IN THE MATTER OF AN ARBITRATION
UNDER THE *LABOUR RELATIONS CODE*, RSBC 1996 c. 244

Between

BC PUBLIC SCHOOL EMPLOYERS' ASSOCIATION / SCHOOL DISTRICT NO. 36 (SURREY)

(the "Employer")

-and-

BRITISH COLUMBIA TEACHERS' FEDERATION / SURREY TEACHERS' ASSOCIATION

(the "Union")

(TTOC Scale Placement Grievance)

ARBITRATOR:	John B. Hall
APPEARANCES:	Julie A. Menton, for the Employer Susanna Allevato Quail, for the Union
HEARING:	April 29 & 30, 2019 Richmond, BC
AWARD:	June 6, 2019

AWARD

I. INTRODUCTION

The Union filed a Step Three policy grievance of general application in October 2017 over the Employer's practice of not crediting out-of-district experience as a teacher teaching on call ("TTOC") for purposes of placement on the salary scale. Article B.22.1 sets out the conditions for recognizing teaching experience gained outside the district, and provides (italics added):

> ARTICLE B.22 TEACHING EXPERIENCE
>
> B.22.1 CONDITIONS
>
> Providing the teacher held a valid teaching certificate, or its equivalent, at the time the experience was gained, teaching experience gained outside the district of Surrey shall be recognized as set out below:
>
> a. Normally, only that experience claimed on a teacher's application form will be eligible for credit as previous experience.
>
> b. For full-time teaching experience, a minimum of ten (10) months full-time service in any one (1) year is required to constitute a year's service, except for one of the years, when eight (8) months full-time service will be sufficient to constitute a full years' service.
>
> c. Fractions of years taught outside the district will be accumulated and recognized where:
>
> i. Interrupted full-time teaching experience was of at least four (4) months' duration in a single continuous assignment, and/or
>
> ii. Part-time *or relieving teaching* experience was at a rate of 20% or more.

The remaining provisions in Article B.22 recognize other types of teaching experience, while Article B.23 provides for recognition of other employment experience. Experience recognition is significant because it determines where a teacher is placed on the salary scale.

The Union acknowledges that Article B.22 does not explicitly list experience gained as a TTOC outside of the district, but advances three reasons why this type of experience should be recognized: first, the words "relieving teaching" must be given some meaning and can only be interpreted as TTOC teaching; second, the Collective Agreement definition "teacher" includes TTOCs and "teaching" includes teaching on call; and third, the interpretation it advances is harmonious with the purpose of the recognition provision. In this regard, the Union submits it would create an anomalous result if teachers can get credit for other work which only marginally resembles the work they do for the Employer (e.g., service in the armed forces in accordance with Article B.23.4), but not for doing the very same thing they will do once employed within the district. The Union also points to Article B.24.2 which provides that experience as a TTOC within the district is accumulated for purposes of salary increments.

The Employer maintains there has been a "decades long" practice of not considering out-of-district TTOC experience consistent with its interpretation of Article B.22.1 of the Collective Agreement. The Employer relies on this practice to support one of two preliminary objections. It says more specifically that the grievance should be dismissed in its entirety based on the doctrine of laches because the Union knew, or should have known, about the practice long before the grievance was filed in October 2017.

The Employer's second preliminary objection is founded on Article B.20.4 of the Collective Agreement. It provides that matters which remain unresolved after two (2) consecutive meetings of the Joint Salary Review Committee (the "Committee") may be referred in writing as a grievance directly to Step Three of the grievance procedure. The Employer maintains the present grievance is inarbitrable because the subject matter was

not addressed in two consecutive Committee meetings before being referred by the Union to Step Three.

In regard to the merits of the dispute, the Employer relies on what it describes as the plain language of Article B.22 and argues there is no requirement to recognize out-of-district TTOC experience because it is not listed in the clause. Further, TTOCs are defined in Article B.2.7 as "teachers who are assigned on a day-to-day basis *in this district*" (italics added).

