

IN THE MATTER OF AN ARBITRATION
BETWEEN:

LAMBTON COLLEGE

("the College")

and

ONTARIO PUBLIC SERVICE EMPLOYEES UNION

("the Union")

AND IN THE MATTER OF CLASSIFICATION GRIEVANCES OF VICTORIA
BYERS, KAREN KULEY, TRACY PARNHAM AND SHERRY RUSSELL
(OPSEU # 712403)

ARBITRATOR: Ian Springate

APPEARANCES:

For the College: Dan Michaluk, Counsel
Wendy Asher, Dean, School of Health and
Community Services
Guy Bertrand, Director, Human Resources
Colleen Charlton, Manager, Staff and Labour
Relations

For the Union: Tracy Parnham, Spokesperson and Grievor
Victoria Byers, Grievor
Carlos Fermin, Vice President Local 124
Val Patrick, OPSEU Grievance Officer

HEARING: In Sarnia on September 9, 2008

AWARD

INTRODUCTION

The four grievors are employed as full-time Learning Specialists in the College's Community Integration Through Co-operative Education ("CICE") program. By way of grievances dated in February and April 2007 they alleged that the College had improperly classified their positions under the job evaluation system binding on the parties. They contended that they should be rated at payband I. When the grievances were submitted the College rated the positions at payband G. In September 2007 in connection with a Step I grievance response the College raised its rating to payband H.

As of the Step I grievance response the College's ratings for all eleven job factors set out in the job evaluation manual resulted in a total of 541 points for the grievors' positions. This total falls within the 520 to 579 point range for payband H. The ratings proposed by the Union would result in a total of 625 points, within the 580 to 639 point range for payband I.

The difference between the parties point totals relate to differing ratings for the factors of planning/coordinating, service delivery, communication and audio/visual effort. Each of these four factors is addressed separately below.

The Union accepts the accuracy of most of the entries in a position description form ("PDF") prepared by the College. The Union has, however, proposed certain language changes, including several new entries and some deletions.

Ms. Wendy Asher is the Dean of the College's School of Health and Community Services. Along with a range of other duties she is responsible for the administration of the CICE program. Ms. Asher gave evidence at the hearing as did Ms. Tracy Parnham, one of the grievors who served as the Union's spokesperson.

AN OVERVIEW OF THE CICE PROGRAM AND THE GRIEVORS' ROLES

The CICE program is a two-year program designed for individuals with learning challenges. At any one time there are about 30 students in the program. With support from the grievors, as well as one other full-time and a number of part-time Learning Specialists, students in the program attend regular classes and labs. Ms. Parnham described the Learning Specialists as having the primary responsibility to support the students in skill development, goal setting and problem solving in relation to classes, tutoring and integration in the College.

When students register in the CICE program they select an area of concentration that could lead to future employment opportunities. For example, a student who takes courses in Early Childhood Education might become an ECE Assistant while a student who takes Horticulture Technician courses might become a Grounds Maintenance Worker. Upon successful completion of the program a student receives a CICE certificate. Some students who have completed the program have stayed on at the College to work towards and receive a regular certificate in their area of concentration.

Ms. Parnham stated that students supported in the CICE program are funded at 8.3 funding units while the general student population is funded at approximately 1.0 funding units. She contended that this speaks to the complexity of the needs of the students. She said that each student requires very individualized education and social support in combination with their program of study.

The grievors are involved in the admission process for the CICE program. They conduct information and orientation sessions and interview prospective students. They also evaluate applicants and make admission recommendations.

A grievor or one of the other Learning Specialists is responsible for supporting a CICE student or students enrolled in a particular course. Thus a grievor will attend classes with one or more students and take notes. While doing so they assist the CICE student(s) to integrate with other students in the class. The same grievor also attends labs for the course to provide assistance to the student(s). In addition, they provide tutoring to the CICE student(s) enrolled in the course. Usually students attend a weekly one hour tutoring session for each course although according to Ms. Parnham this can be increased to two hours for courses such as psychology and sociology that are theory heavy. Ms. Parnham also referred to a student who is a non reader who attends a group tutoring session for a course as well as an hour of one-on-one tutoring.

