

IN THE MATTER OF AN ARBITRATION

BETWEEN:

Confederation College
("the College")

and

OPSEU, Local 731
("the Union")

Classification Grievance of Adair Conlon #2011-0731-0001

ARBITRATOR:

Mary Lou Tims

APPEARANCES:

FOR THE COLLEGE:

Jeannine Nagy - Manager,
Human Resources Services

FOR THE UNION:

Richard Belleau – President,
Local 731

Hearing held in Thunder Bay on March 28, 2012.

AWARD

The grievance before me dated March 1, 2011 alleges that the position of Program Officer held by the grievor, Ms. Adair Conlon, was improperly evaluated. As of the time of the hearing, the position was evaluated at Payband F. The grievance seeks reevaluation to Payband I and compensation “with full retroactivity.”

There were no objections regarding my jurisdiction or the arbitrability of the grievance.

The parties agreed that if compensation is payable pursuant to this Award, it will be payable retroactive to June 7, 2007 despite the date of the grievance. They agreed, however, that there have been periods since June 7, 2007 during which the grievor did not hold the Program Officer position, and that she no longer holds the position. The parties agreed that if compensation is payable in accordance with this Award, it will be calculated accordingly.

The parties accepted that an August 26, 2009 Position Description Form (“the PDF”) is properly considered in these proceedings. While the Arbitration Data Sheet filed by the parties states that the Union disputes the contents of the PDF, the Union’s representative advised at the hearing that it is only the content of the PDF as it relates to the Communication factor that is contested. In all other respects, the Union acknowledged that there is “no general disagreement.”

The rating of the following six factors is in dispute: Analysis and Problem Solving, Planning/Coordinating, Independence of Action, Service Delivery, Communication and Audio/Visual Effort.

The grievor gave evidence in these proceedings, as did Ms. Brenda Small, Dean, Negahneewin College of Academic and Community Development. Ms. Small was the

Supervisor of the Program Officer as of the time that the grievor left the position. The Union referred in these proceedings to a PDF dated September 29, 2008 completed by Ms. Lynne Thornburg, Manager, Access and Employment Programs, who supervised the Program Officer at the time. Ms. Thornburg, I was advised, has since retired, and she did not take part in these proceedings. Both parties also filed pre-hearing Briefs in accordance with the collective agreement.

The Program Officer works at the College's Thunder Bay campus and is responsible for two areas of the College's Academic Upgrading Program. These are the Academic Upgrading and Academic Career Entrance Distance Learning Programs and the Academic Upgrading Testing and Computer Lab.

Ms. Small described that the Academic Upgrading program assists "underprepared learners" entering post-secondary education. The program encompasses various areas of study including communication skills, math, sciences, and life skills. Ms. Small testified that individual learners in the program study at a self-directed pace. The evidence established that there are a number of sites for Distance Learning across northwestern Ontario. Ms. Small also addressed self-directed learning of computer skills in the computer lab.

The Duties and Responsibilities section of the PDF sets out under the following headings "the significant duties and responsibilities associated with the position:"

- Responsible for recruitment, registration, and retention of students for the Academic Upgrading and Academic Career Entrance Distance Learning Programs. (AU ACE DL) - 30%
- Provides advisement, guidance, and direction in the delivery of the AU ACE DL programs. - 25%
- Markets and promotes the Academic Upgrading and Academic Career Entrance Distance Learning programs. - 15%
- Academic Upgrading Testing and Computer Lab - 25%
- Other Duties as Assigned - 5%

ANALYSIS AND PROBLEM SOLVING

The College rated this factor at level 2, regular and recurring. The Union argues that it should be rated at level 3, regular and recurring, and level 4, occasional.

The Support Staff Job Evaluation Manual (“the Manual”) defines levels 2 – 4 Analysis and Problem Solving as follows:

2. Situations and problems are easily identifiable. Analysis or problem solving is straightforward. Solutions may require modification of existing alternatives or past practices.
3. Situations and problems are identifiable, but may require further inquiry in order to define them precisely. Solutions require the analysis and collection of information, some of which may be obtained from areas or resources which are not normally used by the position.
4. Situations and problems are not readily identifiable and often require further investigation and research. Solutions require the interpretation and analysis of a range of information according to established techniques and/or principles.

