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Public Service Labour Relations and Employment Board Act and *Public Service Labour Relations Act*

Before a panel of the Public Service Labour Relations and Employment Board

BETWEEN

FEDERAL GOVERNMENT DOCKYARD CHARGEHANDS ASSOCIATION

Complainant

and

TREASURY BOARD
(Department of National Defence)

Respondent

Indexed as
Federal Government Dockyard Chargehands Association v. Treasury Board (Department of National Defence)

In the matter of a complaint made under section 190 of the *Public Service Labour Relations Act*

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

For the Complainant: Gordon Forsyth, counsel

For the Respondent: Pierre-Marc Champagne, counsel

Heard at Halifax, Nova Scotia,
March 24 to 26 and June 8, 2015.

I. Complaint before the Board

[1] On August 20, 2014, the Federal Government Dockyard Chargehands Association (FGDCA) filed a complaint with the Public Service Labour Relations Board ("the former Board") under section 190 of the *Public Service Labour Relations Act* (S.C. 2003, c. 22, s. 2; "the *Act*") alleging that the Department of National Defence (DND) violated section 107 of the *Act*. In particular, the FGDCA alleged that DND violated the statutory freeze on terms and conditions of employment imposed by section 107 when it changed its parking policy in June 2014.

[2] The FGDCA is the certified bargaining agent for all employees in the Ship Repair bargaining unit (all chargehands and production supervisors located on the east coast) employed at FMF Cape Scott in Halifax, Nova Scotia. The applicable Ship Repair Group collective agreement expired on March 31, 2014 ("the collective agreement"). The FGDCA gave notice to bargain on December 3, 2013, thus triggering the freeze period imposed by section 107 of the *Act*.

[3] The 65 members of the Ship Repair bargaining unit work at the HMC Dockyard and Stadacona locations, which are both part of CFB Halifax. Before notice to bargain was given, most of those members were permitted to park their personal vehicles at those sites, free of charge, on a first-come first-served basis. They were informed in June 2014 that a monthly parking fee of $45.00 would be implemented at those sites, effective September 1, 2014.

[4] According to DND, its actions fell squarely within its management rights over its operations, continued an established pattern, and did not violate section 107 of the *Act*.

[5] On November 1, 2014, the *Public Service Labour Relations and Employment Board Act* (S.C. 2013, c. 40, s. 365) was proclaimed into force (SI/2014-84), creating the Public Service Labour Relations and Employment Board ("the Board") to replace the former Board as well as the former Public Service Staffing Tribunal. On the same day, the consequential and transitional amendments contained in sections 366 to 466 of the *Economic Action Plan 2013 Act, No. 2* (S.C. 2013, c. 40) also came into force (SI/2014-84). Pursuant to section 393 of the *Economic Action Plan 2013 Act, No. 2*, a proceeding commenced under the *Act* before November 1, 2014, is to be taken up and

continue under and in conformity with the *Act* as it is amended by sections 365 to 470 of the *Economic Action Plan 2013 Act, No. 2*.

[6] For the following reasons, I find that the FGDCA did not establish that DND violated the statutory freeze on the terms and conditions of employment.

II. Summary of the evidence

[7] The evidence presented at the hearing consisted of 12 exhibits, which included a total of 41 documents, and the testimonies of 5 witnesses. The FGDCA called David Thornhill, a work centre supervisor; Richard Cashin, FGDCA national president; and Gerald Wayne Park, FGDCA second vice president. DND called Lieutenant Steve Liddell, base security officer; and Captain Angus Topshee, base commander. The relevant portions of their testimonies and of the documentary evidence filed in support are summarized in the following paragraphs.

[8] On March 29, 2010, DND issued an internal message to all personnel, commonly referred to as a "Halgen" message, about upcoming changes to its parking policy. In that message, DND raised the fact that DND employees and Canadian Forces members would be required to pay fair market value for Crown-provided parking and that studies and appraisals would be carried out. At that time, and for as far back as the witnesses could remember, most personnel at CFB Halifax and all FGDCA members had been allowed to park their personal vehicles on the base's parking lots free of charge. During the hearing, none of the FGDCA witnesses disputed that free parking was considered a privilege and that DND's parking policy ("MARLANTORD 29-9") provided that that privilege could be revoked at any time for military, security, or other DND operational reasons.

[9] On July 5, 2010, DND issued a directive indicating that changes to its parking policy would not be completed by July 1, 2010, as originally contemplated, and that the implementation of further changes to the policy were suspended until all parking-related issues had been taken into account.

