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Citation: 2013 PSLRB 18

Parliamentary Employment and Staff Relations Act

Before a panel of the Public Service Labour Relations Board

BETWEEN

CANADIAN ASSOCIATION OF PROFESSIONAL EMPLOYEES

Bargaining Agent

and

LIBRARY OF PARLIAMENT

Employer

Indexed as
Canadian Association of Professional Employees v. Library of Parliament

In the matter of a reference made under section 70 of the *Parliamentary Employment and Staff Relations Act*

REASONS FOR DECISION

Before: Stephan J. Bertrand, a panel of the Public Service Labour Relations Board

For the Bargaining Agent: Peter Engelmann and Ben Piper, counsel

For the Employer: Carole Piette and Sarah Lapointe, counsel

Heard at Ottawa, Ontario,
December 3, 2012.

I. Matter referred to the Board

[1] This matter was referred to the Public Service Labour Relations Board ("the Board") by the Canadian Association of Professional Employees (CAPE or "the bargaining agent") pursuant to section 70 of the *Parliamentary Employment and Staff Relations Act*, R.S.C. 1985, c. 33 (2nd Supp.) (*PESRA*) and pertains to an allegation by the CAPE that the Library of Parliament ("the employer") violated section 39 of the *PESRA* by implementing a new policy that changed the terms and conditions of employment of its members after notice to bargain collectively had been filed.

[2] According to the employer, its actions fell squarely within management rights over the organization of its workplace and did not violate any provision of the *PESRA*.

II. Summary of the evidence

[3] The parties provided an agreed statement of facts that I am, for ease of reference, reproducing below:

> ***BACKGROUND***
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> ***1.*** *The Library of Parliament (the "Employer") offers information, reference and research services to Parliamentarians and their staff, parliamentary committees, associations and delegations, and Senior Senate and House of Commons officials and helps parliamentarians inform Canadians about Parliament and the issues before it. Through its services, the Library of Parliament provides essential support to the Parliament of Canada.*
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> ***2.*** *CAPE is the certified bargaining agent of all employees in the Library of Parliament in the Research Officer and Research Assistant Classifications of the Research and Library Services Group and employees of the Parliamentary Budget Officer.*
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> ***3.*** *Provision 38.01 of the Collective Agreement was negotiated between the parties in 2000.*
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> ***CHRONOLOGY OF EVENTS***
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> ***4.*** *The development a Workforce Adjustment Policy ("WFA Policy") had been identified as a goal for the Library of Parliament since as early as March 2008. On or around March to June 2008, there were discussions between*

Paula Ghosh, the Director of Human Resources, Roland Desjardins, Manager, Employee Relations, Amélie Carpentier-Cayen and Jennifer Sweet, about the deficiencies in the current Redeployment of Human Resources Surplus Employees *(the "Guidelines").*

5. *A project was prepared by Mr. Desjardins outlining the current policies concerning layoffs and setting out the need for a new policy.*

6. *In or about January, 2011, a request was made by Ms. Ghosh to the Policy Officer, Guylaine Rondeau, to develop a Policy on Work Force Adjustment.*

7. *Throughout the month of January, 2011, Ms. Rondeau proceeded to perform research and analysis of best practices related to workforce adjustment policies, as implemented by other federal public sector employers.*

8. *Ms. Rondeau further reviewed the Treasury Board Directive on Career Transition for Executives, the Library of Parliament collective agreements and terms and conditions of employment, as well as the existing Guidelines.*

9. *On January 28, 2011 Ms. Ghosh and Ms. Rondeau held a meeting to discuss what should be included in the Policy.*

10. *On February 4, 2011, a first draft of the WFA Policy was submitted to Ms. Ghosh for review.*

11. *Throughout the months of February to August 2011, there were on-going discussions and work on the draft Policy. Several meetings were held to discuss WFA related issues between Ms. Ghosh and the new Director General of Corporate Services, Lynn Potter.*