The Union answers the Employer's first preliminary objection by asserting it did not know about the practice until the individual circumstances of a teacher were discussed at a June 2017 meeting of the Committee. The grievance was filed within 30 working days of that meeting. With respect to the second preliminary objection, the Union says the subject of out-of-district TTOC experience was in fact discussed by the Committee on two occasions before the referral to arbitration. Alternatively, relief should be granted under Section 89(e) of the *Labour Relations Code* in order to address the real substance of the matters in dispute.

II. EVIDENCE

The Employer has raised two preliminary objections but expressly invited a determination of the merits in final argument, and stressed the importance of resolving the interpretative difference in order to avoid another grievance being filed in the future. I will therefore begin by recounting the events which ultimately led to the grievance being filed, and will set aside for now the testimony of various witnesses regarding the extent to which the Employer's practice was known, or ought to have been known, by the Union.

Mr. Ray Prosser was the District Principal responsible for labour relations from 1990 until his retirement in December of 2017. He assumed responsibility for the Joint

Salary Review Committee in 2016. The Committee had met sporadically prior to that point, and the Union agreed with Mr. Prosser that it should meet on a more regular basis. The first meeting he attended took place on January 16, 2017. Other attendees included Jennifer Harkison for the Employer, and Sue Heuman and Kristine Olsen for the Union.

The next Committee meeting took place on April 20, 2017 and was attended by the same representatives. One of the matters discussed was providing experience recognition for teachers who had taught previously at what are known as Group 1 schools under the *Independent Schools Support Act*. At the time, Article B.22.3 only contemplated recognition of Group 2 schools. A without prejudice Letter of Understanding accepting teaching experience from both types of schools was subsequently prepared, and it was signed by Mr. Prosser for the Employer and Ms. Heuman for the Union.

Another matter discussed at the April 20 meeting was how the district might become more competitive at recruiting teachers in the aftermath of the Supreme Court of Canada judgment restoring class size language to the Collective Agreement. According to Mr. Prosser, Ms. Heuman brought up the fact that some school districts recognize TTOC experience from outside their districts. Mr. Prosser testified that he replied that the parties' Collective Agreement did not require out-of-district recognition, but that he would speak to his superior and see if the Employer was prepared to make a "management decision" given the circumstances. He also asked Ms. Harkison to check with other school districts to determine practices elsewhere. The discussion "was around competitiveness" and was not tied to a specific teacher. Ms. Heuman had no recollection of this discussion at arbitration, although she admitted it possibly occurred.

The next Committee meeting took place on June 22, 2017. In addition to the same four representatives, Mark Keelan also participated as he was about to replace Ms. Heuman as one of the Union's Grievance Officers. At Ms. Heuman's request, one of the agenda items was a teacher who will be referred to as "KS". The teacher had emailed the Union two days earlier questioning the rules around "porting of TTOC time for pay scale

increase" because she did not think her time from another district was correct. Ms. Harkison recalled the Employer advising the Union during the meeting that it had a past practice of "never" giving credit for out-of-district TTOC experience. Mr. Prosser recalled a statement to the effect that recognition was not required by the Collective Agreement. The Committee also discussed an Employer form called the Certificate of Previous Teaching Experience which expressly indicates that out-of-district "TOC experience is not applicable". The Employer representatives understood the Union would advise KS that out-of-district TTOC was not accepted, and the minutes record: "STA requested we review her experience credited. TOC experience is not applicable. STA will notify teacher". Consistent with what was recorded in the minutes, Ms. Heuman sent KS an email the same evening:

> Hi [K], we met with HR this morning and your situation was one that we addressed with them. The experience porting form is clear that Surrey does not recognize TTOC hours in porting experience. We reviewed the form with the district that you signed to port your experience and it is quite clear. Jennifer Harkison at HR would be pleased to review your form in detail if you would like to email her …

The Employer was not copied on this email to KS. Despite what she wrote, Ms. Heuman testified that she did not regard the issue as resolved. However, she did not express any disagreement during the June 22 meeting; nor did she pursue the matter because she was on leave from June 30, 2017 until September 1, 2018.

