

LABOUR RELATIONS CODE  
(Section 84 Appointment)  
ARBITRATION AWARD

BRITISH COLUMBIA TEACHERS' FEDERATION  
and  
BULKLEY VALLEY TEACHERS' UNION

UNION

BRITISH COLUMBIA PUBLIC SCHOOL EMPLOYERS' ASSOCIATION  
and  
BOARD OF SCHOOL TRUSTEES OF  
SCHOOL DISTRICT NO. 54 (BULKLEY VALLEY)

EMPLOYER

(Re: Seniority List)

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Arbitration Board:	James E. Dorsey, Q.C.
Representing the Union:	Douglas L. Dorward
Representing the Employer:	Judith C. Anderson
Dates of Hearing:	April 27, May 24, 28 and 29, 2001
Date of Decision:	June 5, 2001

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### 1. Grievance and Jurisdiction

The union grieves that the employer has made several errors in preparing the seniority list of teachers employed by the employer. The union seeks specific remedies for individual teachers and a general remedy designed to produce an authoritative list complying with the seniority provisions of the collective agreement.

Differences over the seniority list and administration of the seniority and other provisions of the collective agreement arose this year because the employer gave initial notice of layoff on March 14, 2001 to 69 of the 186 teachers with seniority. Final layoff notice was to be given May 15<sup>th</sup>, which is forty-five days before June 30, 2001. The employer posted fifty-four teaching assignments for the 2001-02 on April 4<sup>th</sup>. In response, the British Columbia Teachers' Federation Executive Committee, by letter dated April 5<sup>th</sup>, notified the employer it had placed all positions resulting from the initial layoff notice "in dispute." The local union made an application alleging several matters to the Labour Relations Board and grieved the layoff notices and other matters relating to the staffing process for the 2001-02 school year.

The application to the Labour Relations Board did not proceed to a full hearing. The union and employer agreed to mediation-arbitration "to resolve the current disputes concerning this year's staffing process." They agreed the application to the Labour Relations Board, the layoff notices and all the postings would "be placed on hold" until the conclusion of the mediation-arbitration. They agreed to give the mediator-arbitrator

the authority to "waive the time limits" under the collective agreement, including the date by which the employer must give final notice of layoff.

The union and employer agree I am properly constituted as the mediator-arbitrator. Mediation from April 23<sup>rd</sup> to 27<sup>th</sup> did not produce a resolution. On April 27, 2001, the arbitration hearing commenced and I denied the union's application for exclusion of witnesses at that time, but directed that, unless counsel agreed otherwise, there would be an order for exclusion at the resumption of the hearing when the presentation of evidence would commence. The union asked that I record all my rulings. At the same time, on the application of the employer, I extended the date for final notice of layoff to June 15, 2001. I directed agreed to, best effort deadlines for pre-hearing disclosure of particulars and documents. I directed that case management issues were to be explored further in a conference convened after the union instructed the counsel who was going to represent it at the hearing. The conference was held on May 24, 2001.

**2. Agreements on Seniority - Start Date and Acceptance Date (Article C-7.3.3)**

Among the several issues in dispute, the union and employer agreed to arbitrate the seniority list issues first. An accurate, current seniority list is a foundational requirement for administering the provisions of the collective agreement on layoff, recall and selection of competing applicants for vacancies. Evidence and argument was heard in two days.

Article C-7.9.1 of the collective agreement states: "The Board shall, by October 15 of each year, forward to the Association a list of all teachers employed by the Board, in order of seniority calculated according to paragraph C-7.2, setting out the length of seniority as of September 1 of that year." Since the local union and employer concluded their first collective agreement in 1988, the employer has compiled a seniority list, posted copies in each school and sent a copy to the local union. Throughout the years, the secretary to the Superintendent has been responsible for maintaining the list. In the past, the list did not receive the same, close scrutiny by teachers and the union it received following the layoff notices this year.

The list has generally been in the format of a March 30, 2001 list introduced as an exhibit. It has four columns - name, appointment date, start date and adjustment. The fourth column is a notation of minus or plus a number of days, months or years for some teachers. These are periods of leave during which seniority was not accumulated or periods of service prior to the start date.

During the mediation discussions, the March 30<sup>th</sup> list was expanded to include two more columns - Teacher-On-Call (TOC) days worked since January 1, 1986 and an adjusted aggregate seniority date. The aggregate seniority date is to be the determinative seniority date for the 186 teachers on the list. The collective agreement defines seniority as "a teacher's aggregate length of service with the Board inclusive of service under temporary appointment and part time teaching." (Art. C-7.2.1)

The "TOC days" column is to record of the number of TOC days worked since January 1, 1986. The collective agreement provides the "greatest number of days of substitute teaching with the Board since January 1, 1986" is the second factor to resolve seniority ties. (Art. C-7.3.2) The first factor is "the greatest present continuous employment with the Board." (Art. C-7.3.1) There is no column for this factor. The "appointment date" column is to record the third level tie-breaking factor - "the earliest date of acceptance of employment with the Board." (Art. C-7.3.3) The list does not record the fourth level tie-breaking factor - "the greatest service recognized for increment purposes." (Art. C-7.3.4)

Teachers may have equal seniority because frequently several teachers begin their service on the first day of the school year. For this reason, seniority tiebreakers are common in teacher collective agreement. In some collective agreements, but not this one, the final tiebreaker is a coin toss.

The school year may start on any date between September 1<sup>st</sup> and 8<sup>th</sup>. The return following the Christmas break may be on various dates in early January. When a

teacher's start date was the first day of school in September or January, the union and employer agreed during this arbitration that the date in the start date column is to be either September 1st or January 1st. If the teacher's start date was the second or subsequent day in the school year in September or January, that second or subsequent date will be the teacher's start date.

This agreement is to avoid the anomalies and unfairness that may result from different school year or January start dates over the years. For example, a teacher who started the first day of school in 1993, which was September 7<sup>th</sup>, and has taken a one year leave for which seniority did not accumulate would have an aggregate service or seniority date of September 7, 1994. That teacher would be ranked behind a teacher who started the first day of school in 1994, which was September 6<sup>th</sup>. With this agreement, they both will have an aggregate service or seniority date of September 1, 1994 and will be ranked by application of the tie-breaking factors in order from one to four.

The union and employer realize and accept that this agreement on the start date may result in a teacher's start date being earlier than his or her appointment date. The union and employer also agree that the appointment date is to be the earlier of the dates the teacher signified "acceptance of employment" (Art. C-7.3.3) by signing a contract letter or by actually commencing the assignment.

### **3. TOC Days Since January 1, 1986 (Second Level Tie-Breaker) - Article C-7.3.2**

As a general rule under this local agreement, seniority does not include time worked as a Teacher-On-Call. The number of TOC days is the second level tiebreaker. In preparing a revised seniority list for these proceedings, the employer recorded some, but not all, TOC days worked since January 1, 1986. This generated a difference, which the union and employer agreed I have jurisdiction to decide.

