

IN THE MATTER OF AN ARBITRATION  
BETWEEN:

**MOHAWK COLLEGE**

("the College")

and

**ONTARIO PUBLIC SERVICE EMPLOYEES UNION**

("the Union")

AND IN THE MATTER OF A CLASSIFICATION GRIEVANCE OF TERRY  
FAIR (# 2008-0241-0008)

ARBITRATOR: Ian Springate

APPEARANCES:

For the College: Daniel Michaluk, Counsel  
Sheila Walsh, Director, HR Staff Services and  
Support Staff Relations

For the Union: Keith Bates, Spokesperson  
Tracey-Ann Prokipczik, President, Local 241

HEARING: In Hamilton on February 1, 2010

## AWARD

### INTRODUCTION

The grievor is employed as the College's Academic Systems Specialist. She is responsible for designing, developing and implementing various software applications, including ongoing database administration, technical support and user training. Her primary focus is on the SUMMIT application which records and reports on faculty workload. The grievor's supervisor is Mr. Cameron Houston, Director of Enrolment Planning and Reporting.

The College rates the grievor's position at payband I. On December 17, 2008 the grievor submitted a grievance in which she claimed that it should be rated at payband K.

The College's ratings for all eleven job factors identified in the job evaluation manual total 610 points, which is within the 580 to 639 point range for payband I. The ratings proposed by the Union, including a new rating for independence of action advanced on January 7, 2010, would result in a total of 756 points. This would fall within the 700 to 759 point range for payband K. The intervening payband J covers a range of 640 to 699 points.

The parties agree on the proper ratings for only four job factors. Each of the other seven factors is addressed separately below.

The Union takes issue with certain portions of a position description form ("PDF") put forth by the College. This document was last revised by the College in January 2010. The Union objected strongly to the changes. In addition, the Union contended that a version of the PDF dated April 17, 2008 should be utilized in these proceedings. As noted below, I have relied on the language of the PDF where identical language was included in the versions advanced both by the College and the Union. Where there was a dispute about the language I have relied on the evidence provided at the hearing.

It is apparent from the evidence given at the hearing that the grievor is extremely good at what she does. She performs her duties efficiently and effectively. During the hearing both College counsel and Mr. Houston referred to the grievor as an expert on the SUMMIT application. The job evaluation manual, however, states that when using the manual "it is the position being evaluated and not the individual". It also states that "raters must make a conscious effort not to let knowledge of a particular incumbent or his/her performance influence evaluation decisions". This clearly indicates that the meritorious manner in which the grievor performs her duties is not a consideration when rating her position.

## PLANNING/COORDINATING

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

The College rates this factor at level 3, which is worth 56 points. The Union argues for a level 4 rating, the highest rating possible, worth 80 points. The definitions for the level 3 and level 4 ratings as well as the definitions of some of the terms used are as follows:

3. Plan/coordinate activities, information or material to enable completion of tasks and events, which affect the work schedule of other employees.

4. Plan/coordinate and integrate activities and resources for multifaceted events, projects or activities involving other employees. This typically involves modifying these individuals’ priorities for activities/projects to meet objectives.

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

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

Modify – to make basic or fundamental changes to give a new orientation to or to serve a new end.

The job evaluation manual contains the following notes to raters designed to clarify the differences between levels 3 and 4:

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, are requests 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).

Level 4 – typical planning and coordination at this level involves multiple inputs and complex tasks, frequently requiring the coordination of activities or resources of a number of departments, such as a major campus renovation or major technology upgrade. The position could be responsible for multiple,

concurrent major projects at the same time. At this level, the position would have the authority to require others to modify their schedules and priorities.

At the hearing the grievor discussed the planning that goes into her work and the impact of what she does on others. As discussed above, however, the manual describes the planning/coordinating factor as referring to the organizational and/or project management skills required to bring together and integrate activities and resources needed to complete tasks or organize events. The actions of the grievor in planning her own work and the impact of her work on others do not justify a level 4 rating.

The grievor referred to her role in training new users on the SUMMIT tool. She noted that the times she schedules for training will impact on the schedules of others. She submitted that it might result in staff not being able to meet their deadlines. The grievor's actions in advising other staff of when a training session will be held might be said to "affect" their work schedules as that term is defined in the manual, namely "to produce a material influence upon or alteration in". This fits within the criteria for a level 3 rating. The level 4 note indicates that for the grievor's position to come within the level 4 definition she would have to have the authority to require that others "modify" their schedules and priorities. This term is defined as making basic or fundamental changes so as to give a new orientation or to serve a new end. Advising someone of the time when they are to go for training cannot reasonably be regarded as requiring that they fundamentally change their schedules or priorities.