[10] On March 4, 2011, DND issued a Halgen message that introduced parking fees for individuals with assigned parking spots and that lowered the seniority requirement to park in the general-scramble free parking lots of Stadacona and the Halifax Dockyard from 15 to 12 years of service.

[11] During a meeting between management and representatives of several bargaining agents, including the FGDCA's president, which was held on February 19, 2013, Captain Topshee provided an overview of the parking situation in Halifax and indicated that the Base Operations Team was working on proposals to reach an optimal solution for parking on the base and that the current system was not working very well.

[12] During a similar meeting, at which the FGDCA's president also attended, held on October 10, 2013, Captain Topshee provided another parking update. He referred to a number of challenges to the current parking arrangements, including the costs related to maintaining parking lots, such as painting lot lines, snow removal, and infrastructure. He specifically mentioned that paid parking would be explored and that a proposal would be provided to the parking committee for review.

[13] DND's directive on parking administration (DOAD 1004-1), initially issued on March 17, 2009, and later modified on November 4, 2013, specifically provides at clause 3.1 as follows:

> *… DND and CF parking policies and instructions must comply with applicable laws and reflect the values promoted by the federal government in the management of programme funds, as well as in regard to the proper use of resources and the sound stewardship of real property and immovables.…*

[14] The directive goes on to provide at clause 6.1 as follows:

> *Charges for worker parking provided by the DND and the CAF must be set at the fair market value for all users. For parking under the control of the DND and the CAF, the local parking authority must implement charges at the fair market value as soon as possible, while providing a 30-day notice to workers of any adjustment to the charges.*

[15] On November 27, 2013, Captain Topshee emailed the representatives of several bargaining agents, including the FGDCA's president; he referred again to the ongoing challenges with the current parking system and indicated that the status quo was not a sustainable option. He also informed them that immediate interim changes to parking as well as long-term options to resolve the parking situation would be discussed on December 2, 2013, at a parking committee meeting.

[16] It must be noted that sometime in 2013, DND mandated ARA Ingram Varner and Associates, an independent accredited property appraiser, to investigate and analyze the market rents for its parking properties and to prepare a report detailing the proposed fair market monthly parking rates for those properties as of December 1, 2013. DND properties were physically inspected between November 23, 2013, and December 6, 2013. The final report was completed and delivered to DND on January 8, 2014. Ironically, it was made to the attention of Mark Freeze of Public Works and Government Services Canada ("PWGSC").

[17] On December 2, 2013, a parking committee meeting was held at 9:00 a.m. Mr. Park represented the FGDCA at that meeting. During the meeting, the attendees were provided with the following background information:

> *In 2010 there were changes to Treasury Board Policy. The Canada Revenue Agency (CRA) had announced that there would no longer be free parking at workplaces. When parking is provided by an employer it is considered a taxable benefit. Approximately four years ago a new DAOD started to be written (published through the VCDS) to provide an updated policy on parking. This DAOD 1004-1 was published on 4 Nov 2013.*
>
> *On an incremental level, the aim of the policy change is to remove any tax liability for our employees currently parking at CFB Halifax. Going forward, there will be studies and business plans done to provide a longer term solution to parking on the Base and ensure that we meet the CRA requirements.*
>
> *One option going forward will be to look at a full pay system. A plan will be developed to look at a third party, PSP, or the Base to manage this option. Another option is to continue with scramble parking with some areas that will be for pay parking. The final plan will take a few months to discuss and develop.*
>
> *It is recognized that no solution will be perfect and there will be issues. Feedback is welcome from committee members in the efforts to come up with a final parking plan.*

[18] At the December 2, 2013, meeting, Lieutenant Liddell reminded those in attendance that while some parking areas had previously been assessed at $65.00 per month and others at $0, fair market values of the sites had to be updated every two years, and that PWGSC was on the verge of completing a new parking appraisal at that moment. He added that the parking solution would be part of a long-term plan

expected to be ready for implementation by the summer of 2014. During the round-table portion of the meeting, it was reiterated that paid parking would be part of the long-term plan that had already been actioned.

[19] Sometime after that meeting, the FGDCA gave DND notice to bargain. Although both the notice and the cover letter are dated and signed on December 2, 2013, the evidence established that DND received it at the earliest on December 3, 2013, at 12:51 p.m. The FGDCA was unable to produce a document confirming that DND received the notice at an earlier date or time.

