

IN THE MATTER OF AN ARBITRATION

BETWEEN:

HEALTH EMPLOYERS ASSOCIATION OF
BRITISH COLUMBIA

(the “Employer”)

AND:

HEALTH SCIENCE PROFESSIONALS
BARGAINING ASSOCIATION

(the “Union”)

ARBITRATOR: John Kinzie

COUNSEL: Erin Cutler, for the Employer
Stephen Hutchison, for the Union

DATES OF HEARING: April 1, 25 and 26; May 7, 10 and 29;
and June 25, 2019

PLACES OF HEARING: Richmond, New Westminster and
Vancouver, British Columbia

AWARD

I

Over the course of their last several collective agreements (hereinafter “Provincial Agreement”), the Employer and the Union have been endeavouring to negotiate a new

classification system for the classification of paramedical professional jobs in health care in British Columbia to replace the existing system which has been in place since the late 1980s. With the 2019-22 Provincial Agreement they have made considerable progress towards that goal, but a number of areas remain to be resolved. More fundamentally though, the implementation of a new system is dependent on the provincial government being able to provide the necessary funding to enable its full implementation. It became clear to the Employer and the Union during collective bargaining for a renewal of the 2012-19 Provincial Agreement that that necessary funding would not be made available to them during the term of their subsequent Provincial Agreement.

It was not that no funding was going to be made available for classifications; it was just that it would not be enough for a full implementation of a new system. Consequently, the parties agreed to use the funding that would be made available to make improvements to the existing classification system having in mind the following priorities: supporting the future implementation of the new system, improving the recruitment and retention of scarce employees, supporting the implementation of the Ministry of Health Target Operating Model and addressing existing inequities under the current classification system. Those improvements were contained in an Appendix A to the interim funding agreement.

Some issues have arisen between the parties as to the proper interpretation and application of several provisions of Appendix A detailing the improvements to the existing system that are to be implemented during the term of the 2019-22 Provincial Agreement. Those issues have been referred to me for resolution and that is the subject matter of this Award.

II

The background facts to this proceeding are as follows.

Under the current classification system, there are three different categories of positions. First, are those positions that involve recognized paramedical professions typically included in paramedical professional bargaining units in British Columbia. The parties refer to these recognized paramedical professions as job families. These professions encompass the majority of jobs and employees in those bargaining units and those jobs include entry level positions, more advanced and responsible positions such as supervisory jobs and those requiring higher levels of education, training and/or experience, right up to practice leader or chief paramedical positions. The classification system distinguishes between the various jobs in each profession based on grade descriptions which in turn are tied to different grid levels on the parties' wage schedules. Further, there are a series of classification definitions set out in the collective agreement to assist in the interpretation and application of the grade descriptions. The professions captured by the job families part of the classification system are dietitians, health records administrators, medical technologists, medical radiation technologist/diagnostic medical sonographers, nuclear medicine technologists, occupational therapists,

orthotists/prosthetists, pharmacists, physiotherapists, psychologists, respiratory therapists, social workers and speech language pathologists/audiologists.

The second category of positions captured under the current classification system are those within paramedical professions where only certain types of positions are engaged in bargaining unit work and not the full scope of positions functioning in the profession. Wage rates or, more appropriately, grid levels on the wage schedules are negotiated for these positions and then set out in the collective agreement. The grouping of these positions and their negotiated grid levels are described in the Provincial Agreement as Industry Wide Miscellaneous Rates. These positions are common across the health care industry in British Columbia.

The third category of positions captured under the current classification system are those jobs that do not fit within either the job families or the Industry Wide Miscellaneous Rates sections of the Provincial Agreement. In these circumstances, paragraph 1 of the Provisions of the Wage Schedule section of the Provincial Agreement provides that these positions

“... shall be covered in each instance by separate memoranda to be negotiated from time to time during the life of this Agreement by the HEABC and the Union. In the event of no settlement being reached in such negotiations the dispute shall be referred directly to binding Arbitration.”

Generally speaking, those positions are not common across the health care industry.

Returning to the job families part of the classification system, entry level positions are found at Grade I which captures employees “working under the general supervision” of another employee of the same paramedical profession. However, employees working alone or without the benefit of such supervision, are classified and paid at Grade II, the parties being of the view, it seems to me, that such employees are being entrusted with more responsibility.

Here is where the Classification Definitions and the classification system’s Operating Instructions come into play. The phrase “sole charge” is defined as “the only regular full-time or regular part-time employee within the discipline employed at the facility”. This definition is to be read with the Grade II description capturing a paramedical professional

“... employed at a facility where there is no other regular full-time or regular part-time [paramedical of the same profession] employed. (Sole Charge).”

The phrase “general supervision” is defined as

“Supervision that is general in nature and does not involve supervision of each specific step. The employee has practical access to a Supervisor for guidance and instruction in unclear situations and/or those which deviate from established practices and procedures.”

This definition relates to Grade I positions where employees work under such supervision and to Grade II positions where employees are required to work without such supervision. The Grade II description capturing such positions provides that it captures “A [recognized paramedical professional] required to work without general supervision in the department. . . .”

Finally, this part of the classification system recognizes as well that being responsible for providing supervision and/or instruction to other employees and students is beyond the expectation of an entry-level paramedical professional. Paragraph 2 (g) of the system’s Operating Instructions specifies that such work is to be classified at the Grade II level or above depending on the other requirements of the position.

In summary, positions within the job families section of the classification system who were working as sole charge, without general supervision, or being responsible for a student in terms of instruction or supervision were beyond entry level and their positions were to be classified at the Grade II level or above.

Positions, on the other hand, that were classified and paid under the Industry Wide Miscellaneous Rates section of the Provincial Agreement or by way of memorandum of agreement concluded pursuant to paragraph 1 of the Provisions of the Wage Schedule were not governed by these provisions. In one way, this conclusion makes sense. These positions were not part of the classification system itself. Instead, they were individual jobs and the parties negotiated specific rates of pay for each specific job.

That these jobs were not subject to the classification system’s classification definitions and operating instructions was agreed between the parties. See the May 18, 1990 agreement between the Health Labour Relations Association [the Employer’s predecessor] and the Health Sciences Association of B.C. [one of the constituent members of the Union] regarding “Questions & Answers Related to Application of the Classification Definitions” and in particular Question 34. That question was as follows:

“If jobs are matched to the miscellaneous rates, are they also covered by the various criteria mentioned in the Classification Definitions?”

The agreed upon answer was

“No, only covered by the miscellaneous rates.”

While the Industry Wide Miscellaneous Rates section contains wage rates for individual jobs, some of those jobs are within one paramedical profession. To distinguish those jobs, words such as “Staff”, “Senior”, and “Trainee” are used. As well, “Sole Charge” and “Supervisor” are also found in relation to positions found in the Industry Wide Miscellaneous Rates section. The words, “staff”, “senior” and “trainee” are not defined in the Provincial Agreement. Further, in light of Question 34 and the parties agreed upon answer to it, the definitions for “sole charge” and “general supervision” in the Classification Definitions do not apply to the positions classified and paid under the Industry Wide Miscellaneous Rates. What meaning should be given to those words and phrases? Even though the Classification Definitions do not apply, should they be interpreted consistently with the definitions under the Classification Definitions or can a case be made out for interpreting them differently? Should a “staff” position be treated as equivalent to a Grade I entry level position? These issues under the current classification system had not as yet been resolved between the parties.

That, in summary, is a general overview of the parties’ current classification system contained in the Provincial Agreement. However, since the 2006-2010 Provincial Agreement, the parties have been working on developing a new system for classifying and paying paramedical professional jobs in the British Columbia health care industry. In a Memorandum of Understanding regarding Classification System Implementation which is contained in the 2012-19 Provincial Agreement, as Appendix 23, the parties determined that:

“In considering the implementation of these joint recommendations the parties agree that the introduction of the full working level professional is an important priority and the parties will make every reasonable effort to fulfill this priority.

This priority is subject to the allocation of sufficient funding and will be deemed to be satisfied once the wage rate of the full scope working level professional is equal to the existing Grade II rate of pay.”

