IAN A. HUNTER

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July 28, 2010

Ms. Mary Anne Kuntz Senior Grievance Officer O.P.S.E.U. 100 Lesmill Road TORONTO, Ontario M3B 3P8

Dear Ms. Kuntz:

Re: O.P.S.E.U., Local 563 v. Humber College; Vesik Grievance

I enclose my Decision in the above case.

I have also enclosed my final Statement of Account which I trust you will find in order.

Yours very truly, are Hunter

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enclosures

Mediation/Arbitration Professionals

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IN THE MATTER OF AN ARBITRATION

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BETWEEN:

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ONTARIO PUBLIC SERVICE EMPLOYEES UNION, LOCAL 563 (hereinafter called the Union)

- and -

<u>HUMBER COLLEGE</u> (hereinafter called the College)

- and -

CLASSIFICATION GRIEVANCE OF ENDEL VESIK (hereinafter called the Grievor)

SOLE ARBITRATOR Professor Ian A. Hunter

APPEARANCES:

FOR THE UNION: Ms. Mary Anne Kuntz, Senior Grievance Officer

FOR THE COLLEGE: Mr. Daniel Michaluk, Counsel

ARBITRATION HEARINGS WERE HELD IN TORONTO, ONTARIO ON JANUARY 12, MAY 26 AND 27, 2010; FINAL SUBMISSIONS BY CONFERENCE CALL ON JULY 19, 2010

<u>AWARD</u>

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(1) Background

On March 30, 2009 I was appointed as arbitrator with a hearing scheduled for September 24, 2009. Pursuant to Article 18.4.3.4 I received written briefs from the parties. On examination of the briefs it became apparent that (a) there was no agreement on the content of the P.D.F.; (b) eleven (11) of the twelve (12) job factors were in dispute; and (c) the disparity between the parties on the job factors exceeded two hundred (200) points. All of this suggested to me that the parties had not made a serious attempt to narrow the areas of dispute. I spoke with the parties and requested that they meet on September 24, 2009 and attempt to narrow the issues.

The parties met on September 24, 2009; on November 4, 2009 I was advised that no progress had been made.

I conducted arbitration hearings in Toronto, Ontario on January 12, May 26 and 27, 2010, and a conference call for final argument on July 19, 2010.

I am indebted to Ms. Mary Anne Kuntz, from O.P.S.E.U., and to Mr. Daniel Michaluk, who appeared for Humber College, for their able presentation of this case.

(2) Overview of the Position

The Grievor, Mr. Endel Vesik, is a Support Service Technician at Humber College's Information Technology Department at the Lakeshore Campus. Technicians provide onsite technical support to staff and students at Humber College. Within the Information Technology Department, Technicians perform service functions such as install new computers, troubleshoot and repair existing hardware and software, and preventative maintenance. The Department uses a "ticket" system; when a technical problem is reported to the Help Desk (which is at Main Campus), a "ticket" (College Brief, Tab G) is generated and the "ticket" is assigned to a Technician to deal with. The ticket indicates who initiated the request ("Open by"), a "Summary" of the problem, and the name of the Technician (e.g. Vesik) to whom it is assigned. The ticket also assigns a priority to the request on a scale ranging from 1 (most serious) to 5 (least serious). The assignment of priority is made by the Help Desk agent who received the call.

The P.D.F. refers to a number of routine tasks performed by the position: setting up workstations (page 6); installing software (page 7); remedying printer jams (page 8); imaging or re-imaging computers (page 9); and maintaining inventory records (page 11).

The Technician is the front-line service provider; many of the tickets dealt with are routine in nature. But there is also a troubleshooting component to the position in which the Technician must ascertain and deal with more complex problems. If he cannot fix it readily, he refers the problem to a Co-Ordinator or a more specialized I.T. area within the College, or he may recommend that the hardware be sent outside the College for repair.

In the Union brief, the Grievor provided his own twenty-five (25) page P.D.F.. I have read it. From the evidence it is clear to me that, while no P.D.F. can capture every nuance and subtlety of any position, the College P.D.F. is generally more accurate and more in conformity with the oral evidence in describing the Support Service Technician position than the P.D.F. provided by the Grievor.