The grievors advise CICE students with respect to course selections and assist them to access College resources. In addition, they work with faculty members to modify courses, tests and assignments for individual CICE students.

Mr. Page is a faculty member who spends half his time as the Coordinator of the CICE program. His duties include leading seminars with CICE students who are grouped by semester. Ms. Asher testified that the seminars represent a core course that must be taught by a faculty member. She said that the seminars are the only time CICE students are grouped together. She noted that the seminars cover topics such as organizational skills, problem solving skills and getting ready for a field placement.

At the hearing Ms. Parnham said that there is a high demand on the grievors to do their job well and to do it efficiently since a student's progress depends on the grievors'

ability to function in a fast paced environment and to produce quality resources for students. The evidence indicates that the grievors perform their duties extremely well and assist students to achieve results that will have a profound impact on their future economic and social well being. A note to raters in the job evaluation manual, however, states that it is a position that is to be evaluated and not the individual in the position. It also states that knowledge respecting an individual's performance is not to influence evaluation decisions.

THE FACTOR OF PLANNING/COORDINATING

The job evaluation manual notes that this factor measures the planning and/or coordination requirements of a position. It relates to the organizational and/or project management skills required to bring together and integrate activities and resources needed to complete tasks and organize events.

The College rates this factor at level 2 worth 32 points. The Union contends that a 3 rating worth 56 points would be more appropriate. The definitions for these ratings set out in the job evaluation manual are as follows:

2. Plan/coordinate activities and resources to complete own work and achieve overlapping deadlines.
3. Plan/coordinate activities, information or material to enable completion of tasks and events, which affect the work schedule of other employees.

The manual defines the terms "affect" and "other employees" used in the level 3 definition as follows:

Affect – to produce a material influence upon or alteration in.

Other employees - includes full-time, part-time, students, contractors.

The job evaluation manual contains the following notes to raters designed to clarify the differences between a level 2 and a level 3 rating:

Level 2 - the position plans and prioritizes its own activities. Planning and coordinating are typically focussed on completion of assigned activities within established deadlines or procedures (e.g. scheduling, coordination of data for reports, setting-up of new software in a department to meet specific

business needs). The position may coordinate or make arrangements for an event by coordinating the calendars of others.

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 is requests by the position 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).

The Union agreed with that portion of the College's PDF which sets out three examples of planning and/or coordination by the grievors that occur on a regular and recurring basis. The first is described as "Coordinating individual student's and all CICE Learning Specialist's schedules to fit planned weekly classroom based Lambton College course schedules and scheduling tutoring sessions and seminar classes". Ms. Asher testified that all courses are scheduled by the College's scheduling office. She said that a grievor and a student will together make the choices respecting what courses the student will enrol in. She described it as a cooperative process. Ms. Parnham indicated that students make the final decisions with respect to course selections.

Ms. Parnham testified that the Learning Specialists meet as a large group to decide who among them will attend what courses and to schedule times for tutorials and CICE seminars. These schedules may later have to be adjusted since the scheduling office can make changes to class and lab times during the first ten days of a semester. Even after this ten day period has elapsed should a CICE student drop a course there might be adjustments to a Learning Specialist's schedule. Ms. Parnham indicated that for the past six semesters the Learning Specialists have jointly decided on these adjustments and then advised Mr. Page of what they had decided. She referred to a situation where the Learning Specialists decided to move five hours from a part-time Learning Specialist to Ms. Byers, one of the grievors, after a student had dropped a course in which he or she was being assisted by Ms. Byers. Ms. Asher subsequently indicated that she had not been aware that a decision to reduce a part-time employee's hours had been made without any involvement of management or Mr. Page and that in her view it had not been appropriate for the employees to make such a decision.

