

IN THE MATTER OF AN ARBITRATION

BETWEEN:

ONTARIO PUBLIC SERVICE EMPLOYEES UNION, LOCAL 241
(hereinafter called the Union)

- and -

MOHAWK COLLEGE OF APPLIED ARTS AND TECHNOLOGY
(hereinafter called the College)

- and -

CLASSIFICATION GRIEVANCE – JOB CENTRE CONSULTANTS
(BATES GROUP)

SOLE ARBITRATOR
PROFESSOR IAN A. HUNTER

APPEARANCES:

FOR THE UNION: Mr. Val Patrick and Ms. Mary Anne Kuntz

FOR THE COLLEGE: Mr. Daniel Michaluk, Counsel

ARBITRATION HEARINGS WERE HELD AT MOHAWK COLLEGE IN
HAMILTON, ONTARIO ON SEPTEMBER 9 AND NOVEMBER 26, 2010

AWARD

(1) Introduction

Before me is a group grievance (Exhibit 1) signed by nine (9) Job Centre Consultants who work in the Job Centre at Mohawk College in Hamilton.

The catalyst for the grievance appears to have been the College's decision in 2007 to require Job Centre Consultants (i.e. the Grievors) to teach the mandatory Co-op Preparation Program (CPP), replacing four (4) faculty members who had previously taught the program to co-op students; the Job Centre Consultants have continued to teach a compressed CPP, on a rotational basis, to the present time.

The College's decision to eliminate faculty and to assign the teaching duties to the Job Centre Consultants, was apparently the subject of a faculty grievance. When I convened the classification arbitration hearing on September 9, 2010 the outcome of that grievance was unknown, and I required that the O.P.S.E.U. Local (241) give notice to the faculty union of the present grievance (Exhibit 1) so that the faculty union, as an interested party, might decide whether it wished to be a party to this process. On the resumption of the arbitration hearing on November 26, 2010 I was advised that there is no faculty grievance outstanding.

(2) Overview of the Position

The “Co-op and Career Co-ordinators” (colloquially referred to as Job Centre Consultants) co-ordinate the employment experience for co-op students at Mohawk College. Mohawk College has, on its Fennell campus, a Job Centre and Co-operative Education office where the Job Centre Consultants work with Employment Advisors, Representatives, a Receptionist and an Outreach Planning Co-ordinator.

The Job Centre Consultants work with students and prospective employers to ensure that the co-op work term experience is successfully integrated into each student’s academic program.

Mohawk College has approximately thirty (30) co-op programs serving more than fifteen hundred (1500) students in any given academic year. The Job Centre Consultants work with students, academic departments, and with employers to ensure a meaningful co-op work experience for each student. Each Job Centre Consultant has primary responsibility for a designated group of programs, for example, Mr. Lawrence Jarvis, who testified on behalf of the group of Grievors, has primary responsibility for the Health Wellness and Fitness; Law and Security Administration; and Police Foundations programs.

The Consultants work at Mohawk Job Centre located on the Fennell campus. At the date of the grievance the Job Centre Consultants reported to Mr. Jim Vanderveken, whose title was Director of Community Training Solutions and Co-op Education. Mr. Vanderveken has since become Dean, Faculty of Interdisciplinary Studies, and the Grievors now report to Mr. Al Ersser.

The core components of the position include:

(1) Student Preparation for the Co-op Program

This includes advising students on the expectations of the co-op program, advising, monitoring and follow-up on co-op placements; resolution of issues that arise in the co-op experience; and, on an alternate basis, teaching the mandatory CPP. The P.D.F. (August 2009, Exhibit 3) estimates the student component at approximately thirty percent (30%) of the incumbents' time annually; however Mr. Jarvis said the figure was actually closer to fifty percent (50%), and I accept his evidence.

(2) Working With Employers

This includes promotion and marketing of the Mohawk co-op program; prospecting employers; and generating both co-op placements and future permanent job opportunities for co-op students. Mr. Jarvis estimated this

function at about thirty to thirty-five percent (30% - 35%) of the incumbents' time and I accept his evidence.

(3) Faculty and College Engagement (Fifteen Percent (15%))

This involves the incumbent in College academic planning for the co-op program. The Job Centre Consultant acts as a liaison between industry and faculty members, and conveys information to faculty about the ever changing needs of his or her specialized employment areas.

(4) Community Partnership (Five to Ten Percent (5% - 10%))

This involves liaison between the Job Centre Consultant and the broader community; e.g. Chambers of Commerce, industry and professional groups, job fairs, etc..

Through the evidence, I learned that Mohawk College has been a pioneer in the field of co-op education. There is no doubt that the Job Centre Consultants are crucial to the success of the co-op program.

(3) The P.D.F.

