

IN THE MATTER OF AN ARBITRATION

BETWEEN:

THE COLLEGE COMPENSATION AND APPOINTMENTS
COUNCIL (FOR COLLEGES OF APPLIED ARTS AND
TECHNOLOGY)

-AND-

ONTARIO PUBLIC SERVICE EMPLOYEES' UNION (FOR
SUPPORT STAFF EMPLOYEES), LOCAL 557

EXPEDITED ARBITRATION FOR JOB EVALUATION
HUMBER COLLEGE, TORONTO
JENNIFER AHAMED OPSEU File 756304

Appearances:

Betty Cree, Deborah Cooper and Jennifer Ahamed for OPSEU

Dan Michaluk, Melinda Kao and Christa Iacovino for Humber
College

Jennifer Cosway, observer

Hearing held September 18, 2009 at Mississauga, Ontario

Award released October 8, 2009 at Georgetown, Ontario

AWARD

1. I was appointed by the parties pursuant to Article 18.4.3.1 of their collective agreement to hear and determine on an expedited basis, a dispute concerning the job evaluation of Employment Specialist, Jennifer Ahamed.
2. Ms. Ahamed and OPSEU disagree with the contents of the Position Description and they disagree about the job evaluation results on seven subfactors, Analysis and Problem Solving, Guiding/Advising Others, Independence of Action, Communications, Physical Effort, Audio/Visual Effort and Working Environment.

Accuracy of the Position Description

3. I will not discuss OPSEU and the grievor's concerns about the accuracy of the position description as a separate subject. It became apparent in the course of the hearing that they are concerned that some of the examples given do not properly capture the work performed. Consequently, it is simpler to discuss the concerns about the PDF content within each of the disputed subfactors.

Overview of the position

4. Ms. Ahamed works as an Employment Specialist in an Employment Resource Centre (ERC) operated by Humber, within the community, rather than at a Humber campus. The location of the work, and the unique environment in which Ms. Ahamed works, is important to a number of OPSEU's submissions about the job rating.
5. The ERC is located in a strip mall in Rexdale. The centre is intended to attract members of the public who are looking for work or for help in getting them ready to seek work. The Centre is staffed by full-time and part-time Employment Specialists, a receptionist and a manager. The Employment Specialist's tasks fall into three areas; résumé critiques, introduction to the resources at the Centre and guiding research; and presentation of workshops.
6. Employment Specialists are expected to help job seekers use the resources of the Centre to look for work or programs that will help them find work. Some of these resources are in books or paper files, arrayed around the centre, but many are computer-based. The ERC makes computers and telephones available for job seekers. The Employment Specialist shows the client the tools available on the computer, including relevant bookmarks, and other focused sources of job information. The Employment Specialist will help with printing, minor technical issues and assisting in the research. While both parties agree that the goal of the Centre is to guide the client to do his or her own research, there is disagreement about how often that goal can be reached. Ms. Ahamed explained that many of the clients are not literate in English, do not have strong computer skills, have no idea about how to prepare a résumé and are at a loss as to how to start a job search. In those situations, OPSEU said, the Employment Specialist must play a greater role in directing or guiding the research, which goes well beyond pointing out the location of electronic or paper job search materials.

7. The parties agree that Ms. Ahamed, like the other Employment Specialists, gives workshops to the public and to specially organized groups in job search skills. The only real dispute between the parties is the frequency of the task, which I will discuss in more detail below, under the subfactor Communications.

The disputed subfactors

8. I will set out the excerpts from the Support Staff Job Evaluation Manual in italics, followed by the parties' submissions and then my determination for each subfactor.

Analysis and Problem Solving

This factor measures the Level of complexity involved in analyzing situations, information or problems in varying Levels of difficulty; and in developing options, solutions or other actions.

Notes to raters:

1. Consideration must be given to the types of situations that arise and:

-how situations, analytical requirements or problems are defined

-the range of choice of action within the scope of the job

-the Level and type of investigation required

-how complex or multi-faceted issues or problems are

-from which sources assistance is obtained

This will help define the application of analysis and judgement within the scope of the job. The above elements must also be considered as a whole when selecting the appropriate Level.

2. Consideration can only be give to the extent that judgement is allowed within the parameters and constraints identified in the position duties. Keep in mind, it is the requirement of the position not the incumbent's capability that is being evaluated.

9. The College rated the position at Level 2. OPSEU agrees that Level 2 is appropriate most of the time but argues for a Level 3, on an occasional basis. Levels 2 and 3 read as follows:

2. Position duties are completed according to established procedures. Decisions are made following specific guidelines. Changes may be made to work routine(s).

