IN THE MATTER OF A

CLASSIFICATION GRIEVANCE

BETWEEN:

OPSEU LOCAL 731

-and-

CONFEDERATION COLLEGE

Regarding the Classification of Web Designer
OPSEU #2007-0731-0004

BEFORE :   Kathleen G. O'Neil, Single Arbitrator

For the Union: Adair Conlon, First Vice President, OPSEU Local 731
                   Richard Belleau, President, OPSEU Local 731
                   Michelle Trush, Grievor

For the College: Jeannine Nagy, Manager, Human Resources
                   Darlene Giba, Human Resources Consultant
                   Laraine Tapak, Director, Learning and Resources,
                      by conference phone

A Hearing was held in Thunder Bay, Ontario on September 26, 2008

A W A R D

This decision deals with the classification grievance dated May 11, 2007 claiming that the position of Web Designer, currently held by Ms. Michelle Trush, is incorrectly classified at Payband F and asking that it be reclassified upward to pay band G. The employer maintains that the job is properly classified.

The new classification system

This grievance is one of the first round of grievances arising under the new classification system, which is the result of a thorough overhaul of the support staff classification plan by the provincial parties. The new CAAT Support Staff Job Evaluation Manual (referred to below simply as "the Manual"), a negotiated document dated March 1, 2007, has many similarities to, but some important differences from, the previous scheme.

The similarities include that each job has a Position Description Form (referred to below as the PDF), which describes the duties to be rated according to the job evaluation system. The system continues to be organized around factors, albeit somewhat different ones than before, aimed at determining the relative worth of positions for compensation purposes. It is still true that it is the position which is being evaluated, not any individual incumbent. Raters are still required to evaluate on the "best fit", rather than on the basis of a single word or phrase within a factor's definition.

Differences include the fact that the scheme no longer includes Job Families, benchmark jobs or atypical positions. Team lead duties integral to a job are now included in PDF's. Further, the new manual includes factor-specific "Notes to Raters" and definitions which must be adhered to as they provide directions for interpreting a factor and its levels.

Overview of the Web Designer Position

The Web Designer position is responsible for providing faculty and support staff training concerning Blackboard, a computer application which allows course materials to be accessible electronically. The person in the position is also responsible for ensuring the functionality of these electronic materials, and for troubleshooting software and hardware problems for faculty and staff. The Web Designer position is part of the Centre for Learning and Teaching, and reports to its Manager.

I. THE PDF

The parties have agreed to the PDF, with the exception of the wording for the following factors:

- Independence of Action
- Communication
- Audio/Visual Effort

As the rating for these factors is also in dispute, the issues concerning the PDF will be discussed below under the heading for the specific factor.

II. FACTORS IN DISPUTE

The four factors still in dispute will be discussed in turn. They are:

i.   Analysis and Problem Solving
ii.   Independence of Action
iii.   Communication
iv.   Audio/Visual Effort

i. Analysis and Problem Solving

The Manual provides the following as to what is being measured by this factor:

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 at Level 2, which reads as follows:

Situations and problems are easily identifiable. Analysis or problem solving is straightforward. Solutions may require modification of existing alternatives or past practices.

The union maintains it should be rated at Level 3, as follows:

> 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 College maintains that its rating is correct in that the problems with which the incumbent deals are easily identifiable and their solutions are straightforward. In particular the College relies on the Manual's definition of "past practice", which reads as follows:

> Past practices - to perform work according to how it has customarily been done in the past or the usual way of doing something. Such practice does not have to be written down, but can arise on the basis of regular, repeated action.

The College argued that this definition covers the problem solving required in the examples in the PDF.   For example, the first of these is where a faculty member is having problems and identifies difficulty with a component or feature of Blackboard. Based on past practice, the incumbent questions the faculty, and determines if it is an access problem, lack of knowledge or system problem. Depending on which it is, there are recognized routes to solve the problem. For access problems, it is referred to the help desk, for lack of knowledge, there is one-on-one training and if it is a system problem, the matter can be referred to the help desk or IT department. To the extent it is a problem with the code underlying the links on the website, the College maintains that it is simply a matter of proofreading the sequence of code to find errors. As to the identification of the problem, it is the College's position that no further inquiry is required to define the problem on a regular basis.

