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File: 486-SC-50879

Citation: 2025 FPSLREB 61

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

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

BETWEEN

SENATE OF CANADA

Applicant

and

PUBLIC SERVICE ALLIANCE OF CANADA

Respondent

Indexed as
Senate of Canada v. Public Service Alliance of Canada

In the matter of an application under s. 59 of the *Parliamentary Employment and Staff Relations Act*

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

For the Applicant: David Plotkin, counsel

For the Respondent: Shannon Blatt, counsel

Decided on the basis of written submissions, filed October 10, 16, and 25, and November 1, 2024.

REASONS FOR DECISION

I. Overview

[1] The Senate of Canada ("the Senate") has applied for an extension of time to implement the terms of an arbitral award for the Operational Group, represented by the Public Service Alliance of Canada (PSAC). PSAC opposes the application and asks that I award damages payable to each affected employee.

[2] I have denied the Senate's application because it waited until almost the last minute to make its application, it has not been transparent with PSAC, it has not satisfied me that it has acted with due diligence, and it has not acted in good faith.

[3] I have also concluded that I do not have the jurisdiction to grant damages in this application.

[4] My reasons follow.

II. Procedure followed for this application

[5] As I will explain in greater detail later, I am the panel of the Board for this application, and I was also on the arbitration panel that issued the arbitral award that the Senate seeks to extend the time to implement. On October 8, 2024, PSAC wrote to the arbitration panel to ask it to resolve the issue of the Senate indicating that it would be late implementing the arbitral award. On October 10, 2024, the Senate sent a letter to the arbitration panel seeking an extension of time to implement the arbitral award.

[6] On October 11, 2024, I issued a letter decision stating that the arbitration panel did not have the jurisdiction to deal with PSAC's request because issues about implementation or extensions of time fall within the jurisdiction of the Federal Public Sector Labour Relations and Employment Board ("the Board", which in this decision also refers to any of its predecessors), not an arbitration panel deemed to be the Board for the limited purpose of issuing an arbitral award.

[7] In light of the potential of a broader interest in this jurisdictional question, I reproduce that letter decision as follows:

> *The bargaining agent has requested the intervention of the arbitration board to address an allegation that the employer has declared that it will not implement the arbitral award in a timely*

fashion. The arbitration board does not have the jurisdiction to deal with this request.

Section 48 of the Parliamentary Employment and Staff Relations Act *(*PESRA*) sets out the rules about the composition of the arbitration board and the time limit of its mandate as follows:*

> ***48 (1)** In respect of each dispute referred to arbitration, the Board shall be deemed to consist, **for the period of the arbitration proceedings and for the purposes of the arbitration only**, of a member of the Board and two other persons, one each selected by the Board from each panel appointed under subsection 47(1).*

The bargaining agent's complaint is that the employer has not or will not comply with s. 59 of PESRA. *A complaint about a breach of s. 59 of* PESRA *is dealt with under s. 13(1)(b) of* PESRA, *which states that "the Board" (by which it means the Federal Public Sector Labour Relations and Employment Board, not the arbitration board deemed to be the Board) shall examine and inquire into any such complaint. The arbitration board does not have the jurisdiction to hear a complaint under s. 13(1) of* PESRA *because its jurisdiction only extends "for the purposes of the arbitration" and a complaint under s. 13(1) is not "the arbitration."*

The arbitration board only remained seized to resolve any differences that arose in respect of the implementation of the award – which is limited to clarifying any ambiguity about the terms of the award or correcting any typographical errors. The arbitration board also remained seized for the purposes of resolving the two outstanding issues (wage grid and uniforms) that the bargaining agent states have been resolved. A complaint about late implementation of the arbitral award falls outside of the scope of the arbitration board's reserved jurisdiction.

This is confirmed in Public Service Alliance of Canada v. House of Commons, *2021 FPSLREB 45 at para. 87 where the arbitration board stated: "… if the employer is unable to meet the 90-day timeline, it would need either to negotiate an implementation extension with the bargaining agent or to apply to the Board under s. 59 of the* PESRA *for such an extension." I also reviewed* Federal Government Dockyard Chargehands Association v. Treasury Board (Department of National Defence), *2013 PSLRB 139 where a similar dispute under what is now the* Federal Public Sector Labour Relations Act *was heard by the Board, not by the arbitration panel. This is a further indication that any applications about late-implementation of the award need to be addressed to the Board, not this arbitration board whose mandate is limited.*

For these reasons, the arbitration board does not have the jurisdiction to hear the issues about implementation about [sic] the arbitral award. The parties must proceed to the Federal Public Sector Labour Relations and Employment Board, and not this arbitration board, to address these issues.

> *For the same reasons, the arbitration board does not have the jurisdiction to decide the Senate's application for an extension of time to implement the arbitral award. The Federal Public Sector Labour Relations and Employment Board will be dealing with that matter shortly.*
>
> …

[8] PSAC responded later that day, to state that it opposed the Senate's application but that it would first discuss it with the Senate.

[9] I was then assigned as a panel of the Board to hear this application. On October 16, 2024, I wrote to the parties to ask how they wanted me to go about resolving this dispute. I provided four options: a hearing in writing, a short oral hearing (if the facts were not in dispute or there were no witnesses), an oral hearing with witnesses, or mediation. The parties both chose the first option.

[10] The Senate had sent an email on October 16, 2024, that provided an update on the extension of time needed in this application. The parties agreed that the Senate's letter of October 10 and its email of October 16 would be treated as its submissions in favour of the application. PSAC filed a response on October 25, and the Senate filed a reply on November 1. Both parties attached documents to their submissions that they agreed would be treated as evidence in this application. Later, in response to my question, they agreed that the briefs filed at arbitration would also form part of the record of this application.

[11] Finally, I asked the parties whether they wanted a "line decision" (i.e., the order in this application) immediately, with reasons to follow. Both parties stated that a line decision was not necessary and that they could wait for the formal reasons for my decision.

III. Legal framework for this application

[12] I will begin these reasons with a short overview of the legal framework for an application to extend the time to implement an arbitral award, as this legal framework will explain why these reasons will focus on particular facts.

A. Statutory framework of the *PESRA*

[13] The Senate is one of seven employers regulated by the *Parliamentary Employment and Staff Relations Act* (R.S.C., 1985, c. 33 (2nd Supp); "*PESRA*"). It

provides administrative and other support for senators. Employees with the employers regulated by the *PESRA* are not allowed to strike. Instead, if the employer and bargaining agent are unable to reach a collective agreement, the terms and conditions are set by interest arbitration. The result of that interest arbitration is called an "arbitral award", which is a defined term in s. 3 of the *PESRA*.

