

IN THE MATTER OF A GRIEVANCE PURSUANT TO *THE SASKATCHEWAN TRADE UNION ACT*, R.S.S. 1978 c.T-17, AS AMENDED AND PURSUANT TO A COLLECTIVE BARGAINING AGREEMENT BETWEEN CUPE LOCAL 1594 AND THE REGINA PUBLIC LIBRARY BOARD

BETWEEN:

CUPE LOCAL 1594

(UNION)

-AND-

REGINA PUBLIC LIBRARY BOARD

(EMPLOYER)

AWARD

HEARD BY: MR. BOB PELTON, Q.C. – Sole Arbitrator

COUNSEL FOR THE GRIEVOR: MS. AINA KAGIS

COUNSEL FOR THE EMPLOYER: MR. BRIAN KENNY, Q.C.
MS. JANA LINNER

Heard at Regina, Saskatchewan on May 3, 4, 5, 6, 28, 2010

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AWARD

I Background

1. The subject Grievance arose out of staffing changes which were made in June and July, 2009 pursuant to a Management Plan which implemented a Service Plan adopted by the Regina Public Library (the Library) in September, 2008.
2. At the outset the Parties acknowledged that I had been properly constituted as a Sole Arbitrator and that I had jurisdiction to hear and determine the Grievance.
3. At the request of Counsel for the Employer, I directed that the Hearing would be split. This Award addresses whether the Employer's actions breached the Collective Bargaining Agreement. If one or more breaches are found, the appropriate remedy will be left to the Parties, in the first instance, with me reserving jurisdiction in case they are unable to agree.
4. In addition to this Grievance, Grievances were filed on behalf of a number of employees who were impacted by the staffing changes. The Parties agreed to hold the individual Grievances in abeyance pending this Award.
5. Finally, the Parties agreed to waive the time limits for the issuance of this Award for which I thank them.

II Relevant Provisions of the Collective Bargaining Agreement

6. The Collective Bargaining Agreement involved in this case is the 2007/2008/2009 Collective Bargaining Agreement.
7. The key provisions of the Collective Bargaining Agreement relevant to the Grievance are Article 4- Union Recognition and Negotiation and in particular Article 4.03; Article 10- Lay Offs, Recalls and Resignations and in particular Article 10.01 (a), (b), (c) and (d); Article 11- Seniority and in particular Article 11.01; all of Article 12- Promotions, Transfers, Staff Changes and New Job Classifications; Schedule "D", a Letter of Understanding with

respect to the Joint Job Evaluation Plan and Schedule “K”, a Letter of Understanding entitled “Green-Circling”. The Articles and Schedules in question are attached as Schedule “A” and as well will be referenced when I address and analyze the issues.

III Evidence

8. Evidence was presented on behalf of the Union by three witnesses. The first was Tony Neal, a long time Library employee who has been active within the Union and who was one of the employees impacted by the implementation of the Service Plan. The second was Guy Marsden, a CUPE National Staff Representative. The third was Dale Mitchell, another long time Library employee who has been the Union’s Chief Shop Steward for approximately the past two and one-half years. Jeff Grant, the Library’s Manager of Human Resources since 2008, testified in response.
9. I will provide a chronological summary of events and, as the facts were not in dispute, I will generally not identify which of the witnesses provided the information contained in the chronological summary.
10. In the late 1980s the Library’s Management developed a Job Evaluation Process.
11. In the late 1990s a Joint Union/Management Committee recommended that a Joint Job Evaluation Process be developed to address the principle of equal pay for work of equal value.
12. In a Letter of Understanding signed June 14, 2002, which was part of the 2001/2002/2003 Collective Bargaining Agreement, the Parties agreed to work co-operatively to develop and implement a Job Evaluation Plan. A Joint Job Evaluation Committee was formed which began meeting in the Winter of 2002.
13. In accordance with a document which the Parties agreed to March 17, 2005, entitled “Implementation Process and Procedures for the Joint Job Evaluation Plan”, all of the Library’s approximately 190 employees had their jobs rated. There were 25 to 30 appeals, 7 of which resulted in changes.

14. In 2007 the Library began a Program and Services Review with a view to developing a Service Plan. The Review involved extensive consultation with community stake holders and focus groups to determine community needs as regards Library services.
15. On November 15, 2007 the Parties executed the 2007/2008/2009 Collective Bargaining Agreement.
16. On July 17, 2008 Jeff Barber, the Library's Director, in an Intranet Posting which Library employees had access to, provided an update with general information on the Program and Services Review. The update utilized a Question and Answer format, a portion of which was as follows:

Q. If the Library changes programs and services, won't positions change?

A. Yes, a number of them will. It is too early to say what the changes will be but some staff will not be doing the same thing several months from now that they are doing today.

Q. Is this whole thing just a way to downsize the Library staff?

A. No. The intent of the P & S R is to make the Library more effective (that is, doing what the community needs) and more efficient (that is, meeting those needs in the best way). This will require changes in positions and duties (as noted above) but the intent is not to eliminate jobs.

...

Q. Is it possible that Library branches or the gallery could be at risk again if they're not high priorities in the Plan?

A. No. One of the underlying principles of the process, confirmed by the Board, is that there will be no closures. This process is about doing things better – there will be fewer things, but not at a level so drastic as to lose an entire unit.

17. A follow up Intranet Posting by Mr. Barber on September 22, 2008 advised that a Service Plan had been developed which was the net result of the Program & Services Review. Both community input and employee feedback were utilized in developing the Service Plan. The Posting also advised that a Management Plan would be developed by the Library's Management to implement the Service Plan.
18. The September 22, 2008 communication emphasized:

What about jobs?

To be clear with everyone – the Programs and Services Review was not undertaken to downsize the staffing complement of the Library: the proposed new Service Plan does not direct the Library to reduce its staffing. The Management Plan will ensure that we allocate existing staffing resources to meet the explicit goals and objectives of the Service Plan.

If you are employed in a permanent position now at Regina Public Library, I assure you that there is nothing in this change to the new service vision that will cause you to be removed from employment at Regina Public Library. We have been using term positions for some time to ensure that we have the flexibility to make changes that could include the movement of staffing resources from one unit to another. This ensures that we build capacity for future flexibility with less impact on permanent staff. Having said that, there are areas where we will need to move permanent staff to other units. We will be working within the Collective Agreement to make these changes.

19. On September 23, 2008 the Regina Public Library Board approved the Service Plan. On September 24, 2008 Mr. Barber sent an “all staff e-mail” advising that the Service Plan had been adopted and thanking a number of in-scope employees, including Mr. Neal, for their assistance in the development of the Service Plan.

20. The 2007/2008/2009 Collective Bargaining Agreement in Article 12.07(a)(vi) addresses what happens when an employee is reclassified to a higher pay band, while Article 12.07(a)(vii) addresses what happens when an employee is reclassified to a lower pay band. Schedule “K”, which is also part of the 2007/2008/2009 Collective Bargaining Agreement, provides for “Green-Circling”. In the Fall of 2008 Mr. Grant responded to Alice Frederick, President of CUPE Local 1594, and outlined the Library’s interpretation of Articles 12.07(a)(vi) and Article 12.07(a)(vii). The interpretation provided was:

The intent of Article 12.07(a)(vi) is that in the stipulated circumstances, where an employee is reclassified to a higher payband than her current payband, the employee will be placed in a step in the higher payband that is equal to her current rate of pay and her increment date will remain unchanged. Alternatively, if the higher payband does not have a rate of pay that is equal to the employee’s current rate of pay at the time, she shall be paid at a step in the higher payband which is closest to but higher than her current rate of pay.

The intent of Article 12.07(a)(vii) is that in specified circumstances, where an employee is reclassified to fall within a lower payband than her current payband, the employee shall be paid at the step in the lower payband that is equal to her current rate of pay and her increment date will not change. However, if the lower payband does not have a rate of pay that is equal to the employee’s current rate of pay and the incumbent’s current rate of pay falls between two established steps in the lower payband, the rate of pay is frozen at the current rate until her increment date, at which time she would move to the next step in the lower payband. When the incumbent’s current rate of pay exceeds the maximum rate of the lower payband, her rate of pay is frozen or “red-circled”, without access to negotiated economic increases until such time as the maximum rate of the lower payband meets or exceeds the red-circled rate of pay as a result of negotiated economic increases.

Until the present Grievance that interpretation was not challenged.

21. On October 3, 2008 copies of the Service Plan were made available to all of the Library’s employees.
22. Through October and November, 2008 Library employees were provided with information on the Service Plan.

23. During the Fall of 2008 the Library's Management developed the Management Plan through which the Service Plan was going to be implemented. Mr. Grant explained that in developing the Management Plan they first did a "current state analysis". Then an analysis was done concerning what the Library would look like once the Service Plan was implemented. The next step was a "gap analysis" which identified what would have to be done to move from where they were to where they were going. Finally, a "function sort" was done to determine what would be needed to give effect to the Service Plan.
24. During the period from November 28, 2008 until May 15, 2009 the Library's Management met with members of the Union's Executive and Representatives on 12 occasions to discuss the implementation of the Service Plan.
25. On November 28, 2008 Mr. Grant and Wendy Mohl, a Human Resources Representative, met with Ms. Frederick and Gloria Quinton-Cuddington, the Local Union's First Vice-President. Mr. Grant testified that the meeting was an informal meeting at which time the Library opened discussions on potential collaborative options for implementing the new organizational structure.
26. Management continued to provide employees with information with respect to the coming changes to the organizational structure through "all staff e-mails" and "In the Loop" publications from December, 2009 through August, 2009.
27. A second informal meeting between the Parties was held December 12, 2008.
28. On December 16, 2008 the Regina Public Library Board approved the Management Plan.
29. On December 19, 2008 Mr. Grant met with the Local Union Executive and advised that at least 6 employees would potentially be impacted by the coming changes. While Representatives of the Union were meeting with Management, the Union gave no commitment with respect to its continued participation.

30. On December 19 and 22, 2008 Library Management conducted informal meetings with the Library staff at each of the Library's Branches.
31. On January 6, 2009 the Library posted a draft of the new organizational chart online. Prior to doing so Management shared the draft with the Union Executive. While the organization chart showed job titles, no individual employee names appeared on it.
32. A further Management/Union meeting was held January 8, 2009 at which time Management advised which 6 employees' positions would be ending. Mr. Grant testified that while the Union did not agree to the process which the Library was proposing, it did not offer an alternative process, nor did the Union Representatives suggest that what was happening was tantamount to lay offs. The Union Representatives committed to attending future Management/Union meetings, however, they made it clear that their attendance did not signify their agreement with the process.
33. On January 23, 2009 Management, with a Union Representative present as an observer, met individually with the 6 impacted employees: Erika Wittlieb, Warren James, Kathy Valaitis, Tony Neal, Pete Schachtel and Navee Blair. Each was advised that their position was ending because of the implementation of the new organizational structure. Each was assured that there would continue to be a permanent position for them and that because of that the discussion was not notice of a lay off. Each of the employees was advised that Management could not yet say what their new position would be, as the implementation process had not yet been fully developed with the Union.
34. On January 26, 27 and 28, 2009 Management held a series of mandatory meetings with the employees at which time the purpose of the Management Plan and the draft organizational structure were outlined. Management advised the staff that as the implementation process had not yet been developed with the Union, it could not say where individual employees might fit in the new organizational structure.
35. On February 5, 2009 Crystal Hampson, Manager of the Library's Public Service Units; Jennifer Nation, Human Resources; Ms. Mohl and Mr. Grant met with the Local Union

Executive and Aina Kegis, a CUPE National Representative, in what Mr. Grant described as the first formal Management/Union meeting to discuss the implementation process. Mr. Grant outlined six principles which Management felt had to be protected in implementing the new organizational structure. They were:

1. Respectful of employees.
2. Minimize the potential for negative human impact.
3. Minimize the potential for disruption.
4. Minimize employee movement within the Library system.
5. There would be a Permanent Full-Time position for every Permanent Full-Time employee.
6. There would be a Permanent Part-Time position for every Permanent Part-Time employee.

