IN THE MATTER OF AN ARBITRATION

BETWEEN:

Seneca College
("The College")

and

Ontario Public Service Employees Union,
Local 561
("The Union")

Grievances of C. Daley and J. MacKenzie

ARBITRATOR: Mary Lou Tims

APPEARANCES:

FOR THE COLLEGE:	D. Michaluk – Counsel B. Weisfeld A. Burke D. Viccary K. Chiba G. Saenz L. Torno
FOR THE UNION:	J. Hagan – Local Union President J. MacKenzie C. Daley J. Yebuga T. MacMaster

Hearing held in Markham, Ontario on October 19, 2009.

AWARD

I have before me the March 22, 2007 grievance of Ms. Catherine Daley and the July 15, 2007 grievance of Ms. Jennifer MacKenzie. Both grievors hold the position of Registered Nurse at the Seneca Health Centre. Ms. Daley works at the Health Centre's Newnham Campus location, while Ms. MacKenzie works at the Health Centre's Seneca@York Campus. The grievances allege that the grievors' positions have been improperly classified, and seek reclassification.

The parties agreed that the duties and responsibilities of the two grievors are virtually identical, and therefore agreed to consolidate the two grievances.

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

The parties agreed that the Position Description Form ("the PDF") signed May 30 and June 7, 2007 is the PDF properly considered in these proceedings. Although it appears that Ms. Daley has not signed the PDF, the parties accepted that it applied to the positions held by both grievors.

The Union advised at the hearing that it does not contest the contents of the PDF.

The Position Summary found in the PDF describes the grievors' positions as follows:

> Registered Nurse in a clinical setting caring for broad, knowledge base (sic) population ranging from prenatal to the elderly within the RHPA standards and office management responsibilities.

The Duties and Responsibilities section of the PDF sets out the following "significant duties and responsibilities associated with the position" together with the approximate percentage of time spent annually performing them:

Flu Clinic – 10%
. . .

Health Education – 15%
Teaching, counselling, follow-up

Equipment Maintenance – 10%
. . .

Physical examinations and medical procedures including: - 40%
Assist with procedures
Ear syringing
Blood pressure Support
Allergy Shots
Immunization
Breast Exams
Pain Control
Venipunctures
STD – swabs, vp's, counseling
Birth control dispensing
Patient registration
Prenatal care and postnatal care
Infant examinations
Adolescent Health care including initial PAP, Plan B, **drug addiction, alcohol abuse (sic)
Adult Health Care including POA forms, mmse, (sic) home care
Hazardous waste disposal
Post surgical care
Suture removal

Lab Work – 10%
. . .

Admin Procedures – 15%

The College rated the grievors' positions at Payband K. The Union seeks reclassification to Payband L. The dispute between the parties relates to the ratings assigned to two factors, Analysis and Problem Solving, and Service Delivery.

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. Ms.

MacKenzie and Ms. Daley each testified at the hearing and described their duties and responsibilities.

The parties were largely in agreement with respect to the relevant facts. The Health Centre provides primary care medical services to students, staff, faculty and community on a walk-in-basis. While the Union does not dispute that the Centre is a walk-in clinic, it noted that for a number of reasons, it is not unusual for the grievors to deal with "quite a few" regular patients with "ongoing issues." A large number of the patients seen by both grievors are young, adult College students between the ages of seventeen or eighteen and twenty-five or twenty-six, and in that sense, there is an element of homogeneity at least from an age perspective in the patient population. The Union noted however, and the PDF Position Summary reflects, that both nurses see a broad age group of patients ranging from infants to the elderly.