The Notes to Raters must also be considered and state in part as follows:

At level 2, the work performed is still quite structured, as the incumbent performs it in the customary or usual way. It is very evident when problems arise. However, the position has some freedom in determining how the problem could be resolved if normal past practice cannot be applied. . . .

At level 3, the types of problems that are encountered are readily identifiable but the position must be able to identify when additional information is needed to clearly understand the problem or situation. In order to develop an appropriate solution, the position will need to gather more information. In many circumstances, this additional information . . . will be readily available, but there will be times when the position will need to seek the additional information from a source it is unfamiliar with.

Level 2 versus level 3 – wording in a PDF that suggests there is a need to get additional information, such as problems that require the incumbent to look at several sources of information or ask questions of other departments, does not necessarily mean that level 3 would apply. . . . There may be some judgement (level 2) in deciding which step to try first, but the analysis if any, is quite straightforward (level 2). For level 3, the

incumbent would be gathering information, analyzing each new piece of information in relation to the other pieces, and possibly exploring new or unusual directions to seek more information based on the results of the investigation or analysis.

The first example of regular and recurring Analysis and Problem Solving included in the PDF addresses the Program Officer's role where a potential student contacts the Academic Upgrading Department indicating that he wishes to upgrade skills. The grievor testified that she posed questions to such prospective students and ascertained place of residence, whether high school was completed or not, and student goals and availability. She described program requirements, and explained options and the application process. If the student wished to register for Distance Learning, the grievor made necessary arrangements for the student to write a placement test at a regional campus or at a Contact North site. If the student met entry standards as defined by Ministry of Training, Colleges and Universities ("the Ministry") guidelines, he could enter the program.

The grievor testified that Distance Learning students might work at a Contact North site or on a home computer. In the latter instance, she provided instructions on how to download the College's Centra system. She prepared Training Plans for students, which included personal information, classes to be taken, and student goals. The evidence established that students in the Distance Learning program have teachers available to them online from Monday to Thursday from 9:00 a.m. until 3:00 p.m. during the school year. The grievor also provided support and assistance however. Where a student was unable to sit at a computer, for example, she helped arrange for a computer where he could stand. She also assisted a student who was without access to high speed internet.

A second example of regular and recurring Analysis and Problem Solving included in the PDF relates to the Program Officer's interaction with a student who fails to meet entry standards for Distance Learning. The grievor spoke to the student in such circumstances. If she ascertained that something in the test environment impeded the student's ability to properly complete the test, she arranged to have the test rewritten. If test performance was due to factors such as noncompletion of high school, she recommended alternatives such as local high schools or community based literacy groups. She testified that although a minimum score of "3" was required on entry tests, in some instances students who achieved a "high 2" were permitted to enter the program.

The third example of regular and recurring Analysis and Problem Solving addressed in the PDF and by the parties at the hearing relates to the position's role in assisting Distance Learning students having difficulty accessing Centra or the College library on a computer. The grievor inquired whether students received usernames, passwords, and log-in instructions. She "walked students through" the steps for logging onto the system. In some instances it was necessary for the grievor or for the student to consult with technicians through the Contact North or the Centra helplines. Ms. Small pointed out that problems relating to a Contact North site or Contact North infrastructure were not within the College's purview and that where problems arose with "in house" systems, internal resources were available.

At the hearing, the grievor also testified regarding her one on one interaction with students in the Computer Lab. She described that she assisted them with the internet, Microsoft, Powerpoint and Excel. The grievor gave evidence that she taught students and did not merely troubleshoot. Ms. Small, on the other hand, described a "troubleshooting function" to help facilitate student learning in a self-study program.

Occasional examples of Analysis and Problem Solving in the PDF address the role of the Program Officer where course materials or tests do not reach a Contact North site. The grievor described making inquiries, and testified that she was sometimes required to resend tests, ensuring that test security was not compromised. The PDF also includes as an occasional example of Analysis and Problem Solving the position's role in addressing problems with students, equipment or rooms at Contact North sites. The grievor described that she spoke to students in issue, and in appropriate circumstances raised with Contact North the possibility of obtaining another computer.

