

IN THE MATTER OF A GRIEVANCE ARBITRATION #15-G-01745
RESPECTING JOB EVALUATION

BETWEEN:

GOVERNMENT OF THE NORTHWEST TERRITORIES

(the "Employer" or "GNWT")

-and-

THE UNION OF NORTHERN WORKERS, a component of the
PUBLIC SERVICE ALLIANCE OF CANADA

(the "Union" or the "UNW")

AWARD

Heard: January 13 and 14, 2021

Issued: April 29, 2022

Arbitrator: J. Alexander-Smith (the "Board")

Appearances:

For the Union:

Michael Penner, Counsel
Anne Marie Thistle, Director Membership Services
Nathan Hoo, Public Service Alliance Canada

For the Employer:

Tracy Bock, Counsel
Camilla Offredi, Adjudication Advisor
Trisha Paradis, Legal Counsel

INTRODUCTION

[1] This arbitration involves a group grievance #15-G-01745 (the “Grievance”) filed by the UNW on March 13, 2015 on behalf of fifteen (15) Residence Life Supervisors and Relief Residence Life Supervisors (together referred to as “RLS” employees) working at Aurora College, NT. The Grievance asserts that the Employer breached the collective agreement through its failure to properly compensate the RLS employees following a successful Job Evaluation Appeal in October 2014.

[2] This matter was previously presented at an arbitration in 2018, but the arbitrator did not issue an award. The parties agreed to resubmit this Grievance to arbitration on the basis of the evidence presented at the previous hearing as set out in a Joint Statement of Fact along with supporting documents, which together constitute the entirety of the evidence before the Board in determining the merits of the Grievance. The parties also provided the Board with their respective authorities, later augmented by oral argument at the virtual hearing on January 13 and 14, 2021.

[3] The parties accepted the composition and jurisdiction of the Board to hear and determine the merits of the Grievance.

[4] The parties, however, jointly requested that the issues in the arbitration be bifurcated, firstly between a declaratory award on the merits of the Grievance and, in the event that the Union should prevail on the Grievance, that the Board would thereafter remain seized of the matter without temporal limits to address the issue of remedy, if need be. The Board granted the bifurcation application on that basis. Accordingly, this Award deals solely with the merits of the Grievance.

JOINT STATEMENT OF FACT (“JSOF”)

[5] The Joint Statement of Fact is set out at Appendix “A” to this Award.

JOINT BOOK OF DOCUMENTS (“JBOD”)

[6] The additional documents submitted to the Board in connection with the Grievance were entered into the Record as Exhibits 1-35, described herein at Appendix “B” to this Award.

AUTHORITIES

[7] The authorities considered by the Board are set out at Appendix “C” to this Award.

FACTUAL BACKGROUND

[8] The GNWT uses the Hay Job Evaluation System methodology to establish the pay range of a specific position through the evaluation of individual positions and the subsequent assignment of a “full points” rating, with the points then matched to negotiated pay ranges.

[9] In 2004, the Employer prepared a Job Description for the position of Residence Life Supervisors [Exhibit 4], in which its purpose was described as follows:

The Residence Life Supervisor is responsible for supervising all facets of the Thebacha Campus student residential facilities and operations. This includes ensuring a safe and secure environment that is conducive to the personal development and study requirements of student residents. It also includes ensuring that facilities and operations are maintained in a safe, clean, orderly and effective manner. The Residence Life Supervisor works within the context of the College's vision and principles, the Aurora College Policies and Procedures Manual and in accordance with the Landlords and Tenants Act.

[10] The Job Description also addressed the scope of the RLS's collective responsibilities under the direction of the Residence Life Manager, as follows:

...the operation, maintenance and living conditions of 200 residences including 104 single residences with shared kitchen facilities in Bryant Hall, 80 one and two bedroom apartments in two separate apartment complexes and 15 detached housing units.

[11] The RLS position was evaluated at a full points rating of 194 Hay points.

[12] The Union asserts that RLS employees pursued a job re-evaluation of their position as far back as November 6, 2007, thereby entitling them to retroactive pay back to that date following a successful Job Evaluation Appeal in 2014, pursuant to Articles 24 and 36 of the collective agreement.

[13] The Union further asserts that the RLS's collective efforts to address the perceived shortcomings with the Job Description and other workplace matters was first evidenced in writing in May 2007 through Mr. Jim Kipling's list of concerns, who himself was then a RLS and was also Shop Steward for those employed as Residence Life Supervisors.

[14] Mr. Kipling's enumerated concerns (the "List of Concerns") was initially circulated within the bargaining unit and an edited version of which was thereafter presented to the Employer sometime in August 2007. [Exhibit 7]

[15] The Employer's initial response to the List of Concerns included its establishment of a working group in October 2007, which later included 2 RLS employees who had volunteered to be employee representatives in November 2007. The working group was tasked with addressing such things as RLS safety issues in the workplace, the RLS Job Description and the development of a plan for a possible job re-evaluation.

[16] In the years since Mr. Kipling's List of Concerns was first circulated, the parties continued to communicate about the RLS position description and related workplace concerns as set out in the JSOF.

[17] It is of note that in addition to their discussions, the parties had also negotiated certain Job Evaluation procedures which were first incorporated into the *Collective Agreement between the Union of*

Northern Workers and the Minister Responsible for the Public Service, Expires March 31, 2009, [the “2009 Collective Agreement”].

[18] Article 36 of the 2009 Collective Agreement did not provide for an option for appellants to submit additional documentation together with a Job Evaluation Appeal.

[19] However, Article 36 was later revised under the *Collective Agreement between the Union of Northern Workers and the Minister of Human Resources, Expires March 31, 2012*, [the “2012 Collective Agreement”] and thereafter replicated in the *Collective Agreement between the Union of Northern Workers and the Minister of Human Resources, Expires March 31, 2016*, [the “2016 Collective Agreement”], the provisions relevant to the Grievance are set out below:

ARTICLE 36
JOB EVALUATION

- 36.01 During the term of this Agreement, if a new or revised Job Evaluation System is implemented by the Employer, the Employer shall before applying the new or revised Job Evaluation System, negotiate with the Union the rates of pay and the rules affecting the pay of employees for the evaluations affected. If the parties fail to reach agreement within sixty (60) days from the date on which the Employer submits the new or revised standard to the Union, the Employer may apply the new rates of pay and the Union may refer the matter to arbitration. The arbitrator’s decision will be retroactive to the date of application of the new rates.
- 36.02 During the term of this Collective Agreement the Hay Job Evaluation Guide Charts, in conjunction with benchmark positions as set out in the Job Evaluation Manual, will be used for assessing the value of positions to which employees are assigned. Upon request, an employee shall be provided with access to a copy of the job evaluation manual including guide charts.
- 36.03 (1) Where an employee believes that his/her position has been improperly evaluated and prior to filing an appeal under Clause 36.04, the employee is encouraged to discuss the evaluation of his/her position with his/her supervisor or a representative of management who is knowledgeable in the job evaluation system.
- (2) Upon request the employee shall be provided a copy of the job description for his/her position together with the point rating and the rationale supporting the point rating assigned.
- 36.04 (1) (a) Employees shall file job evaluation appeals directly with their Deputy Head. **At the same time as filing the appeal, the employee may provide any written documentation demonstrating that the employee:**
- (i) **was substantially performing new or changed duties of a higher position, and**
- (ii) **raised these concerns with the Employer.**
- The employee may appeal their job evaluation without submitting written documentation referenced in (i) and (ii).
- The Deputy Head shall refer the appeal to a Job Evaluation Appeal Board.
- (b) The Job Evaluation Appeal Board shall consist of two representatives of the Employer and two representatives of the Union. All members of the Job Evaluation Appeal Board must be trained on the use of the Job Evaluation System.
- (c) The Job Evaluation Appeal Board may sit in Yellowknife or at some other place in the Northwest Territories that may seem appropriate to the Board under the circumstances. The Board shall give the employee and/or the employee’s representative an opportunity to be heard and to explain the reason(s) for the appeal.

- (d) The Job Evaluation Appeal Board may be a unanimous decision, either determine that the employee's evaluation is proper or determine that the employee has been improperly evaluated in his/her position and determine the proper evaluation for the position.
- (e) The unanimous decision of the board is binding on the Employer, the Union and the employee until such time as that employee has been promoted, transferred, or the job description is changed by the Employer and has been re-evaluated.

36.05 An employee may withdraw his/her appeal at any time during the process described in this Article.
[emphasis added by the Board]

[20] On October 11, 2013, the Employer introduced a revised Job Description for the RLS position, but without any adjustment to the 194 full Hay points rating which had initially been assigned. In the Employer's view, notwithstanding the revisions to the RLS Job Description, none (singly or collectively) constituted material changes in job duties; which translated into no increase in Hay points and therefore no increase in pay range was assigned to the RLS employees working under the revised position description. [Exhibit 34]

[21] As set out at para 12 of the JSOF, an employee who felt their job had been improperly evaluated could formally pursue a Job Evaluation Appeal under Article 36.04 of the Collective Agreement, subject to its terms; an option which was thereafter exercised by a majority of the RLS employees.

