

# **REPORT OF THE GRIEVANCE AND APPEALS COMMITTEE TO THE MGEU 63<sup>RD</sup> CONVENTION 2014**

## **Committee Members**

Area 1 - Carole Reimer

Area 2 - Gerry LaBelle

Area 3 - Brian Parley

Area 4 - Ed Miller

Area 5 - Valerie Gustar

Area 6 - Carl Morden

Area 7 - Wes Whiteside / Alan Brackman

Area 8 - Alan Brackman / Jackie Fitzpatrick

Chairperson - Penny Copeland

Vice-Chairperson – Ed Miller

MGEU Staff - Dale Neal / Marc Payette, Staff Representatives

Lorraine Clark, Legal Assistant

## **PURPOSE OF COMMITTEE**

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This Committee gives the members a final opportunity to further a grievance to arbitration or an appeal to the Civil Service Commission (CSC) where the Screening Committee has denied the advancement of their grievance or appeal.

## **MAKE-UP OF COMMITTEE**

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The Committee is made up of elected members from the union membership at each of the eight Area Councils. The Chair of the Committee is elected from the MGEU Board of Directors. There is a staff representative assigned to the Committee.

## **HOW THE COMMITTEE WORKS**

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The Committee normally meets about every six weeks. When a case comes forward to the Committee, a Screening Committee representative provides the rationale for the decision to not proceed to arbitration or appeal to the CSC. The grievor and their Staff Representative present the Committee with evidence they feel may be relevant to their appeal. The Committee members have the opportunity to ask questions during the presentation.

Once the grievor has had every opportunity to present their case, the Committee reviews the case in-camera and reaches a decision on whether or not to proceed to arbitration or appeal to the CSC.

In cases where other employees are affected, this Committee may hear presentations from those employees.

Every case heard by the Committee is different and the decision on whether or not to proceed to arbitration or appeal to the CSC is based on the facts of each case, and on the information that is presented to the Committee during the hearings. Other factors could include how such an arbitration or appeal to the CSC would impact on our membership as a whole or would it be establishing a negative precedent.

The Grievance and Appeals Committee continues to review policies and make recommendations on an ongoing basis.

## **EDUCATION**

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The Committee continues to look for educational opportunities that are beneficial for carrying out the duties required of them.

Since the last convention, this includes:

- Committee members and the Chair of the Committee were provided with the opportunity to attend the Mel Myers Labour Conference in 2013 and 2014.
- The Committee is provided with the opportunity to attend and observe the screening process.
- The Committee reviews the arbitration awards and CSC decisions on an ongoing basis.
- Heard presentation from Paul McKenna of Myers Weinberg that provided the Committee with valuable information regarding the duty of fair representation.

The Grievance and Appeals Committee recognizes that the arbitration process is not the only method of resolving grievances. The MGEU is increasing the use of the alternative methods for resolving disputes.

### **1. Negotiated Settlements**

A very high percentage of grievances are settled this way without proceeding to arbitration. This process allows for a compromise between the Union and the employer to reach a mutually agreed settlement without the necessity of a lengthy arbitration process.

### **2. Mediation / Arbitration**

A very effective method that has an arbitrator hear the case as a mediator. The mediator meets with both sides and attempts to forge an agreement. If the parties cannot agree or come to a resolve, the case then goes to arbitration.

### **3. Neutral Opinion**

This is a very good option to use for technical questions. The Union and the employer formulate a question; the question is then presented to an arbitrator. The case is presented without the need for questioning of witnesses or detailed evidence. This third party opinion is given by someone who knows the law and it can be binding if agreed to by both parties.

### **4. Expedited Arbitration**

This process can be used in any grievance. The Labour Board appoints an arbitrator with time limits placed upon the hearing and the issuance of a decision.

These methods of resolving grievances allow for the most cost effective and efficient resolutions to workplace disputes. The MGEU is constantly evaluating the alternatives to best represent its members.

An overview of grievance activities has revealed that, in 2013, there were a total of 620 grievances filed. Of those grievances:

- 255 were discipline
- 127 were pay issues
- 54 related to leave
- 41 were selection
- 31 were duty to accommodate
- 112 were other (see attachment).

