IN THE MATTER OF AN ARBITRATION

BETWEEN: Simon Fraser University  
(the "Employer" or the "University")

AND: The Teaching Support Staff Union  
(the "Union" or the "TSSU")

Patrick Gilligan-Hackett, for the Employer

Karen Dean, for the Union

DATE AND PLACE OF HEARING:

February 12, 2014, Vancouver, B. C.

ARBITRATOR:

Mark Thompson

AWARD

This case arose from a general grievance filed by the Union concerning the correct interpretation of Article VII B of the parties' Collective Agreement. The parties agreed to my jurisdiction. The hearing in this case was preceded by a preliminary hearing the scope of the case on January 31, 2014. A decision on the preliminary question is issued separately.

The Union grievance arose from the alleged failure of the University to comply with Article VII.B of the Collective Agreement when some departments failed to provide a copy of the Collective Agreement to some Union members. In particular the departments in question did not provide printed copies of the Agreement. The Union
sought full compliance with Article VII.B, full restitution in relation to any consequences of the violation.

The article in question, VII.B, reads as follows:

**Copies of the Collective Agreement**

The University, through the departments of appointment, shall provide a copy of the current Collective Agreement to all bargaining unit members at the beginning of their initial appointment and at the time a new Collective Agreement is implemented. The cost of preparing a sufficient number of copies for this purpose shall be shared equally by the University and the Union. The costs and the number of copies purchased shall be determined by mutual agreement.

The Union’s position was that this Article gave its members the right to receive a printed copy of the Collective Agreement directly, without having to request a copy in writing or orally, or by collecting a copy made available in a commons area. The Employer’s position was that Article VII.B requires departments to make copies of the Collective Agreement available.

The Union gave evidence, without contradiction, that the members of the Union are widely scattered geographically and fill a number of distinct positions. The Union represents about 1500 employees, most of whom are employed at the Burnaby, Surrey and downtown Vancouver campuses, and other locations throughout the province. A majority of the employees the Union represents are also graduate students, but others have no other connection to Simon Fraser. Mr. Colin Tether, the Chief Steward for the Union, testified that the Union’s bargaining unit includes four employee groups: Teaching Assistants, who assist instructors, conduct tutorials and carry out other duties in
classrooms; Tutor/Markers, who are teaching assistants in distance education programs; Sessional Instructors, who teach courses; and English Language and Culture instructors, who teach English as a second language. All employee categories except the English Language and Culture instructors are hired on the basis of a term. The rank of Teaching Assistants varies with the level of the employee’s education or the degree program in which he or she is enrolled.

Mr. Tether’s duties as Chief Steward included enforcing the Collective Agreement and advocating on behalf of members. He gave evidence of the history of the most recent round of bargaining (November 2011-October 2012) over the text of Article VII.B. Counsel for the University argued that the evidence should not be admitted, because it did not concern the language in dispute. The Union proposed to lead the evidence and leave it to me to determine the weight it should be given. Since I had no knowledge of the contents of the evidence, I ruled that the Union could present the evidence, with the normal proviso that I would determine the appropriate weight in the award.

The Union prepared copies of the minutes of bargaining for the new Collective Agreement that occurred between January 2011 and October 2012. The Employer accepted the notes as accurate and did not assert its right to cross examine any witness about their contents.

At the commencement of bargaining, the Employer proposed to amend Article VII.B to make the Collective Agreement available to members electronically, through links to either party’s website. The Employer’s proposals tabled in September 2010 stated that it
wished to “review the language surrounding the printing and distribution of collective agreements.” Later in bargaining, Mr. Chris Hatty, speaking for the University, stated that the University had “boxes and boxes” of the expired collective agreement. Since everyone covered by the Collective Agreement had access to a computer, he wished to discuss a system combining a link to one or more websites and a limited “production” of collective agreements. The rationales for this change were that electronic distribution would be more sustainable and that several boxes of the existing collective agreement remained, presumably indicating that many TSSU members were not interested in receiving printed copies. Members of the bargaining unit had computers and could obtain a copy of the collective agreement electronically.

