

IN THE MATTER OF A
CLASSIFICATION GRIEVANCE

BETWEEN:

OPSEU LOCAL 109

-and-

FANSHAWE COLLEGE

Regarding the Classification of
Customer Service Representative
Retail Services
OPSEU #2007-0109-0051

BEFORE : Kathleen G. O'Neil, Single Arbitrator

For the Union: Gail Geoghegan, Grievor
Marg Rae, OPSEU Local 109
Ron Kelly, OPSEU Local 109

For the College: Jay Henry, Human Resources Consultant
David Smith, Manager of Retail Services
Sarah Hamulecki, Human Resources Consultant

A Hearing was held in London, Ontario on October 5, 2011

A W A R D

This decision deals with the classification grievance dated March 13, 2007 claiming that the position of Customer Service Representative, currently held by Gail Geoghegan, is incorrectly classified, asking that it be reclassified upward to pay band E, with retroactive pay to March 1, 2007. In particular the grievor is of the view that the Lead Hand duties that she regularly performs on evenings in the bookstore in addition to the regular sales and customer service duties of the job have not been adequately recognized. The employer argues that the job is properly classified, and asks that the grievance be dismissed.

The job was originally classified at level B, and in July 2007 was raised to Level C. Subsequently, all the Customer Service Representatives, including those with no Lead Hand duties, were moved to Level C as a result of an arbitration award dated May 10, 2010, concerning the grievance of Peter White. The union is of the view that the incumbent's PDF and evaluation should have been revisited subsequently to reflect that the job is a lead hand position, which should be recognized at a higher level than the generic customer service duties.

As to the lead hand duties, the employer notes that they are only performed in the evenings for eight months of the year, as the store is not open in the evenings in the summer. Further, the employer maintains that they have already been properly recognized in a number of the factors, such as Guiding and Advising, Independence of Action and Communication, not all of which are in dispute. It is the employer's view that, even if the total does not take the incumbent's job into a different Payband than the other Customer Service Representatives, the job is correctly rated. As to the arbitration award in the White grievance, the employer maintains that this arbitration is about the incumbent's job, and the other award is not the issue.

The above themes in the parties' arguments will be discussed as necessary below.

The classification system

Classification grievances such as this one are decided through the application of the support staff classification plan. Its provisions are set out in the CAAT Support Staff Job Evaluation Manual (referred to below simply as “the Manual”), a negotiated document dated March 1, 2007. Under this system, 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 is organized around factors, aimed at determining the relative worth of positions for compensation purposes. It is basic to the system that it is the position which is being evaluated, not the individual who holds the job. This means that extra points are not given because the incumbent does a very good job; it is the duties and responsibilities of the position that are rated, regardless of the experience or performance of the person in the job. Raters are required to evaluate on the “best fit”, rather than on the basis of a single word or phrase within a factor’s definition. In order to assist with providing consistent ratings throughout the system, the 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. My job as an arbitrator is to consider the arguments of the parties in applying the plan to the factors in dispute, in order to resolve the parties’ dispute over the correct rating.

A. THE PDF

The union argues for the addition of content to the Position Description Form (PDF), to better describe the work done by the incumbent. The college was prepared to agree to some of the additional wording, as discussed below.

Before dealing with the detailed requests, it is appropriate to note that the PDF is meant to be a concise description of the job assigned by the employer, and that generally wording need not be added to the PDF unless there are significant duties missing from the PDF so that it does not accurately describe the job for evaluation purposes. Where it did not appear appropriate to change the wording of the PDF, the suggested additions to the PDF were taken as submissions as to duties of the job that the incumbent wished to highlight.

In the section of the PDF dedicated to duties and responsibilities, the grievor wished to combine the sections related to her lead hand duties with her general customer service duties at night to show that they are performed at the same time. She also wished to add the word "keyholder" to show that she holds the keys to the stores as well as setting the alarm.

In regards to this section of the PDF, the parties were also in dispute as to the percentage of time involved in lead hand duties, but were agreed that, together the lead hand duties and customer service counter duties amount to 35%. Most importantly, there is no dispute that the amount of time reaches the regular and recurring level, which is what matters for rating purposes. Further, the PDF form makes it clear that the percentages are understood to be approximate. As well, it is clear from the discussion at the hearing that the amount of hours spent on lead hand duties changes according to whether it is a peak period, or whether the supervisor is present. In these circumstances, it is not necessary to change the current wording drafted by the employer. It is understood that the lead hand duties are important duties, and that when responsible as lead hand, the grievor also performs counter duties. Further, it is understood that the PDF's wording "closes store at the end of the evening" implies that the incumbent has the key.