It is the union's position that further inquiry is regularly involved. When a faculty comes in with a problem with Blackboard for instance, tactful inquiry must be made in order to identify learning needs and give the appropriate instruction. When there is a problem with the HTML code, many things can be wrong, with various components, such as links, graphics, or forms. It is necessary to keep looking and trying solutions until the remedy is found, and verifying the functionality of a solution may require repeated returns to the browser to see if the matter is working. Further, the only step-by-step guides available were either written by the incumbent, as in the checklist for course outlines, or not

intended to guide the incumbent, but the people she is training, such as the handout written by the company that supplies Blackboard which the incumbent gives out after training sessions.

There is no doubt that there is a range of complexity in the incumbent's job. Uploading course outlines is likely performed almost entirely by past practice, for instance. Given that the factor definition at Level 2 involves the ability to modify past practice in order to provide a solution, Level 2 must be understood to involve any modifications as well. In this respect Level 2 does describe much of the incumbent's job, including the troubleshooting function to a significant extent, in that the incumbent uses a step-by-step approach developed by past practice to solve the problem. However, this should not be taken to mean that Level 2 is an adequate rating for all functions for which there is a significant degree of past practice involved, as it is would appear that there is some degree of past practice at all levels of this factor. The Notes to Raters are of assistance here, in particular, the following:

> 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.

> 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. For example, if dealing with a question regarding a "hold" on a student record, the incumbent might have to check several screens on the student record system to see if it is a financial hold, or an academic hold, and might even have to contact the academic or finance department for an answer. However, these are procedural steps that should be followed one by one until the problem is identified and solved. 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.

In light of this note, I find Level 3 to be a "better fit" for this position. In some respects the problems encountered by the incumbent are readily identifiable: e.g. when a faculty member says Blackboard is not working, one knows immediately that Blackboard is involved in the person's problem. However "Blackboard is not working" can cover a multiplicity of problems, ranging from the very simple such as a password problem to a system problem which the IT department would have to fix. It is common ground that the incumbent has to make inquiries to pinpoint the problem. This fits very well with the portion of the note above which indicates that at Level 3:

> …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 general, having heard the parties' submissions, I find that the incumbent's duties involve more sophisticated analysis and judgment than the example given above of level 2 inquiries, where an employee might have to inquire of a number of different departments to find out what kind of "hold" has been applied to a student's record, which is basically looking for a discrete piece of information in order to be able to proceed. By contrast, for example, in the troubleshooting process, the incumbent is gathering information at many levels, from the person who has raised the problem, from the appearance of the website, from its underlying code and analyzing the relation of each piece of information to the others to devise a solution, which she must craft from her knowledge of the several computer applications involved. This involves analysis and judgment that goes far beyond asking for information to be able to identify what someone else meant when they entered "hold" into the system. For the one-on-one teaching process, it is necessary for the incumbent to analyze the current level of knowledge of the faculty member, and use judgment to devise and tailor a teaching approach which meets the level demonstrated.

In the result, the rating for the factor Analysis and Problem Solving should be raised to Level 3.

ii. Independence of Action

This factor measures the level of independence or autonomy in the position. The Manual provides that the following elements should be considered:

- the types of decisions that the position makes

- what aspects of the tasks are decided by the position on its own or what is decided by, or in consultation with, someone else, such as the supervisor

- the rules, procedures, past practice and guidelines that are available to provide guidance and direction

The dispute between the parties is firstly about the wording of the PDF. The union seeks the replacement of the wording "established departmental procedures" with "general guidelines" on pg. 13 of the PDF from the following portions of the PDF:

What are the instructions that are typically required or provided at the beginning of a work assignment?

Regular and Recurring

Day to day activities are performed independently following past practices and established department procedures.
…
What rules, procedures, past practices or guidelines are available to guide the incumbent?

Regular and Recurring

Past practices and experience

Established department procedures

The following definitions are pertinent to this portion of the dispute:

Procedure - a sequence of steps to perform a task or activity

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

It is the union's position that there are no policies and procedures that directly relate to the Web Designer position. The only procedures currently in use are ones designed by the incumbent, such as a checklist for the schools within the College to use when revising course outlines.

