

IN THE MATTER OF AN EXPEDITED CLASSIFICATION ARBITRATION

B E T W E E N:

ONTARIO PUBLIC SERVICE EMPLOYEES UNION. Local 243
(FOR SUPPORT STAFF)
(hereinafter called the "Union")

- and -

COLLEGE COMPENSATION and APPOINTMENTS COUNCIL
(FOR COLLEGES OF APPLIED ARTS and TECHNOLOGY)
In the form of NIAGARA COLLEGE
(hereinafter called the "College")

- and -

GRIEVANCE of Jean Brodie; Christine Drobnich; Cheryl Evans;
Alan Mutch; Karen Pacheco; Elizabeth Roy and Wayne Sadlak

OPSEU File No. 2010-0243 [0002-0008]
(hereinafter the "Grievors")

ARBITRATOR: Richard H. McLaren, C.Arb.

REPRESENTING THE COLLEGE:

Daniel Michaluk - Counsel
Fiona Allan, Director, Workforce and
Business Development,
Kristine Dawson, Manager Co-op
Education & Graduate Employment
Services
Nicole Perrault, Human Resources
Manager
Vicki Turchi, Human Resources Consultant

REPRESENTING THE UNION:

Cindy Rigg – Chief Steward Local 243
Val Patrick - OPSEU
Bob Holder - Local 243 President

A HEARING in RELATION to this MATTER WAS HELD at THOROLD, ONTARIO
on 5 NOVEMBER, 2012.

AWARD

The College evaluated the position of "Co-op Educational Consultant" (hereafter the "CEC") and rated the position at 624 points, thus placing the position within Payband I. There are seven incumbents who are the Grievors listed on the title page and one other individual. They disagree with the rating evaluation by the College, disputing 5 factors, and claiming the position ought to be rated at 749 points, making it properly within Payband K.

The Grievors, the Union and the College are agreed upon the contents of the Position Description Form (PDF). The parties are apart on what is the proper rating of the PDF as it pertains to the factors in dispute. The position of CEC no longer exists and two other positions have replaced that position. The grievance is dated 2 November 2010 and the date the CEC position was reorganized was 24 May 2011. To the extent that there is any retroactive pay adjustment as a result of this Award it would be confined to this time period.

Background

The CEC consultant provides services and support to students of the College enrolled in post-secondary, apprenticeship and applied degree co-op education programs. Their support to the students includes development activities, such as delivery of the CPLN course and support of students in their job search efforts, as well as job development to secure co-op job postings and work term monitoring and assessment to support the student's transition from the school environment to the working environment. These consultants work closely with the students' and their employers' during the career development and job search stage and also during the job development and work term monitoring stages all, of which may occur simultaneously.

The CECs work at the College's Job Centres at Niagara on the Lake and Welland Campuses. There are 2,500 students enrolled in the College's co-op programs and there are approximately 1,200 co-op work term assignments in a given academic year. At the relevant time, the College had 24 co-op programs in which students participated in one or more work experiences as part of their program requirements. Co-op students must apply for, obtain and complete paid work terms independently, although they are supported by the co-op consultants in the process of obtaining a job and retaining it.

Preliminary Matters

The arbitration data sheet signed off by the College and the Union in October of 2012 reveals the following five factors are in dispute: # 3. Analysis and Problem Solving; #4. Planning/Coordinating; #5 Guiding/Advising Others; #6. Independence of Action and #7. Service Delivery.

At the outset of the hearing, the College submitted that it is up to the Union to provide the evidence in support of its grievance. The College will not, and is not required to justify its rating in this proceeding. Rather, the Union must meet the onus placed upon it to establish its case. I agree with this submission and will apply it where it is appropriate to do so.

Factors in Dispute

Each of the factors in dispute is dealt with below under separate headings.

3. Analysis and Problem Solving: Ratings: College Level 3 O 4 / Union Level 4

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

(i) *Evidence & Submissions*

The Union submits that the first thing that a student does in the co-op programs is take a career planning and development course of 6 weeks duration with 3 hours of teaching time run by the CECs (with the reorganization of the position this course is no longer in existence). This is a mandatory course that helps the student learn how to write a job application letter and resume and apply for a co-op job. There are mock interviews and other simulations and assignments in the course, all which are intended to teach a student how to apply for a job. The CECs must evaluate the student and measure satisfactory progress in the course. The Union provided 4 examples of situations where the CEC has to undertake an analysis of the behaviour of a student on their co-op placement, with a view to analyzing what is going on and to make suggestions for improvement. Similar considerations arise when students do not have sufficient co-op hours or they have personal issues or other circumstances that create barriers to employment thus impacting the ability to obtain or sustain a co-op term of employment. In the submission of the Union, the solutions developed, derive from established techniques, past practice and departmental guidelines and meet the standards of a Level 4 rating.

