IN THE MATTER OF A

CLASSIFICATION GRIEVANCE

BETWEEN:

OPSEU LOCAL 241

-and-

MOHAWK COLLEGE

Regarding the Classification of Nurse Technologists
OPSEU #2007-0241-001

BEFORE :	Kathleen G. O'Neil, Single Arbitrator
For the Union:	Mary Anne Kuntz, Senior Grievance Officer Kathy Maxwell, Local 241 Erika McMullen RN, Grievor Deb Morissette RN, Grievor Nancy Stewart RN, Grievor
For the College:	Dan Michaluk, Counsel Marilyn Bieksa, Associate Dean of Health Sciences Joanne Echlin, Vice-President Staff Services Sheila Walsh, Human Resources Staff Services and Support Staff Relations

A Hearing was held in Hamilton, Ontario on December 7, 2008

A W A R D

This decision deals with the classification grievance dated June 13, 2007 in which the union asks that the Nurse Technologists be reclassified upward to pay band L with retroactive pay to March 1, 2007. The employer argues that the jobs are properly classified at Pay band J, and asks that the grievance be dismissed.

The new classification system

Before turning to the specific matters in dispute in this case, it is appropriate to say a bit about the new classification system under which this grievance arises. The provincial parties recently completed their overhaul of the support staff classification plan, which resulted in a new CAAT Support Staff Job Evaluation Manual (referred to below simply as "the Manual"), a negotiated document dated March 1, 2007, with many similarities to, but some important differences from, the previous scheme.

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

Differences include the fact that the scheme no longer includes Job Families, benchmark jobs or atypical positions. Team lead duties integral to a job are now included in PDF's. Further, the new manual includes factor-specific "Notes to Raters" and definitions which must be adhered to as they provide directions for interpreting a factor and its levels. Amendments were made to Article 7 and Appendix E of the support staff collective agreement as part of the implementation of the new plan as well.

I note that, although the collective agreement provides that the arbitrator should provide a brief written notice of the decision on a classification grievance, I have dealt with the

disputed factors at some length because, although the parties have been working on the design of the new system for years, and its implementation for months, the arbitrators charged with interpretation of the new scheme are only just beginning to sort out the disputed points.

Overview of the Nurse Technologist Position

The work of the Nurse Technologists principally involves the demonstration, assessment and supervision of the practice of nursing skills with students from both the baccalaureate (BScN) and Practical Nursing (PN) programs. Their role does not include teaching theory, but they apply nursing theory in planning and performing the duties of their jobs, modelling the integration of theory and practical skill necessary to competent practice. They work together with a faculty coordinator, student tutors and a part-time clerk and report to Marilyn Bieksa, Associate Dean, Health Sciences.

The incumbents at the time of the grievance were Nancy Stewart, Deb Morissette and Erika McMullen, sometimes referred to below as the grievors. Team lead duties are rotated among the incumbents so that all three positions are rated the same. The work is largely done in the Learning Resource Centre (LRC), a sophisticated facility meant to simulate clinical conditions.

I. THE PDF

The parties have agreed to the PDF, but do not agree on the rating of four of its factors.

II. FACTORS IN DISPUTE

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

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

i. Analysis and Problem Solving

The College has rated this factor at Level 3, which is described as follows:

> Situations and problems are identifiable, but may require further inquiry in order to define them precisely. Solutions require the analysis and collection of information, some of which may be obtained from areas or resources which are not normally used by the position.

The union seeks Level 4, which reads:

> 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.

The manual defines “Established techniques and/or Principles”, found in Level 4, as follows:

> - recognized guidelines and/or methods to accomplish a desired outcome. Can be defined as an individualized way of using tools and following rules in doing something; in professions, the term is used to mean a systematic procedure to accomplish a task.

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 Notes to Raters provide the following applicable directions:

1. Consideration must be given to the types of situations that arise and:
- how situations, analytical requirements or problems are defined
- the range of choice of action within the scope of the job
- the level and type of investigation required
- how complex or multi-faceted issues or problems are
- from which sources assistance is obtained.

This will help define the application of analysis and judgement within the scope of the job. The above elements must also be considered as a whole when selecting the appropriate level.

