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File: 568-02-50502
XR 566-02-47278

Citation: 2025 FPSLREB 165

*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

ADRIAN HAU

Applicant

and

**TREASURY BOARD
(Department of National Defence)**

Respondent

Indexed as

Hau v. Treasury Board (Department of National Defence)

In the matter of an application for an extension of time referred to in section 61(b) of
the *Federal Public Sector Labour Relations Regulations*

Before: Deborah Cooper, a panel of the Federal Public Sector Labour Relations
and Employment Board

For the Applicant: Him Ranjit and Chantale Mercier Public Service Alliance of
Canada

For the Respondent: Erin Saso and Lyne Poulin

Decided on the basis of written submissions,
filed June 1, 2023, June 10, September 18, and October 9, 2024,
and April 7 and 17, 2025.

REASONS FOR DECISION

I. Application for an extension of time

[1] Adrian Hau (“the applicant”) is an employee of the Department of National Defence (DND or “the respondent”). At the time the grievance was filed, he held a career transition coordinator (AS-01) position at DND’s Canadian Forces Base (CFB) Kingston location in Kingston, Ontario.

[2] On May 3, 2023, he referred two grievances to adjudication. One pertained to the respondent’s decision to deny him an exemption from the application of the *Policy on COVID-19 Vaccination for the Core Public Administration Including the Royal Canadian Mounted Police* (“the Policy”) and to place him on leave without pay as of February 1, 2022. He referred the grievance (“the first grievance”) under both ss. 209(1)(a) and (b) of the *Federal Public Sector Labour Relations Act* (S.C. 2003, c. 22, s. 2; “the Act”). Accordingly, two files were created (Board file nos. 566-02-47279 and 566-02-50268).

[3] The other grievance (“the second grievance”), for defamation, was referred under s. 209(1)(a) of the *Act*. Therefore, the Board created a file for it (Board file no. 566-02-47278).

[4] On June 1, 2023, the respondent raised two preliminary objections to the second grievance in which it argued that the Federal Public Sector Labour Relations and Employment Board (“the Board”) is without jurisdiction to hear it. That is the subject of this decision.

[5] Specifically, the respondent submitted that the second grievance was not presented in compliance with the timelines set out in the collective agreement between the Treasury Board and the Public Service Alliance of Canada for the Program Administration (PA) group that expired on June 20, 2021 (“the PA collective agreement”), and thus, it is untimely.

[6] Second, it submitted that the grievance, in which the applicant grieved defamation, is not a matter covered under the PA collective agreement, and therefore, the wording in s. 209(1)(a) of the *Act* does not support such a reference to adjudication. As such, it is not a matter over which the Board has jurisdiction.

[7] As for the preliminary objections, the applicant filed a response on June 10, 2024. His initial submissions to the respondent's objections focused on the fact that he had originally filed a "Notice of Occurrence" instead of a grievance, due to what he characterized as conflicting information and confusion around the process. He further argued that in the event that the Board finds that the grievance was indeed filed late, the objection should be dismissed, in the interests of fairness, and the Board should exercise its discretion to extend the deadlines, in accordance with s. 61(b) of the *Federal Public Sector Labour Relations Regulations* (SOR/2005-79; "the *Regulations*") and assume jurisdiction to hear the grievance.

[8] On August 21, 2024, the Board informed the parties that it was considering deciding the respondent's preliminary objection on timeliness and the applicant's request for an extension of time based on written submissions. It provided them with an opportunity to provide written submissions and set out a timeline for the submissions. Accordingly, a Board file was opened for the request for an extension of time (Board file no. 568-02-50502).

[9] After both parties requested extensions to provide submissions, the respondent filed its written submissions on September 18, 2024, while the applicant filed his on October 9, 2024. He reiterated his request for an extension of time, and in doing so, he addressed the criteria that the Board commonly uses to assess such requests, known as the *Schenkman* criteria (from *Schenkman v. Treasury Board (Public Works and Government Services Canada)*, 2004 PSSRB 1).

