

IN THE MATTER OF AN ARBITRATION
BETWEEN:

ST. CLAIR COLLEGE

("the College")

and

ONTARIO PUBLIC SERVICE EMPLOYEES UNION

("the Union")

AND IN THE MATTER OF A CLASSIFICATION GRIEVANCE OF COLLEEN
CLARK (OPSEU # 713710)

ARBITRATOR: Ian Springate

APPEARANCES:

For the College: Joan Pocock
Ron Seguin
Patti France

For the Union: Florry Lang
Wayne Pheasant
Sue McLelland
Ann Marie Peltier

HEARING: In Windsor on February 13, 2008

DECISION

INTRODUCTION

The grievor is employed with the College's Youth Employment Services at its Chatham campus. Among her other duties she collects data and inputs it into a Ministry of Training, Colleges and Universities ("MTCU") Job Connect database. She also generates activity/stipend reports and tracks financial data respecting stipend allocations and spending. She prepares contracts for placements, gathers information from consultants and completes required forms. She calculates, processes and tracks financial subsidies for employers. In addition, she serves as the backup for a receptionist when that individual is at lunch, on sick leave or on vacation.

The College rates the grievor's position as attracting 349 points under the current job evaluation system. This is within the 340 to 399 point range for payband E. In a grievance dated April 5, 2007 the grievor contended that her position was incorrectly classified and asked that it be reclassified to payband F. The Union contends that her position is worth 456 points, which would place it within the 400 to 459 point range for payband F.

The parties agree on the points for six of the eleven job factors identified in the applicable job evaluation manual. The other five factors are addressed individually below.

The current job evaluation system is relatively new and replaces one that had been in place for an extended period of time. The job evaluation manual sets out factor level definitions for each possible level rating for the various job factors. It also contains a number of notes to raters, some of which are quite detailed. In the following statement the manual mandates that raters take the definitions as well as the notes into account:

The "Notes to Raters" and "Definitions", which have been provided for each factor, must be followed. These provide directions for interpreting the factor and the levels within and clarifying the intent of the factor. They also provide raters with appropriate directions for interpreting the information in the PDF.

THE PDF

In February 2007 the grievor and her direct supervisor, Ms. Beth Pirouet, the Manager of Youth Employment Services, agreed on the wording for a position description form ("PDF") under the new job evaluation system. The document was subsequently amended by a College PDF Rating Committee. This was one of a number

of instances where wording agreed to by an employee and their immediate manager was amended by the Committee. The Local Union strongly objected to the changes. It argued that they were designed to produce lower ratings than warranted by the duties of the employees. Ms. P. France, Vice President of Administration and Student Services, is responsible for Human Resource issues for the College. At the hearing she contended that the College's goal had been to achieve equity between the various PDFs and to ensure that like positions are similarly rated.

The wording of an introduction section in the job evaluation manual indicates that the College is responsible for the preparation of a PDF. While the views of an employee and the employee's immediate manager are logically to be given careful consideration there is nothing inherently improper in the College deciding to use different wording in the PDF. It is, however, open to the Union to challenge the accuracy of a PDF. In the instant case the Union challenged certain portions of the PDF arguing that the wording agreed to by the grievor and her manager had been more accurate.

THE FACTOR OF EDUCATION

The job evaluation manual states that the education factor identifies the minimum level of formal education required to perform the responsibilities of a position. The factor has two components. The first, which the job evaluation manual labels as factor "1A", reflects the required formal level of education. The parties agree on a level 3 rating for this component worth 35 points. This rating is appropriate when a position requires a two year diploma or equivalent.

The second component, labeled factor "1B", considers whether in order to perform the responsibilities of a position the incumbent requires a specific course, certification, qualification, formal training or accreditation in addition to the educational level noted in 1A. The College assigned a level 1 rating worth 3 points. Such a rating is appropriate when there are no additional education requirements. The Union argues for a level 2 rating worth 12 points. The relevant factor level definition states that a level 2 rating is appropriate for "additional requirements obtained by course(s) with a total of 100 hours or less". At the hearing the Union spokesperson contended that the Union should have sought a 1B rating higher than level 2. A level 3 rating would apply to additional requirements that are obtained through a course or courses of between 101 and 520 hours.

The grievor inputs data into a Job Connect System designed by the MTCU. Training on this system was not listed as a job requirement when she was hired into her position. Subsequent to the grievor being placed in the position the College sent her to

Toronto for two days of training and, in addition, required that she complete an eleven week online training program respecting the Job Connect system offered by the MTCU. The grievor testified that this training involved her completing a number of modules on line and then submitting her work to the MTCU.

