comprised of experienced accredited classification advisors reviewed the generic work description and determined that it did not meet the requirements of inmate training definitions identified in the standard. It is for this reason the classification rationale indicates that "There is no requirement to train inmate".*
>
> *We reviewed our log and can confirm that we have received classification grievances from some of the GL-COI-11s. The classification grievance process will allow for a new classification evaluation committee, containing 2 different accredited classification advisors and a representative from TBS, to evaluate the generic work description using the same standards that were utilized by the original committee.*

[34] Mr. Sauvé sent an email dated August 20, 2018, to Stan Stapleton, the USJE's president, repeating Mr. Morgan's August 17 explanation. At the hearing, Ms. Crescenzi testified that it was the first time Mr. Sauvé invoked the classification exercise to justify removing the ITD from the GL-COI-11s' salaries. No evidence was adduced at the hearing about a further classification exercise.

[35] The parties introduced several documents that showed the change to the work descriptions and the changes that the classification committee made to the ITD entitlement. I will describe the contents of these documents; but first, I will summarize the evidence of the three GL-COI-11s who testified at the hearing.

[36] Mr. Roy has a post-secondary diploma in building mechanics. He became a CSC employee in 1999 as a building mechanics technical officer classified at the GL-COI-10 group and level. In that position, he earned the ITD as he trained and supervised inmates. He then became a GL-COI-11 at Montée Saint-François, which was then a minimum-security institution, in the Laval region of Quebec, where he stayed for 5 years. He participated in special projects linked to restructuring the Archambault-Sainte-Anne-des-Plaines complex, then occupied a GL-COI-11 position at Archambault Institution from 2014 to 2017. He was then assigned to other duties, for medical reasons, but his substantive position remains that of a GL-COI-11. He estimated that he worked as a GL-COI-11 for some 10 years in total, exclusive of his present assignment.

[37] Mr. Roy's area of expertise was maintaining and repairing building mechanics (heating, ventilation, and air conditioning). He stated that the GL-COI-11s' responsibilities could be divided into four main streams:

- organizing and directing the repair and maintenance work to be done by qualified tradespeople, who themselves trained and supervised inmates in their respective trades;
- managing a system to ensure the preventive and corrective maintenance of buildings;
- administrative work, such as budgeting, assessing the performance of the tradespeople reporting to the GL-COI-11, and staffing; and
- ensuring the employability of inmates by assigning them work, making sure they were trained, including in health and safety matters, and reviewing the tradespeople's (also termed "instructors") performance assessments of the inmates, which would be entered into a database called the "Inmate Management System" (IMS), which only the GL-COI-11 could access.

[38] Requests for service come from inmates or staff to the GL-COI-11, who then assigns the repair work to the proper resource. Recently, the CSC adopted an electronic requesting system, to implement the Service Level Agreement (SLA).

[39] A GL-COI-11's role with respect to inmate employability is to ensure that the inmates progress well in their rehabilitation program, an important component of which is employment. Mr. Roy agreed with the definition in the classification standard that refers to motivating and encouraging inmates to succeed.

[40] The GL-COI-11 ensures an adequate number of inmates to work in the trades, verifies each inmate's ability level and interests, and if necessary, will intervene to preserve harmonious relationships between the instructors and the inmates. The GL-COI-11 plays an active role in assessing the inmates, discusses each one with the

relevant instructor, and meets with the inmate and instructor to hand the evaluation to the inmate.

[41] The GL-COI-11 also meets daily with the tradespeople and therefore, also with the inmates working with them. The GL-COI-11 is responsible for the safety of all staff, including inmates. Mr. Roy gave as an example seeing an inmate using a tool without the proper safety equipment or misusing it. The GL-COI-11 would intervene to ensure the inmate's safety and the protection of the CSC's equipment and buildings. Finally, the GL-COI-11 assesses the inmates' behaviour and supervises their movements in the institution.

[42] In February 2018, Mr. Roy was advised that the GL-COI-11s' job description had been changed and that they would no longer receive the ITD. In his case, he was red-circled, so he continues to receive his earlier salary, including the ITD. He has been assigned to other duties, but nevertheless, he was very much disturbed by the removal of the ITD. According to him, despite changes to the work description, the work itself remains the same. The inmates are still being trained; they still need to be supervised. The instructors provide most of the direct training, but the same oversight role for the GL-COI-11s remains, as well as the motivation and encouragement aspects of the relationship with inmates. Mr. Roy stated that he never received a satisfactory explanation as to how exactly the duties had changed.

[43] Mr. Roy has filed both a job-description and a classification grievance. He believes that the job description has become unclear and that it does not properly reflect the tasks that GL-COI-11s continue to do. He has been assigned to a different position but has regular contact with other GL-COI-11s both inside and outside Quebec. He stated that he finds the classification decision to remove the ITD unfair, since employees should be paid for the duties they carry out.

[44] Mr. Lantagne works at the Sainte-Anne-des-Plaines Institution in Quebec. He was appointed a GL-COI-11 in October 2018, so he never received the ITD. Yet, he described his GL-COI-11 duties in very much the same terms as did Mr. Roy. He receives maintenance and repair service requests, assigns work to tradespeople according to their specialties, and supervises their performance. He is also involved in supervising the inmates' work, to ensure the quality of the work performed. If something is done wrong, or if he sees an inmate approaching a task unsafely or inefficiently, he will

intervene. The instructors assess the inmates' work every three months. Mr. Lantagne reviews that assessment and enters it into the IMS. He ensures that the comments are complete and constructive. He meets personally with each inmate to deliver the assessment.

[45] He agreed that the instructor is primarily charged with training an inmate in the instructor's trade, but he sees the GL-COI-11s' role as ensuring that all goes well and that safety instructions are provided and generally as motivating and encouraging inmates and smoothing things over when behavioural issues or personality conflicts arise. If the instructor is absent, Mr. Lantagne will supervise an inmate's work directly.

[46] He ensures that the training program corresponds to the inmate's needs and skills and that it encourages learning. He works closely with the instructors and often counsels them on the proper relationship with inmates — it should be respectful, but staff must be aware that they should not become too personal with inmates, as it entails too many risks. If behavioural problems cannot be managed, Mr. Lantagne will suspend inmates from the training program.

[47] Mr. Gower applied for the supervisor GL-COI-11 position when the ITD was still part of the working conditions, but he was appointed to it only in November 2018, after being in that position on an acting basis from April to November. Before that, beginning in 2002, he had been a plumber at Mountain Institution in British Columbia. In that capacity, he trained a number of inmates and reported to the chief of works, who was classified at the GL-COI-13 group and level.

