

93G308

BURNETT, GILHAM, MEADER, STEVENSON VS DURHAM

IN THE MATTER OF AN ARBITRATION

BETWEEN:

DURHAM COLLEGE
(the College)

and

ONTARIO PUBLIC SERVICE EMPLOYEES UNION
(the Union)

AND IN THE MATTER OF A GRIEVANCE OF JAN BURNETT, VAL GILHAM,
SANDRA MEADER AND ANN-MARIE STEVENSON (OPSEU File No. 93G308)

SOLE ARBITRATOR: Ian Springate

APPEARANCES

For the College: Don Sinclair, Director of Human
Resources

For the Union: Rick Nemisz, President of OPSEU
Local 353

Hearing: In Oshawa on February 15, 1994.

AWARD

INTRODUCTION

These proceedings were initiated by a grievance filed on behalf of all four grievors. The grievance relates to a job evaluation plan provided for under a collective agreement between the Union and the Ontario Council of Regents for Colleges of Applied Arts and Technology. The collective agreement is binding on the College and support staff employed by the College.

Both parties view the grievors' positions as coming within the Support Services Officer job family defined in the job evaluation plan. The College contends that it is properly paying the grievors at the payband 11 level. The grievors and the Union contend that they should be being paid at the payband 13 level.

ISSUES RELATING TO THE JOB EVALUATION PLAN

The job evaluation plan indicates that a position is generally to be classified on the basis of classification levels described in an evaluation guide chart for the relevant job family. This is done by matching the position with the level on the guide chart which most accurately describes the content and responsibilities of the position. Once this is done payband/classification matrix is used to match the classification with the appropriate payband.

The job evaluation plan recognizes that some atypical positions may encompass duties and responsibilities not adequately covered by the job family definitions and evaluation guide charts. It indicates that these positions are to be evaluated using a core point rating plan set out in the job evaluation manual.

Prior to August of 1993 the grievors were paid at the payband 9 level. At that time their positions were reclassified, retroactive to June 8, 1993, to Support Service Officer C at the payband 11 level. This was done following the College's evaluation of the positions using the job evaluation plan. At the hearing Mr. Don Sinclair, the College's Director of Human Resources, indicated that the positions were rated using the core point rating plan as opposed to the relevant job evaluation guide chart.

In its written brief the Union contends that the grievors' positions are not atypical and on the basis of the job evaluation guide chart they should have been classified at the Support Service

Officer D level. The payband/classification matrix indicates that persons at this level are to be paid in accordance with payband 13. If the Union is correct in its contention that the grievors' positions are typical of a Support Services Officer D position, because of the structure of the job evaluation plan a core point rating of the positions would result in them being paid at the payband 13 level. If the duties associated with the grievors' positions are actually typical of a lower rated level within the job family, core point rating will result in them being paid in accordance with the appropriate payband for that level. If the positions are in fact atypical, core point rating should lead to a payband level which appropriately compensates the grievors for the duties and responsibilities associated with their positions.

The Union disputes the manner in which the College rated a number of aspects of the grievors' positions under the core point rating plan. It challenges the ratings for the complexity and judgement elements of the job difficulty matrix; the nature of review element of the guidance received matrix; the level of contacts element of the communication matrix; the skill element of the knowledge matrix; and the manual effort and visual strain elements of the working conditions matrix.

In determining the appropriate ratings I have relied on a position description form for the grievors' positions which was agreed to by the parties. I have also relied on evidence given by Ms. Donna Andor, the Director of the College's Continuous Learning Division, and Ms. Jan Burnett, one of the grievors. At the hearing the parties agreed that I could regard Ms. Burnett as being representative of the other grievors.

THE GRIEVORS' JOB DUTIES

The grievors are employed as Program Officers in the College's Continuous Learning Division. The Division offers courses to approximately 24,000 students each year. About 600 courses are offered during each of three semesters. The Division has approximately 700 instructors, of whom about 400 teach in any particular semester.

The Continuous Learning Division offers a number of post-secondary courses that are also offered by other divisions of the College. In addition, the Division offers a wide range of courses geared specifically towards the interests of students and the needs of industry. Students taking courses through the Division can complete a variety of certificate programs as well as two diploma programs.

Each of the four grievors is responsible for between 90 and 125 courses each semester. Ms. Burnett testified that she handles a17 of the computer courses, as well as courses in a variety of other areas including interior design and legal administration.

