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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

ZUL PARPIA

Grievor

and

**TREASURY BOARD
(Correctional Service of Canada)**

Employer

Indexed as

Parpia v. Treasury Board (Correctional Service of Canada)

In the matter of an individual grievance referred to adjudication

Before: Augustus Richardson, a panel of the Federal Public Sector Labour Relations and Employment Board

For the Grievor: Sean McGee, counsel

For the Employer: Marylise Soporan, counsel

Heard via videoconference,
February 7 and 8 and April 24, 2023.

REASONS FOR DECISION

I. Introduction

[1] On October 23, 2008, Zul Parpia (“the grievor”) grieved his recent reclassification as an office administrator (AS-02). He alleged that his job description did not adequately reflect the services that he then performed and sought to be classified higher than AS-02, “... in line with the Chief, Administration Services at the Regional Institutions” (Exhibit 1, Tab 3). Despite the grievance’s wording, the parties agreed that in fact it was a complaint that the grievor’s office administrator (AS-02) job description was not a complete and current statement of the duties and responsibilities of that position.

[2] On November 1, 2014, the Public Service Labour Relations and Employment Board Act (S.C. 2013, c. 40, s. 365; PSLREBA) was proclaimed into force (SI/2014-84), creating the Public Service Labour Relations and Employment Board (“PSLREB”) to replace the former Public Service Labour Relations Board (“PSLRB”) as well as the former Public Service Staffing Tribunal. On the same day, the consequential and transitional amendments contained in ss. 366 to 466 of the Economic Action Plan 2013 Act, No. 2 (S.C. 2013, c. 40) also came into force (SI/2014-84). Pursuant to s. 393 of the Economic Action Plan 2013 Act, No. 2, a proceeding commenced under the Public Service Labour Relations Act (S.C. 2003, c. 22, s. 2; PSLRA) before November 1, 2014, is to be taken up and continue under and in conformity with the PSLRA as it is amended by s. 365 to 470 of the Economic Action Plan 2013 Act, No. 2.

[3] On June 19, 2017, An Act to amend the Public Service Labour Relations Act, the Public Service Labour Relations and Employment Board Act and other Acts and to provide for certain other measures (S.C. 2017, c. 9) received Royal Assent, changing the name of the PSLREB and the titles of the PSLREBA and the PSLRA to, respectively, the Federal Public Sector Labour Relations and Employment Board (“the Board”), the Federal Public Sector Labour Relations and Employment Board Act, and the Federal Public Sector Labour Relations Act (“the Act”).

[4] Having considered the evidence and the parties’ submissions, I have concluded that for the reasons set out as follows, the grievance must be denied.

II. The hearing

[5] The hearing took place over three days: February 7 and 8 and April 24, 2023.

[6] There was only one witness for the grievor — himself.

[7] On behalf of the Treasury Board (“the employer”), I heard the testimonies of the following people:

- Craig Townson, who at the material time was the district director, Central Ontario.
- Sherri Rousell, who at the material time was the area director of the Enhanced Services Unit, the Keele CCC, and was responsible for managing operations at the facility which included supervising parole supervisors and officers, correctional officers, office administrators, and human relations in general, and to whom the grievor reported as an office administrator.
- Sheriff Giwa, who during the period from 2009 to 2021 held several positions at the Keele CCC, including as a parole officer, supervisor, and manager and then as the acting area director.
- Dave Pisapio, who in the period from 2005 to 2015 held a number of managerial positions in the Central District from the area to the district director.
- Tania Stirpe, a psychologist who since 1999 has worked as a staff psychologist at the Keele CCC.
- Brigitte Penthor, who at the material time was one of two parole program managers at the Keele CCC.
- Dr. Jeffrey Abracen, who first worked as a psychologist at the Keele CCC from 2002 to 2005 and then became its chief psychologist until his retirement in 2020.

[8] At the conclusion of the employer’s case, the Public Service Alliance of Canada’s (“the bargaining agent”) representative sought to recall the grievor in rebuttal. His submission was that Dr. Abracen’s testimony about his opinion as to the grievor’s tasks and duties for the Keele CCC’s psychology unit amounted to contrary evidence under the rule in *Browne v. Dunn* (1894), 6 R. 67 (H.L.). I was not persuaded that this was so. In my view, Dr. Abracen, who worked at the Keele CCC during a good part of the grievor’s time there, simply testified to his recollection of the relationship and contact, if any, between him and his department and the grievor. It was not the type of evidence that falls within that rule. Accordingly, I dismissed the request to call the grievor to testify in rebuttal.

[9] The parties also each introduced a book of documents (Exhibits 1 (employer) and 2 (bargaining agent)). There were also two individual exhibits, an email chain on

the subject of bedbugs dated August 30, 2013 (Exhibit 3), and an unofficial sketch of an organizational chart of the employer's Ontario operations at the relevant time (Exhibit 4). The sketch was a last minute creation, justified in part by the employer on the grounds that the events in question had happened a long time ago.

[10] As of the date of his grievance, the grievor had been working as an office services supervisor at what was then the Enhanced Services Unit of the Keele Community Corrections Centre ("the Keele CCC") in Toronto, Ontario. He had held that position for roughly 13 years.

III. The background

[11] As of the hearing, the grievor was retired. Before arriving in Canada in 1974, he had been a certified accountant in England and Kenya. He started working with the federal government in 1988, first at Environment Canada. He then transferred to the Correctional Service of Canada ("CSC") to work first as a finance officer, classified CR-04.