The minutes of the June 22 meeting also record an agreement "… that all issues relating to porting of seniority and experience to be reviewed and processed through the Joint Salary Committee". The representatives agreed to continue monthly meetings (although this did not happen due to other demands) as they felt it "… was a definite asset to all involved to meet regularly on issues to get them resolved in a timely manner".

The Union next raised the subject of out-of-district TTOC experience with the Employer on October 5, 2017. Mr. Keelan sent an email to District Principal Chris Stranger advising that he had received a call from a teacher who had not had her TTOC

time in Richmond accepted for salary placement. Mr. Keelan said there was also another teacher in a similar situation, and suggested "there must be many teachers with the same predicament". He asked: "Am I correct that you can forward this information to the Joint Salary Review Committee?" District Principal Stranger copied Mr. Prosser on his reply "as he sits on the Joint Salary Committee and can respond with more knowledge about the process".

Despite having been at the June 22 meeting, Mr. Keelan testified that he first learned of the Employer's practice regarding not crediting TTOC experience outside the district on October 5 when he received the call from the teacher about her time in Richmond. He was at the BCTF office for staff training that day, and spoke to several staff representatives. When he later spoke with others in the STA office and learned this was a "significantly bigger issue", he felt it was not an appropriate matter for the Committee and decided instead to pursue a grievance. It was filed at Step Three on October 6, 2017 and alleged the Employer was violating several articles of the Collective Agreement by not accepting teachers' full out-of-district teaching experience for increment purposes.

Mr. Prosser recalled receiving the grievance, and testified he was surprised "at three levels": first, the Collective Agreement was clear; second, the issue had been discussed at the Committee and had not been brought back a second time; and third, he believed the discussion in June had "affirmed" the Union's agreement with the Employer's position. When the parties met at Step Three, Mr. Prosser raised, among other things, the second point. He said the issue should have been referred to the Committee and there should not have been a grievance. Mr. Keelan did not recall this objection being raised to the grievance.

III. COLLECTIVE AGREEMENT HISTORY

As part of its position regarding the merits of the parties' difference, the Employer points to a lengthy history of part-time and relieving teachers always being referred to together in the Collective Agreement. The earliest document introduced in evidence was the Agreement from 1973 between the School District and the Surrey Teachers' Association. Clause V dealt with Experience and provided in part:

> (c) Relieving and part time teachers who teach one half time or more, but less than full time shall receive credit for one year's experience at the end of every second year of continuous service.

Article 5 of the Agreements between the same parties which were effective July 1, 1987 was headed Relieving or Part-Time Teachers and included these clauses:

> Article 5
> RELIEVING OR PART-TIME TEACHERS
>
> 5.10 Relieving and part-time teachers are defined as teachers who have a letter of appointment to this district assigning them to a position in which the teaching time is less than 100%
>
> * * *
>
> 5.50 Relieving and part-time teachers shall accumulate experience gained in this district on a pro-rata basis and will accumulate such experience in accordance with Article 4.50.

Article 9 of the same document dealt separately with "Substitute Teachers".

Article 4 of the 1988 Agreement between the School District and the Association was headed Experience and Increments. Article 4.13(b) can be seen as a forerunner to the current out-of-district language:

> 4.13 Fractions of years taught outside the district will be recognized only if they were obtained in accordance with Articles 4.15 - 4.19 within the previous thirty-six (36) school months. Such credit will

> be granted as follows, once the teacher has accumulated the equivalent of ten (10) months' full-time experience.
>
> * * *
>
> (b) Part-time or relieving teaching experience will be recognized when a teacher was employed at a rate of 40% or more;

Article 4.50 addressed Accumulation of Full-time Equivalent Service, and included at Article 4.51(b) "relieving or part-time experience with this district". Relieving and part-time were again defined in Article 5.10 as teachers "who have a letter of appointment *to this district* …" (italics added), and Article 9 again dealt separately with "Substitute Teachers". Article 9.40 allowed substitute teachers to accumulate teaching service within the district for purposes of experience credit.