The collective agreement provides that: "For the purpose of calculating length of service part time teaching shall be credited as if it were full-time service." (Art. C-7.2.3)

The employer considers it to be unfair that a teacher working part-time and accruing service credit equivalent to a full-time teacher could also accrue TOC days worked while teaching part-time and obtain a potential tie-breaking and seniority ranking above a teacher working full-time and unable to work TOC days. The union emphasizes that TOC days do not increase a teacher's "aggregate length of service" or seniority. It underscores that TOC days are merely a second level tiebreaker and contain an element of chance like a coin toss. It submits there is no restriction in the collective agreement on the TOC days to be counted, except that they must have been worked since January 1, 1986.

This is not a major issue in the administration of the collective agreement and application of the seniority provisions, but it may have real consequences for some teachers. For example, Lorna Thornton and Robi McKnight each have a start date of September 1, 1997. Ms Thornton's appointment date is August 27, 1997, two days before Ms McKnight's appointment date, August 29, 1997. Ms McKnight worked five TOC hours in 1998 while teaching less than full-time. This is treated as one TOC day. The number of TOC days is the second level tiebreaker. The date of acceptance of employment, or appointment date, is the third level tiebreaker. Assuming equal "present continuous employment" (Art. C-7.3.1), the first level tiebreaker, if Ms McKnight has one TOC day, she is ranked ahead of Ms Thornton. If not, Ms Thornton is ranked ahead of Ms McKnight because her appointment date is two days earlier.

There is no evidence of bargaining history or past practice to assist in discerning the mutual intention of the union and employer in agreeing to the language of Article C-7.3.2. They agreed the second level tie-breaker is to be the "greatest number of days of substitute teaching with the Board since January 1, 1986." There is no stated exception on which the employer relies. It says the different circumstances when the days are worked should be considered to avoid unfair advantage for teachers who have worked part-time.

The union's position is that the words should be given their plain and obvious meaning. The employer's position is that days of substitute teaching are to be treated differently depending on the teacher's status at the time of the teaching days. If the teacher substitutes while teaching part-time, the days should not be counted. To be consistent, if the teacher substitutes while on leave of absence for which seniority accumulates as if the teacher were teaching full-time, the days should not be counted. However, if the substitute teaching occurs during a leave of absence for which seniority does not accumulate, the days should be counted.

The employer, and perhaps others, consider it to be unfair that part-time teachers or those on leave accumulating seniority can gain a seniority ranking advantage ahead of full-time teachers. For others, the circumstances, whatever they were, that resulted in Ms Thornton's date of acceptance of employment being two days before Ms McKnight's acceptance date may be seen to have produced an unfair result for Ms McKnight.

I conclude there is no basis in the language of Article C-7.3.2 or the entire collective agreement to exclude days of substitute teaching while employed as a part-time teacher or on a leave of absence for which seniority continues to accumulate. These days are to be counted for the purpose of Article C-7.3.2 and included in the appropriate column on the seniority list.

#### **4. Bev Forster - Articles C-7.2.2 and H-5.1**

Bev Forster, who testified, began working for the employer as a Teacher-On-Call in September 1998. In early May 1999 Heather Lytle developed difficulties with her pregnancy. Her physician advised her to reduce her hours of work. Ms Forster had substituted for Ms Lytle on May 3, 1999. Beginning Monday, May 10, 1999 she agreed to substitute for Ms Lytle for one-half of the day Monday to Wednesday and all day Friday. When she agreed to substitute, she was told a position vacancy would be posted for a temporary 0.5 FTE temporary assignment for the remainder of the school year. If no one else applied, she would be successful in getting the assignment. The

vacancy was posted May 14<sup>th</sup> with a closing date of May 19<sup>th</sup>. Ms Forster applied for the position.

Ms Forster substituted for Ms Lytle from May 10<sup>th</sup> to 12<sup>th</sup> and on Friday, May 14<sup>th</sup> and again from Monday to Wednesday, May 17<sup>th</sup> to 19<sup>th</sup>. Friday, May 21<sup>st</sup> was a district professional development day and Monday, May 24<sup>th</sup> was Victoria Day. For Teachers-On-Call, a non-instructional day is generally only counted and paid as a teaching day if it falls on the twenty-first or subsequent day in any one substitute assignment. (Art. H-2.5) However, "A Teacher-On-Call's service shall not be considered broken by a Professional Day." (Art. H-2.10) Friday, May 21, 1999 was not the twenty-first or subsequent day for which Ms Forster substituted for Ms Lytle.

Ms Forster substituted for Ms Lytle on May 25<sup>th</sup>. By letter dated May 28, 1999, the employer offered Ms Forster the 0.5 FTE temporary assignment for which she had applied. It was effective May 26<sup>th</sup>. Ms Forster signified her acceptance of the assignment by signing the May 28<sup>th</sup> letter on June 4<sup>th</sup>. In accordance with their agreement on the acceptance date under Article C-7.3.3, the union and employer agree May 26, 1999 is both Ms Forster's start date and her appointment date. This is the same start and appointment date as another teacher, Clare Philip, who the employer determined has 71.5 TOC days and is ranked immediately ahead of Ms Forster, who the employer determined has 69.2 TOC days.

There is an exception to the general rule that TOC days do not count as service for the purposes of determining seniority. Article C-7.2.2 states the aggregate length of service for seniority "... does not include time accumulated as a Teacher-On-Call except when retroactive temporary appointments are made according to Section H5." Section H of the collective agreement addresses Teachers-On-Call. Article H-5 addresses temporary appointments. Its sole provision H-5.1 states: "Twenty (20) days continuous teaching on the same assignment, shall entitle a Teacher-On-Call to a temporary appointment made retroactive to the start of the assignment."



The union and employer agree the purpose of this provision is to protect a Teacher-On-Call from being left in a substitute assignment for an indeterminate length of time without attaining temporary appointment status and accumulating service for seniority purposes. This may happen if a teacher's absence due to illness is unexpectedly prolonged and the substitute period is extended beyond what was the initial expected period of substitution. After twenty days continuous teaching in the same assignment, even if the absent teacher returns on the twenty-first day, the Teacher-On-Call receives a retroactive temporary appointment and the service from the first day becomes part of the teacher's aggregate length of service counted toward seniority.

Ms Forster and the union submit the same protection ought to be extended to a Teacher-On-Call who commences an assignment with the expectation that a temporary vacancy will be posted and applies for and receives the assignment, as Ms Forster did. The employer submits Ms Forster's period of substituting for Ms Lylte between May 10, 1999 and May 26, 1999 was not for twenty days.

