

IN THE MATTER OF THE ONTARIO *LABOUR RELATIONS ACT, 1995*

-and-

IN THE MATTER OF AN ARBITRATION

BETWEEN:

THE CORPORATION OF THE CITY OF LONDON
- the Employer

-and-

CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 107
- the Union

AND IN THE MATTER of a group grievance regarding the equipment operator 1 position

Arbitrator: Howard Snow

Appearances:

On behalf of the Employer:

James P. Barber	- Corporation Counsel
Ivar Andersen	- Associate Director of Operations
Sal Circelli	- Manager of Operations
Stephen Fletcher	- Human Resources Manager

On behalf of the Union:

Michael Klug	- Counsel
D. Wheeler	- President, Local 107
A. Bruff	- Vice-President, Local 107
B. Robinson	- Secretary, Local 107
E. Townshend	- Witness
L. Coughlin	- Grievor

Hearing held September 26 and 27, and October 16, 2002, in London, Ontario.

AWARD

I. INTRODUCTION

This grievance raised the issue of how the working conditions for equipment operator 1 employees who operate back hoes, excavators, graders, gradalls and bull dozers were assessed under the job evaluation system. The parties disagreed as to how "disagreeable" - and therefore how deserving of extra pay - were the working conditions for these employees.

II. THE EVIDENCE

In 1994 the Employer, the Corporation of the City of London, and the Union, the Canadian Union of Public Employees, Local 107, agreed upon a job evaluation system under which all bargaining unit jobs were to be assessed. The Joint Job Evaluation Committee - the Committee - worked over the next five years on this evaluation process.

The Committee solicited written input from both employees and their supervisors and conducted some interviews. The Committee engaged in discussion and generally reached consensus on a rating for each job. When a consensus was reached the Employer prepared a new job description based on the old job description, the information provided to the Committee about the jobs by the employees and their supervisors, and other available information. The new job description was then reviewed by the Committee to ensure that it was consistent with the available information and there was an opportunity for further discussion and reconsideration of the job rating. Consensus in the Committee was binding on the parties.

Equipment operator 1 employees operate heavy machinery. They are the only employees who operate back hoes, excavators, graders, gradalls, and bull dozers. However, there is

insufficient work on those machines to keep the equipment operator 1 employees fully occupied and so they are also assigned to operate other machines know as "equipment operator 2 machines".

In addition to the equipment operator 1 position, there is an "equipment operator 2" position and those employees operate equipment such as snow plows, sanders, tandem trucks, front end loaders, flushers, sweepers, vacuum trucks, mowers, slope mowers, rollers, stumpers, line markers, etc.

The Committee rated jobs on ten subfactors; the subfactor at issue here was "Subfactor 10 - Disagreeable Conditions" which "measures the type and frequency of disagreeable conditions under which an employee is required to carry out the job duties." The equipment operator 1 position was initially rated by the Committee as a 4 on "Subfactor 10 - Disagreeable Conditions". The Employer then prepared a job description which included a provision indicating that these employees would also be required to operate what is commonly referred to as equipment operator 2 machines (i.e. snow plows, sanders, tandem trucks, front end loaders, flushers, sweepers, vacuum trucks, mowers, slope mowers, rollers, stumpers, line markers, etc.). When the new job description was reviewed by the Committee, the members disagreed on whether the job merited a 4 rating or a 5 rating for disagreeable conditions.

As for the equipment operator 2 position, the Committee decided that it merited a rating of 5 on this disagreeable conditions subfactor.

This March 1999 grievance concerning the rating for "Subfactor 10 - Disagreeable Conditions" for the equipment operator 1 employees eventually came before me in this arbitration.

At the hearing, Eric Townshend who was a member of the Committee provided additional evidence about the work of the Committee. The Committee first evaluated several old job classifications. Later, about 1997 or 1998, the parties agreed to consolidate several jobs into what is now the equipment operator 1 position. Mr. Townshend testified the Committee relied upon the information provided by employees and supervisors, as well as the members' own knowledge of the jobs, in its initial evaluation.

