

IN THE MATTER OF AN ARBITRATION

BETWEEN:

Northern College
("the College")

and

Ontario Public Service Employees Union, Local 654
("the Union")

Grievance of K. Hopkins

ARBITRATOR:

Mary Lou Tims

APPEARANCES:

FOR THE COLLEGE:

D. Michaluk – Counsel
T. Senyuk
C. Carbone

FOR THE UNION:

L. Lachance – Chief Steward
F. Wright
K. Hopkins

Hearing held in Timmins, Ontario on September 30, 2009.

AWARD

I have before me the November 28, 2007 grievance of Mr. Kenneth Hopkins. The grievor holds the position of Technical Support Specialist in the Information Technology (“IT”) Department at the Porcupine Campus of Northern College in Timmins, Ontario. The grievance seeks reclassification of his position.

There were no objections with respect to my jurisdiction or to the arbitrability of the grievance.

Although a number of versions of the Position Description Form (“PDF”) were filed with me, the parties were in agreement that the PDF dated November 27, 2007 and December 4, 2007 is the PDF properly considered in these proceedings. While the parties’ Arbitration Data Sheet indicates that the Union disagrees with the contents of the PDF, the Union’s representative advised at the hearing that the content of the PDF is no longer in issue given certain revisions made to it.

The Position Summary found in the PDF describes the grievor’s position as follows:

- Ensuring the proper functioning of all data, and Voice over Internet Protocol (VoIP) networks
- Providing support services and technical advice at a high level of competency in the following areas: network routing and switching, network infrastructure design, AoS (Quality of service), security systems (e.g. firewalls, encryptions systems), computer and Cisco programming, college wide data back-up systems, Wide Area Network (WAN), Virtual Private Network (VPN), and core servers systems.
- The incumbent is responsible for allocating tasks to others in the department and for ensuring the tasks are completed.

According to the Union, the staff complement in the IT Department includes a Computer Technologist, a Programmer/Analyst, a Systems Technologist and another

Technical Support Specialist. The College stated that the grievor is one of three Technical Support Specialists in the department.

The College rated the grievor's position at Payband K, and the Union seeks reclassification to Payband L. The dispute between the parties relates to the ratings assigned to two factors, Planning/Coordinating and Guiding/Advising Others. Both parties filed written submissions prior to the hearing in accordance with article 18.4.3.4 of the collective agreement, and made submissions at the hearing. The grievor and his supervisor, Mr. Tony Senyuk, Director of Information Technology/Plant & Property, spoke to the matters in dispute at the hearing.

PLANNING/COORDINATING

The College rated this factor at Level 3, Regular and Recurring and Level 4, Occasional. The Union argues that it should be rated at Level 4, Regular and Recurring.

The Support Staff Job Evaluation Manual ("the Manual") defines Levels 3 and 4 Planning/Coordinating as follows:

Level 3 - Plan/coordinate activities, information or material to enable completion of tasks and events, which affect the work schedule of other employees.

Level 4 - Plan/coordinate and integrate activities and resources for multi-faceted events, projects or activities involving other employees. This typically involves modifying these individuals' priorities for activities/projects to meet objectives.

The Union asserted that the grievor was a Lead Hand under the previous classification system, and that his duties have not changed. It argued that a Level 4, Regular and Recurring rating is justified here on the basis of the grievor's project work and his role in planning and coordinating day to day departmental operations.

Initially in these proceedings, the Union suggested that the grievor is “occasionally” or “intermittently” involved in the planning and coordinating of projects that “come and go.” It later argued, however, that due to the expansion of the College and the introduction of new technology, the planning and coordination of special projects is a regular responsibility of the grievor’s position. The Union’s representative described that the grievor is responsible for the development and implementation of voice data and video networks at the College. She suggested that he must plan suitable timeframes for the work of different contractors, and must coordinate schedules with Help Desk technicians. While the Union accepted that “overall responsibility” for the planning and coordinating of projects rests with the Supervisor, it maintained that the grievor is responsible for daily follow up. In its pre-hearing Brief, the Union argued that the grievor is the “main contact” in the IT Department on various projects. It stated that such projects require “step procedures” insofar as “set up has to be coordinated to ensure one step is completed before moving on with other steps.” According to the Union, the grievor’s position “must be able to break down large plans into smaller manageable plans, with ability to coordinate activities of project to ensure completion of tasks.”

