

IN THE MATTER OF A
CLASSIFICATION GRIEVANCE

BETWEEN:

OPSEU LOCAL 612

-and-

SAULT COLLEGE

**Regarding the Classification
Grievance of Rocco Davino
Hardware/Network Specialist
OPSEU #2007-0612-0017
Council #761217**

BEFORE : Kathleen G. O'Neil, Chair
John Podmore, College Nominee
Sherril Murray, Union Nominee

For the Union: Marion Melville, OPSEU Grievance Officer
Rocco Davino, Grievor
Lorri Foley, Chief Steward, OPSEU Local 612

For the College: Dan Michaluk, Counsel
Jeff Weeks, Manager, Network Services
Lanie Cerasuolo, Human Resources Consultant

**A Hearing was held on May 21, 2008 and January 19, 2009
in Sault Ste. Marie, Ontario**

A W A R D

This decision deals with a grievance dated March 1, 2007 claiming that the position of Hardware/Network Specialist, held by Mr. Rocco Davino, is incorrectly classified and asking that it be reclassified upward to Payband J. At the time of the grievance, the job was classified at Payband H, but at Step 2 of the grievance procedure it was raised to Payband I. The employer maintains that the job is properly classified at that level.

The matter falls to be decided by application of the recently revised CAAT Support Staff Job Evaluation Manual (referred to below simply as "the Manual"), a negotiated document, to the job duties which are formally set out in the Position Description Form (referred to below as the PDF). It is important to underline, as noted in other awards, that it is the basic requirements of the job that are evaluated in this system, as in the previous one, and not the performance or worth of incumbents, even if they perform at a level or possess skills that surpass the requirements of the job as set out in the PDF. The detailed provisions of the Manual are aimed at providing an objective basis for the placement of a very large variety of jobs across the college system on the common salary grid in the collective agreement. The arbitral role is limited by the collective agreement to determining whether the grievor's PDF accurately reflects his assigned job content and whether the job is properly evaluated pursuant to the Manual. The exercise is somewhat technical, and is no comment on the value of the incumbent's work to the College community in terms of the grievor's personal effort or in the sense of how much his contribution to the College's work is appreciated by his colleagues and those who rely on his work. The College's submissions recognized that the incumbent is an excellent employee.

The parties arrived at an Agreed Statement of Facts relating to exchanges between the parties leading to various revisions of the PDF, and also called oral evidence related to the issues in dispute.

Overview of the Hardware/Network Specialist Position

The position entitled Hardware/Network Specialist is responsible to support and maintain the College's information technology equipment. In this role the incumbent evaluates technology in order to recommend purchases as well as installing and configuring and hardware, as well as troubleshooting hardware and network problems. In the vernacular of information technology, the incumbent is the "go-to" person for hardware issues. He is the only incumbent, and reports to Mr. Jeff Weeks, Manager, Network Services and Support, who in turn reports to Peggy Storey-Inkster, Chief Information Officer.

A. The PDF

The PDF for this position evolved through four versions, the first two of which were acceptable to the union and the grievor. We note that the union has significant concerns over the process involved in the latter revisions, which were not vetted with the grievor or the union before they were evaluated. Given the limitations on the arbitral role set out in the collective agreement, we do not find it necessary to comment in this respect, other than to say that a disagreement developed over the wording related to the disputed factors, i.e.:

- i. Analysis and Problem Solving
- ii. Service Delivery
- iii. Communication

In terms of the first two of these, the panel is satisfied that there is nothing in the differences in wording between the earlier and final versions of the PDF which inaccurately reflects the grievor's assigned job content or could affect the point rating. Indeed, the parties' arguments were mostly focussed on the factor Communication, where the disagreement is more material. Given that the arguments about the wording of the PDF and the disputed rating are intertwined, they are both dealt with below under the heading "Communication".

B. FACTOR RATINGS IN DISPUTE

The three factors in dispute will be discussed in turn.

i. Analysis and Problem Solving

This factor measures the level of complexity involved in analyzing situations, information or problems of varying levels of difficulty; and in developing options, solutions or other actions.

The College has rated this factor at Level 3, for which the Manual's description reads as follows:

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.

The union maintains it should be rated at Level 4 as follows:

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.

Relevant definitions of terms in the disputed factors are as follows:

Established techniques and/or principles - recognized guidelines and/or methods to accomplish a desired outcome. Can be defined as an individualized way of using tools and following rules in doing something; in professions, the term is used to mean a systematic procedure to accomplish a task.

Analysis - to separate into parts and examine them in relation to basic principles to determine how they fit together or cause the problem.

Relevant Notes to Raters read as follows:

1. Consideration must be given to the types of situations that arise and:
 - how situations, analytical requirements or problems are defined
 - the range of choice of action within the scope of the job
 - the level and type of investigation required
 - how complex or multi-faceted issues or problems are
 - from which sources assistance is obtained.

