IN THE MATTER OF

THE *LABOUR RELATIONS CODE*, R.S.B.C. 1996, c. 244

AND

IN THE MATTER OF AN ARBITRATION

BETWEEN:

NORTHWEST COMMUNITY COLLEGE,

(the "College")

AND:

CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 2409, FEDERATION OF POST-SECONDARY EDUCATORS OF BC, LOCAL 11,

(the "Union")

RE: **Layoffs**

AWARD

Arbitrator:	Rod Germaine
For the Union:	Leo McGrady, Q.C.
For the College:	Bruce Grist, and Zelius Kleefstra
Hearing:	January 21 to 23, August 12 to 17, and 19 to 22, 2013, in Terrace, B.C.; and October 18, 2013, in Vancouver, B.C.
Award:	December 30, 2013

Introduction

1 In January 2012, the College initiated a series of layoffs and related staff reductions in order to address a budget deficit. The attempts to layoff faculty members represented by the Union attracted grievances, followed by a complaint to the Labour Relations Board (the "Board"). The grievances and complaint were then resolved in a settlement brokered by the Board in late March. The layoff process was started afresh pursuant to an accelerated timetable established by the settlement. But the ensuing layoffs produced a new wave of grievances in June. Five of these individual grievances were referred to arbitration and heard together in this proceeding.

2 The College is a post-secondary educational institution based in Terrace with campuses in Terrace, Prince Rupert and Smithers. It is a leader in aboriginal education, with satellite campuses in other communities in the northwest which are not material to this dispute. The employees of the College are divided into three bargaining units: support staff represented by the BC Government and Service Employees' Union (the "BCGEU"); vocational instructors who are also represented by the BCGEU; and, the faculty members represented by the Union. In January 2012, the Union represented 76 faculty members, of whom only 38 were regular or continuing, as opposed to temporary or part-time employees.

3 The Union is a local of two trade unions: the Canadian Union of Public Employees ("CUPE") and the Federation of Post-Secondary Educators of BC ("FPSE"). The trade union party on the title page of the collective agreement is identified as both locals, while only the CUPE local is mentioned in Article 1.1, Parties to the Agreement. But the term "Union" in this Award will also refer to another entity called the Academic Workers' Union ("AWU"). In this respect, the Award follows the parties' practice of treating the AWU as an undefined amalgam of the CUPE and FPSE locals which is the bargaining agent for faculty. To be clear, these references to the "Union" should not be construed as a formal determination of the AWU's status.

4 The Union withdrew the grievance of Simon Thompson on the final day of the hearing. The individual circumstances of the other grievors - Catharine White, Hondo Arendt, Mia Reimers and Christane Carr - will be canvassed below. The core of the dispute is Article 11 of the collective agreement, which is headed "Termination and Lay-off". The material facts in this respect are largely common to all of the grievances.

5 Although other provisions of the collective agreement enter into the dispute, both parties seek interpretive guidance in relation Article 11.2.2 in particular. It prescribes a process by which the parties are to explore alternatives to a layoff:

> 11.2.2 When an employee's position is identified as redundant, the College shall notify the Union and form a joint layoff committee comprised of four (4) members, two (2) designated by the Union and two (2) designated by the College. The committee shall consider the alternatives to a layoff and explore all possible options as follows:
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> 11.2.2.1 identify regular vacancies in the bargaining unit for which the employee is qualified;
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> 11.2.2.2 determine whether any future temporary or part-time positions will be occurring for which the employee is qualified;
>
> 11.2.2.3 identify the position in the bargaining unit which the employee is qualified to occupy and for which the employee is able to use his/her seniority rights to displace another employee; or
>
> 11.2.2.4 determine if any other employee is eligible for early retirement. The committee will met within two (2) weeks of the notice of redundancy and present the options to the President within two (2) weeks of their meeting.

6 To some extent, this language is uncontroversial. It is not disputed that a joint layoff committee is to proceed in steps. Pursuant to sub-clause 11.2.2.1, the first step is to determine whether there are teaching positions which the faculty member facing layoff could perform. The second step, under sub-clause 11.2.2.2, is to determine whether there will be "temporary or part-time" teaching opportunities - referred to by the parties as "TBAs" - which the faculty member could perform. The third step under sub-clause

11.2.2.3 requires the joint committee to determine whether there are opportunities for the faculty member to bump a junior faculty member. Under sub-clause 11.2.2.4, the joint layoff committee is to decide whether other faculty members are eligible for early retirement.

7 The grievances relate to determinations at the first three steps of this process. The dispute, however, is really over the process. More precisely, it is over what a joint layoff committee is to determine and how it is to make those determinations.

Preliminary matters

8 When the hearing convened in January 2013, the Union announced that it proposed to call evidence of events commencing in January 2012. Counsel asserted the evidence would establish that the College had determined who would be laid off before it began the layoff process, and was therefore essential to the Union's allegation of bad faith.

9 The College objected to the admissibility of evidence of events prior to the parties' settlement in March. The terms of the settlement were captured in a Settlement Agreement signed on March 28, 2012, which was then incorporated into a Consent Order issued by the Board on March 29. The College submitted the Consent Order resolved all disputes then outstanding, rendering evidence of prior events irrelevant and inadmissible.

10 The College also submitted that any allegation of a breach of the Consent Order was beyond the jurisdiction of this arbitration board. The basis of this objection was a term of the Settlement Agreement which provided that all issues of interpretation and application were to be determined by the "Arbitrator", identified as Vice Chair Ken Saunders or, if he was unavailable, John Steeves, as he then was. The argument of the College was that any complaint about the Settlement Agreement must be referred to Vice Chair Saunders (and only Vice Chair Saunders, due to the elevation of Arbitrator Steeves to the Supreme Court of British Columbia).

11 In addition, the College argued that all of the grievances were abandoned by operation of the collective agreement time limit for advancing grievances to arbitration. Pursuant to Article 4.5.2, failure to "arrange the arbitrator and set arbitration dates for the hearing" within 30 days of submission of a grievance to arbitration "shall result in the deemed abandonment of the grievance". The College suggested the determination of this objection be reserved because, like the Union, it wanted interpretive assistance with regard to Article 11.

12 The Union opposed these objections and indicated it would call evidence regarding the timeliness issue.

13 Following some discussion, the parties agreed to amend or abandon these positions in order to facilitate a binding determination of the interpretive issues. The Union thus abandoned its bad faith argument and the College abandoned its second and third objections. That is, the College agreed this board would assume the role of the "Arbitrator" under the Settlement Agreement and it withdrew its timeliness objection on the condition that this Award put the Union on notice of its position regarding the grievance and arbitration time limits in Article 4 of the collective agreement. Accordingly, this Award shall constitute formal notice to the AWU that the College will insist on compliance with all such time limits in the future.

14 Finally, over the objection of the College, I allowed the Union to introduce some evidence of events prior to the Consent Order as historical background, for the limited purpose of assisting me to better understand subsequent events. Although the ruling was contentious, both parties referred to this evidence in final argument.

Facts part 1: pre-Consent Order background

15 In early 2012, the College was running an annual deficit of more than a million dollars. Strong action was required. As salaries and benefits comprise 76 per cent of the College's budgetary expenses, layoffs and staff reductions were the logical action.

16 On January 9, 2012, at a joint union/management meeting ("JUM") between senior management and the presidents and chairs of all three trade unions, the College disclosed its deficit position and the potential for layoffs. In a message to the trade unions two days later, President Denise Henning advised that the deficit had to be eliminated in the 2012-13 budget. On January 12, 2012, the College issued a notice to the presidents of the three trade unions pursuant to section 54 of the *Labour Relations Code* (the "Code") that it would be "...required to lay off employees to address its dollar structural deficit". The notice invited meetings, "at your earliest convenience to address these serious matters".

17 The Union executive replied to President Henning by letter dated January 17, seeking a meeting and requesting information and documentation to allow the Union to prepare for the meeting. The Union was particularly interested in any directive received by the College from the Ministry of Advanced Education (the "Ministry"). Two days later, Kevin Rose, CUPE National Representative, followed up. In a letter dated January 19, addressed to Dr. Suzanne LeBlanc, then the Director of Human Resources and Payroll and now Vice President, People and Planning, he complained that the College had made no attempt to arrange a meeting and had not provided the Union with adequate information. He reiterated the request for "detailed financial statements and directives from Government". In a letter to Dr. LeBlanc dated January 23, Zoe Towle, FIPSE Staff Representative, filed a grievance alleging the College had failed to engage in meaningful consultations.

18 Despite the mutual requests to meet, no meeting occurred before the College decided it was compelled to take further action. The College was unable to identify redundant positions because annual workload plans had not been completed, but it was concerned that Article 11.2.3 imposed a deadline of February 28 for any "notice of termination". In order to meet this deadline, the College calculated it was necessary to begin the layoff process no later than January 26. It therefore issued a layoff notice dated January 26 to the Union in the form of a memorandum to Christane Carr, Union President. The memorandum explained that in order to meet "tight deadlines" in Article

11, the College considered it necessary to give notice "to all regular staff" in the bargaining unit. The memorandum expressly stated that the total number of layoffs "is not known at this time" and "the actual persons" to be laid off would be identified shortly. A list attached to the memorandum named the 38 faculty members represented by the Union who held regular positions. Despite the language clearly communicating this was an interim measure to be followed by layoff notice to only some of the faculty members, the Union characterized it as a "mass layoff". The Union professed, and continues to profess, shock and outrage over this "draconian" action.

19 A flurry of exchanges and grievances followed. In a letter dated January 30, President Henning replied to the January 17 letter from the Union executive. She asserted the College had arranged a meeting but the Union did not attend and did not have the courtesy to inform the College it would not attend. The letter also rebuffed an intervention by Cindy Oliver, FIPSE President, as "not realistic". On January 31, the Union filed another grievance, alleging the layoff notice violated Article 11 of the collective agreement. On February 3, counsel for the Union launched a complaint and application with the Board, citing numerous provisions of the Code and alleging failure to bargain in good faith, violation of section 54 of the Code and an unlawful lockout. Counsel for the College responded on February 17 with an extensive written submission. Meanwhile, Mr. Rose filed a grievance on February 15, alleging the College was not following the joint process in Article 11.2.2. The Board then convened an informal hearing in Terrace and, as noted, the parties settled their differences on terms which rescinded the layoffs and washed the slate clean of all grievances and other proceedings.

20 This account of the procedural history is incomplete and does not explain the relevance of the pre-Consent Order events. But a closer look at the parties' conduct in this period reveals a reluctance on both sides to engage in meaningful dialogue aimed at addressing the layoffs in a constructive and problem-solving manner.

21 The financial crisis was not new. The College had adopted a deficit budget in September 2010 for the fiscal year 2010-11. As the Acting President in the fall of 2010,

Cathay Sousa, Vice President, Finance and Administration, had struck a Budgetary Task Force ("BTF") and implemented cost-cutting measures, such as reduced travel and discretionary spending. When Dr. Henning was appointed President in May 2011, she established the JUM and a priority planning process. A significant, one-time adjustment was made to the capital budget. But when the first draft of the 2012-13 budget was compiled in December 2011, the deficit exceeded two million dollars. The Ministry was then asked to fund potential severance obligations and it declined.

22 The Union was not the only trade union affected. In January 2012, the College was also dealing with the two BCGEU bargaining units, both of which are larger than the Union's. The College made it a point in these proceedings to contrast the BCGEU's response to layoffs with the Union's. While the BCGEU was prepared to meet and talk in constructive and practical terms about the layoffs, the College perceived that the Union was deliberately endeavouring to delay the process in order to prevent the College from meeting the Article 11 deadline.

23 The College was also of the view that the Union had access to enough documentation, by way of the JUM, BTF and other processes and by means of the College's website. In the January 26 layoff notice, the College had designated Dr. LeBlanc and Beverly Moore-Garcia, Vice President, Academic and Student Services, as the administration's members of the joint layoff committees. The College wanted to meet with the Union in the context of the joint process under Article 11.2.2. When no Union members were designated, Dr. LeBlanc and Ms. Moore-Garcia purported to carry out the joint process on their own.

24 As redundant positions had yet to be identified, the Union considered the layoff process under Article 11.2.2 to be premature. In an email to Dr. LeBlanc on February 8, Ms. Carr stated the Union's position as follows: "...the parties do need to meet but not in the form of the layoff committee but rather to discuss the [layoff notice] grievance as well as the issues raised since it was filed".

25 There is no question the Union was aware of the budgetary problems. Apart from the knowledge of the College community at large, Dr. Mia Reimers, Union President for two years ending September 2011, testified that in 2011 the Union made proposals to deal with the deficit "proactively". In addition, the BTF included two faculty members and, while BTF materials were confidential, it is most improbable that "the spirit of the discussions", as Ms. Moore-Garcia put it, were not conveyed to the Union's executive. The deficit nevertheless mystified the Union. Rocque Berthiaume, the most senior member of faculty and Union President for more terms than any other member, agreed the Union knew there was a 1.5 million dollar deficit when the 2012-13 budget was being developed. But, in his words, "it was never clear why and even people in the Board of Governors were surprised so the… [Union] had to deal with it while at the same time grasping for why it existed". Mr. Berthiaume testified the Union's concern was to maintain a "core" of full-time faculty members committed to the College and to the community.