[22] On November 7, 2013, thirteen (13) of the RLS employees filed separate Job Evaluation Appeals with the Deputy Head, that being the President of Aurora College, under Article 36 of the 2016 Collective Agreement, in response to the Employer's introduction of the revised Job Description and associated Hay full points rating, on the basis that his/her RLS position had been improperly evaluated.

[23] Each of the RLS appeal letters referenced "attached emails and documents" which were tendered as supplemental documentation under Article 36.04 (1)(a)(i) and (ii), at least in part in support of a retroactive pay adjustment date under Article 24 in the event of a successful appeal. However, for reasons unknown, these supplementary materials were not included in the appeal packages thereafter forwarded by the Deputy Head to a Job Evaluation Appeal Board.

[24] Alexandra John, Manager, Job Evaluation, was a member of the Job Evaluation Appeal Board which determined the outcome of the RLS appeals. She testified before the 2018 arbitration board and confirmed that no attachments were included in her appeal package and further testified that the appellants were not informed that this information was not before the Job Evaluation Appeal Board hearing their appeals.

[25] On October 9, 2014, based upon the appeal documentation forwarded by the Deputy Head, pursuant to Article 36.04 (d) of the 2016 Collective Agreement, the Job Evaluation Appeal Board (the "JE Appeal Board") re-evaluated RLS job duties and unanimously determined that each of the appellants had "*...been improperly evaluated in his/her position*" and then determined "*...the proper evaluation for the position.*"

[26] In completing its obligations under Article 36.04 (d), the JE Appeal Board increased the Hay points for the RLS position from 194 to 209 Hay points, which triggered an increased pay grade from pay range 8 to pay range 9, with an effective date of September 8, 2013, that being 60 days prior to the date the Job Evaluation appeals were filed pursuant to Article 24.11(1)(c).

[27] However, it was only after the appeal hearing that Ms. John, on behalf of the Employer, contacted the Union by email on October 30, 2014 to obtain substantiating information to support an earlier retroactivity date. In her words:

In the appeal letters that the Residence Life Supervisors and Relief Residence Life Supervisor submitted, a November 6, 2007 date is mentioned. Do either of you have any additional documentation from the appellants that can substantiate this date?

[Exhibit 22, page 1]

[28] Ms. Thistle, on behalf of the RLS appellants, responded almost immediately and provided the documentation that had been initially forwarded to the Deputy Head on November 7, 2013, which was described by Doug Robertson in an email to Ms. Thistle dated November 01-14, as follows, starting at page 131 of the JBOD:

Hi

Below are copies of emails sent regarding Residence Life Supervisors, job descriptions and job evaluation, starting, November 06, 2007, from Kathy Purchase, and up to March 21, 2011, from Dwayne Woodward.

- Email from Kathleen Purchase (Employer) November 06, 2007 to six (6) named RLSs, copied to Employer representatives with a request to forward the email to all Relief Residence Life Supervisors and anyone she missed.
- Email from Dwayne Woodward, Manager Student Services, Aurora College, March 19, 2008 to three (3) named RLSs.
- Email from Jim Kipling, November 8, 2010 to Scott Shelton (RLS), copied to Employer representatives, in which he states in part, *"Going on four years now Residence Life Supervisors (RLS) are still waiting for the Employer to deal responsibly with concerns about job descriptions, the working environment and job evaluations. RLS have tried discussing content of job descriptions and job evaluations with management with no success."*
- Email from Jeff O'Keefe, Director, Thebacha Campus, February 11, 2011 to Jim Kipling, copied to Employer representatives.
- Email from Jim Kipling to Dwayne Woodward and copied to many RLSs and Employer representatives dated March 22, 2011

[29] This additional information was rejected by Ms. John. According to para. 56 of the JSOF, Ms. John did so on the following basis:

Upon receiving the documents from the UNW, Ms. John testified that she determined that there wasn't any substantiating documentation from the actual appellant. She stated that the information either has to come from the actual employee or to the actual employee.

[30] On February 18, 2015, Mr. Dave Mathieson, then Manager, Advice and Adjudication set out the Employer's position on retroactive pay in an email to Ms. Thistle, which provided, in part, as follows:

Sorry for not getting back to you sooner. To clarify; the earlier messages were provided so as to allow for dialogue on potential communication with employees/members that might be able to establish a retroactivity date prior to the date of their appeal (November 7, 2013). With this in mind and as per Article 36.04 (1)(a), if each appellant was able to provide documentation where they had expressed concerns with the evaluation of their positions then this documentation could be reviewed towards the application of retroactivity. The information supplied to date does not, to my understanding, satisfy the above criteria, primarily as it deals with job descriptions not the evaluated points and are written, in the most part, by individuals who are not appellants and so the info is not applicable.

(Exhibit 24, page 1}

[31] The entitlement to retroactive pay in the event of a successful Job Evaluation Appeal is governed by the provisions set out in Article 24 of the 2016 Collective Agreement, and which provides:

24.10 (d) Where the job evaluation of a position is to take effect retroactively, only employees on strength on the date of implementation of such change or employees who have filed job evaluation appeals in accordance with clause 36.04 shall be entitled to receive any retroactive benefits that might accrue.

24.11 (1)(c) The effective date of a re-evaluation that results in an increase in pay shall be the date upon which the employee began to substantially perform the new or changed duties, but in any event no retroactivity shall be paid for any re-evaluation adjustment that extends beyond sixty (60) days prior to the filing of a grievance or a job evaluation appeal, whichever is earlier, except as provided below.

If the employee has provided documentation under article 36.04(1)(a), dated earlier than either the re-evaluation or sixty (60) days prior to a grievance or appeal being filed, the Employer shall consider an adjustment to the employee's pay retroactive to that earlier date. Such adjustment shall not be unreasonably denied.

[32] Having rejected the "additional information" replicated and submitted with each of the 13 Job Evaluation Appeal letters, the Employer applied the effective date of September 8, 2013 for the pay grade adjustment awarded by the Job Evaluation Appeal Board on October 9, 2014. As for those who had not appealed but were employed in a RLS position, the Employer concluded they were entitled to a pay grade adjustment as of the date of the JE Board decision or if hired later, the date of hire.

[33] In response, the Union filed the group grievance on March 13, 2015, as opposed to individual grievances on behalf of each RLS, seeking retroactive pay to November 6, 2007 for all employees on strength in the RLS position that day, whether they filed a Job Evaluation Appeal or not; and for all those hired after November 6, 2007, retroactive pay to the date of hire.

SUBMISSIONS OF THE PARTIES

The Union

[34] It is the Union's position that the Employer failed to properly compensate all RLS employees in terms of retroactive pay to which they are entitled flowing from the Job Evaluation Appeal Board decision in October 2014, but with an effective date of November 6, 2007 or date of hire, if later.

[35] The Union asserts that the issues precipitating the Job Evaluation Appeal hearing on October 9, 2014 had been raised with the Employer by the RLS employees or by representatives of the RLS consistently and persistently from November 6, 2007 and thereafter, in good faith, yet the Employer had unilaterally and improperly rejected documentation to that effect, allowing only retroactivity back to September 8, 2013; that being 60 days prior to the date the appeals were filed.

[36] The Union states that the basis for the Employer's response to the group grievance as well as its rejection of the documentation submitted in support of an earlier retroactivity date, commencing with Mr. Kipling's List of Concerns first presented in August 2007 and first responded to by Kathleen Purchase for the Employer on November 6, 2007, reflected its misinterpretation of the requirements of Article 36.03 (1) and 36.04 the collective agreement. A portion of the Employer's response and denial of the group grievance at the final level [April 10, 2015] is set out below:

Retroactive pay can be provided beyond the 60 days prior period indicated above, but only to appellants who can demonstrate, in writing, that he/she raised concerns with the Employer over the evaluation of his/her position. None of the appellants listed in this grievance have provided adequate written substantiation to indicate that, on an individual basis, they raised the issue of their position evaluation with the Employer prior to November 7, 2013.

The only documentation that has been submitted to the Employer demonstrating that any individual employee had raised any concerns prior to November 7, 2013, is an email from Mr. Jim Kipling who was neither an appellant, nor did he hold any of the positions at the time of the evaluation. Accordingly, he is not eligible for any consideration or retroactive pay.

[Exhibit 2, page 3]

[37] The Union also asserts that the Employer's rejection of the supplementary documentation in support of an earlier retroactivity date included in the Appellants' individual appeal packages, is both improper and unreasonable, having regard to the specific provisions of the collective agreement.

[38] The Union submits that in order to determine the merits of the Grievance, it is necessary for the Board to determine the interplay between Article 24.11 (1)(c) (retroactive pay) and Article 36.04 (1)(a) (documentation submitted to support an earlier retroactive payment date beyond the 60 day period immediately prior to the filing of a Job Evaluation Appeal). It further asserts that once such documentation is submitted, the Employer is obliged to consider an earlier retroactivity date.

[39] In addition, the Union pointed out that Article 36.03 (1) encourages an employee who feels that their position has been improperly evaluated to first discuss the issue(s) with their supervisor or with a management representative who is knowledgeable about the job evaluation system, prior to filing a Job Evaluation Appeal under Article 36.04; which, the Union submits was a step which was both initiated and satisfied by Jim Kipling's List of Concerns and the Employer's preliminary response to the List of Concerns in November 2007 and the associated steps undertaken thereafter.

