

IN THE MATTER OF AN ARBITRATION

BETWEEN:

ONTARIO PUBLIC SERVICE EMPLOYEES UNION, LOCAL 109
(hereinafter called the Union)

- and -

FANSHAWE COLLEGE
(hereinafter called the College)

- and -

CLASSIFICATION GRIEVANCE OF MR. HAROLD SOBEL
(hereinafter called the Grievor)

SOLE ARBITRATOR
Professor Ian A. Hunter

APPEARANCES:

FOR THE UNION: Ms. Marg Rae, President, Local 109

FOR THE COLLEGE: Ms. Sheila Wilson, HR Consultant

ARBITRATION HEARINGS WERE HELD AT FANSHAWE COLLEGE
ON FEBRUARY 10, MARCH 25 AND JUNE 9, 2009

DECISION

(1) Introduction

The grievance of Mr. Harold Sobel is dated March 16, 2007 and alleges improper classification (Exhibit 1). A classification arbitration was held at Fanshawe College on February 10, 2009. Prior to the hearing, the parties provided me with helpful briefs outlining, and supporting, their respective positions.

In reviewing the briefs, I noticed that the Grievor was also the Support Services Staff Representative on the Fanshawe College Board of Governors. At the outset of the arbitration hearing on February 10, 2009 I raised with both parties the potential for an actual or apparent conflict of interest; both parties consulted their respective principals. The Union advised me in writing on February 10, 2009 that they did not consider that Mr. Sobel was in a conflict of interest position, and they wished to have the hearing proceed. For the College, Ms. Wilson advised that she needed an opportunity to consult more widely, and requested an adjournment in order to do so. On February 13, 2009 I received a letter from Mr. Scott Porter, Corporate Secretary-Treasurer of the Fanshawe College Board of Governors, indicating that the Employer took the position that there was no conflict of interest, actual or perceived, and that the arbitration hearing could proceed. Accordingly, I reconvened the arbitration hearing at Fanshawe College on March 25, 2009.

On that date, I was advised by the College representative, Ms. Wilson, that the Grievor's supervisor, Mr. Mike Logan, Manager, Technical Support Services, was unexpectedly unable to attend that day. Ms. Wilson requested an adjournment. I offered to hear the Grievor's evidence on March 25, 2009 and then to reconvene the hearing at

a later date to receive the College's evidence, but this compromise proposal was rejected by the Union.

I then adjourned the hearing to Tuesday, June 9, 2009 marking it peremptory on the College to proceed on that date.

On June 9, 2009 the hearing proceeded and concluded.

(2) The P.D.F. (Exhibit 2)

The contents of the P.D.F. dated March 1, 2007 are not in contention. The P.D.F. gives the following concise description of the purpose of the Technologist position:

"Under general supervision of the Manager, and with guidance from the Coordinator of Employee Computing Support, provides high-quality customer services by: conducting research, development, implementation and administration activities associated with enterprise IT technical support systems such as remote imaging, anti-pest systems, remote software installation and updating, electronic access services, etc.; completing a variety of assigned computer technical support tasks involving college computers in offices, labs and other locations."

The P.D.F. outlines the duties and responsibilities, and the time allocation to each, as follows:

- | | | |
|-----|--|-----|
| (1) | Researches, recommends, develops, implements and operates assigned enterprise IT support systems and services. | 30% |
| (2) | Assesses and assigns routine service calls to technicians. Responds personally to service calls that require an advanced knowledge of IT theory and knowledge and of College IT services and technologies. | 30% |
| (3) | Responds to routine service calls involving setup, configuration, troubleshooting and service of personal computers, laptops, printers, VDPs and related equipment and software; establishes and maintains | |

user accounts on a College-wide basis.	30%
(4) Performs other related duties as assigned.	10%

It was the Grievor's evidence that items (2) and (3) currently occupied twenty percent (20%) or less of the Technologist's time. Eighty percent (80%) was spent on factor (1), which could broadly speaking be summarized by the term "projects".

Mr. Mike Logan, the Grievor's Supervisor (Manager of Technical Support Services) agreed with the Grievor that since the merger of the Help Desks, in approximately 2007, the Technologist position had evolved considerably; however he would allocate the Technologist's time as sixty percent (60%) projects, forty percent (40%) support.