The wording related to the specific factors in dispute will be dealt with together with the discussion of the appropriate point rating for each factor below.

B. FACTORS IN DISPUTE

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

- i. Analysis and Problem Solving
- ii. Planning/coordinating
- iii. Guiding/advising others
- iv. Communication
- v. Physical effort
- vi. Audio visual effort
- vii. Working environment

i. Analysis and Problem Solving

This factor measures the level of complexity involved in analyzing situations, information or problems of varying levels of difficulty in developing options, solutions or other actions. The College has rated this at level 2 described as follows in the Manual:

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

The union is asking for the addition of occasional points at Level 3, which 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.

As well, the union wishes to add wording to the PDF relating to the incumbent's lead hand duties, and to acknowledge that when she is lead hand on evenings, there is no one else normally available to go to for assistance in solving problems. The employer notes that the union is seeking to put specific wording in an example about product not scanning properly which would apply to each Customer Service Representative, not just this position which also has Lead Hand duties.

The grievor says that when she is doing the lead hand duties, she is usually the only full-time employee in the bookstore and the only one available at the textbook counter. The union also emphasizes that she supervises students who are not as experienced as other part-time staff.

In discussion, the dispute about the wording in this section was narrowed, so that the employer was comfortable adding the wording "Incumbent has some flexibility" to the wording relating to the example regarding refund policy. Further, the incumbent was content with references to the availability of assistance of the manager, if understood to mean when the manager was there. As well, I note that it is clear from the PDF overall that the incumbent holds the lead hand responsibilities when the store is open in the evenings, so that references to the lead hand refer to the incumbent in that respect.

In light of the above, the PDF will be amended as agreed to note that the incumbent has some flexibility in respect of the refund policy. I find the PDF sufficiently accurate otherwise, given that there is no dispute that is the incumbent who holds the lead hand duties.

Turning to the point rating dispute, the difference in the parties' positions raises the question as to whether there is a requirement to engage in further inquiry to define problems, and to analyze and collect information, sometimes from unusual sources, to solve them. The union gave several examples in its brief and at the hearing of the types of problems that arise during the course of the incumbent's work. In deciding whether they warrant extra points at Level 3 on an occasional basis, I must take guidance from the Notes to Raters, which specifies that consideration can only be given to the extent that judgement is allowed within the parameters and constraints identified in the position duties. As well, the following remarks are provided to assist in distinguishing Level 2 from Level 3:

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.

The examples given in the brief fit quite well with the scenario described as fitting within Level 2 above, where there are several sources of information that may need to be accessed, but the level of analysis involved is quite straightforward. For instance, the union referred to occasions when students bring in broken clickers, which are used in electronically interactive classroom sessions. These are items that are bought in the bookstore, and when a customer comes in with one that is not working, the incumbent

will search a website for a solution, and may have to refer the customer to a buyer for replacement. In all the instances referenced, the route to solve the solution appeared to be well known, and the judgment involved was in deciding the most effective place to start. There were e-mails in the brief showing examples of problems noticed by the incumbent and her initiative in proposing solutions, or referring them on to others, but I do not find that these examples go outside the above-noted instruction from the Notes to Raters as fitting within Level 2, where it is acknowledged that solutions may require modification of existing alternatives or past practices. I am not persuaded that the incumbent is expected to solve problems on her own outside the procedural steps available from past practice, modified as necessary to the situation. For instance, the flexibility as to return policy is exercised within established policy and past practice, which fits well at Level 2. Moreover, the employer made clear that it was not an expectation of the job to provide solutions for technology problems.

It is clear that, even though the incumbent is the most responsible to solve problems on the evening shift, she can and does refer them onto others for attention on the day shift when there is something going beyond regular procedure. An example of this is an e-mail in the union brief concerning a requested refund, which the incumbent denied on the basis of existing policy, but explained to her superiors because of the possibility that the customer would appeal to them for further consideration.

In the above circumstances, I find Level 2, to be a good fit, and I am not satisfied that the kind of analysis described in the notes to raters for level 3 is a better fit as the examples given of problems solved in the course of the job do not demonstrate a need to gather information beyond the procedural steps described for level 2.

