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File: 566-02-43818

Citation: 2025 FPSLREB 3

Federal Public Sector Labour Relations and Employment Board Act and *Federal Public Sector Labour Relations Act*

Before a panel of the Federal Public Sector Labour Relations and Employment Board

BETWEEN

RENUKA VERMA

Grievor

and

ROYAL CANADIAN MOUNTED POLICE

Employer

Indexed as
Verma v. Royal Canadian Mounted Police

In the matter of an individual grievance referred to adjudication

Before: Chantal Homier-Nehmé, a panel of the Federal Public Sector Labour Relations and Employment Board

For the Grievor: Nicolas Brunette-D'Souza and Matthew Létourneau, counsel

For the Employer: Lauren Benoit, counsel

Heard by videoconference,
February 9, 13, and 14, 2024.
(Written submissions filed March 13 and 22, 2024.)

REASONS FOR DECISION

I. Individual grievance referred to adjudication before the Board

[1] Renuka Verma ("the grievor") occupied a financial management advisor position classified at the FI-03 group and level within the "K" Division of the Royal Canadian Mounted Police (RCMP or "the employer") in Edmonton, Alberta. On August 7, 2019, she was informed that her position was subject to a workforce adjustment due to a lack of work ("the options letter").

[2] The options letter stated that she would not be provided with a guarantee of a reasonable job offer ("GRJO"). The deputy head declared her an opting employee, and she was provided with three options to choose from, in accordance with section 6.4.1 of the National Joint Council's (NJC) *Work Force Adjustment Directive* ("the WFA Directive").

[3] She had 120 days from the date of the letter to select an option. The opting period was from August 7, 2019, to December 4, 2019 ("the opting period"). The following three options were offered to her: Option A - a 12-month surplus priority period, Option B - a "Transition Support Measure" (TSM), and Option C - an "Education Allowance".

[4] She claimed that she was entitled to priority surplus status under the WFA Directive from August 7, 2019, until her expected lay-off date on December 4, 2019. The employer disagreed. She submitted that the employer refused to acknowledge her priority surplus status and that it delayed responding accurately to her questions about her options, right up to the last day of the opting period.

[5] Furthermore, she advanced that the employer expressly did not recognize her priority status during the search for a reasonable job offer during the opting period. She claims that she lost time and opportunities and that she felt pushed out of her job, with no opportunity to remain employed. On December 4, 2019, she selected Option C.

[6] On January 2, 2020, she filed a grievance under the Financial Management (FI) group collective agreement between the Treasury Board and the Association of Canadian Financial Officers ("the bargaining agent") that expired on November 6, 2022 ("the collective agreement").

[7] She resigned from her position on January 23, 2020.

[8] On May 4, 2021, the grievance was referred to the NJC's Workforce Adjustment Committee. Its Executive Committee denied the grievance and determined that the grievor was an opting employee under the WFA Directive and that the surplus priority status as prescribed by the WFA Directive is available only when an opting employee chooses Option A or if a deputy head provides a GRJO. In the absence of a GRJO, a surplus priority status can begin only once an option selection has been made. The WFA Directive does not provide any other priority statuses within the opting period.

[9] She referred her grievance to adjudication on November 15, 2021.

[10] For the reasons that follow, I agree with the NJC Executive Committee's conclusions and must deny the grievance.

II. Summary of the evidence

[11] The parties submitted an agreed statement of facts. This is a summary of the relevant facts and the oral evidence that led to the filing of the grievance.

A. Background

[12] The grievor holds a Bachelor of Education and a Bachelor of Arts in Mathematics from Delhi University in Delhi, India. She holds a partial MBA degree from Heriot Watt University in Edinburgh, Scotland, as well as an advanced certificate in business administration in accounting from Red River Community College in Winnipeg, Manitoba. In addition, she holds a certificate in adult continuing education from the University of Manitoba in Winnipeg.

[13] She began working for the federal public service in 1988. Throughout her employment, she held several positions, including the head of corporate services for the northern region of the legal surveys division of Natural Resources Canada and a deputy warden, finance and administration, position with a territorial government. She began working for the employer on March 11, 2002.

[14] On July 17, 2019, Kyle Adam, Director of the Northwest Region, advised her verbally that she would be subject to a workforce adjustment due to a lack of work. Nena Publicover, Team Leader, Public Service Human Resources, and Nicolas Brunette-D'Souza, the grievor's representative, were present during that exchange.

[15] As of July 18, 2019, the grievor was in contact with Ms. Publicover to ask questions about her options. She emailed Ms. Publicover questions on the options listed at sections 6.4.1(a), (b), and (c) of the WFA Directive.

[16] Section 6.4.1 of the WFA Directive provides as follows:

> *6.4 Options*
>
> *6.4.1 Only opting employees who are not in receipt of the guarantee of a reasonable job offer from the deputy head will have access to the choice of options below:*
>
> *(a) Option A:*
>
> *(i) Twelve-month surplus priority period in which to secure a reasonable job offer. Should a reasonable job offer not be made within a period of twelve months, the employee will be laid off in accordance with the Public Service Employment Act. Employees who choose or are deemed to have chosen this option are surplus employees.*
>
> *(ii) At the request of the employee, this twelve-month surplus priority period shall be extended by the unused portion of the 120-day opting period referred to in subsection 6.1.2 which remains once the employee has selected in writing Option 6.4.1(a).*
>
> *(iii) When a surplus employee who has chosen, or who is deemed to have chosen, option 6.4.1(a) offers to resign before the end of the twelve-month surplus priority period, the deputy head may authorize a lump-sum payment equal to the surplus employee's pay for the substantive position for the balance of the surplus period, up to a maximum of six months. The amount of the lump-sum payment for the pay in lieu cannot exceed the maximum of that which he or she would have received had they chosen Option 6.4.1(b), the TSM.*
>
> *(iv) Departments or organizations will make every reasonable effort to market a surplus employee during the employee's surplus period within his or her preferred area of mobility.*
>
> *Or*
>
> *(b) Option B:*
>
> *TSM is a cash payment, based on the employee's years of service in the public service (see Appendix C) made to an opting employee. Employees choosing this option must resign but will be considered to be laid off for purposes of severance pay. The TSM shall be paid in one or two lump-sum amounts over a maximum two-year period.*
>
> *Or*
>
> *(c) Option C:*

> *Education Allowance is a TSM (see Option 6.4.1(b)) plus an amount of not more than $17,000 for reimbursement of receipted expenses of an opting employee for tuition from a learning institution and costs of books and relevant equipment. Employees choosing Option 6.4.1(c) could either:*
>
> *(i) resign from the core public administration but be considered to be laid off for severance pay purposes on the date of their departure. The TSM shall be paid in one or two lump-sum amounts over a maximum two-year period; or*
>
> *(ii) delay their departure date and go on leave without pay for a maximum period of two years, while attending the learning institution. The TSM shall be paid in one or two lump-sum amounts over a maximum two-year period. During this period, employees could continue to be public service benefit plan members and contribute both employer and employee share to the benefits plans and the Public Service Superannuation Plan. At the end of the two-year leave without pay period, unless the employee has found alternate employment in the core public administration, the employee will be laid off in accordance with the Public Service Employment Act.*

[17] The grievor indicated that she read her options and that she asked specific questions about each one. She took notes from her conversation with Ms. Publicover directly on the email that she had sent to Ms. Publicover. She wanted to know the type of work that she would be doing and to whom she would report to if she selected Option A and to Option C as to the types of courses that would be covered, if a real estate course would qualify, and if travel expenses were covered. She also inquired about Options B and the TSM payment. She wanted to know if it could be taken over two years.