[40] The Union also argued that under Article 36.03 (2) RLS employees were entitled to an accurate Job Description, along with the details of how and why their position had been scored and how that rationale supported the point rating assigned; whether for use in discussions with the Employer or by pursuing a formal Job Evaluation Appeal under Article 36.04.

[41] In the Union's view, it was open to the RLS appellants to file "any written documentation" in support of their Job Evaluation appeals under Article 36.04 (1)(a), demonstrating that the employee:

- (i) *was substantially performing new or changed duties of a higher position, and*
- (ii) *raised these concerns with the Employer.*

It asserts that the nature of the written documentation is not specified in the Collective Agreement, but that once it was submitted to the Deputy Head for appeal, the Deputy Head was obliged to forward it along with the letter(s) of appeal to the JE Appeal Board; which was omitted in this case.

[42] It also asserts that Article 36.04 (1)(c) contemplates that either an appellant or a representative may be heard to explain the reasons for the appeal and further, that this provision does nothing to restrict the information submitted on appeal be restricted to information relating only to information that is specifically referred to the individual appellant, and to find otherwise would be unreasonable.

[43] In terms of the appropriate retroactivity date, it argued that once an employee has provided documentation under Article 36.04 (1)(a), Article 24.11 (1)(c) imposes an imperative obligation on the Employer to consider retroactive pay to that earlier date and which adjustment cannot unreasonably be denied.

[44] The Union submitted that the "Employer" in these circumstances requires that it be the "Deputy Head" (and not Ms. John and not the JE Appeal Board) who must make that consideration. The Employer's handling of this additional information and its establishment of the retroactivity date did not meet the provisions of the collective agreement and was itself unreasonable in any event.

[45] It is the Union's position that the information that was submitted along with the Job Evaluation appeal letters categorically establishes that the RLS job evaluation process began in 2007 and that as a result the 2009 Collective Agreement applies in this case, which did not include an express provision for the submission of written documentation by the employee.

[46] It also noted that the Employer's response to the 2007 List of Concerns was not addressed to individual RLS but to the RLS employees as a group. The Union argued that this collective exercise should be characterized as a "continuous process" running from November 2007 and all RLS on strength, whether appellants or otherwise, are entitled to retroactive pay back to November 6, 2007 or date of hire.

[47] In reply, the Union also submitted that if the individuality of the job evaluation appeal process is so paramount, it is remarkable that instead of contacting the appellants for clarification of the retroactivity date sought, the Employer contacted the Union; which is neither an appellant nor an affected employee.

[48] It further submitted that the additional documentation to support a retroactivity date back to November 6, 2007 had expressly copied at least three (3) of the appellants on virtually all of the documents (Roger Thompson, Steve Shelton and Brad Tucky) thereby properly constitutes information provided by those individuals.

[49] The Union submits that the Employer never disputed that RLS employees were performing substantive duties of a higher position well beyond those articulated in the 2004 Job Description and that they had raised that issue with the Employer commencing in 2007 and thereafter. The Employer's refusal to consider the additional information submitted on appeal under Article 36 was unreasonable and on that basis, urged the Board to uphold the Grievance.

[50] The Union seeks a Declaration on behalf of all employees who held the position of Residence Life Supervisor/Relief Residence Life Supervisor as of November 6, 2007, that they are to be paid retroactive compensation to that date; and, that all employees hired after November 6, 2007 in the position of Residence Life Supervisor/Relief Residence Life Supervisor are paid retroactive compensation to the date of hire.

[51] In support of its position, the Union relies on the authorities set out in Appendix C.

The Employer

[52] The Employer disputes that the thirteen (13) Residence Life Supervisors and a Relief Residence Life Supervisor who elected to individually file Job Evaluation Appeals on November 7, 2013 with the Deputy Head are entitled to retroactive pay back to 2007 as asserted by the Union.

[53] The Employer asserts that the parties negotiated a formal process to address issues concerning job evaluations within the collective agreement which, it submits, the Board is bound to consider and apply having regard to the negotiated language set out therein; particularly the language under Article 36 which contemplates voluntary/optional or mandatory actions by individual employees who feel their position has been improperly evaluated.

[54] While the Employer concedes that individual position re-evaluations contemplated under Article 36.04 may be heard together by a Job Evaluation Appeal Board, and that where an Appeal Board concludes that an employee has been improperly evaluated in his/her position, it will determine its proper evaluation.

[55] However, the Employer submits that where the job evaluation of a position is to take effect retroactively and applying a plain reading of Articles 24.10 (d) and 24.11 (1)(c), it provides that it is the Employer who then determines who and how retroactive pay is to be calculated.

[56] The Employer submits that the Board's task of interpreting the applicable provisions of the collective agreement must heed the weight of arbitral authorities and most particularly in this case, the intentional distinction between the parties' agreed use of words in the singular or plural form, more so in the absence of a provision that those words are intended to apply interchangeably.

[57] If necessary, the Employer urged the Board to apply long-established interpretive aids in construing the objective intentions of the parties at the time the collective agreement was negotiated.

[58] Accordingly, the Employer argued that the specific words agreed by the parties under Articles 36.03 (1), 36.03 (2) and 36.04 (1) demonstrate that the parties' intended to provide a mechanism for an individual employee to pursue a job evaluation appeal, with the additional option of providing supplemental written documentation if he/she chose to do so, in the form set out in the collective agreement.

[59] The Employer further argued that a singular reference to an "employee" is intended to reference a singular individual and a plural use of this term is intended to be read as more than a single individual; a pattern demonstrated elsewhere in the collective agreement, such as in the definition of "Grievance" under Article 2.01 (p), which provides:

*"... means a complaint in writing that **an employee, group of employees, or the Union** submits to management, to be processed through the grievance procedure.*

[emphasis added by the Board]

[60] The Board is urged to deny any retroactivity beyond the 60 day period set out in Article 24.11 (1)(c) for those who successfully appealed their individual job evaluations to a Job Evaluation Appeal Board. For those RLS employees who did not file a job evaluation appeal, it submits they are entitled to retroactive pay only to the date of the JE Appeal Board's decision [October 9, 2014] or the date of hire, if later.

[61] It further asserts that the identical written documentation submitted by Mr. Kipling on behalf of each appellant's appeal failed to demonstrate on an individual basis that the provisions of Articles 36.03 and 36.04 had been met, which was necessary to secure an entitlement to an earlier retroactivity date beyond September 8, 2013, that being 60 days prior to the date of the November 7, 2013 appeal under Article 24.11 (1)(c).

[62] The Employer also argued that Mr. Kipling was not himself an appellant in the Job Evaluation appeals and further that there is simply no or sufficient evidence to reasonably demonstrate that the thirteen (13) individual appellants ever raised concerns themselves in respect of their job description or their position evaluation with the Employer, aside from Mr. Kipling's initial List of Concerns, in his role as Shop Steward, which he forwarded to Al Dumont, President of Local 12 in August 2007 and shared with the Employer thereafter, evidenced by Ms. Purchase's response of November 6, 2007. Further, the Employer also argued that there is no evidence before the Board of any "back and forth" between management and the individual employees or any evidence that either the appellants were consulted by Mr. Kipling or asked him to correspond on their behalf or that they agreed with the Union's position as expressed in Mr. Kipling's List of Concerns.

[63] While the Employer concedes that a number of RLS employees were copied on emails between management and the Union, no responses or affirmations of the recipients are in evidence before the Board.

[64] For these reasons, the Employer asserts that sufficient cogent evidence necessary to support an earlier retroactivity date is lacking in the evidence before the Board and urged the Board to refrain from reaching unsupported speculative conclusions in determining the merits of this Grievance.

[65] In response to the Union's approach to the interpretation of Articles 36 and 24 of the Collective Agreement, the Employer identified a series of contradictions within the documents submitted to the Board, which it asserts only serve to undermine the Union's position. For example, it pointed out that Mr. Kipling's email of November 8, 2010 to Dwayne Woodward, represents an acknowledgement by the Union of its awareness that individual appeals must be done on an individual basis. The email reads in part:

As no progress has been made I am requesting the following material prior to the filing of an appeal with the Deputy Head as per Article 36 of the Collective Agreement....

...As it is anticipated that each Residence Life Supervisor will be signing on to any appeals and possible future grievances regarding job duties, consideration should probably be given that each employee will likely be making the same requests for the same information as I am. [Exhibit 10]

[66] The Employer further asserts that it was entitled to reject the documentation submitted in support of an earlier retroactivity date under Article 24, noting that it is the "Employer" and not the "Deputy Head" that is tasked with assessing an adjustment to an earlier retroactivity date under Article 24.11 (1)(c). It also pointed out that the "Deputy Head" is not the only delegate of the Minister responsible for the Public Service. Rather, Article 24 intentionally, as agreed between the parties to the collective agreement, specifies that it is the Employer's responsibility thereunder, supports a broader interpretation than that which was argued by the Union that this retroactivity determination is restricted to the "Deputy Head". It urged the Board to reject this analysis.

[67] In contrast, it argued that where the Collective Agreement specifies that the Deputy Head is expressly required to act, such as in Article 36.04 (1)(a) and in Article 24.09 (1), which identifies distinct responsibilities regarding performance documents as between the “Deputy Head” and the “Employer”, that the plain wording of the collective agreement must prevail.