In the result, the rating at Level 2 is confirmed for this factor.

ii. Planning/coordinating

The union is looking for level 3 while the college has awarded level 2, the factor descriptions for which read as follows:

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

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

The union requested further language concerning the incumbent's lead hand duties, which the Manual provides are to be included in the PDF. In general, the union did not feel that the incumbent's job description was different enough from the generic job description for a Customer Service Representative who does not have lead hand duties. For instance, the language in several places refers to the lead hand as if it were someone other than the incumbent. There were several instances of willingness to agree to language changes in the PDF to make it more specific to the incumbent, such as the employer's willingness to insert language to the effect that the buyer would direct the incumbent and to take out the wording that the "Buyer/Lead Hand would make major changes that affect the work schedule" in the first example dealing with organizing and coordinating displays. As well, the union was content to leave the wording about guidelines for revision or updating in the point of sale system, one of the occasional examples, rather than some of its proposed wording changes. However, the discussion turned to changes in the duties after the date of the grievance, and in the end, it appeared best to leave the parties to discuss amending the job description to update it as necessary. Most importantly, there was enough agreement on the major duties for the purposes of rating that I did not find it necessary to make rulings on the various proposed wording changes.

As for the rating dispute, the employer focused on the fact that the Notes to Raters at Level 3 require that the position decides the order and selects or adapts methods for many work assignments, which it argues is not applicable to the work in the small area of the bookstore. Further, it was mentioned that the priorities for the incumbent's job are laid out by supervision, and that a function such as setting up for convocation is implementing a plan coming from elsewhere. In general, it is the employer's position that the lead hand work is more coordinating than planning.

The relevant Notes to Raters provide as follows:

1. Ongoing assigned "lead" or coordination duties that are an integral part of the position should be included in the PDF.

2. Planning is proactive while coordinating is reacting and organizing in response to planning.

3. To clarify the differences between levels 2, 3 and 4:

Level 2 - the position plans and prioritizes its own activities. Planning and coordinating are typically focussed on completion of assigned activities within established deadlines or procedures (e.g. scheduling, coordination of data for reports, setting-up of new software in a department to meet specific business needs). The position may coordinate or make arrangements for an event by coordinating the calendars of others.

Level 3 - the position decides the order and selects or adapts methods for many work assignments. Typically, the planning and coordination at this level, which affects the work schedule of others, are requests for materials/information by specific deadlines in order for the position to plan events or activities (e.g. conferences, research projects, upgrading hardware or software).

From the PDF, briefs and the discussion at the hearing, it is clear that, when acting as lead hand, the incumbent is responsible for the guidance and direction of three to twelve part-time staff. This involves making any necessary readjustments in work flow, task assignment, including monitoring breaks and sending staff home if they are not needed. Although she can not independently schedule extra staff, the incumbent can and does ask for extra help when needed. This goes significantly beyond Level 2, which focuses only on the incumbent's own work. The fact that the Notes to Raters refer to lead or coordination duties as associated with this factor supports recognizing them here.

Although the incumbent's lead hand duties are not at the level of organizing conferences or research projects, referenced as typical in the Notes to Raters for Level 3, there is a regular requirement to decide the order in which work is done in the bookstore during the evening shift in order to meet the needs of the customers. Although on any given shift, this might not amount to "many work assignments" as mentioned in the Notes to Raters, cumulatively, especially during peak periods, it likely would, in a short period of time. I am satisfied that Level 3 is a better fit than Level 2 to recognize the lead hand duties regularly performed by the incumbent.

iii. Guiding/advising others

The college has awarded a Level 2. The union is asking for level 3 with recognition of occasional duties at Level 4. The factor descriptions for those three levels are as follows:

2. Guide others so they can complete specific tasks.
3. Advise others to enable them to perform their day-to-day activities.
4. Guide/advise others with ongoing involvement in their progress.

The term “guide” is defined to mean demonstrating correct process/procedures for the purpose of assisting others with skill development and/or task completion. By contrast, “advise” is defined to mean having the authority to recommend, or provide knowledgeable direction regarding a decision or course of action.