[18] Ms. Publicover recalled a telephone conversation with the grievor on July 31, 2019, and agreed that she had not answered two questions: the reimbursement of travel expenses for courses, and whether a real estate course would qualify.

[19] On August 7, 2019, the employer gave the grievor the options letter, which referenced an enclosed form (“the option-selection form”). The grievor maintained throughout her testimony that no form was enclosed with the options letter. The employer disagrees. I will return to this later.

[20] The options letter mirrored section 6.4 of the WFA Directive and provided further explanations on each option. The key portions provided as follows:

…

> *It has been determined that the Commissioner cannot provide you with a guarantee of reasonable job offer. As a result, you will have 120 calendar days from the date of this letter to consider and decide on one of the three options provided for in the Work Force Adjustment Directive (WFAD).*
>
> *… Once you have chosen an option you will not be able to change your decision. Furthermore, management will establish the departure date if you choose Options B or C. Please note that if you fail to select an option by December 5, 2019, you will be deemed to have selected Option A.*

…

[21] Ms. Publicover testified that Mr. Adam went through the options letter and its contents in detail. The grievor was informed that she would not receive a GRJO and that instead, she would be offered options. Mr. Adam led the meeting, and the grievor was presented with the option-selection form, a contact list for support such as the Pension Centre and the Pay Centre, a copy of the WFA Directive, and the guide to priority administration. Managers were responsible for answering all questions about the option-selection form and the letter.

[22] The second paragraph of the options letter indicated this: "… you have been identified for lay-off and your services will not be required beyond August 21, 2019." The grievor understood this to mean that she was a surplus employee. In addition, because the employer could not offer her a GRJO, she was entitled to options, with 120 days to select one.

[23] The grievor raised this with the employer several times. Its response confused her more. She testified that she had done some research and had found out that a laid-off employee is a surplus employee with priority rights. In her view, she was a surplus employee, and she was also given three options to select from.

[24] In cross-examination, the grievor was asked about the basis of her grievance. She agreed that based on her bargaining agent's opening statement and her oral evidence, her claim pertained to surplus priority status during the opting period. She stated that she had surplus priority status from August 7 to 21, 2019, and that she was not properly informed of her rights. She agreed that the options letter did not declare her a surplus employee. It did not use the word "surplus" employee. Nowhere did it say that she was a surplus employee. She did not receive anything else in writing

declaring her a surplus employee. She did not make the distinction between a surplus employee and a surplus position.

B. The opting period

[25] The opting period was between August 7, 2019, and December 5, 2019. During that time, the grievor made efforts to find a position within the federal public service. Her efforts included one position at the EX-01 group and level and one position at the FI-03 group and level. In July 2019, she applied to a selection process to create an EX-01 pool. The employer did not treat her as a surplus employee as defined in the WFA Directive.

[26] On August 13, 2019, the grievor reached out by email to John Ferguson, Assistant Commissioner, Criminal Operations Officer, to inquire about a position at the EX-01 group and level.

[27] On August 20 and September 12, 2019, the grievor emailed Ms. Publicover, to obtain an update to her questions at the August 7, 2019, meeting, and requested the option-selection form.

[28] From August 20 to November 29, 2019, the grievor exchanged emails with Mr. Ferguson about the EX-01 position. At his request, she sent him a copy of the options letter.

[29] On September 12, 2019, the grievor wrote to Ms. Publicover. She had several questions, and she still had not yet received the options-selection form. These answers were important to her, to make an informed decision. She wanted the options-selection form, to read it. She tried to find it on the Internet but was unable to. She repeatedly asked Ms. Publicover for it, to her recollection at least four times.

[30] On September 17, 2019, the grievor applied for an FI-03 position at Employment and Social Development Canada (ESDC). She was screened into the process but was not appointed to the position. Ms. Publicover and the employer did not help her in this appointment process.

[31] On September 20, 2019, the grievor's bargaining agent representative wrote to Ms. Publicover, to follow up on a series of questions that the grievor had. He indicated that these questions were weighing heavily on the grievor, especially considering that

the deadline to select an option was looming. The bargaining agent followed up on September 25 and 30, 2019. In the September 30, 2019, email, the representative inquired as to why the questions pertaining to course reimbursement and travel expenses remained unanswered since July and requested a timeline for a response.

[32] On October 11, 2019, the grievor informed Ms. Publicover that she had applied for an FI-03 position with ESDC. Ms. Publicover informed her that she should not identify herself as a priority appointment. She advised the grievor that if she selected Option A, the 12-month surplus entitlement, she would then be considered a person with a priority entitlement within the public service. The grievor stated that she understood that she was a surplus employee when she received the August 7, 2019, letter. Ms. Publicover responded that the grievor was an opting employee and directed her to the relevant portions of the WFA Directive, including Appendix D.

[33] On November 13, 2019, the grievor informed Ms. Publicover that she had not selected an option and that she still had not received the option-selection form. The grievor stated that she had been asking for the option-selection form since August 7, 2019. Ms. Publicover responded that the form was sent with the options letter and that she would resend the form. The grievor indicated that this was her fifth written request since receiving the options letter.

[34] On the same day, the grievor emailed Ms. Publicover, asking what would happen to any TSM payments she received if she chose Option B while continuing with the appointment processes. Ms. Publicover responded that she would have to pay back any TSM payment that she received. The grievor asked several follow-up questions, and Ms. Publicover answered as best she could. For the grievor's remaining questions, Ms. Publicover referred her to the Pay Centre and her bargaining agent representative.

C. The options form was received on November 21, 2019

[35] The grievor confirmed receiving the option-selection form for the first time on November 21, 2019. It indicated December 5, 2019, as the deadline to select an option and to return the form to the employer. If she did not select an option by that deadline, she would be deemed to have selected Option A.

[36] On November 26, 2019, the grievor wrote to Ms. Publicover with questions about priority entitlements. The grievor copied and pasted an excerpt that stated that an

organization's own surplus employees who had been informed by their deputy head that their services were no longer required but had not been laid off from the public service had a statutory priority. The grievor and Ms. Publicover had a discussion. The grievor followed up on their conversation with an email indicating that her understanding was that she was a surplus employee.

[37] On November 28, 2019, the grievor emailed Mr. Ferguson, requesting to be considered for the EX-01 position as a reasonable job offer under the WFA Directive. It constituted a promotion. On the same day, Mr. Ferguson and Naomi Harasym, Manager, Public Service Human Resources, K & G Divisions, and Ms. Publicover's manager, discussed the grievor's status. In his personal notes, he acknowledged that the grievor had been deemed surplus. Specifically, he wrote this: "Spoke [with] Naomi re: Renuka Verma. Earlier this date Renuka sent me an email. Renuka needs to make a decision by December 4th related to her position/status in the RCMP. **Her job is deemed as surplus**. She has been given 3 options" [emphasis added]. He testified that he was mistaken and that it was not the grievor that was deemed surplus but rather her position.