[10] On December 10, 2024, a new Board member was assigned to the file. After conducting a review, the Board wrote to the parties on March 31, 2025, to provide them with the opportunity to provide additional written submissions with respect to the preliminary objection. Again, a timeline was provided. The respondent advised the Board that it had no further submissions to file on April 7, 2025, while the applicant replied to the Board that he had no further submissions on April 17, 2025.

[11] This decision deals only with the respondent's timeliness objection, as well as the applicant's application for an extension of time, all of which relates exclusively to the second grievance.

[12] Under s. 22 of the *Federal Public Sector Labour Relations and Employment Board Act* (S.C. 2013, c. 40, s. 365), the Board may decide any matter before it without holding

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an oral hearing. Having reviewed the parties' submissions and the cases that they cited, I am satisfied that I can decide the request for an extension of time and the timeliness objection on the parties' written submissions.

[13] For the reasons that follow, the applicant's request for an extension of time is denied, and the respondent's timeliness objection is allowed.

II. Summary of the evidence

[14] On October 6, 2021, the Government of Canada announced that all employees of the core public administration, including the Royal Canadian Mounted Police (RCMP), had to be vaccinated under the Policy. Under it, all DND employees were required to be fully vaccinated unless they were granted an exemption based on a prohibited ground of discrimination under the *Canadian Human Rights Act* (R.S.C., 1985, c. H-6; *CHRA*). Employees who were not granted an exemption were required to attest to their vaccination status. Those who had not been granted an exemption and who did not comply with the Policy were to be placed on leave without pay.

[15] The applicant submitted his attestation for exemption on the basis of religious beliefs on October 15, 2021. On January 18, 2022, the respondent advised him that his exemption request was denied. As a result, he filed the first grievance on January 25, 2022, under both ss. 209(1)(a) and (b) of the *Act*. In it, he grieved the denial of his exemption request dated January 18, 2022, the respondent's violation of the *CHRA*, and the violation of the "Manager's Toolkit" about the Policy dated December 17, 2021.

[16] The applicant then filed a Notice of Occurrence on January 26, 2022, against Sheila Lacroix, after he received a copy from the respondent on January 24, 2022, on her analysis as part of the accommodation request process. Ultimately, he was placed on leave without pay on February 1, 2022.

[17] On March 30, 2022, the second grievance was filed, ostensibly for the issues raised in the Notice of Occurrence. The preliminary objection raised against the second grievance is the subject of this decision.

[18] In their submissions, both parties indicated that the circumstances surrounding the second grievance crystallized on January 24, 2022.

[19] The parties mutually agreed to waive the previous levels of the grievance process for the second grievance and, as such, the applicant presented both grievances at the final level on February 22, 2023. The respondent denied both grievances on March 22, 2023. With respect to the second grievance, alleging defamation, the respondent denied it on the basis that it was untimely. At the same time, it addressed the merits of the grievance.

III. Summary of the arguments

[20] Both parties submit that *Schenkman* is the authoritative case to determine whether to grant an application for an extension of time. It outlines the following criteria:

- clear, cogent, and compelling reasons for the delay;
- the length of the delay;
- the due diligence of the applicant;
- balancing the injustice to the applicant against the prejudice to the respondent if the application is granted; and
- the grievance's chances of success.

A. For the applicant

[21] The applicant submits that after receiving the denial of his exemption request on January 18, 2022, he spoke with his base commander concerning that decision on January 19, 2024. He states that that is when he initially learned of the Ms. Lacroix's defamatory statements about his religious beliefs.

[22] The base commander gave the applicant a very thorough verbal summary of the analysis of his sworn affidavit and answers to his questions. The applicant requested a copy of the text in question, but his request was denied at that time.

[23] On January 24, 2022, the applicant requested a copy of Ms. Lacroix's analysis via email. He was then provided with the document containing her recommendations and the analysis of his affidavit on the same day. He states that on January 26, 2022, he filed a Notice of Occurrence against Ms. Lacroix, for harassment.