Appendix 22 to the 2012-19 Provincial Agreement called for the establishment of a Joint Classification Committee to develop a new classification system which, *inter alia*,

“... ”

- (b) defines the full scope working level professional which will include the work and responsibilities classified at Grade I and Grade II of the current classification system,
- (c) defines the full scope working level professional for both Industry-Wide Miscellaneous Rates (‘IWMR’) and memoranda professions working in priority

sequence based on the number of employees working in the profession for the purposes of developing the classification system. Full scope working level for IWMR and/or memorandum professionals shall include, but is not limited to, sole charge, senior, student supervision and working without general supervision classification levels,

- (d) provides for valid and meaningful distinctions between classification levels above the full working level professional, which may include clinical and/or administrative/supervisory streams”

In the most recent round of bargaining which led to the 2019-22 Provincial Agreement, the parties agreed that the Classification Redesign Committee would “complete the development of the new profile-based classification system no later than March 31, 2019” which would include profiles for:

- “i. working level I and supervisor/leadership I;
- ii. working level II and supervisor/leadership II;
- iii. supervisory/leadership III; and
- iv. supervisory/leadership IV;

consistent with the format and level of detail in the agreed upon sample/prototypical full-scope working level profile”

However, the parties also realized that there would not be sufficient funding available to fully implement the new system. They therefore agreed to utilize the monies that were being made available to move towards their new “profile-based, modernized classification and compensation system”. They then set out in a document entitled Appendix A to their “Classification Redesign-Interim Agreement” a number of agreed-upon initiatives that were to be implemented over the three years of the 2019-22 Provincial Agreement. These initiatives were focused on the following goals:

- “• Support the future implementation of the new system;
- Improve recruitment and retention;
- Support implementation of the Ministry of Health Target Operating Model, including creation of community-based care teams; and
- Address existing inequities.”

Disputes have arisen in connection with the interpretation and application of three of those initiatives that are to be implemented in “Year 1 (effective the first pay period after April 1, 2019)” of the new Provincial Agreement. The disputed initiatives are contained in paragraphs (d), (e) and (f) which provide that:

- “(d) The classifications and corresponding wage grid levels of

all professions/occupations classified in accordance with separate memoranda (i.e. related to establishing wage rates for a profession or occupation, not memoranda particular to single situations) shall be added to the Industry Wide Miscellaneous Rates (IWMR) section of the collective agreement. The Unions and Employers will identify all such existing memoranda and provide them to HEABC, allowing sufficient time for verification. The parties will make best efforts to complete this work by March 31, 2019.

- (e) Staff level IWMR (including those in (d) above) shall be compensated at one (1) grid higher* when assigned to work sole charge or when they are responsible for a student or when assigned to work without general supervision**.

‘Staff level’ are generally positions that do not work sole charge and are under general supervision (i.e. the job is equivalent to grade 1 jobs in job families). Where there is dispute about whether a position is ‘staff level’, the Working Group will review the job description, employer organizational charts, and past and current practice of the job to determine if it is appropriately classified as a staff level position.

*Placement at the higher grid level shall be at the rate that results in a minimum monthly increase of \$82.

**NB – see provision (r) regarding working without general supervision being subject to the Working Group.

- (f) For those classifications that have two entry level qualifications (such as Art Therapist, Child Life Specialist, Dental Hygienist, Infant Development Program Consultant, Licensing Officer, Recreation Therapist, Speech-Language Pathologist and Vocational Counsellor) there shall remain two staff level classifications and salary structures, however, for classifications above staff level in such disciplines there shall be only one salary structure (i.e. the higher of the previously existing two). Initial placements within the new increment structures shall be at the rate that results in a minimum monthly increase of \$82.”

Specifically, the Employer has taken issue with the application of paragraph (e) of Appendix A to a number of professions/occupations covered by memoranda or other provisions in Appendix A such as perfusionists, psychometrists, biostatistical analysts, research assistants and radiation therapists. In some cases such as perfusionists and

psychometrists, specific salary structures were negotiated elsewhere in Appendix A and the Employer says that it was not contemplated that paragraph (e) would apply to these professions/occupations as well. In one case, the Employer maintained that the position was a “single situation” and therefore the memorandum relating to the position was not to be added to the Industry Wide Miscellaneous Rates section pursuant to paragraph (d) and therefore not subject to paragraph (e), or, in two cases, that the existing wage rates for the positions were already set at wage levels beyond staff level.

With respect to paragraph (f), the Union points to the fact that the Social Worker profession provides for two different levels of qualifications for entry into the profession, i.e., a Bachelor’s degree and a Master’s degree. With a Bachelor’s degree, a social worker classified at the Grade I level is paid at Grid Level 8 and with a Master’s Degree at Grid Level 11. However, a social worker classified at the Grade II level or above is paid at a single wage rate based on the Master’s degree Grade I salary structure regardless of what qualification she possesses. This is not the approach followed with the dual entry professions/occupations contained in the Industry Wide Miscellaneous Rates section of the Provincial Agreement, There the separate streams or salary structures based on their distinct formal education are maintained in the higher level supervisory positions. The Union maintains that the purpose of paragraph (f) is to bring the classification of those dual entry level professions/occupations in the Industry Wide Miscellaneous Rates into line with the classification of higher level Social Worker positions in that profession. In the Union’s view, this is a matter of internal equity bringing the Industry Wide Miscellaneous Rates into line with the main part of the parties’ classification system.

The Employer disagrees with the Union’s proposed interpretation of paragraph (f). It says the Social Worker classification approach to paying higher level classifications in dual entry professions/occupations is the anomaly or exception to the general rule. The general rule is that reflected in the Industry Wide Miscellaneous Rates where the separate streams or salary structures are maintained based on their entry level qualifications. The Union’s interpretation, it maintains, could result in what it describes as an absurdity, i.e., an employee moving from a staff level position with the lower of the two qualifications permitted, to a “sole charge” position whose pay is based on the higher qualification, receiving a three grid level increase in pay instead of just the one grid level increase. It submits that this anomaly should not be used to establish the internal equity of the system as a whole.

During the evidentiary portion of this proceeding, I heard considerable testimony concerning the bargaining that led to the signing of the Classification Redesign-Interim Agreement and Appendix A thereto dated December 6, 2018. Derek Wong, the Membership Services Coordinator for Classification for the Health Sciences Association of British Columbia (hereinafter the “HSA”), a constituent member of the Union, testified on its behalf. Mr. Wong was the principal spokesperson for the Union on these matters. Carmen Hamilton, an employee of the Employer, was its lead negotiator in this negotiation and she testified on its behalf in respect of these matters. She explained that the parties’ discussions regarding classification redesign took place at a “side table” apart

from the “main table” bargaining with respect to the renewal of the 2012-19 Provincial Agreement.

Their evidence touched on a variety of subjects including the costing of the various provisions proposed for inclusion in Appendix A and the exchanges that led to the ultimate agreement on the content of the Classification Redesign-Interim Agreement and Appendix A. Not surprisingly, the specific disputes that are before me in this proceeding did not expressly arise for discussion during those exchanges. If that had occurred, we very likely would not have been here involved in this proceeding. Instead, these issues arose as the parties turned their minds to implementing the provisions of Appendix A.

The search for consensus on what the parties intended with their agreements was rendered more difficult because their focus in many instances was different. With respect to several of the provisions in Appendix A, Mr. Wong referred to the classification entitlements available to the paramedical professionals covered by the job families section of the current classification system. On the other hand, paramedical professionals covered by the Industry Wide Miscellaneous Rates section and memoranda were not entitled to the same enhancements consistent with the agreed-upon answer to Question 34 in the Questions & Answers Related to Application of the Classification Definitions document dated May 18, 1990. In the Union’s view, he said, the denial of these enhancements to these paramedical professionals constituted “inequities” that the Union was seeking to address through the provisions of Appendix A.

Ms. Hamilton, on the other hand, pointed to the difficulty many of its members were having in recruiting and retaining different categories of paramedical professional employees. Perfusionists and paediatric perfusionists were used as examples. That was one reason for the new increased salary structure for perfusionists contained in paragraph (j) of Appendix A.