Mr. Ron Sequin, the College's Director of Continuing Education, is responsible for overseeing the College's Job Connect program. He said that only 74 people worldwide work on the Job Connect system. He said that one cannot be trained on the system except through the training program offered by the MTCU.

The job evaluation manual contains the following statements relating to training not listed in a job posting but which an individual is required to take after being hired into a position:

1B In order to perform the responsibilities of the position, is there a requirement for specific course(s), certification, qualification, formal training or accreditation in addition to and not part of the educational level noted above in 1A. Include only requirements prior to commencement that would typically be included in the job posting.

Notes to Raters: ...

3. Do not include any sessions, seminars or training that is required after an incumbent is hired. For example, familiarization sessions on internal processes, email, or computerized record systems.

In her submissions the College spokesperson relied on the note to raters set out above. She said that the College could not have required that the grievor be trained on the Job Connect system since an individual could not sign up for the training on their own. The Union spokesperson contended that the College is refusing to value the training taken by the grievor. She argued that I should recognize the training since it relates to skills that the grievor is required to have and she could not obtain the training prior to starting in the job. She also noted that the training had been substantial.

The spokesperson for the Union commented that the wording of the job evaluation manual has created unanticipated problems with respect to the recognition of additional educational requirements, including a failure to recognize how positions evolve. She indicated that she intends to seek changes to the wording of the manual in order to address these issues.

Article 18.4.5.1 of the applicable collective agreement provides that a classification arbitrator is restricted to determining whether a grievor's PDF accurately reflects assigned job content "and to determining whether the grievor's job is properly evaluated pursuant to the CAAT Support Staff Job Evaluation Manual". It follows from this provision that I lack jurisdiction to depart from the terms of the manual. In that the current job evaluation system is relatively new the parties' representatives will presumably be reviewing the system's operation and considering whether any changes should be implemented. It is, however, not open to me to assume that any specific change will be retroactively made to the manual.

In her submissions the spokesperson for the Union argued that in order to achieve equity I should recognize the grievor's training given that the College has recognized training received by others after they were hired. In response Ms. France acknowledged that the College has hired and promoted individuals into other positions despite them lacking certain training required in a job posting. She noted that in these situations the College had provided the required training. She said that in promotion situations the College decided to promote an internal applicant who lacked the required training and train them rather than hire someone from outside the College who already had the training. Presumably in these types of situations the employee received the full pay level associated with their new position.

At the hearing the grievor described the College's comparison of her situation and that of other employees who received training after they were placed in a position as "a play on words".

In the context of these proceedings I do not have jurisdiction to pass judgement on the College's approach to job applicants who lacked training specified in a job posting. Nor do I have jurisdiction to re-write the job evaluation manual so as to require that the College's treatment of the grievor's situation be brought into line with that of other employees. As discussed above, the collective agreement restricts my jurisdiction to determining whether the grievor's job is properly evaluated pursuant to the job evaluation manual. I note that it was not suggested that the College's action in requiring that the grievor take post-hiring training on the Job Connect system instead of listing it as a required qualification involved an attempt to avoid the education provisions in the job evaluation manual. Because training on the Job Connect system is not offered at any educational or training institution it was reasonable for the College to view it as post-hiring training that any person newly placed into the position would need to receive.

The training provided to the grievor was lengthy and substantive in nature. The note set out above, however, expressly instructs raters to "not include any ... training that is required after an incumbent is hired". This describes the Job Connect training

taken by the grievor. Accordingly, I conclude that the training is not covered by the criteria for a level 2 rating for the 1B aspect of the education factor. In the result I confirm the level 1 rating assigned by the College.

ANALYSIS AND PROBLEM SOLVING

The job evaluation manual states that 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 rated the grievor's position at level 2 worth 46 points. The Union contends that a level 3 rating worth 78 points would be more appropriate. The job evaluation manual sets out the relevant factor level definitions as follows:

2. Situations and problems are easily identifiable. Analysis or problem solving is straightforward. Solutions may require modification of existing alternatives or past practices.
3. Situations and problems are identifiable, but may require further inquiry in order to define them precisely. Solutions require the analysis and collection of information, some of which may be obtained from areas or resources which are not normally used by the position.

The job evaluation manual contains a note to raters designed, in part, to assist them in distinguishing between situations which justify a level 2 rating from those which justify a level 3 rating. The relevant portions of the note read as follows:

3. To clarify the differences between levels 1, 2 and 3: ...

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

At level 3, the types of problems that are encountered are readily identifiable but the position must be able to identify when additional information is needed to clearly understand the problem or situation. In order to develop an

appropriate solution, the position will need to gather more information. In many circumstances, this additional information or clarification will be readily available, but there will be times when the position will need to seek the additional information from a source it is unfamiliar with.