This will help define the application of analysis and judgment within the scope of the job. The above elements must also be considered as a whole when selecting the appropriate level.

2. Consideration can only be given to the extent that judgment is allowed within the parameters and constraints identified in the position duties. Keep in mind, it is the requirement of the position not the incumbent's capability that is being evaluated.

3. To clarify the differences between levels 1, 2 and 3:

...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 or clarification 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.

...

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 grievor testified that Level 3 did not adequately reflect the level of complexity in the job. He gave two examples to illustrate this point. First, there was a request from the Chief Information Officer, Peggy Storey-Inkster to him and Kevin Martin, who is responsible for servers and applications, to resolve a problem with projectors in classrooms, which had been ongoing for about 3 months. Several technicians had unsuccessfully tried to solve the problem, which had caused disruptions to teaching and lead to complaints from faculty. Messrs. Martin and Davino were instructed to come up with a plan, which they did after about three days of work, and then another two to three days were required to implement the plan. This involved visiting each of 50 to 60 computers with projectors to identify the problem, which involved incorrect keyboards, and a number of problems with software installation. Installing drivers and new software to standardize the software components, as well as to deal with specialty requirements, and in some cases redoing the cable connections, solved the problem. Part of the solution involved producing documentation to post so the faculty could use it as needed.

In cross-examination, counsel suggested that, although the projector problem was a serious one, the troubleshooting was not out of the ordinary, with which Mr. Davino disagreed. He stressed that the problem was intermittent, making it especially challenging to diagnose. It was necessary to look at the machines, try to reproduce the problem, reconfigure some of the components, and determine if it would still work, or whether the problem still existed.

A second example was a problem with the College's e-mail server which affected every staff member in the College with an e-mail account. It lasted about 6 months and was also particularly difficult to track down because the problems were intermittent and random. A team of five IT staff, including Mr. Davino, with Mr. Weeks as lead, was charged with solving the problem. They met as a group, brainstormed and took collaborative decisions. This network based problem involved issues outside the individual staff members' areas of IT responsibility, and its solution took several months to plan and implement, requiring the involvement of the software and hardware vendors as well. The grievor also said that on a daily basis he is asked by co-workers in IT to resolve issues for them, whether from a hardware or network perspective. Students ask for assistance on an irregular basis as well.

Mr. Weeks, the incumbent's supervisor, referred to the incumbent as the key person for hardware problems, and spoke of proactive and reactive troubleshooting. Proactive functions included servicing printers after a certain number of pages, determined by a log, while reactive troubleshooting occurs when a user brings up a problem, often through the help desk, and then a ticket describing the problem would be assigned to Mr. Davino. Mr. Weeks acknowledged that there are also phone and walk-in requests. He indicated that the majority of the problems the incumbent deals with are straightforward, such as replacing printers or hard drives when they fail, but that the problems are sometimes complex. A problem of the size of the e-mail server discussed by the grievor would hopefully only arise once or twice a year.

Employer counsel acknowledged that the incumbent is a hardware expert. Central to the College's position as to the rating of this factor is the submission that the troubleshooting in which he engages to apply that expert knowledge, to both small and large problems, is a level three type function. In support of this, counsel relied on the cases OPSEU and Confederation College (AV Technician) (Springate, 24 April 2008) and OPSEU and Confederation College (Web Designer) (O'Neil, 6 October 2008), arguing that both of those decisions found standard troubleshooting to be captured at Level 3.

Employer counsel argued that the problem solving portion of Level 4 implies a problem that has so much information bearing on it that it needs some kind of organizing model to figure it out. The panel was invited to find that the evidence did not establish any such guiding principle. Rather the incumbent uses his expertise and experience to solve discrete hardware problems which can be observed without some kind of interpretation, in the College's view.

By contrast, the union submits that many of the problems are not readily identifiable, and that their solution requires a fair amount of interpretation, making Level 4 a better fit. Union counsel referred to one of the duties in the PDF, which states that the grievor must determine if a problem is unique or systemic, and argued that where a problem is unique, it could hardly be thought of as readily identifiable. By contrast, the College sees this as a matter of determining if the problem is specific to an individual situation or user, or more widespread.

Both parties referred to the discussion of the Analysis and Problem Solving factor in the decision OPSEU and Mohawk College (Nurse Technologists) (O'Neil, 27 February 2008). The union took the position that the grievor's functions were no less complex than those of the nurse technologists. For its part, the College submitted that the Level 4 finding in that case was carried by elements such as the professional nursing norms applied by those employees, as well as the fact that the incumbents were required to design educational materials.

