Date: 20250513

Files: 566-34-48250 and 569-34-49928

Citation: 2025 FPSLREB 56

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

PROFESSIONAL INSTITUTE OF THE PUBLIC SERVICE OF CANADA AND SIMON CHIU

Bargaining Agent and Grievor

and

CANADA REVENUE AGENCY

Employer

Indexed as
Professional Institute of the Public Service of Canada v. Canada Revenue Agency

In the matter of an individual grievance and a policy grievance referred to adjudication

Before: Christopher Rootham, a panel of the Federal Public Sector Labour Relations and Employment Board

For the Bargaining Agent and Grievor: Dulce Cuenca and Natasha Chartier, Professional Institute of the Public Service of Canada

For the Employer: Desneiges Mitchell, counsel

Decided on the basis of written submissions, filed September 6 and December 6, 2024, and February 7 and 21, 2025.

REASONS FOR DECISION

I. Overview

[1] These grievances arose because the Canada Revenue Agency ("CRA") did not give the Professional Institute of the Public Service of Canada ("PIPSC") permission to use its work email system to send a notice of an annual general meeting for one of PIPSC's sub-groups. The CRA also did not give PIPSC permission to post the notice on its intranet.

[2] These grievances raise two issues.

[3] The first issue is whether the CRA's intranet, which it calls the InfoZone, is an "electronic bulletin board" for the purposes of the collective agreement. If it is, then PIPSC is entitled to post notices on it, sometimes requiring the prior approval of the CRA. If it is not, then PIPSC does not have that right. I have concluded that it is not. While the plain meaning of an "electronic bulletin board" could include an intranet, when the term is read in context with the rest of the relevant clause of the collective agreement and the broader legal context behind the use of an employer's electronic facilities, it does not grant PIPSC a right to post a notice on the InfoZone.

[4] The second issue is whether PIPSC is entitled to use the CRA's email system to send notices to its members. I have concluded that it is not. A bargaining agent has no right to use the employer's email system for union business unless it has negotiated clear language in the collective agreement permitting it. PIPSC has not negotiated that language. Additionally, the times that CRA managers permitted PIPSC to send emails about annual general meetings do not prevent the CRA from refusing to allow it to do that any longer.

[5] Therefore, I have denied the grievances. My detailed reasons follow.

II. Background to the grievances

[6] The factual background to these grievances is straightforward.

[7] PIPSC is divided into a number of groups and sub-groups. One of its groups is the AFS (Audit, Financial and Scientific - CRA) Group. This group is for its members who are in the Audit, Financial and Scientific bargaining unit at the CRA. The AFS Group is divided into 46 geographic sub-groups, one of which is the AFS Burnaby Sub-

Group (which is sometimes referred to as the AFS Surrey Sub-Group or the AFS Burnaby-Fraser Sub-Group in the correspondence in this case).

[8] In early August 2022, the AFS Burnaby Sub-Group's president asked local management at CRA to circulate a notice of the sub-group's annual general meeting ("the AGM notice") by email. Local management refused. Simon Chiu, a PIPSC steward who held other roles within PIPSC as well, argued the point with CRA management up to the assistant commissioner level between August 2 and 8, 2022, to no avail. As part of that discussion, on August 5, Mr. Chiu asked the CRA to let PIPSC post the AGM notice on the InfoZone instead. The CRA said no.

[9] Mr. Chiu filed an individual grievance against this decision. PIPSC also filed a policy grievance.

[10] For context, the InfoZone is the name of the CRA's employee-facing intranet system. Every CRA employee has access to the InfoZone. The CRA uses it to share information and resources with employees. The InfoZone has links to bargaining agents' websites but no union notices.

III. Procedural background to these grievances

[11] After discussing these grievances with the parties in a case management conference, I decided to hear them in writing. The Federal Public Sector Labour Relations and Employment Board ("the Board") has the authority to decide matters in writing, according to s. 22 of the *Federal Public Sector Labour Relations and Employment Board Act* (S.C. 2013, c. 40, s. 365); see also *Walcott v. Public Service Alliance of Canada*, 2024 FCA 68. Neither party objected to having these grievances heard in writing. Both parties filed affidavits with the evidence needed to resolve these grievances, along with written submissions. I gave the parties the opportunity to cross-examine those affiants, but neither party thought it necessary.

[12] The CRA objected to Mr. Chiu's individual grievance on the grounds that he was really seeking relief for PIPSC, and therefore, this should be a policy grievance. Since PIPSC filed a policy grievance and that grievance was heard together with Mr. Chiu's, I do not find it necessary to address whether Mr. Chiu had standing to file his grievance. Regardless of the outcome of that issue, my decision in this case would be the same.

