

IN THE MATTER OF A CLASSIFICATION ARBITRATION

BETWEEN:

ONTARIO PUBLIC SERVICE EMPLOYEES UNION, LOCAL 241  
(hereinafter called the Union)

- and -

MOHAWK COLLEGE  
(hereinafter called the College)

- and -

CLASSIFICATION GRIEVANCE OF MS. LINDA BASSO  
(hereinafter called the Grievor)

SOLE ARBITRATOR  
PROFESSOR IAN A. HUNTER

APPEARANCES:

FOR THE UNION:           Mr. Keith Bates, Chief Steward, Local 241  
                                  Ms. Linda Basso, Grievor

FOR THE COLLEGE:        Ms. Nadine S. Zacks, Counsel

AN ARBITRATION HEARING WAS HELD AT MOHAWK COLLEGE IN  
HAMILTON, ONTARIO ON APRIL 4, 2013

## DECISION

### (1) Introduction

On May 22, 2012 Linda Basso filed a grievance alleging improper classification of her position as Pathways Coordinator at Mohawk College. Mr. Gary Jennings, Associate Dean, School of Language Studies, provided the College's Step 1 Reply denying the grievance (June 22, 2012; Appendix 4, College Brief). On August 15, 2012 Ms. Karen Pashleigh, Chief Human Resources Officer provided the College's Step 2 Reply denying the grievance (August 15, 2012; Appendix 5, College Brief).

The parties filed Briefs in advance of the expedited hearing held at Mohawk College on April 4, 2013. Local 241 had advised me in their Brief that they would be requesting a tripartite arbitration panel as a preliminary issue on April 4, 2013. Pursuant to Article 18.4.4 of the Support Staff Collective Agreement, either party may recommend referral to a tripartite panel. Since the Collective Agreement clearly envisages that the norm shall be sole arbitrator for classification grievances (from the panel set out in Article 18.4.3.1), I held that the party making the request for a tripartite panel bears the onus of proving why such a referral should be made. At the outset of the hearing on April 4, 2013 I invited Local 241 to make their case for referral to a three (3) member Board. After

hearing argument and rendering an oral decision on the issue, the Union dropped its request and the expedited arbitration then proceeded.

For the record, and at the College's request, my oral decision on the preliminary issue is reproduced here:

#### Decision on Preliminary Issue

On May 22, 2012 Ms. Linda Basso filed a grievance alleging improper classification of her position (Pathways Coordinator) at Mohawk College.

On January 22, 2013 I was appointed by the College Employer Council to hear this grievance pursuant to Article 18.4.3.1 of the Collective Agreement. The Collective Agreement goes on to define the process for arbitrator-driven expedited arbitration, which includes the filing of Briefs in advance by the parties. Both parties filed Briefs, which were informative and helpful, in advance of the hearing on April 4, 2013. The first page of the Union Brief states: "Local 241 is requesting a full board arbitration in the matter ...". At the hearing the Union clarified that they wished to rely upon (a) a prior decision of mine at Mohawk College; and (b) P.D.F.'s concerning other positions at the College rated at a higher Payband.

At the outset of the hearing, Mr. Bates clarified that the Union position is that I should continue to sit as sole arbitrator (i.e. not a three (3) member Board) but that I should not be bound by the Collective Agreement restrictions imposed upon the sole arbitrator procedure; specifically, the Union (a) wishes to rely upon my prior decision (not provided to the College in advance of the hearing (cf. Article 19.4.3.4); and (b) wants me to review and compare other P.D.F.'s at the College (not included in Article 18.4.3.4 as relevant information for expedited arbitration, and a practise specifically condemned by a memorandum from the Support Staff Joint Classification Committee dated September 24, 2010); and (c) may wish to call evidence at the hearing concerning the other P.D.F.'s included in the Union Brief, which is not envisaged in Article 18.4.3.6.

I note, first, that the parties, on consent, could have referred the Basso grievance to a full Board under Article 18.4.2.5 but the College did not consent.

I note, second, that I have the power under Article 18.4.4 to refer the grievance to a full Board.