26 It is clear the Union was frustrated by what it regarded as the failure of the College to provide an explanation for the deficit and to fully engage the Union in consultations with regard to how it was to be addressed. It is also clear that the College made no attempt to advise the Union in advance of either the section 54 notice or the layoff notice, much less request a meeting to discuss the impending layoffs and how they should be addressed. Whether the College complied with its contractual obligations to consult with the Union is a question beyond the scope of my jurisdiction. But there was nothing to prevent the Union from submitting a grievance if it was of the view there had been a contract violation. Instead, it refused to meet and the standoff continued.

27 When the parties finally got together in a grievance procedure meeting on February 21, they discussed the layoff timetable. They then disputed the content of their discussions and continued to trade complaints of failure to cooperate. Nevertheless, Dr. LeBlanc, in a letter to Ms. Carr dated February 28, offered to extend the time limits and reactivate the joint layoff committee process. The letter stated the January 26 layoff notice "has been rescinded as you are aware". This statement was not sufficient for the

Union; it required clarification because it had no additional documentation to confirm the comment.

28 On March 8, even though the College had completed its one-sided layoff process, the parties met again to discuss extending Article 11.2.2 deadlines and restarting the joint layoff committee process. Differences over what was agreed at the meeting again scuttled any progress. The Board's informal hearing followed.

29 The parties' Settlement Agreement on March 28, which was appended to the Consent Order issued by the Board on March 29, effectively restarted and rescheduled the layoff process under the collective agreement. The relevant terms need not be quoted; suffice it to say the layoff process, particularly the joint layoff committee stage of the process, was to be completed according to a much accelerated timetable. Although the administration of the layoff process pursuant to the Consent Order generated the grievances for determination in this proceeding, the issues do not include any dispute over the terms of the Settlement Agreement or the Consent Order.

Facts part 2: the layoff process after the Consent Award

30 The first deadline in the Settlement Agreement timetable required the Academic Heads to submit the 2012-13 academic plans to the Dean. Academic Heads coordinate academic planning for each of the three campuses. They are elected pursuant to Article 8.5 of the collective agreement but do not perform their responsibilities as representatives of the Union. Dr. John Krisinger, Academic Head for two academic years ending in 2013, was responsible for the Terrace academic plan and overall coordination. Dr. Reto Riesen, Associate Academic Head, prepared the plan for Prince Rupert, while Mark Wong, Assistant Academic Head, was responsible for the Smithers academic plan.

31 The normal process in this regard is contemplated by Article 13.2.1.3. After consulting with faculty, the Academic Heads prepare a workload proposal including teaching assignments. The proposal for the coming academic year is usually developed in the fall and presented to the Dean early in the New Year. The proposal is then the

subject of discussion between the Dean and the Academic Head. When the Dean accepts it, he refers the proposal to senior management. In 2012, this process stalled when layoffs were heralded in the BTF process. It then took an unusual course under the Consent Order. Based on a recent precedent, the term "academic plan" in the Settlement Agreement was construed to mean a detailed proposal for all sections, courses and programs to be delivered during the next two academic years. These plans, which did not include teaching assignments to individual faculty members, were submitted on March 30, as required by the Settlement Agreement.

32 The College was disappointed with the academic plans for the University Credit Program on the Terrace and Prince Rupert campuses. Although the Academic Heads had been requested to find efficiencies, there was no reduction in the number of sections in the plans. Dr. Krisinger stressed the preparation of the plans was a collegial exercise, and faculty members were concerned to preserve the integrity of programs, particularly the Associate of Arts and Associate of Science Degree programs. From the perspective of the Union, the Academic Heads were not obliged identify redundant sections.

33 The Settlement Agreement timetable required the administration to identify redundant positions by Monday, April 2nd. This stage of the process was accomplished over the weekend by three members of the administration: Ms. Moore-Garcia; Gerry Gauthier, Dean of University Arts and Sciences, Health and Human Services; and, Debbie Stava, Registrar and Director of Institutional Research. Ms. Moore-Garcia testified they worked with historical registration data for every course and section, as well as the requirements for each of the programs and courses offered by the College. Their objective was "to be as least impactful as possible… [and] to keep as many educational pathways as feasible". They identified the sections to be removed from the plans and the individual faculty members who, in the words of Ms. Moore-Garcia, were "likely to be impacted".

34 These decisions were conveyed to the Union in an email message from Dr. LeBlanc to Ms. Carr and Mr. Rose on the evening of April 2nd. Together with

attachments, the message was intended to fulfill several obligations of the College under the Settlement Agreement. It referred to "attached... academic plans that were submitted by the academic heads", but the attachments were the plans modified over the weekend by Ms. Moore-Garcia and her working group. As these modified plans included teaching assignments, they will be referred to as the administration's workload plans. The relevant content of the message was this:

> ...we have identified the individuals who, by virtue of past teaching workloads and seniority, are in positions that have been identified as redundant. Please find the list in the appended memo... I have listed them below for your convenience:
>
> Mitch Verde
> Christane Carr
> Leanne Boshman
> Hondo Arendt
> Elise Kruithof
> Mia Reimers
> Rocque Berthiaume
> Catharine White
> Germaine Mistry
> Simon Thompson
>
> As there are 10 individuals identified, 10 committees need to be formed. In anticipation of step 5 of the settlement agreement, we are notifying you that our two employer delegates are: Suzanne LeBlanc and Beverly Moore-Garcia.
>
> As per section 9 of the settlement agreement, we are providing information that is relevant to the work of the committees:
>
> Please find attached the academic plans that were submitted by the academic heads. These plans outline the courses that will be offered for the 2012-2013 academic years, courses that have been identified as redundant, and a list of individuals that we expect will be teaching (based on past teaching workload and seniority), and the future part time or/and temporary positions that may be occurring. We expect that committees will work with the employee to identify if they are able to teach in areas other than those they have taught in the past. To that end, we recommend that the academic plans be made available to each committee to allow employees the widest breadth of courses possible to select from.
>
> There are no regular vacancies in the bargaining unit anticipated.
>
> The three early retirement positions will not be advertised but the workload for those positions is part of the attached academic plans...

35 The workload plans required some corrections. On April 4, Dr. LeBlanc emailed another set of the plans to Mr. Rose, who had raised issues regarding the initial drafts. In her message, Dr. LeBlanc said the faculty members identified for layoff should be encouraged to provide an up-to-date resume to members of their joint layoff committee. She pointed out that the only resumes in the possession of the College were those in the faculty members' personnel files, many of which were "quite old".

36 After consulting the faculty members affected, Ms. Carr communicated the names of the Union members of the ten joint layoff committees to Ms. LeBlanc in an email message late on the afternoon of April 3rd. Committee meetings were arranged by Ms. Moore-Garcia's executive assistant. Both Ms. Moore-Garcia and Dr. LeBlanc testified this was a challenging task in part because of three campuses and in part because some Union members did not initially offer compatible availability.

37 Between Tuesday, April 10, and Friday, April 13, each of the joint layoff committees met once. The duration of the meetings was mostly an hour or less. The evidence of the Union's witnesses who participated in the committee meetings – Dr. Krisinger, Dr. Riesen, and Gordon Weary – was that the meetings were amicable; there was no disagreement among committee members. Ms. Moore-Garcia testified the meetings "ran the gamut of what can happen in a meeting". Some, particularly those for a faculty member who chose severance, were "to the point". In others, according to Ms. Moore-Garcia, the Union members argued there should be no cuts. In the meeting of Dr. Catharine White's committee, for example, she testified, "Dr. Krisinger spent much of the meeting telling us we shouldn't cut, we should add sections back and there would be no layoff". In other meetings, the Union members "brought a lot of things to the table". Her concern was how to "prioritize" the options. She testified the Union members of Ms. Carr's committee - Dr. Riesen and Erfan Zahrai - stated their only purpose was to establish all of Ms. Carr's options.

38 Dr. LeBlanc testified her role in the joint layoff committee process was restricted to administrative support and providing human resources and process advice. Her

evidence was that the Union members provided possible options for the faculty member in question, she took notes and, at the end of the meeting, she read her notes out loud to gain the agreement of the committee that she had correctly summarized the discussion. She testified there were no objections raised by Union members to any of her summaries. She then created draft reports, in which she ordered her notes of the discussion to correspond with the steps of the process dictated by Article 11.2.2, from sub-clause 1 to sub-clause 4. On April 14, she forwarded draft reports to the Union committee members to ask them "…to confirm this is what was discussed".

39 Most of the Union members' responses to the draft reports were forwarded to Dr. LeBlanc by email on the 16th. The responses contained changes, including the addition of options which had not been discussed by the committee. Some of the additions were sections removed from the 2012-13 teaching schedule by the administration's workload plan. Although the time for joint layoff committee deliberations was extremely short, the Union's witnesses testified they expected dialogue with the College members in order to settle on a report to the President. In his email to Dr. LeBlanc concerning Dr. Reimers' draft report, Gordon Weary suggested a meeting that afternoon or evening "if you need to discuss further". He testified that he and Jake Muller, the other Union member of the committee, expected further discussions with the College committee members because "we felt we were part of a committee which would make one set of recommendations". Reminded in cross-examination of the compressed time frame, Mr. Weary testified that, "in terms of someone's livelihood" there was time. In his messages to Dr. LeBlanc regarding the reports for Mr. Arendt and Ms. Carr, Dr. Riesen referenced the need for all members of the committee "to sign off on it… as this is a joint report".

40 On April 17, in accordance with a Settlement Agreement deadline slightly extended by the parties, Dr. Leblanc forwarded the joint layoff committee reports to President Henning. In some instances, particularly for faculty members who elected to take severance, the report was a unified set of recommendations. But the reports concerning the grievors were comprised of two appendices: Appendix A set out the options identified by the Union committee members and Appendix B the options

identified by the College members. Dr. LeBlanc testified that some of the Union committee members' responses to her drafts had "completely altered" the report but she did not want to change the Union members' document. Rather, she "wanted both voices to be heard". Because of the urgency with which the process was to be completed, she decided to submit some reports in the bifurcated form of two appendices.

41 In an email message to Dr. LeBlanc on the afternoon of April 17, Ms. Towle conveyed the Union's concern about the form of the joint layoff committee reports. Ms. Towle asserted the dual format was contrary to both the collective agreement and the Consent Order and she complained it had been adopted without consultation with the committees' Union members. Ms. Towle requested Dr. LeBlanc to reconvene the joint layoff committees so that unified reports could be formulated. In her email reply on April 18, Dr. LeBlanc denied any breach of the collective agreement or the Consent Order but she offered to reconvene the joint layoff committees on certain terms. The Union's counter-offer was not acceptable to the College because it did not contain an assurance that the end-date of the process would remain unchanged.

42 To meet the deadline stipulated in the Settlement Agreement, the College issued layoff notices to ten employees that afternoon. The letters conveying the layoff notices were dated April 18 and signed by Dr. LeBlanc. Each letter appended "the options identified by the union members of the layoff committee and those identified by the employer members of the layoff committee".

43 In an email message to Dr. LeBlanc on April 19, Ms. Towle requested clarification of the options available to the faculty members, and specifically whether the options in both appendices could be chosen. In the ensuing email exchange, Dr. LeBlanc characterized some of the options proposed by the Union members as "...not viable for the affected employee", and said it was "...the College's position that the Union's lists of options are not acceptable options". When Ms. Towle pressed for further clarification, Dr. LeBlanc replied on April 23:

> The employer options presented reflect the discussions at the full joint committee and offer viable options. What makes many of the employees' options not viable is that they rely on creating more sections than the number being offered.

Later the same day:

> The options recommended by the employer reflect the options the committee as a whole agreed to in the meeting... Where options were not viable, they too were included but put under a section that says the union recommends.

As a consequence, the Union advised its members to choose only from the options in the report of the College members. The four remaining grievors followed this advice.

44 Between May 1 and May 7, the grievors responded to the April 18 layoff letters to communicate their choices of options. In every case, some or all of the grievor's selections were rejected by the College. In letters dated May 22, 2012, Dr. LeBlanc informed each of the grievors that the options were subject to the faculty member being qualified, and the recipient was not qualified because she or he did not possess a master's degree in the discipline in question or in a related discipline.

45 The grievors were invited to provide any further qualifications or documents beyond those in the faculty member's personnel file. Each of the grievors replied, providing information and advancing arguments that she or he was qualified to teach the section(s) in question. Almost all of these representations failed. Each of the grievors was prevented from teaching at least one of the options recommended by the College members on their joint layoff committee. In every case, the reason was the same: in the absence of a master's degree in the discipline or a related field, the grievor was not qualified.