[38] Mr. Ferguson recalled that the grievor told him that she felt coerced. After his meeting with her, he contacted Human Resources because he wanted to confirm that he understood her status. She felt that he had the authority to appoint her to the EX-01 position, which was at a higher level. Ms. Harasym stated that the grievor did not qualify for the EX-01 position and that although there are circumstances in which an employee can be moved to a higher-level position, in this case, he could not. The grievor did not have priority status, and she had not selected Option A. She had to be qualified for the EX-01 position. She did not qualify. The November 29, 2019, email exchange confirmed again that she was an opting employee.

[39] The grievor testified that she was not treated as a surplus employee in this appointment process or any other process after that. She recalled talking to Mr. Ferguson about the possibility of receiving retraining to qualify for the EX-01 position, but she was also denied that. Her understanding was that she was entitled to retraining because her position was work-force-adjusted. No one offered her retraining as an option.

[40] On December 3, 2019, Ms. Harasym responded to the grievor's email and indicated that under the WFA Directive, she was an opting employee, not a surplus employee, and provided her with links to relevant resources.

[41] On December 4, 2019, the grievor wrote to Ms. Harasym, stating that Human Resources had not answered her questions and that she was having great difficulty understanding the definition of "surplus employee". She asked additional questions and stated that she did not want anymore links or letters, only yes-or-no answers.

[42] On the same day, Ms. Publicover responded to the grievor's questions and confirmed that during the opting period, the employer continued to look for alternative employment opportunities at the grievor's substantive level or equivalent. Ms. Publicover offered to have a call with Mr. Adam, the grievor, and her bargaining agent representative before the grievor selected an option.

[43] On December 4, 2019, the grievor responded that her questions remained unanswered and that the delay receiving answers was causing her additional stress. She filled out the form and selected Option C(i), the Education Allowance, and stated that the limited information that she received, which resulted from continued delays, was a key component in choosing this option. She specified a resignation date of January 23, 2020. She testified that she made that selection under duress. She stated that she made a decision that she did not want to make.

[44] In cross-examination, the grievor confirmed that she wanted to remain working with the federal public service. She knew if she selected Option A, she would have surplus priority entitlement within her own and other organizations. She chose Option C because she felt that she had no other choice; the employer was not helping her when positions were available, and she received no counselling. If it would not help her during the opting period, then it would not help her later either. She did not ask for help for her résumé because no one offered her this option.

[45] In further cross-examination, she stated that she selected Option C(i), even though she understood that the second option would have allowed her to remain on leave without pay for two years with one year of priority status. She stated that she had a hard time understanding the difference between Options C(i) and (ii). She is single and has no other income. She thought that selecting this option would give her some financial help and that she could try finding employment. As for the TSM option

and the Education Allowance, she wanted to know if she selected that option and purchased equipment, how much would she have to repay. The employer could not answer if taking courses to become a real estate agent would qualify to be reimbursed, and she wanted to know if travel expenses for taking a course would be reimbursed. The employer never answered her questions. She did not recall if she asked for help with interviews or if she requested information about alternation.

[46] On December 6, 2024, the employer approved the grievor's selection form and sent her additional information about her selection of Option C(i).

[47] On December 18, 2019, the grievor wrote to Ms. Publicover, asking what efforts the employer had made during her opting period to look for alternative opportunities. The grievor asserted that she had not been given correct information as to the terms and interpretation of "surplus employee", "surplus status", and "surplus priority".

[48] The grievor's resignation became effective on January 23, 2020. She received a TSM payment; however, she did not request or receive any payment on account of educational expenses. In cross-examination, she recognized that that date was beneficial to her financially. She agreed that she received the TSM payment in the amount of $100 000, severance pay, unused vacation credits, and some payment for damages related to the Phoenix pay system.

[49] Following her resignation, the grievor applied to other positions, but all the federal public service positions were internal. She subscribed to the Job Alerts service and to the Indeed website. As of the hearing, the grievor was unemployed since her resignation date.

D. The employer's efforts to find employment opportunities

[50] The grievor stated that the employer did not help her find a job, and when she self-referred to positions, it did not assist her. She felt that it wanted to get rid of her. While her position was work-force-adjusted, there were FIs appointed in the Winnipeg and Edmonton offices. She claimed that the director of that region recognized that the financial work could be done from anywhere, geographically. She had the competencies for those positions. In her view, if the employer determined that she did not have the competencies, then she was entitled to retraining.

[51] There was an unadvertised appointment process for an FI-04 position in Edmonton, and the individual appointed to that position was initially an FI-03. The grievor claimed that RCMP personnel told her that this individual was transferred into that position to avoid a work-force-adjustment situation.

[52] She stated that no one took the time to explain the different options to her or the impact of selecting a specific option. She stated that she was never told that she had to select Option A to have a priority of appointment. From her perspective, there was a benefit to being a priority because it was a statutory priority for her, for her home organization. If a position was advertised and available, or future vacancies opened at-level or below-level, then the employer should have made her an offer. For a position at a higher level, she would have had to self-refer. She would have had to meet only the essential qualifications, and nothing else. Departments are to assess the essential qualifications in about 60 days and consider regular priorities before they interview and anyone else applies. No one explained to her the priority directive, the guides, and the regulations.

[53] She does not recall receiving any counselling, as required by section 1.1.36 of the WFA Directive. No one explained to her the employee's rights and obligations in the WFA Directive. She recalls only receiving the options letter dated August 7, 2024, and being notified that if she felt aggrieved, she could file a grievance.

[54] The grievor did not recall receiving any information on alternation options. There was no joint workforce adjustment committee as required by section 1.1.3. She recalled only being told that she was not a surplus employee and that she could not be offered a position. There was no discussion on relocation or retraining. When she spoke to Mr. Ferguson and told him that the WFA Directive allows for retraining, he told her that it was not applicable in her case. She was not provided with any information about the TSM payment or the Education Allowance. She asked many questions on them; for at least a couple of questions, she did not receive answers.

[55] When the grievor received her options letter, she had 31 years of service. She was hoping that she would find a job at her level or higher, to maximize her pension. Her pension represented 70% of her best 5 years' salary. Her benefits were also negatively impacted. Because she retired earlier than expected, she lost 2% per year of service. She had planned to retire in January 2024.

[56] Ms. Publicover stated that throughout the opting period, she looked for alternative employment opportunities for the grievor. She kept an eye out for FI-03 positions as well as AS-07 positions, which are equivalent. In her role, she belongs to a community of labour relations professionals from different departments and of human resources professionals. They attend meetings and exchange information on upcoming vacancies. She requested to be kept informed of positions becoming available because the RCMP had opting employees that it was attempting to retain. But during the opting period, she was not aware of available positions for the grievor that were at-level or lower.

[57] Ms. Publicover explained that had the grievor chosen Option A, priority status, she could have self-referred to the higher-level position. If she met the merit criteria and the essential qualifications, she would have had priority status and would have been considered as such. During the opting period, she continued to try to find alternate employment for the grievor, but no opportunities came up. She was always looking in the background for any opportunities in other departments.

[58] Ms. Publicover recalled the grievor's email dated December 18, 2019, in which she requested details pertaining to Ms. Publicover's efforts to find alternate opportunities for her. Unfortunately, Ms. Publicover no longer had access to her notebooks or the minutes of the community-access meetings. She believes that the grievor was confused between the terms and interpretation of "surplus employee", "surplus status", and "surplus priority". She always told the grievor that she was an opting employee without a GRJO. To be a surplus employee, the deputy head must declare the employee a surplus employee, or the opting employee can select Option A. Ms. Harasym and Ms. Publicover repeatedly told the grievor that she was an opting employee and that to be considered a priority, she had to have selected Option A. Ms. Publicover believed that the grievor simply refused to accept her explanations.