Level 2 versus level 3 - wording in a PDF that suggests there is a need to get additional information, such as problems that require the incumbent to look at several sources of information or ask questions of other departments, does not necessarily mean that level 3 would apply. For example, if dealing with a question regarding a "hold" on a student record, the incumbent might have to check several screens on the student record system to see if it is a financial hold, or an academic hold, and might even have to contact the academic or finance department for an answer. However, these are procedural steps that should be followed one by one until the problem is identified and solved. There may be some judgement (level 2) in deciding which step to try first, but the analysis, if any, is quite straightforward (level 2). For level 3, the incumbent would be gathering information, analyzing each new piece of information in relation to the other pieces, and possibly exploring new or unusual directions to seek more information based on the results of the investigation or analysis.

The PDF wording agreed to by the grievor and her manager included three examples of analysis and problem solving which the College incorporated unchanged into the final PDF. Two of the examples, namely conducting confidential employer and client surveys and preparing placement contracts and invoices for the Job Connect program, appear to involve routine duties that do not require anything beyond the type of analysis described in the criteria for a level 2 rating. The other example, labeled as example #1, reads as follows:

Key issue or problem encountered

Track and monitor all stipend dollars and financial subsidies for employers, in accordance with Ministry contract(s).

How is it identified?

Inherent in position; report request by manager.

Is further investigation required to define the situation and/or problem? If so, describe.

Incumbent gathers client and employer data from consultants and employers verifies accuracy and inputs into Job Connect Training Support Expenditure Program.

Explain the analysis used to determine a solution(s) for the situation and/or problem

Continuous monitoring of use of stipend dollars, including: spent, committed and slippage against available dollars. Monitors activity against targets and generates weekly reports on target achievement to meet funder and College reporting requirements that are both complex and detail specific. Investigates and troubleshoots any variances, trends and special reports requested by Supervisor. Uploads data to Ministry site on a monthly basis; downloads reports from Funder Website, verifies for accuracy and distributes as directed by Supervisor.

What sources are available to assist the incumbent finding solution(s) (e.g., past practices, established standards or guidelines).

Ministry contract stipend reporting requirements; past practice and experience; Job Connect Training Support Expenditure Program; Financial Services data; Employers, Consultants, Supervisor.

The evidence indicates that the grievor's role in tracking stipend dollars and financial subsidies includes addressing discrepancies between her numbers and information contained in reports prepared by others. The grievor referred to a situation when her stipend numbers did not match those in a report generated at the Windsor campus. She said that her manager instructed her to locate the problem. She said that initially she analyzed time records to ensure there had not been any mathematical errors or discrepancies between what was stated in contracts and what had been paid out. She indicated that once she determined that these had not been the cause of the problem she looked at records from Windsor on a one-by-one basis and determined that certain payments relating to the Chatham campus had been posted to Windsor and vice-versa.

Mr. Seguin testified that any data collection respecting service delivery is the responsibility of the consultants and the data is given to the grievor as the data entry clerk. He said that the consultants are accountable for the data. He also said that counselors as well as the consultants keep numbers and if totals should not match "we" would ask the grievor to check with the counselors and if there was still a problem for her to check with a help desk maintained by a third party provider on behalf of the MTCU. The grievor noted that she is in fact responsible for some of the data collection. She strongly objected to being described as a data entry clerk.

Mr. Seguin said that while the grievor is asked to analyze data for accuracy, any reports to the Ministry, which might explain client numbers by reference to local unemployment levels, would result from an analysis performed by management.

The College's written brief contains the following statements with respect to the factor of analysis and problem solving:

The incumbent is responsible for the data entry and the Manager is required to ensure the integrity of the data and is also responsible for the analysis. The Manager is accountable to the Ministry and is the contact person to respond to any questions they may have. The Ministry has a help desk available to answer any questions the incumbent may have regarding any technical glitches in their software that arise when inputting data.

There can be different levels of analysis involving the same data. The fact that the grievor's manager is responsible for responding to Ministry inquiries and management staff analyze the data to put it into context, including analyzing it in terms of local unemployment levels, does not mean that the grievor cannot exercise a less complex form of analysis and problem solving respecting the same material. Further, the fact that consultants are responsible for much of the initial data collection and the manager is required to ensure the integrity of the data does not nullify the analysis and problem solving engaged in by the grievor.