2. Consideration can only be given to the extent that judgement is allowed within the parameters and constraints identified in the position duties. Keep in mind, it is the requirement of the position not the incumbent's capability that is being evaluated.

3. To clarify the differences between levels 1, 2 and 3:
…

> At level 3, the types of problems that are encountered are readily identifiable but the position must be able to identify when additional information is needed to clearly understand the problem or situation. In order to develop an appropriate solution, the position will need to gather more information. In many circumstances, this additional information or clarification will be readily available, but there will be times when the position will need to seek the additional information from a source it is unfamiliar with.
>
> … 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 College supports its rating with the argument that the incumbents rely on, but do not interpret, the skills checklists that they use in the demonstration and assessment of the nursing skills. Counsel submits that the fundamental analytical process is demonstration, and the fact that the job is performed outside a healthcare setting changes it fundamentally. By contrast, the union argues that nursing has become complex and that in order to assess the adequacy of the student's practice, the technologist has to understand the complexity of a wide variety of skills and be able to assess the extent to which the student understands and integrates the core components of the nursing process, which in itself is a five-step process. The union characterizes the fundamental analytical task as determining "what is missing" and what will fix any deficit in the student's grasp of the knowledge and technique necessary to competently perform a wide range of skills. These skills range from the less complex like hand washing to the quite complex such as catheterization and tracheotomy care and interviewing skills. The incumbents deal with large numbers of students whose specific needs can be very different.

Neither level 3, nor level 4 is a perfect fit for this position, so it is necessary to choose the "best fit", or the better of the two. The factor Analysis and Problem Solving deals with solving problems, a process which requires both the identification of the problem, and its solution. The competing factor definitions have two sentences, each addressing one of those two steps.

The PDF's examples in the Analysis and Problem Solving section deal with the portion of the job that takes place in direct interaction with the students, whether in the BScN or the PN program. This was the area that was focused on most frequently in the

submissions at the hearing as well. For this part of the job, the first sentence of Level 3 appears a very accurate description of the analysis part of dealing with the problems presented each day to a nurse technologist by the students. That is, the problem of the state of preparedness and/or knowledge of a given nursing skill is identifiable, but may require further inquiry, usually of the student, to precisely define the nature of any learning deficit. For example, the words "verbal inquiry" are used in the PDF to describe how the problem of a PN student's inability to demonstrate a skill would be identified. The second sentence of level 3, aimed at the solution part of the factor, is however not as directly applicable. This is because the evidence is persuasive that the technologists do a fair amount of interpretation of student learning needs in light of the nursing process, the demands of the curriculum and licensing exams, and the standards of practice. This requires the exercise of judgment in recommending how best to address the needs so that the learning situation will be effective. The second sentence of Level 3 is also not an easy fit concerning the use of resources in the technologist job, as the areas or resources referred to in the material, although quite varied and wide-ranging, all seemed to be ones that would normally be used by the position.

For level 4, the first sentence provides that the situations and problems are not readily identifiable, often requiring investigation and research to identify them. This does not appear as accurate a description of the process of identifying the problems involved with student learning needs, which are the focus of the examples in the PDF. This function does not appear to require investigation in the sense of a formal examination or study, nor research, in the sense of a systematic study to discover new or collate existing information.[1] In regards to the research element of level 4 of this factor, the examples given in the portion of the PDF for this factor do not give any indication that research might be required in order to identify a problem. However, there are other duties of the job which do provide such an indication. In this respect there is some guidance to be found in the Arbitrator Handbook dated April 28, 2007 provided to the arbitrators who received training in the new system. The first of a list of important points in that handbook cautions arbitrators not to just rely on the examples given within each "skill" or "factor". Rather, arbitrators are urged to refer back to the "Duties and Responsibilities" section to confirm whether the examples provided for a factor capture the essence of the

[1] Investigation and research are not terms defined in the Manual, so I have referred to The Canadian Oxford Dictionary, Oxford University Press 2001, as a resource for clarification of the difference in meanings of the terms used.

job functions appropriately. The PDF does indicate among the significant responsibilities of the job that research using a variety of resources is required to plan an effective means of demonstrating skills. As well, the incumbents are required to access current evidence-based research and best practices as part of professional development and to constantly update and revise skill demonstrations.