The grievor referred at the hearing to her having to cope with conflicting demands, including several departments wanting her to prepare reports and new staff, including new deans, needing training. The note to raters with respect to a level 4 rating speaks of an incumbent possibly being responsible "for multiple major projects at the same time." The type of activities referred to by the grievor clearly give rise to conflicting time pressures. They cannot, however, reasonably be regarded as involving multiple major projects.

The union spokesperson contended that the grievor's tasks can be likened to the major technology upgrades referred to in the note for level 4 since they have a major impact on users. As already touched on, however, the thrust of this factor is not the impact of a task on others but rather the planning and coordination required to complete the task. The level 4 note indicates that that the type of task being considered, which could be a major technology upgrade or major campus renovation, is one where the planning/coordination involves multiple inputs and complex tasks and frequently requires the coordination of activities or resources of a number of departments. The tasks performed by the grievor do not require that level of planning or coordination.

The grievor noted that at one time a co-op student had worked with her and she took responsibility for overseeing his work. She said that this included changing the student's priorities as necessary, such as when he was working on design changes and she asked him to help her in assisting users. This role in directing the co-op a student's activities could be said to have produced a material influence on or alteration in his work schedule. Given the definition of "affect" in the manual this fits within the level 3 definition. The grievor's role with the co-op student cannot reasonably be viewed as planning/coordinating and integrating activities and resources for multi-faceted events, projects or activities involving other employees, which is what is required for a level 4 rating.

Having regard to the above considerations I confirm the level 3 rating assigned by the College.

### GUIDING/ADVISING OTHERS

The job evaluation manual states that this factor refers to any assigned responsibility to guide or advise others, including other employees, students or clients in the area of the position's expertise. The manual notes that College support staff cannot formally supervise others in the sense of hiring, firing or handling first step grievances but staff may be required to guide others using specific job expertise.

The College rated this factor at level 3 worth 29. The Union argues for a level 4 rating worth 41 points. The job evaluation manual contains the following factor level and word definitions:

3. Advise others to enable them to perform their day-to-day activities.
4. Guide/advise others with ongoing involvement in their progress.

Others – College employees (FT or PT), students.

Guide - demonstrates correct processes/procedures for the purpose of assisting others with skill development and/or task completion.

Advise - has the authority to recommend, or provide knowledgeable direction, regarding a decision or course of action.

Ongoing involvement – is intended to reflect a requirement to be involved for the duration of the process or skill development, in which the position is an active participant.

Notes to raters designed to clarify the differences between the levels read as follows:

Level 3 – this may be a position with a particular area of expertise (e.g. accounting), which uses that expertise to assist others in completing their tasks. Involvement is generally of an advisory nature and the position is not responsible for how those advised subsequently complete their tasks.

Level 4 – this may be a position that, while not responsible for formal supervision, is assigned to assist less experienced staff and is expected to actively contribute to their ongoing skill development.

At the hearing the union contended that the grievor's role in training others on the use of the SUMMIT system and other software applications meets the criteria for a level 4 rating since she guides and advises others. To meet the level 4 definition, however, the grievor must not only provide knowledgeable direction to others but also have an ongoing involvement with their progress. The grievor contended that she does have ongoing involvement with the progress of others because she is the contact person who others come to when they have questions about the use of the SUMMIT tool, what particular data means or when a department requests remedial training.

The definition of “ongoing involvement” in the manual refers to a need to be involved as an active participant for the duration of a process or skill development. The note to raters respecting a level 4 refers to actively contributing to ongoing skill development. The grievor's training role does not involve that type of ongoing involvement. Individuals might approach her more than once for assistance or training but she is not involved with them on an on-going basis. Nor does she have an on-going responsibility for their work or their skill development. A level 4 rating is not appropriate.

At several points during the hearing the grievor referred to a period ending in October 2009 when she was seconded into a different job. She indicated that while in this other position she had provided guidance and assistance to the individual who took over many of her regular functions. I accept the College's contention that the grievor's role in assisting her temporary replacement while she was on secondment was an aspect of the job that she was performing at the time and not a feature of her regular position which is the subject matter of these proceedings.

