

IN THE MATTER OF AN ARBITRATION
BETWEEN:

ALGONQUIN COLLEGE
("the College")
and

ONTARIO PUBLIC SERVICE EMPLOYEES UNION
("the Union")

AND IN THE MATTER OF A CLASSIFICATION GRIEVANCE OF MR.
ROBERT CULLING #2007-0416-0004

ARBITRATOR: Ian Springate

APPEARANCES

For the College: Diane McCutcheon, Manager,
Employee Services
Stephen Abraham, Director ITS

For the Union: Heather Richmond, Steward
Robert Culling, Grievor

HEARING: In Ottawa on May 30, 2008

AWARD

INTRODUCTION

The grievor is employed as a Senior Technician at the College's main campus in Ottawa. He is involved in P.C. repair and related work. Although his position is rated at payband G he is grand parented at payband H. Neither the Union nor the grievor is seeking to change the grievor's job rating or to raise him to a higher payband.

On May 28, 2007 the grievor filed a grievance which alleged that the College had violated Article 18.4 of the applicable collective agreement. In the grievance he contended that the position description form ("PDF") for his position "does not accurately reflect my working environment, and should be reevaluated". In its brief the Union asked that the following entries prepared by the grievor be added to the PDF for the factor of working environment:

Working Conditions:

Subject to recurring acts of abuse, disparagement, reprisal and provocation by Senior Management which are real conditions of employment as demonstrated at arbitration and by the Human Rights Commission.

Examples:

Open knowledge throughout the College and within the Department that the incumbent has been banned from the 5th floor, disciplined for executing a work assignment that was on the 5th floor; the incumbent was asked to explain why he refused to shake hands with a vice-president.

Frequency:

Infrequently

In its written brief the Union described its position in the following terms:

The Union's position is that the College has failed to accurately reflect the Working Environment of this incumbent's position. The restrictions placed on the incumbent's movement within the College have caused him to be ostracized by colleagues; subject to verbal abuse and the butt of jokes by colleagues. As a result, the incumbent is under mental distress and works in a "poisoned environment". Recognition of these real conditions should be recorded in the Position Description Form.

The wording which the Union seeks to have added to the PDF refers to arbitration proceedings and the Human Rights Commission. At the hearing I asked about any prior related grievances. The Union spokesperson replied that over the years the grievor's working conditions have been less than stellar and this had affected his work environment. No details were provided respecting any prior arbitration. When he gave evidence the grievor indicated that he had contacted the Human Rights Commission but the Commission had not been able to assist him. In these proceedings the grievor did not contend that he had been discriminated against contrary to any of the grounds enumerated in section 5 of the Ontario Human Rights Code.

ISSUES RELATING TO THE NATURE OF THE GRIEVANCE

At the hearing the spokesperson for the College contended that the claims being advanced by the Union should have been raised in a more appropriate manner than through a classification grievance. She added that notwithstanding this contention the College was prepared to argue the case as a classification grievance. She submitted that what is relevant in this regard are the grievor's current working conditions.

In her final submissions the spokesperson for the College contended that the type of working conditions put forward by the Union do not describe the job of a Senior Technician. She said that verbal abuse is not an expectation of the grievor's working environment and that abuse is neither accepted nor tolerated by the College. The College's filings included a copy of its ant-harassment/discrimination policy.

The job evaluation manual indicates that an employee's working environment is to be evaluated on the basis of a number of different considerations, one of which is possible verbal abuse. The manual defines verbal abuse as: "derogatory or threatening comments." The PDF prepared by the College indicates as follows that the grievor's position is one where on an infrequent basis he deals with verbal abuse:

The incumbent is in a position where he is helping people that have a problem with their computer. There is a potential for abusive client. While not tolerated by the college the situation cannot be prevented.

The PDF completed by the College indicates that the grievor's working environment generally involves acceptable working conditions. This justifies 7 points under the job evaluation system. The PDF also notes that the grievor is occasionally exposed to unpleasant working conditions which include dealing with abusive people. This justifies an additional 9 points for a total of 16 points for the factor of working

environment. These ratings are reflected on an arbitration data sheet that was prepared by the College. The Union did not challenge the accuracy of the ratings.

The job evaluation system recognizes that despite a College's best intentions and the enforcement of a non-harassment policy some College staff will unfortunately encounter verbal abuse. Any verbal abuse of employees by members of senior management would be especially serious. Allegations respecting such abuse logically could be raised and addressed in a more direct fashion than through a classification grievance. The job evaluation manual does not, however, restrict the source of verbal abuse that is to be taken into account when rating a working environment. Accordingly, the Union is not barred from advancing alleged verbal abuse on the part of management.

