

**IN THE MATTER OF AN ARBITRATION**

**BETWEEN:**

Seneca College  
("The College")

and

Ontario Public Service Employees Union  
("The Union")

Grievance of Angela Cesario  
Grievance #2010-0561-0011

**ARBITRATOR:** Mary Lou Tims

**APPEARANCES:**

**FOR THE COLLEGE:** Daniel Michaluk - Counsel

**FOR THE UNION:** Janice Hagan, President, OPSEU Local 561

Hearing held in Markham on June 3, 2011.

## AWARD

I have before me the June 10, 2008 grievance of Ms. Angela Cesario. Ms. Cesario holds the position of Secretary, Counselling and Disability Services, at the College's York University campus. Her grievance alleges that her position has been improperly classified at Payband E.

There were no objections regarding the arbitrability of the grievance or my jurisdiction to determine it.

Both parties filed with me pre-hearing Briefs in accordance with article 18.4.3.4 of their collective agreement. In addition, Ms. Cesario testified for the Union. Ms. Dale Viccary, Manager, Counselling, Disability and Health Services and Ms. Jane Wilson, Director, Resolution, Equity and Diversity Centre and Interim Director, Counselling and Disability Services and Health Centres, gave evidence for the College.

A Position Description Form ("PDF") dated April 2008 relating to the grievor's position was entered in evidence. The Position Summary contained therein sets out the following description of "the overall purpose of the position:"

To provide front line administrative support to Counselling and Disability Services reporting to the Manager. Coordinates and provides services for Counsellors in the following programs: Disability Services, Academic/Career Counselling, Personal/Emotional counselling. The incumbent responds to all requests in a number of formats for information relating to any and all of the above programs and services. The incumbent provides on-going assistance to clients with physical disabilities, mental health issues and/or under personal or academic stress.

The "significant duties and responsibilities associated with the position" are described in part in the PDF as follows:

- Knowledge of programs offered out of the Counselling/Disability office in addition to inquiries relating to all college services (*sic*)
- Responsible for all administrative support activities

- Supports the Manager in duties related to the administrative operations of Counselling/Disability office
- Test Administrator for Seneca@York Campus

The parties agree that the grievor performs a “front line service job,” that she knows the options available for students who need assistance, and directs students to such options.

Analysis and Problem Solving is the one factor in dispute between the parties. While they agree that this factor is properly rated at Level 2, Regular and Recurring, the Union contends that a Level 3 Occasional rating is also warranted. The College disputes that this is so.

The Support Staff Job Evaluation Manual (“the 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 Manual defines Levels 2 and 3 Analysis and Problem Solving 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 Notes to Raters are also instructive and state in part as follows:

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 . . . .

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. . . . 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 Union’s position as set out in its Brief is that the grievor is occasionally required to engage in Analysis and Problem Solving at Level 3 “primarily because her client group includes regular contact with students with more complex problems, including students with physical and mental health issues, students in distress and/or students coping with significant barriers to learning and social interaction.” Its argument is two-fold. First, it points to the PDF and specifically to the second example included therein of Regular and Recurring Analysis and Problem Solving. Such example addresses the need to deal with clients in crisis, and indicates that the grievor must “try and talk with student to discern problem” or “ask others what the situation is.” According to the PDF, the “analysis used to determine a solution(s) for the situation and/or problem” is as follows:

- ensure safety of client and others
- maintain calm, confidence and empathy at all times
- discern if client has been to counselling before
- direct client to appropriate counsellor, psychologist, or psychiatrist based on information received from client

Further, the Union points to the grievor's involvement with volunteer note takers as reflected in the PDF. Specifically, the Duties and Responsibilities section of the PDF includes as one of the grievor's "administrative support activities" the following:

Recruits, coordinates and assigns aides who are hired for special need students requiring tutoring, note-takers and readers.

The Union suggests that the PDF should contain as an Occasional example of Analysis and Problem Solving the role which it submits the grievor plays in resolving complaints about volunteer note takers who assist special needs students in the classroom. To the extent that the PDF does not reflect what the Union suggests is a duty performed by the grievor, the Union disagrees with the content of the PDF and submits that this alleged job function justifies a Level 3, Occasional rating for the disputed factor.

The grievor is the only support staff member employed in the Counselling and Disability Services Department at Seneca's York University campus. She reports to Ms. Vicary, who in turn currently reports to Ms. Wilson. The grievor works in the reception area and she described the office as "high traffic" at least during the school year. There are also three Counsellors employed in the department. Two work Monday to Friday, and one works three days per week. Counsellors occupy private offices in the department. All three Counsellors provide career and academic counselling, personal and emotional counselling, and disability counselling primarily to students.