Turning to the examples in the PDF, there are three regular and recurring examples. The first is diagnosing a hardware related problem, such as intermittent crashes, which involves collecting data from the end user, isolating the cause of the problem and checking to see if it is repeatable. The analysis required to determine the solution is described as troubleshooting by "systematically ruling out potential causes to determine the root cause, including drivers, hardware failure, or other software conflicting". Then the incumbent determines the best course of action, i.e. repairing the problem or replacing the equipment. Mr. Weeks identified this as an example of the judgment frequently exercised by the incumbent. The available sources available to assist listed in the PDF include past practice and experience, departmental policies and procedures and external technical support. This example seems well captured by Level 3, as it involves gathering information analyzing each piece in relation to others and possibly exploring new directions based on the results of that analysis, as described in the Notes to Raters for Level 3. Nonetheless, depending on the difficulty of isolating the particular issue, it could fit within Level 4 as well.

In the second example, responding to a user's request for equipment replacement, the identification of the problem seems well captured by Level 3, as further inquiry is required to determine the requirements, and there is no suggestion that the situation is not readily

identifiable. As to the solution, the example provides that the incumbent will evaluate potential solutions based on research and knowledge of current technologies to determine the most appropriate and cost effective solution. Although the word “research” appears in the Level 4 factor definition, and not at Level 3, in order to qualify for Level 4, the solution must require the “interpretation and analysis of a range of information according to established techniques and/or principles.” The process of troubleshooting, trying to reproduce the problem, and using the process of elimination grounded in knowledge of the system, to isolate the problem and solution, itself can fit into either Level 3, as described in the Notes to Raters, or into the description at level 4 “established techniques”, as a recognized method to accomplish the desired outcome of identifying both the problem and the solution. The third example, where a user is unable to connect to the network appears well captured at Level 3.

The example of an occasional function is the shutdown of all college servers, which is identified based on a power failure, emergency event, instructions from supervision, or a scheduled maintenance window. All of these appear to be readily identifiable, and thus adequately captured at Level 3.

The problems about which the grievor gave evidence, which were resolved as part of a team process, involved problems which did not appear readily identifiable since they took a protracted period of time, and several expert people to identify them. Further, their solution required the analysis of a range of information, covering the expertise of all the members of the team. Although the PDF did not include these particular examples, there was no suggestion that they were not assigned functions of the position. Moreover, they are captured in the duties and responsibilities portion of the PDF, under the heading “Provides technical support by... serving as a resource for other technical staff, often for difficult to diagnose or intricate hardware problems.” These functions are a better fit at Level 4, even if the grievor was not acting alone in the team examples. The terms “investigate” and “research”, which appear in Level 4 rather than Level 3, also appear in the third section of the Duties and Responsibilities portion of the PDF “investigates, evaluates and recommends new technologies”, by a variety of methods which includes web research.

The above review demonstrates that the grievor’s job contains elements of both Levels 3 and 4. In these circumstances, one has to decide on the “best fit” in light of the fact that what this factor is measuring is the level of complexity in identifying and solving problems, and considering the elements in the Notes to Raters as a whole.

Employer counsel argued that a review of the percentages in the duties and responsibilities portion of the PDF discloses that 80% of the job is troubleshooting of the variety that is well captured by Level 3, keeping in mind that level 3 is not restricted to problems that are precisely defined. Although this may be the case, it is not really possible to glean from the duties and responsibilities section, from which this percentage is drawn, how complex the problems are in such general duties as “diagnosing problems with computer equipment”. Moreover, it is a fair inference from all the evidence that it is quite unpredictable how much of any given year will be spent on the problems that are difficult to identify and resolve. In the examples described in the oral evidence the amount of time involved was not short, in the sense of time elapsed from when the problem arose to its solution. The evidence did not disclose what percentage of time these duties took up, given all the other duties of the position. In the panel’s estimation, the assignment in the PDF of the incumbent’s role as a resource to other technical staff for difficult problems, and the undisputed evidence of participating as an expert in the teams which tackled very difficult intermittent and random problems, merit recognition at Level 4. Whether or not the grievor is confronted by the type of problems which need a team and lengthy periods of time to solve on a frequent basis, it is clear that the incumbent is consistently required to have the capacity to solve what the PDF calls “difficult to diagnose or intricate hardware problems”, which does not appear to be adequately captured at Level 3. On the evidence, solving the higher end problems involves a considerable amount of interpretation of information and judgment as to how to diagnose and solve problems with many variables each of which may require investigation. These include the overlapping effects of actions of users of various levels of expertise with possibly conflicting software and hardware issues. This consistent reliance on a function that is a better fit with Level 4 falls into the Manual’s directive that “Any task or responsibility that is an integral part of the position’s work and is expected or consistently relied on should be considered “regular & recurring”. By contrast, the term “occasional”, associated with significant activities that occur for only a short period of time, on a few occasions or sporadically throughout the year does not appear to be as good a fit. This is because the potential for having to solve complex problems is ever-present, and the examples of the more complex type of problem in evidence were not resolved in a short period of time. Most importantly, the ability to distinguish and solve the whole range of hardware problems is relied on continually. As a result, and given that this integral part of the job is not captured at Level 3, we find the best fit to be at Level 4. Therefore, the rating for this factor should be raised to Level 4.