The Union’s initial response was to suggest that the current language was not being observed. If the University still had boxes of the expired Collective Agreement, all employees could not have received copies as Article VII.B required. Ms. Dean replied that the Union continued to believe that it was important that employees receive printed copies. When representatives of either party need to refer to the collective agreement, they invariably rely on a printed copy. She expressed the view that restricting the distribution of printed copies could provoke more expense and use of paper because many persons would have to print their copies from an electronic file. She also stated that the Union wanted the Collective Agreement to come from management, to emphasize that it was not a book of “Union rules,” but an agreement reached by both parties.

Mr. Hatty told the Union that the Employer wanted to rely to electronic copies,
either from the Union website, or the University’s Human Resources website, with printed copies available on request. Reliance on printed copies was not as important for members of this Union as it would be for unions representing blue collar workers. Again the Union resisted on several grounds, availability of computer equipment and printers, the optics of having the Collective Agreement come from management and the continued use of and reliance on printed copies.

On November 8, 2011, Mr. Hatty proposed that the language of the Collective Agreement state that electronic copies would be provided, as follows:

The University, through the departments of appointment, shall provide an electronic copy of the current Collective Agreement to all bargaining unit members at the beginning of their initial appointment and at the time a new Collective Agreement is implemented. Upon written request by the employee a printed copy of the Collective Agreement will be provided at the time of the initial appointment and upon subsequent written request, at the time a new Collective Agreement is implemented.

The cost of preparing a sufficient number of copies for this purpose shall be shared equally by the University and the Union. The costs and the number of copies purchased shall be determined by mutual agreement.

The Union resisted the proposal on much the same grounds it had stated earlier, i.e. that many members would print a copy of the Agreement, the value in having the Employer distribute the Agreement and the need to refer to printed copies when the Agreement was used. If the Employer retained boxes of the current agreement, one could assume that the article as it was written had not been observed, i.e. departments were not distributing copies as required.

Further discussion concerned the mechanics of distributing the Collective
Agreement, and the Union’s insistence on the value it attached to members receiving printed copies. The Union countered with another proposed text on November 22, 2011:

The University, through the departments of appointment, shall provide both an email with the Collective Agreement attached and a printed copy of the current Collective Agreement to all bargaining unit members at the beginning of their initial appointment and at the time a new Collective Agreement is implemented. The University and the Union shall each ensure that a current Collective Agreement is available and accessible on their respective websites. The cost of preparing a sufficient number of printed copies for this purpose shall be shared equally by the University and the Union. The costs and the number of copies purchased shall be determined by mutual agreement.

Discussions on the provision continued in later sessions. On February 28, 2012, the University presented an amended version of its November 8, 2011 proposal with more emphasis on electronic communications, as follows:

The University, though departments of appointment, shall provide an electronic copy of the current Collective Agreement to all bargaining unit members at the beginning of their initial appointment and at the time a new Collective Agreement is implemented. The University and the Union shall each ensure that a current Collective Agreement is available on their respective websites. Upon written request by the employee a printed copy of the Collective Agreement will be provided at the time of initial appointment and upon subsequent written request, at the time a new Collective Agreement is implemented.

The cost of preparing a sufficient number of copies for this purpose shall be shared equally by the University and the Union. The costs and number of copies purchased shall be determined by mutual agreement.

The parties discussed how many copies of the previous agreement had been printed. The Employer stated that it wished to reduce or eliminate the requirement for distributing hard copies of the Collective Agreement. It preferred to use electronic copies only or printed copies only for those members who wanted them. The Union opposed any language that made printed copies of the agreement available only on request, which would
impose an administrative burden on members and their departments. Members may not be aware of their union status, and receiving a copy of the Collective Agreement automatically is a useful way to make them aware of their status. The Union did not object to making electronic copies available, but not at the risk of denying members the right to printed copies. The University tabled a revised draft of Article VII.B on March 27, basically restoring the language in its February 28, draft, i.e., retaining the language in the second paragraph about the cost of preparing a sufficient number of copies. The Union did not respond, and there were no further discussions of the provision.