As noted above, the PDF contains as an example of Regular and Recurring Level 2 Analysis and Problem Solving, the Secretary's role in relation to clients in crisis. The Union readily acknowledges that not every encounter with such clients requires Level 3 Analysis and Problem Solving, but it maintains that occasionally Level 3 analytical and problem solving skills are required. Although the grievor was clear that it is difficult to

quantify the frequency with which this is the case, she estimated that she probably spends approximately twenty minutes once every two weeks so engaged.

The Union's position was clearly articulated in its Brief, from which I quote as follows:

(W)hen a client comes into the office in crisis, occasionally, situations require problem solving that is more creative and complex. . . . In addition, when that unknown student in serious distress has one or more mental health issues or learning disabilities, the inquiry must be, by nature, more complex. Each student with a mental health issue or learning disability is an individual and will present uniquely in different circumstances and respond differently to different approaches. Problem solving is not procedural or routine.

Calming down a client in crisis so inquiry can more effectively lead to problem resolution occasionally involves watching carefully for facial reactions, body language, vocal cues (students with speech impediments), as they seem important depending on the individual circumstances and situation.

The grievor and the Union elaborated at the hearing that students may be depressed, anxious, autistic, aggressive, insecure, or easily discouraged by negativity. They reiterated that when dealing with students with mental health issues, social issues, learning disabilities, physical disabilities impacting upon speech or hearing, or problems with English, more "complicated" Level 3 Analysis and Problem Solving is required.

When a student in crisis comes into Counselling and Disability Services, there may be Counsellors in the office who are readily available to provide assistance. At other times, however, Counsellors may be occupied with other clients, or may be out of the office leaving the grievor alone. The Union agreed that in an emergency situation, the grievor can interrupt Counsellors who may be occupied with other clients, but noted in its Brief that "whether or not the situation is an emergency needs to be determined sometimes through complex inquiry...."

When a client in crisis comes into the Counselling office, the grievor must determine who the client needs to see and when. The Union acknowledges that determining who a client should see is often “routine.” It suggests, however, that assessing whether the client needs assistance urgently or not and determining whether Counsellors should be interrupted or assistance sought elsewhere may be more difficult. The Union emphasizes the importance of the grievor remaining calm and empathetic at all times in addressing this question.

The grievor described the “information gathering” in which she engages, while seated in the reception area of the office. She asks questions of the client such as, “Why are you upset?” and “What happened?” and she observes body language and facial expressions. She notes whether the client appears “jittery” and “stomps his feet.” She determines if the client has come to the office for academic counselling or for personal counselling.

Having collected such information, the grievor analyzes what the Union characterizes as a “complex set of questions” to determine if the situation is urgent or not. She speaks to the client in a low tone of voice and maintains eye contact. The Union notes that the analysis and solution are intertwined, and involve some trial and error on the grievor’s part as she decides how to calm an upset client, where to direct the client, and whether to speak firmly or gently to the client.

The grievor is aware of the available resources such as the Counsellors in the office in which she works, Counsellors at the Newnham campus, a nearby health clinic, and a hospital. She recognizes that she has professionals she can call upon for assistance including Counsellors, her manager, Ms. Wilson, the Human Rights office, program Coordinators and other College departments.

The Union emphasizes that experience working with individuals with mental health issues is required for the job, and points out that the PDF specifically refers to experience as a resource to assist the grievor in problem solving. The Union suggests that such experience is important so as to be aware of the possibility of crisis, particularly where not obvious from a client's demeanour. In its Brief, the Union suggests that the "analysis and problem solving that goes into calming and collecting information for distressed clients is more complex than a procedure that can be learned by following guidelines or directions in a training session." It argues that the consequences of the grievor's problem analysis are serious.

The grievor offered a number of specific examples which, in the Union's view, reflect the need for Occasional Level 3 Analysis and Problem Solving in the position. She spoke of a distraught female client who came into the office when the grievor was alone, indicating that she wished to speak to someone. The grievor testified that she saw fear in the client's eyes and knew that she could not let her leave without providing assistance. The grievor contacted the Campus Manager who in turn involved the College's Human Rights office. An employee in such office assisted in arranging a safe place for the client to spend the night after becoming aware that she was fleeing from an abusive relationship.