The days Ms Forster substituted in May 1999 prior to May 26<sup>th</sup> are TOC days to be counted for purposes of the second level tiebreaker under Article C-7.3.2. The circumstances of the assignment substituting for Ms Lylte prior to May 26<sup>th</sup> do not fall within Article H-5.1. Ms Forster did not teach twenty days in the assignment prior to May 26<sup>th</sup>. For this reason alone, she does not come within the exception in Article C-7.2.2. I do not have to decide whether her teaching in that assignment prior to May 26<sup>th</sup> was "continuous." I find Ms Forster's start date for seniority purposes is May 26, 1999.

#### **6. Jeff and Alison Sidow's Leave of Absence - Article C-7.3.6.vii**

The most senior teacher to receive a notice of layoff is Jeff Sidow, whose appointment date is June 25, 1990. His start date is September 1, 1990. The employer calculates his aggregate length of service or seniority date to be two years later because of a two-year leave he and his wife, Alison Sidow, took from September 1995 to September 1997. Ms Sidow is below Mr. Sidow on the seniority list. Using the same

approach, her start date is March 11, 1991 and her adjusted aggregate length of service or seniority date is March 11, 1993.

The union grieves that for each of them the two-year leave of absence ought to be counted toward their aggregate length of service under the provisions of Article C-7.3.5.vii, which states:

For the purpose of this Article, leaves of absence granted by the Board in excess of one month shall not count toward length of service with the Board, except: ...

vii) leave for teaching with the Department of National Defence or Canadian Universities Overseas or similar organization;

Ms Sidow testified. Mr. Sidow did not. In March 1995, Jeff and Alison Sidow learned both of them had been accepted to teach at Woodstock School in the Himalayas in India. Ms Sidow testified she then spoke to Superintendent A. W. Cooper by telephone about each of them obtaining a leave of absence. He asked her to write a letter to him explaining the nature of the leave they were requesting.

Ms Sidow testified she had a copy of the collective agreement and reviewed it before she and her husband drafted a letter to Mr. Cooper. They each wrote an identical letter dated March 27, 1995. It states, in part:

The intent of this letter is to request your approval for an extended leave from my continuing full time teaching position ... . I am asking for a two year personal leave ... . During this leave I intend to fulfill a teaching position at Woodstock International school in Mussoorie, India. Woodstock was founded in 1858 and became an accredited international school in 1974. The school is dedicated to educating young people and to examining and acting upon issues of peace and justice in developing nations. As a teacher at this school I will sometimes be responsible for leading students on humanitarian excursions (i.e. social work in neighboring villages). Our salary is equivalent to \$450.00 Canadian per month. Given the nominal wages and the schools history of humanitarian work it is my hope that my leave will be granted and that I will continue to accumulate my seniority. I continue to be dedicated to teaching the children of the Bulkley Valley and anticipate I will be a more effective and interesting teacher upon my return. Thank you for considering this request.

Mr. Cooper responded by letter dated April 10, 1995:

I am directed by the Board of Trustees of School District #54 (Bulkley Valley) to notify you that your request for a two (2) year personal leave of absence for the 1995/96 and 1996/97 school year has been approved.

Please let me know as early as possible what your intentions are in returning to a teaching position with the district.

Best wishes and I hope your leave is an enjoyable one.

There is no mention of seniority in the letters and no mention of Article C-7.3.5.vii.

Article G-16.1 of the collective agreement states: "Leave of up to one (1) year may be granted to teachers for personal reasons and this leave shall be without pay." Ms Sidow testified she reviewed this article before she spoke to Mr. Cooper and was concerned that it referred to one year when they wanted a two-year leave. She testified she spoke to Mr. Cooper about this. She testified they wanted to return to the Bulkley Valley and it was important that they not lose seniority. She testified they did not cite an article of the collective agreement in their letter because of her conversation with Mr. Cooper. She testified that, if they were to lose their seniority, they would not have taken the leave. She testified she and her husband intended to apply for leave under both Article G-16.1 and C-7.3.5.vii. When they received Mr. Cooper's response they believed it was approval of what they had intended and what she had discussed with Mr. Cooper.

Jeff and Alison Sidow, accompanied by their children, taught at Woodstock School for two years and returned as planned. In the Spring of 1997, the employer faxed postings to them in India. Each of them had been away from their previous schools for more than one year and was not eligible to participate in staffing realignment at those schools for the 1997-98 school year. Article E-2.2.4 states:

When a teacher on a continuing appointment does not return to the school where she/he held the last continuing assignment after a maximum of one year, that teacher will be deemed to have left that school on a permanent basis and will not be included in the staff re-alignment process of that school, except for teachers assigned to specific positions agreed between the Association and the Board; such assignments to have a maximum duration of two years.

By letter dated April 11, 1997, Ms Sidow was given notice that she had to apply on postings to secure a position for the 1997-98 school year. She applied for three jobs. She was successful on a position at Muheim Memorial Elementary School. Later she was successful on a posting for a position at Lake Kathryn Elementary School. Ms Sidow testified that when the school year began at Lake Kathryn, another teacher at the school was upset that Ms Sidow had achieved the position she did and inquired about Ms Sidow's seniority. They looked at a seniority list, which did not have any notation that her seniority was to be adjusted to deduct two years from her period of service. Ms Sidow recalls that without recognition of service for the two years on leave she would not have been senior to the other teacher. She testified they concluded she had attained the position because she was senior.

Ms Sidow did not look at the seniority list in 1998. In 2000, Ms Sidow noticed that the seniority list noted her seniority was to be adjusted by minus three years. She testified she had seen a seniority list with a notation of minus two years and then a subsequent one with a notation of minus three years. She spoke to the local union President, Lianne Eichstadtler, who wrote to Superintendent Dr. Ed Skuba by letter dated April 3, 2000, inquiring why Ms Sidow had a loss of three years and what her current status was. Dr. Skuba testified he did not recall receiving this letter and this explains why he did not respond promptly. Ms Sidow followed up with a letter dated May 31, 2000. She wrote as follows:

At this time, the BVT, on my behalf, has not received a response to the letter written on April 3<sup>rd</sup>. The letter sought clarification on my loss of seniority.

The intent of this letter is to bring to your attention Section A, 6.3.1 of the collective agreement. This article indicates that I should not have lost seniority while seconded to work with the Northwest Teacher Education Consortium. I would appreciate the return of my seniority for the 1999-2000 school year.

Dr. Skuba responded with a letter of the same date. No copy was sent to the union. The letter states as follows:

This is to acknowledge receipt of your letter dated May 31, 2000, wherein you address the matter of your seniority for the 1999/2000 school year.

The decision I have rendered with respect to your request is on a without prejudice basis. I shall approve a one year credit of seniority for you (1999/2000), but this shall be outside the article you cited in the Collective Agreement with Teachers (Section A, Article 6.3.1), unless you can authenticate that you were engaged by the University on a full-time basis for the year.

