In the Matter of an Arbitration Pursuant to a Collective Bargaining Agreement respecting a Policy Grievance

Between:

The Administrative and Supervisory Personnel Association

("Union")

and

The University of Saskatchewan

("University")

Before

Sheila Denysiuk, K.C. **Sole Arbitrator**

Heard on January 17, 2023

Gary Bainbridge, K.C. **For the Union**
Marie Stack and Michael MacDonald **For the University**

AWARD

1. This arbitration concerns the interpretation of a provision in a collective agreement between the Administrative and Supervisory Personnel Association ("ASPA") and the University of Saskatchewan ("the University") regarding entitlement to a supplemental benefit for employees who are on maternity, adoption, or parental leave.

2. The collective agreement in place at the relevant time is effective from May 1, 2019 to April 30, 2022. The dispute involves Article 20.7.5 which reads as follows:

> **20.7.5 Supplemental Benefits Plan**
>
> After twelve (12) months of continuous service at the university, a member who qualifies for a leave as defined under Article 20.7.1, 20.7.2, 20.7.3, or 20.7.4 and is in receipt of Employment Insurance (EI) benefits is eligible to receive supplemental benefits. The Employer will provide a supplemental benefit of 95% (inclusive of EI) of weekly earnings (based on his/her pre-leave earnings) for a period of up to twenty-one (21) weeks (including the one (1) week waiting period).
>
> In no case will the total amount of supplemental benefits, employment gross benefits, and any other employment earnings received by the member exceed 95% of the member's regular weekly earnings (based on his/her pre-leave earnings).

3. The parties disagree on the meaning of "continuous service" in the provision. ASPA contends that the term means service at the University in any capacity, whether within the ASPA bargaining unit, another bargaining unit, or in an exempt position. The University's position is that "continuous service" means service within the ASPA bargaining unit.

4. ASPA filed a policy grievance dated August 13, 2021 challenging the University's interpretation. The relevant paragraphs read as follows:

> The specific incident giving rise is that the employer is failing to provide the supplemental benefit under Article 20.7.5 (ASPA/UofS Collective Agreement May 1, 2019 – April 30, 2022) to members who have not been in an ASPA position for twelve (12) months or longer. The employer is suggesting that the term "continuous service" in the Collective Agreement refers to only time spent as an ASPA member. ASPA believes that this would be time spent in the employ of the employer.
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> Accordingly, ASPA is seeking the following redress: that "continuous service" be recognized as time spent in the employ with the employer, and any member impacted to be made whole in all respects, which would include, but not be limited to, compensation for lost wages and benefits. Currently ASPA is aware of one member who has been impacted, this is Alicia Husband. ASPA reserves the right to bring to the attention of the employer the names of other members impacted throughout this grievance process as we become aware of them.

5. The parties proceeded on the basis of an agreed statement of facts and a joint book of exhibits. The exhibits are listed in Appendix "A" and will be referred to as necessary in the award.

6. At the outset, ASPA raised a second, but related, issue as to whether an employee's brief resignation followed by re-employment constitutes a break in "continuous service" for the purpose of calculating entitlement to the supplemental benefit. The agreed statement of facts sets out the circumstances of three employees who were denied supplemental benefits. The circumstances of one employee involves a resignation from an out-of-scope position in contemplation of being rehired some 10 days later into a similar position within ASPA. ASPA isn't sure whether the University denied the application because the employee hadn't completed 12 months of ASPA service, or because of the resignation, or both.

7. In submissions, the University indicated that the employee's application was denied because she hadn't completed 12 months of service as an ASPA member at the time of her request, but also that, although the short break in service didn't reset the waiting periods for health, dental and pension benefits, it would have broken the employee's continuous service. In other words, the University would have had an alternate reason for denying supplemental benefits. Accordingly, ASPA seeks a declaration that a resignation in these circumstances doesn't constitute a break in "continuous service" for the purposes of Article 20.7.5.

8. The parties agreed to bifurcate the hearing between liability and damages. In the event the grievance is upheld, the parties requested that I retain jurisdiction should they be unable to agree on damages or any other matter respecting implementation of the award.

9. The parties consented, pursuant to Section 6-50(3) of *The Saskatchewan Employment Act,* to extend the time for me to provide this decision beyond the 30 days required by Section 6-50(1).

10. For the reasons that follow, the grievance is allowed with respect to the central issue regarding the meaning of "continuous service at the university", but disallowed with respect to the second issue regarding the University's policy on short breaks in service.