[14] Section 59 of the *PESRA* requires the parties (in this case, the Senate and PSAC) to implement the terms and conditions of employment contained in an arbitral award within 90 days, unless a party applies to the Board for an extension of time to implement the arbitral award. Section 59 of the *PESRA* reads as follows:

Implementation of awards	***Mise en oeuvre des décisions arbitrales***
59 *The terms and conditions of employment that are the subject of an arbitral award shall, subject to the appropriation by or under the authority of Parliament of any moneys that may be required therefor, be implemented by the parties within a period of ninety days from the date on and after which it becomes binding on the parties or within such longer period as, on application to the Board by either party, appears reasonable to the Board.*	***59*** *Les conditions d'emploi sur lesquelles statue une décision arbitrale sont, sous réserve de l'affectation par le Parlement, ou sous son autorité, des crédits nécessaires, mises à effet par les parties dans les quatre-vingt-dix jours à compter de la date où la décision arbitrale lie les parties ou dans le délai plus long que la Commission juge raisonnable d'accorder sur demande de l'une des parties.*

[15] Section 59 of the *PESRA* is similar to s. 43 of that Act about the time within which a collective agreement must be implemented. When the parties reach a collective agreement, they may also agree on the deadline to implement it. If they do not agree, the deadline is 90 days. Again, either party may apply to the Board to extend the time to implement the collective agreement to a period "… as may appear reasonable to the Board" (see s. 43(1)(b) of the *PESRA*).

[16] Sections 43 and 59 of the *PESRA* mirror ss. 117 and 157 of the *Federal Public Sector Labour Relations Act* (S.C. 2003, c. 22, s. 2; "*FPSLRA*"). Section 117 of the *FPSLRA* requires parties to agree on when to implement a collective agreement and, if there is no such agreement, requires that implementation within 90 days. Section 157 states that the parties must implement an arbitral award within 90 days. Both provisions

allow the Board to extend the time to implement a collective agreement or arbitral award.

[17] The only difference between the *PESRA* and the *FPSLRA* is that the former uses the phrase "appears reasonable to the Board", while the later simply states that the Board "may set" a longer period. The predecessor to the *FPSLRA* — the *Public Service Staff Relations Act* (R.S.C., 1985, c. P-35, at s. 57; "*PSSRA*") — was worded identically to the *PESRA* and used the same phrase of "appears reasonable to the Board" as the test for whether the Board should grant an extension of time to implement a collective agreement or an arbitral award until it was amended in 1992 (under the *Public Service Reform Act* (S.C. 1992, c. 54, at ss. 49 and 61)) to reflect the current wording of the *FPSLRA*.

[18] In *Treasury Board v. Federal Government Dockyard Trades and Labour Council East*, 2014 PSLRB 13 ("*Dockyards 2014*"), the Board said the difference in wording between the *PSSRA* and the *FPLSRA* did not materially change its approach to these applications. I agree, and the same difference in wording between the *PESRA* and the *FPSLRA* is not material either.

B. Factors that the Board has considered in similar applications

[19] In the Board's first case granting an extension of time for an employer to implement a collective agreement, it referred to the provision in force at the time as a "… 'safety valve' … designed to deal with situations that could not reasonably have been foreseen at the time the agreement was entered into or situations that develop subsequently and which are beyond the control of the Employer" (see *Treasury Board v. The Professional Institute of the Public Service of Canada*, Board File No. 151-02-4 (19691118) at para. 5; "*TB v. PIPSC 1969*"). The "safety valve" metaphor remains as apt today as it was 55 years ago — or as the Board put it in *House of Commons v. Public Service Alliance of Canada*, 2021 FPSLREB 49 ("*House of Commons 2021*") at para. 176: "The imagery of a safety valve introduced in the *1969 decision* remains generally resonant."

[20] Neither party disputes that s. 59 of the *PESRA* grants the Board the discretionary power to extend the time for a party to implement an arbitral award. The *PESRA* does not expressly limit the Board's discretion in any way.

[21] The Board and its predecessors have heard a number of applications to extend the time to implement a collective agreement or an arbitral award. While these applications are infrequent, there have been enough of them over the past 55 years that the Board and its predecessors have set out a number of factors or principles that are relevant in this case. These factors or principles are the following:

- The applicant bears the onus of proving the need for an extension and the basis of the longer implementation period that it proposes (see *House of Commons 2021*, at para. 172).

- The timing of an application for an extension of time is relevant. The applicant should make the application at the earliest opportunity and with enough notice to the Board to permit it to fully appraise the parties' positions before the expiry of the 90-day period (see *Public Service Alliance of Canada v. Parliamentary Protective Service*, 2020 FPSLREB 1 at para. 43; and *Treasury Board v. Public Service Alliance of Canada*, Board File No. 151-02-7 (19760716) ("*Education Group 1976*") at para. 8).

- The applicant should attempt to reach an agreement with the other party on extending the time for implementation before coming to the Board (see *TB v. PIPSC 1969*).

- The applicant must also be transparent with the other party about the delays, its reasons, and the steps being taken to deal with those delays (see *Dockyards 2014*, at para. 80; and *House of Commons 2021*, at para. 207).

- The applicant must show due diligence to meet the deadline (see *House of Commons 2021*, at para. 177).

- This obligation to show due diligence occurs at two times. First, the Board will consider whether the party seeking the extension has acted diligently before entering into a collective agreement or before an arbitral award has been issued by making the proper assessment of its resources for implementation purposes (see *Treasury Board v. Public Service Alliance of Canada*, [1999] C.P.S.S.R.B. No. 119 (QL) at para. 26). If the problem is known, the party is expected to disclose and negotiate it at the bargaining table (see *Treasury Board v. Public Service Alliance of Canada*, 2000 PSSRB 103). Second, the Board

will consider whether the party seeking the extension has worked diligently after the agreement was concluded or the arbitral award issued, to implement it (see *Dockyards 2014*, at para. 73).

- The Board is more likely to grant the extension when the reason for the delay is an honest error in miscalculating the deadline (see *Dockyards 2014*, at para. 73).

- The Board considers whether the party seeking the extension has acted in good faith (see *House of Commons 2021*, at para. 177; and *Dockyards 2014*, at para. 68).

C. Relevance of the Pay Centre

[22] One more complicated issue is whether the actions of pay administrators are relevant in these applications.