Third, I note that my authority as a sole arbitrator is to determine whether the P.D.F. accurately reflects the Grievor's assigned job content and to determine if the position is correctly evaluated under the Job Evaluation Manual. I have no express authority, as the College reminds me, to review and compare other P.D.F.'s.

In Arbitrator Brandt's decision in O.P.S.E.U., Local 245 v. Sheridan College (2001) the situation was reversed: it was the College that was seeking referral to a full Board and the Union opposed that. I note as well that the Union there took the position (the opposite of what Local 241 takes before me) that "... it is simply not relevant ... to consider the impact that the decision ... might have on the classification of other allegedly 'similar' jobs both at this College and in the system as a whole" (page 5). In the result, Arbitrator Brandt declined to refer the grievances before him to a three (3) member Board.

In the case before me, the Union is seeking to create a hybrid form of arbitration which does not exist under this Collective Agreement. As sole arbitrator, I can consider the grievance of Basso within the restrictions imposed by Articles 18.4.3.4 (no other P.D.F.'s) and 18.4.3.6 (one witness for each side only); or I can refer the grievance to a full Board. What I cannot do is take unto myself the powers of a full Board when I am sitting as a sole arbitrator. If I continue with the expedited hearing today (a) I shall not consider the P.D.F.'s included in the Union Brief; (b) only the Grievor can testify for the Union, and (c) Article 18.4.3.6 will govern the procedure at the hearing. I will admit the prior Award, but I give no commitment at this stage as to its relevance or authority. I note that it was not provided to the College in advance of today's date, and I will be prepared to hear final submissions from the College at the conclusion as to its status and authority.

I then invited the parties to caucus briefly, and return and advise me of their position in light of this ruling. As already indicated, the Union caucused, then returned and dropped their request for a three (3) member Board.

(2) An Overview of the Position

The P.D.F. summarizes the position in this way:

Reporting to the Associate Dean, School of Language Studies, the incumbent is responsible for initiating, developing and coordinating pathway opportunities that facilitate student transition from Secondary School to College, College to College and/or College to University; including local, provincial, national and international articulation agreements between Mohawk and partner institutions.

The incumbent coordinates the development, signing of agreements and the internal and external communication of articulation of all Mohawk College articulation agreements. The position also develops promotional material, including organizing the annual Pathways Fair and maintains statistical data to support pathway initiatives.

The Union points out (a) that this language was written by a manager to whom the Grievor no longer reports; (b) the Pathways Coordinator has since moved from the Student Services Division, to the Office of the Registrar, to the Academic Division in the Faculty of Interdisciplinary Studies; and (c) that the position has evolved considerably since the P.D.F. was last revised in August, 2010.

Be that as it may, the P.D.F. was revised in 2010 when the position was re-titled Pathways Coordinator and the Payband was changed from F to H. The Grievor objected that the P.D.F. failed to accurately express her job duties, particularly in light of significant changes to the position.

From 2010 to 2012 she emailed her Supervisor, and others, seeking changes to the P.D.F..

On February 5, 2012 the College, in effect, installed the current P.D.F. and that was the document provided to me in the Briefs of both the College and the Union. The Union also provided other draft P.D.F.'s (Tab 10 of the Union Brief) and I have reviewed and considered those.

Thirty to forty percent (30-40%) of the position involves developing, monitoring, and implementation of Articulation agreements between Mohawk College and its partners. Another thirty percent (30%) of the position involves working with Academic staff to identify and develop new pathways and articulation agreements. The final thirty to forty percent (30-40%) involves advising students or prospective students (in a variety of ways) about pathway and articulation opportunities.

I keep in mind that many College positions are in near constant flux, and that a P.D.F. provides only a snapshot of any position at a particular point in time.

On May 22, 2012 the grievance before me was filed.

Achieving credit transfers among Ontario's post-secondary Colleges and Universities is an evolving objective; the Grievor's position is at the centre of Mohawk College's addressing of this issue, at least from a student perspective. Pathways tell students what academic credits they may expect to receive at other Colleges and Universities. The brochure "Ontario Transfer" published by the Ontario Government, advises students: "Learn about the transfer policy at the college or university you're considering and consult the school's transfer advisor". At Mohawk College, the person to consult is the Pathways Coordinator.