The parties submitted two (2) P.D.F.'s for this position. The first (dated August 2009; Union Brief, Tab 4) was provided to the Union pursuant to Article 18.4.2.1 and was the P.D.F. used by both parties during the grievance procedure.

The second P.D.F. included unilateral revisions made by the College (in December 2009, and February 2010) after the filing of the grievance (College Brief, Tab A).

The parties did not initially agree on which P.D.F. should be used at the arbitration hearing. However, at the hearing on November 26, 2010 the parties agreed that the August 2009 P.D.F. was the operative P.D.F. to be used.

(4) Job Factors Agreed

<u>Job Factor</u>	<u>Regular</u>		<u>Occasional</u>	
	<u>Level</u>	<u>Points</u>	<u>Level</u>	<u>Points</u>
1B. Education	3	21		
2. Experience	5	69		
5. Guiding/Advising Others	5	53		
9. Physical Effort	2	26		
11. Working Environment	2	38		

(5) Job Factors in Dispute1A. Education

This factor measures the **minimum** formal education required to perform the responsibilities of the position.

The College has rated this factor Level 4 (48 Points): "3 year diploma/degree, trade certification, or equivalent".

The Union has rated this factor Level 5 (61 Points): "4 year degree, or 3 year diploma/degree plus professional certification, or equivalent".

The Union's submission was essentially based on two (2) arguments:

- (1) The August 2009 P.D.F. (Exhibit 3) is a College document; the document specifies under 1A. Education "... 4 year degree plus professional certification, or equivalent";
- (2) In a Job Centre Consultant job posting (July 12, 2007) the College required "A minimum 3 year diploma plus professional certification (degree preferred) or equivalent, incorporating a strong focus on communication skills, marketing, job development and human relations". The Union submits that these criteria, in sum, are a better fit at Level 5 than at Level 4.

I agree with both of the Union's submissions. It is telling that Mr. Jim Vanderveken, when he was the Grievors' immediate Supervisor and Director of the Job Centre, specified a 4 year degree, plus professional certification as the minimum requirement. The August 2009 P.D.F. (Exhibit 3) is a College, not a Union, document; to allow the College to substitute a lesser requirement at arbitration is, in my judgement, a violation of the *contra preferendum* principle of statute or contract interpretation.

The evidence of Mr. Lawrence Jarvis, who actually does the job, was clear and unequivocal that a 4 year degree, or equivalent, was required. He pointed out that twenty to twenty-five percent (20% - 25%) of the Mohawk student population comes from a university background; similarly approximately twenty-five percent (25%) of Mohawk graduates will go on to university. Therefore, he considered a knowledge and understanding of university programs, and the general university environment, to be an important educational requirement.

Mr. Vanderveken testified that a 3 year diploma/degree, plus some additional certification (he mentioned specifically Career Practitioner programs, Business programs (i.e. Marketing), Counselling Techniques, etc.) was the minimum requirement. However, when the August 2009 P.D.F. was put to him he testified: "When I drafted that, we were looking into the future and trying to assess our professional requirements. We wanted to ensure that we were identifying the appropriate minimum educational requirement going forward".

Mr. Vanderveken did not suggest that the educational requirements for the position had diminished since 2009.

Accordingly, both on the *contra preferendum* principle, and on the Union's second submission that, taken in sum, the educational requirements are a

better fit at Level 5 than at Level 4, I find that 1A. Education should be rated at Level 5 (61 Points).

1A. Education	Level 5	61 Points
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3. Analysis and Problem Solving

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

The College has rated this factor at Level 4 (110 Points): "Situations and problems are not readily identifiable and often require further investigation and research. Solutions require the interpretation and analysis of a range of information according to established techniques and/or principles".

The Union has rated this factor at Level 5 (142 Points): "Situations and problems are complex and multi-faceted and symptoms are vague or incomplete. Further investigation is required. Solutions require the interpretation and analysis of information within generally accepted principles".

The evidence of both Mr. Jarvis and Mr. Vanderveken established that a substantial percentage of co-op students whom the incumbents deal with fall into non-traditional categories (e.g. immigrants; English as a second language students; second career students, etc.). This undoubtedly adds to the complexity of the co-op placement process, and I have taken this into account.

The incumbents monitor the co-op placements and must be involved in resolution of on-the-job conflicts when they arise; the P.D.F. gives as an example sexual harassment, and both Mr. Jarvis and Mr. Vanderveken testified about a specific case of sexual harassment involving a co-op placement. Other on-the-job conflicts may arise from labour disputes, or the conduct of the co-op student on the job. Such situations unquestionably require understanding, tact and diplomacy on the part of Job Centre Consultants.