[23] The Senate blames the Pay Centre for the delay in this case. The Pay Centre is a term used to describe a group of employees of the Department of Public Works and Government Services (known as Public Services and Procurement Canada or "PSPC") who are responsible for administering compensation within the federal government. The *Pay Disbursement Administrative Services Order, 2011*, PC 2011-1550, requires the PSPC to provide pay administration services (including the calculation and issuance of pay) across the federal public administration. It states specifically that PSPC must provide this service to persons employed by the Senate.

[24] I have not been given clear evidence about the respective roles of compensation workers with the Senate and Pay Centre. The Senate's submissions state that it prepares a permanent line update table ("PLU table") and that it sends it to the Pay Centre for processing. I am not sure whether this means that the Senate calculates the wage adjustments and the Pay Centre is responsible for data entry, or whether the Senate simply sends the percentage increase and the Pay Centre does the calculations.

[25] On the one hand, the Board has been sympathetic to Parliamentary employers when the delay has been caused by the Pay Centre. The Board considered the "outsized role" played by the Pay Centre in *House of Commons 2021*, at para. 212, as a factor militating in favour of granting an extension, and stated in a letter decision dated

February 6, 2020, involving *Parliamentary Protective Service v. House of Commons Security Services Employees Association* that it "… recognizes the complexity of having to deal with other entities [including the Pay Centre] to implement the payments."

[26] On the other hand, in *Education Group 1976*, the employer sought an extension of time because it had to refer the collective agreement to the Anti-Inflation Board to secure its approval before implementing it. The Anti-Inflation Board took 63 days to approve the collective agreement, and the employer could not implement it within the remaining 27 days available. The Board ended up granting the employer an extension of time, but it did not accept that the time taken by the Anti-Inflation Board justified the extension. It criticized the employer for not implementing the part of the wage increase that it knew would be safe from scrutiny by the Anti-Inflation Board and for not having negotiated an extension of time with the bargaining agent in anticipation of that delay.

[27] The Pay Centre is not a third-party pay administrator. It is part of the federal Crown. So too is the Senate. Just as "… the staff of the House [of Commons] are quite simply, in my view, employees of the Crown" (from *House of Commons v. Canada Labour Relations Board*, [1986] 2 F.C. 372 (C.A.) at 389, per Hugessen J. in a concurring decision), employees of the Senate are also employees of the Crown. See also *Canada (House of Commons) v. Vaid*, 2005 SCC 30, in which the Supreme Court of Canada stated at paragraph 79 that "[o]n the face of it, the *Canadian Human Rights Act* applies to all employees of the federal government including those working for Parliament" — indicating that employees working for Parliament (including the Senate) are employees of the federal government.

[28] There is something distasteful about one branch of the federal Crown trying to justify a failure to comply with its statutory obligation by blaming another branch of the federal Crown. In *Wells v. Newfoundland*, [1999] 3 SCR 199, the Government of Newfoundland enacted legislation that eliminated a particular position. When the former occupant of that position claimed damages for his dismissal, the Government of Newfoundland claimed that his contract of employment had been frustrated by that legislation, absolving it from liability. The Supreme Court of Canada rejected that argument, stating at paragraph 52 that "… it is disingenuous for the executive to assert that the legislative enactment of its own agenda constitutes a frustrating act beyond its control." This is similar to what the Senate is trying to do in this case. It

argues that the Pay Centre's refusal to implement the arbitral award justifies the extension of time. While it does not use the phrase, it is arguing that the Pay Centre's failure is a frustrating act beyond its control — yet both are just different branches of the federal Crown.

[29] I have decided not to resolve this legal issue in this case because, on the facts of this case, I would give no weight to the involvement of the Pay Centre even if its involvement was relevant.

IV. Factual background to this application

A. Conduct of the arbitration

[30] This application is about the implementation of an arbitral award that determined the terms and conditions of employment for approximately 79 Senate employees in the Operational Group bargaining unit represented by PSAC. That arbitral award is *Public Service Alliance of Canada v. Senate of Canada*, 2024 FPSLREB 89 ("*Senate 2024*").

[31] Arbitration under the *PESRA* is conducted in front of a panel of three members: a representative of the interests of each party, and a member of the Board colloquially referred to as either the "chair" or the "neutral" (see the *PESRA*, at s. 48(1)). The two representative panel members are deemed to be members of the Board for the purposes of issuing that arbitral award (see the *PESRA*, at s. 48(2)). If a majority of the Board cannot agree on the arbitral award, the neutral makes the decision (see the *PESRA*, at s. 56(2)).

[32] As described at paragraphs 3 through 5 of *Senate 2024*, the previous terms and conditions were set by an arbitral award issued on September 9, 2021. That arbitral award expired on September 30, 2022. PSAC served notice to bargain on August 2, 2022. The parties bargained for nine days between February and July 2023, after which PSAC requested arbitration. The members of the panel were selected (including me, as the neutral), and the hearing of the arbitration was scheduled for April 16, 2024. The parties exchanged written briefs on April 2, 2024, in advance of that hearing.

[33] Importantly for the purposes of this application, PSAC initially proposed a term or condition of employment that employees would be paid $500 "in recognition of extended implementation", along with another $50 if the arbitral award is not

implemented within 90 days, and then another $50 for each 90-day period that the implementation is late.

[34] By way of context, PSAC represents bargaining units at a number of Parliamentary employers. Those other Parliamentary employers have had a history of late implementation of collective agreements and arbitral awards. PSAC made a similar proposal at arbitration for other Parliamentary employers. The arbitral panel for bargaining units at Parliamentary Protective Services (see *Public Service Alliance of Canada v. Parliamentary Protective Service*, 2024 FPSLREB 73 ("*PPS 2024*")) and the House of Commons (see *Public Service Alliance of Canada v. House of Commons*, 2024 FPSLREB 82 ("*House of Commons 2024*")) ordered that in the event of late implementation of the arbitral award of an amount greater than $500, employees are to be paid a lump-sum of $200 plus $50 for each additional 90-day period of delay. For additional context, I happened to be the neutral for those two arbitration panels in addition to the panel hearing the Senate case.

[35] By contrast, the Senate does not have a history of late implementations. In recognition of that, PSAC withdrew its proposal on April 1, 2024 (i.e., almost immediately before the parties exchanged arbitration briefs). As the Senate stated in its application:

> …
>
> *… the Senate does not have any recent history of late implementation of awards or collective agreements. This fact was rightly acknowledged by PSAC, when it* withdrew *its proposed memorandum on late implementation damages prior to the arbitration before this panel, as it did not have a demonstrated need for such a request vis-à-vis the Senate.*
>
> …

[36] Bizarrely, when it filed its reply submissions in this application, the Senate denied that it knew why PSAC withdrew its late-implementation proposal, stating, "For its own reasons, unknown to the Senate, PSAC remained silent about potential late implementation scenarios, and withdrew its memorandum for late implementation damages on the morning of the hearing."