IV. The InfoZone issue

[13] The InfoZone issue depends on the proper interpretation of the parties' collective agreement; specifically what constitutes "electronic bulletin boards".

[14] The parties' two competing interpretations are straightforward. PIPSC says that the term "electronic bulletin boards" includes an intranet service such as the InfoZone. The CRA says that "electronic bulletin boards" are television screens or monitors placed in hallways, elevators, and other common areas of a CRA office that are set up to display a slideshow of messages to employees.

[15] The relevant text of the collective agreement between PIPSC and the CRA for the AFS group that expired on December 21, 2022, reads as follows:

…	[…]
Article 27 – Use of Employer Facilities	***Article 27 – Utilisation des installations de l'employeur***
27.01 *Reasonable space on bulletin boards including electronic bulletin boards where available, in convenient locations will be made available to the Institute for the posting of official Institute notices. The Institute shall endeavour to avoid requests for posting of notices that the Employer, acting reasonably, could consider adverse to its interests or to the interests of any of its representatives. Posting of notices or other materials shall require the prior approval of the Employer, except notices of meetings of their members and elections, the names of Institute representatives, and social and recreational events. Such approval shall not be unreasonably withheld.*	***27.01*** *Un espace raisonnable sur les tableaux d'affichage, y compris les tableaux d'affichage électroniques, s'ils sont disponibles, dans des endroits accessibles, est mis à la disposition de l'Institut pour y apposer des avis officiels. L'Institut s'efforcera d'éviter de présenter des demandes d'affichage d'avis que l'Employeur pourrait raisonnablement considérer comme préjudiciables à ses intérêts ou à ceux de ses représentantes ou de ses représentants. L'Employeur doit donner son approbation avant l'affichage d'avis ou d'autres communications, à l'exception des avis de réunion et d'élection, des listes des représentantes ou des représentants de l'Institut et des annonces d'activités sociales et récréatives. Cette approbation ne doit pas être refusée sans motif valable.*
…	[…]

[16] Interpreting a collective agreement is a contextual exercise. To quote from *Ewaniuk v. Treasury Board (Department of Citizenship and Immigration)*, 2020 FPSLREB 96 at para. 45, the words in a collective agreement "… must be read in their entire context, in their grammatical and ordinary sense, and harmoniously with the scheme of the agreement, its object, and the parties' intention."

[17] Both parties rely on the plain and ordinary meaning of "electronic bulletin board", although they differ about what that plain and ordinary meaning is. Both parties also rely on other words in clause 27.01. In addition, PIPSC relies on the innocuous nature of the AGM notice, arguing that it is a notice of a meeting and that it cannot harm the CRA's reputation or other interests. By contrast, the CRA relies on the past application of this provision in its legal and collective bargaining context.

[18] I will begin with the plain and ordinary meaning of the text of clause 27.01. I will explain why the text of clause 27.01 means that PIPSC does not have the right to post notices on the InfoZone. I will then move on to consider other context suggested by the parties and explain why that context does not change my conclusion. Specifically, I will explain why the broader legal context supports this conclusion, why I do not need to consider PIPSC's bargaining proposal, and why this interpretation is not unreasonable as argued by PIPSC. I will conclude by explaining why the CRA is not estopped from denying PIPSC's request to post this notice on the InfoZone.

A. Text of clause 27.01

[19] In cases in which the parties dispute the plain and ordinary meaning of words, the most common approach is to consider dictionary definitions of those disputed words. These parties did likewise. Therefore, I will begin there and move on to the rest of clause 27.01.

1. Plain meaning of the term "electronic bulletin board"

[20] The CRA cites the *Merriam Webster Dictionary*, which defines the term "bulletin board" as follows: "… (a) a board for posting notices (as at a school) and (b) a public electronic forum that allows users to post or read messages …". The *Cambridge English Dictionary* has two similar meanings of the term, "a place on a computer system where users can read messages and add their own", and "a board on a wall on which notices can be put". The *Cambridge English Dictionary* also states that the physical board for posting notices is called a "bulletin board" in the United States and

a "noticeboard" in the United Kingdom. The website Dictionary.com has a similar two-part meaning for a bulletin board: "a board for the posting of bulletins, notices, announcements, etc.", and "… an online collection of electronic messages, posted by and accessible to any authorized user … a system, facility, or computer server for collecting and relaying these messages."

[21] The CRA relies especially on the word "public" in the *Merriam Webster Dictionary*'s definition. It says that an intranet is not public because it is available only to employees of the CRA; therefore, an intranet cannot be an electronic bulletin board.