The College also referred to the definition of "past practice" set out above under the factor "Analysis and Problem solving". The Manual cautions against using definitions from one factor when dealing with another, and there is no definition of past practice from the Manual in the section dealing with Autonomy. However, the above definition does not appear to be so specific to the earlier factor, or any different from the ordinary meaning of the words. In the result, to the extent that a definition is needed for the term for the purposes of discussion for the factor of "Autonomy", I do not find it an inappropriate definition.

A basic problem in dealing with the dispute over the wording of the PDF is that there were no established departmental procedures for the job when Ms. Trush started, as she is the first incumbent in the job. She developed one of the two currently available written procedures in evidence, entitled "Course Outline Checklist". As noted above, the other written procedure document is a purchased document used as a hand-out for the faculty and staff the incumbent trains in the use of the Blackboard computer application. Subsequent incumbents may use the checklist developed by the incumbent, or may develop others themselves as procedures change. It is my view that it is not inappropriate to leave the wording in the PDF, as there is at least one departmental procedure, albeit developed by the incumbent. The PDF is supposed to describe the job, regardless of the incumbent in it at any particular time. However, the fact that there is now at least one department procedure in place does not determine the level of autonomy, particularly for the many areas of the job for which there is no elaborated departmental procedure, beyond those which would in included in the existing wording "past practice and experience".

The College underlined that instructions were given by the Academic Coordinator or her manager, and that there were "how-to" guides on the website concerning Blackboard, as well as that the course outline work is reviewed by faculty and deans of the various schools. Further, in regards to some of the decisions listed in the PDF as being made by the incumbent, such as "alternate delivery course layout and template" the College submits that since they are not produced by her, they should be considered as telling her step-by-step what to do. By contrast, the grievor stated that she is never provided with step-by-step instruction or guidelines or procedures for work in this or other areas.

Rather, often the faculty just send her the text and ask her to do the design work before it is uploaded to Blackboard.   As to the checklists she has developed, she has to keep them up to date, as things are constantly changing.   Further, she notes that no one told her to make the checklists; she did it to keep her work consistent.

One of the examples of decisions made by the incumbent listed on the PDF is "finding creative solutions when researching and responding to faculty requests and problems with hardware/software". The incumbent emphasizes there is no step-by-step process for this function. For its part, the employer says that the steps involved in this troubleshooting function are fairly standard, retracing steps until the problem is identified.

As to the union's preferred wording of "general guidelines", the word "guidelines" is a defined term, as set out above, which involves statements of policy or principle to determine a course of action. There are no written statements of policy or principle in evidence regarding the conduct of the grievor's job. The evidence was uncontested that for the trouble shooting portion of the job, the grievor relies on her training and familiarity with the technology involved. I infer from this that there are principles or approaches derived from that training which are a regular feature of what guides her. However, there was no evidence of these being converted into a statement of principle at the College, such that it would accord with the defined term "guidelines". Thus I am not persuaded that it is appropriate to add the wording preferred by the union. It appears to me that what guides the incumbent is mostly past practice and experience, wording which is already in the PDF.

Secondly, in regards to the PDF the parties are now in agreement that the phrase "Plans for Professional Development activities are discussed with Manager" should be moved from the box marked "Regular and Recurring" to the box marked "Occasional".

The parties are also in dispute about the rating of this factor, the College having attributed Level 2, while the union seeks Level 3. The competing levels are described as follows in the Manual:

2. Position duties are completed according to established procedures. Decisions are made following specific guidelines. Changes may be made to work routine(s).

3. Position duties are completed according to general processes. Decisions are made following general guidelines to determine how tasks should be completed.

The College refers to the following excerpt from the Notes to Raters"

To clarify the differences between levels 2 and 3:

Level 2 - duties are completed based upon pre-determined steps. Guidelines are available to assist, when needed. The position only has the autonomy to decide the order or sequence that tasks or duties should be performed.

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.

