

BEFORE THE ARBITRATOR

In the Matter of the Arbitration
of a Dispute Between

LOCAL 150, SERVICE EMPLOYEES
INTERNATIONAL UNION, AFL-CIO, CLC

and

MERITER HOSPITAL, INC.

Case 74
No. 51804
A-5307

Appearances:

Mr. Steven J. Cupery, Assistant to the President, Local 150, Service Employees International Union, AFL-CIO, CLC, 6427 West Capitol Drive, Milwaukee, Wisconsin 53216, appearing on behalf of the Union.

Axley Bryneslon, Attorneys at Law, 2 East Mifflin Street, P. O. Box 1767, Madison, Wisconsin 53701-1767, by Mr. Michael J. Westcott, appearing on behalf of the Employer.

ARBITRATION AWARD

Local 150, Service Employees International Union, AFL-CIO, CLC, hereafter the Union, and Meriter Hospital, Inc., hereafter the Employer or Hospital, are parties to a collective bargaining agreement which provides for the final and binding arbitration of grievances. The Union, with the concurrence of the Employer, requested the Wisconsin Employment Relations Commission to appoint a staff member as a single, impartial arbitrator to resolve the instant grievance. Hearing was held on August 24 and October 5, 1995, in Madison, Wisconsin. The hearing was transcribed and the record was closed on January 2, 1996, upon receipt of post-hearing written argument.

ISSUE:

The Employer frames the issue as follows:

Whether the Employer's classification of the Painter position at pay class 71 is unreasonable?

If so, what is the appropriate remedy?

The Union frames the issue as follows:

Whether the Employer's classification of the Painter position at pay class 71 violates the collective bargaining agreement?

If so, what is the appropriate remedy?

The undersigned adopts the following statement of the issue:

Did the Employer violate the collective bargaining agreement by continuing to place the position of Painter in pay class 71?

If so, what is the appropriate remedy?

RELEVANT CONTRACT LANGUAGE:

ARTICLE III. EMPLOYER RIGHTS

Section 1. Scope

The parties recognize that this contract addresses the employer-employee relationship existing between the Hospital and its employees in the collective bargaining unit represented by the Union, and that the rights and duties between them in their relationship are those of employer and employee.

It is agreed that, except as otherwise expressly limited by this Agreement, the management of the Hospital and the direction of the work force including, by way of example and not by way of limitation, the right to select, hire and assign employees, promulgate and enforce reasonable rules and regulations it considers necessary or advisable for the safe, orderly and efficient operation of the Hospital, direct and assign work, determine work schedules, transfer employees between jobs or departments or sites, fairly evaluate relative skill, ability, performance or other job qualifications, introduce new work methods, equipment and processes, determine and establish fair and equitable work

standards, select and implement the manner by which the Hospital's goals and objectives are to be attained, and to discharge employees for just cause or relieve employees from duty for lack of work or other legitimate reasons are vested exclusively with the Hospital, but this provision shall be construed to harmonize with and not to violate other provisions of this Agreement.

It is further understood that all functions of management not otherwise herein relinquished or limited shall remain vested in the Hospital.

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ARTICLE IV. JOB CLASSIFICATIONS AND JOB DESCRIPTIONS

Section 1. Description Revisions and Establishing New Jobs

The jobs of Hospital employees are presently defined in existing job descriptions and/or position questionnaires. It is agreed that in order to maintain the flexibility of the health care delivery function, such jobs may be revised by the Hospital to conform to current operating conditions. Such changes, however, will be discussed prior to implementation, with a representative of the union or the union segment president and one chief steward and at least one person selected by the union from the affected classification. Final approval of job descriptions and/or position questionnaires rest with management. Job descriptions and position questionnaires shall accurately describe the work performed. However, the right to final approval shall not be used to unilaterally develop job descriptions without conferring with the union.

The Union may also request that a new job description and/or position questionnaire be prepared if substantive changes have occurred within the job during the term of this Agreement. Nothing shall prevent the Union and Management from mutually agreeing to review substantive changes occurring outside of the term of this Agreement. Union requests must be submitted in writing to the Personnel department, stating the reasons which, in the Union's opinion, warrant the change(s) within (30) calendar days from the date that the substantive changes have been incorporated into the expectations of the job or the time the Union knew or should have

known of the changes. If Personnel determines that the job changes are substantive, the appropriate department will, within sixty (60) calendar days, rewrite the job description/position questionnaire. (Disputes arising as to whether substantive changes(s) have occurred may be submitted to the grievance procedure of this Agreement). The rewritten Position Questionnaire will be reviewed by Meriter's Job Evaluation Committee within thirty (30) calendar days from the date that the newly revised Position Questionnaire is completed by the Department. The results of the Job Evaluation Committee will be communicated to the employees in the reevaluated position and the Union Segment President, and any appropriate wage adjustments will be implemented within thirty (30) calendar days from the reclassification by the Job Evaluation Committee (per Article VI, Section 3. C. of this Agreement).

The classification for the accepted job description and/or position questionnaire will be based on the systematic analysis used by the Hospital in the evaluation of such jobs. One employee selected by the Union from the affected job title and an unpaid Union representative may participate in presenting the revised job description and/or position questionnaire to the Job Evaluation Committee. Jobs and classifications, when agreed upon by both parties, will be recognized as a part of the contract.

Job classifications that are not mutually agreed upon will be classified by the Hospital with the provision that any grievance with respect to their classification may be taken up through the regular grievance procedure hereinafter established.

Wage grades for job classifications in effect upon completion of this agreement shall remain through the life of this contract subject to change only where significant alteration of duties warrants such grade change through the procedure outlined above.

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ARTICLE VI. EMPLOYMENT STATUS

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Section 3. Promotions and Transfers Within the Bargaining Unit

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C. Reclassification

If the duties of a job title have changed sufficiently such that upon review of the Job Evaluation Committee, the position is reclassified into a higher payclass, the incumbents in that job title will be moved into the new payclass at their current years of service step. If the position is reclassified into a lower payclass, the incumbents will be slotted into their new payclass at the longevity step closest to their rate of pay. However, if the decrease would be substantial, pay will be red circled.

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ARTICLE XXIV. GRIEVANCE AND COMPLAINT PROCEDURE

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Section 3. Arbitration

If the matter is not settled in Step 3 or Step 4, the grievance may be submitted to arbitration upon written request of either party delivered to the other within ten (10) working days of the Step 3 response or mediation meeting if one was held. Should the matter go to arbitration, the party desiring arbitration shall request the Wisconsin Employment Commission (sic) (WERC) to appoint a staff member of the WERC to serve as arbitrator for the dispute.

A. Limitations

The arbitrator shall not have the power to add, modify, or change any of the provisions of this Agreement. Not more than one (1) grievance at a time may be submitted to an arbitrator, unless mutually agreed upon by the parties. The arbitrator's decision shall be final and binding on both parties.