EVIDENCE

11. The agreed statement of facts is reproduced in its entirety below:

> **A. BACKGROUND**
>
> 1. The Administrative and Supervisory Personnel Association (**"ASPA"**) is a Union pursuant to Part 6 of *The Saskatchewan Employment Act*, SS 2013 Ch. S-15.1.
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> 2. The University is a corporate entity pursuant to Section 3 of *The University of Saskatchewan Act, 1995*, SS 1995 Ch. U-6.1.
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> 3. ASPA is certified as the bargaining representative for a group of individuals employed by The University of Saskatchewan (**"University"**) pursuant to an Order of the Labour Relations Board (**"LRB"**) dated October 31, 1978, as amended by Order of the LRB dated April 5, 2000 and Order of the LRB dated November 1, 2001.
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> 4. The University also employs thousands of other individuals, who belong to bargaining units represented by certified bargaining representatives other than ASPA or are out-of-scope of any bargaining unit. At all times material the University and ASPA were aware the University was a multi-bargaining unit workplace.
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> 5. ASPA and the University have been through multiple rounds of bargaining together, having been parties to multiple different collective agreements over the years, such as the following:
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> (a) The agreement bearing the dates May 1, 2008 to April 30, 2011 ("**Past Agreement 2008 to 2011**") (**TAB "A"**);
> (b) The agreement bearing the dates May 1, 2011 to April 30, 2014 ("**Past Agreement 2011 to 2014**") (**TAB "B"**); and
> (c) The agreement bearing the dates May 1, 2014 to April 30, 2019 ("**Past Agreement 2014 to 2019**") (**TAB** "**C"**).
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> 6. Presently, ASPA and the University are parties to a collectively bargained agreement, bearing the effective dates May 1, 2019 to April 30, 2022 (the **"Collective Agreement"**). A copy of the Collective Agreement is affixed hereto marked as **Tab "D"**.
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> 7. The Collective Agreement includes Section 20.7.5, which reads as follows:
>
> **20.7.5 Supplemental Benefits Plan**
>
> After twelve (12) months of continuous service at the university, a member who qualifies for a leave as defined under Article 20.7.1, 20.7.2, 20.7.3, or 20.7.4 and is in receipt of Employment Insurance (EI) benefits is eligible to receive supplemental benefits. The Employer will provide a supplemental benefit of 95% (inclusive of EI) of weekly earnings (based on his/her pre-leave earnings) for a period of up to twenty- one (21) weeks (including the one (1) week waiting period).
>
> In no case will the total amount of supplemental benefits,

employment gross benefits, and any other employment earnings received by the member exceed 95% of the member's regular weekly earnings (based on his/her pre-leave earnings).

B. **FACTUAL CIRCUMSTANCES LEADING TO GRIEVANCE**

Alicia Husband

8. Alicia Husband commenced employment with the University on March 1, 2014, being hired as a Research Assistant. This Research Assistant role was with the department of Sociology and was out-of-scope of any bargaining unit. Ms. Husband resigned from this Research Assistant position effective October 2, 2020. Despite the resignation, Ms. Husband was not required to serve any waiting periods for health, dental and pension benefits on the assumption of her new position as referenced in paragraph 11, below. The absence of a waiting period for those particular benefits of Ms. Husband's was due to her break in employment being insufficient for a restart of applicable waiting periods to occur. It is the University's general policy that a break in service of 31 days or longer results in the restart of applicable waiting periods, and Ms. Husband's break in service was less than 31 days.

9. In addition to her Research Assistant position, Ms. Husband held a part-time position in-scope of a bargaining unit represented by the Canadian Union of Public Employees ("**CUPE**"). Ms. Husband held her position within the bargaining unit from September 4, 2018 until November 16, 2018.

10. Ms. Husband was not employed with the University in any capacity from October 3, 2020 to October 12, 2020. On October 13, 2020, Ms. Husband was re-hired into another Research Assistant position in the College of Medicine with a term ending April 1, 2021, which was in-scope of the bargaining unit represented by ASPA.

11. On April 1, 2021, Ms. Husband was rehired in-scope of ASPA as a Research Assistant in the College of Medicine with term ending December 1, 2021.

12. Ms. Husband commenced maternity/parental leave on July 5, 2021. The University denied supplying her with supplemental benefits.

13. The employer used Ms. Husband's initial date of hire, May 16, 2014, as the vacation accrual date for the purposes of accruing her vacation. Further particulars of Ms. Husband's overall employment with the University can be found affixed hereto marked as **Tab "E"**.

Cristina Tsang

14. Cristina Tsang commenced employment with the University in January of 2014 as a Cafeteria/Culinary Worker in a casual role that was in-scope of a bargaining unit represented by CUPE. On October 1, 2015, Ms. Tsang was also hired into several positions within scope of the ASPA bargaining unit.

15. The various positions that Ms. Tsang had been hired into were permanent positions. In 2018 Ms. Tsang's employment with the University ceased, as she had been hired into a new position, but she was terminated from that position during the applicable probation period.

16. Ms. Tsang was then rehired on April 22, 2019 with the University as a Research Assistant in the department with the College of Medicine. This Research Assistant position was out-of-scope until October 1, 2020 when it was transferred into the bargaining unit represented by ASPA.

17. Ms. Tsang applied to receive supplementary benefits on or around September 15,

2021. She was denied at that time.

18. Ms. Tsang next applied to receive supplemental benefits on October 1, 2021. Her application was approved at that time.

19. The employer uses Ms. Tsang's date of rehire, April 22, 2019, as the vacation accrual date for the purposes of accruing her vacation. Further particulars of Ms. Tsang's overall employment with the University can be found affixed hereto marked as **Tab "F"**.

Jennifer Dybvig

20. Jennifer Dybvig commenced employment with the University in November of 2003. She held various casual, term, and seasonal positions in the CUPE, Local 1975 bargaining unit. Jennifer achieved permanent status in-scope of CUPE 1975 in July of 2011.

21. On September 15, 2022, Jennifer moved from the position of Clerical Assistant, Finance in the CUPE bargaining unit to the ASPA bargaining unit in the position of Finance Coordinator, without interruption. Jennifer has been employed with the University in varying capacities since 2003, and the employer uses July 25, 2007 as the vacation accrual date for the purposes of accruing her vacation. The adjustment to July 25, 2007 was due to breaks in employment such as casual employment, seasonal layoffs and unpaid leaves of absence.