In deciding the "best fit" rating for this factor, it is important to focus on the fact that the factor is measuring autonomy, and the level of independence in the job. The relevance of the discussion of what step-by-step procedures or guidelines are available is only to the extent that it sheds light on that issue. The problem presented by the facts in this area relates to the fact that everything which happens dealing with technology has an underlying step-by-step aspect to it. Computers do not respond to anything but step-by-step input, and solving problems related to their use inevitably is driven to a large extent by the steps predetermined by the specific technology, hardware or software involved. Formatting and other technical tasks have to be performed according to the standards demanded by the technology. However, in my view, this underlying reality of dealing with technology should not be overly determinative in considering the appropriate measurement of autonomy.

Reading the job as a whole, it can be seen that the job is a mix of functions that are somewhat mechanical, and which do not involve much decision making, such as converting material to PDF format, or uploading materials, while major duties such as training and troubleshooting require considerable autonomy. If all the incumbent were required to do was to follow the checklist for course outlines, for example, (leaving aside for the moment the fact that she created the checklist without direction to do so) one

could easily agree that Level 2 was an adequate rating. However, the overall thrust of the job shows a position in which the incumbent is left to work on her own, to deal directly with academic and IT staff, responsible to get certain work done, but receiving little direction about how to do it. I am persuaded that Level 2 does not adequately describe a job in which the first remark in the PDF under this factor is "Day to day activities are performed independently". Although the wording "following past practices and established department procedures" appears immediately afterwards, there are few established procedures, and none in evidence which circumscribe the grievors autonomy. In this regard, I agree with the union's submissions that the "how-to" guides aimed at non-expert users available on the web are not properly considered established procedures relevant to the autonomy of this position. Moreover, the theme of independence is sounded again, and most tellingly, in the section on what decisions would be decided in consultation with the supervisor. This is a very short list, mostly related to what work the incumbent is being assigned, rather than how to accomplish it. It includes only conflicts in work priorities, situations not encountered previously and new assignments. As for the section of the PDF concerning review of her work, it is only the quality assurance process which is involved, and occasional feedback from faculty and staff; review by the supervisor or manager does not even appear.   Although, as the College argues, there are a number of checks and balances on the incumbent's work, they are in my estimation the type of checks and balances consistent with a level of autonomy beyond Level 2 where the only autonomy is to decide the sequence of tasks.

There is also a section in the PDF relating to decisions made in consultation with others. The wording in this area indicates that the incumbent discusses issues with the people involved in dealing with the same technology such as IT technicians, or those affected by her work, such as faculty and Admissions and Registration staff. In this regard, the evidence is persuasive that, although others provide the academic content and course materials, it is she who determines how to accomplish her assigned duties relating to their electronic accessibility, not these other employees. The fact that there are certain problems which have to be referred to the IT department or the help desk, does not diminish the fact that the incumbent has to decide on her own which path is appropriate to solve any particular problem. The College argued that it was important to note that the academic requirements for what must be included in a course outline are not

decided by the incumbent. Nor are the educational materials which the faculty require to be uploaded to Blackboard. That is not the area in which she has autonomy, but the fact that materials she works with are determined by others, yet she has the autonomy to determine how to achieve the electronic and training results required, fits well with the factor definition at Level 3.

The training and troubleshooting functions of the job in particular are best described by Level 3, and not captured by the wording of Level 2. The incumbent performs these functions according to the general processes (defined as a series of activities, changes or functions to achieve a result) appropriate to assessing the level of knowledge of an individual, providing the necessary training and ensuring the functionality of the electronic material. The main thing specific about the guidelines in evidence have to do with what makes the computer work, not what makes the incumbent decide how to approach the learning needs of a faculty member or how to investigate what has gone wrong with a computer application. The evidence establishes that the decisions about how to approach training and troubleshooting are based on the incumbent's training and experience, not directions from specific guidelines.   The functions related to checking formats of course outlines and uploading materials are more prescribed by templates and standards, but even with these more mechanical functions, there is an element of autonomy or discretion in design and presentation, as well as deciding when checklists or protocols need to be updated.