(3) Job Factors Agreed

The parties are agreed on the following job factors:

<u>Job Factor</u>	<u>Level</u>	<u>Points</u>
1A. Education	4	48
2. Experience	5	69
4. Planning/Coordinating	3	56
5. Guiding/ Advising Others	3	29
7. Service Delivery	3	51
8. Communication - Regular	3	78
- Occasional	4	9
9. Physical Effort - Regular	1	5
- Occasional	2	6
10. Audio/Visual Effort	3	35



#### (4) Job Factors in Dispute

##### 1B. Education

The parties agree that the position requires a three (3) year diploma/degree or equivalent (i.e. Education 1A). The disagreement is whether any additional education, formal training, or accreditation is required over and beyond the three (3) year diploma/degree. The College says not. The Union maintains there should be an additional requirement of courses between one hundred and one (101) and five hundred and twenty (520) hours (Level 3). The College rates this factor as Level 1, 3 points. The Union seeks Level 3, 21 points.

The Union's Brief points to the job requirement of counselling students on a one-on-one basis. It suggests that "counselling" would not be part of a three (3) year diploma/degree but could be obtained through a Counselling Techniques Certificate program, such as those at Mohawk College involves eight (8) courses of forty-two (42) hours each (three hundred and thirty-six (336) hours). This is the rationale for the Union rating.

The College minimizes the "counselling" requirements of the position, pointing out: "The College neither expects nor instructs the incumbent to provide any counselling, as this is done by a Counsellor/Faculty member

... the incumbent has been specifically informed to direct all counselling needs to the Counsellors”.

In considering this issue, I remind myself that it is the minimum required at the point of hire, not the maximum skills that might be desirable, that is the test.

I find that the College rating (Level 1, 3 points) is correct. There was no evidence which would lead me to conclude that there is a “counselling” element to the position; and, particularly, not one that would require additional education beyond a three (3) year diploma/degree. Mr. Gary Jennings, the Associate Dean of the School of Interdisciplinary Studies, was categorical on this point, and I accept his evidence.

1B. Education

Level 1

3 Points

### 3. Analysis and Problem Solving

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

The College has rated this factor at Level 3: "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 at 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 principles."

In considering this issue, I have reviewed and been guided by the Notes to Raters in the Job Evaluation Manual.

Most of my questioning of the Grievor at the hearing focussed on this point. There are several aspects of her position which have convinced me that Level 4 is the correct rating. First, many of the student inquiries that

she receives are identifiable and repetitive; but it was her evidence, which I accept, that about one-third (1/3) are not. The latter require further investigation and research (a Level 4 indicator). In the course of that research, she will often be required to interpret an Articulation Agreement or Memorandum of Understanding. True, her conclusion is not the final interpretation, nor is it binding on the College. But she is interpreting fairly complex documents in circumstances that are important to the student inquirer.

Second, the Grievor is required to make in-class presentations to students. This, in my judgement, requires Analysis and Problem Solving beyond a Level 3 definition.

Third, in the organization and successful carrying out of the yearly education Pathways Fair, I hold that the incumbent is required to exhibit Analysis and Problem Solving at the Level 4 metric. The Fair is only one (1) day, once per year, but I accept the Grievor's evidence: "One (1) day of Fair, six (6) months of planning". She is the College person responsible for planning the Fair, invitations to participants, and ultimately the success of the Pathways Fair.

Fourth, the Grievor is involved in the formulation of some (not all) Articulation Agreements. This again, in my judgement, requires Level 4 Analysis and Problem Solving.

Considered cumulatively, these regular and recurring aspects of the incumbent's job duties are sufficient to tip the balance (albeit slightly) into Level 4 Analysis and Problem Solving.

3. Analysis and Problem Solving	Level 4	110 Points
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#### 6. Independence of Action

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

Factors to be considered include:

- types of decisions the position makes;
- what is decided alone; what in consultation with Supervisor;
- rules, procedures, past practices, and guidelines that provide guidance and/or direction.

The College has rated 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 Union proposes a rating for this factor at Level 4: "Position duties are completed according to specific goals or objectives. Decisions are made using industry practices and/or departmental policies." The Union also proposes an Occasional rating at Level 5.