[20] On December 19, 2013, DND issued a Halgen message detailing further changes to its parking policy, which informed its personnel that the years-of-service requirement to access general parking was being reduced from 12 to 8 and that the objective of further long-term parking solutions that were still being explored was to implement by no later than September 2014 a system that would pay for itself, that would be compliant with government regulations, and that would be fair to all users.

[21] During a parking committee meeting on March 7, 2014, Captain Topshee reminded the attendees that pay parking would be coming to many areas of CFB Halifax where it had not been implemented before, that this option was still being reviewed for Stadacona and the Halifax Dockyard, and that should a full-pay unassigned parking system be implemented, the monthly rate had been established at $45.00. According to the minutes of that meeting, the freeze issue was never raised during any of the discussions. Once again, Mr. Park attended that meeting on the FGDCA's behalf.

[22] On March 28, 2014, the employer issued another Halgen message, which informed its personnel that the years-of-service requirement to access general parking was being further reduced from eight to five years of service, effective May 1, 2014. When he testified, Captain Topshee explained that the parking lots were never full and that reducing the years of service requirement was one way of maximizing the usage of the available parking spaces.

[23] On April 24, 2014, after being briefed on the conclusions of the ARA Ingram Varner and Associates report, Captain Topshee approved a parking decision that recommended a pay parking system for all CFB Halifax parking facilities, including Stadacona and the Halifax Dockyard. The decision to move to a pay parking system by

September 1, 2014, was communicated to the parking committee at a meeting on June 10, 2014.

[24] On June 9, 2014, DND issued a Halgen message informing personnel of the monthly parking rates that would be implemented on September 1, 2014. It specified that a monthly rate of $45.00 would apply to the non-operations zone of the Halifax Dockyard general parking and to Stadacona's general parking.

[25] In an email to all personnel dated June 16, 2014, Captain Topshee made the following statement:

> *As you are undoubtedly aware, there has been considerable discussion related to parking within MARLANT property. We find ourselves in a unique situation at CFB Halifax as a large base in the centre of a thriving city. As a result, a fair market value is deemed to exist at most CFB Halifax locations and, after lengthy review, it has been determined that the fairest and most equitable way of addressing this situation is to expand our current pay parking system to cover all personnel who choose to drive to work and therefore need to park a vehicle.*

[26] The employer's parking policy was officially revised to reflect those changes on July 11, 2014. The new monthly parking rates became effective on September 1, 2014, as had previously been announced.

[27] On August 20, 2014, the FGDCA filed this complaint.

III. Summary of the arguments

A. For the complainant

[28] Some of the FGDCA' arguments focused on the motivation and the soundness of DND's decision to implement a parking fee at the Stadacona and Halifax Dockyard parking lots. For the reasons that follow, I have not included those arguments in this decision. Simply put, they are irrelevant to the issue at hand.

[29] The FGDCA argued that while DND had looked into the issue of parking before the freeze period began, it had not yet decided whether to charge for parking at the Stadacona and Halifax Dockyard sites; nor had it communicated its intention to. It referred me to *Graduate Assistants' Association v. Carleton University*, [1978] 1 Can.

L.R.B.R. 447 at para. 13, and to *Ontario Nurses' Association v. Oakville Lifecare Centre*, [1993] OLRB Rep. October 980 at para. 44.

[30] The FGDCA contended that pondering over what option to take with respect to the parking situation at those sites was not sufficient to establish a business-as-usual or business-as-before defence. Since the decision to change the parking policy had not been made or crystalized before the freeze, the change could not be implemented after the freeze.

[31] As for what the purpose of the freeze period in question ought to be, the FGDCA referred me to *Spar Professional and Allied Technical Employees Association v. Spar Aerospace Limited*, [1991] OLRB Rep. March 399 at para. 41, which states as follows:

…

> *41. The purpose of the freeze provisions was set out succinctly in* A. N. Shaw Restorations Ltd.*, supra, at paragraph 9 as follows:*
>
> It has long been held by this Board that the purpose of the Section 70(1) [now 79(1)] freeze, which maintains the status quo in respect of "wages or any other term or condition of employment or any right, privilege or duty" is to facilitate the bargaining process by providing a fixed point of departure and a period of tranquillity [*sic*] and stability in which to commence and hopefully conclude negotiations for a collective agreement.... The task which confronts the Board in these matters, therefore, is to determine the component elements of the status quo as of the date the statutory freeze took effect and to assess the change or alteration which is complained of against this fixed point of departure.