Ms. Burnett was hired by the College in 1983 and worked at several jobs prior to assuming her current position. These included jobs as a data entry operator and a computer services information officer providing software support. Ms. Burnett testified that without her background in computers she could not perform her current job.

Ideas for new Continuous Learning Division courses come from a variety of sources. Ms. Andor indicated that many of the ideas come from meetings she has with outside organizations and businesses and with the heads of continuous learning at other colleges. Ms. Andor testified that she might discuss an idea for a new course with the grievors, for example if General Motors advised her that it wanted the College to offer a particular course, but at other times she simply asks one of the grievors to implement a course.

Ms. Andor indicated that at times the grievors come up with ideas for new courses. Ms. Burnett testified that she comes up with ideas based on her own analysis of the job market. She indicated that outside agencies also approach her about possible new courses. She gave the example of recently being contacted by an inspector with the Durham Regional Police to see if the College could put on a course leading to a firearms acquisition certificate.

Ms. Andor testified that if a grievor decides on a new course which involves capital costs, requires specialized rooms or involves controversial issues, the grievor will raise the matter with her. For other new courses, however, a grievor will simply go ahead and organize the course. Ms. Andor indicated that when the calendar for each semester is about to be prepared she looks at all the proposed courses. She testified that at this point she could ask that a course be pulled, although she has never done so.

Ms. Burnett testified that for the certificate programs in her areas of responsibility she decides what courses are needed to obtain a certificate, and then reviews her decision with Ms. Andor.

Wherever the idea for a new course comes from, it is up to the grievors to ensure that there is a course outline for it. Ms. Burnett testified that more and more the Division is adding courses from post-secondary programs, and when this is done the existing course outline is utilized. Ms. Burnett indicated that the Division's computer courses tend to be very specialized, such as teaching students how to use Word Perfect. She stated that she develops the course outline and then gets additional input from the instructor who will be teaching the course. She indicated that at times Ms. Andor reviews completed course outlines.

Ms. Burnett testified that when an instructor is required for a new course she goes through the resumes of prospective instructors and selects the individuals she feels should be interviewed.

She stated that she and Ms. Andor generally interview these individuals together and jointly decide who to hire.

For most credit courses the minimum number of students is 14 or 15. If the number of students drops below the minimum a grievor can decide to cancel the course. Ms. Burnett testified that when she cancels a course she is not required to advise Ms. Andor. Ms. Andor stated that if there are at least 10 students registered in a class, a grievor can decide to balance the shortfall against another class which has five students over the minimum. According to Ms. Andor, sometimes the grievors advise her when they do this, and sometimes they do not.

If the number of students in a scheduled course falls below 10, the general practice is to cancel the course. Ms. Andor testified that if a grievor wants to run a course with fewer than 10 students she must discuss it with her. At times it is decided to discontinue offering a particular course because of on-going low enrolment. Ms. Andor testified that if a course is run two or three times and does not get sufficient enrolment, it will be pulled. She added that there are computer programs to assist in making this decision.

Ms. Burnett testified that after going through statistical reports she may decide that a course should be discontinued and then tells Ms. Andor. According to Ms. Burnett, Ms. Andor generally accepts her decision, although at times she questions it and they will then discuss the matter. Ms. Burnett testified that at times Ms. Andor has asked that a course be offered for one more semester in a different format.

The position description form states that the grievors are to forecast and achieve income targets and control department expenses to stay within budget requirements. The form also states that they are expected to achieve projected revenues of up to \$375,000 per year.

The grievors try to ensure that instructors are evaluated by their students at least once a year. A grievor advises a clerk of the classes in which an evaluation is to be done. The clerk hands out the evaluation forms to the students and later collects them and gives them to the grievor.

Ms. Burnett testified that if the evaluations are positive she will inform the instructor of this. If the evaluations indicate that there is a problem, she generally meets with the instructor and advises him or her of the problem. According to Ms. Burnett, frequently a problem will not reoccur, but if it does she raises the matter with Ms. Andor. Ms. Burnett stated that if the evaluations suggest that there is a major problem with an instructor she will raise the matter with Ms. Andor after meeting with the instructor.