The second example of planning and/or coordinating referred to in the PDF is: "Planning for tutoring and testing and assignments for assigned students". Ms. Parnham described this example as representing the Union's strongest argument in favour of a level 3 rating. She said that a student cannot study without notes from a Learning Specialist and that when a faculty member assigns an essay to a class a

Learning Specialist will outline on a step by step basis what the CICE student(s) in the class must do to complete the essay.

The third example in the PDF refers to “coordinating student services”. Ms. Parnham testified that if a student is unable to pay tuition fees a Learning Specialist will refer them to the financial aid office and/or to Ontario Works. She indicated that should a student be unable to handle their course load a Learning Specialist will discuss their options with them, including possibly dropping a course. She noted that when a student drops a course it could impact on the scheduling of other staff, on whether the student will be enrolled on a full or part-time basis, their financial assistance, their grade point average and also whether they will meet graduation requirements.

Ms. Parnham contended that all three of the examples in the PDF meet the requirements for a level 3 rating since the grievors plan/coordinate activities, information or material so as to enable the completion of tasks and events which affect the work schedule of others. She noted that the manual’s definition of “other employees” contains a reference to students.

Counsel for the College contended that a level 3 rating requires project management skills and such skills are not required of the grievors. He submitted that the scheduling engaged in by the grievors is primarily in the nature of an administrative task of fitting tutorials into a schedule with some choice in terms of who does what. He described it as a team scheduling process. He argued that the reference to students in the definition of “other employees” in the manual is to students who work on a part-time basis at the College.

The three examples discussed above all involve planning and the coordination of activities and resources as part of assisting students in the CICE program. These activities impact in a major way on what students’ schedules look like and how students complete course requirements. In that actively working with students is the central role of a Learning Specialist, however, the grievors’ tasks can reasonably be viewed as planning and coordinating activities and resources in order to allow them to complete their own work.

A level 3 rating applies when planning and coordinating activities affect the work schedule of other employees. The Union relies on the fact that the job evaluation manual uses the word “students” in the definition of “other employees”. As noted above, the manual defines “other employees” by saying that the term “includes full-time, part-time, students, contractors”. Logically this wording is designed to clarify that the term employees encompasses not only full time employees of the College but also part-time employees, students who are employees and employees of contractors. The definition is presumably designed to forestall disputes such as whether employees who

are also students at the College or who are employees of a contractor are meant to be covered by the relevant language. The definition does not logically result in students who are neither employees of the College nor employees of a contractor being viewed as employees for the purpose of the level 3 definition.

The note to raters respecting a level 3 rating states that typically planning and coordination at this level affects the work schedule of others by requesting materials and information in order to plan events or activities such as conferences, research projects and upgrading hardware or software. None of the grievors' functions can reasonably be described as involving these or analogous activities.

The role of the Learning Specialists in altering staffing in response to students dropping a course appears to be a collaborative one with the grievors and other Learning Specialists making adjustments to their schedules. The situation where Learning Specialists decided to remove hours from a part-time employee and assign them to Ms. Byers appears to have involved a relatively unique situation, as opposed to one that occurs on an occasional basis. Based on this (and apart from any issues respecting the propriety of bargaining unit employees making such a decision) it is not an appropriate basis for rating the job factor.

Having regard to the above considerations I conclude that the grievors functions do not fit the definition for a level 3 rating. I confirm the level 2 rating assigned by the College

SERVICE DELIVERY

This factor looks at the service relationship that is an assigned requirement of a position. It considers how a request for service is received and the degree to which the position is required to design and fulfil the service requirement.

The College rated this factor at level 3 which is worth 51 points. The Union argues for a level 4 rating, the highest rating possible, worth 73 points. The relevant level definitions and word definitions read as follows:

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

Tailor - to modify or adapt with special attention in order to customize it to a specific requirement.

4. Anticipate customer requirements and pro-actively deliver service.

Anticipate - given advance thought, discussion or treatment to events, trends, consequences or problems; to foresee and deal with in advance.

Proactive - to act before a condition or event arises.