In an earlier proposal put forward by the Union on July 26, 2018, paragraphs (d) and (e) of Appendix A then read [at the time they were paragraphs (e) and (f)]:

“[d] The classifications and corresponding wage grid levels of all professions classified in accordance with separate memoranda shall be added to the Industry Wide Miscellaneous Rates section of the collective agreement.

[e] All Industry Wide Miscellaneous Rate staff/entry level classifications (including those formerly classified per Separate Memoranda) shall be:

- i. Defined as Grade 1 within their profession, and all references to Grade 1 in the Collective Agreement will apply to these positions.
- ii. Be compensated at the salary structure that is one (1)

- grid level higher when assigned responsibility for a student for one (1) shift or more.
- iii. Be compensated at the salary structure that is one (1) grid level higher when assigned to work in a Sole Charge position.
 - iv. Be compensated at the salary structure that is one (1) grid level higher when required to work without general supervision.
 - v. Compensation in accordance with the above shall take place on a payroll coding up basis when performed for less than a majority of time.
 - vi. When an employee is responsible for a student, working as Sole Charge, or working without general supervision for a majority of time the employee shall be compensated at the higher grid level. Initial placement within the new increment structure shall be at the rate that results in a minimum monthly increase of \$82.”

Further, paragraph (f) [then paragraph (g)] commenced with the words “in addition to the application 1 (f) above . . .” [now paragraph (e)].

In cross-examination, Mr. Wong was asked about the fact that the word “all” contained in the Union’s proposal dated July 26, 2018 for paragraph (f) did not appear in paragraph (e) in the final form of Appendix A. In reply, Mr. Wong acknowledged that fact, but he went on to say that there had been no specific discussion about its deletion, nor was it stated that the wording of the clause meant anything different as a result of its deletion. Nor was there any discussion surrounding the deletion of the opening words in paragraph (g) of the July 26, 2018 draft of Appendix A from its final form in paragraph (f) of Appendix A signed on December 6, 2018.

III

I now turn to consider the issues that rise for determination in this proceeding.

This proceeding raises issues both of an interpretive nature as well as of an application nature in respect of paragraphs (d), (e) and (f) of Appendix A. I will deal with the interpretive issues first of all, and then, with the proper interpretation of the relevant paragraphs settled, turn to the issues of their application that have been put before me.

The parties do not really disagree with respect to the appropriate principles that should be utilized in my determining the proper interpretation of the clauses in Appendix A in dispute. They simply disagree on the interpretation that should result from the application of those principles.

I should say that I have arbitrated disputes under the parties' current classification system for a number of years now and through that experience have developed some familiarity with it. I have also considered the evidence of Mr. Wong and Ms. Hamilton concerning their exchanges pertaining to the negotiation of the Interim Agreement and Appendix A thereto. Most importantly, I have considered the words they have used to express their intentions in those documents.

With respect to my consideration of the words they have used to express their intentions and the extrinsic evidence I heard regarding the negotiation of those words, I have been guided by the comments of the Labour Relations Board of B.C. in *Board of School Trustees, School District No. 57, Prince George*, BCLRB No. 41/76, 1976 Carswell B.C. 1369, where the Board stated:

“The significance and weight accorded to parole evidence should be directly related to the degree of ambiguity in the collective agreement. In most instances the text of the agreement (and by the text I mean not only the language of the provision itself but the entire collective agreement) and common sense rules of construction will favour one interpretation. That is not to deny that an ambiguity, or another interpretation is possible. In such circumstances only very persuasive and unequivocal parole evidence would justify the less obvious interpretation. Conversely, in an agreement whose two different interpretations are equally attractive, the significance of extrinsic evidence is far greater. But the point to emphasize is that an arbitration board's recognition of an ambiguity does not compel it to decide the meaning of the agreement according to the parole evidence it hears. It is the agreement and not the extrinsic evidence which must be interpreted. The evidence will assume greater or lesser significance according to the degree of ambiguity in the text. If the parole evidence itself is equivocal the Board is merely deprived of one tool in its interpretative function. In all instances it must settle the difference with regard to the wording of the agreement.

Secondly, there is extrinsic evidence of various types and value. At one end of the spectrum is objective evidence such as negotiating minutes signed by both parties or the past practice of parties. Such evidence must be given considerable weight because in both examples it reflects a *mutuality* of intent measurable by objective standards. At the other end of the spectrum is subjective evidence of a party's intentions or impressions of what in fact was achieved at a bargaining session. Unless such impressions are supported by evidence validating those impressions, they are of no value. The intent of one party is

only significant when the extrinsic evidence allows an arbitration board to attribute it to the other party.”

(at paras. 30-31)

Generally speaking, I found the evidence pertaining to these negotiations of both Mr. Wong and Ms. Hamilton to reflect their subjective impressions of what had been achieved and not a “*mutuality* of intent measurable by objective standards.” The fact that there was not a meeting of minds in this way does not mean that an agreement was not reached. Instead, it signals that the extrinsic evidence is simply equivocal and that “the Board is merely deprived of one tool in its interpretative function.” But the important caution the Board emphasized is that:

“In all instances it must settle the difference with regard to the wording of the document.”

(at para. 30)

In my view, in addition to the mutual intention flowing from the words the parties have used to express their intentions, the critical principle at play in the interpretive exercise in this case is context. Appendix A and its initiatives should not be interpreted in isolation. Instead, I am of the view that a proper understanding of what the parties’ mutually intended by Appendix A requires a consideration of the provisions of the parties’ current classification system, where they are going with their new classification system, the roles the parties’ Classification Redesign-Interim Agreement and Appendix A are to play in the ultimate transition from the old system to the new system, and how that context plays out in determining what the parties mutually intended with their agreement on paragraphs (d), (e) and (f) of Appendix A.

With respect to paragraphs (d) and (e) of Appendix A, the relevant context under the parties’ current classification system is that entry level positions within the recognized job family professions perform their work at the Grade I level under the general supervision of a fellow professional from their own discipline, but if they perform that professional work as a sole charge, or without general supervision, or are responsible for students, those positions will be classified at the Grade II level. However, there was doubt as to whether professions/occupations covered by the Industry Wide Miscellaneous Rates and memoranda negotiated pursuant to paragraph 1 of the Provisions of the Wage Schedule were to be similarly reclassified upwards, because they were not covered by the Classification Definitions and Operating Instructions of the classification system. See the answer to Question 34 in the May 18, 1990 Questions & Answers document.

However, in developing their new classification system, the parties agreed to address that uncertainty. The new system would entail the development of job profiles for all jobs or positions covered by the Provincial Agreement starting with the full scope working level professional in all professions. Pursuant to Appendix 23 of the 2012-19

Provincial Agreement, the introduction of such positions was “an important priority” and the parties agreed to “make every reasonable effort to fulfill this priority.”

In Appendix 22 to that agreement, the parties clarified that the “full scope working level professional” would “include the work and responsibilities classified at Grade I and Grade II of the current classification system.” Thus, the “full scope working level” would encompass entry level work being performed under general supervision as well as such work being performed sole charge, or without general supervision, or being responsible for the supervision of students. However, this portion of their agreement only captured job family professionals and not Industry Wide Miscellaneous Rates or memoranda professionals because the former were the only ones classified as Grade I or II.

What about the “full scope working level professional” covered by the Industry Wide Miscellaneous Rates or memoranda? What about the uncertainty under the current classification system regarding their situation in these circumstances? In Appendix 22, the parties agreed to resolve that doubt under the new classification system. See paragraph 4 (c) of Appendix 22. There the parties agreed that:

“Full scope working level for IWMR and/or memorandum professionals shall include, but is not limited to, sole charge, senior, student supervision and working without general supervision classification levels.”

Consistent with the fact that every “full scope working level professional” position would encompass the work and responsibilities of a working level professional captured by the Grade II level of the current classification system in respect of job family professions, their wage rates were to be set at the Grade II level. See Appendix 23 to the 2012-19 Provincial Agreement. This agreement addressed the wage rates for “full scope working level professional[s]” in the recognized job families. What about the wage rates for “full scope working level professional[s]” in professions/occupations covered by the Industry Wide Miscellaneous Rates and memoranda?