ii. Service Delivery

The College has rated this factor at Level 2, regular and recurring, with the addition of recognition that the incumbent works occasionally at Level 3, while the union seeks a rating at Level 3 regular and recurring. The two levels of the factor definition read as follows:

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" from Level 3 is defined as follows:

Tailor – to modify or adapt with special attention in order to customize it to a specific requirement.

The commentary and Notes to Raters provide as follows:

This factor looks at the service relationship that is an assigned requirement of the position. It considers the required manner in which the position delivers service to customers and not the incumbent's interpersonal relationship with those customers.

All positions have a number of customers, who may be primarily internal or external. The level of service looks at more than the normal anticipation of what customers want and supplying it efficiently. It considers how the request for service is received, for example directly from the customer; through the Supervisor or workgroup or project leader; or by applying guidelines and processes. It then looks at the degree to which the position is required to design and fulfill the service requirement.

Notes to Raters:

1. "Customers" refers to the people or groups of people who receive the services delivered by the position. They can be internal, students or external to the College.

2. Consider the position's overall or primary focus of service. For example, the primary focus may be to deliver or provide information.

3. To clarify the differences between the levels:

...

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 grievor's evidence was that he has to tailor solutions to the needs of the individual users or the College as a whole, and that this is regular and recurring. By tailoring, he meant not just giving an "off the shelf" solution. He gave the example of project work he has been assigned, such as developing a hard disk protection system, or a battery replacement strategy and a college-wide faxing system. Mr. Davino testified that his solutions impact many people, and that for each one he has to go and talk to the user, usually staff, but sometimes students, understand what they want and are trying to do, and come up with an appropriate solution that meets their needs and the college's standards, or to let them know that what they want is not possible within the college's standards. He indicated that there are no two problems the same, and that there is a wide variety of time involved from minutes to weeks, depending on what it is.

As to the ever evolving standards for hardware, Mr. Davino said he usually finds the current industry standard and makes a recommendation to Mr. Weeks or Ms. Storey-Inkster, who have the final say. The grievor gave the example of over a hundred computers which had recently been purchased on his recommendation, which are the college standard, until he reviews the matter again in about six months. In a similar effort for printers, he holds focus groups to find out the user needs. He said he deviates from standards to meet user's needs about once a month, but that if one combines the ongoing determination of College standards and off-the-cuff requests, it would be at least weekly. His job is to remain updated, and find out what users need, what is available in the industry, and stay within corporate direction and budget. In finding out what users need, he asks them questions concerning their use of elements such as hard drive and storage space, or what printing functions they need. He defines the need and then provides them with a product that meets that need. If the customer wants something off standard, he researches on line, calls vendors or manufacturers to get opinions, specifications or to find out what they are offering at what price. There is a vendor of choice for computers, and for other hardware items, there is a finite pool of vendors.

His supervisor did not contradict the incumbent's evidence about service delivery, agreeing that Mr. Davino meets with college staff, and determines what they need, collaboratively or afterwards

on his own. Mr. Weeks included printers for graphic design in the category of specialty equipment.

The union's position is that what is required to meet the needs of the incumbent's clients is far more complex than the employer appreciates in rating this as Level 2 with only occasional Level 3. Union counsel submitted that Mr. Davino's evidence which showed that the problems were wide ranging and varied in time, was supported by the employer's evidence, and the fact that he has to go meet with the clients to consult them about their needs, shows that he is not just providing quick "off-the-shelf" fixes. By contrast, employer counsel argued that the grievor's consultative function is sufficiently recognized by the occasional rating at Level 3, given for the example on page 20 of the PDF which relates to a service upgrade or implementation of a new service based on an analysis of customer needs or behaviour. For the bulk of the services, the employer asserts that the available selection options are fairly limited, which is accurately rated at Level 2, as explained by the Notes to Raters.