A note to raters states that the term "customers" refers to the people or groups of people who receive the services delivered by a position, including students. To clarify the differences between the various levels the notes to raters include the following comments:

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 PDF wording proposed by the Union for this factor differs somewhat from the wording in the PDF prepared by the College. The Union did not, however, take issue with the contention of counsel for the College that there was not any substantive difference between the wording advanced by the two parties.

The PDF indicates that the grievors provide service when addressing enquires from potential students and members of the public at College open houses and community presentations and also when responding to phone calls and emails.

In order to provide appropriate services the grievors are required to assess the learning needs of students who have been accepted into the CICE program. This includes referring to a 32 question advocate reference form completed as part of a student's initial application by a non-relative, such as a teacher, counsellor, employer or case worker. A grievor will also take into account the results of an admission interview

conducted by one of the Learning Specialists or by Mr. Page. Ms. Parnham testified that these sources provide the grievors with background information respecting the development a student has gone through and are helpful in integrating the student into the College.

Ms. Asher described the assessment of student learning needs as ongoing. She indicated that it takes place through observations in the classroom and also in observations during tutoring sessions when a grievor ascertains what a student has obtained from a class and what needs to be done to solidify their classroom learning.

As touched on above, some of the services delivered by the grievors involve their attendance at classes, labs and tutoring sessions. Ms. Asher testified that after a classroom session, which might involve the review of several pages of text, a grievor will be required to come up with strategies to match the course content with a student's abilities and styles. She said that this can include the use of pictures, charts and games designed to reinforce material taught in class. She indicated that the nature of the support received by a particular student can change and that one goal is to have a student require less support over time.

Ms. Parnham indicated that during a tutoring session she will ask a student what worked for them in the past and should the student reply that they need to see things she will ask if this is better done through pictures or notes or by her demonstrating something. Ms. Parnham described this as being proactive. She also contended that the grievors must anticipate a student's needs. She gave the example of her ensuring that a text on tape is available for a student who is a non reader.

Another aspect of the grievors' service delivery involves them assisting students with course selections. Ms. Parnham testified that a grievor will map out possibilities and recommendations for a student even before the individual arrives at the College. She indicated that when students are interviewed they are asked what classes they enjoyed and did well in at high school and this information is used to help with course selections. She said that she also points out those courses that have another course as a prerequisite. In their evidence both Ms. Asher and Ms. Parnham indicated that although faculty cannot refuse to have CICE students in their classes certain faculty members are more open to CICE students and more flexible in their approach and this is taken into account in the scheduling process.

Ms. Parnham testified that the scheduling function involves discussing course options with students and/or their parents based on what the student's goals are after they complete the program. She said that the selection of courses is done based on what courses can best meet those goals. She also said that a student's goals are mapped out over a two year period so that the individual can see where they are going. She

described this as long term planning. She also said that for students considering staying on for a regular diploma the grievors help them to understand what the course load will look like.

Ms Asher contended that the grievors are not involved in career planning for students. She described the CICE program as being very much an academic program. Ms. Parnham replied that the grievors must be aware of a student's career goals to assist them in planning their courses so they can reach their desired goals. From this evidence I conclude that it is not the role of the grievors to assist students in planning their future careers but the grievors do take a student's career goals into account when assisting them to select courses.

The grievors complete course drop/add forms for CICE students. Ms. Parnham said that this function is usually performed by the Counselling Office for non-CICE students.

Ms. Parnham contended that a level 4 rating is appropriate for this factor since the grievors anticipate customer requirements and proactively deliver services. In its written brief the College contended that a level 4 rating is not appropriate because the grievors are not involved in anticipating customer requirements. At the hearing counsel for the College contended that a level 4 rating is reserved for areas of strategic planning, such as someone with a planning function in IT. He submitted that the grievors gather information in order to identify a student's current needs and to assess what a student is struggling with at any point in time. He contended that the note to raters respecting a level 3 rating is a perfect fit with the grievors' duties.

The note to raters relied on by College counsel respecting a level 3 rating does in fact appear to encompass the grievors' activities with respect to service delivery. In order to provide the right type of service a grievor must develop an understanding of a student's situation and customize the way service is delivered to that individual. A grievor might subsequently modify service delivery to ensure that it continues to meet the student's needs.