46 The grievances before this board followed, each submitted by Ms. Towle in letters dated June 5 and 8. The grievances alleged breaches of Articles 11, 13 and 14 of the collective agreement. Two of the grievances also cited contract provisions related to travel expenses but those issues have been resolved. In all of the grievances except for

Mr. Thompson's, the Union advanced the contention that the grievor was qualified to teach the courses in question and, as the sections had been identified as viable options, it was "arbitrary, unfair, discriminatory and unreasonable" for the College to determine they were not qualified. In separate memoranda dated June 8, Dr. LeBlanc denied each of the grievances and on grounds which previewed two of the more significant issues in dispute:

> The [joint layoff] Committee did not make determinations on whether the individual was qualified to teach the section(s) identified. We sought to look at all possible options for individuals who were then required to prove their qualifications for the choices they made.
>
> As per Article 11.2.4.2, the employee must be qualified and able to perform the job...
>
> In reference to your assertion that the employer was "arbitrary, unfair, discriminatory, and unreasonable", we disagree. Determination of eligibility to teach is based on the long-standing criterion outlined for every advertised University Transfer position: Master's degree in the field or related discipline".

47 The weeks and months which followed were difficult for the College. Dr. LeBlanc was away from work from June 26 to late September. Ms. Moore-Garcia was forced to assume Dr. LeBlanc's responsibilities through a busy period of layoffs and other staff reductions. Inquiries regarding the options which remained available to the grievors went unanswered. Some of the options not initially selected were posted as TBAs and assigned to junior members of faculty. In Dr. LeBlanc's absence, the College struggled to accurately capture the employment status of the grievors. Numerous letters were forwarded to the grievors purporting to terminate their continuing status. However, the issues in this respect have been resolved; it is agreed that, except for Ms. Carr, each of the grievors retains continuing or regular status.

Facts part 3: the grievors

48 The grievance of Mr. Thompson, as I have noted, was referred to this arbitration and withdrawn by the Union at the conclusion of the evidentiary hearing. Three of the other ten faculty members who were laid off - Mitch Verde, Leanne Boshman and Elise Kruithof - took severance pay. Another - Germaine Mistry - selected options which

preserved her continuing appointment. The last, Mr. Berthiaume, retained his full-time continuing position but only by virtue of his election as Union President, for which he received a 25 per cent release from a full workload. Mr. Berthiaume's position is that he should not have been laid off and his grievance has been referred to a separate arbitration.

49 Dr. Catharine White earned a B.Sc. in Biology with highest honours from the University of Tennessee at Chattanooga, which she attended on an athletic scholarship. She then earned a Ph.D. in Microbiology at Cornell University in 2005. She pursued post-doctoral research at Ludwig Maxmillians University in Munich, Germany, before returning to Canada to take a research post at McMaster University.

50 In 2010, Dr. White was the successful candidate for an advertised vacancy at the College. She was appointed to a full-time regular position teaching Biology courses essential to the Associate in Science program, and did not expect to be vulnerable to a layoff. But sections and labs in Introductory Biology, as well as other Biology sections, were removed from the teaching schedule by the administration's workload plans and she was the junior faculty member in the Biology Department in Terrace.

51 At Dr. White's request, the Union members of her joint layoff committee were Dr. Krisinger and Mr. Weary. They had been members of the hiring committee which had selected her from among a number of strong candidates a year and one-half earlier, and were therefore familiar with her qualifications. Reference has been made to the meeting of this joint layoff committee. The Union members recommended options which had been removed from the College's workload plan but the two sets of recommended options were otherwise essentially the same.

52 Under sub-clause 11.2.2.2, the committee identified sections of Biology in Terrace temporarily available because Dr. Krisinger was on release as the Academic Head. Under the same sub-clause, the committee also identified 3 TBAs in Smithers, including Geography 215. Other options in Prince Rupert were identified under sub-clause 11.2.2.3. Following receipt of Dr. LeBlanc's layoff letter of April 18, Dr. White

selected a 0.6 FTE workload in Terrace and the three TBAs in Smithers. With credit for travel time (under Article 13.2.1.4 and a supplementary agreement between the parties), these choices would have comprised a full workload. But the selection of Geography 215 provoked controversy.

53 The administration's workload plan for Smithers contained this footnote: "Geo 215 added as humanities". Ms. Moore-Garcia testified the intention was to ensure the presence of the "building blocks" for the Associate of Arts Program. The academic plan had included only one section in the humanities but two were required. However, the choice of Geography 215 perplexed faculty. Dr. Riesen testified it had been taught the previous semester and is usually rotated with two other Geography courses and, as far as he was concerned, a different section in the trilogy was "up for teaching" in 2012-13.

54 Dr. White was told she was not qualified to teach Geography 215 because she does not have a master's degree in geography. In her reply to Dr. LeBlanc's May 22nd letter to this effect, Dr. White referenced her Ph.D. and post-doctoral research, as well as the content of Geography 215. She asked the College to reconsider its decision or provide reasons for it.

55 Dr. Krisinger asked Ms. Moore-Garcia who had decided Dr. White was not qualified. According to Dr. Krisinger, her response was that Geography 215 is a humanities course, which touched off a storm of email messages in July concerning the nature of the section. The original course outline stated it could "provide 3 credits of either a humanities or non-lab science". But Ken Shaw, the faculty member who articulated the course, joined in the email fray to describe how it was rotated with the two other Geography sections delivered "as non-lab science courses". Others contributed to the email debate. Mr. Weary's position was that, as the member of faculty who represented the geography discipline on Dr. White's selection committee, he could confirm she was hired to replace a member of faculty who had taught many Geography courses. His view was that Dr. White was clearly qualified to teach Geography 215 because of her science background.

56 Dr. White took umbrage with the continued assertion that she was not qualified to teach Geography 215. Both Mr. Weary and Dr. Krisinger expressly said she was qualified and, based on the manner it had been taught in the past, she knew the College was wrong. Dr. White construed the College's position as an implication that she had misrepresented her qualifications and regarded it as a personal attack. Dr. Krisinger espoused the same view.

57 Ms. Moore-Garcia stood her ground. In a message to Dr. Krisinger on July 9, she stated that Dr. White was not qualified, "[a]s long as the College recognizes it as humanities, and grants degrees based on this status, and not as a science". In her evidence, Ms. Moore-Garcia elaborated: "if Geography 215 were a non-laboratory science course, I would be pleased to have a scientist - especially one with a Ph.D. - teach it... but if it was to be taught as a humanities or social science course then I would have someone with a closely related social science background teach it".

58 Despite inquiries, Dr. White waited several weeks for a communication of her employment status and workload for the coming academic year. The terms conveyed to her then changed in a series of letters from the College. The Biology courses in Prince Rupert were assigned to a faculty member who was junior to her. In a letter to Ms. Moore-Garcia on July 25, Dr. White proposed that she teach a computer science lab in Smithers. The College treated the computer science lab, CPSC 111, as a TBA and posted it. Dr. White applied and on August 15 she was informed that the selection committee had determined she was qualified. With credit for travel, this assignment increased her workload to 1.05 FTE.

59 Hondo Arendt has a B.A. in History with a concentration in political science, a B.Ed. in Secondary Social Studies and a M.A. in History. He has taught at the College since 1992 and as a full-time regular member of faculty since 1996. His teaching is based in Prince Rupert where he lives with his family.

60 The layoff notice Mr. Arendt received on April 18 advised that 0.4 FTE of his position had been identified for layoff. He was not initially worried; three of the eight regular members of faculty in Prince Rupert had either retired or accepted severance, thereby substantially increasing the number of TBAs at that campus. In addition, as he put it, "...I have so much seniority and I have taught in so many areas".

61 There was considerable overlap in the two sets of joint layoff committee recommendations to the President. Both sides of the committee identified History 213, which was a TBA in Smithers, under sub-clause 11.2.2.2 and Geography 150 and 160, as well as Anthropology 112 under sub-clause 11.2.2.3. In response to his layoff notice, Mr. Arendt chose the History section if it could be delivered in an accelerated mode and, if not, the Geography150 and Anthropology 112 sections in Prince Rupert. The latter choices entailed bumping members of faculty who were junior to him. He communicated these choices to Dr. LeBlanc by letter dated May 4.

62 In her letter to Mr. Arendt dated May 22, Dr. LeBlanc advised that he was not qualified to teach geography or anthropology because he did not possess a master's degree in either. But Mr. Arendt had previously taught Geography 150 and Anthropology 113. Indeed, he taught geography nearly every year, a total of five different sections in the subject. His unchallenged evidence was that his classes are generally well attended and his student evaluations are generally above average.

63 The College did not respond to Mr. Arendt's choice of the History 213. I infer the College did not accept his request that it be taught "over a short term". But he eventually did acquire a full workload. The College accepted his assertion that Anthropology 112 is essentially a history course; it was assigned to him on June 7. He was not assigned Geography 150 even though the instructor he would have bumped did not have a M.A. in Geography either. Nor was he assigned Geography 110, although he had previously taught it twice and faculty in the Department voted unanimously that he was qualified. Ultimately, toward the end of July, he was assigned Geography 210, a section which he had not taught previously and which was at a higher level than the geography choices he

had been denied on the ground he was not qualified. Despite the "irony", as he put it, this provided him with a full workload.

64 Dr. Mia Reimers was appointed to a full-time regular position in 2003. The posting for her position, she testified, referenced teaching History, Political Science "and other courses". At the time, she possessed a M.A. in History. In 2008 she earned a Ph.D. in History. She has been very active in the community and the Union. As noted, in 2012 she was the Union's Past President.

65 There were only minor differences between the options identified by the Union members and those identified by the College members of her joint layoff committee. Under sub-clause 11.2.2.2, both recommended TBA sections in Smithers: History 213 and the imminently contentious Geography 215. Under sub-clause 11.2.2.3, both identified Criminology sections taught by a junior faculty member named Michael Brandt.

66 Dr. Reimers has taught History, Political Science and Women's Studies. Her pattern of teaching two to four sections of Political Science each year appears to have been overlooked in the College's early layoff preparations and the error resurfaced in her layoff letter. Dr. Reimers was informed she would be laid off from her "50 % continuing position". In her reply on May 2, Dr. Reimers pointed out that she held a 100 per cent continuing position. To retain full-time status, she needed three sections. She advised she would bump Mr. Brandt from three sections of Criminology, leaving it to the Department to determine the specific sections.

67 On the same day, May 2, 2012, Mr. Brandt visited Dr. Reimer in her office. She testified: "he'd figured out I'd be bumping him". He assured her he would not fight her and he knew she would do a "really good job on the courses". As I will describe below, his activities during the following days belie these assurances.

68 Dr. LeBlanc's May 22 letter to Dr. Reimers advised that she was not qualified to teach criminology because she did not possess the required qualification of a master's degree in the discipline or a related subject. In a reply dated May 28, Dr. Reimers explained why she is qualified to teach three specific sections of Criminology. She reviewed the subject matter of her post-graduate degrees and her doctoral dissertation, and asserted that history is a discipline related to criminology. She described the interdisciplinary nature of criminology. In her evidence, Dr. Reimers pointed out that many historians teach criminology. She also testified that both Criminology 131 and Criminology 135 had been taught by instructors who did not possess a master's degree in criminology. Further, the College's 2012-13 workload plan assigned other Criminology courses to faculty members who do not possess a master's in the discipline.

69 The next communication Dr. Reimers received from the College concerning her workload and employment status was a letter from Ms. Moore-Garcia dated July 20. It advised Dr. Reimers that her full-time continuing appointment would end on July 31, 2012 and confirmed her appointment to a 50 % workload for the academic year ending August 31, 2013. Dr. Reimers wrote to Ms. Moore-Garcia on July 25 to recount the lengthy delays between her layoff and the College's letter advising she was not qualified, followed by an even longer delay after she had explained why she was qualified. The effect, she pointed out, was that the History 213 option in Smithers had been assigned to another faculty member who was junior to her. In the words of Dr. Reimer in direct examination: "during the eight and one-half weeks I was left flapping in the wind, the opportunity had evaporated".

70 On July 31, Ms. Moore-Garcia emailed Dr. Reimers to say History 213 was no longer available because she had not exercised her bumping rights under Article 11.2.4 within 30 calendar days. In fact, History 213 was a TBA section when she received her layoff notice and she therefore claimed it pursuant to sub-clause 11.2.2.2, not sub-clause 11.2.2.3.

71 Dr. Reimers endured further delay before her 2012-13 workload was finalized. On July 31, Ms. Moore-Garcia advised her that the other option under sub-clause 11.2.2.2 at the time of her layoff - Geography 215 - was "under review". I have already recounted the sometimes heated debate over the nature of this section. In late September, at Ms. Moore-Garcia's request, Dean Gauthier apologized to Dr. Reimers that the matter was not yet resolved. Sometime in the fall, Dr. Reimers saw an email from Dean Gauthier to Mr. Wong on August 8 in connection with the replacement of Geography 215 in the Smithers workload plan. In this message, Dean Gauthier had said that since Geography 215 "was not assigned or yet posted, it does not affect anyone's workload". But at the time Dr. Reimers still needed to add sections to restore her full-time workload. Dr. Reimers testified Dean Gauthier's comment made her feel that she did not matter.

72 Finally, in November, Dr. Reimers was assigned the section in Women's Studies which replaced Geography 215 in Smithers. Later, the College added a Political Science section in Smithers and assigned it to Dr. Reimers. Later still, the College added a Women's Studies section in Prince Rupert, which Dr. Reimers taught during the 2013 winter session and again in the intersession toward the end of the 2012-13 academic year. With credit for travel, Dr. Reimers' 2012-13 workload was 0.95 FTE.