The union proposed adding wording to the PDF to note that in the absence of a supervisor, the incumbent is available to assist staff and allocate specific tasks, i.e. special tasks that were not completed by regular day staff. The employer objects to this as inaccurate, in that incumbent does not do the scheduling of staff or assign duties, although she can shift tasks. Further, the employer notes that this wording would suggest a Level 5, the highest level, which is not requested in the union’s rating. The union responded to this by saying it could be placed in the box indicative of Level 4. I am not satisfied that the current wording is inaccurate in describing the lead hand duties in the duties and responsibilities section as overseeing evening operations and providing guidance and direction, which is echoed in the language in the section of the PDF specific to guiding and advising.

The incumbent highlights that she assumes the responsibility for the retail operations when the manager is not there, being responsible for all policies and procedures to be communicated and followed with regards to the evening operations, monitoring customer service delivery, providing direction to the part-time staff, allocating breaks for evening staff and mentoring all regular part-time and full-time staff in the areas of merchandising and display techniques. As well, she is responsible for training of part-time staff especially during semi-annual rush periods.

The union argued that just by being designated as Lead Hand, the incumbent gained the authority to recommend – that she was the knowledgeable point of authority for the evening shift. Although there is an initial appeal to this argument, as the overall responsibility for the bookstore during the evenings suggests additional authority, the

specific duties involved do not correspond closely with the factor description at Level 3. It is not that the incumbent is not knowledgeable, or does not provide direction. It is more that the duties of the job in regards to others are not aimed at giving advice to enable them to make a decision about a course of action related to their day-to-day activities, which is necessary for level 3, because of the definition of the word “advise”. This language implies that there is some decision or course of action on which knowledgeable direction or advice is required, such as with the example in the Notes to Raters of an accountant giving advice, presumably as to what course of action to take in regards to an accounting or financial issue. This is a different type of function than the demonstration of correct procedures which is explicitly referenced in the definition of “guide” from the Level 2 factor description. There were no examples given which seemed to fit better with this sense of a advising someone on whether to take one course of action or another than with the sense expressed in the definition of “guide” for Level 2 of showing people how to complete tasks. The incumbents’ duties towards other staff appeared to be to show them what they were required to do, rather than to advise them as to how to make one decision rather than another.

As for the requested occasional rating at Level 4, the factor description requires ongoing involvement with the progress of others. The prescribed definition of ongoing Involvement indicates it is intended to reflect a requirement to be involved for the duration of the process or skill development, as an active participant. In this respect, the incumbent mentioned ongoing involvement with staff concerning upgrades to policies, such as those related to sponsored students, and the procedure for putting them into the system, and ongoing assistance to staff during the shift because of lack of time before the shift to do so. By contrast, the employer emphasized that the expectation is not that the incumbent be involved in the ongoing skill development of staff; rather the expectation is job shadowing and demonstrating procedures.

It is very clear that the incumbent is responsible to demonstrate correct processes, so that the part-time staff can complete their tasks. The wording of Level 2, where the position is currently rated, is defined to include assisting in skill development and task completion. This is to be contrasted with Level 4’s requirement to be involved in the duration of their skill development. The material before me does not establish that the

incumbent is required to be involved for the duration of the staff's development. Rather, the duties described of showing part-time staff the procedures in the book store fit well at Level 2 as providing guidance to perform specific tasks.

In sum, having carefully considered the material before me, it is my view that Level 2 is the best fit for this factor so that the employer's rating for this factor is confirmed.

iv. Communication

For communication, both parties have rated the regular and recurring aspect of the job as Level 2, and the union is asking for occasional points at level 3. The factor descriptions for these two levels are as follows:

2. Communication involves the exchange of information that requires explanation and/or interpretation.
3. Communication involves explaining and/or interpreting information to secure understanding. May involve communicating technical information and advice.

The Notes to Raters provide the following guidance concerning these two levels:

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

"Explain" and "interpretation" in level 2 refers to the fact that it is information or data which needs to be explained or clarified. The position exchanges basic technical or administrative information as the normal course of the job and may be required to deal with minor conflicts or complaints. This level may also include exchanges that are of a more complex technical nature, where all the parties to the communication are technically competent. That is, for those people the communication is relatively basic as they share a vocabulary and understanding of the concepts.

"Explain" and "interpretation" in level 3 refers to the need to explain matters by interpreting policy or theory in such a way that it is fully understood by others. The position must consider the communication level/skill of the audience and be sensitive to their abilities and/or limitations. At this level, if the exchange is of a technical nature, then usually the audience is not fully conversant or knowledgeable about the subject matter. Unlike communicating with people who share an understanding of the concepts, in this situation the material has to be presented using words or examples that make the information understandable for non-experts or people who are not familiar with the intricacies of the information.