I note that in the employees' written information provided to the Committee they generally indicated they were exposed continuously to adverse weather, noise, fumes, odours, etc. and also to health and accident risks.

Larry Coughlin is an equipment operator 1 who testified at the hearing. In recent summers he has operated an excavator as part of a road repair crew consisting of some sixteen employees, including another equipment operator 1 employee and eleven employees in the equipment operator 2 classification. In the winter he has usually operated a truck equipped as a snow plow or done other work using a truck. He said he operated equipment operator 2 machines about 5 months each year.

Mr. Coughlin said that in the summer on his road crew he is exposed to dirt and dust on a regular basis. He said that while a flusher is used to try and keep the dust down, it can't run all the time and does not prevent all the dust. He said that while his excavator had a cab it was necessary to keep the windows and sun roof open to watch for electrical wires above and to communicate with the rest of the crew and, with the cab open, he is exposed to fumes from his own excavator and from other equipment. In the summer his work is hot and in the winter it is cold. In the winter he said the snow plow scraping along the road was very noisy.

As for "health and accident hazards", Mr. Coughlin said in the summer there was regularly

the risk of hitting electrical or gas lines, and a danger of tipping his machine or sliding into a hole.

Mr. Coughlin said he had operated some, but not all, the operator 2 equipment while classed as an equipment operator 1.

Doug Wheeler, the President of the Union, testified that the first equipment operator 1 job description did not contain the reference to operating equipment operator 2 machines, and that none of the job descriptions for those classifications which have now been amalgamated into this new position had such a reference. The provision was added during the job evaluation process.

Scott Stafford is the Employer's Manager of Operations of Environmental Services/Traffic Operations. He supervises most of the employees in both the equipment operator 1 and equipment operator 2 job classifications. His evidence regarding the work of employees in the equipment operator 1 classification was largely consistent with that of Mr. Coughlin. He agreed that there were extremes of dust, dirt, noise and vibration in the grader, and minor health and safety concerns. The back hoe was similar to the grader, except that there was more vibration in the back hoe, especially when using an attachment to compact earth or another attachment to break through frozen ground. He said the gradall was similar except that it was not air conditioned. The excavator and bull dozer were similar to the back hoe.

Mr. Stafford then reviewed in detail the equipment operator 2 machines and compared the working conditions for the two job classifications. He agreed that the work on equipment operator 1 machines was as disagreeable in terms of "Subfactor 10 - Disagreeable Conditions" as was the work on the equipment operator 2 machines.

III. COLLECTIVE AGREEMENT PROVISIONS

The following are the key provisions of the parties' 1998-2000 collective agreement:

ARTICLE 7 - JOB EVALUATION FOR THE PURPOSES OF RECLASSIFICATION, REVISION OF POSITION AND NEW POSITIONS

7.1 Job Evaluation ratings and consequent wage classifications as determined through the comprehensive review shall be maintained in accordance with the provisions of the Job Evaluation Booklet. The Parties agree that the Job Evaluation Booklet forms part of the Collective Agreement between the Parties, notwithstanding the fact that it is published in separate booklet form.

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The following are the key provisions of the Job Evaluation Booklet which, by Section 7.1 of the agreement, form part of the collective agreement:

Terms of Reference and Manual CUPE Local 107 and the City of London Joint Job Evaluation Committee and Process

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I. Terms of Reference

The Joint Job Evaluation Committee (JJEC) will be comprised of four representatives from each of the Union and Management. . . .

The JJEC will operate by consensus. All decisions made by the JJEC within its mandate will be final and binding on the Parties. In the event that the JJEC cannot decide unanimously on any issue, the issue will be referred . . .