73 Christane Carr was appointed to a 50 per cent continuing position in September 2007. At the time, she possessed a B.A. in Native American Studies from the University of Lethbridge, and B.S.W. from the University of Calgary. She testified the College recruited her because of her connections with First Nations communities. She taught a total of 15 different sections over the ensuing years, mainly but not exclusively in the Special Education Assistant ("SEA"), Social Service Worker ("SSW") and Early Childhood Education ("ECE") programs. She was usually able to increase her workload by adding TBA sections. I infer that her teaching was largely confined to Prince Rupert where she lives with her family. In 2011, she entered a Master's in Education program with Simon Fraser University, the focus of which was aboriginal learning.

74 Ms. Carr has or has had other positions with the College, such as Accessibilities Coordinator for the Prince Rupert campus and Regional Coordinator of the Special Education Assistant program. The former is in the instructors' bargaining unit represented by the BCGEU and, as I understand it, she continues to hold a 20 per cent part-time auxiliary position in that unit. In 2008 and 2009, she and a colleague, Elise Kruithof, developed the curriculum for an Aboriginal Mental Health and Addictions certificate/diploma program offered by the College. She has other part-time employment.

75 The two sets of recommendations made by Ms. Carr's joint layoff committee were very similar. Under sub-clause 11.2.2.1, both identified vacant sections in Psychology and Sociology in Prince Rupert. Under sub-clause 11.2.2.2, both recommended TBAs in SSW at Terrace and Smithers, as well as TBAs in ECE at Terrace. With regard to sub-clause 11.2.2.3, the College committee members reported that Ms. Carr had no options to bump a junior faculty member, while the Union recommendations stated that Ms. Carr was qualified and had the seniority to teach ECE courses and coordinate the ECE program.

76 Ms. Carr needed to teach five sections in order to maintain her 50 per cent continuing status. In her reply to Dr. LeBlanc's April 18 layoff letter, she communicated her choice of the Psychology and Sociology sections in Prince Rupert. Ms. Carr felt confident about her choices. Although she had not taught any sections in Sociology, she had taught courses related to both psychology and sociology, including a second year section in Psychology. She had also studied sociology in her bachelor's degree programs, including courses at the fourth year level. In addition, she had extensive clinical experience and had supervised the clinical component of the M.A. in Psychology completed by Ms. Kruithof, whose decision to take severance made the Psychology and Sociology sections available.

77 Dr. LeBanc's letter to Ms. Carr dated May 22nd advised that, in the absence of a master's degree in either psychology or sociology, the College did not consider her to be qualified to teach those subjects. Ms. Carr's email reply on May 28 requested the

College to reconsider and detailed her reasons for asserting that she was qualified. One of her points was that two faculty members at Simon Fraser University were willing to discuss the "psychology foundation" of the master's program she was then completing.

78 On June 28, Ms. Carr responded to a posting of ECE sections in Terrace. She applied in the absence of any further communication from the college, even though these sections were presumably among options identified by her joint layoff committee. The application was for two sections, one to be delivered in the fall and one in the winter. She forwarded her application by email, attaching her resume. Her application was never acknowledged. When this omission was investigated following an inquiry from Ms. Towle in October, Dr. LeBlanc advised that Ms. Carr had forwarded her application to an incorrect email address. The error was to include a period at the end of the address. There is, in fact, a period at the end of the address in the posting but only because the address was at the end of a sentence. On November 9, Ms. Towle emailed Dr. LeBlanc to assert the sections should never have been posted in the first place and to urge an amendment to "Ms. Carr's schedule to include the ECE courses as per the collective agreement". The College did not reply.

79 Meantime, on July 28, Ms. Carr responded to a posting of the same four Psychology sections in Prince Rupert she had opted to teach in response to her layoff notice. Although the posting specified a bachelor's and a master's in psychology "or a closely related field", she applied because she "did not want the Employer to think I was not interested". On August 6, Dean Gauthier informed Ms. Carr by email that the selection committee established for the posting had reviewed her application and it "...deemed that you do not possess the required qualifications as stated in the posting".

80 In December 2012, Ms. Carr became aware that two SSW sections in Prince Rupert had been posted. Although she had previously taught both sections, her application was unsuccessful because she did not possess a master's degree. In an email message on December 21, Dean Gauthier advised Ms. Carr that, "[i]t has been deemed that you do not possess the necessary educational qualifications and as such will not be

offered the position". A faculty member junior to Ms. Carr who has a master's in the field was the successful candidate.

81 In July 2013, after the hearing in this matter had started, Ms. Carr applied for posted SSW sections in Terrace. The selection committee was uncertain of whether she had been awarded the Master's in Education in which she had been enrolled since 2011. Dean Gauthier inquired of Ms. Carr by email and, on July 16, 2013, Ms. Carr advised that she had completed the program on July 13th. In another email five days later, on July 21, Ms. Carr withdrew from the competition, stating that she could not afford to live in Terrace while maintaining her home in Prince Rupert and she did not think she could reliably commute from Prince Rupert through the winter.

82 As noted above, Ms. Carr has no current position in the Union's bargaining unit.

Facts part 4: the master's degree requirement

83 The College's reliance "...on the long-standing criterion outlined for every advertised University Transfer position... a Master's degree in the field or related discipline", as Dr. LeBlanc stated in her June 8 memoranda, is central to this dispute. The relevant facts are largely but not entirely uncontroversial. Dean Gauthier testified that when he met with Ms. Moore-Garcia in May to consider the responses to the April 18 layoff letters, they discussed the need for a "standard" or a "framework" with which they could assess the options selected by faculty members as alternatives to layoff. They agreed the framework for assessing qualifications to teach a course would be a master's degree in the discipline or a related discipline.

84 On one level, this was an unremarkable decision. Contemporary job postings for vacant positions and teaching opportunities at the College specify that the successful candidate will have a master's degree in the discipline or a related field, with the latter sometimes expressed as a "closely related field". Similarly, course outline documents which initiate the procedure for approval of a new course or changes to an existing course also require a master's degree. One or two of the Union's witnesses recalled job postings

or course outlines which did not stipulate a master's degree, but no such document was introduced into evidence.

85 The formal requirement of a master's degree is reinforced by the system for transfers between post-secondary educational institutions under the auspices of the British Columbia Council on Admissions and Transfer ("BCCAT"). The system depends on the 70 or so articulation committees which exist for disciplines taught at this level. The committees are composed of "discipline specialists" from all of the institutions offering the program or delivering instruction in the field. A 2004 BCCAT publication describing the role of articulation committees states that they normally meet annually "to share information, and engage in discussions related to curricular matters, particularly those affecting student mobility".

86 The BCCAT website, in a section entitled "Instructor Qualifications for Transferable Courses", states BCCAT's position on qualifications. It reads in part:

> - Based on long-standing precedents in the BC Transfer System, BCCAT expects that instructors who teach academic, degree-level transfer courses will usually possess, at a minimum, a master's degree or equivalent in the discipline or a closely related area...
> - When, for legitimate reasons, it is not possible to engage faculty who meet the standards described above, institutions should provide appropriate mentoring and supervision.

87 On another level, however, the decision by Ms. Moore-Garcia and Dean Gauthier was a departure from the practical realities of a small, northern community college. First of all, the concept of a related field is sometimes tricky. Introductory courses are often broad in scope, with content which is not easily categorized in a single discipline. Whether a master's degree is in a related field often entails an individual decision which is specifically responsive to the nature of the faculty member's degree(s), research and experience, as well as the precise content of the course to be taught. Second, and more importantly, in smaller institutions like the College, there are not enough faculty members to ensure that every course is taught by someone with a master's degree in the discipline.

88 Consistent with these realities, the BCCAT position is not inflexible. Firstly, it recognizes the autonomy of the individual institutions. The paramount function of BCCAT is to facilitate the transfer of credits, not to prescribe minimum qualifications for faculty. Second, as revealed in the excerpt quoted above, the BCCAT position on qualifications acknowledges that faculty who do not meet the master's degree standard may be engaged "for legitimate reasons". They are to be mentored and supervised.

89 The College has emphasized that it is sometimes forced to assign a course to a faculty member without a master's degree in the subject. The College would have me conclude this only happens when it is unable to recruit someone with a master's. But there is more to the practice than that. As Mr. Arendt put it, if a master's degree were required for every course, the College would be unable to offer more than a partial workload to most of its faculty. Recruitment and retention problems would follow. With few exceptions, faculty tend to enjoy full workloads by developing broader teaching expertise. By way of an example, Mr. Arendt, whose master's degree is in history, has taught courses in Geography, Political Science, Anthropology and Asian Studies as well as History. He has in fact articulated courses in Political Science and Asian studies as well as History. He also testified that he attended a Political Science articulation committee meeting at which none of the small college representatives had a master's in political science. His evidence was that the committee discussed this situation and agreed it was acceptable.

90 This is the context in which Ms. Moore-Garcia and Dean Gauthier decided to require a master's degree in the discipline or a related field when deciding whether the faculty members laid off in 2012 were qualified to teach the options they chose. Ms. Moore-Garcia was influenced by the consistent requirement of a master's in the job postings. She testified that when a selection committee proposed to hire a candidate without a master's degree, she had declared the process a failed search. She did not review what occurred before she arrived at the College in June 2010; she simply assumed the standard would be consistent. Dean Gauthier testified that, "we were wanting to be

absolutely sure we were making proper decisions so we were not displacing faculty... [who possessed] qualifications with faculty who may not have the right qualifications; we wanted to be fair and equitable so we had to have a standard". In cross-examination, he insisted the purpose was "...to protect everyone".

91 The most significant feature of the assessment of qualifications during the 2012 layoffs is that it represented a change by the College. The master's degree "framework" adopted by Ms. Moore-Garcia and Dean Gauthier entailed a stricter requirement of a master's degree than the College had required previously. Dean Gauthier agreed with this, and he supplied the motivation for it. He testified, "there were instances in the past of people teaching without a master's". At one point he explained that what had been done in the past was not necessarily "best practice". He subsequently disavowed this term and I do not ascribe any significance to it other than one unavoidable implication: it confirms the master's degree standard applied in 2012 was higher than the standard applied previously.

92 The only controversial aspect of the more vigorous insistence on a master's degree is the question of whether the College sought the assistance of the BCCAT to buttress the higher standard. Ms. Moore-Garcia testified that when she was acquainting herself with the College, she contacted Dr. Robert Fleming, the Executive Director of BCCAT, to seek clarification of the term "related field". The inquiry was of a general nature and not specifically related to the assessment of faculty qualifications during layoffs in 2012. But two other initiatives followed in May of 2012 and, despite the attempts of the College's witnesses to diminish these contacts, the documents and other evidence suggest there was an attempt to solicit support for the greater emphasis on a master's degree.

93 The first initiative concerned psychology. In May, sometime after Ms. Carr had chosen the four Psychology sections identified as options in the report of her joint layoff committee, Dr. Ted Altar, Head of the College's Psychology Department, expressed concern about psychology instructors not having a master's. Ms. Moore-Garcia and Dr.

LeBlanc were both present. Ms. Moore-Garcia testified she did not contact BCCAT during the layoffs. However, if she did not, I find that Dr. LeBlanc certainly did. Dr. Altar told Dr. LeBlanc there was a BCCAT guideline that a master's degree is the normal expectation, with limited exceptions. In an email exchange with Dr. Altar on May 22, she ascertained the identity of the chair of the psychology articulation committee and the following day she emailed the chair to ask, "what would be the outcome in terms of articulation of NWCC psychology courses if an individual were [to] teach psychology courses given they do not have a Master's Degree nor a BA degree in psychology?".

94 Dr. LeBlanc testified her intention was of a general nature: "to ascertain the impact on students if the receiving institution asked and the instructor did not have the qualifications in the course outline". But her message to the committee chair on May 23 appears to be linked to Ms. Carr; she wrote: "[t]he individual has undergraduate degrees (social work and first nations studies)". And it is clear the layoffs were on her mind because she concluded her message with this explanation: "The College is undergoing a layoff process which is linked to bumping…; [w]e want to ensure people keep their jobs but also want to ensure that academic standards are maintained".

95 In his emailed reply to Dr. LeBlanc on May 23rd, Ian McBain, Chair of the Psychology Articulation Committee, advised he would put the matter on the agenda of a forthcoming meeting and said: "I can tell you that in years past NWCC would have been jeopardizing its transfer status by hiring someone with less than a Master's Degree to deliver the course". Dr. LeBlanc's reply thanked Mr. McBain for his "assistance in this matter". In August, Mr. McBain forwarded to Dr. LeBlanc the link to the BCCAT website statement of position on qualifications quoted above in part.

96 The second initiative concerned criminology and involved Mr. Brandt who has a master's in criminology and was slotted to teach several sections of Criminology in the administration's workload plan for Terrace. Three of those sections were among the options chosen by Dr. Reimers when she replied to her layoff on May 2nd.