The incumbent speaks of providing information regarding services or products or telephone inquiries, guiding parents and students through the website, explaining store

policies and procedures for refunds, and general inquiries about books, supplies, and events. As well, in the evening she must explain policies and procedures as well as work assignments to part-time staff. She also provides training, especially during September and January intake. There is technical information involved in training other staff in using the system, as well as guiding students and parents on how to order materials on-line.

The employer was content that the wording in the PDF in the section reserved for Communication indicating “at times the incumbent is required to demonstrate policy and procedure – i.e. proper use of point of sale system” be moved to the second box on the form opposite the heading “Explanation and interpretation of information or ideas.” I am not persuaded that adding the wording “Work assignments” opposite the heading “exchanging routine information, extending common courtesy” is necessary, as it is my view that this is covered elsewhere in the PDF, in the sections dealing with Duties And Responsibilities and the factor Guiding and Advising.

The employer takes the position that Level 2 accurately depicts the duties of the position. While acknowledging that the incumbent’s duties include those described above, the employer is of the view that this is covered by the description at Level 2 as information which needs to be explained and clarified. Although I accept that this is true of much of the information exchange, I am not persuaded that Level 2 covers the requirement to communicate to staff how to do various parts of the job, in an on-the-job training mode, where it is important that they understand. Such a training situation is better described by the Note to Raters concerning Level 3 where the audience is not fully conversant with the subject matter. I can readily accept that the information transmitted concerning how to carry out various operations required for bookstore transactions is not at a very complex technical level. Nonetheless, the computerized system is somewhat technical, especially for a new employee who has not been exposed to the processes before, and there appear to be a fair number of processes with several steps to learn. I am satisfied that it is appropriate to recognize the incumbent’s training function during peak periods, which I am persuaded must involve the objective of ensuring new staff understand such processes, as an occasional Level 3

function. The general fact of being in charge during evenings also likely involves some requirement to explain in a way that ensures understanding by staff and customers.

In the result, the requested addition of occasional recognition at Level 3 is granted.

v. Physical effort

The employer has rated this factor at level 1 as light physical effort with recognition of occasional moderate effort at level 2. The Notes to Raters advise that Level 1, light physical effort, includes the physical demand associated with occasionally lifting/carrying paper in order to restock a printer or photocopier as part of normal office routine.

“Moderate” is defined in the Manual as pushing, pulling, or lifting heavier objects 5 to 20 kg or sustained handling of lighter objects less than 5 kg and “heavy” is defined to mean greater than 20 kg or sustained handling of objects less than 20 kg.

The union takes the position that the job should be rated at level 2 as it requires moderate physical effort with occasional heavy physical effort, moving boxes over 20 kg or 44 lbs.

The union also requested changes to the PDF. Firstly, the union is requesting that sitting be listed as weekly, rather than infrequently. It is clear that the incumbent is on her feet most of the time, but can sit as need be. The current wording of the PDF indicates infrequent sitting for less than one hour at a time, with ability to reduce strain. Although one could describe the situation in a number of other ways as well, this does not seem an inaccurate description, so that I do not think the wording of the PDF needs to be changed. Secondly, a change is requested to indicate that bending, standing/walking and lifting are for more than 2 hours at a time. In this regard, I agree with the employer’s view that this would not be accurate, as the incumbent has the opportunity to change position or activities so that she would not be required to maintain any of those positions for more than two hours continuously.

The union also wishes an indication that the incumbent is required to lift items over 20 kg. or 44 pounds, such as cartons of Bainbridge board and notebooks at 45 pounds, which would be within the definition of heavy physical effort. The employer does not

dispute that the incumbent is required to deal with such items, albeit infrequently, but says that the employees are not expected to lift anything in the heavy range themselves, and should ask for help. The union argues that this is not always possible in practice, and that it would be letting the employer “off the hook” to accept this argument. However, it was not suggested that employees had been told that they were to lift heavy items on their own. It may be that further direction needs to be given as to the employer's expectations concerning the process of getting such help, especially in peak periods, but, given that the employees are not expected to lift the heavy items on their own, I do not find it appropriate to rate the work as requiring heavy physical effort.