36. CUPE suggested the use of a Mediator to assist in the development of the implementation process, however, Management rejected the suggestion as premature.
37. On February 18, 2009 Management and the Union met again at which time Management presented a draft Letter of Understanding (Exhibit E88) with respect to the implementation of the revised organizational structure. One element of the draft was:

16. That the order of placement, once qualifications have been established, will be by pay band, from highest to lowest, by seniority within each pay band, from most to least senior.

Mr. Grant acknowledged, on cross-examination, that the Employer's draft Letter of Understanding made numerous references to a placement process in which employees would have placement options and would be able to participate in a placement process. He conceded, however, that there is no reference in the Collective Agreement to the term "placement" or a "placement process". Further, Mr. Grant acknowledged that although paragraph 16 of the Library's draft Letter of Understanding provided that seniority would be addressed within each pay band, the Collective Bargaining Agreement itself does not limit seniority to a particular pay band.

38. Management and the Union representatives next met on March 2, 2009 at which time the Union presented its draft of a Letter of Understanding (Exhibit E90). During the meeting Management restated the Library's 6 principles outlined at paragraph 35 hereof. The Union stated that from their perspective the key principles were choice and the application of seniority. The Union wanted to see every position within the Library treated as unencumbered and to then allow every employee, in order of descending seniority, their choice of position in the new structure. The process proposed by the Union did not place limits on FTE or pay band, although it did require employees to possess the necessary requisites for the position chosen. The Union's draft included provisions that read:

3. Employees' options may include remaining in their current position, displacing a less senior employee in the same, a higher or lower pay band, provided employees have the skill, ability and qualifications to perform the duties of the position into which they chose to displace.
4. Part time employees may elect to displace a less senior part time or full time employee provided they have the skill, ability and qualifications to perform the duties of the position into which they choose to displace.
- ...
10. Employees who displace into a position in a lower pay band shall be green-circled, that is, they shall retain their existing rate of pay, advance through the increments based on their original anniversary date and receive any economic adjustments negotiated by the Union.

Mr. Grant's response was that Management's six principles could not be protected under the Union's proposal. Ms. Kagis' response was that the stated principles were those of Management, not the Union.

39. Mr. Grant, in his testimony, described the Union's proposed Letter of Understanding as highly disruptive; one that would not enable the Library to protect the hours of work and rates of pay of the employees and that it would not allow the Library to put the best person available in the various positions. Mr. Grant noted that the Union's proposal did not guarantee that full-time status would be preserved for full-time employees. Further, Mr. Grant observed that the Union's proposal would take longer to implement as each

individual would have to be interviewed. Mr. Grant felt that the Union's proposal raised cost concerns as the Union was seeking green-circling. Mr. Grant offered the following hypothetical to illustrate the potential cost issue. The Supervisor Outreach position was being re-rated from pay band 9 down to pay band 8. Under the Union's proposal, the employee in the Supervisor Outreach position could claim a pay band 4 position for which he or she was qualified and still maintain the pay band 9 rate of pay. The Library, however, would still need a Supervisor Outreach and would now have 2 individuals paid at a high rate of pay (1 green-circled at pay band 9 and 1 at pay band 8). The difference between pay band 9 and pay band 4 is in excess of \$20,000.00 per annum.

40. An exchange of e-mails and revised Letters of Understanding followed on March 6, 2009. Management indicated that, in the absence of a collaboratively developed process, the revised structure would be implemented in a manner which both met its six principles and adhered to the Collective Bargaining Agreement.
41. Management and Union representatives, including Mr. Marsden for the first time, met on March 13, 2009. The Union made it clear that Management's proposed Letter of Understanding was unacceptable. Management reiterated that it would proceed without the Union's agreement and that it would do so in a manner that protected the six principles and adhered to the Collective Bargaining Agreement. The Union's response was that it would grieve location changes.
42. Management and the Union met again March 25, 2009 but were unable to reach a resolution with respect to the implementation process. Management reiterated that it would proceed unilaterally, while the Union advised that it would grieve any breaches of the Collective Bargaining Agreement.
43. In an "all staff e-mail", sent March 30, 2009, Management advised that efforts to reach a collaborative process had been unsuccessful. The e-mail outlined the four assumptions upon which the Management Plan was based, namely:

- i. No Branches would close.

- ii. All permanent employees would have continued employment.
- iii. Insofar as it was possible, units would remain.
- iv. Implementation of the new organizational structure was to be resource neutral.

The e-mail also set out the six principles referenced at paragraph 35 hereof. Mr. Barber, in the March 30, 2009 e-mail, advised that had the Library's suggested process been followed it would have seen approximately 140 of the employees remaining in their current locations, performing fundamentally the same work that they had been. Approximately 18 employees would have continued to fundamentally perform the same work but in a different location. The balance of the employees would have been given the opportunity to choose from the remaining positions using a combination of current pay band, qualifications, skills, abilities and seniority.

- 44. On April 23, 2009 the Management and Union representatives met again, although the focus of the meeting was to discuss 2 new positions created by Management which Management contended were out of scope. The Union agreed that the position of Assistant Manager, Public Services would be out of scope but did not agree that the Manager, Virtual Systems should be out of scope. Ultimately the Labour Relations Board concluded that it was.
- 45. The Letter of Understanding attached to the 2007/2008/2009 Collective Bargaining Agreement as Schedule "K", "Green-Circling", which had been entered into November 15, 2007, provided that:

If the implementation of the Joint Job Evaluation Plan results in an employee's position being classified into a payband with a maximum rate of pay that is lower than the maximum rate of pay in her current payband, the employee shall be green-circled.

On April 23, 2009 the Parties entered into a further Letter of Understanding, paragraph 4 of which provided:

Re-distribution of the lump sum monies and the subsequent donation to the CUPE 1594-Jan Hone Memorial Scholarship will complete the implementation of the Joint Job Evaluation Plan. There will be no future re-consideration of the lump sum calculations.

46. Management and the Union met May 15, 2009 at which time Management outlined how it would be proceeding with the implementation of the Management Plan. Later that day Mr. Grant sent the Union Representatives an e-mail (Exhibit E71) which summarized the Meeting. The e-mail stated, *inter alia*:

The implementation process that was described today is as follows:

1. The positions of Central Adult Branch Head and Literacy Programming Supervisor will be posted and filled.
2. We will meet with the 35 (or remaining) impacted individuals in order of seniority, by decreasing payband, to review available options and determine position placement.
3. New job descriptions will be attached to existing encumbered position numbers as described in article 12.07 and positions will be relocated, if required, as described in Article 12.10.
4. In the event that all permanent employees from a particular payband have been placed and there are still unencumbered positions within that payband, the placement process will stop until those positions have been posted and filled.
5. In the event that all positions within a particular payband have been filled and permanent employees from that payband remain unplaced, those permanent employees will be placed in positions for which they are qualified in the next lower payband, in order of seniority, prior to permanent employees from that lower payband.
6. This process will continue until all permanent employees are encumbering a position in the new organizational structure.

The next steps that have been identified as being required prior to beginning the implementation process are, in no particular order:

1. Meet with the three payband 11 employees, the Literacy Programmers and the potentially red-circled employees prior to the full sharing of job descriptions and updated organization chart.

2. Provide CUPE with the 5 – 6 outstanding job descriptions and the updated organization chart.
3. Share all job descriptions and updated organization chart with all staff.

CUPE's participation in all meetings with staff was requested and agreed to.

The Parties acknowledged that the e-mail accurately reflected what was said during the meeting, although Ms. Frederick, in a May 19, 2009 e-mail to Mr. Grant, clarified that the Union Representatives would be attending to ensure that their Collective Agreement rights were upheld and further, the attendance of Union Representatives at the meetings did not constitute an endorsement of the Library's implementation process. Mr. Grant, in a subsequent e-mail to Ms. Frederick, acknowledged that the Library understood the Union's position.

47. On May 20, 2009 Mr. Grant, with a Union Representative present, met individually with 5 employees who might be red-circled: Wendy Sinclair, Joanne Farmer, Heather Milani, Jan Jordan and Navee Blair.
48. On May 21, 2009 Mr. Grant, again with a Union Representative present, met individually with a further 2 employees: Mr. Neal and Anna Mann.
49. On May 29, 2009, in an "all staff e-mail", Mr. Grant advised that all in-scope positions had been reviewed; that those that changed had new job descriptions which had already been provided to the Union and would be posted, together with their pay band, online later that day; and that Management would have met with those employees whose job changes would be evident on the updated organization chart prior to the chart being posted.
50. The uncontradicted evidence was that prior to the reorganization there were 18 or 19 out-of-scope Managers; 175 permanent in-scope employees and 15 to 18 term employees. After reorganization there were 20 or 21 out-of-scope Managers, however, the number of permanent in-scope employees and term employees remained the same.

51. As indicated the Union did not agree with the manner in which Management was proceeding with the implementation of the Management plan. It launched a four pronged response:

- i. on May 30, 2009 Ms. Frederick sent an e-mail to the Library's Management in which she submitted, on behalf of the Union, that Management's unilateral re-writing of the job descriptions and the assignment, in some cases, of new pay bands "... may represent an undoing of the Joint Job Evaluation Plan that the Parties agreed to under Schedule "D" of the collective agreement and spent several years negotiating and implementing." Further, without prejudicing other avenues, the Union served notice that it wished to negotiate the salaries of 24 of the new or reclassified positions pursuant to Article 12.07(a)(iv) of the Collective Bargaining Agreement. As well the Union asked that any employee changing position remain in their current pay band and be green-circled in accordance with Schedule "K" of the Collective Bargaining Agreement.
- ii. the subject Grievance, dated June 3, 2009, alleging that the implementation of the Management Plan breached Articles 4, 12.01, 12.02, 12.07, 12.09, 12.10 and Schedules "D" and "K" was filed.
- iii. an Unfair Labour Practice alleging that Management had failed to conclude a Maintenance Plan as required by Schedule "D" and in implementing its Management Plan, had undermined the Joint Job Evaluation Plan, was filed with the Labour Relations Board; and
- iv. a number of individual Grievances were filed by employees impacted by the changes.

52. Prior to the implementation of the new organizational structure there had been 3 pay band 11 positions (the highest in-scope pay band) but there was only 1 pay band 11 position in the new organizational structure, namely Central Adult Branch Head. Further, there had been 3 pay band 8 Literacy Programmers, but in the new structure there was one Literacy

Programming Supervisor at pay band 9. Staffing for the new organizational structure began with the posting of 2 competitions: Central Adult Branch Head (pay band 11) and Literacy Programming Supervisor (pay band 9).