Counsel for the employer referred to the decision in OPSEU and Lambton College (Learning Specialists) (Springate, 10 October 2008) as an example of more open-ended options for service which was granted a Level 3 rating. That was a case in which the College had rated the job at Level 3, and the union was claiming level 4, so that Level 2 is not explored in the decision. However, facts in that decision which supported the Level 3 rating were that the Learning Specialists, who assist and tutor students with learning challenges, would review input from other staff and external counselors and meet with and observe the clients and then come up with strategies to match course content with a student's abilities and style. Also they helped students with course selections. Although Mr. Davino's job is substantially different from that of the Learning Specialists, there are significant parallels. For example, a significant amount of the content they are dealing with in order to provide service is defined externally to their positions, academic content and available courses for the learning specialist, and available technology and budgets in the case of Mr. Davino. The task of each is to identify the available resources, match them to the need of the client, and modify them as necessary. The decision that Level 3 was appropriate for the Learning Specialists turned on the need to customize the way service was delivered to the students, as they had individual challenges and histories.

The section of the PDF regarding service delivery is very clear on how the requests for service are received, and that the grievor is required to develop an understanding of the client's requirements, mostly from them directly. It is not as precise on how the solutions are determined, which is key to the difference between Levels 2 and 3. It indicates that the incumbent "responds appropriately", "follows up", "reports" or "provides the service". From the open ended nature of

the wording, any of the solutions could involve tailoring, not just the final example of service upgrades or implementation of new services. Portions of the Duties and Responsibilities section of the PDF provide somewhat more relevant detail, a number of which appear to involve tailoring, such as adjusting hardware configurations as required to support changing organizational requirements, configuring operating systems, implementing and evaluating pilot implementations of new hardware, serving as a resource for other technical staff, often for difficult to diagnose or intricate hardware problems, creating technical documentation, developing and designing information technology systems and services. Although there are percentages attached to the global functions, there is little assistance to be gained as to frequency of the need for tailoring from this section of the PDF.

The examples discussed under the area of Analysis and Problem solving are relevant to this factor as well. The example of the problems with the projectors and the e-mail servers clearly showed that the solutions in which Mr. Davino participated had to be tailored, in the sense of adapting the software configuration and cabling to the requirements of the situation, including specialty requirements. This is evidence that does not support the College's assertion that the tailoring function was mostly limited to the consultations necessary to the last example in the PDF for this factor, relating to service upgrades.

Employer counsel also referred to OPSEU and George Brown College (Systems Analyst) (Cummings, 11 January 2009) and its description of what is involved in a Level 3 service function in an IT job. Although the systems analyst involved in that decision may tailor service more regularly than the incumbent does as the creation of technical design documents appeared to be the defining role of that job, we nonetheless find the description at paragraph 27 of that award of the Level 3 function to be applicable to the incumbent's job as well. It discusses how, in meeting users' requests for change or new functionality, the incumbent must ensure that he fully understands the user's needs, and how meeting those needs affects the function of the overall system. As Arbitrator Cummings found, Level 3 includes the step of thinking about the user's request and applying expertise to see if there is a better way to accomplish the task, which is part of "tailoring service", particularly where there is a need to consider the impact of change on the functionality of the whole College system.

The College's disagreement with Level 3 is essentially that the grievor is not customizing or tailoring the service often enough for it to drive the overall rating. The question to be answered then becomes whether the tailoring function deserves a regular and recurring rating, or whether the "occasional" rating is sufficient. This involves very similar considerations as to the analysis and problem solving issue, in that the Manual directs that the distinction between occasional and regular and recurring may not be readily identified as a quantitative amount of time. This is a bit

of a conundrum in that the terms which one must apply, “occasional” and “regular and recurring” have a time based quantitative aspect to them, as explained by the Manual at some length. Nonetheless, it is an indication that the Manual is directing attention to the qualitative importance of the function and whether it is integral or severable from the rest of the job. Overall, we are persuaded that the responsibility to tailor solutions where appropriate is “an integral part of the position’s work and is expected or consistently relied on”, and thus should be considered “regular and recurring”.

Moreover, we are not persuaded that Level 2, in which the notes to raters says there is “no, or limited, ability for the incumbent to change the options” is an adequate description of the grievor’s role in regularly adjusting hardware configurations and recommending changing hardware options. Level 2 is a sufficient description of the function of ordering replacement parts for a malfunctioning printer or sourcing a piece of equipment for a discrete request, as those functions are mainly selecting the best among limited options to meet the customer’s need. Obviously, in a finite world, options are never unlimited, but Level 2 describes a situation much closer to the zero end of the spectrum than the PDF and oral evidence describe. Someone who actually manipulates the configurations has a significantly larger ability to change options than the example in the Notes to Raters for Level 2 of recommending one of externally defined student loan programs, which there is no power to change. As well, the grievor’s uncontradicted evidence is persuasive that the incumbent must ask questions to develop an understanding of the customer’s situation on a regular basis, which corresponds to the elaboration of Level 3 in the Notes to Raters. In these circumstances, Level 3 is a better fit for this factor, and the rating should be raised.

iii. Communication

This factor measures the communication skills required by the position, both verbal and written and includes:

- communication to provide advice, guidance, information or training
- interaction to manage necessary transactions
- interpersonal skills to obtain and maintain commitment and influence the actions of others

The College has rated the Communication factor at Level 3, with occasional functions at Level 4, while the union seeks Level 4. The two factor definitions are 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.