The note respecting a level 4 rating indicates that such a rating is only appropriate where an employee must fully understand a customer's current and future needs and must then consider that information in a wider context so as to be able to structure services to meet currently stated as well as emerging needs. Although the grievors take into account a student's career goals they are not required to place that information into a wider context in order to be able to design services that will meet future needs. There is also not a need for the grievors to proactively deliver services to customers in the sense of acting before a condition or event arises.

The main functions of the grievors involve assessing and addressing the current needs of current students. A level 3 rating is the most appropriate fit for this factor. Accordingly, I confirm the level 3 rating assigned by the College.

COMMUNICATION

A: General

This factor measures the communication skills required for a position, both verbal and written. This includes communication to provide advice, guidance, information or training; interaction to manage necessary transactions; and interpersonal skills to obtain and maintain commitment and influence the actions of others.

The College rated the grievors' positions at level 3 on a regular and recurring basis, which is worth 78 points. The College also assigned a level 4 rating on an occasional basis worth an additional 9 points. The Union contends that the grievors' positions are entitled to a 4 rating on a regular and recurring basis which would result in 110 points.

The relevant factor levels and term definitions are as follows:

3. Communication involves explaining and/or interpreting information to secure understanding. May involve communicating technical information and advice.

4. Communication involves explaining and/or interpreting information to instruct, train and/or gain the cooperation of others.

Instruct - to give knowledge to or provide authoritative information within a formal setting such as a workshop or lab environment.

Train - impart knowledge and/or demonstrate skills within a formal instructional setting.

A note to raters aimed at clarifying the difference between a level 2 and a level 3 rating contains the following statements respecting a level 3 rating:

"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.

In order to clarify differences between "gaining cooperation" at level 4 and "negotiation", which would justify a level 5 rating, a note to raters contains the following comments:

The assigned communication and interpersonal skills needed at both of these levels [i.e. at 4 and 5] are at an extremely high level.

"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.

"Negotiation" refers to having the authority to commit to a solution or compromise. An incumbent who communicates at this level also works within broad parameters and the preferred outcome is also broadly defined. The incumbent needs to have the skills/tools to reach an agreement that is then binding on the College. Normally, the audience will have divergent views or opposing objectives.

B: The Exchange of Information

The grievors' communication responsibilities include the exchange of routine information and information that requires explanation and/or interpretation. They also communicate technical information and advice. The communication skills involved do not qualify for a level 4 rating.

C: Instruction and Training

The College contends that the grievors are not engaged in any instruction or training that would justify a level 4 rating. The Union, however, proposed adding the following language to the PDF as examples of instruction or training:

Course information/modifying the initial and ongoing instruction given by faculty.

Tutoring and Testing Life Skills Delivery - Integration

Ms. Parnham testified that prior to tutoring sessions the grievors will develop study guides, review questions, project outlines and activities to augment the information provided by faculty in class. She said that a grievor's role in tutoring is to ensure that a student understands what has been taught in class. She also said that "we" teach things through tutoring that are not taught in class, such as how to use a text book, including how to use the index, chapter review questions and bold text. At another point in the hearing she said that the grievors instruct students on how to outline an assignment, what to study, how to use a meal card and where to go for books.

Ms. Parnham testified that the grievors impart knowledge and/or demonstrate skills to students in areas such as time management, organizational skills, self esteem, personal hygiene, social etiquette, group work skills and social boundaries. She referred to being in class and noticing that a student was having problems with a group activity or having problems raising their hand in class to express their views and her subsequently role playing the relevant skill during a tutoring session.

Ms. Parnham contended that the grievors provide tutoring in an authoritative manner in that it is done from a position of authority as it is a scheduled part of a student's day and a required component of the CICE program.