In the Union's view, the Program Officer is required on a regular and recurring basis to seek information "not of a straightforward nature" to undertake the analytical and problem solving tasks required of the position. It suggests that a level 3, regular and recurring rating should therefore be awarded. In the Union's submission, not all situations and solutions to problems are readily identifiable, and for this reason, an occasional level 4 rating is also warranted.

The College asks me to confirm the level 2, regular and recurring rating. Ms. Small testified that the position addresses a "spectrum of issues that become the norm." Where students wished to apply for Academic Upgrading programs, she suggested that the grievor engaged in straightforward "back and forth" discussion. She pointed out that programs are Ministry funded, and that the governing criteria and guidelines leave little room for interpretation or analysis. Similarly, according to Ms. Small's testimony, where a student did not meet entry requirements for Distance Learning, the grievor knew of available community resources and informed the student accordingly. The College urges me to accept Ms. Small's suggestion that the analytical and problem solving role of the position is not "onerous" and does not involve analysis particularized to individual

learners. It asserts that the position engages in “positive messaging,” and communicates options available to learners.

I am not convinced that the higher ratings sought by the Union here are warranted. Situations and problems encountered by the position are, in my view, “easily identifiable.” While “solutions may require modification of existing alternatives,” the required analysis and problem solving is “straightforward.” The Union has not demonstrated that “further inquiry” is required in order to define situations and problems, and nor do I see in the evidence examples of problems that are not “readily identifiable.” Further, the examples before me do not reflect problem solving through the analysis and collection of information at level 3, or through the interpretation and analysis of information according to established techniques and/or principles as defined at level 4. While I recognize the need for the position to formulate and ask questions of students in the circumstances addressed in the PDF and by the evidence more generally, the required analysis is nonetheless straightforward and within level 2. The evidence does not establish, in my view, the need to gather information, to analyze each new piece of information in relation to other information, and to possibly explore “new or unusual directions” as contemplated by the Notes to Raters pertaining to level 3.

The rating of this factor at level 2, regular and recurring is confirmed and the Union’s claim for higher regular and recurring and occasional ratings is denied.

PLANNING/COORDINATING

The College rated this factor at level 2, regular and recurring. The Union argues that it should be rated at level 3, regular and recurring.

Level 2 Planning/Coordinating is defined in the Manual as follows:

Plan/coordinate activities and resources to complete own work and achieve overlapping deadlines.

Level 3 Planning/Coordinating is defined as follows:

Plan/coordinate activities, information or material to enable completion of tasks and events, which affect the work schedule of other employees.

“Affect” is defined as “to produce a material influence upon or alteration in.” For purposes of this factor, “other employees” includes “full-time, part-time, students”

The Notes to Raters clarify that Level 2 Planning/Coordinating is “typically focused on completion of assigned activities within established deadlines or procedures (e.g. scheduling, coordination of data for reports” At level 3, in contrast, a position “decides the order and selects or adapts methods for many work assignments.” Level 3 Planning/Coordinating “typically” involves “requests for materials/information by specific deadlines in order for the position to plan events or activities. . . .”

The PDF sets out three examples of regular and recurring Planning/Coordinating. The first example addresses the Program Officer’s responsibility to book Contact North sites for the delivery of programs prior to a March 1 deadline. Similarly, the PDF refers to the position’s involvement in planning and coordinating the delivery of materials to Contact North sites. The PDF includes as a second example planning and coordinating for advertising Distance Learning programs and for participating in community presentations. The third example in the PDF refers to the inputting of required statistics in accordance with Ministry deadlines.

At the hearing, the Union focused on the position’s role in preparing sessional Faculty schedules for the Distance Learning program. The grievor explained that she would know for example that Math and English teachers were required, and that she would talk to teachers and ascertain who was able and available to teach the courses in

issue. She then compiled a list of names, courses, and sessions and provided such information to her manager. After the Manager approved a schedule, the Administrative Assistant prepared the necessary contracts.

Ms. Small acknowledged that the grievor's supervisor communicated staff needs to the grievor and requested assistance in identifying potential part-time teachers. She agreed that the grievor then did the "initial groundwork" in the preparation of the schedule, and provided information to her supervisor. The schedule was then finalized and contracts prepared by the supervisor and the Administrative Assistant.