Another relevant consideration concerns the employment of the co-op student. This individual started in January 2006 and worked as a co-op student during both the winter and summer terms. He returned to class in September 2006 and was hired to work on a part-time basis for the fall term, although he did not stay for the entire time. Mr. Houston acknowledged at the hearing that this student had worked closely with the grievor and learnt from her. He said that during this period he met with the grievor and the student about how things were going. He also noted that he was the one who had prepared and submitted a report to the Co-op Department with respect to the student's progress.

Mr. Houston said at the hearing that there is no current expectation of having another co-op student work with the grievor. He said that it would be difficult to find someone with the requisite skill and knowledge and in his view a student should not have access to faculty workload information. He did not, however, categorically state that the College would not hire another co-op student who possessed the requisite skill and knowledge.

The co-op student only worked with the grievor during the 2006 calendar year. The College did not, however, contend that being involved with a co-op student was no longer an aspect of the grievor's position. To the contrary the College continued to refer to co-op students in the PDF, including in the January 2010 revision. In the circumstances it is apparent that the College continues to view working with a co-op student as an aspect of the grievor's position.

The PDFs advanced by the College and the Union both refer to the grievor working with co-op students as follows:

The incumbent is the primary person interacting with coop students assisting with the SUMMIT application. This will include training the student on matters associated with the SUMMIT application, as well as identifying tasks for the co-op student to complete.

At the hearing counsel for the College acknowledged that the College had amended the PDF entry with respect to this example. The College did not change the wording of the example. It did, however, change how it characterized the example. In the April 2008 PDF it was described as a regular and recurring example of "the incumbent being an active participant and having ongoing involvement in the progress of others with whom she has the responsibility to demonstrate correct process/procedures or provide direction". This language pointed towards a level 4 rating. The College's current PDF describes the same example as recommending a course of action or making decisions so that others can perform their day to day activities, which meets the criteria for a level 3

rating. Beside the applicable wording in the PDF are two boxes, one to be checked when this type of activity occurs on a regular and recurring basis, the other to be checked if it occurs on an occasional basis. The regular and recurring box is checked.

At the hearing counsel for the College submitted that it had been appropriate for the College to change the language of the PDF. He also said that although the example of the grievor working with the co-op student had been included in the most recent version of the PDF as a regular and recurring function the entry does not reflect the College's actual position. He submitted that it is not in fact a regular and recurring duty.

There are two aspects to the situation of the co-op student. One is how the grievor's duty should be rated. The other is whether it should be rated as a regular and recurring aspect of her position or an occasional one. It is apparent that when there was a co-op student the grievor was expected to work closely with him. Although Mr. Houston had the responsibility for rating the student's work the note respecting a level 4 rating indicates that an employee at this level is not responsible for formal supervision. Instead, what is required is to be assigned to assist less experienced staff and to actively contribute to their ongoing skill development, which is what the grievor was doing. Given these considerations I conclude that the grievor's role with the co-op student justified a level 4 rating.

The next issue is how one rates the frequency of the involvement with the co-op student. The grievor worked with this individual in 2006. There has not, however, been a co-op student since the fall of 2006 and Mr. Houston's comments indicated that there is currently no intention to employ such a student.

I have concluded that the College erred in classifying the grievor's role with the co-op student at level 3 on a regular and recurring basis. Having rejected the College's rating I do not feel bound by the box in the College's PDF describing the example as a regular and recurring function. To do so would result in a level 4 rating on a regular and recurring basis for the factor based solely on a function that was last performed two years prior to when the grievor filed her grievance and which has now not been performed for over three years. I conclude that the appropriate rating is level 3 on a regular and recurring basis for the grievor's other duties and a level 4 rating on an occasional basis to reflect her work with a co-op student. This rating recognizes that involvement with a co-op student when viewed over an extended time period is not something that is regular or consistent but rather something that has occurred in the past and which might occur again at some time in the future. This occasional rating adds an additional 3 points to the rating assigned by the College.

## INDEPENDENCE OF ACTION

The job evaluation manual describes this factor as measuring the level of independence or autonomy in a position. It states that consideration is to be given to the types of decisions 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; and also the rules, procedures, past practice and guidelines that are available to provide guidance and direction.