Mr. Vesik's pre-hearing submission to me also contained a letter (August 31, 2009) in which he asserts that he is not a Technician but rather a Technologist. In effect, he was asking, through arbitration, to be reclassified into a different position. I do not believe that an arbitrator under the joint classification system adopted by the parties has authority to do that; but even if I did have that authority, the evidence did not support that result.

I turn now to the specific job factors.

(3) Job Factors Agreed

Only two (2) job factors were agreed:

<u>Job</u>	Factor	Level	<u>Points</u>
1B.	Education	2	12
8.	Communication	3	78

(4) Job Factors in Dispute

Both the Grievor and his Supervisor (at the date of the grievance, Mr. Ryan Burton) testified. Each was questioned by Ms. Kuntz and Mr. Michaluk, and, to a limited extent, by me. I found this oral evidence helpful in coming to my decision on the disputed job factors.

1A. Education

This factor looks at the level of formal education required; it considers also additional education beyond the scope of the formal education required. It examines the <u>minimum</u> formal education required to perform the position responsibilities.

The College has rated this factor at Level 3: "2 year diploma or equivalent".

The Union has rated this factor at Level 4: "3 year diploma/degree ...".

I note, first, that the College P.D.F. specifies a "2 year diploma or equivalent" as the minimum requirement. Second, I agree with the College submission that Education (1A) must be read in conjunction with 1B; under Education 1B the parties have agreed that there may be additional educational requirements obtained by courses up to one hundred (100) hours. When one considers all aspects of the P.D.F. it is clear that Humber College's requirement for the Technician position is:

(1) a 2 year diploma or equivalent in computer sciences;

- (2) certification in I.T.L. Foundations; and
- (3) one (1) year of related experience "... in a fast-paced environment providing on-site technical (hardware and software) support" (P.D.F.).

The evidence established to my satisfaction that these are reasonable, minimal requirements for the Technician position at Humber College.

Through the Union brief, the Grievor made the submission that the Technician position was "quite similar" to an I.T. Specialist position, and therefore Education 1A should be rated at Level 4. This submission was not supported by the evidence and I reject it.

The I.T. Specialist position at Humber College is in a separate school; School of Media Studies and Information Technology. The duties required of an I.T. Specialist (e.g. "... developing enabling technologies ... integrating the services required in an enterprise computing environment ...") have no parallel in the duties of a Support Service Technician. As Mr. Burton put it in his evidence: "You are comparing apples and oranges".

The Grievor claimed that an earlier P.D.F. for the position had included a 3 year diploma requirement. This was never proved. When I asked the Grievor what specific 3 year diploma he thought should be the minimum formal education requirement, he answered "Computer Engineering or Electronics". The Grievor does not have this 3 year diploma, nor was there evidence that other Humber Support Service Technicians have it. Yet, on the evidence, he (and they) are fully capable of satisfactory performance.

By contrast, Mr. Ryan Burton (Client Services Manager) testified that he had hired four (4) to six (6) Support Service Technicians since assuming his position in December 2006. All had 2 year diplomas, and one (1) year of related experience, and he was comfortable with that as the minimum requirement. The one (1) year experience requirement, he explained, might be obtained in a College or similar facility, or in a Tech business (e.g. Geek Squad). He also explained, in some detail, why Help Desk agents require a broader range of technical experience to do their functions.

I am satisfied that the College's rating of Education 1A is correct.

Education (1A) - Level 3 - 35 Points

2. Experience

This factor measures the typical number of years experience, in addition to education, required to perform the duties of the position.

The College has rated this factor at Level 2: "Minimum 1 year".

The Union has rated this factor at Level 3: "Minimum 2 years".

The Manual says that I should consider the "... minimum time required in prior positions to learn the <u>techniques</u>, <u>methods</u> and <u>practices</u> necessary to perform this job ...".