[68] Article 24.09(1) provides:

An employee holding a position for which there is a minimum and maximum rate of pay may be granted increases in pay until he/she reaches the maximum for the position. Such pay increases are dependent on satisfactory performance of the duties of the position by the employee, and shall not be granted to the employee **until his/her Deputy Head certifies to the Employer** that the employee is so performing the duties of his/her position.

[emphasis added by the Board]

[69] Similarly, the Employer argued that the mere fact that an employee’s representative may be eligible to have attended or did attend the Job Evaluation Appeal Board hearing as a source of support for an appellant or the appellants; that fact alone does nothing to undermine the individual employee requirements mandated under Article 36.04 (1)(a).

[70] In specific response to the Union’s assertion that since the thirteen (13) RLS appellants’ letters of appeal were submitted collectively without objection, therefore the Employer’s interpretation of Article 36.04 (1)(a)(i) and (ii) is undermined; the Employer disputes that this is so. The Employer points out that this Article merely speaks to what needs to be provided thereunder without a restriction as to who can deliver the information.

[71] For these reasons, the Employer submits the grievance should be denied.

[72] In support of its position, the Employer relies on the authorities set out in Appendix C.

ANALYSIS and REASONS FOR DECISION

[73] In determining the merits of the Grievance, I have carefully considered the documentary evidence submitted to the Board as set out in the Joint Statement of Fact, along with the supporting Joint Book of Documents, entered individually as Exhibits in these proceedings, as well the submissions and authorities provided by counsel.

[74] The Grievance before the Board stems from a re-evaluation of the Hay Points and the corresponding pay accorded to the position of Residence Life Supervisor by a Job Evaluation Appeal Board on October 9, 2014 pursuant to Article 36.04 (1)(d) of the collective agreement.

[75] The Grievance concerns the Employer’s corresponding determination of the retroactivity date from which the calculation of retroactive pay amongst members of this bargaining unit in the position of Residence Life Supervisor and Relief Residence Life Supervisor was made, pursuant to Articles 24.10 (d) and 24.11 (1)(c) of the collective agreement.

[76] In response to the Job Evaluation Appeal Board's re-evaluation of the Residence Life Supervisor position, the Employer determined and paid those in the position (including Relief Residence Life Supervisors) ("the Position") retroactive pay as follows:

- (i) those in the Position who filed a Job Evaluation Appeal on November 7, 2013 under Article 36.04 (1)(a) were paid retroactive pay back to September 8, 2013; that being 60 days before the appeal was filed;
- (ii) those in the Position but who had not filed an Article 36.04 (1)(a) appeal but who were on strength on October 9, 2014 (the date of the Job Evaluation Appeal Board's decision), were paid retroactive pay back to October 9, 2014; and,
- (iii) no one in the Position was entitled to retroactive pay to an earlier date than that which was assessed under (i) and (ii) above, having failed to provide sufficient written documentation under Article 36.04 (1)(a)(i) and (ii) to establish an adjustment date beyond September 8, 2013 pursuant to Article 24.11 (1)(c).

[77] While I accept that the parties elected to engage in a prolonged dialogue about the duties and workplace issues facing employees in the Position back to the summer of 2007, and while I also accept that the pace of that dialogue appeared to be sluggish and even stagnant at times throughout this period; the fact remains that no employees in the Position filed a Job Evaluation Appeal pursuant to Article 36 at any time prior to November 6, 2013, although that option was available under Article 36 of the 2009 Collective Agreement, and under Article 36 of the 2012 Collective Agreement, as well as under Article 36 of the 2016 Collective Agreement.

[78] Similarly, the Union also elected to continue the informal dialogue in the alternative to taking the formal step of filing a grievance on these issues prior to March 13, 2015, although that option was also available under the various versions of the collective agreement in effect during the relevant times.

[79] It is unnecessary to speculate why no formal steps were undertaken under the collective agreement(s) at any time between 2007-2012; the fact remains that those available options were not pursued, without evidence or explanation. However, the Union seeks a Declaration on behalf of eligible employees in the Position of an entitlement to retroactive pay back to November 6, 2007, which entitlement must therefore necessarily be found within the provisions of the collective agreement.

[80] While arbitral jurisprudence has long recognized a number of rules of construction to be applied as aids in construing the provisions of a collective agreement, where necessary, one must first look at the words chosen by the parties and give effect to those words, have regard to the collective agreement as a whole.

[81] On a plain reading of the Job Evaluation provisions under Article 36 of the various applicable collective agreements in place throughout these years, the parties negotiated both permissive and mandatory language within it, as follows:

- [36.03.(1)]: discussing his/her position evaluation with the supervisor or a management represented before filing a job evaluation appeal (optional);
- [36.04 (1)(a)]: filing a job evaluation appeal directly with their Deputy Head [mandatory];
- [36.04 (1)(a)(i) and (ii) [2012 and 2016 Collective Agreement]: at the same time as filing the appeal an employee may also provide (optional) *“any written documentation demonstrating that the employee:*
 - *was substantially performing new or changed duties of a higher position, and*
 - *raised these concerns with the Employer.”*

[82] While the parties agreed that an employee was first “encouraged” to “discuss” the position evaluation with their supervisor or a representative of management, it is the mandatory step of filing a job evaluation appeal with their Deputy Head that triggers the appeal process under Article 36.04 (1)(a) and it is at that point (at least under the 2012 and 2016 Collective Agreements) that an employee had the option of submitting additional documentation with his/her appeal to satisfy the additional criteria under (i) and (ii) set out at bullet 3 above, which may then trigger an earlier retroactivity date under Article 24.11 (1)(c) as determined by the Employer, who is defined at Article 2.01 (n) as:

“Employer” means the Government of the Northwest Territories as represented by the Minister responsible for the Public Service Act or his/her designate.

[83] I am persuaded that the deliberate wording chosen by the parties under Article 24 does not support the Union’s argument that it is the Deputy Head who has been tasked with an assessment of the appropriate retroactivity date, but rather it is the Employer. The plain wording of Article 24 expressly undermines the Union’s interpretation.

[84] The Union argued that it is the provisions of the 2009 Collective Agreement which apply in this Grievance, which excludes the option for individual employees to provide “any additional documentation” at the same time as filing the appeal, found at Article 36.04 (1)(a)(i) and (ii) of the 2012 Collective Agreement and 2016 Collective Agreement. I am not persuaded that is so. The Job Evaluation Appeals were filed November 7, 2013 by 13 RSL employees and the Grievance was filed on March 13, 2015, well after the expiry of the 2009 Collective Agreement. Aside from argument, the Board has no cogent evidence before it to conclude otherwise.

[85] I am persuaded that the individual RLS employees did have the option of filing additional documentation under Article 36.04 (1)(a)(i) and (ii), to demonstrate that the employee was substantially performing new or changed duties of a higher position, and had raised these concerns with the Employer.

[86] The additional documentation included with the 13 appeal letters dated November 7, 2013 was not considered by the Job Evaluation Appeal Board, whether through error or misadventure, as it was not forwarded to the appeal body as the Deputy Head should have done.

[87] However, the JE Appeal Body did have an opportunity to re-evaluate the 2013 Job Description introduced by the Employer October 11, 2013 [Exhibit 34], at the hearing on October 9, 2014 and increased the Hay Points for the RLS position in respect of the three working conditions elements:

physical, environmental and sensory demands; from 194 to 209, resulting in a pay increase from pay range 8 to pay range 9 for each appellant.

[88] The evidence before this Board is that the Employer did consider the additional documentation, as it was required to do, in assessing the retroactivity date under Article 24.11 (1)(c). In this case the Employer rejected the additional documentation on the basis that it failed to establish that the individual appellants had sufficiently or satisfactorily established an earlier retroactivity date, as they were each required to do.

[89] That additional information included Mr. Kipling's List of Concerns, initially authored in May 2007, about which, as he testified at the 2018 arbitration hearing, was submitted to management on behalf all of the Residence Life Supervisors; described at paras. 17 and 18 of the Joint Statement of Fact, and not on behalf of the individual RLS, as contemplated under Article 36.04 (1)(a)(i) and (ii).

[90] On November 8, 2010, Mr. Kipling wrote to management in an email in which he stated that the Residence Life Supervisors "...are still waiting for the Employer to deal responsibly with concerns about job descriptions" and further stated... "As it is anticipated that each Residence Life Supervisor will be signing on to any appeals and possible future grievances regarding job duties, consideration should probably be given that each employee will likely be making the same requests for the same information as I am." [Exhibit 10]

[91] Mr. Kipling described the early efforts in an email to management dated April 15, 2011 [Exhibit 14, page 69 Joint Book of Documents], as follows:

Residence staff initiated action in 2007 to revise job descriptions and a job evaluation. By 2011 there had been no progress....

[92] The issue before me is an interpretation of Article 36.04 (1)(a)(i) and (ii), as to the nature of the additional documentation contemplated by the wording of the negotiated provisions set out therein required to reasonably establish an earlier retroactivity date.

[93] As pointed out by Arbitrator Ponak in *GNWT v. UNW #08-G-00743 – Job Evaluation Appeal Process* [2013] C.L.A.D. No. 227, the collective agreement provides a forum for an employee who felt their position was improperly evaluated to seek redress through the filing of a job evaluation appeal.