In my view, this is one of the purposes of paragraph (e) of Appendix A. First of all, it provides that “staff level” positions in professions/occupations covered by the Industry Wide Miscellaneous Rates and memoranda are to be treated as “equivalent to grade I jobs in job families”. Then it provides that all such jobs “assigned to work sole charge or when they are responsible for a student or when assigned to work without general supervision” shall be paid one grid level higher for that work. In effect, the parties have agreed that the classification criteria for the Grade I and Grade II classifications in the job families section of the current classification system are now to be applied to those professional positions classified and paid under the Industry Wide Miscellaneous Rates section of the agreement which, pursuant to paragraph (d), now includes memoranda positions as well. Thus, the uncertainty under the current classification system was resolved as well. The inequity of Industry Wide Miscellaneous Rates and memoranda positions performing these higher level duties and responsibilities

and not being compensated for that work is addressed by paragraph (e). It also supports the future implementation of the new classification system consistent with the provision in Appendix 23 that the requirement for “sufficient funding . . . will be deemed to be satisfied once the wage rates of the full scope working level professional is equal to the existing Grade II rate of pay.”

I am of the further view that, with one exception, all professions/occupations covered by memoranda are to be included in the Industry Wide Miscellaneous Rates section of the Provincial Agreement. The one exception is the one identified in paragraph (d) itself, i.e., “not memoranda particular to single situations”. Thus, in my view, professions/occupations like perfusionists, biostatistical analysts, research assistants, and radiation therapists are *prima facie* covered by paragraph (e) and accordingly ought to be included in the Industry Wide Miscellaneous Rates. In my view, the fact that the salary structure for several perfusionist positions were changed in paragraph (j) of Appendix A does not change that result. Perfusionist wage rates have always been determined by memoranda. That profession is not a recognized job family profession. Nor, to this point in time, has that profession been included in the Industry Wide Miscellaneous Rates. In my view, the fact that the salary structures for those various positions are now set out in Appendix A does not change my conclusion. In my view, paragraph (j) of Appendix A is tantamount to a separate memorandum reflecting the agreed upon salary structure for those positions.

The Employer then argues that the fact there is a specific salary structure negotiated into Appendix A for the perfusionist profession creates a presumption that that salary structure was intended by the parties to be complete and that therefore they could not have intended that paragraph (e) would apply to that profession and its salary structure. I do not agree. In my view, this argument is inconsistent with the scheme of the parties’ current classification system under the Provincial Agreement. That scheme contemplates that there may be holes in the classifications for a particular profession, i.e., a position for which the existing classifications do not provide a good match, with the result that a new classification would have to be established to provide such a match. In those circumstances, the second sub-paragraph in paragraph 1 of the Provisions of the Wage Schedule would come into play. The parties would be required to negotiate the new classification and a salary structure for it and if they were not able to do so, an arbitrator would have to. If an Industry Wide Miscellaneous Rates profession was involved and the position was a “staff level” one performing sole charge work, or being assigned responsibility for a student, or working without general supervision, which work was not covered by the existing classifications, paragraph (e) would fix the salary structure for that work.

Instead, the Employer’s argument that professions/occupations like perfusionists, psychometrists, biostatistical analysts, research assistants and radiation therapists are not covered by paragraphs (d) and (e) raise application issues. Does their involvement in B.C. health care involve “single situations” within the meaning of paragraph (d) of Appendix A? If so, they are not to be included in the Industry Wide Miscellaneous Rates and paragraph (e) would not apply. Secondly, paragraph (e) is concerned with “staff

level” positions that may be assigned to work sole charge or . . . [be] responsible for a student or when assigned to work without general supervision.” If there is no “staff level” position within the profession/occupation being considered, paragraph (e) would have no application. Thus, within each of the professions/occupations put in issue by the Employer, the question must be considered – is there a staff level position in existence? If so, then any time it is working sole charge, made responsible for a student, or working without general supervision, it will be entitled to be compensated at one grid higher than its “staff level” rate of pay.

Finally, and in response to another contention advanced by the Employer, I note that paragraph (e) is worded such that it applies to all “staff level IWMR (including those in (d) above)”. There are no exceptions or exclusions recorded in paragraph (e). In particular, paragraph (e) does not say that it does not apply in the case of “staff level IWMR” professions/occupations that have dual entry level qualifications and that are covered by paragraph (f) of Appendix A.

Turning next to paragraph (f) of Appendix A, I am of the view that context also plays a central role in its interpretation.

We are concerned under paragraph (f) with professions where it is possible to enter into the practice of that profession with two different levels of formal education. In some cases, like the profession of recreation therapy, it is possible to commence practice with either a diploma or a bachelor’s degree. In other cases, either a bachelor’s degree or a master’s degree is required. The practice of social work is an example of such a profession.

In the case of the Social Worker job family, the only profession in the job family section of the Provincial Agreement that has dual qualifications for entry into the profession, formal education only plays a classification role at the Grade I or entry level. A Grade I Social Worker with a bachelor’s degree is paid at Grid Level 8, while a Grade I Social Worker with a master’s degree is paid at Grid Level 11. Thereafter, formal education plays no role in the classification of Social Worker positions. A Sole Charge position is classified at the Grade II level and paid Grid Level 12, regardless of whether the incumbent has a bachelor’s degree or a master’s degree. Thus, in the case of the Social Worker job family, there are two salary structures at the Grade I entry level, i.e., one for bachelor’s degrees and one for master’s degrees. However, at the Grade II level, there is only one salary structure as formal education ceases to play a role in the classification of Social Worker positions.

However, the approach to the classification of professions/occupations, having dual qualifications for entry into the profession/occupation, under the Industry Wide Miscellaneous Rates section of the Provincial Agreement is different from the one utilized in the Social Worker job family. Under the Industry Wide Miscellaneous Rates section, formal education continues to play a role in the classification of positions in those professions beyond the staff level position including Sole Charge, Senior and Supervisory positions. For example, a Staff Level Recreation Therapist position with a

diploma is paid at Grid Level 6, while one with a bachelor's degree is paid at Grid Level 8. Thereafter, the role of formal education is not eliminated. Instead, the two separate classification streams and salary structures are maintained. At the Sole Charge classification level, a Sole Charge Recreation Therapist with a diploma is paid at Grid Level 7, while one with a bachelor's degree is paid at Grid Level 9. A Recreation Therapist Supervisor (a) with a diploma is paid at Grid Level 8 and a Supervisor (b) with that diploma is paid at Grid Level 10. On the other hand, one with a bachelor's degree in a Supervisor (a) position is paid at Grid Level 10 and a Recreation Therapist Supervisor (b) is paid at Grid Level 13. In effect, there are two salary structures for Recreation Therapist, i.e., one for those who have a diploma and a different one for those who have a bachelor's degree.

In the Union's submission, the intent of paragraph (f) of Appendix A is to have the approach to dual entry qualifications and salary structures reflected in the Social Worker job family applied to all professions/occupations covered by the Industry Wide Miscellaneous Rates and having dual entry qualifications. On this basis, it maintains, formal education would play no role in the classification of positions in those professions/occupations beyond the staff level. While there would continue to be two salary structures at the staff level, it submits that thereafter there would only be one.

For its part, the Employer agreed with the Union's submission at the supervisory level "as it felt it was reasonable to have only one supervisory classification as the work itself would not differ based on the incumbents formal degree." See counsel's written Summary of Argument, paragraph 36.

Where the parties differ then is in respect of positions in those professions/occupations at the sole charge level, i.e., staff level positions working sole charge, where they are responsible for a student, or when they are working without general supervision. Only one of the Industry Wide Miscellaneous Rates professions/occupations with dual entry qualifications has an agreed-upon Sole Charge wage rate. That is the Recreation Therapist profession. For the others, the Union says that paragraph (e) would apply to determine that rate by taking the salary structure for the staff level classification of the highest level qualification in that profession and by adding one grid level to it. The Employer responds that this would result in as much as a 3 grid level increase for those incumbents with only the lower level qualification. It contends that such an interpretation of paragraphs (e) and (f) is unreasonable and instead it submits that

“. . . the existing recreational therapist structure as it pertains to staff and sole charge rates for both the diploma and bachelor staff levels is the correct application and intent of paragraph (f), and rationalizes the two paragraphs in Appendix A.”