The P.D.F. refers to "complex issues and sometimes serious situations" that a Job Centre Consultant must deal with. However the methodology required of the Job Centre Consultant to resolve such issues is more suggestive to me of Level 4 than Level 5. Problems encountered may require "... further investigation and research" (Level 4) but the symptoms are not "vague or incomplete" (Level 5).

I have reviewed also the examples included in the P.D.F. (Exhibit 3) of regular and recurrent problems; e.g. insufficient co-op jobs available for students; students unable to grasp the techniques and expectations required to develop a résumé, cover letter and portfolios. Mr.

Vanderveken testified that these examples were typical and recurrent. To resolve such problems a Level 4 rating on Analysis and Problem Solving is adequate.

Nothing in the evidence of Mr. Jarvis persuaded me that Analysis and Problem Solving warranted a Level 5 rating.

3. Analysis and Problem Solving Level 4 110 Points

4. Planning/Coordinating

This factor measures the planning and/or coordinating requirements of the position. 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. There may be a need to perform tasks with overlapping deadlines (multi-tasking) to achieve the decided results.

The College has rated this factor at Regular, Level 2 and Occasional, Level 3.

The Union has rated this factor Level 4: "Plan/coordinate and integrate activities and resources for multi-faceted events, projects or activities involving other employees. This typically involves modifying these individuals' priorities for activities/projects to meet objectives".

From the P.D.F., and from the oral evidence of Mr. Jarvis and Mr. Vanderveken, I have concluded that the College's rating (Regular, Level 2; Occasional, Level 3) undervalues the Planning/Coordinating requirements of the Job Centre Consultant position; similarly, I have concluded that the Union's proposed rating (Level 4) overstates the requirement. Let me explain.

Level 4 is inappropriate because the position does not plan, coordinate or integrate "multi-faceted events" involving other employees. Nor does the Job Centre Consultant have authority to require other employees to modify their schedules, priorities or projects. Page 16 of the Manual states: "... At this level, the position would have the authority to require others to modify their schedules and priorities". There was no evidence of that.

However, Level 2 is inappropriate because Job Centre Consultants do regularly affect the work schedules of other employees: co-op students, other Job Centre employees, and external employers. The P.D.F. gives a number of examples of planning, all of which, in my judgement suggest a Regular, Level 3.

I asked myself whether there is an Occasional Planning/Coordinating at Level 4 to this position? I have concluded that there is not. The "best fit" principle leads me to conclude that Planning/Coordinating is properly rated at Level 3.

4. Planning/Coordinating	Level 3	56 Points
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6. Independence of Action

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

The College has rated this factor Level 3: "Position duties are completed according to general processes. Decisions are made following general guidelines to determine how tasks should be completed".

The Union proposes Level 5: "Position duties are completed according to broad goals or objectives. Decisions are made using College policies".

The P.D.F. describes the position in this way: "The incumbent works independently following established co-op guidelines". It is clear that the Job Centre Consultants function independently in their day-to-day activities, although there is general supervision from within the Job Centre (currently by Mr. Al Ersser).

The evidence of Mr. Jarvis confirmed that the Job Centre Consultants function in a highly independent way in their day-to-day activities.

However, their actual decisions are governed by a combination of College policies and co-op education "best practices". In any unusual case (e.g. the sexual harassment case, mentioned earlier) the Supervisor would immediately be involved. It is instructive in that case that all subsequent correspondence was dealt with by Mr. Vanderveken, not by the Job Centre Consultant.

I asked Mr. Jarvis what situations he would take to his Supervisor? He replied: "Any issue with a student that we could not resolve, that might be an academic issue, an exemption from a certain requirement, and so on".

On the basis of both the P.D.F., and the evidence before me, I am satisfied that Independence of Action is correctly rated at Level 3.

6. Independence of Action Level 3 78 Points

7. Service Delivery

This factor looks at the service relationship that is an assigned requirement of the position. It considers the required manner in which the position delivers service to customers and not the incumbent's interpersonal relationship with those customers.

The College has rated this factor Level 3 (51 Points): "Tailor service based on developing a full understanding of the customer's needs".

The Union proposes a Level 4 rating (73 Points): "Anticipate customer requirements and pro-actively deliver service".

The P.D.F. (Exhibit 3) gives three (3) examples of daily service which a Job Centre Consultant provides:

(1) Assisting students with résumé, cover letter or mock interview;

- (2) Discussing job postings with an employer;
- (3) Calls from employers to set up interviews.

A weekly example provided of services was when a faculty member contacts a Job Centre Consultant to discuss some aspect of the co-op program.

In my judgement, all of these examples fit comfortably within Level 3.

The core of the Job Centre Consultant position is providing quality service to students and their employers through the co-op program. This means that the Consultant must understand the needs of both students and employers, and must tailor his/her service to those needs. This is a classic Level 3 position.

The evidence of both Mr. Jarvis and Mr. Vanderveken were, in my opinion, consistent with a Level 3 rating.