53. Between June 4, 2009 and June 10, 2009 Mr. Grant continued meeting individually (with a Union Representative present) with impacted employees.
54. On June 11, 2009 the postings for Central Adult Branch Head and Literacy Programming Supervisor closed.
55. Mr. Grant, in a June 12, 2009 e-mail to all staff, after acknowledging that the Union had grieved the Library's implementation process, proceeded to describe the implementation process. He did so by beginning with what he referred to as some basic information. He noted in the e-mail that the Library had 174 permanent employees. The e-mail stated, *inter alia*:

All but 37 of those employees will be doing essentially the same work they are doing today, in the same place they are today, receiving the same rate of pay they receive today. Most will receive a revised job description that more accurately defines the role of their position.

6 of the 37 employees have had their jobs re-written with duties and responsibilities either being added or removed. 4 of those 6 positions move down in payband and the individuals will be red-circled at their current rate of pay. The other two positions move up in payband and the individuals will be paid accordingly.

6 of the remaining 31 employees could be affected by the outcome of the recent posting of the Central Adult Branch Head and Literacy Programming Supervisor positions. While it is not our expectation, there is the potential for all 6 employees to be red-circled in lower paybands. Those competitions closed yesterday and we expect that the interview and selection process will be complete by no later than Friday, June 19.

The rest of the impacted employees will have a new or different assignment of duties. The assignment of those duties will be done to best match qualifications, skills, and abilities and we will discuss this with the impacted employees in order of seniority within their paybands.

56. Mr. Grant's June 12, 2009 e-mail went on to indicate that the Library would be implementing two concurrent "streams" for the reassignment of duties: librarian and non-librarian. Mr. Grant advised that in each stream:

- some individuals would have only one option and would be formally notified of their reassignment;
- others would have more than one reassignment option and would be provided with a list of their options and asked to advise as to their preference;
- seniority would be used to determine the sequence in which individuals were considered for assignment of new duties within each payband;
- any remaining reassignment options that were unfilled would be posted as vacancies and filled prior to moving to the next payband; and
- the reassignments were necessary for the full implementation of the new Service Plan.

Later that day the new organization chart was posted on the Intranet.

57. On June 15, 2009 the Library sent correspondence to its employees:

- A. 127 employees were advised that they would remain in their current positions. Four different letters were used:
 - i. 61 of the 127 employees were advised that while there was no title change to their position, their job description had been revised to more accurately reflect what they were doing;
 - ii. 36 of the 127 employees were advised that they would have a new job title and a new job description which more accurately described what they were doing;
 - iii. 24 of the 127 employees were advised that there would be no change in either their title or job description; and

iv. 6 of the 127 employees received a new job title but their job descriptions did not change.

B. Letters were sent to 4 employees advising that their positions had been re-rated to a lower pay band and that their salary would be red-circled at their current rate.

C. 2 employees were sent letters indicating that their positions had been re-rated to a higher pay band.

D. Letters were sent to 5 employees indicating that they were being reassigned to a new location (1 in the same job and 4 in new jobs).

E. 6 employees holding Term positions were advised that they would return to their home positions once their Term positions concluded.

F. 3 part-time pay band 6 employees and 1 full-time pay band 4 employee were sent letters advising that they would be reassigned to a new position in the same pay band. They were provided with a list of options and were asked to express their preference.

G. 1 employee received a letter indicating that she would remain in her current position.

58. On June 19, 2009 correspondence was sent to the 3 part-time pay band 6 employees and the 1 full-time pay band 4 employee referenced in paragraph 57 (F) hereof, advising them of the positions they would be reassigned to and advising that seniority was the determining factor for their reassignments.

59. On June 19, 2009 correspondence was also sent to the 2 former pay band 11 employees (Mr. Neal and Ms. Valaitis) neither of whom had applied for the new Central Adult Branch Head, pay band 11 position, advising them that they would be reassigned to a new position

within pay band 10 and that they would be red-circled. Each was provided with a list of available positions and asked to list their preference. In accordance with paragraph 5 of the implementation process outlined in the May 15, 2009 e-mail referenced in paragraph 46 hereof, they were advised that they would be placed in positions for which they were qualified in the next lower pay band, in order of seniority, prior to permanent employees from that lower pay band.

60. On June 24, 2009 4 full-time pay band 4 positions at the Albert Library were posted. That same day the 2 Literacy Programmers who had been at pay band 8 were advised that their positions, as Literacy Programmers, had been re-rated to pay band 6 and they would be red-circled (for Ms. Farmer this was to be effective September 1, 2009, while the change with respect to Ms. Milani was to take effective when her grant position ended in July, 2010).
61. On June 26, 2009 Ms. Blair was announced as the successful applicant for the Central Adult Branch Head (pay band 11) position, while Alice Samkoe was announced as the successful applicant for the Literacy Programming Supervisor (pay band 9) position. As well, Mr. Neal and Ms. Valaitis were advised as to which pay band 10 positions they would be assigned to effective September 1, 2009. Finally, on June 26, 2009, the remaining 2 pay band 10 positions (Lead, Reference and Readers' Advisory and Lead, Children's Programming) were posted. Ms. Mohl, in her June 26, 2009 e-mail, advised staff that once the 2 pay band 10 competitions were completed, the pay band 9 staff would be notified of their options. Further, she advised that in the non-librarian stream, they had posted a part-time pay band 5 Reference Assistant in Central Reference and a full-time pay band 4 Senior Public Service Clerk at Albert Library. She indicated that once those 2 positions had been filled, the pay band 3 employees would be notified of their options.
62. On July 6, 2009 the Lead, Reference and Readers' Advisory and Lead, Children's Programming competitions closed, as did the posting for the Public Service Clerk at the Albert Library.
63. On July 10, 2009 letters were sent to 4 full-time pay band 3 employees advising them that they would be reassigned to new positions within their same pay band. As each had been

green-circled when they had initially been placed in their positions prior to the 2009 reorganization, they were advised that they would continue to be green-circled. Additionally, each of the 4 were provided with a list of options and asked to express their preference. That same day, July 10, 2009, 4 part-time pay band 3 employees and 1 part-time pay band 1 employee were given letters advising that they would be reassigned within their same pay band. They too were provided with a list of options and asked to express their preference.

64. On July 15, 2009 letters were sent to 4 pay band 9 employees advising them that they would be reassigned to a new position within their current pay band. A list of 4 available positions was enclosed, 3 of which were new Assistant Branch Head positions. Mr. Mitchell testified that the 4 pay band 9 employees who received the letters were not the only 4 qualified to be Assistant Branch Heads and he was of the view that others, with more seniority, may have been qualified.
65. On July 16, 2009 letters were sent to the 4 full-time pay band 3 employees; the 4 part-time pay band 3 employees and the 1 part-time pay band 1 employee referenced in paragraph 63 hereof, advising them of their reassignments.
66. On July 20, 2009 all remaining vacant positions in the new organization structure were posted. Candidates were asked to express their preference and the selection was made based on the highest rated candidate. Where there was a tie, seniority prevailed.
67. On July 21, 2009 letters were sent to the 4 part-time pay band 9 employees referenced in paragraph 64 hereof, advising them of the positions they would be reassigned to.
68. By July 21, 2009 all permanent employees affected by the new organization had been notified of their reassignments.
69. By August, 2009 a dispute between the Parties as regards pay administration had arisen. The Union wanted green-circling for all employees moved to a lower pay band and it wanted what was described as “step to step promotion” for those moving to a higher pay

band. As an example, if an employee was at step 3 in a particular pay band and was then moved to a higher pay band, the Union wanted the employee placed at the same step in the new pay band that he or she had been at in the old pay band, rather than at the step in the higher pay band that was equal to the employee's current rate of pay or, if the higher pay band did not have a rate of pay equal to the employee's current rate of pay, at that step in the higher pay band that was closest to, but higher than, the current rate of pay. Management, on the other hand, took the position that Article 12.07(vi), rather than step to step promotion, would be applicable to those moving to a higher pay band. Further Management reiterated a position it had advanced in June, 2009 that Schedule "K", covering green-circling, was no longer applicable as it was meant to apply to the implementation of the Joint Job Evaluation Plan rolled out in January, 2008 and completed with the donation to the CUPE 1594-Jan Hone Memorial Scholarship in June, 2009. The Union countered that the implementation of the Joint Job Evaluation Plan had not been completed as there was still no maintenance plan in place.

70. The pay administration dispute was resolved by a November 19, 2009 Letter of Understanding (Exhibit U7) between the Parties. As regards the pay administration issues the Parties agreed that:

... clauses related to pay administration changes that directly result from the application of the Joint Job Evaluation Maintenance Processes and Procedures shall be addressed by the Bargaining Committees of the Regina Public Library and CUPE Local 1594 through collective bargaining beginning January 1, 2010.

71. The Letter of Understanding also provided that a Joint Job Evaluation Maintenance Committee (JJEMC) was to be formed immediately and that it would finalize the Joint Job Evaluation Maintenance Processes and Procedures Manual which had been the subject of negotiation for a number of years. Once finalized it was to be referred to the Regina Public Library and CUPE Local 1594 for approval by November 30, 2009.
72. Subsequent to the November 19, 2009 Letter of Understanding having been entered into the Unfair Labour Practice, referred to in paragraph 51 (iii) hereof, was withdrawn by the Union.

73. On November 30, 2009 the JJEMC finalized the Joint Job Evaluation Maintenance Processes and Procedures Manual and it was referred to Mr. Barber for approval by the Regina Public Library Board.
74. The Maintenance Processes and Procedures Manual had been the subject of negotiations between the Parties prior to and into 2008. The Parties had then hit a number of road blocks and had stopped talking. Mr. Grant's predecessor had gone on medical leave in October, 2008 and ultimately left the employment of the Regina Public Library. Mr. Grant assumed, incorrectly, that Mr. Barber had been briefed by Mr. Grant's predecessor on the negotiations with respect to the Maintenance Processes and Procedures Manual. As a result, rather than being up to speed on past negotiations and forwarding the Joint Job Evaluation Maintenance Processes and Procedures Manual, which the JJEMC had negotiated and agreed to, to the Regina Public Library Board for approval, Mr. Barber proposed 23 revisions which Mr. Grant communicated to the Union Representatives by e-mail dated December 3, 2009. While some of the proposed revisions were merely housekeeping items, others were substantive in nature.
75. Mr. Grant testified that as Mr. Barber was a very detail-oriented individual he expected that Mr. Barber might have some comments with respect to the Maintenance Processes and Procedures Manual, although he did not expect that they would be as extensive as they were. Further, Mr. Grant did not take issue with Mr. Marsden's testimony that Mr. Grant told him (Mr. Marsden) that he was "blind sided" by Mr. Barber's 23 proposed revisions.
76. The Union's view was that as the Maintenance Processes and Procedures Manual had been negotiated and agreed to by the Joint Committee, the Parties, as a matter of principle, were obligated to endorse it.
77. During his cross-examination Mr. Grant acknowledged a number of points. He agreed that the positions of Central Adult Reference Head, Assessment Librarian, Assistant Branch Heads and Acquisitions Coordinator, all of which were new positions in the revised organizational structure, had not been posted. Rather, they were positions that were offered as options to employees that were being reassigned.