[37] Neither of those statements are correct. PSAC did not withdraw its late-implementation proposal on the morning of the hearing — it withdrew it roughly two

weeks before the hearing. Also, PSAC was clear about why it withdrew its proposal, which the Senate acknowledged in its application in this case.

[38] The arbitration panel released its decision on July 15, 2024. The arbitration panel awarded wage increases effective on October 1 of 2022, 2023, and 2024. The parties had previously agreed on a $2500 lump-sum payment for each employee employed in the bargaining unit on the date of the arbitral award; the parties disagreed about how to word that payment, so the arbitration panel settled the wording of that payment. The arbitration panel also ordered the parties to create a wage grid for this collective agreement, to be made effective on October 1, 2024, after the wage increases had been implemented.

B. Facts about late implementation

1. The Pay Centre "freeze"

[39] As discussed earlier, the Pay Centre is partly responsible for inputting wage increases for Senate employees.

[40] On March 1, 2024, an official at the Pay Centre sent an email to the Senate (and other affected departments, agencies, and employers) with the subject line, "Upcoming agreement and freeze period - Pay System, Database and PeopleTools (PSDPT)". The English text of that email reads as follows (excluding some colour coding in the original used to make the periods more obvious):

> *Good day all,*
>
> *While many negotiations for new agreements are on-going [sic] and could result in additional updates that must be processed in the coming months, PSPC wants to make you aware of the launch of the Pay System, Database and PeopleTools (PSDPT) transition that is scheduled to be implemented in the pay system the weekend of September 20 to 23, 2024.*
>
> *To ensure a smooth transition, the freeze periods below were established. Please note that after the soft freeze, very limited activities will be authorized.*
>
PSDPT (Project):	*Soft Freeze:*	*February 5, 2024– May 31, 2024*
	Hard Freeze:	***June 1, 2024 – September 23, 2024***

Deployment:	***September 20-23, 2024***
Stabilization Period:	***September 24, 2024 – November 20, 2024***

> *The implementation of new agreements (collective agreements, letter of authority, arbitral awards, etc.) in the pay system requires robust planning to factor in ongoing major business change activities to prevent impacting the programs and the integrity of the release. Therefore, PSPC strongly recommends that our partners factor in the pay system restriction when establishing implementation timelines in order to reduce the impact of possible penalty payments. The standard for implementation of the automated portion of a salary revision, mass retroactive payment and other provisions should be 180 days.*
>
> *As we move towards the government's goal of simplification of the pay system, we remain available to provide assessments of whether changes to the agreements hinder that goal.*
>
> *We thank you for your continued collaboration and we look forward to continue working with you with your new agreement activities.*
>
> …
>
> [Emphasis in the original]

[41] This email is not entirely clear about what the so-called stabilization period between September 24, 2024, and November 20, 2024 means.

[42] I have no evidence that the Senate wrote to the Pay Centre to ask for clarification of this email, given that it was about to have an arbitration hearing on April 16, 2024, and that it would have to implement an arbitral award within 90 days of a decision flowing from that hearing (which could have come at any time).

[43] The Senate did not inform either PSAC or the arbitration panel about this email or about the possibility of any delay implementing an arbitral award.

[44] On the contrary, since PSAC pulled its proposal dealing with late implementation shortly before the briefs were due, the Senate responded to that proposal, despite it being pulled. When doing so, the Senate wrote the following in its arbitration brief (at pages 85 and 87):

> *… The Employer met all the implementation deadlines in the last round of bargaining ….*

> *On this basis alone, there is no evidence of late implementation and therefore no demonstrated need for such an appendix.*
>
> …
>
> *These backlogs* [in pay implementation]*, to the extent they exist today for the core public service, **do not exist at the Senate**. The Senate's in-house Compensation Team is entirely up to date in entering its daily transactions: there is no backlog. As such, there is no basis, whatsoever, to assume that there will be late implantation [sic] of any award, and to sanction the Employer with monetary penalties – even for meeting the statutory deadlines.*
>
> [Emphasis in the original]

[45] In this application, the Senate did not explain how it could reconcile its statement on April 2, 2024, that "… there is no basis, whatsoever, to assume that there will be late implantation [*sic*] …" with the email of March 1, 2024, from the Pay Centre, telling it that it would not be able to implement an arbitral award between June 1, 2024, and either September or November 2024.

[46] The Senate acknowledges that it never told PSAC about the March 1, 2024, email. Nevertheless, it submits that PSAC must have known about the possibility of late implementation because two PSAC representatives attended a meeting on April 9, 2024, of the technical sub-committee of the executive-level Phoenix union-management consultation committee. During that meeting, there was a PowerPoint presentation about a payroll database upgrade project. At the top of slide 9 of 14 of that presentation, in tiny font, there was a timeline that set out the dates of a "PSDPT Hard Code Freeze" and the "PSDPT Stabilization" periods set out in the March 1, 2024, email. These freeze and stabilization periods have something to do with the database upgrade.

[47] As far as is listed in the minutes of that meeting, no one from the Senate attended. The Senate filed no evidence (by a witness or some confirming document) about the content of that presentation or what was said about that timeline. The minutes of that meeting state that two people from PSAC attended. The minutes state that the meeting was scheduled to last two hours and that it took place by videoconference. I have no information about either of the two people from PSAC, aside from them not having appeared at the arbitration involving the Senate.

[48] In short, I have no evidence about what was said at this meeting, what the PowerPoint slide was meant to communicate, how it was understood by the

participants at this meeting, or what a "hard code freeze" even means. As I stated earlier, the Senate bears the onus of proof in this application. Its evidence falls well short of what I would need to draw an inference that PSAC knew on April 9, 2024, that the Pay Centre would prevent the Senate from implementing an arbitral award in a timely fashion.

[49] To further contradict its submission that PSAC knew about the so-called hard freeze and its implications, the Senate argues that it did not understand its implications either, stating this:

> …
>
> *Far from active concealment, it is also important to note that the March 1, 2024, email that the Senate received, was not confirmation that the PSAC employees at the Senate* would *necessarily be affected by a data freeze. This email informed the Senate of the speculative possibility that if several cards fell the way they did that there might be a delay in implementing the pay provisions of the award. Namely, if an arbitral award would be rendered in June or July 2024 (and no earlier or later), if retroactive pay would be awarded, if no party would seek judicial review of the award, and if PSPC might have an undue backlog of data entry requests and would not prioritize the Senate's requests. That is a lot of "ifs".*
>
> …

[50] I note two things about this. First, this contradicts the Senate's submission that PSAC knew about the hard freeze and its implications. The Senate cannot argue that PSAC knew about it (especially on the basis of one line buried at the top of a PowerPoint slide) but that the Senate did not. Second, this contradicts the Senate's submission at arbitration that "… there is no basis, whatsoever, to assume that there will be late implantation [*sic*] of any award …". Even if the Senate was unclear about the impact of the March 1, 2024, email, it cannot credibly assert that there was "no basis" to be concerned about a late implementation.

