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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

**VALÉRIE COUPAL**
Grievor and Complainant

and

**CANADIAN FOOD INSPECTION AGENCY**
Employer and Respondent

Indexed as
*Coupal v. Canadian Food Inspection Agency*

In the matters of a complaint made under section 190 of the *Federal Public Sector Labour Relations Act* and an individual grievance referred to adjudication

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

**For the Grievor and Complainant:** Peter Engelmann and Darryl Korell, counsel

**For the Employer and Respondent:** Alexandre Toso and Jena Montgomery, counsel

Heard by videoconference,
June 7 to 11, 14 to 16, and 18, 2021.

## REASONS FOR DECISION

### I. Individual grievance referred to adjudication and complaint before the Board

[1] Since 2001, the Professional Institute of the Public Service of Canada ("Institute", or "bargaining agent") and the veterinarians it represents who work at the Canadian Food Inspection Agency ("the CFIA" or "the employer") have been trying to agree with the employer on the veterinarians' work descriptions and classification, at several classification levels — VM-01 through VM-04. As will be seen in more detail later in this decision, the dispute has been long and protracted, although from time to time, it has been marked by agreements between the parties.

[2] This decision concerns one position in particular, supervisory veterinarian. It is a generic position numbered 59668 and classified VM-02. Numerous supervisory veterinarians grieved their work description in 2001, 2009, and 2011. Finally, in 2016, at the final level of the grievance process, they obtained a work description that they deemed satisfactory ("2016 work description"). Accompanying the 2016 work description was a letter from the CFIA's vice president of operations ("VP Operations") indicating that the new work description would be sent to CFIA's classification division for evaluation and classification.

[3] The 2016 work description was never classified. Instead, through the classification exercise, the employer considered it anew, and it was rewritten in 2019 to produce a new work description ("2019 work description"). The 2019 work description was classified VM-02.

[4] On December 17, 2018, the representative grievor, Dr. Valérie Coupal, referred her initial 2011 grievance to adjudication before the Federal Public Sector Labour Relations and Employment Board ("Board"). By previous agreement between the Institute and the employer, it was understood that the Board's final decision of Dr. Coupal's grievance would apply to all the employees (approximately 250) occupying supervisory veterinarian positions with the 59668 work description whether or not they had grieved (there were 154 grievors).

[5] Although her grievance had been allowed at the third and final level of the grievance process, Dr. Coupal claims that its resolution was still unsatisfactory, as it failed to fulfill all the requirements of clause E1.01 of the collective agreement between

the Institute and the employer. That clause provides not only for a complete and current statement of duties and responsibilities but also for the position's classification level, point rating, and placement in the organizational chart. Since the 2016 work description was never classified, according to Dr. Coupal and her bargaining agent (the Institute), the conditions of clause E1.01 have not been fulfilled.

[6] Clause E1.01 of the collective agreement between the CFIA and the Institute for the Veterinary Medicine (VM) Group bargaining unit (the "collective agreement") provides as follows:

> *Upon written request, an employee shall be entitled to an official, complete and current statement of the duties and responsibilities of his position, including the position's classification level and the point rating allotted by factor and organization chart depicting the position's place in the organization.*

[7] On July 19, 2019, the Institute filed an unfair-labour-practice complaint with the Board on behalf of the grievors. It alleged that the employer had violated ss. 186(2)(a)(iii) and (iv) of the *Federal Public Sector Labour Relations Act* (S.C. 2003, c. 22, s. 2 ("*Act*")) "… by repeatedly discriminating against and intimidating some of the Applicant's members with respect to their pay and terms and conditions of employment because they exercised their right to grieve under Part 2 of the Act." For the purpose of this decision, since the grievance and the complaint are linked, Dr. Coupal is considered the complainant.

[8] The complainant alleged that the employer deliberately and indefinitely delayed the classification decision, by misleading the Institute and the grievors on the classification process, by refusing to allow Institute representatives to attend the classification division's on-site interviews, and by adopting and classifying the 2019 work description, which, according to the complainant, downgraded the 2016 work description. The complainant alleged that by doing so, the employer sought to avoid the obligations of a salary increase were the position reclassified at a higher level and to intimidate the grievors for exercising their right to grieve.

[9] The complainant sought the following remedies:

- a declaration that the employer violated ss. 186(2)(a)(iii) and (iv) of the *Act*;
- an order that the employer rescind the 2019 work description;
- an order that the employer classify the 2016 work description;

- an order that the reclassification be retroactive to May 1, 2001; and
- any other remedy to make whole the affected members of the bargaining unit.

[10] On August 30, 2019, the employer responded to the complaint, stating that it had not deliberately delayed the classification process, had not misled the Institute and the grievors, and had not downgraded the work description to avoid a reclassification from VM-02 to VM-03.

## A. Preliminary objections

[11] On June 30, 2020, the employer filed objections with the Board with respect to both the grievance and the complaint. For the grievance, the employer submitted that it was moot, as the grieved 2011 work description had been replaced by the 2019 work description and therefore no longer applied to any employee. If the grievors are still dissatisfied with their work description, they should grieve the 2019 work description, as it is the only work description applicable to them, going back to May 1, 2001.

[12] In addition, the remedy sought, classifying the 2016 work description, is beyond the Board's jurisdiction, as the *Act* specifically excludes classification from collective bargaining and therefore from recourse before the Board.

[13] As for the unfair-labour-practice complaint, the employer presented several arguments to support its position that it should be summarily dismissed.

[14] First, the complaint was untimely, as it was made after the 90-day time limit provided in the legislation to make one.

[15] Second, the complainant asked the Board to order the classification of the 2016 work description, but the Board has no jurisdiction in classification matters.

[16] Third, no facts support the allegation of an unfair labour practice, as the employer in no way penalized the grievors for exercising their rights.

[17] Finally, the remedies sought were not in the contemplation of the legislator. The remedies stated in the legislation for an unfair-labour-practice complaint, albeit not exhaustive, nevertheless are an indication of the scope and nature of the possible remedies. Those sought by the complainant do not fall in that category.

[18] The grievor and complainant's position was that too many facts are in dispute for the Board to make any ruling on the objections. I indicated to the parties that the

objections could be raised in argument but that the hearing would proceed on the merits of both the grievance and the complaint.

[19] The complainant requested that I bifurcate the hearing on the remedy for the complaint. Should it be allowed, the complainant asked that I remain seized for 90 days to give the parties the opportunity to settle, failing which I should decide the remedy after hearing their arguments. The employer opposed the request, but I granted it. There is enough to decide with the grievance and the complaint; at this point, the issue of damages would be a distraction and would be difficult to circumscribe in the absence of a decision on both the grievance and the complaint.

## II. Summary of the evidence

[20] The grievor and the complainant called three witnesses: Dr. Coupal, the representative grievor; Émilie Gagné, a classification and labour relations officer with the Institute; and Paul Durber, an independent consultant, who was qualified in the course of the hearing as an expert in job evaluation in the federal public service.

[21] The employer called the following witnesses, who all work for the CFIA: Dr. Janine McLearon, Area Operational Manager in the Animal and Plant Health Operational Specialist Unit (Ontario); Dr. Sukmandar Bains, Inspection Manager; Dr. Patrick Fréchette, Regional Director of Operations (Saint-Hyacinthe, Quebec); Kelvin Mathuik, Director General for Western Operations; Fadia Verchere, Manager of the Organizational Design and Job Evaluation Division; Kevin Urbanic, Director General for Ontario Operations; and Danika Lim, Portfolio Manager in the Organizational Design and Job Evaluation Division.

[22] Although on the whole, the testimonies were not contradictory, I have summarized each one separately in the paragraphs that follow, to show that the evidence was given from the witness's perspective. To be clear, there was little contradiction between the testimonies of the Institute and the employer witnesses, mainly because there was little overlap. The Institute's lay witnesses presented an uncontradicted historical perspective, then a summary of the events after the 2011 grievance was allowed in September 2016. Except for Mr. Mathuik, who testified to his contribution to the 2016 work description, all the employer witnesses testified to events relating to the development of the 2019 work description. Mr. Durber provided evidence on the impact the difference in wording would have on the evaluation of the

2016 work description and the 2019 work description. The employer's two classification witnesses, Ms. Lim and Ms. Verchere, did not expand on job evaluation but rather on the hallmarks of a proper classification exercise, including on-site verification, which in this case led to rewriting the work description.

**A. Dr. Coupal**

[23] The CFIA was created in 1997. It integrated inspection services that had been carried out by Agriculture and Agri-Food Canada, Fisheries and Oceans Canada, and Health Canada. One of its main human-resources challenges was combining the different groups and levels of employees coming from several departments.

[24] The CFIA considered adopting a new classification plan, but it was never implemented. It also considered adopting a new classification standard for the VM group, but the project met several obstacles and was abandoned in 2009. As a result, the CFIA still applies the VM classification standard to evaluate positions in the VM group; this standard dates from 1987.

[25] In 2001, VMs (at various levels) grieved their work descriptions; approximately 124 of them were classified at the VM-02 level. Between 2001 and 2009, the Institute and the employer exchanged often about the work descriptions, the grievances, and the proposed new classification standard. In 2009 and 2010, approximately 300 VMs, including incumbents of the supervisory veterinarian position, filed new grievances against their work descriptions. In 2011, the employer issued new work descriptions for the VM group. Some VMs grieved their new work description. The Institute and the employer had more consultations and exchanges.

[26] Since the CFIA was created, Dr. Coupal has held a supervisory veterinarian position at the VM-02 level. She grieved her work description in 2001 and 2009 and again in 2011. As the representative grievor, Dr. Coupal made presentations to the employer at the final level of the grievance process in April and June 2016.

[27] The employer issued a decision on September 15, 2016. It allowed the grievances for the supervisory veterinarian position, no. 59668, stating that the 2011 work description was not a complete and current statement of duties. Consequently, it changed the work description to include a number of modifications suggested by the grievors.