97 Mr. Brandt attended the Western Regional Criminology Articulation Committee ("WRCAC") meeting in Vancouver on May 9 and 10, where he spoke to the matter of qualifications of faculty teaching criminology. The minutes of the meeting record his comments as follows: "Major cutbacks have resulted in 'bumping' of faculty where senior faculty from other departments are teaching courses instead of more qualified instructors from that department". No such bumping had yet occurred but, as I have recorded, Mr. Brandt understood that Dr. Reimers had elected to teach sections assigned to him.

98 The minutes of the WRCAC meeting also record that, "BCCAT explained that specific qualifications for instructors vary to respect institutional autonomy". Nevertheless, the meeting passed a motion to approve a statement "in principle" to be developed by Mr. Brandt and Gail Anderson of Simon Fraser University. The following statement was later circulated by Mr. Brandt:

> While we respect institutional autonomy of institutions to make decisions with respect to the appointment of instructors (as recognized in the BCCAT statement on Instructor Qualifications for Transferable Courses), we nonetheless wish to underscore the importance of insuring that institutions observe and adhere to minimal education standards for instructors who teach criminology courses. Potential problems may arise in situations where instructor's qualifications have not been satisfactorily met.

99 In an email on May 16, Mr. Brandt advised Dr. LeBlanc and Dean Gauthier that he was "waiting on the position statement from the Criminology Articulation Committee re: minimum qualifications to teach criminology". On May 18, he emailed the Chair of the WRCAC asking when he would receive the statement, adding: "[d]ecisions about this are being made now at NWCC". This message was copied to Dr. LeBlanc who replied the following day to thank Mr. Brandt. In this message, she added:

> At the moment we have the job postings educational requirements that we have been using to make determinations on qualifications. Having the position statement would be really helpful when the eventual grievance occurs.

100 On May 21st, Mr. Brandt forwarded to Dr. LeBlanc a statement signed by the Chair of the WRCAC. The statement, addressed "To Whom It May Concern", advised the reader of a "robust and thorough-going discussion" at the most recent WRCAC meeting "regarding situations that may arise where lay-offs are underway and, more specifically... the question of levels of qualifications for transferable courses". It then endorsed the BCCAT position on qualifications and stated that the WRCAC "...wished to emphasize potential impacts that variance from this standard may have on course quality and transferability". After quoting the earlier statement emanating from the May meeting, the Chair's statement concluded "...that institutions that are in situations involving lay-offs face difficult choices and must often weigh a variety of factors" and expressed the hope that "...the information above will be considered in these decision making processes".

101 Ms. Moore-Garcia testified she did not see the May 2012 WRCAC meeting minutes until the fall. She does not recall seeing the emails from Mr. Brandt and she did not discuss them with either Mr. Brandt or Dr. LeBlanc. Dr. LeBlanc's evidence was that she did not solicit Mr. Brandt's emails and she did not discuss the matter with him. She was unable to say what "eventual grievance" she referred to in her email to Mr. Brandt on May 19. She testified she was simply trying to be helpful to Ms. Moore-Garcia and Dean Gauthier, and added that, "probably the impetus was all the postings requiring a master's degree". It will be recalled that her letters to the grievors advising they were not qualified were dated May 22nd.

102 Dean Gauthier testified he had no role in authorizing contacts with BCCAT articulation committees. He became aware of Dr. LeBlanc's communications with Messrs. McBain and Brandt "probably in late May" and discussed them with Ms. Moore-Garcia but only in passing with Dr. LeBlanc. His evidence was that he had no conversation with Mr. Brandt at any time about his participation in the May meeting of the WRCAC, and he did not see Dr. LeBlanc's email containing the reference to an "eventual grievance". Dean Gauthier did agree, however, that at a meeting with Dr. Krisinger and Dr. White on June 5, it is, in his words in evidence, "very likely" he said

that "HR was involving the articulation committee in reviewing... [Dr. Reimer's] qualifications to determine if she can teach Crim 213". His evidence was that he meant to say Ms. Moore-Garcia when he referred to HR on that occasion because Dr. LeBlanc was not involved.

Collective Agreement

103 Although the dispute is about Article 11, other terms enter into the analysis. The Union places much emphasis on the provisions which, in its submission, reflect the parties' intention to incorporate the precept of collegiality into the relationship and the operation of the College. Both Mr. Berthiaume and Dr. Reimers spoke to these terms at some length during their direct examination. It will not be necessary to quote them all in their entirety.

104 Article 1, The Agreement, contains several of the provisions cited by the Union on this account. Section 1.1, Parties to the Agreement, includes language dealing with allocation of new employees to a bargaining unit. The matter of which bargaining unit is to be decided by a committee of representatives of the parties plus the BCGEU. If the committee cannot come to a unanimous conclusion, the matter is to be referred to arbitration. Section 1.2, Preamble, states that the terms of the collective agreement "...are designed to promote harmonious relations and to facilitate the amicable settlement of disputes and misunderstandings". Section 1.6, which limits contracting out, also recognizes that it may be necessary in some circumstances but provides that it "will be undertaken only after discussion and agreement between the parties". Section 1.8, Technological Change, provides that the parties will engage in collective bargaining to address defined changes, with unresolved issues to be arbitrated under Article 4 of the collective agreement.

105 Of more significance, in section 1.11, Joint Consultation, the parties agree to meet at least bi-monthly to discuss workplace issues. Article 1.14, Strategic Planning, provides that such planning shall be undertaken "with Union consultation as defined" and

Article 1.15, Annual Financial Planning, is to the same effect in respect of annual financial planning. The definition of "consultation" in clause 1.2.2 is:

> **Consultation** is defined as meaningful and in-depth discussion by the Parties, including during all stages of the planning process, and full disclosure of all information and access to all documentation as it becomes available. Within ten (10) working days, a written record of the meetings of consultation will be agreed upon and this record of the meeting(s) of consultation shall be signed by the parties and copies provided. Both parties will have the right to include written unedited submissions without penalty. Without such a written record of consultation, consultation shall be considered not to have happened in accordance with the Collective Agreement.

106 The Union also emphasizes these sections of Article 3, Union Activities:

> **3.4 College Board Meeting Agendas & Minutes**
>
> The Union will be furnished with a copy of the agenda and other public information assembled for College Board meetings. This material will be mailed to the Union at the time of distribution to the College Board. Approved minutes of all Public College Board meetings will be distributed similarly.
>
> **3.5 Financial Status of College**
>
> The College will provide to the Union on a quarterly basis the detailed financial status of the College. The details of the reporting will be decided in consultation between the Union and the Bursar.

107 The Union points to Article 5, Salaries, and to section 5.2 in particular, because it authorizes the Academic Head to make the initial decision regarding a faculty member's placement on the salary scale. In addition, the Union relies the provision for a standing Professional Development Committee established by clause 7.2.3 in Article 7, Leaves of Absence. The committee is comprised of four representatives of the Union and two representatives of the College and charged with management of "the professional development program of the employees", which includes an annual budget of $50,000 and annual reports to the Presidents of both the College and the Union. The determination of assisted educational leave funding also falls to the Committee (clause

7.1.3), although approved educational leave proposals are subject to final approval by the College President.

108 Article 8, Selection of Employees, provides for another joint committee process in connection with the selection of regular employees. Two of the four committee members are faculty members, one the designate of the Union and the other - appointed by the Union in consultation with the Academic Head - the subject expert from the discipline in which the vacancy is to be filled (section 8.1). Under Article 8.5, the positions of Academic Head, Associate Academic Head and Assistant Academic Head are filled by election among the faculty at the respective campuses. Under Article 8.6, Coordinators are elected by the faculty in the Department. Article 8.6, Selection of Administrators, provides that the appointment of excluded staff "is clearly the responsibility of the Employer" but with extensive input from a joint Selection Committee on which the Union, the BCGEU, the administration and the College Board are to be equally represented. The committee is assigned the role of setting the selection criteria, creating the job posting, short-listing and interviewing candidates and making a recommendation to the College Board.

109 The Union concludes its argument that the collective agreement provides for collaboration by citing a number of provisions which are suggestive of collegial decision-making in the sense that they reflect the post-secondary educational institution context: Article 10, Evaluation; Article 12.2, Academic Freedom; and, Article 13, Workload. In addition, language in Article 1.2, Preamble, speaks to the "broad educational purposes" of the College, and expressly recognizes "...that special attention should be given to the educational and training needs of working people, aboriginal people, and women, as well as to other segments of society that historically have been disadvantaged with respect to enjoying full access to educational and training opportunities".

110 The effect of these provisions is irresistible, and I accept the Union's characterization of the mutual intention they indicate. However, the commitment to collegiality is not unlimited. As the College contends in response to this aspect of the

Union's case, it retains "exclusive control" of the management of the College by operation of Article 14, Management Rights:

> Except as otherwise provided in the Agreement, the College or its delegated officers have exclusive control over the management, supervision and administration of the College and its affairs and the direction of the employees covered by this Agreement. However, if situations arise that are not spoken to in the Agreement, the College agrees to consult with the Union.
>
> The exercise of management rights shall be in a fair, reasonable manner, which is not arbitrary or discriminatory.

111 Returning to Article 11, Mr. Berthiaume testified it was negotiated into the collective agreement between 1989 and 1992. I have quoted clause 2.2, which is at the heart of the dispute, in paragraph 5 above. To put it into context, the layoff terms as a whole are:

> **11.1 Termination and Lay-off**
>
> The College agrees not to lay-off or terminate the employment of an employee for reasons other than outlined in this Agreement. The Union president will receive copies of any layoff, or notice of termination, at the same time it is given to the employee.
>
> **11.2 Termination or Lay-off for Operational Reasons**
>
> 11.2.1 The College may lay-off or terminate the employment of an employee for operational reasons including budgetary exigencies, or program termination, modification or substitution. In the event the lay-off or termination involves a regular employee, the remaining provisions of this Clause shall apply.
>
> 11.2.1 When an employee's position is identified as redundant, the College shall notify the Union and form a joint layoff committee comprised of four (4) members, two (2) designated by the Union and two (2) designated by the College. The committee shall consider the alternatives to a layoff and explore all possible options as follows:
>
> 11.2.2.1 identify regular vacancies in the bargaining unit for which the employee is qualified;
>
> 11.2.2.2 determine whether any future temporary or part-time positions will be occurring for which the employee is qualified;

11.2.2.3 identify the position in the bargaining unit which the employee is qualified to occupy and for which the employee is able to use his/her seniority rights to displace another employee; or

11.2.2.4 determine if any other employee is eligible for early retirement. The committee will meet within two (2) weeks of the notice of redundancy and present the options to the President within two (2) weeks of their meeting.

11.2.3 Once the committee has issued their report, the employee will be given a notice of layoff and the options identified by the committee. The employee will be given a minimum of five (5) months notice of termination which, for other than unexpected budgetary changes, shall be given on or before February 28.

11.2.4 Within thirty (30) calendar days of the notice of layoff the employee may advise the College that he/she wishes to exercise his/her seniority rights to displace another employee in which case:

11.2.4.1 the employee shall identify the position within the bargaining unit occupied by a person with lesser seniority whom he/she intends to displace;

11.2.4.2 the employee must be qualified and able to perform the job of the less senior person, with or without a period of in-service training considered sufficient by the College up to a maximum of one (1) month or employee initiated training up to a maximum period of six (6) months. In the latter case, the College will cover the cost of training up to the maximum of the employee's severance entitlement;

11.2.4.3 where the displacement involves the relocation, the employer shall bear the entire cost of such relocation;

11.2.4.4 the employee shall retain his/her salary placement on scale and seniority;

11.2.4.5 should the employee identify displacing an employee who holds a regular 50/50 joint CUPE/BCGEU appointment, the laid off employee must have greater seniority and an earlier hire date. The employee is only able to displace the 50% of the position that is covered by the CUPE/FPSE Agreement.

11.2.5 The employee may opt for early retirement provided he/she is eligible to do so under the applicable pension plan, in which case he/she shall be entitled to additional pensionable service equivalent in value, as determined by the Superannuation Commissioner, to

the severance pay compensations stipulated in **Article 11.2.6** below. Benefits under this provision shall not exceed the time that would be required for the employee to reach his/her maximum retirement age.

11.2.6 Effective July 1, 2001, the employee may opt for severance pay on the basis of:

11.2.6.1 One (1) month's current pay for each year of seniority rounded upward to the nearest year to a maximum of six (6) months' salary; and:

11.2.6.2 One (1) additional month's current pay for each additional five (5) years of seniority rounded upward to the nearest year to a maximum of four (4) months' salary.

11.2.7 Where the employee opts for and receives severance pay, he/she shall be placed on the recall list for a twenty-four (24) month period, effective the date of severance. Where the employee is rehired through the recall process during the period covered by severance pay, he/she shall repay to the College the proportionate amount of severance pay he/she received. Recall of employees shall be to positions within the Bargaining Unit and shall be in order of seniority, provided the employee to be recalled is qualified and able to do the work available and provided he/she is available to commence work when requested. An employee so recalled shall retain the seniority he/she accrued prior to lay-off.