The article numbers changed in the 1988-1990 Collective Agreement between the School District and the Association. Then Article 35.132 recognized "teaching experience gained outside the district of Surrey", including "[p]art-time or relieving teaching experience [that] was at a rate of 20% or more". Other experience beyond what was set out in the Collective Agreement could be recognized under Article 35.50 at the sole discretion of the Joint Salary Review Committee. Article 37 addressed Increments for teachers employed by the district and provided in part:

> 37.20 ACCUMULATIONOF EXPERIENCE
>
> The following experience will be accumulated by the district Payroll Department, with calculations for increments made as of September and January:
>
> 37.21 Full time experience with this district and/or,
> 37.22 Relieving or part-time experience with this district, and/or
> 37.23 Experience as a substitute teacher as specified in Article 40.90, …

Article 39.10 defined "part-time" as "a teacher who is employed on a temporary or continuing contract for less than one hundred percent (100%) of full-time". Article 40.10 defined "substitute teachers" as "teachers who are employed on a day-to-day basis to

relieve continuing contract or temporary contract teachers" (I note parenthetically that this is the only time the word "relieve" was used in relation to substitute teachers).

In the Collective Agreement which took effect as of July 1, 1990 there was a slightly revised definition of "part-time", and "substitute teachers" were defined as "teachers who are assigned on a day-to-day basis in this district". Aside from the nomenclature, this definition has basically been continued through to the current Collective Agreement. Article 45.13 recognized fractions of years taught outside the district where:

> 45.131 Interrupted full-time teaching experience was of at least four (4) months duration in a single continuous assignment, and/or
> 45.132 Part-time or relieving teaching experience was at a rate of 20% or more.

There was no recognition for experience based on service as a substitute teacher outside the district. However, experience as a substitute teacher within the district could be accumulated:

> 47.20 ACCUMULATION OF EXPERIENCE
>
> The following experience will be accumulated by the district Payroll Department, with calculations for increments made as of September and January:
> 47.21 Full-time experience with this district and/or,
> 47.22 Relieving or part-time experience wit this district, and/or
> 47.23 Experience as a substitute teacher as specified in Article 9.80 …

There was no change to Article 46.13 in the Collective Agreement which took effect on July 1, 1992. The accumulation of experience language in then Article 48.20 reflected a change in terminology in Article 9.10 from "substitute teachers" to "teacher-on-call".

> 48.20 ACCUMULATION OF EXPERIENCE

> The following experience will be accumulated by the district Payroll Department, with calculations for increments made as of September and January:
>
> 48.21 Full-time experience with this district and/or,
>
> 48.22 Relieving or part-time experience with this district, and/or
>
> 48.23 Experience as a teacher-on-call as specified in Article 9.80, …

There were no material changes in the Transitional Collective Agreement between the BCTF and BCPSEA which applied to the district from June 17, 1996 to June 30 1998. The same can be said of the Provincial Collective Agreement which applied from July 1, 1998 to June 30, 2001, as well as the July 1, 2001 to June 30, 2004 Collective Agreement.

IV. THE CURRENT COLLECTIVE AGREEMENT

The following provisions of the July 1, 2013 to June 30, 2019 Collective Agreement between the BCTF and BCPSEA as it applies to the district are relevant to the issues raised by the Union's grievance:

> LOCAL PROVISIONS:
>
> B.2.7 TEACHERS TEACHING ON CALL
>
> Teachers Teaching On Call are teachers who are assigned on a day-to-day basis in this district.
>
> * * *
>
> ARTICLE B.20 JOINT SALARY REVIEW COMMITTEE
>
> B.20.1 COMPOSITION OF COMMITTEE
>
> A Joint Salary Review Committee shall be comprised of up to two (2) representatives of the Surrey Teachers' Association and up to two (2) representatives of the Board.
>
> B.20.2 INQUIRIES

Questions relating to salary, allowances, benefits or indemnities shall be referred through the Surrey Teachers' Association's Economic Welfare Committee to the Joint Salary Review Committee.

B.20.3 MEETINGS OF THE COMMITTEE

a. The committee will schedule regular monthly meetings, which will be scheduled prior to the monthly payroll cut-off dates. Such meetings will only be convened if there is business forth committee to conduct.

b. Notwithstanding Article B.20.3.a, the committee may convene additional meetings as may be required to conduct its business.