The note to raters at Level 3 supports the higher rating as well in that it provides that specific results or objectives that must be accomplished are prescribed by others but the process can be chosen by the incumbent with the assistance of general guidelines. The incumbent's obligations to train the faculty, ensure functionality of systems, and troubleshoot its problems are results or objectives determined by others, but she can choose the processes to do so, guided by her training and experience. I find that this job involves a substantially higher level of autonomy than that described in the Level 2 note to rater to the effect that the position only has the autonomy to decide the order or sequence that tasks or duties should be performed.

In the result, the rating for Independence of Action should be raised to Level 3.

iv. 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

This is one of several factors for which the new scheme provides point ratings which vary according to whether the elements at a certain level are regular and recurring or occasional.

The union seeks a change to the PDF so that Instructing and Training is listed as "regular and recurring" and that the words "Educational technology one-on-one in depth training sessions with faculty" are moved to appear under the heading "Instructing or Training" , rather than the heading "Imparting technical information and advice". Further, it is submitted that "students" should be added to the audience for this task.

The question of where the one-on-one sessions with faculty fit in the job evaluation scheme is at the root of the dispute between the parties concerning both the wording of the PDF and the appropriate rating of this factor. "Train", the root verb in "training", is a defined term in the Manual meaning:

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

And it is a fundamental provision of this job evaluation scheme that the employer structures the job by identifying and defining the tasks to be performed. The employer chose the wording for the job description, in which the words "train" and "training" appear repeatedly. Significantly, they appear in the lead responsibilities in both the position summary and the list of duties and responsibilities. The College accepts that the occasional training done in a larger group in a classroom setting is properly considered training, and there was no request from the employer that the assigned task of individual sessions be reworded to exclude the word training. Further, the evidence in this respect indicated that the material covered, for instance concerning the Blackboard application,

is basically the same, regardless of the location of the training. As well, there was no contradiction of the incumbent's evidence that faculty have provided feedback that they learned more in the one-on-one sessions, a relevant fact if the assigned function is imparting knowledge or demonstrating a skill. Nonetheless, the fact that the incumbent does not evaluate the faculty and is not responsible for the learning of faculty is something which the College argues distinguishes this from the training measured by this factor. The union responds that even if the incumbent does not mark the faculty, it is clear that she has to assess their level of learning in order to know what training to provide.

In any event, given that the term "train" is something the parties agreed had a specific meaning in the agreed manual, it would be difficult indeed to justify a finding that work assigned in the PDF as "training sessions" was not "training". Arbitrators are required to apply the agreed meaning of defined terms further to point 5 in the Manual's section "How to Use the Manual:

> 5. The "Notes to Raters" and "Definitions", which have been provided for each factor, **must** be followed. These provide directions for interpreting the factor and the levels within and clarifying the intent of the factor. They also provide raters with appropriate directions for interpreting the information in the PDF.
>
> [bold type in the original]

For this basic reason, I am persuaded to adopt the union's argument that the assigned duty of "educational technology one-on-one in-depth training sessions with faculty" belongs under the heading "instructing and training" and not under "imparting technical information and advice", and thus the request to make that change to the PDF is accepted. This means that the submissions made at the hearing about why sessions with faculty which take place at the Centre for Learning and Teaching should not be considered to take place in a formal setting such as a lab or workshop cannot ultimately be determinative. These submissions were focused on the wording of the definition of "instruct" in the manual, which reads as follows:

> To give knowledge or provide authoritative information within a formal setting such as a workshop or lab environment.

The employer took the position that the open area where the one-on-one sessions takes place in the Centre for Learning and Teaching, equipped with only two computers, rather

than in a room with more computers which has been designated as a laboratory should not be considered a formal setting. It is my finding that when the job was structured to assign a duty as "training sessions", the debate was effectively over as to how it should be considered for rating purposes, given the directions in the job evaluation manual.