[12] In 1990, he started working in the Enhanced Services Unit at the Keele CCC (its unit and operations have undergone several name changes over the years, and I have elected to use "Keele CCC" as a catch-all name.) It was housed in a building in Toronto that had two sections or units that were physically separated on each side of the building. One side contained the residential unit, which housed or supervised inmates who were moving gradually back into the community at large. The number of inmates in residence fluctuated over the years but was never more than something in the range of 40. Some lived in the unit but worked or spent the day outside, under supervision. Others lived and worked in the community but continued to be supervised by parole officers at the Keele CCC. They were all minimum-security risks.

[13] The other side of the building housed those providing administrative and correctional support services to the Keele CCC. The former housed the administrative staff, which included the grievor's office as an office administrator, together with three clerks (or "associates", as the grievor liked to call them) who worked under him and the office of the director of the Keele CCC. It also housed the offices for the parole officers, a few psychologists who provided counselling to the inmates, and a chaplain. The numbers of these employees, most if not all of whom worked in their own departments, was never clear in the evidence. The Keele CCC had a few vehicles

assigned to it for transporting inmates or for parole officers or psychologists who might have to attend court or other places as part of their work.

[14] The space between the two units was occupied by correctional officers.

[15] There were a number of directors at the Keele CCC between 1990 and 2008 (when the grievance was filed), including Mary Leiger, Mark Harland, Bets Hibbert, and finally, Sherri Rouzel. The grievor testified that the director's responsibilities included only the Keele CCC.

[16] The grievor started working at the Keele CCC in 1990 as an office service supervisor (CR-05). However, this position became part of a process that resulted in it being reclassified AS-02 and renamed as office administrator, effective February 2007 (Exhibit 1, Tabs 1, 4, and 5; and Exhibit 2, Tab 2). The job description for the position as of February 2007 was entered as part of the employer's book of documents (Exhibit 1, Tab 2).

[17] The grievor was not satisfied that the work that he carried out, now as an office administrator, was properly classified AS-02. He filed the grievance before me on October 27, 2008. He sought reclassification to a higher level than AS-02, in line with the chief, administrative services, position at the CSC's Regional Institutions (Exhibit 1, Tab 22).

[18] I pause to note that the relevant organizational structure (with classifications) as it existed in or about 2008, insofar as relevant, and from the top down in terms of reporting, was the following:

- 1) Deputy Commissioner, Ontario (EX-04)
- 2) District Director, Central Ontario (EX-02)
 - a) Assistant to District Director (AS-01)
- 3) Director, Enhanced Services Unit, the Keele CCC (WP-06)
 - a) Office Administrator (AS-02)
 - b) Parole Supervisor, Team Supervisor (WP-05)
 - c) Parole Supervisor, the Keele CCC

[19] The office of the director of the Keele CCC was located in the administrative wing of the Keele CCC building. The offices of the other positions up the chain were located elsewhere.

[20] On September 4, 2009, the Keele CCC's director provided the employer's first-level response to the grievance. It was noted that the effective date for the AS-02 reclassification was chosen to align with the implementation of the director's position, given that the office administrator reported to the (area) director (Exhibit 1, Tab 7). The grievance was denied at the first level. It then began a slow transit through the other steps in the grievance process.

[21] On February 3, 2012, Ms. Rousell, then the Keele CCC's acting director, was asked about the grievor's work there as an office administrator. She was provided with a detailed explanation of the factors that went into classification decisions. She replied as follows (Exhibit 1, Tab 15):

... I have already tried to explain to Zul that while he does different things than the other OAs his jobs still fall within the very detailed job description for an AS2. I pointed out that while he does more related to the centre but [sic] Daphne and the other OAs have more contracts to contend with that he does not have so in the end a lot of that balances out. I also pointed out that while he does often help the other depts. (psych and progs) it is not his job to do so and if he chooses to help them that is his choice. It is difficult to explain this to him. While I want to help him I don't think there is much I can do and I really don't want to damage the great working relationship we have either. With respect to the decision making I think in the end most of that responsibility rests with me and not him. He happens to be very adept at what he does and requires limited direction from me which probably feels like he has more responsibility than he really does. Does this make sense and am I accurate do you think?

...

[22] In a February 9, 2012, email, Mr. Pisapio added his observation as follows of the grievor's position (Exhibit 1, Tab 17):

...

It is the location of part of the district staff on the main floor at 330 Keele that is of issue. Zul tended to pay bills and look after some of the admin procedures for the programs and psychology staff (district staff) given their location on the main floor. Way back...when the district office was located at 330 Keele, Zul was assigned administrative duties to the district office when he returned from a period of sick leave following surgery. Upon resuming the OA responsibilities at Keele Centre, he maintained the admin function for the district staff and continued for part of the district staff when the office split. So...all responsibilities fall within the work description as far as I can tell but providing

assistance to district staff may make him feel that it is outside of his responsibilities.

...

[23] In a February 12, 2012, email to Director Rousell, the grievor repeated the basic outline of his grievance as follows (Exhibit 1, Tab 17):

...

In all honesty it is still my belief that there are duties I perform and have performed over the years have not been included in my Job Description.

I feel strongly that these should be included in my Job Description. It may seem that other OAs are performing duties that I may not be in some areas.

That in my opinion is debatable perhaps for a lack of better words not quite true because I do and have looked after contracts for several years when my duties included Programs, Psychology and even IT. Whether this was explicit or implicit.

For over 10 years as the OA at Keele I did Finance, Fleet Management, Procurement and Administrative duties for Programs, Psychology, Chaplaincy, IT.

All these sections are housed at 330 Keele Street. For these services at no time I was offered any remuneration or given credit in my Job Description.

These duties were performed with the full knowledge of the District Management. At no time there was any attempt was [sic] made for me to desist from doing these duties.

...

[24] On March 29, 2012, the employer delivered its second-level response to the grievance. It denied the grievance, stating that the grievor's existing work description accurately reflected the duties and responsibilities then assigned to his position (Exhibit 1, Tab 21).