3. Position duties are completed according to general processes. Decisions are made following general guidelines to determine how tasks should be completed.

The notes to raters provide the following clarification of the differences between Levels 2 and 3:

At Level 2, the work performed is still quite structured, as the incumbent performs it in the customary or usual way. It is very evident when problems arise. However, the position has some freedom in determining how the problems could be resolved if normal past practice cannot be applied. For example, if a position was to post certain information on a daily basis and, for a reason never previously experienced by the incumbent, the information was not available, then the individual in the position would

need to determine if a solution to another similar situation could be applied in the circumstance.

At Level 3, the types of problems that are encountered are readily identifiable but the position must be able to identify when additional information is necessary to clearly understand the problem or solution. In order to develop an appropriate solution, the position will need to gather more information. In many circumstances, this additional information or clarification will be readily available, but there will be times when the position will need to seek additional information from a source it is unfamiliar with.

10. OPSEU argues that many of the people who attend the Centre are not able to articulate exactly what they need. As a result, the Employment Specialist must first make the client feel comfortable, explain what resources are available, and then ask questions to find out what help is needed. If, for example, the client has no résumé and no idea where to begin, the Employment Specialist can refer them to a workshop but if the résumé is needed right away to help the client respond to a job ad, then the Employment Specialist will do what they can. But what is important to remember, Ms. Ahamed said, is that many clients do not know where to start in a job search, and are overwhelmed by their situation, making it challenging for the Specialist to collect enough information to get the client started. In addition, the Employment Specialist does not just direct the client to the resources and leave them alone; the Specialist may need to be ready to help them move to the next stage, providing ongoing advice.

11. Ms. Ahamed said that while templates are available to assist in résumé preparation and review, the templates do not cover all situations. If, for example, the client is a welder, there are no templates the Employment Specialist will review their files, find something similar, and then customize the résumé to suit the need.

12. While I appreciate that the Employment Specialist has to take steps to acquire information from clients to seek to meet their needs, the tasks remain structured, and the incumbent can rely on solutions achieved other times to solve the new challenge presented by, for example, a client needing a résumé suitable for a welder. I conclude that the type and degree of problem solving and analysis is fully captured by the words at Level 2.

13. The example that OPSEU and Ms. Ahamed would like to have added to the PDF is more detailed than the examples in the employer's PDF but I do not believe that it makes a qualitative difference to the PDF. I note that the opening section of the PDF describing duties and responsibilities, clearly sets out the job requirements that OPSEU and Ms. Ahamed would like added to the PDF. All evaluators are told to read all of the PDF before evaluating the job, and the section under duties and responsibilities is typically treated as a very important source of information for evaluators. Consequently, I am satisfied that the PDF captures the necessary job information.

Guiding/Advising Others

14. At issue between the parties is whether the Employment Specialist is a Level 2, with an occasional Level 3, or a regular and recurring Level 3, with an occasional Level 4. This subfactor reads as follows;

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

15. Level 2 reads; *Guide others so they can complete specific tasks.* Level 3 reads; *Advise others to enable them to perform their day-to-day activities.* Level 4 says; *Guide/advise others with ongoing involvement in their progress.*

16. What principally separates the parties is whether the Employment Specialist has any role in clients' success and progress on an ongoing basis. Ms. Ahamed said it is not unusual for clients to make several visits to the centre, as they complete steps in their job search, and return to the same Employment Specialist for guidance to the next step. The College did not dispute that clients may return to the centre and seek additional help, but that the job does not impose any accountability or responsibility for the client's progress. Melinda Kao, the former co-ordinator at the Rexdale Employment Resource Centre and Ms. Ahamed's supervisor during the relevant time period, said that the client always makes the decision about what to do with the advice and guidance that is offered, including whether to accept it, whether to act on it or not and whether to return. The client's success is up to the client.

17. OPSEU understands that the Employment Specialist has no ongoing responsibility for the clients' success but submitted that the position performs tasks, that when combined, contribute to the clients' self-sufficiency in their job search.

18. I conclude that Level 2, with an "occasional" Level 3 is appropriate. Both parties agree that the Employment Specialist has no requirement to take an ongoing responsibility for the client's progress, which makes Level 4 inappropriate. On the basis of the information before me, I conclude that for the most part the Employment Specialist "guides" clients to resources, showing how to use them with the purpose of developing the clients' skill and confidence. From time to time, the Employment Specialist will also "advise", providing her knowledgeable recommendation about the path to follow.