12. *The collective agreement between CAPE and the Employer expired on June 15, 2011. CAPE submitted a notice to bargain collectively on June 28, 2011.*

13. *On or about August 30, 2011, the Employer and CAPE exchanged bargaining proposals. Neither CAPE nor the Employer addressed any issues related to work force adjustments, the WFA Policy, or any job security issues at the bargaining table.*

14. *Throughout the months of August to September, 2011, various revisions were made to the draft WFA Policy.*

15. *On October 4, 5, 6, 2011, the Employer and CAPE held the first round of collective bargaining.*

16. *On October 18, 19, 20, 2011, the Employer and CAPE held the second round of collective bargaining.*

17. *On or about October 21, 2011, the draft WFA Policy was revised following a meeting between the new Acting Director of Human Resources, Michelle Berry and Ms. Rondeau. Modifications were made to the draft WFA Policy following additional meetings held throughout the months of October 2011 to April 2012.*

18. *On October 31, 2011, the Employer and CAPE held a further round of collective bargaining.*

19. *On or about November 15, 2011, the draft WFA Policy was discussed at a meeting of the Library Executive Committee.*

20. *On or about December 2, 2011, in light of the federal government's planned lay-offs in the federal public sector, Yves Rochon, CAPE Labour Relations Officer, contacted Ms. Berry to inquire about whether the Library of Parliament had any mechanisms in place to address budgetary constraints. Ms. Berry indicated that there were old guidelines in place, but that the Employer was in the process of developing a new WFA Policy. On January 19, 2012, Ms. Berry sent Mr. Rochon the existing guidelines on* Redeployment of Human Resources Surplus Employees. *Ms. Berry assured Mr. Rochon that the Employer would consult CAPE and seek their input on the draft WFA Policy.*

21. *On March 15, 2012, the Employer and CAPE held a further round of collective bargaining.*

22. *On or about March 30, 2012, the Employer sent a communiqué to all employees advising them that it was conducting a Strategic and Operating Review ("SOR"), and that the WFA Policy was being updated.*

23. *On April 4, 2012, CAPE filed a notice of request for arbitration pursuant to section 50 of PESRA.*

24. *On April 25, 2012, the new Director of Human Resources, Shirley Squires, held an introductory meeting with Mr. Rochon and CAPE's local President, Nathalie Pothier,*

in the course of which she advised them of the draft WFA Policy.

25. *On April 26, 2012, Ms. Squires forwarded Ms. Pothier an e-mail to provide CAPE with the draft WFA Policy and an advance copy of a communiqué to staff as a follow-up to the message sent on March 30, 2012 regarding the SOR. This was the first occasion on which any CAPE representative was provided with the draft policy. Ms. Pothier transmitted the Policy to Mr. Rochon from the CAPE national office. This e-mail indicated that the Employer would hold a special consultation with union locals to discuss the draft WFA Policy.*

26. *In the weeks following this meeting, Ms. Squires had discussions with the presidents of the union locals. Among other issues, these discussions included the budget, the SOR and the WFA Policy. Ms. Pothier expressed concerns from her membership about the way in which layoffs from the SOR would be handled, but never provided input into the content of the WFA policy. Unions were encouraged to submit any concerns or suggested changes to the WFA Policy.*

27. *On May 4, 2012, the Employer held a meeting with CAPE and PSAC local Presidents to explain why the Employer had developed a WFA Policy, to replace the prior Guidelines. This discussion clearly explained the imperative of having a clear WFA Policy in place in light of the imminent budget announcements and the inadequacies of the existing Guidelines. In response to inquiries from local Presidents, Ms. Squires confirmed that questions and comments on the draft policy would be welcome, including advice on related issues such as support service providers that unions were aware of from experiences of other federal employers whom they thought provided good service. Ms. Pothier attended this meeting, in order to relay the information given to CAPE's local executive and national office.*