[48] The CSC-wide restructuring of Technical Services meant that a GL-COI-11 position was created at Mountain Institution. The Chief of Works, who had been his supervisor, became the Chief of Facilities Management, responsible for three institutions, Mountain, Kent, and Chilliwack. At Mountain and Kent institutions, positions were created at the GL-COI-11 level to supervise the tradespeople.

[49] Mr. Gower described his GL-COI-11 work as assigning and coordinating maintenance and repair work, inspecting worksites, and dealing with problems, including those involving the inmate workforce.

[50] He described a typical workday.

[51] The day begins with a 15- to 20-minute briefing session with correctional managers where concerns and information about the institution are shared. Then, he returns to his office and checks the electronic system for service requests. Work orders are accepted or rejected according to the SLA, and work is assigned to the shops. Then the inmates show up for work. Mr. Gower meets the group and answers any questions or concerns.

[52] Mr. Gower deals with purchases, contract approvals, and contractors from outside the institution. He ensures that they have the proper passes and tools.

[53] He visits the worksites to check that safety measures are enforced and that the proper materials are provided and to answer any questions or deal with complaints. The whole day is about problem solving — problems related to services or people, including inmates. If an inmate has a grievance, he will meet with the inmate and investigate the circumstances.

[54] Some 35 to 40 inmates work in technical services in the institution. Mr. Gower sees them on a daily basis. During the COVID-19 confinement period, they did not work; work is restarting presently (as of the hearing date — August 2020).

[55] Mr. Gower approves the hiring of inmates and will often meet with inmates applying for a position to determine their suitability. He often will intervene in conflicts between tradespeople and inmates and try to resolve problems amicably. If discipline is necessary, he will recommend it to the Programs Board, which makes disciplinary decisions.

[56] Mr. Gower is responsible for the performance evaluations for the tradespeople who report to him. He believes that one of the more important aspects of the assessment is that they have a good working relationship with the inmates, as he sees that technical services has the mandate to train and employ inmates. He stated that he tries to be a role model by developing positive relationships and by providing training in a constructive and respectful way.

[57] He sees his role with the inmates from a different perspective than when he was a plumber. Then, he would train 1 or 2 inmates at a time. Now, he supervises approximately 35 inmates. He ensures that all goes well and that things run smoothly. Part of that involves monitoring the inmates' behaviour and successes, which is not the

direct training of inmates that he did as a plumber. He agreed with the definition in the classification standard that speaks of motivation and encouraging self-improvement. He also is very aware of how inmates are trained and of how the training can be improved, if necessary.

[58] Mr. Gower stressed how inmate employment was an integral part of the technical services offered in the institution. Without them, technical services could not be offered in-house. When the work descriptions refer to maintenance staff, Mr. Gower believes that it includes the inmates, whether or not they are mentioned, as they compose the institution's labour force.

[59] The reality of working with inmates in an institution changes the nature of a supervisor's work. According to him, it is essential that GL-COI-11s have experience working with inmates; if not, the job cannot be done.

[60] Mr. Gower added that training inmates involves not only technical training. Inmates also have to learn behaviours that will serve them well in the outside world, such as obeying directions, being punctual, following rules, and understanding routines. A GL-COI-11 has an important part to play in teaching those behaviours and habits through motivation, encouragement, and problem solving with inmates and instructors.

[61] Mr. Bélanger and Ms. Racicot saw the GL-COI-11s' role as supervising the employment program but not offering training. Neither of them had GL-COI-11s or GL-COI-13s reporting to them. They both stressed the fact that the GL-COI-11s received an allowance called the "Correctional Service Specific Duty Allowance" (CSSDA), which was bargained for and defined as follows in the collective agreement:

…

> ***61.01*** *The CSSDA shall be payable to incumbents of specific positions in the bargaining unit within Correctional Service of Canada. The Allowance provides additional compensation to an incumbent of a position who performs certain duties or responsibilities specific to Correctional Service of Canada (that is, custody of inmates, the regular supervision of offenders, or the support of programs related to the conditional release of those offenders) within penitentiaries as defined in the Corrections and Conditional Release Act, and/or CSC Commissioner Directives.*

…

A. Work descriptions

[62] The 2007 work description for "Maintenance/Works Supervisor, GL-COI- 11" refers to inmate direction and training several times. The "Key Activities" section deals mainly with organizing maintenance and repair services for an institution. It includes the following references to training and supervising inmates:

> …
>
> *Sets priorities, directs and monitors the activities of the staff and inmates in the ongoing operation, maintenance, inspection and repair to various systems….*
>
> *Supervises, trains and develops a staff of highly skilled journeymen and/or semi-skilled tradesmen, including inmates ….*
>
> …
>
> *… provides quality control of the services provided by contractors, staff and inmates in the maintenance and repair of the facility ….*
>
> …
>
> *Coordinates the training and instruction of offenders in the performance of various works or engineering tasks; in safe work practices and in the safe and proper use of hand tools and portable power tools; ensures the maintenance and control of shop inventory and tools; monitors the quality control of services provided by offenders; completes inmate assessment reports; and controls the offender's behaviour and movement.*

[63] The "Skills" section states that the work requires knowledge of the equipment and systems and maintenance and repair techniques as well as management and human resources skills. Among the knowledge required is the following:

> *The principles and techniques of training and instruction to train staff and inmates … with respect to the utilization of maintenance equipment, fire prevention, safety, induction and security. This knowledge must extend to the assessment of the training program and the formulation of recommendations for improvement or problem-resolution.*

[64] Finally, the "Responsibility" section includes the following paragraph:

> *Supervises or controls inmates, and their movement; takes corrective action when appropriate in regards to the inmates' work responsibilities; gives direction to inmates regarding the rules or regulations of the institution, their behaviour, or their participation in their work activities; contributes to the overall operations of the institution by leading a group of inmate workers; observe and report on inmate behaviour to appropriate case managers on a regular basis.*

[65] The 2016 and 2018 work descriptions include large parts of the 2007 work description with respect to organizing, coordinating, and directing maintenance and repair work for an institution. There are notable differences with respect to directing and supervising inmates. Under "Key Activities", the 2016 work description refers as follows to inmates:

> *Establishes priorities, directs and monitors the activities of the staff and inmates in the ongoing operation … maintenance, inspection and repair to various systems, vehicles and physical structures….*
>
> *…*
>
> *… provides quality control of the services provided by contractors, staff and inmates in the maintenance and repair of the facility ….*
>
> *…*
>
> *Supervises and provides advice on work techniques, best practices and expertise to maintenance staff, including inmates, in order to perform such work as: painting, masonry, sheet metal work, carpentry, welding, locksmith, electrical work, plumbing, vehicle mechanic, heavy equipment operation, fire prevention, millwright, water treatment, grounds keeping, general duty and labour as well as service plant operation in an institutional setting.*
>
> *…*
>
> *Supervises and trains inmates, directly or through employees under the incumbent's responsibility, in work related to facilities management. Determines the needs for inmate employment to support the maintenance team. Identifies training needs for inmates and ensures the work environment in which they are employed remains safe for them and for employees. Coordinates activities related to the inmate employment program within the defined framework, writes and/or reviews inmate performance evaluations, controls the inmates' behaviour and movement. Determines and applies appropriate monitoring requirements, ensures compliance of inmate performance evaluations with the program objectives and guidelines.*

[66] I note that the description of activities in the 2016 work description closely corresponds to what Messrs. Roy, Lantagne, and Gower testified were their main duties with respect to training inmates. The 2016 work description provided at the hearing included only the key activities (not skills and responsibilities).