2. Events after the arbitral award

[51] As I stated earlier, the arbitration panel released its award on July 15, 2024. This means that it had to be implemented by October 15 (as the 90 days expired on a weekend with a statutory holiday, and October 15 was the next day that was not a holiday). On July 16, an official with the Senate wrote an email to the Pay Centre with

the subject line "Implementation of new salary grid". The text of that email reads as follows:

…

> *Quick question, we are presently in arbitration with our PSAC employee, we received an arbitral decision to negotiate a wage grid, meaning we would be passing from a min-max range to a step grid. We have 990 days to implement. My is question is will it take more time for you guys to implement the step grid since it's the first one? Or is it more or less the same process as updating the PLU table?*
>
> [*Sic* throughout]

[52] The email that I have quoted does not actually ask the Pay Centre to implement the arbitral award within 90 days. It asks about implementing the wage grid — which is not what the arbitral award ordered (as a reminder, it ordered the parties to create the wage grid, but the grid was to be effective only after the wage increases on October 1, 2024).

[53] In its application, the Senate states that its internal human resources team began the process of implementing the award on July 16, 2024, when it sent that email. It provides no evidence of what that process entailed. The Senate also asserts in its submissions that it "… showed persistence in [its] interactions with PSPC". It has presented no evidence to substantiate this submission: no letters, emails, or meeting notes.

[54] The Senate states that its compensation team prepared the necessary calculations "[l]ater in the summer". Again, it provides no evidence to substantiate that claim and does not even provide the date it provided the calculations to the Pay Centre. "Later in the summer" could mean August (as many people think of summer ending at the end of August) or sometime closer to the official end of summer, on September 22, 2024.

[55] The Senate also submits that "[a]t every stage, and with full transparency, the Senate has kept the union's representatives aware of the challenges it was facing with PSPC …". To support this submission, the Senate provided an email dated Friday September 27, 2024, that reads as follows:

…

> *A quick note to let you know that PSPC has confirmed that the economic increase can be expected on the pay issued December 4 and the retro on the pay of December 18.*
>
> *Please let me know if you have any questions.*
>
> …

[56] The Senate's chief human resources officer sent that email to a local representative, who was also a member of the PSAC bargaining team, but, notably, not to PSAC's negotiator. I say that this is notable in light of the Board's decision in *House of Commons 2021*, which read as follows:

> …
>
> *[207] To the extent that the case law suggests that transparency is among the factors to be considered when weighing the merits of an extension application, I find that the evidence seriously militates against the applicant's position… The applicant involved local union representatives in rolling out membership information sessions about the Award and forewarned Mr. Thompson that there might be delays. That engagement was laudable and useful, but the bargaining agent, represented by Mr. Gay, had the authority to represent the interests of the membership and to address implementation issues.*
>
> …

[57] Similarly, in this case, the Senate engaged with local representatives instead of PSAC's negotiator (who was also Mr. Gay this time). There are a series of one-line emails dated October 1, 2024 (the next working day), in which the Chief Human Resources Officer says that she has spoken with Mr. Gay and that she will "keep him posted." She also tells the local representative that "… unfortunately we don't directly carry out every step." I have no information about this conversation with the negotiator, what information was provided, and whether there was later discussion. There must have been some discussion after October 1 in light of PSAC's attempt to engage the arbitration panel about late implementation on October 8, but I have no evidence aside from that.

[58] On October 2, 2024, an official from the Pay Centre wrote to an official at the Senate to say that "… we do not have a window to implement prior to November 19 for the PLU and November 21 for the Retro." The Senate characterizes this as the Pay Centre's "definitive decision". The Senate must have received an interim decision before that date (otherwise, it would not have written to the PSAC local representative

on September 27), but I have no evidence about when the Senate received that interim decision.

3. Details of the extension sought by the Senate

[59] As I stated earlier, PSAC wrote to the arbitration panel on October 8, 2024, to seek a resolution to the late implementation, and the Senate filed what became this application on October 10.

[60] The Senate initially sought an extension of time so that the economic increases would be paid on December 4, 2024, and that the $2500 lump sum and retroactive pay would be paid on December 18. On October 16, it amended its request so that the $2500 lump sum would be paid on November 6 instead. In its reply submissions, the Senate states that this was the result of its "persistence" and is proof that it has acted "diligently". Again, I have no evidence to substantiate this assertion, and I have nothing to explain why this happened. The Senate characterizes this as "a clear win for the employees" that it is less late than it anticipated. It does not explain how being less late than anticipated in paying money it owed was a "win" for employees — reducing the margin of defeat does not make something a victory. On November 5, the Senate amended its application again because the Pay Centre would be able to make the retroactive payments on December 4.

4. The Senate pays wage increases to unrepresented employees

[61] On October 18, 2024, the Senate informed its unrepresented employees of salary increases that came into effect on October 1 and that would be reflected on the pay deposits made on October 23. PSAC argues that this shows that the Senate "… lacks credibility when it categorically claims that full and timely implementation is not possible." In reply, the Senate submitted that its treatment of unrepresented employees is irrelevant. I disagree; if unrepresented employees are paid a wage increase during the time the Senate says it is impossible to pay represented employees, that calls its alleged inability to implement the arbitral award into question.

[62] More substantively, the Senate states that it authorized this increase in June 2023 so that its unrepresented employees would be paid a "guesstimate" of what represented employees would ultimately receive through collective bargaining. The Senate states that it requested that the Pay Centre make this change in March 2024, for payment in October.

[63] The Senate provides no evidence to support these assertions. It states that this decision was made by the Senate Standing Committee on Internal Economy, Budgets and Administration but does not provide a copy of that decision. It does not provide a copy of the correspondence with the Pay Centre in March 2024.

[64] Also, the Senate's position is hard to reconcile with the Pay Centre's March 1, 2024, email. That email stated that the Pay Centre would accept only "exceptional" requests during the soft freeze up to May 31. There is no evidence to explain what made the wage adjustments for unrepresented staff exceptional and warranting special treatment, while the Senate and Pay Centre could not comply with the 90-day period to implement an arbitral award. The Senate also does not explain how this payment was processed almost immediately after the so-called hard freeze, while the arbitral award could not be processed at the same time.