Independence of Action

19. This factor is defined as follows:

This subfactor measures the Level of independence or autonomy of the position. The following elements should be considered:

- *The types of decisions that the position makes*
- *What aspects of the tasks are decided by the position on its own or what is decided by, or in consultation with, someone else, such as the supervisor*
- *The rules, procedures, past practice and guidelines that are available to provide guidance and direction*

These considerations, when taken as a whole, will define the parameters and constraints of the position within which the incumbent is free to act.

20. The employer advocates for Level 3, *Position duties are completed according to general processes. Decisions are made following general guidelines to determine how*

tasks should be completed. The union proposes Level 3, with Level 4 on an “occasional” basis. Level 4 reads, Position duties are completed according to specific goals or objectives. Decisions are made using industry practices and/or departmental policies.

21. The notes to raters are helpful:

Level 3-specific results or objectives that must be accomplished are pre-determined by others. The position has the ability to select the process(es) to achieve the end result, usually with the assistance of general guidelines. The position has the autonomy to make decisions within these parameters.

Level 4-the only parameters that are in place to guide the position’s decision-making are “industry practices” for the occupation and/or departmental policies. The position has the autonomy to act within this boundaries and would only need to consult with the supervisor (or others) on issues that were outside these parameters.

22. Ms. Ahamed said that Level 4 occasional was appropriate because the job involves not just listening to the information clients provide, but probing further into their circumstances. For example, Ms. Ahamed said that she knows about certain programs for which clients might be qualified, and seeks out that information. She then guides the client to a resource or program for which they qualify. Ms. Ahamed said that this demonstrates that the position enjoys a high Level of autonomy to assist the client.

23. I conclude that Level 3, not Level 4, best captures the work. The Employment Specialist must be knowledgeable about a range of resources, both those offered at the Centre and outside. Based on the information she collects from the client, she can apply her knowledge and suggest what options would be good for the client, but she is always guided by established processes.

Communication

24. This factor reads as follows:

*This factor measures the communication skills required by the position, both **written and oral** and includes:*

- *communication to provide advice, guidance, information and training*
- *interaction to manage necessary transactions*
- *interpersonal skills to obtain and maintain commitment and influence the actions of others*

The Notes to Raters provides the following to clarify:

*‘Explain’ and ‘interpretation’ in **Level 3** refers to the need to explain matters by interpreting policy or theory in such a way that it is fully understood by others. The position must consider the communication Level/skill of the audience and be sensitive to their abilities and/or limitations. At this Level, if the exchange is of a technical nature, then usually the audience is not fully conversant or knowledgeable about the subject*

matter. Unlike communicating with people who share an understanding of the concepts, in this situation the material has to be presented using words or examples that make the information understandable for non-experts or people who are not familiar with the intricacies of the information.

'Gaining cooperation' refers to the skills needed to possibly having to move others to your point of view and gaining commitment to shared goals. The incumbent works within parameters determined by the department or College and usually there is a preferred outcome or goal. The audience may or may not have divergent views.

25. The employer rated the position at Level 3, with an “occasional” Level 4. The union argues for Level 4. Level 3 reads: *Communication involves explaining and/or interpreting information to secure understanding. May involve communicating technical information and advice.* Level 4 says, *Communication involves explaining and/or interpreting information to instruct, train and/or gain the cooperation of others.*

26. The dispute between the parties concerns how often the Employment Specialist is required to give workshops. The workshops last about one hour and a half. The Centre holds regular workshops, open to the public on such topics as résumé writing, job interviews, internet job searches and “the art of cold calling”. In addition to the public workshops, the Centre may be asked to provide a series of related workshops through a community organization. It is agreed that because the content is repetitive and delivered on the basis of prepared materials, each workshop would require about a half an hour of preparation to deliver. It is also agreed that the nature of the communication required to successfully deliver information in the workshop attracts a rating at Level 4. At issue is whether the preparation for and delivery of the workshops is a “regular and recurring” aspect of the job, or an “occasional requirement”.

27. The PDF prepared by the College indicated that workshop preparation and facilitation would take approximately 35% of the incumbent’s time, but that is no longer accurate. The College said that at the time the PDF was prepared, workshops were just starting out and the College over-estimated how much customization was necessary. OPSEU objected to the College seeking to alter the PDF to downgrade this important aspect of the job. The union and Ms. Ahamed disagree that an “occasional” rating is important, disputing the employer’s estimate that the Employment Specialist delivers, on average, one workshop a week, for a total of two hours.