The grievor stated that he must respond to technological changes, and that he coordinates contractors, other departments, teachers and managers to facilitate what needs to be done with minimal disruption to College operations.

The Union also took the position that although ongoing work activities of technicians are addressed at weekly departmental meetings, that “things happen,” and the grievor is the “go to person.” The grievor indicated that his “job is the network,” but that he must have knowledge of the “whole gamut of IT.” He explained that the Supervisor

has ultimate responsibility, but that he addresses “things that come up” without “running” to Mr. Senyuk “with every little issue.”

The College did not dispute that the grievor is engaged in “project work” in the course of his duties, and indeed acknowledged in its Brief the “significant planning responsibilities” associated with the grievor’s position. It argued, however, that Level 3 Planning/Coordinating is not “simplistic” in nature. It noted that the Level 4 factor definition refers to “multi-faceted” projects, and suggested that the grievor’s position is not involved in the planning and coordination of projects which can properly be characterized as such. Counsel further noted that “multi-faceted” is not a term defined in the Manual. He suggested, however, that the Notes to Raters outline what must be regarded as the “hallmarks” of multi-faceted projects.

While the College accepted that the grievor is a senior employee with knowledge and experience, and that IT staff assist each other in fulfilling their individual responsibilities, it disputed that the grievor has any assigned planning or coordinating role with respect to other staff which would justify a Level 4 Regular and Recurring rating.

In the College’s submission, the grievor’s position is properly rated at Level 3, Regular and Recurring. While I did not understand Counsel to suggest that the Occasional rating of Level 4 assigned to this position could or should be withdrawn, he argued that there was in fact no basis for such rating and that it should be regarded as “gratuitous.” In any event, the College argued that even if I am of the view that a Level 4 Occasional rating is justified, that I cannot conclude that such rating is warranted on a Regular and Recurring basis.

The grievor’s position has been rated by the College at Level 3, Regular and Recurring and Level 4, Occasional. Despite the College’s suggestion that the Level 4

Occasional rating of this factor is unwarranted, in my view, it is not open to the College in the present circumstances to even indirectly challenge the validity of ratings which it assigned. My analysis here starts therefore on the basis that the College has accepted as appropriate an Occasional Level 4 rating. The only question before me then is whether the Union has demonstrated that such Level 4 rating should be assigned on a Regular and Recurring basis instead.

The relevant factor definitions must be read in light of the Notes to Raters. Such Notes distinguish between Level 3 and Level 4 ratings as follows:

Level 3 – the position decides the order and selects or adapts methods for many work assignments. Typically, the planning and coordination at this level, which affects the work schedule of others, are requests for materials/information by specific deadlines in order for the position to plan events or activities (e.g. conferences, research projects, upgrading hardware or software).

Level 4 – typical planning and coordination at this level 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.

In addressing the parties' positions before me, I have also considered the distinction drawn in the Manual between "Regular and Recurring" and "Occasional."

The Manual states as follows:

"Regular and recurring" may not be readily identified as a quantitative amount of time. If a specific task occurs daily or weekly, it is easily identifiable as "regular and recurring." However, a specific task that occurs once or twice a year, every year, and takes up about 25% of the work year should also be recognized as "regular and recurring." Any task or responsibility that is an integral part of the position's work and is expected or consistently relied on should be considered "regular and recurring."

The term "occasional" can be considered in a few different time frames. It can be defined as once or twice a month or three or four times per year. It is important to remember that this term is to be considered when identifying significant skills or responsibilities associated with activities that occur for a short period of time, on a few occasions or sporadically throughout the year. (at page 5)

The parties addressed a number of examples of Planning/Coordinating both at the hearing, and in the written materials filed with me. After considering all such examples, I accept that the grievor plays a planning and coordinating role with respect to the IT Department's daily operations. I have considered in particular his work with summer students, his interactions with the Help Desk technician, his involvement in addressing and resolving problems which arise in the department, and the assistance that he provides to staff in James Bay.