11.2.8 Where the employee exercises his/her seniority rights to displace another employee in a position that they are qualified to perform, the employee to be displaced must have less seniority. The employee so displaced shall have the right to displace another employee with less seniority. The employee laid off as a result of displacement shall be given a minimum of two (2) months' notice of termination.

11.2.9 The employee displacing another employee shall be on probation as per **Article 9.2** if the new position involves duties she/she did not previously perform. Where probation is required, should the employee fail to successfully complete his/her probationary appointment, he/she shall forthwith be terminated, and no other provision in this Article shall apply to him. No part-time or temporary employee will be offered a position which could be filled by a regular employee on layoff qualified to perform the work.

11.2.10 Where a regular employee is on lay-off and when a vacancy occurs for which the employee is qualified and capable, the vacancy shall be offered to the employee. The employee shall be guaranteed the offer of a position, should they be qualified and it becomes

> available, equivalent to the position held prior to layoff. If the employee takes a part-time or temporary position, this shall not extinguish his/her recall rights. **Article 6.12** is not applicable. Salary and benefits will be at the appropriate rate.

112 As previously noted, the grievances also refer to Article 13. To the extent this was due to issues related to travel benefits, those issues have been resolved. If the provision was cited for any other reason, the Union did not pursue it in final argument. The College submits and I agree that Article 13 need not be considered.

113 The grievances also referenced the "common agreement" which is binding on the parties by virtue of province-wide bargaining. Article 6 of the common agreement, Job Security, and more specifically, Article 6.4, Targeted Labour Adjustment, address "funding shortfalls and reductions of the work force". Described by Ms. Towle as a "much broader adjustment provision" than Article 11, Article 6.4 of the common agreement sets out procedures and strategies for avoiding or at least minimizing layoffs. The reports of the joint layoff committees in this case indicate that Article 6.4 was considered, but it did not enter into the parties' final submissions. Article 6.4.3 recognizes that layoffs may be necessary and, if so, the "local collective agreement will apply", which returns the dispute to Article 11 of the collective agreement.

Parties' positions

114 The Union submits the joint layoff committee process of exploring all possible alternative options to a layoff in Article 11.2.2 is "a fundamental obligation not a matter of mere procedure": *College of New Caledonia and College of New Caledonia Faculty Association*, [1983] BCCAAA No. 349 (Bird), at paragraph 242. The Union's submission that the College did not comply with its obligations gives rise to the interpretive issues related to Article 11.

115 The Union also alleges the College acted in a manner that was unfair, unreasonable, arbitrary and discriminatory. It is necessary to resist the temptation to characterize this aspect of the Union's case as something of a restoration of the bad faith

allegation it abandoned at the outset of the hearing. Article 14 expressly incorporates these terms to regulate the exercise of management rights under the collective agreement. In support of its position, the Union cites authorities dealing with layoffs by post-secondary educational institutions and awards which have held that standards of reasonableness and fairness govern the exercise of discretionary authority even in the absence of any express contract language to that effect: *Simon Fraser University and Association of University and College Employees, Local 6, Teaching Support Staff Union*, [1983] BCLRB No. 169; *BC Institute of Technology and BCIT Staff Society*, [1998] BCCAAA No. 542 (Ready); and, *Kwantlen College and Douglas & Kwantlen Faculty Association* (1982), 12 LAC (3d) 115 (Fraser).

116 The College emphasizes that Article 11.2.1 entitles it to layoff employees for reasons which include "budgetary exigencies". The College, it is submitted, has proven it had a substantial budgetary deficit and, in the circumstances, Article 11 must be construed in conjunction with the management rights of the College under Article 14. Further, the joint layoff committee process does not provide senior unqualified faculty members the right to bump junior members who are qualified. Therefore, it is submitted that "sole issue of substance" is whether the College was entitled to give the meaning it did to the qualifications requirement. In this respect, the College relies on job postings as well as the stated position of BCCAT and its articulation committees. The College says the job postings establish the parties' agreement on a master's degree as the requisite qualification: *School District No. 75 (Mission) and Mission Teachers' Union* (2004), 77 CLAS 416 (Kinzie). The College contends the fact that it has appointed faculty members without a master's degree when it could not recruit someone who possessed one does not alter the requirement for a master's degree: *Capilano College and OTEU, Local 378* (February 21, 1994), unreported award (Larson); *Cambridge (City) and CUPE, Local 1882* (1991), 22 CLAS 163 (Kilgour).

117 The College says the error of its members on the joint layoff committees was to initially accept the options recommended by the Union members. This error, it is submitted, did not impose any legal liability on the College: *Highland Valley Copper and*

USWA, Local 7619, [1987] BCCAAA No. 206 (Chertkow). Faculty who are qualified in one field may not be qualified in another even though it may be related: *Malaspina University-College and Malaspina Faculty Association* (2001), 65 CLAS 22 (McDonald), upheld on review (BCLRB Decision No. B429/2001). The College submits the requirement of a master's degree was reasonable and reasonableness is standard of review in layoffs: *College of New Caledonia, supra*; *Camosun College and Camosun College Faculty Association* (2005), 81 CLAS 203 (Thompson); The College argues that insistence on a master's degree was not intended to denigrate the grievors; they simply did not meet the reasonable criteria which constituted the necessary qualification: *Vancouver Community College and Vancouver Community College Faculty Association* (2010), 104 CLAS 59 (McConchie). In the submission of the College, the Union's allegation of discrimination is speculative, based on an unproven and questionable factual basis: *Lornex Mining Corporation and USWA, Local 7619* (July 11, 1984), unreported award (Chertkow).

118 The College also observes that, with the exception of Ms. Carr, all of the grievors eventually retained their employment with a full or nearly full workload. Therefore, it is submitted that, "as imperfect and difficult" as the layoff process was, "it basically worked".

Reasons and conclusions part 1: the interpretative issues

119 The plain and ordinary meaning of the words of clause 11.2.2 supports the Union's contention that the parties intended the joint layoff committees to be a collegial process. It is impossible to define the process exactly, but in general terms it entails the designates of the College and the Union meeting as colleagues to discuss and debate the potential options for the faculty member, and to continue, with whatever assistance they may agree they require from the faculty member or other sources, until either they reach a consensus or, despite their best efforts, they conclude no consensus is possible.

120 At the risk of stating the obvious, the process depends on committee members having some familiarity with the College's programs and workload development.

Without such a knowledge base, a committee member will not be equipped to question and logically argue points of difference with committee colleagues. And such differences are to be expected. The discussion necessary to resolve them may be time-consuming but sub-clause 11.2.2.4 affords the committees two weeks to begin meeting and another two weeks to finish their deliberations, inquiries, discussions, and debates. This should be more than adequate in most circumstances for informed, reasonably-minded academics to resolve any differences as long as they remain committed to the process.

121 That the parties intended this kind of process is of course reinforced by reference to the broader context of the collective agreement. The layoff process in Article 11.2 is only one of the many joint or collaborative processes contemplated by the agreement. As the Union contends, the importance of this theme of the agreement is underscored by the obligation to consult in Articles 1.11, 1.14 and 1.15, together with the detailed definition of consultation in Article 1.2.2.

122 Turning now to the specific issues, the first is the role of a joint layoff committee in relation to the matter of whether the faculty member is qualified to perform the work identified as options by the committee under sub-clauses 11.2.2.1, 11.2.2.2 and 11.2.2.3. The Union contends the language of these provisions is clear; since the committee is charged with the responsibility of identifying the options available to the faculty member as alternatives to layoff, it must therefore make the determination that the faculty member is qualified. Again, this interpretation is supported bythe plain and ordinary meaning of the words of the sub-clauses. In each, the options to be identified or determined are those for which the faculty member "*is qualified*".

123 Dr. LeBlanc, in her June 8 standard response to the grievances, asserted faculty members are required to prove they are qualified, citing sub-clause 11.2.4.2. In three of her May 22nd letters, she cited clause 11.2.8. Both of these terms confirm the necessity for a faculty member to be qualified in order to bump a junior faculty member, although the substance of clause 11.2.8 is about the rights of the bumped faculty member.

124 In this regard, Ms. Towle suggested that sub-clause 11.2.4.2 applies to a faculty member seeking to bump into work not identified by the joint layoff committee, in which case the member would be required to establish the necessary qualifications. She described this as a "different provision" from the joint layoff committee process. In my view, this is not a tenable interpretation of the relevant language. Sub-clause 11.2.4.2 is a component of the language governing the joint layoff committee process. Clause 11.2.2 details the responsibilities of the joint layoff committee, while clauses 11.2.3 and 11.2.4 speak to the notice to be given the faculty member after the joint layoff committee has issued its report and then to the particular consequences if the faculty member should choose to bump. The intended flow from one step to the next is plainly evident; they cannot be construed as different terms or related to different processes.

125 This is not to say Ms. Towle was wrong to suggest that a faculty member must prove she is qualified if she proposes to displace a junior member from work not referenced in her joint layoff committee's report. That a faculty member must be qualified is of course a given; it is not in dispute. If a joint layoff committee has not made the determination, then it must fall to the faculty member, either by necessary implication of sub-clause 11.2.4.2 or by operation of clause 11.2.8, to make the case.

126 The critical point is that the plain effect of the words in sub-clauses 11.2.2.1, 11.2.2.2 and 11.2.2.3 is not altered or undermined by either sub-clause 11.2.4.2 or clause 11.2.8. One further comment in this regard. Sub-clause 11.2.4.2 and clause 11.2.8 apply to bumping situations only. As such, they are not related to options identified under sub-clauses 11.2.2.1 or 11.2.2.2 and there is nothing similar in Article 11 or elsewhere which would support the suggestion the employee must establish qualifications to teach such options. This is because it is for the joint layoff committee to decide the faculty member is qualified for all of the options the committee is prepared to identify in its report.

127 To repeat, the word "is" in each of the sub-clauses plainly conveys that it is the responsibility of the joint layoff committee to decide the matter of qualifications. The College did not really dispute this interpretation in its final submissions. Rather, it

argued that in this case the joint layoff committees made mistakes when they performed this responsibility. My interpretive conclusion, then, is that it is the responsibility of the joint layoff committees to determine whether the faculty member is qualified to teach the options the committee identifies for the faculty member.

128 The second specific issue emerges from the email exchange between Mr. Rose and Dr. LeBlanc on April 4, 2012. Each party appears to have regarded it to be the responsibility of the other to ensure that the joint layoff committees possessed an up-to-date resume of the faculty member whose options were to be decided. In the absence of any explicitly relevant language in Article 11, it is difficult to understand why the College should bear this responsibility. The College probably should provide each committee member with any resume or other relevant information in the faculty member's personnel file in order to establish a minimum foundation of common knowledge for the committee's deliberations. But, in my view, Dr. LeBlanc was justified in taking the position that the faculty members affected were the best source of the most up-to-date information. Whether directly or through the Union's joint layoff committee members, the faculty member being laid off should ensure the joint layoff committee is apprised of her or his current academic standing. The point is that a faculty member who does not take this precaution will risk the committee making determinations regarding the member's options without a full appreciation of the faculty member's degrees, research interests and activities, teaching experience and other career-development activities.

129 The third issue is generated by the Union's position that none of the grievors should have been required to apply for any teaching opportunity identified as an option by her or his joint layoff committee or, for that matter, any other opportunity for which they were qualified. It will be recalled that sections identified as options by joint layoff committees were in some instances no longer available when the College determined a grievor was not qualified to teach the options initially selected. Dr. White was required to participate in a posting competition for the CPSC section she was eventually assigned. Dr. Carr attempted to respond to a posting of ECE sections in late June although the sections had been identified as TBAs by her joint layoff committee. The question is

about the rights of a faculty member whose initial choices are frustrated. What right does the faculty member then have to either the other options identified by the joint layoff committee or another assignment for which she or he is qualified?

130 This is not, in my view, a real issue. It arises on the facts here only because the joint layoff committees did not determine the faculty members were qualified to teach the options identified by the committees. Had the joint layoff committees made these determinations, the options chosen by the grievors would not have been denied them. It was because of the denials that the grievors were forced to look elsewhere to increase their workloads. Because the administration took some time to communicate the denials, other options identified by the layoff committees had been assigned to other faculty or posted as a vacant TBA. Such postings could have been cancelled but at that point the issue of qualifications remained outstanding. Posting competitions would thus have served the purpose of deciding the question of qualifications which should have been determined by the joint layoff committees.

131 Although the issue should not have arisen in this case, it may arise in other circumstances. For example, an unanticipated vacancy due to illness may occur after the layoff process has concluded. Or a new course may be approved. Further, as the Union submitted, the parties anticipated the occurrence of an unassigned "vacancy" after a faculty member has been laid off. Such circumstances are governed by Article 11.2.10 which mandates that an assignment of this nature "shall be offered" to a laid-off faculty member who is qualified. Indeed, the laid-off faculty member is "guaranteed" such offers until her previous continuing position has been restored.