[28] The employer's VP Operations at that time, Gérard Étienne, addressed a letter to each of the grievors, including the new 2016 work description for the supervisory veterinarian position, no. 59668. In that letter, he stated that the 2016 work description had been sent to the Organizational Design and Job Evaluation Division ("the classification division") for evaluation. The 2016 work description was retroactive to May 1, 2001, as the parties had agreed in the course of their exchanges.

[29] The 2016 work description was never evaluated or classified. Rather, in March 2019, the employer provided the Institute with another work description for the supervisory veterinarian position, no. 59668 (the 2019 work description), which was also retroactive to May 1, 2001. Within the following month, in April 2019, the employer released a classification decision for the 2019 work description. The classification was maintained at the VM-02 level.

[30] Dr. Coupal believes that the changes made were not warranted, in that the 2019 work description no longer reflects all her duties and responsibilities. The post-mortem responsibility has been diminished, yet supervisory veterinarians remain responsible for determining whether carcasses are safe for consumption.

[31] Another example she cited was the role supervisory veterinarians play in mediating conflict between CFIA employees and plant management. This is an important role, involving smoothing the ongoing relationship between CFIA and industry. The supervisory veterinarians' active intervention is essential in every plant. This is true also of district offices, where industry and government concerns are often in conflict.

[32] In the 2016 work description, the word "mediate" was used. In the 2019 work description, it became "intervenes", which, according to Dr. Coupal, does not fully convey the actions that the supervisory veterinarian must carry out to resolve conflicts.

[33] Dr. Coupal testified as to the profoundly demoralizing effect of the employer's actions on her and her fellow grievors. After years of struggle, the employer had finally recognized the duties performed by the supervisory veterinarians, as shown in the 2016 work description. Yet, the victory was short-lived and was completely undone by the employer's reversal with the 2019 work description, which removed a number of duties and responsibilities that had appeared in the 2016 work description. She

believes that the employer's actions were attempts to intimidate and discriminate against supervisory veterinarian position holders for exercising their right to grieve their work description.

**B. Ms. Gagné**

[34] Ms. Gagné is a labour relations officer with the Institute and has been since 2009. She has been in the classification section since 2010. Since December 2010, she has been involved with job-description and classification grievance files. In March 2015, she was specifically assigned the VM file.

[35] After the September 2016 final-level decision allowing the 2011 grievances and granting a work description that the Institute and the grievors considered adequate (for the supervisory veterinarian position, no. 59668), Ms. Gagné expected a classification decision to follow. The grievances were not referred to adjudication, pending the classification decision. At the end of September 2016, Ms. Gagné sought the employer's agreement to place the grievances in abeyance until December 31, 2016, considering that the three-month period would be ample time for the employer to provide a classification decision.

[36] No response was received, and Ms. Gagné's manager, Karyn Ladurantaye, followed up with Chantal Seeton, Executive Director of Employee Relations & Engagement at the CFIA. Ms. Seeton responded in mid-October as follows:

> …
>
> *… I had already verbally discussed this request in principle with Emilie earlier that week when I saw her and indicated that we would be open to this idea. That said, since we have received the request, there is more to it than thought and the request is also linking in the classification decision which in our opinion should be unrelated to the job content issue or referral to adjudication. We have not been ignoring this latest request but rather we have been in discussion with HR and management teams implicated as I cannot commit them to a timeline without knowledge of their workloads and priorities if this is even feasible given our very limited resources as I am sure you can appreciate.*
>
> …

[37] By February 2017, there was still no classification decision. The Institute repeated its request for one, to complete the requirements of clause E1.01; that is, the classification level, point rating, and location in the organizational chart. In an email

addressed to Ms. Seeton, Ms. Ladurantaye explained that the Institute understood that the classification and job-content issues were separate and that they had different recourse mechanisms. However, the Institute wanted to ensure that the job-content grievance was fully resolved by having the employer provide all that was required under clause E1.01. Ms. Ladurantaye worded it thus: "In all honesty, our concern, given the history of this file, is that we withdraw the job content [grievance] and a classification decision is never rendered by the Employer (and this file lives for another 10 years)."

[38] On March 27, 2017, Celio Martinez, an HR officer with the employer, informed Ms. Gagné that an evaluation committee was to meet on May 8, 2017, to evaluate the 2016 work description.

[39] A supervisory veterinarian incumbent informed Ms. Gagné that the supervisory veterinarians received an email on July 24, 2017, informing them that the 2016 work description had been assessed and maintained at the VM-02 level. Ms. Gagné was very surprised; she thought that she had an agreement with the employer that she would be informed as soon as a classification decision was issued. More importantly, this was not the expected result of the classification exercise, given the important changes that had been made to the work description to make it more complete and accurate.

[40] On August 4, 2017, the employer retracted its July 24 email, stating that it had been sent in error. The message was the following:

> *59668 Supervisory Veterinarian*
>
> *Dear Colleagues,*
>
> *Due to an administrative error, please disregard the email notification sent to you on July 24, 2017 regarding classification results of the review and update of the Supervisory Veterinarian position. A decision with respect to the above noted work description is expected shortly and you will be advised accordingly.*
>
> *We apologize for the inconvenience and appreciate your patience.*
>
> …

[41] A few days later, Mr. Martinez told Ms. Gagné that the first decision had been sent in error and that a new decision would be issued shortly. Ms. Gagné followed up in September 2017. A year had passed since the final-level decision had been rendered.

No explanation was provided. She tried a number of times to contact Megan Turpin, Mr. Martinez's manager, as indicated in an email dated December 6, 2017.

[42] On December 8, 2017, Mr. Martinez wrote the following email to Ms. Gagné:

> …
>
> *I also have had the chance to discuss with classification earlier in the week for a status update on the VM. My understanding from them was they were going to be ready in two weeks. It appears that there is some communication material for managers that is being finalized and requiring translation.*
>
> …

[43] By March 2018, there was still no classification decision for the 2016 work description. In a conference call, the Institute learned that the employer had decided to carry out on-site interviews with incumbents of the supervisory veterinarian position, no. 59668, to verify their duties. This was over a year-and-a-half after the employer had issued its final-level grievance decision. Ms. Gagné wrote to the employer to protest the process of the on-site interviews, which would needlessly delay the classification of the 2016 work description.

[44] In July 2018, the Institute requested that its representative be allowed to attend the on-site interviews. The employer denied the request. In October 2018, the Institute's counsel wrote a letter to the CFIA, asking that the 2016 work description be evaluated and classified. In December 2018, the Institute referred the grievances about the supervisory veterinarian work description, no. 59668, to adjudication.

[45] In March 2019, the CFIA informed the Institute that the on-site evaluation was finished, and it provided the 2019 work description, with an effective date of May 1, 2001.

[46] On April 24, 2019, the employer issued the classification decision for the 2019 work description. The supervisory veterinarian position, no. 59668, was maintained at the VM-02 level.

[47] According to Ms. Gagné, the employer deliberately misled the Institute and the grievors for 18 months, from September 2016 to March 2018, by having them believe that a classification decision would be issued shortly, which was not true. The 2016 work description was modified after it had been issued in response to the grievances.

In short, the employer did not fulfill the requirements of clause E1.01 of the collective agreement by its failure to classify the work description that it had issued and that the Institute and grievors had agreed to.

## C. Mr. Durber

### 1. Qualification as an expert witness

[48] The Institute asked Mr. Durber, a consultant in job evaluation, to assess the 2016 and 2019 work descriptions to determine if the change in wording would likely make a difference in the evaluation of the work descriptions for the purpose of classification. Mr. Durber prepared a report, which the grievor and complainant sought to introduce at the hearing. The grievor and complainant also requested that Mr. Durber be qualified as an expert witness.

[49] The employer objected on several grounds. Mr. Durber was not an expert in the CFIA classification system; nor had he worked with the VM standard. His opinion was irrelevant to the issues at hand. The decision maker did not need Mr. Durber's evidence. And the evidence he presented in his report was based, as he confirmed in cross-examination, only on the two work descriptions and the VM standard, while the job evaluation had to take into account several other factors, including an understanding of the organization and the place of the position at issue in the CFIA's overall structure.

[50] The grievor and complainant argued that Mr. Durber's evidence met all the necessary tests for admitting expert evidence, namely, those enunciated in *R. v. Mohan*, [1994] 2 S.C.R. 9, and *White Burgess Langille Inman v. Abbott and Haliburton Co.*, 2015 SCC 23.

[51] I decided to admit Mr. Durber as an expert witness, for the following reasons.

[52] The test for the admissibility of expert evidence is succinctly summarized in the Ontario Court of Appeal's decision in *R. v. Abbey*, 2017 ONCA 640 at paras. 48 and 49, as follows:

> *[48] The test may be summarized as follows:*
>
> *Expert evidence is admissible when:*
>
> *(1) It meets the threshold requirements of admissibility, which are:*

> *a. The evidence must be logically relevant;*
>
> *b. The evidence must be necessary to assist the trier of fact;*
>
> *c. The evidence must not be subject to any other exclusionary rule;*
>
> *d. The expert must be properly qualified, which includes the requirement that the expert be willing and able to fulfil the expert's duty to the court to provide evidence that is:*
>
> *i. Impartial,*
>
> *ii. Independent, and*
>
> *iii. Unbiased.*
>
> *e. For opinions based on novel or contested science or science used for a novel purpose, the underlying science must be reliable for that purpose,*
>
> *and*
>
> *(2) The trial judge, in a gatekeeper role, determines that the benefits of admitting the evidence outweigh its potential risks, considering such factors as:*
>
> *a. Legal relevance,*
>
> *b. Necessity,*
>
> *c. Reliability, and*
>
> *d. Absence of bias.*
>
> *[49] In short, if the proposed expert evidence does not meet the threshold requirements for admissibility it is excluded. If it does meet the threshold requirements, the trial judge then has a gatekeeper function. The trial judge must be satisfied that the benefits of admitting the evidence outweigh the costs of its admission. If the trial judge is so satisfied then the expert evidence may be admitted; if the trial judge is not so satisfied the evidence will be excluded even though it has met the threshold requirements.*

[53] As stated in Sopinka, Lederman & Bryant, *The Law of Evidence in Canada*, 5th ed. at 12.55, the two stages may be confused, as they repeat the same criteria. As explained in *Abbey*, the second stage is rather a cost-benefit analysis; despite being legally admissible, is the expert evidence truly necessary?