The grievors are formally managed by Ms. Dale Vicarry, Manager, Disability and Health Services and Mr. Arthur Burke, Director, Counselling, Learning Centres, Disability and Health. The College indicated in its pre-hearing Brief that they work under the day-to-day supervision of one of four attending physicians under contract to the College. As noted in the Union's Brief, however, although there are days when doctors are scheduled to be in the clinics, there are also regular days in both clinics when the nurse is the only medical professional available to assist patients. The evidence was clear that the grievors are usually present in the examining room when a male doctor performs certain medical procedures for a female patient. The Union advised that Ms. MacKenzie sees approximately twenty further patients per day, while Ms. Daley sees approximately forty additional patients per day. While I accept the College's characterization of the

clinics as "high volume," I also accept the Union's indication that some patients are seen very briefly in the clinics, while others spend more time with the grievors.

ANALYSIS AND PROBLEM SOLVING

The College rated this factor at Level 4, Regular and Recurring. The Union seeks a rating of Level 5, Regular and Recurring.

The Support Staff Job Evaluation Manual ("the Manual") defines Level 4 and 5 Analysis and Problem Solving as follows:

> Level 4 – Situations and problems are not readily identifiable and often require further investigation and research. Solutions require the interpretation and analysis of a range of information according to established techniques and/or principles.
>
> Level 5 – Situations and problems are complex and multi-faceted and symptoms are vague or incomplete. Further investigation is required. Solutions require the interpretation and analysis of information within generally accepted principles.

"Established techniques and/or principles" as referenced in the Level 4 factor definition is in turn defined as follows:

> Established techniques and/or principles – 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.

"Generally accepted principles," as referred to in the Level 5 factor definition is defined in the Manual as follows:

> Generally accepted principles – more general statements or parameters used to describe the desired outcome. Can be defined as the collectivity of moral or ethical standards or judgements.

The Union emphasized in these proceedings that the human body and human emotions are inherently complex and multi-faceted in nature. In caring for patients and in analyzing and solving the situations and problems encountered in doing so, the Union

argued that the grievors do not address only the physical aspects of health. Rather, in the Union's submission, they work within a "philosophy of whole health" and address the emotional, mental, social and spiritual aspects of patient wellness.

The grievors testified that in caring for young adult College student patients, they often address issues relating to sexuality or pregnancy, alcoholism, drug abuse, depression and anxiety. They emphasized that young adult patients dealing with relationships and sexuality may experience difficulties in coping with "complex emotional and physical issues."

While the patient population seen by the grievors may be somewhat homogenous from an age perspective, the Union's representative noted that it is both culturally and emotionally diverse. I accept the Union's argument that cultural issues in some instances impact on a patient's comfort or discomfort in addressing certain health matters and note that this is reflected in one of the Occasional examples included in the PDF. The Union also advised that many patients do not speak English as their first language, and that infant or young children patients are not able to articulate their concerns. It suggested that the grievors must particularly in such instances address "symptoms" that are "vague or incomplete."

The PDF sets out a number of examples of the analysis and problem solving engaged in by the grievors in the course of performing their duties. The Regular and Recurring examples described in the PDF include a patient brought to the clinic after passing out. A second example refers to a patient at the clinic complaining of nausea and urinary frequency, and a third example refers to a patient losing consciousness during routine veinipuncture.

The parties addressed a number of additional examples at the hearing of what they characterized as the Regular and Recurring Analysis and Problem Solving required in the grievors' positions. Ms. Daley described a situation in which a patient seeking a bandaid proved to be involved in self-mutilation and suffering from depression. Ms. Daley referred her for counselling and followed up with the changing of dressings on wounds. The Union also referred to one of the Occasional examples included in the PDF regarding a female patient seeking assistance for an undisclosed medical problem. The Union addressed the need for an RN to communicate with the patient and help her through her fears without disturbing the patient's community and family relationships.

The College led evidence of what it suggested was more typical of the problems presented by patients in the clinic. Its evidence related to a female patient presenting with a cat bite on her arm, and on another occasion, a lesion on her back. The College's evidence was that such patient was in both instances referred to the physician.

The grievors often see patients after they are assessed by a physician. An example offered by the Union was that the grievors perform blood work and offer health education to a patient after a physician prescribes birth control medication.

