

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

CITATION : 2014 WAIRC 00325

CORAM : PUBLIC SERVICE ARBITRATOR
ACTING SENIOR COMMISSIONER P E SCOTT

HEARD : WEDNESDAY, 9 APRIL 2014, THURSDAY, 10 APRIL 2014

DELIVERED : THURSDAY, 24 APRIL 2014

FILE NO. : PSA 32 OF 2013, PSA 33 OF 2013, PSA 34 OF 2013,
PSA 35 OF 2013, PSA 36 OF 2013, PSA 37 OF 2013,
PSA 38 OF 2013, PSA 39 OF 2013, PSA 40 OF 2013,
PSA 41 OF 2013, PSA 42 OF 2013, PSA 43 OF 2013,
PSA 44 OF 2013, PSA 45 OF 2013, PSA 46 OF 2013,
PSA 47 OF 2013, PSA 48 OF 2013, PSA 49 OF 2013,
PSA 50 OF 2013, PSA 51 OF 2013, PSA 52 OF 2013,
PSA 53 OF 2013, PSA 54 OF 2013, PSA 55 OF 2013,
PSA 56 OF 2013

BETWEEN : BEVERLEY ANNE DORNAN AND OTHERS
Applicants

AND

DIRECTOR GENERAL, DEPT OF EDUCATION
Respondent

CatchWords : Reclassification appeal – Work value – Work Value Principle –
Principle 7.6 – BiPERS assessment – Classification Review
Committee – Classification review process

Legislation : *Industrial Relations Act 1979* s 80E(2)(a)
School Education Act 1999 s 63

Result : Applications dismissed

Representation:

Applicants : Ms B Dornan and with her Mr I Dennis and Mr E Troy

Respondent : Ms S Young and with her Ms E McAdam

- 1 The applicants seek the reclassification of positions of Coordinator Regional Operations (CRO), from Level 7 to Level 8, pursuant to s 80E(2)(a) of the *Industrial Relations Act 1979*. The applicants also say that the respondent's classification review process was flawed.
- 2 In 2010, the structure of District Offices was replaced by a Regional Office structure, overseen by a Regional Executive Director (RED). A tier of management, the District Director position, was removed, some functions relocated and the previous positions of Manager District Operations (MDO) became CRO. The applicants claim that there have been changes to the position since 1997, in particular that with the removal of the District Director positions, the autonomy, responsibilities and decision-making of the CRO has increased.
- 3 The parties agree that the role description and selection criteria in the 1997 Job Description Form (JDF) have not changed in substance although the title changed to CRO. The current JDF reflects the structural and title changes resulting in different reporting arrangements.
- 4 The role of CRO, and previously MDO, is described in the JDF as follows:

This position is responsible for the operational management of the regional office. The (CRO) provides professional, administrative and operational support to the (RED). A major responsibility is the implementation of system-wide strategies and programs which provide support to schools. Communication with schools and networks of schools, central office, liaison with the media and public relations in the wider community are coordinated through the (CRO). This position works alongside and supports the work of the Coordinator Regional Services.
- 5 The selection criteria are:
 1. Leadership skills and the capacity to utilise them to promote a shared understanding of the role of regional office and contribute to the development of cooperative work teams.
 2. Experience in managing a complex work environment: demonstrated capacity in financial management, general office management and human resource management, including performance management and disciplinary procedures.
 3. The ability to plan and coordinate projects including the design and implementation of systems and quality assurance processes and monitor and review policy and program implementation to improve regional level support to schools.
 4. Conceptual and analytical skills that demonstrate an ability to identify and analyse issues and generate appropriate strategies to address them including policy development and strategic planning skills.
 5. Communication and public relations skills, including experience in liaising with the media and excellent written and oral communication skills.
 6. Excellent interpersonal skills including an ability to work in a team environment; skills in negotiation, consultation and conflict resolution; and an innovative approach to problem-solving.
 7. A good understanding of the need to establish and maintain productive relationships with the customer base of the regional office and a focus on the achievement of excellence in service delivery.