In general, the incumbent says that there is a great deal of physical effort on a daily basis. As well as the items of the heavy variety dealt with above, she mentions 42 pound rolls of Borco, a material used with drafting tables, which would be at the upper end of the moderate level.

In order to decide whether the incumbent's requirement for moderate physical effort is best described as regular and recurring or occasional, reference is to be had to the Notes to Raters. They provide that one is to attempt to identify the amount of time involved from the PDF, and rate accordingly. Although the PDF indicates that 45% of the incumbent's time is required to deal with Customer Service and supplies, including maintaining merchandise on shelves, it is not clear from the PDF drafted by the employer what weight was intended to be involved in this respect, or for what periods of time. Lifting is indicated as daily, with light and medium weights checked in a separate section. Then there is a section for lifting heavier boxes, which is indicated as Infrequent, but, in the context of the PDF, the term “heavier” is ambiguous as to whether it indicates heavier than the light items, or “heavy” as defined by the Manual. In the manual itself, it is clear that “heavier” refers to items in the moderate range.

The section of the Manual entitled “How to Use the Manual” provides further guidance as to what is to be considered “regular and recurring” as opposed to occasional. It indicates that “regular and recurring” may not be readily identified as a quantitative amount of time, and that any task or responsibility that occurs daily or is an integral part of the position's work and is expected or consistently relied on should be considered “regular

and recurring”. This direction makes it clear to me that moderate physical effort should be considered “regular and recurring” in the incumbent’s job in that the evidence is clear that she is consistently relied upon to lift whatever materials are required to restock, fill orders and service clients, with the proviso that she is to get help for items over 44 pounds or 20 kg. The incumbent’s uncontested evidence was that she lifts a carton over 11 pounds every day, and that during peak periods stock moves very quickly, from which I have inferred it would be more frequent. It was not disputed that cartons of textbooks weigh upwards of 20 pounds, well into the moderate range. Further, although shipping and receiving staff bring cartons of books into the bookstore, the incumbent, with other staff, is clearly required to regularly re-stock shelves, which involves moving cartons and display materials around, as well as other activities such as internal deliveries and shifting shelves as necessary, as an integral part of the job.

I note that there appears to be some inconsistency between the direction in the “How to Use the Manual” direction that any task that occurs daily or weekly is “easily identifiable as regular or recurring” and the portion in the Notes to Raters for physical effort which says that heavy lifting that occurs throughout the day, but for less than a half hour should be considered occasional. And although the introductory directions indicate that the Notes to Raters and definitions which have been provided for each factor must be followed, they do not state that they override the more general instructions in case of inconsistency. Nonetheless, in this case, I am satisfied that on the whole, the combined physical effort of the job goes beyond the bounds of Level 1’s light physical effort. This is because the job regularly includes lifting materials into the moderate range, prolonged standing, regular walking, carrying, bending, pushing, pulling, albeit with ability to reduce strain. The necessary physical effort is clearly well beyond the normal office level of effort, involving occasional lifting of paper to restock printers, used as a reference point for Level 1 in the Notes to Raters.

On balance, then, it is my view that the best fit for the incumbent’s work is Level 2, regular and recurring moderate effort.

vi. Audio/Visual effort

The employer has rated this factor at Level 1, Focus Maintained, while the union is arguing for Level 1, Focus Interrupted which is defined to mean that the task must be achieved in small units, with a need to refocus on the task at hand or switch thought processes. Corresponding changes to the PDF are also requested by the union.

The evidence is convincing that the incumbent's job regularly involves multi-tasking and a variety of interruptions. However, the Notes to Raters direct us to first decide whether an interruption such as a customer request is an integral or primary part of the job. If so, it is not to be considered an interruption for the purpose of the rating. It is very clear from the material before me, that the primary responsibility of the position in customer service, as the title of the incumbent's job, Customer Service Representative, itself indicates. It is also clear from the Manual that interruptions and competing demands are considered part of customer service. The union argued that the job can be broken down into specific tasks, such as stocking shelves, which have a different focus than direct customer service such as doing cash, and that all of them can be interrupted by phone calls or more immediate customer requests. Although this is no doubt true, I am not persuaded that it is sufficient reason not to consider this as properly rated as Focus Maintained, when the main function of the job is customer service.