There was no follow-up correspondence from the union or Ms Sidow inquiring about the other two years. There is no evidence of any inquiry or concern expressed by Mr. Sidow about the notation of minus two years beside his name on the seniority list before March 2001.

Ms Sidow received initial notice of layoff March 14, 2001. She then spoke to Dr. Skuba for the first time about recognizing the two-year leave for her and Mr. Sidow under Article C-7.3.5.vii. He asked for, and she delivered to him, information about Woodstock School. Dr. Skuba testified this is the only information about the school in either Jeff or Alison Sidow's personnel files.

Dr. Skuba, who was first employed by the employer in 1996 and became Superintendent in 1997, reviewed the information. On April 1, 2001 he wrote to Jeff and Alison Sidow as follows:

Thank you for submitting information about the Woodstock School, at which you taught while on leave from School District No. 54. I have reviewed this information, along with records from your personnel files, in reconsidering the question whether or not the leave granted to you was appropriately classified.

The nature of the leave granted to you, in writing, dated April 10, 1995, specified the leave as personal in nature. It is, in my judgement, an appropriate classification of leave. I understand, from our earlier conversation, that you believe your leave should have been counted as service to the District No. 54, under Section C, Article 7.3.5 vij of the Collective Agreement. However, I do not find that the materials I have reviewed, would constitute cause to re-categorize the leave initially approved.

Dr Skuba testified that "in my professional judgement the school was not unlike other private or independent schools, but unlike CUSO or DND." He concluded

Woodstock School was no different than any other school in British Columbia. He did not "feel the need to override the decision of the previous Superintendent" that the leave was a personal leave. On cross-examination, Dr. Skuba agreed teaching at Woodstock School is basically volunteer work, but he did not take that into consideration as a factor. He acknowledged his familiarity with CUSO schools is superficial. He did not look beyond the information provided by Jeff and Alison Sidow. No evidence was adduced about teaching with DND or CUSO.

Woodstock School in Mussoorie, India in the foothills of the Himalayas is described in the two page article provided to Dr. Skuba as a "... school and home for 450 energetic, bright and hearty kids from 38 countries the world over." It is an International Christian school, which prepares students for "college careers in both the East and the West." Classes run from July to June with a month vacation and an eight week winter break. The school advertises that 95% of its graduates go to college or university, about half in the United States and the other half in the United Kingdom, Europe, India, Australia, New Zealand, Japan, Korea, Russia and elsewhere.

The union submits the employer is estopped from denying Jeff and Alison Sidow accumulated seniority while on leave. Referring to an arbitration award in which an estoppel submission was dismissed, the union submits:

In other words, an estoppel will arise when a person or party, unequivocally by his words or conduct, makes a representation or affirmation in circumstances which make it unfair or unjust to later resile from that representation or affirmation. The unfairness or injustice must be more than slight. It does not matter whether the representation or affirmation was made knowingly or unknowingly, or actively or passively. The representation is taken to have that meaning which reasonably was taken by the party who raises the estoppel. (*Abitibi Consolidated Inc.* (2000), 91 L.A.C. (4th) 21 (Blasina) at p. 35)

The union submits that, through the words or conduct of Superintendent Cooper, the employer made a representation, which Jeff and Alison Sidow relied on to their detriment. While they referred to seniority in their applications for leave, the reply was silent. They relied on that silence as confirmation they would continue to accumulate

seniority, as they had expressed hope would occur. Consequently, the employer is now estopped from asserting they did not accumulate seniority during their leave.

Alternatively, the union submits the Woodstock School is a "similar organization" under Article C-7.3.5.vii. It is a humanitarian school at which Jeff and Alison Sidow taught for a nominal salary. Teaching at Woodstock School fulfils the intention to recognize unique teaching experiences around the world to enhance a teacher's experience and to enrich the contribution the teacher can make to the Bulkley Valley School District.

The employer submits there was no representation seniority would continue to accumulate. Jeff and Alison Sidow requested, and were granted, an extended leave for personal reasons. There was no reference in the written application to any representation by Superintendent Cooper. There was testimony from Ms Sidow about any representation by Superintendent Cooper in the telephone conversation that preceded the written application. Ms Sidow testified he said he would examine the request when he received the application.

The employer submits accumulation of seniority is not a feature of extended personal leaves and there can be no assumption that it was implicit in the decision of the Board of Trustees in 1995 to grant the leaves. There was no subsequent statement that seniority had accumulated until this arbitration. The employer underscores that the discussions at Lake Kathryn in September 1997 between Ms Sidow and another teacher did not involve the employer and amounted to no more than conjecture between two teachers. In April 2000 the adjustment of three years to Ms Sidow's seniority was before everyone and the only issue raised was the one year while she was at Simon Fraser University.

Similarly, the employer submits, there was no mention of Article C-7.3.5.vii until after the notice of intention to layoff. There is no reference to this type of leave being requested in 1995. Article C-7.3.6 states: "Any approved leave of absence shall

preserve continuity of service, but shall not add to seniority, except in accordance with C-7.3.5 above." Ms Sidow read the collective agreement before making the leave application in 1995. She must be taken to have read this provision and to have understood that she had to identify the nature of the leave they sought if they wished to accumulate seniority while teaching at Woodstock School.

The employer submits it undertook a review of the material in 2001 and Dr. Skuba concluded Woodstock School was no different than any other independent Christian school in British Columbia or elsewhere. The union asserts it is different, but led no evidence to identify the ways in which teaching at Woodstock School is similar to teaching with the Department of National Defence or the Canadian Universities Service Overseas.

I find it is understandable that Jeff and Alison Sidow wish to attain seniority that places them above the layoff line. It is commendable that the employer would consider their request, years after their leave, to treat it as a leave of absence under Article C-7.3.5.vii. And it is remarkable, in light of Ms Sidow's testimony, that she did not say to Dr. Skuba in April 2001 that they had been promised, or it had been represented to them by his predecessor, that they would accumulate seniority while on leave teaching at Woodstock School.

I find that the evidence does not support a reasonable conclusion that such a representation was made to them by the employer. They were seeking a leave greater than the one year referred to in Article G-16.1. Their letters of application of March 27, 1995 speak of a "hope" that their leave would be granted and that they would "continue to accumulate" seniority. That expression of hope was after the telephone conversation with Mr. Cooper. There is no evidence that any subsequent employer communication or action represented to them that their hope had been fulfilled. To the contrary, seniority lists identified an adjustment of minus two years. I find that the requisite foundational representation, that they would continue to accumulate seniority, to support



a conclusion of unfairness and the application of the principle of estoppel was not made expressly, implicitly, by silence or by any act on the part of the employer.