(Written Summary of Argument, para. 49)

I do not agree with the Employer's interpretation. Where there are two entry level qualifications for a profession/occupation, the Employer's interpretation would have the effect of maintaining the two separate salary structures in place for both the staff level positions and the sole charge level positions. In my view, this result is inconsistent with the words used in paragraph (f) of Appendix A. In my view, paragraph (f) provides that for dual entry level professions/occupations, "there shall remain two staff level classifications and salary structures" It then goes on to provide that "however, for classifications above staff level in such disciplines there shall be only one salary structure (i.e. the higher of the previously existing two)."

The critical point is that the staff level classification is separate and distinct from the sole charge level. This is clear in the job families section of the current classification system where entry level is classified at Grade I and the sole charge, responsibility for a student, and working without general supervision is classified as Grade II work. This separation and distinction is maintained in the Industry Wide Miscellaneous Rates. The parties agree in paragraph (d) that staff level "is equivalent to Grade I" and then specifies that sole charge work is to be "compensated at one (1) grid higher" Further, the phrase "staff level" is described as "generally positions that do not work sole charge and are under general supervision"

Thus, I am of the view that the sole charge level is a classification "above staff level" within the meaning of paragraph (f) and therefore in the case of its salary structure, there must be only one, i.e., the higher of the previously existing two. In the case of the Recreation Therapist profession where there is already sole charge wage rates for both qualifications, that rate would be the Recreation Therapist Sole Charge/Senior with a bachelor's degree rate which is at Grid Level 9. For those dual entry qualifications professions in the Industry Wide Miscellaneous Rates sections without an established sole charge classification in the salary structure, I am of the view that paragraph (e) of Appendix A would apply. Consistent with paragraph (f) you would take the wage rate for the staff level at the highest level of the two entry level qualifications and then apply paragraph (e) to that rate, i.e., add one grid level to it.

Take the Child Life Specialist profession/occupation as an example. That profession/occupation provides for entry with either a diploma or a bachelor's degree. The staff level with a diploma wage rate is Grid Level 7. The staff level with a bachelor's degree has a wage rate at Grid Level 8. If a sole charge position was created, I am of the view that pursuant to paragraphs (f) and (e), there would only be one classification established to capture such a position and the wage rate for that classification would be Grid Level 9. If this matter had to go through the negotiation and arbitration process contained in the second sub-paragraph of paragraph 1 of the Provisions of the Wage Schedule in the 2012-19 Provincial Agreement, I am of the view that that would be the wage rate awarded for a Sole Charge Child Life Specialist classification.

I am also of the view that this interpretation is consistent with the aims and purposes of the parties entering into the Interim Agreement and Appendix A. I am not

persuaded that the purpose of paragraph (f) is to address an existing inequity in the systems as the Union contends. On the evidence I have before me, I am not in a position to say that the approach the parties adopted in the case of the Social Worker job family is more equitable than the maintenance of the two salary structures approach the parties followed in the case of dual entry classifications under the Industry Wide Miscellaneous Rates. Without evidence to the contrary, I accept the parties had valid reasons for adopting the different approaches they did at the time. What I can say is that the approach reflected in paragraph (f) of Appendix A based on the words the parties used to express their mutual intentions in that regard, accords with the Social Worker job family approach and not the approach to dual entry professions under the Industry Wide Miscellaneous Rates section of the Provincial Agreement.

However, I am of the view that this interpretation does “support the future implementation of the new [classification] system” in this way. It appears to me that under the parties’ new classification system that classifications are going to be distinguished on the basis of the level of work and responsibility at the various classification levels. See the provisions of paragraph 4 in Appendix 22 to the 2012-19 Provincial Agreement. See also paragraph 2 (a) of the Interim Agreement which provides that the Classification Redesign Committee will develop and adopt

“A complete job profile classification system including profiles for:

- i. working level I and supervisor/leadership I;
- ii. working level II and supervisor/leadership II;
- iii. supervisory/leadership III; and
- iv. supervisory/leadership IV;

consistent with the format and level of detail in the agreed upon sample/prototypical full-scope working level profile”

In my view, these titles are consistent with the distinguishing factors between classifications being levels of work and levels of responsibility.

Put another way, it is apparent to me that formal education will no longer be a distinguishing feature under the new classification system. It will be a factor in filling vacant positions in the sense of determining whether an applicant for a vacant position has the necessary knowledge, skill and ability to perform the work and handle the responsibility at the particular classification level, but that is a separate and distinct issue.

Thus, in removing the role of formal education in the classification of positions in dual entry qualifications professions/occupations right down to, but not including, the staff level classification, the parties are taking a significant step in moving towards the new system. Assuming the funding available under the Interim Agreement is able to cover the cost, less funding will be required at the time for final implementation.

What is left out of paragraph (f) is the staff level position, but the parties are already working on developing job profiles for all full-scope working level professionals. These too are to be based on “work and responsibilities” and not formal education levels. See paragraph 4 (b) of Appendix 22.

In summary, with respect to the interpretive issues put before me in this proceeding, having considered all of the evidence and argument adduced in that regard, I am of the view that it was the mutual intentions of the parties in agreeing to paragraphs (d), (e) and (f) of Appendix A to bring the treatment of Industry Wide Miscellaneous Rates classifications and positions, including those dealt with by memoranda, into line with the treatment of similar classifications in the job families section of the Provincial Agreement. Pursuant to paragraph (e), “staff level” positions and classifications under the Industry Wide Miscellaneous Rates are to be treated as “equivalent to Grade I jobs”. Under the job families section of the Provincial Agreement, sole charge work, work involving responsibility for a student, and working without general supervision from a professional from the same discipline or profession is treated as Grade II work. In most professions, Grade II work is compensated at one grid level higher than Grade I work. Consistent with that approach, paragraph (e) then provides for a one grid level lift to the “staff level” grid salary structure for those Industry Wide Miscellaneous Rates jobs. Thus, the doubt that had arisen in this regard under the current classification system was resolved in favour of a consistency in approach.

That same intention or desire can be seen in paragraph (f). Prior to this agreement, there were two different approaches to classifications having dual entry qualifications for entry into the profession/occupation. Under the job families section of the Provincial Agreement, there were two distinct salary structures for the Grade I entry level into the profession, but at the Grade II level and above, only one salary structure based on the highest one at the entry level. See the Social Worker job family. The classification of jobs in professions having dual entry qualifications covered by the Industry Wide Miscellaneous Rates section of the Provincial Agreement was treated differently. There the separate streams based on qualifications and their salary structures were maintained throughout the profession’s hierarchy. See the Recreation Therapist classifications as an example. What paragraph (f) does, in my view, is eliminate that difference in approach and selects the approach utilized under the job families section of the Provincial Agreement to be the preferred one. The parties agree to apply that approach to the classifications and position under the Industry Wide Miscellaneous Rates having dual entry qualifications into their professions.

I am of the further view that adopting this consistency in approach between the job families and Industry Wide Miscellaneous Rates sections of the Provincial Agreement will serve the purpose of supporting the implementation of the new classification system. It will facilitate the development of consistent job profiles under the new system for all classifications, particularly at the level of the full scope working level professional which is to incorporate both Grade I and Grade II work. See again paragraph 4 (b) and (c) in Appendix 22 to the 2012-19 Provincial Agreement. Having to develop a consistent format of job profile for the new system from two distinctly different

approaches to the classification of work under the current system would be an invitation to inconsistency, confusion and complications for the future.

Finally, the Employer relies on the rule of construction that a specific provision should take precedence over a general provision. It says that paragraph (f) is the specific provision addressing classification levels for dual entry qualification professions/occupations covered by the Industry Wide Miscellaneous Rates section of the Provincial Agreement and paragraph (e) is only a general provision. As such, only paragraph (f) should apply in respect of sole charge positions in dual entry qualification professions/occupations covered by the Industry Wide Miscellaneous Rates. Having considered the matter, I am satisfied that that rule of construction has no application in the circumstances of this case. That rule exists as an aid in determining the parties' mutual intentions in circumstances where there is a conflict between the general and specific provisions in that regard. They both address the same circumstances, but their wording provides a conflicting response as to what the parties intended.