After considering the examples relied upon by the parties, I accept as well that the grievor is involved in the planning and coordination of projects. The College accepted that this was the case. It is necessary, however, to consider whether the projects in issue are of such a nature as to come within the scope of the Level 4 factor definition, as addressed by the Notes to Raters.

I have considered in this regard the grievor's role in addressing the issues associated with bringing a doctor's office onto the College network three or four years ago, recognizing that some issues continue to arise on an ongoing basis.

Of significance, in my view, is the grievor's planning and coordination role with respect to the Emergency Generator Project in 2007. I note that the grievor devoted 20 – 25% of his time during a period of months, although there was some significant lapse in time when work could not be performed while awaiting the delivery of the generator. I accept that the grievor worked with the electrician, the supplier and others in a planning

and coordinating role. I recognize, however, that the College retained an engineering firm to design and manage the project.

I have also considered what was referred to as the NORCAT project in which the grievor was involved. I was advised that this involved the move of the NORCAT office two years ago with a one day changeover. I accept the Union's submission that the fact that the move itself was accomplished in a single day is not in any way determinative of the level of planning and coordinating done by the grievor in advance. Although there was no indication given of the time spent by the grievor on associated tasks, the Union described the grievor's role in its Brief:

The incumbent was responsible to set up contracts for room set up, to move computer equipment from one room to another, to coordinate the Help Desk IT staff to move program to new equipment, to contact contractor for cabling set up, to assign IT staff to program software. These duties were coordinated by the incumbent to be accomplished in a one day changeover.

I am satisfied that the grievor plans and coordinates both in relation to day to day departmental operations and to projects. After considering all of the examples relied upon by the Union, however, I am not convinced that the grievor plans and coordinates on a regular and recurring basis for "multi-faceted events, projects or activities involving other employees." I am also not convinced that the grievor on a regular and recurring basis is engaged in planning and coordinating which involves "modifying these individuals' priorities for activities/projects to meet objectives."

The rating of Level 3, Regular and Recurring and Level 4, Occasional is therefore confirmed.

GUIDING/ADVISING OTHERS

The College rated this factor at Level 3, Regular and Recurring and Level 5, Occasional. The Union seeks a rating of Level 5, Regular and Recurring.

Level 3 Guiding/Advising Others is defined in the Manual as follows:

Advise others to enable them to perform their day-to-day activities.

“Advise” is defined in the following manner:

Has the authority to recommend, or provide knowledgeable direction regarding a decision or course of action.

The Manual defines Level 5 Guiding/Advising as follows:

Responsible for allocating tasks to others and providing guidance and advice to ensure completion of tasks.

The Manual provides the following direction in rating this factor:

This factor refers to any **assigned responsibility** to guide or advise others . . . 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.

Support Staff in the Colleges cannot formally “supervise” others as defined by the Ontario Labour Board However, there may be a requirement to guide others using specific job expertise. This is beyond being helpful and providing ad hoc advice. It must be an assigned responsibility and must assist or enable others to be able to complete their own tasks.

The Notes to Raters are also instructive:

Level 3 – this may be a position with a particular area of expertise . . . , which uses that expertise to assist others in completing their tasks. Involvement is generally of an advisory nature and the position is not responsible for how those advised subsequently complete their tasks.

Level 5 – while not a formal “supervisor,” the position has the assigned responsibility for allocating tasks and using its expertise to assist others and ensure that the tasks are completed satisfactorily.

The relevant language of the PDF must be considered, and is set out as follows:

Position Summary

...

The incumbent is responsible for allocating tasks to others in the department and for ensuring the tasks are completed.

Guiding/Advising Others

...

The incumbent will allocate tasks that need to be carried out by other IT staff to ensure the specific goals of the department are met and so as the incumbent (sic) can complete his/her work.

Follows up to ensure tasks are properly completed, and when required, recommends a course of action to others to complete the work order.

E.g.

...

Schedule daily work for summer students.