[25] The grievor then transmitted the grievance to the third level. The employer's third- and final-level response on June 12, 2012, was to the same effect (Exhibit 1, Tab 25).

IV. The job duties and responsibilities

[26] The grievor's position name and classification as of when the grievance was filed was that of an office administrator (AS-02). The employer provided a copy of the associated work description (Exhibit 1, Tab 2). In his direct examination, the grievor spent virtually no time testifying to that job description. He did not identify or

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describe the tasks and responsibilities that he performed that were within it. More to the point, he did not describe the tasks and responsibilities that were not accurately described in it. He was instead taken to — and laid claim to — a number of skills, tasks, and responsibilities in the job description for a chief, administrative services (AS-03), position, which had been effective since January 2004 (Exhibit 2, Tab 1). However, he did not spend any time explaining or differentiating those skills, tasks, and responsibilities from the ones in the office administrator job description.

[27] The thrust of the grievor's testimony was that a large number of the tasks and responsibilities he performed at the Keele CCC were outlined in the job description for a chief, administrative services (AS-03), position (effective January 1, 2002) (Exhibit 2, Tab 1). His counsel walked him through the categories in the description named "Client Service Results", "Key Activities", "Skill", "Effort", "Responsibility", and "Working Conditions" and secured answers as to how those categories compared to the work that he did. Both he and the grievor paid particular attention to 16 items that the grievor had marked with stars as being particularly relevant to his grievance. (I note that he put check marks next to 6 descriptions in addition to the 16 starred items; see Exhibit 2, Tab 1.)

[28] The grievor did not say when he had marked up the job description. I assume that it was some time before February 6, 2023, which is when I received a copy of it (Exhibit 2).

V. The chief, administrative services, job description, and the grievor's testimony

[29] The grievor first provided a brief account of his history with the employer. He then provided an outline of the events that led to the office service supervisor (CR-05) position being reclassified to office administrator (AS-02), effective February 2007.

[30] The grievor was next taken directly to the job description of the chief administrative services (AS-03), position and was asked about the tasks, skills, and responsibilities he had starred in that job description (Exhibit 2, Tab 1). The first was as follows:

...

Manages the information and records management function for the institution, including : directing the full life-cycle process of administrative and offender records; directing threat/risk

assessments and audits on main and sub registries to ensure compliance with Administrative and Security policies, procedures and legislation; responding to internal and external information requests.

...

[31] The grievor was asked who at the Keele CCC was responsible for managing and recording information there. He said that he was.

[32] He was then asked who directed the full life-cycle process of administrative and inmate records. He answered that he did, with the help of his “associates”, in his words. (Later in his testimony, he explained that by “associates”, he meant those who reported to him and added this: “[I] didn’t like to use the word ‘clerk’ or ‘subordinate’ because I don’t like to make them seem lesser to me ... but by ‘associate’ I mean those who report to me.”) He explained that three associates worked for him at the material time.

[33] He was asked who was responsible for directing threat/risk assessments and audits on the main and sub-registries to ensure compliance with administrative and security policies at the Keele CCC. He answered that he was “responsible, but that ultimate decisions were made by the director.”

[34] He was asked who was responsible for responding respond to internal and external information requests. He answered that he was.

[35] The grievor was then taken to the second task description that he had starred, as follows, and he testified that he carried it out, “but in conjunction with the director”:

...

Manages, plans, implements, provides expert advice and training and ensures compliance of services offered to staff and offenders in regard to Privacy and Access to Information. Implements or recommends corrective action to Management. Produces a yearly Management Control Framework report.

...

[36] He was asked who performed that task. He explained that he did. He added that the regulations to be followed came from the CSC’s Regional Headquarters but that he

“had to manage them.” He added that the director did the planning but that he and his clerks (whom he persisted in referring to as his “associates”) did the implementation.

[37] He was asked who implemented these directions. He said that he did, along with his clerks. He was asked who provided the expert advice and training, and he said that he did, “in conjunction with Regional Headquarters.”

[38] He was asked whether a Regional Headquarters representative was at the Keele CCC. He answered with this: “no, but they communicated with me and the director”. He added this: “anything I did the ultimate decision was the director’s and I did the basic work.”

[39] He was asked who prepared the yearly report. He said that he did, “in conjunction with the director.”

[40] He was then taken to the third starred task description, which reads as follows:

...
Manages, plans, implements, provides expert advice and training and ensures compliance of services offered to staff and offenders in regard to Claims Administration, Ex-gratia Payments, Pardons and Offender Grievances. Implements or recommends corrective action to Management. Produces a yearly Management Control Framework report.
...

[41] He was asked who performed this task. He explained that he advised on claims and payments, that the director was responsible for making the actual decisions, and that he (the grievor) then implemented the corrective actions. When asked who was responsible for recommending any particular corrective action, he answered that it was entirely at the director’s discretion, that he had no such authority, but that what had to be remembered was that “there was no one else between me and the director ... that if anything was to be done it was between me and the director.”

[42] The next seven starred items were under the Skills heading. The grievor was taken to the first one (being the fourth of the starred descriptions), which reads as follows:

...

The theories, principles and techniques of financial resources management and purchasing to : manage an O&M budget of up to \$300,000 for the purchasing, maintenance and leasing of all office equipment, office supplies and telecommunications equipment for the institution; ensure compliance with purchasing/NMSO policies, procedures and processes; conduct financial planning, forecasting and cost benefit analysis; plan long-range requirements and provide advice to management (e.g. for major office retrofit projects where office equipment, records storage and telecommunications equipment expenditures are involved).

...