The College rated this factor at level 3 worth 78 points. The Union originally proposed a level 4 rating worth 110 points. Prior to the hearing, however, it raised this to level 5 rating, the highest possible, worth 142 points. The relevant factor level and word definitions are as follows:

3. Position duties are completed according to general processes. Decisions are made following general guidelines to determine how tasks should be completed.
4. Position duties are completed according to specific goals or objectives. Decisions are made using industry practices and/or departmental policies.
5. Position duties are completed according to broad goals or objectives. Decisions are made using College policies.

Guideline – a statement of policy or principle by which to determine a course of action.

Process – a series of activities, changes or functions to achieve a result.

Industry practice – technical or theoretical method and/or process generally agreed upon and used by practitioners to maintain standards and quality across a range of organizations and settings.

Policies – broad guidelines for directing action to ensure proper and acceptable operations in working towards the mission.

The manual contains the following note which forms part of a discussion relating to the differences between a level 2 and a level 3 rating:

Level 3 – Specific results or objectives 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.

The manual also contains the following note to raters designed to clarify the differences between levels 4 and 5:

Level 4. - The only parameters or constraints 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 these boundaries and would only need to consult with the supervisor (or others) on issues that were outside these parameters.

Level 5. - The only parameters or constraints that are in place to guide the position's decision-making are College policies. The position has the autonomy to act within these boundaries and would only need to consult with the supervisor (or others) on issues that were outside these parameters.

At the hearing the grievor referred to a period prior to October 2009 when Mr. Houston was not her supervisor and supervisory involvement with her work was considerably reduced. She said that during this period she had two different supervisors, one of whom was not aware that he was her supervisor. These two individuals, however, served as the grievor's supervisors during the period when she was seconded to another position and not while she was working in the position that is the subject matter of these proceedings. As noted above, I do not view the time the grievor spent in her seconded position as relevant to the position under consideration.

Among the identical PDF language put forward by both the Union and the College with respect to this factor was the following:

What are the instructions that are typically required or provided at the beginning of a work assignment?

Regular and Recurring:

There is agreement between the incumbent and supervisor as to the nature of the tasks that must be completed, and the general time frame they must be completed in, however the incumbent determines specific implementation schedules.

High-level design aspects are discussed with the supervisor however the incumbent determines specific design changes to the SUMMIT application, and how these changes are implemented.

Occasional:

The incumbent is given complete latitude to respond to ad hoc requests provided they do not impact ongoing scheduled activities.

It is up to the discretion of the incumbent to determine if the request is appropriate to the department, when the task can be completed, and how information/data is presented.

Tasks are often completed without prior knowledge of the supervisor. The incumbent is only required to seek approval where the requests are beyond normal departmental roles, or where completing the tasks may impact normally scheduled activity.

What rules, procedures, past practices or guidelines are available to guide the incumbent?

Regular and Recurring

The incumbent must operate within boundaries determined through discussion with the supervisor.

College wide schedules, academic contract requirements, and Ministry requirements must be adhered to where applicable.

Occasional

Specific requests for information may be the result of Ministry requirements. In these cases the incumbent must adhere to Ministry guidelines.

For other requests the incumbent can determine how to proceed, how information will be presented and/or how applications are developed and implemented as long as the result meets standards within the department/college.

At the hearing the grievor outlined her regular functions involving the SUMMIT tool. Mr. Houston said that these are carried out in what he described as a production environment three times per year. Both the grievor and Mr. Houston referred to

meetings at which they look at lists of “bugs” that need fixing as well as possible enhancements to the SUMMIT tool and requests and problems raised by users. The two of them go through the list together and decide which tasks the grievor should undertake. Mr. Houston noted that once they decide what it is the grievor will be doing it is up to her to develop a plan to accomplish the work involved. Mr. Houston commented that there is more than one way to accomplish a goal and although when they go through the list they might bounce ideas off each other he does not monitor how the grievor does her coding.

Mr. Houston referred to situations where the grievor responds to issues requiring immediate attention without her first discussing them with him. He said that these situations are usually pretty clear, such as users being unable to move from one form to another or if close to a SWF deadline the SWF report is not presenting properly.

Both Mr. Houston and the grievor referred to ad hoc requests made to the grievor. The grievor gave the examples of her being asked to extract data for a new report or to change how information is reflected on a SWF. Both she and Mr. Houston indicated that she will typically comply with such requests without consulting Mr. Houston unless it is an unusual request or if to undertake it would take up a lot of time or impact on deadlines. In such cases the grievor will discuss the matter with Mr. Houston.