The grievor also spoke of a situation where a part-time student contacted her for assistance in that he could not sit for long periods because of a back issue and required a podium so that he could stand and take notes in class that evening. The grievor called Ms. Vicary who told her to report back to her, accessed the student's schedule, tried unsuccessfully to contact the Department Chair, and then contacted the instructor directly who agreed that the student would be able to use his podium in class that evening.

The grievor related another experience with a hearing impaired student who was unaware that he had been withdrawn from the College. Upon learning of his status, he was upset. His father called the grievor, and the student came into her office at a time when she was alone. She called the Program Chair as the Coordinator was not available, and arranged a meeting between the Chair, the student and her so that the student would understand what the withdrawal from his program involved. She suggested that this exemplified the need to contact an area “not normally used by the position.”

The grievor referred as well to students coming into the office on several occasions having panic attacks in anticipation of giving class presentations. She described that she spoke in a soothing voice, asked if they were ready, sometimes “threw in a bit of humour,” and tried to calm them so that they could return to class.

The Union also addressed the grievor’s role in coordinating note takers for students who require such assistance in class, and noted that at times, such arrangements do not work out well. The grievor was clear that upon being made aware of any such circumstances, she deals with the situation. She impresses upon volunteer note takers the seriousness of their commitment, and urges them to be empathetic so as to get compliance with their agreement to take notes. Such situations when they arise can require Level 3 Analysis and Problem Solving according to the Union, and the grievor suggested that she dealt with such problems approximately four times per year during each of the last two years, spending about forty-five minutes on each occasion. The Union emphasizes that the grievor was never instructed by College management that she was not to engage in such work, and it disputes any suggestion that management was not aware that she was doing so, particularly since this issue was identified through the filing of the present grievance. The Union questions, in any event, why the College accepts that

it is appropriate for the grievor to assist with other types of accommodation issues, but not with this. In dealing with problems relating to volunteer note takers, the Union suggests that the grievor does not pose “the same series of routine questions,” but that she must be “more creative and spontaneous with her observations and the questions she asks” in response to individual circumstances. It stated in its Brief that the grievor “must sometimes determine, based on inquiry, follow-up questions, expressions and body language whether the note-taker is likely to improve,” and that such “investigative discussion . . . involves more complex inquiry associated with Level 3.”

The College also addressed the role played by the grievor with students in crisis and with volunteer note takers.

When a student in crisis comes into the Counselling office, the College suggests that the grievor must first assess whether she is dealing with an emergency and whether the student appears to pose a security threat. It refers to the College’s policy regarding Personal Safety/Security Threats in this regard, and suggests that the grievor, like all College employees, is subject to such policy and expected to call security if appropriate. Assuming that this is not the case, according to the College, the grievor then makes two further inquiries, determining whether the client needs assistance immediately or not, and who the client needs to see. Ms. Wilson described that the grievor is to identify the nature of the initial problem bringing the student to the Counselling office, but does not “drill down to the triggers.” In short, the grievor is to answer the question, “Why are you here?” The College agrees that the grievor is expected to have “in-depth knowledge” of services offered by Counselling and Disability Services and elsewhere in the College and that she books appointments for students with Counsellors or refers them to other College services. According to the College’s Brief, the grievor is responsible for dealing with

“routine inquiries that can be answered based on in-depth knowledge of college services and to engage in routine administration.” Counsel suggested that even Level 2 Analysis and Problem Solving involves the identification and resolution of problems, and that the problem solving at issue here is “straightforward.” The College further argued that although Level 2 is an appropriate rating for “structured or repetitive work,” the Level 2 definition also encompasses “dealing with periodic scenarios that break from routine.”

Ms. Wilson acknowledged that the grievor can be by herself in the office at times, but noted that it is open to her to contact Ms. Viccary, the Registrar’s office, Program Chairs or Coordinators or her for assistance if required.

The College does not dispute that the grievor confronts challenges with communication at times, but argues that such issues do not impact on the analytical task facing her. Similarly, although the College acknowledges the importance of the results of the grievor’s work, it again suggests that this in itself does not bear on the nature of the required analysis.

The College addressed some of the examples offered by the grievor. Ms. Wilson was of the view that the grievor’s approach to the situation involving the client in an abusive relationship was a reasonable one. The College suggested, however, that such example demonstrated the distinction it draws here. It was the grievor’s responsibility to ascertain that the client needed to see someone then, and to contact an appropriate person for assistance at a time when the Counsellors were not in the office with her. The grievor fulfilled such responsibilities in contacting the Campus Manager. The College noted, however, that it was the individual in the Human Rights office who ultimately uncovered the client’s issue with abuse and took steps to assist the client in protecting herself.