78. During his cross-examination Mr. Grant was referred to Article 12.10 which provides that employees can be relocated involuntarily, on those rare occasions when the efficient operation of the Library so requires. Mr. Grant was asked where and to whom the efficiencies were communicated. His response was that all of the changes pursuant to the Service Plan were done for efficiencies and that those efficiencies were identified through the new organizational structure. Simply put he felt that the new structure provided for the more efficient delivery of library services.
79. Mr. Grant was specifically asked what efficiencies were gained by transferring a full-time Assistant Librarian from one Branch to another. His response was that the first Branch did not need a full-time Assistant Librarian, whereas the second Branch did.
80. As regards Article 12.07, Mr. Grant's interpretation of its operation was that in the absence of a Maintenance Plan, Management was entitled to package duties and then, using the Joint Job Evaluation Plan, assign a value, that is a pay band, to the duties. That information would be shared with the Union and if the Union wanted to negotiate the salary or salary range it could make that request. In the absence of agreement the matter would ultimately proceed to arbitration.
81. Finally, during his cross-examination, Mr. Grant acknowledged that the absence of an agreement with the Union as regards the implementation of the Service Plan did not absolve Management from having to comply with the Collective Bargaining Agreement.
82. On March 23, 2010, in preparation for the Hearing, Counsel for the Library, Mr. Kenny, Q.C., wrote to Ms. Kagis outlining the Library's understanding of the Union's complaints. The Library's understanding of the Union's position as outlined in Mr. Kenny, Q.C.'s Letter was similar, if not identical, to that communicated by Mr. Grant to Mr. Marsden in a June 24, 2009 Memo.
83. Ms. Kagis, by letter dated April 6, 2010, confirmed that the list of 10 matters which had been outlined accurately reflected the primary grounds for the Union's Grievance.

84. Subsequently, by e-mail dated May 2, 2010, Ms. Kagis advised Mr. Kenny, Q.C. that the Union would also be alleging that the Employer's actions had violated Articles 10.01 and 12.07(v).

IV Issues, Arguments and Analysis

85. I will address each of the issues, the arguments with respect to the issues and my analysis of the issues individually, largely in the order in which they were addressed during the Employer's closing argument.
86. At the outset I would note that because the facts were not in dispute, the issues fall to be determined on how the Library's actions are properly characterized and then examining those actions in light of the provisions of the Collective Bargaining Agreement.
87. Before addressing the issues which must be decided, I will provide some general comments and outline what is not in dispute.
88. The evidence has satisfied me that the Program and Services Review was conducted in good faith and the Service Plan which resulted was designed to enable the Library to be more effective and more efficient.
89. Throughout the implementation process there was extensive consultation by Management with the Union.
90. Although the Union did not agree with Management's implementation process, it did participate in a meaningful way.
91. While the Parties were unable to agree on the implementation process, both the Employer and the Union are to be commended for the interaction which they did have.
92. Despite what appeared to me to be a sincere effort on the part of both the Employer and the Union to agree upon an implementation process, no agreement was reached. The fact that

the Parties were unable to reach an agreement, despite their sincere efforts, did not absolve the Employer from having to adhere to the Collective Bargaining Agreement. That was acknowledged by the Employer several times during the course of its communication with the staff.

93. As I understand the evidence and arguments, although the Union felt that Management had undermined the Joint Job Evaluation Plan by unilaterally re-writing job descriptions and assigning new pay bands and by changing job titles, the subject Grievance does not attack the June 15, 2009 Letters sent by the Library to the 127 employees who were to remain in their current positions as outlined in paragraph 57 (A) (i-iv) hereof.
94. No issue was taken by the Union with respect to the positions that were posted and the process by which the posted vacancies were filled:
- a. Central Adult Branch Head and Literacy Programming Supervisor (paragraph 52);
 - b. 4 full-time pay band 4 positions at Albert Library (paragraph 60);
 - c. 2 pay band 10 positions – Lead, Reference and Readers Advisory and Lead, Childrens’ Programming; 1 part-time pay band 5 Reference Assistant in Central Reference; 1 full-time pay band 4 Senior Public Service Clerk at Albert Library (paragraph 61); and
 - d. All remaining vacant positions (paragraph 66).
95. In a previous Award involving this Union and this Employer, along with Ms. Quintin-Cuddington (April 25, 2007), I held that the posting provisions contained within Article 12.02 of the Collective Bargaining Agreement provided for a “relative ability” or “competitive” selection process, as opposed to a “threshold” or “sufficient ability” process and I am still of that view.
96. By way of contrast, the lay off and recall provisions contained in Article 10 do utilize a “threshold” or “sufficient ability” process.

97. I now turn to the general arguments advanced on behalf of each of the Parties and the specific issues.
98. Counsel for the Union, in her closing submissions, noted that the Collective Bargaining Agreement does not contain a management rights clause. As such, and citing Brown & Beatty's text, *Canadian Labour Arbitration*, 4th Edition at page 4-57, Counsel submitted that Management's obligation to act reasonably was even more stringent than would ordinarily be the case.
99. Counsel for the Employer, in his Written Submissions, began by asserting that the onus rested with the Union to prove, on a balance of probabilities, that the Library had breached its obligations during the implementation of the new organizational structure. Further, Counsel maintained that the onus on a Party asserting a particular interpretation of a Collective Agreement was not easily discharged where the language was less than clear and the intention of the Parties was not readily ascertainable (see *Consolidated Aviation Fueling & Services (Pacific) Ltd. and Teamsters Union, Local 213* (1987), 30 L.A.C. (3d) 130 (Greyell) and an unreported Decision referred to therein: *British Columbia Hydro & Power Authority* (January 5, 1987 Hope); *Saskatoon (City) and C.U.P.E. Local 859* (1999), 55 C.L.A.S. 190 (Priel) and *Peterborough Utilities Commission and International Brotherhood of Electrical Workers Local 1964* (1973), 4 L.A.C. (2d) 383 (Palmer). Counsel for the Union did not take issue with the proposition that the Union bore the onus to establish any breaches of the Collective Bargaining Agreement.
100. As regards management rights, Counsel for the Employer submitted that it was well established in arbitral jurisprudence that even in the absence of a management rights clause in a collective agreement, an employer has the right to make operational and workforce decisions, except to the extent that that right is limited by terms in the collective bargaining agreement. In support of that proposition Counsel referred me to *Canadian Labour Arbitration* 4th Edition at paragraph 4:2310; *Voice Construction Ltd. v. Construction & General Workers' Union, Local 92* [2004] 1 S.C.R. 609; *Coastal Community Credit Union v. Office and Technical Employees Union, Local 15* [2001] B.C.C.A.A.A. No. 356 (Blasina); *Toronto Star Newspapers Ltd. and Southern Ontario Newspaper Guild, Local 87*

(1983), 10 L.A.C. (3d) 1 (Picher); *Canadian Union of Public Employees, Local 21 v. Regina (City)* (Policy Grievance), [2006] S.L.A.A. No. 14 (Pelton) and *Saskatoon (City) and C.U.P.E. Local 859, supra*, (Priel). While, as indicated, the Union maintained that Management's obligation to act reasonably in the absence of a Management Rights clause was even more stringent, she did not suggest that the Library had no ability to make operational and work force decisions, as long as it did so in accordance with the Collective Bargaining Agreement.

A. Article 4.03 - Union Recognition

ARTICLE 4 – UNION RECOGNITION AND NEGOTIATION

...

4.03 No employee(s) shall be required or permitted to make a written or verbal agreement with the Employer which conflicts with the terms of this Collective Agreement or with any compensation plan or system arising from it.

101. The Union submitted that the Employer had placed pressure on employees to agree to placement with limited or no options in a manner which violated the Collective Bargaining Agreement.

102. While this general proposition was advanced, the real issues relate to the reassignment of employees and how the reassignments were carried out. Those issues will be addressed below.

103. The Employer's response to the allegation that it had breached Article 4.03 was to point out that where employees had to be reassigned they were. In the absence of multiple positions to which an employee could be reassigned, the employee was simply reassigned. Where there were options, the employee being reassigned was informed of the options and asked to express a preference. Counsel for the Employer emphasized that throughout the process there was extensive communication with the Union.

104. Further, Counsel for the Employer submitted that the Library's consideration of the personal preferences of employees, especially where that preference was provided in the

presence of a Union Representative, did not violate the “Union recognition” provisions of Article 4.

105. While the reassignments and the manner in which they were carried out will be discussed below, I have not been persuaded, on a balance of probabilities, that Article 4.03 was breached in this case. In some instances employees were advised of available options and asked to express a preference. In a number of cases the expressed preference was accommodated. That, however, falls short of an employee being required or permitted to make a written or verbal agreement with the Employer which conflicted with the terms of the Collective Agreement.

B. Article 12.10 – Relocation

ARTICLE 12 - PROMOTIONS, TRANSFERS, STAFF CHANGES AND NEW JOB CLASSIFICATIONS

...

- 12.10 The Union acknowledges that it is the function of the Employer to relocate an employee, however it is not the wish or intention of the Employer to relocate an employee involuntarily, except in those rare occasions when the efficient operation of the Library so requires.

106. Counsel for the Union submitted that given the number of employees who were relocated, it could not be said that we were dealing with “rare occasions”.
107. Further, Counsel questioned the efficiencies of the relocations and to whom those efficiencies were communicated.
108. In response, Counsel for the Employer, relying upon *Canadian Labour Arbitration*, 4th Edition at paragraph 4:2310; *Alberta Union of Provincial Employees v. Alberta Health Services (Nguyen Grievance)*, [2009] A.G.A.A. No. 61 (Wallace) and *Downtown Eastside Residents’ Association v. Canadian Union of Public Employees, Local 1004 (Policy Grievance)* (2008), 173 L.A.C. (4th) 90 (Nordlinger), maintained that arbitral authority

was clear that the right to change the location where an employee's duties were performed, was a fundamental management right and any agreement to limit that right would have to be expressed in unequivocal collective agreement language.

109. Counsel submitted that Article 12.10 made it clear that the right to designate the location where duties were performed was part of Management's fundamental right to direct and organize its work force.
110. Counsel acknowledged that the broad management right for involuntary transfers was limited to those "rare occasions when the efficient operation of the Library so requires". Counsel submitted firstly that the development of the Service Plan and the implementation of a new organizational structure was a rare occasion. In that regard Counsel noted that Mr. Mitchell, during his examination-in-chief, had indicated that in his 17 years with the Library he was not aware of any reorganizations other than the reorganization which occurred in June and July, 2009. Secondly, as regards the "efficient operation of a Library" limitation, Counsel maintained that the evidence had established that the new organizational structure was required for the efficient operation of the Library.
111. In addressing Article 12.10 it must be remembered that we are dealing with the relocation of an employee from one geographic location to another. Article 12.10 does not address the transfer or reassignment of an employee from one position to a different position.
112. Given the evidence that the 2009 relocations were the result of the only structural reorganization of the Library in approximately the 17 years that preceded them, I am satisfied that they constituted "rare occasions".
113. The final requirement of Article 12.10 that, the efficient operation of the Library required the involuntary relocation of a number of employees, has in my view been met. The assertion in the Intranet Posting referenced in paragraph 16 hereof that the intent of the Program and Services Review was to make the Library more effective and more efficient was not challenged by the Union, nor was Mr. Grant's evidence that the changes pursuant

to the Service Plan were done for efficiencies and that those efficiencies were identified through the new organization structure.

114. Accordingly I have concluded that Article 12.10 of the Collective Bargaining Agreement was not breached by the Library's actions.