Either Party may thereafter refer outstanding matters to Arbitration . . . the Arbitrator shall decide the matter upon which the JJEC has been unable to agree . . . The jurisdiction of the Arbitrator shall be limited strictly to the matter in dispute as submitted by the Parties.

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GENDER NEUTRAL JOB EVALUATION MANUAL

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INTRODUCTION

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This Gender Neutral Job Evaluation Plan contains a rating manual which allows jobs to be placed in a proper relative order dependent upon their rated work. This rating manual is based upon four (4) main factors - Skills, Effort, Responsibility, and Working Conditions.

To ensure a complete and comprehensive rating manual, each factor has been subdivided into subfactors, ten in all. Each of these subfactors will measure the various compensable components that make up the jobs . . .

By measuring each of these compensable factors, and assigning a numerical value to them, this plan places a numerical value upon a job. The value is used for comparing jobs according to their relative worth. . . .

Factor Definitions and Notes to Raters are provided to assist Joint Job Evaluation Committee members, or raters, in understanding the subfactors. It is critically important to the rating process that the subfactors be clearly understood, interpreted and applied in a consistent manner. . . . Objectivity rather than subjectivity is required.

Raters should read each degree definition as a whole. In assigning degrees, raters should determine which definition provides the best fit or description of the job being evaluated.

It is fundamental to the task of job evaluation that the joint rating committee be aware that they are not rating an individual employee's performance. Job content information should be found within the job questionnaire, job description, interviews and work site visits.

In summary, the exercise of Job Evaluation measures the job as it currently exists. . . .

SUBFACTOR 10 - DISAGREEABLE CONDITIONS

Definition: This subfactor measures the type and frequency of disagreeable conditions under which an employee is required to carry out the job duties.

Notes to Raters:

1. Raters should consider the many and varied conditions that prevail in the workplace. The types of disagreeable conditions are as follows:

- Minor:
- a) Lesser conditions of dust, dirt, fumes, heat, cold, noxious odours, noise, vibration, poor lighting, inclement weather, poor ventilation, congested workspace, lack of privacy, travel.
 - b) Minor health and accident hazards including the possibility of lost time. Unsanitary client's residences.

Major: a) Extreme conditions of dust, dirt, fumes, heat, cold, noxious odours, noise, vibration, poor lighting, inclement weather, poor ventilation, travel.
b) Exposure to verbal and/or physical abuse, behaviourally difficult clients, etc.
c) Health and accident hazards of a serious nature involving lost time or which may result in partial or permanent disability.

2. Do not consider conditions which are recognized and provided for under the terms of the Collective Agreement (such as shift work, standby, call-in, overtime).
3. The frequency of exposure to undesirable working conditions must be related to work carried out on a regular basis throughout the year.

Little: Once in a while
Occasional: Once in a while, most days
Frequent: Several times on a daily basis, or at least four days per week.
Continuous: Almost all working hours (except coffee and meal breaks).

Degree

Degree Definition

- | | |
|---|---|
| 1 | Minor conditions with little exposure. |
| 2 | Minor conditions with occasional exposure;
or
Major conditions with little exposure. |
| 3 | Minor conditions of frequent exposure;
or
Major conditions of occasional exposure;
or
Multiple major conditions of little exposure. |
| 4 | Minor conditions of continuous exposure;
or
Major conditions of frequent exposure;
or
Multiple major conditions of occasional exposure. |
| 5 | Major conditions of continuous exposure;
or
Multiple major conditions of frequent exposure. |
| 6 | Multiple major conditions of continuous exposure. |

	Little	Occasional	Frequent	Continuous
Minor	1	2	3	4
Major	2	3	4	5
Multiple Major	3	4	5	6

IV. UNION POSITION

The Union submitted that the issue was whether the equipment operator 1 position should be rated as a 5 on Subfactor 10 - Disagreeable Conditions, or rated as a 4. Based on all the evidence which had been presented at the hearing, the Union submitted it was very difficult to deny that the rating should be at least a 5. While it said the evidence might support a rating of 6, the Union sought only a 5 rating.