[22] Neither the *Cambridge English Dictionary* nor the Dictionary.com definition use the word "public" to describe a bulletin board. All three definitions state that they are available to "users", implying that a bulletin board can be restricted in some way to its users.

[23] Additionally, PIPSC relies in part on TERMIUM Plus, the Government of Canada's terminology and linguistic data bank. That data bank defines "electronic bulletin board" as, "A computer conference that is devoted to posting and discussing announcements and messages of interest to a specific community of users." It goes on to state that an electronic bulletin board is "… usually limited to a small specialized group of users, employing a bulletin board system." This also undermines the CRA's argument that an electronic bulletin board must be available to the general public.

[24] Therefore, I disagree with the CRA when it submits that an electronic bulletin board must be available to the general public. At most, the word "public" in the *Merriam Webster Dictionary* definition is simply meant to distinguish a bulletin board from a direct and private person-to-person (or persons) message.

[25] The CRA relies on the qualifier "electronic" to the term "bulletin board". It points out that the dictionary definition of "electronic" (in the *Cambridge English Dictionary*, for example) states that it is "*especially of* ***equipment***" and used in a system by "*various* ***devices***" [emphasis in the CRA's submissions]. While the CRA's point is not entirely clear, it appears to be arguing that the equipment or various devices are the monitors and screens showing the slideshows in CRA offices. However, the equipment or various devices could just as easily mean the desktops, laptops, and smartphones used by CRA employees to access the intranet — those devices are just as electronic as a monitor or television screen.

[26] In conclusion, the dictionary definition of "electronic bulletin board" includes both a physical monitor and an online collection of computer messages, such as an intranet. Therefore, the InfoZone could be a type of electronic bulletin board.

2. Placing the term "electronic bulletin board" in context with the rest of clause 27.01

[27] However, the task in this adjudication is not to decide the meaning of "electronic bulletin board" but to decide the meaning of that term in clause 27.01. This means I must examine clause 27.01 as a whole.

[28] Clause 27.01 starts with the sentence, "Reasonable space on bulletin boards including electronic bulletin boards **where available**, **in convenient locations** will be made available to the Institute for the posting of official Institute notices" [emphasis added]. The phrases "where available" and "in convenient locations" support the CRA's interpretation of clause 27.01.

[29] The InfoZone, like all intranet services, is available anywhere an employee has a computer, smartphone, or other device that can connect to it. The CRA submitted specifically the following:

> …
>
> *68 … The words "where available" only have meaning in accordance with the CRA's interpretation of the agreement. The language reflects that electronic bulletin boards (physical screens in the workplace) are not present in every CRA worksite and, as a result, the option of an electronic bulletin board may not be available in all offices.*
>
> …
>
> *70. The Intranet is web-based and omnipresent. If it were the case that an Intranet constituted an "electronic bulletin board" then there would be no meaning to the words "where available."*
>
> …

[30] I agree, although characterizing the intranet as "omnipresent" sounds a little more Orwellian than the CRA probably intended.

[31] The InfoZone also does not have a location, let alone a convenient or inconvenient one. On the other hand, monitors showing slideshows have locations. The CRA submits that this is a further indication that clause 27.01 refers to bulletin boards in physical locations. Again, I agree.

[32] PIPSC argues that the location of the comma in the current version of clause 27.01 is important. A different collective agreement between PIPSC and the Treasury Board for the Research Group in 2000 had the comma in a different place in a similar clause. The two versions of these collective agreements read as follows:

> [This collective agreement:]
>
> | | |
> |---|---|
> | ***27.01*** *Reasonable space on bulletin boards including electronic bulletin boards where available, in convenient locations will be made available to the Institute for the posting of official Institute notices.…* | ***27.01*** *Un espace raisonnable sur les tableaux d'affichage, y compris les tableaux d'affichage électroniques, s'ils sont disponibles, dans des endroits accessibles, est mis à la disposition de l'Institut pour y apposer des avis officiels* […] |
>
> [Older collective agreement:]
>
> | | |
> |---|---|
> | ***29.02*** *Reasonable space on bulletin boards, including electronic bulletin boards where available, will be made available to the Bargaining Agent for the posting of official notices, in convenient locations determined by the Employer and the Institute.…* | ***29.02*** *Un espace raisonnable sur les tableaux d'affichage (y compris les tableaux d'affichage électroniques, s'ils sont disponibles), dans des endroits accessible, est mis à la disposition de l'agent de négociation pour y apposer ses avis officiels en des endroits facilement accessibles déterminés par l'Employeur et l'Institut* […] |

[33] PIPSC argues that the lack of a comma before the word "including" means that "… the physical location assertion of the CRA is further negated." I am not entirely sure why, and I am not convinced that the comma placement changes the meaning of the clause. Even if it could change the clause's meaning, I disagree with PIPSC that this comma is important.