Ms. Asher testified that when in class a grievor might assist a student to find a particular page in a text, encourage the student to be part of a group activity or encourage them to behave like other students by not calling out or standing up inappropriately. She said that the purpose of tutoring sessions is to reinforce the material delivered by faculty in class so that students can maximize their understanding. She said that Learning Specialists come up with strategies to support what is going on in class but they do not offer any new academic information. She went on to say that a Learning Specialist might develop a game that emphasises key points, use a power point demonstration, have students look at a text or have them read from an article. She also

said that during a tutorial a grievor might need to discuss with a student on a one to one basis how to review materials.

Ms. Asher testified that seminar sessions attended by CICE students are about life skills, college manoeuvring and moving into the community.

In his submissions counsel for the College contended that tutorials are about reinforcing and supporting academic content previously taught by a member of faculty. He noted in this regard that group tutorial sessions are organized by course. He submitted that formal non academic support is provided in the seminars which are not organized by course.

In its written brief the College argued that the grievors' role in facilitating tutoring sessions does not involve instructing or training because they do not "give knowledge", "provide authoritative information" or "impart knowledge and/or demonstrate skills". The College contended that tutoring sessions are conducted by the grievors as part of their academic support duty which involves supporting the delivery of academic content taught by a faculty member. It submitted that this communicating with CICE students benefits the students because it features closer and more individualized communication than what they receive in the integrated classroom and/or lab environment. It argued that the grievors' role is to simplify and repeat information previously conveyed so that CICE students can succeed in an integrated program and that the grievors communicate with students to secure understanding of academic content, precisely as contemplated by the level 3 factor definition.

In its brief the College further stated that while support staff employees can "instruct" and "train" individuals on a wide range of matters, for example such as on a new piece of machinery or new piece of software, they do not traditionally instruct or train on academic content and cannot reasonably be said to be doing so when they are engaged only in an academic support role. The College also submitted that the grievors are not responsible for learning outcomes and do not have a degree of authority respecting academic content that allows for a rating based on either instructing or training.

I accept the College's contention that that the grievors are not engaged in instruction or training with respect to academic content but rather they reinforce what students have already been taught in class. The grievors do, however, provide instruction in terms of showing students how to review materials and how to break down assignments. They also instruct students on how to act appropriately in class and about a range of issues including organizational skills, self esteem, group work skills and social boundaries. This instruction is complementary to the instruction provided at the seminar sessions but nevertheless it does occur on a regular basis. The instruction is

provided in scheduled tutoring sessions, which in my view is a setting “such as a workshop or lab environment”. Accordingly I find that the grievors instruct others in the sense of providing knowledge or authoritative information within a formal setting.

D: Communication to Obtain Cooperation and Consent of Students

The PDF prepared by the College contains the following statement with respect to communication designed to obtain cooperation or consent: “Required to persuade students to recognize the need for tutoring and gain their cooperation in actually attending tutoring sessions”. Counsel for the College described this as an infrequent occurrence and indicated that it was what resulted in the College assigning an occasional 4 rating with respect to the factor of communication.

The Union proposed adding an additional entry to the PDF reflecting the grievors’ role in obtaining consents from students so that their grades, educational records and similar information can be shared with others, including their parents. The Union described this as an example of the grievors using communication to gain the cooperation of others. It appears, however, that with two or three exceptions per term CICE students provide requested consents as a matter of course. Further, when consents are not provided staff continue on as best they could without being able to share the relevant information. I do not view this function as one that meets the criteria for a level 4 rating.

E: Dealings With Faculty and Accommodation Issues

The duties and responsibilities section of the PDF prepared by the College refers to the grievors meeting with teachers to promote the inclusion of students in the classroom. Ms. Asher testified that the goal is to have CICE staff live the philosophy of the program and through “our” daily activities demonstrate our philosophy. She indicated that the grievors engage in informal discussions with faculty about including CICE students in classroom activities. She said that classroom teachers might have anxieties about students who learn differently than others and the grievors act as a resource in providing them with support and a comfort level. Ms. Parnham said that a Learning Specialist will sit down and chat with a new faculty member in order to address any concerns they might have. She said that the Learning Specialist will stress that while a student may have a learning challenge this does not mean they cannot learn.