132 The final interpretive issue emanates from the explanation offered by the College for the dual joint layoff committee reports to the President. The College suggested this format was necessary because there is no mechanism to resolve a stalemate between the College members and the Union members of a joint layoff committee. In my view, this is not correct but the relevant interpretation must be prefaced with the observation that such an impasse should occur very rarely. If the parties designate committee members who

are familiar with the College's programs and the delivery of those programs, and who are committed to a collaborative decision-making process, there is every reason to expect the committees will reach consensus and file a unified report. If the committees perform their function in the intended fashion, the likelihood of deadlock between the College members and the Union members should be no greater than the probability of a single dissent. Even in the unlikely event that a committee is unable to hammer out a consensus, there is no need for multiple reports to the President. The language of clause 11.2.3 contemplates a single report. If necessary, conflicting or dissenting positions can be described in one report.

133 However, the precise answer to the argument is found in the obligation of the joint layoff committee in sub-clause 11.2.2.4 to present its conclusions to the College President. Under Article 11.2.3, the faculty member will be given the options identified by the committee but the report is presented to the College President for a reason. In my view, the President has the ultimate opportunity to contribute to the process. Consistent with the College's exclusive control over its operations under Article 14, the President presumably has the authority to reject options identified by a joint layoff committee for legitimate management reasons. But it is sufficient here to observe that it must be open to the President to inject her views on the options identified by the committee. In the unlikely event of a committee reporting that it is irretrievably divided on the options, the President is thus in a position to resolve the impasse by advising the faculty member of the particular options which are acceptable to the College.

Reasons and conclusions part 2: the 2012 layoff process

134 Both the College and Ms. Towle offered the opinion that, as only one of the grievors was ultimately laid off, the 2012 joint layoff committee process was rocky but it worked. As Ms. Towle described it, the joint layoff committee process has worked in the past and it worked in this instance to ameliorate the effect of layoffs. I am unable to share this positive assessment. In my estimation, the 2012 process fell short of compliance with Article 11.2.2 for a number of reasons.

135 First, it was not a collegial decision-making process. The committee members designated by the College made it almost impossible for the committees to engage in collegial discussion and debate. Given Ms. Moore-Garcia's portfolio, her presence on the committees cannot be criticized. She is very senior in the administration but it is a small institution. Dr. LeBlanc, on the other hand, was not in a position to fully participate in a collegial capacity. As she acknowledged, it was not her role to determine academic questions. But the function of the joint layoff committees is to address precisely such questions. Nor was it necessary for her to be on the committees in order to provide administrative support and human resources and process advice. In contrast, had Dean Gauthier been on the committees, he would have had the knowledge to immediately challenge doubtful or untenable recommendations by Union committee members.

136 Second, the committees did not determine whether the faculty members were qualified to teach the options identified as alternatives to layoff. The College committee members both anticipated the committees would make such decisions. In her April 2nd email message identifying the faculty members in redundant positions, Dr. LeBlanc said the College expected "...that committees will work with the employee to identify if they are able to teach in areas other than those they have taught in the past". But the approach of both Ms. Moore-Garcia and Dr. LeBlanc placed the onus on the Union members to demonstrate the faculty member was qualified. In the words of Ms. Moore-Garcia, "we hoped they would come back with choices and qualifications". Dr. LeBlanc testified the assumption she and Ms. Moore-Garcia "...walked in there with... was that Union members would bring in information to show qualifications".

137 Dr. LeBlanc soon recognized this was not happening. Union members recommended sections which were not in the administration's workload plan. She detected untenable recommendations, such as the proposal that sections in Criminology were options for a member of the English Department, a reference to the joint layoff committee for Mr. Thompson whose grievance was maintained by the Union until the last day of the hearing. Dr. LeBlanc was worried that the Union committee members were taking an "anything goes" approach.

138 The problem was that the College members of the joint layoff committees took no action to address these valid apprehensions. They did not consult the personnel files of the faculty members. Some of the resumes in the files would have been out of date but, by relying on them, Ms. Moore-Garcia and Dr. LeBlanc could have forced the Union members to assemble recent resumes and current information about the faculty members. There is no evidence that Ms. Moore-Garcia or Dr. LeBlanc asked for an explanation of how a particular faculty member could be qualified to teach a particular course, let alone voiced disagreement. Challenging the Union members in this fashion would have led to further inquiries, the examination of more relevant information, and more discussion and debate, leading, eventually, to a resolution of the issue. As I have said, this is the intended process.

139 Third, the College members of the joint layoff committees limited their participation to simply recording the discussion and asking the Union members to agree the record was accurate. They then prepared their own recommendations and, where there were differences, they forwarded two sets of recommendations to the College President. Ms. Moore-Garcia testified the administration's members never once ended a meeting of a joint layoff committee. In my view, this does not change the fact that the participation of the College designates in the joint layoff process was formalistic rather than substantive.

140 I note that both College members acknowledged the inadequacy of this approach. Dr. LeBlanc testified that, "had we had more time, there would have been a to and fro with Union members". Ms. Moore-Garcia acknowledged in cross-examination that, "in hindsight, committee members should not be allowed to leave the meeting until options are found". It may be preferable to schedule another meeting rather than perpetuate an unproductive discussion, but Ms. Moore-Garcia's comment reflects a commitment to the joint committee process consistent with the intention of Article 11.2.2.

141 In short, the 2012 layoffs were not administered in accordance with Article 11. No other conclusion is possible in view of my interpretation of Article 11.2.2. The joint layoff committee process for identifying alternatives to layoff prescribed in Article 11.2.2 is the equivalent of the duty to seek alternatives considered by Arbitrator Bird in *College of New Caledonia* and it is equally "a fundamental obligation not a matter of mere procedure" (paragraph 242). On this basis, each of the grievances succeeds at least to the extent that the grievors are entitled to a declaration that the joint layoff committee process did not comply with the collective agreement.

142 While the shortcomings of the joint layoff committees in 2012 are largely attributable to the manner in which the College chose to participate in the process, this observation is not a full or fair assessment of the conduct of the College. It fails to take account of the reality that the College was justifiably mindful of the compressed timetable in the Consent Order. In order for ten committees to meet the April 17 deadline, it was simply not possible for the committee members to settle into and complete the kind of thorough-going discussions required to reach a consensus on the options for which the faculty members were qualified under each of the three sub-clauses 11.2.2.1, 11.2.2.2 and 11.2.2.3. In this respect, I agree with the College that the flaws in the layoff process after the Consent Order were rooted in the earlier events.

143 For a better perspective on the administration of the 2012 layoffs, it will be helpful to review and measure the entire process against the reasonableness standard which the parties agree is pertinent. Both parties cited *College of New Caledonia* as authority for the application of this standard. In that award, Arbitrator Bird adopted "the 'reasonableness' approach" to reviewing layoffs after canvassing authorities involving post-secondary educational institutions: see paragraphs 232 to 234. The approach was described in those authorities as providing the employer with a range of reasonable choices, thereby exercising "an appropriate degree of arbitral restraint in reviewing this particular kind of management decision made in the context of externally imposed budgetary limitations" (*British Columbia Institute of Technology and BCIT Staff Society*

(June 39, 1982), unreported award (Lysyk), at page 20, as quoted in *College of New Caledonia*, at paragraph 233).

144 The Union, of course, is not required to rely on arbitral jurisprudence to invoke the reasonableness standard. By virtue of the last sentence of the management rights language in Article 14 of the collective agreement, the College is contractually bound to exercise its management rights in a manner which is reasonable. In this regard, the Union contends aspects of the College's administration of the 2012 layoffs were unfair, unreasonable, arbitrary and discriminatory, all of which are advanced "disjunctively in the alternative". I decline to dissect the conduct of the College in the manner which would be required to address this submission. In my view, such an analysis would not be in the interests of the parties who must reconstruct the channels of communication on which the contractually-agreed nature of their relationship is founded. It will be sufficient to measure the College's conduct against the standard of reasonableness.

145 The College did not offend this standard when it concluded it was necessary to implement layoffs. The College had no other practical or effective means of addressing the budget deficit, which I accept it was required to eliminate in the 2012-13 fiscal year. As the College submits, Article 11.2.1 expressly states its management right to layoff members of the bargaining unit "for operational reasons including budgetary exigencies".

146 Nor can it be said the decisions to cut various sections in the workload plans produced by Ms. Moore-Garcia, Ms. Stava and Dean Gauthier failed to meet the reasonableness test. The Union's witnesses disagreed with certain of the cuts but that does not establish unreasonableness. It is trite but true that reasonable people may differ.

147 The more difficult question is whether the departures from the prescribed joint layoff committee process amounted to unreasonableness on the part of the College. The failure to determine qualifications for the options identified by both sides of the joint committees led inexorably to many of the Union's complaints. The most prominent of these complaints were based on the sequence of options being identified by the College

members' reports to the President and then described by Dr. LeBlanc as "viable", only to be denied when chosen by the faculty members. On the evidence, the College members of the joint layoff committees were not unaware of the faculty members' qualifications. In Ms. Carr's case, for example, the Union members of the committee highlighted her lack of a master's degree before the committee's report was forwarded to the President. The manner in which the joint layoff committee process unfolded and the delays and errors in the subsequent administration of the layoffs exacerbated the stress and anxieties experienced by the grievors, all of whom gave convincing evidence in this regard.

148 It does not follow that the College's conduct fell short of the reasonableness standard. The straightjacket timetable in the Consent Order did not permit the joint layoff committee process to function. I am satisfied the intention of the process was frustrated by the unrealistically short time available for it to be carried out. The College then had to continue the process during July, August and September without the assistance of Dr. LeBlanc.

149 The impossible timetable was forced on the parties by their inability to communicate productively during the first three months of the year. Despite their respective protests of openness to dialogue at that time, it is apparent that neither party was prepared to engage in the kind of practical and productive discussions which might have established a procedure to rescue the joint layoff committee process under Article 11.2.2. Both parties must bear responsibility for the lost opportunities before the Consent Order, as well as the consequential breakdown of the joint layoff committee process after the Consent Order. On this basis, I refrain from allocating responsibility for the failed joint committee process entirely to the College and I find the College's participation in the joint layoff committee process was not unreasonable.

Reasons and conclusions part 3: the master's degree requirement

150 The stricter master's degree requirement was doubtless applied with the best of intentions during the 2012 layoffs. Ms. Moore-Garcia and Dean Gauthier wanted to prevent the layoffs from attracting suspicions and thereby forestall any possibility of

other institutions declining to accept the credits earned by students at the College. They may have wanted to elevate the academic stature of the College and its programs. The more rigid criterion also enabled Ms. Moore-Garcia and Dean Gauthier to administer what they regarded as a consistent standard. Dean Gauthier perceived the effect was greater fairness for all concerned. I am not unsympathetic to these objectives. But they do not justify the change.

151 The more exacting insistence on a master's degree provided Ms. Moore-Garcia and Dean Gauthier with a measure of convenience and a method of overcoming the failure of the joint layoff committees. The new standard made it possible to determine whether a faculty member was qualified without the kind of thorough consideration of the faculty member's academic record and course content which the joint layoff committees should have carried out.

152 Ms. Moore-Garcia and Dean Gauthier were not responding to any indication of College students encountering difficulties transferring their credits to other institutions. The only such issue they might have been aware of was initiated by a College faculty member who communicated a concern to another institution. But the College has not once been apprised of an articulation issue by any external institution or agency, including BCCAT and its articulation committees. There was, in a word, *nothing* about articulation of College credits to warrant a change in the standard applied to the determination of qualifications to teach courses at the College.

153 More importantly, the change impacted the collective agreement. Stricter insistence on a master's degree necessarily reduced the number of courses and sections faculty members were qualified to teach. In the context of a layoff, the change meant faculty members had fewer options under the sub-clauses of Article 11.2.2. The rights of the faculty members under those provisions, including seniority rights which are the foundation of the right to bump under sub-clause 11.2.2.3, were thus diminished.

154 However understandable the motivation may have been, the change was made at the wrong time and in the wrong way. Indeed, it was the worst possible time to restrict the range of teaching opportunities for faculty. The effect could only magnify the adverse impact of layoffs on livelihood, career and lifestyle. Neither party is entitled to unilaterally revise basic rights in the collective agreement, whether the alteration is effected by blatant failure to comply with express terms or by a covert change of practice. In a relationship governed by a collective agreement infused with consultation obligations intended to embody collegial decision-making, a change of this nature would normally be possible only by agreement between the parties.

155 Article 14 does not provide the College with a management right to effect such a change unilaterally. In this regard, I am guided by the award in *Red River Community College and Manitoba Government Employees' Union* (June 23, 1997), unreported (Freedman), which was relied on by Arbitrator Ready in *BC Institute of Technology*, at paragraphs 39 to 41. The layoff provision in *Red River Community College* provided for layoff in reverse order of seniority, subject to the condition that "the employees who are retained must have the qualifications and ability to perform the duties which the remaining employees will be required to perform". The employer refused to consider reorganizing staff functions or assignments to preserve the employment of a senior employee. It was held the employer failed to breached the employee's seniority rights:

> That approach is too rigid on the facts of this case. It does not give appropriate priority to the rights inherent in seniority, so fundamental to this collective agreement, and so important to the individual. Within some reasonable parameters the College must give consideration to a reassignment of duties and rearrangement of staff functions, which it does from time to time, according to the evidence, in order to preserve the benefits accruing to seniority, even if that would mean a reorganization soon after a previous one. I add the qualifier about reasonable parameters because it would not be fair or reasonable or required under the Agreement to require an employer (or in this case the College) to reassign duties and rearrange functions either very expensively or continually. Some degree of predictability, certainty and order must me maintained, and a high level of planning and scheduling is required. I think there could be a situation where one might have a concern about too many to too frequent changes, which could then take the consideration of a reorganization outside reasonable parameters; that situation does not exist here. (as quoted in *BCIT*, at paragraph 41)

Similarly, here, the stricter requirement of a master's degree was too rigid. It eroded the seniority rights of faculty by narrowing their alternative teaching options. I recognize, without deciding the point, that articulation considerations may constitute analogous "reasonable parameters". That is, there may be situations in which the incidence of other institutions declining to accept the College's credits would warrant a stricter application of qualifications as prescribed by postings and endorsed by BCCAT. But that situation did not exist on the facts of this case.