[65] There may well be documents to substantiate the Senate's assertion that the pay increase for unrepresented employees was processed well in advance and therefore not caught by the Pay Centre's freeze. However, as I have set out earlier, the Senate misrepresented itself to the arbitration panel when it stated that there was no basis to assume that there would be a late implementation when it knew about the Pay Centre's hard freeze; it misrepresented itself in its reply submissions when it claimed that it did not know why PSAC withdrew its late-implementation proposal at arbitration; and it exaggerated when it stated in its application that it proceeded with "full transparency" with PSAC about the late implementation when, in fact, it sent a terse email to PSAC's local representative just over two weeks before the deadline to implement was about to expire. In light of these other misrepresentations, I am not prepared to take the Senate's explanation for why unrepresented employees were paid first at face value.

V. Decision to deny the application

[66] When considering these facts alongside the factors applied by the Board in applications to extend the time to implement a collective agreement or an arbitral award, I struggle to find any factors in favour of the extension of time, aside from that the Senate seeks a relatively short extension.

A. Timing of the application

[67] First, the timing of the application militates against granting this extension of time. As the Board put it in *Education Group 1976*, at para. 8, "By delaying its

application until this late date, the Employer automatically accorded to itself an extension of time …". In that case, the employer waited until one day before the expiration of the 90-day implementation period. In this case, the Senate did not wait until the day prior — it filed its application on Thursday, October 10, 2024 (before a long weekend), when the deadline to implement was Tuesday, October 15. This factor is particularly stark in this case because the Senate knew about the likely delay with the Pay Centre back in March and filed no evidence to indicate that it learned something new about the possibility of a delay in the days or weeks after the arbitral award was made.

B. Lack of transparency with PSAC

[68] Second, I have no evidence that the Senate has been transparent with PSAC about the delay, its reasons, and the steps being taken to resolve it. All the Senate has filed is a terse email dated September 27, 2024, stating that the payments will be made on December 4 and 18, and then some one-line emails on October 1, 2024, that have no details about the reasons for the delay or what the Senate has done to mitigate it.

C. No evidence of due diligence

[69] Third, I have no evidence that the Senate has acted with due diligence to meet the deadline. As I stated earlier, due diligence occurs at two times: while bargaining (or in this case while arbitrating), and while implementing. The Senate did not act diligently while bargaining or arbitrating when it failed to raise the prospect of a delay with PSAC or with the arbitration panel. While the Senate submitted that it has been working diligently after the arbitral award to ensure that the payments are made as soon as possible, it provided no evidence to support that submission.

D. The Senate has not acted in good faith

[70] Fourth, and most importantly, the Senate has not acted in good faith. I have already spelled out the times when the Senate misrepresented itself to the arbitration board and in this application. Its misrepresentation at arbitration led PSAC to drop a proposal that could have pre-emptively resolved this dispute if the arbitration board made an order similar to the ones in *PPS 2024* and *House of Commons 2024*.

E. The short duration of the extension

[71] The only factor in favour of the application is the relatively short period needed to implement the arbitral award of a little over seven weeks. This is more than outweighed by the factors against this application.

F. No weight given to involvement of the Pay Centre

[72] I have given no weight to the involvement of the Pay Centre in this case. The Senate has led no evidence to show that it acted diligently in a way that makes the Pay Centre wholly responsible for the delay. I also have no evidence to explain the Pay Centre's delay aside from the terse March 1, 2024, email and a PowerPoint presentation from April about a database upgrade. I have no evidence to explain how the freeze periods prevented the Pay Centre from implementing the arbitral award but permitted it to implement wage increases for unrepresented employees. In short, I do not know whether this is actually the Pay Centre's fault and, if so, what prevented it from inputting the PLU tables provided by the Senate.

G. What the Senate could have tried

[73] In respect of the involvement of the Pay Centre, and in reply to PSAC's submissions, the Senate made the following submission:

> …
>
> *PSAC seems to imply that the Senate somehow could threaten, pressure, or force PSPC to change its decision and make these payments earlier. Without any evidence or rationale, it asserts that the Senate is refusing to exert sufficient pressure in "a thin veil for considerations of convenience." This assertion defies reality. What does the Union practically suggest the Senate do? Does the Union think that the Employer gains a benefit by its employees receiving economic increases 1-2 months late? How could it be "convenient" for the Employer to have to expend valuable time and HR resources working with PSPC on solutions, and legal resources seeking an extension before this Board?*
>
> …

[74] The risk with crafting submissions in the form of a series of rhetorical questions is that the decision maker may have answers for them.

[75] In response to the rhetorical question about what to "practically suggest the Senate do", there are a number of solutions. The Senate could have negotiated an

outcome with PSAC that would have been mutually acceptable to both sides. The Senate could have asked the Pay Centre to hold off inputting the data for its unrepresented staff and, instead, spend that time working on the arbitral award. The Senate could have calculated the withholding tax owing on the $2500 lump sum and paid the balance directly to employees by cheque, while ensuring that employees understood that it was an estimate and that a reconciliation would be done once the Pay Centre finished its work — after discussing that with PSAC, of course. The Senate could have arranged pay advances for employees who were relying on the timely receipt of the amounts owing. Importantly, the Senate never claimed (and I saw no evidence) that it considered any practical, pragmatic, or creative solutions to ensure that its employees received at least part of the amounts owing to them.

[76] In response to the rhetorical question about whether "… the Employer gains a benefit by its employees receiving economic increases 1-2 months late", the answer is yes. Money depreciates over time — a dollar today is worth more than a dollar in the future. In its arbitration brief, PSAC estimated the cost of both its and the Senate's economic proposal. The lower amount was obviously the Senate's proposal ($555 579), and the arbitration panel selected a number between those two costs. The Bank of Canada's interest rate during this roughly two-month period ranged between 3.75 and 4%. Even assuming that the total payment owing was this lower amount, and assuming the Bank of Canada's interest rate, the federal Crown saved roughly $3500 in interest by paying this money late.

[77] As mentioned in the arbitral award, the Senate said that there were 79 affected employees in the bargaining unit as of January 1, 2024. If these savings were passed on to the employees, this would amount to just under $45 per employee. I note that in *PPS 2024* and *House of Commons 2024*, the arbitration boards ordered the employer to pay each employee $50 for every 90-day period that it was late (in addition to a fixed payment of $200 for the first time the employer was late).