On October 12, 2012, the Employer withdrew its proposals to amend Article VII.B, so the item was not discussed further, and the language was unchanged from the previous Collective Agreement.

Variations of the current language in Article VII.B have been part of the collective agreements negotiated by the parties since 1982. While the texts varied somewhat, all of the agreements included the phrase “The University shall provide a copy of the current Collective Agreement.” Beginning in 1993, the Agreement has included the phrase “through the departments of appointment,” after the words “The University.”

The events leading to the grievance in question began after the final ratification of the current Collective Agreement. Ms. Diane Almeida, a “Labour and Employee Relations Assistant” from the University’s Human Resources department, wrote to administrative managers on April 12, 2013 as follows:

Hard copy versions of the 2010-2014 TSSU Collective Agreements are now available. As per article VII.B, the University is obligated to provide a copy of the
current agreement to all members of the TSSU. Please respond to this email indicating how many copies your department requires for distribution. Please note the agreement is also available on the HR website: http://www.sfu.ca/human-resources/tssu.html.

Counsel for the University stated, without contradiction, that Ms. Almeida was not a member of management. He also noted that the University has approximately 40 departments and schools, so Ms. Almeida’s e-mail presumably was addressed to most or all of them.

After the conclusion of negotiations, the Union bargaining committee decided that Mr. Tether would work with departments to fulfill the requirements of Article VII.B. In carrying out his responsibility, on May 22, 2013, he sent an e-mail to “Department Managers,” stating:

The TSSU has been informed that a number of departments have not distributed copies of the 2010-2014 collective agreement to all bargaining unit members as per Article VII B on p. 7. Please confirm that printed copies of the new collective agreement have been distributed in your department.

After sending the e-mail, Mr. Tether learned that practices with respect to distribution of the new Collective Agreement varied considerably across departments. He testified that the replies he received ranged from a single word to more elaborate explanations of how collective agreements were distributed. One variation was that the copies were left in the graduate student lounges, which were not accessible to members who were not graduate students. Moreover, the hours of work of members are variable. Some members teach night classes, or work on weekends, while others determine their own hours of work.

The two e-mails generated correspondence between department managers and the
University's Human Resource department. In addition, Mr. Tether’s communication initiated his discussions with several departments.

The manager in the sociology-anthropology department informed graduate students that she had copies of the new Collective Agreement in her office. She asked the students to request a copy, which she would put into the individual’s mail box or give them out to individual employees from her office. She also included the link to the University’s human resource website where the agreement could be found. The manager in the English Language and Culture Department requested that the Human Resources Department send 40 copies for her to place in the members’ mail boxes.

The department manager in Health Sciences responded that her department had approximately 150 graduate students, plus up to 10 sessionals, but she did not think that each needed a hard copy. She requested 50 copies to be stored in two offices. Mr. Tether notified the department that each TSSU member should receive a copy of the contract. The manager then responded that printed copies would be available to graduate students in their designated lounge. She believed that the Union members preferred to “go on-line.” but printed copies would be available. Mr. Tether reiterated the Union’s position that members should be provided with copies rather than making them available.

The departmental secretary for the department of humanities asked for 20 hard copies of the Collective Agreement to be distributed in the department. A few days later, she asked that the order be cancelled because “Minds were changed amid concerns regarding paper waste.” She was told that the copies had been sent, but they could be
returned to Human Resources.

The manager for the department of English initially informed Mr. Tether that hard copies of the Collective Agreement were “being made available to all current TSSU members.” Subsequently the manager wrote to Mr. Tether to say that the Union members had been notified that they could pick up their hard copies from the main office for the department. Mr. Tether registered concern with this event and explained why the Union believed that it was important that each department “provide every current member with a printed copy of the CA.” He requested that she distribute a printed copy to every current member of the Union in the department. To emphasize his concern on this point, Mr. Tether also introduced evidence of the considerable variety in starting dates and locations at which Union members worked in the English department.