The P.D.F. narrows down the kind of experience the College seeks: "Minimum of one year experience in a fast-paced environment providing on-site technical (hardware and software) support" (page 5).

As previously mentioned, Mr. Burton gave specific examples of the kind of experience the College was looking for and where such experience might be acquired.

The Technician is the first-step Humber responder to technical problems. If I consider some examples given in the P.D.F. (e.g. setting up new workstations (page 6); remedying printer jams (page 8); deploying workstations in labs (page 10)), some of the work required in the position must be considered routine and basic.

There is also a "troubleshooting" component to the position. However, it was the evidence of Mr. Burton, the Grievor's Supervisor, that these functions would quite easily be performed by Technicians with one (1) year's experience. Even for the examples provided by the Grievor in the Union Brief (cf. Evidence #2), I am convinced that one (1) year of experience would be adequate to deal with most, if not all, of those.

When I asked the Grievor what new experience a second year would provide that would not be encountered in the first year, he could give no examples. When I asked directly: "Would the experience gained in a second year be qualitatively different from the experience gained in the first year?", he answered "No".

The College has evaluated Experience at Level 2, 24 points. I hold that this is correct.

Experience

- Level 2

- 24 Points

3. Analysis and Problem Solving

This factor measures the level of complexity involved in analysing situations, information or problems of varying levels of difficulty.

The College has rated this factor at Level 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 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 also proposes an Occasional rating at Level 4.

Levels 2 speaks of "easily identifiable" problems; Level 3 requires "further inquiry" in order to precisely define the problem. From the Grievor's evidence, I am satisfied that the problems he encounters are easily identifiable; some (a minority) do require "further inquiry" to precisely define.

But the "solutions" do not usually require the Technician to "collect other information" from, say, other departments. At pages 6-8 of the P.D.F. there are three (3) regular and recurring examples of problem solving; these, in my view, are embraced within Level 2. There are also two (2) "occasional" examples given (jammed printer; student inappropriately using workstation); both of these examples are adequately embraced at Level 2.

The "troubleshooting" aspect of the Grievor's position comes closest to suggesting Level 3. But, upon reflection, I have concluded that Level 2 is correct; first, the Technician has available certain aids (e.g. Known Error database; Knowledge Solutions database) to assist him. More important, College policy is that if a Technician cannot quickly and simply handle the "ticket" problem, they are to (a) refer the problem to someone else (e.g. the Co-ordinator or another College resource) or have the hardware sent out for repair. The Technician is the first-step responder; if the problem solving is not basic, it is the Technician's job to refer it elsewhere and move on to do something else.

The Grievor defined the "gist" of the troubleshooting required in three (3) steps: (1) Identify the problem; (2) Try a possible solution; and (3) If that solution doesn't work, try something else. His evidence was that eighty (80%) to eighty-five percent (85%) of the "ticket" hardware or software problems, he can resolve. This, I conclude, is because they are basic, recurring type problems. Those problems that he cannot resolve he refers (by sending the ticket back to the Help Desk), and from there on to one of the College's specialized Departments (e.g. Network; Mainframe; Configuration Management, etc.).

I suggested to the Grievor that in such cases he was like a general medical practitioner referring a complex or baffling problem to a specialist. He accepted that as "a fair analogy".

There was nothing in the evidence to suggest a requirement for "analysis and collection of information, some of which may be obtained from areas or resources which are not normally used by the position". This is one indicator of Level 3.

From the evidence of the Grievor, and his Supervisor, Mr. Burton, I find that Analysis and Problem Solving required in the position is Level 2.

Analysis and Problem Solving - Level 2 - 46 Points

4. Planning/Coordinating

This factor measures organizational and/or project management skills required in the position.

The College has rated this factor at Level 2: "Plan/coordinate activities and resources to complete own work and achieve overlapping deadlines."