28. *On May 18, 2012, the Employer held a meeting with CAPE to discuss the WFA Policy. In attendance were Ms. Pothier, Mr. Rochon, Ms. Squires, Ms. Berry, Ms. Sweet and Mr. Desjardins. At this meeting, Mr. Rochon provided CAPE's official position that since notice to bargain had been served and the collective bargaining process had not been completed, it would be inappropriate for the*

employer to introduce a new WFA policy. He indicated that it was CAPE's position that the coming into force of such a policy could be deemed to be a violation of section 39 of the Parliamentary Employment and Staff Relations Act *("*PESRA*"). For this reason, CAPE would not participate in consultation regarding the WFA Policy.*

29. *On May 22, 2012, although the negotiations were at an impasse and both parties had filed for arbitration, Carole Piette, the negotiator for the Employer, invited Hélène Paris, the negotiator for CAPE, to discuss the WFA Policy. On advice from legal counsel, Ms. Paris refused to discuss the Policy. She advised Ms. Piette that because notice to bargain had been issued and the issue of work force adjustment had not been raised as an issue by either party in bargaining, a statutory freeze applied and CAPE would not resume bargaining with the employer to initiate discussions on the issue.*

30. *On May 23, 2012, in a meeting with Ms. Pothier, the Employer reiterated that it would proceed with the implementation of the WFA Policy in light of the Strategic and Operating Review exercise and the imminent approval of the Library of Parliament's budget by the Speakers of the Senate and the House of Commons. Although Ms. Pothier was provided with information by the Employer about the WFA Policy, she never provided input or asked questions about the policy in light of CAPE's position that the WFA Policy violated the statutory freeze.*

31. *On May 29, 2012, the WFA Policy was approved by the Parliamentary Librarian and the Director General of Corporate Services.*

32. *On June 8, 2012, Mr. Desjardins, Ms. Berry and Ms. Squires met with both Presidents of local union executives to confirm that the WFA Policy was approved and that they were proceeding with information sessions so that unions would be equipped to answer any questions from members regarding the new policy.*

33. *On June 19, 2012, Ms. Pothier advised Ms. Squires that CAPE would not participate in this training session. In an email sent later that day, Ms. Pothier specified that the CAPE local executive had decided, on the advice of the CAPE national office, that it was ill-advised for CAPE*

representatives to attend training on the WFA policy that the Employer intended to promulgate.

34. *On June 20, 2012, the session was convened for the locals of each union. CAPE did not attend. PSAC, which represents the LS, LT, and CGS groups at the Library, attended and was provided an overview of the WFA Policy and additional clarity regarding the interpretation of the WFA Policy.*

35. *On June 25, 2012, Ms. Squires received correspondence from Mr. Rochon requesting an update regarding the WFA Policy, and reiterating CAPE's objection to the policy. He expressed disappointment with the fact that the Employer appeared to be proceeding with the implementation of this policy, as evidenced by a voicemail received by their negotiator, Ms. Paris, from the Employer's negotiator, Carole Piette, notifying her that the Employer was proceeding with the implementation of the WFA Policy, as well as the invitation sent to Ms. Pothier regarding the information session held earlier in June. In his email, Mr. Rochon asked for a clear statement as to whether the policy was being implemented and, if so, the date when it would be in force.*

36. *On June 28, 2012, the Employer held a meeting with the local Presidents of both unions. The Employer provided an update on the budget approval and the proposed announcement to staff anticipated for July 12, 2012. Union locals were advised that they would receive advance communication and any information related to affected employees in order to jointly coordinate meetings with affected employees, as needed.*

37. *In or about June 2012, the Speaker of the Senate and the Speaker of the House of Commons, who are responsible for the direction and control of the Library of Parliament, provided direction to the Library regarding its Strategic and Operating Review. On or about June 21, 2012, the Speakers approved the Library's SOR proposal, in keeping with measures undertaken across the federal public service and within the Senate and House of Commons administrations. This provided for a reduction of the Library's budget by 2.5%, or approximately $1 million, by the end of the 2014-2015 fiscal year.*