The wording of the factor level definitions indicate that a key difference between a level 2 and a level 3 rating is that level 3 involves the analysis and collection of information, some of which may be obtained from areas or resources not usually used by the person in the position. This point is reinforced by the note to raters which refers to a person at level 3 gathering information and analyzing each piece of information in relation to other pieces of information.

As noted above, when addressing the grievor's role in tracking and monitoring stipend dollars and financial subsidies for employers the PDF states that she investigates and troubleshoots any variances and trends. The example given by the grievor of her being asked to locate a discrepancy between her stipend numbers and those contained in a report generated at the Windsor campus indicate that she was required to gather information, including postings performed at another campus. Mr. Seguin noted that the grievor could be asked to obtain information from counselors in addition to the information provided by consultants. On the basis of these considerations I conclude that while certain of the analysis engaged in by the grievor is relatively straightforward, on a regular and recurring basis she gathers and analyzes information in relation to other information. This involves the type of analysis and problem solving which meets the criteria for a level 3 rating. Accordingly I find a level 3 rating to be appropriate.

GUIDING / ADVISING OTHERS

This factor refers to an assigned responsibility to guide or advise others, including other employees, students or clients. The job evaluation manual states that this is over and above communicating with others “in that the position’s actions directly help others in the performance of their work or skill development”. 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 2 worth 17 points. The Union argues for a level 3 rating worth 29 points. The job evaluation manual contains the following factor level definitions:

2. Guide others so they can complete specific tasks.
3. Advise others to enable them to perform their day-to-day activities.

The manual defines what is meant by the terms “guide” and “advise” as follows:

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.

The PDF form that was prepared by the grievor and her manager and the PDF form subsequently adopted by the College contain an identically worded example relating to this factor. The form prepared by the grievor and her manager characterize the example as illustrating: “Minimal requirement to guide/advise others. The incumbent may be required to explain procedures to other employees or students”. The manual indicates that this level of assistance would justify a level 1 rating. The PDF adopted by the College refers to the example as demonstrating correct processes/procedures to others so they can complete specific tasks, which qualifies for a level 2 rating. The identically worded example reads as follows:

Incumbent provides statistical and financial information support for the Job Connect Program. Acts as primary back-up to the Receptionist; greets and provides information to telephone and in-person inquiries about the Program.

The grievor testified that client flow is important and each consultant is responsible for certain monthly targets. She said that the consultants provide her with intake and exit information which she tracks on a daily basis. She said that she takes and analysis this data and then provides the numbers to the consultants so that they can manage their case loads. She noted that the consultants rely on her to track information accurately. She said that the consultants also check with her about the amount of stipend already on an individual client prior to doing up a new contract since there is a maximum cap. She noted that because of budget limits consultants also ask her about the total amount already spent on stipends. She testified that individuals who do workshops check with her in terms of whether they have achieved certain targets and people also ask her if “we” have met survey targets.

Mr. Seguin said that there is an expectation that the grievor will have a continuing interplay with consultants which involves the exchange of information. He contended that this information assists others to complete their tasks but the grievor cannot tell others what to do. The Union spokesperson argued that the grievor makes recommendations respecting the course of action for others. She said that consultants rely on the grievor’s input respecting standings as well as the advice that she gives them about where they stand in terms of the budget. She argued that the grievor gives recommendations and advice to consultants, clients and her manager.

The Union’s written brief correctly notes that the grievor provides daily statistical, financial and numeral information to consultants so that they can effectively manage their caseloads in order to meet MTCU standards and targets and this information is also constantly relayed to the manager. The brief then goes on to contend that the grievor “must interpret new MTCU guidelines and assist consultants with understanding guideline changes and new statistical expectations in order to reach MTCU targets. Must also share detailed technical information exchanges with the Ministry Help Desk involving new case loads and correctional data programming patches”. There was nothing in the evidence, however, to suggest that the grievor is the one responsible for advising consultants about changes to Ministry guidelines or ensuring that they understand such changes. To the contrary, Mr. Seguin stated that communications with respect to program changes are done by the manager assisted by a lead hand who is a consultant. While the grievor does provide technical information to the help desk the evidence does not suggest that when she encounters problems or glitches she advises staff at the help desk about how they are to perform their duties.

The grievor continuously provides information to the consultants and to management respecting progress towards target numbers and available financial resources. To qualify for a level 3 rating, however, she must give advice to others that enables them to perform their day-to-day activities. The job evaluation manual defines “advice” for this purpose as having “the authority to recommend or provide

knowledgeable direction regarding a decision or course of action”. This definition does not encompass the provision of factual information to others. The evidence indicates that management and the consultants utilize information provided to them by the grievor to help them make decisions and to decide on a course of conduct. It does not, however, demonstrate that the grievor has the authority to make recommendations or provide knowledgeable direction to the employment consultants or to management.