The Union proposes Level 3: "Plan/coordinate activities, information or material to enable completion of tasks and events, which affect the work schedule of other employees." The Manual (page 16) clarifies that Level 2 positions are typically focussed on completion of assigned activities within established deadlines. This exactly describes the Grievor's duties, as assigned on the "ticket" system which gives each assignment a priority rating. By contrast, Level 3 envisages planning and coordination that affects the work schedule of other employees. There was little evidence of that in this case, although the Grievor did allude to potential student disruption when computer equipment is replaced or reconfigured for a lab. However on the relatively rare occasions when this must done, it is scheduled before classes begin (usually in the summer months).

The Grievor estimated that about twenty-five percent (25%) of his work had the potential to affect the schedules of other employees; for the most part, however, this was the schedule of the employee whose computer he was working on. The Grievor generally plans and coordinates his own work, but that is done within the "ticket" priority system. The Grievor's daily tasks are performed within minimal direction or oversight from his Supervisor, but this is because the prioritizing of the work is done at the Help Desk and has been assigned before the "ticket" reaches the Grievor.

I have considered the Grievor's evidence about reconfiguring or re-imaging computer labs at the Lakeshore Campus; suffice to say that this evidence did not, in my opinion, take the position to Level 3.

There was no evidence to persuade me that the College's evaluation of this factor was in error.

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5. Guiding/Advising Others

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This factor refers to assigned responsibility to guide or advise others (i.e. employees, students, clients). It measures something over and beyond the communication inherent in any College support staff position.

The College has rated this factor at Level 2: "Guide others so they can complete specific tasks." The College proposes an Occasional rating of Level 3: "Advise others to enable them to perform their day-to-day activities."

The Union proposes Level 3 (*supra*) with an Occasional rating of Level 4: "Guide/advise others with ongoing involvement in their progress." [The Grievor's letter to me (August 31, 2009) proposed Level 5 but, wisely, the Union did not pursue that.]

The P.D.F. justifies the College rating (i.e. Regular 2; Occasional 3) by stating: "Technician serves as coach and mentor to 3-5 interns". In these cases, the Technician may "... provide direction when interns run into something unexpected in the field".

The evidence of the Grievor was that he regularly trains both interns and work-study students on how to use specific software and hardware and on how to perform diagnostic testing. His Supervisor, Mr. Burton, testified that the Grievor was not involved in training interns or work-study students. He may, on occasion, work alongside them on a large project (e.g. re-equipping a lab) but he gives them neither direction nor instruction, nor does he in any way evaluate their work.

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The Manual (page 18) advises Raters that Level 3 applies to "involvement ... of an advisory nature and the position is not responsible for how those advised subsequently complete their tasks". In a sense he is involved in training interns or work-study students, because on occasion he will work alongside them on a big project (e.g. re-equipping a lab). But the Grievor does not direct their work, nor instruct or in any way evaluate their performance.

The Grievor does not perform this function now. At the date of the grievance (August 2008) and until the College adopted the ALTIRIS software development program used to re-image computers, the Grievor worked alongside interns or work-study students on major projects. But even then his position was not of an "advisory" nature, although he might demonstrate a process or technique for them.

Since the new ALTIRIS system came in (about two (2) years ago) Mr. Burton was clear that the Grievor does not guide or advise any interns or work-study students. While in the rare case of an emergency (which might happen once or twice a year) the Grievor may work alongside such students, for the most part the Grievor works alone. As a "pilot project" the College did hire a student (Brian Strong) to "work off the Grievor's [ticket] queue" from January to April, 2010. Even then, Mr. Burton stressed, the Grievor was not responsible for assigning work, or for guiding or advising Mr. Strong.

The evidence before me supports the College's rating: Regular Level 2; Occasional Level 3.

Guiding/Advising Others	- Regular	- Level 2	- 17 Points		
	- Occasional - Level 3		- 3 Points		

6. Independence of Action

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This factor measures the level of independence or autonomy in the position. Raters should consider "the parameters and constraints of the position within which the incumbent is free to act".

The College has rated this factor at 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 rates this factor at Level 3: "Position duties are completed according to general processes. Decisions are made following general guidelines to determine how tasks should be completed."