At the hearing the spokesperson for the Union submitted that the PDF refers to College wide schedules, academic contract requirements and Ministry requirements and these all relate to College policies as referred to in the level 5 definition. Logically, the duties of all employees are to some extent governed by College policies. As provided for in the level 5 note to raters, however, to justify a level 5 rating College policies must be the only constraints in place to guide decision making. The PDF language set out above and the evidence provided by the grievor and Mr. Houston all indicate that the grievor does not have such a broad scope of operation. A level 5 rating is clearly not appropriate.

The note respecting a level 3 rating refers to a position having the ability to select the processes to achieve the end result but with specific results and objectives being pre-determined by others. The PDF language set out above and the evidence indicate that the grievor’s objectives are either established as being part of her job, raised by way of ad hoc requests from others or decided in discussions with Mr. Houston. The grievor selects the process to achieve the desired end result. The note to level 4 indicates that this rating is applicable if an individual only consults with a supervisor for matters not covered by industry practices or departmental policies. It is clear, however, that the grievor consults with Mr. Houston about relatively specific matters and that he is involved in deciding what tasks she will or will not perform.

Having regard to these considerations I conclude that a level 3 rating is appropriate.

## 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 on a regular and recurring basis, worth 51 points, as well as at level 4 on an occasional basis which is worth an additional 6 points. The Union argues for a level 4 rating on a regular and recurring basis worth 73 points. The relevant level definitions and word definitions are as follows:

3. Tailor service based on developing a full understanding of the customer's needs.
4. Anticipate customer requirements and pro-actively deliver service.

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

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 services delivered by a position. To clarify the differences between the various levels the notes to raters also 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 language proposed by the Union and the College both include the same table which sets out the key services associated with the grievor's position. The table contains the following information respecting three types of services:

1. How is it received?

Requests for changes to underlying SUMMIT data are received via phone and/or email.

How is it carried out?

Incumbent determines appropriate updates to academic blocks, and courses and then updates to a variety of SUMMIT datatables are made either through direct input or querying data.

2. How is it received?

SUMMIT users contact incumbent regarding difficulties with the use of it.

How is it carried out?

Incumbent must ask relevant questions to determine the nature of the problem and determine and implement the solution.

3. How is it received?

Requests are received to create new SUMMIT user accounts.

How is it carried out?

Incumbent adds them to the appropriate SUMMIT table and instructs the I.T. department to add to required NT group(s) and the appropriate Lan Administer install remote desktop icon and run Windows registry editor.

None of the above examples from the PDF indicate that the grievor is involved in anticipating customer requirements. Instead in all three situations she reacts to issues after they were raised by others.

In its written brief the Union referred to the duties and responsibilities section of the PDF and the grievor's function of facilitating the flow of course data through the SUMMIT software tool. The College PDF identified eight aspects of this duty, three of which the Union argued support a level 4 rating. The Union's discussion of the three aspects was as follows:

Incumbent receives documentation of an upgrade to the TPHi scheduling software or a request from the Academic Scheduling Coordinator and/or Business Analyst to change the fields that populate in TPHi or purpose that the data fields are being used for. Incumbent reviews the upgrade documentation or discusses the request with the Academic Scheduling Coordinator/Business Analyst, determines what changes have an impact on the SUMMIT – to – TPHi download tool and determines the necessary changes and proactively modifies the queries proactively so that the data that the incumbent downloads in the future will be in the required format to accommodate the TPHi structural changes.

Incumbent is made aware through H. R. Staff Services of corporate decisions that have an impact on SUMMIT administration. Incumbent performs necessary programming changes in the SUMMIT Administrative tool in preparation for necessary data changes, i.e. a decision was made to include orientation activities on the faculty S.W.F.s as T.C.H.s instead of Complementary Assigned. Because the delivery start date would now be different than the S.W.F. start date, the newly designed process is run by incumbent to modify the information in various tables in SUMMIT in preparation for the Academic Departments running their S.W.F.s.

Incumbent is made aware of changes to the structure of the Strategic Enrolment Management data that is used for loading of academic blocks into SUMMIT. Incumbent proactively modifies the SUMMIT academic block loading tool queries in preparation for the upcoming creation of academic blocks for the future term loading.