The components with the highest number of grievances filed in 2013 were Health Care Support Services (143) and Corrections (66).

As of May 31, 2014, there were a total of 270 grievances filed. Of those grievances:

- 117 were discipline
- 42 were pay issues
- 22 were selection
- 15 were duty to accommodate
- 74 were other (see attachment)

The components with the highest number of grievances filed to date in 2014 are Health Care Support Services (36) and Community Support (33)

In the last two years, the Committee has dealt with:

- 19 appeals as follows:
  - 11 discipline – 6 terminations, 3 suspensions, 1 written reprimand, 1 verbal warning,
  - 1 selection
  - 1 pay and compensation
  - 3 probationary rejections
  - 1 accommodation
  - 1 denial of long service step
  - 1 respectful workplace complaint

and reviewed:

- 19 MGEU Arbitration Awards and CSC Decisions
- Lancaster House Arbitration Bulletins

In the past two years, the Committee has upheld the Screening Committee's decision to not proceed further on 16 appeals and overturned the Screening Committee on 1 appeal. The Committee recommended 2 cases be re-screened based on new information.

Elected representatives and staff encourage and educate our members to ensure that they are knowledgeable with respect to their rights in the workplace. This helps our members to stand

up and hold employers accountable for workplace injustices that violate our respective Collective Agreements. Employer accountability is the key to improving our workplace environment.

Members of the Grievance and Appeals Committee encourage and expect our membership, their elected officers and staff representatives to work together to bring forth issues for resolve.

The Committee has attached to this Report a summary of the grievances filed throughout the Province.

## **IN APPRECIATION**

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To all the members, stewards and staff who have appeared before the Committee, thank you.

To the Legal Department of the MGEU, Helen Krahm, David Lewis, and Lorraine Clark, for all their help, patience and guidance, thank you.

To Dan McKay and Walter Fernandez, who provided all of the statistical data for the preparation of this report, thank you.

To Dale Neal, MGEU Staff Representative, for his assistance with the Committee, thank you and best wishes on his retirement.

To Marc Payette, MGEU Staff Representative, for his assistance with the Committee, thank you.

On behalf of the Committee

In Solidarity,

Penny Copeland, Chairperson  
Grievance and Appeals Committee

/lc  
acte 1725

## MGEU – Grievances by Type

Grievance Type	Year			
	2012	2013	2014*	Grand Total
Allowance	4	1	2	7
Application of Agreement	32	28	11	71
Benefit Plan	1	3	1	5
Conflict of Interest		1		1
Contract Out	2	2	1	5
Disability		1	1	2
Discipline	263	255	117	635
Discrimination	5	4		9
Dress	2			2
Duty to Accommodate	27	31	15	73
Harassment	9	10	1	20
Health and Safety	9	4		13
Hours of Work	7	14	7	28
Lay-off	3	5	12	20
Leave	33	54	12	99
Pay	116	127	42	286
Personnel File	2	2	2	6
Reclassification	20	16	11	47
Relocation	1	3	1	5
Resignation	1	1		2
Selection	26	41	22	89
Seniority	7		1	8
Term Conversion	86	2	1	89
Unsatisfactory Working Cond.	4	6	7	17
Work Assignment	5	9	3	17
<b>Grand Total</b>	<b>665</b>	<b>620</b>	<b>270</b>	<b>1555</b>