22. Jennifer became pregnant in the fall of 2022, with an expected due date of May 6, 2023.

On December 13, 2022, she contacted the employer's service centre, ConnectionPoint, by email to ask if she would qualify for the supplemental maternity leave benefits under the ASPA Collective Agreement, being unsure of her entitlement to the same, given her previous CUPE service.

23. Jennifer was initially told by the ConnectionPoint Service Agent, Jordan Miller, through an email in response that she would qualify, "as the months do not need to be within the same bargaining unit". Approximately 2 hours later, the employer emailed Jennifer to advise that "the policy is now such that the 12 months of service must be within the ASPA bargaining group and that CUPE service does not apply". Further details of this exchange can be found affixed hereto and marked as **Tab "G"**.

24. Further particulars of Ms. Dybvig's overall employment with the University can be found affixed hereto marked as **Tab "H"**.

25. Jordan Miller started employment with the University on April 18, 2022, in-scope of CUPE 1975, working in ConnectionPoint as a Service Agent. Following the initial advice provided by Jordan to Jennifer, the Manager of Workforce Administration with the University, Jillian Rowland, advised Jordan that the advice provided to Jennifer was inaccurate. Jordan then followed up with Jennifer to apologize, and to clarify that she would not be eligible for the supplemental benefit under Section 20.7.5 as previously advised. Jordan apologized for the poor wording of his previous reply and explanation, and clarified that her ineligibility for the supplemental benefit was determined as per the employer's existing interpretation and application of Section 20.7.5.

26. ConnectionPoint is a service within the University (often referred to as a "service centre") which provides support services in the administrative areas of Human Resources and Finance. Some services include human resources activities such as posting positions, closing job competitions, coordinating onboarding of new employees and off-boarding of existing employees, administering benefits and approving leaves of absence. In addition, some other services include financial activities such as processing payroll, supporting various

> steps throughout the procurement of products and services, assisting with travel and reimbursement of expenses, and entering transactional data into numerous systems. As well, ConnectionPoint has a Service Team with front- facing Service Agents that respond to and offer guidance upon receiving an inquiry relating to the aforementioned service and activities. The Service Agents are not in the role of making interpretations of Collective Agreement language.
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> **C. THE GRIEVANCE**
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> 27. ASPA filed a policy grievance in response to the University's interpretation of Section 20.7.5, that being grievance 2021-003 dated August 13, 2021 (the **"Grievance").**
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> 28. The Grievance is affixed hereto, marked as Tab "I".
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> 29. With the Grievance, ASPA seeks for its interpretation of Section 20.7.5 to be confirmed as being the correct interpretation, and for any of its members affected by the University's interpretation of Section 20.7.5 to be made whole, such as in terms of appropriate compensation/benefits being delivered by the University.
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> [Emphasis in original]

12. The parties called no evidence beyond the agreed statement of facts and joint exhibits. Notably, the University policy referred to in paragraph 8 of the agreed statement wasn't filed as an exhibit, nor was any witness called to clarify or expand upon the policy apart from its brief mention in the agreed statement of facts.

ISSUES

13. The central issue is whether prior service at the University in a different bargaining unit or in an exempt position counts towards an employee's "continuous service" for receipt of supplemental benefits under Article 20.7.5 of the collective agreement.

14. The second issue is whether an employee's resignation constitutes a break in that employee's "continuous service" if the employee is then rehired into another position less than 31 days after the resignation.

POSITIONS OF THE PARTIES

15. The parties made written and oral submissions in support of their respective positions. The written submissions refer to numerous judicial and arbitral authorities. The authorities with full citations and short form names are listed in Appendix "B". Reference to an authority in the award will be by the short form name. In addition to arbitral authorities, the parties referred to passages from Brown & Beatty, *Canadian Labour Arbitration*, regarding collective agreement interpretation.

ASPA Position

16. ASPA's position is that a member's service in another University bargaining unit, or in an out-of-scope position, should count in calculating the member's "continuous service at the university" for the purpose of Article 20.7.5.

17. ASPA submits that the reference to "member" doesn't mean it is only time spent as an ASPA member that counts towards continuous service; it simply means that the employee must be a member of ASPA at the time of applying for supplemental benefits.

18. ASPA acknowledges that the definition of "service" in the collective agreement provides that when calculating vacation accrual, and when calculating notice and severance, service will include prior employment in-scope of any bargaining unit and in exempt positions. ASPA anticipates that the University will argue the *expressio unius, exclusio alterius* principle to the effect that specifically including vacation, notice and severance implicitly excludes service outside the bargaining unit for other purposes in the collective agreement; but submits that this argument shouldn't succeed for the simple reason that Article 20.7.5 refers to continuous service "at the university". ASPA argues that the qualifier would be meaningless unless it was intended to cover service both inside and outside of the bargaining unit. There is no other reasonable explanation for the qualifier having been added to the language – it would make no labour relations sense to suggest it was added to address service with another employer.

19. If the parties intended to only count service within the ASPA bargaining unit, ASPA argues that Article 20.7.5 would likely only refer to "continuous service" without the qualifier. The term "continuous service" appears in other provisions in the collective agreement. For example, Article 3.4.3.1 deals with granting permanent or seasonal status to a term employee where "continuous service" is qualified by a requirement that the service be "in the same position and same department". Article 16.1 deals with notice or pay in lieu and "continuous service" appears without qualification, however, the calculation of service is dealt with specifically under the definition of service. Article 20.1 deals with special leave and "continuous service" is entirely unqualified.

20. ASPA points out that the qualifier in Article 20.7.5 was added in the bargaining leading to the 2011 to 2014 collective agreement (Ex B). The parties could easily have used language restricting "continuous service" to service only within the ASPA bargaining unit, but obviously chose not to do so, and instead added "at the university" to qualify the meaning of "continuous service".