Finally, Mr. Tether presented evidence from the psychology department. The manager sent graduate students and faculty an e-mail stating that the new Collective Agreement was available on the Human Resources website. She requested that any member who wanted a hard copy of the agreement should notify her in the following week, and she would ensure that a copy was placed in his or her mailbox.

The Union filed a grievance alleging violations of Article VII.B on June 26, 2013, alleging that more than one department or faculty had violated that Article. The grievance was filed as a Step Two grievance, pursuant to Article X A.4 of the Collective Agreement.

Arguments

The first basis of the Union argument was that the Employer had implemented
Article VII.B so that members of the Union did not receive printed copies of the Collective Agreement after unsuccessfully seeking to obtain language to that effect in the 2010-2013 round of bargaining. The crucial element of the Article was the meaning of “provide.” The Union position was that the purpose of the Article was to provide each employee covered by the Agreement with a printed copy at the time of first employment and after a revision. The Article refers to the mechanics of distributing printed copies, with references to number of copies, allocation of cost and a “sufficient number of copies.” The evidence was clear that a printed copy of the most recent Collective Agreement was not provided to some members of the Union.

The Union argued that the Employer had implemented the new system for distributing the 2010-2014 Collective Agreement after it failed to achieve changes in contract language to explicitly permit the University to rely on electronic copies to fulfill its obligation.

To support its position, the Union first referred to the history of bargaining in the 2010-2013 round summarized above. Ms. Dean pointed out that the Employer had not said that “provide” did not mean giving a copy to employees. However, the meaning of “provide” was not discussed by either party.

In reviewing Mr. Tether’s evidence, Ms. Dean argued that, of the departments on which he had knowledge, only the Department of English Language and Culture/Interpretation and Translation carried out its responsibilities for the distribution of the Collective Agreement properly in 2013.
As part of her argument, Ms. Dean produced a copy of the Collective Agreement with the word "provide" or "provided" appeared. Her argument was that the parties knew very well how to use these words in their negotiations. It is clear that she was correct. The word "provide" appears approximately 33 times in the Collective Agreement (including Article VII.B), and "provided," approximately 24 times. However, the words are not used interchangeably. "Provide" normally infers a form or information to be supplied or furnished. A few typical examples illustrate this generalization. Article IV.A states that "The Union shall provide the check-off form for use by the University." Similarly Article XIII.E 8, which covers working conditions of Teaching Assistants, requires the Course Supervisor "to provide a guideline of the approximate length of time expected to be devoted to each major activity. . . ."

The word "provided" is used for various purposes. One is a derivation of the use of "provide," especially in the passive voice, such as Article XX.A, which covers work space and facilities. It requires that "bargaining unit employees shall be provided with an appropriate place for holding office consultations. . . ." In Article XXV.D 3 deals with the rights of employees who are denied requests for personal leave. In those cases, the unsuccessful applicant "will be provided with an explanation."

Several uses of the word refer to other provision of the Collective Agreement or the Employment Standards Act. Thus, Article X, which covers the grievance procedure, states in paragraph A 1.9 that time limits "provided in the Grievance Procedure may be extended" by mutual agreement of the parties. Elsewhere, "provided" states a condition
precedent for an action by the parties. For example, Article XIII.3 covers workload issues for Teaching Assistants and stipulates that the assigned workload will not exceed the maximum hours of work, “provided as follows” listing procedures to ensure that every effort is made to ensure that the workload falls within specified limits.

The other basis of the Union’s argument was a line of arbitration decisions that addressed the issue of unilateral actions by management on provisions that it had been unable to change in collective bargaining. A case presented that stands for this point was *Re Finning (Canada), a Division of Finning International Inc. v. International Association of Machinists and Aerospace Workers’ Union, District Lodge 250*, [2013] BCCAAA No. 11 (Lanyon).