…

[32] According to the FGDCA, free parking was a term and condition of employment of its members that could not be changed or altered during the freeze period. Since DND's decision to implement a parking fee was communicated to its members for the first time on June 9, 2014, six months after the freeze period had commenced and while it was still in effect, the FGDCA argued that that action contravened section 107 of the *Act* and ought to be remedied by the new Board.

[33] The FGDCA reminded me that section 107 applies not only to those terms and conditions of employment that are embodied in the collective agreement but also to those that are capable of being embodied into it. In support, it referred me to *The Queen in right of Canada as represented by the Treasury Board v. Canadian Air Traffic Control Association*, [1982] 2 F.C. 80 (F.C.A.) at para. 17, and to *Public Service Alliance of Canada v. Treasury Board (Canada Border Services Agency)*, 2013 PSLRB 46 at para. 186.

[34] It added that privileges that could be said to have hardened into rights or into terms and conditions of employment through past usage and custom ought to be protected by the statutory freeze.

[35] The FGDCA maintained that DND was not at liberty to revoke the parking privilege it had extended to its members for years simply because the privilege was something it could properly have withdrawn outside the freeze period or during the course of the collective agreement. In support, it referred me to *Canadian Union of Public Employees v. Scarborough Centenary Hospital Association*, [1978] OLRB Rep. July 679.

[36] The FGDCA argued that since the change DND introduced during the freeze period was not consistent with its past management practices or with a decision that a reasonable employer would have made in the same circumstances, it could not be found consistent with DND's normal management policy, i.e., its usual business, or to some pattern or tradition. In support, it referred me to *United Food and Commercial Workers, Local 503 v. Wal-Mart Canada Corp.*, 2014 SCC 45, and to *CAW-Canada v. Middlesex (County)*, [2002] OLRB Rep. November/December 1020 at para. 26.

[37] Relying on s. 192(1)(a) of the *Act*, the FGDCA sought the following relief: (i) an order declaring that DND failed to comply with section 107 of the *Act*; (ii) an order compelling DND to cease charging parking fees to the FGDCA's members during the freeze period; and (iii) an order requiring DND to reimburse the FGDCA members any and all parking fees collected during the freeze period.

B. <u>For the respondent</u>

[38] The employer argued that maintaining the working relationship between the parties included maintaining the process it had put in place to determine the option that would best address the unsustainable parking situation at CFB Halifax.

[39] According to the employer, the evidence clearly established that the FGDCA was aware of the steps it had taken over the years to tackle the numerous challenges it was facing with respect to parking and that management's intention to alter the status quo had been communicated in many different ways to all stakeholders, including the FGDCA, before the freeze took effect.

[40] Implementing changes to the parking policy was business as usual, as far as the employer was concerned. It pointed to several changes it had made to its parking policy both before and after the freeze and contended that the change announced in June 2014 and implemented in September 2014 was nothing less than the continuance of a process that had been both initiated and communicated before the freeze period.

[41] The employer argued that its right to manage its operations is also captured by the freeze period in that it ought to be permitted to conduct business as usual or business as before the freeze period and to carry on with the practices it had initiated, and in some cases implemented, before the freeze.

[42] According to the employer, the fact that some of its long-standing efforts and plans to address the parking challenges came to fruition shortly after the freeze period came into effect does not automatically imply that section 107 was contravened, especially when its resulting action was consistent with its past management practices.

[43] Arguing that its post-freeze conduct could be characterized as nothing less than business as before, the employer referred to *United Steelworkers of America v. Royalguard Vinyl Co., A Division of Royplast Limited*, [1994] OLRB Rep. January 59 at para. 18, in which the Ontario Labour Relations Board stated the following:

> *18. It was suggested that the "reasonable expectations" approach modified the Board's "business as usual" or "business as before" approach. The reasonable expectations of employees would be considered in assisting the Board to understand what constituted the employer's "business as before, or vice versa. The "business as before" approach was*

> *described in* Spar Aerospace Products Limited, supra, *at paragraph 23:*
>
> > *23. The "business as before" approach does not mean that an employer cannot continue to manage its operation. What it does mean is simply that an employer must continue to run the operation according to the pattern established before the circumstances giving rise to the freeze have occurred, providing a clearly identifiable point of departure for bargaining and eliminating the chilling effect that a withdrawal of expected benefits would have upon the representation of the employees by a trade union. The right to manage is maintained, qualified only by the condition that the operation be managed as before. Such a condition, in our view, cannot be regarded as unduly onerous in light of the fact that it is management which is in the best position to know whether it is in fact carrying out business as before. This is an approach, moreover, that cuts both ways, in some cases preserving an entrenched employer right and in other cases preserving an established employee benefit.*

[44] The employer maintained that at all times, both before or during the freeze, it continued to manage its operations as before. Therefore, it cannot be said that it contravened the statutory freeze.