[94] That forum was in place throughout these events (whether under the Employer's Human Resources Manual – UNW Bargaining Unit Job Evaluation Appeals [August 2007] (Exhibit 5) or the Collective Agreements of 2009, 2012 and 2016] but not accessed until 2013, although intimated by Mr. Kipling in 2010, that such a step would likely be forthcoming.

[95] It is also noted that notwithstanding that the additional documentation submitted by each appellant was not forwarded to the JE Appeal Board in time for the October 9, 2014 appeal hearing, it still concluded that the appellants' position had not been properly evaluated, whether and/or what, if any, additional submissions may have been presented to the JE Appeal Board during the appeal hearing that day. I would presume that those in attendance at the hearing would have had an opportunity to make submissions; however that evidence is not before me.

[96] I am mindful of Arbitrator Jolliffe's thoughtful assessment of the role of the JE Appeal Board and an incumbent's individual appeal process in a 2018 arbitration award concerning an Article 36.04 policy grievance between these same parties in *The Minister Of Human Resources (Government Of The Northwest Territories) -and-The Union Of Northern Workers Re: Grievance #18-P-00247 Job Evaluation Appeal*, supra, at page 34:

*It is observed that Article 36.04 contains no express requirement for the Appeal Board to ignore evaluating the scope of an incumbent's regularly instructed duties, a factual assessment, where they may not be adequately described in the job description. Its critical role, realistically, is to determine whether the employee was properly evaluated in his/her position, i.e., properly credited for the work being done, and where that is shown not to be the case, to do its own Hay Method evaluation. Its concern at the point of intervention is not with benchmarking the work for the benefit of the other positions. **An incumbent's individual appeal process is a different issue than the employee or Union seeking to change the written job description itself, which might apply to numerous employees on a bench marking basis, or somehow wanting to have it rewritten by the Appeal Board which this language does not permit.** That eventual possibility falls within the Employer's authority, but noting that under paragraph (e) a unanimous decision of the Appeal Board is binding "until such time as the employee has been promoted, transferred or the job description is changed by the Employer and has been re-evaluated."*

[97] And at page 35, Ibid:

*I accept that the express Article 36.04 language cannot be ignored, nor the impact of the Ponak award concerning the significance of Article 36.03 discussions **and Article 36.04 appeals being the exclusive path for resolving individually triggered disputes over the results of a job evaluation. This contractual description of the process is what I have to accept on the wording of Article 36.04, governs the job evaluation appeal process and envisages an assessment of the job being worked on an individual case basis at least where grouping appeals presents no issue.*** [emphasis added by the Board]

[98] I concur with Arbitrator Jolliffe's analysis of the Job Evaluation Appeal process under Article 36.04; it is, indeed, an "individually triggered" disputes process over the results of a job evaluation, as distinct with a dispute over a job description. The plain wording of Article 34 establishes that "*where an employee believes that his/her position has been improperly evaluated*", the Job Evaluation Appeal process may be accessed. Accordingly, I can only conclude that the individual RLS employees who did not file Job Evaluation appeals cannot therefore seek retroactivity beyond the date of the JE Appeal Board's decision dated October 9, 2014.

[99] I acknowledge that starting in October 2007 the parties engaged in discussions concerning the inadequacies of the Residence Life Supervisors' 2004 Job Description; arising, in part, from Mr. Kipling's List of Concerns, which included ongoing concerns with the stressful and even dangerous working conditions associated with performing their RLS duties and responsibilities as set out in the Job Description.

[100] On October 17, 2007, in an email to Residence Life Supervisors, members of management acknowledged that the List of Concerns had been reviewed and had identified items for action, which included "*reviewing the job description and developing a plan for revision and job evaluation*" as well as the establishment of a joint Working Group to move forward, which eventually resulted in a revised RLS Job Description, introduced by the Employer in October 2013.

[101] Notwithstanding these events and the significant passage of time, the 13 RLS appellants did not trigger the Article 36 Job Evaluation Appeal process until November 2013, which is the exclusive forum in which to address individually triggered disputes over a job evaluation; which was the avenue selected in this case.

[102] Yet the procedural error in the Deputy Head's failure to include the additional information submitted with each appeal sent to the JE Appeal Board prevented it from considering or assessing this information; and its impact is simply unknown. As mentioned above, there is no evidence before this Board regarding any submissions either one or more of the appellants or a representative of the appellants may have made to the JE Appeal Board on October 9, 2014.

[103] In any event, I have already concluded that the 13 appellants did individually submit "additional documentation" when they filed their job evaluation appeals, and as a result, the Employer was obliged to consider the additional information and further consider an earlier retroactivity date in the event that the criterion under Article 36.04 (1)(a)(i) and (ii) was met.

[104] I am persuaded that the Employer did thereafter consider the additional materials, which it found insufficient to satisfy the requirements for an earlier retroactivity date. I am unable to conclude that the Employer erred in doing so, based upon the evidence presented to this Board.

[105] In reaching this conclusion and having regard to the words used by the parties as reflected in Article 36.04 (1)(a) to establish an earlier retroactivity date, I have considered the context in which the words appear, which relates exclusively to the individually-triggered job evaluation appeal process and the opportunity to establish an earlier retroactivity date by each appellant under Article 24.11(1)(c).

[106] Of the 13 RLS employees who successfully appealed the re-evaluation of their Position, they were entitled to retroactive pay as set out in Article 24.11 (1)(c), which limits that period to a maximum 60 day period prior to filing a grievance or a job evaluation appeal *unless* an employee filed "additional documentation" under Article 36.04 (1)(a) (i) and (ii) which was "*...dated earlier than either the re-evaluation or sixty (60) days prior to a grievance or appeal being filed*", then the Employer must consider an earlier retroactivity date which must not be "*unreasonably denied*".

[107] The additional information initially submitted with each appellant's appeal was identical and was composed of a series of emails to and from the parties between 2007-2011 as described in para. 28 above. Some of these emails were copied to some, to most or to all of the RLS employees at different times. Clearly the additional documentation was not restricted to those who filed job evaluation appeals and no or no sufficient evidence was before the Board to demonstrate which of the appellants were included or signed off on Mr. Kipling's List of Concerns, or that they individually consulted with Mr. Kipling in the creation of the List of Concerns or that they individually raised these concerns with the Employer, as required under 36.04(a).

[108] I am not persuaded that merely copying individuals (some, most or all RSLs) on some or most or all emails commencing in 2007 regarding the then existing RSL job description reasonably triggers an entitlement to retroactive pay to those who did appeal their Position evaluations in 2013. Under Article 36.04(1)(a), an earlier period of retroactivity must be established by the individual appellants; specifically what each appellant did to establish that "*the employee was substantially performing new or changed*

duties of a higher position, and raised these concerns with the Employer", as required to be entitled to an earlier retroactivity date than the 60 day period outlined in Article 24.11(c).

[109] Based upon the evidence before the Board, I am simply unable to conclude that the "group" steps largely undertaken by members of management or Mr. Kipling on behalf of the RLSs, without evidence of their specific involvement, prior to the filing of individual Job Evaluation Appeals in 2013, adequately or reasonably establishes or supports a retroactivity date back to November 6, 2007 for each or any of the appellants, as asserted by the Union or at all.

[110] In addition, the Union seeks retroactive pay for all those in the position of Resident Life Supervisors on November 6, 2007, whether they filed job evaluation appeals or not, or the date of hire, if later. As set out above, the job evaluation appeal process is an individually triggered process; those who did not file appeals are not able to piggy-back on to those who did appeal in any event in terms of retroactivity beyond the date of the JE Appeal Board's re-evaluation of the Position on October 9, 2014.

[111] Accordingly, I have concluded that the Employer paid the retroactive pay to which the job evaluation appellants were entitled of sixty (60) days prior to the filing of a job evaluation appeal, having failed to reasonably established an entitlement to an earlier retroactivity date under Article 36.04(1)(a)(i) and (ii).

[112] For these reasons, the Grievance is denied.

Dated this 29th day of April 2022.



J. Alexander-Smith
Arbitrator

APPENDIX "A"

IN THE MATTER OF A GRIEVANCE ARBITRATION #15G-01745
RESPECTING JOB EVALUATION

BEFORE SINGLE ARBITRATOR JANET ALEXANDER-SMITH

BETWEEN:

UNION OF NORTHERN WORKERS

(the "Union")

and

GOVERNMENT OF THE NORTHWEST TERRITORIES

(the "Employer")

JOINT STATEMENT OF FACT



Michael H. Penner
Legal Counsel
Union of Northern Workers



Tracy Bock
Legal Counsel
Government of the Northwest Territories

JOINT STATEMENT OF FACT

Introduction

1. The parties have agreed to proceed to arbitration solely with the evidence contained in this Joint Statement of Fact and accompanying Joint Book of Documents.
2. This grievance was previously presented at arbitration in 2018 but the arbitrator hearing the case did not issue an award. The parties agree to run this case anew though the Joint Statement of Fact containing evidence presented at the previous hearing.
3. The Collective Agreements between the parties that pertain to the matters in issue are as follows:
 - a. *Collective Agreement between the Union of Northern Workers and the Minister of Human Resources, Expires March 31, 2009*, a copy of the pertinent articles are attached as **Document 26**;
 - b. *Collective Agreement between the Union of Northern Workers and the Minister of Human Resources, Expires March 31, 2012*, a copy of the pertinent articles are attached as **Document 27**; and
 - c. *Collective Agreement between the Union of Northern Workers and the Minister of Human Resources, Expires March 31, 2016* (hereinafter, the 2016 Collective Agreement), a copy of which will be provided electronically prior to the hearing of this matter.