[54] Since the rules of evidence before the Board are somewhat less strict than before a court of law, I believe that for the purposes of this decision, I must consider the gatekeeper function; that is, whether this evidence is useful and necessary for the hearing. I find it is, and that it meets all four criteria.

[55] The evidence presented in Mr. Durber's report is relevant in that it helps to understand what impact the changes from the 2016 work description to the 2019 work description have on a classification exercise. I do not have jurisdiction over classification, but to properly determine both the grievance and the complaint, it is important to understand the consequences of classifying the 2019 work description as opposed to the 2016 work description.

[56] The interaction between work descriptions and their classification is a very specialized field, and the Board is rarely exposed to it. Again, it is not a matter of deciding a classification grievance but rather deciding whether a classification exercise is needed for the 2016 work description. For this purpose, I find the expert evidence both relevant and necessary.

[57] Given Mr. Durber's long career in job evaluation in the public service, I find him qualified as an expert in that field. I believe Mr. Durber can present a fair and unbiased point of view on how job content is evaluated for classification purposes, considering his long experience working for the Treasury Board. I note that Mr. Durber was retained by the Institute, but that he was well aware of his responsibility to be impartial and unbiased.

**2. Testimony**

[58] In his report, Mr. Durber compared the 2016 work description and the 2019 work description. In his testimony, he summarized his conclusions. Essentially, he concluded that the difference in wording between the two work descriptions would cause a job evaluator to assess a lower rating for the 2019 work description.

[59] The Classification Standard, Veterinary Medicine, Scientific and Professional Category ("VM standard"), is used to classify veterinary positions at the CFIA. It is what is called a "predominant factor" standard. Five factors are evaluated, and if they are not at the same level, the predominant level will be the level for the whole.

[60] The VM standard is complex. It includes five factors, each of which includes subfactors or characteristics. Each characteristic is a range, from limited responsibility and autonomy to complete responsibility and autonomy. Here are the factors and characteristics:

1) Kinds of assignments

· The objectives established by others for the conduct of the work.
· The extent of the work.
· The variety of activities.
· The scope for planning and conducting work.

2) Complexity of the work

· The availability of and the problems involved in obtaining information and date.
· Verifying the validity of information and data.
· The nature of information and data.
· The interrelationships of variables.
· The effects of others' activities on the work.
· The requirement to communicate.
· The requirement to develop or apply approaches, practices, and techniques.
· The requirement to apply theoretical and practical knowledge.

3) Professional responsibility

· The requirement to define objectives and problems and to establish guidelines.
· The professional leadership received.
· The extent to which others check the work.
· The requirement to assess the quality of others' work.
· The requirement to interpret the work results.
· The requirement to give advice.

4) Management responsibility

· Responsibility for the control of staff.
· Responsibility for the control of physical and financial resources.
· Responsibility for committing departmental resources.
· Responsibility for the administrative control of work.
· Responsibility for the administrative coordination of work performed for, or in conjunction with, other organizational units.
· Responsibility for obtaining outside assistance.
· Responsibility for implementing or developing administrative and management guidelines.

5) Impact of recommendations and activities

· The impact of recommendations and activities on departmental work.
· The impact of recommendations and activities on an industrial or commercial process, operation, or product.
· The impact of recommendations and activities on the Canadian livestock industry and the health status of animals.
· The impact of recommendations and activities on public health.
· The impact of recommendations and activities on a body of knowledge.

[61] Not only is the VM standard complex but also, its application is complicated, given that the factors do not correspond readily to the present headings of work descriptions. Consequently, the factors and subfactors must be applied to one or several headings.

[62] One notable particularity of the VM standard is that there are no descriptors (or highlights) for certain degrees or levels. Factor 1, for example, has descriptors for levels 2 and 4, but not level 3. According to Mr. Durber, to assess a level 3, the evaluator must be very certain that the factors are present to an extent that significantly exceeds level 2, without reaching level 4. Therefore, it is very important that the work description contain the details that will give the evaluator the confidence to assess a level 3.

[63] The VM standard includes benchmark positions that can help situate the work description in the overall structure of the organization. In terms of methodology, the VM standard prescribes these six steps:

1) Understanding the position as a whole and the nature of duties and responsibilities as they relate to the characteristics of each factor.
2) Confirming that the position is properly allocated to the category and group.
3) Assigning a degree to each factor by considering the range of each characteristic and the degree highlights (or levels).
4) Confirming degree assigned by comparing to benchmark position descriptions.
5) The level of a position is determined by the degree assigned to at least three of the five factors.
6) Further confirmation is done by comparing benchmark positions that have been assigned the same level.

[64] Comparing the 2016 work description and the 2019 work description, Mr. Durber emphasized the fact that details left out, along with omissions and abridgments, would impact the evaluation, since with less information, it would be difficult to ensure that the position included sufficient information to ensure correspondence with a given level. With the details provided with 2016 work description, the different factors would reach level 3, according to Mr. Durber. Given the omissions in 2019 work description, it was more likely that the factors would amount to level 2.

[65] In cross-examination, it was brought to Mr. Durber's attention that some content that he thought had been omitted from the 2019 work description was in fact still

there. He readily acknowledged the mistakes that were pointed out. However, the mistakes were minor, and the fact is that many segments of the 2016 work description were removed in the 2019 work description. As will be demonstrated later in this decision, Dr. McLearon confirmed this. She drafted the 2019 work description.

[66] I am cognizant of the fact that it is not the Board's task to assess classification or to conduct a classification exercise. The Board does not have jurisdiction to conclude the 2016 work description would have been assessed predominantly at degree 3 and thus would have been classified at the VM-03 level. However, based on Mr. Durber's testimony, I find that the 2019 work description altered the 2016 work description in such a way that some factors could not be assessed with the 2019 work description at the same level as they would have been with the 2016 work description, since information was missing.

[67] Mr. Durber considered that the 2016 work description could be evaluated without a further review of the job content through an on-site examination, since this was the definitive work description that the employer provided and that the grievor and the Institute agreed to.

[68] Mr. Durber also stated that once a work description is complete, it should take about a month to classify it. I note that once the employer issued the 2019 work description in March 2019, it was classified within a month, in April 2019.

**D. Dr. McLearon**

[69] Dr. McLearon testified to her role in redrafting the 2016 work description, which became the 2019 work description.

[70] Dr. McLearon has worked as a supervisory veterinarian at the VM-02 level in both a large chicken-processing plant and a small organic-red-meat processing plant. She was promoted to an inspection manager position, supervising supervisory veterinarians in both meat plants and district offices. Since 2018, she has been an area operational manager responsible for animal health, slaughter, and plant-health issues in southwestern Ontario.

[71] In October 2018, as part of the on-site review being carried out by the classification division, Dr. McLearon reviewed the on-site questionnaire filled out by Dr. Karsan Chaudhari, a supervisory veterinarian at a poultry-processing plant.

[72] In March 2019, Mr. Urbanic, the senior director for the CFIA's Ontario region, informed her that the senior directors for the CFIA's four regions (Western, Ontario, Quebec, and Eastern regions) had been asked by the VP Operations Theresa Iuliano to review the 2016 work description and provide an updated version. Dr. McLearon and two Ontario inspection managers were asked to provide feedback on the 2016 work description. Their consensus was that it was too detailed and lengthy. Also, it gave more importance to the Meat Hygiene program, as opposed to the Animal Health program. Supervisory veterinarians in the Meat Hygiene program work in meat-processing plants; supervisory veterinarians in Animal Health work in district offices.

[73] Mr. Urbanic asked Dr. McLearon to redraft the work description. She took into account the comments of her Ontario colleagues as well as those from the other regions, the recommendations provided by the classification division (specifically, Ms. Lim), and her knowledge of the supervisory veterinarians' work.

[74] Within a few days, in March 2019, Dr. McLearon provided a new draft to the classification division. She believed that her new version (the 2019 work description) maintained the information in the 2016 work description, while reducing its wordiness. She also removed certain duties that she did not believe that supervisory veterinarians provided, such as "consultative services". Dr. McLearon explained that supervisory veterinarians were specifically told that they could not provide advice on how things were to be done in a plant; rather, their role was to explain the legal and regulatory requirements and to point out deficiencies. The solutions were left to the plant's management.

[75] Dr. McLearon removed some items in the 2016 work description because they were no longer applicable, for example, the Quality Management System that supervisory veterinarians were to enforce but that had been ended by 2019.

[76] Dr. McLearon also drafted the work description to "genericize" it, that is, rewording it to make it more general and more inclusive of both the Meat Hygiene and the Animal Health streams.

[77] In cross-examination, Dr. McLearon stated that she did not look at the on-site questionnaires that supervisory veterinarians in meat plants and district offices had answered. She was unaware of the history behind the 2016 work description and that it had been the final-level decision to the 2011 job-description grievance. She had been

a supervisory veterinarian classified VM-02 in 2011, but she did not grieve her work description.

**E. Dr. Bains**

[78] In early 2019, Dr. Bains, an inspection manager who worked as a supervisory veterinarian from 2010 to 2014, was asked to provide the name of a supervisory veterinarian in the Animal Health program to answer a questionnaire concerning the content of the supervisory veterinarian work description. He suggested one of his direct reports, who was a supervisory veterinarian in the Guelph District Office, a busy office with a complex mandate. Ms. Lim then asked him to comment the answers provided. His comments were mainly that some questions related to Meat Hygiene and not to Animal Health and that in carrying out his duties, the supervisory veterinarian must often consult with the inspection manager and CFIA specialists.

[79] Dr. Bains collaborated in reviewing the 2016 work description in March 2019 with Dr. McLearon and another inspection manager. In his comments on the 2016 work description, Dr. Bains indicated that the Animal Health tasks were underrepresented, and that Meat Hygiene was overrepresented. He agreed with Dr. McLearon that the 2016 work description was too wordy and that it should be made more concise and more generic, to better include the Animal Health stream.

