

IN THE MATTER OF AN EXPEDITED CLASSIFICATION ARBITRATION

B E T W E E N:

ONTARIO PUBLIC SERVICE EMPLOYEES UNION, Local 416
(FOR SUPPORT STAFF)
(hereinafter called the “Union”)

-and-

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

-and-

GRIEVANCES OF KARL KRECH, COLLEEN CLARK & CONNIE JESSUP
OPSEU File No. 2011-0416-0013
(hereinafter the “Grievors or the Incumbents”)

ARBITRATOR:

Richard H. McLaren, C.Arb.

REPRESENTING THE COLLEGE:

Diane McCutcheon Acting Director, Labour
Relations
Jamie Bramburger Manager, Community and
Student Affairs
Shelley Carter-Rose Dean, Algonquin
College Heritage Institute

REPRESENTING THE UNION:

Cinds Chapman – Local 416 Vice-President
Karl Krech – Grievor
Colleen Clark - Grievor
Connie Jessup - Grievor

HEARINGS IN RELATION TO THIS MATTER WERE HELD AT OTTAWA, ONTARIO ON
28 FEBRUARY and 25 APRIL 2013.

A W A R D

At the first day of hearings in this matter on 28 February 2013, the Arbitrator met with the parties to hear and determine the issues in dispute. By agreement of the parties and order of the Arbitrator dated 28 February 2013, an Interim Award was issued defining the procedure leading to the second day of hearings held on 25 April 2013.

Algonquin College Community Employment Services is based in the Pembroke and Perth campuses of the College. Under the predecessor program known as “Job Connect,” training Consultants were responsible for determining suitability and appropriateness of clients for Job Connect. That program ended on 31 July 2010. A new government program “Employment Ontario” replaced the predecessor on 1 August 2010. Under this program, the College provides employment assistance to individuals who are looking for work or re-training opportunities. The position of Training Consultant under the previous program of the Ontario government was re-written in December 2010 to be Employment Consultant supporting the Algonquin College Community Employment Services office. The re-written positions were submitted for evaluation to the College Evolution Committee.

The College has evaluated the position of Employment Consultant reporting to the Dean of Perth Campus or the Manger of Community & Student Affairs, Pembroke Campus and rated the position at 569 points, placing the position within Payband H whereas the Incumbents holding the position when it was titled “Training Consultant” were higher rated at Payband J. The full-time employees in these roles were grand-parented for salary administration purposes at their previous Payband level as is required by the Collective Agreement. As a result of the first day of hearings and the assistance of the Arbitrator, the parties were directed to go through a process of discussion and reconsideration before coming to the second day of hearings. That process is set out in an Interim Award dated 28 February 2013. I want to congratulate the parties on successfully using that process and thereby narrowing and focusing the issues for the second day of hearings in this matter. The parties were able to agree on a Position Description Form (“PDF”) in which there was only a slight disagreement on one factor. The College reevaluated the position and advised at the second day of hearings on 25 April 2013, that the

position had been re-rated at 581¹ points placing the position within Payband I. At the second day of hearings, the view of the Union remained unchanged that the position ought to be higher rated at Payband J.

The three Incumbents, Karl Krech, Colleen Clarke and Connie Jessup, grieve the evaluation, disputing 3 factors, and claiming the position ought to be rated at Payband J. The Grievors and the College are in substantial agreement as to the language of the Position Description Form (PDF) dated in March of 2013 that replaced the previous PDF issued in December 2010.

Background

The Employment Consultants are responsible for assisting unemployed persons of all ages to prepare for entry or re-entry into the labour market by delivering unique needs to the unemployed person. They provide employment and career counseling support and develop customized return-to-work strategies that include job search, job matching and placement, along with job retention assistance and follow up with clients. These services are delivered through extensive client needs assessment, in-depth career employment counseling, and the development, implementation and monitoring of customized return-to-work action plans.

The unemployed persons that the Employment Consultants deal with are those individuals who could not be helped at the first level of inquiry. Thus many of their clients experience barriers and/or challenges to being effectively redeployed in the work force. Those barriers include: lack of financial resources; mental or physical challenges; social issues such as abuse or physical drug dependences and the like.

Factors in Dispute

There are three factors in dispute in this proceeding. Each of the factors in dispute will be dealt with below under separate headings.

¹ Calculation error by the College sheet recorded subtotal at 575 and should have been $572 + 9 = 581$.

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

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 Union submits that the clients who pass on from the initial screening exhibit problems that are complex and multi-faceted. The Consultants are required to engage in an in depth investigation of a client to gain the necessary information to provide the services the client requires.

The College submits the problems and situations regularly encountered by the Incumbents are readily identifiable although additional information may be required from time to time. There are established guidelines from the Ministry to assist in the analysis and there are forms to help with decision making. For these reasons, it is submitted the position is squarely in Factor level 3 definitions.

The evidence from the hearing suggests that the College is correct in that many of the solutions and problems are identifiable even if they require further inquiry. This would make the proper rating one with the definition of Factor level 3. However, it is important to realize that there has been an initial screening where those individuals whose situations are easily identifiable or are highly likely to be re-employable never pass through to become clients of the Consultants. Accordingly, the Consultants only receive clients who are not easily identifiable and will have situations and problems which are not necessarily identifiable even with further inquiry. Many of the clients have barriers precluding them from being re-employable. There are frequent and multiple barriers which might include less than a Grade 12 education; unstable housing and family situations; lack of reliable transportation; and criminal backgrounds. There may also be physical and mental barriers to re-employment. These situations may well be poorly articulated by the client. Thus, the counselors are required to engage in a good deal of interpretation of what is being said to them. Furthermore, many of the clients are unable to describe the barriers that make them less likely to be re-employable. In those cases, the Consultants face a considerable challenge in obtaining the information to engage in analysis. Therefore, I find that in a reasonable number of their cases, the Consultants need to *“analyse a range of information according to established*

techniques and or principles". This type of activity justifies concluding that the better fit for this factor in the Consultants case is Level 4 and not 3. I find that the Union has provided sufficient evidence and information to establish the appropriate rating is Level 4.