If Jeff and Alison Sidow intended their applications in 1995 to invoke Article C-7.3.5.vii they did not say so then or any time before April 2001. It was undoubtedly an enriching personal and family experience for them to teach at Woodstock School. However, not every personally enriching teaching experience, while on leave for more than one month, qualifies as an exception to the rule that time on leave does not count to "add to seniority." (Art. C-7.3.6) The teaching must be at an organization similar to the Department of National Defence or the Canadian Universities Service Overseas, not any school. There is insufficient evidence to conclude Woodstock School is an organization similar to the Department of National Defence or the Canadian Universities Service Overseas. I conclude Jeff and Alison Sidow are not entitled to have the two years on leave added to their aggregate length of service with the employer.

#### **6. Aggregate Length of Service - Background and Positions**

The 1987-88 Teacher's Salary Agreement contained provisions on seniority. It began with a statement of principle and a definition of seniority:

##### **1. Principle of Seniority:**

The Board and Association agree that increased length of service in the employment of the Board entitles teachers who have the necessary qualifications to commensurate increase in security of teaching employment.

##### **2. Definition of Seniority:**

In this article, seniority means a teacher's length of present continuous service in the employment of the Board inclusive of service under temporary appointment and part time teaching.

This does not include time accumulated as a substitute teacher.

The first collective agreement was for the term July 1988 to June 1990. To assist local union collective bargaining, the BCTF distributed a collective bargaining handbook

to local union negotiating committees. The handbook contained suggested clauses on seniority, layoff, recall and severance pay. It also contained background narrative and reference materials and suggested clauses.

Three of the persons engaged in collective bargaining for the first collective agreement testified. None of them retained notes of the negotiations and none had a reliable, specific recollection of the discussions or the details of the agreements. Each recalls that the subject of seniority was not contentious.

Mark Littler and Mark Reed were members of the union bargaining committee assigned responsibility to negotiate what became *Article C: Employment Rights* in the first collective agreement. In that set of collective bargaining, employment rights were extended to temporary teachers. Neither Mr. Littler nor Mr. Reed was involved in subsequent rounds of collective bargaining. Mr. Littler recalls that two members of the union negotiating committee had broken service with the employer. One, Jim Tayler, had been employed by the employer and then left to teach in Victoria for two years. He returned to teach in the District. The other person, Ms. Gail Nicholson (then Wilson), had taken time off for family responsibilities. Neither Mr. Tayler nor Ms Nicholson testified.

The union and employer agreed to retain the statement of principle, which has survived in successive collective agreements and is Article C-7.1.1 in the current collective agreement. The definition of seniority suggested by the BCTF and proposed by the local union, was as follows:

In this article, "seniority" means a teacher's aggregate length of service in the employment of the board, inclusive of service under temporary appointment and part-time teaching. For the purpose of calculating length of service, part-time teaching shall be credited fully as if it were full-time service.

The union and employer agreed to what were Articles C-7.2.1 to 7.2.3 in the 1988-90 collective agreement:

7.2 Definition of Seniority:

- 7.2.1 In this Article, seniority means a teacher's aggregate length of service with the Board inclusive of service under temporary appointment and part time teaching.
- 7.2.2 This does not include the time as a substitute except when retroactive temporary appointments are made according to section H-5.
- 7.2.3 For the purpose of calculating length of service part time teaching shall be credited as if it were full-time service.

These were not contentious changes. Articles 7.2.1 and 7.2.3 have continued unaltered into the current collective agreement. In Article 7.2.2, the word "substitute" has been replaced by "Teacher-On-Call."

Mr. Littler testified he understood that the substitution of the word "aggregate" for "present continuous" would entitle Mr. Tayler and Ms Nicholson to count their prior service to determine their seniority ranking. He specifically recalls talking about interrupted service and maternity leaves. He cannot say there was discussion about persons who had retired returning to employment. He testified: "We did not even think someone would retire and want to come back. It definitely was not in my mind." Subsequent to concluding a collective agreement, seniority lists, including the one of March 31, 2001, have had an adjustment notation of plus two years next to Mr. Tayler's name and plus a period of time next to Ms Nicholson's name.

Mr. Reed recalls the goal was to have seniority recognition for past service, particularly for part-time teachers. He did not mention Mr. Tayler or Ms Nicholson in his testimony. He had no recall about any discussion about the following article among the ones suggested by the BCTF: "For the purpose of this article, continuity of service shall be deemed not [to] have been broken by resignation for purposes of maternity followed by re-engagement within a period of three years, or by termination and re-engagement pursuant to this article."

Trustee Adrian Meeuwissen has chaired the Personnel and Finance Committee for over a decade and participated in the first and subsequent rounds of collective

bargaining. He has no specific recollection of the discussions in the first round of collective bargaining. He has no recollection of ever discussing whether pre-resignation or pre-retirement service would be counted as service for seniority on subsequent engagement.

Francis Bucher testified. He is a teacher with broken service. He was hired in 1982 and taught until 1990 when he resigned to take a position in Campbell River. He taught in Campbell River for one year and was rehired by the employer for the 1991-92 school year. He testified it was unclear to him at the time whether his prior service was recognized as part of his seniority. There was a notation "+8 years" beside his name on the seniority list over the years. On March 8, 2001 he asked Dr. Skuba if his prior service was recognized for seniority purposes. Dr. Skuba replied it was not - "... broken service that comes about through resignation/retirement results in a loss of previously accumulated seniority."

Donna Stanyer testified. She was first employed by the employer in 1979. She resigned in April 1981 to raise her first child. She testified she chose not to take maternity leave. She taught as a Teacher-On-Call from September 1981 to June 1986 and in an assignment from September 1986 to June 1990, when she took an extended leave for personal reasons for one year. During the year of her leave, the 1990-91 school year, she did TOC teaching from September to March. She taught the 1991-92 school year and resigned in June 1992. She resigned to raise her second child and, again, chose not to take maternity leave.

From September 1992 to November 1993, Ms Stanyer did TOC teaching. She took an assignment from November 1993 to June 1996 and then took an extended leave for personal reasons for one year. During that year, she did TOC teaching from September 1996 to March 1997. She has been continuously employed since September 1997.

The seniority list records Ms Stanyer's start date as November 3, 1993, with a notation of "+6.3 years" beside her name. The union and employer agree the correct length is 6.7 years before deducting one year for the 1996-97 personal leave.

When Ms Stanyer received notice of layoff she looked at the list. She was unsure what the notation meant. Perhaps, it was for pension or some other administrative reason. But she was surprised she was as far down the list as she was. Her total TOC time since 1986 is 59.4 days.

Through the testimony of union Bargaining Chair and Treasurer Betty Klassen and Assistant Superintendent Judy Morgan, the union and employer adduced evidence about errors in the seniority list and general uncertainty about the accuracy of the list. For example, on the March 31, 2001 list K. Bachman had a start date of September 5, 1989, an appointment date of August 31, 1989 and no notation beside her name for any adjustment. When Ms Morgan reviewed the files, she determined the start date should be February 1, 1977, the date of a temporary appointment, and the appointment date should be January 25, 1977. Because Ms Morgan did not find a resignation letter on file, she treated the employment as uninterrupted and calculated the aggregate length of service would produce a seniority date to be February 1, 1989. Similarly, J. Littler had a start date of September 6, 1988 and an appointment date of June 9, 1988 with no notation. Ms Morgan determined the start date should be May 8, 1978 and the appointment date May 4, 1978. She calculates that the aggregate length of service generates a seniority date of September 8, 1986.