E. The impact on the grievor

[59] The grievor felt ignored and neglected throughout the opting period. The lack of information and of answers to her questions made it an extremely difficult time for her. The entire opting period and how she was treated impacted her well-being. She was not able to sleep, and she felt that she was alone and that there was no one to help her in the process.

[60] The grievor explained that had she felt that the employer had treated her equitably, she would have selected Option A, surplus priority status. She had financial commitments for which she had to work longer, and she wanted to finish her 35 years, to receive the maximum pension. She selected Option C, but she never used it. She selected it without having received all the information; even on the last day of the opting period, she had not received the answers to all her questions. Throughout, she felt coerced. Her self-esteem and self-confidence were low.

III. Issues

[61] This matter raises the following three issues:

> 1) Does the Federal Public Sector Labour Relations and Employment Board ("the Board") have jurisdiction to interpret and apply the provisions of the WFA Directive that pertain to surplus status, surplus priority, and surplus employee?
> 2) If so, what was the grievor's status under the WFA Directive?
> 3) Did the employer breach the WFA Directive?
> 4) If so, what is the appropriate remedy?

IV. Analysis and arguments

A. Does the Board have jurisdiction to interpret and apply the provisions of the WFA Directive that pertain to surplus status, surplus priority, and surplus employee?

[62] The Board's jurisdiction over individual grievances is derived from s. 209(1) of the *Federal Public Sector Labour Relations Act* (S.C. 2003, c. 22, s. 2; "the *FPSLRA*"). The grievor referred her grievance under s. 209(1)(a), which relates to the "… interpretation or application in respect of the employee of a provision of a collective agreement or an arbitral award …". Her grievance states as follows:

> *I grieve my Employer's failure(s) and omission(s) to provide and allow me to fully benefit from my rights and entitlements under (1) the National Joint Council's Work Force Adjustment Directive (WFA Directive); (2) the Agreement between the Treasury Board and the Association of Canadian Financial Officers (FI Collective Agreement); and (3) any other policies, rules, directives, agreements, laws, rights, practices, costumes* [*sic*]*, principles or documentation which may apply.*
>
> *I grieve my Employer's behaviour and treatment of my person on the basis that it contravened, amongst other things: (1) the National Joint Council's Work Force Adjustment Directive; (2) the Agreement between the Treasury Board and the Association of Canadian Financial Officers; and (3) any other policies, rules,*

> *directives, agreements, laws, rights, practices, costumes* [*sic*], *principles or documentation which may apply.*

[63] As the WFA Directive is part of the collective agreement, the Board has full jurisdiction over its interpretation (see *Chénard v. Treasury Board (Employment and Social Development Canada and Statistics Canada*), 2020 FPSLREB 15 at para. 30).

[64] At the pre-hearing videoconference, the employer submitted that the Board (note that in this decision, "the Board" refers to the current Board and any of its predecessors) is without jurisdiction to hear this matter because the applicable provisions of the WFA Directive were not incorporated into the collective agreement, given that they are the responsibility of the Public Service Commission ("the PSC") under the *Public Service Employment Act* (S.C. 2003, c. 22, ss. 12, 13; "the *PSEA*") and the *Public Service Employment Regulations* (SOR/2005-334; "the *PSER*"). Therefore, they cannot be the subject of an adjudication under s. 209(1)(a) of the *FPSLRA*. In the alternative, if the Board finds that it has jurisdiction, the employer submitted that it did not breach the WFA Directive or the collective agreement and that the grievor was treated in compliance with their provisions.

[65] The grievor maintained that the provisions relating to the PSC's jurisdiction, which are found at section 1.3 and Appendix F of the WFA Directive, are not the central issues of the grievance. The WFA Directive specifically provides for an employee's right to grieve and to refer matters to adjudication. The employer extrapolates that anywhere the word "surplus" is found, the Board has no jurisdiction. The grievor submits that that is erroneous.

[66] It was evident throughout the grievor's testimony and her exchanges with the employer and her bargaining agent that her main allegation was that she was not treated in accordance with the WFA Directive because she was not given a surplus priority entitlement. She claimed that she was a surplus employee entitled to a priority of appointment.

[67] In its lengthy submissions, the employer essentially argues that for an employee to benefit from a priority entitlement, the deputy head must declare them surplus. The Board does not have the jurisdiction to establish a priority entitlement. The grievor asserts that the Board can identify employees as surplus employees, thus establishing a priority entitlement where none existed before. The employer submits that doing so

is beyond the Board's jurisdiction and that it would be in violation of s. 113(b) of the *FPSLRA*, which prohibits modifying the terms of the collective agreement.

[68] According to the employer, the Board cannot determine whether the grievor's surplus rights under the *PSEA* and *PSER* were breached, as doing so would be outside the scope of jurisdiction conferred on it under s. 209(1)(a) of the *FPSLRA*. It can only interpret and apply the collective agreement and the documents incorporated into it. Matters involving an alleged breach of statute are assessed by judicial review. The grievor did not pursue that route in her claim for surplus priority status. Section 5 of the *PSER* clearly states that an employee must be declared surplus by the deputy head before they can benefit from a priority entitlement.

[69] The bargaining agent advanced a series of arguments that seek to justify that the Board has the jurisdiction to interpret the statutory meaning of "surplus" and to find that the grievor was erroneously not deemed a "surplus employee". The grievor requested that the Board remedy this error by finding that she should be treated like a surplus employee during the opting period and that it would not require any findings against the PSC. I disagree.

[70] Section 5(2) of the *PSER* clearly states that only the deputy head can declare an employee surplus for the purposes of a priority entitlement. Article 51 of the collective agreement excludes section 1.3 and Appendix F of the WFA Directive. Section 1.3 and Appendix F fall exclusively within the PSC's purview; this includes administering priorities and the entitlements that are attached to that status. Those responsibilities are specifically listed at sections 1.3 and 1.3.3, the latter of which states that "[f]or greater detail on the PSC's role in administering surplus and lay-off priority entitlements, refer to Appendix E of this document." Therefore, the Board cannot determine that the grievor was erroneously not deemed a "surplus employee".

[71] The bargaining agent submitted that the employer's interpretation of what lies within the responsibility of the PSC is too broad. The PSC does not have complete and total jurisdiction over everything that refers to the word "surplus". It is responsible only for administering priority entitlements. The identification of surplus employees is listed at section 1.1 under the roles and responsibilities of departments and organizations and not under section 1.3, which sets out the PSC's roles and

responsibilities. The roles and responsibilities of departments and organizations are part of the terms that indeed, form part of the collective agreement.

[72] That may be so, however, these collective agreement provisions must be read in conjunction with s. 5 of the *PSER,* which specifically states that only the deputy head can declare an employee surplus for the purposes of a priority entitlement. The Board does not have the jurisdiction to identify the grievor as a surplus employee and determine that she be provided with all the rights and entitlements that attach to that priority.

[73] Although the Board can interpret and apply these provisions, it does not have the jurisdiction to declare an employee surplus. Employees who have been advised by the deputy head that their services are no longer required but before they are laid off benefit from a priority when the deputy head declares them surplus. The Board has no authority over s. 5 of the *PSER*. Section 5(2) of the *PSER* states that only the deputy head can identify the grievor as a surplus employee. This is clearly indicated in the WFA Directive's definition of "surplus employee".