\*January 1st to May 31st 2014

## MGEU – Grievances by Component and Local

Component / Local	Year			
	2012	2013	2014 *	Grand Total
<b>Addictions Foundation</b>				
AFM				
AFM, Area 2	2		2	4
AFM, Area 3	2	2	1	5
AFM, Area 4				
AFM, Area 5				
AFM, Area 6	2	3		5
AFM, Area 8	1			1
<b>Addictions Foundation Total</b>	<b>7</b>	<b>5</b>	<b>3</b>	<b>15</b>
<b>Administration</b>				
Administration				
Administration, Area 1		1		1
Administration, Area 2				
Administration, Area 3		2		2
Administration, Area 4				
Administration, Area 5		1		1
Administration, Area 7	15	9	13	37
Administration, Area 8	2	1		3
<b>Administration Total</b>	<b>17</b>	<b>14</b>	<b>13</b>	<b>44</b>
<b>Clerical</b>				
Clerical				
Clerical, Area 1				
Clerical, Area 2	2		1	3
Clerical, Area 3	2	3		5
Clerical, Area 4		2		2
Clerical, Area 5	2			2
Clerical, Area 7	42	16	15	73
Clerical, Area 8		1	2	3
<b>Clerical Total</b>	<b>48</b>	<b>22</b>	<b>18</b>	<b>88</b>
<b>Community Support</b>				
Interlake-Eastern Community Support, Area 5	3			3
Northern Community Support, Area 1	7	5	1	13
Northern Community Support, Area 8		4		4
Prairie Mountain Community Support, Area 2	1	4	2	7
Prairie Mountain Community Support, Area 3	6	5	4	15
Southern Community Support, Area 4			1	1
Southern Community Support, Area 5		5	1	6
WRHA Families First Home Visitors	2	1		3
WRHA Home Care/Home Support	11	39	24	74
WRHA Proctors		1		1

<b>Community Support Total</b>	<b>30</b>	<b>64</b>	<b>33</b>	<b>127</b>
<b>Community-Based Social Services</b>				
ANCR	1	1		2
Career Connections		1		1
CFS Central Manitoba Supervisors				
CFS Central Manitoba Support				
CFS Western Manitoba				
COR Enterprises Inc				
Elizabeth Fry Society of Manitoba	2			2
Family Dynamics Community Staff				
Family Dynamics Office Staff				
Family Visions			3	3
Knowles Centre	1	1		2
Macdonald Youth Services APHP				
Macdonald Youth Services Crisis Stabilization				
Main Street Project	12		1	13
Metis CFCS, Area 6			1	1
Metis Child & Family Services Authority				
Michif CFS, Area 1				
Michif CFS, Area 2				
Michif CFS, Area 3				
NCN Family & Community Wellness Centre	1			1
Osborne House				
Parkland Crisis Centre				
Parkland Res & Voc Services Inc		3		3
Project Neecheewam				
ROSE	6	2		8
Sara Riel Inc				
Southeast Child & Family Services				
Special People in Kildonan East	1	2		3
St Amant Community Residential Program	1			1
Tamarack Rehabilitation				
YWCA Residence Inc				
YWCA Westman Women's Shelter				
<b>Community-Based Social Services Total</b>	<b>25</b>	<b>10</b>	<b>5</b>	<b>40</b>
<b>Corrections</b>				
Corrections, Area 1	9	5	2	16
Corrections, Area 2		4		4
Corrections, Area 3		3	1	4
Corrections, Area 4	2	4	2	8
Corrections, Area 5	7	4	4	15
Corrections, Area 7	52	46	15	113
<b>Corrections Total</b>	<b>70</b>	<b>66</b>	<b>24</b>	<b>160</b>

<b>Diagnostic Services of Manitoba</b>				
Diagnostic Services of Manitoba Support, Area 2		1		1
Diagnostic Services of Manitoba Support, Area 5		1	2	3
Diagnostic Services of Manitoba Technical, Area 2				
Diagnostic Services of Manitoba Technical, Area 3	1	1		2
Diagnostic Services of Manitoba Technical, Area 4				
Diagnostic Services of Manitoba Technical, Area 5		1	3	4
Diagnostic Services of Manitoba Technical, Area 8				
Westman Lab		2		2
Westman Lab Support				
<b>Diagnostic Services of Manitoba Total</b>	<b>1</b>	<b>6</b>	<b>5</b>	<b>12</b>
<b>Emergency Medical Services</b>				
Interlake-Eastern EMS, Area 5		18	8	26
Medical Transportation Coordination Centre	1	1	3	5
Paramedics of Winnipeg	7	6	3	16
Prairie Mountain EMS, Area 2		2		2
Prairie Mountain EMS, Area 3		3		3
Southern EMS, Area 4		2		2
Southern EMS, Area 5		5	2	7
<b>Emergency Medical Services Total</b>	<b>8</b>	<b>37</b>	<b>16</b>	<b>61</b>
<b>Golico</b>				
Golico, Area 1	1			1
Golico, Area 2				
Golico, Area 3	1		2	3
Golico, Area 4	1		2	3
Golico, Area 5	1			1
Golico, Area 7	14	5	8	27
Liquor and Gaming Authority				
Liquor and Gaming Authority, Area 3				
Liquor and Gaming Authority, Area 7		1		1
Manitoba Lotteries Food & Beverage	8	6	1	15
<b>Golico Total</b>	<b>26</b>	<b>12</b>	<b>13</b>	<b>51</b>
<b>Government Community Workers</b>				
Government Community Workers				
Government Community Workers, Area 1	3			3
Government Community Workers, Area 2				
Government Community Workers, Area 3		1		1
Government Community Workers, Area 4				
Government Community Workers, Area 5				
Government Community Workers, Area 6		3		3
Government Community Workers, Area 8	3			3
<b>Government Community Workers Total</b>	<b>6</b>	<b>4</b>	<b>0</b>	<b>10</b>
<b>Health</b>				
Health				
Health, Area 1	2			2