[24] In his first set of submissions, filed on June 10, 2023, the applicant states that he filed the first grievance contesting the denial of his religious exemption to the vaccine mandate on January 25, 2022. In his second set of submissions, he states that that he filed his grievance in the week of January 26, 2022. As such, there is a minor

discrepancy in the dates provided. However, I find that nothing turns on it. On February 1, 2022, the applicant began his period of leave without pay.

[25] The applicant submitted that until at least February 25, 2022, it had not been made clear to him that he would not obtain the proper remedy under the Notice of Occurrence process. He also submitted that confusion arose around the process, which contributed to the lack of clarity.

[26] As a result of that realization, the applicant submits that on March 30, 2022, he then filed "... a discrimination and harassment grievance against [a labour relations employee in DND named] Sheila Lacroix for the defamatory and discriminatory comments made in her recommendations to deny his request for a religious exemption." He argued that he initiated a parallel process and that he filed a Notice of Occurrence against Ms. Lacroix for harassment on January 26, 2022. He reiterated that until at least February 25, 2022, it had not been made clear to him that he would not obtain the proper remedy under that process.

[27] In the alternative, the applicant argued that should the Board find that date not legitimate, he requests that the Board exercise its broad discretion and, in the interest of fairness, extend the deadline in accordance with s. 61(b) of the *Regulations* and assume jurisdiction to hear the grievance.

1. Clear, cogent, and compelling reason for the delay

[28] The applicant submitted that he "... sought recourse and initiated a parallel process and filed a Notice of Occurrence against Ms. Lacroix for harassment ... within a couple of days of the matter giving rise to the grievance." He further stated that "due to conflicting information and confusion around the process, [he] did not know that filing the Notice of Occurrence would not obtain the remedy he was ultimately seeking until at least February 25, 2022."

[29] The applicant further argued that he did not delay and that he took swift action by filing the Notice of Occurrence, as well as a grievance contesting the denial of his religious exemption to the Policy, within a couple of days. He argued that *Charlebois-Chauret v. Treasury Board (Public Health Agency of Canada)*, 2024 FPSLREB 121, which the respondent argued in its submissions (see below), is about a different circumstance and should not apply to this situation.

[30] The applicant further referred to a number of other cases, in which the Board allowed an extension of time when it dealt with the confusion issue with respect to the grievor in each case (see *Daigneault v. Treasury Board (Correctional Service of Canada)*, 2024 FPSLRB 2; and *Barbe v. Treasury Board (Correctional Service of Canada)*, 2022 FPSLRB 42).

2. Length of the delay

[31] The applicant argued that in *Brown v. Deputy Head (Department of National Defence)*, 2024 FPSLRB 69, the Board ruled that delays of four or five months at the onset of grievance processes are neither minimal nor excessive. He argued that in this case, the length of the delay is considerably shorter than in other cases and that it should not be considered excessive. To support that position, he cited a number of cases, including *Thompson v. Treasury Board (Canada Border Services Agency)*, 2007 PSLRB 59; *Richard v. Canada Revenue Agency*, 2005 PSLRB 180; *Prior v. Canada Revenue Agency*, 2014 PSLRB 96; and *International Brotherhood of Electrical Workers, Local 2228 v. Treasury Board*, 2013 PSLRB 144.

3. Due diligence of the applicant

[32] The applicant argued that he sought recourse and that he initiated a parallel process and filed a Notice of Occurrence on January 26, 2022, within a couple of days of the matter that gave rise to the grievance. He argued that he did not delay and that he took swift action by filing the Notice of Occurrence as well as filing a grievance contesting the denial of his religious exemption to the Policy on January 25, 2022.

[33] The applicant states that during the grievance processes of both grievances, he was fully engaged and that he provided all the necessary information about his file to his component, the Union of National Defence Employees. He argued that he "... would have filed the grievance at issue on time if it was not for conflicting information and confusion around the process." He further stated that he "... did not know that filing the Notice of Occurrence would not obtain the remedy he was ultimately seeking until at least February 25, 2022." As such, he believed that February 25, 2022, was the date that the 25-day period set out in clause 18.15 of the PA collective agreement began to run. As a result, he filed his grievance on March 30, 2022. He submitted that the fact that he filed his grievance only a few weeks after reaching the understanding demonstrates his reasonable due diligence.