[74] The Board's jurisdiction is limited to the interpretation of the WFA Directive and the legislation and policies that it references. The WFA Directive and all its references were incorporated into the collective agreement, and therefore, the Board has jurisdiction to interpret them and apply them to the grievance. This includes determining if the grievor's rights under the WFA Directive were breached. To make that determination, the Board must interpret the definitions of the WFA Directive and determine the grievor's status on August 7, 2019, when she was informed that her position was subject to a workforce adjustment due to a lack of work.

B. What was the grievor's status under the WFA Directive?

[75] The applicable principles for interpreting and applying a collective agreement's provisions were succinctly summarized in *Duhamel v. Canadian Food Inspection Agency*, 2022 FPSLREB 87 at paras. 57 to 64. They consist of rules of construction that adjudicators rely upon to ascertain the parties' true intention when a dispute arises as to the meaning and interpretation of a collective agreement provision. The fundamental presumption is that the parties are assumed to have intended the words expressed within that provision.

[76] Consistent with that line of reasoning, the employer referred me to *Watchman v. Treasury Board (Department of Veterans Affairs)*, 2019 FPSLREB 28 at para. 90, in which the Board determined that the fundamental object in construing a collective agreement is to discover the intention of the parties that agreed to it from the written agreement itself. The language should be viewed in its normal or ordinary sense, unless doing so would lead to some absurdity or inconsistency with the rest of the agreement.

[77] The same principles apply to the interpretation of the WFA Directive. The bargaining agent asked that the collective agreement and the WFA Directive be interpreted in alignment with the *PSER* and all other applicable legislation. To support its position, it referred to the Board's decisions in *Vidlak v. Treasury Board (Department of Human Resources and Skills Development)*, 2014 PSLRB 91 at para. 24, and *Poupart v. Treasury Board (Correctional Service of Canada)*, 2021 FPSLREB 13 at paras. 90 to 93.

[78] In concluding that the grievor was not simultaneously a surplus and an opting employee, I interpreted the relevant provisions of the WFA Directive in the context of the *FPSLRA*, the *PSEA*, and the *PSER*. That legislation is incorporated by reference in the WFA Directive and therefore forms part of the collective agreement.

[79] The bargaining agent submitted that the question of whether a person can simultaneously be an opting and a surplus employee has been settled long ago. It referred me to *Ferguson v. Treasury Board (Statistics Canada)*, 2009 PSLRB 21 at paras. 7, 26 to 28, 40, 44, 55, 59, 64, and 69, and *Nesic v. Treasury Board (Health Canada)*, 2016 PSLREB 117 at paras. 14, 15, and 43, in which the employer acknowledged in the agreed statement of facts that the employees in question had become surplus on the day they received a letter informing them of the elimination of their positions.

[80] The bargaining agent argued that in both cases, the letter is quoted in the decision and appears to use the same language as the letter that was sent to the grievor in this case. The letter indicates that "… written notice that [the employee's] services in his substantive position were no longer required as of May 1, 2012, because of a lack of work or the discontinuance of a function. Therefore, he had been identified for lay-off no later than August 9, 2013." This letter was recognized as having declared the employees surplus, despite the absence of a GRJO. Both were given options.

[81] The employer responded that simply because some parties agreed to certain facts in the context of a case does not make those facts determinative of a legal question in subsequent cases. In *Nesic* and *Ferguson,* the Board did not discuss or analyze the question of whether the employee could be an "opting employee" and a "surplus employee" at the same time, as it was not asked to.

[82] The employer is correct. The Board did not examine the question of whether the employees could be simultaneously be an opting and a surplus employee. In *Nesic*, at para. 43, the reference to a letter that advised the employee that he was "… being declared surplus and that he would not receive a GRJO …" does not decide the legal question in the present case. Contrary to the grievor's suggestion, it is far from recognized and accepted that an employee is a surplus employee the moment they receive their formal notification. The plain wording of the WFA Directive confirms that that is not so.

[83] The circumstances of the grievor's situation as of August 7, 2019, and the definitions in the WFA Directive clearly demonstrate that she was an opting employee. She was not a surplus employee because the deputy head did not declare her surplus and she did not select Option A. No evidence was presented to establish that she had been identified as a surplus employee or that she had elected to be one. The August 7, 2019, letter is an options letter. There is no mention of surplus. There is no overlapping opting employee status and surplus employee status. The WFA Directive contains no provisions to support this position. Interpreting the WFA Directive that way would lead to anomalies and would render certain provisions redundant.

[84] As required by section 1.1.7 of the WFA Directive, the options letter contains three options and is consistent with the WFA Directive's definition of "opting employee". The options letter stated that the grievor would not receive a GRJO; therefore, she was not a surplus employee with a surplus priority unless she selected Option A.

[85] Section 1.1.7 of the WFA Directive states that when the situation occurs due to a lack of work or the discontinuance of a function, such communication will also indicate if the employee is (a) being provided with a GRJO from the deputy head and that the employee will be in surplus status from that date on or (b) is an opting

employee and has access to the options in section 6.4 of the WFA Directive because the employee did not receive a GRJO from the deputy head.

[86] To be a surplus employee with surplus priority status, the employee must have received a GRJO or selected Option A. This is confirmed in section 1.1.10 of the WFA Directive, which states this:

> *1.1.10 Where a deputy head cannot provide a guarantee of a reasonable job offer, the deputy head will provide 120 days to consider the three options outlined in Part VI of this Directive to all opting employees before a decision is required of them. If the employee fails to select an option, the employee will be deemed to have selected Option 6.4.1(a), twelve-month surplus priority period in which to secure a reasonable job offer.*

[87] The definitions in the WFA Directive are unambiguous. A simple reading of them, particularly of "guarantee of a reasonable job offer", states that surplus employees who receive this guarantee will not have access to the options available in Part VI of the Directive. The grievor was told in writing in the options letter that she was not entitled to a GRJO and that she had three options to chose from. She was not at any time a surplus employee with priority entitlements.

[88] In *Nowlan v. Canada (Attorney General)*, 2022 FCA 83 at para. 32, the Federal Court of Appeal stated that the words of the WFA Directive are to be given their ordinary meaning, the provisions should be read as a whole, effect must be given to every word, and specific provisions take precedence over general ones. The ordinary meaning of the WFA Directive is clear. The definition of "surplus employee" is found in the WFA Directive. To become a surplus employee, the employee must be declared surplus, in writing, by the deputy head. An employee in receipt of a GRJO is a surplus employee. An opting employee becomes a surplus employee when they select Option A or do not make a selection by the selection date.

[89] Once declared surplus, they receive a surplus priority entitlement and are placed in surplus status. The grievor was never declared surplus by the deputy head, and she did not select Option A. The options letter formally notified her that she would be subject to workforce adjustment, that she would not be provided with a GRJO, and that she had 120 days to decide on 1 of the 3 options in Part VI of the WFA Directive. In cross-examination, she acknowledged that the letter did not contain the words "surplus employee" and that it did not declare her surplus. Because the grievor

never became a surplus employee, she was never entitled to a surplus priority and was never placed in surplus status; see *Atkinson v. Treasury Board (Correctional Service of Canada)*, 2016 PSLREB 54, at paras. 15 and 34. The employer did not breach the WFA Directive by not treating her as a priority.