As well, the term "Focus Maintained" is defined to mean that concentration can be maintained for most of the time. This is an indication that if concentration can be maintained on the task at hand over half of the time, albeit with interruptions for less than half of the time, it is appropriate for the rating to be done on the basis of "Focus Maintained". Although the job clearly has diverse responsibilities, from data entry to merchandising and signage, as well as counter duties, which require attention to detail, one after the other, the evidence is not sufficient to find that, even if it were not primarily a customer service job, concentration cannot be maintained *most* of the time.

For these reasons, the union's requests to amend the PDF and raise the rating for this factor are denied.

vii. Working Environment

The employer has rated this as Level 1, denoting acceptable working conditions with occasional exposure to agitated customers and crowded or dusty conditions. The union is looking for the more difficult conditions to be recognized as regular and recurring at level 2 and to include in the PDF reference to noise in the store and music in the hallway as an infrequent factor, under the heading for smelly, dirty or noisy environments.

The incumbent reports that during the semiannual rush periods, the store is so crowded that security is required to monitor the traffic in the store. Further, during the rest of the year, the bookstore can be quite isolated in the evening particularly at closing time. This can be unnerving especially if she has had to deal with a difficult customer. As the store was identified as a higher risk area, panic buttons have been installed and its employees were sent for violence prevention training.

The employer responds with the submission that, even considering the crowds at the peak periods, the amount of time involved does not warrant the designation of regular and recurring, as the peak periods really only amount to a few weeks of the year. As well, it is busy, but not dangerously busy, as it is controlled by security. Further, the area around the bookstore is not truly isolated as security is close by, and the Tim Horton's is usually open, in the employer's view.

The union replies that they see the peak periods as longer than a few weeks, and that dangerous crowding is not required to meet the requirements of Level 2. In any event, the peak periods are integral to the job and should be seen as regular and recurring for this reason as well, in the union's view.

This last point returns us to the problem of distinguishing between "regular and recurring" and "occasional" elements of a job. This is sometimes difficult to do, as the instructions in the section entitled "How to Use the Manual" about the meaning of "regular and recurring" and "occasional" are not mutually exclusive, i.e. an element of a job can qualify for both designations. Here, in a time sense, I am satisfied that the less desirable elements of the working environment in the bookstore are occasional, as they only occur twice in the year, at the beginning of the fall and winter semesters. And we are instructed that to be considered even occasional, the "skill or responsibility must be

important and without it the position duties could not be performed.” The peak periods in the bookstore are clearly important to the job, and without working them, the position could not be performed, and do not occur very frequently, so they meet the criteria for being included as occasional as the employer has done.

However, the Manual also advises 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 and recurring’ ”. Are the peak periods also integral to the job, and consistently relied on, so that they meet that criterion as well as well? The employer advised that 65% of the store’s sales are made in two and half weeks in September, which is persuasive evidence that the peak periods are integral to the sales function of the job. As well, there is no doubt that in the everyday sense of the words, the peak periods of the bookstore are regular and recurring, predictably taking place as they do each September and January. Therefore, there is an entirely reasonable basis to say that the crowded conditions are a regular and recurring feature of the job. Thus, the peak periods meet the criteria for both “regular and recurring” and “occasional”. Moreover, it is frankly difficult to find any difference in meaning between the terms “integral to the job and consistently relied on” used by the Manual to express the intended meaning of “regular and recurring” and “important and without it the position duties could not be performed”, used to explain the minimum basis on which to be considered even “occasional” for the purpose of attribution of points. In sum, there is not a clear basis to choose between the two in the Manual’s wording in a circumstance like the one here in issue.

I have considered the idea put forward by the union that the bookstore should be considered an isolated area in the evenings, particularly when the incumbent locks up each night. If that is properly considered an isolated condition, it would clearly warrant a “regular and recurring” designation at level 2 as it happens every time the bookstore is open in the evening. However having reflected on the matter, and although “isolated” is not a defined term, it is not at all clear to me that the drafters of the manual intended the normal evening conditions of a suburban college campus to be considered isolated working conditions for the purposes of rating. If that was the intention, further direction would be useful. For the present, on the material before me, it appears that others are

still around campus, albeit in reduced numbers, and that assistance from security would be available if necessary. In these circumstances, I do not feel that the evidence is sufficient to find that the conditions are truly isolated, and accordingly the requested change to the PDF and designation for level 2, regular and recurring, in this respect is not warranted.