[67] There are two 2018 work descriptions, one for the healing lodges (HL) and the other for other institutions (OI). The key activities in the 2018 work description (HL) are identical to those in the 2016 work description (except for one sentence added in the 2018 work description (HL) that is irrelevant to the grievance at issue).

[68] Under "Skills" and the subheading "Knowledge" in the 2018 work description (HL), the following is required: "The principles and techniques of training and instruction to train staff and inmates … with respect to the utilization of maintenance equipment, safety and security."

[69] Under "Responsibility" in the 2018 work description (HL), the following paragraph is included:

> *Supervises or controls inmates, and their movement; takes corrective action when appropriate in regards to the inmates' work responsibilities; gives direction to inmates regarding the rules or regulations of the institution, their behaviour, or their participation in their work activities.*

[70] The 2018 work description (OI) is largely the same as the 2018 work description (HL), except for the removal of most references to inmates or their training. The key activities mentioned earlier appear as follows:

> *Establishes priorities, directs and monitors the activities of the staff in the ongoing operation … maintenance, inspection and repair to various systems, vehicles and physical structures….*
>
> *…*
>
> *Supervises and provides advice on work techniques, best practices and expertise to maintenance staff in order to perform such work as: painting, masonry, sheet metal work, carpentry, welding, locksmith, electrical work, plumbing, vehicle mechanic, heavy equipment operation, fire prevention, millwright, water treatment, grounds keeping [sic], general duty and labour as well as service plant operation in an institutional setting.*
>
> *…*
>
> *Supervises the inmate employment program of the site(s), ensuring compliance with the Service Level Agreement. Determines the needs for inmate employment to support the maintenance team. Ensures the work environment in which they are employed remains safe for them and for employees. Reviews and supports inmate employment opportunities, promotes employment of inmates, collaborates with institutional programs to support the organization in achieving the goals related to correctional programs.*

[71] Under "Skills", knowledge is required for the following: "The principles and techniques of training and instruction to train staff ~~and inmates~~ … with respect to the utilization of maintenance equipment, safety and security."

[72] The words “and inmates” are simply crossed out; none of the employer witnesses could explain who had crossed them out. Three 2018 work descriptions (OI) were introduced at the hearing corresponding to different levels of supervision (i.e., the number of tradespeople supervised, which has an impact on the supervision premium) that are otherwise identical. In all three, the words “and inmates” are crossed out. I note that in the French versions of the three work descriptions, in the corresponding phrase *Connaissance des principes et des techniques de formation et d’instruction du personnel et des détenus …*, the words *et des détenus* are not crossed out.

[73] Finally, under “Responsibility”, the paragraph concerning the supervision and control of inmates’ movement reads as follows: “Supervises the control of inmates, and their movement; gives direction to staff supervising inmates regarding the rules or regulations of the institution, their behaviour, or their participation in their work activities.”

B. The classification process

[74] The classification committee met in June 2017 and assessed the 2016 work description. It concluded that the GL-COI-11 position should have a training rating of “C”. This rating now applies to the GL-COI-11s working in healing lodges.

[75] Another classification committee (both three-person committees shared one member) revisited the conclusions of the first classification committee in February 2018. The signature page is dated February 9, 2018. In its report, the committee explains as follows why it considered anew the classification of the GL-COI-11 position:

> *In 2014, the Correctional Service Canada began grouping minimum, medium and maximum security institutions within similar geographic areas into “clustered” sites. This clustering allowed the organization to share human and financial resources between multiple institutions where appropriate. One of the areas in which efficiencies were realized by clustering was Technical Services and Facilities.*
>
> *Management initiated the review and update of the generic Technical Services and Facilities work descriptions in order to reflect changes in the work brought about by the clustering of sites. As a result of clustering, the Supervisor, Facilities Management role became responsible for the supervision of facilities management within a specific institution or for a specific*

> *portfolio of work, whereas previously this role had been used as the head of facilities management within small institutions only.*
>
> *A classification committee was held on Wednesday, June 14, 2017, to evaluate the Supervisor, Facilities Management work description.*
>
> *Following the evaluation of the work description, management undertook discussions regarding the role of the Supervisor, Facility Management in the training of inmates. It was determined further review of the work description was needed in order to remove the responsibility for inmate training from the work description.*
>
> *In February 2018, a classification committee was convened to review the impact of the work description changes on the evaluation of the work description.*

[76] In the June 2017 classification rationale, the "C" rating is explained as follows:

> ***Nature of Training Responsibility*** ***Degree C***
>
> *The work requires supervising and training inmates, directly or through employees under the SP's responsibility, in work related to facilities management. This involves determining the needs for inmate employment to support the maintenance team; identifying training needs for inmates and ensuring the work environment in which they are employed remains safe for them and for employees; coordinating activities related to the inmate employment program within the defined framework, writing and/or reviewing inmate performance evaluations, proposing disciplinary action, controlling the inmates' behavior and movement and determining and applying appropriate monitoring requirements as well as ensuring compliance of inmate performance evaluations with the program objectives and guidelines.*

[77] In the 2018 classification rationale, the rating is simply "N/A" (not applicable). The report explains it as follows: "There is no requirement to train inmates", despite the fact that the following passage is found in both reports, under "Committee Deliberations":

> *In its deliberations, the June 2017 committee considered all the information relative to the SP (subject position) including the proposed work description, proposed organizational chart, previous work description, management's response to committee questions as well as internal and external relativity.*
>
> *Questions arose during the evaluation of the subject position under the Inmate Training Plan, so the committee contacted the functional authority representative, Martin Khalife, Director, Engineering and Maintenance, Technical Services to clarify the SP's responsibilities related to inmate training. Mr. Khalife confirmed*

> *the SP delivers training to inmates with respect to the utilization of maintenance equipment, safety and security and ensures the work meets the delivery standards of the Service Level Agreement (SLA).*
>
> …

[78] At the hearing, none of the employer's witnesses could explain the seeming discrepancy between Mr. Khalife's comment and "no requirement to train inmates". Mr. Morgan offered that perhaps it was an oversight and an error to have included it in the second report, which is largely identical to the first report.