156 It has long been settled that the value of seniority is "important and far-reaching": *Tung-Sol of Canada* (1964), 15 LAC 61 (Reville). In the absence of any articulation issue, the seniority of the faculty members being laid off should have been accorded the greater weight it would have had the matter of qualifications been determined according to the standard which was applied prior to the 2012 layoffs.

157 This conclusion also answers the College's submission that it corrected errors made by the administration's designates to the joint layoff committees. The determination of qualifications according to a changed and more rigid requirement for a master's degree did not correct any error. On the contrary, it actually compounded the errors in the joint layoff committee process.

158 For the forgoing reasons, I conclude the College violated the collective agreement seniority rights of the grievors. Moreover, as the recognition of "reasonable parameters" in the *Red River* award necessarily implies, the violation of the grievors' seniority rights was unreasonable. Tangible evidence of this is not difficult to locate. On the one hand, Dean Gauthier asserted that no faculty member without a master's degree has been hired or appointed to teach at the College since the 2012 layoffs. On the other, he was unable to disagree with a number of examples of faculty members who are teaching in a field in which they do not possess a master's degree. The more rigid insistence on a master's degree during the 2012 layoffs constituted an unreasonable exercise of management

rights in contravention of Article 14. The grievors are entitled to a declaration to this effect as well.

Reasons and conclusions part 4: the grievances

159 The specific complaints of Dr. Catharine White are threefold. First, she was denied her choice of Geography 215 on the ground she was not qualified. Second, when that occurred, she was not permitted to bump into one or more of the Biology sections in Prince Rupert. Third, she was required to apply when the CPSC 111 section was posted.

160 With respect to Geography 215, the new master's degree standard was not a factor in the College's denial of the option. I accept Ms. Moore-Garcia's evidence that the College required it to be taught as a humanities subject in order to support the Associate of Arts program in Smithers. Eventually, the College decided to deliver a different humanities section in order to achieve this purpose. As eminently qualified as Dr. White was and is to teach Geography 215 as a science course, the decision that she was not qualified to teach the humanities version was not wrong or unreasonable.

161 Regrettably, the College's purpose was not communicated to Dr. White or indeed to the Union in a timely manner. Instead, the issue was dominated by a sometimes testy debate over whether Geography 215 is a humanities or a science course. Incredibly, the lack of clarity persisted through the hearing. The entire episode could have been avoided with a modicum of constructive dialogue between the parties. But, in view of the reason the College added Geography 215 to the Smithers workload plan, I decline to find it should have been assigned to Dr. White.

162 Dr. White's two other complaints are the product of the failure of the joint layoff committee to perform its responsibilities. Had it fulfilled its function, the committee probably would have debated the nature of Geography 215 but the purpose for which the College added the section to the Smithers workload plan would surfaced and it would not have been identified as an option. Had the committee determined she was qualified to teach the options it identified, Dr. White would have chosen assignments sufficient to

establish a full workload. With a full workload, there would have been no need for Dr. White to pursue more assignments. Whether she was entitled to bump into Biology sections in Prince Rupert would never have entered into the process. Neither would the question of whether she should have been required to respond to a posting of the computer science section. The complaints are hypothetical in that sense and I decline to consider them any further.

163 Dr. White eventually earned five per cent more than her full workload salary, and no compensation is claimed on her behalf.

164 Hondo Arendt testified that part of his grievance is related to the unusual method by which the workload plan was generated in 2012, as well as certain aspects of the plan which he considered "not well thought out". This aspect of the grievance fails. I have already concluded the 2012 process was dictated by the Settlement Agreement and Consent Order of March 29. Even if the workload plan included sections not as well attended as others which were deleted, as Mr. Arendt asserted, the decisions underlying the workload plan were not unreasonable in the hurried circumstances in which it was developed by Ms. Moore-Garcia, Ms. Stava and Dean Gauthier.

165 The more important part of the grievance challenges the rigid insistence on a master's degree qualification. There is little to add in this respect except that Mr. Arendt's experience illustrates the inequity of the stricter standard. Mr. Arendt was denied options he had previously taught successfully and without any articulation repercussions. Because options identified under sub-clause 11.2.2.3 were denied, the new standard reduced his bumping options and thereby diminished his seniority rights. The circumstances are distinguishable from the awards cited by the College in which the grievor did not have sufficient or adequate qualifications. In *School District No. 75 (Mission)*, for example, the appointment of a junior colleague following a posting procedure was upheld because, in part, the grievor "did not have the academic background" (paragraph 63). Similarly, in both *Malaspina University-College* and *Vancouver Community College*, the grievor did not possess qualifications or specified

experience. The distinction is that Mr. Arendt was qualified, as his teaching record confirms.

166 In the end, however, Mr. Arendt did not suffer any loss of income. His grievance succeeds but no compensation is due to him.

167 Dr. Mia Reimers experienced a series of administrative mistakes by the College in the course of the 2012 layoffs. These mistakes exacted a personal toll but, for the reasons canvassed above, I have concluded they did not amount to an unreasonable exercise of management rights.

168 The specific issues arising from her grievance concern the denial of options which would have bumped Mr. Brandt from sections in Criminology, followed by the misapplication of Article 11.2.4 to the History 213 option.

169 Dr. Reimers' response to LeBlanc's invitation to provide further qualifications presented a forceful case that she was qualified to teach Mr. Brandt's sections in Criminology. But I do not rely on it. If I were to conclude she was qualified on that basis, I would not be exercising the appropriate degree of arbitral restraint. However, the evidence is that five other faculty members have taught the subject without a master's in criminology and I have no doubt that Dr. Reimers would have been considered qualified to bump Mr. Brandt had her qualifications been assessed according to the standard used for the purpose prior to the 2012 layoffs. In my view, the adoption of a new and more restrictive test for qualifications during the 2012 layoff process dispenses with concern about appropriate restraint. As with Mr. Arendt's grievance, these circumstances also distinguish Dr. Reimers' grievance from the awards cited by the College.

170 The assignment of the History 213 section, on the other hand, is one of the issues generated by the breakdown of the joint layoff committee process. It appears logical to say that, as she was indisputably qualified to teach the section, it should have been assigned to her in accordance with Article 11.2.10. But, again, had the joint layoff

committee performed its intended function, Dr. Reimers would have been able to choose options for which the committee had determined she was qualified and she would have had a full workload as a result. Therefore, it is an artificial issue in the sense that it should not have arisen. For this reason, it is unnecessary to consider this complaint any further.

171 The denial of Dr. Reimers' choice of criminology options violated her seniority rights and the College acted unreasonably in that regard. Dr. Reimers lost five per cent of her income during the 2012-13 academic year as a result and she is entitled to compensation for the loss.

172 The College emphasizes that Christane Carr was subject to layoff a year earlier when the SEA program was terminated. She retained her 50 per cent continuing position during the 2011-12 academic year by means of two non-teaching activities. First, she was tasked with preparing a report on the viability of the SEA as a cost-recovery program, for which she was credited with the equivalent of a 25 per cent workload. Second, she was elected President of the Union, for which she was given a 25 per cent release from teaching. The former ended on July 31, 2012 and the latter on August 31, 2012. In a letter to Ms. Carr dated July 20, 2012, Ms. Moore-Garcia confirmed her layoff "from the SEA Program" and notified her that her 50 per cent continuing appointment would end July 31, 2012.

173 The College would have me conclude that Ms. Carr was aware she would have no workload on this account. The implication is that she had no legitimate expectation of continued employment and her grievance should fail on this account. But her status as a regular employee had to be addressed. Ms. Carr's workload prospects in April 2012 did not diminish her rights under Article 11. The College was still required to utilize the layoff process to conclude her employment. The issues arising from her grievance flow directly from the process as it was applied to her.

174 The specific issues begin with the denial of Ms. Carr's choice of the Psychology and Sociology sections identified as options by her joint layoff committee. The letter communicating the denial couched it in terms of a bumping situation, but these sections were options under Article 11.2.2.1. The second issue is whether the posted ECE courses she unsuccessfully applied for should have been assigned to her as a laid-off faculty member. Third, she was then denied the SSW sections posted in December, long after her grievance was filed. Although the obvious jurisdictional issue was raised at the hearing, it was not addressed by counsel in final argument.

175 Ms. Carr's grievance is more difficult because it is not as evident that, had the joint layoff committee functioned in the intended manner, she would have been regarded as qualified to teach the Psychology and Sociology sections. The complication is that the same sections were then posted and, when she applied, a selection committee determined she was not qualified in July. The selection committee included two faculty members, one of whom was a subject specialist. In addition, her withdrawal from the competition for SSW courses in 2013 casts some doubt on her evidence that teaching in Terrace was an option she was prepared to consider in May 2012.

176 The subject specialist on the July 2012 selection committee was Mr. Altar who, it will be recalled, had expressed concern in May about psychology courses being delivered by faculty members who do not have a M.A. in Psychology. Mr. Altar also assisted Dr. LeBlanc to contact the psychology articulation committee. It is not for me to criticize his view on the importance of a master's degree but it does not change the analysis. The fact remains that the requirement was not applied as strictly prior to May 2012. Dean Gauthier, who was largely responsible for the unannounced change to a stricter master's degree requirement, was also a member of the selection committee in July. It is safe to infer on the balance of probabilities that it applied the new standard.

177 It cannot be said with any certainty what the joint layoff committee would have concluded had it performed its mandate in the manner intended in Article 11.2.2. But it would not have moved the master's degree goal posts the way Ms. Moore-Garcia and

Dean Gauthier did the following month. Dr. Riesen was on that committee and it is evident from emails he authored regarding the SSW posting in December 2012 that he did not regard the master's requirement as an obstacle to Ms. Carr teaching those sections.

178 For these reasons, I am persuaded that, had Ms. Carr's qualifications been assessed by the joint layoff committee in accordance with the then prevailing standard, she would have been afforded options sufficient to maintain her 50 per cent continuing appointment. Given the array of options in the SSW and ECE programs which were also under consideration and her background in both of those programs, this conclusion is not contrary to the appropriate degree of arbitral restraint. If not all of the Psychology sections she attempted to choose or even the Sociology section, the probability is that the joint layoff committee would have concluded she was qualified to teach more than the five sections she needed. Her workload may have consisted of the Psychology and Sociology sections or a combination of some of those sections and some of the SSW and ECE sections. Not all of the TBAs in Terrace would have been scheduled in the winter session when the reasons for her withdrawal from the 2013 competition for courses in Terrace would have been a factor.

179 With this conclusion, it is unnecessary to consider Ms. Carr's other complaints. She is entitled to reinstatement to 50 per cent regular status and compensation for lost income in 2012-13 and subsequently.

Conclusion

180 For the foregoing reasons, the grievors are entitled to declaratory relief in relation to both the breakdown of the joint layoff committee process under Article 11.2.2 and the violation of their seniority rights. Although the grievors should have been assigned some of the options they selected in April 2012, the academic year in which these assignments would have been performed ended in August 2013, two months before the hearing in this matter concluded. Thus, the Union did not pursue remedies it said it would request when the hearing commenced in January 2013.

181 Specifically, then, it is hereby declared that the grievors' joint layoff committees did not perform their responsibilities under Article 11.2.2, the most critical of which was to determine whether the grievors were qualified to teach the options identified by the committees as alternatives to layoff. As a result, the grievors experienced a number of needless difficulties. But the process shortcomings were largely attributable to the unrealistic timetable in the Settlement Agreement of late March and that timetable was, in turn, the product of the parties' mutual inability to constructively address the necessity for layoffs during the first three months of 2012.

182 It is further declared that the application of a more rigid requirement for a master's degree in the determination of the grievors' qualifications during the 2012 layoffs violated both the grievors' seniority rights and the duty of the College to exercise its management rights reasonably.

183 Two of the grievors suffered material loss as a consequence of the foregoing collective agreement contraventions and are entitled to further relief. The College is hereby directed to compensate Dr. Mia Reimers for her five per cent loss of income. The College is also directed to reinstate Ms. Christane Carr as a 50 per cent regular faculty member and to compensate her for the loss of income she has suffered.

184 I retain jurisdiction to determine any issues related to the remedies so awarded as well as any other issue arising from this Award.

Dated at Vancouver, British Columbia, this 30th day of December 2013.

Rod Germaine, Arbitrator