The Union put forward as evidence four examples. Three of them involved student conduct such as inappropriate or unacceptable behaviour, or personal issues that created barriers to obtaining or maintaining employment. The other example proffered involved market forces where there are insufficient co-op jobs, or insufficient student applicants for the co-op jobs available. It was submitted that in each of the student situations, an analysis considering past practices, Co-op Guidelines and CEC workplace knowledge were required to work out solutions. In the market forces situation, the analysis involved exploring trends and understanding the fit between the program and the employers. All of these instances were cited as the reason why the factor ought to be rated at level 4.

In considering its submissions, the Union urged me to refer to arbitration decision Fenner (ref. #2008-0561-0005) and Bates Group (10-12-01) being decisions of Arbitrators Springate and Hunter. While I have the utmost regard for the capabilities of both of those Arbitrators, I am not inclined to examine their awards. They are based upon different facts and PDFs for positions which, while they may be titled the same, are not necessarily similar jobs to those of this College and its CECs. Therefore, I have made no reference to the cited awards in my deliberations.

The College submits that generally speaking, the level of analysis or problem solving is straightforward, characterized by clear processes. The co-op process has a typical cycle which commences with the career planning and development course which might be termed "the development period." This is followed by a January to April job search period assuming the course was taken in the Fall semester. Then once a job is found, the students are monitored in that job during the summer work term. Approximately 85% of such work terms occur in the summer months, but they can occur at other times of the year. It is submitted that the co-op process is a repetitive structured process and evidence of that can be found in the "Co-op Guidelines" to which both parties referred me. It is submitted that the problems the CECs experience are of a routine nature, resolved through questioning and fact gathering, and not the kind of research contemplated by Level IV.

The Occasional Element within the Factor

The rating by the College does have an occasional 4. However, there was no discussion of this element in the brief of the Union and it is only cursorily referred to by the College. I find there is insufficient evidence to make any determinations on this aspect of the rating. I make no findings as a result, and merely accepted it as the rating that has been assigned.

(ii) Findings

This is a factor which attempts to measure the application of analytical skill and

judgment that is required to perform the scope of the job. In each of the four examples given by the Union, the situations and problems are readily identifiable. This is one of the distinguishing points between Levels 3 and 4. At the latter level, the situations and problems are typically, not readily identifiable. The examples cited to me were readily identifiable. I find that there is insufficient evidence that the problems are not readily identifiable.

In each example, further inquiry and gathering of information is required before solutions can be hypothesized and such activity is squarely within Level 3. Level 4 requires investigation or research, which is a more rigorous form of inquiry or gathering of information. None of the examples provided require further research, perhaps with the possible exception of the market forces example. Some student problems of a personal nature may require limited investigation. The example of the market conditions need only be examined by an inquiry. Thus, there may be elements of Level 4 in some instances but the best fit is Level 3. I do not find that the factor was incorrectly rated.

4. Planning and Coordinating: Ratings: College Level 3 /Union Level 4

The Support Staff Job Evaluation Manual describes the factor as follows:
*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 decided results.*

Level 4 planning involves "... *multiple inputs and complex tasks, frequently requiring the coordination of activities or resources of a number of departments, such as a major campus renovation or major technology upgrade. The position could be responsible for multiple concurrent major projects at the same time. At this level, the position would have the authority to require others to modify their schedules and priorities*".

(i) *Evidence & Submissions*

The Union submits that the Grievors are engaged during the year in numerous activities and events that require a multi-faceted approach. They are simultaneously dealing with teaching and running the career planning course, while engaging with other students in job development, conducting interviews, site visits and undertaking evaluations of assignments, reports and work term placements.

The Union submits that the students in the co-op programs have a variety of ages, physical abilities, educational, work and social backgrounds. In the case of the international students, they tend not to have any work background and have merely theoretical education. This diverse population of individuals that the CECs serve makes the planning and co-ordinating Factor one at Level 4 in the submission of the Union.

Three examples are cited. First the diversity of the population served requires multi-faceted skills to assist and support the student. In performing their work they also must exhibit a high degree of sensitivity to cultural divergence, physical limitations, transportation and financial resources as well as family and health issues. The CEC is attempting to assist the student to ensure success and in doing so, must plan and co-ordinate students and employers. Also provided, is an example of the multi-tasking discussed at the outset of this heading. The third example involves a new prospective employer who must be informed of the program, how it works and how they and the student can benefit from engaging in the co-op program.