21. ASPA relies on the presumption that when interpreting a collective agreement, all words are to be given meaning. In support, ASPA refers to *City of Richmond* where the question was whether "length of service" was the same thing as "seniority" for the purpose of evaluating applicants for positions. The arbitrator stated that if the parties had intended that seniority be used to distinguish between equally qualified candidates, they could have done so, and the fact the parties didn't insert language to that effect should be viewed as meaningful in the interpretive exercise.

22. See also *Wasaga Beach Hydro* where the question was whether a worker who was self-employed in addition to his job was basically working for another employer. In rejecting the employer's interpretation, the arbitrator stated that if the parties intended the disqualifying factor to be broadly construed, they would have used a term such as "anyone" or "another person", rather than "an employer" which has a narrower legal connotation. The specific language negotiated by the parties was presumably meant to have some meaning.

23. ASPA submits that the comments in the above case are applicable in the within situation. The University is both ignoring a qualifier that is present ("at the university") while concurrently asking to add a further qualifier that isn't present ("within the bargaining unit"). It is trite law that an arbitrator shouldn't read in or add words that aren't present. See *Mosaic Potash*.

24. Clear language is required to deny an employee an entitlement or to restrict that entitlement's application. See *Food Group Inc*. where the employer prorated the vacation entitlement of certain employees because they had been laid off. In allowing the grievance, the arbitrator noted that the parties could have inserted a provision in their collective agreement if they had wished to exclude periods of layoff from calculating vacation entitlements. Having not done so, the grievance was allowed. The same result occurred in *Sola Basic Ltd*.

25. Relying on *Food Group Inc.* and *Sola Basic Ltd.*, ASPA submits that any limitation or elimination of the bargained right to supplemental benefits must appear clearly and expressly in the agreement and shouldn't be implied or read in by an arbitrator.

26. In conclusion on the central issue, ASPA submits that in the absence of an explicit stipulation that a particular benefit doesn't apply, the clear wording of the collective agreement must apply. The parties must have meant "…at the university" to have some meaning, and when read in the context of the collective agreement, it means service outside of the bargaining unit. The wording isn't sufficiently clear to restrict entitlement to the supplemental benefit in the manner claimed by the University.

27. Regarding the second issue, and assuming the University takes the position that Husband's resignation constitutes a break in her continuance service and provides an alternate reason for denying supplemental benefits, ASPA disagrees and takes the position that the resignation doesn't break continuous service in the circumstances.

28. ASPA points out that "continuous service" isn't defined in the collective agreement, and there is no contractual language regarding what constitutes a break in service. ASPA refers to *Falconbridge Nickel* where continuous service wasn't found to be interrupted by time on a strike. ASPA also refers to *Nova Scotia Hospital Employees* and *Dominion Tanners* where it was found that time spent on strike didn't break service for the purpose of vacation entitlement.

29. ASPA argues that Husband's transition from one position to another, resulting in a break of less than two weeks, was more or less seamless. Importantly, the University treated her employment as continuous for other purposes and there is no principled justification for treating the resignation as a break in continuous service for the purposes of supplemental benefits.

30. ASPA seeks declarations that the University's interpretation of Article 20.7.5 contravenes the collective agreement, that resignation in these circumstances doesn't break an employee's continuous service, and that "continuous service at the university" in Article 20.7.5 includes all service at the University, whether in or out of the bargaining unit.

University Position

31. The University submits that Article 20.7.5 is clear and unambiguous when considering the entire context of the collective agreement. Like ASPA, the University notes that the collective agreement refers to "continuous service" in a number of different contexts; however, the University's position is that these other provisions, and the definition of "service" in the collective agreement, combine to demonstrate the unreasonableness of ASPA's interpretation of the provision at issue.

32. The University contends that the definition of "service" and "member" create a general rule for calculating a member's service (or presumably continuous service), together with exceptions to the general rule. The general rule is that "service" is time spent by a "member" performing duties assigned by the University and, as a consequence, "service" in its general sense under the collective agreement, and Article 20.7.5 in particular, means time spent as an ASPA member.

33. The definition of "service" provides two exceptions to the general rule, namely calculating vacation accrual where "service refers to all continuous employment of the individual with the employer", and calculating notice and severance where "service will include prior continuous employment in-scope of any University bargaining unit and also in Exempt positions". Since supplemental benefits don't fall within either exception, the University argues that the general rule for calculating service must apply. In other words, the member must have served 12 continuous months in ASPA before being entitled to supplemental benefits.

34. The University refers to Article 9.8 as an example of a provision that explicitly addresses service of an ASPA member outside of the ASPA bargaining unit. The provision deals with the situation of an ASPA member being temporarily reassigned to an out-of-scope position, and on being reappointed to an ASPA position, the time spent out-of-scope is treated as continuous ASPA service. The member would be eligible for supplemental benefits by virtue of the specific language, namely that the member "will have all rights and privileges" as if membership in ASPA "had been throughout the member's University employment". Given that Article 20.7.5 doesn't explicitly address service outside of the bargaining unit, the general rule applies.

35. The University submits that its interpretation is consistent with the overall wording of the collective agreement whereas ASPA's interpretation ignores plain language existing elsewhere in the agreement. Importantly, Article 20.7.5 refers to a "member", not an "employee", being entitled to the supplementary benefit. ASPA is essentially trying to argue that the parties intended that Article 20.7.5 refers to an "employee" rather than a "member". The benefits under Article 20.7.5 are contemplated as being available only for ASPA members and only once 12 months of service has been completed. Why would the parties incentivize an individual moving from another bargaining unit into ASPA and taking a paid leave before even working 12 months in the new position?