[79] As stated, the report of the second classification committee was signed on February 9, 2018. On February 8, 2018, Stephanie Lane, Senior Director, Technical Services, emailed the following to Mr. Sauvé: "Good morning Ghislain, Please find attached the final version of the COI-11 with no ITD for routing to the ACCS's office."

[80] Finally, I note that in the 2018 work description (OI), a number of points correspond to the rationale that the June 2017 classification committee used to justify a rating of "C" for training. These are the points:

> ***Key Activities:***
>
> *… Determines the needs for inmate employment to support the maintenance team. Ensures the work environment in which inmates are employed remains safe for them and for employees. Reviews and supports inmate employment opportunities, promotes employment of inmates, collaborates with institutional programs to support the organization in achieving the goals related to correctional programs.*
>
> ***Effort:***
>
> …
>
> *Prepare oral and written reports for correctional staff (regarding observations made with respect to the behaviour of offenders) to assist them in making decisions regarding offender discipline, movement, transfer and the overall safety and good order of the Institution. Effort is also required to ensure offenders comply with Departmental rules and regulations; and to recommend disciplinary action.*
>
> ***Responsibility:***
>
> …
>
> *Supervises the control of inmates and their movement; gives direction to staff supervising inmates regarding the rules or regulations of the institution, their behaviour, or their participation in their work activities.*

III. Summary of the arguments

A. The employer's objections

[81] The employer had three main objections: this is not a proper policy grievance, as it does not relate to the bargaining unit generally; the Board has no jurisdiction on classification issues; and the employer's management rights allowed it to change the duties assigned to the employees. The decision to remove the ITD was a classification matter resulting from a change of duties.

[82] The *Federal Public Sector Labour Relations Act* (S.C. 2003, c. 22, s. 2; "the *Act*") provides for policy grievances at s. 220(1) in the following terms:

> ***220 (1)*** *If the employer and the bargaining agent are bound by an arbitral award or have entered into a collective agreement, either of them may present a policy grievance to the other in respect of the interpretation or application of the collective agreement or arbitral award as it relates to either of them or to the bargaining unit generally.*

[83] Policy grievances do not relate directly to an individual grievor or a group of grievors. Rather, they provide the parties to a collective agreement or arbitral award, who are the employer and the bargaining agent, with the opportunity to raise a general dispute about interpreting or applying the collective agreement or arbitral award as it relates to them or the bargaining unit generally.

[84] According to the employer, this grievance concerns a group of employees, the GL-COI-11s working in institutions other than healing lodges. The proper recourse is an individual or group grievance, since the matter does not concern the bargaining agent or the bargaining unit generally.

[85] The bargaining agent invoked article 58 of the collective agreement, which entitles individual employees to a complete and current work description. The recourse for a deficient work description is clearly an individual grievance. Moreover, if the bargaining agent challenged the work description, it had to call all the employees concerned as witnesses. It did not meet its evidentiary burden of showing that the work description is deficient by calling only a few chosen GL-COI-11s.

[86] The grievance concerns the fact that GL-COI-11s are no longer entitled to the ITD. Determining that entitlement is a classification issue, over which the Board has no jurisdiction.

[87] The classification review that led to removing the ITD related to a change to the duties assigned to the GL-COI-11s. The employer can add or remove duties as provided in s. 7 of the *Financial Administration Act* (R.S.C., 1985, c. F-11; (*FAA*); nothing in the *Act* or the collective agreement changes that right.

[88] There is no free-standing entitlement to the ITD under the collective agreement. The ITD is paid if the classification committee rates a position as having training responsibilities. This is a classification decision, and again, the Board has no jurisdiction.

[89] The bargaining agent also submitted in its grievance that the employer breached Appendix K of the collective agreement, which reads as follows:

> ***Appendix "K": Memorandum of Understanding Between the Treasury Board and the Public Service Alliance of Canada With Respect to Classification Review***
>
> *Unless otherwise agreed with the Alliance, the Employer agrees not to enter into collective bargaining with respect to modifications to the Operational Services rates of pay related to classification review during the life of the present agreement until notice to bargain has been served.*

[90] The employer argued that it has not entered into collective bargaining or modified the rates of pay provided in the collective agreement. The classification review referred to does not involve the individual classification of positions but rather the introduction of new occupational groups or new classification standards, which would necessitate bargaining new rates of pay. Therefore, this claim of the bargaining agent should not be considered.

[91] So that the Board could narrow the issues at the hearing, the employer asked that it do the following before the hearing:

- *Declare that it has no jurisdiction over the assignment of duties by the Employer pursuant to section 7 of the FPSLRA;*
- *Declare that a policy grievance is not the proper recourse in the circumstances to allege a breach of the Statement of Duties Article;*
- *Declare that it has no jurisdiction over whether an ITD is payable to the GL-COI-11 incumbents since that is a classification issue; and*
- *Declare that Appendix K of the Collective Agreement is plainly inapplicable to the matter at hand.*

[92] As stated earlier, I did not pronounce on the objections before the hearing.

B. For the bargaining agent

1. The employer's objections

[93] Before the hearing, the bargaining agent responded that evidence was necessary to decide all the issues and that if it made the declaration that the employer sought, the Board would decide in the employer's favour before receiving the bargaining agent's evidence.

[94] According to the bargaining agent, this is a proper policy grievance. Grievances are not mutually exclusive, and the bargaining agent is entitled to make a policy grievance concerning the application and interpretation of the collective agreement. Two conditions must be met: it must concern the application or interpretation of the collective agreement, and it must affect members of the bargaining unit covered by the collective agreement (see *Professional Institute of the Public Service of Canada v. Treasury Board*, 2019 FPSLREB 7). The broader interest in this case is how the pay provisions are applied. At the hearing, the bargaining agent reported on the general concern about the ITD.

[95] The bargaining agent cited *Public Service Alliance of Canada v. Treasury Board (Canada Border Services Agency)*, 2008 PSLRB 84, to support its argument that a policy grievance was properly used in this case because the bargaining agent seeks to have the employer respect the intent of the collective agreement. In addition, the employer's actions in this case concern the bargaining unit, given the unilateral change of conditions that could happen (as was feared) to other members of the bargaining unit. It is not necessary that all members be concerned. It is a matter of the bargaining unit being generally concerned, not of every member being directly impacted (see *Professional Institute of the Public Service of Canada v. Treasury Board (Correctional Service of Canada)*, 2008 PSLRB 95).

