

**APPENDIX D**



**CUPE**

**JOINT UNION-MANAGEMENT APPEAL PANEL**

**APPEAL HEARING PROCESS**

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The following outline of roles, policies and procedures are for the purpose of ensuring the integrity of the job evaluation plan, the integrity of the information presented and to ensure clarity in roles, authorities and responsibilities of persons attending appeal hearings.

### **A. Right To Appeal**

The PS/CUPE Bargaining Agreement states that permanent employees may appeal the classification decision resulting from a request for a classification review to a Joint Union-Management Appeal Panel, called Classification Joint Council.

Notwithstanding the above, an employee hired into a new job (as per Article 6.2 of the Joint Evaluation Maintenance Procedures), may appeal the classification decision if the job is moved downwards as a result of the 6 month review.

### **B. Purpose Of The Appeal Hearing**

To examine, substantiate, authenticate and adjudicate evidence as to whether appealed Subfactor ratings are appropriate, relative to the full intent of the Subfactor degree definitions.

### **C. Composition Of Panel**

For the purpose of review of classification in the CUPE Class Plan, appeal panels shall consist of four (4) members, equally split between union and management. Quorum shall consist of three (3) members subject to the approval of the minority party (either the union or management member) and all occupations must be adjudicated by equal or better female representation. Appeal panel members shall be drawn from members of the JJEC.

### **D. Role Of The Appeal Panel**

1. To uphold the integrity of the job evaluation plan through the adjudication of disputes regarding the assignment of Subfactor ratings to the job assignment. In this regard, management members of the panel **do not** represent, nor advocate for management or the Public Service Commission and the union members **do not** represent, or advocate for the appellant.
2. To question evidence presented to determine if it meets the requirements in the Notes to Raters and the full intent of the degree definition within the Subfactor.
3. Where necessary, to ensure that evidence presented is verified as legitimate duties and responsibilities of the job assignment.
4. To examine evidence in the context of Benchmark rating comparisons by ensuring the full Benchmark content on the appealed Subfactor is examined in relation to the appealed duties and responsibilities and the full intent of the Subfactors.

### **E. Role Of The Joint Job Evaluation Committee (JJEC)**

1. Article 6.4 of the Job Evaluation Maintenance Procedures (JEMP) obligates the JJEC to ascertain the assigned duties and responsibilities of all jobs and evaluate all jobs in the job evaluation plan. Where no position description questionnaires (PDQ) have been submitted, the JJEC has the authority to obtain the information and evaluate jobs in the job evaluation plan.
2. The Rating Panel (RP) is charged with these responsibilities and to ensure equitable judgements in the application of the plan, in order to ensure the plan's integrity. It is the role of the Appeal Panel (AP) to ensure equitable decisions in this regard.
3. In this process, the RP and the AP have the authority to obtain information through questioning and written documentation to substantiate any statements.
4. One or more RP representatives will meet with the employee prior to a hearing being scheduled to review the appellant's rationale for appeal. The RP will review the rationale and provide a final decision in writing, with rationale, to the employee. Any new information provided by the employee after this point in the process will be taken forward to a formal hearing.
5. If the incumbent goes forward to a formal appeal hearing, the RP is required to provide the AP with written rationale as to the basis of the RP's decision regarding the appealed Subfactors. If additional evidence is provided at a hearing, the RP and the AP are charged with the responsibility to ensure such material is valid and, if necessary, substantiated and that it meets the requirements in the Notes to Raters and full intent of the Subfactor degree.

### **F. Role of the Appellant**

1. To contact his/her own witness(es) [no more than two] to invite them to the hearing. At the appeal panel's discretion, additional witnesses may be allowed.
2. To advise the Secretary, Appeal Panels who will be attending the hearing as witness(es).
3. To bring sufficient copies to the hearing of any written evidence for the AP and the RP.
4. To have new information not provided in the position description questionnaire signed and authorized as legitimate duties or authority by his/her out-of-scope manager prior to the hearing.
5. To provide rationale as to why his/her job should be rated higher on a Subfactor by presenting examples of job content that relate to the Subfactor being appealed. NOTE: The appellant can ask someone else (e.g., a fellow employee, union representative, supervisor) except members of the JJEC to present his/her case at the hearing.

### **G. Observers**

1. Observers are not appellants at the specific hearing.
2. An individual may request permission to observe an appeal hearing from the Secretary, Appeal Panels. The Secretary shall advise the appellant and if the appellant is uncomfortable with the observer(s), the Secretary shall cancel the observer(s) attendance at that meeting.
3. The number of observers may be limited at the discretion of the Appeal Panel.
4. Observers cannot participate in any way in any discussion.
5. No observers will be allowed to enter once a hearing has commenced.
6. The Chair shall request that observers leave the appeal if, in any way, their behaviour is inappropriate.