In this case, I am of the view that paragraphs (e) and (f) address different circumstances and the two provisions, where they both apply, can be read together harmoniously. Paragraph (f) serves to eliminate the dual salary structures that exist for dual entry qualification professions/occupations covered by the Industry Wide Miscellaneous Rates section of the Provincial Agreement "for classifications above staff level". It then provides that going forward, for those classifications above staff level, there shall only be one salary structure which will be based on the higher of the two existing structures, i.e., the staff level grid level for the higher of the two qualifications for entry into that profession/occupation. The sole charge level is a "classification above staff level" within the meaning of paragraph (f) and paragraph (e) then addresses the salary structure for that sole charge level, i.e., one grid level higher based on the staff level salary structure determined in accordance with paragraph (f).

IV

I now turn to consider the application of paragraphs (d) and (e) of Appendix A to several somewhat unique professional/occupational positions. The parties were not able to agree on their application and asked me to address those issues. I reiterate my interpretive conclusion expressed above that, *prima facie*, those provisions apply to all professions/occupations covered by the Industry Wide Miscellaneous Rates section of the Provincial Agreement or by memoranda added to that section pursuant to paragraph (d). The grounds for paragraphs (d) and (e) not applying are first of all, the memorandum in question only deals with a "single situation" and therefore is not to be added to the Industry Wide Miscellaneous Rates, and second, the position(s) in issue do not include a position at "staff level" in which case paragraph (e) does not apply.

What paragraph (e) does provide for is that where there is a "staff level" position in an Industry Wide Miscellaneous Rates profession/occupation and it is assigned to work sole charge, or when it is responsible for a student, or when it is assigned to work without general supervision, the position will be compensated at one grid level higher. "Staff

level”, pursuant to paragraph (e), is treated as equivalent to Grade I jobs in the job families section of the current classification system and working sole charge, being responsible for a student, and working without general supervision are all circumstances that are classified and paid at the Grade II level. Further, the Grade II grid level is almost invariably one grid level higher than the applicable Grade I level. The only exceptions are in the case of the Dietitian and Health Records Administrator professions where the difference between Grade I and Grade II are two grid levels. Finally, paragraph (e) defines “staff level” as being “generally positions that do not work sole charge and are under general supervision”

With respect to the phrase “general supervision”, the current classification system contemplates that that supervision will be provided by a supervisor in the same profession/occupation as the incumbent in the staff level position. See the Grade I description for every profession covered by the job families section of the current classification system. As an example, the description for a Grade I Dietitian reads

“A Dietitian working under the general supervision of another Dietitian.”

In this regard, also see Question 29 and its Answer in the Questions & Answers Related to Application of the Classification Definitions document. That question and answer reads as follows:

“[Q] How are employees who report to a different discipline evaluated against the classification definitions?”

[A] A paramedical who is required to report to an employee in a different discipline can be considered to be in charge of the work/operation of a section or sub-section of their own discipline and will be paid at the Grade II level.”

I take “who you report to” as synonymous with “who is your supervisor”.

The first such position is the Biostatistical Analyst working at the B.C. Cancer Agency which is the subject of a Memorandum of Understanding dated August 18, 2000. There is also a Memorandum of Understanding dated May 22, 2009 concerning a Senior Biostatistical Analyst position.

The Job Summary section of the job description for the Biostatistical Analyst position dated December 11, 2013 reads in part as follows:

“[It] performs a variety of duties related to the analysis and interpretation of cancer control data, conducts statistical analyses, advises on the creation of databases in support of cancer control, and serves as a resource on the statistical methodology and outcome evaluation. Provides assistance to clinicians/researchers

undertaking statistical outcome analyses for tumour groups and programs.”

The agreed upon wage rate for the position is Grid Level 12.

Turning to the Duties section of this job description, paragraphs 4 and 5 provide that:

- “4. Educates cancer agency staff such as tumour groups, medical research and clinical trial (sic) coordinators regarding statistical methodology, analysis and reporting of clinical findings for evidence-based outcome analysis. Trains staff on how to use agency wide statistical software.
5. Responds to a variety of questions from research staff regarding study design, interpretation, statistical methodology and software.”

The Job Summary of the Senior Biostatistical Analyst job description dated December 11, 2013 reads as follows:

“The Senior Biostatistical Analyst (Senior BSA) provides work direction and supervision to the Biostatistical Analysts and liaises with the SOU Director, program managers, clinicians and reserchers to ensure effective and efficient utilization of available resources Senior BSA directs cancer surveillance activities including the preparation of content to post on the BCCA website, performs a variety of duties related to the analysis and interpretation of cancer control data, conducts statistical analyses, advises on the creation of databases in support of cancer control and serves as a resource on statistical methodology and outcome evaluation.”

The first paragraph of the Duties section of the job description provides in part that the Senior “provides technical guidance and advice to staff and monitors performance to ensure department standards are met.” The agreed upon wage rate for the Senior position is Grid Level 14.

A master’s degree in biostatistics, or in statistics accompanied by graduate courses in biostatistics, is required for both positions. In this regard, the Employer maintains that entry level Grade I positions and staff level positions requiring a master’s degree are generally paid at Grid Level 11. See the master’s prepared Social Worker Grade I classification wage rate and the wage rates for the master’s prepared former Social Program Officer classification and Vocational Counsellor classification under the Industry Wide Miscellaneous Rates. They are all fixed at Grid Level 11. Because the Biostatistical Analyst classification is paid at Grid Level 12, the Employer submits that it

is not a staff level classification. The Union disagrees and points to the general supervision a biostatistical analyst receives from a senior analyst.

Further, the fact that the Analyst position is subject to supervision, in and of itself, does not make this provision a staff level position. Virtually all paramedical bargaining unit positions will report to a bargaining unit supervisor.

Having considered the matter, I agree with the Employer that the Biostatistical Analyst position is not a staff level job. This position is responsible for educating agency staff including “tumour groups, medical research and clinical trial coordinators regarding statistical methodology, analysis and reporting of clinical findings for evidence-based outcome analysis”. It is also responsible for training staff “to use agency wide statistical software.” It is not simply participating in, or assisting others with, this education and training. In my view, this education and training work goes beyond demonstrating procedures which may be undertaken at the Grade I level. Remember, pursuant to paragraph (e), a staff level position is “equivalent to Grade I jobs in job families”. Instead, I am of the view that this education and training work is tantamount to teaching within the meaning of the current classification system which at a minimum would be classified at the Grade II level. See paragraph 2 (g) of the Operating Instructions. This is one aspect of the duties of the Biostatistical Analyst job description which would explain the Grid Level 12 wage rate, one additional grid level above the master’s level Grid 11.

Based on the level of its work and its responsibilities. I am satisfied that this position is not a “staff level” job. Thus, at this time, paragraph (e) does not apply to this profession/occupation.

The second area of dispute concerning the application of paragraphs (d) and (e) of Appendix A pertains to a group of positions commonly referred to as Research Assistants. The incumbents in these positions are employed by the Provincial Health Services Authority at various locations operated by the B.C. Cancer Agency. These research assistants can be grouped into three distinct categories: genomics technologists, bioinformatics technologists and cancer research technologists. Each of the three categories contains five different positions including a technologist position, some specialty technologist positions and then some supervisory positions. Each of these categories starts off with a technologist position which in the case of both the genomics technologist and cancer research technologist requires a diploma by way of formal education and is paid at Grid Level 6. The bioinformatics technologist requires a bachelor’s degree and is paid at Grid Level 8. The Union submits that each category should also have a position that encompasses sole charge, responsibility for a student and working without general supervision. Pursuant to paragraph (e), the Union submits, these positions should be paid at Grid Levels 7 and 9 respectively

A fact finding review was conducted and a report was prepared into the classification and salary structure of these positions by Sheridan West (employer representative) and David Fairey (Union representative) in March, 2009. They reported that at the time there were 29 different position job descriptions with 110 incumbents in

the three categories. The incumbents worked in one of five different laboratories operated by the B.C. Cancer Agency. They observed that the majority of the job descriptions presented to them were out-of-date.