These three examples all indicate that others make the grievor aware of required changes or new information and the grievor responds in a manner that meets their particular requirements. None of the three examples suggests that the grievor regularly anticipates and then meets future customer requirements.

In both its written brief and at the hearing the Union objected to the removal of an appendix which had been attached to the April 2008 version of the PDF. This appendix referred to the grievor's role in making improvements to the SUMMIT application in

order to provide new functionality or improve its usability. It stated that an important part of the grievor's role was to make continual improvements to the SUMMIT application. It also stated that: "Enhancements can be identified proactively by the incumbent, or through identification of issues in conjunction with SUMMIT users." At the hearing the grievor said that the appendix was prepared by her supervisor but later removed by the College. Ms. Sheila Walsh, the College's Director of Human Resources Staff Services and Support Staff Relations, said that appendices were utilized at the College so that a classification committee could better understand a job but once an evaluation was completed the applicable PDF reverted back to the format set out in the job evaluation manual.

It is apparent from the evidence provided by both the grievor and Mr. Houston that the above noted statements from the appendix were in fact accurate. An important part of the grievor's role is to make continued improvements to the SUMMIT application. The grievor at times identifies potential improvements which she raises with Mr. Houston. At other times she and Mr. Houston jointly identify possible improvements. Mr. Houston's evidence, however, was that generally possible enhancements are identified by end users or through interactions with end users. Potential improvements are included on the list discussed above and Mr. Houston and the grievor meet to decide which potential changes on the list will be given priority. The evidence taken as a whole suggests that potential improvements or enhancements generally come from issues raised by users although the grievor on her own initiative does at times give advance thought to events, trends, consequences or problems in order to foresee and deal with them in advance. This, is not, however, something that she does on a regular and recurring basis.

Having regard to all of the above, I conclude that on a regular and recurring basis the grievor's position justifies a level 3 rating while on an occasional basis it justifies a level 4 rating.

### PHYSICAL EFFORT

This factor measures the degree and frequency of the physical effort required by a position. The College rated this factor at level 1 worth 5 points. This is appropriate when a position requires light physical effort. The union accepts that a level 1 rating is appropriate on a regular and recurring basis but argues for a level 2 rating on an occasional basis, which would result in an additional 6 points. A level 2 rating reflects moderate physical effort.

The job evaluation manual contains the following definitions of "light" and "moderate" physical effort:

### Light

- pushing, pulling or lifting lighter objects (less than 5 kg or 11 lbs)
- able to adjust working position to minimize physical stress

### Moderate

- pushing, pulling or lifting heavier objects (5 – 20 kg or 11 – 44 lbs)
- sustained handling of lighter objects (less than 5 kg or 11 lbs)
- restricted ability to adjust working position for longer periods of time (over 30 minutes) or sustaining awkward work positions (up to 30 minutes)

The job evaluation manual contains a number of notes to raters with respect to this factor, including the following:

Level 1 includes the physical demand associated with occasionally lifting/carrying paper in order to restock a printer or photocopier as part of the normal office etiquette.

Included in this factor is any physical strain associated with travel and whether there is the ability to reduce strain from prolonged sitting.

At the hearing the grievor said that she had visited a couple of other colleges to discuss matters. This appears not to be an aspect of her position that is significant enough to determine a rating. The grievor also said that she goes to College facilities in Stoney Creek, Brantford and at the McMaster University campus in Hamilton to train others or to speak to people about SUMMIT. Given the relatively short distances involved this travel cannot reasonably be viewed as involving prolonged sitting of the type that could give rise to physical strain that could be classified as moderate as opposed to light physical effort.

The grievor and the Union also relied on the grievor's action in carrying her laptop and training materials to a lab when she does training. The grievor noted that this training material includes four or five page long SUMMIT request forms as well as a 65 page document. She said that she also brings her laptop with her when she schedules times for users to input data. The grievor said that she carries her laptop between 9 and 15 days per year. She also said that although she had not weighed the training material she was "fairly certain" that with her laptop it weighed over 11 pounds. She added that her computer with its case weigh close to that. The grievor agreed with College counsel that there is a trolley available that she could use at the main campus.

The spokesperson for the union argued that pushing a trolley carrying a weight of 11 pounds meets the requirement for a level 2 rating. He also referred to the grievor carrying her computer and other materials when she visits other campuses.