### **H. Authority Of Joint Union-Management Appeal Panel**

1. To recommend confirmation of the subfactor rating, or a higher or lower rating, based upon the authorized PDQ.
2. **There shall be no discussion by appeal panel members with either party prior to the appeal hearing.**
3. Only the appealed subfactors are subject to review.
4. A subfactor rating cannot be adjusted if the duties or responsibilities have been credited in another subfactor as this would represent bias due to double crediting.
5. Consideration can only be given to the duties and responsibilities of the position as of the effective date of the request. Consideration will not be given to subsequent changes that have taken place.
6. AP members shall refrain from making statements, comments, or personal opinions about what level jobs should be evaluated; nor enter into any debate about the meaning or interpretation of the subfactor, prior to excusing the appellant and the RP member.

### **I. Witness' Function**

1. Appellants, the RP, or the Appeal Panel may call witnesses, including the appellant's supervisor, or manager.
2. Witnesses may only answer questions for clarification of job content, or authority. They are not to present a case, nor express their opinion of the rating. Responses are to be individual, without interruption and addressed to the panel.

3. The questions must pertain to facts about which the witnesses have first-hand knowledge. If questions are asked which the witness(es) cannot answer from their own knowledge, they should decline to answer on that basis.

#### **J. Conflict of Interest Guidelines for JJEC Members**

1. Members of the JJEC must exempt themselves from RP's, AP's and Audit where the member could gain, or could be perceived to gain, from the decision. This includes participation in decisions on jobs:
  - (i) in their work unit, e.g., supervisors and the people who report to them;
  - (ii) in their occupational series, as defined by the PSC;
  - (iii) encumbered by family members, or close personal friends;
  - (iv) for which they have declared a bias for or against.

#### **K. Role and Selection of the Chair**

1. The appeal panel shall select the Chair prior to calling the appellants, RP, witnesses and observers, into the hearing room.
2. The Chair will:
  - (i) Call appellants, RSC, witnesses and observers, into the hearing room.
  - (ii) Read the statement of the panel's role and authority.
  - (iii) Ensure everyone is introduced (name, representation). At this time, the Chair will ask the appellant if there is any perceived conflict of interest as defined in Section J. It is too late after the hearing for the appellant to say they think they did not get a fair hearing because someone on the AP was biased against them. It is the AP's decision how to proceed.
  - (iv) Outline the procedures of the hearing.
  - (v) Outline that the basis of the evaluation shall be the statement of duties, examples of work and the authority assigned to the job.
  - (vi) The Chair has authority and shall excuse any person whose behaviour is inappropriate.
  - (vii) The Chair must ensure that the question period does not become a discussion. This is to be question and response, both without interruption.

- (viii) The Chair shall ensure the hearing is run in an expeditious manner and has the authority to move the discussion along in the event that information is repetitious, or not relevant to the subfactor under appeal. The Chair must focus the presentation on information relevant to the subfactor under appeal and may limit the length of discussion on the subfactor and request that the AP take breaks after a certain length of time. During the breaks, the parties are not to discuss the appeal hearing events.
- (ix) In the event that an appeal hearing is running longer than scheduled and the appellants for the next scheduled hearing are waiting outside, the Chair may stop the proceedings and indicate how long the wait might be.

## **L. Procedures for Appeal Hearings**

### 1. Scheduling

- (i) The Secretary, Appeal Panels, shall notify the appellant(s), the Rating Panel and the Appeal Panel regarding date, time and place of the hearing.
- (ii) Once the appellant(s) has agreed to a hearing date, the hearing will proceed on that date unless there is a reasonable reason for postponement (eg. illness, funeral, etc.) If the employee is unable to attend for other reasons, the hearing will proceed and the employee may ask a spokesperson to attend in their place.

### 2. Preliminary

- (i) The Chairperson ensures that everyone is introduced, including observers and witnesses.
- (ii) The Chairperson outlines the role, authority and procedures of the appeal hearing and the authority of the Joint Union-Management Appeal Panel.

### 3. Rules of Evidence

- (i) All written evidence to be presented must be made available at the hearing to all parties. This amounts to approximately 10 copies. Witnesses and observers do not require copies. It is suggested that a page per subfactor is sufficient to explain the rationale.
- (ii) The basis for the evaluation of the position are the assigned duties and responsibilities, as evidenced by:
  - a. Statements of duties, responsibilities and authority on the PDQ, signed by the manager.
  - b. Examples of work in the PDQ.
  - c. New, or additional information presented at a hearing in the form of job content or authority, or examples of work performed. The RP and/or the AP may request verification by requesting such evidence be signed as legitimate duties, responsibilities, or authority by the permanent head or designate.

- (iii) In the event that new information presented at a hearing has not been confirmed by the manager, it may be considered in rendering the decision. However, no decision shall be released if confirmation is required until it is received in writing by the Chair of the Appeal Panel.
- (iv) Words copied from a subfactor definition must be substantiated with examples and are not accepted outright. Similarly, if examples are copied from benchmarks where the job is very different, the out-of-scope manager may be requested to verify that such duties are, in fact, performed.
- (v) In the event of a disagreement over job content at an appeal hearing between the manager and employee that affects the rating of a specific Subfactor, the Appeal Panel will not render a decision on that Subfactor. The Appeal Panel will render a decision only on the other Subfactors under appeal. **It is not the role of the panel to adjudicate disputes of job content.** Once the dispute is resolved, the RP will rate the job and the appellant has the right to continue to the hearing.