Guide student (sic) as to how to complete assigned computer and network tasks

“Regular and Recurring” as opposed to “Occasional” is checked.

Duties and Responsibilities

...

Allocating tasks to others in the department and checking and ensuring completion.

“7%” is entered as the “approximate % of time annually.”

The Union relied upon the language included in the Guiding/Advising section of the PDF, and asked me to conclude that a Level 5, Regular and Recurring rating is warranted here. It took the position that the PDF is “the document that we have to work with” and that the College bears the onus of establishing that it is “wrong” should it so assert.

The Union's representative addressed the fact that the Duties and Responsibilities section of the PDF assigns a figure of 7% to the position's responsibility for "allocating tasks to others in the department." She acknowledged that such number "may not seem regular and recurring," but urged me to conclude from the evidence that although it may reflect the allocation of tasks as a distinct duty, that this responsibility is also encompassed in other duties.

The Union argued that the grievor's position determines the roles of IT staff and allocates tasks to ensure completion of projects according to deadlines.

While it acknowledged that regular departmental meetings are held with the Supervisor, it suggested that issues arise on a daily basis which the grievor addresses. It offered as an example a situation in which the printer in the Student Services Office malfunctioned. The grievor investigated and resolved the problem. In the Union's submission, when "things need to be done and no one is around, the grievor is the contact person." The Union argued as well that the grievor gives direction to technicians and to others, and that when they are unable to address certain problems, he does so himself.

The Union also addressed a need for the grievor, on a regular basis, to give instructions to staff in Moosonee and Moose Factory to deal with network issues.

The Union referenced the grievor's role with respect to summer students, and suggested that he is involved in their skill development as part of the College's mandate to provide all staff with "support for lifelong learning."

Finally, the Union noted that during the period from January to March 2007, the grievor was formally assigned Lead Hand responsibilities during his Supervisor's absence. The Union explained that others in the department continued to operate on the basis of this dynamic even after Mr. Senyuk's return to work.

The College, in response, emphasized that the Manual is clear that this factor is to be rated only on the basis of “assigned” responsibilities. That said, it acknowledged that the grievor was assigned certain “Lead Hand functions” which warranted, in its view, an Occasional Level 5 rating.

In its pre-hearing Brief, the College referred in this regard to the grievor’s assigned role to monitor IT projects and report to his Supervisor, and his role in “supervising” summer students.

At the hearing, the College also addressed a role played by the grievor every two to three weeks for approximately twenty minutes, allocating tasks that have not been self-assigned from the computerized IT service request system. It acknowledged that this assigned role was also appropriately considered in awarding a Level 5 Occasional rating.

The College argued that the grievor’s responsibility for monitoring IT projects had not “materialized” and has recently been assumed by Mr. Senyuk. Mr. Senyuk stated that he began holding meetings for this purpose in September 2009. The College also took the position that Level 5 Guiding and Advising contemplates a role in contributing to skill development, and that this is not applicable to the grievor’s responsibility pertaining to summer students.

The College referred to the Duties and Responsibilities section of the PDF. It argued that the 7% figure assigned to allocation of tasks is consistent with an Occasional rating, and that it more than adequately addressed the “Lead Hand activity actively engaged in by the grievor.”

The College suggested that the operative part of the PDF for present purposes must be such indication in the Duties and Responsibilities section that task allocation occupies 7% of the position’s annual time.

The College asked me to disregard the language contained in the Guiding/Advising Others section of the PDF, and argued that I am not bound by it. Counsel urged me to construe the PDF “pragmatically” to further good labour relations. He asked me to recognize that the final PDF document is the result of some “back and forth” between the parties and to conclude that it should not be rigidly construed. The College further argued that the PDF is, in any event, ambiguous on its face insofar as the above noted 7% figure is not consistent with the language in the Guiding and Advising section. Counsel argued that I must make my decision here based on the evidence before me at the hearing, which he suggests demonstrates the appropriateness of the disputed Occasional rating here.