As noted above, the PDF indicates that forty per cent of the incumbents' time is spent performing physical examination and medical procedures. There is no dispute that such procedures are physician ordered. The Union agreed that the "physical aspect" alone of administering such procedures involves Level 4 Analysis and Problem Solving, but it argued that a higher level of analysis is engaged insofar as the grievors provide holistic care to patients. Ms. MacKenzie spoke of "ongoing assessment" as an "integral part of nursing practice." The Union offered as an example an RN giving an injection to a patient. It noted that the grievors in such circumstances do not merely administer the

medical procedure in accordance with required standards, but that they address the patient's anxiety level, consider visual cues, and use "ethics and moral judgment" in providing such care to the patient. The Union stated that the grievors must keep the patient as "intact as possible considering cultural and religious needs."

The evidence was clear as well that although the procedures in issue are ordered by a physician, the RN is accountable for ensuring that the client's condition warrants such procedure. There was no dispute on this point. Ms. MacKenzie described in this regard a situation in which she concluded that immunization ordered by the physician was not appropriate in the circumstances, and she conferred with the physician.

The evidence before me also established that the grievors see patients entering their respective clinics in a triage role, and that they are sometimes able in doing so to answer the question that brought the patient to the clinic. The College Brief notes that the College employs at each location an Administrative Medical Assistant. Such individual is the first contact point for patients entering the clinics and is responsible for conducting an initial non-medical assessment of the patient need. The evidence before me does not permit the conclusion that the role played by such position in any way impacts upon the analysis and problem solving requirements of the grievors' positions.

The parties both addressed the subject of counselling. The Union noted that counselling is a permitted function of nursing practice and it is in fact reflected in the PDF. The College noted, however, that it employs trained Counsellors to whom patients are referred. The scenario referred to above by Ms. Daley regarding the female patient involved in self-mutilations was an example offered of this. The evidence was clear as well that physicians can refer patients for psychiatric care, and that there is access to a

psychologist and a psychiatrist at the Newnham clinic. In crisis situations, patients are sent to a hospital emergency department.

Ms. MacKenzie indicated that she counsels patients as well however. She described by way of example a "situationally depressed patient" who had just broken up with her boyfriend. Ms. MacKenzie indicated that she would speak with her, ask her about her routine, inquire into whether she was eating and sleeping, and depending on the circumstances, perhaps recommend getting some sleep. She noted that some patients simply want to "talk to someone" or need "some TLC."

The parties both addressed the grievors' responsibility for providing health education, as reflected in the PDF. The Union suggested that inherent in this responsibility is the Level 5 analytical requirement to address what a patient needs.

The Union emphasized that the grievors as medical professionals analyze and problem solve on the basis of ongoing reading they do to remain current in their field, and on the basis of discussions they engage in with other medical professionals. Ms. MacKenzie described as well that RNs engage in "reflective practice" whereby they continuously upgrade, monitor and analyze every aspect of the nursing care they provide.

After considering the parties' submissions and the evidence before me, I acknowledge the often demanding and challenging situations and problems encountered by grievors in caring for their patients. I accept the College's submission, however, that Level 4 Analysis and Problem Solving should not be regarded as simplistic in nature. Situations and problems encountered at Level 4 "are not readily identifiable and often require further investigation and research."

In my view, this well describes the situations and problems which the grievors regularly deal with in the course of performing their duties. The crux of the Union's

argument before me was that the grievors are regularly called upon to address "complex and multi-faceted" situations and problems with "vague or incomplete" symptoms as they seek to care for the physical, emotional, mental and spiritual aspects of patient health. I recognize that despite the high volume nature of the clinics, that the grievors spend more time with some patients than others, and indeed see some patients on an ongoing basis.

I recognize as well the need to deal with language issues where patients are not fluent in English, or the need to be culturally sensitive when caring for a culturally diverse patient population as reflected in one of the Occasional examples included in the PDF. I agree with College Counsel, however, that this does not alter the fundamental analytical and problem solving exercise required of the incumbents.