Without quibbling as to which percentage allocation is more accurate, it is clear that the Technologist position has evolved, and that the "projects" component has increasingly displaced the "support" component.

(3) The Grievor's Background

It is a cardinal rule of job classification that it is the position, not the incumbent, that is under review. I shall abide by that rule. Nevertheless, it should be remarked that Mr. Sobel comes to his employment as a Technologist at Fanshawe College by a rather unusual route; after a thirty (30) year career as a dental surgeon, Mr. Sobel attended Fanshawe College and obtained a diploma in computing systems. He graduated in 2004 and started full-time employment at the Connect Resource Centre before moving to the Help Desk. He was a Help Desk Technologist reporting to the Manager, Technical Support Services (Mike Logan) when, in 2005, he began to be assigned to several specialized

computing projects (e.g. Autoevaluator System of clinical marking in the Dental Hygiene Department; Dicom Image Storage for the MRT Department; Simman Clinical Hearing System for the Nursing Department; to name just a few). In making my decision I bear in mind Ms. Wilson's statement that I should consider only those parts of Mr. Sobel's evidence that describe the Technologist core functions, and not his own somewhat idiosyncratic career path.

(4) An Overview of The Position

The position in question - Technologist, Technical Support - is a hands-on computer specialist position which requires knowledge of computer network theory and computer programming experience.

The Technologist position falls within the Technical Support Services division; Mike Logan is the Manager. The division is divided into three (3) areas: Academic Computing Support; Connect Resource Centre; and Employee Computing Support. Mr. Sobel's position is in the Employee Computing Support, and he is one of three (3) Technologists currently at Payband 'G'. I understand that there is agreement between the parties that my Decision will apply to all three (3) Technologists.

(5) Job Factors Agreed

The Union and the College are agreed on the following factors and ratings:

<u>Job Factor</u>	<u>Level</u>	<u>Points</u>
1A. Education	4	48
1B. Education	1	3
2. Experience	4	54
5. Guiding/Advising Others	5	53
8. Communication	3	78

(6) Job Factors in Dispute

The parties are at issue on the following job factors:

3. Analysis and Problem Solving
4. Planning/Coordinating
6. Independence of Action
7. Service Delivery
9. Physical Effort
10. Audio/Visual Effort
11. Working Environment

(7) Decision

3. Analysis and Problem Solving

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

The College has rated this factor at Level 3: "Situations and problems are identifiable, but may require further inquiry in order to define them precisely. Solutions require the analysis and collection of information, some of which may be obtained from areas or resources which are not normally used by the position."

The Union has rated this factor Level 4: "Situations and problems are not readily identifiable and often require further investigation and research. Solutions require the interpretation and analysis of a range of information according to established techniques and/or principles."

I asked the Grievor, Mr. Sobel, to describe his problem solving methodology: He answered that he first determines (a) the relevant set of circumstances; and (b) identifies desired outcomes. "My job is to find the way from point 'a' to point 'b'."

I asked him the most difficult problem he encounters as a Technologist? He said that there were no difficult problems, because any problem was solvable once you had the necessary information. He said that the most frustrating problem was learning to deal with College bureaucracy. He elaborated that because two (2)

groups (Administration and Students) use the College network, the College has chosen a "lock-down" model so many problems that occur, and for which he has the answer, he cannot get quick network access. Instead he must go to the next level (Network Services and Computerized Operations) in order to get the required security clearance.

I asked Mr. Sobel where he gets assistance from? He replied: "Other Technologists, and particularly from outside agencies. These could be computer designers, industry, third-party vendors, etc.."

Mr. Sobel described the analysis or problem solving in the position as follows: The first step is to understand the "symptoms" (Mr. Sobel declined to use the word "problem") which the person requesting assistance describes to you. The Technologist will then determine (a) what the problem is, and then (b) find the solution. Mr. Sobel stated: "Often the person reporting the problem, does not know what the problem is. All they are able to do is describe symptoms of a problem. My job is to figure out the problem, and then the solution."