36. The University reiterates that ASPA's interpretation contradicts the definition of "service" which expressly provides exceptions for vacation accrual, and for notice and severance. If

the parties had preferred ASPA's interpretation, they would simply have added another exception in the definition of "service", or different language in Article 20.7.5 itself.

37. The University submits that ASPA hasn't provided reasoning as to why the clearly worded general rule wouldn't apply. As such, ASPA is attempting to impose a monetary benefit by inference or implication which is unreasonable.

38. The University points out that the definition of "service" has evolved through several collective agreements. Bargaining leading to the 2011 to 2014 agreement modified the exception for calculating vacation accrual by inserting the word "continuous" to address vacation accrual for individuals who experienced breaks in their employment. The general definition of service remained unchanged until the 2014 to 2019 agreement at which time an exception was added for the purpose of calculating notice and severance. As a result, the *expressio unius, exclusio alterius* principle should be applied which demonstrates that the parties didn't intend to change the general definition when the exceptions were added for vacation accrual, notice and severance. When the past agreements are considered, it is plain to see that the parties chose language to address specific exceptions, but at no point did they agree to change the general definition of "service".

39. The University maintains that the wording in the collective agreement is clear and unambiguous, therefore it is unnecessary to consider extrinsic evidence, or evidence of past practice. In the event ambiguity is found, the University submits that the factual circumstances relating to the three individuals confirm its consistent and unwavering practice of requiring 12 months of ASPA service when assessing entitlement to supplemental benefits. None of the three individuals had completed 12 months of continuous service within ASPA by the time they applied for benefits.

40. With regard to the second issue, the University acknowledges that Alicia Husband wasn't required to observe a waiting period for the receipt of health, dental and pension benefits because her break in service was less than 31 days which, according to the University's general policy, was insufficient to require the restart of waiting periods. However, the University submits that the general policy on short breaks doesn't apply to Article 20.7.5. In other words, although Husband's application was denied since she hadn't spent 12 months performing duties as an ASPA member, the resignation and short break wouldn't have been "saved" by the general policy.

ASPA Reply

41. ASPA repeats that it isn't asking for a benefit; rather, it is asking that its members not be deprived of a benefit. In other words, there is a right to the top up.

42. ASPA points out that much of the University's argument centers on the definition of "service", but that isn't the issue in this case. The interpretation question is what "continuous service at the university" means, not what "service" means.

43. Further, the University focused on the term "a member" in Article 20.7.5 and argued that ASPA was trying to equate "an employee" with "a member". ASPA acknowledges that membership in the bargaining unit is necessary to trigger the benefit, that is, it is not any

employee who can apply for supplemental benefits, only a member of the ASPA bargaining unit; however, that membership in the bargaining unit is necessary doesn't support the University's argument that continuous service only includes service in the bargaining unit.

ANALYSIS

Interpretation Principles

44. It is useful to start the analysis by commenting on the onus of proof with respect to interpretation issues. The question of onus is addressed in Brown & Beatty, at § 3:23, where the authors state that onus has no bearing on questions of law, which includes the interpretation of provisions in a collective agreement. The onus is an evidentiary burden regarding the facts needed to support the proposed interpretation.

45. As Arbitrator Wallace stated in *SEIU/Saskatchewan Health Authority*, in resolving interpretation issues, arbitrators must determine the meaning of the words at issue using principles of interpretation. The task is to determine the true meaning by finding the intention of the parties from the language they have used. The burden of proof only applies to establishing the facts needed to sustain the interpretation being advanced.

46. The parties disagree on whether there is an added onus where the grievance involves a claim for a monetary benefit. The University argues for a higher onus, and submits that ASPA must point to clear and unambiguous evidence which unequivocally demonstrates that the parties had a shared intention to provide the monetary benefit being sought. In support, the University refers to *Vancouver Hospital*, *Keller Foundations*, *Wire Rope Industries*, and *Canada Trader*.

47. On the other hand, ASPA contends that it isn't seeking a benefit; it is simply asking that its members not be deprived of a negotiated benefit. ASPA argues that clear language is required to deny an employee an entitlement or to restrict the application of the entitlement. In support, ASPA refers to *Wasaga Beach Hydro*, *Food Group Inc*, *Sola Basic Ltd.*, and *Orca Bay*.

48. Having reviewed the authorities, I am satisfied that the University has correctly described the onus where a monetary benefit is being claimed. In such a case, the language must set out a clear and specific intention to grant the benefit. A monetary benefit won't be imposed by implication or inference. All of that said, I am also satisfied that similar reasoning applies where an employer is seeking to reduce or otherwise limit an entitlement; that is, clear language is required and a restriction or limitation won't be implied or inferred.

49. There is no disagreement regarding the principles of collective agreement interpretation. The parties agree that the modern approach enunciated by Arbitrator Elliot in *Imperial Oil* should be applied. As stated by Arbitrator Elliot, the modern principle is a method of interpretation rather than a rule, but still encompasses the many well-recognized interpretation conventions, and directs interpreters as follows:

> 1 to consider the entire context of the collective agreement

2 to read the words of a collective agreement
- in their entire context
- in their grammatical and ordinary meaning

3 to read the words of a collective agreement harmoniously
- with the scheme of the agreement
- with the object of the agreement, and
- with the intention of the parties.