7. Service Delivery

Level 3

51 Points

8. Communication

This factor measures the communication skills required by the position, both **verbal and written**.

The College has rated this factor at Level 4: "Communication involves explaining and/or interpreting information to instruct, train and/or gain the cooperation of others".

The Union proposes a rating at Level 5: "Communication involves imparting information in order to obtain agreement, where interests may diverge, and/or negotiation skills to resolve complex situations".

The Communication section of the P.D.F. (Exhibit 3) contains nothing that would suggest a level beyond Level 4.

However, there are two (2) idiosyncratic points that emerged from the oral evidence that have led me to add an Occasional rating of 5 to the Regular rating of 4. These points are:

- (1) In the spring of 2007 Mohawk College eliminated four (4) faculty positions that had formerly taught the Co-op Preparation Program (CPP). This was, and remains, a mandatory program for students

entering the Mohawk co-op program. Although class attendance is no longer mandatory, the evidence was that approximately eighty-five percent (85%) of students do attend the classes taught now by the Job Centre Consultants. The students who do not attend can obtain the material on-line. Since 2007 this teaching (a five (5) week compressed program at the beginning of each term) has been assigned to the Job Centre Consultants on a rotational basis. This occasional teaching requirement, in my view, warrants an Occasional rating at Level 5.

- (2) There can be a negotiations component to the resolution of student/employer issues. This is recognized in the P.D.F. (under Analysis and Problem Solving) as follows: "... the incumbent must respond quickly to the situations using a high degree of analysis, judgment, use of mediation and facilitation techniques in order for the outcome to be satisfactory for the parties involved".

I am satisfied that these two (2) functions warrant an Occasional Communication rating at Level 5.

8. Communication	Regular	Level 4	110 Points
	Occasional	Level 5	9 Points

10. Audio/Visual Effort

This factor measures audio/visual effort, specifically considering the degree of focus or attention required.

The College has rated this factor at Level 2 (Focus Maintained).

The Union has rated this at Level 3 (Focus Interrupted).

Suffice to say that nothing in the P.D.F., nor in the evidence of either witness, persuaded me that the College's rating Level 2 (20 points) is in error.

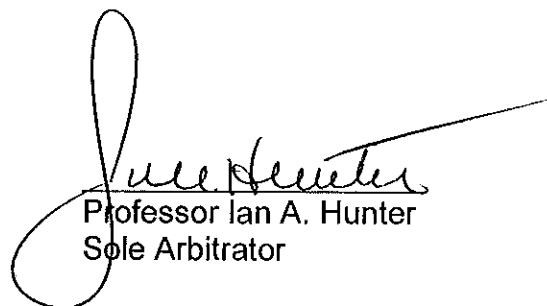
10. Audio/Visual Effort	Level 2	20 Points
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I have completed and appended my Arbitration Data Sheet.

For the reasons given, the grievance is allowed. The incumbents are to be reclassified at Level K, 702 points.

I remain seized to deal with any issue which may arise in the implementation of this Award.

Dated at the City of St. Thomas this 15th day of DECEMBER, 2010.



Professor Ian A. Hunter
Sole Arbitrator

Arbitration Data Sheet – Support Staff Classification

College: Mohawk

Incumbent: Kelly Bates et al

Supervisor: Al Ersser

Current Payband: J

Payband Requested by Grievor: L

1. Concerning the attached Position Description Form:

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

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

<u>Factor</u>	<u>Management</u>				<u>Union</u>				<u>Arbitrator</u>			
	<u>Regular/ Recurring Level</u>	<u>Points</u>	<u>Occasional Level</u>	<u>Points</u>	<u>Regular/ Recurring Level</u>	<u>Points</u>	<u>Occasional Level</u>	<u>Points</u>	<u>Regular/ Recurring Level</u>	<u>Points</u>	<u>Occasional Level</u>	<u>Points</u>
1A. Education	4	48			5	61			5	61		
1B. Education	3	21			3	21			3	21		
2. Experience	5	69			5	69			5	69		
3. Analysis and Problem Solving	4	110			5	142			4	110		
4. Planning/ Coordinating	2	32	3	7	4	80			3	56		
5. Guiding/ Advising Others	5	53			5	53			5	53		
6. Independence of Action	3	78			5	142			3	78		
7. Service Delivery	3	51			4	73			3	51		
8. Communication	4	110			5	142			4	110	5	9
9. Physical Effort	2	26			2	26			2	26		
10. Audio/Visual Effort	2	20			3	50			2	20		
11. Working Environment	2	38			2	38			2	38		
Subtotals	(a)	656	(b)	7	(a)	897	(b)	0	(a)	693	(b)	9
Total Points (a) + (b)		663				897				702		
Resulting Payband		J				L				K		