The Evidence

- 6 The applicants presented evidence from Margaret Collins, RED, South Metropolitan Education Region Office; Robyn Davis, human resource management consultant who undertook the classification review; and three of the applicants, David Forster, Gary Sampson and Brian

Sampson. The respondent presented evidence from Joanne Frances Bergmans who, at the time the positions were reviewed, was Senior Classification Officer, and Stephen Andrew Baxter, RED, Midwest Region.

- 7 Ms Collins and Mr Baxter were impressive witnesses. The three applicants' witness statements contain many identically worded paragraphs, and in some paragraphs words were changed but the effect was identical. They discussed the preparation of their statements amongst themselves. Mr Forster gave a copy of his statement to Mr Gary Sampson and Mr Brian Sampson. As they agreed with his statement they included many of the 'generic' statements in their own witness statements. Therefore, it was not their own first hand evidence, but simply agreement with Mr Forster's statement. This is problematic as I found Mr Forster's evidence to be unreliable. He was argumentative and determined to assert his views of the high status and respect with which the CROs are held, regardless of the questions asked of him. Further, I note below some concerns about his evidence and his view of the role (see [42] – [44]).

Consideration and Conclusions

Respondent's Classification Review Process

- 8 The focus of these Reasons for Decision is on the level of classification rather than the process. However, from the information and evidence that was put forward, I make the following observations:
1. It was suggested that the Chair of the Classification Review Committee (CRC) actually made the decision, having some input from the other members. The validity of the process and ultimately the decision, depend upon the formal decision making authority of the Chair and the CRC. The Terms of Reference of the CRC provide that '[a]ll members, including the Chair, will have an equal voting right' (exhibit A6, clause 6.6). However, the CRC Terms of Reference also note that '[t]he Director General has delegated the responsibility for ... evaluating and classifying ... positions to the Executive Director, Workforce or his/her delegate as Chair of the CRC. The Executive Director, Workforce may nominate another senior officer to act as Chair of CRC with delegated authority to approve CRC decisions on his behalf.'

All of this means that the CRC is to review any material, including assessment reports, and make a decision on the level of classification. The Chair of the CRC has delegated authority to approve the CRC decision.

 2. The applicants complain that initially the CRC did not meet but exchanged views via email. From my experience those CRCs which meet, either face-to-face or in teleconference, have a more rigorous process than those which simply exchange views via email. This allows for clarification of issues or free flow of information and opinions. In this case, there appears to have been some incorrect assumptions by the members of the CRC, such as when the position was created. In any event, the Terms of Reference refers to 'meetings' (exhibit A6, clause 7).
 3. Ms Collins gave evidence that when she had an opportunity to present further information to the CRC, there was a very structured question and answer session with no a real chance to express her view. However, Ms Collins accepts that in hindsight, a person of her level of seniority should have been somewhat more assertive and expressed her views.

4. It is my understanding from dealing with many reclassifications that human resource management staff, such as Ms Bergmans, regularly do what might be described as a desktop review, simply on the papers as part of the information to be considered by the CRC. The Terms of Reference set out the Executive Officers' role, which includes to 'provide effective classification review services' (exhibit A6, clause 6.3), whatever that might mean.
5. Ms Bergmans made an error in the BiPERS assessment by identifying the position as the fifth level of subordination rather than the fourth level. This error resulted in a five point difference in the total score of between 421 and 471 points for Level 7. A correction still brings the positions within Level 7. She also noted that whilst many of the CRO positions do not have a supervisory function, because some of them do, she gave them all the benefit of that higher level of responsibility. Those positions which do not have supervisory responsibility benefited by five points.

The Level of Classification

- 9 The claim is based on increased work value. The Work Value Principle (State Wage General Order [2013] WAIRC 00353 Schedule 7.2; (2013) 93 WAIG 467 at 491) sets out the test. Its essence is 'that change in the nature of the work should constitute such a significant net addition to work requirements as to warrant the creation of a new classification or upgrading to a higher classification'.
- 10 The decision in *The Minister for Health v The Health Services Union of Western Australia (Union of Workers)* ([2013] WAIRC 00836; (2013) 93 WAIG 1565) sets out many of the authorities and they are applied to the consideration of this matter.
- 11 The applicants say that there are six reasons in particular supporting their applications.