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BACKGROUND:

On March 21, 1994, during the negotiation of the current collective bargaining agreement, the parties executed a Side Letter which contains the following:

The Hospital and Union agree that the Union may utilize the job evaluation process set forth in Article IV, Section 1 of the collective bargaining agreement with respect to the following positions:

Nursing Assistant I
Nursing Assistant II
Painters

Any reclassification that results (be it an increase or a decrease) will be effective on the first payroll period following the final determination of the evaluation committee. The Union will not, in the future, negotiate reclassifications of positions but will resort to the procedures set forth in Article IV, Section 1 of the collective bargaining agreement.

After reviewing the Painter position, the Job Evaluation Committee concluded that the position would be awarded 297 points and rated at payclass 71, the same as when it was last evaluated in 1990. Thereafter, the Union filed the instant grievance alleging that the classification decision was inaccurate.

The Employer's Job Evaluation Committee evaluates bargaining unit positions and classifies them according to a Job Rating Plan, referred to as the "tool." The tool measures Skill, Effort, Responsibility, and Job Conditions against the definitions in the plan. Skill is measured by the factors of Education, Experience and Mental Skills. Effort is measured by the factors of Physical Requirements and Mental and Visual Requirements. Responsibility is measured by the factors of Equipment or Process, Material or Product, Safety of Others and Work of Others. Job Conditions is measured by the factors of Working Conditions and Unavoidable Hazards.

The tool recognizes that each factor is present in various degrees. Each degree is weighted, i.e., accorded "points." The position is placed in the payclass which corresponds to the total number of "points" awarded by the Job Evaluation Committee.

At the time of hearing, the following factors and degrees were in dispute:

Management's Union's

	<u>Degrees</u>	<u>Degrees</u>
SKILL		
Education	3	4
Experience	4	5
Mental	3	4
EFFORT		
Mental and Visual Requirements	3	4
RESPONSIBILITY		
Safety of Others	2	3
JOB CONDITIONS		
Unavoidable Hazards	2	3

POSITIONS OF THE PARTIES

Union

The Employer violated the terms of the collective bargaining agreement by failing to systematically evaluate the Painter position and, thus, it is appropriate to resolve this dispute through the grievance procedure. The side letter of agreement, submitting this position to the contractual grievance arbitration procedure, is unambiguous. Since the contractual grievance procedure does not provide for a reasonableness test, the Union's statement of the issue is more appropriate.

Education or Trade Knowledge

The minimum education requirement of the Painter position is high school or GED, or equivalent, as well as a Painter apprenticeship or equivalent. The four year Painter apprenticeship requirement is confirmed by the testimony of Supervisor Len Biggs. This factor is appropriately ranked at the Fourth Degree.

Although there is some discrepancy in the record, it appears that the August, 1990 document was the position questionnaire used to previously evaluate the Painter position. Although this document contains a different and lesser educational requirement than the 1994

standard, the rating was not changed to reflect the new, higher standard.

The Employer has indicated that the process of "sore thumbing" is taken into consideration by the Committee and that, if the difference between degrees were close, the Committee would look at other positions in the Department to insure consistency in the application of the evaluation tool. The Cabinet Maker position, which has a minimum education requirement of a high school graduate or equivalent, is rated at the Fourth Degree.

Experience

Under the current Painter position questionnaire, the minimum previous experience requirement is five to six years. While the position questionnaire states that there is also an additional six-week "break-in" time, the testimony demonstrates that a newly hired Painter cannot perform the required work without significant additional training in the Employer's protocols and procedures.

The Cabinet Maker position requires three to four years' prior experience and a six week "break-in" period; the Mechanic 4 position requires four years of prior experience and a six to nine month "break-in" period; the Electrician 1 position requires four years' prior experience and a six-month "break-in" period; and the Electrician 2 requires four years' prior experience and a six to nine month "break-in" period. Although these positions require less experience and, in some cases, require less "break-in" time, these positions are rated at the Fourth Degree.

The fact that no other bargaining unit position is rated at the Fifth Degree does not mean that it is not appropriate to rate the Painter at the Fifth Degree. This factor is appropriately ranked at the Fifth Degree.

Mental Skills

The 1994 position questionnaire, unlike the 1990 position questionnaire, contains the requirement that Painters coordinate their work with outside contractors. At the time of the 1990 position questionnaire, the Painters did not use multi-spec paint.

Painters determine which product will provide the appropriate finish; determine the appropriate method to apply the product, including the appropriate application tool; adjust techniques to respond to variables, such as atmospheric conditions; coordinate their work with outside contractors to ensure that the work is performed in the appropriate sequence; coordinate their work with other employees to ensure that the work does not interfere with patient care; and keep abreast of changes in technology. Painters perform complex work in the absence of standard practices or clear precedents. The work of the Painter meets the requirements of "must work with

minimal direction from department staff to accomplish a project for a specific department or usage."

Cabinet Makers are rated at the Fourth Degree. The Cabinet Maker position questionnaire and the Painter position questionnaire exhibit a similarity in the factor of Mental Skill, except that the Painters are required to coordinate their work with outside contractors. This factor is appropriately rated at the Fourth Degree.

Mental and Visual

Painters are required to read and follow blueprints, the Employer's Engineering Services Accountabilities and Standards for Painters, and schedules. Painters are required to monitor inventory; use materials and time efficiently; inspect their work, as well as the work of others, to ensure compliance with quality standards; analyze complicated problems; develop solutions to complicated problems; and implement these solutions. Painters exercise independent judgment and perform a variety of tasks which require close visual attention to detail.

Painters, unlike Cabinet Makers, are required to assist in the punch list. Arguably, the Painter, like the Cabinet Maker, is required to use drawings 15 percent of the time and each is required to make efficient use of material and to keep records for follow-up documentation. The Cabinet Maker is rated at the Fourth Degree for mental and visual requirements, and so should the Painter.

Safety of Others

When working in the lock down psych unit, the Painter cannot leave equipment unattended and must practice care because a patient could use equipment, such as a razor blade, to cause injury to the patient or others. When choosing materials and applying materials, the Painter must exercise care to avoid materials which cause noxious odors and respiratory problems. A Painter must exercise care when setting up scaffolds or ladders, working in stairwells or on ladders and scaffolds, laying drop cloths in hallways, and using equipment such as roller poles and the airless spray painting system.

If the airless spray were to penetrate skin, it could cause serious injury, which, in some cases, could lead to amputation. Airless spray painting was not present in the 1990 position questionnaire. The appropriate rating is the Third Degree.

Unavoidable Hazards

The airless sprayer, which was introduced after 1990, adds to the list of existing unavoidable hazards, e.g., asbestos and lead dust, noxious fumes, cuts, burns, falling from ladders and scaffolding, and crushed hands. Lead has been found to have toxic effects on both the central and peripheral nervous system.

A Painter cannot identify asbestos by sight and there has not been any extensive testing of plaster, calk, joint compounds, or wallboard in the Hospital. Although the Hospital did provide two hours of training, describing areas most likely to contain asbestos, this training did not provide information on procedures to follow when encountering asbestos, protective devices or clothing, or

monitoring requirements.