[34] Clause 27.01 states that "… space on bulletin boards including electronic bulletin boards **where available**, in convenient locations **will be made available** to the Institute …" [emphasis added]. This clause is not artfully constructed, as it is unclear how something will be made available where it is already available. The clause only makes sense if the phrase "where available" applied only to electronic bulletin boards — i.e., if the comma were still present. The CRA must permit PIPSC to use electronic bulletin boards where they are already available but must provide physical

bulletin boards (i.e., physical bulletin boards "will be made available" regardless of whether they were already available).

[35] Further, the current French version of the collective agreement has commas in different places from the English. The comma whose absence PIPSC relies on in the English version is present in the French version of the collective agreement. This means that PIPSC's argument that the absence of that comma broadens the meaning of an "electronic bulletin board" runs afoul of the principle of bilingual interpretation that the common meaning of bilingual documents is the narrower of the two meanings; see *R. v. Daoust*, 2004 SCC 6 at para. 29. In this case, the narrower version would exclude the InfoZone.

[36] It is said that Sir Roger Casement was hanged by a comma. Whatever the truth of that, the CRA is not hanged by the absence of a comma in this case.

[37] To conclude on the text, an electronic bulletin board could include an intranet. However, reading clause 27.01 as a whole, it does not refer to an intranet in this case because the parties agreed that PIPSC would have access to an electronic bulletin board "where available" and "in convenient locations". Those qualifiers or requirements would make no sense if clause 27.01 were meant to include the intranet.

B. Broader legal context behind the use of an employer's electronic network

[38] The CRA's interpretation is also more consistent with the broader legal context of a union's access to an employer's electronic facilities.

[39] There is a legal principle, articulated in *Bernard v. Canada (Attorney General)*, 2014 SCC 13 at para. 27, that "… the employer can control the means of workplace communication, can implement policies that restrict all workplace communications, including with the union, and can monitor communications." This right flows from an employer's right to control and manage its workplace.

[40] The Board has applied that general principle and has stated that "… generally, an employee organization does not have the right to use the employer's property to communicate with its members and that where that right exists it is usually the result of collective bargaining" (see *Professional Association of Foreign Service Officers v. Treasury Board (Department of Foreign Affairs, Trade and Development)*, 2013 PSLRB 111 ("*PAFSO*") at para. 66). In *PAFSO*, that meant that a union did not have the right to

send emails to its members using the employer's email system, and the employer was entitled to block those emails. The Board came to a similar conclusion in *Merriman v. MacNeil*, 2011 PSLRB 87, holding that a union does not have the right to use the employer's telephone system to call its members about union business at work. The Board also upheld the CRA's decision to discipline a union representative for using its email system for union affairs in *Paglia v. Canada Revenue Agency*, 2020 FPSLREB 67 at para. 238.

[41] This broader legal context means that a bargaining agent's ability to use the employer's electronic network is limited to those cases in which it has clearly and specifically negotiated its use. The CRA's interpretation is more consistent with this broader legal context.

[42] In addition to that broader legal context, the Board has referred to the InfoZone as an electronic bulletin board but has also stated that bargaining agents had no right to post on it. In *Public Service Alliance of Canada v. Canada Revenue Agency*, 2021 FPSLREB 1 ("*PSAC v. CRA 2021*"), a different bargaining agent complained that the CRA breached its collective agreement by denying it the right to post a communiqué concerning ongoing collective bargaining. The issue in that case was whether the CRA was entitled to refuse permission to post the specific messages about bargaining. However, the Board said two contradictory things in that case that are relevant to this one.

[43] First, the Board summarized the evidence from the CRA's witness like this:

> …
>
> *[6] According to Mr. Bellevance* [*sic*]*, the truth of what happened at the table that led to the breakdown of negotiations in May 2019 was the CRA's communiqué, posted* ***on its electronic bulletin board named "InfoZone",*** *in which he stated that the UTE had showed [sic] no interest in negotiating and that the CRA had made every reasonable effort to address the UTE's key priorities (see the communiqué, Exhibit 1, Tab 8).*
>
> …
>
> [Emphasis added]

[44] Mr. Bellavance affirmed an affidavit in this grievance, stating that the Board misstated his evidence in that earlier case and adding this:

…

> *18. I did not and would not give evidence that InfoZone is an electronic bulletin board because, at no time in my career, have I ever considered or interpreted InfoZone to be an electronic bulletin board under the relevant collective agreement provision.*
>
> *19. The issue of whether or not InfoZone is an "electronic bulletin board" was never raised by anyone during my evidence at the hearing. If it had been raised, I would have taken the opportunity to clarify and explained my interpretation that InfoZone is not an electronic bulletin board. The matter before the Board concerned a paper version of a union communiqué on a traditional bulletin board and its content.*

…

[45] It is fair to say that the issue in *PSAC v. CRA 2021* was not about the meaning of the term "electronic bulletin board". Mr. Bellavance was not cross-examined on his affidavit, so I take his evidence at face value.