Counsel for the College argued that the grievor had not established the actual weight of the materials she carries. He noted that the brief that the College filed was about 65 pages long. He also said that his laptop weighs 4 or 5 pounds. He argued that the Union should have weighed the materials instead of just claiming that they weigh in excess of 11 pounds.

An arbitrator can take notice of everyday matters. It is not apparent, however, that the material carried by the grievor would weigh 11 pounds or more. Sixty-five sheets of paper do not involve an appreciable weight, particularly considering that a standard package of printing paper contains 500 sheets. It was open to the Union to establish that the laptop and training materials carried by the grievor actually weigh at least 11 pounds. No one, however, claimed to have weighed them and the items in question were not brought to the hearing. Further, the grievor's comments at the hearing indicated that she understood that her laptop and case actually weigh less than 11 pounds. In all the circumstances I am not satisfied that the grievor is required to carry 11 or more pounds such as to engage in moderate as opposed to light physical activity.

Having regard to the foregoing I find that the grievor's position justifies a level 1 rating on a regular and recurring basis with no additional rating on an occasional basis.

### 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 and activities over which the position has little or no control that make focus difficult. The manual states that a rater is to: "Assess the number and type of disruptions and interruptions and the impact of the 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".

Both the College and the Union rated this factor at level 3. Such a rating is appropriate when there are extended periods of concentration. The parties disagree, however, on whether the grievor's focus is maintained or interrupted during periods of concentration. The College contends that focus is maintained, which would justify 35 points for this factor. The Union contends that focus is interrupted, which would be worth 50 points. The manual defines the terms "focus maintained" and "focus interrupted" as follows:

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.

The manual also contains a number of notes to raters. These include the following which touch on the issue of whether focus is maintained or interrupted:

3. Concentration means undivided attention to the task at hand.
4. Few interruptions or disruptions generally means that an appropriate level of concentration can be maintained for the duration of the task being performed. Where there are many disruptions, concentration must be re-established and the task completed in smaller units or steps.
5. In determining what constitutes an interruption or disruption, you must first decide whether the “disruption” (e.g. 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 other assigned tasks or duties while tending to customer requests, then those requests can not 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.

This is a factor where the Union noted that the College had re-written the PDF. The April 2008 version indicated that the grievor’s focus was interrupted when she was designing and implementing coding changes for SUMMIT application and also when preparing and updating the SUMMIT database with initial data load for the term. The PDF currently advanced by the College states that the grievor requires a higher than usual need for focus and concentration when designing and implementing coding changes for SUMMIT application, training end-users on SUMMIT application and when preparing and updating the SUMMIT database with initial data load for the term. Beside each of these three functions the College checked a box denoting that usually “concentration or focus (can) be maintained throughout the duration of the activity”.

The grievor said at the hearing that it is not always possible for her to concentrate due to different priorities and requests from end users. She said that once she has been interrupted she finds it hard to get back to what she was doing. The grievor said that if she is doing coding and gets called away it takes her a while to get back into the work. She also said that she might have figured something out but had not yet started to make the change. The grievor agreed with College counsel that she is able to save code but noted that her thought processes would be interrupted. She also agreed with College counsel that sometimes she is called upon to do some quick fixes and when this occurs she is less likely to lose her train of thought. Later, however, she referred to other activities which require a lot of concentration such as prepping data for download. She said that when doing this task she is interrupted a fair bit. She also said that she might be called away to do something different and on her return she will basically have to start over.

In its brief the College said that it was putting the union to the strict proof with respect to this factor. It contended that to succeed the union is required to establish not only that disruptions occur which cause a break in concentration but “these disruptions cause a break in concentration most of the time (i.e. more than 50% of the time).” At the hearing counsel for the College submitted that based on the definition of “focus maintained” in the manual in order for an employee’s focus to be interrupted there must be breaks of concentration most of the time.

I do not accept the College’s contention that a “focus interrupted” rating requires that interruptions outweigh times when an employee can concentrate. The definition of “focus interrupted” contains no such language. Rather it refers to tasks being achieved in smaller units, which suggests that what is to be considered is whether tasks can generally be completed without the employee’s concentration being broken. This corresponds with the wording of the PDF form set out in the manual which asks if concentration or focus can be maintained “throughout the duration of the activity.” The grievor’s evidence suggests that generally she cannot complete tasks that require concentration without her concentration or focus being interrupted and she must later refocus on what it was she was doing.