Although Don Morschauser was provided with a HEPA mask on one occasion, he does not believe such a mask is readily available and has never been informed of any requirement to use protective equipment or clothing. The appropriate rating is higher than the Second Degree, with the Third Degree being the most appropriate rating.

Conclusion

The Employer violated Article IV, Section 1, by failing to use the agreed-upon systematic analysis in an appropriate manner. The Painters should be awarded pay class 80 and made whole retroactively to September 12, 1994. The arbitrator should retain jurisdiction in this matter for sixty calendar days to resolve any issues as to remedy.

Employer

Article IV, Section 1 provides that a position will not be reclassified unless there has been a significant alteration of duties during the term of the collective bargaining agreement. Since the record fails to establish that there has been such an alteration of duties, the rating of pay class 71, reached during the previous evaluation, must stand.

Education or Trade Knowledge

Education or trade knowledge, along with experience, is a factor which represents the normal minimum requirements necessary for satisfactory performance on the job. Comparing the Third and Fourth Degree, the primary differences are complexity of drawings and specifications and mathematics applied in the job, along with the nature of the measuring instruments used in the performance of the job.

Assuming Morschauser's training is representative of that which is required for the job, it fits into the two to three years of trades training referenced in the Third Degree because, as he acknowledged at hearing, only three years of training were in the "book course" at the apprenticeship center. The testimony of James Rothfuss establishes that (1) there was no information provided to the Committee that advanced job mathematics, a full understanding of complicated drawings, or a variety of precision measuring devices were required to perform the work of the Painter and (2) that the Committee was not informed that there were any changes since 1990 with respect to the nature of the apprenticeship program or the education required for the position. It is not evident that the Employer has acted unreasonably or violated any provision of the collective bargaining agreement by maintaining the rating of the Third Degree.

Experience

The factor of Experience measures essentially two things, i.e., previous experience required before one will be hired and "break-in" time, defined by the tool as ". . . time spent under competent supervision in continuous and intensive training on the job." The minimum prior experience required for the position is five to six years, which can be fairly interpreted as a minimum of five years. The position questionnaire states the break-in time is six weeks.

Morschauer's testimony demonstrates that break-in time, as that term is defined in the job evaluation tool, is not required for the Painter position. When Painters come onto the job they know how to paint; they only need to be shown where to go and how to proceed with the work. As Rothfuss testified, the Committee was not provided with information that any intensive and continuing training on the job was required. No bargaining unit position is rated at the Fifth Degree. It is not evident that the Employer has acted unreasonably or violated any provision of the collective bargaining agreement by maintaining the rating of the Fourth Degree.

Mental Skill

Mental skills, one of three factors used to measure skill, measures independent action, use of judgment, the degree of decision-making and the use of originality, planning and foresight by the employe. When measuring these criteria, the tool takes into consideration the complexity of the duties and the extent the work is circumscribed by either precedent or standard practices and procedures.

The primary difference between Third Degree and Fourth Degree is the amount of independent direction and judgment required by the job. Morschauer's testimony demonstrates that his judgment in selecting and using available equipment and tools fits within the Third Degree. For example, with respect to the cafeteria chairs, his decision-making involved choosing one of three methods of spray painting, i.e., conventional air, HVLP or airless. Once the method of spray painting was selected, he determined how the chairs would be held while being sprayed and, thereafter, spent four or five weeks simply spraying on paint. His decision-making with respect to the application of multi-spec paint involved calling people, such as paint and spray gun manufacturers, for advice on how best to apply the paint. These activities did not involve the complicated assignments or difficult decisions which are the hallmark of the Fourth Degree.

Rothfuss' uncontradicted testimony demonstrates that the coordination of work with other employes is not a factor which is measured by the mental skills category and has never been considered when rating any bargaining unit position. The Committee was not advised that there were any new or additional duties. The planning and judgment involved in Painter work does not rise to the level of the Fourth Degree. The factor is appropriately rated at the Third Degree.

Mental and Visual Requirements

This factor evaluates the application of mental and visual skills in terms of duration and intensity. The primary differences between the Third Degree and the Fourth Degree is the extent of the mental and visual requirements.

Painters, at times, perform acts requiring mental dexterity, but it is not required at all times or even the majority of the time. It is not evident that mental concentration is continuously required in addition to visual attention.

The Committee did not receive any information that the mental and visual requirements of the job were any greater than when the position was last rated. The visual attention required of Painters is consistent with the Third Degree.

Responsibility for Safety of Others

The responsibility for safety of others evaluates the degree of an employe's responsibility for exercising care in performing his or her work in order to prevent physical harm to others. The primary differences between the Second and Third Degrees are the extent of responsibilities; extent of injuries; and the opportunity for other individuals to act to avoid injury. It is not evident that, during the term of the collective bargaining agreement, or during the term of the predecessor collective bargaining agreement, there was any significant change in Painter equipment.

The primary safety concern raised by the Painters is that the airless sprayer may inject paint into skin. The Union ignores the fact that the tool gives consideration to the probability of an injury. Given the infrequency of the use of the airless sprayer and the ability of Painters to take precautionary measures, the probability of injury is low and, in fact, there has never been such an injury at Meriter.

Painters could injure others when using scaffolding, ladders, drop cloths, and roller poles. It is not evident that injuries resulting from the failure to exercise care with this equipment would cause injuries more severe than cuts, abrasions, bruises or minor burns and sprains. The factor is appropriately rated at the Second Degree.

Unavoidable Hazards

Unavoidable hazards are those which remain although all safety precautions are observed and all safety devices are fully operative. These hazards are evaluated upon probable extent of injury and the probability of injury.

Morschauser identified asbestos, lead dust, noxious fumes, cuts, injections, burns, chemical burns, falling, broken bones and smashed hands as unavoidable hazards. Painters have protective equipment, such as goggles, gloves, clothing and masks, which may be used when there is a concern about exposure to fumes or chemicals.

If Morschauser, who has received asbestos awareness training from the Hospital, has a concern that asbestos may be present in a work area, then he needs to advise management of his concern. Management will then arrange to have the work area sampled. If asbestos is present in a friable form, then the Hospital is required to have the asbestos removed by a registered contractor. If asbestos is present in a non-friable form, then employees can proceed with their work as long as they are encapsulating the asbestos.

Painters do not apply any paint that contains lead. As Morschauser testified, if he suspects that lead may be present in an existing surface, then he wears a paper suit and goggles provided by the Hospital. The Hospital has provided training on lead and lead testing kits are available to Painters. If lead were found, management would determine whether or not the paint would be disturbed. If the area needed extensive preparation, then the work would be contracted out. If extensive preparation were not needed, then the Painter could proceed using a HEPA mask.

It is not evident that any Painter has been exposed to asbestos in a friable state or lead at the Hospital. Nor is it evident that any Painter has suffered an injection injury.

The Union has failed to demonstrate that injuries resulting from accidents would generally be more severe than cuts, abrasions, punctures, bruises and minor burns or sprains. The factor is appropriately rated at the Second Degree.