Jennifer Mulder began employment in May 1975 and resigned in June 1984. She was rehired in February 1992. She has no TOC days since 1986. The notation next her name was "+6 years, - 3 years." The employer says her service prior to 1992 is not to be counted for purposes of seniority.

Dave McNeilly taught in the District from January 1989 to December 1989 as an Australian exchange teacher while he was an employee of an Australian education

authority. His start date with the employer is January 24, 1996. The notation next to his name is "+1 year." The employer has not included the 1989 teaching as part of his aggregate length of service "with the Board" because he was not employed by the employer.

Ann Harness taught between December 3, 1990 and June 1993, when she resigned. She was rehired in September 1999. There is no notation next to her name. She has 222.8 TOC days since 1986. The employer has not recognized the two years service between December 1990 and June 1993, during which time she took some leave.

Donna Steeves started with the employer in 1979 and retired in 1994. She returned and taught from January 19, 1996 to June 1997. She worked TOC days and has been teaching continuously since September 14, 1999. The employer says her start and appointment dates are January 19, 1996 and her aggregate length of service produces a seniority date of January 19, 1998. She has 330.8 TOC days since 1986. The employer has not recognized her pre-retirement service, which is noted as "+17 years" on the March 31, 2001 list.

The union and employer agree there should be a process for a thorough, joint review of the seniority list with an opportunity for teachers to review and challenge or question their placement and any aspect of their record before the list is finalized. The union believes it must have full access to all personnel files to assure itself that any list generated by the employer is accurate and correct. The employer is unwilling to give the union open access to personnel files without individual teacher consent.

The union's submission is that the change to "aggregate length of service" from "length of present continuous service" was to recognize for seniority purposes all teaching experience in the employ of the employer. That is why there were notations that months or years were to added on the seniority lists over the years.

The union relies on the dictionary definition of aggregate: "entire number, sum, mass, or quantity of something; total amount; complete whole." (*Black's Law Dictionary*, abridged sixth edition, (1991))

The union submits specific language is needed to abrogate seniority rights. (*Tung-Sol of Canada Ltd.* (1964), 15 L.A.C. 161 (Reville)) There is none with respect to resignation or other break in service and there are no clauses addressing loss of aggregate service or seniority. Therefore, the union submits, aggregate length of service includes all prior service, including, with exception, service prior to any past resignations or retirements. This service is to be counted when a teacher returns to employment with the employer. The union agrees only current employees, including any on layoff with recall rights, should be on the seniority list. The union agrees that if a teacher resigns and takes severance pay, then that service is lost. Similarly, if a teacher accepts an early retirement incentive payment, then the service prior to that is not to be counted as part of the aggregate length of service if that teacher is rehired.

The employer agrees that "aggregate length of service with the Board" does mean some parts of service taken together. (*The Board of School Trustees of School District No. 69 (Qualicum)*, unreported, July 5, 1999 (Taylor) at pp. 10 - 12) The employer does not agree it includes all past service. The employer submits the aggregate length of service includes:

- ♦ "present continuous service", which is used as the first tie-breaker (Article C-7.31);
- ♦ non-continuous service on a temporary appointment leading to conversion to a continuing contract (Article C-5);
- ♦ TOC time entitling a teacher to a temporary assignment (Article H-5);
- ♦ continuous employment with broken service for an "approved leave of absence", which "shall preserve continuity of service, but shall not add to seniority" (Article C-7.3.6);

- ♦ service before and after "termination" or "layoff", unless the teacher receives severance pay and is re-hired, in which case "the calculation of years of service for purposes of seniority shall commence with the date of such re-hiring" (Art. C-7.11.3); and
- ♦ certain time employed as an Administrative Officer (Art. 7.2.4).

The employer submits the language change from the last salary agreement to the first collective agreement did not involve any change to the principle of seniority in Article C-7.1.1. The change from "length of present continuous service" to "aggregate length of service" was to enable recognition of deemed service and service as a "substitute" when retroactive appointments are made. The deemed service circumstances are part-time teaching credited as full-time teaching, approved leaves agreed to count toward length of service and service interrupted by a layoff, which was defined for the first time in the first collective agreement (Art. C-7.6).

In *Catholic Public Schools of Victoria Diocese* [1997] B.C.A.A.A. No. 9; Ministry No. A-11/97 (Fuller) one issue was whether part-time teaching was to be credited as full-time teaching for determining "aggregate length of service." The employer had prorated part-time service for seniority purposes. Despite the absence of any provision recognizing part-time service as equivalent to full-time service, the grievors argued that the principle of seniority in the collective agreement means there is to be no distinction between full and part-time service. Arbitrator Fuller did not agree. The definition of seniority was to be used to give meaning to the principle and not vice-versa. "Aggregate" modified "length of service" and meant the "accumulation of all time worked" (§ 21), whether full or part-time (§ 26). Aggregating length of service did not mean treating part-time service as full-time service. The employer submits the same approach should be employed in interpreting this collective agreement. The definition in Article C-7.2 is to be used to give meaning to the statement of principle in Article C-7.1.

The employer submits Article C-7.2.1 speaks of "service", not "employment." It is implicit that some current, continuous employment relationship must exist as a



substratum to the service that is aggregated. Temporary teacher employment rights did not exist in the last salary agreement and were introduced in the first collective agreement when the language defining seniority was changed. The concept of "ten aggregate months in temporary assignments" first appears in Article C-5.2 the second collective agreement for the period 1990-92. The use of the word is consistent with grouping time within a current, continuous employment relationship.