Because the Committee was deadlocked and unable to reach agreement, it was the Union's position that there was no issue of deferring to a decision of the Committee; as arbitrator I should decide the issue based on all the evidence.

The Union said there was evidence that "major" disagreeable condition "a) Extreme conditions of dust, dirt, fumes, heat, cold, noxious odours, noise, vibration, poor lighting, inclement weather, poor ventilation, travel" was present on a continuous basis and thus the first of the two possible "degree definitions" for "degree 5" was met. Alternatively, if "major" disagreeable condition "a)" was not continuous but only frequent, the evidence indicated that there were frequent health and accident hazards under "major" disagreeable condition "c)" and that, together with frequent exposure under major condition a), meant the alternative definition for a rating of 5 was met.

The Union also submitted that the first time the Committee considered this position it did not consider the work the employees did on equipment operator 2 machines. The original

decision was based solely on the employees' work on equipment operator 1 machines. When the Employer revised the equipment operator 1 job description it became clear that the equipment operator 1 employees were also required to operate equipment operator 2 machinery. The evidence indicated the work on equipment operator 2 machines was a significant part of these employees' work. The equipment operator 2 position was rated as a 5 on this "disagreeable conditions" subfactor and these employees should have the same rating for their work on the same machines. In addition, the evidence indicated the conditions for equipment operators 1 using operator 1 machines were as disagreeable as the conditions of work for employees working on operator 2 machines, thus indicating that a final rating of 5 was also warranted for the equipment operator 1 position.

V. EMPLOYER POSITION

The Employer said the Committee had been very successful in rating positions and only this one subfactor "disagreeable conditions" for this one classification was left to be decided by arbitration. The Committee had originally concluded that a rating of 4 was appropriate. Following the revision of the job description, the issue of the rating on this subfactor came back to the Committee. The Committee split on the issue of whether the inclusion of equipment operator 2 machinery in the equipment operator 1 job description justified changing the rating from a 4 to a 5. It was the Employer's position that, after reviewing the evidence, I should adopt the Committee's initial decision.

The Employer agreed that there were disagreeable conditions faced by equipment operator 1 employees. The equipment operator 1 employees faced some extremes under "major" disagreeable condition "a)" but many of those extremes were mitigated by heated and air conditioned cabs. Those extremes were thus not continuous.

The employees also faced health and accident hazards but, while those might be encountered frequently, they were not continuous.

In comparison, equipment operator 2 employees faced more disagreeable conditions. While equipment operator 1 employees were usually in the cabs of their vehicles, equipment operator 2 employees were required to operate mowers which had no cabs. The fact that equipment operator 2 employees were outside on the mowers in the elements justified a higher rating for those employees.

In summary, the Employer asked me to find that equipment operator 1 employees should receive a rating of 4 on "Subfactor 10 - Disagreeable Conditions", rather than 5. While accepting that I had to reach a decision as to where this position fell, the Employer submitted that "degree 5" was not met on the evidence.

The Employer referred to the following: *Boeing Canada Technology Ltd. & CAW-Canada, Local 2169* [2001] M.G.A.D. No. 61 (Hamilton); *Coast Mountain Bus Co. v. Office and Professional Employees International Union, Local 378* [2000] B.C.C.A.A.A. No. 442 (Sigurdson); and *Kamploops (City) v. Canadian Union of Public Employees, Local 900* [1993] B.C.C.A.A.A. No. 220 (Ready).

VI. CONCLUSIONS

The parties have agreed upon a comprehensive plan for evaluating jobs and pay rates are based upon those evaluations. The Committee which performed those job evaluations in the late 1990's did an excellent job. The Committee evaluated approximately 65-70 job classifications using 10 subfactors for each job and reached consensus on every subfactor for every job with one exception - the disagreeable conditions subfactor for these equipment

operators.