[80] In 2011, Dr. Bains had grieved his work description (supervisory veterinarian position no. 59668). By the time he received the final-level decision in 2016, he was no longer in a supervisory veterinarian position. By then, he was an acting inspection manager (from 2014 to 2017); he became indeterminate in that position in 2017. He testified that he did not remember receiving the final-level decision (the letter addressed to him was introduced in evidence at the hearing) and that in any event, by then, it was no concern of his. He had filed the work-description grievance in 2011 out of a sense of solidarity with the Institute, which was leading the campaign, as he was then involved in union activities. He had never really paid attention to the content of his work description as to whether it accurately reflected his duties and responsibilities.

[81] When he was asked to review the 2016 work description in March 2019, it did not occur to him that the 2016 work description was the result of the grievance in which he had been a grievor. It seemed to him that the 2016 work description needed

to be amended – to be updated, to include more for the Animal Health stream and to remove some duties that supervisory veterinarians did not do, such as providing consultative services.

**F. Dr. Fréchette**

[82] Dr. Fréchette is an area operational manager and is responsible for the Saint-Hyacinthe region in Quebec. Before holding that position, he was an inspection manager, supervising supervisory veterinarians, including Dr. Coupal, from 2006 to 2012. He was a supervisory veterinarian (then called a chief veterinarian) from 1992 to 1997.

[83] According to Dr. Fréchette, the supervisory veterinarian in a meat plant is responsible for the whole of the inspection system in the plant. In a district office, the supervisory veterinarian ensures animal health for the district.

[84] In poultry plants, meat inspection has changed somewhat with the implementation of the modernized poultry-inspection program. Meat inspection is now plant management's responsibility, and CFIA employees ensure regulatory compliance. Plant employees inspect the meat, but twice a day, the supervisory veterinarian will verify that the inspections have been carried out properly.

[85] Supervisory veterinarians also ensure compliance by noting any deficiencies in the plant's operation. They will complete a corrective-action request and give plant management a deadline in which to comply with CFIA regulations.

[86] Dr. Fréchette reviewed the 2016 work description and the 2019 work description. He noted that some of the duties outlined in the 2016 work description were no longer carried out by supervisory veterinarians. He cited as an example the Quality Management System, which has been replaced by other surveillance activities.

[87] He also noted that supervisory veterinarians do not lead epidemiological inquiries. They may play a role within their districts or plants, but epidemiological surveys involve other CFIA employees, including regional veterinary officers, inspection managers, and epidemiologists. In other words, they are responsible only at the plant or district level; beyond that, other CFIA employees are involved.

[88] Dr. Fréchette commented on the use of the word “mediate” for one of the key activities in the 2016 work description. Although it is true that supervisory veterinarians have a role in resolving conflicts between CFIA employees and plant management, they are not trained mediators. He believed the word “intervene” would be more appropriate.

[89] On the whole, Dr. Fréchette did not agree with the responsibility that seemed to be assigned to supervisory veterinarians. While he conceded that they were responsible for implementing CFIA policies in meat plants and district offices to ensure animal health and safe food, he believed that the policies and priorities were set at a higher level. The supervisory veterinarian was not involved in decisions at the regional and national levels.

[90] According to Dr. Fréchette, the 2016 work description also needed updating, as the legislation and regulations had changed.

[91] Dr. Fréchette was not aware of the work-description grievances.

[92] His attention was brought to a document detailing operations CFIA employees carry out in a meat plant (“*Module de planification des opérations*”). One of the supervisory veterinarian’s activities was “[translation] consulting with the clients — meat hygiene”. Yet, Dr. Fréchette had already stated, as had Dr. Bains and Dr. McLearon, that supervisory veterinarians did not provide consultative services.

[93] Dr. Fréchette explained that the consulting activity referred to was rather in the nature of explaining to plant management the regulatory requirements and issues arising from meat processing in light of legislation, regulations, and CFIA policies. It was not consultative work in the sense of offering advice — deficiencies could be pointed out, but solutions were left to industry stakeholders. Dr. Fréchette noted that providing information was an important component of the supervisory veterinarian duties (according to him, this also applied to the VM-01 and the chief inspector at level EG-5), because plant management would have many questions about meat inspection.

**G. Mr. Mathuik**

[94] Mr. Mathuik has been the CFIA’s director general for western operations since 2014.

[95] In 2016, the VP Operations, Mr. Étienne, asked him to review the supervisory veterinarian work-description grievance (position no. 59668) in light of the presentation made by Dr. Coupal and the Institute at the final level of the grievance process for the 2011 grievance.

[96] In Dr. Coupal's presentation, several suggested items that the grievors claimed were missing from their work description were drawn from the Managing Veterinarian work description, classified at the VM-03 level. The Western region was the only area where the position existed.

[97] Mr. Mathuik explained that there were two managing veterinarians at the time and that each was responsible for a very large beef-processing plant. In addition to the duties of a supervisory veterinarian (the head veterinarian in a meat plant), the managing veterinarians had financial delegation, were not part of the bargaining unit, and could hear grievances at the first level of the grievance process.

[98] Mr. Mathuik agreed with some of the statements in the grievance presentation that were drawn directly from the managing veterinarian work description, but he noted several contextual differences between the managing and supervisory positions. He provided his feedback to Mr. Étienne, and he appeared before the classification committee that met in May 2017 to classify the 2016 work description. His presentation consisted of explaining the supervisory veterinarian's place in the organizational structure. That was the end of his involvement with the 2016 work description.

[99] Mr. Mathuik testified that after a structural review in 2015, it was decided to cease including managing veterinarians in the structure by the end of 2016, to ensure a uniform reporting structure. They have been replaced by supervisory veterinarians; the financial delegation and first-level grievance responsibility are now part of the duties of an inspection manager, to whom the supervisory veterinarians report.

[100] I note that the CFIA's Western region did not provide any comment on the 2016 work description when asked by CFIA upper management in 2019.

**H. Ms. Verchere**

[101] Ms. Verchere is the manager of the CFIA's classification division. (Note: At the CFIA, classification has two components, one that is essentially classification policy,

called Corporate Classification and Organizational Design, and the other that is classification practice, called the Organizational Design and Job Evaluation Division, which I refer to in this decision as the classification division.)

[102] Ms. Verchere is accredited in classification by the CFIA. She has been working in classification with the CFIA since 2002. From 2014 to 2017, she worked in Labour Relations. She returned to the classification division in July 2017 as the acting manager. She has since been appointed indeterminately to that position.

[103] Ms. Verchere testified that when she began as the acting manager, the classification division was severely understaffed. It did not have enough classification advisors to serve the CFIA's needs. There was an important backlog of classification actions.

[104] According to Ms. Verchere, it takes time to train and accredit classification advisors, as the subject matter is quite complex.

[105] In July 2017, Ms. Turpin, the manager of corporate labour relations, brought to her attention the matter of classifying the 2016 work description. Ms. Verchere was informed that the 2016 work description had been issued in September 2016, after the employer had allowed a work-description grievance. Ms. Turpin told her that the Institute was applying considerable pressure for a classification decision.

[106] Judy Anifrani, the classification advisor in charge of the 2016 work description classification, informed Ms. Verchere that the classification committee had met on May 8, 2017, and that the decision was to be issued shortly.

[107] Ms. Verchere reviewed the classification committee's report and found a number of deficiencies that concerned her. In short, the report did not provide sufficient information to allow interested persons to understand its conclusion maintaining the VM-02 level.

[108] Ms. Verchere was concerned that the Institute and the grievors would be dissatisfied by the report, especially since a reclassification to VM-03 had been considered. She was also concerned that no on-site review had been done, to ensure that the incumbents of the position were really performing the duties stated in the 2016 work description. Although on-site reviews at the time were discretionary, they are part of sound practice and ensure a proper classification exercise. Unbeknownst to

Ms. Verchere, the classification decision was issued nonetheless on July 24, 2017. In consultation with Ms. Turpin, Ms. Verchere decided to recall it, to have the classification report corrected.

[109] Ms. Anifrani did release a second report, correcting some deficiencies but, in Ms. Verchere's opinion, not all deficiencies. Ms. Anifrani's term ended in September 2017 and was not renewed.

[110] Ms. Verchere then sought to hire another consultant to entirely redo the classification of the 2016 work description. It took time to hire the consultant, who finally started working on the file at the end of February 2018. Unfortunately, the consultant became ill, and finally, Ms. Verchere assigned the file to Ms. Lim, who was a portfolio manager in her office.

[111] Ms. Lim conducted on-site reviews from July to September 2018 and again in January and February 2019. Following these on-site reviews, Ms. Lim made recommendations to management on the 2016 work description, mainly to genericize it to better reflect the Animal Health stream. She was part of the panel that classified the resulting 2019 work description at the VM-02 level.

[112] Ms. Verchere denied giving the message to Labour Relations for the Institute that the classification decision would be issued "soon" ("within two weeks", according to the December 2017 email that Mr. Martinez addressed to Ms. Gagné). According to Ms. Verchere, the classification process takes from 6 to 12 months, which includes the on-site review.

[113] Once the on-site review is done, management will decide if and how the work description will be modified. The classification division has no control over content.

[114] Ms. Verchere denied Mr. Durber's assertion that the work description and VM standard were sufficient to classify the position. It was important to consider the organizational relativity of the position, taking into account positions above, below, and at level.

[115] Ms. Verchere testified that in fact, the on-site assessment established that there was coincidence between the 2016 work description and the duties performed but that the Animal Health stream was inadequately reflected.

[116] In cross-examination, Ms. Verchere stated that the classification division was not bound by the wording of the 2016 work description; it had to do its job and confirm whether the work description was accurate and reflective of the tasks accomplished by the incumbents. She was only vaguely aware of the several grievance campaigns about the VM work descriptions. When cross-examined about the fact that the 2016 work description was a final-level grievance decision, she stated that this would not make it definitive. Only a court or Board order could do so.