During the hearing I briefly raised the issue of whether the collective agreement contemplates the filing of a classification grievance which seeks to amend a PDF without any resulting change to the employee's payband. The Union spokesperson contended that such a grievance is permitted by Article 18.4.1 of the collective agreement which states that an employee who claims their assigned job is improperly evaluated may present a classification grievance. The spokesperson for the College did not directly address the issue. Nothing in this award is to be taken as a finding respecting whether an employee can or cannot file a classification grievance which seeks an amendment to their PDF but not a change in their payband.

INCIDENTS RELIED ON BY THE UNION

On June 13, 2007 the Union provided the College with examples of the type of conduct the grievor was relying on in support of his request for additional language in the PDF. The College included this material in its written brief.

At the hearing the grievor said that he has a paper trail respecting the College's treatment of him dating back to 1991. He also said that there were letters on his file with respect to events that had not taken place. The grievor gave evidence with respect to several specific incidents, the most recent of which occurred some three and a half years ago when Mr. Stephen Abraham became Acting Director of IT Services. The actual date when Mr. Abraham was appointed to the position was not referred to in evidence.

The grievor testified that the current College President began in that position in 1996. He said that during the tenure of the previous President he had exercised his rights on a job competition. He said that because he had not been pleased with the result a Vice President at the College suggested that he talk to the Human Rights Commission, which he did. According to the grievor as a result of his inquiries "some

actions” took place at work. I infer that the grievor viewed these actions as having had a negative impact on him. It appears to have been at about the same time when according to the grievor the College President stood in a parking lot and shouted abuse at him.

At the hearing the grievor referred to another incident which he identified as having occurred in 1996. He said that he put in writing his views concerning the conduct and honesty of someone at the College. He said that as a result of this the then President threatened him with disciplinary action. According to the grievor he told the President that he could not be disciplined for telling the truth, to which the President replied that he could be disciplined in the context of a harassment complaint.

The grievor testified that in 1999 he was barred from the fifth floor in the College’s main building which is where the President’s office is located. He indicated that before this occurred he had resolved computer-related issues on the fifth floor. At one point during his evidence the grievor said that he was not officially told to stop visiting the fifth floor but he was disciplined for having done so. The grievor said that a Vice President also instructed his director to investigate his behaviour, but the alleged behaviour on his part had not taken place. As noted above, the Union provided the College with what it claimed were examples of alleged verbal abuse suffered by the grievor. One example addressed issues relating to the fifth floor as follows:

The grievor feels that there is repeated interference by senior management in his work environment as evidenced by the open knowledge that the grievor has been “banned” from the 5th floor. Bob was being assigned work orders on the 5th floor. In February 1999, (email from Beth Perrin to John Hamilton, in which Beth stated “Wendy McMonagle called and asked me to go to her office. She inquired into the reason for Mr. Culling’s presence at my workstation. She proceeded to advise me that Mr. Culling was not to be on the fifth floor and provided some background information that I indeed was not aware.” This email was then forwarded by John Hamilton to Barry Brock for “appropriate action please”). Bob sent a formal response to Barry Brock; Bob’s manager discussed the incident with Beth Perrin and, in that manager’s own e-mail, “From the conversation Beth said that all was going fine until Wendy McMonagle happened to walk by the office. Then she created a commotion about Bob being on the fifth floor and the next thing Beth knows, she is approached by John Hamilton to write about Bob Culling.” The Director of ITS still proceeded with a formal letter to Bob, copy to his Human Resource’s file.

Subsequently, the running joke in the office was that when work orders for the 5th floor came in, “give it to Bob.”

Subsequent to the events of February 1999 the grievor's manager transferred him to the College's Rideau campus. According to the Union this was "to get him below the President's radar". After the Rideau campus closed the grievor was transferred back to the main campus. The grievor's evidence indicated that on his return his work duties did not involve the fifth floor.

As noted above, Mr. Abraham became the College's Acting Director of IT Services about three and-a-half years ago. About one year later he was confirmed as Director. Mr. Abraham indicated that while the grievor normally reported to him through a manager this individual had left the College in January 2008 and had not yet been replaced. Mr. Abraham noted that PC repair is divided into three geographic areas with the fifth floor being in a building in the central area whereas the grievor is assigned to one of the other areas.

Mr Abraham testified that he was unaware of any restrictions on the grievor's movement. He said that he had heard the grievor say that he was barred from the fifth floor but he had not given him any such direction. Mr. Abraham also said that he had not received any direction from the President or a Vice President that the grievor was not allowed on the fifth floor. Mr. Abraham said that should the central area need assistance on the fifth floor and the grievor was the appropriate person to send he would have no problems in assigning him to the floor.

The arbitration hearing was held in a meeting room on the fifth floor. Prior to the commencement of the hearing the grievor asked the Union spokesperson about the propriety of him using the washroom on the floor and she indicated that he should use the facility. I did not observe nor was I advised of the grievor having asked management for permission to use the washroom. During the hearing the grievor commented that he is 56 years old and had to ask for permission to go to the washroom.