The PDF form prepared by the grievor and her manager and the PDF form adopted by the College both refer to the grievor spending 5% of her time in an administrative support/receptionist position. The grievor testified that when in this position she explains to employers who call in that they can receive a package of materials regarding the Job Connect program. She said that she also provides them with an overview of the program and tells them that they will need liability insurance and WCB coverage. The grievor said that when on reception she tells clients about job boards and about their options. Mr. Sequin stated that the person on reception provides only basic information to clients and it is the consultants who assess individuals and put together an action plan.

The spokesperson for the Union argued that when performing the reception role the grievor provides guidance and advice to individuals about them becoming clients and she provides guidance and advice to companies about them becoming employers in the Job Connect program.

The evidence establishes that when serving in the receptionist position the grievor provides information to employers and potential clients. Her role in that regard can be characterized as providing guidance. It is apparent, however, that the grievor has no authority to recommend or provide knowledgeable direction to such individuals with respect to any decision or possible course of action they might take, which is what is required for a level 3 rating.

Having regard to the above considerations I confirm the level 2 rating assigned by the College.

COMMUNICATION

The job evaluation manual states that this factor measures the communication skills required by a position, both verbal and written, and includes:

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

actions of others.

The College rated this factor at level 2 worth 46 points. The Union contends that a level 3 rating worth 78 points would be more appropriate. The relevant factor level definitions are as follows:

2. Communication involves the exchange of information that requires explanation and/or interpretation.
3. Communication involves explaining and/or interpreting information to secure understanding. May involve communicating technical information and advice.

To assist in applying these factor level definitions the job evaluation manual contains the following definitions:

Explain - provide details or examples to help others better understand the information.

Interpret - explain or tell the meaning of; translates; conveys the meaning of something..

The job evaluation manual contains four notes to raters with respect to this factor. The third note expressly addresses the difference between a level 2 and level 3 rating. It takes on considerable importance given the similarity between the wording of the two factor level definitions. This and the first two notes read as follows:

1. Consider the need to initiate written text versus modifying the writing of others.
2. Do not consider communication between incumbents and their Supervisors.
3. To clarify the differences between levels 2 and 3:
"Explain" and "interpretation" in level 2 refers to the fact that it is information or data which needs to be explained or clarified. The position exchanges basic technical or administrative information as the normal course of the job and may be required to deal with minor conflicts or complaints. This level may also include exchanges that are of a more complex technical nature, where all the parties to the communication are technically competent. That is, for those

people the communication is relatively basic as they share a vocabulary and understanding of the concepts.

"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.

The PDF form prepared by the grievor and her manager and the PDF later adopted by the College both contain the following two examples designed to demonstrate required communication skills:

1

Communication Skill/Method

Exchanging routine information, extending common courtesies

Example

Incumbent answers questions, provides and elicits information; Acts as back-up to Receptionist and provides information as appropriate in response to inquiries.

Audience

Clients, potential clients; Employers, coworkers.

Frequency

Daily

2

Communication Skill/Method

Explanation and interpretation of information or ideas

Example

Troubleshoots data; provides and modifies statistical and financial reports; tracks and provides information on financial, statistical and target information, in accordance with Ministry allocations and reporting guidelines.

Audience

Consultants, Manager.

Frequency

Weekly

In addition to the two examples set out above, both PDF forms also contain an identically worded third example. The form prepared by the grievor and her manager characterize the example as illustrating the imparting of technical information and advice. The PDF adopted by the College lists it as a further illustration of the explanation and interpretation of information or ideas. The common wording of the example is as follows:

Example

Maintains highly sensitive and confidential client and employer information in client computerized database. Creates accurate, specific and detailed statistical and financial information; constantly monitors and reports on year-to-date activity, targets and expenditures as prescribed by the Ministry.

Audience

Employers, clients, Supervisor, College, Ministry

Frequency

Daily-Weekly

As noted above, in the first example both PDF forms refer to the grievor acting as a backup to the receptionist and providing information in response to inquiries. Both forms describe this function in terms of the exchange of routine information and extending common courtesy. At the hearing, however, the Union relied on the grievor's work in the receptionist's position in support of a level 3 rating.