As well, in regards to other issues raised about the wording of the PDF, I am not persuaded that adding the examples of infrequent noise in the store or hallway is necessary to a correct rating. The noise in the store seems associated with the periods where the store is crowded, something already included, whereas the noise in the hall did not appear to be part of the actual working environment in the store. Rather the hall noise seemed to be an intermittent issue that might warrant other solutions than adding points in the job evaluation context. In any event, as occasional points have already been awarded for less desirable elements, it would not change the point rating to mention the hall noise in the PDF.

I have also considered whether one or the other of “regular and recurring” or “occasional” is the best fit for the element of crowded conditions in the bookstore, but I do not find a sufficient basis in the material before me to decide that one or the other is the best fit, as the Manual’s criteria can reasonably support either. In these circumstances, solving the problem by the application of the onus of proof which is on the union, does not seem appropriate either, as it is not an evidentiary matter that is the problem, but the provisions of the manual which do not provide a clear answer in the circumstances.

In the end, I have determined that the criterion of internal equity is the best basis on which to resolve the above dilemma. The Manual speaks in a number of places about the importance of internal equity and consistency in the interpretation of the factors. The factor of the work environment is one that is common to the incumbent’s position and the other Customer Service Representatives, and is one of the factors considered by the arbitrator in the White grievance referred to above. In his decision, Arbitrator Tenace found that the working environment was correctly rated at Level 1, with recognition of occasional conditions at Level 2. I do not have sufficient reason to decide that the

working environment of the incumbent is different in any significant way from the other Customer Service Representatives, given my finding above about the claim for recognition of isolated conditions in the evenings.

For the above reasons, I have determined that the rating for Working Environment should be confirmed as rated by the employer, at Level 1, Occasional Level 2.

To summarize, for the reasons set out above, the grievance is allowed in part. The agreed changes to the PDF and the issue of any necessary updating of the PDF is returned to the parties for implementation. Otherwise, I am satisfied the PDF is sufficiently accurate for rating purposes.

In regards to the rating of the disputed factors, my findings are:

1. Analysis and Problem Solving – Confirmed at Level 2
- ii. Planning/coordinating – Raised to Level 3
- iii. Guiding/advising others - Confirmed at Level 2
- iv. Communication – Occasional points added at Level 3
- v. Physical effort - Raised to Level 2
- vi. Audio visual effort - Confirmed at Level 1
- vii. Working environment - Confirmed at Level 1, with Occasional Level 2

This brings the point rating to 310, which falls within Pay band D. 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 this 7th day of January, 2012

Original signed by Kathleen G. O'Neil

Kathleen G. O'Neil, Arbitrator

Arbitration Data Sheet - Support Staff Classification

College: FANSHAWE Incumbent: GAIL GEOGHEGAN Supervisor: DAVE SMITH
 Current Payband: C Payband Requested by Grievor: E

1. Concerning the attached Position Description Form:

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

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

Factor	Management				Union				Arbitrator			
	Regular/ Recurring		Occasional		Regular/ Recurring		Occasional		Regular/ Recurring		Occasional	
	Level	Points	Level	Points	Level	Points	Level	Points	Level	Points	Level	Points
1A. Education	1	9			1	9			1	9		
1B. Education	1	3			1	3			1	3		
2. Experience	2	24			2	24			2	24		
3. Analysis and Problem Solving	2	46			2	46	3	9	2	46		
4. Planning/Coordinating	2	32			3	56			3	56		
5. Guiding/Advising Others	2	17			3	29	4	3	2	17		
6. Independence of Action	2	46			2	46			2	46		
7. Service Delivery	1	7			1	7			1	7		
8. Communication	2	46			2	46	3	9	2	46	3	9
9. Physical Effort	1	5	2	6	2	26	3	6	2	26		
10. Audio/Visual Effort	1A	5			1B	20			1A	5		
11. Working Environment	1	7	2	9	2	38			1	7	2	9
Subtotals	(a) 247		(b) 15		(a) 350		(b) 27		(a) 292		(b) 18	
Total Points (a) + (b)	262				377				310			
Resulting Payband	C				E				D			

Signatures:

[Signature] 2011-06-17 _____
 (Grievor) (Date) (College Representative) (Date)

[Signature] Sept 23 / 11
 (Union Representative) (Date)

Kathleen Ornel October 5, 2011 January 7, 2012
 (Arbitrator's Signature) (Date of Hearing) (Date of Award)