The Employer suggested that I should defer to the Committee's decision. As arbitrator I might be inclined to defer to a final decision of such a Committee if there was such a decision. But in this case, although the Committee initially reached a decision on this disagreeable conditions subfactor, once it received the Employer's revised job description, it was unable to reach a consensus. The initial decision was based on an old and now inaccurate job description and there is thus no Committee decision to which I might reasonably defer.

Instead it is necessary to review the evidence and decide which of the definitions for disagreeable working conditions is most suitable. It is clear that as arbitrator I should follow the approach mandated for the Committee and other raters and apply the subfactors with "objectivity", reading "each degree definition as a whole" to "determine which definition provides the best fit or description of the job" (see Job Evaluation Booklet, Introduction, *supra*).

The types of disagreeable conditions are described in subfactor 10. In "major disagreeable condition a)" not all the listed factors (i.e., extreme conditions of dust, dirt, fumes, heat, cold, noxious odours, noise, vibration, poor lighting, inclement weather, poor ventilation, travel) must arise at one time. Clearly employees will not be faced with extreme conditions of both heat and cold at the same time. Instead employees need only to be faced with extreme conditions of one or more of these listed matters to qualify under "major condition a)".

Similarly I would note that while the major condition a) begins with "extreme" conditions, that word must be considered, as the Job Evaluation Booklet says, with "objectivity". While I acknowledge that there are other communities with worse weather, communities that are,

for example, hotter in the summer and colder in the winter, that alone should not mean that employees working outdoors in London cannot also experience extremes of either heat or cold. Similarly the mere fact that there may be other jobs which involve more vibration, or worse fumes, does not mean these employees are not experiencing extremes.

The evidence of the various witnesses, both Union and Employer, regarding the working conditions of equipment operator 1 employees was consistent.

Equipment operator 1 employees operate heavy equipment. They do so frequently on what are thought of as construction sites, involving sewer repairs, road repairs, etc. Their work is largely outdoors and may be conducted at any time of the day or night. Many of the summer jobs involve dirt and dust. In addition, fumes and noxious odours are present in, for example, road and sewer work, with the fumes from their own and other machines, from asphalt, from open sewer lines, etc., entering the cabs. In the summer, the employees are frequently subjected to 30 degrees C. heat. While most of the equipment has a cab, much of the time the operator works with other employees and must keep the window(s) open in order to communicate with those other employees and be better able to see safety hazards. In the winter the employees are subjected to below freezing temperatures. Snow plowing is generally done in cold and snowy conditions which would qualify as an extreme of inclement weather. The work plowing snow is also very noisy as the blade scrapes along the road.

I conclude that these employees face extreme conditions of heat and cold, of dirt and dust, of noise, fumes, etc. under major factor a). On the days during which there are no extremes of heat or cold, these employees are nevertheless exposed to extremes of fumes or odours, or to dirt or dust, or to vibrations or noise, etc. While their particular working conditions change from day to day, the employees face different extreme conditions under this factor throughout the entire year. While the fumes and odours are worse in the summer, the

inclement weather, the noise and the vibrations are worse in the winter. Although the conditions vary during the year and from hour to hour, the equipment operator 1 employees experience extreme conditions listed under "Major: a)" during most of their working hours. As the agreement describes "continuous" exposure as "Almost all working hours (except coffee and meal breaks.", I find that these employees face extremes of those disagreeable conditions listed in "Major: a)" on a "continuous" basis.

As "major disagreeable condition a)" is present on a continuous basis, the equipment operator 1 position would merit a 5 rating under disagreeable conditions for "Major conditions of continuous exposure". That conclusion is enough to deal with the grievance. However, the Job Evaluation Booklet suggests that I should choose the definition that best suits the situation and I will thus consider other factors to determine whether another definition might be more suitable.

Regarding "major condition b)", there was evidence that some employees face verbal abuse from, for example, residents who are unhappy with having their roads or sewers torn up in the summer, or are unhappy with having their driveway plowed full of snow in the winter. However, I find that this happens, in the language of the subfactor 10, only "once in a while" providing "little" exposure.