[46] Second, the Board summarized the evidence from one of the bargaining agent's witnesses in that earlier case like this:

…

> *[18] The traditional place for posting such information is on a workplace bulletin board, which is where the membership still goes for update information, according to Mr. O'Brien. The PSAC has less than 50% of its members' personal email addresses,* ***and InfoZone is not available to the UTE to post its updates****. When the employer's update was posted, the UTE's members received an email from the employer stating that it was available for them to read on InfoZone.*
>
> …
>
> [Emphasis added]

[47] The Public Service Alliance of Canada's (PSAC) collective agreement is worded identically to PIPSC's collective agreement in that it states, "Reasonable space on bulletin boards in convenient locations, including electronic bulletin boards where available, will be made available to the Alliance for the posting of official Alliance notices."

[48] Reading *PSAC v. CRA 2021* as a whole, I cannot give any weight to the offhand comment at paragraph 6 of that decision calling the InfoZone an electronic bulletin board. The meaning of an electronic bulletin board was not the issue before the Board

in that case, and that offhand comment is contradicted later by the evidence that the InfoZone was not available to the bargaining agent to post notices.

C. PIPSC bargaining proposal

[49] In the most recent round of collective bargaining that led to an agreement in 2023, PIPSC proposed adding a clause that states, "For the sake of clarity, electronic bulletin boards shall include email systems, and any digital or other system, that is used to communicate general information to all employees." The parties did not amend clause 27.01, despite that proposal. The CRA argues that this favours its interpretation; PIPSC argues that by including the phrase "[f]or the sake of clarity", its proposal has no impact on the interpretation of clause 27.01.

[50] In light of my conclusion about the interpretation of clause 27.01 already spelled out, it is not necessary for me to consider whether to give any weight to PIPSC's bargaining proposal.

D. Nature of the AGM notice

[51] PIPSC submits that the AGM notice was innocuous and that it would not have harmed the CRA's interests; therefore, it was unreasonable for the CRA to refuse to permit it to post that notice. PIPSC further argues that the decision not to permit it to post the AGM notice on the InfoZone was a rule or policy introduced unilaterally by the CRA, which would require the CRA to meet the test in *Re Lumber & Sawmill Workers' Union, Local 2537 v. KVP Co. Ltd.* (1965), 16 L.A.C. 73 ("*KVP*"), for such policies — namely, that the rule must be reasonable.

[52] This is not a new CRA policy. Instead, it was following its long-standing practice not to permit PIPSC to post using the InfoZone. The *KVP* test applies only to rules made by management in the exercise of its reserved right to manage the workplace. Continuing a practice is not a "rule" that attracts the *KVP* analysis; see *British Columbia Public School Employers' Association / The Board of Education of School District No. 37 (Delta) v. British Columbia Teachers' Federation /Delta Teachers' Association*, 2023 CanLII 54536 (BC LA) at para. 66. PIPSC admits that there is no CRA policy document prohibiting a union's use of the InfoZone. Contrary to PIPSC's suggestion that this absence of a policy somehow makes the CRA's decision unreasonable, all it does is make it less likely that the decision attracts review under the *KVP* analysis.

[53] Even if the CRA's decision attracted the *KVP* analysis, I would not allow the grievance on that basis, for two reasons.

[54] First, PIPSC argues that the CRA's decision was unreasonable because it was a change to its past practice. However, there is no evidence that the CRA changed its past practice about the InfoZone. The CRA states that it has never permitted unions to post notices on the InfoZone, and PIPSC has no evidence to contradict that. Since there was no change, the CRA's decision cannot be unreasonable on this basis.

[55] Second, while I agree with PIPSC that an AGM notice is innocuous and inoffensive in and of itself, allowing it to post these messages on the InfoZone could have broader consequences.