28. At my suggestion, over the lunch break, the parties collected information about the number of workshops delivered by Ms. Ahamed over a four month period and the total hours. The information revealed;

May 2009	1 workshop	1.5 hours
June 2009	5 workshops	15 hours
July 2009	3 workshops	7.5 hours
August 2009	3 workshops	6 hours

29. I heard that in June, Ms. Ahamed delivered more workshops than usual, because they were understaffed, but the understaffing seems a chronic, rather than isolated issue. I am satisfied that the Employment Specialist delivers the workshops on a weekly basis and that the PDF at page 22 should be changed to reflect that. I suggest that the employer and the union discuss how page 3 should be altered to reflect the reality that the Employment Specialist does not devote 35% of her time to Facilitation.

30. Having found that the Employment Specialist prepares and delivers workshops on a weekly basis, is this a “regular and recurring” activity or an “occasional” one? In the opening pages to the job evaluation manual, under the title “How to Use the Manual”, guidance is provided:

“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 identified as “regular and recurring”....

31. On the basis of the direction in the manual, I conclude that facilitating the workshops is a regular and recurring aspect of Employment Specialist position, and therefore Level 4 is appropriate.

Physical Effort

32. The dispute between the parties concerns the significance, if any, of the position’s need to move tables and chairs in the ERC to accommodate guest speakers, workshops etc. It is common ground that there are no services staff to set up rooms for events. The employer has rated the positions at Level 1; *the position requires light physical effort*. “Light physical effort” is defined as pushing, pulling or lifting objects less than 11 pounds in weight. The union argues for Level 2; *the position requires moderate physical effort*. “Moderate physical effort” is defined, in part, as pushing, pulling or lifting objects between 11 and 44 pounds. I saw photos of the round, library-style tables. It is unlikely that they weigh less than 11 pounds. It was difficult to get an accurate picture about how often tables and chairs need to be moved, but on each occasion, the task would take only a few minutes. I conclude that assigning an “occasional” Level 2 rating would be appropriate.

Audio/Visual Effort

33. This factor read as follows:

This factor measures the requirement for audio or visual effort. This factor measures the following two aspects:

a) the degree of attention or focus required, in particular for:

-periods of short, repetitious tasks requiring audio/visual focus

-periods where task priorities and deadlines change and additional focus and effort is required to achieve the modified deadline

b) activities over which the position has little or no control that make focus difficult. This includes the requirement to switch attention between types of tasks and sensory input (e.g. multi-tasking where each task requires concentration)

Assess the number and type of disruptions or interruptions and the impact of these activities on the focus or concentration needed to perform the task. For example, can concentration be maintained or is there a need to refocus or change thought processes in order to complete the task.

Two of the Notes to Raters are particularly relevant to this job:

“5. In determining what constitutes an interruption or disruption, you must first decide whether the “disruption” (i.e. customer requests) is an integral or primary responsibility of the position (e.g. customer service, registration/counter staff, help desk, information desk). Then consider whether these activities are the primary or secondary aspect of the job. For example, if an individual has no assigned tasks or duties while tending to customer requests, then those requests cannot be seen as disruptions.

6. Consider the impact of the disruption on the work being done. For example, can the incumbent in the position pick up where he/she left off or has the interruption caused a disruption in the thinking process and considerable time is spent backtracking to determine and pick up where he/she left off”.

34. The employer rated the job as Level 2; *regular and recurring long periods of concentration; or occasional extended periods of concentration*, with “focus maintained”. The union seeks Level 3; *extended periods of concentration*, with “focus interrupted”. Those terms are defined;

Focus Maintained-concentration can be maintained for most of the time.

Focus Interrupted-the task must be achieved in smaller units. There is a need to refocus on the task at hand or switch thought processes.

35. The parties agree that interruptions are an integral or primary responsibility of the position. The PDF allocates 50% of the time in the job to orienting new clients, assessing client needs and providing assistance on the floor to walk-in clients in the use of the computers and job search tools.

36. In reviewing résumés, Ms. Ahamed has a checklist which she can rely on to help her locate and correct common mistakes and then offer help to the résumé’s author for improvement. It is agreed that this task requires focused concentration. Ms. Ahamed asserts that such concentration is hard to maintain, while she is out “on the floor” helping clients who walk in. The employer responds that it does not expect Ms. Ahamed to critique résumés while she is out on the floor, but instead to perform that work in the back room, where she would not be disturbed. The union counters that it is not always

easy to leave the floor, and essentially, reduce the staff who are available to help those who walk in to the centre.