Conclusion

The contract does not provide for "interest arbitration" of classification disputes. The arbitrator does not have authority to substitute her judgment for that of the Hospital, but rather, is limited to a determination of whether or not the Hospital has acted arbitrarily or capriciously. The Union unfairly attempts to attack the rating by relying on evidence that was never presented to the Job Evaluation Committee.

The Union has failed to meet its burden of proving that the Hospital's classification of the Painter position as a pay class 71 is unreasonable. The grievance must be denied.

DISCUSSION:

In the Side Letter of March 21, 1994, the parties agreed that the Union could "utilize the job evaluation process set forth in Article IV, Section 1," to seek a reclassification of the Painter position. The parties further agreed that future classification disputes were to be resolved through the "procedures set forth in Article IV, Section 1 of the collective bargaining agreement."

By submitting the instant dispute to "the job evaluation process set forth in Article IV, Section 1, of the collective bargaining agreement" and future disputes to "the procedures set forth in Article IV, Section 1, of the collective bargaining agreement," the parties demonstrated an intent to remove the Painter classification dispute from the classification procedure set forth in Article IV, Section 1, and to submit the Painter classification dispute to a new procedure which incorporates some, but not all, of the provisions of Article IV, Section 1.

The job evaluation process of Article IV, Section 1, involves the following: the Employer presents a rewritten position questionnaire, accurately describing the work performed, to the Job Evaluation Committee; one employe selected by the Union from the affected job title and a Union representative have the right to participate in this presentation; the Job Evaluation Committee classifies the rewritten position questionnaire based upon the "systematic analysis used by the Hospital in the evaluation of such jobs"; jobs and classifications agreed upon by both parties become part of the contract; and job classifications not mutually agreed upon may be grieved through the regular grievance procedure.

Since the "job evaluation process set forth in Article IV, Section 1," provides that "any grievance" on the classification "may be taken" to the contractual grievance procedure, the undersigned is satisfied that the instant grievance is arbitrable.

Under the "job evaluation process set forth in Article IV, Section 1," the Job Evaluation Committee, and not the arbitrator, has the contractual authority to classify positions. The Job Evaluation Committee, however, does not have an unfettered right to classify positions. Rather, the Job Evaluation Committee is required to base the classification on the "systematic analysis used by the Hospital in the evaluation of such jobs."

Given the contractual authority of the Job Evaluation Committee, the undersigned is persuaded that arbitral review is limited to a determination of whether or not the classification of the Job Evaluation Committee is based upon "the systematic analysis used by the Hospital in the evaluation of such jobs." If there has been compliance with the agreed-upon evaluation procedures and the classification decision reasonably flows from the evidence produced by following these procedures, then the decision of the Job Evaluation Committee must be upheld.

Compliance With Agreed Upon Procedures

Don Morschauer, the employe selected by the Union to present the rewritten position

questionnaire to the Job Evaluation Committee, and the management representatives responsible for rewriting the position questionnaire agreed upon the rewritten position questionnaire that was submitted to the Job Evaluation Committee. 1/ The Union did not object to the rewritten position questionnaire when it was presented to the Job Evaluation Committee. 2/ The Job Evaluation Committee did not modify this position questionnaire. The undersigned is satisfied that the position questionnaire presented to the Job Evaluation Committee accurately described the work performed.

When the rewritten position questionnaire was presented to the Job Evaluation Committee, the Union representative and Morschauser were restricted to a presentation of no more than thirty minutes. This restriction was imposed by the Employer because the Employer had scheduled presentations on other reclassification requests.

To give effect to the right to participate in the presentation of the rewritten position questionnaire, the Employer must provide the Union and the selected representative employe with an opportunity to provide relevant evidence. If the thirty minute time limit had prevented the Union and Morschauser from presenting relevant information to the Job Evaluation Committee, then one could reasonably conclude that the Employer had not complied with the agreed-upon procedures for evaluating the Painter classification. It is not evident, however, that the time limitation precluded the Union, or Morschauser, from presenting relevant information. 3/

In "the job evaluation process," the Job Evaluation Committee obtains information from the rewritten position questionnaire, as well as from employes, Union representatives, or management representatives who present at the hearing. 4/ As the Job Evaluation Committee deems necessary, it may seek additional information from managers or employes. The Job Evaluation Committee determines a classification by applying the classification tool to information

1/ Testimony of Don Morschauser. T. II at 145.

2/ Testimony of Union Segment President Kathy Ellingson. Tr. I at 68.

3/ At hearing, Morschauser stated that he could have provided additional information to the Job Evaluation Committee, but did not do so because he understood that he and the Union were to limit the presentation to thirty minutes. Since the record does not reveal the nature of this additional information, the undersigned does not know whether or not the information is relevant.

4/ At hearing, the Union introduced various documents relating to lead and asbestos which were not presented to the Job Evaluation Committee. The Union does not argue, and the record does not demonstrate, that the Employer precluded the Union from presenting this information to the Job Evaluation Committee. If the Union wished these documents to be considered, then it was incumbent upon the Union to present the documents to the Job Evaluation Committee in a timely manner.

obtained in "the job evaluation process." The undersigned is satisfied that the Job Evaluation Committee followed this procedure when it classified the Painter position at payclass 71.

In summary, the undersigned is persuaded that there has been compliance with the agreed-upon evaluation procedures. Having reached this conclusion, the undersigned turns to the issue of whether or not the classification decision reasonably flows from the evidence produced by following these procedures.

The Disputed Factors

EDUCATION OR TRADE KNOWLEDGE

The Job Evaluation Committee rated this factor at the Third Degree. The Union maintains that this factor should be rated at the Fourth Degree. The classification tool provides as follows:

1. EDUCATION OR TRADE KNOWLEDGE

This factor appraises the basic knowledge or "scholastic content" essential as background or training preliminary to learning the job. It refers to knowledge normally secured or achievable in a formal course in a public or private school, or in an organized training course, preliminary to assignment to the job.

Consideration is given to such requirements as reading, writing, the use of mathematics, drawings, and measuring instruments, and formal trades or business training. Specialized knowledge pertaining only to procedures and practices in a particular department or company is usually learned through work experience and should be evaluated in the Experience Factor.

Education together with Experience represents the normal minimum requirements necessary for satisfactory performance of the job.

. . .

THIRD DEGREE (42): This degree covers work which requires a well-rounded knowledge in a specialized field or process including the use of drawings and specifications, shop mathematics and/or formulas, and measuring instruments associated with the field in order to apply the general methods, practices, and

procedures to a variety of assignments and problems. It also covers work which requires a general business or commercial training. The degree involves educational or training requirements equivalent to a minimum of two (2) years high school plus two (2) to three (3) years trades training or four (4) years industrial arts, technical, or commercial high school training with specialization in the particular trade or field. In some cases it also may involve additional short specialized courses. The use of drawings and specifications may include the reading and interpretation of complicated drawings, engineering metal drafts, or complicated schematic diagrams and the understanding of the views, symbols, and terminology used in order to obtain the required information such as locations, reference points, and dimensions.