C. Article 12.01(a)(i) -Vacancy and Job Posting Requirements

**ARTICLE 12 - PROMOTIONS, TRANSFERS, STAFF CHANGES AND NEW
JOB CLASSIFICATIONS**

- 12.01 (a) (i) all vacancies which the Employer wishes to have filled shall be posted on a bulletin board for at least ten (10) calendar days. Such posting shall include the job classification or title, a summary of the job description, budgeted hours allocated to the position, the applicable wage rate or salary range, and the initial location of the position.
115. There can be no issue that the Collective Bargaining Agreement directs that vacancies, which the Employer wishes to have filled, shall be posted in accordance with Article 12.01(a) and filled in accordance with Article 12.02.
116. As I have already noted, the Union took no issue with those vacancies that were posted or the manner in which they were filled. The Union contended, however, that rather than posting all of the vacancies, the Library filled a number of them by reassigning employees to them. As such the issue is what actions give rise to a vacancy?
117. Counsel for the Employer made a number of submissions with respect to the issue of vacancies. Firstly, he submitted that the circumstances in which an employee was relocated from one Branch to another (Article 12.10) did not involve a vacancy to which Articles 12.01(a)(i) and (ii) would apply. In this regard reference was had to *Downtown Eastside Residents' Association v. Canadian Union of Public Employees, Local 1004 (Policy Grievance)*, *supra*; *Re UNA and Caritas Health Group* (1995) 40 C.L.A.S. 26 (Smith) and *General Hospital (Grey Nuns) of Edmonton and U.N.A. Local 79* (1991), 25 C.L.A.S. 129 (McFetridge).

118. Secondly, Counsel argued that the process of rewriting a job description and reassigning employees to revised job descriptions did not create vacant positions to which the posting requirements in Article 12.01(a)(i) and (ii) would apply.

119. As regards what is a vacancy and when it must be filled, Counsel referred me to an Award of Arbitrator Dissanayake in *Humpty Dumpty Foods Ltd. v. Teamsters, Local 647* (1990), 15 L.A.C. (4th) 18 where, at paragraph 12, the Arbitrator commented:

The arbitral principles relating to job vacancies are now well established. An employer does not have to post a vacancy merely because a position becomes empty in the sense that the incumbent has ceased to occupy the position. A vacancy exists only where there is adequate work in the opinion of the employer to justify the filling of the position. The employer has a certain amount of discretion in deciding whether a vacancy exists. This includes an ability to decide whether the available work will be reassigned to other employees already in its employ. Provided the reassignment is made in good faith or for good business reasons, the employer may decide that no vacancy exists.

120. In the *Alberta Union of Provincial Employees (Nguyen)* Award the majority of a Board of Arbitration chaired by Les Wallace discussed the issue at paragraphs 32 – 34:

32. ... Has there been a “vacancy” or a “transfer”? In our opinion, no. Both terms are somewhat elastic. The essence of a vacancy, however, as we see it, is the existence of a “job”, a bundle of duties, to which no incumbent is currently assigned. A vacancy can arise by an employee leaving the job, by retirement, discharge, resignation or transfer; or it can arise by the employer creating a new job, a new bundle of duties that must be undertaken by an employee.

33. It is usually easy to discern when a new job has been created so as to generate a vacancy. Generally, no new job is created by making minor changes to an existing bundle of duties. Sometimes, however, an existing bundle of duties can be changed in such a fundamental way that it becomes a qualitatively new and different job. Case law suggests that this can happen where there is a change in the classification assigned to a position, a change in status from full-time to part-time or vice versa, or a “fundamental change in duties”: *Re UNA and Caritas Health Group*(1995) 40 C.L.A.S. 26 (P. Smith).

34. The case law submitted to us is against the proposition that a mere change in location, so that the employee occupies the same classification and performs the same duties in a different place, is the filling of a “vacancy”

121. The Union, in discussions with Management, had identified three examples of what it contended were vacancies that had not been posted: Lead, Adult and YA Programming, Acquisitions Coordinator and Library Assistant.
122. While this is a general Grievance, as opposed to a Grievance filed on behalf of a specific individual, specifics were provided in evidence in an attempt to illustrate what had happened.
123. By letter dated June 15, 2009 Warren James (who at the time was a Young Adult Services Specialist, at pay band 10 at Sunrise Branch) was advised that effective September 1, 2009 he would be reassigned to the position of Lead, Adult/Young Adult Programming, Programming Unit, pay band 10 at Central Branch. Management maintained that this was a relocation to a redefined position. The Union maintained that it was a new position, which was vacant, and should have been posted.
124. Susan Dugas, who prior to the reorganization was a Library Assistant, pay band 6 at the Connaught Branch, was advised by letter dated June 15, 2009 that effective September 1, 2009 she would be reassigned to the position of Library Assistant, Glen Elm Branch, pay band 6. Management maintained that this was a relocation pursuant to Article 12.10 of the Collective Bargaining Agreement.
125. Pat Schubert, who prior to the reorganization was a Library Assistant with Reference and Independent Learning, pay band 5, was advised by letter dated June 15, 2009 that effective September 1, 2009 she would be reassigned to the position of Acquisitions Coordinator Collections, pay band 5. Management maintained that the circumstances did not meet the definition of “a vacancy required for the application of Article 12.01(a)(i).
126. I agree with Counsel for the Employer that a relocation pursuant to Article 12.10 whereby an employee is moved from one geographic location to another (but fundamentally performs the same job) does not give rise to a vacancy such that the posting positions of Article 12.01(a)(i) and (ii) are brought into play.

127. Further, I agree, as stated by Arbitrator Dissanayake in the *Humpty Dumpty Foods* case, that an employer does not have to post a vacancy merely because a position becomes empty.
128. In this case we are not dealing with vacancies created by an employee leaving a position by retirement, discharge, resignation or transfer. However, as noted by Arbitrator Wallace in the *AUPE (Nguyen)* case, a vacancy can also arise when an employer creates a new job, that is a new bundle of duties that must be undertaken by an employee. As Arbitrator Wallace stated, minor changes to an existing bundle of duties generally does not create a new position. However, if a bundle of duties are changed in a fundamental way, qualitatively it becomes a new and different job. In those circumstances the posting provisions of Article 12.01(a)(i) and (ii) are brought into play. Further, as will be discussed when I address Article 12.07(a), the creation of a new job category, new classifications within each job category or new positions within each classification or the reclassification of a position, will give rise to a posting obligation.
129. Arbitrator Wallace, in the *AUPE (Nguyen)* case, commented that “Generally, no new job is created by making minor changes to an existing bundle of duties.
130. In a similar vein, re-writing a job description to more accurately reflect what an employee is doing does not create a new job and a resultant vacancy. That appears to have been accepted by the Union as I saw no challenge by the Union (apart from the contention that the Joint Job Evaluation Plan had been undermined) to the June 15, 2009 letters to employees advising that they would remain in their current positions, albeit some would have revised job descriptions and/or new job titles (paragraph 57(A)(i), (ii) and (iv) hereof).
131. Returning to the specific examples raised by the Union and outlined at paragraphs 123, 124 and 125 hereof, I must reiterate that I am not ruling on specific individual Grievances. Rather, I am addressing the issues from a more conceptual perspective.

132. If an individual is relocated from one geographic location to another, and yet continues to perform the same, or fundamentally the same job, there is no vacancy and the posting requirements are not triggered.
133. If an individual's position is retitled or if the individual is given a new job description which more accurately describes what they are doing, there is no vacancy.
134. On the other hand, where the Library created a new position, or to paraphrase Mr. Grant's June 12, 2009 e-mail (paragraph 55 hereof), where employees are not doing essentially the same work, then the posting requirements contained in Article 12.01 and 12.07 will be triggered.
135. In short, whether Article 12.01(a)(i) has been breached will depend upon whether the particular circumstances of each individual case constituted a vacancy which the Library filled, but which it did not post.

D. Article 12.09 - Transfers

**ARTICLE 12 - PROMOTIONS, TRANSFERS, STAFF CHANGES AND NEW
JOB CLASSIFICATIONS**

...

- 12.09 Employees may be transferred from one position to another only in the event of mutual agreement between the Union and the Employer. In an emergent situation, the Employer retains the right to temporarily transfer an employee.
136. Counsel for the Union noted that Article 12.09 requires mutual agreement between the Union and the Employer for the transfer of employees from one position to another except in an "emergent situation" in which case the Employer may "temporarily" transfer the employee.
137. In this case there was no suggestion that the circumstances surrounding the reorganization in June and July, 2009 involved either an "emergent situation" or temporary transfers.

138. The Union argued that Warren James, Peter Schachtel, Erika Wittlieb, Patti-Lynne McLeod, Selva Suppiah, Trudi Stafford, Laura Duguid, Donna Barlow and Geoff Corbett were all transferred, without the Union's agreement, and as such Article 12.09 had been breached.
139. In response, Counsel for the Employer submitted that employees were not "transferred" from one position to another, but rather, their positions were simply relocated pursuant to Article 12.10. In addition to relying upon the *AUPE (Nguyen)* and *Downtown Eastside Resident's Association* cases, in support of that proposition, Counsel also referred me to *Ottawa Civic Hospital and Canadian Union of Public Employees, Local 576* (1979), 24 L.A.C. (2d) 244 (Carter) and *Camp Hill Medical Centre and N.S.N.U.* (1996), 53 L.A.C. (4th) 314 (Slone).
140. As I indicated in addressing Article 12.10 my function in the present case is not to rule on whether the movement of specific individuals contravened the Collective Bargaining Agreement.
141. Speaking generally, however, I agree with Management that assigning or reassigning an employee to do the same job, in a different geographic location, is a relocation which, if the conditions of Article 12.10 are met, is permissible.
142. A transfer is something different. As Article 12.09 itself states, a transfer is movement from one position to another. Reading Article 12.09 together with 12.10 makes it clear, in my view, that to be considered a transfer there must be more than a change in geographic location. Rather, there must be movement from one job to a different job.
143. As a result, whether any of the specific examples referenced by the Union constituted a transfer, such that Article 12.09 was breached, will be dependent upon whether any of the individuals were being moved to a fundamentally different job, as opposed to being reassigned to do the same job, in a different geographic location.

E. Article 12.02 - Seniority

**ARTICLE 12 - PROMOTIONS, TRANSFERS, STAFF CHANGES AND NEW
JOB CLASSIFICATIONS**

...

12.02 Permanent employees shall be entitled to bid to fill any posted vacancy by means of written application within ten (10) days of the date the vacancy is posted. New positions or vacancies shall be filled on the basis of where the overall qualifications, skill, ability and aptitude as between two or more permanent employee applicants is equal, then seniority shall prevail. Nothing shall prevent the Employer from temporarily filling a new position or vacancy pending the selection of a successful applicant. Provided, if the Employer decides that no permanent employee applicant has the overall qualifications, skill, ability and aptitude, the Employer may hire any other applicant; the Employer's decision shall be subject to the grievance procedure.

144. The Union argued that the Library had denied employees the opportunity to exercise their full seniority rights in accessing work, as seniority was only being applied within each pay band.

145. While the Library did not dispute that pursuant to Article 11.01 (quoted at page ii of Schedule "A" of this Award) seniority was bargaining unit-wide, it did contend that the relocation of employees or the reassignment of employees to revised job descriptions, simply did not equate to filling a "new position" or "vacancy". Accordingly the Library maintained that it was not obligated to post the positions and as such the seniority provisions of Article 12.02 were simply not triggered.

