

IN THE MATTER OF AN ARBITRATION

between

ONTARIO PUBLIC SERVICE EMPLOYEES UNION (LOCAL 109)

and

FANSHAWE COLLEGE

Classification Grievance: Ernie Durocher

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For the Union: Ernie Durocher, Grievor (Athletics Officer)  
André Savoie, Chief Steward  
Harold Sobel, Union Representative

For the College: Daniel Michaluk, Counsel  
Mike Lindsay, Manager of Athletics  
Julie McGuire, Human Resources Consultant

Before: Louis M. Tenace

Heard in London, Ontario on October 26, 2009

## AWARD

Ernie Durocher, the grievor, is a graduate of the Athletic Training and Management Program at Sheridan College. He was first employed at Fanshawe College in September 1979 as a technician with the Physical Fitness Instructors Program and Athletic Department. In 1983 he was employed solely with the Athletic Department as an Athletic Therapist and Technician. Since 1998, he has managed the Intramural Campus Recreation Program as well as coordinating the Basketball, Soccer and Golf Varsity Programs. He was the first recipient of the Fanshawe College Distinguished Support Staff Award. He has also served as Vice President of Ontario Community College Campus Recreation (OCCCR) for six years and is currently the Convenor of the Ontario College Athletic Association (Basketball). The grievor described his main role as administering the College's Intra and Extra Mural Program as well as the Intercollegiate Athletics Program.

The work unit is comprised of 2 full-time Athletics Officers (of which the grievor is one), 1 part-time Athletics Officer, 1 Clerk, 1 Athletics Technician and 1 Customer Services Representative. All report to the Manager of Athletics (Mike Lindsay). All share the same office area and have regular informal and formal contact with the Manager who provides instructions on work objectives, activities and tasks. There are also formal monthly staff meetings as well as meetings about special projects.

The grievor who is currently classified as a Support Services Officer at payband level H is seeking re-classification to payband J. I should note that the original grievance sought re-classification to payband level I but the submission to arbitration altered this to payband J. The College has objected to this amendment of the grievance. I indicated to the parties that I would deal with this matter should it be necessary after considering their submissions on the issue of the various factors in dispute arising from their respective ratings of the Position Description Form (PDF). The PDF itself is not in dispute.

The Factors and Ratings in dispute are as follows:

### **3. Analysis and Problem Solving**

College rating is Level 3, 78 points (regular and recurring)

Union rating is Level 3, 78 points (regular and recurring) and Level 4, 9 points (occasional)

The College submitted that the duties of the position are to administer athletic programs according to established procedures. Whatever problems may arise are readily identifiable and while they may require further inquiry by the incumbent, they do not really require further investigation and research. In the College's view Level 4 foresees a higher degree of problem solving necessitating interpretation and analysis.

Based on what I heard from the incumbent, I am satisfied that from time-to-time he must engage in the analysis and problem-solving mode when faced with various situations in the performance of his duties; however, I am equally convinced that the steps he would follow to do so are mainly procedural and information gathering to permit him to make the best decision. As stated in the Notes to Raters, *“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 merits of the investigation or analysis.”* There are well-established rules and regulations to guide him. For example, if a report is received from an official describing some fight or mêlée that took place during an event, the incumbent would apply the College Zero Tolerance rule which states that “Zero tolerance with respect to violent misconduct will be enforced”. While I certainly do not wish to “pigeon-hole” the incumbent by using this type of example as an illustration of all situations that might arise, I do believe that a Level 3 rating is the proper fit for this factor and that it certainly fits within the parameters outlined above. I do not see any need for an “occasional” rating as I believe the factor definition properly captures the essence of the duties.

**The rating for this factor remains unchanged at Level 3, 78 points.**

#### **5. Guiding/Advising Others**

College rating is Level 3, 29 points (regular and recurring)

Union rating is Level 4, 41 points (regular and recurring )

The College submits that to qualify for a Level 4 rating, an incumbent would have to be an “active participant in the individual’s process or skill development”. An Athletics Officer’s role is mainly to ensure that student employees perform their assigned tasks properly and according to the various rules and regulations in effect. If the student does not perform satisfactorily, the Athletics Officer can provide guidance/advice but there is no on-going responsibility for the student’s development. The function is to ensure that the rules are followed.