The College referred as well to the grievor's involvement in assisting the student who required a podium for note taking in class. While Ms. Wilson acknowledged that the grievor was clearly attempting to be helpful, she suggested that this was not a task assigned to her. In any event, the College argued that this incident was atypical, and that it reflected accessing resources and thereby providing service, as opposed to Level 3 Analysis.

The College spoke to the grievor's example involving the student withdrawn from his program. It took the position that in involving herself in the manner she described, the grievor acted outside of her proper role. The College suggested that this was an academic matter, and that applicable protocols should have been respected. Ms. Wilson testified that the grievor should have told the student to speak to the Program Coordinator. In any event, the College argued that the grievor's work in arranging a meeting does not exemplify Level 3 Analysis.

The College also addressed the Union's evidence regarding the grievor's role with respect to volunteer note takers. Again, the College took the position that the grievor's involvement in such matters was not an assigned duty and was not one she was expected to undertake. Ms. Wilson testified that she was not aware that the grievor was so involved, and Ms. Viccary suggested she was not aware that the grievor was engaged in meetings of this nature. The College emphasized that it expected the grievor to encourage self-advocacy for students in such instances, and that accordingly, if made aware of problems, she should encourage students to speak to the note taker, the appropriate professor or the Counsellor. In any event, the College also suggested that the time spent in this role was "inconsequential" and did not come close to what it characterized as "the Occasional threshold." Finally, the College asserted that even

taking the Union's case at its best, the role described by the grievor was one of conveying expectations to note takers with the hope of resolution. This, in the College's view, does not exemplify Level 3 Analysis and Problem Solving.

The question before me for determination is a narrow one, that being whether the Union has established that the Secretary, Counselling and Disability Services at the York University campus is occasionally required to engage in Level 3 Analysis and Problem Solving as defined in the Manual.

The Union addressed in these proceedings the importance of empathy in the grievor's position and the fact that the grievor may encounter challenges in communicating with clients with speech impediments or for whom English is a second language. The Union also emphasized that the results of the grievor's work matter. When clients in crisis visit the Counselling and Disability Services office, the grievor is their first contact and her response to such clients is important. I accept all of these points, and would add that my brief opportunity to listen to the grievor in these proceedings left me with the impression that she is a conscientious employee eager to be of assistance to those she encounters in the course of performing her duties. Despite this, however, the issue before me is the appropriate rating of the grievor's position in accordance with the factor definitions set out in the Manual, and not the measure of the grievor's job performance. Further, despite the fact that empathy may be an important quality for the Secretary, Counselling and Disability Services, and despite the fact that communication may in some circumstances prove challenging, I am asked here to assess only whether Level 3 Analysis and Problem Solving is occasionally required in the position, as that is defined in the Manual. It is not at all clear that difficulties in

communication, the need for empathy or the important consequences associated with the grievor's work bear on the nature of the required analysis.

In considering the parties' positions before me, I note that they disagree whether certain examples relied upon by the Union reflect assigned duties and responsibilities. I accept the College's submission that the evaluation of the position must be based on assigned duties and responsibilities. Given my decision set out below, however, it is not necessary for me here to decide whether or not the disputed duties are in all of the circumstances properly regarded as "assigned." After considering the evidence in its entirety together with the helpful submissions of the parties' representatives, I am not convinced that Occasional Level 3 Analysis and Problem Solving has been demonstrated in the grievor's position. I so conclude even if I assume, without finding, that the examples relied upon by the Union all reflect assigned duties and responsibilities.

The evidence before me is clear that the grievor acts as the front line contact for clients visiting the Counselling and Disability Services Department at the College's York University campus. She is expected to be knowledgeable about the services offered in the department and elsewhere in the College and she described in some detail the resources she understands to be available to clients seeking assistance. When "clients in crisis" seek assistance, they first confer with the grievor who sits in the reception area of the office, which the grievor characterized as "high traffic" at least during the school year. Based on her inquiries and observations as she described them in these proceedings, she determines who the individual should see, a question that the Union indicated is often "routine." It is the further question of when help is required for someone in crisis that can prove to be the more challenging determination for the grievor to make. She described the need to assess whether an individual requires immediate

assistance or whether offering an appointment at some later point is adequate. While the College emphasized in these proceedings that all staff are subject to the Personal Safety/Security Threats policy, I recognize that the Union here does not merely suggest that the grievor determines whether a client poses a security risk as contemplated by the policy, but that she addresses whether a client seeking assistance in the Counselling office in a range of possible circumstances needs immediate intervention or not. There is no dispute that she is at times alone in the office or, that there may be occasions when Counsellors are present, but occupied. In the latter scenario, although Counsellors may be available to assist in urgent circumstances, the grievor must decide whether they should be interrupted or not. Similarly, it is clear that the grievor is free to contact Ms. Viccary, Ms. Wilson, the Registrar's office or others for assistance if required.