In considering this factor, I have kept in mind the Notes to Raters in the Job Evaluation Manual.

There is no doubt that the position (and the incumbent) are required to demonstrate analytical skill and judgement. In dealing with Articulation Agreements the Grievor makes decisions, some without input from a Supervisor, but she does so according to Ministry and/or College guidelines, precedents, and past practices. However, based on the evidence, I find that the Grievor does not make independent decisions binding on the College without guidance. The guidance comes from her Supervisor, Deans, and College management. She makes procedural decisions independently, but the substantive decisions are not within her authority. For example, the Grievor may make decisions independently that will move an Articulation Agreement along, but the decision as to (a)

whether to have such an agreement; and (b) its essential content, are not hers to make. Within parameters, the Grievor makes important decisions, but the parameters suggest to me Level 3 not Level 4.

I have also considered the examples of independent decision-making provided in the Union's proposed P.D.F. and not included in the College P.D.F.. Even if the examples are accurate, I find that they are adequately embraced within Level 3, not Level 4. Nor am I persuaded by the Union's submissions that there should be an Occasional rating at Level 5. There was no evidence whatsoever that would substantiate a Level 5 rating.

6. Independence of Action	Level 3	78 Points
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### 11. Working Environment

The College rates this factor at Regular, Level 1: "Acceptable working conditions"; with an Occasional rating at Level 2.

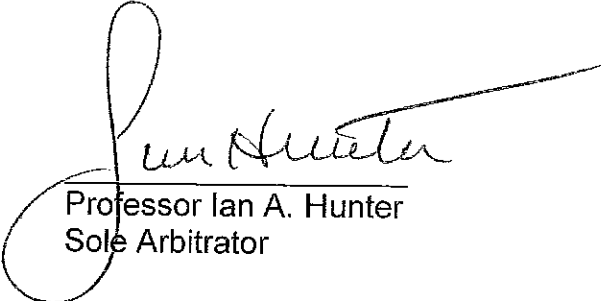
The Union rates this factor at Level 2: Working conditions involve: difficult weather conditions; smelly, dirty or noisy environment; working in isolated or crowded conditions; travel.

(5) Decision

The position (Pathways Coordinator) at Mohawk College should be reclassified at Payband "I", 593 points. I have appended a completed Arbitration Dada Sheet.

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 19<sup>th</sup> day of APRIL, 2013.



Professor Ian A. Hunter  
Sole Arbitrator



## Arbitration Data Sheet – Support Staff Classification

College: Mohawk

Incumbent: Linda Basso

Supervisor: Gary Jennings

Current Payband: H

Payband Requested by Grievor: J

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	<u>Management</u>				<u>Union</u>				<u>Arbitrator</u>			
	<u>Regular/ Recurring Level</u>	<u>Points</u>	<u>Occasional Level</u>	<u>Points</u>	<u>Regular/ Recurring Level</u>	<u>Points</u>	<u>Occasional Level</u>	<u>Points</u>	<u>Regular/ Recurring Level</u>	<u>Points</u>	<u>Occasional Level</u>	<u>Points</u>
1A. Education	4	48			4	48			4	48		
1B. Education	1	3			3	21			1	3		
2. Experience	5	69			5	69			5	69		
3. Analysis and Problem Solving	3	78			4	110			4	110		
4. Planning/ Coordinating	3	56			3	56			3	56		
5. Guiding/ Advising Others	3	29			3	29			3	29		
6. Independence of Action	3	78			4	110	5	9	3	78		
7. Service Delivery	3	51			3	51			3	51		
8. Communication	3	78	4	9	3	78	4	9	3	78	4	9
9. Physical Effort	1	5	2	6	1	5	2	6	1	5	2	6
10. Audio/Visual Effort	3	35			3	35			3	35		
11. Working Environment	1	7	2	9	2	38			1	7	2	9
<b>Subtotals</b>	(a)	537	(b)	24	(a)	650	(b)	24	(a)	569	(b)	24
<b>Total Points (a) + (b)</b>		561				674				593		
<b>Resulting Payband</b>		H				J				I		