[56] This AGM notice was for the AFS Surrey Sub-Group. What PIPSC calls sub-groups are called locals by other bargaining agents. According to its website, PIPSC has 54 different sub-groups in the AFS group. If the CRA were to agree to this request, it would have to do it for the other 54 PIPSC sub-groups as well. The InfoZone is a national intranet, so PIPSC's request is to post local union notices on a national platform. This makes it unlike a physical bulletin board or physical screen at a given location, where local AGM notices could be posted and read only by employees who are impacted because they work at that location.

[57] The CRA has identical collective agreement language with its other bargaining agent, PSAC. If PIPSC is allowed to use the InfoZone, so too would be PSAC. The component of PSAC representing members at the CRA (the Union of Taxation Employees) has 54 locals — each of which would be allowed to post AGM notices and other innocuous union business information.

[58] In other words, even if allowing this grievance would only permit PIPSC to post sub-group AGM notices, there would still be over 50 such notices each year. PSAC would get to post the same number of notices, meaning there would be over 100 notices each year.

[59] Finally, the Treasury Board has negotiated collective agreements with bargaining agents that have similar or identical language to this agreement permitting posting on electronic bulletin boards. Each department in the core public administration has its own intranet. Each department also has employees from a number of bargaining units.

There are roughly 29 bargaining units with 17 bargaining agents representing employees employed by the Treasury Board. Many units have a number of sub-groups, locals, or the equivalent.

[60] My point is that if I were to allow this grievance and conclude that a bargaining agent's right to use an electronic bulletin board extended to posting AGM notices or other notices on an agency's or department's intranet, some departments would have to post hundreds of AGM notices for local elections of no interest to the vast majority of employees (because they would not be part of that particular local).

[61] This one request by one sub-group at the CRA may be innocuous on its own. However, the implications of allowing this grievance would be far-reaching. This is a topic that warrants further consideration, discussion, and negotiation.

[62] PIPSC further argued that it needs access to the InfoZone because without it, it could communicate with only roughly a third of its membership because there are no screens in many workplaces, and many of its members work remotely. The mere fact that many workplaces do not have screens is not evidence that PIPSC is unable to communicate with its membership.

[63] I note that PIPSC spent over a decade fighting at the Board, the Federal Court of Appeal, and the Supreme Court of Canada to obtain home contact information from the CRA for the employees whom it represents; see *Bernard v. Canada (Revenue Agency)*, 2017 FCA 40, for a summary of this legal odyssey. I have no information one way or the other about why PIPSC does not have, or could not use, home contact information to contact its members about an AGM considering its right to obtain such information.

[64] Finally, PIPSC argues that the CRA's interpretation of the term "electronic bulletin board" is outdated and inconsistent with technological advancements. If that is true, it has been outdated for decades now. This is not a case of interpreting a collective agreement to keep pace with rapid technological change because the CRA has had the InfoZone since its inception over 25 years ago.

E. There is no estoppel

[65] PIPSC also relies on the doctrine of estoppel. PIPSC argues that the CRA has represented that the InfoZone is an electronic bulletin board and that it cannot go back on that representation in this case.

[66] The doctrine of estoppel requires a representation or course of conduct amounting to a representation by one party that was relied upon to the detriment of the other party; see *DP World (Canada) Inc. v. ILWU Ship and Dock Foreman, Local 514*, 2024 CanLII 132821 (CA LA) at p. 17. In other cases, there may be other elements or conditions to an estoppel. It is not necessary for me to explore those other conditions because PIPSC has failed to make out either of these two core features (a representation and detrimental reliance) of estoppel.

[67] First, there is no evidence of a representation by the CRA or a course of conduct that the InfoZone is an electronic bulletin board. Mr. Chiu's first affidavit says nothing about any representation or course of conduct. The closest it comes is when it says (at paragraph 4) this: "I confirm and reiterate the allegations set out in my Individual Grievance … and the Policy Grievance …". Both grievances state that the CRA denied the request to send the AGM notice **by email**, "… despite the fact that the Employer had acceded to such requests in previous years." Both grievances then state that the request to post the AGM notice on InfoZone was also denied. The grievances do not say that the CRA had acceded to requests to use the InfoZone in previous years.

[68] There is nothing in the first affidavit, or the grievances that the affidavit states contain true information, setting out a representation or course of conduct about the InfoZone.

[69] PIPSC filed three affidavits in reply to the CRA's submissions. None of them spell out a practice of using the InfoZone for union notices.

[70] Instead, PIPSC simply asserts in its written submissions that "[f]or years, the CRA has effectively represented and offered the Info Zone as the 'electronic bulletin board' described in the [collective agreement]." PIPSC does not identify any such representation. It appears to be relying on the Board's decision in *PSAC v. CRA 2021* as the source of this representation. As I have discussed, I am not prepared to take the

Board's characterization in that case as dispositive of this matter, nor does it amount to a representation by the CRA.