(1) Ms Davis's work value assessment and evidence

- 12 Following an interview with Ms Collins, Robyn Davis was engaged by Ms Collins to undertake a review of the classification of the position. She interviewed CROs who were referred to her by Ms Dornan, who represented the applicants in this matter, Ms Collins and one other of the eight REDs also nominated by Ms Dornan.
- 13 Ms Davis was fully aware that Ms Collins, who sponsored the application and paid for it from her region's budget, strongly supported the reclassification. The only people she interviewed supported the reclassification.
- 14 Ms Davis's report sets out a comparison chart identifying changes said to have occurred since 1997 when the position of MDO was created. The first two sections deal with policy and legal advice to schools, principals, teachers and parents, and complaints management. The changes suggested there relate to:
 1. Increased sophistication and awareness of complainants.
 2. The creation of a centralised electronic database of legislation and policy.
 3. Increased complexity of complaints.
 4. Liaison with Family Court personnel.
 5. CROs being required to undertake records management and TRIM training.
- 15 Firstly, I note that the report also recognises that along with this increased level of sophistication amongst complainants, there is now a Legal Services Branch with whom CROs

are expected to liaise. There is a central electronic repository of policies and legislation. There is a Standards and Integrity Unit which has published policy guidelines about which complaints are to be addressed locally and which are to be addressed centrally. There is now a policy for dealing with *Disputes and Complaints* and one for *Employee Complaints*. All of these things suggest that the system around policy, legislation and complaints management has developed in a way which supports the role of the CRO in a more complex and sophisticated environment. There are formalised processes and centrally and readily accessible policy and guidelines. These make the performance of the role easier, not harder and the advice given more consistent and less based on the individual CRO's experience.

- 16 I am unsure how liaison with the Family Court affects the skill or responsibility of the position, considering that a central responsibility has always been liaison with external agencies.
- 17 In respect of records management and TRIM responsibility, this is a function often performed by officers at levels well below Level 7.
- 18 Also, while there may be more complaints, the essence of the work remains the same, as do the skills required.
- 19 Under the heading of *HR Management and Advice*, Ms Collins said that the CROs act as executive officers and/or convenors for the selection processes under the Public Sector Standards. During her evidence, Ms Davis acknowledged that being the executive officer in selection processes may be done by officers at Level 7 and below.
- 20 Ms Davis could not recall the basis of a number of the conclusions she had reached, as the report was undertaken 18 months ago. She was unable to answer why she had noted that '[s]ince 2010 CROs must provide advice and *preside* over HR processes' at page 8 of her assessment report (emphasis added).
- 21 In the report, Ms Davis also noted that the relativities between the salaries of this position and a Deputy Principal of a Senior High School or a Primary Principal had diminished over time, noting that most public service MDOs/CROs were or are former teachers. However, she acknowledged in cross-examination that comparing the salaries of public service positions with teacher positions, where the salary structure and pay rises are entirely differently based, was not an appropriate consideration in a classification determination.
- 22 I conclude that in these circumstances, the report lacks objective analysis and contains significant flaws. It could not form the basis for the CRC to grant a reclassification, and I place very little reliance upon it.

(2) Mr Axworthy's letter to all CROs dated 24 January 2013

- 23 By a memorandum dated 24 January 2013 addressed to CROs, Mr Axworthy, Deputy Director General, Schools said:

As you are aware a request to the Classification Review Committee (CRC) to review the position of Coordinator Regional Operations Level 7, was submitted late last year.

This request was fully supported by all Regional Executive Directors, who understand and acknowledge the level of support and leadership you demonstrate on a daily basis.

- 24 The applicants say that this demonstrates that they had cause to believe that all REDs supported their reclassification.
- 25 One interpretation of this memorandum is that it was Mr Axworthy's understanding that all REDs fully supported the reclassification. However, what it says is that '[t]his request', that is,

the request to the CRC *to review* (emphasis added), was fully supported by all REDs. This accords with Mr Baxter's evidence, that he supported the CROs having the opportunity for their positions to be reviewed but did not actually support a reclassification.