37. It is often difficult to strike a balance between the employer's expectations and the reality of how the workday unfolds. The employer expects that work requiring close attention be completed away from the floor but also agrees that service to walk-in clients is a priority. The primary responsibility of the position is customer service, so interruptions in that aspect of the job are not to be counted in this subfactor. But another primary responsibility of the job is résumé review and workshop preparation. It appears that some of the time, that work can be done without interruption, but not all of the time, because service to walk-in clients is a priority.

38. I conclude that Level 2 best describes the situation; *regular and recurring long periods of concentration; or occasional extended periods of concentration*. The information does not establish that the grievor is required to maintain concentration for more than two hours, which is the requirement for Level 3. But I agree with the union that "focus interrupted" rather than "focus maintained" is more reflective of the work situation; the Employment Specialist must achieve work requiring concentration in smaller units and a need to refocus after the interruptions that are necessary to meet client service priorities.

Working Environment

This factor looks at the environment in which work is performed and the extent to which there exists undesirable or hazardous elements.

39. Level 1 is defined as "Acceptable working conditions." Level 2 is defined as;

Working conditions involve:

- difficult weather conditions*
- smelly, dirty or noisy environment(s)*
- exposure to very high/low temperatures*
- verbal abuse*
- working in isolated or crowded conditions*
- travel*

Level 3 is defined as;

Working conditions involve:

- exposure to extreme weather conditions*
- handling of hazardous substances*
- dealing with abusive people who pose a threat of physical harm*
- accessing crawl spaces/confined spaces*
- other conditions which pose a risk to physical safety*

40. The employer has rated the job at Level 1, with an "occasional" Level 2. OPSEU and Ms. Ahamed advocate for Level 3. "Verbal abuse" is defined as *derogatory or*

threatening comments. “Abusive” is defined as *verbal abuse; more than dealing with someone who is angry or upset.*

41. Ms. Ahamed and the union explained that the ERC is located in a high-crime neighbourhood. The Centre is open to the public, with no barriers, meaning that undesirable people have ready access. In addition, people will come to the Centre, claiming to be job-seekers, but will use the telephones and computers for other purposes, a practice that the Employment Specialists are expected to monitor. In the course of telling people not to use the computers to, for example, access porn sites, the Employment Specialist is subject to abusive and derogatory comments. Ms. Ahamed also included Security Occurrence Reports she had documented, that show the verbal abuse she received from a client who was required to wait a few minutes for the copier to become free. The client sent an e-mail of complaint, which contained more unacceptable racist and offensive remarks, directed at Ms. Ahamed. In the second security report, Ms. Ahamed noted that a client yelled obscenities at her in the office, and then remained in the parking area when Ms. Ahamed was leaving work to get into her car.

42. The union submits that because the ERC is not at a campus, staff do not have a realistic expectation that security will come quickly when they call. The characteristics of the Centre that make it accessible to the community make it less safe for staff, the union argued.

43. The College responded that it is unacceptable that any of its staff are subject to verbal abuse and that it makes efforts to identify and exclude the few who misuse the Centre and abuse its staff. But, the employer argued, the incidents are few, as established by the fact that only two Security Occurrence reports are relied upon.

44. In the PDF, the employer wrote that the position deals with abusive people on a daily basis, noting that incumbents are required to “...refocus a client on job search related activities rather than surfing the internet or chatting”. The PDF noted weekly exposure to odours and to crowded situations because “...the centre can be extremely busy at times”.

45. In my view, all of the information, taken together, makes Level 2 the best fit. The employer acknowledges regular exposure to derogatory or threatening comments, combined with frequent exposure to crowded or smelly conditions. The Security Occurrence Reports, although not numerous, show the poisonous and highly personal comments that the incumbent is exposed to, which become more menacing when the offender remains in the parking lot as the grievor is leaving work. However, I am not satisfied that Level 3 is appropriate because none of the information establishes that the incumbent must deal with abusive people who pose a risk of physical harm. I conclude that a Level 2 is strongly established.

46. On the disputed subfactors, I make the following determinations for the reasons set out above:

Analysis and Problem Solving	Level 2	46 points
Guiding/Advising Others	Level 2, occasional Level 3	20 points
Independence of Action	Level 3	78 points
Communication	Level 4	110 points

Physical Effort	Level 1, occasional Level 2	11 points
Audio/Visual Effort	Level 2, focus interrupted	35 points
Working Environment	Level 2	38 points

When those points are added to the points for the undisputed subfactors, the result is 505 points, which places the Employment Specialist at pay band G.

Dated at Georgetown, Ontario, this 8th of October, 2009.

A handwritten signature in black ink, appearing to be 'Mary Ellen Cummings', with a large, sweeping flourish extending to the right.

Mary Ellen Cummings