

Grievances:

17-P-00963
18-P-00981
18-P-00986
18-P-00991
18-P-00993
18-P-01015

Grievor: Nunavut Employees Union**Department:** All – Policy Grievances**Issue:** Bargaining Unit Exclusions**Decision:** August 22, 2019**Arbitrator:** Paula Knopf**Background:**

The NEU filed multiple policy grievances contesting the Employer's decision to remove numerous positions from the NEU bargaining unit; thus, resulting in re-categorizing the positions as Excluded. Although the positions under contention have been considered included in the NEU bargaining unit for several years, the Employer cited the bargaining unit alterations were due to the improper application of the statutory exclusion criteria set out in the *Public Service Act*, S. Nu, 2013, c. 26, s. 55(8) which outlines:

“An Employee, other than an Employee of the Qulliq Energy Corporation, is not eligible for membership in a bargaining unit, where, in the opinion of the Minister, the Employee is employed:

- a) As a deputy head, a head of secretariat of the Executive Council, as assistant deputy minister, a director, a regional director, an assistant director, an area director, a regional superintendent or an auditor;
- b) In a position in a division or section of the Financial Management Board Secretariat with duties and responsibilities that include developing and administering policies, procedures and guidelines respecting human resource management, program and evaluation, financial planning and resource allocation;
- c) In a position that provides support or advise directly to the Executive Council, a committee of the Executive Council or a member of the Executive Council;
- d) As a legal officer or in a position that provides translation services to a legal officer on a regular basis;
- e) In a position with duties and responsibilities that include providing advice and assistance, on a regular basis, respecting the terms and conditions of employment, including collective bargaining;
- f) In a position duties and responsibilities that include carrying out the following on a regular basis:
 - i. Staffing
 - ii. Interpreting employment contracts
 - iii. Resolving workplace disputes
 - iv. Responding to grievances, or
 - v. Providing advice in respect of the matters referred to in subparagraphs (i) to (iv)
- g) In a position with management responsibility that includes directly assigning work to, assessing the performance of and imposing discipline on other employees;
- h) As a dentist or a medical practitioners; or
- i) In a position that provides administrative or secretarial support directory
 - i. To a person in paragraphs (a), (c), or (d), or
 - ii. To a person referred to in paragraphs (b), (e), (f), or (g) in respect to the duties and responsibilities referred to in those paragraphs.”

Decisions:

With regards to the removal of positions from the bargaining unit with job description duties and responsibilities that require the incumbent to assign work, conduct performance reviews, and imposes discipline; the Arbitrator found in favour of the Employer citing the positions sufficiently meet Section 55(8)(f) and (g) exclusion criteria.

With regards to the removal of Human Resource Officer and Human Resource Assistant positions from the bargaining unit, the Arbitrator found in favour of the Employer. Supported by job descriptions and evidence, the incumbents are regularly charged with staffing, hiring, resolving workplace disputes, responding to grievances and are expected to provide collective agreement advice and assistance. Thus, these positions meet Section 55(8)(e) and (f) exclusion criteria.

In review of job descriptions and testimony against the exclusion criteria for Senior Payroll Accountant, Quality Assurance Specialist, Pay Processing Administrator, and Compensation / Pay and Benefit Officer positions the Arbitrator found in favour of the NEU and ordered all positions to revert back to NEU bargaining unit effective September 1, 2019. In her decision the Arbitrator states, although "it appears that these people are giving advice and assistance that amount to work that takes them into the kinds of work that would be excluded under s. 55(8)(e)... [h]owever, that is not reflected in their actual job descriptions and goes beyond the expectations of the positions."

Lessons Learned:

Although an employee may perform work that exceeds the duties and responsibilities outlined in their respective job description which may meet the exclusion criteria outlined in Section 55(8) in order to compensate for vacancies and / or knowledge gaps, if those additional duties go beyond the expectations of the position and are not reflected in the job description it is unsuitable for the Employer to deem those positions to meet the exclusion criteria.

It is the responsibility of the Employer to ensure that incumbents are working within the expectations of their position's job description, is providing training to incumbents on subject matters they are responsible for undertaking so as to reduce overcompensation by others, and review existing organizational structures, job expectations, and descriptions to ensure appropriate allocation of responsibilities.