The first dispute for this factor concerns the area of the PDF under the headings “instructing and training”. The College acknowledges that some of the grievor’s assigned duties qualify as “instructing and training” within the definition of those terms in the Manual. “Instruct” and “Train”, the root verbs in “instructing” and “training”, are defined as follows:

Instruct – to give knowledge to or provide authoritative information within a formal setting such as a workshop or lab environment.

Train - Impart knowledge and/or demonstrate skills within a formal instructional setting.

The first and second PDF’s indicated that the instruction and training function was done on a daily basis. The disputed revisions list it as monthly and it has been treated as “occasional” for rating purposes. The parties agree that sessions in which the incumbent demonstrates new hardware to groups of staff, either on his own or with vendor representatives, fall into in this category, and the College has assigned points for that as “occasional”. The grievor testified about other formal sessions he has done for students, at the request of faculty, or at the beginning of term, to familiarize students with the information technology system.

There is no real dispute that the grievor has done presentations for students in the past. However, the evidence made it clear that the employer does not consider it an assigned function any longer. In this respect, the College issued two written clarifications of its expectations after the grievance was filed. The first of these was dated October 2, 2007, in the College’s response after the step two meeting, in which it was stated that presentations in both Computer Studies and Intro to Lab classes were not assigned to Mr. Davino, and he was not expected to perform those duties. The second was a letter to the grievor dated June 4, 2008, to be placed in his personnel file, which stated that although he may have performed student lab orientation sessions in the past, that this was not a responsibility assigned to the Hardware & Network Technologist position. Nonetheless, with the consent of his supervisor, the grievor subsequently responded to a faculty request to address students. It is unnecessary to deal with the evidence concerning the different views of the basis on which Mr. Davino did this most recent session. That is because the grievor himself indicated that the presentations to students were performed on an occasional basis, so nothing turns on any remaining debate for the wording of the PDF, since the instructing and training function has already been acknowledged at the occasional level.

The more significant continuing debate is over the fact that the union and the grievor assert that the less formal demonstrating that the grievor does should also properly be considered in the category of instructing and training, which would justify the restoration of the “daily” wording to the PDF. The College maintains that the more frequent “how-to” sessions that

the grievor does, for example in troubleshooting situations, do not fall within the definitions of “instruct” and “train”, because they are not in a formal setting.

The grievor’s evidence that he regularly visits departments to show people in groups of two to twenty how to use a new piece of equipment was not disputed. He estimated that he visited the departments 15 to 20 times a year for a couple of hours at a time, varying according to the size of the group and the number of questions. The grievor stressed that the definition of instruct uses the words “such as” to describe workshop or lab environments, indicating that they are examples of formal settings, rather than the only place that instructing or training can take place, or an exhaustive definition. By contrast, the College maintains that what he is doing in these sessions, for instance, when installing a new keyboard, is communicating technical information, rather than doing instructing or training. Counsel for the employer proposed a number of factors that might be indicative of the formal setting mentioned in the definition of “instruction or training”, such as where a session is scheduled, mandatory, conducted according to learning objectives, involving evaluation and a lesson plan, and in a classroom setting with teaching aids or materials. Cautioning against a narrow interpretation of the concepts of training and instruction, union counsel emphasized that instruction can occur formally or informally, and can occur anywhere on campus, not just in a workshop or lab environment.

On the evidence, there is no doubt that the incumbent is conveying authoritative information whenever he is showing others how hardware works, thus satisfying one of the elements of the Manual’s definition of instructing. But that is not where the dispute lies. As noted, the dispute flows from the references in the definitions of “instruct” and “train” to a formal setting. And although it is true that the wording “such as” in the definition of “train” preceding the words “workshop or lab environment” indicates those are only examples, that cannot determine the issue. The drafters of the Manual clearly meant there to be some difference between the terms used at level 3 - “explaining and/or interpreting information to secure understanding” and “communicating technical information and advice” and the wording at Level 4 – “explaining and/or interpreting information to instruct, train and/or gain the cooperation of others”. And meaning must be given to the distinction despite the fact that the terms used in the two factor definitions are certainly not mutually exclusive. For example, it is clear that any effective instructing and training (Level 4) includes “explaining and/or interpreting information to secure understanding” (Level 3). In cases of such overlap, resort must be had to the overall scheme and the thrust of the differences in the context of all the information provided in the Manual pertaining to this factor. This includes the Notes to Raters which provide the following elaboration of Level 3 communication:

"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.