[43] The grievor explained that O&M stood for “office management” and that during the material time, the budget was actually up to something in the range of \$500 000. He testified that he was responsible for purchasing and leasing equipment. He said that he did the financial planning, “in conjunction with the director.” He also said that he did the long-range planning, albeit that the ultimate decision rested with the Keele CCC’s director.

[44] He was then taken to the second starred item under Skills, which reads as follows:

...

Telecommunications technology to : provide expertise to management (e.g. institutional requirements); to plan new installations and purchase equipment; ensure that all institutional telecommunications equipment and systems are compliant with security policies and legislation; provide training to institutional staff; manage the offender phone systems; act as the designated institutional contingency plan telecommunications lead. Knowledge requirements in this area are constantly evolving and require ongoing training and familiarisation with emerging trends and developments.

...

[45] The grievor was asked who provided expertise to management on telecommunications equipment and systems. He said that he did and pointed to a certificate of appreciation (Exhibit 2, Tab 9), which he had received for his “... diligence and hard work in negotiating a sizable [sic] credit from Bell Canada and securing future savings for CSC”.

[46] He was also asked about the planning, purchase, and installation of new equipment. He answered that it was his responsibility, although the ultimate decision

was that of the director. He said this: “I did the planning, I made recommendations and did the groundwork and gave it to the director, and the director then authorized it.”

[47] The grievor was then taken to the next starred description, which stated this: “Procedures development to : Administer the institutional Directives Management process (including Standing Orders and Institutional Operation Procedures) and develop procedures for the Administrative Services section.”

[48] He was asked who did that, and he said that he did, “in conjunction with the director.”

[49] He was then taken to the next starred description, which reads as follows: “Responsibilities as outlined in Contingency Plans for emergency situations to ensure the proper and timely delivery of emergency administrative and telecommunications services as required.”

[50] The grievor said that these responsibilities were his, “in conjunction with the director.”

[51] The next starred description was the following:

...
CSC, its Mission and Values, corporate objectives and management practices, correctional facilities, community-based residential facilities and regional parole offices to respond to inquiries, direct and obtain information and contribute to the overall performance of the institution.
...

[52] When asked about this, the grievor testified that it was mandatory for him to know the CSC’s mission and values.

[53] The questions and answers on the last two starred items under the Skill heading followed the same format.

[54] The same approach to the evidence of what the grievor did was also applied to the starred items under the Effort heading. For example, the first starred item under this category (being the 11th starred item in total) read as follows:

...

Manage the federal and provincial electoral processes for the institution, ensuring compliance with legislative requirements
Coordinates the process with Elections Canada, Management, RHQ and NQH. Constraints include tight deadlines, ensuring the proper level of resourcing and explaining the voting process to offenders who may have cognitive difficulties.

...

[55] The grievor was asked who performed this task. He said that he did “all the groundwork for the electoral process management.” He said that he was responsible for ensuring that a proper level of resources was available to support the voting process.

[56] The grievor was then taken to the items he had starred under the Responsibility heading. His evidence followed the same approach. For example, the first starred description under that heading was this one:

...

Management of the information and records management function for the institution, including : directing the full life-cycle process of administrative and offender records (classification, storage, protection, retention and disposal); responding to internal and external information requests; developing standards, procedures and work processes; providing advice and training to institutional staff and management; making recommendations to the Warden regarding e.g. operational requirements and the improvement of service delivery; attending court as the Warden's delegate when [sic] subpoena is received for offender records.

...

[57] The grievor was asked, sentence by sentence, who performed these actions. He replied that in most cases, he did. He acknowledged that in many cases, the director was ultimately responsible for any decision that was made. As the grievor explained it, he “did the planning and gave recommendations to the director who then decided.” He added that he never attended court for the director.

[58] The grievor was then taken to the descriptions he had ticked (rather than starred) as relevant. The first, under the subheading “Responsibility for the leadership of human resources and the well-being of individuals” under the Responsibility heading, was this one:

...

Manages the human resources of the institutional Administrative Services section including : planning long range resourcing requirements (based on the needs of the section and the administrative support requirements of the institution); developing work plans, personal development plans, performance indicators, annual objectives, work processes and procedures; hiring and supervising staff; conducting performance appraisals; recommending disciplinary action; responding to labour relations grievances.

...

[59] He was asked who did those things, and he answered that he did, generally in conjunction with the director. He made recommendations to the director, who made the decisions. When asked whether he made recommendations as to disciplinary action, he answered that he did, although he acknowledged that he had no authority to become involved in labour relations. He was asked whether he supervised staff, and he answered that he did, although he did not specify (and was not asked) who in particular he supervised.

[60] The grievor was taken to the 13th starred item (the second under Responsibility), which reads as follows:

...

*Management of the institutional Offender Grievance function, including : coordinating activities with the Inmate Grievance Committee and the Citizen Advisory Committee; providing information to and mediating with offenders to resolve issues at the earliest possible step; assigning sensitive or priority designations to the complaints; providing advice and information to Management and the Warden to assist them in their responses; quality controlling response [sic] to complaints; ensuring compliance of offender complaint decision and proper input into OMS; providing information and guidance to institutional staff on the investigative process.
Tracks offender complaints/grievances and Claims Against the Crown/Ex-gratia payments, identifying potential trends and security issues for Management/Security.*

...

[61] He was asked whether he dealt with the inmate grievance function. He said that he did, "in a limited way." He would find out what the grievance was about and determine whether it was legitimate. However, the ultimate decision and responsibility was with the director, and regardless of whether the grievor thought that the grievance

was legitimate, it still had to go to the director. When asked about mediating complaints, he said that he tried it because he had an excellent rapport with most of the residents.