38. *On July 3, 2012, the Employer held a meeting with the PSAC local President regarding a communiqué to be sent to all staff on July 4th. CAPE local President was absent that day. In Ms. Pothier's absence, Ms. Squires spoke with Mr. Rochon. Both unions were provided with an advance e-mail of this communiqué.*

39. *On the same day, Ms. Squires responded to Mr. Rochon's e-mail dated June 25th. In her e-mail, she confirmed that the Policy had been adopted on May 29, 2012. Ms. Squires wrote that continuity of employment remained a goal of the employer, but was not always possible. As such, the new policy offered a range of options. In her view, the new policy was enacted in the interest of employees as they would otherwise only be entitled to the indemnity provided under the Collective Agreement. She further suggested that the new policy did not breach any provisions of the* PESRA *and that it came within the Employer's right to organize its workplace. Finally, Ms. Squires confirmed that, should any CAPE members be affected by the SOR, the Employer would apply the WFA Policy. Ms. Squires concluded the e-mail by indicating that the Library of Parliament was willing to consult with the union about the WFA Policy.*

40. *On July 4, 2012, a communiqué was sent to all staff on the approval of the Library of Parliament's Strategic and Operating Review by the Speakers of the Senate and the House of Commons. This communiqué outlined the details of the budgetary restrictions and the measures that would be taken by the Employer to meet these requirements. The communiqué stated that, "*the Library Executive Committee (LEC), assisted by our extended management team, has considered a great number of options and adopted an approach for implementing SOR that is consistent with the Library's mandate, that reflects the strategic priorities for the organization, and that limits the impact on services that most directly benefit parliamentarians and the public we serve on their behalf.*" Further, the communiqué indicated that up to half the projected 45 positions affected could be eliminated through attrition. The communiqué indicated that most affected employees would be notified by the end of the 2012 calendar year.*

41. *On July 13, 2012, the Employer received an e-mail from Mr. Rochon regarding the communiqué sent out on July 4, 2012 and a town hall meeting held July 5. Mr. Rochon expressed concern regarding the delay involved in identifying which of the up to 45 positions would be affected by budget cuts. He underlined the importance of minimizing uncertainty in the circumstances. Mr. Rochon further reiterated his objection to the WFA Policy and advised the Employer that CAPE would file a complaint regarding the policy if it was not revoked.*

42. *On July 17, Ms. Squires held the regular bi-lat meeting with Ms. Pothier. She reiterated previous communications with CAPE, to the effect that no CAPE employees had been declared affected or been among the four employees whose positions were cut as of the July 4, 2012 communiqué. Ms. Squires took the opportunity to explain that the application of the Policy would be closely monitored, that the Union would be kept informed of any developments, and that unions would be given an opportunity to provide input into any required changes.*

43. *On July 19, 2012, Ms. Squires spoke to Mr. Rochon via telephone, and explained the approach taken in administering WFA notifications to the four PSAC members affected as of July 4, 2012. At this date, no CAPE members were affected.*

44. *On the same day, an e-mail reply was sent to Mr. Rochon and Ms. Pothier to clarify the content of the July 4 communiqué, indicating that while no CAPE employee was affected by the budget cuts to date, the Strategic and Operating Review was ongoing and that most affected employees would be advised by the end of 2012.*

45. *On August 8, 2012, Ms. Squires sent Mr. Rochon a second e-mail in response to his July 19, 2012 correspondence, providing further clarifications on the information provided in the July 4, 2012 communiqué. In her correspondence, Ms. Squires suggested that without the WFA policy, CAPE members would only have right to the indemnity in the Collective Agreement. She confirmed that the WFA Policy would be applied to CAPE members and noted that the Employer remained open to CAPE's feedback on the WFA Policy.*