B.20.4 UNRESOLVED ITEMS

If the matter remains unresolved after two (2) consecutive meetings of the Joint Salary Review Committee, the matter may be referred, in writing, as a grievance directly to Step Three of the grievance procedure.

* * *

ARTICLE B.22 TEACHING EXPERIENCE

B.22.1 CONDITIONS

Providing the teacher held a valid teaching certificate, or its equivalent, at the time the experience was gained, teaching experience gained outside the district of Surrey shall be recognized as set out below:

a. Normally, only that experience claimed on a teacher's application form will be eligible for credit as previous experience.

b. For full-time teaching experience, a minimum of ten (10) months full-time service in any one (1) year is required to constitute a year's service, except for one of the years, when eight (8) months full-time service will be sufficient to constitute a full year's service.

c. Fractions of years taught outside the district will be accumulated and recognized where:

i. Interrupted full-time teaching experience was of at least four (4) months' duration in a single continuous assignment, and/or

ii. Part-time or relieving teaching experience was at a rate of 20% or more.

d. For increment purposes, fractions of years not applied at time of hire will be carried to accumulate with Surrey Teachers' Association experience.

e. Experience as an exchange teacher will be recognized.

f. Experience as a teacher with Canadian University Services Overseas (C.U.S.O.) or as a teacher with Canadian International Development Agency (C.I.D.A.) will be recognized.

g. A teacher shall not be credited with more than one (1) increment for service in any twelve (12) months' period.

* * *

ARTICLE B.24 INCREMENTS

* * *

B.24.2 ACCUMULATION OF EXPERIENCE

The following experience will be accumulated by the district Payroll Department, with calculations for increments made as of September and January:

a. Full-time experience with this district and/or,

b. Relieving or part-time experience with this district, and/or

c. Experience as a Teacher Teaching On Call as specified in Article B.2.14, and/or

d. Fractions of years of service outside Surrey which are carried under Articles B.22.1.d or B.24.1, or

e. A combination of the above

f. For adult education teachers, one thousand (1000) hours of teaching experience shall constitute one (1) year of service. Fractions of years shall be accumulated with each one hundred (100) hours being equivalent to one (1) month's service.

* * *

ARTICLE C.23 PART-TIME EMPLOYMENT

C.23.1 PART-TIME

a. The term "part-time" as used in this agreement refers to an employee who is employed on a contract for less than one hundred percent (100%) of full-time.

V. ANALYSIS

A common starting point where the meaning of collective agreement language is at issue is the summary of principles found in *Pacific Press -and- GCIU, Local 25-C*, [1995] BCCAAA No. 637 (Bird)

1. The object of interpretation is to discover the mutual intention of the parties.

2. The primary resource for an interpretation is the collective agreement.

3. Extrinsic evidence (evidence outside the official record of agreement, being the written collective agreement itself) is only helpful when it reveals the mutual intention.

4. Extrinsic evidence may clarify but not contradict a collective agreement.

5. A very important promise is likely to be clearly and unequivocally expressed.

6. In construing two provisions a harmonious interpretation is preferred rather than one which places them in conflict.

7. All clauses and words in a collective agreement should be given meaning, if possible.

8. Where an agreement uses different words one presumes that the parties intended different meanings.

9. Ordinarily words in a collective agreement should be given their plain meaning.

10. Parties are presumed to know about relevant jurisprudence.

Arbitrator Bird additionally stated that these rules are not rigidly binding, and that common sense and special circumstances must not be ignored (*ibid*).

The Union's first argument in support of recognizing out-of-district TTOC experience for purposes of salary placement is that the term "relieving teaching" in Article B.22.1.C.ii must be given meaning (i.e., the seventh *Pacific Press* rule). The Union acknowledges that relieving teachers and substitute teachers (now TTOCs) were historically treated as separate categories, and accepts that different words in a collective agreement are normally given different meanings (i.e., the eighth *Pacific Press* rule). However, it maintains that there are no longer "relieving teachers" in the district, and argues:

> We agree with the Employer that the Collective Agreement historically referred to relieving teachers in a manner that remained consistent. We agree that relieving teachers and substitute teachers were treated as separate categories. We unequivocally agree that during the time period when there was such a thing as a "relieving teacher" - when that was an actual category of teaching position, that was posted and people were hired to perform - the phrase "relieving teacher" in the collective agreement referred to those jobs and not to substitute teachers.
>
> However, while the language didn't change, the world around the language changed. "Relieving teacher" can't mean the same thing it did during the lives of the past collective agreements you have been referred to, because that thing doesn't exist anymore.