It may also involve the interpretation of complicated assembly drawings showing the interrelationship of a number of detail parts or the interpretation of technical charts or specifications and manufacturers' handbooks. The shop mathematics may include the use of algebra, geometry, and/or trigonometry, and the selection and use of handbook formulas. The measuring instruments may include the use of a variety of precision instruments such as size blocks, vernier height gauges and calipers, sine bars, surface plate, and the various types of micrometers. The degree covers work which requires a general business or commercial training with specialization in particular field such as stenography or bookkeeping. It includes jobs requiring a broad background in clerical work covering office methods and practices, filing systems, and the use of office equipment in order to plan and coordinate various types of clerical activities. It also includes jobs which require a general background in business operations and procedures covering both shop and office activities in order to plan and coordinate the work of a group performing a function such as scheduling or expediting for various other departments or sections and in order to handle the more difficult or responsible contracts with these activities.

FOURTH DEGREE (56): This degree covers work which requires a broad shop trade knowledge together with the use of complicated drawings and specifications, advanced shop mathematics, and a variety of precision measuring instruments. It involves a comprehensive knowledge of a highly skilled trade covering both theory and practice and including an understanding of

allied fields in order to deal wit (sic) the various aspects of diversified problems and perform all manual and technical operations. It also includes the full understanding and use of all of the elements of advanced shop mathematics, complicated drawings and specifications, and a variety of precision measuring instruments as these elements are defined in the preceding degree. The degree involves educational or training requirements equivalent to a minimum of four (4) years high school and four (4) years formal training in a highly skilled trade.

. . .

As set forth above, this Factor appraises "the basic knowledge" or "scholastic content," which with Experience, represents the normal minimum requirements necessary for satisfactory performance of the job.

The rewritten Painter position questionnaire contained two Education requirements. The first was "High school or G.E.D or equivalent." The second was "Painter apprenticeship program or equivalent." At the time of the evaluation, the Job Evaluation Committee was advised that the normal length of the apprenticeship program for a Painter is four years, consisting of three years of course work in a school and one year of on-the-job training.

The Third Degree states that "The degree involves educational or training requirements equivalent to a minimum of two (2) years high school plus two (2) to three (3) years trades training or four (4) years industrial arts, technical, or commercial high school training with specialization in the particular trade or field." The Fourth Degree states that "The degree involves educational or training requirements equivalent to a minimum of four (4) years high school and four (4) years formal training in a highly skilled trade."

If "years" of education or training were the only factors to be considered, then it would be reasonable to conclude that the Painter position exceeds the requirements of the Third Degree and falls squarely within the requirements of the Fourth Degree. However, "years" of education or training are not the only factors to be considered. One must also give consideration to the type of education or training and the specific knowledge obtained through the education or training.

For example, the Fourth Degree requires a minimum of "four (4) years formal training in a highly skilled trade." (Emphasis supplied) As a review of the first paragraph of this section of the tool reveals, "formal" refers to course work in a school. Since the Painter apprenticeship involves only three years of course work in a school, one may reasonably conclude that the Painter has had only three years of "formal" training in a highly skilled trade. Moreover, while it is evident that the Painter's education and training provides the Painter with an understanding and

use of shop mathematics, drawings and specifications, and measuring instruments, it is not evident this understanding and use rises to the level required of the Fourth Degree. The record fails to demonstrate that the Job Evaluation Committee acted unreasonably when it rated this factor at the Third Degree.

As the Union argues, the "Painter apprenticeship program or equivalent" is now a requirement of the position questionnaire, where as previously it had been preferred. The record demonstrates, however, that when the position was last evaluated, it was evaluated as if a "Painter apprenticeship program or equivalent" were required. The reason being that the Job Evaluation Committee understood that an applicant would not be hired into the Painter position unless the applicant had a "Painter apprenticeship program or equivalent." Thus, this change in the written position questionnaire is not a substantive change.

The Cabinet Maker position questionnaire contains only one educational requirement, i.e., High school graduate or equivalent, with the "Carpenter apprenticeship program or equivalent" preferred. The Union relies upon the education and training requirements listed on the two position questionnaires to argue that the Fourth Degree rating awarded to the Cabinet Maker is inconsistent with the Third Degree rating awarded to the Painter.

As the record demonstrates, the Job Evaluation Committee does not rely solely upon information contained in the written position questionnaire. Moreover, as the record further demonstrates, the Job Evaluation Committee has ignored information contained in the written position questionnaire when the Job Evaluation Committee did not consider the information to be accurate.

Contrary to the argument of the Union, one may not rely solely upon information contained in the Cabinet Maker position questionnaire, or in any other position questionnaire, to argue that the Job Evaluation Committee has been inconsistent in its application of the classification tool. Rather, one would have to be privy to all of the information considered by the Job Evaluation Committee before one could reach any reasonable conclusion concerning the appropriateness of the classification decision.

EXPERIENCE

The Job Evaluation Committee rated this factor at the Fourth Degree. The Union maintains that this factor should be rated at the Fifth Degree. The classification tool provides as follows:

2. EXPERIENCE

This factor appraises the length of time typically required by an individual, with the specified educational qualifications, to learn to perform the work acceptably; that is, to meet minimum job standards. The amount of experience required is in addition to the time needed to acquire trade knowledge or similar specialized training which is covered under the Education Factor.

The factor includes any necessary previous experience on related work, either within the organization or outside, together with the "breaking-in time" or period of adjustment and adaptation on the specific job itself. "Breaking-in time" is considered as time spent under competent supervision in continuous and intensive training on the job.

. . .

FOURTH DEGREE (88): Over three (3) years up to five (5) years.

FIFTH DEGREE (110): Over five (5) years.

As the Union argues, Article IV, Section 1, states that "Job descriptions and/or position questionnaires shall accurately describe the work performed." Since the Employer has final approval of the job descriptions and/or position questionnaires, the Employer has a duty to ensure that the position questionnaires submitted to the Job Evaluation Committee are accurate. If the Job Evaluation Committee determines that any portion of the position questionnaire is inaccurate, then it is incumbent upon the Job Evaluation Committee to take appropriate steps to correct the position questionnaire.

In the present case, the parties agreed to the rewritten position questionnaire which was submitted to the Job Evaluation Committee and the Job Evaluation Committee did not modify this position questionnaire. The Employer, therefore, has waived any right to argue that the information contained in the Painter position questionnaire is inaccurate.

The position questionnaire identifies the "Minimum Prior Experience Required" as five to six years of "Journeyman painter with wall covering experience" and identifies the "Break in" time as six weeks. Since the classification tool expressly recognizes that "break in" time is to be added to "any necessary experience" when determining the factor of Experience, the Job Evaluation Committee could not reasonably conclude that the Painter's Experience factor is less than five years. Rather, the only reasonable conclusion is that the Experience factor is more than five years and, thus, is appropriately rated at the Fifth Degree.