[62] I pause to note that the rest of the grievor's testimony on the AS-03 job description proceeded the same way. That is to say, he was taken to items in the description that he had already previously starred as significant to his grievance. He was asked who performed each task. He answered that he did, albeit acknowledging in many cases that the ultimate decision or responsibility was with the director. In effect, he was led through his testimony in direct examination. He was not asked open-ended questions designed to get him to explain in his own words what he did. He was not asked to provide details of the tasks or responsibilities that would or could explain or justify his conclusion that he performed the higher-level tasks and responsibilities in the AS-03 job description. He was not asked to compare what he actually did with what was set out in the office administrator's job description. Instead, he was simply asked repeatedly, in effect, to confirm what he had already previously indicated to the employer were work descriptions that he alleged fell within the AS-03 classification.

[63] The grievor then moved on to provide a few examples of the work and responsibilities that he said fell outside the office administrator's job description and hence its classification.

[64] One example had to do with Toronto Transit Commission ("TTC") tokens.

[65] The inmates and sometimes Keele CCC staff on employer business would use the TTC to get around Toronto. The TTC provided a discount for the bulk purchase of transit tokens greater than \$2200.00. Over the years, the grievor had developed a practice of making the purchase and then doling out the tokens to the inmates or the departments (parole, psychology, etc.) at the Keele CCC. Ms. Rousell testified that those departments had raised a concern about having to go to the grievor each time they needed tokens. They sought the ability to control their own tokens.

[66] In an email dated September 23, 2012, Ms. Rousell asked the grievor about the issued tokens, as follows (Exhibit 1, Tab 27):

...

I noticed the last time I signed for tokens that you order a certain number of rolls for us, psych and programs but Brigitte said they only get one roll at a time. Can you please give all the rolls you order for programs to them and let Brigitte manage them.

Thanks Zul :) I realize they need to be ordered through our account but no need for us to hold on to them.

...

[67] The grievor responded the next day with this (Exhibit 1, Tab 27):

NO problem! Shall be done, Sherri

I do not give one a time. It depends on how many rolls ask [sic].

There is no reason for me to give one a time.

As long as they have the control that is fine with me. This way I will not be responsible to account for them.

In future perhaps they can do their ordering. Save me a lot of hassles. This is very good for me.

...

[68] Ms. Rousell then asked the grievor whether the individual departments could order their own tokens, as follows:

...

With respect to the tokens... Is it easy to create their own account with TTC? If not it is no big deal for us to include their order with ours but they can manage their own tokens when they come in. Brigitte [Penthor] has signing authority so she should manage anything financially related to her department. We have enough to look after with our own stuff. As I have said since I arrived there is no reason they cannot take on more responsibility downstairs.

...

[69] The grievor replied as follows, explaining that while departments could order tokens, they would not be able to obtain the same volume discount (Exhibit 1, Tab 27):

Because TTC will not deliver tokens for less than \$2200 I order for Keele, Programs and Psychology. If each office goes it alone Keele will have to pick up the tokens at a Station and it will cost more.

Because of the large order we get a slight discount. Health Services used to pick up their [sic] by asking Finance to prepare a DBA cheque i.e. a small cheque in the name of the person who is going to go get the tokens. The same as Petty Cash Cheque.

I have been out of the goodness of my heart providing the Token services and keeping records for several years.

Frankly, I am happy to part from the 'goodness' part. I don't get credit for it nor make friends. Smile!

So, one more thing to part from, Sherri. Can you see the smile on my face?

...

[70] Ms. Rousell responded by establishing the procedure to be employed as follows (Exhibit 1, Tab 27):

If I read this correctly it is in all our best interest to continue with the larger order so they are delivered otherwise you too have to go to the station to pick them up. Let's keep the order the same but let programs manage them once they come in. They can sign that they got them from you but can keep their own logs etc.

Brigitte - does this make sense?

[71] The grievor had the last word, as follows (Exhibit 1, Tab 27): "I concur, Sherri I know it is a little bit more work on my side but that is okay. Brigitte is a nice lady. I don't mind helping her. LoL [sic]!"

[72] In cross-examination, the grievor often backed away from some of this testimony in direct examination. For example, he was asked about preparing budgets. His evidence in direct examination had been to the effect that he was close to an equal with whoever had the final say. On this point, he was asked in cross-examination whether he was "in charge" of the psychology department's budget. He answered that "in charge is very strong ... I'd do groundwork but the final decision was by the psychology supervisor ... I just did the forecasting." When asked about budgeting for the other units within the Keele CCC, he said that he helped them out by providing them with their expenses for the year in response to their questions.

[73] I note that on the issue of budgeting for the psychology department, Dr. Abracen, who was then in charge of the department, explained the process as follows:

I'd be handed budget by District and then by region . typically [sic], it didn't vary all that much, x dollars one year, maybe it would go up a percentage next year, but there was not much variability ... typically our contracts with psychologists providing service to the unit were for one year with some option for renewal, so not much variation in the budget from year to year, the contracts often

lasted 3-5 years depending on the options ... most of the money we spent was for psychologist and psychiatrist contracts.

[74] When the grievor was asked for his role in the process, he replied with this:

he was separate from us, in charge of the upstairs from us at Keele, sometimes we might have asked him ... I've had assistant who asked Zul for help regarding an order for office supplies, he was very helpful giving us tokens, he was responsible for tokens, he give us them to give to clients, he was very helpful with that . and when I first started, he helped with the order of office supplies ... it was always district or region that helped with office supplies ... I would not be surprised if a new assistant would ask Zul who supplies should be ordered from but once that happened the assistant would do it for themselves.

[Sic throughout]

[75] With that evidence in hand, I now turn to the parties' submissions.