From the evidence, I have concluded that Analysis and Problem Solving is correctly rated at Level 3 (78 points). The "situations and problems" that the Technologist is required to deal with are identifiable, although they often require further inquiry in order to define them precisely. Solutions require the analysis and collection of information, some of which may be obtained internally at the College, or through research, or which may be obtained from resources outside the College. Level 4 would require that the situations that the Technologist encounters are not "readily identifiable", and while the problems are various and complex, I am satisfied that

they are “readily identifiable”. In this respect, I found Mr. Mike Logan’s evidence helpful. He testified that most problems originate at the entry level (i.e. phone calls to the Help Desk). If the Technician at the Help Desk cannot solve it, the problem gets escalated to the Technologist. All of the Technologists have greater experience than the Help Desk Technicians. Mr. Logan testified: “There is a natural migration of the issue from the Technician to the Technologist.”

It is true that the “project” portion of the Technologist’s work (which now clearly comprises more than fifty percent (50%)) does not usually originate with an inquiry to the Help Desk (although it may). This substantial aspect of the Technologist’s work has an impact on other factors (e.g. Independence of Action and Service Delivery) but it does not alter my view of the correct rating for Analysis and Problem Solving.

Analysis and Problem Solving - Level 3 - 78 Points

4. Planning/Coordinating

This factor measures the planning and/or coordinating requirements of the position. This refers to the **organizational and/or project management skills** required to bring together and integrate activities and resources needed to complete tasks or organize events. There may be a need to perform tasks with overlapping deadlines (multi-tasking) to achieve the desired result.

Both parties are agreed on a Regular rating at Level 3: Plan/coordinate activities, information or material to enable completion of tasks and events, which affect the work schedule of other employees.

The Union also proposes an Occasional rating at Level 4: Plan/coordinate and integrate activities and resources for multi-faceted events, projects or activities involving other employees. This typically involves modifying these individuals' priorities for activities/projects to meet objectives.

For Level 4 to apply, the Union's evidence would have to prove: (1) Planning/coordinating/integrating activities and resources for multi-faceted events. There was no evidence of this. Also, a characteristic of Level 4 is making basic or fundamental changes to other individuals' priorities or activities in order to meet the Technologist's objectives. There was no evidence of this either.

Accordingly, I am satisfied that Planning/Coordinating is correctly evaluated at Level 3 (56 points) and that the College is correct in its conclusion that there should be no Occasional rating.

Planning/Coordinating - Level 3 - 56 Points

6. Independence of Action

This factor measures the level of independence or autonomy in the position.

The rater should consider: the types of decisions made; what aspects are decided by the incumbent and what, if any, require consultation with a supervisor or someone else; and rules, procedures, past practice and guidelines available in making decisions.

The College has rated this factor Level 2: "Position duties are completed according to established procedures. Decisions are made following specific guidelines. Changes may be made to work routine(s)."

The Union is proposing a rating for this factor of Level 5: "Position duties are completed according to broad goals or objectives. Decisions are made using College policies."

Mr. Sobel described the Technologist's position as that of a "lone ranger". He said: "We are the fixers. We go wherever it may be to fix problems. We're the ones who put our fingers in the dike."

Mr. Sobel testified that he had very little supervisory contact with Mike Logan. Mr. Logan leaves his Technologists free to deal with problems, and expects to hear from disgruntled customers only if the service provided by the Technologist is not adequate. In both the "support" aspect of the position, and in the larger "projects" aspect, Mr. Sobel testified that there is little supervisory input. Mr. Logan essentially agreed. "I am a hands-off manager in terms of day-to-day functions."

The Technologist position at Fanshawe College enjoys a very high level of autonomy and independence. Level 3, I have concluded, best describes the

Regular level. Occasionally, however, the incumbent is making decisions using industry practices which warrant an Occasional rating at Level 4.

Independence of Action	- Regular Level 3	- 78 Points
	- Occasional Level 4	- 9 Points

7. Service Delivery

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

The College has rated this factor Level 2: "Provide service according to specifications by selecting the best method of delivering service." The College also gives an Occasional rating of Level 3.

The Union proposes a Regular rating of Level 3: "Tailor service based on developing a full understanding of the customer's needs."

The customers in question are College management and faculty.

The Grievor testified that he frequently outlines options that the customer has not himself thought of or considered. It is the Technologist not the customer who identifies the problem and tailors the service necessary to solve the problem.

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

From the evidence, this is precisely what the Technologist does, both in the “support” and in the “project” aspects of his/her work.

Of the seven (7) factors in dispute, it was clearest to me that Service Delivery had been most undervalued by the College.