[90] Mr. Chamberlain's affidavit evidence is unhelpful in determining the Board's jurisdiction and the grievor's status. His evidence simply mirrors s. 113 of the *FPSLRA*, in that collective agreements cannot deviate from the legislation. With respect to the flowchart that was submitted jointly into evidence, it is not determinative of the bargaining agent's position that the employer in the grievor's circumstances changed its long-standing practice to identify opting employees as surplus employees. The flowchart can be interpreted as indicating that opting employees who select Option A become surplus employees. I prefer the employer's evidence that this was an error and that it was later corrected. It had nothing to do with the grievor's situation.

[91] In addition to the plain wording of the WFA Directive, when it is viewed as a whole, opting employees do not have a surplus priority entitlement. Section 6.4.1(a)(ii) applies to opting employees who choose the 12-month surplus priority period and allows them to extend that period by the unused portion of the 120-day opting period referred to in section 6.1.2 that remains once they have selected in writing the option in section 6.4.1(a).

[92] I disagree with the bargaining agent that the employer's interpretation would create the scenario that surplus employees would have more rights and entitlements than would opting employees. The bargaining agent conflated both terms and did not consider the very clear and simple definitions of "affected employee", "surplus employee", "opting employee", "surplus priority", and "surplus status". As per sections 1.1.7 and 1.1.11, surplus employees receive a GRJO, and opting employees receive options. The rights and entitlements are different.

[93] The employer is correct that if, as the grievor submitted, opting employees have a surplus entitlement during the 120-day opting period, then this section would be meaningless. An employee would not need to add the time remaining in their opting period to their 12-month surplus priority period if they were entitled to a surplus priority while they were in the 120-day opting period.

[94] The parties could not have intended to include a provision that has no meaning. As indicated in *Duhamel*, at paras. 57 to 64, effect must be given to every word in the WFA Directive. "Opting employee" and "surplus employee" are distinct categories with distinct entitlements that do not overlap.

[95] The grievor was informed that her position was being workforce-adjusted due to a lack of work. In accordance with section 1.1.7 (b) of the WFA Directive, she was an opting employee without a GRJO. Her obligations and entitlements were expressly covered by section 6.4 of the WFA Directive. Having determined her status as an opting employee under the WFA Directive, the next question to be answered is whether the employer violated those provisions.

C. Did the employer breach the WFA Directive?

1. The grievor alleged that the employer did not provide her with timely and accurate information

[96] The bargaining agent submitted that the employer failed to meet its obligations under the WFA Directive. It alleged that the employer failed to provide the grievor with her counsel entitlements and that it delayed responding accurately to her questions, right up to the last day of the opting period.

[97] The grievor claimed that the employer withheld information and explanations and that it did not recognize her as a surplus employee until she selected Option A. She claimed that it prevented her from finding a reasonable job offer during the opting period. Only as of November 8, 2019, at day 93 of the 120 days, were the follow-ups quicker. While the follow-ups were quicker, the grievor claimed that the information was not clear, and she was confused and uncertain of her rights.

[98] Furthermore, the bargaining agent claimed that the evidence set out that with 27 days remaining in her 120-day period, the grievor began receiving more timely follow-ups to her emails. However, she found the responses confusing, incomplete, and in conflict with the information that she was reading.

[99] The grievor needed someone to explain the information that was being sent to her. In her email to the employer on December 3, 2019, she stated that she asked questions about the WFA Directive and that she had sent regular reminders since August 7, 2019. Either she did not receive the answers in a timely fashion or she was

provided links. She stated that she read the information sent to her but that she is not a Human Resources specialist and that she needed clarification.

[100] The grievor alleged that no one walked her through the WFA Directive to explain its nuances. Had someone done so, she would have chosen Option A, and her priority period could have still included any leftover opting period. The employer also did not inform her as to how priority information management works or about alternatives that might be available to her. She was not helped with preparing a résumé or provided advice on how to prepare for interviews. I note that there is no evidence of her making any of those requests.

[101] I cannot find that the employer did not treat the grievor equitably. Their email exchanges do not demonstrate it. I find that she received all her entitlements under the WFA Directive and that she was treated equitably. The evidence of Mr. Ferguson and Ms. Publicover was clear that considerable efforts were made to assist the grievor. The grievor alleged that her questions were unanswered, that she received contradictory information, and that she did not receive timely responses. However, I agree with the employer that in cross-examination, each of those allegations was questioned, and it was evident that they lacked substance.

[102] In cross-examination, the grievor was referred to her email of July 18, 2019, in which she admitted that all but two questions were answered. Those pertained to reimbursement for courses to become a real estate agent and whether travel expenses would be covered if travel was required for the courses. I agree with the employer that answers to those questions were not necessary to make an informed decision about which option to select. Particularly in this case, the grievor did not give any indication that she was considering a course that required travel or that she was pursuing a career as a real estate agent.

[103] In response to the grievor's claim that she received conflicting information, the employer highlighted that in cross-examination, she admitted that she received consistent information from Ms. Publicover and Ms. Harasym. The email correspondence very clearly and consistently states that she is an opting employee. She had an idea in her mind that she was entitled to a surplus priority and refused to believe anyone that told her that she was not so entitled. I was not presented with any evidence to demonstrate that the grievor received conflicting information.

[104] In response to the grievor's claim that timely responses started only after November 8, 2019, the employer stated that the documentary evidence confirms that that is not so. She received multiple timely responses in her exchanges with the employer from October 11 to 16, 2019, when she asked if she should identify herself as a priority. The documentary evidence does not support the bargaining agent's allegation. It was in October that Ms. Publicover informed her again in writing that she was an opting employee — not in receipt of a GRJO. The responses to the grievor's email inquiries from November 8 to 22, 2019, were timely.

[105] Except for the form, which she received on November 21, 2019, there were no significant delays with respect to any of the responses from the employer. I will return to the issue of the form later.

[106] The grievor had multiple email exchanges with Mr. Ferguson beginning in August 2019 and she confirmed timely responses from him, often on the same day or one business day later. The email correspondence in October 2019 confirms the response times within the same day or one to two business days. Both he and Ms. Publicover testified that they had multiple in-person conversations with the grievor beginning in July and August 2019 in which information was provided to her.

[107] Since I have determined that the grievor was not a surplus employee, I will not address her claims in that respect. Although the employer could have been quicker at times in responding to some of her inquiries, the way it responded to the grievor's inquiries did not amount to a breach of the WFA Directive. The evidence did not establish that the employer withheld crucial information or that it provided unduly slow responses. A review of the evidence establishes that the grievor's first inquiry about her options was on July 18, 2019, in which she listed a series of questions for each option. Ms. Publicover responded on July 30, 2019, and they had a telephone conversation on July 31, 2019. The grievor stated that she received responses to all these questions except for the reimbursement of courses to become a real estate agent and if travel expenses were covered.

[108] Several email exchanges between the grievor and Ms. Publicover occurred on August 20 and September 12, 2019. In it, the grievor followed up, to obtain a response to her questions. On September 20, 2019, the bargaining agent followed up with Ms. Publicover with respect to a potential settlement and a request for answers to the

grievor's questions. When it did not receive a response, it followed up again on September 25, 2019. By September 30, 2019, Ms. Publicover still had not responded. Even if there was a delay on Ms. Publicover's part responding to the bargaining agent's email, it was not detrimental to the grievor's ability to select an option.