The Union has not in my view demonstrated level 3 Planning/Coordinating. It is clear from the PDF and from the evidence in its entirety that the grievor performed various tasks in accordance with deadlines. I accept that adherence to such deadlines was important. I recognize that she booked Contact North sites for program delivery by a March 1 deadline. Similarly, she planned and submitted advertisements within prescribed deadlines. In the same manner, the grievor was responsible for inputting statistics for the Ministry in accordance with deadlines. While the Union suggested in its Brief that the failure of the grievor to comply with any of the applicable deadlines could have ultimately led to the demise of the programs in issue, I am not convinced that the position's activities completed by prescribed deadlines reflect Planning/Coordinating that enables task completion which "affects" the work schedules of others as defined. Rather, it seems to me that these examples reflect "the completion of assigned activities within established deadlines" as addressed by the Notes to Raters pertaining to level 2 Planning/Coordinating.

I accept that the grievor played a role in compiling availability information and in the initial drafting of sessional Faculty schedules for the Distance Learning program,

subject to approval and finalization by her supervisor. I am not convinced, however, that the grievor's participation in this process involved deciding the order and selecting methods for work assignments as contemplated by level 3, Planning/Coordinating.

The College's rating of this factor at level 2, regular and recurring is confirmed.

INDEPENDENCE OF ACTION

The College rated this factor at level 3, regular and recurring. The Union seeks a rating of level 4, regular and recurring.

The Manual defines levels 3 and 4 Independence of Action as follows:

3. Position duties are completed according to general processes. Decisions are made following general guidelines to determine how tasks should be completed.
4. Position duties are completed according to specific goals or objectives. Decisions are made using industry practices and/or departmental policies.

The Manual also sets out the following definitions:

Process – a series of activities, changes or functions to achieve a result.

Guideline – a statement of policy or principle by which to determine a course of action.

Policies – broad guidelines for directing action to ensure proper and acceptable operations in working toward the mission.

The Notes to Raters are also of assistance and provide in part as follows:

Level 3 – specific results or objectives that must be accomplished are pre-determined by others. The position has the ability to select the process(es) to achieve the end result, usually with the assistance of general guidelines. The position has the autonomy to make decisions within these parameters.

Level 4 – the only parameters or constraints that are in place to guide the position's decision-making are "industry practices" for the occupation and/or departmental policies. The position has the autonomy to act within these boundaries and would only need to consult with the supervisor (or others) on issues that were outside these parameters.

The Union urges me to conclude that the autonomy exercised by the Program Officer in the performance of her assigned duties is best rated at level 4. In its pre-hearing Brief, the Union stated that the grievor made decisions based on College and Academic Upgrading policies and procedures, Ministry policies and procedures and departmental past practice. It noted as well that the position consulted with the supervisor where extra staff was required, where there were program changes, or when a situation was “out of the ordinary.”

The PDF states that the position works independently managing day to day tasks so that the Distance Learning program and the Computer Lab “run smoothly.” It notes the need to “prioritize work in a busy and demanding . . . environment.” The PDF refers to the Computer/Testing Lab Procedures Binder developed by the grievor based on experience, past practice and policy to guide day to day tasks. The PDF also refers to internal and departmental policy and procedure manuals and to Ministry guidelines consulted by the grievor.

The grievor testified at the hearing that she oversaw testing in the Computer Lab, monitored the Lab for class management purposes, engaged in troubleshooting of computer problems, and ensured that required materials were available for Faculty. She noted that the Ministry established goals and objectives for literacy, numeracy and computer skills, and that she assisted students in meeting such requirements. She also noted that she developed marketing materials as part of a team, and submitted same to her supervisor for approval.

The Analysis and Problem Solving section of the PDF is also usefully considered here and sets out “sources available to assist the incumbent finding solutions.” Such sources include “experience, expertise, past practices, College calendar, website

information, Community Education publications,” Academic Upgrading policies and procedures, “online help,” and technical and other staff.

Ms. Small emphasized that although programs offered are subject to Ministry guidelines and policies, the Program Officer’s duties are performed on the basis of long established practices, standardized processes, and pre-determined steps.