* * *

> As the Employer said in opening, it is inconceivable that this language was merely an oversight. The "relieving teachers" disappeared from SD36, but the language stayed in the collective agreement. It has to mean something in this brave new world, or the parties would have been taken it out.
>
> What does "relieving teaching" mean today? The only thing it can possibly mean in today's context is teaching on call. (written argument at paras. 51-52 and 54-55)

The difficulty faced by the Union on this front is that the record at arbitration does not support a finding that there are no longer "relieving teachers" in the district. It was Mr. Prosser's essentially unchallenged testimony that what is commonly referred to as an "admin relief teacher" is someone hired on a part-time basis to relieve a teacher who has a partial load of administrative duties and cannot be in the classroom for a portion of their FTE (typically a vice-principal). He noted there has been a consistent reference through all of the collective agreements to "part-time or relieving teaching", and said relief teaching is really synonymous with part-time teaching "aside from relieving for administration".

I digress somewhat to record that the Union sought to introduce at arbitration "historical documents" from The British Columbia Teacher publication which make various references to "relieving teachers". The Employer objected, and I reserved my decision on admissibility and weight. Assuming these hearsay documents are admissible, I am unable to accord them any interpretative significance because there is not sufficient information to ascertain the nature of the role. At best, they show that something called "relieving teachers" existed in the past, but they do not establish that the category is extinct as the Union suggests. And for reasons just given, I find Mr. Prosser's evidence allows the terminology to be given continued meaning.

In any event, even if relieving teachers no longer exist as such in the district, this would not be the first time that "a vestage" from a prior period (to adopt the Union's description) continues unaltered in a collective agreement. And it does not mean that one must give the words new meaning -- particularly where the meaning would be plainly

inconsistent with other terms of the contract. As stated in *Pacific Press*, the rules of interpretation are not "rigidly binding".

This brings me to a more general consideration of the language in numerous past Collective Agreements and in the current Collective Agreement. It should be abundantly apparent from the history recounted in Part III of this award that part-time and relieving teachers have invariably been referred to together, and that they have been described separately from substitute teachers (later teachers-on-call and now TTOCs). For instance, the 1987 Agreement defined relieving and part-time teachers identically as "teachers who have a letter of appointment to this district assigning them to a position in which the teaching time is less than 100%", and allowed them to accumulate experience "gained in this district" (Articles 5.10 and 5.50). Substitute teachers were dealt with in an entirely separate article. The 1988 Agreement contained the same definition, and included recognition outside the district for part-time and relieving experience where the teacher was employed at a rate of 40% or more (this was changed in later years to the current 20% rate).

Of even greater significance was inclusion in the 1990 Agreement of experience as a substitute teacher in the district for purposes of accumulating experience and calculating increments (Article 47.20). Article 45 dealt with experience outside the district, and it was not amended in a similar fashion; instead, it continued to include only "[p]art-time or relieving teaching experience". The same distinction continues in the current Collective Agreement, and I repeat the material language:

> ARTICLE B.22 TEACHING EXPERIENCE
>
> B.22.1 CONDITIONS
>
> > Providing the teacher held a valid teaching certificate, or its equivalent, at the time the experience was gained, teaching experience gained outside the district of Surrey shall be recognized as set out below:
> >
> > * * *

c. Fractions of years taught outside the district will be accumulated and recognized where:

i. Interrupted full-time teaching experience was of at least four (4) months' duration in a single continuous assignment, and/or

ii. *Part-time or relieving teaching experience was at a rate of 20% or more.*

ARTICLE B.24 INCREMENTS

* * *

B.24.2 ACCUMULATION OF EXPERIENCE

The following experience will be accumulated by the district Payroll Department, with calculations for increments made as of September and January:

a. Full-time experience with this district and/or,

b. *Relieving or part-time experience with this district, and/or*

c. *Experience as a Teacher Teaching On Call as specified in Article B.2.14*, …

It can reasonably be presumed from the foregoing history that the parties intended to recognize experience as a substitute teacher (now TTOC) within the district when the amendment was introduced in the 1990 Agreement, and did not intend to recognize out-of-district TTOC experience when an equivalent amendment which would have achieved that result was not included. Nor has the Collective Agreement been amended since then to allow for such recognition, and the parties have continued to distinguish between experience that can be accumulated within the district and what can be accumulated outside the district. Further, as the Employer contends, "relieving teaching" in the current Article B.22.1.c.ii cannot be read to mean teaching as a TTOC -- otherwise, there would be no need for an explicit reference in current Article B.24.2.c to "[e]xperience as a Teacher Teaching On Call" for accumulation within the district. The latter clause would become redundant under the Union's interpretation of "relieving teaching".

As stated in *Victoria Times Colonist -and- Vancouver Printing Pressmen, Assistants and Offset Workers Union, Local 25 (Overtime Grievance)*, [1984] BCCAAA No. 268 (Hope), citing the Board's seminal *UBC* case, prior collective agreements can assist in a disputed interpretation to the extent that their provisions support inferences about the mutual intentions of the parties (*Victoria Times Colonist*, at para. 81). When looking at the Collective Agreements here which cover about three decades, one can readily discern a mutual intention of these parties to: (i) define contract teachers (i.e., part-time or relieving teaching) differently from substitute or TTOC teachers; (ii) give different rights and benefits to those different types of teachers; and (iii), distinguish between what experience within the district can be accumulated and what experience outside the district will be recognized. TTOC experience within the district could not be accumulated until the 1988-1990 Collective Agreement. The right was negotiated, and the parties did not include equivalent language recognizing out-of-district TTOC experience. This omission cannot be overcome at arbitration by giving new meaning to the words "relieving teaching" that was not mutually intended.

There is a third area of the Collective Agreement where part-time and relieving teachers are referenced together. Article G.20 covers the subject of Sick Leave, and Article G.20.3.c provides: "*For part-time and relieving teachers*, sick leave shall be credited in the same ratio as the teacher's regular assignment for the day bears to that of a full-time teacher in the same school" (italics added). Article G.20.5 contains separate language setting out the sick leave entitlements for TTOCs, once again reinforcing the distinction between those types of teachers.

In summary to this point, the interpretative guidance provided by *Pacific Press* -- and especially the second, seventh and eighth rules -- lends exceedingly strong support to the Employer's position concerning the merits of the grievance. The Union's remaining arguments are not sufficient to reach a contrary conclusion.

The Union's second argument flows from the definitions of "teacher" and "employee" in the Collective Agreement. The former includes TTOCs while the latter explicitly excludes them. Based on these definitions, the Union points to the opening words of Article B.22.1: "Providing the *teacher* held a valid teaching certificate, or its equivalent, at the time the experience was gained, *teaching* experience gained outside the district of Surrey shall be recognized as set out below …" (emphasis in the Union's Written Argument).

The evidence at arbitration indicates there are two broad categories of teachers covered by the Collective Agreement: full-time or part-time teachers who hold continuing contracts, and TTOCs "who are assigned on a day-to-day basis in this district" (Article B.2.7). Thus, there is no dispute that TTOCs are "teachers" and not "employees" for purposes of the Collective Agreement. The fact that the opening words of Article B.22.1 include "teaching experience" does nothing to advance the Union's case because the recognized experience outside the district must be "set out below". For reasons given already, experience as a TTOC outside the district is not listed, and the words "relieving teaching" cannot be construed as overcoming that omission.