With respect to the genomics technologists, the fact finders explained that they

“... conduct molecular or biochemical studies and experiments into genetic expression, gene manipulation and recombinant DNA technology and protein function (sic), applying technical knowledge and skills to run the most recent research laboratory technologies.”

(Report, at 10)

The report describes Bioinformatics as entailing:

“... the creation and advancement of databases, algorithms, computational and statistical techniques, and theory to solve formal and practical problems arising from the management and analysis of biological data. In genomics research this involves the manipulation, searching, data mining, assembly, profiling, aligning and experimental modeling of Deoxyribonucleic Acid (DNA) sequence data. “

(Report, at 10)

Incumbents in the Cancer Research Technologist classifications perform a variety of work in the laboratory including experiments, tests and technical support to programs.

Following publication of the fact finders' Report in March, 2009, the Employer and the HSA entered into a Memorandum of Understanding dated April, 2009 detailing the classifications and salary structures for the three different categories of research assistants encompassing 15 different classifications. The Memorandum of Understanding went on to provide that:

“Each classification level within these three occupational groups is further defined by the classification level definitions found in the attached Appendix – Classification Groups & Level Definitions.”

The Employer submits that the April, 2009 Memorandum of Understanding addresses a “single situation” within the meaning of paragraph (d) of Appendix A and that therefore paragraph (e) does not apply as this memorandum would not be added to the Industry Wide Miscellaneous Rates. I do not agree that this memorandum is “particular to” a “single situation”. There is not just one set of circumstances addressed

by this memorandum. There are 15 different classifications of work in three distinct rate groups being addressed with a salary structure for each. There may be only one employer, i.e., the B.C. Cancer Agency, but paragraph (d) does not say memoranda particular to a “single employer” are not to be incorporated into the Industry Wide Miscellaneous Rates. Further, contrary to the Employer’s contention, the fact finders’ Report dated March, 2009 indicates that the research assistants work in a number of different locations, not just the Terry Fox Laboratory. In fact, the Report indicates that the latter laboratory encompasses nine different research laboratories. However, paragraph (d) does not say that memoranda are excluded if they pertain to a “single location”. Finally, the fact that those positions are commonly funded through research grant monies and not through the Ministry of Health budget does not, in my view, make this memorandum one pertaining to a “single situation”. In my view, the uniqueness of the circumstances, i.e., what makes it a one-off, must pertain to the job of work itself, not the funding for it, for the memorandum setting its salary structure to be excluded from the effect of paragraph (d).

In the alternative, the Employer contends that it would not be appropriate to apply paragraph (e) to the Grid Level 6 position in these three categories. It says that the concept of sole charge does not really apply in the circumstances in which these jobs find themselves. Nor, it maintains, would these positions work without general supervision, the supervisor often being the principal investigator for the study being undertaken or one of the scientists working on it. As well, it would be the principal investigator or scientist who would most likely be responsible for instructing or supervising students, not a diploma or bachelor level research assistant.

In response, the Union appears to accept that currently there is no staff level research assistant position functioning as a sole charge, or undertaking responsibility for a student, or working without general supervision. However, it says the fact that the B.C. Cancer Agency has organized its affairs that way at this point in time does not mean it might not change that organization in the future such that one or other of those duties might be undertaken by one of the staff level research assistant positions.

Based on the limited evidence I have before me at this time, I am not persuaded that these positions could never exist. In these circumstances, I believe that the most appropriate course of action for me to follow at this point is to say that paragraph (e) does not apply in the present circumstances, but to leave it open to the Union to raise the matter again should it feel that the B.C. Cancer Agency has established such a position in the future.

If such an event does not occur, the issue will have to be dealt with in definitive terms when the Classification Redesign Committee comes to defining the full scope working level professional job profiles for genomics technologists, bioinformatics technologists and cancer research technologists pursuant to paragraph 4 (c) of Appendix 22 to the 2012-19 Provincial Agreement. Those job profiles “shall include . . . sole charge, senior, student supervision and working without general supervision classification levels.” Consequently, that work and those responsibilities will have to be

in the job profiles unless the parties agree that they could never apply to those professionals. If those duties are included in the job profiles, the wage rates for those classifications and job profiles would have to reflect that fact.

The third area of dispute having to do with the application of paragraphs (d) and (e) of Appendix A pertains to the Perfusionist and Paediatric Perfusionist profession/occupation. The salary structure for the three types of positions in this profession/occupation is set out in paragraph (j) of Appendix A. Despite its salary structure being established by a part of Appendix A, I am of the view that perfusionists including paediatric perfusionists are still captured by paragraph (d) of Appendix A for the reasons discussed above. The question before me now is whether paragraph (e) applies to this profession/occupation.

There are three classifications within the perfusionist salary structure: the clinical perfusionist, the perfusionist educator and the perfusionist supervisor. I was provided with a job description for the Cardiovascular Perfusionist position at Kelowna General Hospital which the Union contends is a “staff level” position. The Job Summary section of that job description describes its duties and responsibilities this way:

“... the position works under the direct clinical supervision of the Anaesthesiologist and the Surgeon and provides technical support in the direct application of extracorporeal perfusion techniques. Monitors physiological responses to patients undergoing open-heart surgery. Ensures effective and safe patient care. Demonstrates expertise and leadership in perfusion practice. Operates, prepares and maintains perfusion equipment. Maintains and advances clinical competence. Participates on designated Hospital committees/teams and approved research projects as assigned.”

Further, paragraph 6 of the Typical Duties and Responsibilities section of the job description provides that a perfusionist

“Guides clinical experience of assigned new staff and students; provides input to the Supervisor (or designate) as requested on individual’s progress in achieving established clinical practice guidelines and standards of practice. Demonstrates procedures and usage of equipment to staff including medical residents and students.”

While in formal terms this position reports to the Supervisor, Cardiovascular Perfusion, that position does not supervise it in terms of its principal duties, i.e., those described in paragraph 1 of the Typical Duties and Responsibilities section of the job description as follows:

“Provides perfusion services by methods such as assembling and operating extracorporeal equipment to temporarily replace the patient’s circulatory and respiratory functions, conducting myocardial perfusion and protection techniques, assessing patient’s physiological condition such as; hemodynamic pressure, blood gases, anticoagulation levels, electrocardiograph, coronary/systemic blood flow and temperature recordings, adjusting equipment to maintain patient vital signs within the acceptable ranges, conducting physiological measurements and calculations, and administering blood products, drugs, anaesthetic vapours, crystalloid solutions and medical gases as directed. Acts as a perfusion resource in areas of non-cardiac services including orthopaedic surgery, vascular surgery, trauma surgery and critical care.”

With respect to these clinical duties, the Supervisor, Cardiovascular Perfusion is not there in the operating room while the open-heart surgery is being performed and therefore, even if qualified, could not give any practical guidance or advice. In any event, even if she was, the operation is under the direction and control of the anaesthesiologist and surgeon. It is these individuals who control what goes on in the operating room and as the job description provides, the clinical perfusionist is under their “direct clinical supervision”. In these circumstances, the clinical perfusionist does not have “practical access” to his perfusionist supervisor “for guidance and instruction in unclear situations and/or those which deviate from established practices and procedures” within the meaning of the definition of “general supervision” in the Provincial Agreement. For these duties and responsibilities, the clinical perfusionist reports to the anaesthesiologist and surgeon. They are the only ones she has access to for clinical guidance in the operating room.

The cardiovascular perfusionist has other duties such as maintaining, calibrating, monitoring and testing the equipment he uses, participating in quality control programs, maintaining a variety of records, as well as participating in research activities and on committees. I accept that in the performance of these duties, he functions or works under the general supervision of the Supervisor, Cardiovascular Perfusion. However, in my view, these are incidental duties and subordinate to his primary clinical responsibilities in the operating room where he is under the “direct clinical supervision” of an anaesthesiologist and the surgeon. With respect to these clinical duties he is not reporting to a supervisor of his own discipline, nor is he under such a supervisor’s general supervision while doing so. In order for this position to be treated as equivalent to a Grade I position, it would have to be under the general supervision of another perfusionist.

Consequently, I am of the view that this Clinical Perfusionist position is not equivalent to a Grade I position in that it reports to, and takes guidance and instruction from, non-perfusionists in respect of the performance of its clinical duties. Because of these unique circumstances in respect of the supervision it receives in respect of the

performance of its principal duties, I am of the view that this position is not a “staff level” position within the meaning of paragraph (e).