VI. Summary of the submissions

A. For the grievor

[76] The grievor's counsel commenced by acknowledging that the issue before me was whether the grievor's AS-02 job description was a complete and current statement of the duties and responsibilities of his office administrator position. He submitted that in answering that question, one could look at job descriptions for AS-03 and AS-04 positions. He provided a 14-page "Job Description Comparison" chart that compared what was said about different client service results, key activities, skills, effort, responsibilities, and working conditions between the AS-02 office administrator position and the AS-03 (labelled AS-04) job description that the grievor had testified about. (For ease of reference, I have marked the chart as Exhibit 5.) The chart also included his submission as to what as a result was missing from the AS-02 job description and so should be included.

[77] The grievor's counsel submitted that the grievor's testimony was to be preferred over that of the employer's witnesses. The grievor's testimony was clear and credible. His memory for the most part was clear. This clarity was to be contrasted with the employer's witnesses, who often were uncertain as to long-ago events. When stating this, he did not suggest any mendacity on the part of the witnesses. He acknowledged that all testified to the best of their memories. But the events were long ago; they

involved the grievor directly and the witnesses only tangentially, so it was reasonable to conclude that any conflicts should be resolved in the grievor's favour.

[78] The grievor's counsel then recapitulated, point by point, the grievor's testimony on the AS-03 tasks and responsibilities that he had laid claim to. He argued that the employer never directly contradicted the grievor's testimony on these points and never said that he did do what he said he had done. He submitted that as long as the grievor said that he did something, it was not necessary to provide evidence as to the underlying facts that supported that assertion. For example, the grievor's testimony that he had managed the telecommunication systems was sufficient — he did not have to provide evidence as to what he actually did and how that would amount to the “management” of the system in the absence of any denial or contradictory evidence from the employer.

[79] The grievor's counsel then turned to two authorities that he submitted supported the grievor's position: *Meszaros v. Treasury Board (Department of Justice)*, 2016 PSLREB 29; and *Lacasse v. Treasury Board (Department of Agriculture and Agri-Food)*, 2021 FPSLREB 6.

[80] In response to the question of whether the voluntary assumption of tasks or responsibilities outside one's job description could render a job description deficient, the grievor's counsel submitted that if the task was done at all times with the employer's knowledge, then it must perforce be considered part of the job. He pointed to *Lacasse* as establishing that there is a difference between performing an unauthorized task and performing tasks that have to be done over years. Such latter tasks should, in the absence of any objection from the employer, be included in the job description by virtue of their long-standing performance.

[81] The grievor's counsel concluded by pointing to the chart (Exhibit 5) and submitting that the wording listed under “Complete and Current Statement of the Grievor's Duties” should be incorporated into the AS-02 office administrator job description.

B. For the employer

[82] The employer's representative commenced her submissions by pointing to s. 7(1)(e.1) of the *Financial Administration Act* (R.S.C., 1985, c. F-11), which reads as follows:

7 (1) The Treasury Board may act for the Queen's Privy Council for Canada on all matters relating to

...

(e.1) the terms and conditions of employment of persons appointed by the Governor in Council that have not been established under this or any other Act of Parliament or order in council or by any other means ...

[83] She then turned to the authorities in this area, including *Lacasse; Jennings v. Treasury Board (Department of Fisheries and Oceans)*, 2011 PSLRB 20; *Suric v. Treasury Board (Department of Human Resources and Skills Development)*, 2013 PSLRB 44; and *Hughes v. Treasury Board of Canada (Natural Resources Canada)*, 2000 PSSRB 69, all to the effect that job descriptions need not be detailed with respect to each and every activity carried out by an employee and that one is sufficient if it contains enough information to accurately reflect what the employee does.

[84] The employer's counsel then pointed to what she argued were defects in the grievor's evidence. She noted that there was no evidence as to the provenance or authority of the unsigned copy of the AS-03 job description (Exhibit 2, Tab 1). She noted that a number of times in cross-examination, the grievor acknowledged that he did not perform a number of tasks or responsibilities or they were the ultimate responsibility of the director to whom he reported. In other words, the grievor was not self-directed with respect to those responsibilities — he simply acted to assist the director. And she noted that there was a fair amount of overlap between the AS-02 and AS-03 job descriptions. In other words, the tasks, skills, and responsibilities of the two positions were not mutually exclusive.

[85] The employer's counsel submitted that it is not for an adjudicator to wordsmith a job description or to redraft it to produce a "better" one. An existing description is to be left alone so long as it indeed does provide a complete and current statement of the position's duties and responsibilities.

[86] The employer's counsel submitted as well that the grievor's starting point should have been a comparison of his AS-02 job description with the work that he performed. If there was a reasonable match — which she argued clearly existed — then the grievance had to be denied.

[87] The employer's counsel submitted that the fact that the grievor might have taken on services for other departments at the Keele CCC or voluntarily provided help or information to others did not warrant reclassifying his job, even if that activity fell outside an AS-02 position. She pointed to the tokens issue as an example.

[88] The employer's counsel also raised an objection based on timing. She noted that in June 2012, the grievor was expressly directed to perform only the tasks and responsibilities outlined in the office administrator (AS-02) job description. That being the case, if the grievance were allowed, it could cover a period only up to June 2012 on the basis of being a temporary assignment.

C. The grievor's reply submissions

[89] Counsel for the grievor rejected the employer's submission that the grievor engaged in wordsmithing. He submitted that job descriptions must reflect the work actually being done. The fact that the director might have signed off on a particular decision did not detract from the grievor's role in ensuring that the process leading to that decision ran smoothly.

[90] The grievor's counsel submitted that while the grievor might not have been asked or directed to do certain tasks, nevertheless, he had been performing them for years, to the employer's knowledge.