In any event, even if the instructions in the manual concerning defined terms were not as clear as they are, it is my view that when the College assigns the duty to provide "in-depth one-on-one training" which are set up by appointment, and repeated as often as the person being trained needs to feel comfortable with the technology, it is fair to consider this a formal instructional setting. This places the function within the definition of training, even if one chooses not to consider it a lab or workshop, as in the examples given in the definition of verb "instruct". It is certainly a setting in which knowledge is imparted. Aspects of the facts which contribute to finding it to be a formal setting, regardless of how many computers are available or whether it is a totally enclosed area, include the fact that the training, an educational service, is advertised at the College and that time is set aside in an organized fashion to specifically transmit that knowledge in a focused way. The training sessions are distinct from knowledge imparted more casually, or incidentally while the incumbent is performing some other function such as providing a troubleshooting solution. Further, and quite apart from the parties' chosen definition of "train", they are consistent with the ordinary definition of "formal" when related to education, which is "officially given at a school, university, etc." [See The Canadian Oxford Dictionary, 2001 edition]

The College argued that it was important not to focus on the meaning of one word, without assessing the entire factor definition, something the Manual specifically warns against. This is fair comment. Nonetheless, the definition of the single word "training" is crucial in the determination of the placement of the disputed phrase. However, as mentioned above, there are other aspects of the definition, such as the wording related to setting which support the placement under the heading of training as well.

The union asked for the indication of D/W, for daily/weekly. The PDF currently indicates W for weekly. The approximate time percentage attributed to the training function in the PDF is 25%. A half day a week is said to be 10%. A 25% rating therefore works out to

an average of a day and half per week. This would indicate that D/W would be a more accurate indication for the combined training function. As the evidence did not indicate that the training sessions were for a whole day, it would appear they occur more frequently than once a week, on average.

There was also a request to add students to the audience for training mentioned in the PDF. It was common ground that training of students was incidental, and occurred infrequently, such as when new faculty members did not feel comfortable training their own students and requested the incumbent to come to their class to train the students. Given that the Manual indicates on pg. 6 that where a task is not a notable feature of the job, it need not be reflected in the evaluation, including students in the audience is not necessary, and thus the union's request in this regard is declined.

Turning to the rating of this factor, the College rated this factor at Level 3, which reads as follows:

> 3. Communication involves explaining and/or interpreting information to secure understanding. May involve communicating technical information and advice.

The college then added points for Level 4, on an occasional basis, for the times when the incumbent provides training to groups. That element reads as follows:

> 4. Communication involves explaining and/or interpreting information to instruct, train and/or gain the cooperation of others

By contrast, the union seeks Level 4, to be counted as regular and recurring.

The effect of the finding above that what the incumbent is doing in the one-on-one sessions is training, as opposed to communicating technical information and advice, is that both the group training and individual sessions should be considered to be training. For those functions, Level 4 is the appropriate level. It is not disputed that the combined individual and group training should be considered regular and recurring.   However, it was not disputed that Level 3 would be appropriate for other duties performed by the incumbent, such as troubleshooting. The question then becomes how the system intends a factor to be rated where there are two types of regular, recurring duties which would, in isolation, attract different rating levels. The Manual does not address this situation directly, other than to read all levels to find the one that captures the elements

in the PDF, and then to choose the best fit. Specifically, the system does not provide for an averaging of points, or distributing the points from the different levels proportionally to the time allocation in the PDF.

For this factor, Level 3 does not capture all of the functions of the position, particularly the training functions. In this respect, I find Level 4 to be the better fit, as it captures the training functions when Level 3 does not. The training functions are a major component of the job. It is my view that without recognition for them in a factor which specifically provides for recognition of communication for training, the rating would not be appropriate.

In the result, it is my finding that the appropriate rating for the Communications factor is Level 4, regular and recurring.

iv. Audio/Visual Effort

This factor looks at the environment in which work is performed and the extent to which there are undesirable or hazardous elements, one of which is interruptions.

The union requests that the PDF be changed so that the answer to the question "can focus be maintained" is recorded as "no", rather than "usually", as it currently reads. This request is consistent with the union's dispute of the College's rating. The parties are agreed that "unless interruptions occur" should be removed from the PDF in this area as the template PDF does not contain these words.

The College rated this factor at Level 2, Focus Maintained which reads as follows:

> Regular & recurring long periods of concentration; or occasional extended periods of concentration.

The union is looking for the same Level 2, but with the designation "Focus interrupted", which would result in a higher point rating.