The grievor testified that his last contact with the President occurred when he returned from the Rideau campus. It is not clear when this occurred. The grievor said that tradesmen had still been "muddying the walls" in a new building and the air was "pathetic." He said that he put on a dust mask which was not acceptable to the President and he was directed not to wear the mask. The grievor said that he continued to wear the mask because it involved a health and safety issue. He noted that nothing happened to him as a result of him continuing to wear the mask but added that everyone had gotten the message. The material that the Union sent to the College described this incident as follows:

When T building was under construction and the contractors were sanding drywall, Bob was told not to wear a protective mask by his manager Jacques Saucier, as directed by Barry Brock following a heated call from the

President, heated based on the volume and obscenity of Barry's reaction when he hung up, as heard by staff outside the Director's office, although the building was still a construction area and the President had happened to witness Bob wearing a mask while he, the President, was discussing with staff their complaints of headaches and sore throats in an area where Bob was working.

As touched on above, the most recent incident referred to by the grievor occurred when Mr. Abraham was named Acting Director of IT. It involved a staff meeting that was attended by the grievor as well as Mr. R. Letourneau who had recently been appointed Vice President. During the meeting Mr. Letourneau announced the departure of the previous Director of IT and Mr. Abraham's appointment as Acting Director. According to the grievor Mr. Letourneau described the previous director's departure as amicable even though the former director had been asked for his cell phone and keys and had been escorted from the premises by a man dressed in blue. The grievor said that during the meeting he chose not to shake Mr. Letourneau's hand since he felt Mr. Letourneau's conduct had not shown respect for him.

Mr. Abraham testified with respect to this incident. He said that because Mr. Letourneau was new he had been introducing himself to people when the incident with the grievor occurred. Mr. Abraham said that following this incident Mr. Letourneau asked him to find out what it had been about. Mr. Abraham indicated that he subsequently met with the grievor and a Union steward to discuss the matter. He said that no discipline or letter to the grievor's file resulted from the incident. In response to Mr. Abraham's evidence the grievor noted that he was the one who had asked that a steward be present. He also said that although he had not been officially disciplined word does get about.

Mr. Abraham testified that he can only speak to the three and-a-half years since his appointment. He said that he has told staff that they are to advise abusive persons that they will not accept abusive behaviour and if the behaviour continues they are to raise the matter with management. He said that he had not received any reports of abuse from the grievor. He also testified that he has not seen any evidence of disparagement, reprisal or provocation against the grievor.

The grievor said that the last time he was singled out by management was with respect to his refusal to shake Mr. Letourneau's hand. He said that while he can defend himself against verbal abuse from lower level staff and faculty he cannot respond when it comes from a manager. He also commented that he is not at liberty to tell a manager that they are condescending or refusing to answer his questions or refusing to understand what he is saying.

THE DETERMINATION

At issue is whether the working environment portion of the PDF should include a reference to verbal harassment by management. The job evaluation manual includes the statement that: “a PDF describes the position as it now exists, not as it ought to be or will be in the future”. The manual also states that “each employee should receive a current signed PDF”. These entries indicate that a PDF is meant to describe a position as it currently exists and not set out goals for the future or be a historical record of what a position used to be like. Some consideration of events in the recent past may be appropriate when assessing situations that occur on an occasional basis. This does not, however, justify relying on events from years gone by.

The most recent incident identified by the grievor occurred some three and a half years ago. The evidence establishes that at a meeting where the prior director’s departure was announced the grievor declined to shake the hand of Mr. Letourneau who had recently been appointed Vice-President. He did so because he felt Mr. Letourneau had not accurately described the events surrounding the previous director’s departure. The grievor did not at the time explain his reasoning to Mr. Letourneau and Mr. Letourneau asked Mr. Abraham to inquire into the situation. Presumably when the two men and a steward subsequently met the grievor explained to Mr. Abraham the rationale for his conduct. Management appears to have accepted the grievor’s rationale and no further action was taken. In my view the incident cannot reasonably be described as having involved verbal abuse of the grievor. The incident also did not involve disparagement, reprisal or provocation on the part of management.

The incident with the dust mask occurred at some point more than three and a half years ago. Issues relating to the grievor being on the fifth floor arose in February 1999. Other situations referred to by the grievor occurred even earlier, namely during or prior to 1996. These events might have justified consideration under the job evaluation plan in existence at the time. They cannot, however, reasonably be said to relate to a description of the grievor’s position as it existed when he filed his grievance on May 28, 2007.

In his evidence the grievor indicated that part of his concern relates to the manner in which he is viewed by management and a fear that management might take action against him in the future. There is, however, a note to raters in the job evaluation manual respecting to the factor of working environment which states: “This factor reflects working conditions that are real and not a condition that might occur.” It follows from this that the grievor’s views about what might potentially occur in the future are not a basis for amending his current PDF.

Having regard to the foregoing I dismiss the Union's contention that the PDF for the grievor's position should be altered in the manner that it proposed.

Dated this 11th day of June 2008.

Arbitrator