VII. Analysis and decision

[91] At the material time, the grievor was a member of the Public Service Alliance of Canada (Program and Administrative Services Group), and as such, he was subject to the terms and conditions of the agreement between it and the employer that expired on June 20, 2007 ("the collective agreement").

[92] Clause 54.1 of the collective agreement provides as follows:

54.01 Upon written request, an employee shall be provided with a

54.01 Sur demande écrite, l'employé-e reçoit un exposé complet

complete and current statement of the duties and responsibilities of his or her position, including the classification level and, where applicable, the point rating allotted by factor to his or her position, and an organization chart depicting the position's place in the organization.

et courant de ses fonctions et responsabilités, y compris le niveau de classification du poste et, le cas échéant, la cote numérique attribuée par facteur à son poste, ainsi qu'un organigramme décrivant le classement de son poste dans l'organisation.

[93] The grievance before me states that the office administrator (AS-02) job description does not adequately reflect the services that the grievor performs as of 2008. The onus of proof that it does not was upon the grievor.

[94] The jurisprudence on what a job description must contain to satisfy the requirement that it provide a complete and current statement of the duties and responsibilities is well established. As noted in *Jennings*, at para. 52:

[52] What is a complete and current statement of the duties and responsibilities of an employee? The parties and the arbitral authorities on which they rely agree that a work description must contain enough information to accurately reflect what the employee does. It must not omit a "... reference to a particular duty or responsibility which the employee is otherwise required to perform" ... A job description that contains broad and generic descriptions is acceptable as long as it satisfies that fundamental requirement... The employer is not required to use any particular form of wording to describe the duties and responsibilities of an employee and "... it is not the adjudicator's role to correct the wording or the expressions that are used," so long as they broadly describe the responsibilities and duties being performed ...

[95] The question then is whether the grievor met the onus of establishing that the AS-02 job description fails to broadly describe the duties that he performed and his responsibilities in his work at the Keele CCC. To meet that burden, he had to establish that tasks and responsibilities that were part of his regular office administrator duties were not adequately described or identified in his job description. If that onus was met, then the omitted tasks or responsibilities must be placed in the job description. Once that happens, it is up to the parties to decide what impact, if any, it would have on the classification.

[96] Before proceeding with my analysis, I think it must be said that it was quite clear from the evidence that the grievor was a hardworking and very helpful employee. He was always willing to help others with their work. His long history at the Keele CCC

made him a deep source of information and of possible solutions for other employees, particularly new ones, in other departments who might have struggled to find answers to questions that arose during the course of their work, such as how or where to purchase office supplies or arrange for public transit or the use of fleet vehicles. He was not content to stick in his lane when another employee in another department needed help. The employer's witnesses were united in sharing this view of the grievor's work as an office administrator.

[97] But the issue in these types of grievances is not whether the employee is hardworking, highly valued, or highly rated in terms of performance. Those qualities may be grounds for promotion, but they are not relevant to the accuracy of the employee's job description.

[98] The grievor alleged that his job description did not capture his duties and responsibilities at the Keele CCC. He stated that it was not a complete and current description of his work. And he set out to prove that allegation by looking at the AS-03 job description and highlighting the tasks and responsibilities in it that he said that he performed.

[99] By taking that approach, the grievor put the cart before the horse. In this type of grievance, his first step had to be a comparison of his actual duties and responsibilities with his actual job description — that is, for an office administrator (AS-02). He had to identify the tasks and responsibilities that did not fall within that job description. Had he done that, he would have established a foundation for his allegation that the AS-02 description did not provide enough information to accurately and completely describe the work that he in fact did; see, for example, *Jennings*.

[100] But that is not what the grievor did. Instead, he focussed a substantial part of his evidence on tasks and responsibilities that were in the AS-03 job description. However, the fact that there were tasks and responsibilities in a different job description would have been relevant only if his AS-02 job description did not also cover them. It is not enough, in other words, simply to lay claim to a number of the descriptions of the tasks and responsibilities in the chief, administrative services, job description. The grievor had to establish that those tasks and responsibilities were not already adequately described in his office administrator job description.

[101] There are a number of difficulties with this approach.

[102] First, as already noted, by focussing on the AS-03 job description, the grievor failed to provide the evidence necessary to establish that the existing AS-02 job description did not provide a complete and current statement of the duties and responsibilities of his office administrator job. To put it another way, the fact that the grievor performed tasks and had skills that fell within the AS-03 description would be relevant only if those tasks and skills did not also fall within those laid out in the AS-02 description. His failure to focus on his actual job description left open the possibility that the tasks that he said he performed were simply different ways of describing tasks and responsibilities that were already laid down in the AS-02 job description. Adding to this difficulty is the way he went about presenting his evidence. Because it was the product of leading questions linked to the end goal (the AS-03 description) rather than to the current description (the AS-02 description) meant that it lacked much weight.

[103] Second, the evidentiary onus on the grievor meant that it was not enough for him simply to allege that he performed tasks and responsibilities described in the AS-03 job description. The descriptions in that one are essentially conclusions based on the underlying facts of what the job entails. His failure to provide evidence as to those underlying facts weakened his claim that he performed those tasks and had those responsibilities. The absence of detailed evidence as to what he actually did meant that there was no support for his claim that what he did matched those descriptions in the AS-03 description.

[104] Third, and related to the second, there is often an inherent indeterminacy in the descriptions of tasks and responsibilities in job descriptions, particularly when jobs in one classification overlap those in a lower or higher classification. For example, a responsibility that involves staff supervision offers little guidance as to the complexity or demands of that responsibility. It does not set out, for example, whether the supervision involves 3 employees in one office (the grievor's task) or 100 employees in several different offices. After all, it is not always the description that determines the substance of the task or responsibility being described. In many cases, it is the underlying factual context. The fact that one job description contains task descriptions similar to another, higher-level job description does not mean that the two are the same or that the first is inadequate. What matters is the degree, extent, and complexity of the tasks in issue.