As touched on above, the grievor testified that when performing in the receptionist's role she explains the Job Connect program to employers. She said that she also explains the requirements of the program to clients. She commented that some people are hard to communicate with and do not "get it" in terms of understanding the criteria involved. She also said that she is responsible to determine if an individual is eligible for the process they are interested in. She added that if they are eligible she makes an appointment for them to see a consultant but if they are not eligible she advises them about a resource centre.

Mr. Seguin testified that the criteria for the Job Connect program is that clients be aged 16 to 24, unemployed and out of school. He said that the parts of the program that a client qualifies for is determined by a consultant and this process might involve two or three meetings. He also said that in the very clearest of cases the grievor might advise a potential client that they do not qualify, such as if they are already working full-time. He noted that the resource centre is staffed. Mr. Seguin said that the consultants negotiate contracts with clients and provide the details to the grievor who then prepares the documents.

The spokesperson for the Union described Job Connect clients as being mostly young people who are not highly educated and who face multiple barriers. She contended that when the grievor is on reception she ensures that the clients understand the information that she is providing to them and she may need to explain the information at a level that secures their understanding.

It is apparent that when filling in for the receptionist the grievor provides individuals with information about the Job Connect program. She might also tell them that they do not qualify for a particular aspect of the program that they are interested in and refer them to the resource centre. When performing these roles the grievor logically explains or interprets the information that she provides. Both the criteria for both a level 2 and a level 3 rating, however, encompass the explanation and interpretation of information.

The third note to raters set out above addresses how the appropriate level is to be determined in this type of situation. It states that for a level 2 rating it is the information or data which needs to be explained or clarified whereas for a level 3 rating there must be a need “to explain matters by interpreting policy or theory in such a way that it is fully understood by others”, while taking into account the communication level/skill of the audience. The evidence suggests that when serving as a receptionist the grievor explains and clarifies information. It does not suggest that she needs to interpret policy or theory so that those she is dealing with can fully understand the policy or theory involved. Accordingly, I conclude that the explanation and interpretation engaged in by the grievor when in the receptionist position meet the criteria for a level 2 rating.

In support of a level 3 rating the Union relies on the grievor’s communications with the help desk provided by the Ministry and with IT staff at the College. The grievor noted that this communication involves technical information. She said that she must clearly explain the problem she has encountered and the other person might spend hours telling her step-by-step what to do. The Union spokesperson contended that when the grievor is dealing with the help desk she must secure an understanding respecting what the issues are.

These proceedings are not about how the functions of College IT staff or the help desk staff might be characterized. What is in issue is the grievor's communications to IT staff and help desk staff when she encounters problems with the Job Connect system, including glitches in the system. Logically she must explain the situation in such a way that the individual assisting her fully understands the problem. This appears to meet the criteria for both a level 2 and a level 3 rating. The third note to raters, however, contains the statement that a level 2 rating "may also include exchanges that are of a more complex technical nature, where all the parties to the communication are technically competent ... for those people the communication is relatively basic as they share a vocabulary and understanding of the concepts". The note goes on to explain that a level 3 rating will be appropriate with respect to the provision of technical information if the audience is not fully conversant or knowledgeable about the subject matter. Logically College IT staff and staff at the help desk are technically competent and understand the concepts involved. The grievor's communications role appears to be to provide them with technical information about a problem or glitch that she has encountered. In the circumstances I conclude that these communications meet the criteria for a level 2 rating.

The next issue relates to a more central aspect of the grievor's position, namely providing statistical and financial information to others. In that portion of its brief that addressed this factor the Union took issue with the College not including in the current PDF certain entries that had been in the grievor's PDF under the previous job classification system. These entries related to a "responsibility" factor that had been part of the previous job classification system. This factor measured the impact of an incumbent's decisions and actions, including the impact of possible errors. Such a factor is not included in the current job evaluation system. The Union brief described the entries in the former PDF as having included the following statements: "Information management is critical, the program's on-going funding/existence is reliant on reporting of accurate prescribed statistics, including reporting accurate, specific and detailed statistical and financial information to the Ministry, Supervisor and all staff" and "Significant negative effect on funding levels if core statistics are not recorded accurately and in a timely manner to the funder. Lack of integrity in statistics, activity and stipend expenditures reporting compromises contracted targets and causes professional embarrassment to St. Clair College".

The above comments from the former PDF respecting the need for accuracy continue to apply. Further, it is clear that the grievor takes great care to keep accurate statistics and financial information. The introduction to the current job evaluation manual, however, notes that the evaluation of a job is concerned with the content of a position and not with the assessment of an individual's performance. This point is reinforced by a later note to raters which states:

It is the position that is being evaluated not the individual. Raters must make a conscious effort not to let knowledge of a particular incumbent or his/her performance influence evaluation decisions.