Health, Area 2				
Health, Area 3				
Health, Area 4	77	4	3	84
Health, Area 5	5	8	1	14
Health, Area 7	2	3	1	6
<b>Health Total</b>	<b>86</b>	<b>15</b>	<b>5</b>	<b>106</b>
<b>Health Care Support Services</b>				
Actionmarguerite (Saint-Boniface)	5	5	1	11
Actionmarguerite (Saint-Vital)	1			1
Beacon Hill Lodge	9	6	3	18
Convalescent Home	1			1
Dr Gendreau	4	7		11
Eden Mental Health Centre HCSS	2	2		4
Fred Douglas Lodge	2	2	2	6
Golden Door Geriatric Centre		1		1
Golden Links Lodge		2		2
Holy Family		2		2
Interlake-Eastern HCSS, Area 5	10	2	2	14
Nisichawayasihk Personal Care Home				
Poseidon Care Centre	7	4		11
Prairie Mountain HCSS, Area 2	39	49	3	91
Prairie Mountain HCSS, Area 3		36	19	55
River Park Gardens Personal Care Home	2			2
Riverwood Square		3		3
Sharon Home		4	1	5
Southeast Personal Care Home	1	1		2
Southern RHA HCSS, Area 5	7			7
St Amant Support	6	4	1	11
St Amant Trades				
St Boniface General Hospital Maintenance & Trades	1	1		2
St Norbert Personal Care Home		1	1	2
Ste Rose Hospital		1		1
Victoria Hospital Support	7	7	1	15
Victoria Hospital Trades			1	1
Victoria Lifeline				
Villa Youville			1	1
WRHA Pan Am Clinic	2			2
WRHA Selkirk Laundry Operations		3		3
<b>Health Care Support Services Total</b>	<b>106</b>	<b>143</b>	<b>36</b>	<b>285</b>
<b>Legal</b>				
Legal				
Legal, Area 1	2	3		5
Legal, Area 2	1		1	2
Legal, Area 3		5	2	7
Legal, Area 4		2		2

Legal, Area 5	2		2	4
Legal, Area 7	21	24	9	54
Legal, Area 8	3	7	1	11
<b>Legal Total</b>	<b>29</b>	<b>41</b>	<b>15</b>	<b>85</b>
<b>MPI</b>				
MPI, Area 1			1	1
MPI, Area 2	1			1
MPI, Area 3	1		3	4
MPI, Area 4		2		2
MPI, Area 5		1		1
MPI, Area 7	16	18	4	38
MPI, Area 8		1		1
<b>MPI Total</b>	<b>18</b>	<b>22</b>	<b>8</b>	<b>48</b>
<b>Physical Sciences</b>				
Physical Sciences				
Physical Sciences, Area 1	1			1
Physical Sciences, Area 2		3		3
Physical Sciences, Area 3		1		1
Physical Sciences, Area 4		1		1
Physical Sciences, Area 5	1			1
Physical Sciences, Area 7	3	3	3	9
Physical Sciences, Area 8	2	1		3
<b>Physical Sciences Total</b>	<b>7</b>	<b>9</b>	<b>3</b>	<b>19</b>
<b>Post Secondary Education</b>				
Assiniboine Community College	4			4
Brandon University	2	1		3
Red River College	6	9	1	16
Universite de Saint-Boniface Professors (APPUSB)		1		1
Universite de Saint-Boniface Support (PASA-USB)	1			1
Universite de Saint-Boniface Teachers (APETP)	1	3		4
University College of the North				
University College of the North, Area 1	8	4	1	13
University College of the North, Area 8	5	3	1	9
<b>Post Secondary Education Total</b>	<b>27</b>	<b>21</b>	<b>3</b>	<b>51</b>
<b>Social Sciences</b>				
Social Sciences				
Social Sciences, Area 1	1		1	2
Social Sciences, Area 2				
Social Sciences, Area 3	2		1	3
Social Sciences, Area 4	1			1
Social Sciences, Area 5	1	1	1	3
Social Sciences, Area 7	13	20	3	36
Social Sciences, Area 8	1	6	2	9
<b>Social Sciences Total</b>	<b>19</b>	<b>27</b>	<b>8</b>	<b>54</b>