[71] Mr. Bellavance's affidavit states that the CRA has always taken the position that the InfoZone is not an electronic bulletin board and that it denied PIPSC permission to use the InfoZone in June 2015 on that basis. This evidence is clearer and more precise and therefore more persuasive that the past practice has been not to permit PIPSC to post messages on the InfoZone.

[72] Second, there has been no detrimental reliance. PIPSC has filed no evidence to show that it relied on the alleged representation to its detriment. It has filed no evidence to show that it changed its practices about preparing or sending AGM notices as a result of the CRA's alleged representations.

[73] When it comes to estoppel and collective agreement interpretation, detrimental reliance is often the inability of a party to collectively bargain to preserve the representation or course of conduct. For example, if a party says that it will not enforce the strict wording of the collective agreement, there is detrimental reliance by the other party if it did not try to collectively bargain to preserve that representation. The detriment suffered is the lost opportunity to bargain. The CRA and PIPSC were in the middle of negotiating a new collective agreement when these events arose in 2022. They signed a new collective agreement on December 14, 2023, and did not change the language of this clause. Therefore, even if there was a representation (which PIPSC has not filed sufficient evidence of), PIPSC did not suffer detriment because it had the opportunity to negotiate new language.

[74] Further, even if there had been an estoppel flowing from the detrimental reliance of not negotiating a right to use the InfoZone into the collective agreement (which there was not), the estoppel would have ended when the parties signed a new collective agreement. As an arbitrator said in *Saskatchewan (Ministry of Justice) v. SGEU (Humble)* (2014), 248 L.A.C. (4th) 117:

> …
>
> *[27] At its heart, estoppel is an equitable doctrine to prevent unfairness. In the context of a collective bargaining relationship, one party cannot represent that it will do or not do something and have the other party act on this representation, only to have the first party renege on its representation, even if for valid reasons,*

> *after it is too late for the first party to do anything about it… Normally, the party that is estopped from enforcing its rights has to await the subsequent round of collective bargaining for the estoppel to be removed. It is at the bargaining table that the legal rights inscribed in the collective agreement can be altered… Fairness dictated that the party that had relied on representations to its detriment should be able to maintain the status quo until it had the opportunity to renegotiate the legal relationship.*
>
> *[28] The distinguishing feature of the current case is that the Employer gave notice of its intention to enforce its legal rights during contract negotiations. The Union had the opportunity to attempt to change the contract to prevent the Employer from carrying out its intentions. Having chosen not to do so, it would be unfair to the [sic] prevent the Employer from enforcing its right to end the camp shifts until the next round of bargaining.*
>
> …

[75] Even if there was a representation (which PIPSC has not demonstrated) and detrimental reliance (which PIPSC has also not demonstrated), PIPSC had clear notice of the CRA's position in 2022 and signed a new collective agreement in 2023 that did not address the intranet. Any estoppel (and again, I have concluded that there was none) has ended.

[76] As I mentioned earlier, PIPSC made a proposal during bargaining that would have addressed this issue. According to an affidavit filed by its negotiator:

> …
>
> *We agreed to withdraw the above proposal because the Union was of the belief that we would have better chances at enforcing an existing entitlement via the policy and individual grievances that have been referred to adjudication given the resolute stance of CRA in this regard.*
>
> …

[77] PIPSC is certainly allowed to make that decision, but it means that it wins or loses this grievance based on the interpretation of the collective agreement. Any estoppel, if one existed, came to an end as soon as PIPSC signed a collective agreement in 2023.

F. Conclusion on the InfoZone

[78] For these reasons, I have dismissed the part of the grievance about the InfoZone. Clause 27.01, read as a whole, does not grant PIPSC access to the InfoZone to post AGM notices.

V. Email issue

[79] The answer to the email issue is straightforward. PIPSC has not negotiated the right to use the CRA's email system to communicate with its members. Without that negotiated agreement, the CRA does not have to let it use its email system.

[80] PIPSC argues that "… there are provisions in the [collective agreement] that support the use of the CRA's electronic tools, such as its electronic network, email and Intranet, for PIPSC to post its official notices …". However, PIPSC does not identify what provision in the collective agreement it is referring to. Clause 27.01 of the collective agreement permits PIPSC to access electronic bulletin boards, but it says nothing about emails. Nor do any other provisions of the collective agreement. As I discussed earlier, the general rule is that a union does not have the right to communicate with its members using the employer's telephonic or electronic equipment. Such a right must be negotiated. PIPSC has not done so for emails.