Having considered the evidence before me as to the analytical and problem solving role required of the grievors, I am not convinced that the situations and problems which they regularly address are well described as "complex and multi-faceted" with "vague or incomplete" symptoms, but that they are fairly characterized as "not readily identifiable" often requiring "further investigation and research."

I also conclude on the basis of the evidence before me that the grievors solve the problems they encounter through "the interpretation and analysis of a range of information according to established techniques and/or principles." The grievors are both knowledgeable and educated medical professionals who engage in what was referred to as "reflective practice." The evidence before me does not establish that solutions to problems require analysis and interpretation of information within "generally accepted principles" as that term is defined in the Manual. While I recognize that the solutions to problems and the range of information interpreted and analyzed by the grievors vary depending on the needs of a given patient, the required analysis of information is in

accordance with "established techniques and/or principles" and not "generally accepted principles" as that term is defined. I think it is more accurate to conclude that the grievors problem solve using "recognized guidelines and/or methods to accomplish a desired outcome" as contemplated by the Level 4 definition, and not on the basis of "the collectivity of moral or ethical standards or judgments."

The rating of this factor at Level 4 is confirmed.

SERVICE DELIVERY

The College rated this factor at Level 3, Regular and Recurring and Level 4, Occasional. The Union seeks a rating of Level 4, Regular and Recurring.

Level 3 Service Delivery is defined in the Manual as follows:

> Tailor service based on developing a full understanding of the customer's needs.

Level 4 Service Delivery is defined as follows:

> Anticipate customer requirements and pro-actively deliver service.

"Tailor" is defined in the Manual as "to modify or adapt with special attention in order to customize it to a specific requirement." "Anticipate" is defined as "given advance thought, discussion or treatment to events, trends, consequences or problems; to foresee and deal with in advance." According to the Manual "proactive" means, "to act before a condition or event arises." The Manual defines "customers" as "the people or groups of people who receive the services delivered by the position."

The Notes to Raters are helpful in considering the factor definitions. They state as follows:

> Level 3 refers to the need to "tailor service." This means that in order for the position to provide the right type of service, he/she must ask questions to develop an understanding of the customer's situation. The customer's request must be understood thoroughly. Based on this understanding, the

> position is then able to customize the way the service is delivered or substantially modify what is delivered so that it suits the customer's particular circumstances.
>
> Level 4 means that the position designs services for others by obtaining a full understanding of their current and future needs. This information is considered in a wider context, which is necessary in order for the position to be able to structure service(s) that meet both the current stated needs and emerging needs. The position may envision service(s) before the customer is aware of the need.

The College commented in its Brief that a Level 4 Occasional rating was given here on the basis of the assigned role for one of the grievors to contribute to the work of the College's Pandemic Planning Committee.

The Union did not suggest that such role in and of itself warranted any more than an Occasional rating. The Union's argument, however, was that the day to day focus of the grievors' positions is the proactive delivery of service within the Level 4 definition, and that this should be reflected in a Regular and Recurring rating at such level.

The Union's first position in this regard was that the grievors are responsible for "being up to date with respect to information in the nursing profession." Ms. MacKenzie described this as being accountable for "being aware of what is coming." I heard evidence that the grievors read manuals, Ministry of Health and Public Health bulletins, nursing and medical journals. They also consult the internet and confer with Public Health officials and other professional colleagues to ensure that they are aware of current trends and issues. Topics addressed by the grievors are diverse, including birth control options, STD's, H1N1, SARS, immunization, learning disabilities, and bed bugs.

Furthermore, the Union argued that the grievors proactively deliver day to day care to individual patients. Examples relied upon included identifying the need for counselling in Ms. Daley's patient who articulated only a need for a bandaid, the role of

the grievors in suggesting to patients seeking birth control medication that they be tested for STDs, addressing drug interactions and the potential side effects of medication, addressing the need for a patient on birth control to quit smoking cigarettes, the need described by Ms. MacKenzie to contact the Ministry of Health when vaccine dosages were changed, and the need for her to consult with a Lab where there was a lack of clarity on a lab requisition completed by a physician. The Union described that the grievors address with patients not only the issues apparent at the time, but also the expected course of a condition, illness or treatment so that patients are aware of complications or issues they should anticipate.