Ms. Burnett indicated that instructors speak to her about problems they are having with students, and students speak to her about problems they are having with a course or with an

instructor. She stated that at times students complain that they are not being taught what they expected to be or that a course outline is not being followed. According to Ms. Burnett, in response to such a complaint she will review the course outline with the student. She stated that this review may indicate that the student should actually be enrolled in a different course. When this occurs Ms. Burnett arranges for the transfer of the student to the appropriate course. Ms. Burnett testified that in other situations she may have a discussion with the instructor about whether the course outline is being followed or whether changes should be made in the way a course is being taught. At times Ms. Burnett arranges to meet with the student and the instructor together to try to iron things out. She stated that if she cannot solve a student-faculty problem she will involve Ms. Andor in the situation.

Ms. Burnett testified that while the College's admissions office provides counselling to full-time students, it is the grievors who counsel students and prospective students with respect to courses offered by the Continuous Learning Division. Ms. Burnett indicated that this function involves meeting with individuals, ascertaining the level of their current knowledge and their goals, and then working out a progression of courses they might take. The position description form indicates that the grievors spend 14 percent of their total time advising and counselling current and potential students.

Students will at times seek an exemption from a course on the basis of a course taken at another college. Ms. Burnett testified that using the course outline from the other college she decides if the student is eligible for the credit. Alternatively, she might decide that the student will have to write a challenge examination or take the course. She stated that if the situation is a straightforward one, such as a student who took a Lotus course from Centennial College which was 90 percent the same as a course offered at the College, she will allow the credit. In situations where the matter is not so clear, however, she might discuss the matter with a full-time faculty member.

According to Ms. Burnett, the grievors schedule their own courses as well as any laboratory time. She testified that when they do the scheduling the grievors must ensure that courses that are part of a certificate program are not offered on the same night.

Sometimes the grievors "market" their courses. The College advises the grievors in advance of when advertisements can be placed in a local newspaper. Ms. Burnett testified that she pulls together the required information and the Division secretary then prepares the actual advertisement. All of the grievors have been interviewed on a local cable channel show called "Durham Today". They have also forwarded information about courses to a "bulletin board" on the same cable channel. It was Ms. Andor's evidence that the grievors do not "go on the road" to market courses.

Ms. Burnett testified that the grievors may decide to develop and send out flyers to advertise courses. She gave the example of her developing a flyer for a robbery prevention seminar aimed at small business. According to Ms. Burnett, she used the newspapers to find out which businesses, such as video stores, are robbed more than others, and then used the telephone directory to get the names of individual businesses to send the flyers to. Ms. Burnett indicated that on many occasions the idea of having a flyer has come from Ms. Andor.

THE JOB DIFFICULTY MATRIX

The parties disagree on the appropriate rating of the grievors' positions with respect to both the complexity and the judgement elements of the job difficulty matrix. The College gave the positions a D rating in terms of complexity and a 5 rating for judgement. The Union argues for an E-6 rating. The criteria for these ratings are as follows:

Complexity

D. Work involves the performance of varied, non-routine complex tasks that normally require different and unrelated processes and methods.

E. Work involves the performance of non-routine and relatively unusual tasks that may require the application of specialized processes or methods.

Judgement

5. Duties performed require a significant degree of judgement. Problem-solving involves interpreting complex data or refining work methods and techniques to be used.

6. Duties performed require a high degree of judgement. Problem-solving requires adopting analytical techniques and development of new information on various situations and problems.

It seems reasonable to assume that the grievors' involvement with many courses is relatively routine, particularly where a popular course is continuing to be offered with the same instructor. Certain of the grievors' tasks are clearly non-routine. An example of this is dealing with instructors about problems raised by individual students. Because the problems relate to different courses and different instructors, they would be non-routine in nature. On the other hand, because the same general issues would presumably be raised, such as whether the instructor is following the course outline, I do not believe the task can be described as relatively unusual. Accordingly, this task would fit within the criteria for a D rating.

At issue is whether there are aspects of the grievors' jobs which involve the performance of tasks which are non-routine and also relatively unusual. In my view the grievors' role in deciding on new courses fits these criteria. Although the evidence suggests that Ms. Andor plays

a leading role in the development of new courses, the grievors are expected to come up with ideas for new courses and to evaluate ideas raised by others. Since each new course is presumably designed to meet some unique need, I view the process of deciding to offer each new course as a relatively unusual task. Although this takes up a relatively small part of the grievors' time, it is an on-going part of their jobs. In my view it satisfies the criteria for an E rating. I also find that the grievors' positions meet the criteria for a 6 rating for the judgement element. The position description form states that the grievors problem solve by means of adopting analytical techniques. At times they are also required to develop new information. Ms. Burnett did so when she read newspapers to determine which small businesses are most likely to be robbed so as to be able to target them for a robbery prevention seminar.