It is apparent that one function of the grievors is to explain the CICE program and the learning abilities of CICE students to faculty in order to gain their active cooperation

with the program and gaining a commitment to shared goals. This involves communication skills at level 4.

Although the Union did not claim a level 5 rating it did contend that the grievors engage in negotiations with faculty members respecting accommodation/modification issues and when advocating on behalf of a student. Ms. Parnham contended that the grievors negotiate with faculty about modifications and the resulting modified course becomes a binding agreement between the College and the student. She indicated that a faculty member might say they do not like a proposed accommodation and ask a grievor if it can be changed.

Ms. Asher testified that a grievor will suggest modifications to a faculty member with the faculty member having the final say. Ms. Parnham suggested to Ms. Asher that a grievor's back and forth with a faculty member respecting modifications to be made to a course is a form of negotiation. Ms. Asher disagreed. She said that she viewed it as sharing information about the student.

I view a grievor's discussions with faculty about how a course can be modified to fit the needs of a particular student as the grievor explaining information and communicating technical information to a faculty member so as to allow the faculty member to make a reasoned decision respecting a proposed accommodation. It does not involve the grievor committing the College to a solution or compromise such as to come within the term "negotiations" as it is used in the note set out above.

It may be that when discussing the proposed modification of a course or test for a particular student a grievor will feel the need to ensure that the relevant faculty member understands and cooperates with the CICE program. It does not, however, appear that this is what generally happens in discussions with faculty. As noted above, such dialogues appear to generally involve an exchange of information so as to allow a faculty member to make a reasoned decision. As such they fit the criteria for a level 3 rating.

F: Level 4 Communication Skills – Occasional or Regular/Recurring

The remaining issue is whether the grievors' communication responsibilities at level 4 are appropriately characterized as occurring on an occasional basis or whether they can be better described as occurring on a regular and recurring basis.

As indicated above, the grievors' roles in communicating for the purpose of exchanging information to secure understanding and to communicate technical information and advice meet the criteria for a level 3 rating.

The grievors' role in persuading CICE students to recognize the need for tutoring and gain their cooperation in actually attending tutoring is acknowledged by the College to justify a level 4 rating, although on an occasional basis. The grievors' role in seeking to get obtain active cooperation from faculty also fits the criteria for a level 4 rating, although again on an occasional basis.

Also relevant are the grievors' activities during tutoring sessions when they instruct students about how to review materials, how to do assignments, how to behave in class and about life skills. As noted above, this involves instruction in the sense of providing knowledge or authoritative information within a formal setting. As such, it meets the criteria for a level 4 rating. This aspect of the grievors' duties is encompassed by a statement in the job evaluation manual which reads: "Any task or responsibility that is an integral part of a position's work and is expected or consistently relied on should be considered regular & recurring". Given these considerations I conclude that although much of the grievors' communication responsibilities justify a level 3 rating the grievors do engage in communications which fit the criteria for a level 4 rating on a regular and recurring basis. Accordingly, I find a level 4 rating to be appropriate.

AUDIO VISUAL EFFORT

This factor measures the requirement for audio or visual effort. It does so by measuring the degree of attention or focus required as well as activities over which the position has little or no control that make focus difficult.

The College rated this factor at level 2 worth 20 points. The union argues that a level 3 rating worth 35 points would be more appropriate. (One consideration in determining points for this factor is whether an employee's focused is maintained or interrupted. The ratings of both parties are based on a focus that is maintained.) The level definitions and relevant terms used in those definitions are set out as follows in the manual:

2. Regular & recurring long periods of concentration; or occasional extended periods of concentration.

Long period - up to 2 hours at one time including scheduled breaks.

3. Extended periods of concentration.

Extended period - more than 2 hours at one time including scheduled breaks.

Notes to raters state that only tasks or situations where a higher than usual level of focus or concentration is required are to be considered and that concentration means undivided concentration to the task at hand.