By rating the Experience factor at the Fourth Degree, rather than at the Fifth Degree, the Job Evaluation Committee did not base its classification upon the "systematic analysis used by the Hospital in the evaluation of such jobs" and, thus, violated the provisions of Article IV, Section 1, made applicable to this dispute by the Side Letter of March 21, 1994. A rating of the Fifth Degree adds twenty-two points to the Painter position, increasing the total points from 297 to 319. 319 points places the Painter in pay class 74.

MENTAL SKILLS

The Job Evaluation Committee rated this factor at the Third Degree. The Union maintains that this factor should be rated at the Fourth Degree. The classification tool provides as follows:

3. MENTAL SKILLS

This factor appraises the requirements of the work for independent action, the exercise of judgement, the making of decisions, and the use of planning, originality and foresight taking into account the complexity of the duties and the extent to which the work is circumscribed by precedent or standard practices and procedures. The appraisal of the duties reflects only the demands of the job with respect to its proper place in the organization and is affected by the degree and the nature of the direction over the work.

Volume and/or variety in themselves do not affect the scoring of this factor; however, the character of the elements resulting from volume and/or variety are evaluated separately under the appropriate factors.

. . .

THIRD DEGREE (42): This degree covers duties which require the planning and performing of work of some complexity, involving a sequence of operations, and the analysis of facts to determine what action should be taken within the limits of standard practices or recognized methods. It involves judgement in selecting and using available equipment and tools and in planning or altering the method of work, layout, or setup for various work assignments. Somewhat difficult decisions are required in such matters as choosing a course of action from various alternative methods and procedures, within standard practice, or determining corrective action or disposition in cases involving borderline variations from specified quality.

FOURTH DEGREE (56): This degree covers duties requiring the planning and performing of unusual and difficult work where only general operation method are (sic) available and the making of

decisions involving the use of considerable ingenuity, initiative, and judgement. The duties require the interpretation of broad instructions and the application of general knowledge and procedures in the field to consider various known choices of action, supply missing information, select or improvise tools, equipment, and methods, and diagnose and correct difficulties. Resourcefulness and skill are required in carrying out complicated assignments and making difficult decisions in the absence of clear-cut precedents.

. . .

This factor measures independent action, use of judgment, the degree of decision-making and the use of originality, planning and foresight by the employee. When measuring these criteria, the tool takes into consideration the complexity of the duties and the extent that the work is circumscribed by either precedent or standard practices and procedures.

As the rewritten position questionnaire states, Painters work with minimal direction from other department staff. However, Painters receive direction from other employees and from established policies and procedures. For example, work orders from other Departments identify the work to be performed. Also, the types and colors of paint, tiles and wall papers applied by the Painters are generally established by the Hospital and indexed in a master list or finish schedules. Products used by the Painters are frequently accompanied by manufacturer guidelines and recommendations.

Occasionally, Painters are confronted with a special project for which there is not an existing standard for either product or product application. For example, Morschauser was given specifications for cafeteria chairs. i.e., the color, that it was to have a gloss, and that it was to dry quickly for a fast turn around. Morschauser exercised judgment in selecting the paint and paint application method which met these specifications.

Painters use judgment in selecting among available equipment and methods of application. For example, Painters determine whether to apply paint with a sprayer, brush or roller. The Painter also decides which sprayer to use, i.e., airless, conventional, or HVLP. However, when questions arise concerning the suitability of a technique or product, or the proper application of a product, Painters frequently seek advice from manufacturers or sales representatives.

Painters plan their work. This generally involves reading a work order; viewing the work area and/or talking to the person who requested the work to confirm that the Painter understands the work being requested; assembling the appropriate tools and materials; and selecting the time period in which the work will be performed. It may involve reading a blueprint or drawing to obtain dimensions so that the Painter may determine appropriate amounts of material, or to

determine locations of electrical outlets or the area which is to be painted or papered. At times, Painters need to coordinate work with other employees or contractors.

Painters may alter their method of work. For example, Morschauser developed a procedure for hanging wall paper in which the paper is trimmed on the wall, rather than table trimmed, as suggested by the manufacturer. When the Hospital decided to use multi-spec paint in place of wall coverings, Morschauser tried using the airless sprayer, as suggested by the manufacturer, but concluded that there was too much sheering. After consulting with various manufacturers and, by use of trial and error, Morschauser discovered that the HVLP sprayer produced the best result. Painters adjust their technique to respond to external variables, such as changes in humidity or temperature.

Painters diagnose and correct difficulties. For example, Morschauser converted from an oil base to a water base paint when he became concerned about noxious odors. On one occasion, Morschauser was dissatisfied with a paint, called the manufacturers representative, and was advised to apply a primer because it was probable that the paint was not adhering to the glossy surface.

It is reasonable to conclude that the work of the Painter requires the planning and performing of work of some complexity, involving a sequence of operations, and the analysis of facts to determine what action should be taken within the limits of standard practices or recognized methods, as required of the Third Degree, but that the work does not normally require the planning and performing of unusual and difficult work where only general operation methods are available, as required of the Fourth Degree. It is also reasonable to conclude that somewhat difficult decisions are required in such matters as choosing a course of action from various alternative methods and procedures, within standard practice, as required of the Third Degree, but that the work does not normally require resourcefulness and skill in carrying out complicated assignments and making difficult decisions in the absence of clear-cut precedents, as required of the Fourth Degree. The record fails to demonstrate that the Job Evaluation Committee acted unreasonably when it rated this factor at the Third Degree.

MENTAL AND VISUAL REQUIREMENTS

The Job Evaluation Committee rated this factor at the Third Degree. The Union maintains that this factor should be rated at the Fourth Degree. The classification tool provides as follows:

5. MENTAL AND VISUAL REQUIREMENTS

This factor appraises the requirements of the work for the application of mental and visual attention in terms of the duration and intensity of such application. It does not measure the degree of

mental development or skill, but rather then (sic) extent of the mental and visual application or attention required.

All levels of attention having job significance require some employment of mental faculties which is aided by perception, principally vision. Mental and visual demands are, therefore, considered as related aspects of the job requirement of attention rather than as separate and independent job characteristics and are evaluated as a single factor.

Consideration is given to both the intensity and duration of the mental aspect of this factor. The intensity of such application varies in different jobs depending upon the work requirements. For example, simple work with few variations becomes practically automatic through repetition requiring little thought, while complicated work may require mental concentration in solving complex problems or meeting changing situations. Similarly, consideration is given to the duration and continuity of the alertness, attention, or thought required. The visual aspect of the factor varies chiefly with regard to the duration of elements on jobs requiring unusually close and exacting visual attention and the exercise of a high degree of manual dexterity in performing fine and delicate work.

. . .

THIRD DEGREE (15): This degree covers duties which requires constant alertness or continuous application of mental and visual attention.

It includes short cycle repetitive operations requiring continuous attention and the use of coordination to operate office machines and other equipment or to perform manual operations involving the use of various types of equipment.