[96] The employer also objected that the grievance was a classification issue and that therefore, the Board does not have jurisdiction. The bargaining agent opposed that objection, stating that it is not a matter of classification but rather of the remuneration to which the GL-COI-11s are entitled, given their duties. It invoked *Stagg v. Canada (Treasury Board)*, [1993] F.C.J. No. 1393 (T.D.)(QL), and *Chadwick v. Canada (Attorney General)*, 2004 FC 503, in which the Federal Court found that the adjudicator

had jurisdiction in matters of acting pay, since the issue was covered by the collective agreement. I will return to the jurisprudence in my analysis.

[97] Finally, the employer invoked its management rights under ss. 7 and 11 of the *FAA*. The bargaining agent did not dispute management rights but countered that they must be exercised reasonably and consistently with the collective agreement (see *Association of Justice Counsel v. Canada (Attorney General)*, 2017 SCC 55). The same principle is stated in *Union of Canadian Correctional Officers - Syndicat des agents correctionnels - CSN v. Treasury Board (Correctional Service of Canada)*, 2007 PSLRB 120 ("*UCCO-SACC 2007*"). The unreasonable removal of the ITD cannot be considered a fair and reasonable application or interpretation of the collective agreement. Under that agreement, the GL-COI-11s are entitled to fair remuneration for the work they perform.

[98] The work description is not the concern per se but rather how the employer acted by modifying it with the specific intent of decreasing the GL-COI-11s' pay. There is no reason it cannot be the subject of a policy grievance.

2. On the merits

[99] The work description was altered because of a pay-discrepancy issue, which is not a proper reason to write work descriptions or carry out classification activities. However, the work description changes did not bring about a change to the GL-COI-11s' responsibilities. Supervising tradespeople means that they continue to be responsible for training inmates, as they were before. Their interaction with inmates goes beyond what the CSSDA covers.

[100] In the inmate-training rating plan (within the classification standard), inmate-training rating is defined by the nature of responsibilities and the number of inmates trained, whether directly or "through subordinate instructors". Those definitions have not changed, and they still apply. The bargaining agent submitted that the pay provisions were violated since the ITD is part of the GL-COI-11s' pay; despite the work description change, their duties have not changed. Article 58 was also violated, since the job description is no longer accurate.

[101] The bargaining agent emphasized the difference between the supervisory differential and the ITD. For the supervisory differential, the collective agreement

clearly states that it will be established according to the classification standard. There is no equivalent provision for the ITD; the collective agreement simply has a definition of "pay" at Appendix B, specific to the General Labour and Trades Group, which states that pay includes the supervisory differential and the ITD, when applicable. Clause 4.01 of Appendix B reads as follows: "A supervisory differential, as established in Annex B, shall be paid to employees in the bargaining unit who encumber positions which receive a supervisory rating under the classification standard, and who perform supervisory duties."

[102] There is no equivalent clause for the ITD, and therefore, the classification standard serves to determine the ITD alphanumerical coordinates, not the entitlement.

[103] It is clear from the process of removing the ITD that doing so was the employer's goal from the start. As Mr. Bélanger testified, it was clear that the regional administrators considered direct training when reformulating the work description, not the GL-COI-11s' duties. Mr. Sauvé's testimony did not contradict the bargaining agent's version. He stated that it was his decision to ensure that the GL-COI-11s would not receive a salary equivalent to the GL-COI-13s' salary. Mr. Morgan supplied the classification rationale much later.

[104] The employer did not contradict the GL-COI-11s' testimony that their duties have not really changed. Its witnesses stressed the point of direct training but never denied that the GL-COI-11s continue to be ultimately responsible for inmates' training and employability.

[105] Finally, the fact that the GL-COI-11s receive the CSSDA is irrelevant. It is an allowance that is part of the collective agreement and that recognizes the added stress of working in an institution that houses offenders. It has nothing to do with inmate training.

[106] The employer sought to escape its pay obligations under the collective agreement. That is the violation, which is what this policy grievance is all about.

C. For the employer, on the merits

[107] The employer argued that this is indeed a classification issue and that it should be grieved as such. The employer reformulated the work descriptions, as it is entitled

under the legislation, and a classification committee determined that the new work description did not involve inmate training.

[108] Contrary to what the bargaining agent affirmed, the employer argued that the collective agreement does not create any obligation to pay the ITD. If the employer does not assign any duties to train inmates, as is the case with the new work description, then the employer has no obligation to pay the ITD.

[109] Management rights with respect to assigning duties and classification are found in the legislation and are not displaced by the collective agreement. A change to duties may be grieved but cannot be referred to adjudication; nor can a classification grievance be referred to adjudication. Therefore, the Board is without jurisdiction in this matter.

[110] The employer cited *Jennings v. Treasury Board (Department of Fisheries and Oceans)*, 2011 PSLRB 20, for the proposition that a generic work description can be sufficient; it is not necessary to detail all the elements of the duties performed.

[111] The employer made the parallel with *Batiot v. Canada Customs and Revenue Agency*, 2005 PSLRB 114, and *Maillet v. Treasury Board (Department of Employment and Social Development)*, 2014 PSLRB 16, in which the adjudicator found that the employees were assigning themselves duties that their employer did not require or that it no longer required. In the same way, if the GL-COI-11s find themselves responsible for training, then they are performing duties that they are no longer required to perform.

[112] In short, the decision relates to classification, and the Board has no jurisdiction.

IV. Analysis

[113] The employer argues that this policy grievance is not a true policy grievance, and moreover, that it really is a classification grievance, over which the Board does not have jurisdiction. The decision underlying the classification exercise, which was rewriting the work description, was simply part of management's rights, and again, the Board has no jurisdiction.

[114] I declined making any declaration before the hearing as I agreed with the bargaining agent that evidence was necessary to make any decision, including on the

objections. I will deal with each objection before pronouncing on the merits of the grievance.

[115] The grievance specifically referred to the employer's actions violating article 58 and Appendices C and K. At the hearing, Appendix K was not argued.

[116] The parties submitted a number of cases to support their arguments. I will cite those that I found useful to this decision.

A. Whether this is a proper policy grievance

[117] The employer argued that this cannot be a policy grievance, since it does not affect the bargaining unit generally. It should be presented as an individual or group grievance, according to the employer.

[118] However, at s. 232, the *Act* refers to the possibility that a policy grievance relates "… to a matter that was or could have been the subject of an individual grievance or group grievance …". That section then limits the remedies that the Board may award if such is the case.