Having regard to these considerations I find a level 3 rating with focus interrupted to be appropriate.

### WORKING ENVIRONMENT

This factor looks at the environment in which work is performed and the extent to which there exists undesirable or hazardous elements. The College contends that a level 1 rating worth 7 points is warranted. The Union submits that level 1 is appropriate on a

regular and recurring basis but that a level 2 rating should be awarded on an occasional basis worth 9 additional points. The applicable rating definitions are as follows:

1. Acceptable working conditions.
2. 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 situations
  - travel

Two aspects of this factor are at issue, namely whether the grievor is the target of verbal abuse and also the travel she does.

The manual defines “verbal abuse” as “derogatory or threatening comments”. The manual also notes that verbal abuse is more than dealing with someone who is angry or upset. The PDF versions advanced by both parties refer to the grievor dealing with “abusive people” and contain the following statement:

The incumbent must deal with a large number of SUMMIT users that demand the incumbent’s immediate attention regardless of competing workload issues, or the number of concurrent demands from other users. This is particularly true at peak input times.

Given how the manual defines “verbal abuse” this entry in the PDF does not justify a level 2 rating. In its brief the union contended that occasionally threatening statements are made to the grievor which can be upsetting “especially if those statements are being made by people in positions of authority within the College.” The brief went on to state that, “The statements threaten the future of the incumbent’s position at the College.” At the hearing the grievor indicated that people are upset or angry with her when matters proceed more slowly than they would have liked. She said that one person in a position of authority had told her that they had submitted a budget reduction strategy that would do away with her position.

The one situation referred to above can be viewed as a sophisticated form of threat. It also appears to have been a single incident rather than reflecting an ongoing aspect of the grievor’s position such as to justify basing a rating on it. Accordingly, I conclude that the grievor does not face verbal abuse as that term is defined in the manual.

With respect to the issue of travel a note to raters in the job evaluation manual reads as follows:

The actual mode of transportation is not an important element of travel. The travel component of working environment refers to the 'undesirable' aspect of having to leave the work site and travel somewhere else to complete work assignments. Any physical strain associated with travel is considered under Physical Demand.

Limited travel that occurs infrequently and is not necessarily needed in order for the position to perform its job duties can be captured within the definition for level 1. For, example, a meeting that sometimes occurs at a location other than the position's home campus and the position doesn't need to be in actual attendance (e.g. teleconferencing).

As a guide, travel that is a requirement of the position and occurs on a regular basis for more than 10% of the time (e.g. equivalent of ½ a day a week or 2 ½ days per month) should be considered 'regular and recurring.'

When addressing this factor the grievor said that she could travel to other campuses a couple of times per year or nine times, "it depends." She agreed with College counsel that at times she has had employees come to the main campus to meet with her for training.

In his submissions counsel for the College noted that the other campuses visited by the grievor are close to the main campus. He also noted that the note to raters indicates that some travel can be at level 1. He contended that one must look to see if travel is a negative part of the job. In reply, the spokesperson for the Union pointed out that the manual does not refer to the length of travel involved.

It is apparent that the grievor does not travel often or very far. In other circumstances it might not be viewed as an undesirable aspect of her position. The note to raters set out above, however, deems travel to be an undesirable aspect of a position since it involves having to leave the work site to complete work assignments. Given the way the note is worded the length of the travel is not a determining factor.

As noted by College counsel the note does indicate that some travel will justify a level 1 rating. This, however, involves infrequent travel that is not necessarily needed, such as someone who could teleconference rather than be in attendance. This does not describe the grievor's situation. She needs to be with the people she is training. In addition, although the grievor acknowledged that at times people come to her for

training it was not suggested that her going to other campuses to train people and talk about SUMMIT was not in the circumstances involved the most practical manner of proceeding.

Having regard to the above, on the basis of the grievor's travel I conclude that her position justifies a level 2 rating on an occasional basis.

## CONCLUSION

As noted above, the various ratings assigned by the College resulted in the grievor's position receiving a total of 610 points. The additional 3 points associated with an occasional level 4 rating for guiding/advising others; 15 additional points for a "focus interrupted" rating for audio-visual effort and 9 more points for an occasional 2 rating for working environment raise the total to 637 points. This leaves the position within payband I.

Having regard to the above, I confirm that the grievor's position is appropriately rated at payband I.

Dated this 24th day of February 2010.

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Arbitrator