26 I also note here that Ms Collins gave evidence that she had an email from Greg Robson, RED Kimberley Region, the previous day. Mr Robson said that he had been speaking with Mr Baxter and wanted her, Ms Collins, to withdraw from her witness statement reference to his supporting the reclassification.

27 Therefore, it is clear that whilst some REDs support the reclassification, at least two do not. In any event, the support of senior officers is not relevant to whether a position warrants a reclassification based on increased work value.

(3) Delegated authority to liaise with other child protection agencies

28 In May 2013, the Director General delegated authority to CROs to liaise with child protection agencies to ensure the wellbeing of children within the care of the department. The applicants say this demonstrates the Director General's confidence in the CROs to liaise directly with agencies about important matters and that such authority is usually only given to higher level positions.

29 The Instrument of Delegation (exhibit R1) demonstrates that a number of positions have this delegated authority including Coordinator Regional Services, also at Level 7, with which the CROs work. This is not a higher level responsibility for the CRO, particularly given the other longstanding liaison duties of the position.

(4) The CRO is now at the 4th level of subordination whereas previously it was the fifth level

30 With the removal of the tier of management, the CROs are at a higher level of subordination within the organisation. Two things arise in this regard. I note my comments in [8](5) above. The level of subordination is not significant. It is more relevant whether there is a consequential increase in responsibility and autonomy and this will be considered later.

(5) REDs cover a large geographical area and are not as accessible

31 The applicants say that with the removal of the District Director position, the RED covers a larger geographical area and it is said that it is practically impossible to manage the day-to-day work that was previously undertaken by the District Director, thereby placing greater reliance on the CROs to manage without reference to their RED.

32 There is conflicting evidence about the level of responsibility and autonomy exercised by the position and whether that has been affected by the removal of the District Director position. Mr Baxter and Ms Collins could not agree. Messrs Forster, Gary Sampson and Brian Sampson all say that there is greater autonomy and responsibility.

33 Mr Gary Sampson noted that the region in which he works is the same size as it previously was. He gave an example of recently being required to advise a school principal to close a school due to lack of water and to make arrangements for water to be available. He makes decisions such as this regularly, and provides advice. However, this is the type of work and level of responsibility which the position has always held. He says sometimes the RED is there and makes decisions, but other times is not. He accepted that the RED has a mobile phone and is as contactable as was the previous District Director.

34 I also note that with the restructure, some functions and positions, including the Principal Consultant, moved to central office.

- 35 Mr Brian Sampson says that in the past he had daily briefings with his District Director but he is now expected to undertake more of the work without such close communication and his RED tends to accept his decisions.
- 36 The applicant witnesses also gave evidence of their attendance at meetings within and external to the department on behalf of their RED. Ms Collins says that the CRO has the authority to commit resources, other than money, to community projects as part of these meetings. However, she noted that only the Director General or someone with formal delegated authority can bind the department but that where the department has resources in the region that they can utilise, the CROs may agree within these committee arrangements to do so.
- 37 I note that, except that it referred to representing the District Director, the 1997 JDF contained this duty. I am not satisfied that this means that there has been an increase in responsibility.
- 38 Those applicants who gave evidence have been in these roles for many years. It would be expected that having reached the top increment of the Level 7 they are fully competent and experienced in the role, and have the confidence of their REDs. At Level 7, a significant level of autonomy would be anticipated.
- 39 Given the conflict in the evidence, and particularly between the REDs, I am unable to conclude that in all regions the CROs have greater autonomy and decision-making responsibility than previously, sufficient to constitute a significant net addition to work value to warrant a higher level of classification.

(6) TSA to Level 8

- 40 The applicants also rely on a number of CROs being given Temporary Special Allowances (TSA) to Level 8.
- 41 It is clear from Mr Gillam's letter dated 9 February 2011, that the TSA granted to the CRO, Midwest Education Region, was a temporary situation and it took account of workload and retention issues. If the incumbent left the position, the position would revert to Level 7. It does not demonstrate that the CRO position was given the Level 8 classification based on an assessment of its work value. This approach is consistent with Principle 7.6 of the Work Value Principle.