The PDF prepared by the College refers to the grievors creating student and Learning Specialist schedules during sessions which extend beyond two hours in duration. The College indicated that it did not view these occasions as being frequent enough to justify a level 3 rating.

The College's PDF refers to the grievors taking notes in class and tutoring students as involving concentration for long periods of time with an average duration of up to two hours. The Union contends that the duration of many of these activities, including scheduled breaks, frequently extend beyond two hours.

In support of its position the Union relied on schedules from the fall of 2005 through to the winter of 2007 which show that grievors were at times scheduled for individual classes which extended beyond two hours. The schedules also show that the grievors were frequently scheduled for back-to-back classes and/or tutoring sessions which together extended beyond two hours

Ms. Asher testified that in a one hour class a teacher might talk for 50 minutes but in a two hour class there would have to be something else to engage the students, perhaps a group activity. She said that for three or four hour blocks she would expect a teacher to use a variety of teaching methods including active methods. Ms. Parnham testified that she takes notes not only during the lecture portion of a class but also during other learning processes. She referred to an equipment maintenance class with a one and a half lecture portion after which the students engage in hands on work with equipment. She indicated that she has ten minutes to put on her overalls and get to the work area. She said that during the work period she continues to take notes. She said that if there are 15 steps involved in changing the oil on a piece of equipment she makes notes respecting the steps a student forgot and/or what steps the student had to struggle with.

There are scheduled ten minute periods or breaks between classes. Ms. Parnham indicated that the ten minutes might not actually represent a break for the grievors since they might have to rush to obtain some books or go from the gym to the office and then to somewhere else.

Counsel for the College noted that in the notes to raters respecting this factor the term "task" is used repeatedly. He referred specifically to a note which reads:

Raters must only consider tasks or situations where a higher than usual level of focus or concentration is required. It is important to consider the level of concentration that the task requires and not the incumbents (in)ability.

College counsel contended that the Union was lumping together all of the time listed on a schedule whereas a variety of things can occur in a class. He said that while all of the activities might involve note taking it cannot be said that they all constitute one task. He further contended that the fact courses might go over two hours in duration does not justify saying that a task extends beyond two hours.

The focus of the factor is on the duration of periods of concentration, not whether periods of continuous concentration can be described as involving one or more than one task. Ms. Parnham's evidence indicates that a grievor maintains concentration during a class, or back to back classes, and this includes continuing to take notes as faculty move between different teaching techniques. The College's PDF acknowledges that the grievors are also required to concentrate during tutorials.

As noted above there are 10 minute breaks between classes. Presumably there are similar breaks between tutorials. Ms. Parnham's evidence indicated that the grievors generally do not relax during these periods. Neither, however, are they engaged in a high level of focus or concentration. This raises the issue of whether the ten minute periods are properly viewed as breaking the length of concentration or whether the time constitutes "scheduled breaks" which pursuant to the manual are to be viewed as part of an on-going period of concentration. While the matter is not clear cut, given the nature of the work performed by the grievors during classes and tutorials I believe it is more appropriately described as scheduled break times.

Extended periods of concentration are defined in the manual as more than two hours at one time including scheduled breaks. The grievor's frequently spend more than two hours at a time (including scheduled break times) concentrating on note taking and tutoring students. Accordingly, I find a level 3 rating to be appropriate.

CONCLUSION

The various ratings assigned by the College in connection with the Step I grievance response resulted in the grievors' positions receiving a total of 541 points. Additional points for a level 4 rating on a regular/recurring basis for the factor of communication and for a level 3 rating for audio/visual effort raise the total to 579 points. This remains within the range for payband H.

The new point total falls just short of the points required for the next higher payband. The use of point intervals (and a rating scheme which does not allow for the granting of individual points) inherently carries with it the possibility that a point total might come just under or just over a dividing line for a higher payband.

As noted above, during the grievance process the College acknowledged the validity of the grievors' contention that their positions were improperly classified at payband G. I uphold the College's subsequent rating at payband H.

Dated this 10th day of October 2008.

Arbitrator