The employer submits the provisions of the collective agreement read as a whole do not support the union's interpretation. If all and any past service were to be captured by aggregate, then there is not need to speak of preserving continuity of service while on approved leave of absence in Article C-7.3.6 or deeming service to be unbroken while on layoff. Article C-7.3.7 states: "A teacher terminated and subsequently re-hired while covered by this Agreement shall be deemed to have unbroken service for seniority purposes but time of [sic] layoff shall not contribute to seniority." These provisions clarify aggregate. If the union is correct, they are meaningless and add nothing to the collective agreement. Similarly, Article C-7.11.3, which addresses the situation of a laid-off teacher who accepted severance pay being rehired, assists in determining the meaning of aggregate length of service. The right to re-engagement is lost for various reasons identified in the collective agreement, including the passage of three years. (Art. C-7.8.4)

The employer submits the union's interpretation will result in a retroactive recognition of service that was not "present continuous service" at the time the first collective agreement was concluded. The union seeks to have broken service prior to 1988 credited toward seniority when no retroactive application of the agreement is stated. Arbitrator Kinzie did not find this intention in *Board of School Trustees of School District No. 61 (Greater Victoria)* Ministry No. A-323/92; [1993] B.C.D.L.A. 615-01. He was satisfied that had the negotiators had not intended this result

"... there would have been discussions beforehand about the administrative feasibility of the Employer going back and recalculating the seniority of potentially a considerable number of teachers and of the competing interests of the teachers

who gain from such a change and those who would lose in the sense of their relative positions on the seniority list." (p. 9)

The evidence before him was that there was no such discussions. He concluded "... given the consequences of the Union's interpretation and the absence of any discussion during bargaining concerning them, it would in my view be unreasonable to conclude that the parties intended the interpretation contended for by the Union." (p. 10)

The employer submits the issue in dispute is a threshold one of seniority entitlement, not abrogation of seniority.

*Tung-Sol* is concerned with attempts to limit or override seniority rights. That case is not of assistance in determining whether a class of employees are entitled to seniority. Whether an employee is entitled to seniority at all is a threshold question which must be answered affirmatively before there can be a contest which would engage *Tung-Sol* principles of interpretation. (*The Board of School Trustees of School District No. 75 (Mission)* Ministry No. A-71/95; [1995] B.C.D.L.A. 615-04 (Bird) at p.28)

The employer submits the bargaining history evidence is of not assistance. It is not sufficiently clear or reliable to establish any mutuality of intention. (*The Board of School Trustees of School District No. 69 (Qualicum)*, above; *University of British Columbia*, BCLRB No. 42/76; *Board of School Trustees, School District No. 57 (Prince George)*, BCLRB No. 41/76; *Nanaimo Times Ltd.* [1996] B.C.L.R.B.D. No. 40; BCLRB No. 840/96; *North Central Plywoods* (2000), 88 L.A.C. (4<sup>th</sup>) 387 (Kelleher)) The union evidence is contradictory. The 1988 BCTF background to seniority issues speaks of protecting "real" seniority by crediting aggregate service to avoid the "unfairness that can result when a long-term teacher has a recent, short break in service", not any break in service as the union now contends.

Similarly, the employer submits the past practice of having plus notations on the seniority list is inconclusive and does not assist in interpreting the collective agreement. The teachers who testified, Mr. Bucher and Ms. Stanyer did not know the reason for the notation.

Finally, the employer submits the union's interpretation can have the unsound result of a teacher who was previously dismissed for cause and re-hired having the prior service counted in the current employment. Or a retired teacher who returns to help out or work part-time converting to continuing and immediately rising to the top part of the seniority list and having security of employment over other teachers, while receiving a pension.

### **7. Aggregate Length of Service - Discussion, Analysis and Decisions**

I have concluded that the evidence from the three witnesses who participated in collective bargaining in 1987 and 1988 for the first collective agreement is too vague and unspecific to be reliable or of assistance in ascertaining the mutual intention of the union and employer. The reason for the past practice of constructing a seniority list with notations beside teacher's names has not been explained. These proceedings have revealed that neither the local union nor the employer gave the seniority list the scrutiny it deserved or placed priority on its accuracy. The March 30, 2001 list has plus notations beside twenty-three teachers ranging from seventeen years to twenty-two days. It has minus notations beside thirty-one teachers ranging from two months to eight years. One teacher has both a plus and minus notation. One teacher who started in 1982 has an unexplained notation of "term". There is no evidence that reliable explains the meaning or purpose of these notations or why some other teachers do not have a notation beside their name.

Security of employment increases with seniority. When it is necessary to reduce the total number of teachers, "the teachers to be retained on the teaching staff of the District shall be those who have the greatest seniority, provided that they possess the necessary qualifications for the positions available." (Art. C-7.5.1) Seniority is defined as "aggregate length of service with the Board inclusive of service under temporary appointment and part time teaching." (Art. C-7.2.1) It is further defined not to include time accumulated as a Teacher-On-Call, except for retroactive temporary appointments. (Article C-7.2.2 and H-5) Part-time service is to be credited as full-time. (Art. C-7.2.3) Service while employed as an administrative officer in the district is deemed to be

teaching time for seniority purposes. (Art. C-7.2.4) Leaves of absence longer than one month do not count toward "length of service", unless they are certain listed leaves. (Art. C-7.3.5 and 6) Continuous service, which is interrupted because of layoff followed by re-engagement, is deemed to be unbroken service. (Art. C-7.3.7)

All of these provisions speak to service and seniority of employees in a current employment relationship with the employer. That relationship may be interrupted by an employer decision to lay-off a teacher. When that occurs, re-engagement or recall rights may be lost if the teacher elects to receive severance pay, twice refuses certain continuing appointments or three years elapses. (Art. C-7.8.4) The consequence would be that, if a teacher were rehired, the teacher's service would be broken. For a laid-off teacher who accepts severance pay and is rehired service for seniority begins from the time of rehire. (Art. C-7.11.3)

This is a detailed code of seniority. The "aggregate length of service" consists of a combination of all of the identified service in the bargaining unit, including on temporary appointment or part-time teaching; time on specified leaves, but not others or while on lay-off; and time employed outside the bargaining unit as an administrative officer. The agreement is careful to specify that approved leaves and layoffs do not break a teacher's continuity of service. Some of these may be lengthy leaves - long term sick leave, compassionate leave, holding elected office, secondment to the Ministry of Education, attending to union duties, etc. The collective agreement is specific that service prior to receipt of severance pay following notice of layoff is not to be counted if a teacher is subsequently rehired.

The collective agreement is silent whether service prior to resignation, other than before receiving severance pay, or retirement is to be combined with current service as part of the aggregate length of service. Although not in the agreement, the union says service prior to retiring when receiving a retirement incentive is not service to be included in the aggregate length of service if rehired.

The plain or literal meaning of "aggregate" is a combination or the entire amount of recognized or agreed service. But that meaning does not determine the service that is to be aggregated and the service that is not to be included. The service to be aggregated must be identified from the entire provisions of the collective agreement. It is not open-ended.

The seniority definition provision does not presume aggregate length of service includes all, and any, service with the employer. It expressly includes "service under temporary appointment and part time teaching" and expressly excludes "time accumulated as a Teacher-On-Call", except time specifically identified. It expressly includes and excludes other service with the employer. These express inclusions and exclusions are not for greater certainty because the intention is to include all service, as the union submits. These express inclusions and exclusions are to identify and define the mutual agreements on the nature of service that is to be included to produce an aggregate length of service, which will be the teacher's seniority.

Service in the employ of another employer, not party to the collective agreement, is not "service with the Board." Mr. McNeilly's service in the employ of an Australian education authority, noted as plus one year on the seniority list, was teaching in the District, but it was not service with the employer.