The Manual clarifies that Level 2 positions are limited to defining the order or sequence in which tasks or duties should be performed. Level 3 positions select the process(es) to achieve the end result (page 20).

I asked the Grievor who determines the sequence in which his duties will be performed. He claimed that he did because "I know the Department and I know the computers". I accept this, but on the evidence, it is the "ticket" that determines the priority of the Grievor's assignments. The Grievor completes his assignments by following established procedures. He may make changes to his work routines, but the position does not reach the level of autonomy of Level 3.

In his evidence, the Grievor claimed that about fifteen percent (15%) of his work was governed by inquiries or requests made directly to him (called in the trade "ambushes") that did not come through the Help Desk. To the extent that this is true, this is contrary to his Supervisor's directions and to College policies.

Mr. Burton elaborated at some length as to why the College must enforce the ticket policy. Ms. Kuntz, in final submissions, suggested that "Mr. Vesik is all about <u>service</u>; Mr. Burton is all about <u>process</u>". I do not agree with this. Mr. Burton, in my opinion, emphasized the importance of process precisely because he believes it will maximize customer service. There are specific "ticket" processes in place precisely to ensure that service is provided in an efficient, timely way. When confronted with the Grievor's evidence concerning the fifteen percent (15%) of his work which is requested outside the ticket process, Mr. Burton said: "Well, I understand that it can be difficult to say 'No'. It is tough to direct people to the Help Desk instead of just doing the job. Endel's heart is in the right place. He wants to help. But the ticket process is critical to the success of our operation. I probably still have work to do with Endel on that."

The evidence persuades me that the College's rating (Level 2) is the best fit.

7. Service Delivery

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This factor examines the relationship between the position and its customers. How are requests for service received? How does the position fulfill the service requirement?

The College has rated this factor at Level 2: "Provide service according to specifications by selecting the best method of delivering service."

The Union proposes Level 3: "Tailor service based on developing a full understanding of the customer's needs." "Tailor" here means modifying or adapting or customizing service to a specific requirement. The Union also proposes an Occasional rating at Level 4.

The Manual (page 22) indicates that Level 2 embraces service which requires the incumbent to (a) know the options available; (b) be able to explain those options to the customer; and (c) select or recommend the best option. Nothing in the evidence of the Grievor or his Supervisor persuaded me that the position goes beyond that three (3) step process of service delivery.

The Grievor gets his assignments from the tickets. He tackles each assignment with a routine and straightforward three step problem solving process. He refers the more complex or difficult problems to specialist departments. I have examined the Grievor's "tickets", as supplied to me by the parties. The tickets corroborate my earlier conclusion that the position implements known solutions to (mostly) routine problems. If the problems are complex, they are referred elsewhere.

A quote from page 22 of the Manual directly applies to this position: "The incumbent selects or recommends the best option based on the customer's needs. There is no, or limited, ability for the incumbent to change the options."

Therefore, the College has correctly rated Service Delivery.

Service Delivery - Level 2 - 29 Points

9. Physical Effort

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This factor measures the degree and frequency of physical effort required by the position.

The College has rated this factor at Regular, Level 2: "moderate physical effort"; Occasional, Level 3: "heavy physical effort".

The Union rates this factor at Regular, Level 3: "heavy physical effort".

The Manual distinguishes "moderate" from "heavy" as follows:

Moderate - pushing, pulling, lifting up to 44 lbs.

Heavy - pushing, pulling, lifting over 44 lbs.

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It is common ground between the parties that the position sometimes entails "heavy" lifting (i.e. boxes of paper, computer, printers, etc.).

But is that heavy lifting "regular & recurring"? That is the issue. The P.D.F. suggests that such heavy lifting would not exceed one (1) hour per day.

The Grievor initially testified that he is involved in heavy lifting approximately two (2) hours per day. But the Grievor also said that on some days there is no heavy lifting, and later said: "On average, maybe half an hour a day I might be lifting something heavy".

Mr. Burton thought even half an hour of heavy lifting a day was excessive. He thought it might be closer to "once or twice a week averaged out over a year".