50. The approach described above is widely accepted by arbitrators across the country and has been adopted by arbitrators in Saskatchewan. See for example, *Saskatchewan Telecommunications*, *SEIU-West/Saskatchewan Health Authority, SEIU-West/Saskatoon Regional Health Authority*.

51. Once an interpretation is settled upon, it should be tested by asking whether it is plausible and effectively answers the issue in question within the bounds of the collective agreement and the bounds of acceptability for the parties. The interpretation should also meet the legal values of fairness and reasonableness.

52. Historically, extrinsic evidence could only be considered where the provision at issue was found to be ambiguous. It is now well established that arbitrators must consider evidence of relevant surrounding circumstances when interpreting a collective agreement regardless of whether the language is ambiguous. The core principle of the modern approach is that the language must be interpreted purposefully and in its context.

53. There is no dispute about the recognized principles of interpretation; it is the application of the principles that will typically cause difficulties. With this in mind, I now turn to the interpretation in this case.

Interpretation – "…continuous service at the university…"

54. The provision at issue is repeated for convenience:

> **20.7.5 Supplemental Benefits Plan**
>
> After twelve (12) months of **continuous service at the university**, a member who qualifies for a leave as defined under Article 20.7.1, 20.7.2, 20.7.3, or 20.7.4 and is in receipt of Employment Insurance (EI) benefits is eligible to receive supplemental benefits. The Employer will provide a supplemental benefit of 95% (inclusive of EI) of weekly earnings (based on his/her pre-leave earnings) for a period of up to twenty-one (21) weeks (including the one (1) week waiting period).
>
> In no case will the total amount of supplemental benefits, employment gross benefits, and any other employment earnings received by the member exceed 95% of the member's regular weekly earnings (based on his/her pre-leave earnings).
>
> [Emphasis added]

55. The question is whether "continuous service at the university" includes all service at the University, or only service within the ASPA bargaining unit. The parties disagree and rely on principles of interpretation to support their positions.

56. ASPA relies on the presumption that all words used were intended to have some meaning, and that service "at the university" means exactly that, namely service at the University as a whole, regardless of whether the service is within the ASPA bargaining unit or otherwise. ASPA submits that it can't reasonably be argued that the qualifying phrase was meant to differentiate work at the University from work with other employers. The qualifying phrase would otherwise be meaningless unless it was intended to capture service both inside and outside the bargaining unit.

57. ASPA's interpretation is compelling. On its face, it would seem that the provision isn't ambiguous and that the qualifying phrase means service at the University as a whole, regardless of whether the service is within the ASPA bargaining unit, another bargaining unit, or an exempt position. The dispute would end here if the interpretation exercise simply involved considering the highlighted passage in isolation.

58. However, as indicated, the modern approach to contract interpretation mandates that words not be read in isolation, and instead must be read in their entire context, in their grammatical and ordinary sense, harmoniously with the scheme of the agreement, its object, and the intention of the parties.

59. As required by the modern approach, the parties made submissions with a view to reconciling Article 20.7.5 with other provisions in the collective agreement. In doing so, the parties rely on changes in language resulting from bargaining prior collective agreements. ASPA focuses on changes to Article 20.7.5 whereas the University focuses on changes to the definition of "service".

60. I will start with the changes to Article 20.7.5. The joint exhibits include the current collective agreement and the three preceding agreements. In the agreement covering the period May 1, 2008 to April 30, 2011, Article 20.7.5 referred to 12 months of continuous service. In the bargaining leading to the next agreement, continuous service was qualified by the words "at the university". ASPA argues that the amendment is significant in that the parties chose not to add any further qualification limiting continuous service to service within the bargaining unit.

61. The University hasn't addressed what the above qualifying phrase means and/or offered an explanation as to why it was added in the 2011 iteration of the collective agreement. Instead, the University has focused on the definition of "service", and to a lesser extent "member", in this and past collective agreements. The University argues that Article 20.7.5 isn't ambiguous once other provisions in the collective agreement are considered.

62. The definition of "service" has changed over several rounds of bargaining. Paragraph 56 in the University brief contains a helpful chart summarizing the changes. The chart is reproduced below:

Agreement	Definition of "Service"
Past Agreement 2008 to 2011	**Service** refers to the time spent by a member performing the duties assigned by the employer except when calculating the vacation accrual rate where service refers to all employment of the individual with the employer.
Past Agreement 2011 to 2014	**Service** refers to the time spent by a member performing the duties assigned by the employer except when calculating the vacation accrual rate where service refers to all continuous employment of the individual with the employer.
Past Agreement 2014 to 2019	**Service** refers to the time spent by a member performing the duties assigned by the employer except when calculating the vacation accrual rate, where service refers to all continuous employment of the individual with the employer. **For purposes of calculating notice and severance, service will include prior continuous employment in-scope of any university bargaining unit and in Exempt positions.**
Present Collective Agreement	**Service** refers to the time spent by a member performing the duties assigned by the employer except when calculating the vacation accrual rate, where service refers to all continuous employment of the individual with the employer. For purposes of calculating notice and severance, service will include prior continuous employment in-scope of any university bargaining unit and in Exempt positions.

[Emphasis in original]

63. I agree with the University that spelling out exceptions in the definition leaves intact a general rule for calculating service and, in its general sense, "service" means time spent as an ASPA member. This is the logical conclusion from applying the *expressio unius, exclusio alterius* maxim.

64. In reaching this conclusion, I have not attached any importance to the fact that Article 20.7.5 references service by "a member". I agree with ASPA that the reference to "a member" simply means that an applicant for supplemental benefits must be an ASPA member.