It follows from the above note that the fact the grievor does her job well and keeps accurate statistics and financial information does not impact on the rating for the factor of communication. The manual indicates that this factor is designed to measure required verbal and written skills. That includes the verbal and written communications skills associated with the grievor providing information to others with respect to statistics and financial information.

In its written brief the Union contended that the level of communication utilized by the grievor clearly involves the explanation of information to secure understanding while taking into consideration the level or skill of her audience, whether it is the Ministry, any of the consultants, an employer with concerns, a client or her manager.

The grievor provides information to the MTCU by entering data into the Job Connect system. The evidence does not suggest that she prepares reports, commentary or explanations for the Ministry respecting this data. In its written brief the Union suggested that the grievor communicates directly with the Ministry. At the hearing, however, Mr. Seguin was not challenged when he said that staff are aware that they are not allowed to communicate with Ministry staff. The grievor's involvement with the Ministry does not warrant a level 3 rating.

The grievor testified that her major communication is working with the consultants to get information from them for her to input. She said that it is important that the consultants understand what it is she requires from them. She also said that if a consultant gives her paperwork respecting a client to input which has key information missing she will communicate with the consultant to get the information. Logically when she obtains data from the consultants the grievor explains or clarifies to them what information she is after. There does not, however, appear to be a need for her to interpret policy or theory to the consultants so that they understand the policy or theory. Given the wording of the third note to raters I conclude that this function does not justify a level 3 rating.

The grievor reports information to her manager and provides consultants with information about amounts spent on stipends for individual clients and in total and she tells consultants how they are doing in terms of individual targets. Her role with respect to providing information to her manager and the consultants logically includes at times explaining or interpreting the information. As indicated by the wording of the PDF originally prepared by the grievor and her manager this explanation or interpretation can

be described as “imparting technical information and advice”. A similar phrase is used in the level 3 factor level definition, coming immediately after the words “may involve”. The third note to raters, however, makes it clear that not all communication of technical information justifies a level 3 rating. The note states that a level 2 rating relates to the exchange of basic technical or administrative information in the normal course of the job and such a rating may also include exchanges that are of a more complex technical nature where all of the parties to the communication are technically competent. The note also states that a level 3 rating requires that there be a need to explain matters by interpreting policy or theory.

There is nothing in the evidence to suggest that the manager who receives statistical and financial information from the grievor or the consultants who obtain information from her respecting their progress towards set goals and the availability of stipend money are not technically competent or require special wording or examples from the grievor in order to make the information understandable. Further, as noted above, there is no suggestion that the grievor needs to interpret policy or theory to the manager or the consultants so that they can understand the policy or theory. The note to raters suggests that the grievor’s role in this regard does not justify a level 3 rating.

Having regard to the foregoing I confirm the level 2 rating assigned by the College.

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 rated this factor at level 1 worth 7 points for the grievor’s regular and recurring duties. The College also gave a level 2 rating for an occasional aspect of the job, which added 9 additional points. The Union contends that the grievor’s regular and recurring duties justify a level 2 rating, which would be worth 38 points. The factor level definitions provide 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

The job evaluation manual defines “verbal abuse” as derogatory or threatening comments. It also notes that verbal abuse is more than someone being angry or upset.

There are two notes to raters with respect to this factor. One relates to travel. The other note states that “this factor reflects working conditions that are real and not a condition that might occur”.

At the hearing the grievor advanced a strongly worded argument in support of an overall level 2 rating based on a concern for her personal safety during the entire time when she is at work. She contended that everyone in her office, not just the person at the front desk, is at risk since someone could come in and threaten or rob them. She also noted that all of the staff in the office have panic buttons and all of them have been directed not to work alone. Ms. France said that as a precaution employees in this and other areas of the College have been provided with panic buttons and employees in a number of offices have been directed not to work alone.

Concern for the grievor’s safety was also raised in the Union’s brief. The brief included a report about the April 2007 killing of some 33 individuals by a student at the Virginia Polytechnic Institute and State University.

The job evaluation manual addresses the issue of potential physical harm by assigning a level 3 rating for “dealing with abusive people who pose a threat of physical harm” as well as for “other conditions that may pose a risk to personal safety”. It was not argued in these proceedings that the grievor has dealt with abusive people who posed a threat of physical harm. I recognize that at all of the Colleges and in other public institutions there is always a potential danger to staff whatever the nature of their jobs. The note to raters, however, states that what is to be measured are working conditions which are real and not a condition that might occur. Any change to this approach would require an amendment to the job classification manual.