IV. Reasons

[45] The question that must be answered is whether the change to the employer's parking policy, which came into effect on September 1, 2014, amounted to a violation of section 107 of the *Act* that could not be saved by the "business as before" or the "reasonable expectation" exception.

[46] Section 107 of the *Act*, often cited as a "freeze period" provision, stipulates as follows:

> ***107*** *Unless the parties otherwise agree, and subject to subsection 125(1), after the notice to bargain collectively is given, each term and condition of employment applicable to the employees in the bargaining unit to which the notice relates that may be included in a collective agreement, and that is in force on the day on which the notice is given, is continued in force and must be observed by the employer, the bargaining agent for the bargaining unit and the employees in the bargaining unit until a collective agreement is entered into in respect of that term or condition or*

> ***(a)*** *if the process for the resolution of a dispute is arbitration, an arbitral award is rendered; or*
>
> ***(b)*** *if the process for the resolution of a dispute is conciliation, a strike could be declared or authorized without contravening subsection 194(1).*

[47] Several labour relations boards have interpreted the purpose of a freeze period, such as the one contemplated by section 107. At paragraph 8 of *Canadian Union of Public Employees*, the Ontario Labour Relations Board described it as purporting to do the following:

> *… maintain the status quo of the employment relationship so that the union is given an opportunity to enter negotiations and bargain for a collective agreement from a fixed point of departure and in an atmosphere of industrial relations security that is undisturbed by alterations in conditions of employment.…*

[48] However, the jurisprudence has established that a change to a condition of employment that is not contrary to a past pattern and that constitutes no more than "business as before" on the part of an employer will not be found to violate such a freeze period (see *Spar Aerospace Limited*). A similar approach has been applied when the employees ought to have reasonably expected such a change.

[49] A privilege has often been found to form part of the status quo that ought to be maintained throughout the freeze, as it can be akin to a term or condition of employment that is capable of being embodied in the collective agreement. The employer did not challenge that proposition.

[50] While I do not disagree with the FGDCA's suggestion that an employer that wishes to revoke a privilege that may reasonably be expected to continue must do so, or at the very least communicate its intention to, before the freeze period starts, it follows that when an employer's past conduct makes such an expectation unreasonable, and when it has warned the other party of its intention to alter the privilege in question before the freeze period starts, then such a privilege ought not to be captured by the status quo.

[51] In this case, the evidence established that alterations to the employer's parking policy had been made before the freeze, that further alterations were looming, in the

form of either a taxable benefit or a monthly fee, and that the parking status quo was no longer a viable option.

[52] The evidence also established that the employer's intention to depart from the status quo and to alter its parking policy was communicated before the freeze period began. Simply put, the wheels were in motion before the freeze took effect on December 3, 2013. The following examples illustrate that point:

- the introduction of parking fees for individuals that had assigned parking spots and the lowering of the seniority requirement to park in the general-scramble free parking lots of Stadacona and the Halifax Dockyard in March 2011;
- a parking update that referred to the need to find an optimal solution for a parking system that was not working very well in February 2013;
- another parking update that referred to cost-related parking challenges and the consideration of paid parking in October 2013;
- Captain Topshee's email, which suggested that the status quo was not a sustainable option and that immediate interim changes to parking as well as long-term options to resolve the parking situation were in the works in November 2013;
- the fact that an independent accredited property appraiser had been mandated to prepare a report detailing the proposed fair market monthly parking rates as of December 1, 2013; and
- the employer's December 2, 2013, statement that it was considering the option of implementing a full-pay system in all its parking facilities and that the parking solution would be part of a long-term plan expected to be ready for implementation by the summer of 2014.

[53] This case bears no resemblance to the situation in *The Hydro Electric Commission of the City of Mississauga*, 1977 OLRB Rep. Dec. 821, cited in *Canadian Union of Public Employees,* in which the employer provided commissioned vehicles to employees during weekends for years and revoked the privilege, without warning, during a freeze.

[54] As outlined earlier, the employer in this case had initiated a process to address parking challenges; it had implemented some changes to its parking policy and was on

the verge of implementing more, all of which the FGDCA knew about. The employer had mandated an independent accredited appraiser to investigate and analyze the market rents for its parking properties and to prepare a report detailing the proposed fair market rates of those properties as of December 1, 2013 (before notice to bargain was given). The employer's properties were physically inspected between November 23, 2013 (before notice to bargain was given), and December 6, 2013 (shortly after notice to bargain was given).