While the fact pattern is complex, the issue in dispute was whether the employer could unilaterally implement a change in the company pension plan. The retirement plan gave the plan administrator the right to amend or terminate it. The plan was administered by trustees appointed by the management of Finning International, the parent company of Finning (Canada). In 2004, the plan administrators started a transition from a defined benefit plan to a defined contribution. The union was interested in the operation of the pension plan (which was not covered by the collective agreement), and brought the subject up in bargaining on several occasions. In the 2003 round of negotiations, the union sought improvements in the plan, partly because it understood that Finning (United Kingdom), another subsidiary of Finning International, had established a defined contribution plan. Current employees who were members of the defined benefit plan had the option of
remaining in that plan or moving to the defined contribution plan. New hires would be enrolled in the defined contribution plan. The Finning (International) parties negotiated over the pension plan, which was the subject of a strike vote. Ultimately they incorporated a memorandum of agreement into the 2003-2006 collective agreement (signed December 5, 2003) stating that the current defined benefit plan would continue to be available for existing employee participants in the pension plan.

On December 3, 2003, the Employer informed employees of changes in the Finning International pension plan that affected members of the British Columbia plan. The Finning (Canada) plan was to include a defined contribution plan. The pension administrators developed a program to assist Finning (Canada) employees then in the defined benefit plan to assess their options of remaining in the defined benefit plan or converting to the defined contribution plan. In June 2004, employees in the defined benefit were given the opportunity to convert to the defined contribution plan.

The parties negotiated a new collective agreement for the period 2006-2009, which included a new Letter of Understanding which stated that the present defined benefit plan would continue to be available for existing employees who were members of that plan. During the next round of bargaining in March 2011, the employer proposed to eliminate the right of existing employees to continue to participate in the defined benefit plan, and substituted wording to continue the defined benefit plan to December 31, 2015. In the course of bargaining, the employer abandoned its proposal, leaving the wording of the letter of understanding on the subject intact.
In January 2011, the Employer informed members of the defined benefit plan that they would become members of the defined contribution plan effective January 1, 2016. The administrators had discontinued the defined benefit plan in November 2010. The union filed a policy grievance asserting the right of current members of the defined benefit plan to remain in that plan.

Arbitrator Lanyon concluded that the words chosen by the parties with respect to the defined benefit plan, "shall continue to be available," on their plain meaning, were a binding commitment on the employer to current members of the defined benefit plan that they were entitled to remain in the plan during the term of the collective agreement, although they were not part of the collective agreement, but in letters of understanding. He noted that the employer had not succeed in eliminating the defined benefit plan in the 2011 round of bargaining. The arbitrator ruled that the employer, Finning (Canada) could not unilaterally eliminate the defined benefit plan, but must seek to negotiate a change to the letter of understanding. See also, Re Health Employers’ Assn. of British Columbia and B.C.N.U. (Forest) (2006) 154 L.A.C. (4th) 109 (Burke).

Counsel for the Employer argued that this case was not about electronic copies of the Collective Agreement. In the most recent round of bargaining, the Employer sought to reduce the number of printed copies of the collective agreement. The University would make a printed copy available to any employee who wanted one. Ultimately, the employer withdrew its demand. The Employer did not argue in this case that telling employees where they could get electronic copies of the Agreement met its obligation under Article
VII.B. Therefore bargaining history was not relevant.

According to the University, the difference between the parties was the meaning of “provide.” The Union could not provide a single decision on the meaning of “provide,” the core of the case.

The Employer pointed to *Buildevco v. Monarch Construction Ltd.* [1990] O.J. No. 782, 73 O.R. (2d) 627, Then, J. 1990. Again, the fact pattern was complex. Buildevco and Monarch were partners in a joint venture for several years. In 1982 Buildevco defaulted on payment of its obligations (various mortgages) under the joint venture agreement.

Monarch made payments pursuant to the joint venture agreement and notified Buildevco that it would claim those payments. The parties disagreed on the amount of the payments and the rate of interest of the mortgages. The dispute went before the courts several times, ending with the decision cited to me. In the view of Justice Then the case turned on the meaning of “provide” in a clause in the joint venture agreement. The clause in question stated:

If either party fails to provide funds pursuant to paragraph 3(b), the other party may provide all or part of the amount in default, in which case the said amount in default so provided shall be paid back to the party who provided same before repayment is made of any moneys owing to the defaulting party, and the defaulting party shall pay interest to the other party on such amount at the rate of fifteen per cent (15%) per annum, until the said amount is returned.