[78] In response to the question of how it is convenient for the Senate to use human resources working with the Pay Centre and legal resources seeking an extension before this Board, the Senate was going to have to work with the Pay Centre regardless, so it is not clear to me where the additional inconvenience arises. As for legal resources, PSAC could claim with equal plausibility that it had to expend legal resources because of the

Senate's delay. Finally, I reject the idea that an employer can complain about it being inconvenient for its human resources officials to pay other employees on time.

[79] Finally, I am concerned that this decision is not being released until after the payments have been made. However, the Senate has not argued that its eventual late payment has made this application moot, and both parties asked me not to issue a line decision back in October 2024, so I still need to decide this application.

[80] For these reasons, I have denied the Senate's application.

VI. The Board does not have the jurisdiction to award damages in this application

[81] PSAC asks that the Board order damages of $500, payable to each affected employee if the Board grants an extension in this case, that the Board remain seized of this matter until the arbitral award has been implemented, and that the Board permit PSAC to seek additional damages if there are further delays. While read narrowly, PSAC is asking for damages only if the application is granted, read in context, the submissions apply equally if the Board denies the Senate's application.

[82] The Senate responds by submitting that the Board does not have the jurisdiction to order damages in this application.

[83] I agree with the Senate that the Board does not have the jurisdiction to award damages in an application to extend the time to implement an arbitral award.

[84] As the Board has stated on many occasions, it is a "… creature of statute and not a court with inherent jurisdiction" (see *Green v. Deputy Head (Department of Indian Affairs and Northern Development)*, 2017 PSLREB 17 at para. 340; see also *Serediuk v. Union of Canadian Correctional Officers - Syndicat des agents correctionnels du Canada - CSN (UCCO-SACC-CSN)*, 2023 FPSLREB 71 at para. 51; and *Killips v. Treasury Board (Public Service Commission)*, 2024 FPSLREB 97 at paras. 70 and 71). This applies to the Board's remedial powers as well: the power to order a remedy must be found in statute, and a tribunal "… does not have freestanding authority to issue relief to a party to one of its proceedings" (from *Labourers' International Union of North America, Local 183 v. Across Canada Construction Ltd.*, [2017] O.L.R.D. No. 869 (QL) at para. 30).

[85] PSAC submits that the Board's authority to award this remedy can be found in s. 10 of the *PESRA*. The Senate disagrees, relying on ss. 13 and 14 of the *PESRA*. Therefore, I will begin by setting out those provisions:

Powers, duties and functions	***Attributions de la Commission***
10 *The Board shall administer this Part and shall exercise the powers and perform the duties and functions that are conferred or imposed on it by, or are incidental to the attainment of the objects of, this Part including the making of orders requiring compliance with this Part, with any regulation made under this Part or with any decision made in respect of a matter coming before the Board under this Part.*	***10*** *La Commission met en œuvre la présente partie et exerce les attributions que celle-ci lui confère ou qu'implique la réalisation de ses objets, notamment en rendant des ordonnances qui en exigent l'observation, celle des règlements pris sous son régime ou des décisions qu'elle rend sur les questions dont elle est saisie sous son régime.*
…	[…]
Complaints	***Plaintes***
13 (1) *The Board shall examine and inquire into any complaint made to it that an employer or an employee organization, or any person acting on behalf of an employer or employee organization, has failed*	***13 (1)*** *La Commission instruit toute plainte dont elle est saisie et selon laquelle l'employeur ou une organisation syndicale ou une personne agissant pour le compte de celui-là ou de celle-ci n'a pas, selon le cas :*
…	[…]
(b) *to give effect to any provision of an arbitral award;*	***b)*** *mis à effet une disposition d'une décision arbitrale;*
…	[…]
Order of Board directing compliance	***Ordonnance d'exécution de la Commission***
(2) *Where under subsection (1) the Board determines that any person has failed to observe any prohibition, to give effect to any provision or decision or to comply with any regulation as described in that subsection, it may make an order, addressed to that person, directing the person to observe the prohibition, give effect to the*	***(2)*** *Dans les cas où, en application du paragraphe (1), la Commission juge une personne coupable d'un des manquements énoncés dans les alinéas (1)a) à d), elle peut rendre une ordonnance enjoignant à cette personne de remédier à son manquement ou de prendre toute mesure nécessaire à cet effet dans*

provision or decision or comply with the regulation, as the case may be, or take such action as may be required in that behalf within such specified period as the Board may consider appropriate and,	*le délai qu'elle juge approprié. Elle adresse en outre son ordonnance :*
***(a)** where that person has acted or purported to act on behalf of an employer, it shall direct its order as well to the employer; and*	***a)** lorsque l'auteur du manquement a agi ou prétendu agir pour le compte de l'employeur, à celui-ci;*
***(b)** where that person has acted or purported to act on behalf of an employee organization, it shall direct its order as well to the chief officer of that employee organization.*	***b)** lorsque la personne a agi ou prétendu agir pour le compte d'une organisation syndicale, au dirigeant attitré de celle-ci.*
Where order not complied with	***Défaut d'exécution de l'ordonnance***
***14** Where any order made under section 13 directs some action to be taken and is not complied with within the period specified in the order for the taking of that action, the Board shall cause a copy of its order, a report of the circumstances and all documents relevant thereto to be laid before each House of Parliament within fifteen days after the expiration of the period or, if that House is not then sitting, on any of the first fifteen days next thereafter on which that House is sitting.*	***14** Dans le cas où une mesure prescrite par une ordonnance rendue conformément à l'article 13 n'est pas prise dans le délai imparti, la Commission fait déposer une copie de son ordonnance, un rapport circonstancié et tous les documents afférents devant chaque chambre du Parlement dans les quinze jours de séance de celles-ci suivant l'expiration du délai.*

[Emphasis in the original]

[86] Section 10 of the *PESRA* is a provision commonly referred to as a "basket clause". Many statutes have these sorts of basket clauses that give a tribunal or agency broad power to ensure that the purposes of the statute are met.

[87] However, broadly worded basket clauses such as s. 10 of the *PESRA* "cannot be read in isolation" but, instead, must be read in the context of the statute as a whole (see *Reference re Broadcasting Regulatory Policy CRTC 2010-167 and Broadcasting Order CRTC 2010-168*, 2012 SCC 68 at para. 29). One of the ways a basket clause is

read in context is that powers granted through a basket clause cannot be interpreted to give a tribunal powers that are broader than those expressly provided for elsewhere. For example, in *Canadian Pacific Air Lines Ltd. v. Canadian Air Line Pilots Association*, [1993] 3 SCR 724 at 741, the Supreme Court of Canada concluded that a basket clause similar to s. 12 could not grant the Canada Labour Relations Board the power to order the pre-hearing production of documents because there was an express provision granting the power to order production during a hearing.