The Manual definitions referenced above address how position duties are performed and how decisions are made. Level 3 Independence of Action speaks to the completion of position duties in accordance with general “processes,” and “processes” include “a series of activities.” Level 4 Independence of Action contemplates completion of duties in accordance with “specific goals and objectives.” At level 3, the “position has the ability to select the processes” to achieve the end result, but the objectives to be accomplished are predetermined by others. In my view this well describes the autonomy associated with the completion of the Program Officer’s duties. The evidence does not reflect the more autonomous completion of duties according to “specific goals or objectives” as set out in level 4.

Decisions are made at level 4 Independence of Action using “industry practices and/or departmental policies” as defined. The Notes to Raters are clear that at level 4, “the only parameters or constraints that are in place to guide the position’s decision-making are ‘industry practices’ for the occupation and/or departmental policies.” The Union does not suggest that “industry practices” are relevant here. The PDF, the Union’s Brief, and the evidence before me at the hearing were clear that although departmental policies are factors in decision making, they are not “the only parameters” that guide the Program Officer’s more constrained decision making. I cannot accept that decisions are made using only “departmental policies,” particularly taking into account the definition

of “policies” as “broad guidelines for directing action... to ensure proper and acceptable operations in working toward the mission.”

The College’s rating of this factor at level 3, regular and recurring is confirmed.

SERVICE DELIVERY

The College rated this factor at level 1, regular and recurring. The Union argues that it should be rated at level 2, regular and recurring and level 3, occasional.

The applicable definitions set out in the Manual are as follows:

1. Provide service according to specific requests and established methods.
2. Provide service according to specifications by selecting the best method of delivering service.
3. Tailor service based on developing a full understanding of the customer's needs.

“Tailor” is defined as “to modify or adapt with special attention in order to customize it to a specific requirement.”

The Notes to Raters are clear that students can be “customers.” They provide further clarification as follows:

Level 1 – service delivery is typically providing answers to customers’ questions. There may be times when the incumbent will need to refer the customer to another source for the answer or the incumbent may need to consult with others to provide the appropriate answer.

Level 2 – service is provided by determining which option would best suit the needs of the customer. The incumbent must know all of the options available and be able to explain them to the customer. The incumbent selects or recommends the best option based on the customer’s need. There is no, or limited, ability for the incumbent to change the options. For example, positions working in the Financial Aid area would need to fully understand the various student loan programs that are available and based on a student’s unique situation select or recommend the program that would best address the student’s financial situation. The incumbent doesn’t have the ability to change the funding programs which are established by an external agency.

Level 3 refers to the need to “tailor service.” This means that in order for the position to provide the right type of service, he/she must ask questions to develop an understanding of the customer’s situation. The customer’s request must be understood thoroughly. Based on this understanding, the position is then able to customize the way the service is delivered or substantially modify what is delivered so that it suits the customer’s particular circumstances.

The Union argues that the grievor used her knowledge of available academic upgrading options to determine what best suited individual student needs, taking into account factors such as student availability and location, and availability of learning sites. While the Union does not dispute that Ministry guidelines establish criteria for entry into College programs, it emphasizes that it remained the responsibility of the grievor to recommend to students their best available options within such framework.

In the Union’s submission, the grievor was also occasionally required to tailor service offered. It offered as an example a student who was unable to remain at a Contact North site for the hours during which attendance was to be monitored for purposes of WSIB, and the need for the grievor to address alternate arrangements that satisfied WSIB requirements.

Ms. Small agreed that the grievor needed to know and to explain to students the options available. Where she differed, however, was as to whether or not it was for the grievor to recommend options to students. She emphasized that the grievor was dealing with “adult learners.” While she acknowledged that the grievor assisted “potential learners,” she maintained that they exercised their autonomy and made their own decisions, recognizing that the College programs in issue here are not the only available options. Ms. Small disagreed that it was the grievor’s usual role to recommend options.

Ms. Small also addressed the Union’s claim that service delivery is occasionally tailored. While she acknowledged that the grievor needed to consider, for example,

restrictions on a student's availability in presenting possible options, the grievor's task, in her view, remained one of knowing and explaining options.

The Union maintains that the grievor did in fact recommend the best options available for students. It notes in any event that the ability of students to select a particular learning opportunity was effectively predetermined by the options put to them by the grievor based on her understanding of applicable circumstances.