65. Having concluded that the definition of "service" contains a general rule and exceptions, I turn now to the question of whether "continuous service" in Article 20.7.5 means only service as an ASPA member. In my view, that the definition of "service" includes exceptions doesn't mean that exceptions and qualifiers can't be incorporated elsewhere in the collective agreement. For example, in Article 3.4.3.1, continuous service is qualified by the requirement that the service be "in the same position and same department". Granted

the scenario in Article 3.4.3.1 is different than the provision at issue, but the point is that the exceptions provided in the definition of "service" don't necessarily cover all scenarios. In other words, it is still open to the parties to incorporate language to define "service" or "continuous service" in a specific provision.

66. In my view, this is precisely what the parties did when the words "at the university" were added in an earlier round of bargaining. I agree with ASPA that the words wouldn't have been added to address employment outside the University. I further agree with ASPA that the qualifying phrase must have been intended to cover all service at the University whether inside or outside of the bargaining unit. The words used by the parties must be given some meaning. No other reasonable explanation has been provided.

67. Bargaining history evidence would have been helpful, but evidently isn't available or doesn't exist. There is no evidence of past practice apart from the factual circumstances of the three individuals set out in the agreed statement of facts. I agree that the University dealt with these individuals consistently, however, the "practice" in relation to one of the individuals (Husband) is apparently what gave rise to the policy grievance, and the "practice" in relation to the other two individuals occurred after the grievance was filed. In other words, the University's response isn't evidence of a longstanding approach to applications for supplemental benefits.

68. ASPA and the University are sophisticated entities. As pointed out in the University brief, both are knowledgeable about the University as a multi-bargaining unit workplace, as well as the collective bargaining process. I am satisfied that these sophisticated parties intended the phrase "at the university" to have some meaning. To repeat, I conclude that the phrase means service within and outside of the ASPA bargaining unit.

69. The interpretation is in harmony with the scheme and object of the agreement. The interpretation recognizes that a new member's past service at the University will be recognized in determining entitlement to supplemental benefits, in the same way that past service is recognized in calculating vacation accrual, notice and severance. If the parties had intended otherwise, the qualifying phrase wouldn't have been added and the University could rely on the general definition of service.

70. Having carefully considered the submissions, and adopting the modern approach to interpretation, I find that ASPA's proposed interpretation is the correct interpretation. For the purposes of Article 20.7.5, I conclude that the ASPA bargaining unit inherits the continuous service accumulated by members from their work in other bargaining units and in exempt positions at the University.

Interpretation – Resignation

71. The University maintains a policy whereby a break in service of 31 days or longer results in the restart of certain waiting periods. In other words, a break in service less than 31 days won't reset the waiting periods.

72. The policy is referred to in paragraph 8 of the agreed statement of facts in relation to Alicia Husband who resigned from an out-of-scope position effective October 2, 2020 and was

rehired into position within the ASPA bargaining unit effective October 13, 2020. On being rehired, Husband wasn't required to serve a waiting period for health, dental and pension benefits, and her initial date of hire (May 16, 2014) was used for calculating her vacation accrual. Husband commenced maternity/parental leave on July 5, 2021. The University denied her application for supplemental benefits ostensibly on the basis that she hadn't spent 12 months performing duties as an ASPA member at the time of her leave.

73. Despite the resignation not being the stated reason for denying Husband's application for supplemental benefits, ASPA seeks a declaration that a resignation, on these facts, doesn't constitute a break in service. ASPA repeats that, while "service" is defined in the collective agreement, "continuous service" isn't, nor is there specific language regarding what constitutes a break in service.

74. ASPA refers to arbitration decisions where "continuous service" has been held to include an absence for time spent on strike. See *Falconbridge Nickel* and *Nova Scotia Hospital Employees*. ASPA also refers to *Dominion Tanners* where it was held that "continuous service" without any limiting words, isn't interrupted by authorized absences from the workplace. In that case, authorized absences included absence due to illness, disability, maternity leave and so on.

75. The University acknowledges that Husband didn't have to complete a waiting period for receipt of health, dental and pension benefits because her break in service was less than 31 days. In addition to the operation of the policy, the University notes that Husband was a term employee and Article 3.4.3 provides that a term employee's waiting period for benefits shall be calculated taking into consideration previous continuous employment; however, the provision only applies to assessing entitlement to health, dental and pension benefits, not supplemental benefits.

76. The policy wasn't filed as an exhibit, perhaps because it isn't in writing. Regardless, neither party led any evidence about the policy and how it has been applied, apart from the reference to health, dental and pension benefits in paragraph 8 of the agreed statement of facts. There was no evidence that a break of less than 31 days is only relevant to those benefits, and not available in other circumstances, such as supplemental benefits.

77. ASPA's request for a declaration that a resignation in these circumstances doesn't constitute a break is reasonable. It is perhaps unfair that an employee with a short break in service is eligible for health, dental and pension benefits without serving a waiting period whereas the same short break is seen to interrupt service for other purposes. Despite this, I am not inclined to make the declaration requested by ASPA for the simple reason that the evidence is insufficient to support the request. The policy isn't referenced anywhere in the agreement and scant evidence is provided in the agreed statement of facts.

78. The onus is on ASPA to prove that the University has violated the collective agreement by the position it has taken with respect to applying the policy in these circumstances. In my view, the onus has not been met. It is of course open to the University, in consultation with ASPA or otherwise, to reconsider its position regarding the application of the policy to applications for supplemental benefits.