As to the second sentence of Level 4, which focuses on the solution of the problems identified by "Established techniques and/or Principles", the union stresses that the manual's definition of that phrase specifically includes professions. As well, it is submitted that "a systematic procedure to accomplish a task" is a very appropriate description of the nursing techniques used daily by the nursing professionals in the technologist's job.

In this vein, it is useful to look at the third example in the PDF for this factor which highlights the assessment function that runs through the nurse technologist's work. This involves assessment of knowledge, preparedness and adequacy of performance of a skill. Designing clinical simulations is mentioned as part of the analysis to determine a solution, and the PDF indicates that the sources for finding solutions includes using past experience in the hospital setting as well as resources such as text books, program manuals, AV media and best practices websites. These functions fit within the description of level 4, as the evidence supports a finding that the incumbents do interpret and analyze this range of information according to the systematic procedures of their profession in order to analyze and design a solution.

In the end, given the range of information and processes dealt with by the nurse technologists, I find Level 4 to be a better fit. The incumbents are essentially learning resource people for students and faculty, and are required to constantly revise their demonstrations and practices according to the nursing process and the standards of practice of their profession. Although an isolated interaction such as observing a PN student do a specific nursing skill might be adequately captured by Level 3, the range of function of this position, including the judgment necessary for the assessment and solution of learning problems arising in a wide variety of nursing situations and individuals, according to established nursing techniques and principles, makes Level 4 a better fit. The range of problems includes those that are readily identifiable, such as

whether or not a student counts pulse accurately, as well as those that are not as readily identifiable, such as whether a student's inability to take pulse correctly is because of other factors such as a second language, anxiety, distraction or lack of study. Although it is true, as the College argues, that the practice does not take place in a health care setting, and is therefore fundamentally different, the students are being trained to be able to safely function in those settings, so that the incumbents have to be able to do what it takes in the practice setting to equip the students with competency for the real clinical setting. This is a difference, yes, but it is not one that persuades me that the analysis and problem solving should be considered to lack complexity. Although the LRC does not involve the demands of real patients in multiple rooms as in a work situation, the assessment of learning deficits and remedial guidance functions of the job, as well as the planning and updating of demonstrations, add a different, perhaps more abstract layer of complexity which it is appropriate to recognize in the rating level.

II. Independence of Action

The dispute between the parties is between Level 3, attributed by the College, and Level 4, sought by the union.

The Manual's Description of Level 3 is:

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

By contrast, Level 4 is described as follows:

> Position duties are completed according to specific goals or objectives. Decisions are made using industry practices and/or departmental policies.

"Process" from Level 3, and "Industry Practices" from Level 4 are defined terms, whose definitions read as follows:

> Process – a series of activities, changes or functions to achieve a result.
>
> Industry Practices – technical or theoretical method and/or process generally agreed upon and used by practitioners to maintain standards and quality across a range of organizations and settings.

The manual provides, in relevant part, that:

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

- the types of decisions that the position makes
- what aspects of the tasks are decided by the position on its own or what is decided by, or in consultation with, someone else, such as the supervisor
- the rules, procedures, past practice and guidelines that are available to provide guidance and direction.

These considerations, when taken as a whole, will define the parameters and constraints of the position within which the incumbent is free to act.

In the Notes to Raters the following appears:

2. When determining the guidance and direction provided also consider the checks and balances that are in place to verify the work. This includes activities, such as feedback by end users, computer system verification routines, other employees reviewing the work, work checked or verified during the next step of a process, supervisor reviews the work.

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

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

Level 3 - specific results or objectives that must be accomplished are pre-determined by others. The position has the ability to select the process(es) to achieve the end result, usually with the assistance of general guidelines. The position has the autonomy to make decisions within these parameters.

4. To clarify the differences between levels 4 and 5:

Level 4 - the only parameters or constraints that are in place to guide the position's decision-making are "industry practices" for the occupation and/or departmental policies. The position has the autonomy to act within these boundaries and would only need to consult with the supervisor (or others) on issues that were outside these parameters.

Level 5 - the only parameters or constraints that are in place to guide the position’s decision-making are College policies. The position has the autonomy to act within these boundaries and would only need to consult with the supervisor (or others) on issues that were outside these parameters.