> ***46.*** *On October 24, 25, 2012, the Employer and CAPE held an informal mediation. The interest arbitration between the parties took place on November 15-16, 2012.*
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> ***47.*** *On November 22, 2012, a communiqué was sent to all staff advising them of the measures that will be taken in response to budgetary reductions at the Library of Parliament. This communiqué outlined the required adjustments to the workforce, including the elimination of thirty six (36) positions rather than the estimated forty-five (45) positions. The communiqué stated, "*we anticipate that the measures indicated above, in combination with those already underway, will allow us to meet our budgetary reduction and reallocation requirements in the context of the Strategic and Operating Review.*" It further emphasizes that despite the current budgetary reductions, the Library's priority is to sustain direct services to clients.*
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> ***48.*** *Since January 2012, a number of other policies or practices have come into effect including the Leave with Income Averaging Policy, the Values and Ethics Code and the Policy on information Security. Please see the complete list attached at Tab 36.*
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> ***49.*** *To date, no positions represented by CAPE have been eliminated, and the Employer has conducted further recruitment for positions within CAPE's bargaining unit. Please see the complete list of competitions since January 2012, attached at Tab 37.*
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> *[Sic throughout]*

[4] In addition to the agreed statement of facts, the parties also submitted documents which further detailed the events in question.

III. Summary of the arguments

A. For the bargaining agent

[5] According to the bargaining agent, the employer undoubtedly violated section 39 of the *PESRA* when it introduced and implemented the new WFA policy. By doing so, the employer unilaterally changed the terms and conditions of employment of the bargaining agent's members, notwithstanding that notice to bargain collectively

had previously been given. This, the bargaining agent argued, is specifically prohibited by section 39.

[6] In essence, the bargaining agent contended that the WFA policy was implemented during what is commonly referred to as a statutory freeze, a fact that is not in dispute, that the policy implemented substantial and fundamental changes to existing terms and conditions of employment and that the employer was not simply conducting business as usual when it implemented the WFA policy, nor could the bargaining agent or its members have reasonably expected its implementation. According to the bargaining agent, the employer was not acting in a routine fashion nor continuing a long-established practice when it introduced the WFA policy. The bargaining agent argued that, since the employer had waited four years before consulting it and only did so after notice to bargain collectively had been given, no reasonable expectation could possibly arise in such circumstances.

[7] In support of these arguments, the bargaining agent referred me to the following authorities: *Treasury Board v. Canadian Air Traffic Control Association*, [1982] 2 F.C. 80 (C.A.), *Professional Association of Foreign Service Officers v. Treasury Board*, 2003 PSSRB 4, *Pacific Coast Terminals Co. Ltd. v. Vancouver Wharves Limited*, 87 di 113 (C.L.R.B.), *The Professional Institute of the Public Service of Canada v. Treasury Board*, PSSRB File No. 148-2-125 (19870211), *Canadian Union of United Brewery, Flour, Cereal Soft Drink and Distillery Workers v. Simpsons Limited*, [1985] OLRB Rep. April 594, 1985 CanLII 949 (ON LRB), *Public Service Alliance of Canada v. National Capital Commission*, PSSRB File Nos. 148-29-218 and 161-29-761 (19951016), *Public Service Alliance of Canada v. BHP Billiton Diamonds Inc.*, 2006 CanLII 62914 (CIRB), *Bremsak v. Professional Institute of the Public Service of Canada*, 2009 PSLRB 103.

B. For the employer

[8] In essence, the employer argued that the implementation of its WFA policy in no way violated section 39 of the *PESRA*. First, it argued that neither the guidelines nor the WFA policy dealt with terms and conditions of employment that could be embodied into a collective agreement. In support of this argument, the employer argued that the fact that arbitral awards cannot deal with layoff procedures or processes under section 55 of the *PESRA* implies that layoff issues may not be embodied in a collective agreement.