Turning now to the evidence regarding "major condition c)", health and accident hazards, an employee operating a back hoe or excavator is often working near buried or overhead electrical wires, or buried gas lines. There was agreement from all witnesses that there were serious dangers to employees from hitting these lines. In addition, the machines are often involved in digging holes and there is a danger of the machine sliding into the hole, or the machine simply tipping over. There was evidence regarding concern that the gradall might tip over and evidence that a grader had, in fact, hit a water shut off valve and tipped over a

few years ago. In addition, there was evidence that operating these machines may cause the operator back and wrists problems, but that evidence was general in nature.

Because of the work near electrical and gas lines, I would conclude that, while some equipment operator 1 employees are exposed on a frequent basis to serious health and accident hazards, other employees are exposed less often. On balance I conclude the equipment operator 1 employees, as a group, are exposed to serious health and accident hazards once in a while most days, providing only "occasional" exposure.

Based on a review of the three types of "major" conditions, the first definition under degree 5 - "Major conditions of continuous exposure" - is most appropriate. I thus find that the equipment operator 1 employees are entitled to a rating of 5 on "Subfactor 10 - Disagreeable Conditions".

There is an alternative basis upon which I reach the same conclusion. I note that the equipment operator 1 employees spend considerable time operating equipment operator 2 equipment. The witnesses estimated that as much as 50% of the work of equipment operator 1 employees was done on equipment operator 2 machines. The Committee rated the equipment operator 2 position as meriting a 5 on this subfactor. Labour arbitrators have long held that employees covered by a collective agreement should be treated fairly. In this instance, consistency and fairness in the treatment of the employees would require that the same rating, a 5, should be awarded to all employees in both job classifications doing that same work on the same machines.

As for the work which equipment operator 1 employees do on their own equipment - operator 1 machines - the evidence was that the working conditions on the operator 1 machines were similar to the working conditions on the operator 2 machines. Mr. Stafford, the Employer's

sole witness, agreed that there was no basis for saying the working conditions for the equipment operator 2 employees were more disagreeable than those for the equipment operator 1 employees. Mr. Coughlin, an equipment operator 1 employee, gave evidence which was consistent with Mr. Stafford's evidence on this point. Accepting that the equipment operator 1 work is as disagreeable as equipment operator 2 work, and that equipment operator 2 work merited a 5 on the disagreeable conditions subfactor, leads to the conclusion that the rating for the equipment operator 1 classification should also be a 5.

Finally, I note that the Employer submitted that the difference in ratings between the two job classifications could be explained by the fact that some of the equipment operator 2 employees worked in the summer on lawn mowers which were open to the elements. I reject this conclusion for three related reasons. First, operator 1 employees can be assigned to operate any of the operator 2 equipment and can thus be assigned to operate these mowers. While the evidence suggested that in recent years equipment operator 1 employees had not been assigned to operate these mowers, there is no basis for excluding this work from consideration of the conditions for equipment operator 1 employees. Secondly, the evidence did not show that the conditions on the mowers were worse than the conditions on the other equipment. It appeared that the open mowers were used in mowing parks, boulevards and other grassy areas and, while the mowers were open to the elements, it was not clear that the conditions were appreciably worse so as to justify a different rating on this subfactor for all equipment operator 2 employees. Finally, there was no evidence to suggest that the Committee relied on this point in its deliberations to lead it to award a rating of 5 for equipment operator 2 employees.

In summary, I find that the best rating for the equipment operator 1 job classification for "Subfactor 10 - Disagreeable Conditions" is 5 because the employees are exposed to "major disagreeable conditions a)" on a "continuous" basis.

I remain seised to deal with any issues which may arise in implementing this award.

Dated in London, Ontario this 14th day of November, 2002.

Howard Snow, Arbitrator