The resolution of this dispute depends on which level of focus is the best fit. The competing terms are defined as follows in the Manual:

Focus Maintained - concentration can be maintained for most of the time.

Focus Interrupted - the task must be achieved in smaller units. There is a need to refocus on the task at hand or switch thought processes.

As can be gleaned from the discussion concerning the factors previously discussed, the incumbent performs a variety of functions. The evidence is clear that during the group training sessions, and the troubleshooting functions performed out of the Centre for Learning and teaching, concentration can be maintained for most of the time. It is difficult to be precise about the breakdown of time which should be attributed to the group training sessions and video conferencing training. The incumbent's experience has been that they are provided a few times a semester, while her replacement while she is currently on leave has done four in one month. The College indicated that the latter was on a trial basis, and how often they would be done on a regular basis in the future remained to be seen. Given the thrust of the Manual to rate a job as it is, rather than as it may become, it is appropriate to focus on the attribution of time as monthly in the PDF, which seems sufficiently consistent with the incumbent's experience. The figure 25% was attributed overall to training, which includes both the group and individual sessions. The applicant estimated that group instruction would take up about 10% of her time. The percentage attributed to the troubleshooting functions in the PDF is 20%. The applicant estimated that for 5% of her time she would be troubleshooting in faculty offices where focus can be maintained. So, on the incumbent's estimate, 15% of her time is not subject to interruption, leaving 85% subject to interruptions, being the time spent in the Centre doing the remainder of her functions. She estimated about ten interruptions a day. The question becomes: is that level of interruption sufficient to warrant a finding that the incumbent is not able to maintain focus most of the time?

The evidence at the hearing indicated that the interruptions occur mostly when faculty or staff walk into the office with questions about course outlines or to set up a training appointment. There is a receptionist in the centre, but it was common ground that she was not there to protect the incumbent from interruptions, and that anyone asking for the incumbent would be referred directly to her.

The Manual requires that one consider the impact of the interruptions, as follows:

Assess the number and type of disruptions or interruptions and the impact of these activities on the focus or concentration needed to perform the task. For example, can concentration be maintained or is there a need to refocus or change thought processes in order to complete the task.

And the notes to raters provide further:

4. Few interruptions or disruptions generally means that an appropriate level of concentration can be maintained for the duration of the task being performed. Where there are many disruptions, concentration must be re-established and the task completed in smaller units or steps.

5. In determining what constitutes an interruption or disruption, you must first decide whether the "disruption" (e.g. customer requests) is an integral or primary responsibility of the position (e.g. customer service, registration/counter staff, help desk, information desk). Then consider whether these activities are the primary or secondary aspect of the job. For example, if an individual has no other assigned tasks or duties while tending to customer requests, then those requests can not be seen as disruptions.

6. Consider the impact of the disruption on the work being done. For example, can the incumbent in the position pick up where he/she left off or has the interruption caused a disruption in the thinking process and considerable time is spent backtracking to determine and pick up where he/she left off.

The thrust of these instructions read together with the definition of the term "focus maintained" is that the application of the factor is not meant to be a purely quantitative function. There is an obvious quantitative aspect in the definition, since it says "concentration can be maintained most of the time". This is a direction that if focus can be maintained most of the time, which I read as meaning a majority of the time, then the appropriate rating is "focus maintained". However, this quantitative aspect has to be read with the Notes to raters as well, which include the reference to "an appropriate level of concentration", an indication that the drafters recognized that some tasks need less or different kinds of attention. Further, the impact of the disruption is to be considered, so that if the interruption is not really disruptive, then it is not as weighty in the equation.

There is a difficulty inherent in applying this factor in jobs with mixed functions such as this one, because how disruptive an interruption is depends almost entirely on when the interruptions occur, which is not predictable. In this respect, the College argues that most of the incumbent's work is already divided into small parts, given the step-by-step processes involved in much of her work, such as on course outlines. The incumbent, by contrast, says that even those functions can require sustained concentration, with

several documents open at once, at which point an interruption causes her to have to refocus and figure out where she left off with each of the components.