The College states that the Grievors have no responsibility for planning and co-ordinating the kind of multi-faceted events required to justify a Level 4 rating. Level 3 is associated with an affect or material influence on others in engaging in the planning process. It is submitted that is exactly what the CECs do. They are not planning or co-ordinating multi-faceted events but rather influencing students and employers.

(ii) *Findings*

The Union submits that the CECs are engaged in multiple major projects at the same time. They could be doing the course and also visiting employers for prospective co-op positions. I find that while the Union submissions do clearly demonstrate that there are multiple activities within the day for any CECs, they are serially engaged in either teaching students or one-on-one situations with students or employers. The planning and co-ordinating work is sequential in nature and not multi-faceted at one single point in time, which is how I read the requirement of Level 4. There are no planning responsibilities for a complex task or involving multiple inputs. The CECs are engaging with a single student or employer at one time, or possibly both together in some instances. They are not co-ordinating activities or resources of a number of departments as is required to be in Level 4.

(iii) *Conclusion*

For all of the foregoing reasons, I confirm the rating of the Factor and I reject the Union submission that there ought to be an adjustment to Level 4.

5. **Guiding/Advising Others: Ratings: College Level 3 / Union Level 5**

*This factor refers to any **assigned responsibility** to guide or advise others (e.g. other employees, students, clients) in the area of the position's expertise. This is over and above communicating with others in that the position's actions directly help others in the performance of their work or skill development.*

(i) *Evidence & Submissions*

It is submitted by the Union that the CECs allocate tasks to others by assigning tasks to students via the career planning course and individual career consultations. The CECs must use their expertise to advise the student and allocate tasks that ensure the proper completion to achieve success. In summary, they provide individual guidance and advice to assist them in their successful completion of the course and the co-op aspects of their course. Reference was also made to the Fenner arbitration, *supra*. I have already indicated my views on the use of such awards in this type of case.

It was further submitted by the Union that the CECs assist with present and future employment needs including assisting in the establishment of graduate and co-op wage ranges for present and future hiring needs.

It was submitted by the College, that the Level 3 Guiding and Advising rating for the CECs is the appropriate one for the factor; describes exactly what the CECs do, that is: “*advise others to enable them to perform their day-to-day activities*”. Advise is defined as “*the authority to recommend, or provide knowledgeable direction regarding a decision or course of action*”. The students have to perform their work independently and they must find the employment. It is not the College or the CEC’s responsibility to find them co-op work. Thus, the CECs assist the students to perform their daily activities and carry out a similar function with the employers participating in the program.

(ii) *Findings*

Level 3 provides for advising students or employers on a course of action. That level places them with ongoing involvement in their progress. Level 5 provides that the guidance and advice ensures completion of the tasks. The CECs have no responsibility for ensuring the completion of any tasks on which they provide guidance or assistance to either students or employers. Therefore, their work is not performed at the Level 5 that is the request of the Union.

The CECs do provide advice to students and employers. However they also have an “ongoing involvement” with the students under their direction. That concept is defined and requires that they be involved with the student “*for the duration of the process or skill development*”. The CECs do have such an ongoing involvement while teaching the students in the course. They also have it with students who require support and assistance during the term, or in the co-op placement. Therefore, I find that there is evidence to establish that the appropriate rating for this Factor is Level 4.

6. Independence: Ratings: College Level 3 / Union Level 4

(i) *Evidence & Submissions*

It is submitted by the Union that the level of independence is at Level 4 because without supervision, the CECs make autonomous decisions relating to employer/student disputes and in-class student issues. They also do so in developing and implementing job development plans. In reference to the "Co-operative Education Guidelines and Procedures 2008/2009" refers throughout to contact the CEC; or consult with; or obtain their permission to, for example leave a co-op job. These actions by the CEC indicate that such responsibility and independence supports a Level 4 rating.

The College submits that Level 3 is the best fit because the co-op process is highly structured, with a strong rhyme to it, and features defined activities and general guidelines. There is a course workbook for the career planning and development course which has been approved by management which structures the content delivered by co-consultants. Therefore, the course related activities are well defined. The Co-Op Guidelines also play a part here for it sets out a process for applying for co-op positions and securing and accepting them.

(ii) *Findings*

A Level 3 rating requires that "*Position duties are completed according to general processes*". In contrast, Level 4 requires that the "*Position duties are completed according to specific goals or objectives*". Aside from the overall goal of trying to ensure that a student graduates, there are no specific goals or objectives of duties that are carried out by the CECs. Furthermore, the position does not require the CECs to take steps or carry out tasks.