4. Balancing injustice to the applicant and the prejudice to the respondent

[34] The applicant argued that the result of his grievance not being heard would be quite significant. In contrast, he states that the prejudice to the respondent would be much less significant. He submitted that the respondent has not demonstrated any prejudice that it would suffer were the extension of time granted. To support this argument, he referred to *Noor v. Treasury Board (Department of Indigenous Services)*, 2023 FPSLRB 86; and *Brown*).

5. Chances of success of the grievance

[35] The applicant argued that it is premature to evaluate the merits of the grievance at this stage. Nevertheless, he submitted that the Board has focused more on excluding cases that have no chance of winning. He did not submit any case law to support this particular argument. Lastly, he submitted that the grievance is clearly a serious matter and that there is no evidence that it is frivolous or vexatious in any way.

B. For the respondent

[36] With respect to timeliness, in its initial preliminary objection filed on June 1, 2023, the respondent submitted that the applicant filed the grievance on March 30, 2022, while the matter that gave rise to it occurred on January 24, 2022. Therefore, the grievance was filed 22 days past the timelines indicated in the PA collective agreement.

[37] Clause 18.15 of the PA collective agreement clearly sets the time limits to present a grievance and reads as follows:

18.15 A grievor may present a grievance to the first level of the procedure in the manner prescribed in clause 18.08, not later than the twenty-fifth (25th) day after the date on which the grievor is notified or on which the grievor first becomes aware of the action or circumstances giving rise to the grievance. ...

18.15 Un employé-e s'estimant lésé peut présenter un grief au premier palier de la procédure de la manière prescrite par la clause 18.08 au plus tard le vingt-cinquième (25e) jour qui suit la date à laquelle il est informé ou prend connaissance de l'action ou des circonstances donnant lieu au grief. [...]

[38] As such, the respondent submitted that the grievance was filed beyond the time limits of the PA collective agreement and rejected the grievance for that reason at all levels of the grievance process.

[39] The respondent further noted that the applicant did not deny that his grievance was presented beyond the 25-day time limit set out in the PA collective agreement. In addition, it made submissions about his request for an extension of time.

[40] The respondent argued that the application for an extension of time be dismissed in accordance with the criteria established under the Board's case law. It acknowledged that the Board has the authority to grant an extension of time in the interest of fairness under s. 61(b) of the *Regulations*. However, it submitted that doing so should be the exception.

[41] It argued that while the Board is mandated under s. 61 of the *Regulations* to consider applications for extension of time when time limits have been missed in a grievance process, it should grant them only in exceptional circumstances in which doing so would be in the interest of fairness. To support its position, the respondent referred the Board to *Grouchy v. Deputy Head (Department of Fisheries and Oceans)*, 2009 PSLRB 92.

[42] The respondent provided arguments with respect to the Board's jurisprudence in *Schenkman*, as follows.

1. Clear, cogent or compelling reasons for the delay

[43] The respondent submitted that there are no clear, cogent, or compelling reasons for the delay. The applicant was represented by a sophisticated and experienced bargaining agent and deliberately chose a different process instead of the grievance process. Nothing prevented him from filing his grievance. To support its position, it referenced *Charlebois-Chauret*.

2. Length of the delay

[44] In terms of the length of the delay, the respondent acknowledged that the delay in this case may not be considered lengthy compared to other extensions that the Board has granted but argued that that does not lessen the standard that the reason for the delay is held to. To support its position, the respondent referred to *Risser v. Treasury Board (Canadian Transportation Accident Investigation and Safety Board)*, 2024 FPSLREB 98.

[45] The respondent further noted that the matter giving rise to this second grievance took place on January 24, 2022. That is the date when the applicant was

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provided with a copy of the January 13, 2022 analysis at issue. It further noted that by the parties' mutual agreement, the first and second levels of the grievance process were waived, and that it denied the grievance at the final level of the grievance process on the basis of timeliness.