Accordingly, I am satisfied that paragraph (e) does not apply to the Clinical Perfusionist positions, nor Clinical Paediatric Perfusionist positions which are structured the same way. This is not a case where there is a “staff level” [Grade I] position on the one hand and then there is a change in circumstances so that the performance of those duties would justify a one grid lift in pay [Grade II]. If the current classification system was applied to Clinical Perfusionist positions, they would always be at the Grade II level.

In this regard, I have considered the potential impact of Appendix 24 of the 2012-19 Provincial Agreement and I have concluded that it would have no impact on my conclusion that the Cardiovascular Perfusionist position is not a “staff level” job within the meaning of paragraph (e) of Appendix A. Appendix 24, *inter alia*, provides for an alternative definition of “general supervision” to that found in the Classification Definitions in the 2012-19 Provincial Agreement. However, insofar as the Cardiovascular Perfusionist position is concerned, the differences in the definitions are not particularly germane. Both definitions require that the supervision be provided by a supervisor in their own discipline. With respect to its principal duties, it does not receive such supervision. Instead, it receives “direct clinical supervision” from an anaestheseologist and a surgeon. Thus, in respect of these principal duties, it never works under general supervision. The supervision it does receive is “direct”, not “general” and it is provided by positions that are not from its own discipline. Therefore, it can never be a “staff level” job under the current classification system.

The fourth profession put in dispute in respect of the application of paragraph (e) is the psychometrist.

I was provided with the May 4, 2015 Vancouver Coastal Health Authority job description for the Psychometrist position at Vancouver General Hospital, UBC Hospital, G.F. Strong Rehabilitation Centre and Hope Centre. The Job Summary section of that job description describes the job in part this way:

“... this position works under the general supervision of a Psychologist, and conducts a series of standardized neuropsychological/psychometric tests to assess cognitive functioning, education level, learning difficulties, personality, quality of life and vocational interests. Provides psychologist with written and/or verbal summary of test results and the client’s performance and behaviour to assist in diagnosis and treatment interventions.”

As one of its qualifications, the job description specifies the requirement of a bachelor’s degree in Psychology. It also provides that the position’s Supervisor is in fact three positions: Patient Services Manager, Professional Practice Director, Psychology, and Psychologist.

It is to be noted that the profession/occupation of psychometrist is treated differently from the profession/occupation of psychologist. Psychologist is one of the recognized job families, while psychometrist is one of the identified professions/occupations under the Industry Wide Miscellaneous Rates. Thus, the Psychometrist position is like the Clinical Perfusionist position in that it reports to, and is supervised by, a position from another paramedical discipline or profession. There is no such position at this time as a Psychometrist Supervisor position.

Is the Psychometrist position working at various hospitals and centres of the Vancouver Coastal Health Authority a “staff level” position? For the reasons discussed above in relation to the Cardiovascular Perfusionist position at Kelowna General Hospital, I am of the view that the answer to that question must be no. In reporting to, or being supervised by, a patient services manager, a professional practice director in psychology or by a psychologist, the psychometrist is not being supervised by another psychometrist. In order for a Psychometrist position to be treated as a Grade I position, it would have to be performing its work under the general supervision of another psychometrist. It is not, so it cannot be treated as a “staff level” position which according to paragraph (e) is equivalent to a Grade I position.

In effect, the Psychometrist position at Vancouver Coastal Health Authority must be treated as working without general supervision and therefore not a “staff level” position. The result is paragraph (e) of Appendix A does not apply to it.

The last area of dispute relating to the application of paragraph (e) of Appendix A pertains to the profession of radiation therapy.

In a B.C. Cancer Agency job description created on March 19, 1998 and revised on June 25, 2010, the duties and responsibilities of the Radiation Therapist position are summarized this way:

“... the Radiation Therapist provides radiation services and patient care in accordance with established policies and standards of professional practice for radiation therapy. Provides radiation services through treatment planning, delivery and follow up. Provides patient care such as assessment and patient and family education related to planning, treatment and side effects.”

One of the specific duties is set out in paragraph 10 of the Duties section of the job description:

“Participates in the orientation, clinical instruction and evaluation of student radiation therapists as required by methods such as demonstrating techniques and providing feedback on the student’s performance to the Clinical Educator or designate.”

The wage rate for this new position has been set at Grid Level 11.

Is this position at “staff level” within the meaning of paragraph (e)? I am satisfied that it is. It works under the general supervision of another radiation therapist. It is involved with students in terms of participating in their orientation, instruction and evaluation, but I am not persuaded that that participation reaches the level of being “responsible for” that student which would be at the Grade II level. Finally, there is no evidence to suggest that a regular full-time or part-time radiation therapist would ever be the only such radiation therapist employed at the B.C. Cancer Agency.

Paragraph (e) then provides if that position is assigned to work sole charge, or when they are made responsible for a student, or when they are assigned to work without general supervision, it will be compensated at one grid level higher. However, counsel for the Union acknowledges in his closing written argument that:

“It appears that sole charge is simply not possible given the organization of the delivery of radiation therapy. It also seems practically unlikely that Therapist would be eligible for student supervision pay or wwgs [working without general supervision] pay given the present organization of the workplace. However, the Employer is free to organize its workplace as it sees fit and in the future there may situation (sic) where an employee is working without general supervision or supervising students.”

(at para. 86)

In these circumstances, I declare that the position reflected in the B.C. Cancer Agency’s Radiation Therapist job description dated June 25, 2010 reflects a “staff level” position, equivalent to a Grade I position. However, the circumstances necessary for this position to be reclassified to the equivalent of a Grade II position have never occurred and do not seem likely to occur in the near future. On this basis, paragraph (e) does not apply at this time to this profession. If those circumstances change before the new classification system is implemented and a “staff level” Radiation Therapist position is assigned to work sole charge or without general supervision or is made “responsible for” a student, the Union or one of its constituent members could raise the matter again at that time to claim that the position is now entitled to be compensated at one grid level higher.

I should say that I have considered the Employer’s argument that the Radiation Therapist position is already “sufficiently compensated” at Grid Level 11 and therefore there is no justification for applying paragraph (e), and its one grid lift, to it. It refers to the fact that a bachelor’s degree is required to qualify for the position and bachelor degree positions are generally compensated at Grid Level 8. The Radiation Therapist classification is already being compensated at three levels above that, Grid Level 11 and, it says, a further one grid lift is not justified. I am not persuaded by this argument. In my view, nothing in paragraph (e) or in any other provision of the Interim Agreement or Appendix A gives me the authority to decide its applicability based on my view as to

whether the staff level position is already “sufficiently compensated” or not. The questions under paragraph (e) are whether the position at issue is a “staff level” position and, if so, whether it is working sole charge, or been assigned responsibility for a student, or assigned to work without general supervision. If the answer to both of those questions is in the affirmative, then the position is entitled to the one grid level lift regardless of the “staff level” rate of pay.

In summary, with respect to the application of paragraph (e), I have concluded that that paragraph does not apply to the Biostatistical Analyst position, nor the Cardiovascular Perfusionist position and, finally, nor the Psychometrist position because none of those positions are, in my view, “staff level” positions within the meaning of that paragraph. While I am persuaded that the Genomics Technologist, Bioinformatics Technologist position, the Cancer Research Technologist may be, and the Radiation Therapist position is, a “staff level” position within the meaning of paragraph (e), there is no evidence of any of these positions at this time working sole charge, being responsible for a student, or working without general supervision. Consequently, at this time, there is no justification for applying the provisions of paragraph (e) to them. Should circumstances change in the future such that there is evidence of any of those four positions working sole charge or without general supervision or being assigned responsibility for a student, the Union, or the applicable constituent member, can reapply at that time so long as those events occur before the implementation of the new classification system.

All of which is so awarded.

I retain jurisdiction to deal with any difficulties that might arise in connection with the implementation of this Award as well as to complete this Award should that prove necessary.

Dated this 9th day of October, 2019.

‘John Kinzie’
JOHN KINZIE
ARBITRATOR