Background

4. Aurora College is a college in the Northwest Territories consisting of three regional campuses: Aurora Campus in Inuvik, Thebacha Campus in Fort Smith and the North Slave Campus in Yellowknife.

5. The following is a description of Aurora College from its website:

Aurora College is a modern and comprehensive post-secondary institution connected through transfer agreements and partnerships to a wide network of technical schools, colleges and universities throughout Canada and the circumpolar world. In addition to a broad range of trades and apprenticeship training and certificate, diploma and degree programs, the College offers adult literacy and basic education as well as a variety of continuing education courses. Building on over 40 years of experience, Aurora College is well-positioned to work with Northerners to prepare them to build a strong and vibrant society in the NWT.

6. Residence Life Supervisors supervise the student residences, facilities and operations at Aurora College. The job description established in 2004 is attached as **(Document 4)**. The job description was revised in 2013 **(Document 34)**.

The Grievance

7. The Union filed a group grievance #15-G-01745 (the “Grievance”) on March 13, 2015 on behalf of fifteen (15) Residence Life Supervisors and Relief Resident Life Supervisors, consisting of thirteen (13) individuals who had each filed a job evaluation appeal and two (2) who had not, alleging that the Employer had not correctly compensated all those listed in terms of retroactive pay resulting from a Job Evaluation Appeal. The Union asserted that “the issue [of job description content] was raised with the Employer as far back as Nov. 6, 2007”, and asserts that pursuant to Article 24.11(c) the information provided on behalf of the appellants warranted retroactive pay back to November 6, 2007 **(Document 1)**.
8. The Employer responded to the Grievance on April 10, 2015. In a letter to Anne Marie Thistle from Deputy Minister Shirley Desjardins, the Employer argued that the conditions for Article 24.11(c) were not met as “none of the appellants listed in this grievance have provided adequate written substantiation to indicate that, on an individual basis, they raised the issue of their position evaluation with the Employer prior to November 7, 2013” **(Document 2)**.
9. The Union re-submitted the grievance at Step 3 and referred the matter to arbitration on April 23, 2015 **(Document 3)**.

The Job Evaluation Appeal - Background

10. The GNWT uses the Hay Job Evaluation System to evaluate the relative job size of positions within the organization. The Hay methodology is a relative ranking system. As such, each position is evaluated using the Hay methodology resulting in a ‘full points’ rating. The points are then matched to the negotiated pay ranges in order to apply a pay range to the position.

11. In October 2013, the Employer revised the Job Description of the Residence Life Supervisor position and it was reviewed by the Job Evaluation unit through the standard process, and was viewed as having no material changes that would impact the evaluation, and therefore remained at its previously evaluated 194 full points (pay range 8) **(Document 34)**.
12. At that time, under Article 36 of the 2016 Collective Agreement, an employee could file an appeal if that employee believed that his or her position had been improperly evaluated. This process was outlined in Article 36 as a job evaluation appeal. Thirteen Residence Life Supervisors (including Relief RLS) each filed individual appeal letters on November 7, 2013.
13. The Employer produces a Human Resources Manual (HRM) to assist managers in the administration of staff, using authorities and references that includes the established employment agreements. The Union does not contribute to nor endorse the Human Resources Manual and it is solely produced by the Employer.
14. At the time of the appeals (November 2013), Section 905a of the Human Resources Manual articulated the Employer's policy regarding UNW Bargaining Unit Job Evaluation Appeals, based on Article 24, Pay and Article 36 Job Evaluation. **Note:** "Total Rewards Planning" referenced in the HRM is a former name of the Job Evaluation and Organization Development unit. **(Document 5)**.
15. In addition to Section 905a, the Employer had produced a document entitled "Information about Job Evaluation Appeals For Appellants, Supervisors, Managers and Directors" which is provided to appellants and supervisors when an appeal is initiated. **(Document 6)**.

Resident Life Supervisors – History

16. In 2004, the job description for the position of Residence Life Supervisor was instituted by the Employer. It was authorized by the President of Aurora College and reviewed by a Interdepartmental Job Evaluation Committee (IJEC), and was evaluated at full point rating of 194 Hay points. **(Document 4)**.
17. Jim Kipling, the shop steward for the Residence Life Supervisors, testified in the original hearing in May 2007, he wrote a list of concerns on behalf of the Residence Life Supervisors and presented it to Al Dumont, President of Local 12, Union of Northern Workers and Frank Moswal, the Union Safety Officer. He provided an edited version to Mr. Dumont in August 2007 **(Document 7)** (hereinafter, the "List of Concerns").
18. Mr. Kipling testified that the purpose of the List of Concerns was to bring the concerns of the Residence Life Supervisors to the attention of management. He stated that the job itself involved many stressful and potentially dangerous responsibilities, particularly around campus security, that were not reflected in the job description at the time. The Residence Life Supervisors wanted the job description to reflect the work they were actually performing and to have their work safety concerns dealt with.

19. On October 17, 2007, management from the Thebacha Campus met with the Residence Life Supervisors, including Mr. Kipling, and discussed the List of Concerns.
20. On October 17, 2007, in an email to the Resident Life Supervisors, Kathleen Purchase, Director of the Thebacha Campus, acknowledged that she, Marg Shott (Residence Manager) and Dwayne Woodward (Manager, Student Services) had reviewed the List of Concerns and had identified items for action, including “reviewing the job description and developing a plan for revision and job evaluation” and the establishment of a “working group” **(Document 8)**.
21. On November 16, 2007 Ms. Purchase emailed the Residence Life Supervisors to advise that Roger Thompson and Steve Shelton had volunteered to be the employee representatives for the working committee **(Document 28)**.
22. On March 19, 2008, Dwayne Woodward emailed Mr. Shelton and Mr. Thompson with an update that the “working group” would resume work in May 2008 **(Document 9)**.
23. Mr. Kipling testified that he went on a transfer assignment from late 2007 to early 2009 at which time he returned to his position of Resident Life Supervisor and Shop Steward.
24. On June 29, 2009, Mr. Kipling emailed Mr. Woodward, Patty Hartlen, Regional Superintendent of Human Resources and Jeff O’Keefe, who had replaced Ms. Purchase as Director. Attaching a copy of the List of Concerns, Mr. Kipling again raised the issues of unsafe work and the need to revise the job description on behalf of Residence Life Supervisors **(Document 29)**.
25. On March 1, 2010, Campus Director Jeff O’Keefe emailed Mr. Woodward and Ms. Shott noting that he had discussed issues with the UNW. He suggested that they discuss issues arising from that dialogue with the UNW, including the revision of the job description to more accurately reflect the work **(Document 32)**
26. On November 8, 2010, Jim Kipling emailed Scott Shelton, Acting Resident Life Manager, on behalf of himself and the other Resident Life Supervisors expressing his frustration from the lack of progress. He also requested specific documents as follows:
 - a. Access to a copy of the job evaluation manual including guide charts;
 - b. A copy of his job description together with the point rating and the rationale supporting the point rating assigned.**(Document 10)**
27. Mr. Kipling testified that he wanted to push the issue of the accurate job description forward and determine if the current job evaluation was fair. He reasoned that he could do so with the information requested. He was also looking for this information to enable him to file a job appeal per Article 36 in the event that the evaluation was not fair.

28. In response to Mr. Kipling's request for documents, the following actions occurred:
- a. On November 19, 2010, Mr. Kipling was sent a Residence Life Supervisor job description by Scott Shelton. He noted that Patty Hartlen, Regional Superintendent of Human Resources, would send him the remaining requested documents;
 - b. On February 3, 2011, Mr. Kipling emailed the President of Aurora College and the Deputy Minister of Human Resources stating that he had not received the remaining requested documents and that the job evaluation issue had long been outstanding; and
 - c. Tom Williams, Deputy Minister of HR, emailed Mr. Kipling on February 7, 2011 confirming that Ms. Hartlen had compiled the requested material and had sent it to the President of Aurora College who was to distribute it as an information package to the Resident Life Supervisors.

(Document 11)

29. On November 30, 2010 Mr. Kipling raised the issue of the accuracy of the job description again, this time at a meeting of the Health & Safety Committee comprised of representatives from both management and employees. **(Document 12)**. He had sent the Health & Safety Committee a letter outlining these concerns, among others, as an attachment to an email to Frank Moscal on November 29, 2010 **(Document 31)**.

30. Mr. Kipling raised the issue again at the Health & Safety Committee meeting on February 8, 2011. According to the minutes from that meeting, an action was assigned to "DW" to review and rewrite the Job Description by end of March **(Document 30)**

31. On February 11, 2011, Jeff O'Keefe, who had replaced Kathleen Purchase as Director, Thebacha Campus, emailed Jim Kipling to inform him "In regards to this and other requests, we have committed to reviewing and revising the current RLS job description by the end of February" **(Document 13)**.