The Union insists that the role of the incumbent goes far beyond what the College is suggesting and that the role involves advising, training and supervising. Students often turn to this individual for advice.

I find that the College’s appreciation of this factor is too narrow. While it is true that the incumbent does not perform the role of “counsellor” or “academic advisor”, it seems to me that the PDF’s outline of the Duties and Responsibilities supports the Union’s position. Some 25% of the incumbent’s time is shown as “Supports head coaches with the recruiting, selecting and advocacy of intercollegiate athletics. *Engage, advise and track athletes regarding their student athletic and academic success and eligibility in accordance with the OCA/CCAA mandate while nominating student athletes for internal and external (ocaa, ccaa, so or nso) awards and bursary.”* On the other side of the coin, there is no question in my mind that the incumbent does not have a direct responsibility

to guide or advise students. But, based on the evidence presented, the individual can and does provide knowledgeable direction regarding a decision or course of action. In my opinion, the water is “muddy” in terms of the PDF and this factor; however, I believe that the best fit is a Level 4.

**The rating for this factor is amended from Level 3, 29 points to Level 4, 41 points.**

### **6. Independence of Action**

College rating is Level 3, 78 points (regular and recurring)

Union rating is Level 4, 110 points (regular and recurring)

As stated in the Job Evaluation Manual (JEM), this factor “measures the level of independence or autonomy in the position” and that what must be considered is “the types of decisions” made; whether the decisions are “decided by the position” or in consultation with the supervisor or others; and, finally, whether there exists a body of “rules, procedures, past practice and guidelines” to assist the incumbent.

The PDF, in describing the type of decisions that would be decided by the incumbent, states that these would consist of the “timing of most of own (sic) activities. Student staffing schedules, practice schedules, intramural/extramural activity.” Other decisions would be made in consultation with the supervisor or others.

The parties made extensive written and verbal presentations on this factor and I am satisfied that despite the fact that the incumbent is often alone at many of the events which are a requirement for the incumbent to attend, there are an abundance of rules, procedures, guidelines and past practices available to the individual. Moreover, the supervisor is usually only a phone call away. The incumbent agreed that he had to abide by the existing rules. Although the position organizes many activities, it is done with others and not in isolation. I believe that Level 3 is a proper fit for this factor.

**The rating for this factor remains at Level 3, 78 points.**

### **8. Communication**

College rating is Level 3, 78 points (regular and recurring) and Level 4, 9 points (occasional) – the occasional rating for this factor was accorded by the College during the course of the hearing

Union rating is level 4, 110 points

The incumbent’s major audiences are comprised of athletic customers, both intra and extra mural as well as student employees and officials with whom routine information is

exchanged; explanations, interpretations, information, technical information and advice is also provided.

The JEM states that “To clarify the differences between *gaining cooperation* in level 4 and *negotiation* in level 5: The assigned communication and interpersonal skills needed at both of these levels are at an extremely high level.” *Gaining cooperation refers to the skills needed to possibly having to move others to your point of view and gaining commitment to shared goals.*

The Union cited several examples to demonstrate that the incumbent had to communicate with players and coaches to get their cooperation in a variety of situations. The College countered that while this might be true in certain situations, this was not a frequent enough occurrence to justify a regular and recurring rating. In the College’s view, the communication involved could more aptly be described as communication to secure understanding and would be more in line with a level 3 rating.

As noted above, during the course of the hearing the College agreed to amend its rating to allow for an occasional rating of level 4, 9 points. The Union insisted upon maintaining its position in this regard (i.e. Level 4, 110 points)

I believe that the College has acted properly in according an occasional rating of level 4, 9 points for this factor. In my view, this factor would be improperly rated at level 4 (regular and recurring). Quite simply, it does not meet the various criteria outlined in the JEM for such a level. At the same time, I do recognize that certain situations as explained by the grievor during the hearing should warrant some consideration. I believe the College has met that need by recognizing an occasional element to the position.