This is an accurate description of what the PDF provides in the duties and responsibilities section, and what the evidence indicated the grievor does when he regularly visits departments to explain how new hardware works and should be used. And although this Note does not deal with setting, it does further support the idea that what the incumbent does at the worksite, accurately described as presenting material using words or examples conducive to gaining understanding from non-experts, is a good fit at level 3 for rating purposes. The question is whether the regular visits to other staff can be said to be in a formal instructional setting, which would make it a better fit at Level 4.

The word formal is not defined in the manual other than by the examples of a workshop or laboratory setting. As those two examples can contain a range of formality in themselves, settings may be more or less formal without straying from the drafters' meaning of the word. It is a fundamental feature of all attempts to classify job functions that they occur on a continuous spectrum, often making it difficult to determine when a function is better described at one level than another. It involves a classic "line drawing" exercise, deciding which level the function is more like, guided by the Manual's "best fit" concept. The more structure or pre-determined form there is to the context in which the information is transmitted, the more likely the setting (defined by Merriam Webster Online dictionary as "the time, place, and circumstances in which something occurs") is to be considered formal.

It is clear that the grievor's functions in regards to communication span the whole spectrum of Levels 3 and 4, since, as noted, it is agreed that at least occasionally he instructs and trains in a formal setting. This is true, even though the most formal presentations done by the grievor, such as executive training in the boardroom as part of professional development for senior staff, do not involve all the attributes proposed by employer counsel for a formal instructional setting, such as mandatory attendance or evaluation of learning outcomes. When Mr. Davino shows an individual during a troubleshooting session how to avoid a problem specific to that individual in the future, that appears to be best captured at Level 3 as explaining to secure understanding, since there is no particular formality to the situation other than that they are at work rather than engaging in a social interaction. When he gives

a scheduled presentation to a group to introduce a new printer, it is agreed he is training, better captured at Level 4. Mr. Weeks' evidence was that new printers would not be bought more than ten or fifteen times a year at most and that this was probably a generous estimate, a frequency for a severable function that corresponds with occasional. When the grievor gives a session with 20 people held at the work site, rather than in a separate lab or workshop location, the event could qualify equally at either level. It is not possible on the evidence to be precise about exactly how often the line is crossed into a formal setting. It suffices for this dispute to observe that the evidence did not establish that it was the norm, in the sense of done on a regular and recurring basis, that the sessions of the more formal variety were done more often than monthly, which is how the PDF favored by the College reads. Thus, we do not find the reference in the revised PDF as instruction and training as monthly to be an inaccurate description of the grievor's assigned job duties. And ultimately, the College is able to revise the duties and the PDF, as long as it accurately reflects the duties assigned to the position. Nor did the evidence establish that the more formal type sessions were done on a daily basis during the period between June 12, 2006 when the grievor and his supervisor signed the first PDF and July 5, 2007 when the revision removing the daily designation for instructing and training was presented to the grievor.

The second area of dispute relates to the heading "cooperation and consent". The College's evidence that the PDF was originally filled out under the misunderstanding that every box had to be filled out, which included putting the wording "attaining best price and delivery times for orders" in the box labelled "negotiating" was not disputed. In the most recent version of the PDF, that wording has been moved to the box labelled "Obtaining cooperation or consent". Employer counsel did not ask for this latter wording to be amended, but asked that it be understood in the context of the evidence of the misunderstanding about how to write the PDF, and to put it in the context of the duties and responsibilities section of the PDF and the evidence about the functions the grievor performs.

The primary element of the Duties and Responsibilities section of the PDF relevant to the issue of gaining cooperation and consent is under the heading "Implements new or upgraded Information Technology services", and provides, "Sourcing and ordering computer hardware." Somewhat related is the function of "liaising with external computer hardware vendors and service providers" under the rubric "Investigates, evaluates and recommends new technologies". The oral evidence established that before recommending hardware options, the grievor will collect price quotes. There is a vendor of choice for computers, and for other hardware items, there is a finite pool of vendors. Mr. Weeks said when he drafted the PDF wording, he was referring to getting quotes and choosing the best price. For vendors of record, it would just be getting the price. As for dealing with physical plant staff, he gave the example that Mr. Davino would work with them if

furniture needed to be moved before equipment for new staff was installed. He also agreed on cross-examination that the grievor might have to deal with a large variety of staff, advising them, and gaining their cooperation as to the dangers of using computer components from home on the College system. Further, he agreed that students could be part of the audience for the incumbent's communication duties, but specified that staff represents the vast majority. He also agreed cooperation from the students is needed to make sure they respect the system standards. Moreover, Mr. Weeks testified that if Mr. Davino had difficulties with someone not being able to get something done in time for a new employee for instance, he would not expect Mr. Davino to "push back", it would be escalated to him and he would work with the other managers. He also said management typically sets time lines for delivery, working within the vendor's offering.