[9] The employer also argued that, in the event that I find that the WFA policy does deal with terms and conditions of employment that can be embodied in a collective agreement, no substantial or fundamental change to existing terms and conditions of employment had been introduced through the WFA policy. According to the employer, the policy simply fettered the discretion that was afforded to management in the previous guidelines and imposed mandatory procedures and processes.

[10] Finally, the employer argued that, in the event that the WFA policy was found to deal with terms and conditions of employment that could be embodied into a collective agreement and to have substantially and fundamentally changed the existing terms and conditions of employment, it nevertheless amounted to no more than business as usual and to something that could reasonably have been expected by the bargaining agent. It added that the statutory freeze ought not to be used by the bargaining agent to effectively paralyze the employer's operations during the bargaining process.

[11] In support of these arguments, the employer referred me to the following authorities: *Aliant Telecom Inc.*, [2002] CIRB No. 181, *S.P.A.T.E.A. v. Spar Aerospace Products Ltd.*, [1978] O.L.R.B. Rep. 859, *Canadian Union of United Brewery, Flour, Cereal Soft Drink and Distillery Workers v. Simpsons Limited*, *Public Service Alliance of Canada v. National Capital Commission*, *Public Service Alliance of Canada v. National Capital Commission*, [1996] F.C.J. No. 57 (F.C.A.), *Mohawk Hospital Services Inc.*, [1993] OLRB Rep. September 873, *P.I.P.S.C. v. Canadian Tourism Commission*, 2009 CIRB 456, *Camco Inc. and U.E., Local 550 (Grace)*, (1989) 14 C.L.A.S. 63, *Giant Yellowknife Mines Ltd. and U.S.W.A., Local 4440,* (1990) 17 C.L.A.S. 88, *Toronto District School Board v. Canadian Union of Public Employees, Local 4400*, [2002] O.L.A.A. No. 7, *Canadian Union of Public Employees, Local 4400 v. Toronto District School Board*, [2008] O.L.A.A. No. 5, *TRW Canada Ltd. and T.P.E.A.*, 19 L.A.C. (4th) 136, and *Collins & Aikman and U.S.W.A., Loc. 889L*, 11 L.A.C. (4th) 185.

IV. Reasons

[12] Section 39 of the *PESRA* is designed to promote orderly and fair collective bargaining. It provides as follows:

Continuation in force of terms and conditions

> ***39.*** *Where notice to bargain collectively has been given, any term or condition of employment applicable to the employees in the bargaining unit in respect of which the notice was given that may be embodied in a collective agreement and that was in force on the day the notice was given shall remain in force and shall be observed by the employer affected, the bargaining agent for the bargaining unit and the employees in the bargaining unit, except as otherwise provided by any agreement in that behalf that may be entered into by the employer and the bargaining agent, until such time as*
>
> > *(*a*) a collective agreement has been entered into by the parties and no request for arbitration in respect of that term or condition of employment, or in respect of any term or condition of employment proposed to be substituted therefor, has been made in the manner and within the time prescribed therefor by this Part; or*
> >
> > *(*b*) a request for arbitration in respect of that term or condition of employment, or in respect of any term or condition of employment proposed to be substituted therefor, has been made in accordance with this Part and a collective agreement has been entered into or an arbitral award has been rendered in respect thereof.*

[13] Having carefully reviewed and considered the facts and documentary evidence jointly filed by the parties, I have no hesitation in finding that the WFA policy in question, which in great part clearly strives to ensure that continued employment opportunities are given to employees facing workforce adjustments, does pertain to terms and conditions of employment.

[14] In order for section 39 to apply, those terms and conditions do not necessarily need to be embodied in a collective agreement, as long as they are of the type that may be embodied in a collective agreement. In this case, I believe that the terms and conditions of employment targeted by the WFA policy could be embodied in a collective agreement. Contrary to what was suggested by the employer, the fact that arbitral awards cannot deal with layoff procedures or processes under section 55 of the *PESRA* does not mean that layoff issues may not be embodied by the parties in a collective agreement. In fact, it is quite common to find similar WFA policies incorporated into collective agreements in the public sector.