Other Issues

- 42 A number of the issues relied on by the applicants as constituting the changes to the role include increased complexity in the community and school community environment and more external scrutiny of their actions. David Forster gave evidence of his role in Geraldton in 2001-2002 and now being in the western suburbs of Perth, where he says parents may be better educated, more demanding and have higher expectations. However, this goes to geographical or socio-economic differences rather than a changed work environment for the same position over time. It may go to whether there are different expectations of CROs in different regions. However, the evidence suggests that most regions have their own peculiarities.
- 43 It is clear that the CRO provides advice, coaches and supports school principals. Mr Forster suggested that he directs school principals, yet he acknowledged that the principal is the authority in the school and he provides advice. The *School Education Act 1999* (s 63) makes the Principal responsible for day-to-day management and control of the school, and other matters. There is no reporting or directive relationship with the CRO.

- 44 It was not clear from his evidence, and he was not asked, whether Mr Forster has any legal qualifications. If not, two aspects of his evidence are of concern. Firstly, he says that he acts ‘as an expert advisor to my RED in (a) range of “legal” matters, to colleagues, and to school principals’ (Witness Statement of David Forster [38]). Secondly, Mr Forster gave evidence that he received a request for assistance from a school principal on a Sunday. The principal told him that the police were about to interview her about the disappearance of a student from her school the previous Friday, including about why the matter had not been reported sooner. Mr Forster advised the principal that she did not have to meet the police that day – that it could wait until the next day. He then met with the principal, assisted her to prepare for the questions the police were likely to ask her and assisted her to draft a statement to the police. He said ‘I made a decision there that that draft statement was – was appropriate to go [to the police]’ (ts 81). He said that he did not consider it necessary to refer her for legal advice – that it was a straight forward statement (ts 82).
- 45 The applicant witnesses noted that ‘I use the same generic skills as for my beginning days as a MDO to achieve my broad functions such as giving advice to Principals, managing complaints and grievances, internally and externally, providing policy advice and contributing to policy development, attending meetings – both inside and outside of the agency – managing critical incidents’. However, they say that the application of those skills has become considerably more difficult, stressful or demanding over time and particularly since the structural changes since 2010. The requirement to be knowledgeable about the department’s operations and the legislative and policy framework is said to be greater than previously, requiring them to draw upon an extensive research, theoretical and practical knowledge base. I refer to my comments earlier that having a central repository of departmental policies, available electronically, and other special support units should have made the job easier and less reliant on their personal experience and memory than before. I am not satisfied that this constitutes a higher level of skill or responsibility than previously.
- 46 The applicants’ involvement in conferences, including arranging speakers, is not higher level work than would normally be performed by a Level 7 position. In fact, there are officers at lower levels who also perform this function.

Conclusions

- 47 I accept, without reservation, that these positions fulfil an important role within our education system, in providing advice and support to principals and within and external to the department, and that the role has experienced change. The question is whether that change constitutes such a significant net addition to work requirements to warrant the reclassification of the position. I am unable to find that this change has resulted in the CRO utilising a greater level of skill or responsibility than in 1997. Critical incident management has always been part of the role. While the work environment has become more complex, measures are in place to largely ameliorate that complexity. Parents, and society in general, are more demanding in their contact with government. However, that applies to all government officers who deal with the public, regardless of the level of the position.
- 48 I am unable to find that these changes constitute a significant net addition to the work value. CROs still do much the same work as before, using the same skills as before, except that they do it better and more consistently, through better access to research facilities and resort to expert guidance. They do so with less contact and direct supervision. However, at Level 7, it is expected that a competent person could do so without it adding greater responsibility to the

position. In all of the circumstances, I conclude that the position is appropriately classified at Level 7.

- ⁴⁹ However, I have a great deal of sympathy for the applicants. They were given false expectations by a flawed assessment. Further, they erroneously believed that the assessment report would carry the day with the CRC, without understanding the classification review process. Thirdly, they believed, also erroneously, that they had support, not merely for a review, but for a reclassification, from all REDs.