[88] A similar principle applies in this case. Paragraph 13(1)(b) of the *PESRA* permits a bargaining agent (or employer) to make a complaint with the Board that the employer (or bargaining agent) has failed to give effect to an arbitral award. Subsection 13(2) then spells out the Board's remedial authority in such a complaint. Since the *PESRA* has an express provision granting the Board the power to make remedial orders in complaints, the basket clause cannot provide the Board with the authority to make remedial orders in other proceedings.

[89] In reaching this conclusion, I carefully read the decision of the New Brunswick Labour and Employment Board in *R v. Canadian Union of Public Employees, Locals 1190, 1251 and 1418*, 2022 CanLII 116251 (NB LEB). New Brunswick's *Public Service Labour Relations Act* (RSNB 1973, c P-25) is worded very similarly to the *PESRA* and to the old *PSSRA*. Like the *PESRA*, it requires employers to implement collective agreements within 90 days, allows employers to apply for an extension of time to implement collective agreements, and allows bargaining agents to make complaints about the late implementations of collective agreements. In that case, the employer applied for an extension of time, and the bargaining agent made a complaint. The board granted a roughly six-week extension of time, and the employer fulfilled most (but not all) of the required retroactive wage payments by the end of that extension period. The bargaining agent claimed damages as a result of the late implementation, both before and after the period of the extension of time.

[90] The employer in that case argued that the New Brunswick Labour and Employment Board did not have the jurisdiction to award damages. In light of the similarities between the New Brunswick and federal legislation, the parties relied almost entirely on jurisprudence from the Board. This included the decision in *Federal Government Dockyard Chargehands Association v. Treasury Board (Department of National Defence)*, 2013 PSLRB 139 ("*Chargehands*"), in which the Board ordered

damages for the late implementation of a collective agreement as a remedy to a complaint made by the bargaining agent.

[91] The New Brunswick Labour and Employment Board concluded that it had the jurisdiction to award damages because of the combined operation of ss. 17 and 19 of the New Brunswick *Public Service Labour Relations Act*. Section 17 of that Act is a basket clause and is almost identical to s. 10 of the *PESRA*, and s. 19(2) of that Act is almost identical to s. 13(2) of the *PESRA*.

[92] However, in this case, there can be no combined operation of ss. 10 and 13(2) of the *PESRA* because PSAC has not filed a complaint. The New Brunswick Labour and Employment Board was seized with both an application for an extension of time and a complaint, meaning that it could rely on s. 19(2) of its Act, as well as the basket clause. In this case, the only case before me is the Senate's application for an extension of time. I agree with the Senate that the only remedial jurisdiction that the Board has in an application for an extension of time to implement an arbitral award is the jurisdiction set out in s. 59 of the *PESRA* — namely, to determine the period of time that "appears reasonable" to implement the arbitral award. The Board only has the jurisdiction to award damages if the bargaining agent files a complaint. PSAC has not done so.

[93] In this case, I have dismissed the application for an extension of time for the reasons set out in detail earlier. Another way of expressing that order is to say that I have decided that the usual 90-day period to implement an arbitral award "appears reasonable" to me in the circumstances. That is the extent of my jurisdiction in this application.

[94] I appreciate that my decision may appear to rest on a technicality. However, the Board is a creature of statute, and it must follow the rules laid out by statute, no matter how technical.

[95] In addition to its jurisdictional argument, the Senate also disputed the merits of PSAC's claimed remedy of $500 per affected employee. Had I concluded that I had the jurisdiction to award damages, I would have convened a hearing (either in writing or orally) and required PSAC to justify this damage claim. I would have asked for submissions in particular about whether damages should be payable to PSAC (as in *Chargehands*) or to individual employees (as in *Eaton v. Canada*, [1972] F.C. 185), and

on what basis. Since I have concluded that I do not have the jurisdiction to award damages in this specific application, I do not need to consider this issue any further.

VII. Tone of the submissions

[96] I conclude this decision by commenting on the tone of the parties' submissions.

[97] In its response to this application, PSAC likened the Senate to children that have to be disciplined for it not complying with the 90-day deadline to implement the arbitral award. Specifically, PSAC submitted this:

> …
>
> *That one may be permitted to do a thing, or be able to escape the consequences of not doing a thing, is not an argument that one should or should not do the thing in question. This is a lesson that we all learn as children, but which the Senate appears to have forgotten. PSAC submits that the Senate of Canada should engage in sober second thought as to its own values, conduct and expenditures of energy, lest the notion of a "taskless thanks" enjoyed by members of the Senate be shown to be other than apocryphal.*
>
> …

[98] The tone and wording of this submission is unhelpful and unnecessary. I understand employees' frustration about not being paid retroactive amounts and the lump-sum payment on time; however, the delay is just a matter of a few weeks. PSAC could have expressed its members' frustration without infantilizing their employer.

[99] In its reply, the Senate complained about what it called the "inflammatory language" of PSAC's submissions and declared that it would focus its reply on the facts and law in dispute. However, it did not follow through on that; instead, it threw gasoline on that inflammatory language.

[100] To provide an example, when addressing PSAC's argument about why the Senate prioritized paying its unrepresented employees over implementing the arbitral award, it submitted this:

> …
>
> *This shows a surprising misunderstanding by the Union of the rights afforded to unionized employees that are not afforded to non-unionized employees.*

> *The terms and conditions of employment of unrepresented employees are irrelevant to the considerations under a section 59 extension request. However, we will elaborate for educational purposes.*
>
> …

[101] These paragraphs are typical of the condescending and sardonic tone adopted by the Senate throughout its submissions.

[102] The Senate has also shown a surprising lack of empathy — and absolutely no remorse — for the delay implementing the arbitral award. It says that it is frustrated by the delay. This is not the same thing as empathy or remorse. On the contrary, the Senate's submissions imply that its officials responsible for implementing the award (who, remember, received their wage increases earlier) are the victims in this application.

[103] Relief under s. 59 of the *PESRA* is discretionary. A party asking the Board to exercise its discretion and come to its aid is not well served by adopting this tone.

[104] Civility is one of the cornerstones of the legal profession because it preserves relationships needed to resolve future disputes. Civility is particularly important in labour relations because the parties have to continue to work together after this dispute is over. There is a Biblical proverb: "A soft answer turns away wrath, but a harsh word stirs up anger."

[105] In more modern parlance: use soft words and strong arguments.

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

(The Order appears on the next page)

VIII. Order

[107] The application is denied.

May 16, 2025.

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