[81] PIPSC relies on the doctrine of estoppel in this issue as well.

[82] In its initial submissions, PIPSC did not provide clear evidence to support its claim for an estoppel. It relied on Mr. Chiu's original affidavit that purported to adopt the grievance form, which referred briefly to a past practice of allowing it to send AGM notices by email. That one line would not be sufficiently clear to convince me of the existence of this past practice.

[83] In its reply submissions, PIPSC included three new affidavits, including another one by Mr. Chiu. This time, Mr. Chiu stated that he has been working with the CRA for 18 years and that "[e]ver since [he] can remember", it has allowed the circulation of AGM notices by email. He included two such notices: one for a 2021 AGM of the "Vancouver-CRA Branch" (what I understand to be the AFS Vancouver Sub-Group), and one for the 2018 AFS Burnaby Sub-Group.

[84] At the risk of stating the obvious, annual general meetings occur annually. It is not clear to me why Mr. Chiu could provide only a single AGM notice sent by email for

two AFS sub-groups. In particular, this case is about the 2022 AGM notice for the AFS Burnaby Sub-Group; Mr. Chiu does not explain why he could provide only a single notice from 2018 for this sub-group.

[85] Even if I were to accept Mr. Chiu's affidavit as clear evidence of a past practice that amounts to a representation that PIPSC could send AGM notices by using the CRA's email, PIPSC filed no evidence about any detriment it suffered by its reliance on this alleged representation. As with the InfoZone issue, there is no evidence that it changed a position in an earlier round of bargaining because of this representation, delayed sending the AGM notice directly to its members in reliance on this alleged representation, or suffered any other detriment by relying on this representation.

[86] Finally, as I said earlier, even if there were an estoppel, it ended on signing the new collective agreement. The CRA notified PIPSC that it could not use work email for AGM notices; PIPSC proposed language to deal with that issue and ultimately signed a collective agreement without that language. Even if there were an estoppel, the CRA brought it to an end.

VI. Scope of reply evidence and submissions

[87] I want to conclude by addressing a concern about PIPSC's reply submissions. PIPSC filed 3 affidavits, along with a 16-page argument (1 page longer than its initial submissions). The CRA objected to these affidavits and submissions on the basis that they went beyond the scope of a proper reply. PIPSC responded with an 11-page submission about why its reply was necessary.

[88] PIPSC bears the burden of proof in these grievances, and it led its evidence first. Reply evidence is limited to rebutting matters newly raised in the second party's (in this case, the CRA's) evidence that could not reasonably have been anticipated by the first party (in this case, PIPSC); see *Guest v. Canada Customs and Revenue Agency*, 2003 PSSRB 89 at para. 50. As stated in M. Gorsky et al., *Evidence and Procedure in Canadian Labour Arbitration*, at chapter 10:38, "… the party beginning cannot divide its case by presenting its evidence and then, when this is shaken by the other side's evidence, attempt to add confirmatory evidence." This is exactly what PIPSC tried to do in its reply. In particular, Mr. Chiu's affidavit about the nature of this past practice was not about something newly raised in the CRA's evidence; further, the need to lead clear

evidence to substantiate this past practice was clear from the outset and should have been anticipated by PIPSC.

[89] PIPSC argues that its new evidence in support of its estoppel argument is proper because the CRA could have known about those emails and "… has a deeper and all-encompassing ability to retrieve old emails containing the notices that may no longer be accessible to union members and Mr. Chiu." The fact that the CRA has access to emails on its network does not relieve PIPSC of the obligation to lead the material facts necessary to establish an estoppel.

[90] Not all the reply evidence violates this principle; for example, the affidavit of Vance Coulas addressed PIPSC's bargaining proposal about electronic bulletin boards. The affidavit was directly responsive to the CRA's affidavit, and it is at least possible that the issue of the implications of its bargaining proposal might not have been reasonably anticipated by PIPSC.

[91] Similarly, reply submissions are also supposed to be restricted to matters raised by the responding party (in this case, the CRA). PIPSC went beyond that in some of its submissions in this case.

[92] As it turns out, I was not persuaded by PIPSC's reply evidence and submissions, and I have referred to them in my reasons for this decision despite them being outside the proper scope of a reply. I will not go line-by-line through PIPSC's reply to parse what was an appropriate reply and what was not. By referring to all its reply submissions, I am not endorsing expansive reply evidence and submissions.

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

(The Order appears on the next page)

VII. Order

[94] The grievances are denied.

May 13, 2025.

Christopher Rootham,
a panel of the Federal Public Sector
Labour Relations and Employment Board