[119] In *Public Service Alliance of Canada v. Treasury Board (Canada Border Services Agency)*, 2008 PSLRB 84, the adjudicator wrote as follows:

> …
>
> *65 … Section 232 of the* Act *clearly implies that the legislator intended that a policy could be challenged on a principle basis through a policy grievance with suitable remedial authority given to the adjudicator, without the parties having to wait for the individual impacts arising from the application of the policy. This procedure can also avoid a multiplicity of proceedings and favours an early consideration and adjudication of the alleged violation of the collective agreement resulting from management actions which affect its employees broadly.*
>
> …
>
> *68 My understanding of the purpose of a policy grievance is to provide a forum through which issues relating to the application and interpretation of provisions of the collective agreement or an arbitral award are resolved on a principle basis. As I stated earlier, this is reinforced by section 232 of the* Act *which provides the adjudicator with declaratory powers and the ability to issue a compliance order, but no mention is made of individual redress. In such a context, I do not see the relevance of distinguishing between those policies affecting all of the employees in the bargaining unit and those affecting only a portion of the employees in the*

> *bargaining unit: the number of employees potentially affected is irrelevant to the determination of whether the employer is in principle in breach of the collective agreement. I cannot think of any policy reason why Parliament would have required that every employee included in a bargaining unit necessarily had to be affected by an employer action before a policy grievance could be presented.*
>
> …

[120] Both parties cited *Professional Institute of the Public Service of Canada v. Treasury Board (Correctional Service of Canada)*, 2008 PSLRB 95, the employer to emphasize that the nature of the grievance (the assignment of duties and classification) did not warrant a policy grievance, and the bargaining agent to show that a policy grievance was the most appropriate venue in this case. I believe the following passage of that decision is useful to this case:

> …
>
> ***56*** *Those examples reinforce the conclusion that the employer's interpretation of the words "bargaining unit generally" is erroneous. It is inefficient to use individual or group grievances to challenge an employer's policy. It does not matter if the policy affects 1 percent, 10 percent or 50 percent of the bargaining unit. The words "bargaining unit generally" must be interpreted qualitatively and not quantitatively. It is not the number of members of the bargaining unit directly affected that matters but the very nature of the grievance.*
>
> ***57*** *Because subsection 220(1) of the* Act *is ambiguous, it is useful to read it and interpret it in relation to the preamble of the* Act, *which gives the* Act *its tone in setting its purpose. The following sections of the preamble are of particular interest to this case:*
>
> …
>
> Recognizing that
>
> …
>
> the Government of Canada is committed to fair, credible and efficient resolution of matters arising in respect of terms and conditions of employment;
>
> the Government of Canada recognizes that public service bargaining agents represent the interests of employees in collective bargaining and participate in the resolution of workplace issues and rights disputes;
>
> commitment from the employer and bargaining agents to mutual respect and harmonious labour-management relations is essential to a productive and effective public service;

…

> ***58*** *A grievance is a matter arising from the terms and conditions of employment. The preamble suggests that it be resolved efficiently. In the case of an employer's policy which allegedly violates the collective agreement, the most efficient way to resolve the alleged violation is through a policy grievance, because the policy can be challenged whether it applies yet or not, without the need to consider individual circumstances of the employees to which it may eventually apply.*
>
> ***59*** *The employer's interpretation of what constitutes a policy grievance is erroneous. In this case, the employer erred in rejecting the grievance on the basis that it was not a policy grievance because it did not relate to the bargaining unit generally. The grievance does affect the bargaining unit generally, in that it affects all members of the bargaining unit entitled to the benefits of article 40, without regard to individual circumstances. Potentially, any member of the bargaining unit could be affected by article 40, if he or she accepted a position within Correctional Services that receives the PFA. The important point is that the grievance be of general interest to the members.*
>
> ***60*** *The bargaining agent's argument that proceeding by way of a policy grievance is a convenient vehicle is valid. As section 232 of the* Act *makes clear, a policy grievance may be used instead of an individual or group grievance - there is no exclusivity.*

…

[121] In that case, the Professional Institute of the Public Service of Canada (PIPSC) referred a policy grievance about the lack of payment of an allowance to which a small portion of the bargaining unit members were entitled. The employer argued that paying the allowance concerned the employees, not the bargaining agent, and then, only a small fraction of the bargaining unit. The adjudicator found that a policy grievance was an efficient way to grieve the matter.

[122] In this case, the employer argued that the work descriptions and classification should be grieved by way of individual or group grievances. However, as s. 232 of the *Act* and the jurisprudence cited above make clear, a policy grievance may be used instead of an individual or group grievance – there is no exclusivity.

[123] This policy grievance serves to efficiently bring to the Board a grievance involving the bargaining unit generally, as it involves a change to the generic work description applicable to all GL-COI-11s (OI) and a corresponding change in their pay. It is related to the application of the collective agreement, since article 58 of the collective agreement entitles employees to a complete and current statement of duties.

A GL-COI-11's pay also includes the ITD, where applicable, as provided in the definition of "pay" under Appendix B.

B. Whether this is a classification grievance

[124] In *Stagg*, the adjudicator declined jurisdiction over a grievance related to acting pay. The adjudicator accepted the employer's reasoning that it was a classification case, since paying the employee at a higher rate would have been akin to reclassifying her position, something an adjudicator (or in this case, the Board) cannot do.

[125] The Federal Court ruled that the adjudicator had misunderstood his jurisdiction. Acting pay was a right under the collective agreement, independent of classification. The adjudicator had the duty to determine whether the grievor was entitled to acting pay for the time she claimed she had performed the duties of a higher classification.

[126] In this case, the employer argued that no provision in the collective agreement entitles employees to the ITD; the entitlement stems from the classification of the position.

[127] The bargaining agent pointed out the fact that while the supervisory differential is granted if the position receives a supervisory rating under the classification standard (Appendix B, clause 4.01), there is no equivalent language for the ITD, which is paid "where applicable" (see the definitions section of Appendix B), as is the supervisory differential, but without specifying that paying the ITD is a classification decision. The bargaining agent argued that the classification committee simply provides the alphanumerical value of training responsibilities; it does not decide entitlement, as it does for the supervisory differential.

[128] Collective agreement interpretation is similar to legislative interpretation. The parties' intent is to be construed from the clear meaning of the text. As stated in *Professional Institute of the Public Service of Canada v. Treasury Board*, 2019 FPSLREB 7:

…

> ***109*** Brown and Beatty*, at paragraph 4:2100, provides that the intention of the parties to a collective agreement must be gathered from the written instrument. The function of the courts or administrative tribunals, such as this one, is to ascertain what the*

> *parties meant by the words they used and to declare the meaning of what is written in the instrument, not of what was intended to have been written. Accordingly, in determining the parties' intention, the cardinal presumption is that they are assumed to have intended what they have said and that the meaning of the collective agreement is to be sought in its express provisions.*
>
> …

[129] In *Stagg*, the grievor was clearly entitled to acting pay, and classification played no role, except to the extent that the difference in rating (and therefore pay) between two levels of responsibility is a classification decision. In this case, there is no debate that the alphanumeric rating of the GL-COI-11 position for the ITD is a classification decision, which is not what the bargaining agent has asked me to decide.