[109] The next exchange of emails between the grievor and Ms. Publicover occurred on October 11, 2019. The grievor informed Ms. Publicover that she applied for an FI-03 position with ESDC on September 17, 2019. She asked Ms. Publicover if she should identify as a priority. Ms. Publicover responded on October 15, 2019, informing the grievor that she should not identify as a priority. She provided the grievor with a clear explanation in writing as to her status under the WFA Directive. She informed the grievor that she was an opting employee, writing as follows:

> …
>
> *If you chose* [*sic*] *Option A as an opting employee, which is the time-limited Surplus Entitlement, you are then considered a person with a priority entitlement within the public service. You will be registered in the Priority Information Management System (PIMS) if you choose and will be referred with an entitlement to all departments that fall under the PSEA when they request clearance.*
>
> …

[110] The grievor responded that she understood from the opting letter that she was out of the affected stage and that she was a surplus employee because the letter stated that her services were not required beyond the August 21, 2019. On October 16, 2019, Ms. Publicover responded that the grievor was an opting employee because she was not offered a GRJO by the deputy head. She included a link to a flowchart that outlined the steps in the workforce adjustment process and what would happen if an employee took different steps along the way.

[111] The next communication was on November 8, 2019, in which Ms. Publicover referred to her conversation with the grievor about her options and her selected retirement date as well as what would happen if she chose Option B or C. The grievor did not mention that she was looking to obtain a position at an equal or lower level. The grievor was not contemplating Option A. This is evident by her inquiry into real estate courses.

[112] On November 13, 2019, Ms. Publicover mentioned that she would send the options form that was supposed to have been included with the options letter. On the same day, the grievor emailed Ms. Publicover again and asked her to clarify a scenario in which if she chose Option B or C and was successful in an appointment process, what would happen to the TSM payment. Ms. Publicover provided a comprehensive response on November 18, 2019.

[113] On November 20 and 21, 2019, the grievor and Ms. Publicover discussed things more. On November 22, 2019, the grievor informed Ms. Publicover that she still had questions with respect to the Education Allowance, the TSM payment, and the reimbursement of equipment expenses. These exchanges demonstrate that the grievor was struggling to select an option; however, I cannot conclude that it was the employer's fault.

[114] On November 20, 2019, the grievor wrote to Ms. Publicover and stated that it was the fifth written request she had made to receive the form since she received the options letter. On November 21, 2019, Ms. Publicover emailed the grievor the options form. On November 22, 2019, the grievor responded that it was the first time she had seen the form.

[115] It is unfortunate that it took several weeks before Ms. Publicover sent the form. With respect to the form, Ms. Publicover testified that it was included in the package provided to the grievor on August 7, 2019. However, even if it was not included, the form contained nothing that the grievor did not already know or required to decide her options. This does not amount to a breach of the WFA Directive. There was no crucial information in the form that the grievor did not already know.

[116] I agree with the grievor that the form seems to contain confusing information in that it states that management certifies that this employee is "… an indeterminate employee whose position has been identified as surplus to requirements within the meaning of the [WFA] Directive or [WFA] Agreement, as applicable." But the WFA Directive and the definitions do not define "surplus position". As discussed previously, it defines "surplus employee", "surplus status", and "surplus priority", which is different from "opting employee". Ms. Publicover's previous emails to the grievor clearly indicated that she was not a surplus employee and that she had to select Option A to benefit from priority status.

[117] On November 26, 2019, the grievor referred Ms. Publicover to an excerpt that she had sent to her earlier that referred to priority entitlements and provided general information on priorities. She again asked Ms. Publicover if she was a statutory priority, given the information in the excerpt. On the same day, her bargaining agent explained priorities, and Ms. Publicover responded that the bargaining agent was correct in its interpretation of the priority entitlements. There was no withholding of information.

[118] Ms. Publicover again reiterated that the grievor would be considered a priority if she selected Option A or that if she failed to make a selection, then the employer would make it for her, as addressed in the WFA Directive. She stated again that the grievor was an opting employee with no GRJO. Ms. Publicover mentioned that she would take steps with the Pay Centre to obtain the information that the grievor sought with respect to the TSM payment and the Education Allowance.

[119] Later that afternoon, the grievor contacted Ms. Publicover again, stating that her understanding was that she was a surplus employee and that the reason that the RCMP's commissioner could not provide her with a GRJO was that there was no other FI-03 position available with the RCMP in Edmonton. The grievor asked that if she chose priority status and if a job became available at an equal level in Edmonton, then would she be considered a statutory priority for it? The grievor asked Ms. Publicover to define "equal level". On November 28, 2019, Ms. Publicover responded that she would provide the grievor with a response when she returned to the office in the following week.

[120] On December 3, 2019, the grievor followed up with Ms. Harasym, to obtain information sent to the Pay Centre and to obtain a response to her inquiries. Ms. Harasym responded that she had to wait for Ms. Publicover's return to respond. On the same day, the grievor sent another email, stating that she had been requesting information about the WFA Directive. In it, she referred to excerpts again and asked specific questions. She also referenced a line that stated that "… managers will inform human resources if the employee is declared surplus or provided with a guaranteed reasonable job offer." Ms. Publicover again stated that the grievor was an opting employee because she did not receive a GRJO. Ms. Publicover again informed her that she had to select Option A or not select an option, and the employer would deem her surplus. She told the grievor that she would then receive a surplus letter.

[121] On December 4, 2019, Ms. Publicover responded to the grievor's questions and informed her that the employer continued to look for alternative employment opportunities should the situation arise for her to maintain continued employment at her substantive level or equivalent. She invited the grievor to participate in a call with her, her bargaining agent representative, and Mr. Adams, to discuss further and help her make an informed decision. There is no evidence that the call took place, and the grievor did not respond.

[122] For the entire opting period, there was no inconsistency in the information that Ms. Publicover and Ms. Harasym shared. Although some delays arose in responding to the grievor's questions at times, they did not amount to a breach of the grievor's entitlements. It is obvious that she and her bargaining agent disagreed with the employer as to her status. They had differing interpretations of the information that was shared. The grievor did not accept the employer's responses to her question about surplus status. However, the information is not confusing when it is read while considering the WFA Directive and the applicable legislation. To the contrary, Ms. Publicover and Ms. Harasym remained courteous and polite throughout despite the grievor's repeated refusals to accept the information that she was given.

[123] It is obvious that throughout the opting period, she had a difficult time selecting an option because she did not want to be work-force-adjusted. The decision to workforce-adjust her position was not a personal one against her. The selection process was indeed a difficult time for the grievor; however, the evidence does not support her allegation. The bargaining agent and the employer had access to several resources to help them determine the grievor's status and her entitlements.

[124] The employer met the obligations in section 1.1.36, whether through information provided to the grievor verbally, by email, or by written correspondence and through links and documents that it provided. While she asserted that these resources were not enough and that she required clarification, the evidence confirms that she received clarification several times but refused to accept it. The bargaining agent could have assisted her in that respect as well. The obligations in the WFA Directive are not solely those of the employer. The bargaining agent and the grievor had obligations as well. She simply refused to accept the fact that she was an opting employee and that the only way she could have benefited from priority status was to select Option A or not make a selection. The bargaining agent is a sophisticated party,

and it could have easily explained the grievor's rights to her and helped her make a selection suited to her needs.

2. The grievor alleged that the employer did not provide her with every reasonable opportunity to continue her public service career

[125] The bargaining agent submitted that the purpose of the WFA Directive is to maximize employment opportunities for employees affected by a workforce adjustment and to ensure that whenever possible, alternative employment opportunities are provided to them. It submitted that it means that if an employee loses their job, the employer will do everything to re-employ them. I disagree.