[117] Ms. Verchere did not communicate directly with the Institute; that was the responsibility of Labour Relations, headed by Ms. Turpin. She had no idea what was communicated to it about the classification process until it was informed in March 2018 that on-site assessments would be done.

[118] Ms. Verchere was not aware of several points raised in the 2019 classification report, such as the overlap between the VM-03 managing veterinarian position and the 2016 work description. She said that Ms. Lim would be able to answer any questions about the overlap. When asked about her earlier statement that there was coincidence according to the on-site assessments but insufficient content about the Animal Health stream, she answered that Ms. Lim had provided the information.

[119] She emphasized that the content of the work description was entirely a management decision. If the on-site assessments found a lack of coincidence between the work description and the duties performed, it was up to management to correct it. Once the work description was definitive, the classification committee's task was simply to evaluate.

**I. Mr. Urbanic**

[120] Mr. Urbanic is the director general for the employer's Ontario region and is one of four senior directors in Canada.

[121] In May 2018, the senior directors were asked to identify incumbents in supervisory veterinarian positions to assist in on-site reviews for the purpose of classifying the position. The classification division had provided names to reflect the different characteristics of meat plants (size and animal species), and the senior directors were asked to validate the list. At that point, only Meat Hygiene positions

were considered. Only in November 2018 were names requested for the Animal Health stream.

[122] In November 2018, the VP Operations, Ms. Iuliano, asked the senior directors to help the classification division finalize the supervisory veterinarian file so that the position could be classified as soon as possible. At that point, when the senior directors met with Ms. Lim, she realized that the Animal Health stream had been omitted from the on-site review. She had not known until then that the supervisory veterinarian position applied to both supervisory veterinarians working in plants in Meat Hygiene and supervisory veterinarians working in district offices in Animal Health.

[123] On-site reviews were conducted in January and February 2019 with supervisory veterinarians in district offices. From the on-site-reviews, Ms. Lim made recommendations to modify the 2016 work description, mainly to make it more generic, to cover both streams.

[124] Mr. Urbanic tasked subject matter experts (including Dr. Bains and Dr. McLearon) to review the 2016 work description and suggest changes following Ms. Lim's recommendations. Mr. Urbanic agreed with the group's comments that the 2016 work description was too wordy and that it lacked sufficient representation of the Animal Health stream. He suggested removing details of the Meat Hygiene program to correct the imbalance.

[125] Ms. Lim asked for a finalized version of the work description, so Mr. Urbanic asked Dr. McLearon to write the final draft of it, which resulted in the 2019 work description. He attended the classification committee meeting in April 2019 but could not recall if any questions were asked.

[126] Mr. Urbanic rose through the inspector ranks; he is not a veterinarian. He was unaware of the VMs' long grievance history.

**J. Ms. Lim**

[127] Ms. Lim is a portfolio manager with the CFIA's classification division. One of her duties is participating on classification committees. She was trained in classification and was accredited by the Canada Revenue Agency in 2010, by the Treasury Board

while at the Department of Justice in 2011, by the Treasury Board Secretariat in 2015, and by the CFIA in 2017. She began working at the CFIA at the end of August 2017.

[128] Ms. Lim learned about the classification of the 2016 work description from Ms. Verchere. Since the classification decision was found deficient, Ms. Verchere decided that it should be redone, including on-site reviews to better understand the incumbents' duties and responsibilities.

[129] When Jean-Guy Chapman began as the classification consultant for the supervisory veterinarian file in February 2018, Ms. Lim helped him plan the on-site reviews. The questionnaire was based on the key activities found in the 2016 work description.

[130] In May 2018, Ms. Lim was put in charge of the classification exercise, as Mr. Chapman was ill. The on-site reviews were held from July to October 2018. The incumbents answered the questionnaire, and Ms. Lim and a colleague followed up with on-site visits and asked additional questions to fully understand the incumbents' role and to clarify their responses. The incumbents and their managers were given the opportunity to review the on-site report and to correct any mistakes.

[131] Once the on-site reviews were complete, Ms. Lim met with the senior directors at the end of November 2018 and learned only then that the supervisory veterinarian position was found not only in meat plants, for Meat Hygiene, but also in district offices, for Animal Health. The senior directors debated whether there should be two work descriptions but concluded that there should continue to be a single, generic work description. It was then decided to conduct on-site reviews for the district offices, which were carried out in February 2019.

[132] Ms. Lim prepared a report based on the on-site reviews. Based on that report, she concluded that there was a lack of coincidence between the supervisory veterinarians' duties and responsibilities and what was found in the 2016 work description.

[133] In reality, the report shows more coincidence than not. Some activities simply do not apply to one or the other stream, but all activities coincide with the activities of at least one stream, and most coincide with both. The questionnaire listed the key activities; the incumbents indicated whether each was indeed a key activity that they

performed. When Ms. Lim was asked in cross-examination why certain activities or duties were removed, despite coincidence, she answered that in the end, the work description was management's decision. When asked why she thought there was a lack of coincidence despite the responses, she answered that the streams were not equally represented.

[134] Ms. Lim recommended that several changes be made to genericize the work description to include both Meat Hygiene and Animal Health streams. Some amendments were recommended because changes had occurred in the operations, such as post-mortem inspections, which are now done by inspectors, not veterinarians, but remain under the veterinarians' responsibility, who alone can make decisions with respect to diagnosis or disposition. I note that changes made to the 2016 work description were due only partly to Ms. Lim's recommendations; they were also largely due to the senior directors' initiative. They disagreed with some wording (such as "mediate", although it had perfect coincidence in the questionnaires) and with the general wordiness of the 2016 work description.

[135] The new 2019 work description that resulted from Dr. McLearon's redrafting was submitted to a classification committee chaired by Mr. Chapman. Ms. Lim was also part of that committee. The committee's report does not deal with the application of the VM standard; there is no discussion of factors or characteristics. Rather, the position is evaluated only in terms of benchmark comparisons — more than level 1, less than level 3, equal to level 2.

[136] The classification report provides background to the classification exercise and includes the following paragraph, which reproduces the information that Ms. Lim provided to the senior managers in February 2018 to explain the need for on-site reviews:

> …
>
> *A classification committee was held on August 1, 2017 to evaluate the Supervisory Veterinary JD (D59668). During the committee deliberations, a number of similarities (overlap) with the VM-03 Managing Veterinarian, Meat Hygiene were identified. The committee was therefore put on hold until further consultation with management could take place and on-site interviews could be performed to determine coincidence with the JD.*
>
> …

[137] When asked about the information contained in this paragraph, Ms. Lim replied that it had been provided to her, since she arrived at the classification division only at the end of August 2017.

[138] Yet, this information is not consistent with Ms. Verchere's testimony or the 2017 classification committee report. The committee met on May 8, 2017. The report makes no mention of its deliberations, let alone any discussion of similarities with the VM-03 managing veterinarian work description. It is clear from Mr. Mathuik's testimony that the employer was well aware of the similarities before the 2016 work description was finalized and that the similar tasks were deliberately included as part of allowing the grievance.

## III. Summary of the arguments

[139] The parties submitted case law in support of their arguments. I reviewed it all but will apply only those that I consider relevant, which are discussed in my analysis.

### A. For the grievor and complainant

[140] The grievor and complainant submitted that this is an unprecedented case. To decide it, it is necessary to return to fundamental principles; that is, to promote harmonious labour relations, both parties must follow the rules. In this case, the employer did not follow the rules. Despite allowing the grievance, it then acted to make the grievance process meaningless and to award the grievors a hollow victory. This basic negation of the outcome of the grievance process had the effect of intimidating the grievors with respect to the exercise of their rights.

[141] In the case of the grievance, the analysis was straightforward. The employer had not fulfilled the whole of its obligation under clause E1.01 of the collective agreement, by failing to classify the work description that was the outcome of the final-level decision in the grievance process.

[142] The analysis of the unfair-labour-practice complaint might be somewhat more complex, given its unprecedented nature, but in the end, the employer failed to meet its onus of disproving the presumption of an unfair labour practice, since it failed to explain its actions to not classify the 2016 work description and instead to replace it with another work description, the 2019 work description.

[143] The employer deliberately misled the bargaining agent when it told the Institute in December 2017 that the classification decision was about to be issued, when in fact, the classification process was at a standstill.

[144] In his letter dated September 15, 2016, and addressed to all grievors, the then VP Operations, Mr. Étienne, stated that the 2011 work description was not complete and provided a new work description, with the additional commitment of having it classified.

[145] This was the result of a dispute dating back to 2001. The employer thoroughly examined the 2016 work description that flowed from the final-level decision, as Mr. Mathuik testified. Some items from the managing veterinarian work description were added, and not all the changes that the grievors advocated were made. This was management's decision. The grievors and the bargaining agent agreed with the 2016 work description.

[146] The 2016 work description was sent to classification in October 2016. From that moment, the employer provided no information on the classification exercise. It took until May 2017 for a classification committee to meet. Mr. Durber testified that once a work description is complete and accurate, it should take about a month for the classification to be done. In fact, this is somewhat confirmed by what happened to the 2019 work description; it was provided to the bargaining agent in March 2019, and the classification was done within a month, in April 2019.

[147] No explanation was provided for the seven-month delay, from October 2016 to May 2017. When Ms. Verchere decided to retract the classification committee's decision in August 2017, her explanation was that the decision was insufficient, especially in light of the proposed reclassification.

[148] The employer did not call anyone associated with the 2016 work description from either management or Labour Relations.

[149] No explanation was provided to the bargaining agent about the classification process. After the classification committee's decision was rescinded in August 2017, Labour Relations continued to assure Ms. Gagné that a classification decision would be issued shortly, which is completely at odds with Ms. Verchere's testimony.