[130] Rather, the bargaining agent's grievance relates to the duties of the GL-COI-11 position and any corresponding payment of the ITD, where applicable. Again, there is a right under the collective agreement to a complete and current statement of duties. A GL-COI-11's pay also includes the ITD, where applicable, as provided in the definition of "pay" under Appendix B.

[131] Had the grievance been solely about the classification committee's rating, I would have no jurisdiction, and I would consider the grievance a classification issue. However, as I will show later, the employer and the classification committee simply ignored any training duties. As a result, employees were deprived of "pay" that the employer had previously determined that they were entitled to because they performed inmate training. The employer has the duty to ensure that employees have a complete and current statement of duties and are paid for what they do; this is provided for in the collective agreement, as indicated above. To the extent that the employer has not fulfilled those obligations, it is a violation of the collective agreement and not a classification issue.

C. The employer's management rights

[132] The *FAA* provides for the Treasury Board's authority in human resources matters in general and classification in particular. The *Act* reiterates those rights in the labour relations context as follows:

…

> ***6*** *Nothing in this Act is to be construed as affecting the right or authority of the Treasury Board under paragraph 7(1)(b) of the* Financial Administration Act*.*
>
> ***7*** *Nothing in this Act is to be construed as affecting the right or authority of the Treasury Board or a separate agency to determine the organization of those portions of the federal public administration for which it represents Her Majesty in right of Canada as employer or to assign duties to and to classify positions and persons employed in those portions of the federal public administration.*

…

[133] However, those rights are limited by the collective agreement and by applying it in good faith. As stated in *Bodnar v. Treasury Board (Correctional Service of Canada)*, 2016 PSLREB 71 (set aside on other grounds in 2017 FCA 171):

…

> ***136*** *The employer argued that I am without jurisdiction to interpret the NAMP* [National Attendance Management Policy] *as it was established under the employer's management authority under the* FAA*, unless it has been expressly incorporated into the collective agreement or specifically prohibited by the collective agreement. That is a very broad statement of management rights with which I do not agree. Management does have the right as stated earlier to implement policy, but it is restricted by not only anything stated in the collective agreement but also anything that has the effect of violating provisions of the collective agreement.…*

…

[134] In *UCCO-SACC 2007*, the employer objected to a group grievance concerning the payment of premiums in a timely fashion, since the collective agreement did not specify any timelines. The adjudicator found that by considering the purpose clauses of the collective agreement, it was implicit that what the employees were owed would be paid in a reasonable time. The adjudicator wrote as follows:

…

> ***22*** *Whether an employer is under an obligation to administer the collective agreement in a fair and reasonable manner has been the subject of much discussion in the arbitral jurisprudence (see Mitchnick and Etherington,* Labour Arbitration in Canada *at 16.2 and 16.3). The arbitrator in Blue Line Taxi Co. and R.W.D.S.U., Local 1688 (1992), 28 L.A.C. (4th) 280, summarized the discussion and conclusions as follows (at pages 287-88):*

…

> *As I understand the law, therefore, the employer will only be answerable for the exercise of a management discretion if a link to the collective agreement can be established. Such a link might be found to exist if (a) the collective agreement expressly confers or recognizes a management discretion, or (b) the exercise of the management discretion might lead to specific provisions of the agreement being negated or undermined.*
>
> …

[135] The employer has the discretion to modify the work description and classify positions. However, the exercise of that discretion cannot lead to the negation of collective agreement rights. That is exactly what the bargaining agent claims in this case. Therefore, I cannot simply dismiss the grievance because of management rights.

D. The merits

[136] The employer argued that if the bargaining agent challenged the work description, it would have to call all the employees concerned. I believe that it is sufficient to show that the generic work description is basically flawed. I find that the generic work description for GL-COI-11s (OI) is not complete with respect to describing their inmate training duties. I do not need to hear from every GL-COI-11 to confirm it.

[137] The bargaining agent argued that the employer's actions violated the collective agreement provisions relating to work descriptions and pay. I agree.

[138] The removal of inmate training duties from the 2018 work description was clearly instigated to reduce the GL-COI-11s' pay as the GL-COI-13s would no longer be entitled to the ITD. I received little evidence on the situation of the GL-COI-13s (who are not represented by a bargaining agent, being in managerial positions), but it was sufficient to understand that they experienced a true change to their duties. Some GL-COI-13s (as was the case for Mr. Gower's supervisor when Mr. Gower was a tradesperson directly training inmates) performed the work of GL-COI-11s (and received the ITD). With the restructuring of Facilities throughout the CSC, the GL-COI-13s became two levels above the tradespeople, and therefore were not involved with inmate training.

[139] The ITD removal is related to the 2018 work description; however, this work description still includes (as I will show later) elements that the classification committee used as indicators of training in its 2017 classification exercise.

[140] The documents introduced at the hearing concerning the change to the work descriptions and the classification committee's deliberations and conclusion clearly show that the employer wanted to ensure that the ITD would no longer be paid to the GL-COI-11s. I find that this is the reason for the sudden change from June 2017 to February 2018 that GL-COI-11s were no longer performing any training.

[141] There was an utter lack of explanation for the second classification committee's decision. Mr. Morgan, the classification specialist called to testify at the hearing, had no knowledge of the committee's discussions. He spoke in general terms of the classification exercise, certainly not of the specifics of this case.

[142] Again, I am entirely aware of the fact that the Board has no jurisdiction in classification matters. However, the evidence pertaining to the classification committee's deliberations is pertinent to the issue of whether the 2018 work description was brought about by an actual change to the GL-COI-11s' duties.

[143] The first classification committee's rationale in determining the training rating and ITD level for the GL-COI-11s working in healing lodges included a number of points that are also found in the 2018 work description (OI):

- determining the needs for inmate employment to support the maintenance team;
- ensuring that the work environment in which inmates are employed remains safe for them and for employees;
- coordinating activities related to the inmate employment program within the defined framework;
- and proposing disciplinary action, controlling the inmates' behaviour and movement, and determining and applying appropriate monitoring requirements.

[144] Yet, in the second classification committee's report, there is no rating for training because according to the committee, there is no training requirement, despite the same factors appearing in the work description.