32. Following the February 11, 2011 email, the following actions occurred:

- a. On March 21, 2011, Dwayne Woodward emailed representative Residence Life Supervisors with a draft Job Description and invited them to provide input by April 15, 2011;
- b. On April 15, 2011, Jim Kipling responded by email with a significantly altered draft with input from the Residence Life Supervisors; and
- c. On April 21, 2011, Mr. Woodward responded to Mr. Kipling and advised that he was only seeking input and that it was the Employer's sole responsibility to write the job description, that he assured Mr. Kipling was being worked on.

(Document 14)

33. On September 23, 2011, Mr. Kipling, as Chief Shop Steward, emailed the new Director of the Thebacha Campus, Delphine Paulette, about the Residence Life Supervisor's concerns that he believed had yet to be addressed by management. **(Document 15)**

34. Mr. Kipling testified that he left his position of Residence Life Supervisor in January 2012 and had contacted Ms. Paulette in the hopes that he could resolve the job evaluation issue before his departure.
35. Mr. Kipling also testified that throughout his communications with management from 2007 to his departure he was never encouraged or told by management to pursue the issue as a job appeal pursuant to Article 36.
36. On December 9, 2011, Blaine Dumkee, Local UNW President, emailed Dwayne Woodward after having met with four of the Resident Life Supervisors. He asked for a progress report on the updated Job Description. Later, on January 5, 2012, Mr. Dumkee emailed Delphine Paulette seeking the same update as he had not heard back from Mr. Woodward.
(Document 16)
37. In early 2013, Mr. Dumkee sought the advice from both the Employer and the UNW as to what was occurring with the Job Description for the Residence Life Supervisors. The following actions occurred:
 - a. On February 11, 2013, Mr. Dumkee emailed Jennifer Inch, Manager, Organizational Planning at HR and sought clarification, noting that he was told in February 2012 by Mr. Woodward that the Job Descriptions were being rewritten and submitted for evaluation. Similarly, he was told by Campus Manager Glenn Bourke that he would be writing the Job Descriptions for the Residence Life Supervisors in February 2013;
 - b. On February 13, 2013, Mr. Dumkee emailed Chris Potyok at the UNW to let him know about Mr. Bourke's statement about writing the Job Descriptions;
 - c. On March 6, 2013, Anne Marie Thistle advised Mr. Dumkee that the Employer was revising all job descriptions at Aurora College and that the Residence Life Supervisor Job Description was part of that broader process.
 - d. On March 7, 2013, Blaine Dumkee stated that he spoke with members of the Residence Life Supervisor group recently and that their Manager was working with them to write a new JD.
 - e. On March 8, 2013, Ms. Thistle confirmed that all jobs at Aurora College were being revised and that the operating Job Description for Residence Life Supervisors was the version from 2004.

(Document 17)

New Job Description

38. On October 11, 2013, the Employer introduced the revised Job Description for Resident Life Supervisor. It was reviewed by the Job Evaluation unit and remained at 194 Hay Points (PR8) representing no change from its previous evaluation. It was determined by the Employer that there had been no material change to the job. **(Document 34)**
39. Blaine Dumkee testified that when the new Residence Life Supervisor job description was completed he learned that there was no re-evaluation of the Hay score. He recalled that he contacted the President of Aurora College and was informed that the changes to the job description, according to the Employer, were not significant enough to warrant a re-

evaluation and that the College would not be submitting the new job description for a re-evaluation.

Testimony of Jennifer Inch

40. At the original hearing, Ms. Inch testified as to her involvement in the reorganization of Aurora College and the job evaluation appeal of the Residence Life Supervisors.
41. Ms. Inch noted that her involvement with the re-organization of Aurora College began in 2010 when President of the College, Sarah Wright Cardinal, began a wholesale re-design of the entire organization.
42. Ms. Inch's primary involvement was to evaluate the revised management and instructor job descriptions for positions within Aurora College. She did not specifically recall seeing the revised job description for the Residence Life Supervisors prior to the appeal process.
43. With respect to the job evaluation process, Ms. Inch stated that it is the referring Department that verifies if the expanded duties of the job description had been performed by employees prior to the change to the job description. That is not an issue that her office would determine.
44. As to the actual Job Evaluation Appeal process itself, Ms. Inch testified that an employee representative may table documents on other employees' behalves during an appeal hearing, such as when one job has multiple positions or when employees prefer to have a representative speak on their behalf at the hearing. Any documentation related to retroactive dates is reviewed on a case-by-case basis. That said, she confirmed that she rejected the information provided by Mr. Kipling as Mr. Kipling was not an appellant and therefore not involved in the appeal process. She confirmed it was her decision, after consulting Labour Relations, to reject the material forwarded by the UNW in support of the retroactive application.

Request for Job Evaluation Appeal

45. On November 19, 2013, Jane Arychuk, President of Aurora College received job evaluation appeal requests from thirteen Residence Life Supervisors and Relief Residence Life Supervisors (**Document 19**).
46. According to his testimony, the appellants' requests were drafted by Mr. Dumkee with each appellant signing his or her own letter. He testified further that he had been working with the Trade Instructors at Aurora College who had just filed a similar appeal and he used that template for the Resident Life Supervisors.
47. Each appeal letter from the Residence Life Supervisors referred to "attached emails and documents". Mr. Dumkee confirmed that the documents referred to were a series of emails beginning with Ms. Purchase's email from November 6, 2007 (**Document 20**)

48. On September 29, 2014, each of the Residence Life Supervisors and Relief Resident Life Supervisor appellants received a letter from Alexandra John, Manager of Job Evaluation and Chaka Rukobo of the UNW confirming the appeal meeting date of the Job Evaluation to be October 9, 2014 and outlining the general agenda. **(Document 21)**

Testimony of Alexandra John

49. Ms. John testified that she was the Manager, Job Evaluation and was a member of the Job Evaluation Board for the Residence Life Services appeal.
50. She confirmed that she had received the email from Ms. Arychuk, President of Aurora College but the email did not have the attachments referred to in each appeal letter. She confirmed that the appellants were not made aware that the information was missing prior to the hearing.
51. The appellants appeared by phone in a conference call. She could not recall if all of the appellants were in attendance but all of the appellants on the call were given an opportunity to speak about their jobs. Their manager was also given a chance to speak as well.
52. Based on the representations made by the appellants and their manager on the call, the Appeal Board decided unanimously that the working conditions as set out in the Job Description needed to be amended to reflect the actual work performed. This resulted in a change in Hay points and subsequent pay range change.
53. After the hearing Ms. John noticed the reference in the appellants' letters to additional material and a specific date for retroactivity. When she reviewed the file she did not see the referenced additional material.
54. On October 30, 2014 Ms. John emailed Chaka Rukobo, the Union representative on the Job Evaluation Appeal Board, and Anne Marie Thistle at the UNW looking for the substantiating information to support the requested retroactive date of November 6, 2007 **(Document 22)**. She confirmed that she did not contact any of the appellants about the missing information.
55. Ms. Thistle responded on November 2, 2014 and re-sent the attached material that had accompanied the original requests for appeal prepared by Mr. Dumkee. **(Document 22)**
56. Upon receiving the documents from the UNW, Ms. John testified that she determined that there wasn't any substantiating documentation from the actual appellant. She stated that the information either has to come from the actual employee or to the actual employee.

The Job Evaluation Appeal Board results

57. The Job Evaluation Appeal Board re-evaluated the Resident Life Supervisor position with increased points in the three working conditions elements: physical, environmental and

sensory demands, resulting in an increase to full points from 194 to 209 points, and a corresponding pay increase from pay range 8 to pay range 9. A letter was drafted for each appellant and each was to receive a copy of the Appeal Board's rationale **(Document 23)**

58. Beginning on December 3, 2014, the following events occurred:

- a. On December 3, 2014 Ms. John emailed Dave Mathisen, Manager, Advice & Adjudication at Labour Relations. She informed Mr. Mathisen that she had not originally received the email documents from the appellants when their appeal requests were sent to her by Aurora College. Though she had since received the material from the UNW, she stated that "it does not provide individual employee concerns about their job evaluation".
- b. On December 4, 2014, Mr. Mathisen contacted the UNW and stated that "we have not been provided with any documentation that would satisfy the criteria as contemplated by the agreed upon language within Article 36.04(1)(a)(ii) of the Collective Agreement";
- c. Mr. Mathisen followed up with the UNW seeking their response to his email;
- d. On February 13, 2015, Ms. Thistle responded stating that the required information had already been sent to the Employer on November 2, 2014;
- e. Mr. Mathisen responded in an email dated February 18, 2015 and set out the Employer's interpretation of the requirements of each appellant to express concerns with the evaluation of their position, and that to his understanding the material provided did not meet those requirements "primarily as it deals with job descriptions not the evaluated points and are written, in most part, by individuals who are not appellants and so the info is not applicable".