[150] The idea of on-site reviews arose later, when Mr. Chapman was hired in February 2018. At that point, the classification division was concerned by the overlap with the managing veterinarian work description. Yet, this was known when management issued the new 2016 work description; in September 2016, management endorsed including certain items from the managing veterinarian work description. It seemed to become a problem in February 2018; again, no explanation was provided for management's change of heart. Neither Ms. Verchere nor Ms. Lim had any knowledge of how the 2016 work description had been crafted, starting with Dr. Coupal's presentation to the employer at the final-level grievance hearing.

[151] It is striking to see how the bargaining agent was misled until March 2018, when it suddenly learned that on-site reviews would be necessary to classify the 2016 work description.

[152] The grievors and bargaining agent did not dispute that the employer can modify work descriptions. However, this situation is different. The 2016 work description was the result of a 15-year grievance process, and the parties agreed that the work description resulting from the grievance would be retroactive to May 1, 2001. If the employer adopts a new work description, it cannot displace the 2016 work description with its effective date. It can replace the 2016 work description with an effective date beyond the date on which the 2011 grievance was allowed.

[153] No explanation was provided for management's decision to redo the 2016 work description, but the effect of the changes brought about by the 2019 work description is clear: the work description was downgraded from what it was as the 2016 work description. Mr. Durber provided cogent testimony to explain how the changes might have an effect on classification. The changes are undeniable and were in fact confirmed by Dr. McLearon and Ms. Lim. Some duties and responsibilities were omitted in the 2019 work description; work that is invisible cannot be classified.

[154] In Mr. Durber's experience, a work description that the employer considers complete and accurate and that the bargaining agent agrees to can be classified directly, without on-site reviews.

[155] The employer not classifying the 2016 work description was profoundly demoralizing for the grievors. After obtaining a decision from management that spelled success after 15 years of struggle, the victory became hollow when the 2016

work description was replaced by the 2019 work description. The supervisory veterinarians also grieved the 2019 work description but in a far smaller number than in 2011. The feeling is that the issues will never be resolved.

[156] The employer's evidence is remarkable for what is missing. The employer called only Ms. Verchere and Ms. Lim to testify about the classification process. Neither had any decision-making authority with respect to the work description, and neither seemed to grasp the import of classifying a work description that concludes a lengthy grievance process.

[157] If the employer can rewrite a work description after granting a new one at the final level of the grievance process for the same effective period, then the grievance process is meaningless.

[158] Despite the on-site review exercise, as Ms. Lim confirmed, management is the ultimate decider of work-description content. And it seems that the on-site review was an afterthought as it was not first mentioned in Ms. Verchere's criticism of the initial (May 2017) classification decision. Reasons seemed to evolve to justify the delay in the classification, which shows their pretextual nature. All the employer's actions had the single aim of avoiding the reclassification of the supervisory veterinarian position from VM-02 to VM-03. When the overlap between the managing veterinarian position and the 2016 work description was noted in February 2018, it was as if it had suddenly appeared during the classification exercise. Yet, the overlap was known, examined, and accepted when the 2016 work description was issued.

[159] The on-site review to determine coincidence was done with the reality of 2018 and 2019 in mind. It did not apply to a work description meant to have an effective date of 2001. It seems that Ms. Lim did not know of the second stream (Animal Health) for the supervisory veterinarian position. Yet, this was part of Dr. Coupal's presentation at the final-level grievance hearing. In other words, the grievance process was simply and completely ignored.

[160] From the absence of any evidence from the employer explaining the delay in classification and the refusal to classify the 2016 work description, the only conclusion to be drawn is that management was content to let the classification division proceed without any knowledge of the 2016 work description's background. The classification

division was meant to proceed afresh and to forget the past and therefore to not take into account the 2016 work description as the result of a long-standing grievance.

[161] Management was also content to let Dr. McLearon modify the work description and make changes that went beyond any conclusion of the on-site report, which in fact showed more coincidence than not. It was management's prerogative, according to Ms. Lim.

[162] From the exchanges between the VP Operations in 2018, Ms. Iuliano, and Mr. Urbanic, who led the on-site review and modification exercise, it was clear that the employer wanted the 2016 work description modified, which was the result of the classification exercise. It was carried out absent any context of the grievance being allowed.

[163] The language of the collective agreement is clear: a grievor is entitled to a complete and accurate job description, as well as its classification. As the employer will argue, it is true that the Board has no jurisdiction over classification. But this is not a matter of classification per se; it is a matter of enforcing the rights in the collective agreement.

[164] As the Board stated in *Bodnar v. Treasury Board (Correctional Service of Canada)*, 2016 PSLREB 71, management rights are limited by a collective agreement, and the Board has jurisdiction over grievances referred to adjudication under the collective agreement.

[165] As stated in *Ottawa Humane Society v. Ottawa-Carleton Public Employees' Union*, [2005] O.L.A.A. No. 220 (QL), 137 L.A.C. (4th) 337, the employer cannot resile from a position it has taken in the grievance process, which in this case was allowing the grievance and granting the 2016 work description as part of its decision.

[166] An adverse inference must be drawn from the lack of evidence called by the employer. Neither upper management nor Labour Relations explained why the bargaining agent was provided with misleading information until March 2018. No explanation was provided to explain why the 2019 work description should be retroactive to 2001, despite the fact that the on-site review was concerned with contemporaneous and not historical duties.

[167] The failure to call anyone from management or Labour Relations leads to the adverse inference that the employer's actions were indeed deliberate. It misled the bargaining agent, it disconnected Labour Relations from classification, and it never considered the proposed reclassification.

[168] Section 191(3) of the *Act* provides that the written complaint of an alleged failure to comply with s. 186(2), which prohibits discrimination and intimidation for exercising the right to grieve, is evidence of the failure; it is up to the employer to rebut that statutory presumption.

[169] In this case, the employer provided no explanation for the miscommunication between September 2016 and March 2018. All that time, the Institute was assured that the classification of the 2016 work description was imminent. Yet, it never occurred. The employer did not comply with the terms of the collective agreement; more than that, it deliberately misled the grievors and the Institute. The impact was to demoralize and intimidate the grievors, contrary to s. 186(2) of the *Act*. The effect can be seen in the decrease in the number of employees grieving the 2019 work description. As Dr. Coupal testified, they have been actively discouraged from making any effort to enforce their right to a complete and accurate work description.

[170] The complainant relied on *Joe v. Treasury Board (Correctional Service of Canada)*, 2021 FPSLREB 10, to argue that it had at least an arguable case and that consequently, the reverse onus applied to the employer. The employer discouraged attempts to enforce the grievors' rights. By resiling from the issued grievance decision, the employer changed the rules mid-stream. No evidence was called to show that it was a reasonable exercise of authority.

[171] The employer raised the issue of timeliness. The complaint was made on July 19, 2019. The complainant argued that the event giving rise to the complaint was the classification decision of the 2019 work description, which was issued on April 23, 2019. The Institute was apprised of the new 2019 work description in March 2019, but its impact on the grievors occurred with the classification decision.

[172] The grievor and complainant concluded by stating that this is an important test case for the interpretation of clause E1.01's plain meaning. If job-description grievances do not include the right to a proper classification exercise, as stated in clause E1.01, then they are basically meaningless.

[173] The complainant conceded there was little jurisprudence on the unfair-labour-practice complaint presented in this case. But it was important to see the grievance process in a wider context then simply the terms of the collective agreement. This concerned the integrity of the grievance process and respect for the dispute resolution system. The basic compromise of Canadian labour law is that disputes must be resolved within the means provided by the relevant collective agreement; therefore, the grievance process is a commitment on both sides and must be respected. According to the complainant, not respecting the grievance process is an unfair labour practice.

[174] As for the grievance remedies, the grievors sought a declaration that clause E1.01 had been violated and that the employer had to carry out the second part of clause E1.01; that is, classify the 2016 work description with an effective date of May 1, 2001. Given the previous delays, the grievors asked for an order that the classification exercise be done within 90 days of the decision date.

[175] In regard to the unfair-labour-practice complaint, if the Board finds it substantiated, the Board should reserve jurisdiction to allow the parties to agree on a remedy or return before the Board if no agreement is reached.

**B. For the employer and respondent**

[176] According to the employer, there is no basis for an unfair-labour-practice complaint. Disappointment and feelings are not the basis for such a complaint. No disciplinary or punitive actions were taken against the grievors, and no deliberate action was taken to downgrade the work description. The changes made to the 2016 work description had nothing to do with the grievance — most of the actors involved were unaware of it.

[177] All the actions related to the classification were explained. A classification exercise cannot be done in a vacuum; it must be based on the work performed, which is what the on-site review is designed to determine.

[178] The Board has no jurisdiction over classification and therefore cannot pronounce on the process. The employer conceded that it is regrettable that the classification took so long, but the witnesses explained the operational reasons.

[179] On the grievance, the employer argued that clause E1.01 does not entail a requirement to classify the work description. According to its interpretation, the two

are separate. The employee is entitled to a work description and to the classification of his or her position. The grievors never lacked the classification of their position. It was and remains VM-02.

[180] In its September 2016 letter to the grievors that included the 2016 work description, the employer simply committed to sending the 2016 work description to classification. On the 2016 work description, the classification was already provided, at level VM-02. There was no void. The employer did send the 2016 work description to the classification division, where the issue of coincidence arose and led to the need to verify the content of the work description. The employer conceded that reclassification was considered in light of the 2016 work description. However, a full analysis had to be done to determine coincidence and relativity.

[181] The employer cited *Brochu v. Canada (Treasury Board)*, [1992] F.C.J. No. 1057 (C.A.)(QL), to support its argument that the collective agreement did not entitle the grievors to the classification of a specific work description.

[182] The employer made a timeliness objection to the unfair-labour-practice complaint. The triggering event was the complainant's knowledge of the circumstances that gave rise to the complaint. The grievor referred the grievance to adjudication on December 17, 2018. Therefore, she was already aware of the circumstances of the complaint. The employer produced a new work description and informed the Institute of it on March 21, 2019. The complaint was made on July 19, 2019, which was well beyond the 90-day statutory deadline. The only event within the 90 days was the Institute being informed of the classification level of the 2019 work description, but the Board has no jurisdiction over classification decisions.