The mandatory notes to raters provide the following guidance concerning gaining cooperation and consent:

4. 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 incumbent works within parameters determined by the department or College and usually there is a preferred outcome or goal. The audience may or may not have divergent views.

"Negotiation" refers to having the authority to commit to a solution or compromise. An incumbent who communicates at this level also works within broad parameters and the preferred outcome is also broadly defined. The incumbent needs to have the skills/tools to reach an agreement that is then binding on the College. Normally, the audience will have divergent views or opposing objectives. Some people use the word "negotiation" for making arrangements that are relatively straightforward (e.g. negotiating a meeting date). In those situations, that type of communication would typically be considered an exchange of routine information. The use of the word "negotiation" is therefore quite specific in this factor.

Although the union submitted that the evidence supported a finding that the incumbent had to negotiate from time to time as to price, the rating sought, Level 4, does not feature an assigned duty for negotiation as defined in the Manual, and thus this need not be part of the equation. The dispute is really over whether the grievor's regular assigned duties are accurately described as "gaining cooperation and consent" as defined in the Manual. All in all, the evidence is not persuasive that this is the case. In the price example in the PDF, there is really no requirement to move someone else to the incumbent's point of view. He collects prices and selects the best one for the hardware solution in question. The other PDF example is arranging with physical plant or security to implement services or repair equipment, which does not in itself imply a need to move

anyone to a different point of view. Both appear to be adequately captured in Level 3's notion of explaining to secure understanding, especially in the context that the Level 2 Notes to Raters indicates that it was intended that exchanges of basic technical or administrative information in the normal course of the job, including minor conflicts, would be even a level lower. Further, and although it is acknowledged in the duties and responsibilities section of the PDF that part of the incumbent's provision of technical support involves answering questions of students as well as staff, there is really no specific assigned duty in the PDF in respect to gaining their cooperation, and the evidence is not persuasive that it is other than an incidental aspect of the job.

The College's submission that the way the PDF was filled out did not take full account of the definitions in the Manual is supported by the fact that pricing is mentioned at the basic level in the Communications section of the PDF under "exchanging routine information", something the Manual puts at Level 1, as well as under "obtaining cooperation or consent", which the Manual mentions at Level 4. In this respect, it is problematic for the College to put forward a PDF using terms defined in the Manual, and then to argue that they should not be taken to have meant it that way. And it was not explained why this was not revised when the wording was moved from the box labeled "Negotiating" to the one labeled "Obtaining Cooperation and Consent". Nonetheless, and despite the understandable frustration expressed by the union in their submissions with the several revisions made by the College, and the confusion over the use of the terms in the PDF, the new system involves a learning curve for everyone involved, and emphasizing technicality or form over substance does not serve the long-term interests of either party. Moreover, the collective agreement is clearly focused on the accuracy of the PDF and the evaluation. Further, the Manual cautions against evaluating on the basis of one word or phrase. In the end, the evidence about the grievor's function as to price and dealing with physical plant staff was basically not in dispute. In these circumstances, the placing of the wording "working with physical plant or security to implement a new service or repair existing equipment" and "Attaining best price and delivery times for orders" in the box labeled "obtaining cooperation or consent" does not justify awarding Level 4 for this factor.

In the result, the College's rating of Level 3 for the Communications factor, with recognition of Occasional functions at Level 4, is confirmed.

* * *

To summarize, the College's rating for the factor of Communication is confirmed, while the factors for Analysis and Problem Solving as well as Service Delivery should be raised one Level. This brings the point rating to 629, which remains within Payband I.

In the result, the grievance is allowed to the extent of the revision of the rating of the factors Analysis and Problem Solving and Service Delivery, but the Payband remains at the level to which it was raised on October 2, 2007.

The Arbitration Data sheet is attached.

Dated at Toronto this 12th day of May, 2009.

Original signed by Kathleen G. O'Neil

Kathleen G. O'Neil, Chair

Partial Dissent attached

Sherrill Murray, Union Nominee

Concurs

John Podmore, College Nominee

Partial Dissent of Union Nominee
Grievance of Mr. Davino

The majority confirms the Union position in two factors but errs on “communication”. Without the ability to exchange information between the customer/client and the grievor, translate the needs into an appropriate solution, the likelihood of success is seriously diminished. This is a regular, daily integral part of the grievor’s job and the level ought to reflect this required skill. Therefore, I would have concluded that this factor should have been raised to a level 4 as neither the level 3 nor the additional points for “frequency” accurately reflect the level of communication required daily.

All of which is respectfully submitted, Sherril Murray