[55] My role is not to second-guess the validity of the report, and I have no reason to doubt the appropriateness of the appraiser's methods, procedures, and investigations. The issue before me is not whether the employer's decision to alter its parking policy and to charge a monthly parking fee was well motivated, legitimate, or sound. Nothing in the collective agreement prevented the employer from charging a parking fee on government-owned properties before or after the freeze.

[56] The real issue is whether the employer could implement a change to its parking policy when it did, during the freeze, keeping in mind the provisions of section 107 of *Act* and the applicable jurisprudence. If I conclude that it could, then there is no need to look further into how it determined the fair market monthly parking rate for its parking facilities. For the purpose of this exercise, it matters not that the change implemented by the employer was potentially unreasonable, arbitrary, or ill conceived, which I do not believe it was, in any event.

[57] In this case the employer's actions before the freeze made it impossible to argue that the parking privilege could reasonably be said to have hardened into a right or into a term and condition of employment.

[58] The pattern that the employer established before the freeze did not suggest that free parking was an acquired right that could be expected to continue. Rather, the pattern suggested that a process aimed at altering the parking policy had been initiated, that some changes had already been implemented, and that others were coming. It was a work in progress.

[59] Given the employer's pre-freeze warnings that options such as taxable benefits and parking fees were being considered and that the status quo was no longer being considered as a sustainable option, I fail to see how free parking could be said to be the clearly identifiable point of departure for bargaining when the freeze took effect.

Whether or not the taxable benefit or the parking fee option was implemented, a financial consequence would have resulted, which would have altered the parking policy and ended the status quo. Therefore, this case bears no resemblance to *Ontario Nurses' Association*, in which the employer acted in a manner that suggested that the status quo would be maintained.

[60] In this case, the employer's practices shortly before the freeze took effect were a moving target, as there were clear indications that it was in the process of altering the parking arrangements and that concrete changes to its parking policy were on the verge of being implemented. It even went so far as to warn the FGDCA about the exact timing of this alteration by stating that the changes would be announced in the summer of 2014, which turned out to be the case.

[61] Those facts cannot be ignored when attempting to determine what the reasonable expectation of the bargaining unit members ought to have been in the circumstances. The employer's actions in the months leading to the freeze period would certainly have cast serious doubts on the validity of any expectations that it would continue to offer free parking in the not-so-distant future. In my view, the employer's pre-freeze business practice was illustrative of a pattern of modifying its parking policy that could be carried into the freeze period.

[62] Having carefully considered all the evidence presented at the hearing, I have no hesitation concluding that the changes that the employer made to its parking policy during the freeze period continued a process it had initiated and communicated before the freeze. In my view, the $45.00 monthly parking fee was implemented in accordance with a methodology and with considerations established before the freeze took effect. By continuing and finalizing a process it had initiated months before the freeze period, it can be said that the employer was continuing to manage its operations according to a pattern it had established before, hence conducting business as before (see *Royalguard Vinyl Co.*, at para. 18).

[63] In my view, the employer would have handled that change in the same way had notice to bargain not been given, as it represented a reasonable and probable outcome to the transparent process it had initiated several months prior (see *United Food and Commercial Workers*, at para. 57). The change to the employer's parking policy was not contrary to the past pattern.

[64] Since nothing in the collective agreement prohibited the employer from amending its parking policy before notice to bargain was given, and in light of the process it initiated involving that policy before notice was given, it must follow that nothing prevented such an amendment after the freeze took effect. The employer could continue to exercise its right to manage its parking spaces, including who could park where, how parking was allocated, how seniority was considered when allocating parking spaces, and whether to charge for parking, as it had done in the past, which amounted to nothing less than business as before.

[65] Finally, I note that the FGDCA did not attempt to argue estoppel at the hearing and did not lead any evidence suggesting that any of its members had relied to their detriment on the fact that parking at Stadacona or the Halifax Dockyard was to continue to be free of charge.

[66] After a thorough review of the evidence and the jurisprudence, the Board finds that the FGDCA failed to meet its onus of proof of establishing that DND violated section 107 of the *Act*.

[67] While the parties cited many cases in support of their arguments, and while I have read and considered each one, I have chosen to cite only those that are of particular significance to this case.

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

(The Order appears on the next page)

V. Order

[69] The complaint is dismissed.

[70] I order file 561-02-709 closed.

March 29, 2016.

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