The crux of the dispute between the parties was whether the interest rate should be the original rate contained in the mortgage contract or the higher rate contained in the joint venture agreement.

The court noted that the general rule in contract interpretation is that words be
given their "plain, literal and ordinary meaning." Justice Then cited Black's Law Dictionary for a definition of "provide," and concluded that the plain meaning of "provide" was "to furnish or to make available." The plain meaning did not connote any limitation as to the source or means by which a party makes a thing available. The court also stated that the word "provide" must be read in the context of the whole agreement. It observed that to limit the interpretation of the word could lead to a commercial absurdity, to constrain the financing arrangements a party might make to pay the defaulted amounts.

The University's position was that the word "provide," as used in Article VII.B covered its actions to distribute copies of the Collective Agreement in 2013, and there was no record that was inconsistent with that meaning. Counsel noted that "provide" was used differently in the Collective Agreement, in conditional sense and to mean "make available." There may be a small number of examples where the meaning of make available would not make sense.

**Analysis**

In their summation of their arguments, both parties agreed that the core of this case is the meaning of "provide." To answer that question, it is appropriate to turn first to the rules of interpreting a collective agreement, developed by arbitrators over several decades. A commonly-cited list of the rules of interpretation was stated by Arbitrator Bird in Re Pacific Press, Div. Of Southam Inc and G.C.I.U., Local 25-C (1995) 41 C.L.A.S. 488, at paragraph 27:

1. The object of interpretation is to discover the mutual intention of the parties.
2. The primary resource for an interpretation is the collective agreement.
3. Extrinsic evidence (evidence outside the official record of agreement, being the written collective agreement itself) is only helpful when it reveals mutual intention. 
4. Extrinsic evidence may clarify but not contradict a collective agreement.
5. A very important promise is likely to be clearly and unequivocally expressed.
6. In construing two provisions a harmonious interpretation is preferred rather than one which places them in conflict.
7. All clauses and words in a collective agreement should be given meaning, if possible.
8. Where an agreement uses different words one presumes that the parties intended different meanings.
9. Ordinarily words in a collective agreement should be given their plain meaning.
10. Parties are presumed to know about relevant jurisprudence.

Not all of these rules are equally important or relevant in most exercises in interpretation. In this case, it is obvious that there must be an effort to discover the mutual intention of the parties. In addition, all clauses and words in the collective agreement should be given meaning. Since the parties both focussed their attention on the word “provide,” it should be given its plain meaning if possible. It is equally clear that the primary resource for interpretation is the Collective Agreement, not only the text of Article VII.B, but the many uses of “provide” in the Collective Agreement, to which the Union called attention. I admitted extrinsic evidence, over the objections of Mr. Gilligan-Hackett, but I must consider carefully the weight it should be given.

Turning first to the plain meaning of “provide,” each party referred to a standard reference to offer a definition. Ms. Dean produced the Canadian Oxford Dictionary (2 ed.), which contained several definitions. The most relevant for this case were: “furnish, provided them with food; ensure or specify, this agreement provides that profits will be divided equally among partners.” Mr. Gilligan-Hackett referred to the Concise Oxford English Dictionary, Eleventh Edition, which also had several definitions, the first of which
is: 'make available for use; supply;' a supplementary definition was '(provide someone with) equip or supply someone with.' The same dictionary also defined 'provided' as a conjunction, 'on the condition or understanding that.'

In addition, the decision in *Buldevco Ltd. v. Monarch Construction Ltd.*, *supra*, referred to Black's Law Dictionary, 5th ed, which defined 'provided' as: 'to make, procure or furnish for future use, prepare. To supply; to afford, to contribute.'