146. Further, Counsel for the Employer submitted that, pursuant to Article 12.07(a)(i) and (ii), the Employer had the right to change job descriptions of employees and to assign new and different duties or responsibilities to employees but that did not create "new positions" within the meaning of Article 12.02 such that a posting was required and seniority was brought into play.

147. Counsel for the Employer quoted from Brown & Beatty, *Canadian Labour Arbitration*, 4th Edition at paragraph 5:2000:

... as a general presumption, arbitrators have taken the view that where the reorganization is not contrary to the general law, where it is done in good faith,

and where it does not contravene clear prohibitions in the agreement, and subject to such overriding principles as waiver, management is free to reorganize the work procedures and methods within the bargaining unit as it requires. And this is so whether the assignment of work is temporary or permanent, or whether it is within a job classification or crosses classification or departmental lines. Moreover, this presumption will prevail regardless of whether the reorganization takes the form of creating new classifications, discontinuing old classifications, or splitting and reorganizing classifications and departments, including replacing full-time jobs or part-time ones, or changing jobs from rotating to permanent ones. As well, this presumption will sanction reorganizing, adding or discontinuing jobs within classifications, raising or lowering a classification, and, indeed, making any other *bona fide* change in the organization of the workforce. And as a corollary, where new classifications are properly created, it has been recognized that management can unilaterally establish both the rates of pay and work standards connected with them Similarly, although it is generally assumed that an employee does not have a proprietary right to his job, the seniority provisions in the collective agreement may give him a relative right to a job as a whole, and to that extent, they may limit such reorganizations.

148. Counsel also submitted that it has been recognized in arbitral jurisprudence that employees do not possess a proprietary right to a specific set of job duties or responsibilities, absent some explicit provision to that effect in the collective bargaining agreement. (see *Retail Wholesale Bakery & Confectionary Workers, Local 461 and Canada Bread Co. Ltd.* (1965), 16 L.A.C. 202 (Reville)).
149. As Mr. Grant acknowledged on cross-examination, the Collective Bargaining Agreement does not limit seniority to a particular pay band. Pursuant to Article 11.01 seniority is bargaining unit-wide.
150. Whether the seniority provisions of the Collective Bargaining Agreement were breached or not, is dependent upon how what Management did, is properly characterized.
151. Where Management posted a position, there was no suggestion that it did not adhere to the provisions of Article 12.01(a)(i) and (ii) and Article 12.02.
152. Where Management properly relocated an employee pursuant to Article 12.10 the seniority provisions do not come into play.

153. Revising a job description to more accurately reflect what an employee is doing, or renaming a job title, does not make the seniority provisions applicable.
154. The Collective Bargaining Agreement in this case, however, does place limits on Management's right to reorganize the work place. As I have already held, if Management created a new position which it wished to fill, the posting provisions of Article 12.01 are triggered. Further, and as will be discussed in addressing Article 12.07, where Management establishes "... new job categories, new classifications within each job category, and new positions within each classification" or where it reclassifies a position, Management must post the "new classification/position" pursuant to Article 12.07(a)(v) if it wants to fill the new classification/position. That, in my view, does bring the seniority provisions of Article 12.02 into play.

F. Article 10.01 - Lay offs

ARTICLE 10 - LAY OFFS, RECALLS, AND RESIGNATIONS

- 10.01 (a) When reducing staff, senior employees shall be retained provided they have the skill, ability, and qualifications to do the work.
- (b) A laid off or displaced employee may exercise seniority in the following manner:
- (i) The employee may choose to displace a less senior employee, provided she has the necessary skill, ability, and qualifications to perform the work.
 - (ii) The employee may accept layoff and be placed on a recall list.
 - (iii) The employee may resign from the Regina Public Library and receive any benefits to which she is entitled under the terms of the Collective Agreement.

All options will be presented to the employee within five (5) working days of notice of layoff. She will then have up to five (5) working days to render her decision to the Employer.

- (c) Notwithstanding Article 10.01 (b), employees may be placed in vacant positions upon mutual agreement between the parties.
- (d) If a position affected by layoff results in the incumbent being displaced into a position in a lower pay band, the incumbent shall retain the salary range in effect prior to her or his displacement. The employee shall not be entitled to any economic adjustments until such time as the maximum

salary range for the lower classification level overtakes the maximum salary range retained under the is subsection.

155. Counsel for the Library addressed the issue of lay offs at paragraphs 98 – 109 of his Written Submissions.

156. Counsel for the Union, in her oral submissions, conceded that the arbitral jurisprudence supported the Employer's position and effectively abandoned the Union's contention that the lay off provisions of Article 10.01 had been breached. As such I do not propose to address that issue.

G. Article 12.07(a)(vii) - Red-circling and Schedule "K" Green-circling

**ARTICLE 12 - PROMOTIONS, TRANSFERS, STAFF CHANGES AND NEW
JOB CLASSIFICATIONS**

...

12.07 (a) (vii) if the salary payable to an employee whose reclassification has been initiated by the Employer is determined by agreement or arbitration to fall within a lower pay band than her current pay band, the employee shall be paid at the step in the lower pay band that is equal to her current rate of pay and her increment date shall not change. If the lower pay band does not have a rate of pay equal to the employee's current rate of pay, such lower salary shall become effective when the position is vacated.

This Letter of Understanding supersedes point 5 of Schedule D.

**SCHEDULE K
LETTER OF UNDERSTANDING**

GREEN CIRCLING

If the implementation of the Joint Job Evaluation Plan results in an employee's position being classified into a pay band with a maximum rate of pay that is lower than the maximum rate of pay in her current pay band, the employee shall be green circled.

"Green circling" shall mean that an employee will continue receiving increments in her current pay band and will receive negotiated economic adjustments until she vacates her position.

157. I will address the issues surrounding red-circling and green-circling together.

158. The Union maintained that employees who were reclassified and fell into a lower pay band should be green-circled pursuant to Schedule “K” of the Collective Bargaining Agreement.
159. The Employer countered by arguing Schedule “K” was no longer applicable and submitted that it had properly red-circled employees who fell into a lower pay band pursuant to Article 12.07(a)(vii).
160. In support of the Employer’s position that Article 12.07(a)(vii) was the operative provision, rather than Schedule “K”, Counsel pointed to the letter of interpretation provided by Mr. Grant to Ms. Frederick, in the Fall of 2008 (paragraph 20 hereof). Relying upon *Canadian Labour Arbitration* at paragraph 2:2211, *Consolidated Fastfreight v. International Brotherhood of Teamsters, Local 362 (Cookson Grievance)* (2007), 162 L.A.C. (4th) 84 (Smith) and *Communications Energy and Paperworkers Union of Canada, Local 911 v. Information Services Management Canada Corp. (ISM Canada) (Maternity/Paternity Leave Grievance)*, [2008] S.L.A.A. No. 1 (Pelton), Counsel submitted that as the Union had not challenged the Employer’s interpretation and as Management had relied upon that interpretation in the development and implementation of the Management Plan, the Union was estopped from challenging the interpretation now.
161. As regards Schedule “K” no longer being operative, Counsel stressed the opening words of Schedule “K”: “If the implementation of the Joint Job Evaluation Plan results in an employee’s position being classified into a pay band with a maximum rate of pay that is lower than the maximum rate of pay in her current pay band, the employee shall be green-circled.” Counsel submitted that rather than Schedule “K” creating an ongoing obligation, it created an obligation that was triggered by the implementation of the Joint Job Evaluation Plan, which had been rolled out in January, 2008. Counsel also noted that the Parties, in their April 23, 2009 Letter of Understanding, specifically agreed “... the subsequent donation to the CUPE 1594 – Jan Hone Memorial Scholarship will complete

the implementation of the Joint Job Evaluation Plan.” That donation was made in June, 2009.

162. Counsel argued that the language of Schedule “K” did not speak to the Library’s current circumstances in that the Wage Schedule in the Collective Agreement had been reduced from 14 pay bands to 11; the number of steps per pay band had been limited to 5 and interlocking pay steps had been eliminated.
163. While Article 12.07(a)(vii) and Schedule “K” both address what happens when an employee’s position is moved to a lower pay band, they provide for dramatically different results.
164. While the onus is on the Union, as the Grievor, to establish a breach of the Collective Bargaining Agreement, the onus falls upon the Employer to establish the estoppel which it has asserted.
165. As noted, the argument in favour of an estoppel is based upon the letter of interpretation referenced in paragraph 20 hereof. While the letter (Exhibit E89) addressed to Ms. Frederick opens with the statement:

In response to your request this letter is intended to explain how the Employer interprets Articles 12.07(a)(vi) and 12.07(a)(vii)

the evidence did not specifically disclose what Ms. Frederick’s request was. The letter makes no reference to Schedule “K”.

166. Further, while it was argued on behalf of the Employer that the Employer took the silence of the Union as an indication that the Union agreed with the Employer’s interpretation and relied on the interpretation during the development and implementation of the Management Plan, that is not the same as saying it relied upon an interpretation in formulating its position in the negotiation of a collective bargaining agreement. Whether Management relied on its interpretation in developing the Management Plan or not, the Management Plan can not be contrary to the Collective Bargaining Agreement.

167. In the circumstances I am not satisfied that the elements of estoppel have been established.
168. The question remains as to which of the two conflicting approaches is applicable: red-circling or green-circling?
169. The words immediately above Schedule “K”: “This Letter of Understanding supersedes point 5 of Schedule ‘D’”, supports the Union’s position as point 5 of Schedule D, in essence, mirrors Article 12.07(a)(vii).
170. I am satisfied, however, that Schedule “K” is no longer operative. As noted, because of amendments to the Wage Schedule since Schedule “K” was entered into, the Wage Schedule is different than it was when Schedule “K” was agreed to. Further, Schedule “K” stated that it was the implementation of the Joint Job Evaluation Plan which triggered green-circling. The Parties, in their April 23, 2009 Letter of Understanding, specifically acknowledged that the implementation would be completed once the Scholarship donation was made, which it was. The agreement as to when the implementation would be completed negates the Union’s argument that implementation had not been completed because a Maintenance Plan had not yet been agreed to.
171. Accordingly, when an employee is reclassified to fall within a lower pay band, the employee will be red-circled pursuant to Article 12.07(a)(vii).
172. Before leaving this issue it is important to note that the Parties, in their November 19, 2009 Letter of Understanding, agreed that clauses related to pay administration changes that directly resulted from the application of the Joint Job Evaluation Maintenance Process and Procedures would be addressed in the collective bargaining that was to begin in January, 2010. Accordingly the Parties will have an opportunity to revisit the issue of green-circling versus red-circling.

H. Articles 12.07(a)(ii) (iii) and (iv)

**ARTICLE 12 - PROMOTIONS, TRANSFERS, STAFF CHANGES AND NEW
JOB CLASSIFICATIONS**

...

12.07 (a) ...

- (ii) if there is a change in duties and responsibilities of a permanent classification/position, either on an identifiable date or gradually over a period of time, a reconsideration of the classification/position may be requested by the Union or the Employer.
- (iii) in the event the Employer wishes to introduce a new category, classification or position not currently in the contract, or to reclassify a position, it shall advise the Union of the particulars, in writing, including a job description.
- (iv) at least fifteen (15) days prior to establishing such new classifications or position, or reclassifying a position, the Employer shall notify the Union of such intention, including the proposed salary or salary range and the Employer's [sic] shall, if so requested by the Union, negotiate the salary or salary range for such new category, classification or position. Such request by the Union shall be in writing and must be delivered to the Employer within fifteen (15) days of receiving the notice from the Employer, otherwise the Union shall be deemed to have concurred with the implementation of the Employers [sic] intention as set forth in such notice. If agreement cannot be reached within sixty (60) days, either party may submit the matter to arbitration.