The Service Delivery section of the PDF reflects that the Program Officer responds on a daily basis to inquiries regarding the AU ACE DL program "and/or directs students to complete applications and assessments. . . ." The Analysis and Problem Solving section of the PDF is also usefully considered here. It reflects that the position asks questions "to identify and determine the best options to meet the student's learning goals" and that a number of factors are considered "when developing options for the caller." The Analysis and Problem Solving section of the PDF also addresses the Program Officer's interaction with a student who fails to meet entry requirements for Distance Learning. The PDF reflects that the Program Officer offers solutions and makes "recommendations to help the student meet his/her learning goals."

I am of the view that this factor should be rated at level 2, regular and recurring. I am satisfied that the role played by the grievor as reflected in the PDF went beyond level 1 Service Delivery described in the Notes to Raters as "typically providing answers to customers' questions." While I recognize that the grievor dealt with adult learners who were free to make their own decisions regarding continued education, I accept that student choices were effectively channeled by the grievor knowing and presenting the options that she understood best suited individual circumstances. I find that such role is well captured by level 2 Service Delivery.

I am not, however, convinced by the Union that the position occasionally “tailors” service within the meaning of the level 3 factor definition. While I recognize that student circumstances vary and that the suitability of options varies accordingly, the grievor’s role as demonstrated by the evidence remained one of knowing and explaining the options available as contemplated by level 2 Service Delivery. It did not extend to “customizing” service delivery or to the “substantial modification” of what was delivered to suit individual student circumstances as contemplated by level 3.

Accordingly, I order that the College amend the rating of this factor to level 2, regular and recurring. The occasional rating sought by the Union is however denied.

COMMUNICATION

The College rated this factor at level 3, regular and recurring. The Union seeks a rating of level 4, regular and recurring.

The Manual defines levels 3 and 4 Communication as follows:

3. Communication involves explaining and/or interpreting information to secure understanding. May involve communicating technical information and advice.
4. Communication involves explaining and/or interpreting information to instruct, train and/or gain the cooperation of others.

“Instruct” is further defined in the Manual as “to give knowledge to or provide authoritative information within a formal setting such as a workshop or lab environment.”

“Train” is defined as “impart knowledge and/or demonstrate skills within a formal instructional setting.”

The Notes to Raters are also of assistance and state as follows:

“Explain” and “interpretation” in level 3 refers to the need to explain matters by interpreting policy or theory in such a way that it is fully understood by others. The position must consider the communication level/skill of the audience and be sensitive to their

abilities and/or limitations. At this level, if the exchange is of a technical nature, then usually the audience is not fully conversant or knowledgeable about the subject matter. Unlike communicating with people who share an understanding of the concepts, in this situation the material has to be presented using words or examples that make the information understandable for non-experts or people who are not familiar with the intricacies of the information.

The August 2009 PDF before me in these proceedings offers as examples of “imparting technical information and advice” the position’s responsibility to “instruct” on use of equipment and software and to “demonstrate” the use of Centra, Microsoft, Blackboard, Toolbox and the internet. It sets out no examples of “Instructing.” The Duties and Responsibilities section of the PDF includes under the heading “Academic Upgrading Testing and Computer Lab” the following: “Instructs students and staff on use of computer programs, hardware and systems.”

Included in the Union’s pre-hearing Brief was a draft PDF dated September 29, 2008 prepared by the grievor and her supervisor at the time, Ms. Thornburg. Such PDF includes the following as an example of “daily/weekly/monthly instructing:”

Instruct students, staff, and faculty on: Computer Operations, Word-processing, Excel, PowerPoint, web design, BlackBoard, the Internet, email, and Centra.

Also included in the Union’s pre-hearing Brief were September 2008 e-mails exchanged between Ms. Thornburg and Ms. Jeannine Nagy, then Manager Staff Development. By e-mail dated September 29, 2008, Ms. Nagy posed the following question to Ms. Thornburg:

I need a definitive answer on the following question: Does the PDF that accompanied Adair’s email from 10:44 am this morning accurately reflect the job duties performed by Adair since March 1, 2007?

Ms. Thornburg responded affirmatively by e-mail dated September 30, 2008.

The College notes that it is not at all unusual for PDFs prepared in individual departments to require amendment once reviewed by Human Resources staff. This was the case in these circumstances in the College's submission. Further, the College filed with its pre-hearing Brief a list of teaching contracts held by the grievor between October 2004 and March 2011. In the College's submission, the "instruction" referenced in the September 2008 PDF prepared by the grievor and Ms. Thornburg was associated with teaching contracts held separately by the grievor, and was not a part of the Program Officer's duties.