In also includes longer cycle operations during which continuous mental and visual attention is required for the entire work cycle or constant alertness is necessary to take prompt action in the event of certain contingencies or to properly time and carry out the various steps in the operation sequence.

It includes duties requiring continuous mental and visual attention to the check quality of work, both visually and through the use of various types of gauges and equipment or to perform various

clerical activities such as posting, checking, and filing records.

It includes diversified work which requires continuous attention to carrying out various tasks and may require a moderate amount of planning before performing the details of the work.

It includes work in which mental and visual concentration on complex operations or problems is occasionally required, but the majority of the duties require only continuous alertness or attention.

FOURTH DEGREE (20): This degree covers duties which require the concentration of mental and visual attention for extended periods in planning and playing out complex work or require sustained and close visual and mental attention together with a high degree of manual dexterity.

It includes duties in which a considerable part of the time is spent in analyzing the requirements of complicated tasks and determining the best methods or procedures involving the planning in advance of a large number of steps or details, in laying out work to close limits, and in diagnosing and correcting difficulties.

It includes duties which require close attention and the exercise of very precise muscular coordination and control for long periods in performing fine and delicate work.

. . .

This factor appraises the mental and visual attention required to perform the work of the Painter. Mental and visual attention is measured in terms of duration and intensity.

As set forth in the rewritten position questionnaire, Painter's apply a variety of finishes, e.g., paints, stains, varnishes, and wall coverings, to a variety of surfaces, e.g., plaster, drywall, masonry, plastic, wood and metal. Painters also remove wall coverings, perform drywall and plaster repairs, and replace ceiling and surface tile. In performing this work, the Painter uses a variety of equipment, e.g., scaffolding, brushes, rollers, sprayers, trowels, masking tape, utility knives, and scrapers.

It is reasonable to conclude that the work of the Painter requires a moderate amount of planning before performing the details of the work, as required of the Third Degree, but does not normally require extended periods in planning and playing out complex work, as required of the

Fourth Degree. It is also reasonable to conclude that the majority of the work of the Painter requires constant alertness or continuous application of mental and visual attention, as

required of the Third Degree, but does not normally require sustained and close visual and mental attention together with a high degree of manual dexterity, as required of the Fourth Degree.

The application of multi-spec paint, the Painter work which has the highest mental and visual requirements, reasonably falls within the Third Degree, in that it requires continuous mental and visual attention to check the quality of the work. While it is evident that the Painter has to control arm movements to achieve the proper pattern, it is not evident that this work requires the very precise muscular coordination and control for long periods in performing fine and delicate work which is a requirement of the Fourth Degree. The record fails to demonstrate that the Job Evaluation Committee acted unreasonably when it rated this factor at the Third Degree.

RESPONSIBILITY FOR SAFETY OF OTHERS

The Job Evaluation Committee rated this factor at the Second Degree. The Union maintains that this factor should be rated at the Third Degree. The classification tool provides as follows:

8. RESPONSIBILITY FOR SAFETY OF OTHERS

This factor appraises the employee's responsibility for exercising care in the performance of his work to prevent physical injury to others. This responsibility is measured by the degree of care required and by the probable extent of injury to others as a direct result of inattention or carelessness on the part of the person performing the job, taking into account the nature of the work, the work position, the equipment and material used, the proximity of other employees, the extent to which they are protected by safety measures or may act to safeguard themselves, and the *frequency of exposure and probability of injury*. Consideration is given to the type of accident which may occur through such carelessness or inattention and the probable injury resulting therefrom. It is assumed that the other workers are observing the safety rules and that all safety devices for which the employee is not directly responsible are fully operative. The factor does not include possible injuries to others as a result of actions not directly connected with the performance of the job or contrary to general shop rules such as smoking in unauthorized areas, "horseplay," or running.

Any assigned responsibility for instructing others in the safety way to do the work is included in this factor. This factor does not include injury to the employee performing the job which is considered under Unavoidable Hazards.

. . .

SECOND DEGREE (10): This degree covers work which requires the exercise of reasonable care to prevent injuries to others. If they should occur, injuries would generally be minor in nature, such as cuts, abrasions, bruises, and minor burns or sprains.

THIRD DEGREE (15): This degree covers work which requires the exercise of care to prevent lost time injuries to others. A lost time injury is one which causes a temporary disability sufficient to prevent the employee from performing any regularly established job on his next regular shift.

This degree includes work in which injuries to others likely to result in lost time may occur such as crushed hands or feet, loss of fingers, eye injuries from flying particles, or burns.

. . .

This factor evaluates the employee's responsibility to exercise care when performing the employee's work to avoid physical injury to others, i.e., guests of the hospital, other workers, but not patients, taking into consideration such factors as the degree of care required, the frequency of exposure, the probable extent of injury, and the extent to which others may safeguard themselves.

The exercise of reasonable care by the Painter is generally sufficient to prevent injuries to others. If an injury were to occur, the injury would probably result from tripping over drip cloths or other equipment; being struck with a roller pole, or by objects falling from scaffolding; noxious fumes; and assisting the Painter in moving furniture. The probable injuries would be minor respiratory distress, headaches, cuts, abrasions, bruises, and minor sprains.

As the Union argues, the airless sprayer can inject paint into the skin. However, if an individual were injected with paint, the individual could avoid serious injury by seeking prompt medical attention. Given that the Employer is a hospital; the probability that an injection injury would be detected immediately; and the probability that a Painter would safeguard the injured individual by explaining the need for prompt medical treatment, it is not likely that an injection injury would result in serious injury.

The airless sprayer is used no more than a few times per year. Thus, there is infrequent exposure to such an injury. While it is possible that a paint injection injury to others could result in lost time, as required by the Third Degree, it is not probable. 5/ It is not evident that the Job Evaluation Committee acted unreasonably when it rated this factor at the Second Degree.

UNAVOIDABLE HAZARDS:

The Job Evaluation Committee rated this factor at the Second Degree. The Union maintains that this factor should be rated at the Third Degree. The classification tool provides as follows:

11. UNAVOIDABLE HAZARDS

This factor appraises the unavoidable hazards to which the employee is subjected in the performance of his work. These hazards are evaluated in terms of the probable extent of injury resulting from accidents or from health hazards associated with the work or work area, taking into account the nature of the work, the work position, the equipment and material used, the hazards arising from the work being performed by other employees in the adjacent area, the extent to which the employee is protected, the frequency of exposure to the hazards, and the probability of injury. Consideration is given to the type of accident which may occur and to the health hazards which remain even though all safety precautions are observed by the employee and all safety devices are fully operative. The factor does not include possible injuries or health hazards resulting from actions not required in the performance of assigned work or contrary to general hospital rules, such as smoking in unauthorized area, "horseplay," or running.

...

SECOND DEGREE (10): This degree covers work which

5/ The Hospital has never experienced such an injury.

involves exposure to minor accident hazards and no more than

negligible health hazards. Injuries resulting from accidents would generally be minor in nature such as cuts, abrasions, punctures, bruises, and minor burns or sprains.