[183] Substantively, according to the employer, the unfair-labour-practice complaint is not founded. No intimidation, discrimination, or discipline occurred in the grievance process. The classification belonged to the employer. The classification division followed best practices when it verified the content of the work description. The bargaining agent demonstrated no evidence of disciplinary intent or disciplinary measures. An unfair-labour-practice complaint is not a vehicle to complain about unsatisfactory results: it is designed to protect an employee's exercise of rights by prohibiting reprisals from the employer.

[184] The employer cited *Comiskey v. Jensen*, 2012 PSLRB 22, as an example of the Board not recognizing a complaint related to a classification exercise.

[185] Mr. Durber's opinion on the comparison between the 2016 work description and the 2019 work description has no bearing on the unfair-labour-practice complaint. His opinion was based strictly on the two work descriptions and did not consider the CFIA's overall structure, as classification requires.

[186] Ms. Verchere explained the operational constraints under which the classification division was functioning. It took time to find and hire an experienced classification expert. A communication breakdown might have occurred, but it does not amount to an unfair labour practice. By March 2018, the bargaining agent was fully informed of the measures that the classification division took to carry out the classification of the work description, including the on-site review.

[187] The complainant did not show any intent by the employer to downgrade the 2016 work description. Key duties were not removed; rather, it was genericized to include the Animal Health stream of the supervisory veterinarian position.

[188] In *Laplante v. Treasury Board (Department of Industry and the Communications Research Centre)*, 2007 PSLRB 95, the Board found that there was no evidence that the employer's motivation was to prevent the exercise of legal rights. Similarly, the employer argued that no evidence has been shown of such a motivation in this case. If it wanted to punish the grievors for filing and pursuing a grievance, it would not wait eight years. It took in stride the numerous grievances and grievance campaigns. This is completely independent from the need to correct the 2016 work description for the purposes of classification.

[189] The employer invoked *Cameron v. Deputy Head (Office of the Director of Public Prosecutions)*, 2015 PSLREB 98, for the proposition that classification decisions, even if they feel deeply unfair to the incumbent of a position, are managerial decisions over which the Board has no authority.

[190] Contrary to the situation in *Joe*, the grievors had other recourses, such as grieving the content and classification of the 2019 work description.

**IV. Analysis**

[191] Unfortunately, there were gaps in the evidence, so some of the employer's actions and decisions remained largely unexplained. The grievor and complainant asked me to draw negative inferences from the absence of any witness who could have testified to the period between September 2016 and July 2017, who could have explained the curious disconnect between the message conveyed by Labour Relations and the action or inaction of the classification division from December 2016 to March 2018, or who could have testified to management's role in approving the 2019 work description.

[192] As stated by Brown and Beatty in *Canadian Labour Arbitration*, 5th edition, at 3:5120, failing to call a witness who could have explained a material fact can entitle the decision maker to infer that such testimony would not have supported the party's position. As stated in *Douglas Aircraft Co. of Canada v. U.A.W., Local 1967*, 13 L.A.C. (2d) 410 at para. 9:

> *9 In arriving at the above assessment of the evidence, I was affected by the well-recognized rule that where a party or a witness fails to give evidence, which could have been given by the party or witness and which might have elucidated the facts, then the tribunal is justified in drawing the inference that the evidence of the party or witness would have been unfavourable to the party in default ….*

[193] Two important components of the situation in this dispute remain unexplained. Why did management not confirm to the classification division that the 2016 work description was the work description to be classified, without any need for further verification? Why did the Labour Relations section provide the Institute with classification timelines that were, to put it mildly, fanciful?

[194] The explanations provided at the hearing came only from the classification division. Both Ms. Verchere and Ms. Lim insisted on the importance of on-site reviews, only to concede that management had the final say on the content of the work description. Yet that decision was made in September 2016 when the employer granted at the final level of the grievance process that the 2016 work description was now complete and accurate.

[195] I can infer only that management was content to let the classification division drag out the process and justify redrafting the 2016 work description to change it into the 2019 work description. From the evidence, the on-site reviews played only a minor role in the redrafting. Dr. McLearon, the author of the 2019 work description, did not consider the questionnaires. She stated that the 2016 work description was "too wordy", and she accepted change suggestions from other senior directors, even though the incumbents had confirmed coincidence, and more importantly, despite the fact that the wording constituted the final-level decision in the grievance process.

[196] One further point was not elucidated, and absent an explanation from the employer, I infer that it shows that a change of management at the upper echelons brought about a change of heart concerning the September 2016 final-level decision to the 2011 grievance.

[197] In Ms. Lim's email of February 2018 to senior directors explaining the need for on-site reviews, as well as in the second classification report, mention is made of suddenly discovering an overlap between the managing veterinarian (VM-03) position and the 2016 work description. Yet, when Mr. Étienne wrote to the grievors in September 2016 to present them with the 2016 work description, he was well aware of that overlap. In fact, he had specifically tasked Mr. Mathuik to review precisely that overlap and recommend which elements of the managing veterinarian work description should be included in the 2016 work description. In other words, the overlap was part of the employer's final-level decision of 2016.

[198] By the time the second classification was launched a year later, the overlap had become a problem to be solved. The initial classification exercise did not identify the overlap, as the 2017 classification committee report does not discuss it. Neither Ms. Verchere nor Ms. Lim could explain where or how the overlap problem had originated. In other words, it seems management decided that the overlap had become a problem, contrary to the employer's final-level decision in 2016 allowing the grievance. That is the main negative inference I draw from the employer's silence.

**A. Preliminary objections**

[199] The employer objected that the 2011 grievance was not properly before me, as it considered it moot. The 2011 work description that had been grieved no longer exists; the employer takes the position that it was replaced by the 2019 work

description, which is retroactive to May 1, 2001. If the grievors were dissatisfied with their work description, the employer contends that they should have grieved their current work description, the 2019 work description.

[200] In other circumstances, the argument might have some merit. However, in this case, it does not. Grievors are entitled to refer to adjudication a grievance "… that has not been dealt with to the employee's satisfaction …" (see s. 209(1) of the *Act*). The grievor's argument is that she has not been granted the whole remedy she claims to be entitled to – both the work description and its classification. I still need to decide the merits of the grievance, but the fact that it might fail does not deprive me of jurisdiction or render the grievance moot.

[201] With respect to the grievance, the employer also objected that the Board has no jurisdiction over classification and therefore cannot pronounce on the classification situation of the 2016 work description.

[202] It is well established that the Board does not have jurisdiction over classification. The grievor did not dispute that point. Management's right to classify positions is entirely preserved in s. 7 of the *Act*.

[203] That said, I do not consider this grievance a classification grievance; nor was it presented to me as one. This is a collective-agreement-interpretation case, and there is no doubt that the Board has every right to interpret the terms of a collective agreement. The grievor argued that clause E1.01 of her collective agreement entitles her not only to a complete and current work description but also to its classification. The employer argued that the two issues are separate. I will have to answer that question. I am not pronouncing what classification level should be assigned to the grievor's position, but rather on whether she was entitled to have her work description classified. I find the following passage of *Souaker v. Canadian Nuclear Safety Commission*, 2009 PSLRB 145, particularly apt:

…

> ***124****. I agree that an employee's right to refer a grievance to adjudication must originate in the Act and not the collective agreement. In section 209 of the Act, the legislator expressly and narrowly set out the matters that can be referred to adjudication and, in principle, a grievance against a rejection on probation is not adjudicable. However, in my opinion such a conclusion is not sufficient to resolve the issue of my jurisdiction. In addition to*

> *grievances filed against measures expressly noted in paragraphs 209(1) (b), (c) and (d), the legislator also provided in paragraph 209(1)(a) that grievances involving the application or interpretation of a collective agreement are adjudicable.…*
>
> *…*

[204] In the same decision the adjudicator adds at paragraph 126: "The legislator certainly did not intend for a violation of the collective agreement to escape review by an adjudicator". Therefore, I find that as an issue of collective agreement interpretation, the grievance is adjudicable.

[205] The employer objected to the timeliness of the complaint. The 90-day time limit in which to make a complaint under s. 190 of the *Act* is mandatory and cannot be extended. This position is correct, but of course, it all depends on the event that gave rise to the circumstances of the complaint. The complainant argued that the event was the classification decision, and I agree. It was proper for the complainant to wait for the entire process to complete before making a complaint of an unfair labour practice.

[206] As to the employer's argument that the complaint is not an arguable case, this goes to the issue of whether there is a basis that would establish a reverse onus for the employer, according to s. 190(3) of the *Act*. I will come back to this issue when dealing with the merits of the complaint.

**B. The grievance**

[207] The grievor relied on clause E1.01 of the collective agreement to claim that she is entitled to have the 2016 work description classified as-is by the employer, without any modification. For ease of reading, I shall quote the text of clause E1.01 again:

> *Upon written request, an employee shall be entitled to an official, complete and current statement of the duties and responsibilities of his position, including the position's classification level and the point rating allotted by factor and organization chart depicting the position's place in the organization.*

[208] The grievor argued that the classification must be related to the "… official, complete and current statement of duties and responsibilities …", while the employer argued that the classification need not be related to the statement of duties and responsibilities. Rather, according to the employer, the incumbent of a position is entitled to the classification of his or her position.

[209] However, the wording of the clause suggests that the classification must be related to the statement itself. An employee is entitled to a statement of duties and responsibilities, **including** the classification of the position. Therefore, the classification of the position is related to the specific statement of duties ("official, complete and current").

[210] The employer's other argument to oppose such a position is the classification exercise itself. According to the employer, the classification division was right to review the 2016 work description, and management was perfectly entitled to redraft it. Its position relies on *Brochu*, a decision of the Federal Court of Appeal.

[211] The facts in *Brochu* are different from the situation in this grievance. Mr. Brochu sought to have his employer allot a classification and point rating to his job description, based on a provision in his collective agreement that was identical to the provision at issue in this case.