The Union's third and final argument regarding the merits of the grievance is that its interpretation is harmonious with the purpose of Article B.22 in recognizing experience outside the district. The Union argues that the Employer's interpretation creates an anomaly: teachers who TTOC within the district get credit and move up the salary scale, while those who TTOC outside the district do not receive such credit. It submits there is no logical basis for this distinction given the purpose of the provision. Further, many teachers start working in the district as TTOCs and experience as a TTOC in other districts enhances their value as new teachers.

These and related arguments can be answered in fairly succinct terms. As the Union's submissions acknowledge, arbitrators may properly consider the purpose of collective agreement language and whether an interpretation would give rise to anomalous results where proposed interpretations "are equally viable". As I have

endeavoured to explain, the Employer's interpretation accords completely with the negotiation history and the present Collective Agreement as a whole, while the Union's interpretation does not have contractual support. There is accordingly no legitimate basis for moving beyond the language chosen by the parties and imbuing Article B.22.1 with some other purposive meaning.

The foregoing determinations effectively turn any examination of the Employer's first preliminary objection based on the doctrine of laches into an academic exercise. Therefore, I will not address the evidence and arguments regarding the Employer's longstanding practice and the extent to which the Union should have been aware that out-of-district TTOC experience was not being credited for purposes of salary placement.

The same cannot be said of the Employer's second preliminary objection, and it should be addressed for future guidance. The most relevant clause in Article B.20 which provides for the Joint Salary Review Committee is repeated for convenient reference:

> B.29.4 UNRESOLVED ITEMS
>
> > If the matter remains unresolved after two (2) consecutive meetings of the Joint Salary Review Committee, the matter may be referred, in writing, as a grievance directly to Step Three of the grievance procedure.

The Committee has a broad mandate to deal with "[q]uestions relating to salary, allowances, benefits or indemnities" (Article B.20.2). This potentially ranges from examining the circumstances of individual teachers to negotiating agreements such as the 2017 Letter of Understanding which modified provisions of the Collective Agreement. The Committee is clearly constituted as a problem-solving forum and the matters it considers may be the subject of a grievance. However, the Collective Agreement contemplates that matters within its purview will not be referred to Step Three until they have been addressed at two (2) consecutive Committee meetings. This is an express pre-condition.

It appears the parties discussed credit for out-of-district TTOC experience during one meeting in early 2017. However, this was in the context of finding ways to make the district more competitive for purposes of attracting teachers. The Employer's existing practice was not in dispute. The practice was discussed when the inquiry by KS was brought forward at the June 22 meeting. From the Employer's perspective, the Union was not challenging the practice, but that is somewhat beside the point in terms of the procedural requirements now being examined. The Employer did not hear anything further on this front until Mr. Keelan raised the circumstances of another teacher (and potentially others) in an email on October 5, and asked that the information be forwarded to the Committee. The matter was never addressed by the Committee at a second meeting because Mr. Keelan instead filed the Union's policy grievance on the very next day.

I find the Union did not proceed in accordance with Article B.20.4 and Mr. Prosser properly raised an objection when the matter was discussed during the grievance procedure. Where parties have designed an internal mechanism for resolving certain questions without resorting to a formal grievance, the procedure should be followed and respected. The evidence indicates that the Committee process was working well. Moreover, there was no need from a timeliness perspective for the Union to file the grievance -- a grievance brought after a second Committee meeting could have been referred directly to Step Three if there was no resolution (in this regard, the Committee essentially supplants Steps One and Two of the grievance procedure for arbitral matters within its authority). That said, whether the Union's breach of the procedural requirements in Article B.20.4 should be the subject of arbitral relief under Section 89(e) of the Code is moot because the merits of the grievance have been addressed already at the Employer's request.

VI. DECISION

The Employer's interpretation of Article B.22.1 is affirmed and the Union's policy grievance seeking credit for out-of-district TTOC experience is dismissed on the merits. I have found the Union contravened Article B.20.4 when it purported to invoke the grievance procedure without first attempting to resolve the underlying question at two (2) consecutive meetings of the Joint Salary Review Committee. The remaining issues raised by the parties' arguments have not been addressed because they are moot given my conclusion on the merits.

DATED and effective at Vancouver, British Columbia on June 6, 2019.

JOHN B. HALL
Arbitrator