The examples of types of decisions required of the technologists referred to in the PDF feature prominently the assessments of and directions to students concerning the skills they are performing which are done with virtually no supervision. When referring to the incumbents’ role with regard to BScN students doing practice of communication interviews with the incumbent, for instance, the PDF uses the phrase, “work independently with a high level of self directedness…”

In terms of what aspects of the tasks are decided by the position on its own, and what is decided by others, there is quite a mix. There is little autonomy in terms of what to focus on when a student comes with a specific skill check list for practice or evaluation, or in considering what range of skills need to be covered, as that is determined by the curriculum, faculty and student need. This portion of the job would be adequately captured by Level 3. However, in terms of deciding how to approach a student's learning needs and remedy them, provide guidance to the student or research and revise the demonstrations required by the program, the evidence did not establish constraints other than the standards of practice and the professional training and experience of the incumbents which is formed by those standards. In deciding whether the standards of practice fit within Level 3 or Level 4, "industry practices", defined as it is to mean practices used by practitioners to maintain standards and quality across a range of organizations and settings, is a term which is a much better fit than the term "general processes" from Level 3.

It is worth noting that part of the problem in choosing the best fit for this factor is the fact that nursing is a highly regulated profession, with a specifically limited range of authorized practices and decision making according to the nursing process, which makes it appear perhaps that there is less autonomy. Nonetheless, the wording at Level 4 does not distinguish between industry practices that are highly regulated, and those that are not. That wording appears to be well suited to the situation of employed professionals whose work is circumscribed more by external standards than by close employer direction or supervision.

Dealing with a related point, while it is true, as argued by the College, that there are customary ways of running demonstrations and evaluating students, they are unwritten, and appear to be driven by the goal of ensuring that graduates are competent in the nursing knowledge and skills needed to pass their licensing exams and work in the profession, which fits with the Level 4 provision that the duties are completed according to specific goals or objectives. The departmental policy, although unwritten, appears to be to leave the planning and implementation of the demonstration and assessment of practice to the incumbents. Further, the responsibility of the technologists to be continually current as a learning resource to students and faculty and to research best

practices to update demonstrations without supervision adds an element of autonomy that goes well beyond repetitive skill demonstrations.

As to the types of decisions made in consultation with someone else, the PDF indicates that the technologist would inform faculty about a student's difficulty after two unsatisfactory skill assessments, that the incumbents consult with each other about student progress, and that they work with minimum supervision. There is no suggestion that these contacts with colleagues constitute a review or supervision process. Nonetheless, such collegial exchange does provide the kind of input on work issues common in a professional environment. In terms of the checks and balances, the PDF provides that the work is reviewed or verified only in circumstances that are out of the ordinary, and this is rated as to frequency as "occasional'. Budget approval for supplies rests with the supervisor, as does the occasional issue requiring a decision that is beyond the scope of the position or difficulty meeting student appointments because of time constraints. Matters such as vacation or time off, which do not involve the job duties per se, go through Ms. Bieksa as well. It was the uncontradicted evidence of the incumbents that there would be no need in the course of a normal day to consult anyone, and that even new nurse technologists work independently very soon after starting in the job.

The College argued that no credit should be given under this factor for the analysis performed by the incumbents, as that is an analytical process, rather than a "position duty", which should be accounted for only in the Analysis and Problem Solving factor dealt with above. It is certainly true that the drafters have provided two different factors, each with significant weight in the overall rating of the position. And analysis was not a focus of the arguments made by the parties on the factor of Independence of Action in this case. Thus, the decision on this factor does not turn on this aspect of the incumbents' jobs. However, it is fair to note that the provincial parties have seen fit to provide in the portion of the Arbitrator Handbook dealing with Independence of Action that "the examples described in the "Analysis and Problem Solving" section often provide additional information about the type of resources available to assist the position in making decisions. Nonetheless, the handbook goes on to state that although some of the guidelines and parameters may be similar to those in the "Analysis and Problem

Solving" factor, that the Independence of Action factor is concerned with the checks and balance that are in place to verify the work or support the decisions being made.

Overall, I find that the evidence supports a finding that industry practices such as the standards of practice prescribed by the College of Nurses as well as the best practices for each of the nursing procedures are the main constraints in a working situation described in the PDF as involving minimum supervision. Therefore, level 4 is the better fit.