The service addressed in the collective agreement is current, continuous service. This is why the agreement expressly speaks to maintaining the continuity of service while on approved leave or layoff. Resignation is a break in service. Ms Mulder resigned in 1984, before the first collective agreement and when the salary agreement spoke of "present continuous service." When she was hired in 1992, her service between 1975 and 1984 was not revived. Her aggregate length of service begins in 1992.

Ms Stanyer chose to resign twice when she was entitled to taken maternity leave. Each time, it was a break in service. The first time was in 1981. Her current period of

continuous employment began in 1993. This is when her aggregate service begins. Mr. Bucher chose to resign, rather than seek personal or other leave when he left for Campbell River. His resignation does not simply bank service to that date. It closes the book on his continuous employment relationship. His aggregate length of service and seniority began when he was hired in 1991. Ann Harness resigned in 1993. Her aggregate length of service began when she was hired in 1999.

For the past service prior to the first collective agreement, like that of Mr. Tayler and Ms Nicholson referred to in the testimony, there is no evidence to support the conclusion that there was a mutual intention to give retroactive recognition to service that did not count toward seniority under the last salary agreement.

Retirement is a break in service, whether it is or is not accompanied by an early retirement incentive. Donna Steeves retired in 1994. Her aggregate length of service in her current, continuous employment relationship began in 1996.

#### **8. Process to Review Seniority List**

The union and employer agree that I should order and superintend a process to review and revise the seniority list in accordance with the findings in this award. The process should identify mistakes in the current seniority list and produce a list in which everyone can have confidence. The union and employer agree there should be an expeditious, informal dispute resolution process.

The difference between the union and employer is over the role the union should play in identifying issues and verifying the list. The employer proposes that individual teachers should identify questions and concerns which a joint union and employer committee investigates and examines. With individual teacher consent union representatives would have access to personnel files which may contain sensitive, personal information. The union proposes that its representatives have full access to the files in the same manner as administrators and other employees have had.

I have concluded that a process dependant upon teachers or administrators to identify issues involving an individual teacher's seniority will not provide the thorough review of the list contemplated. Teachers may identify concerns that their aggregate length of service is understated. It will be unlikely a process, in which concerns are raised by individuals, will identify circumstances where a teacher's aggregate length of service may be overstated. Individuals generally have an interest only in their relative placement compared to those immediately above them or with similar qualifications. Both the union and employer have an interest in the overall integrity of the seniority list for the current circumstances and their future relationship.

I have confidence the persons designated by the union will respect the privacy of teachers and will, like administrators, treat as confidential any personal information they learn when reviewing a teacher's personnel record. I therefore order, and incorporate as part of the remedial process, that the two representatives designated by the union to serve of the joint seniority list review committee will have access to the personnel records of any teacher included on the seniority list or proposed for inclusion on the list. I order the following:

1. No later than noon, Friday, June 8, 2001, the union and employer will each designate two persons to be members of a joint seniority list review committee. The purpose of the committee will be to review and to agree to revisions to the seniority list. A quorum for any meeting or decision of the committee will be at least one union and one employer designated member. If for any reason, a member is not longer able to serve, a replacement member may be designated. The committee will record minutes of its meetings, deliberations and decisions.
2. Each member of the joint seniority review committee will have access to all personnel records of teachers included on the seniority list or proposed for inclusion on the list.
3. On Monday, June 11, 2001, the employer will distribute an information memorandum to each teacher. The memorandum will explain the format of a seniority list to be distributed the next day and the reason the list is to be distributed. The memorandum will inform the teachers that they are expected to communicate any concerns about the seniority list to the union or employer no later than Friday, June 15, 2001.

4. The employer will provide the joint seniority review committee with a draft of the memorandum to be distributed to the teachers. Before distributing the memorandum, the employer will incorporate into the memorandum any additions or revisions which are agreed to by the committee before 5:00 p.m. on Friday, June 8, 2001. No other additions or revisions will be made to the draft memorandum. If all the contents of the memorandum are agreed to by the committee, the memorandum will be issued as a joint union and employer memorandum.
5. On Tuesday, June 12, 2001, the employer will distribute to the union and to each teacher in the bargaining unit an up-to-date list of all teachers employed by the employer, in order of seniority calculated according to Articles C-7.2 and C-7.3 and incorporating the decisions in this award. The list will set out for each teacher as of January 1, 2001, or some later date, the following:
  - (a) seniority ranking;
  - (b) name;
  - (c) seniority date as determined by aggregate length of service;
  - (d) start date of current, continuous employment;
  - (e) date of commencement of present continuous employment;
  - (f) number of days substitute teaching since January 1, 1986;
  - (g) date of acceptance of employment; and
  - (h) service recognized for increment purposes.
6. The joint seniority review committee will complete its review and revision of the seniority list no later than Monday, June 18, 2001. Any revisions proposed by a one or more members of the committee, but not agreed to by all other members of the committee will be submitted for review and final decision to a seniority referee agreed to by the union and employer or named by me. The disputed revisions, the difference among the members of the committee and the competing positions for each teacher will be clearly identified in a joint statement of agreed and disputed facts and issues. The joint statement for each teacher about whose seniority there is a difference is to be completed and signed by each member of the committee no later than Tuesday, June 19, 2001.
7. If the union and employer are unable to agree by Tuesday, June 12, 2001 who is to be named as the seniority referee, each will nominate to me up to three persons, who they have confirmed are willing and available to serve as the seniority referee. The nominations will be made no later than Thursday, June 14, 2001. I will appoint the seniority referee from among the persons nominated before Monday, June 18, 2001.
8. The union and employer will share equally the fees and expenses of the seniority referee.



9. The seniority referee will have the authority to determine his or her own procedure in resolving differences, but must be satisfied each teacher about whom there is a joint statement has been given a copy of the statement and notice of the difference. The seniority referee will provide each teacher about whom there is a difference an opportunity to be heard on the difference concerning that teacher's circumstances. The seniority referee is expected to render a final decision on each difference as quickly as is feasible in the circumstance. Unless there are exceptional circumstances with respect to a difference or circumstances arise that are beyond the control of the seniority referee, a final decision will be made on each difference no later than Tuesday, June 27, 2001. Each final decision must be in writing and communicated by the seniority referee to the union, employer and teacher involved.
10. The employer will issue a seniority list incorporating all agreed revisions and any decisions of the seniority referee no later than Thursday, June 29, 2001. Any difference not finally determined by the seniority referee will be noted on the list.

**9. Reservation and Retention of Jurisdiction**

I reserve jurisdiction on any matter raised by the union or employer that I may have failed to answer and I retain jurisdiction to resolve any matter arising out of the implementation of this award.

JUNE 5, 2001, LIONS BAY, BRITISH COLUMBIA.

James E. Dorsey

James E. Dorsey