Service Delivery

- Level 3 - 51 Points

9. Physical Effort

This factor measures the degree and frequency of the physical effort required in the position. Physical activities including lifting, bending, carrying, pushing, pulling, etc..

The evidence was clear (and uncontradicted by Mr. Logan) that the incumbent must lift and carry objects ranging in weight from ten (10) to fifty (50) pounds; computers, printers, hard drives, etc.. This is a daily occurrence. From the evidence of both Mr. Sobel and Mr. Logan, I have determined that the objects requiring lifting are generally more than light (i.e. greater than eleven (11) pounds), but are not particularly heavy. In other words, “moderate physical effort” is the best fit.

Physical Effort

- Level 2 - 26 Points

10. Audio/Visual Effort

This factor measures the requirement for audio or visual effort. The factor measures the following two aspects:

- (a) the degree of attention or focus required; and
- (b) activities over which the position has little or no control that make focus difficult.

The College has rated this factor Level 1: "Regular & recurring short periods of concentration; or occasional long periods of concentration".

The Union proposes Level 2: "Regular & recurring long periods of concentration; or occasional extended periods of concentration".

From the evidence of both Mr. Sobel and Mr. Logan, I have concluded that Level 1 adequately embraces the audio/visual effort required in the position. Occasionally, the Grievor is required to concentrate for a long period of time (up to two (2) hours), but this is adequately embraced at Level 1.

Audio/Visual Effort

- Level 1 - 5 Points

11. Working Environment

This factor looks at the environment in which work is performed and the extent to which there exists undesirable or hazardous elements.

The College has rated this factor Level 1: "Acceptable working conditions".

The Union has proposed Level 2 based on the travel requirement.

The Technologist is required to travel to the Galleria and Strathroy campuses. These locations have no Lab Technicians. Consequently, the Technologist goes at least one (1) week per semester to each location to do necessary lab work. In addition, the Technologist may be required to go there to deal with an emergency or with a special call-out.

From the evidence, I am satisfied that the travel requirement is "regular & recurring" but I am not persuaded that it requires more than ten percent (10%) of the Technologist's time. Accordingly, I am not persuaded that working conditions (which are otherwise satisfactory) should be rated at Level 2.

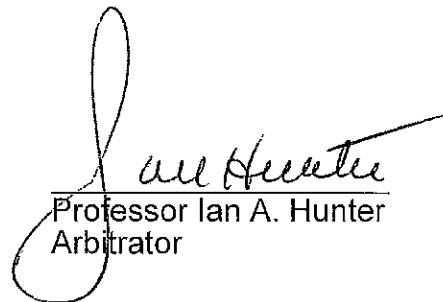
Working Environment

- Level 1 - 7 Points

I have appended a completed Arbitration Data Sheet.

The grievance is allowed. The Technologist position is reclassified at 546 points, Payband 'H'. I remain seized to deal with any issue which may arise in the implementation of this Decision.

Dated at the City of St. Thomas this *22nd* day of *JUNE*, 2009.


Professor Ian A. Hunter
Arbitrator

Arbitration Data Sheet - Support Staff Classification

College: FANSHAW Incumbent: H. JOSE Supervisor: M. LOKAN
 Current Payband: G Payband Requested by Grievor: I

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	4	48			4	48			4	48		
1B. Education	1	3			1	3			1	3		
2. Experience	4	54			4	54			4	54		
3. Analysis and Problem Solving	3	78			4	110			3	78		
4. Planning/Coordinating	3	56			3	56	4	7	3	56		
5. Guiding/Advising Others	5	53			5	53			5	53		
6. Independence of Action	2	46	3	9	5	142			3	78	4	9
7. Service Delivery	2	29	3	6	3	51			3	51		
8. Communication	3	78			3	78			3	78		
9. Physical Effort	1	5			2	26			2	26		
10. Audio/Visual Effort	1	5			2	20			1	5		
11. Working Environment	1	7	2	9	2	38			1	7		
Subtotals	(a) 452		(b) 40		(a) 679		(b) 7		(a) 537		(b) 9	
Total Points (a) + (b)	492				686				546			
Resulting Payband	G				I				H			

Signatures:

_____ (Grievor) _____ (Date) _____ (College Representative) _____ (Date)

_____ (Union Representative) _____ (Date)

Jane Heester June 9/09 June 22/09
 (Arbitrator's Signature) (Date of Hearing) (Date of Award)