173. A number of issues were raised by the Union with respect to Article 12.07(a)(ii)(iii) and (iv).

174. The Union submitted that Articles 12.07(a)(ii) and (iii) should have limited application, rather than what it contended was the Library's "wholesale" utilization of them.

175. In response, Counsel for the Employer argued that there was nothing within the language of the Collective Agreement which created a presumption in favour of a restricted or limited application of the Articles. Notwithstanding the lack of language that limited the application of these Articles, Counsel maintained that when one had regard to the size of

the Bargaining Unit and the number of employees impacted by the reorganization, the Library's reliance on these Articles was limited and measured in application.

176. Article 12.07(a)(i) specifically provides that the Employer has the right to establish new job categories, new classifications within each job category, and new positions within each classification, or to reclassify a position. The only limitation on that right is that it is subject to the terms of Article 12.07. Provided the terms of Article 12.07 are adhered to, there is nothing to limit its use.
177. The Union also maintained that the Library had violated the spirit of Article 12.07(a)(iv) by continuing to provide options to employees prior to negotiating the salaries of changed or new positions.
178. In response, Counsel for the Library noted that the Library had notified the Union of its intention to exercise its right under Article 12.07(a)(i), within the notification time lines identified in Article 12.07(a)(iv). Further, the Employer agreed to negotiate with the Union as required and requested additional information prior to commencing those negotiations.
179. Counsel submitted that the Article does not prohibit the establishment of new positions until a salary has been negotiated and agreed upon but rather it outlines the avenues of redress if the Parties are unable to reach an agreement.
180. I agree with the position advanced on behalf of the Library. The Union has failed to establish a breach of Article 12.07(a)(ii), (iii) and (iv).

I. Schedule D - Joint Job Evaluation Plan

181. Schedule D is attached at page v of Schedule "A".
182. The Union argued that the Library's decision to unilaterally re-write job descriptions and attach ratings to them undermined the integrity of the Job Evaluation Plan and had undone what had been negotiated between 2002 and 2007.

183. As well, the Union submitted that because the Library had not agreed to a Maintenance Plan and had proceeded unilaterally, it had put the relevance of the Job Evaluation Plan in question.
184. Finally, Counsel for the Union contended that because the JJEMC had negotiated and agreed upon a Joint Job Evaluation Maintenance Processes and Procedures Manual, Mr. Barber and the Library Board should have approved it.
185. In response, Counsel for the Library submitted that the Library had and would continue to engage in negotiations with a view to agreeing upon a Maintenance Plan.
186. Counsel noted that the main issues that must be resolved before a Maintenance Plan can be finalized are the use of green-circling and step-to-step movement between pay bands. The Parties, in their November 19, 2009 Letter of Understanding, agreed to address these issues in the next round of bargaining (2010).
187. As regards the Library Board not approving the Joint Job Evaluation Maintenance Processes and Procedures Manual which the JJEMC had negotiated, Counsel indicated that Mr. Barber simply had not been aware of the details contained within the Manual prior to it having been sent to him to take to the Library Board.
188. Paragraph 2 of the November 19, 2009 Letter of Understanding entered into by the Parties provided:
2. The Joint Job Evaluation Maintenance Processes and Procedures Manual shall be finalized by the JJEMC and referred to the Regina Public Library and CUPE Local 1594 for approval by November 30, 2009.
189. While it is understandable that the Union expected that the Library Board would approve the Joint Job Evaluation Maintenance Processes and Procedures Manual, the fact is that it did not.

190. In my view the circumstances outlined above do not constitute a breach of Schedule D.

While it is regrettable that as at the date of the Hearing a Maintenance Plan had not been agreed to, I agree with the submission made on behalf of the Employer that, in the absence of a signed Maintenance Plan, the Employer was entitled to act unilaterally to re-write job descriptions, to establish new job categories, new classifications within each job category and new positions within each classification or to re-classify positions and to then indicate a salary or salary range, provided of course that it acted in accordance with Article 12.07.

J. Article 12.07(a)(v) - Posting “New Classification/Position”

ARTICLE 12 - PROMOTIONS, TRANSFERS, STAFF CHANGES AND NEW JOB CLASSIFICATIONS

...

- 12.07 (a) (i) subject to the terms of this Article 12.07, the Employer shall have the right to establish new job categories, new classifications within each job category, and new positions within each classification, or to reclassify a position.
- (ii) if there is a change in duties and responsibilities of a permanent classification/position, either on an identifiable date or gradually over a period of time, a reconsideration of the classification/position may be requested by the Union or the Employer.
- (iii) in the event the Employer wishes to introduce a new category, classification or position not currently in the contract, or to reclassify a position, it shall advise the Union of the particulars, in writing, including a job description.
- (iv) at least fifteen (15) days prior to establishing such new classifications or position, or reclassifying a position, the Employer shall notify the Union of such intention, including the proposed salary or salary range and the Employer's [sic] shall, if so requested by the Union, negotiate the salary or salary range for such new category, classification or position. Such request by the Union shall be in writing and must be delivered to the Employer within fifteen (15) days of receiving the notice from the Employer, otherwise the Union shall be deemed to have concurred with the implementation of the Employers [sic] intention as set forth in such notice. If agreement cannot be reached within sixty (60) days, either party may submit the matter to arbitration.

- (v) pending the arbitration, the Employer may post and fill the new classification/position at the salary or salary range assigned through RPL's job evaluation process with the designation "New Position – Under Review" affixed to the posting. If the salary or salary range determined appropriate by the Arbitrator differs from that arrived at by the job evaluation process, an adjustment will be made retroactively to the date the successful applicant was appointed to the position.

- 191. The Union argued that Article 12.07(a)(v) had been breached in that the Library did not use the "job evaluation process" to re-rate a number of positions and did not post either the re-rated positions or the new positions that were created.
- 192. In addressing Article 12.07(a)(v) regard must be had to the provisions which precede it: Article 12.07(a)(i)(ii)(iii) and (iv).
- 193. Article 12.07(a)(i) gives the Library the right, subject to the terms of Article 12.07, to establish new job categories, new classifications within each job category, and new positions within each classification, or to re-classify a position.
- 194. In implementing a change in duties and responsibilities of a permanent classification/position on an identifiable date, the Library was obligated by Article 12.07(a)(iii) to advise the Union of the particulars in writing, including a job description. The evidence established that this was done.
- 195. Similarly, the requirements of Article 12.07(a)(iv) were met and as noted by Counsel for the Employer, the Library, at the request of the Union, extended the Union's 15 day review period.
- 196. Counsel noted Mr. Grant's evidence that Management had rated the newly written job descriptions utilizing the factors and benchmarks provided for in the Job Evaluation Plan and assigned a pay band to them. The Union, as it was entitled to do pursuant to Article 12.07(a)(iv), served notice that it wished to negotiate the salaries of 24 of the new or re-

classified positions. If the Parties are unable to reach agreement, the matter may be submitted to arbitration.

197. The Library wanted to fill the new positions created pursuant to Article 12.07(a)(i). Other than in the limited number of cases in which it posted positions, it filled the new positions by reassigning employees to them. This, in my view, was contrary to Article 12.07(a)(v).
198. Article 12.07(a)(v) provides that where a new job category, new classifications within a job category or new positions are created, or where a position is re-classified, the Library may post and fill the new classification/position. The use of the word “may” simply indicates that Management is not required to proceed with the posting of all new classifications/positions prior to the classification/position’s salary being set. However, if Management decides to fill the classification/position prior to the salary being finalized, it must, in my view, post the position.
199. While Article 12.07(a)(v) requires posting in the circumstances outlined above, Article 12.07 does not address the posting process. In my view the process provided for in Articles 12.01 and 12.02 would be applicable.
200. As regards Article 12.03, in a number of instances an employee’s former position was no longer going to exist, so if such an employee successfully bid on one of the newly created classifications/positions, Article 12.03 would simply not be applicable.
201. Having regard to the scheme of Article 12.07 as a whole, I do not see the posting requirements of Article 12.07(a)(v) as being dependent upon a disputed salary or salary range having been submitted to arbitration.
202. If I am wrong in that view, then I believe that in circumstances where the Employer has created a new classification/position pursuant to Article 12.07(a)(i), posting would still be required as Article 12.01(a)(i) would be applicable.

203. Accordingly I have concluded that in those instances in which an employee was reassigned to what in essence was fundamentally a new job, the posting provisions of Article 12.07(a)(v) and Article 12.01(a)(i) were breached.

K. The Union's Proposed Implementation Process

204. Before closing I will comment on the Union's proposal with respect to how the reorganization should have been carried out, as outlined at paragraph 38 hereof.

205. Treating every position within the Library as unencumbered and then allowing every employee, in order of descending seniority, their choice of position in the new structure would not, in my view, have been an appropriate approach.

206. Firstly, as noted by Mr. Grant in his June 12, 2009 e-mail, the majority of the employees (all but 37) were going to be doing essentially the same work, in the same place, and at the same rate of pay, albeit some would have a revised job description which more accurately described what they were doing and/or a new job title. Those positions were not unencumbered and the posting provisions were not triggered.

207. Secondly, in those cases that were, or ought to have been posted, selection would have to have been based upon a "competitive", as opposed to a "threshold ability", process.

V Summary

208. In summary the Union has failed, on a balance of probabilities, to establish that the Employer breached Articles 4.03 (Union Recognition); 12.10 (Relocation); 10.01 (Lay Offs); Schedule K: green-circling; 12.07(a)(ii), (iii) and (iv); or Schedule D: Joint Job Evaluation Plan.

209. However, where Management created a new position as that term has been discussed herein, which it wished to fill, reassigning an employee to it breached the posting provisions of Articles 12.01(a) and 12.07(a)(v) as well as Article 12.09 (Transfers) and Article 12.02 (Seniority).

210. As I indicated at the outset, this Award addresses whether the Employer's actions breached the Collective Bargaining Agreement or not. Having found a number of breaches, the appropriate remedy will be left to the Parties, in the first instance, with me reserving jurisdiction in case they are unable to agree.
211. Counsel for the Union asked that I direct that, if the Parties were unable to agree on a remedy within 30 days, the matter be remitted to me for determination. Given the number of breaches and the number of employees potentially impacted by this Award, I expect 30 days will be insufficient for the Parties to attempt to reach agreement upon a remedy. Accordingly I do not propose to assign a time limit within which a remedy is to be reached. Rather, the appropriate remedy will be left to the Parties, although I will reserve jurisdiction in case they are unable to agree. Either side will be at liberty to ask that the matter of remedy be remitted to me.
212. Finally, I would like to thank Counsel for having addressed a large number of issues as concisely and completely as they did.

Dated at Regina, Saskatchewan this 20th day of October, 2010


Mr. Bob Pelton, Q.C. – Sole Arbitrator

Schedule "A"

ARTICLE 4 – UNION RECOGNITION AND NEGOTIATION

...

4.03 No employee(s) shall be required or permitted to make a written or verbal agreement with the Employer which conflicts with the terms of this Collective Agreement or with any compensation plan or system arising from it.

...