In the Collective Agreement, Article VII.B clearly anticipates that printed copies will be provided to employees on the appropriate occasions. References to the cost of "preparing a sufficient number of copies" suggest that the parties recognized that physical copies would be available. But that language in itself does not preclude the use of other media to provide copies of the Agreement.

The uses of the word 'provide' elsewhere in the Collective Agreement also are instructive. In the majority of the clauses in which the word appears, there is no particular guidance on the mode in which the information, or policy, or document will exist. For example, Article IV D requires that the University should provide the Union with a current list of bargaining unit employees. Similarly, Article XIII.E 2 states that the "Course Supervisor is expected to provide a guideline of the approximate length of time expected to be devoted to each major activity." As a final example, Article XV, which covers Distance Education, Tutor/Marker, in paragraph C.2.f, states: "If requested, the Tutor/Marker will provide recommendations to students for additional readings."

Elsewhere in the Collective Agreement, the requirement of 'provide' is specified.
Article XVI requires that "The written contract of employment shall be provided to the successful applicant..." as part of the position posting and offer of employment process. Subsequently in the same Article, the University agrees to "provide the applicant with a letter on department letterhead" to assist an applicant who does not have a valid Social Insurance Number. In Article XXVIII, TSSU Member child Care Bursary for Teaching Support Staff Union Members, paragraph 1.g states: Financial Assistance will provide a written statement of expenditures..." Although these examples conditions on "provide," are illustrative, they are also quite rare among all the uses of the word.

The word "provided" is also used frequently in the Collective Agreement. The most common examples are simply passive used of "provide," e.g. Article VI.C 2, which specifies that charges for University facilities that the Union uses will be at the same rates as "provided" the other unions and associations. Other uses are conjunctions in the terms of the definitions in the Oxford English Dictionary. An example is Article X. B.16, which gives either party to bring additional representatives to a grievance meeting, "provided" reasonable notice of the person's identity is given.

In Re Insurance Corp. Of British Columbia and C.O.P.E, Local 378 (2012) 112 C.L.A.S. 36, Arbitrator Taylor had to determine if overtime was worked without authorization should be paid. He found the word "authorized" was used many times in the collective agreement and concluded that the parties knew how to use the word. Had they intended to require pre-authorization as a condition for overtime payment, they would have said so.
The Union presented evidence of bargaining history to clarify the meaning of Article VII.B. As stated above, the Union's argument was that the Employer had sought a change in the Article. When it did not succeed in negotiations, it implemented the provisions that it had proposed at the bargaining table. The Employer argued the contrary point, i.e., that because no change was made in the disputes provision of the Collective Agreement,

Bargaining history must be examined carefully to determine if it truly assists in clarifying the meaning of terms in a collective agreement. In particular, it should indicate the parties' mutual intent. The case *Re Victoria Times Colonist and Victoria-Vancouver Island Newspaper Guild, Local 30223 (Telus Hot Edict) (2010) 203 L.A.C. (4th) 297* (Germaine) is instructive. Arbitrator Germaine was asked to interpret a clause in the collective agreement that permitted newspaper employees to refuse to publish material produced by parties involved in a labour dispute. The union introduced evidence of the history of the disputed provision, starting in the 1970s. The clause was based on other agreements, some dating from 1945, and the language in question first appeared in the 1981-1983 collective agreement. The clause was invoked several times, usually leading to litigation initiated by the employer or a third party which was unable to advertise during a strike. The effect of the clause was affected by provincial legislation in the 1980s. When legislation changed, the clause was reinstated.

In several bargaining rounds, the employer sought to have the clause removed, but was unsuccessful. The union invoked the clause in 2005, in connection with a dispute of
Telus and its union. The employer applied to the BC Labour Relations Board to overturn the union’s actions. It also filed a grievance which led to the arbitration.

Despite the volume and long history of bargaining, the arbitrator found that the evidence did not shed light on the parties’ mutual understanding of the disputed clause. The union believed it had the right it asserted in the Telus dispute, but the history did not reveal the employer’s understanding of the language.