<b>Technical / Professional</b>				
Interlake-Eastern T/P, Area 5	11			11
Prairie Mountain T/P, Area 2	3	2		5
Prairie Mountain T/P, Area 3	2	6	3	11
Southern T/P, Area 4	2			2
Southern T/P, Area 5				
<b>Technical / Professional Total</b>	<b>18</b>	<b>8</b>	<b>3</b>	<b>29</b>
<b>Trades</b>				
Trades				
Trades, Area 1	1	3	1	5
Trades, Area 2	8	2	6	16
Trades, Area 3	3	5	2	10
Trades, Area 4	11	2	3	16
Trades, Area 5	11	16	8	35
Trades, Area 7	20	10	5	35
Trades, Area 8	6	8	5	19
<b>Trades Total</b>	<b>60</b>	<b>46</b>	<b>30</b>	<b>136</b>
<b>Locals With No Component</b>				
Allied Wings				
Canadian Blood Services, Area 3				
Canadian Blood Services, Area 6	4	4		8
Centre de sante Saint-Boniface				
Churchill RHA	1			1
Communities Economic Development Fund			1	1
DC Cafe				
Deaf Centre Manitoba	2			2
Falcon Lake Golf Course				
Family Visions			1	1
Halcrow Lake Day Care				
Hecla Golf Course				
Impark Lot Attendants	6			6
Impark Maintenance				
Manitoba Centennial Centre				
Manitoba Horse Racing Commission				
Manitoba Housing Authority				
Manitoba Housing Authority Brandon	2	1		3
Manitoba Housing Authority Dauphin		2		2
Manitoba Housing Authority Portage	3	1		4
Manitoba Housing Authority Selkirk	2	1	1	4
Manitoba Housing Authority The Pas	5	4		9
Manitoba Housing Authority Winnipeg	2	10	1	13
Manitoba Museum				
Manitoba Technology Centre	1	1		2
MASC, Area 2				
MASC, Area 3				

MASC, Area 4				
MASC, Area 5				
MASC				
MATC	4	1		5
OPCN South Indian Lake	3			3
Peak of the Market		3		3
Prairie Mountain HCSS, Area 3				
Rural Municipality of Springfield Firefighters	1			1
Sandy Bay Ojibway First Nation	1	3	18	22
Seine River School Division Educational Assistants				
Seine River School Division Support				
Seine River School Division Trades				
Signal Industries				
Society for Manitobans with Disabilities	2	3		5
Teranet				
Teranet, Area 3				
Teranet, Area 7			1	1
Travel Manitoba				
UnionWare Inc	1			1
University of Winnipeg Students' Association		1		1
Western Manitoba Regional Library				
Winnipeg Art Gallery				
Winnipeg Clinic	2	2	2	6
WRHA Community Programs	10	7	2	19
WRHA HSC Security	5	4	2	11
WRHA Interpreters				
<b>Locals With No Component Total</b>	<b>57</b>	<b>48</b>	<b>29</b>	<b>134</b>
<b>Grand Total</b>	<b>665</b>	<b>620</b>	<b>270</b>	<b>1555</b>

\*January 1st to May 31st 2014

## **ARBITRATION/APPEAL SUMMARY SHEET**

(To be completed by representative on receipt of decision and filed with award)  
(Points 1-7 below to be transcribed to Index)