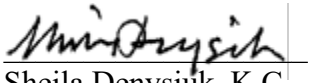
DECISION

79. In summary on the first issue, I find that ASPA's interpretation is the correct interpretation. I declare that the phrase "continuous service at the university" in Article 20.7.5 includes all service at the University, whether in or out of the bargaining unit. I further order that any member impacted be made whole in all respects.

80. In summary on the second issue, I decline to make a declaration that a resignation in the circumstances of this case doesn't constitute a break in "continuous service" for the purposes of Article 20.7.5.

81. The grievance is allowed in part. As requested by the parties, I retain jurisdiction to deal with any matters arising out of the implementation or application of this award.

DATED as Saskatoon, Saskatchewan on May 8, 2023.



Sheila Denysiuk, K.C.

Appendix "A"

Joint Exhibits

A	Collective Agreement effective May 1, 2008 to April 30, 2011
B	Collective Agreement effective May 1, 2011 to April 30, 2014
C	Collective Agreement effective May 1, 2014 to April 30, 2019
D	Collective Agreement effective May 1, 2019 to April 30, 2022
E	Alicia Husband employment record
F.1	Cristina Tsang employment record
F.2	Cristina Tsang job change submission September 14, 2021
F.3	Cristina Tsang job change submission August 30, 2021
G	Jennifer Dybvig communication with Jordan Miller regarding mat leave
H	Jennifer Dybvig employment record
I	Grievance

Appendix "B"

ASPA List of Authorities

C.E.P., Local 777 v. Imperial Oil Strathcona Refinery, 2004 CarswellAlta 1855 [*Imperial Oil*]

Saskatchewan Telecommunications v. Communications, Energy and Paperworkers Union of Canada, Locals 1-S and 2-S (Hague Grievance), [2009] S.L.A.A. No. 4 [*Saskatchewan Telecommunications*]

Richmond (City) v. C.U.P.E., Local 718, 1995 CarswellBC 3122 [*City of Richmond*]

Wasaga Beach Hydro-Electric Commission v. I.B.E.W., Local 636, 1995 CarswellOnt 1439 [*Wasaga Beach Hydro*]

United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (United Steelworkers), Local 7656 and Mosaic Potash Colonsay ULC [*Mosaic Potash*]

Food Group Inc. v. R.W.D.S.U., Local 1065, 1986 CarswellNB 500 [*Food Group Inc.*]

Sola Basic Ltd. v. I.A.M., Local 1168, 1976 CarswellOnt 1393 [*Sola Basic Ltd.*]

Orca Bay and Hotel, Restaurant & Culinary Employees & Bartenders' Union, Local 40, [1998] B.C.C.A.A.A. No. 590 [*Orca Bay*]

Sudbury Mine, Mill & Smelter Workers, Local 598 v Falconbridge Nickel Mines Ltd., 1971 CarswellOnt 947 [*Falconbridge Nickel*]

Nova Scotia Assn. of Hospital Employees v. C.B.R.T. & General Workers, Local 607, 1991 CarswellNS 930 [*Nova Scotia Hospital Employees*]

U.F.C.W., Local 312A v. Dominion Tanners, 2001 CarswellAlta 1959 [*Dominion Tanners*]

University List of Authorities

Alberta Government Telephones (1971), 23 L.A.C. 124, 1971 CarswellAlta 150 [*Alberta Government Telephones*]

Canada Trader.Com (2002), 115 L.A.C. (4th) 89, [2002] B.C.C.A.A.A. No. 405 [*Canada Trader*]

CEP, Local 777 v. Imperial Oil Strathcona Refinery (2004), 130 LAC (4th) 239, 2004 CarswellAlta 1855 [*Imperial Oil*]

Denison Mines Ltd. (1992), 28 L.A.C. (4th) 1, [1992] O.L.A.A. No. 100 [*Denison Mines*]

Greater Essex County District School Board, (2014), 246 L.A.C. (4th) 148, 2014 CarswellOnt 14443 [*Greater Essex School Board*]

Horizon Operations (Canada) Ltd., (2000), 93 L.A.C. (4th) 47, [2000] B.C.C.A.A.A. No. 391 [*Horizon Operations*]

Keller Foundations Ltd. and IUOE, Local 870, 249 L.A.C. (4th) 283, 2014 CarswellSask 827 [*Keller Foundations*]

PCL Construction Ltd. and Construction & General Workers, Local 1111, (1982), 8 L.A.C. (3d) 49, [1982] A.G.A.A. No. 1 [*PCL Construction*]

SEIU-West v. Saskatchewan Health Authority, 2020 SKCA 113 [*SEIU-West/Saskatchewan Health Authority*]

SEIU and Saskatchewan Health Authority (Packet), Re, 317 L.A.C. (4th) 1, 2020 CarswellSask 384 [*SEIU/Saskatchewan Health Authority*]

SEIU-West v. Saskatoon Regional Health Authority, 2010 CarswellSask 891, [2010] S.L.A.A. No. 9 [*SEIU-West/Saskatoon Regional Health Authority*]

University of Saskatchewan v. CUPE Local 1975, 2010 CanLII 151328 [*University of Saskatchewan/CUPE*]

Vancouver Hospital v HEU, Local 180 (1996), 1996 CarswellBC 3188, 54 LAC (4th) 35 [*Vancouver Hospital*]

Wire Rope Industries Ltd. v USWA, Local 3910 (1982), 4 LAC (3d) 323, 1982 CarswellBC 2620 [*Wire Rope Industries*]