The Union acknowledges that the grievor "taught" only pursuant to Faculty contracts and it accepted that the Program Officer does not "teach." It argues, however, that the grievor played an instructional role as a Program Officer both by providing workshops and by providing one on one instruction to students in the Lab. Such assigned responsibilities, it submits, are properly reflected in a level 4 Communication rating. The Union questions the College's failure to recognize such Communication where the Duties and Responsibilities section of the August 2009 PDF reflects that the grievor performs a role which the Union suggests clearly warrants a level 4 rating.

The grievor testified that she worked with students on an individual basis in the Lab and instructed them about Microsoft, the internet, Power Point, Excel and web design. She noted that students had varying levels of knowledge. Her evidence was that the Ministry sets goals and objectives associated with defined levels of achievement, and that she checked off and assessed completed work modules for students.

The College agrees that the grievor provided workshops and worked with students on an individual basis in the Lab. It further agrees that the Lab is "a formal setting such as a workshop or lab environment" as contemplated by the definition of "instruct"

included in the Manual for the Communication factor. According to the College, however, and as noted above, workshops were given pursuant to the grievor's Faculty contracts and she was compensated for performing such duties. They cannot therefore form part of the evaluation of her Program Officer position. Where the grievor worked one on one with students in the Lab, the College acknowledges that she did so in her capacity as a Program Officer. It argues, however, that such role is properly reflected in a level 3 Communication rating. Ms. Small noted that students presented with varying levels of expertise in relation to computers. The College suggests that the grievor explained and interpreted information to students "to secure understanding," and that the Notes to Raters for level 3 reflect the need to explain and interpret for an audience that "is not fully conversant or knowledgeable about the subject matter."

I am of the view that this factor should be rated at level 4, regular and recurring. The parties agree that the grievor provided workshops in the Lab, and the College agrees that if such role was associated with her Program Officer responsibilities, it would warrant a level 4 rating. The parties disagree, however, as to whether workshops were provided pursuant to the grievor's Support Staff or her Faculty duties and responsibilities, and the evidence before me is of little assistance in making such determination. The parties also agree, however, that the grievor worked on an individual basis with students in a "formal setting such as a . . . lab environment" and that this role was performed in her capacity as a Program Officer. The College does not dispute that this was a regular and recurring duty. The Duties and Responsibilities section of the PDF states that the position "instructs students and staff on use of computer programs, hardware, and systems." The issue ultimately requiring determination is a narrow one. Did the grievor explain and interpret information "to secure understanding" within the level 3 definition

or did she explain and interpret information to “instruct” or “train” as defined? In my view, the grievor’s individualized communication with students in the Lab regarding the use of computer programs, hardware and systems including matters such as Microsoft, Power Point, and Excel is properly characterized as “giving knowledge” or “demonstrating skills” rather than “securing understanding” and should be rated at level 4.

I order the College to amend the rating of this factor to level 4, regular and recurring.

AUDIO/VISUAL EFFORT

The College rated this factor at level 2, focus maintained. The Union accepts that level 2 is an appropriate rating, but argues that focus is interrupted.

The Manual defines “focus maintained” as “concentration can be maintained for most of the time.” “Focus interrupted,” according to the Manual, means that “the task must be achieved in smaller units. There is a need to refocus on the task at hand or switch thought processes.”

The Notes to Raters direct that “Raters must only consider tasks or situations where a higher than usual level of focus or concentration is required.” They further state that “Concentration means undivided attention to the task at hand.” The Notes direct raters to “consider the impact of the disruption on the work being done,” and to ask whether the incumbent can “pick up where he/she left off” or whether “the interruption caused a disruption in the thinking process” so that “considerable time is spent backtracking to determine and pick up where he/she left off.”

The PDF provides three examples of “activities that require a higher than usual need for focus and concentration.” It addresses monthly preparation of statistics, with an

average duration of up to two hours. It states that focus can usually be maintained in performing such task, but that this “depends on interruptions from others.” The Union disagrees that focus can usually be maintained when performing this duty.