3. The due diligence of the applicant

[46] The respondent submitted that the applicant did not demonstrate that he exercised due diligence in pursuing his grievance. The fact that he filed a first grievance on January 25, 2022, and then a Notice of Occurrence against Ms. Lacroix for harassment the following day does not demonstrate that he exercised due diligence with respect to the grievance in question.

[47] In support, the respondent again referenced *Charlebois-Chauret* and argued that the applicant did not file his grievance on time because he chose to address the matter through a different route. The fact that the route he chose did not afford him the remedy he was hoping for does not mean that he should be able to change his decision and state that he would prefer to have chosen the grievance route.

[48] Furthermore, the applicant's submissions indicated that by February 25, 2022, it became clear to him that he would not obtain his desired remedy under the harassment process. The respondent argued that the amount of time it took to file the grievance after that should also be considered.

4. Balancing the injustice to the applicant against the prejudice to the respondent if the application is granted

[49] The respondent submitted that the balance of the injustice to the applicant against the prejudice to the respondent should not carry a great deal of weight because the applicant has not established cogent, cogent, and compelling reasons for the delay or demonstrated that he acted with due diligence.

[50] Referencing the *Grouchy* decision, the respondent argued that it should be entitled to some certainty to know that labour disputes will be solved in a timely manner. In addition, the applicant has not established the injustice to him, and had the matter been of utmost importance to him, the respondent submitted that a more diligent effort to ensure a timely filing would have been made.

5. The chances of success of the grievance

[51] In terms of the chances of success of the grievance, the respondent submitted that it is premature to assess them.

IV. Reasons

[52] In the interest of fairness, I find that the application for an extension of time should be denied, and the respondent's preliminary objection allowed, for the reasons that follow.

[53] As both parties point out, when determining whether such an application should be granted, the Board will generally consider the criteria set out in *Schenkman*.

[54] There are typically two avenues in the Board's case law with respect to applications for extensions of time. They are described in *Van de Ven v. Treasury Board (Canada Border Services Agency)*, 2023 FPSLRB 60 at paras. 73 and 74, and in *Noor*, at para. 45, and are as follows: 1) a clear and cogent reason for the delay takes precedence over the other criteria, or 2) a more balanced approach is preferred to assess the *Schenkman* criteria. I prefer the more balanced approach in this matter to consider whether, in the interests of fairness, an extension of time should be granted.

A. The *Schenkman* criteria

1. Clear, cogent, and compelling reasons for the delay

[55] The applicant's grievance was filed 22 days late, by his admission. He indicates that he filed a Notice of Occurrence against Ms. Lacroix on January 26, 2022, but states in his written submissions that he did not know that he could not obtain the remedy that he ultimately sought until February 25, 2025.

[56] I find two issues with this argument.

[57] First, there is no explanation as to why he did not know that he could not obtain such information and why there was "... conflicting information and confusion around the process", as noted in his submissions. The applicant was represented by a sophisticated bargaining agent that had previously filed a grievance on his behalf. In addition, it is not clear what remedy he thought he might obtain from a Notice of Occurrence. The fact that the route he chose could not provide him the remedy he was hoping for does not, in and of itself, mean that he should be able to change his

decision and state that he would prefer to have chosen the grievance route. As such, the Board is left to guess as to any clear reasons for the delay other than the vague statements referenced earlier.

[58] Second, as indicated previously, I find that the matter that gave rise to the grievance crystallized on January 24, 2022. It is not addressed as to why he waited more than a month to file his grievance once he knew that he could not obtain the remedy he desired, particularly since he would have still been within the 25-day window to file his grievance. As such I find that this is counter to the applicant's argument that he acted with reasonable due diligence as soon as he discovered that he could not obtain the remedy he sought via the Notice of Occurrence process.