III. Audio/Visual Effort

Both parties rate this factor at level 2, which reads as follows: in issue here are:

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

The dispute is over whether the rating should be "Focus Maintained" or Focus Interrupted", both of which are defined terms, as follows:

> Focus Maintained - concentration can be maintained for most of the time.
>
> Focus Interrupted - the task must be achieved in smaller units. There is a need to refocus on the task at hand or switch thought processes.

Concentration is defined as undivided attention to the task at hand.

The manual provides that this factor measures the requirement for audio or visual effort, according to two aspects:

> a) the degree of attention or focus required, in particular for:
> - periods of short, repetitious tasks requiring audio/visual focus
> - periods where task priorities and deadlines change and additional focus and effort is required to achieve the modified deadline
>
> b) activities over which the position has little or no control that make focus difficult. This includes the requirement to switch attention between types of tasks and sensory input (e.g. multi-tasking where each task requires concentration).
>
> Assess the number and type of disruptions or interruptions and the impact of these activities on the focus or concentration needed to perform the task. For example, can concentration be maintained or is there a need to refocus or change thought processes in order to complete the task.

The Manual's directions include the direction to assess the number and type of disruptions or interruptions and the impact of these activities on the focus or concentration needed to perform the task. The College argues that the manual makes it clear that interruptions alone will not justify a "focus interrupted" rating unless there is a need to refocus or change thought processes in order to complete the task, as well as drawing a distinction between tasks that can be picked up where they were left off rather than needing to be re-started. Given that the technologists have an expert grasp of the nursing skills they demonstrate, it is submitted that interruptions do not cause the loss of focus necessary to justify a "focus interrupted" rating. Further, it is said that a practice session typically involves interaction between one technologist and three to five students, making it a dynamic situation where the technologist would be able to answer a quick question or put the inquirer off without losing focus.

The union submits that the employer's position is incompatible with the plain language of the agreed PDF. The PDF gives three examples of assessments of students demonstrating a nursing skill, each with an indication that focus cannot be maintained because of constant interruptions. In this regard, the employer's argument is essentially that the PDF does not reflect a reassessment of the position done in May 2007, after which it seems no one went back to the PDF. Counsel argues that the finding should reflect the real situation. Given that the PDF is an agreed document, and the manual provides that it is what is to be rated, accepting this position would be quite at odds with the design of the scheme. The parties both maintained that the PDF was agreed, and it is not my view that an arbitrator is in a position to go behind that, in the absence of some extraordinary circumstances not present in this case. In any event, the evidence supports the wording of the PDF, as discussed below.

The compulsory Notes to Raters include the following directions:

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

Raters are also directed to consider the impact of the disruption on the work being done and whether the incumbent can pick up where she left off or whether the interruption

causes a disruption in the thinking process and considerable time is spent backtracking to determine and pick up where she left off.

The grievors indicated that their work takes place in an environment where other groups of students can be in very close proximity, with dozens of other students in the area. A frequent situation would be where a technologist is observing the practice of a nursing skill and a faculty member or student interrupts to ask for something they need. This can and does occur several times during one demonstration, and is not in the incumbents' control. There is a part-time clerk who can field some questions, but after 12:30 p.m., there is no clerk assigned. Sometimes the interruption is not just verbal, but requires the technologist to leave the area, and the student demonstration is disrupted. The College accepts that the LRC is a very busy, sometimes noisy location and does not dispute that there are interruptions, but notes that there is also a coordinator who can take some of the questions. As well, the employer expects that the technologist would be able to answer short questions without losing focus on the demonstration or assessment in progress. It is considered the exception rather than the rule that focus would not be able to be maintained. The union submits that the coordinator is more often than not unavailable.

Given the thrust of the notes to raters, the designers of the scheme intended that many disruptions would be taken to mean that concentration has to be re-established. It is not possible to precisely quantify the number of interruptions, but they did not appear to be "few", even with the help of the clerk and other professional staff for part of the time. Further, although it may not be very difficult for a skilled professional to pick up where she left off in an assessment, the disruption is no less real. Further, the requirement to do so repeatedly is what the "focus interrupted" aspect of the factor is measuring, not whether the incumbents are able to do it without great difficulty. And switching to answering a question about needed equipment or booking an appointment surely involves a change of thought process from counting pulse, or assessing tracheotomy care, or tactfully guiding a student as to how to remedy learning deficits. Further, the skill of the professional cannot be assumed for the student, and the incumbents would need to deal with issues in the assessment or supervised practice if the student has difficulty picking up where he or she left off.