ARTICLE 10 – LAY OFFS, RECALLS, AND RESIGNATIONS

10.01 (a) When reducing staff, senior employees shall be retained provided they have the skill, ability, and qualifications to do the work.

- (b) A laid off or displaced employee may exercise seniority in the following manner:
 - (i) The employee may choose to displace a less senior employee, provided she has the necessary skill, ability, and qualifications to perform the work.
 - (ii) The employee may accept layoff and be placed on a recall list.
 - (iii) The employee may resign from the Regina Public Library and receive any benefits to which she is entitled under the terms of the Collective Agreement.

All options will be presented to the employee within five (5) working days of notice of layoff. She will then have up to five (5) working days to render her decision to the Employer.

- (c) Notwithstanding Article 10.01 (b), employees may be placed in vacant positions upon mutual agreement between the parties.
- (d) If a position affected by layoff results in the incumbent being displaced into a position in a lower pay band, the incumbent shall retain the salary range in effect prior to her or his displacement. The employee shall not be entitled to any economic adjustments until such time as the maximum salary range for the lower classification level overtakes the maximum salary range retained under the is subsection.

...

ARTICLE 11 – SENIORITY

11.01 Bargaining unit wide seniority shall accumulate for permanent employees from the time the employee last entered the service of the Employer as a permanent employee subject to Article 11.04. Seniority shall not be acquired by an employee until she has completed probation and has become a permanent employee. At that time, her seniority shall be made retroactive to the time she last entered the service of the Employer.

...

ARTICLE 12 – PROMOTIONS, TRANSFERS, STAFF CHANGES AND NEW JOB CLASSIFICATIONS

12.01 (a) (i) all vacancies which the Employer wishes to have filled shall be posted on a bulletin board for at least ten (10) calendar days. Such posting shall include the job classification or title, a summary of the job description, **budgeted hours allocated to the position**, the applicable wage rate or salary range, and the initial location of the position.

(ii) each posting shall contain the educational qualifications or equivalencies, skill, ability and **aptitude** required for the position. The posted requirements with respect to skill, ability, **aptitude** and qualifications shall reasonably relate to the job to be performed.

(iii) if the posted qualifications for a vacancy are in excess of those required in the job prior to the vacancy existing, then at least fifteen (15) days prior to such posting, the Employer shall give written notice to the Union of such proposed increase in qualifications, and the Employer shall, if so requested by the Union, meet with representatives of the Union to discuss the proposed increase in qualifications.

(iv) Articles 12.01 (a)(i) to (iii) shall be interpreted, in all events, that the Employer shall make the final determination binding upon an Arbitrator in any matters relating to educational qualifications or equivalencies required for a position and arising under or out of Article 12.01 (a)(i) to (iii), provided the educational qualifications or equivalencies reasonably relate to the position.

12.02 Permanent employees shall be entitled to bid to fill any posted vacancy by means of written application within ten (10) days of the date the vacancy is posted. New positions or vacancies shall be filled on the basis of where the overall qualifications, skill, ability and aptitude as between two or more permanent employee applicants is equal, then seniority shall prevail. Nothing shall prevent the Employer from temporarily filling a new position or vacancy pending the selection of a successful applicant. Provided, if the Employer decides that no permanent employee applicant has the overall qualifications, skill, ability and aptitude, the Employer may hire any other applicant; the Employer's decision shall be subject to the grievance procedure.

12.03 Promoted or transferred full time or part time employees shall be considered on trial in their new position for a period of 471 hours actually worked following the date of promotion or transfer. In specific cases, an extension to the trial period may be considered, subject to mutual agreement of both parties. During the trial period an employee may elect to return to the position formerly occupied or may be returned by the Employer. The employee who returns or is returned to the position formerly occupied shall not lose seniority. Where an employee is returned to his former position prior to the end of the trial period of 471 hours actually worked on the ground that he is considered by the Employer to be incapable of performing such work satisfactorily, the Employer's decision to so return shall be subject to the grievance procedure.

12.04 The salary of an employee who **by appointment works in** a higher paid classification shall be advanced to that step in the scale of the higher paid classification that is closest to but higher than her current salary rate. The **appointed** employee's annual increment date will then become the effective date of **the change**.

12.05 The temporary performance of higher position duties shall be defined as the assignment, in writing, by an Out-of-Scope Manager of an employee to perform some (less than 50%) or most (50% or more) of the major functions of a higher paid position.

When an employer is temporarily assigned to perform some of the major functions of a higher paid position, she shall receive a rate of pay five (5) percent higher than her regular rate. When an employee is temporarily assigned to perform most of the major functions of a higher paid position, up to and including three (3) pay bands higher, she should receive a rate ten (10) percent higher than her regular rate. When an employee is temporarily assigned to perform most of the major functions of a position that is four (4) or more pay bands higher than her regular position, she shall receive a rate fifteen (15) percent higher than her regular rate or the minimum rate in the pay band for the higher paid position, whichever is greater. In no case shall an employee receive a higher rate than the maximum rate in the pay band for the higher paid position.

In this article, the word "temporarily" means a period of **three** or more consecutive working days up to a period of 3 consecutive calendar months unless extensions are mutually agreed to by the parties.

12.06 An employee required to temporarily assume duties of a lower paid position shall continue to receive the rate of pay applicable to the employee's classification immediately prior to such relief assignment.

12.07 (a) (i) subject to the terms of this Article 12.07, the Employer shall have the right to establish new job categories, new classifications within each job category, and new positions within each classification, or to reclassify a position.

(ii) if there is a change in duties and responsibilities of a permanent classification/position, either on an identifiable date or gradually over a period of time, a reconsideration of the classification/position may be requested by the Union or the Employer.

(iii) in the event the Employer wishes to introduce a new category, classification or position not currently in the contract, or to reclassify a position, it shall advise the Union of the particulars, in writing, including a job description.

(iv) at least fifteen (15) days prior to establishing such new classifications or position, or reclassifying a position, the Employer shall notify the Union of such intention, including the proposed salary or salary range and the Employer's [sic] shall, if so requested by the Union, negotiate the salary or salary range for such new category, classification or position. Such request by the Union shall be in writing and must be delivered to the Employer within fifteen (15) days of receiving the notice from the Employer, otherwise the Union shall be deemed to have concurred with the implementation of the Employers [sic] intention as set forth in such notice. If agreement cannot be reached within sixty (60) days, either party may submit the matter to arbitration.

(v) pending the arbitration, the Employer may post and fill the new classification/position at the salary or salary range assigned through RPL's job evaluation process with the designation "New Position – Under Review" affixed to the posting. If the salary or salary range determined appropriate by the Arbitrator differs from that arrived at by the job evaluation process, an adjustment will be made retroactively to the date the successful applicant was appointed to the position.

(vi) if the salary payable to a reclassified employee is determined by agreement or arbitration to fall within a higher payband than her current payband, the employee shall be paid at the step in the higher payband that is equal to her current rate of pay and her increment date shall not change. If the higher payband does not have a rate of pay equal to the employee's current rate of pay, she shall be paid at the step in the higher payband which is closest to but higher than her current rate of pay.

(vii) if the salary payable to an employee whose reclassification has been initiated by the Employer is determined by agreement or arbitration to fall within a lower pay band than her current pay band, the employee shall be paid at the step in the lower pay band that is equal to her current rate of pay and her increment date shall not change. If the lower pay band does not have a rate of pay equal to the employee's current rate of pay, such lower salary shall become effective when the position is vacated.

(viii) where a position is reclassified and a different rate of pay results that different rate of pay shall be applicable from the date of such reclassification, or the date of request of such reclassification, whichever is the earlier.

- 12.08 Subject to the rights of other employees, where an employee, because of a bonafide disability, cannot perform her regular work, the Employer will attempt to find suitable work for such employee. In such event, the Employer will consider all options to maintain income security within its duty to accommodate up to the point of undue hardship.
- 12.09 Employees may be transferred from one position to another only in the event of mutual agreement between the Union and the Employer. In an emergent situation, the Employer retains the right to temporarily transfer an employee.
- 12.10 The Union acknowledges that it is the function of the Employer to relocate an employee, however it is not the wish or intention of the Employer to relocate an employee involuntarily, except in those rare occasions when the efficient operation of the Library so requires.

(Emphasis in the original)

SCHEDULE "D"
LETTER OF UNDERSTANDING

JOINT JOB EVALUATION PLAN

1. The parties hereto are committed to the principle of equal pay for work of equal value.
2. The parties agree to work co-operatively to develop and implement a new, gender neutral equal pay for work of equal value Job Evaluation Plan for all classifications at the Regina Public Library.
3. Equal pay for work of equal value is deemed to be achieved when jobs are assigned to a pay range with the same maximum hourly rate of pay as other jobs assigned work of equal or comparable value.
4. In determining equal or comparable value, the criteria to be applied is the composite of factors which measure skill, effort, responsibility and working conditions which are written such that the parties agree the content does not incorporate gender or other bias.
5. The parties agree that red circling of an employee's job rate will occur where the evaluation of her position results in an allocation to a pay range with a maximum hourly rate of pay which is lower than their current hourly rate of pay. The employee shall remain at her current hourly rate of pay until such time as the applicable pay range's maximum hourly rate of pay equals or surpasses the employee's current hourly rate of pay. The employee will then be paid in accordance with Schedule A.

6. The parties agree to establish a Joint Job Evaluation Committee made up of equal representation from management and the Union. Committee members shall suffer no loss of pay for attendance at meetings and performing committee related work.
7. The Committee's mandate shall be:
 - to develop Terms of Reference, processes and procedures, including a communications strategy in order to commence and complete the Job Evaluation Plan;
 - to develop a point rating Plan consisting of compensable factors, assigned point values and accompanying comparative descriptions;
 - to oversee the evaluation and rating of all jobs using the Job Evaluation Plan;
 - to develop a maintenance procedure for the Plan;
 - to operate on the basis of consensus and refer any disagreements back to their principles;
 - to obtain external expertise during Plan development as required.
8. The parties agree to develop a dispute resolution mechanism to deal with disagreements arising out of the Plan.
9. Implementation of the Job Evaluation Plan will be solely vested with the Regina Public Library Board and CUPE Local 1594 and shall be subject to negotiation and agreement between the parties. It shall be the goal of the parties to conclude these negotiations by December 31, 2005.

On or before December 31, 2005, the Regina Public Library Board commits to set aside funding totaling \$150,000.

The parties agree that this amount will represent the entire funding for the term of this agreement for negotiated bargaining unit salary adjustments that result from the implementation of the Plan. The effective date for salary adjustments resulting from negotiating shall be midnight December 31, 2003.

The parties agree that only those positions and employees existing as of the date of implementation of the Job Evaluation Plan will be allocated to the Plan.

REGINA PUBLIC LIBRARY BOARD:

C.U.P.E. LOCAL 1594:

“signed”

“signed”

DATE: November 15, 2007

This Letter of Understanding supersedes point 5 of Schedule D.

**SCHEDULE K
LETTER OF UNDERSTANDING**

GREEN CIRCLING

If the implementation of the Joint Job Evaluation Plan results in an employee's position being classified into a pay band with a maximum rate of pay that is lower than the maximum rate of pay in her current pay band, the employee shall be green circled.

"Green circling" shall mean that an employee will continue receiving increments in her current pay band and will receive negotiated economic adjustments until she vacates her position.

Signed this 15th day of November 2007.

REGINA PUBLIC LIBRARY

CUPE LOCAL 1594

"signed"

"signed"