By contrast, in Finning (Canada), supra, the parties had frequent discussions about the employer’s pension plan. In that case, the parties discussed the continuation of a defined benefit pension plan and retained a letter of agreement guaranteeing current members of the plan the right to continue membership. The employer then unilaterally cancelled the defined benefit pension.

In the case before me, I do not find that the bargaining history assists in the interpretation of the essential element of Article VII.B, the word “provide.” The University clearly wanted to move away from exclusive use of printed copies to meet the requirements of Article VII.B. The parties presented proposals for new language. The University never proposed to eliminate printed copies completely. The meaning of “provide” was not discussed directly in bargaining, and the Employer did not succeed in changing the existing language to expand its right to rely on electronic copies of the Collective Agreement. As I have noted above, Article VII.B anticipates that the University will distribute printed copies of the Collective Agreement. For these reasons, bargaining history does not clarify, let alone modify, the plain meaning of the word. Nor does it reveal the parties’ mutual
intent. Moreover, no evidence on past practice on the application of this Article was led, so I have no basis for concluding that the University's actions in 2013 changed in the aftermath of the 2010-2013 bargaining round.

In this case, after examining the Collective Agreement and standard dictionaries, I find that the plain meaning of "provide" is to furnish or make available. I do not interpret the word "provide" to be limiting in itself. Looking at the whole Collective Agreement, I share Arbitrator Taylor's conclusion that if the parties had wished to modify the verb "provide," they could have done so. In fact, on occasion they did specify that a "written statement of expenses," or a "written contract of employment" had to be provided. There is no such language in Article VII.B.

The setting in which the grievance in this case arose is significant. After the implementation of the new Collective Agreement, Ms. Almeida sent an e-mail to Department Managers on April 12, 2013. Ms. Almeida did not testify, and there is no evidence who prepared the e-mail under her name. The e-mail stated first that "the University is obligated to provide a copy of the current agreement to all members of the TSSU." She then asked departments to inform her how many copies they required. Thirdly, she stated: "Please note the agreement is also available on the HR website . . . ." Mr. Tether's evidence was that one of the four departments about which he had information responded as the Union thought necessary, i.e. giving each member a printed copy of the Collective Agreement. Each of the other three departments acted differently, including one in which the manager somehow determined that none of the TSSU members
The remedy the Union sought was to instruct the Employer to ensure that the provisions of Article VII.B were implemented. That is appropriate in this case. However, no particulars were offered on restitution, if any, flowing from this award.

Both parties requested guidance on how the process under Article VII.B should be carried out in the future. To meet this request, I return to the April 12 email. It announced that each TSSU member was to receive a copy of the Agreement. The purpose of contacting the departments was to determine the number of members working there. Finally, it informed the departments, without comment, that the Agreement was accessible through the Human Resources website. As I have stated above, Ms. Almeida’s e-mail was an acceptable manner of implementing Article VII.B. Based on the evidence I received, further guidance to departments is necessary, i.e., departmental managers do not have the right to determine how TSSU members will receive their copies of the Collective Agreement. In particular, Article VII.B does not support the imposition of requirements on TSSU members, i.e., that they must request a copy, or make special efforts to obtain a copy when their working conditions do not provide ready access to a mail box or to some other delivery mechanism. If members prefer to receive a copy electronically, or rely on an electronic copy in the future, they can inform their departments or return the printed copies.

To implement this provision properly, the University presumably will have to monitor the procedures departments follow. Since this part of the award provides guidance, I suggest that the monitoring process would be a suitable topic for the Labour-Management Committee established by Article XXII of the Collective Agreement, a possibility that was
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To implement this provision properly, the University presumably will have to monitor the procedures departments follow. Since this part of the award provides guidance, I suggest that the monitoring process would be a suitable topic for the Labour-Management Committee established by Article XXII of the Collective Agreement, a possibility that was
discussed briefly in bargaining.

I retain jurisdiction to assist the parties in the implementation of this award.

Dated at Vancouver, B. C., this 25th day of March, 2014.

Mark Thompson
Arbitrator