Grievor: xxxxxxxxxx  
File No.: 537-024/11  
Issue: Pay  
Employer: Province of Manitoba  
Arbitrator: Michael Werier  
Date of Award: October 22, 2012

### **Summary of Decision**

#### **Facts**

The grievor accepted employment with the Province and signed a pre-employment contract wherein the Province agreed to pay the cost of training her to obtain her accredited appraisal designation. The agreement provided that she would be reimbursed for tuition fees, books and other costs. She would also receive her salary while taking the training. In return, the grievor agreed to remain in the employment of the Province for three years after completing the training. According to the agreement, if she left the employment of the Province she would be required to repay the costs.

The grievor commenced employment with the Province and took one week of training. However, after a year she accepted a position with the City of Winnipeg. On her resignation the Province withheld her vacation pay, her last two weeks wages and also demanded that she pay \$909.00 to cover the cost of the training. The employer argued that this was a pre-employment contract which they could enforce. The union's argument was that the agreement was void and unenforceable as all negotiations respecting issues of pay had to be done exclusively with the union.

#### **Decision**

The employer had a preliminary argument that this matter was not grievable as the pre-employment contract was not something which was a breach of any section of the collective agreement and accordingly a grievance could not be filed. Arbitrator Werier held that since the matter dealt with pay it was grievable.

The arbitrator held that the agreement was void and unenforceable. He relied on a long line of cases which indicate that the union is the exclusive bargaining agent and any agreements must be negotiated with the union and not unilaterally. Once an individual is hired they become a member of the bargaining unit and all agreements regarding the terms and conditions of employment must be bargained with the union. The only exception appears to be relocation expenses. Relocation expenses appear to be viewed as a loan to an employee to help them

relocate from another area to come to do a job. If an employee is terminated or released on probation, an employer will be able to recover relocation expenses.

**Grievance Allowed**

## **ARBITRATION/APPEAL SUMMARY SHEET**

Grievor: xxxxxxxxxxxx  
File No.: **211-013/12**  
Issue: **Termination**  
Employer: **Department of Justice - Corrections**  
Agreement: **GEMA**  
Arbitrator: **Ms. Kris Dangerfield**  
Date of Award: **December 7, 2012**

### **Summary of Decision**

#### **Facts**

The grievor was a CO1 at Milner Ridge for two years. On a shift with other junior officers, he unilaterally decided to take away the phone receiver from the office and announced there would not be any office phone privileges until the TV was turned to football. He said he was joking but did walk around with the phone receiver for a period of time. Inmates as a matter of practice were allowed to use the office phone to call lawyers, the ombudsperson or for family emergencies. Several hours later when it came time to lock up, an inmate took the batteries out of the TV remote presumably so the football game would not be turned on. He was told to return the batteries by another CO1 and refused. At that point the grievor intervened and when the inmate became belligerent, he ordered the inmate to lock up. He followed the inmate up the stairs and then leaned on a railing waiting for him and other inmates to lock up. The inmate forcefully threw the batteries into the lower tier. In response to the inmate calling him a fucking goof, the grievor said I'm not the one acting like a fucking goof. At that point the inmate charged at him and stood very close to him and spoke in a threatening manner. After a minute or two, he backed down and locked up. The employer investigated further after receiving the grievor's incident report which failed to mention that he had taken the phone privileges away from the inmates. The employer concluded after conducting interviews and watching the video that the grievor had provoked the incident by taking away the phone for an invalid reason, had not reported that action to his superior and then acted in a cavalier and careless manner when the inmate charged at him, all of which could have resulted in a much more serious incident. He was terminated.

The grievor testified that he had exercised poor judgment by taking the phone away and had not connected that action with how this inmate behaved several hours later as he had had no contact with that inmate at all. He had no discipline on his record. Further, none of the other officers had called a code in the circumstances.

### **Decision**

The arbitrator found that the grievor was sincere and remorseful for his actions. She also took into account that none of the other guards had been disciplined, that it was reasonable for the grievor not to have connected the two events but when he did, he provided a sincere apology to the employer. She also considered that in a similar incident at Headingley jail where a disruption actually occurred and a code was called, those officers received 7 day suspensions. She reinstated him with a 7 day suspension and backpay for the balance.