#### 4. Presentation Order

- (i) The appellant or advocate presents rationale for one appealed subfactor without interruption. No questions will be asked at this point by any party.
- (ii) In group appeals, the group shall identify a spokesperson who shall make the presentation. In the event the group has appealed more than one subfactor, a different spokesperson for each subfactor will be allowed. For large groups, the group shall select representatives to be present at their appeal.
- (iii) The RP representative then presents the written rationale for the rating of the appealed Subfactor, without interruption.
- (iv) The Chairperson will provide for a question period at the end of both party's presentation. The Appeal Panel, the appellant or their representative or their spokesperson for the group, and the RP representative are the only ones who can ask questions. The purpose of the questioning is to clarify how evidence presented relates to the Subfactor definitions. Responses are to be directed to the panel.

In group appeals, other members of the group shall be asked if they have additional examples to add, until such time as the Appeal Panel feels they have enough information to make a decision. This shall not be in the form of a discussion, but in the form of individual statements to the panel. If the information being presented is repetitious or not relevant to the subfactor, the Chair has the authority to move the discussion on.

- (v) Witnesses may only be questioned regarding job content, or authority of which they have first-hand knowledge. It is the role of the Chair to ensure that witnesses speak only when questioned and that they do not speak to matters other than job content, or authority. There is an expectation that the panel will determine how such witness(es) came to have first-hand knowledge.
- (vi) The Chairperson will ensure that if any further questions are required, they are asked prior to the summary rebuttal.
- (vii) An opportunity for a short summary rebuttal shall be provided to both parties. The RP representative will summarize first, then the appellant. Where there is a group appeal, only one spokesperson shall be given rebuttal opportunity. For group appeals, prior to the rebuttal, a 5 to 10 minute break will occur to allow input to the rebuttal.
- (viii) When an appellant(s) has appealed more than one subfactor, the above process (i) to (vii) shall be repeated for all subfactors appealed.

## 5. Deliberations

- (i) The Appeal Panel will convene separately, after all the Subfactors under appeal have been heard.
- (ii) If the Appeal Panel requires additional information, the Chair shall ensure the information is obtained. If new confirmed information is obtained by the panel after the hearing, both the appellant and the RP member are to be sent a copy so they are aware of all the information the panel will be taking into consideration in making their decision. The forum for collection and distribution of the information will be at the discretion of the panel.
- (iii) The Appeal Panel shall attempt to determine the appropriate rating by consensus and notify the Secretary, Appeal Panel, on the form provided. In the event that consensus is not achievable, the panel shall write a report outlining the basis of the disagreement, based on the relationship of duties and examples to subfactor rationale. The Appeal Panel will send their report to a quorum of JJEC members, in accordance with the Conflict of Interest Guidelines in Article J. If a quorum of JJEC members is not achievable, or they are unable to reach consensus, JJEC shall bring in a Chair from a mutually agreed to list. In making their decision, the quorum of JJEC or the Chair will consider:
  - a) the Rating Panel appeal brief;
  - b) the appellant's rationale and authorized position description questionnaire, as at the effective date of the assignment;
  - c) the report from the Appeal Panel;
  - d) the full intent of the degree definitions within the subfactors;
  - e) the Notes to Raters;
  - f) the Benchmarks
  - g) any new information they may request.

- (iv) In comparing duties and responsibilities to benchmarks, the Appeal Panel, the quorum of JJEC or the Chair shall consider the full content of the Benchmark description for that Subfactor. Comparison to jobs other than the benchmarks in the relevant job evaluation plan are not to be considered.
- (v) Moral or monetary issues are not to be considered.
- (vi) If a rating change is agreed to by consensus, the panel, the quorum of JJEC, or the Chair shall provide the Secretary, Appeal Panels with written rationale in the form of examples, which show how the work is consistent with the full content meaning and intent of the level definitions within the Subfactors, Subfactor definitions and Notes to Raters. (The Ratings Panel brief is the rationale for unchanged decisions).
- (vii) No decision shall be released except to the Secretary, Appeal Panel, by panel members, the quorum of JJEC or the Chair verbally, or in writing. Outcomes shall be released only by the Secretary of the Appeal Panel as directed by the JJEC.
- (viii) Appeal Panel decisions are subject to audit by a quorum of JJEC members in accordance with the Conflict of Interest Guidelines in Article J. If audit shows the rating is in error, the job shall be re-evaluated by the JJEC.
- (ix) Rating decisions of the JJEC or the Chair, if made within the meaning and intent of subfactors, are final and binding. Such decisions are also final and binding on subsequent incumbents in the same job where there has been no change of duties or responsibilities.

6. Payment of Members

- (i) The employer shall provide leave of absence with pay to union members on the JJEC.
- (ii) The Chair called in to resolve rating disputes, if in the employ of the government, shall be granted leave of absence with pay. If not in the employ of the government, the remuneration shall be equally shared by the parties.
- (iii) The union shall be responsible for the travel and sustenance expenses of its representatives.