I start by addressing the College’s submission that it is appropriate for me to disregard the language included in the Guiding and Advising section of the PDF. With respect, I do not agree. That said, I recognize and the Union acknowledged that there is at least arguably a lack of clarity in the PDF insofar as the Guiding and Advising section characterizes as “regular and recurring” the grievor’s role in allocating tasks to other IT staff, while the Duties and Responsibilities section assigns a figure of 7% to such role. I agree with the College that I must consider the evidence before me in these proceedings when addressing the PDF in order to assess whether a Level 5 Regular and Recurring rating should be ordered.

In doing so, I did not understand the Union to suggest that the grievor’s acting assignment in Mr. Senyuk’s absence in 2007 has any bearing on the rating of his own position. The Union did argue, however, that such acting assignment in effect perpetuated a workplace dynamic whereby the grievor is regarded and effectively treated by colleagues as a Lead Hand despite the fact that the grievor returned to his usual

position and his usual pay rate upon his Supervisor's return. The Manual is clear, however, that this factor refers only to "assigned responsibility" to guide and advise, and does not contemplate merely "being helpful and providing ad hoc advice." I accept the College's submission that this factor is to be rated based on "assigned responsibility" only.

The College accepted that an Occasional Level 5 rating was warranted here on the basis of three assignments. The first of these is the assigned responsibility for the grievor to check the computerized work assignment system. Mr. Senyuk suggested that this takes approximately twenty minutes every two to three weeks.

Second, the College referred to the grievor's assigned role to work with other Technical Support Specialists to monitor and synchronize project work, and to then report back to Mr. Senyuk. Mr. Senyuk indicated that this task was expected to occupy a "few hours" each week. College Counsel noted, however, that this responsibility had in fact never "materialized," and Mr. Senyuk stated that he began to hold meetings for this purpose in September 2009. The College urged me to conclude on this basis that the assigned task of monitoring project work is not properly considered "an integral part of the position's work." I understood Counsel's argument to be that such responsibility could not therefore be properly characterized as "regular and recurring" within the meaning of the Manual's directives. I am not so convinced. Rather, I note the following provisions in the Manual:

The term "occasional" can be considered in a few different time frames.... It is important to note that this term is to be considered when identifying significant skills or responsibilities associated with activities that occur for a short period of time, on a few occasions or sporadically throughout the year.

Ultimately, the primary focus is to determine whether the skill, responsibility or activity is of note and as such needs to be reflected in the evaluation. For example, if a description or example in the PDF applies to a skill that is used 5% of the time and is deemed to be a notable element of the position, it should be captured at the “occasional” level. However, if a skill is used about 5% of the time and it is not a significant differentiating element, it would not be helpful to assign the “occasional” level to the work being described.

No matter how often the activity occurs, however, the skill or responsibility must be important and without it the position duties could not be performed.

The College acknowledged that a Level 5 rating was appropriately assigned here, on an Occasional basis, in part because of this assigned activity. In my view, it is not open to the College then to challenge whether such responsibility was “significant,” “of note,” and “important” as contemplated by the Manual. While the College asserts that such assignment has not in fact “materialized” and that it has recently been assumed by Mr. Senyuk, I am not convinced that this in itself alters whether or not the assigned task was significant, integral, or important. This is particularly so where the Position Summary in the PDF states in a “concise description of the overall purpose of the position,” that “the incumbent is responsible for allocating tasks to others in the department and for ensuring the tasks are completed.”

The third assigned responsibility that the College suggested contributed to the Level 5 Occasional rating was what it characterized as the “minor” role played by the grievor with respect to summer students. The evidence before me establishes that the College has in recent years hired two summer students in the IT Department for four months each year. The grievor “shares” such students with the Help Desk, but, as acknowledged by the College, he plays a role in “supervising” them. In the summer of

2009, the students worked primarily with the Help Desk. During the previous summer, they worked largely in networking and cabling.

In the College's submission, a Level 5 rating of the Guiding and Advising factor necessarily contemplates contribution to skill development. That said, although it argued that this is not part of the grievor's role with respect to summer students, it assigned an Occasional Level 5 rating to the position partly on the basis of this responsibility. The Union maintained that the grievor does bear responsibility for skill development of students. In the circumstances before me, even if the College is correct in asserting that an assigned responsibility for skill development is a prerequisite for a Level 5 rating, I see no basis upon which I can find that the grievor's role with summer students is not properly considered in assessing the appropriate rating. The only question, in my view, is whether the Level 5 rating should be assigned on an Occasional or on a Regular and Recurring basis.