[15] The terms and conditions in question were previously covered in great part by the guidelines *Redeployment of Human Resources Surplus Employees*. While the employer may have felt that these guidelines were deficient and needed to be

revamped through a new policy, the affected terms and conditions were already in existence when notice to bargain collectively was given. In addition, I note that the first subtitle of the previous guidelines is entitled "policy" and that the language used throughout does not appear to provide much discretion or flexibility. For example, the word "will," as opposed to "may," is used consistently when describing the procedures and processes to be taken by the employer in surplus situations. In addition, I believe that the changes introduced through this new policy were substantial and fundamental. I agree with the bargaining agent's suggestion that the previous guidelines made no specific references to layoffs and appeared to offer stronger protections to employees. The new WFA policy departed from the guidelines' strong protection and in many ways circumscribed these protections. The fact that in March 2008 the employer's Chief of Employee Relations and Classification felt that the employer's existing layoff practices practically made the concept of layoff inexistent and that he recommended that the employer's redeployment "policy" be reviewed and modified (see Tab 2 of Exhibit 1) certainly supports this premise.

[16] Further, I find that the introduction of this policy was not the result of normal business practice or business as usual on the employer's part but rather amounted to a unilateral change of its employees' terms and conditions of employment after notice to bargain had been given by their bargaining agent, something that section 39 is specifically designed to prevent. Simply put, the process of substantially changing the WFA policy was not part of the employer's customary or established practice.

[17] I further reject the employer's argument, based on the OLRB's 1984 decision in *Simpsons Limited*, that it was not prevented from introducing the policy in issue because such a prohibition would effectively paralyze its operations. Assuming that I accept this viewpoint, the evidence I was presented with did not convince me that the employer could not continue to operate within the parameters or the established pattern and to be guided by the existing layoff practices it had previously implemented.

[18] I did not consider the employer's *bona fide* business reasons for introducing its WFA policy to be material in my determination. No matter how valid the reasons for introducing the WFA policy may have been, it still amounted to a violation of section 39 that could not be saved by the "business as usual" or by the "reasonable expectation" exception. In these circumstances, it was simply not practical to infer that

the concerned employees or their bargaining agent should reasonably have expected the implementation of a new WFA policy during the freeze.

[19] As for what constitutes an appropriate remedy in this case, I note that no evidence was led by the parties to suggest that the employer's introduction of this policy was made with any malicious intent whatsoever.

[20] I am also mindful that as a result of a recent arbitral award of this Board, issued on February 1, 2013 (see *Canadian Association of Professional Employees v. Library of Parliament*, 2013 PSLRB 10), the statutory freeze is no longer in effect.

[21] In addition, since none of the employees represented by the bargaining agent were affected by the introduction of this policy, as no position represented by CAPE were eliminated during the applicable freeze period, there are no practical consequences that resulted from this violation. In other words, although, in the employer's estimation, it was in place, the amended WFA policy was simply not applied during the freeze period.

[22] Accordingly, no remedy, other than a declaration that the employer did violate section 39 of the *PESRA* when it implemented its WFA policy on or about July 2012, is warranted in the circumstances. This declaration only applies for the period covered by the statutory freeze, that is, from June 28, 2011 (the date of the notice to bargain collectively) to February 1, 2013 (the date of the arbitral award in *CAPE v. Library of Parliament*, 2013 PSLRB 10). These reasons do not propose to address the issue of whether or not the employer could or should reintroduce its WFA policy at a later date, now that the statutory freeze is no longer in effect.

[23] For all of the above reasons, the Board makes the following order:

(The Order appears on the next page)

V. Order

[24] I declare that the employer violated section 39 of the *PESRA* when it implemented its WFA policy in July 2012.

February 26, 2013.

Stephan J. Bertrand,
a panel of the Public Service
Labour Relations Board