**The rating for this factor remains at Level 3, 78 points and Level 4, 9 points (occasional) as amended during the hearing.**

## **11. Working Environment**

College rating is Level 2, 38 points (regular and recurring)

Union rating is Level 2, 38 points (regular and recurring) and Level 3, 9 points (occasional)

The Union is seeking an occasional rating for this factor at Level 3, 9 points on the basis that the incumbent is exposed to extreme weather conditions, must deal with abusive people and must deal with threats to personal safety. The rationale provided is that storms occur from time-to-time, fans and players may become unruly and one fears for one’s personal safety. The College pointed out that there had been one fight in the last five years involving persons in the crowd. Moreover, there is clear direction to all persons that in such situations they are not to intervene but to call Security immediately. Regarding inclement weather, the College noted that inclement weather is not extreme weather. In instances of extreme weather conditions, the event is cancelled.

In my view, the Union's position is a "stretch" and I simply do not agree that the duties of this position meet the requirements for level 3 (occasional). I think that they fit quite nicely into the regular and recurring area of level 2.

The rating for this factor remains unchanged at Level 2, 38 points.

In summary, I have agreed with the Union position regarding Factor # 5 (Guiding/Advising) and have altered the rating to Level 4, 41 points. I have also agreed with the College's decision made during the course of the hearing to allocate an Occasional rating of Level 4, 9 points for Factor # 8 (Communication). The result is that the revised point total for all the Factors (Regular and Recurring) will now be 560 points; combined with the 9 points (Occasional), the total points will be 569. According to the Payband Determination Schedule of the JEM, 569 points situates the position within payband H (520-579 points).

**The position remains at payband level H. The Arbitration Data Sheet is attached.**

Given my findings outlined above, there is no need for me to address the issue of the Union's amendment of the grievance raised by Counsel for the College at the start of the hearing.

I wish to add that during the course of the hearing the Manager (Mike Lindsay) was most sincere in making the point that the grievor was a most valued employee who did his job extremely well and that this process and the evidence offered was not meant to detract from this in any way. This process is about the position and its evaluation and not about the incumbent. In a similar vein, I wish to thank both Mr. Durocher and Mr. Lindsay for their candour and cooperation during the hearing.

Signed in Ottawa this 30th day of October, 2009

Louis M. Tenace

**Arbitration Data Sheet - Support Staff Classification**

College: FANSHAWE Incumbent: ERVIE DUROCHER Supervisor: MIKE LINDSAY  
 Current Payband: H Payband Requested by Grievor: J

1. Concerning the attached Position Description Form:

- The parties agreed on the contents     The Union disagrees with the contents and the specific details are attached.

2. The attached Written Submission is from:  The Union     The College

Factor	Management				Union				Arbitrator			
	Regular/ Recurring		Occasional		Regular/ Recurring		Occasional		Regular/ Recurring		Occasional	
	Level	Points	Level	Points	Level	Points	Level	Points	Level	Points	Level	Points
1A. Education	3	35			3	35			3	35		
1B. Education	2	12			2	12			2	12		
2. Experience	4	54			4	54			4	54		
3. Analysis and Problem Solving	3	78			3	78	4	9	3	78		
4. Planning/Coordinating	3	56			3	56			3	56		
5. Guiding/Advising Others	3	29			4	41			4	41		
6. Independence of Action	3	78			4	110			3	78		
7. Service Delivery	2	29			2	29			2	29		
8. Communication	3	78	4	9	4	110			3	78	4	9
9. Physical Effort	2	26			2	26			2	26		
10. Audio/Visual Effort	3	35			3	35			3	35		
11. Working Environment	2	38			2	38	3	9	2	38		
<b>Subtotals</b>	(a) 548		(b) 9		(a) 624		(b) 18		(a) 560		(b) 9	
<b>Total Points (a) + (b)</b>	557				642				569			
<b>Resulting Payband</b>	H				J							

Signatures:

[Signature] (Grievor)      Oct 27/09 (Date)      [Signature] (College Representative)      Oct 27/09 (Date)

[Signature] (Union Representative)      27/10/09 (Date)      [Signature] (Arbitrator's Signature)      30 Oct 09 (Date of Award)