Having regard to these considerations, I conclude that E-6 is the appropriate rating for the job difficulty matrix.

THE GUIDANCE RECEIVED MATRIX

The parties agree that the grievors' positions justify an E rating with respect to the guidelines available element of the guidance received matrix. The College gave the positions a 4 rating for the nature of review element while the Union argues for a 5 rating. The criteria for these ratings are as follows:

4. Work assignments are subject to a general form of review for achievement of specific objectives and adherence to established deadlines.
5. Work assignments are reviewed only for achievements of broad objectives, effectiveness of results and to ensure integration with the work of others.

The evidence indicates that on an on-going basis the grievors keep Ms. Andor verbally advised of what they are doing and she in turn gives them ideas and information. With one major exception, however, Ms. Andor does not review the grievors' work for the achievement of specific objectives and adherence to established deadlines. The exception relates to the deadlines for the preparation of a calendar three times a year. These deadlines have always been met.

The agreed-on position description form contains the following entry with respect to how the grievors' work is reviewed:

Work assignments reviewed only for broad objectives, eg. calendar deadline, course scheduling, reaching budget objectives.

This entry in the position description form, as well as the evidence, indicate that the criteria for a 5 rating more closely describes the situation than does the criteria for a 4 rating. Accordingly, I find that E-5 is the proper rating for the guidance received matrix.

THE COMMUNICATION MATRIX

The parties agree that the grievors' positions justify an E rating for the purpose of contacts element of the communications matrix. They disagree on the level of the contacts. The College gave the positions a 3 rating while the Union argues for a 4 rating. The criteria for these ratings are as follows:

3. Contacts are primarily with employees at higher levels within the College and with individuals at middle management levels outside the College.
4. Contacts are primarily with employees at senior management levels within the Colleges and outside the Colleges.

The position description form contains the following entry with respect to the grievors' contacts:

THIS SECTION PROVIDES INFORMATION ON THE NATURE AND LEVEL OF A POSITION'S INTERNAL and EXTERNAL CONTACTS ("INTERNAL" REFERS TO CONTACTS WITHIN THE COLLEGE; "EXTERNAL" REFERS TO ORGANIZATIONS AND INDIVIDUALS OUTSIDE THE COLLEGE).

SUMMARIZE, IN ORDER OF IMPORTANCE, THE TYPICAL CONTACTS WHICH ARE A NORMAL PART OF THE INCUMBENT'S DUTIES, THE NATURE OR REASON FOR THE CONTACTS AND THE FREQUENCY OF SUCH CONTACTS.

INTERNAL CONTACTS	REASON FOR CONTACT	FREQUENCY
Vice-President	College policy and procedure	Monthly updates
Director	Office updates/objectives	Daily
Registrars	Data collection, student enrolment	Daily
Bookstore/Stores/ Receiving/ Purchasing	Supplies of material required for program operation	Weekly

Accounting	Budget reconciliation, expenses	Weekly
Payroll	Contract issues	Monthly
Timetabling	Room bookings Office	Weekly
Physical Resources	Set up/Alteration of facilities	Monthly
Print Shop	Preparation of course or promotional materials	Weekly/ Monthly
Athletic Complex	Facility bookings yearly	3 times/ yearly
EXTERNAL CONTACTS	REASON FOR CONTACT	FREQUENCY
Clients/Students	Counselling, advising, inquiries complaints, follow up	Daily/ Weekly/ Monthly
Faculty	Course set up, monitoring and follow up	Daily/ Weekly/ Monthly
Government Ministries	Transfer of course materials, guidelines or details	Monthly
Suppliers	Ordering of supplies	Monthly
Publishers	Ordering of texts	Monthly
Other Colleges/ Institutions	Monitor, liaise with, research other college courses	Monthly

Notes to raters in the job evaluation manual stipulate that contacts with students are to be rated at degree 2, and those with teaching staff at degree 3.