The Union suggested as well that Level 4 Service Delivery is reflected in providing health education. I heard evidence in this regard that one of the grievors gave a presentation in a student residence with respect to the Gardasil vaccine.

The College maintained that a Level 4 Occasional rating is adequate here in light of the evidence. Counsel emphasized that to the extent that the grievors engage in professional development to ensure that they are current in their nursing knowledge, this is not addressed by this factor.

The College considered the grievors' role in caring for patients and in providing health education. Counsel suggested that such responsibilities are largely "reactive" in nature, given in response to articulated patient needs or requests.

The College acknowledged what it characterized as a "minor" proactive role in delivering patient care and health education. It accepted as an example of this the grievors proactively addressing STD testing with a patient coming to the clinic for birth control, "where time permits." The College took the position that a rating of Service Delivery at Level 4 is justified on an Occasional basis only.

Counsel also emphasized that Level 4 Service Delivery contemplates the "design" of service. He suggested that this is the role of the physicians. Level 3 Service Delivery, according to the College's Brief, is about "consulting to individuals" while Level 4 contemplates a broader role in "strategic or long term planning" based on an assessment of both patient needs and "an assessment of the broader environment."

The Union argued that service is delivered by the grievors at Level 4 in their day to day duties, as part of their professional responsibility to provide proper patient care. The Union denied that service is delivered at such level only as "time permits." The Union also took the position that to the extent that the grievors keep themselves up to date professionally so as to proactively assist patients, this is not just a matter of professional development, but is a day to day responsibility properly reflected in a rating of Level 4 Service Delivery.

There is no dispute here that the grievors deliver service at Level 4 in the course of their duties. The only issue is whether this is required on a Regular and Recurring basis or Occasionally as addressed in the Manual.

The Manual states that a task or responsibility that is "an integral part of the position's work and is expected or consistently relied upon" is properly regarded as "regular and recurring." (at p. 5)

The Manual is clear that rating of the Service Delivery 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…. The level of service looks at more than the normal anticipation of what customers want and supplying it efficiently. It considers how the request for service is received…. It then looks at the degree to which the position is required to design and fulfil the service requirement."

The evidence before me suggested that the grievors conscientiously take steps to ensure that they are current in their professional knowledge, and aware of developing trends relevant to their field of work. While I recognize that this undoubtedly assists them in the effective performance of their duties, I am not convinced that it exemplifies the anticipation of customer requirements and the pro-active delivery of service within the Level 4 factor definition.

I am satisfied from the evidence, however, construed in light of the PDF and the Manual, that the grievors are required on a Regular and Recurring basis to "anticipate customer requirements and pro-actively deliver service" within the meaning of the Level 4 definition in caring for patients and in delivering health education.

It may be, as the College notes, that in some instances "future needs" may not be in issue, as in the cat bite example relied upon by the College. I recognize as well the role of the physician in "designing" services for patients. I am satisfied by the Union, however, that the grievors as part of their day to day duties must consider information of current and future patient needs and must "structure service(s)" within the parameters of their professional responsibilities that meet those needs, possibly "envision(ing) service(s) before the customer is aware of the need" as addressed in the Notes to Raters.

I am of the view that this factor should be rated at Level 4, Regular and Recurring, and I so order.

CONCLUSION

For the reasons set out herein, to the extent that the grievances before me assert that the grievors' positions have not been properly rated for Analysis and Problem Solving, they are denied.

To the extent that the grievances assert that Service Delivery has not been properly rated, they are upheld, and I order that the grievors' positions be rated at Level 4, Regular and Recurring, and assigned the corresponding 73 points for this factor.

The net outcome is that the total points for the positions are 749, and they thus remain within Payband K.

Should there be implementation issues arising out of this award, I remain seized of these matters to assist the parties.

DATED at TORONTO this 2nd day of November, 2009.

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Mary Lou Tims, Arbitrator