**Grievance Allowed**



## **ARBITRATION/APPEAL SUMMARY SHEET**

Grievor: XXXXXXXXXXXX  
File No.: **211-013/12**  
Issue: **Termination – Supplemental Decision**  
Employer: **Department of Justice - Corrections**  
Agreement: **GEMA**  
Arbitrator: **Ms. Kris Dangerfield**  
Date of Award: **December 21, 2012**

### **Summary of Decision**

#### **Facts**

After reinstating the grievor after being terminated from Milner Ridge Correctional Centre, the employer advised that he would be required to report to the Provincial Remand Centre or to Headingley Correctional Centre so that he could receive the close supervision required. The Union reconvened before the arbitrator and argued that the previous arbitration contemplated him being returned to Milner. Evidence at the arbitration was that the grievor had transferred from Headingley to Milner so he could buy a home in Powerview and raise his family there. If he were required to report to Headingley, that would involve a 4 hour commute in perfect conditions. There was no evidence at the arbitration as to the level of supervision that would be required if he were to be reinstated. The failure to place him back at Milner was the employer thumbing their nose at the arbitrator. The Union argued the decision was not to return him to **any** CO1 position but to return him to his position at Milner.

The employer argued that this was beyond the jurisdiction of the arbitrator and that the employer had the ability to return him to a CO1 position wherever they determined would be the best place for him.

#### ***Decision***

The arbitrator clarified that she had ordered him reinstated to his position at Milner Ridge. The grievance referred to his termination from Milner Ridge and she ordered him to be “reinstated to his position without loss of pay or benefits.” She found that to the extent the Award lacked some clarity, or left an aspect of the Award unaddressed, she had the jurisdiction to complete the Award by stating he was to be returned to his position as a CO1 at Milner. However, she also added that if the employer subsequently transferred the grievor, she would not have jurisdiction to deal with that issue and would require a new grievance to be filed.

### **Award Clarified**

## **CLASSIFICATION APPEAL SUMMARY SHEET**

Appellant: Property Assessment Officers  
7 positions

File No.: 996-025-2012

Issue: Classification Appeal

Employer: Provincial Municipal Support Services Division  
Manitoba Local Government

Civil Service Commission Board Members:  
Shirley Delaquis, Chairperson  
Ertrice Eddy  
Brian Stewart

Hearing Date: June 18/19 and July 10, 2013

Date of Award: November 28, 2013

Effective Date: February 26, 2011

Appeal from/to: Property Assessment Officer 4 (PA4) to  
Property Assessment Officer 5 (PA5)

### **Summary of Decision**

#### **Facts**

Gradual changes and elimination of senior positions changed the responsibilities of a group of seven Property Assessment Officers (PA) who were specifically assigned to Industrial, Commercial and Investment (ICI) property appraisals. The classification specifications explicitly state that the PA series is a cumulative series where the PA5 level performs the functions of a PA4 as well as the most complex assessments. Also, the PA5 is either a supervisor or a specialist.

The Union argued that, while not all of the ICI assessments were the most complex, all of the most complex assessments were ICI Properties and it was the incumbents who solely performed those assessments. The Union also argued that there was no requirement to perform the most complex assessments at the PA4 level, so by doing any of the most complex assessments the positions must be higher than the PA4 level. The employer argued that the majority of time was not spent doing only the most complex assessments as ICI properties were both “complex” and “most complex”, and positions were classified by the primary (majority) responsibility so therefore the positions should remain at the PA4 level.

### *Decision*

The Board confirmed the series is cumulative and that the appellants do perform specialized work (i.e. ICI assessments) for the majority of their duties. The Board concluded that the employer erred in their interpretation that the positions must only perform very/most complex assessment to meet the intent of the PA5 series. The Board found fault that the employer presented evidence that was compiled for the hearing but not part of the review and did not meet with the Coordinator as recommended by the appellants.

### **Appeal Granted**

### **Notes**

The PA series is very specific and explicit in outlining the cumulative nature of the PA4 and PA5 series. Other series may not be as explicit, so such arguments should be used judiciously.