[145] No explanation was provided. It seems clear that management decided to do away with the ITD for GL-COI-11s (except in healing lodges), and the classification committee accepted management's request. I base this conclusion on the fact that the work descriptions "without ITD" were sent for signature on February 8, a day before the classification committee signed its report on February 9. I also base my conclusions on the contradictions within the second report; that is, not taking into

account factors that had been used before to find that the GL-COI-11s did perform training.

[146] I am satisfied from the testimony of Messrs. Roy, Lantagne, and Gower that the GL-COI-11s' work has not changed, despite changes to the work description. They are not generally responsible for the direct training of inmates, and they never were. They are, as they have always been, very much involved in ensuring proper inmate training and supervision, and they contribute directly to inmate motivation and self-esteem through frequent interactions with them and through their involvement in the inmates' learning plans and assessments.

[147] I do not find this case similar to *Batiot*, which the employer invoked to illustrate the fact that employees might assign themselves duties that the employer does not require. The GL-COI-11s are still responsible for the work performed by the tradespeople and the inmates. They are still responsible for the inmates' "employability". They cannot properly carry out those duties without being involved in the inmates' training. The problem with the work description is that it has become fuzzy. It both includes and suppresses the training responsibility; a complete and current work description must be clear.

[148] As stated in the following extract from *Maillet*, the test as to the accuracy of the work description is whether the duties continue to be carried out:

…

> ***64*** *… The proper approach is to compare the job description with those duties, activities and responsibilities carried out and intended to be carried out by the grievor as of the introduction of the new job description. Duties not within the job description that continued to be carried out after that date are relevant if, on the evidence, they continued to be a material, ongoing part of the grievor's duties. They are not relevant if the evidence establishes that their performance was either voluntary or the result of the type of transitory overlap that occurs when old job descriptions evolve into new ones.*

…

[149] The employer argued that instead, it is a case of duties continuing to be carried out because of "transitory overlap". I cannot agree. I am satisfied from the evidence that the duties remain and that the responsibility for inmate training remains with the GL-COI-11s, albeit indirectly, as was largely the case before.

[150] The following definitions are given for "Nature of Training Responsibility" and "Number of Inmates Trained":

> *"Nature of Training Responsibility" refers to the actions taken singly or collectively and progressively to establish communications with inmates, to motivate them towards self-improvement, to encourage in them a pride of accomplishment, to train them in specific skills, and to assist them in a better self-understanding.*
>
> *"Number of Inmates Trained" refers to the relative size of the inmate group for which the incumbent of the position exercises training control directly or through subordinate instructors.*

[151] Those definitions still apply. I cannot properly assess the GL-COI-11s' work description with respect to those definitions; that is the task of a classification committee. However, that task must be carried out in good faith, based on a complete and current statement of duties.

[152] The incumbents and the bargaining agent were not consulted with respect to the 2018 work description. The employer certainly has the right to assign duties and to add and remove them. But at the same time, as provided in the collective agreement, employees are entitled to a complete work description, and their tasks should be accurately reflected in it.

[153] I find that the current 2018 work description (OI) does not reflect all the GL-COI-11s' inmate training tasks. From the evidence, the 2016 work description accurately reflected their duties. The GL-COI-11s are entitled to a fair description of their duties. In one of the decisions cited by the employer, *Currie v. Canada (Canada Customs and Revenue Agency)*, 2006 FCA 194, the Federal Court of Appeal stated that for an employee to seek reclassification, the employee must first agree with his or her job description. If the job description omits a significant part of his or her work, it must be corrected.

[154] I agree that a generic work description may be sufficient (see *Jennings*). That said, if significant elements are omitted that preclude the classification committee from fairly evaluating the position, the work description must be amended. As stated in *Wilcox v. Treasury Board (Department of Human Resources and Skills Development)*, 2013 PSLRB 145 at para. 28: "So long as the job description sufficiently describes in broad terms the full range of duties and responsibilities attributed to the position and

it reflects the realities of the affected employee's work situation, all is well." The problem in this case is that the 2018 work description (OI) does not reflect "the full range of duties and responsibilities".

[155] I cannot tell the classification committee how to assess positions; it has the necessary expertise. But it must ensure consistency in its assessments, in the interests of fairness and harmonious labour relations.

[156] Further, there is an expectation that the collective agreement's provisions will be implemented fairly, to follow on the principles enshrined in the preamble to the *Act* and the purpose clause of the collective agreement. While the employer has discretion with respect to the assignment of duties and the classification of positions, the collective agreement entitles employees to a complete and current statement of duties and, where applicable, to be paid the ITD. As stated previously, the employer will be answerable for the exercise of its discretion if a link to the collective agreement can be established. I find that such a link exists in this case. The 2018 work description for GL-COI-11s (OI) does not accurately reflect their inmate training duties, as required by article 58 of the collective agreement.

[157] I further find that the removal of inmate training duties from the 2018 work description was not based on the exercise of management's discretion with respect to the assignment of duties but was to negate the GL-COI-11s' previously determined entitlement to the ITD. The ITD is part of the collective agreement, and it is expected that it will be paid to employees "where applicable" (Appendix B of the collective agreement). Until March 2018, the GL-COI-11s received the ITD pursuant to the duties enunciated in the 2016 work description and the classification committee's determination, based on that 2016 description, that it was applicable. The evidence in this case demonstrates that the 2016 work description remained current and complete and that the changes brought about to it by the employer in March 2018 were not accurate or reflective of any change in duties. As such, I find that the 2016 work description and corresponding entitlement to the ITD, as previously determined by the employer, remained applicable and that the employer violated the pay provisions of the collective agreement by not paying GL-COI-11s that applicable ITD, effective March 2018.

[158] Therefore, I find that the pay provisions of the collective agreement (Appendix B, definition of "pay"), as well as article 58, which entitles employees to "… a complete and current statement of the duties and responsibilities …" of their positions, have been violated.

[159] For all the above reasons, the Board makes the following order:

(The Order appears on the next page)

V. Order

[160] The employer's objections are rejected.

[161] The policy grievance is allowed.

[162] I declare that article 58, which entitles employees to a complete and current statement of the duties and responsibilities of their positions, has been violated.

[163] The 2018 work description for GL-COI-11s (OI) is incomplete. I order the employer to reinstate the 2016 work description, effective March 2018.

[164] I declare that the employer violated the pay provisions of the collective agreement (Appendix B, definition of "pay"), effective March 2018, by not paying GL-COI-11s the ITD that it had determined was applicable as a result of the 2016 work description.

November 9, 2020.

Marie-Claire Perrault,
a panel of the Federal Public Sector
Labour Relations and Employment Board