In its brief the Union criticized the College for removing references to verbal abuse from employee PDFs based on the rationale that the College has a Respectful Work and Educational Place Policy. The enactment and active enforcement of such a policy can play an important role in preventing and addressing inappropriate conduct, including verbal abuse. The fact that such a policy exists, however, cannot alter the fact that verbal abuse does occur and it must be taken into account when rating working environments.

In the instant case the College acknowledges that the grievor is at times the target of verbal abuse when filling in for the receptionist. That is why it assigned a level 2 rating with respect to an occasional aspect of her job. The Union in its brief and the Union spokesperson at the hearing argued that verbal abuse is an aspect of the grievor’s

working conditions that is regular and recurring. The Union spokesperson noted that the grievor fills in for the receptionist every day.

Mr. Seguin contended that many of the people who the Job Connect program deals with are out of work due to the job market and are fine to deal with. The grievor replied that she deals with people in situations which lead them to become frustrated.

At the hearing the grievor was unable to be specific about the number of times she has been the target of verbal abuse. She did say that when she has filled in when the receptionist was on vacation and off sick verbal abuse was “fairly regular”. She also said that everyday there is a chance that “we” will be yelled at and called idiots. She subsequently commented that once or twice a month is not acceptable; adding that how often it occurs in a week varies as “we” deal with young disgruntled people. For its part the College in its brief made the following statement with respect to this factor:

In the past seven years where the current management staff have been involved with Job Connect program there was only one incident report filed due to a difficult client. The individual was a client of another community agency.

Although employees in the Job Connect program at the College have filed only one incident report relating to a difficult client as noted above the College acknowledges that verbal abuse does occur. At issue is whether the verbal abuse encountered by the grievor when she fills in for the receptionist is more appropriately regarded as occasional or regular and recurring. I note that this is not the same as addressing the extent to which the regular receptionist or other employees in the Job Connect program whose jobs involve regular on-going contact with the public encounter such abuse.

It is not obvious how one is to measure the extent to which an employee is verbally abused. Unlike other situations it may not be as straightforward as looking at how much time an employee spends exercising a particular skill or working in a particular type of environment. When assessing verbal abuse does one look to the entire time that the employee is engaged in a discussion with an individual who becomes verbally abusive or is it some greater or lesser amount of time? I need not actually decide that issue in the instant case. As noted above, both the PDF form prepared by the grievor and her manager and the PDF adopted by the College state that the grievor spends 5% of her time in the receptionist position. It was not suggested that all of or even most of the individuals who she talks to when filling in for the receptionist verbally abuse her by way of derogatory or threatening comments. It appears from the evidence that the

grievor's actual dealings with individuals who engage in verbal abuse constitute a small percentage of her total time, well under 5%.

The job evaluation manual contains the following statements regarding what is to be viewed as regular and reoccurring and what is to be viewed as occasional:

“Regular and reoccurring” may not be readily identified as a qualitative amount of time. If a specific task occurs daily or weekly, it is easily identifiable as “regular and recurring”. However, a specific task that occurs once or twice a year, every year, and takes up about 25% of the work year should also be recognized as “regular and reoccurring”. Any task or responsibility that is an integral part of the position's work and is expected or consistently relied on should be considered “regular and recurring”.

The term “occasional” can be considered in a few different time frames. It can be defined as once or twice a month or three or four times a year. It is important to remember that the term is to be considered when identifying significant skills or responsibilities associated with activities that occur for a short period of time, on a few occasions or sporadically throughout the year.

Ultimately, the primary focus is to determine whether the skill, responsibility or activity is of note and as such needs to be reflected in the evaluation. For example, if a description or example in the PDF applies to a skill that is used 5% of the time and is deemed to be a notable element of the position, it should be captured at the “occasional level”. However, if a skill is used about 5% of the time and it is not a significant differentiating element, it would not be helpful to assign the “occasional” level to the work being described.

Being verbally abused is obviously a significant differentiating element which needs to be recognized. The grievor, however, finds herself in such a situation for only a small percentage of her time, substantially under the 5% referred to in the job evaluation manual. In the circumstances I conclude that it represents an occasional aspect of her position. Accordingly, I uphold the rating assigned by the College.

CONCLUSION

The various ratings assigned by the College resulted in the grievor's position receiving a total of 349 points. An additional 32 points associated with a level 3 as opposed to a level 2 rating for analysis and problem solving raises the total to 381 points. This remains within the range for payband E. Accordingly, I find that the grievor's position is properly rated at payband E.

Dated this 22nd day of March 2008.

Arbitrator