The autonomy that is present in the job is limited by indirect supervision. For example, the course that CECs teach is approved by management and must be delivered as approved. That is clearly a Level 3 function. However, their autonomy is also limited not by indirect supervision, but by forms of control over the actions of the position by the

application of general guidelines to determine how to deal with student problems or issues. The decisions that are made with respect to one-on-one consultation, monitoring work term placement and employer outreach activities include the use of departmental policies. These aspects of the jobs function are at Level 4 because the decisions made by the CEC involve departmental policies but are made on the spot at the time without the informal control involved in the course. Thus, there is a mix of levels here between 3 and 4. In such a situation, I am required to use a best fit determination. In so doing, I turned to the PDF to examine the amount of time that the guidelines might play a role versus informal indirect control by management. The course which is taught has the heading "Career Development Activities" and the entire list of activities represents 50% of the annual time spent on the job. Job development, which is 25% of the time and site visits which is 20% of the time, reflect more of the decisions that must be made through the use of departmental policies. Therefore, on a best fit basis, I find the factor is not correctly rated at 3 and ought to be rated at Level 4.

7. Service Delivery: Ratings: College Level 3 / Union Level 4

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

(i) *Evidence and Submissions*

The Union submits that the CEC must anticipate the requirements of the customer to proactively deliver service. It is submitted that the diversity of the student population, the number of both disabled and international students and the WSIB sponsored students all support the need to analyze these students' current and future needs in comparing the presence and sustainability of the labour market in order to develop proactive marketing and outreach strategies.

The College has rated this factor at Level 3. They state that the services are tailored to the individual student based on the needs that the consultant must identify.

There is little need to anticipate what is to occur but rather to react to what is going on which is more of a Level 3 activity. The services are defined in the Co-op Guidelines and the Course Workbook and cannot be re-designed. In fact, that is how the services are made consistent so every student receives similar service delivery. When dealing with the employers, they are engaged in a defined offering with identified attributes being the College's co-op program.

(ii) Findings

Level 4 requires that a person anticipate customer requirements and proactively deliver services. There are no tailored services to the user. I find the Factor has been properly rated at the Level 3.

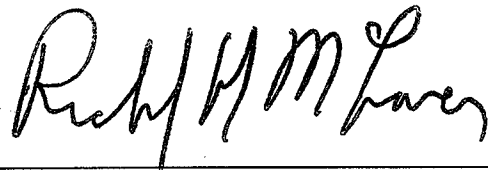
CONCLUSION

The total points, when adjusted as rated by this award, are "regular & recurring" 643 "occasional" 15, for a total of 658. That places the Payband within Level J, the range in the Manual being between 640 - 699. See the attached rating sheet.

The parties are hereby directed to take the necessary steps in order to implement this decision. If there are any disputes as to the implementation of my award, I retain jurisdiction to resolve those disputes and issue a supplementary award to complete the process of ensuring that the remedy is complete and the Grievors are made whole to the extent that may be required.

I will remain seized of this matter with jurisdiction to complete the remedy in this award for a period of 45 days from the date herein. Either party may on written request to the Arbitrator ask me to reconvene the hearing for the purposes of determining the remedy aspects of this award. If no written request is received within the stipulated time frame, I will no longer retain jurisdiction over the implementation of the remedy arising from this award.

DATED at LONDON, ONTARIO THIS 12th DAY of November, 2012.

A handwritten signature in black ink, appearing to read "Rich H McLaren". The signature is written in a cursive, flowing style.

Richard H. McLaren, C.Arb.
Arbitrator

Arbitration Data Sheet - Support Staff Classification

College: Niagara Incumbent: Jean Brodie Et Al. Supervisor: Fiona Allan
 Current Payband: I Payband Requested by Grievor: K

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						
1B. Education	2	12			2	12						
2. Experience	5	69			5	69						
3. Analysis and Problem Solving	3	78	4	9	4	110			3 3	78	4	9
4. Planning/Coordinating	3	56			4	80			3	56		
5. Guiding/Advising Others	3	29			5	53			4	41		
6. Independence of Action	3	78			4	110			4	110		
7. Service Delivery	3	51			4	73						
8. Communication	4	110			4	110						
9. Physical Effort	1	5	2	6	1	5	2	6				
10. Audio/Visual Effort	3	35			3	35						
11. Working Environment	2	38			2	38						
Subtotals	(a) 609		(b) 15		(a) 743		(b) 6		(a) 643		(b) 15	
Total Points (a) + (b)	624				749				658			
Resulting Payband	I				K				J			

Signatures:

Brodie (Grievor) Oct. 4 2012 (Date) _____ (College Representative) _____ (Date)
[Signature] (Union Representative) Oct 4, 2012 (Date)
[Signature] (Arbitrator's Signature) 5 Nov 2012 (Date of Hearing) 12 Nov 2012 (Date of Award)

argued best