The grievor described the sorts of inquiries and observations she makes when a client in crisis seeks assistance. As noted by the Union, I acknowledge that the PDF specifically refers to experience as a source available to the grievor in resolving problems regarding clients in crisis and the Experience section of the PDF identifies "experience working in the field of mental health and disability services" as "an asset." The Union submits that such experience assists the grievor in recognizing that a client is in crisis and requires immediate attention, and I accept such suggestion as reasonable.

Ms. Wilson testified that the grievor's role at the point of initial contact with a client in crisis is in essence to answer the question, "Why are you here?" She distinguished the identification of such "problem" from the identification of the "triggers" for the circumstances giving rise to the client request for assistance. Such distinction is in my view reflected in the example involving the woman fleeing from an abusive relationship. The client advised the grievor that she wished to speak to someone, the

grievor observed that the individual appeared fearful, and recognized a need for immediate assistance. While the grievor was the front line employee responding to the request for help, and while she was undoubtedly helpful in contacting appropriate individuals who were able to offer further assistance in response to the client's specific circumstances once uncovered, the "problem" confronting the grievor was well defined. She needed to answer and did effectively answer the questions, "Does the client need immediate help, and if so, who can assist her?" I am not convinced that the grievor was required in such circumstances to address problems that "may require further inquiry in order to define them precisely," but rather am satisfied that she was faced with a more easily identifiable problem within the scope of the Level 2 factor definition. The same must be said of other scenarios described by the grievor such as where a student needed a podium, where a student was upset after he was withdrawn from his academic program, and where students experienced panic attacks in anticipation of class presentations. In all instances, "it is very evident when problems arise," as contemplated by the Notes to Raters pertaining to Level 2 Analysis and the "problems" are "identifiable," without the need for "further inquiry in order to define them precisely."

I have considered as well the grievor's evidence regarding the problem solving required in her position and note her estimation that her interactions with clients in crisis typically occupy approximately twenty minutes of her time. Again, I refer to the example of the woman in an abusive relationship. The grievor appropriately responded to the client's request for assistance by involving individuals who were able to secure safe accommodation for her for the evening when the nature of the client's issue became apparent. Her involvement in determining when assistance was required and who could provide it, in my view, exemplified "straightforward" analysis and problem solving. The

Notes to Raters are clear that even at Level 2, “the position has some freedom in determining how the problem could be resolved if normal past practice cannot be applied.” They further state that “there may be some judgement (level 2) in deciding which step to try first, but the analysis if any, is quite straightforward (level 2).” The Notes to Raters contrast Level 3 problem solving, stating that at such higher level, “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.” I am not convinced that solving the problem or answering the questions of when help is required and who can be appropriately called upon to offer such help reflects Level 3 Analysis and Problem Solving as addressed in the Manual. Similarly, the grievor’s role with respect to the podium, the withdrawn student and the students experiencing panic attacks reflect “straightforward” analysis or problem solving and not “the need to gather more information” to develop a solution as addressed by the Notes to Raters with respect to Level 3.

I have also considered the evidence regarding the grievor’s role in dealing with problems with volunteer note takers. I note first the grievor’s acknowledgement that over the past two years, such role has occupied approximately three hours each year. Leaving aside the College’s position that this is insufficient from a quantitative point of view to warrant an Occasional rating, I am of the view that the nature of the grievor’s work in this regard does not demonstrate Level 3 Analysis and Problem Solving. To the extent that the grievor assists special needs students in addressing problems encountered with note takers, the evidence leads me to accept the College’s characterization of this role as one of conveying expectations to volunteers with the hope that problems will resolve.

Situations and problems are fairly described as “easily identifiable” and the required analysis and problem solving is “straightforward.” I am not convinced that the fairly brief encounters described by the grievor reflect “further inquiry” to “precisely” define problems, or that the solution of such problems requires the “analysis and collection of information” as that is described in the Manual.

For all of the above reasons, I am unable to find that the position in issue here is required to occasionally engage in Level 3 Analysis and Problem Solving. The rating of this factor is therefore confirmed, and the grievance before me is denied. I thank the parties and their representatives for their assistance in these proceedings.

DATED at TORONTO this 20th day of June, 2011.

"M. Tims"

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Mary Lou Tims, Arbitrator