Generally speaking, the evidence is convincing that there is a range of impact of interruptions. For instance, if the "walk-in" occurs when the grievor is about to switch focus from uploading a course outline to troubleshooting, or when she has just returned from a video conference or teaching session outside the office, it would not properly be considered disruptive for purposes of this factor, as her concentration was interrupted already by the obligation to switch job duties. If it occurred however, during a period of proofreading HTML code, or designing or formatting materials with various components, an interruption would likely cause the kind of disruption the factor is trying to measure, i.e. "a disruption in the thinking process and considerable time is spent backtracking to determine and pick up where he/she left off". An intermediate level of impact would be when the incumbent is working in the open area demonstrating a feature of Blackboard to a faculty member on the computers there. A walk-in requesting an appointment might be momentarily disruptive, while the incumbent dealt with the request or arranged to do so later, but the evidence did not indicate that it would take "considerable time" to pick-up the demonstration again. In such a case, it would be difficult to find that an appropriate level of concentration cannot be maintained most of the time for the duration of the task of demonstrating skills.

There are also interruptions from phone calls which were not quantified. The incumbent said she feels obliged to answer her phone, while the College said she had the right to put the phone on call forward when necessary to maintain concentration. This aspect would benefit from clarification for the incumbent, but given my view of the appropriate result, nothing turns on this difference in approach to phone calls for the purpose of rating this factor.

Given the mixed range of disruption discussed above, one can only attempt to quantify the amount of time during which the appropriate level of concentration can be maintained for most of the time, with the understanding that it is not possible to be precise about unpredictable interruptions. It appears to me that even making the "worst case" assumption that the incumbent was proofreading code all day, during which it

might take a considerable amount of time to recover from an interruption, and no interruptions coincided with natural breaks in attention, the arithmetic of the situation indicates that most of the incumbent's time would be uninterrupted. By this I mean that if one takes 7 working hours as an average, and distributes the estimated 10 interruptions over the 420 minutes of those seven hours, there is an average of one interruption every 42 minutes, or a situation where most of every hour is uninterrupted. If it were an assumption of an 8 hour day, the average uninterrupted period is a few minutes longer. I find that this would mean that the incumbent's focus could be maintained most of the time. I realize that there are also phone calls which can interrupt work, but for the purposes of finding the "best fit" in a decision making process that is based on what is more probable than not, I find that the interruptions from phone calls are probably balanced out by the blocks of time such as troubleshooting out of the office or training when the appropriate level of concentration can be maintained in any event.

In the result, I am not persuaded that the College's rating for the factor of Audio/visual Effort should be disturbed, so that Level 2, focus maintained, is confirmed.

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To summarize, for the reasons set out above, the grievance is allowed in part.

Firstly, in regards to the disputes as to the wording of the PDF, the results are as follows:

a) for the factor Independence of Action, the parties are now in agreement that the phrase "Plans for Professional Development activities are discussed with Manager" should be moved from the box marked "Regular and Recurring" to the box marked "Occasional". The union's other requests for change of wording for this factor are denied.

b) For the factor Communication, the union's request to list Instructing and Training as "regular and recurring" and to move "Educational technology one-on-one in depth training sessions with faculty" to appear under the heading "Instructing or Training" , rather than the heading "Imparting technical information and advice" are granted.

c) For the factor Audio/visual Effort, the union's request to change the answer to the question "can focus be maintained" to "no", rather than "usually" is denied. The parties are agreed to delete the wording "unless interruptions occur" from the section of the PDF relating to Activity #1.

Secondly, in regards to the rating of the disputed factors my findings are:
The rating for the factors Analysis and Problem Solving and Independence of Action should be raised to Level 3 while the rating for the factor Communication should be raised to Level 4. The rating of the factor Audio/visual Effort is confirmed at Level 2, focus maintained.

This brings the point rating from 418 to 505, which is within Pay band G. The arbitration data sheet is attached.

I will remain seized to deal with any problems in implementation of the above decision, including any dispute concerning retroactive pay, which the parties are unable to resolve themselves.

Dated at Toronto this 6th day of October, 2008.

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Kathleen G. O'Neil, Arbitrator