[212] Mr. Brochu had been provided with a work description, including its classification, in response to his request for a complete and accurate work description. He was dissatisfied with the result and filed a classification grievance. Before the grievance was resolved, he and his immediate supervisor, along with a third unidentified manager, agreed on a new work description, which was sent to the classification section of Mr. Brochu's department. The classification section refused to classify the work description as it was incorrect, did not conform to the standards (too long and repetitive), and was not consistent with the organizational structure.

[213] Mr. Brochu was provided with a third work description, which remained classified at the initial level. Mr. Brochu grieved the refusal to classify the second work description. The Board's predecessor agreed with the employer that the second work description could not be classified, and the Federal Court of Appeal upheld the decision.

[214] The Court stated that for all intents and purposes, the second work description did not really exist, since the classification section had never approved it. Therefore, the Board has been right to decline ordering the employer to classify it. The Court's decision ends with the following paragraph:

…

> *Responsibility for the classification of positions rests with the Treasury Board and the departments which it authorizes to exercise such responsibility. This responsibility is not affected by the provisions governing labour relations in the Public Service… Within the Correctional Service of Canada, it is exercised by classification specialists who have been accredited by the Commissioner… Their power to classify positions includes the power to refuse a classification when the description of the position does not meet the standards or is not consistent with the organizational structure of the institution.*
>
> …

[215] I agree that the ultimate decision-making authority with respect to classification rests with the employer. However, from the evidence heard at the hearing, this authority is not ceded to the CFIA's classification division. Both Ms. Verchere and Ms. Lim insisted that management is the ultimate decision maker as to the content of the work description, with the classification division's advice.

[216] Ms. Verchere stated that a work description that would result from a Board or court decision would not be changed but would be classified as-is. She did not believe the same would be true of a final-level decision on a grievance.

[217] That is the crux of the matter in this case, which did not occur in *Brochu*. In that case, upper management had not been involved. Mr. Brochu's work description was not a generic description applicable to hundreds of employees. It was not the result of a long series of exchanges, agreements, and discussions between the employer, the bargaining agent, and the grievors. Crucially, the work description at issue in *Brochu* was not the final-level decision in a grievance procedure.

[218] The factual differences have an impact. The 2016 work description was the culmination of a 15-year grievance process. It was provided by the delegated authority as a final decision to the grievance process. It was the final resolution to a grievance and, again, in the formal setting of the CFIA's highest delegated authority. The classification division's role at that point was to classify; the employer was bound by its decision.

[219] The 2016 work description was granted at the final-level of the grievance process and made retroactive to May 1, 2001. With a change of vice presidents came a change of direction. Again, I received no evidence on this point, but I draw a negative inference from the fact that the employer chose not to call any evidence to explain why

it did not order the classification division to classify the 2016 work description as it was written, after CFIA upper management, the grievor, and the Institute had endorsed it.

[220] A final-level decision must have meaning for the grievance process to work and to foster harmonious labour relations. In its final-level decision, the employer granted a work description that was to be classified. It never was. I agree with the grievor that, under clause E1.01 of the collective agreement, she was entitled to have the 2016 work description classified and that the employer's failure to do so breached the collective agreement.

[221] The Board has no jurisdiction over classification. I have no say on the classification result. However, the Board can order that the terms of the collective agreement be respected.

[222] For that reason, I will order that the 2016 work description be classified and that the point rating, allotted by factor, be provided to the grievor.

## C. The complaint

[223] The Institute, on behalf of the grievors, made the complaint under s. 190(1)(g) of the *Act* alleging that the employer committed an unfair labour practice within the meaning of ss. 186(2)(a)(iii) and (iv). Those provisions read as follows:

> ***186 (2)*** *No employer, no person acting on the employer's behalf, and, whether or not they are acting on the employer's behalf, no person who occupies a managerial or confidential position … shall*
>
> ***(a)*** *refuse to employ or to continue to employ, or suspend, lay off, discharge for the promotion of economy and efficiency in the Royal Canadian Mounted Police or otherwise discriminate against any person with respect to employment, pay or any other term or condition of employment, or intimidate, threaten or otherwise discipline any person, because the person*
>
> …
>
> ***(iii)*** *has made an application or filed a complaint under this Part or Division 1 of Part 2.1 or presented a grievance under Part 2 or Division 2 of Part 2.1, or*
>
> ***(iv)*** *has exercised any right under this Part or Part 2 or 2.1 ….*

[224] Section 191(3) of the *Act* creates a reverse onus for the employer, in the following terms:

> ***(3)*** *If a complaint is made in writing under subsection 190(1) in respect of an alleged failure by the employer or any person acting on behalf of the employer to comply with subsection 186(2), the written complaint is itself evidence that the failure actually occurred and, if any party to the complaint proceedings alleges that the failure did not occur, the burden of proving that it did not is on that party.*

[225] The employer argued that the reverse onus did not apply, as the complainant did not establish even an arguable case that would create the reverse onus, since there was no intimidation or penalty for filing the 2011 grievance.

[226] The Board dealt with the issue of the arguable case as a condition to applying the reverse onus in *Joe*. In that case, the employer substituted a written reprimand for a one-day suspension days before the Board was scheduled to hear the grievance against the suspension. The employer then argued that the grievance could not proceed before the Board, since a written reprimand cannot be referred to adjudication.

[227] Mr. Joe, the grievor in that case, made an unfair-labour-practice complaint with the Board, arguing that the substitution was intended to deprive him of his right to have the grievance heard by the Board, contrary to s. 186(2)(c)(i) of the *Act*, which read as follows:

> ***186 (2)*** *No employer … shall*
>
> ***(c)*** *seek, by intimidation, threat of dismissal or any other kind of threat, by the imposition of a financial or other penalty or by any other means, to compel a person … to refrain from*
>
> ***(i)*** *testifying or otherwise participating in a proceeding under this Part or Part 2 or 2.1 ….*

[228] Part 2 of the *Act* concerns grievance adjudication.

[229] In *Joe*, the Board set out in the following terms the test that must be met for such a complaint to proceed:

> …
>
> *[40] Typically, the assessment of an arguable case is done based on the allegations contained in the complaint and the written submissions on that issue. In* Laplante*, the PSLRB determined that a complainant must meet this precondition for the provision on the reversal of the burden of proof to apply; that is before the*

> *employer can be required to prove that it did not contravene the prohibitions. The complainant must show that one of the circumstances described in s. 186(2) of the* Act *has been met. The complainant must also describe how they were either: intimidated, threatened, penalised or disciplined. Without that, the complaint is inadmissible, and the reversal of the burden of proof in s. 191(3) of the* Act *cannot be applied.*
>
> *[41] I concur with the reasoning followed in* Quadrini *and* Laplante*. An allegation of a breach of s. 186(2) must be reasonably arguable on its face in order for the Board to have jurisdiction and for s. 191(3) to apply. In* Quadrini*, at para. 32, the PSLRB described the threshold as follows: "taking all of the facts alleged in the complaint as true, is there an arguable case that the respondents have contravened subparagraphs 186(2)(a)(iii) or (iv) of the new* Act*?"*
>
> …

[230] I agree with the test set out in *Joe* concerning the arguable case. Based on that test, I cannot reach the conclusion that the allegation of the breach is reasonably arguable.

[231] In this case, the operative words are "… intimidate, threaten or otherwise discipline any person …". Being discouraged by the process is not the same as being intimidated, threatened, or otherwise disciplined.

[232] As stated earlier, I agree that the employer breached the collective agreement. It did not live up to the obligations that flowed from the final-level decision that the grievors received in September 2016. However, this does not amount to an unfair labour practice.

[233] Section 186(2)(a), which the complainant relied on, prohibits the employer from taking punitive actions against employees seeking to enforce their rights. Section 186(2)(c), which applied in *Joe*, prohibits any action that would prevent access to recourse under the *Act*. That action need not be punitive; the very prevention is prohibited. Not so in section 186(2)(a), which states that acts of reprisal for exercising rights are prohibited. I cannot find reprisal in the employer's actions.

[234] That said, there is something disconcerting in the employer's actions that show disregard for proper and harmonious labour relations, namely, the time the classification process took, without a proper explanation; the pretextual nature of the on-site review, which was not the main factor in modifying the work description; and

the deliberate setting aside of the final-level decision on a grievance that had lasted for 15 years in one guise or another.

[235] However, these actions do not add up to an unfair labour practice as defined in the *Act*. Section 186 is not designed to protect the rights of bargaining agents, but the rights of employees. Moreover, the actions taken by the employer must have a punitive effect. The employer's actions were not designed to punish or intimidate the grievors. They demonstrated woeful disregard for the terms of the collective agreement, not only clause E1.01 but also the grievance process itself, and the significance of the third-level decision.

**D. Conclusion**

[236] I find that the employer violated the collective agreement by not classifying the 2016 work description.

[237] For the grievance process to be meaningful, the decisions rendered within that process must be implemented. The employer issued a final-level decision on September 15, 2016, and provided a new work description, which it stated was complete and accurate. The work description's content, which had been grieved since 2001, was finally resolved to the grievors' satisfaction.

[238] The employer failed to fulfill its obligation to classify the work description it had determined complete and accurate. The changes made to the 2016 work description resulted in a different, decreased work description that was more likely to be classified at the VM-02 level. Those changes were made in complete disregard of the final-level decision that granted the 2016 work description.

[239] Consequently, I order the employer to classify the 2016 work description granted at the final level of the grievance process and communicated to the grievors in September 2016.

[240] Of course, the employer may revisit the work description in the future. However, any new work description for the supervisory veterinarian position, no. 59668, cannot have a retroactivity date earlier than the date the 2016 work description was granted, on September 9, 2016.

[241] I find that the complainant did not show an arguable case of unfair labour practice. Therefore, the complaint is dismissed.

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

*(The Order appears on the next page)*

## V. Order

[243] The grievance in file 566-32-39579 is allowed. The employer must classify the work description dated September 9, 2016, for supervisory veterinarian, no. 59668, as it was written and provide the point rating, allotted by factor, to the grievor, within six months of this decision.

[244] The complaint in file 561-32-40739 is dismissed.

November 12, 2021.

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