Ms. Andor testified that about every three weeks she meets with the Vice-President responsible for the Continuous Learning Division. She stated that she also meets with committees throughout the College to determine which way the College is moving. She stated that Ms. Burnett accompanies her when she meets with a computer committee. Ms. Andor indicated that she also deals with a number of outside organizations and meets on a regular basis with representatives of the two local school boards and General Motors.

Ms. Burnett's evidence suggests that her contacts outside the College relating to the development of new courses are at the upper management level. It is not clear whether the above excerpt from the position description form simply fails to mention these contacts, or if they are included as part of the monthly contacts with "Other Colleges/Institutions". That part of the position description form which outlines the grievors' duties and responsibilities states that they spend 4 percent of their time developing new programs, and 1 percent of the time liaising with various agencies for the development of specialized training programs. This suggests that while these type of contacts are at a high level, they are not nearly as frequent as the grievors other contacts.

The criteria for a 3 and a 4 rating are not worded in terms of the highest level of an employee's regular contacts. Rather the determining factor is the frequency of such contacts. The grievors do have regular contacts with people at upper management levels. Their contacts, however, appear to primarily be with individuals in other than senior management positions in and outside the College. Accordingly, I affirm the E-3 rating given by the College.

THE SKILL ELEMENT OF THE KNOWLEDGE MATRIX

The College gave the grievors, positions a 5 rating with respect to the skill element of the knowledge matrix. The Union argues for a 6 rating. The criteria for these ratings are as follows:

5. Work requires the ability to organize complex statistical information and to understand and apply elementary principles of a science or professional discipline. May operate very complex electronic instruments, laboratory or computer equipment.
6. Work requires the ability to understand and apply complex principles of a discipline, such as mathematics, computing science etc. Designs testing procedures for repetitive application, conducts standardized scientific studies and performs statistical and other problem analyses.

The Union contends that the grievors meet the criteria for a 6 rating because of their involvement with the College's computer system. The evidence falls far short of supporting this contention. The position description form, however, provides that the skills and abilities required to perform the grievors' duties include the two set out below. Presumably the disciplines referred to relate to the subjects within the grievors' various areas of expertise.

- The ability to understand and apply complex principles of discipline
- Able to perform statistical problem analysis

The basis for the College's decision to give the grievors' positions a B-4 rating for manual effort is not clear. Perhaps it relates to a combination of the time they spend lifting supplies and the extended sitting they do when preparing calendars three times per year. In any event, the evidence does not support a rating higher than B-4. Accordingly, I confirm the B-4 rating given by the College.

The parties agree that the grievors' positions justify a B rating for the visual strain element of the working conditions matrix. This rating is appropriate where an employee is required to focus on small areas and objects for up to an hour. The College submits that the prevalence of this level of visual strain justifies a 2 rating, meaning it was present less than 10 percent of the time. The Union argues for a 5 rating, which is appropriate when the relevant degree of visual strain exists for more than 60 percent of the time.

The position description form describes the aspects associated with the grievors' positions which might potentially create visual strain as follows:

Normal visual concentration required (continuous more than 60 percent of the time)

This entry would appear to justify an A-5 rating, which is the appropriate rating when normal visual concentration is required more than 60 percent of the time. Ms. Burnett's evidence was that although the grievors normally do not spend more than an hour at a time looking at a video display terminal, they do so when preparing the calendars. It is presumably this work which justifies a B rating.

Ms. Burnett testified that the preparation of a calendar takes about a week, meaning that the three calendars take about three weeks. The job evaluation manual indicates that one week represents about 2 percent of an employee's annual working time. Three weeks would thus represent about 6 percent of the time. This fits within the criteria for a 2 rating.

Having regard to these considerations, I affirm the B-2 rating given by the College.

CONCLUSION

The College's rating of the grievors' positions resulted in them receiving a total of 716 points under the job evaluation plan. My finding that E-6 was the proper rating for the job difficulty matrix results in an additional 52 points. My 5 rating for the nature of review element of the guidance received matrix, and 6 rating for the skill element of the knowledge matrix, raises it by an additional 23 and 14 points respectively. This brings the total to 805 points, which is within the point range for payband 12.

Having regard to the above, I find that the grievors' positions should be classified as being within payband 12.

I will remain seized of this matter to deal with the issue of the compensation payable to the grievors should the parties not be able to resolve that issue.

Dated at the Town of Ajax this 11th day of March, 1994.

"Ian Springate"

Arbitrator