On balance, and in light of the agreed wording of the PDF, the evidence supports a finding that “Focus interrupted” is the appropriate rating for this factor.

IV. Working Environment

This factor looks at the environment in which work is performed and the extent to which there are undesirable or hazardous elements. This is one of several factors for which the new scheme provides point ratings which vary according to whether the elements at a certain level are regular and recurring or occasional.

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

> Working conditions involve:
>
> - difficult weather conditions
> - smelly, dirty or noisy environment(s)
> - exposure to very high/low temperatures
> - verbal abuse
> - working in isolated or crowded situations
> - travel

The college then added points for handling hazardous substances, an element from Level 3, on an occasional basis.

By contrast, the union seeks Level 3, to be counted as regular and recurring, which is as follows:

> Working conditions involve:
> - exposure to extreme weather conditions
> - handling of hazardous substances
> - dealing with abusive people who pose a threat of physical harm
> - accessing crawl spaces/confined spaces
> - other conditions which may pose a risk to personal safety

Two of the elements in Level 3, handling hazardous substances and accessing crawl spaces/confined spaces, are listed as daily occurrences on the PDF. The argument at the hearing centred around how to rate the portion of the PDF which deals with “Handling hazardous substances” for which two examples are given. The first is uncontroversial; it is agreed that coordination of pick-ups of Biomedical hazardous waste is done one or two times per semester and is thus “occasional”. The controversy is over the example, which occurs daily, described as follows:

During supervised practice and assessment for medications, syringes and ampoules are used.

The College submits that the risk of injury from dealing with syringes and ampoules is very low, and that the technologists as professionals know how to control the risk by proper procedure. For its part, the Union argues that because the agreed PDF provides that hazardous substances are handled on a daily basis, Level 3, regular and recurring, is the appropriate rating.

The Manual includes an introductory section entitled "How to Use the Manual" which provides at point 4a that if a specific task occurs daily or weekly, it is "easily identifiable" as "regular and recurring". This provision supports the union's position, since two of the elements of Level 3 are said to occur on a daily basis.

The College's position is that the technologists work in an acceptable clean environment without live subjects, and that the risk of injury is low. There have been few needle stick injuries, all to students, not necessarily even under the incumbents' supervision, and none involving exposure of the technologists to human blood. It does indeed appear that the risk of injury is extremely low, as there is a sharps container for the needles (even if not always used by students), and the ampoules are not likely dangerous unless broken. Nonetheless, the factor definition does not operate by a measurement of the level of risk of injury. Rather, it measures how often the incumbents handle hazardous substances. In writing the PDF, the College has written in syringes and ampoules as involving the daily handling of hazardous substances. The union has agreed to that. Although there is a natural desire to reflect the fact that the danger is not very great, despite the frequency of handling the hazardous substances, the factor definition does not measure the magnitude of the risk, but the frequency of the exposure to it. Additionally, there is the fact that accessing crawl spaces is listed as a daily duty, which is another regular and recurring element at Level 3. In sum, in light of the way the factor definition is worded, Level 3 is more reflective of the PDF than Level 2.

* * *

To summarize, for the reasons set out above, the grievance should be allowed. The rating of the factors should be as follows:

Analysis and Problem Solving: Level 4 – 110 points
Independence of Action: Level 4 – 110 points
Audio/Visual Effort: Level 2, Focus Interrupted – 35 points
Working Environment: Level 3, Regular and Recurring - 69

This brings the point rating from 671 to 772, which is within Pay band L. As per the local parties' memorandum of agreement dated March 8, 2007, retroactive payment of the difference between Payband J and Payband L is to be paid back to March 1, 2007.

I will remain seized to deal with any problems in implementation of the above decision which the parties are unable to resolve themselves.

Dated at Toronto this 27th day of February, 2008.

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Kathleen G. O'Neil, Arbitrator