Having considered all the evidence, the Union has failed to prove that the College's rating is incorrect.

- Physical Effort Regular Level 2 26 Points
 - Occasional Level 3 6 Points

<u>10. Audio/Visual Effort</u>

This factor measures the requirement for audio or visual effort required in the position.

In this factor the parties are agreed on Level 2: "Regular & recurring long periods of concentration; or occasional extended periods of concentration." Where they differ is on whether or not this is a "Focus Maintained" (College) or "Focus Interrupted" (Union) position.

The only factor referenced by the Union as suggesting "focus interrupted" was the fact that the Grievor is required to carry a Blackberry. This, and the fact that he occasionally gets calls on it, does not meet the test of "focus interrupted". In any event, customer service is an integral part of the position; so the fact that the Grievor may receive another service request on his Blackberry while he is out servicing someone else, does not meet the test in the Manual (see page 28, paragraph 5). I note that the only example the Grievor gave of his focus being interrupted was precisely that (i.e. people calling on his Blackberry when he was out servicing another request).

Audio/Visual Effort - Level 2 - 20 Points

11. Working Environment

This factor looks at the environment in which the work is performed. It also considers the extent to which there are undesirable or hazardous elements in the workplace.

The parties are agreed at a rating for this factor at Level 2, which embraces something less than "acceptable" but not the most adverse working conditions. The Union also proposes an Occasional rating at Level 3.

The only elements in the Grievor's evidence that related to less than "acceptable" working conditions were these:

- he handles toner cartridges;
- he travels on occasion to the Main Campus;
- he sometimes has to go outside from building to building on the Lakeshore Campus in less than ideal weather conditions;
- sometimes students or staff get angry if printers are not working properly.

It was Mr. Burton's evidence that the College Health and Safety Committee had examined the issue of toner cartridge and specifically concluded that they are safe and pose no health risk.

All of the buildings around the Lakeshore Campus are linked by tunnels so there is no requirement for the Grievor to go outside in inclement weather. I have taken into account the examples mentioned by the Grievor; I have weighed them cumulatively, and I have concluded that the College rating is correct.

Working Environment - Level 2 - 38 Points

(5) <u>Decision</u>

I have completed and appended an Arbitration Data Sheet.

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For the reasons given, the grievance of Mr. Endel Vesik (Exhibit 1) is dismissed, and the College's rating of Level F, 412 points is confirmed.

Dated at the City of St. Thomas this 250 day of $-\sqrt{0}$, 2010.

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Professor lan A. Hunter Arbitrator

ARBITRATION DATA SHEET - Support Staff Classification

1.1.

College: <u>Humber</u> Incum			ncumb	ent: <u>Er</u>	<u>ndel V</u>	<u>esik</u>		Supervisor: <u>Ryan Burton</u>				
Current Payband: <u>G (red circled)</u> Payband Requested by Grievor: <u>I</u>												
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	Regular Recurrir Level P	ng	Occas	ional Points	Regu Recu	Union lar/ rring Points		asional Points	Regu Recu		Occa	isional I Points
1A. Education	3	35	Level	T OING	4	48	LCVC		3	35	LEVE	FUIIIS
1B. Education	2	12			2	12			2	12		
2. Experience	2	24			3	39			2	24		
 Analysis and Problem Solving 	2	46			3	78	4	9	2	46		
4. Planning/ Coordinating	2	32			3	56			2	32		
5. Guiding/ Advising Others	2	17	3	3	3	29	4	3	2	17	3	3
 Independence of Action 	2	46			3	78			2	46		
7. Service Delivery	2	29			3	51	4	6	2	29		
8. Communication	3	78			3	78			3	78		
9. Physical Effort	2	26	3	6	3	47			2	26	3	6
10. Audio/Visual Effort	2	20			2	35			2	20		
11. Working Environment	2	38			2	38	3	9	2	38		
Subtotals	(a) 4	03	(b)	9	(a)	589	(b)	27	(a)	403	(b)	9
Total Points (a) + (b)	4	12				616				412		
Resulting Payband	F				I				F			