[105] An example of this problem for the grievor may be found in the question of staff supervision. This was one of the tasks and responsibilities that he advanced in support of his allegation that his job description was inadequate. Here is a comparison of what the two job descriptions detail about staff supervision.

A. Office administrator job description (AS-02)

[106] Under Key Activities, it states: “Trains, supervises and evaluates the performance of administrative staff responsible for providing case management and administrative support to the Area Office.”

[107] Under Skill, it states this:

...

Oral communication skills are required to provide advice and recommendations to management, to train and supervise administrative staff and to interact with staff, government departments and agencies, service providers, suppliers, offenders and members of the general public.

...

Analytic, leadership and problem-solving skills are required to supervise, counsel and motivate administrative staff.

...

The Public Service Employment Act, policies and procedures related to harassment in the workplace and employment equity, in order to hire, train and supervise administrative staff and provide information to assist in human resource [sic] inquiries.

...

[108] Under Effort, it states: “Manages and supervises the work of the administrative section of the Area Office in terms of establishing workload, setting priorities, training and evaluation.”

[109] Under Responsibility, it states as follows:

...

*Manages, plans, develops and implements administrative and case management functions and procedures to ensure compliance with legislative requirements, both **provincial and federal**. Supervises and monitors the efficiency of the administrative staff to ensure timeframes are met, organizes and leads administrative meetings to communicate policy and procedural changes.*

...

[Emphasis in the original]

[110] Under “Additional Information”, it states: “The number of Case Management Assistants supervised by the Office Administrator ranges from 1 to 8.”

B. Chief, administrative services, job description (AS-03)

[111] And here is what the AS-03 job description states about supervising staff.

[112] Under Skill, it states the following:

...

The theories, principles and techniques of human resources management to : plan long range resourcing requirements; develop work plans, annual objectives, work processes and procedures; hire, train and supervise staff; respond to labour relations grievances; conduct performance appraisals; develop disciplinary measures; ensure the quality and compliance of the work unit's service delivery; direct the delivery of administrative services in the context of crisis and emergency situations in accordance with the institutional contingency plan.

...

The Public Service Employment Act, Labour Code of Canada [sic] Part II, Public Service Staff Relations Act, collective agreements, Public Service Modernization Act, Harassment in the Workplace policies and procedures, Employment Equity policies and procedures e.g. to hire and supervise staff, respond to labour relations grievances and ensure a safe and discrimination/harassment free workplace.

...

[113] This comparison reveals four basic points. First, both descriptions include supervising at least some employees. Second, it highlights that any such supervision requires at least a passing knowledge of statutory, regulatory, and human resources principles (such as those associated with harassment and discrimination). Third, the AS-03 description involves responding to labour relations grievances, which the AS-02 description does not. And fourth, the AS-02 description suggests that the number of employees being supervised is limited to, at most, eight. There is no such limitation in the AS-03 description.

[114] The first two points overlap. The second two do not. Hence, the grievor's testimony that he supervised a staff of roughly three but that he did not handle labour

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relations grievances establishes no more than that the AS-02 description contained a complete and current description of his work insofar as it related to supervising other employees. The fact that the AS-03 description also refers to supervising staff does not by that alone establish that his AS-02 description is inadequate.

[115] Another example of this difficulty may be found in the chart (Exhibit 5) that the grievor's counsel relied upon. It suggests that in the AS-02 job description, there was "[n]o reference to violence, hostage taking, mutilation, murder, physical assault or psychological discomfort in working conditions." However, the AS-02 description does state that "[t]here is a requirement, at times, to deal with the public and offenders who may be distressed, angry, confrontational, socially unskilled or abusive. This could result in increased stress and loss of morale" (Exhibit 1, Tab 2). In my view, this description is more than adequate to describe the working conditions outlined in the AS-02 job description, given the following:

- the nature of the Keele CCC, which housed minimum-security inmates who were close to a full return to the wider community;
- the physical separation of the administrative from the residential wings; and
- the grievor's testimony that he had never been threatened, assaulted, or taken hostage by the inmates and in fact had good relations with them.

[116] Fourth, some of the tasks that the grievor discussed — such as organizing the phone system, providing advice as to the purchase of office stationery, or handling the purchase and distribution of TTC tokens — were not discussed within the context of the office administrator job description. It is not for me to conclude that, in the absence of such a discussion, such tasks did not fall within that job description. Moreover, what evidence there was pointed simply to the grievor's character as a helpful and friendly employee. If the grievor assumed those tasks because he enjoyed being a helpful and valued employee, then it cannot be said that his job description is inadequate.

[117] Even assuming that these tasks were outside the office administrator job description, there was nothing to suggest that the employer ordered the grievor to perform them as part of his normal responsibilities. There was nothing to that effect from him. The employer, for its part, maintained consistently that (a) the grievor was an exceptional and valued employee who (b) often took on helping others but that (c) he was never ordered or directed to do those things and (d) had on occasion been expressly asked not to. And voluntarily performing tasks or responsibilities that might

fall outside one's job description does not render it inadequate. One cannot bootstrap oneself into a deficient job description by assuming tasks or duties outside one's job description.

[118] For all these reasons, I was not persuaded that the grievor satisfied his onus of establishing that the AS-02 office administrator position job description did not provide a complete and current statement of the duties and responsibilities of his position. Accordingly, I make the order that follows.

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

(The Order appears on the next page)

VIII. Order

[120] The grievance is denied, and the Board's file is ordered closed.

April 15, 2024

**Augustus Richardson,
a panel of the Federal Public Sector
Labour Relations and Employment Board**