5. Guiding/Advising Others: Ratings: College Level 3 / Union Level 4

*This factor refers to any **assigned responsibility** to guide or advise others (e.g. other employees, student, and 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.*

The Union submits that the Consultants are expected to guide and advise others with ongoing involvement in their progress and that fits squarely within Level 4.

The College submits that following the 6 March 2013 meeting directed by the Interim Award, the College accepted the Union's rationale for moving from a regular and recurring Level 2 to Level 3. Consultants have the authority to recommend or provide knowledgeable direction regarding a decision or course of action for their clients. They also remain in contact with the clients and follow up with them. What they do not do and what is part of Level 4, is assist less experienced staff to attain skill development.

In the Grievors testimony, there was considerable discussion of how they assist the new hires in the Consultants position. There was also testimony regarding the assistance given by the Consultants to new on-site supervisors one of whom was at an earlier time and, under a different Collective Agreement, a lead hand.

I find that the Consultants do not have any supervisory function in the formal sense. Based on the evidence I heard and read in the briefs, this position involves guiding and advising the clients so the client may achieve their career and employment plan. The focus of the job is on this activity which includes examining the placement employment situation, advising the participating employer as well as the client. While the Incumbents, who have a wealth of experience, do assist the new hires, this is not a regular part of their job as Consultants. The Note to Raters describes the difference in Level 4 as being

“assigned to assist less experienced staff and is expected to actively contribute to their ongoing skill development”. From the evidence I have, the Consultants are not engaging in the quoted activity. They are not assigned by management to assist less experienced staff who would also be Consultants. The Incumbents do help in their development but it is on a collegial confrere basis and not because it is assigned to them to do so. They are also not assigned to contribute to the new hires ongoing skill development. Therefore I conclude that the Union has not satisfied me that this factor is incorrectly rated at Level 3. The Union submission is rejected on this factor.

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

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

The Union submits that the counselors exercise full autonomy in developing effective client-centered interventions that lead to the client attaining their career and employment goals. A course of action is developed for each client and is not reviewed by management. There is a reporting function to the Ministry funding the program and there is that external review but it is not College based or employer driven. The Consultants are expected to achieve a 69% success rate in expectation that employment outcomes are successful.

The College submits that the Consultants work independently within the scope of their responsibilities and that most day-to-day assignments do not require supervision. The Consultants are acting within Ministry guidelines and Employment services policies, as well as past practices.

The evidence in the form of the parties briefs and the oral testimony I elicited from the Incumbents and management, suggests there is very little oversight of these employees by management in respect of their job functions. Management may be involved in official complaints received by the College from a client, employer, or agency, but that is not supervision of the day-to-day activities of the Incumbents. The Incumbents work in a dynamic and difficult human environment dealing with individuals whose hopes and dreams of career and employment have not been realized and thus are in an unhappy frame of mind as to what is going on in their lives. The Incumbents develop action plans to help clients achieve their career and

employment goals. They also develop their own forms to assist them in monitoring progress. Those forms are in turn provided to the Ministry to outline what they have done and accomplished. The Incumbents are thus, evaluating the success and failure of their course of action with each individual. Those successes are measured against Ministry requirements and are evaluated externally. Therefore, I find that their work is better described by the definition of Level 4. That is: *Position duties are completed according to specific goals or objectives. Decisions are made using industry practices and /or departmental policies.* The evidence establishes that this is a very good fit for what they do. I find that the Union has established that the position ought to be rated at Level 4.

CONCLUSION

For all of the foregoing reasons, I find that two factors ought to be rated as submitted and proven by the Union. Accordingly, the total points assigned for the position is to be 645. That places the position in Payband J on the Schedule in the Job Evaluation Manual.

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 30th day of April 2013.

A handwritten signature in black ink, appearing to read 'RHM L', written over a horizontal line.

Richard H. McLaren, C.Arb.
Arbitrator

Arbitration Data Sheet - Support Staff Classification

College: Algonquin Incumbent: K. Krech
C. Clarke
C. Jessup Supervisor: _____
 Current Payband: I Payband Requested by Grievor: J

1. Concerning the attached Position Description Form:

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

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

Factor	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	3	35			3	35			3	35		
1B. Education	1	3			1	3			1	3		
2. Experience	5	69			5	69			5	69		
* 3. Analysis and Problem Solving	3	78			4	110			4	110		
* 4. Planning/Coordinating	3	56			3	56			3	56		
* 5. Guiding/Advising Others	3	29			4	41			3	29		
6. Independence of Action	3	78			4	110			4	110		
7. Service Delivery	3	51			3	51			3	51		
8. Communication	4	110			4	110			4	110		
9. Physical Effort	1	5			1	5			1	5		
10. Audio/Visual Effort	2	20			2	20			2	20		
11. Working Environment	2	38	3	9	2	38	*3	9	2	38	3	9
Subtotals	* (a) 575		(b) 9		* (a) 648		(b) 9		* (a) 636		(b) 9	
Total Points (a) + (b)	* 572		504		* 648		657		636		645	
Resulting Payband	I				J							

Signatures:

(Grievor)

(Date)

Diane McEntee
(College Representative)

March 27, 13
(Date)

AO
(Union Representative)

April 25th 2013
(Date)

RJM
(Arbitrator's Signature)

25 April 2013
(Date of Hearing)

30 April 2013
(Date of Award)

* - mathematical calculation errors