(Document 24)

59. With respect to the notification of the result to the appellants and the payout of their respective salary increases, the following events occurred:

- a. On March 16, 2015 Ms. Inch (Manager of Job Evaluation and Organizational Design as of January 19, 2015) emailed Mr. Rukobo of the UNW with the draft appellant letters for his signature;
- b. When she followed up on March 24, 2015, Mr. Rukobo informed her that the matter was now subject to a grievance;
- c. Ms. Inch informed Mr. Rukobo on March 25, 2015 that she had proceeded with entering the unanimously agreed evaluation result (string and pay range) into the HR Information System, "as there is no justification for delaying the current pay and retroactivity 60 days prior to the appeal date to the verified appellants" and had informed the appellants of the change to points and pay via , and email, and had also informed Roxanna Baisi of the UNW via separate email ;
- d. On April 22, 2015, Ms. Thistle sought clarification from Mr. Mathisen about the payout and he confirmed on April 24, 2015 that the appellants would be receiving retroactive pay for 60 days prior to the date of their appeal.
- e. On April 24, 2015 Mr. Mathisen responded to Ms. Thistle to confirm the verified appellants "will receive the correct pay retroactively 60 days prior to the date of their appeal."

(Document 25)

60. With respect to the requirement for employees to file individual appeals, and the effective date of the Appeal Board Decision on positions where an incumbent did not appeal, the following events occurred:

- a. On January 7, 2015 Mr. Kipling emailed Ms. Alexandra John, noting that he had spoken with a Residence Life Supervisor (RLS) who had advised him of the change to the evaluation of the RLS positions, resulting in a reclassification, and claiming that he should be entitled to retroactive pay.
- b. On February 4, 2015 Ms. Inch responded (Ms. John having left the Manager, JE position), copying Mr. Rukobo of the UNW. Ms. Inch informed Mr. Kipling that as he had not filed an appeal while he occupied an RLS position, and as he was also not on strength in an RLS or Relief RLS position as of the date of the Appeal Board's decision in 2014, the result of the appeal did not apply to him.
- c. Mr. Kipling responded the same day to both the Employer and the UNW, with questions and concerns.
- d. Ms. Inch then drafted a response and shared it with Mr. Rukobo for his review and input. The email was then sent to Mr. Kipling and copied to Mr. Rukobo on February 5, 2015. In the email Ms. Inch stated that employees are responsible for filing their own individual evaluation appeals, and that information was readily available at any time either from the UNW Collective Agreement, or through direct contact with the UNW.

(Document 33)

APPENDIX "B"
JOINT BOOK OF DOCUMENTS – EXHIBITS 1-35

- Ex 1 Email dated March 13, 2015 from Anne Marie Thistle to Shirley Desjardins Re: Grievance Creation or Changes (4 Pages)
- Ex 2 Letter date stamped April 10, 2015 to Anne Marie Thistle Re: Grievance #14-P-01745 – Pay – Residence Life Supervisors and Relief Residence Life Supervisors at Aurora College (3 Pages)
- Ex 3 Email dated April 23, 2015 from Anne Marie Thistle to Shirley Desjardins Re: Grievance Creation or Changes (4 Pages)
- Ex 4 Position Description - Residence Life Supervisor (7 Pages)
- Ex 5 UNW Bargaining Unit Job Evaluation Appeals (7 Pages)
- Ex 6 Information about Job Evaluation Appeals For Appellants, Supervisors, Managers and Directors (6 Pages)
- Ex 7 Issues Residence Life Supervisors – August 2007 (10 Pages)
- Ex 8 Email dated November 6, 2007 from Kathleen Purchase to Gabe Bourke and others Re: Update on Residence Life Supervisors' Issues Document (1 Page)
- Ex 9 Email dated March 19, 2008 from Dwayne Woodward to Steve Shelton and others with no subject line (1 Page)
- Ex 10 Email dated November 8, 2010 from Jim Kipling to Scott Shelton Re: Job Description and Job Evaluation Residence Life Supervisors (1 Page)
- Ex 11 Email dated February 3, 2018 from Jim Kipling to Michael Penner Re: Job Description and Job Evaluation Residence Life Supervisors Thebacha Campus (4 Pages)
- Ex 12 Health & Safety Committee November 30, 2010 (3 Pages)
- Ex 13 Email dated February 11, 2011 from Jeff O'Keefe to Jim Kipling Re: Job Description and Job Evaluation Residence Life Supervisors (1 Page)
- Ex 14 Email string for revision of job description 2011 dated April 21, 2011 from Dwayne Woodward to Jim Kipling Re: Job Description (17 Pages)
- Ex 15 Email dated September 23, 2011 from Jim Kipling to Delphine Paulette Re: Residence Life Supervisor Issues (2 Pages)
- Ex 16 Email dated January 5, 2012 from Blaine Dumkee to Delphine Paulette Re: Residence Life Supervisors (2 Pages)
- Ex 17 Email dated March 8, 2013 from Anne Marie Thistle to Blaine Dumkee Re: JD Clarification Residence Life Supervisors (3 Pages)
- Ex 18 Aurora College – Residence Life Supervisor (6 Pages)
- Ex 19 Email dated November 29, 2013 from Jane Arychuk to Alexandra John Re: Residence Life Position – JD Appeal (14 Pages)
- Ex 20 Email dated November 6, 2007 from Kathleen Purchase to Gabe Bourke and others Re: Update on Residence Life Supervisors' Issues Document (5 Pages)
- Ex 21 Document dated September 29, 2014 Re: Position Evaluation Review – Job Evaluation Appeal Board (2 Pages)

- Ex 22 Email dated November 2, 2014 from Anne Marie Thistle to Alexandra John Re: Residence Life Supervisor and Relief Residence Life Supervisor appeal (6 Pages)
- Ex 23 Document undated to Doug Robertson Re: Job Evaluation Appeal Board Result – Residence Life Supervisor, 91-2089 (4 Pages)
- Ex 24 Email dated February 18, 2015 from Dave Mathisen to Anne Marie Thistle Re: Residence Life Supervisors and Relief Residence Life Supervisor appeal results – effective date (7 Pages)
- Ex 25 Email dated April 24, 2015 from Dave Mathisen to Anne Marie Thistle Re: Appeal result letters (Relief Residence Life Advisors / Residence Life Advisors) (4 Pages)
- Ex 26 *Collective Agreement between The Union of Northern Workers and The Minister Responsible for the Public Service, Expires March 31, 2009*, a copy of the pertinent articles (6 Pages)
- Ex 27 *Collective Agreement between the Union of Northern Workers and the Minister of Human Resources, Expires March 31, 2012*, a copy of the pertinent articles (7 Pages)
- Ex 28 Email dated November 16, 2007 from Kathleen Purchase to the Residence Life Supervisors Re: Update on Residence Life Supervisors’ Issues Document (1 Page)
- Ex 29 Email dated June 29, 2009 from Mr. Kipling to Dwayne Woodward Re: Shift Work / Relief Staff / Shift Schedule / Residence Life Supervisors Concerns 2007 (15 Pages)
- Ex 30 Draft Minutes dated February 8, 2011 – Aurora College Thebacha Campus – Fort Smith Occupational Health & Safety Committee Minutes (2 Pages)
- Ex 31 Email dated November 29, 2010 from Frank Moskal to Health & Safety Committee – Thebacha Campus Re: Safety Committee (9 Pages)
- Ex 32 Email dated March 1, 2010 from Campus Director Jeff O’Keefe to Dwayne Woodward and Marg Shott Re: Meeting with Jim Kipling (1 Page)
- Ex 33 Email dated February 5, 2015 from Jennifer Inch to Jim Kipling Re: Residence Life Supervisors (7 Pages)
- Ex 34 Aurora College – Residence Life Supervisor (7 Pages)
- Ex 35 *Collective Agreement between the Union of Northern Workers and the Minister of Human Resources, Expires March 31, 2016* (“the 2016 Collective Agreement”), a copy of which will be provided electronically prior to the hearing of this matter.

Appendix “C”

Authorities

[1] For the Union:

- TAB 1 *Laurentian University and Laurentian University Staff Assn. Re.* [1987] O.L.A.A. No. 94
- TAB 2 *Windsor (City) v. Canadian Union of Public Employees, Local 82* [2011] O.L.A.A. No. 514
- TAB 3 *GNWT v. UNW #08-G-00743 – Job Evaluation Appeal Process* [2013] C.L.A.D. No. 227
- TAB 4 *GNWT v. UNW #18-P-00247 – Job Evaluation Appeal* [2018] unreported
- TAB 5 *UNW v. GNWT* [2004] N.W.T.L.A.A. No. 1
- TAB 6 *UBC v. Faculty Assn. of UBC (Lund)* [2012] B.C.C.A.A.A. No. 26
- TAB 7 *GNWT v. UNW (Gamble)* [1997] unreported

[2] For the Employer:

- TAB 1 *Alberta Union of Provincial Employees v Alberta (Boulter Grievance)* [2016] A.G.A.A. No. 58
- TAB 2 *McMorran v Alberta Pension Services Corporation*, 2015 CBPG para 8106
- TAB 3 *Re Sealy (Western) Ltd. And Upholsterers’ International Union, Local 34* [1985] A.G.A.A. No. 2
- TAB 4 *Toronto Police Services Board and Toronto Police Assn. (King) (Re)* [2001] O.L.A.A. No. 958
- TAB 5 *Breitenmoser v Treasury Board (Solicitor General Canada – Correctional Service)*, [2004] C.P.S.S.R.B. No. 91
- TAB 6 *Assn of Justice Counsel v Treasure Board*, 2016 LNPSLREB 48