The PDF notes as a second activity monthly “curriculum compilation/revisions,” with an average duration of up to two hours as well. The PDF reflects that focus cannot be maintained throughout the duration of this activity due to “too many interruptions.”

Also included as an example in the PDF is “inputting student information/booking sites, booking students, WSIB reports, CN reports and reports for the manager.” This is characterized in the PDF as “daily” with an average duration of less than thirty minutes.

The Union’s evidence was that the activities referenced in the PDF are performed in the Lab area. The grievor testified that she worked in that area from June to September each year. The Duties and Responsibilities section of the PDF reflects that 25% of the position’s time is spent on duties associated with the Academic Upgrading Testing and Computer Lab. The Lab was open to students until 3 p.m. and the grievor was scheduled to finish work at 3:30 p.m.. The grievor described that the Lab was busy all day, and estimated that approximately thirty to fifty students and Faculty members sought her attention over the course of a day for a variety of reasons. I note that the Duties and Responsibilities section of the PDF states that the position “provides on-going support to students and faculty” in the Lab. The parties agree that interruptions sometimes necessitated backtracking in the grievor’s work, while sometimes it would be possible to simply resume whatever she had been doing prior to an interruption.

Ms. Small clarified that the curriculum compilation activity referenced in the PDF was a typing task for the grievor, as the curriculum compilation/revision was completed by a Faculty member. Similarly, Ms. Small noted and the grievor agreed that the

grievor's role with respect to reports for managers did not reflect an analytical task, but involved calling up statistics.

The Union argues that the PDF reflects that a Focus Interrupted rating is warranted here. The College emphasizes, however, that interruptions in and of themselves do not justify such higher rating unless there is a need to refocus and change thought processes in order to complete a task.

I need not decide here whether or not the disruptions in issue caused by interactions with students and Faculty in the Lab are "integral or primary" responsibilities of the position, as this was not the basis upon which the parties chose to address this factor.

In considering the parties' positions, I must consider both the quantitative and qualitative aspects of the factor definitions. Focus is maintained, according to the Manual, where concentration can be maintained "most of" or the majority of the time. Raters must also consider the types of interruptions experienced and the impact of such interruptions on focus and concentration.

The activities relied upon by the Union here take place in the Lab between June and September. I accept that the Lab was a busy environment, and that it was open to students during most of the grievor's scheduled working hours. While Ms. Small suggested that there were quiet times in the day where the grievor would have been relatively uninterrupted, it is difficult to accept that there were long stretches of such time given the grievor's evidence that thirty to fifty students and Faculty members required her attention in some way. That said, on the evidence before me, it is also difficult to assess the length and nature of such interruptions. The evidence was clear that in some instances, interruptions were momentary, where the grievor was simply ensuring that

students signed into the Lab properly in accordance with her obligation to maintain statistics regarding use of the area. The impact of interruptions on the grievor's work performance also varied. I note in this regard that two of the activities relied upon by the Union here and referenced in the PDF were performed monthly only. It was clear as well that even where interruptions were experienced when performing the activities outlined in the PDF, it was not in all instances necessary for the grievor to spend "considerable time" backtracking with a need to "refocus on the task at hand or switch thought processes." I note in this regard, for example, that the curriculum compilation activity described in the PDF as a monthly activity involved typing on the grievor's part where a need for "considerable time spent backtracking" when interrupted seems unlikely.

Having considered the evidence against the applicable Manual definitions and Notes to Raters, I am unable to conclude that the interruptions experienced by the grievor while in the Lab between June and September impacted on her ability to maintain focus in such a way and to such an extent that concentration could not be maintained "most of the time."

The College's rating of this factor is therefore confirmed.

CONCLUSION

For all of the above reasons, the grievance is allowed in part. The College's rating of Analysis and Problem Solving, Planning/Coordinating, Independence of Action, and Audio/Visual Effort is confirmed. The College is ordered, however, to amend the ratings assigned to Service Delivery and Communication as set out herein. The total number of points assigned to the Program Officer position is therefore 482, putting it in Payband G. The College is ordered to compensate the grievor retroactively in accordance with the parties' agreement.

I retain jurisdiction of this matter to assist the parties with the implementation of this Award should that prove necessary.

DATED at TORONTO this 16th day of April, 2012.

"M. Tims"

Mary Lou Tims, Arbitrator