[126] It is well established that general-purpose clauses and preambles have no independent validity as a source of rights or obligations and that they can assist only in interpreting the substantive provisions of a collective agreement. See *Canada (Attorney General) v. Lâm*, 2008 FC 874, and *Mackwood v. National Research Council of Canada*, 2011 PSLRB 24. The same applies to the WFA Directive. Its purpose is to maximize employment opportunities within the framework that is outlined in it. Nothing more. It is a complete code and provides a clear outline of the employees' rights and entitlements.

[127] In the grievor's case, the employer did in fact seek to maximize employment opportunities for her by offering her three options. It correctly submitted that a key principle of contract interpretation is that specific provisions take precedence over general ones; see *Nowlan* at para. 32. The objectives section of the WFA Directive does not confer rights.

[128] Section 1.1 of the WFA Directive states that it is the department's responsibility to ensure that employees are treated equitably and that they are given every reasonable opportunity to continue their careers as public servants. Sections 1.1.4 and 1.1.5 state that departments must make efforts to redeploy and retrain employees. Sections 1.1.12 and 1.1.13 state that departments must notify the PSC that an employee was declared surplus along with several details, forms, and materials. They must provide a written statement to the PSC that they are prepared to appoint the surplus employee to a suitable position if one is available.

[129] The employer complied with all the applicable sections of the WFA Directive, including treating the grievor equitably and giving her every reasonable opportunity to

continue her career as a public servant. The obligations that she raised at sections 1.1.12 and 1.1.13 apply only to surplus employees. She was an opting employee, not a surplus employee, because she selected Option A.

[130] Having determined that the grievor was not a "surplus employee" under the WFA Directive, I will not address the bargaining agent's allegations with respect to her claim to those surplus entitlements under the WFA Directive, including those at sections 1.1.4 and 1.1.5. Had she selected Option A or not made a selection, as indicated in the options letter, she would have been declared a surplus employee and would have benefited from those entitlements. Therefore, I cannot find that the employer breached those provisions and that it did not provide her with every opportunity to continue her public service career.

3. The grievor alleged that the employer failed to inform her of the impact of making an early selection

[131] The bargaining agent maintained that the employer should have informed her of the impact of choosing an option from the start, to facilitate and maximize her continued employment. It maintained that the employer refused to allow the grievor to benefit from those options. I cannot accept that statement, considering the evidence that was presented. The grievor had difficulty accepting that her position was being workforce-adjusted due to a lack of work, and she had difficulty selecting an option. I did not hear any evidence that the employer purposely attempted to circumvent any opportunities for her to select an option. She was repeatedly told that she was not a surplus employee and that she had to select an option. At no time did the employer withhold information from her that negatively impacted her selection.

[132] I agree that the grievor investigated opportunities to extend her public service career and self-referred or applied to hiring processes and vacant positions, including two FI-03 positions and one EX-01 position. She was screened into one of the FI-03 processes but was not selected as the chosen candidate. Had she selected option A, she would have been entitled to a priority of appointment. The employer cannot be held responsible for her lack of selecting Option A. The bargaining agent could have assisted her by explaining the WFA Directive provisions and the impact of making an early selection. There was no evidence presented as to whether it provided that information to her.

[133] The grievor testified that between August 7 and December 5, 2019, she became aware of positions being staffed within the RCMP that would have been at an equivalent or a lower level. She was aware that an FI-03 position was being staffed in Winnipeg, as were some AS positions in Edmonton. She was not offered any of them. The grievor presented no evidence to that effect. Mere statements of knowing of the existence of those positions is not sufficient. Moreover, she did not contact Ms. Publicover to inform her of this or to request her assistance with them. Regardless, she did not select option A, and as an opting employee, she was not entitled to a GRJO. Even if I find that those positions existed, she had no priority entitlement to them under the WFA Directive until she selected Option A or failed to make a selection.

[134] The bargaining agent submitted that the grievor had planned to select Option A and that she had had the goal of reaching 35 years of service and a full pension. However, she claims that management's actions, delays, and omissions made her feel unwanted, alone, and dismissed. She felt pushed out, under duress, and coerced when choosing her option. In her testimony, she noted that she had no other choice than to leave the public service. The employer did not help her find employment during the opting period; therefore, she concluded that it would not assist her later if she selected Option A.

[135] I do not believe that the grievor planned to select Option A with the goal of reaching 35 years of service and a full pension. If she intended to continue her employment in the federal public service, then why did she not select Option A? The evidence does not support her allegation that management's actions, delays, and omissions pushed her out. It is unfortunate that that was her interpretation and that she felt unwanted, alone, and dismissed.

[136] Furthermore, the evidence is not conclusive that the grievor would have accepted a position. Her actions did not demonstrate a desire to remain employed in the federal public service. This is evident from the following facts: she selected Option C, the Education Allowance, over Option A, the 12-month surplus priority; the fact that she chose Option C(i), which required her to resign immediately, as opposed to Option C(ii), which would have allowed her to take the TSM payment but remain on leave without pay for up to 2 years and then receive a 12-month priority afterwards, and the fact that she did not apply to any federal public service positions after her resignation

in January 2020, despite many jobs being available within her field of work, leads me to conclude that she did not intend to remain employed.

[137] I did not find any evidence of duress or coercion being placed on the grievor when she chose her option. To the contrary, the employer, through Ms. Publicover, made efforts to help her find employment during the opting period; unfortunately, it was going through a workforce adjustment. I accept Ms. Publicover's evidence that there were no positions to be had during the opting period. The grievor bore the burden of proving on a balance of probabilities that there were positions at her level or equivalent for which she should have been considered. However, to trigger this alleged right, she had to select Option A or not make a selection, per section 1.1.10 of the WFA Directive.

[138] The employer did not bear the sole responsibility of informing the grievor of the benefit of making an early selection. The bargaining agent could have assisted her in that respect; it was involved from the beginning. Unfortunately, it completely disregarded the fact that she was clearly an opting employee and that her rights and obligations were clearly set out in section 6.4 of the WFA Directive.

V. Conclusion

[139] The Board has jurisdiction to interpret and apply the WFA Directive and the relevant provisions of the collective agreement. However, it does not have the jurisdiction to consider who has been chosen as a surplus employee and determine that the grievor was erroneously not deemed a surplus employee. The power to declare an employee surplus is expressly conferred on the deputy head, and the Board has no oversight over identifying employees as surplus under the *PSEA* and *PSER*.

[140] The deputy head did not declare the grievor surplus; therefore, she did not have surplus status. She was declared an opting employee, and she had 120 days to select an option. There is no overlapping opting and surplus employee status under the WFA Directive. Although both the employer and the bargaining agent could have handled the opting period more smoothly for the grievor, I am not persuaded that the employer failed any of its obligations under the WFA Directive or the collective agreement.

[141] Workforce adjustment situations are never an easy process for those going through them, but it is also not easy for those administering the process. Bargaining

agents can play a supportive role by being better informed or seeking the assistance of joint committees, such as the National Joint Council, which have expertise in such matters when they are faced with questions for which they do not know the answers.

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

(The Order appears on the next page)

VI. Order

[143] The grievance is denied.

[144] The file is closed.

January 9, 2025.

Chantal Homier-Nehmé,
a panel of the Federal Public Sector
Labour Relations and Employment Board