I return to the PDF and after considering the relevant language in the context of the Manual and the evidence before me, I am convinced by the Union that Guiding/Advising Others is properly rated at Level 5, Regular and Recurring. The grievor's assigned weekly role to monitor IT projects, his assigned responsibility for allocating tasks on the IT service request system every two to three weeks, and his assigned role in supervising summer students shared with the Help Desk four months of the year is, in my view, beyond Occasional Level 5 Guiding/Advising Others as contemplated by the Manual, and is properly characterized as Regular and Recurring.

Accordingly, I order that the rating of the Guiding/Advising Others factor be amended to Level 5, Regular and Recurring.

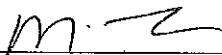
CONCLUSION

To the extent that the grievance before me challenges the rating of the Planning/Coordinating factor for the Technical Support Specialist position held by the grievor, the grievance is denied.

To the extent that the grievance asserts that the grievor's position should be rated at Level 5, Regular and Recurring for Guiding/Advising Others, it is upheld, and I so order. Based on such amended rating, the College is ordered to reclassify the grievor's position at Payband L.

The parties agreed that any remedy would be awarded retroactively to March 1, 2007. Accordingly, I order that the College compensate the grievor at Payband L retroactive to March 1, 2007. I retain jurisdiction of this matter to assist the parties in implementing this award should that prove necessary.

Dated at Toronto, Ontario this 20th day of October, 2009.



Mary Lou Tims, Arbitrator

Arbitration Data Sheet – Support Staff Classification

College: Northern College Incumbent: Ken Hopkins Supervisor: Tony Senyuk

Current Payband: K Payband Requested by Grievor: L

1. Concerning the attached Position Description Form:

The parties agreed on the contents X The Union disagrees with the contents and the specific details are attached

2. The attached Written Submission is from: X The Union The College

Factor	Management		Union	
	Regular & Recurring	Occasional	Regular & Recurring	Occasional
1A. Education	4 - 48		4 - 48	
1B. Education	3 - 21		3 - 21	
2. Experience	6 - 86		6 - 86	
3. Analysis/ Problem Solving	5 - 142		5 - 142	
4. Planning/Coordinating	3 - 56	4 - 7	4 - 80	
5. Guiding/Advising Others	3 - 29	5 - 3	5 - 53	
6. Independence of Action	4 - 110		4 - 110	
7. Service Delivery	4 - 73		4 - 73	
8. Communication	4 - 110		4 - 110	
9. Physical Effort	2 - 26		2 - 26	
10. Audio/Visual Effort	2A - 20		2A - 20	
11. Working Environment	1 - 7	2 - 9	1 - 7	2 - 9
Subtotals	(a) 728	(b) 19	(a) 776	(b) 9
Total Points (a) + (b)	747		785	
	K		L	

For the college:
 Carbone
 Sept 30/09

For the Union:
 Lucille Lachance
 Sept. 30/09.

K Hopkins

College:

Incumbent:

Supervisor:

Current Payband:

Payband Requested by Grievor:

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		
1B. Education									3	21		
2. Experience									6	56		
3. Analysis and Problem Solving									5	142		
4. Planning/Coordinating									3	56	4	7
5. Guiding/Advising Others									5	53		
6. Independence of Action									4	110		
7. Service Delivery									4	73		
8. Communication									4	110		
9. Physical Effort									2	26		
10. Audio/Visual Effort									2A	20		
11. Working Environment									1	7	2	9
Subtotals	(a)		(b)		(a)		(b)		(a) 752		(b) 16	
Total Points (a) + (b)	768											
Resulting Payband	L											

Signatures:

(Grievor)

(Date)

(College Representative)

(Date)

(Union Representative)

(Date)


(Arbitrator's Signature)

Sept 30/09
(Date of Hearing)

Oct 20/09
(Date of Award)