THIRD DEGREE (15): This degree covers work involving exposure to lost-time accidents and/or health hazards which may result in injury or temporary disability sufficient to prevent an employee from performing any regularly established job on his next regular shift. The degree includes work in which such injuries may occur as crushed hand or foot, loss of fingers, or burns or occupational diseases likely to result in lost time.

This factor appraises unavoidable hazards to which the employe is subjected in the performance of the employe's work, taking into consideration a variety of elements, including the frequency of the exposure to the hazards and the probability of injury. In measuring this factor, it is assumed that all safety precautions are being observed by the employe and that all safety devices are fully operative.

The rewritten position questionnaire identifies the following Unavoidable Hazards: shock, exposure to asbestos, exposure to lead paint and dust and exposure to cadmium. The rewritten position questionnaire also identifies the following potential injuries: burns; nerve damage; death; asbestosis; possible damage to blood, nervous system, kidneys, bones, heart and reproductive system; and cancer. At hearing, Morschauer stated that unavoidable hazards and their potential injuries also include paint injections; chemical burns; falling off ladders and scaffolding; broken bones and smashed hands.

Asbestos and lead may be present in old construction materials. 6/ Lead and asbestos are not hazardous unless it is in a friable form. Thus, the Painter is not exposed to a hazard unless the Painter is abrading or cutting into a surface which contains lead or asbestos. 7/ It is not evident that any Painter has suffered an injury as a result of exposure to lead, asbestos, or cadmium.

If a Painter is concerned that an area contains lead or asbestos, then the Painter may raise this concern with his/her supervisor. The Employer claims that it is willing to test material

6/ According to Morschauer, asbestos may be found in materials constructed prior to 1980 and in paint manufactured before 1979.

7/ The position questionnaire estimates that the frequency of exposure to lead, cadmium, and asbestos is 30%. The record, however, does not reveal whether this is any exposure, or only includes exposure to material which is in a friable form.

whenever a Painter raises a concern and the record demonstrates that, when a Painter has raised a concern, the Hospital has had the material tested. Materials tested by the Hospital have not always tested positive for lead or asbestos. 8/

By law, the Employer is not allowed to handle asbestos which is friable. Rather, such a hazard must be abated by a registered company.

Upon request of the Painter, the Hospital will provide a HEPA mask to Painters. The HEPA mask contains a special filter which can trap asbestos fibers. 9/ The Hospital provides Painters with a variety of other protective equipment, *i.e.*, a respirator with organic vapor chemical cartridges which protects against fumes; disposable paper coveralls; hearing plugs; protective goggles; rubber gloves; spray socks to cover hair; rain suits with rubber boots; a ventilation hood for spraying objects; and dust masks.

While the record demonstrates that exposure to lead, asbestos, and cadmium in a hazardous form is possible, it does not demonstrate that such exposure occurs with any frequency. Moreover, the record does not demonstrate that, if a Painter observes all safety precautions and uses available safety devices, such exposure is likely to cause a Painter "lost-time accidents or health hazards which may result in injury or temporary disability sufficient to prevent an employee from performing any regularly established job on his next regular shift," as required by the Third Degree.

A fall from a ladder or scaffolding could result in an injury "sufficient to prevent the employe from performing any regularly established job on his next regular shift," as required by the Third degree. However, an employe observing all safety precautions is unlikely to sustain such an injury.

It is possible that a Painter could receive a paint injection injury. However, for the reasons discussed above, it is not probable that such an injury would occur. Nor is it probable that, if such an injury did occur, that a Painter would not avoid serious injury by seeking prompt medical attention.

Observing all safety precautions and having all safety devices fully operative, Painters are

8/ At hearing, Morschauser stated that, based upon his reading of Journal articles, he did not believe that the lead testing kits provided by the Hospital were reliable. It is not evident, however, that any expert has analyzed the specific lead testing kit used by the Hospital and found it to be inaccurate. Absent such evidence, one cannot reasonably conclude that the lead testing kits are unreliable.

9/ Union Exhibit #15.

exposed to minor accident hazards and no more than negligible health hazards. The probable

injury resulting from any unavoidable hazard would be minor in nature, of the type which Morschauser has suffered on the job, i.e., cuts, abrasions, and dermatitis. It is not evident that the Job Evaluation Committee acted unreasonably when it rated this factor at the Second Degree.

Conclusion

As the Employer argues, Article IV, Section 1, does state that "Wage grades for job classifications in effect upon completion of this agreement shall remain through the life of this contract subject to change only where significant alteration of duties warrants such grade change through the procedure outlined above." However, for reasons discussed below, the undersigned does not consider this language of Article IV, Section 1, to be applicable to the instant dispute.

First, this provision of Article IV, Section 1, is not part of the "job evaluation process." Rather, this provision addresses procedures to be followed after the "job evaluation process" has been completed. Thus, under the plain language of the Side Letter, this provision of Article IV, Section 1, is not applicable to this Painter classification dispute.

Moreover, Article IV, Section 1, already provided the Union with the right to use the job evaluation process set forth in Article IV, Section 1, to seek a reclassification based upon a "significant alteration of duties." Had the parties intended the last sentence of Article IV, Section 1, to govern this dispute, there would have been no need to enter into the Side Letter.

The record does not warrant the conclusion that the Job Evaluation Committee acted unreasonably when it rated the factors of Education, Mental Skills, Mental and Visual Requirements, Responsibility for Safety of Others, and Unavoidable Hazards. However, the record does warrant the conclusion that the Job Evaluation Committee acted unreasonably when it rated the factor of Experience at the Fourth Degree, rather than the Fifth Degree.

By rating the Experience factor at the Fourth Degree, rather than at the Fifth Degree, the Job Evaluation Committee did not base its classification on the "systematic analysis used by the Hospital in the evaluation of such jobs" and, thus, violated the provisions of Article IV, Section 1, made applicable to this dispute by the Side Letter of March 21, 1994. The remedy for this contract violation is to rate the Experience factor at the Fifth Degree, award the Painter position a total of 319 points, and assign the Painter position to payclass 74, effective "on the first payroll period following the final determination of the evaluation committee," as required by the Side Letter of March 21, 1994. 10/

10/ The record indicates that the decision of the evaluation committee was made on, or about, September 8, 1994.

Based upon the above and foregoing, and the record as a whole, the undersigned issues the following

AWARD

1. The Employer violated the collective bargaining agreement by continuing to place the position of Painter in pay class 71.
2. The Employer is to remedy this contract violation by
 - a) rating the Experience factor at the Fifth Degree
 - b) awarding the position a total of 319 points
 - c) placing the Painter position in pay class 74, effective on the first payroll period following the final determination of the Job Evaluation Committee, which occurred on or about September 8, 1994
 - d) immediately making employes whole for all wages and benefits lost as a result of the Job Evaluation Committee's determination to continue to place the position of Painter in pay class 71.

Dated at Madison, Wisconsin, this 19th day of December, 1996.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Coleen A. Burns /s/
Coleen A. Burns, Arbitrator