2. Length of the delay

[59] The applicant filed his grievance approximately 22 days outside the time limit prescribed in the PA collective agreement. I agree with the reasoning in *Rinke v. Canadian Food Inspection Agency*, 2005 PSSRB 23 at para. 16, which is that there is no threshold at which a date is deemed reasonable with respect to a time limit. I also agree with the applicant's submissions that several decisions have found that delays of less than a few months are not necessarily excessive, depending on the circumstances of the case.

[60] Further to this, while there is a need for efficient labour relations resolutions, I find that the respondent was aware that the applicant was attempting to address its decision through other grievances and by challenging Ms. Lacroix's analysis through other means. Given that, and the fact that the delay is relatively short, I find that the delay of 22 days is within the realm of reasonable in these particular circumstances, and as such, I find that this factor weighs somewhat in the applicant's favour.

3. The applicant's due diligence

[61] Based on the parties' submissions, I find that the applicant was not diligent. Similar to the analysis as to whether there was a clear and cogent reason for the delay, his submissions state that it had not been made clear to him that he would not obtain a proper remedy under the harassment process. However, he does not provide details as to why or who did not advise him. In addition, he states that he became aware of that fact on February 25, 2022. Yet, he did not demonstrate any urgency in filing a grievance, waiting until March 30, 2022, to do so.

[62] Lastly, the applicant is represented by a sophisticated and experienced bargaining agent and had already filed a grievance alleging discrimination shortly before this grievance was filed, with the assistance of that same bargaining agent. At a minimum, it appears that he had some knowledge as to his options.

[63] Therefore, I am unable to conclude that this criterion should favour him in deciding whether to grant the extension of time.

4. Balancing the injustice to the applicant against the prejudice to the respondent from granting the application

[64] I do not find that the injustice to the applicant would be greater were the application not granted than would be the prejudice to the respondent were it granted.

[65] The applicant alleges that the impact of not having his case heard would be significant and that the impact to the respondent would be much less significant. However, he does not state how. He argued that in the *Noor* decision, the adjudicator ruled that given the discrimination allegation in that case, the impact of not having that grievor's case heard was significant. From this, I can surmise only that he is equating the defamation grievance with a discrimination grievance. However, it is not argued under that heading in his written submissions.

[66] On the other hand, the prejudice to the respondent, while not significant, exists in the sense that it would be required to respond to a grievance rather than a Notice of Occurrence, which is an entirely different process.

[67] The exercise of balancing the injustice to the applicant against the prejudice to the respondent is fact-specific and differs slightly when the delay at issue arose at the initial grievance presentation stage as opposed to a subsequent stage of the internal grievance process or when the grievance was referred to adjudication.

[68] In this case, the respondent denied the grievance based on timeliness at the final level, which was the only level at which the grievance was considered following the mutual agreement of the parties. The respondent was entitled to rely on timelines to provide finality in labour relations. It proceeded reasonably, under the assumption that this matter could not be properly referred to adjudication and would not result in a hearing on the merits (see *Mazzini v. Canada Revenue Agency*, 2024 FPSLRB 105).

[69] I give this factor little weight in favour of the applicant for several reasons.

[70] First, the delay occurred at the outset of the internal grievance process.

[71] Second, the grievance is very explicit as to what it alleges. It states this: “I grieve the defamation committed against me by S. Lacroix, drafted and/or transmitted 13 January 2022”. It does not mention discrimination in the grievance details. This is further reinforced by the recourse requested, being damages of \$100 000 for injury to reputation. There is no reference to any article in the PA collective agreement explicitly or implicitly, in my view.

[72] Lastly, the applicant had already filed a grievance pertaining to the denial of his exemption, which covers the denial of his accommodation request, the *CHRA*, and an alleged violation of the Managers Toolkit with respect to the Policy. As such, there remains a live mechanism under which the applicant may continue to challenge the denial of his exemption.

5. The grievance’s chances of success

[73] In many cases involving an analysis of the *Schenkman* criteria, it has often been held that it is premature to assess the merits of the grievance at this stage because evidence as to its substance has not been presented (see *Mazzini* and *Ho v. Canada Revenue Agency*, 2025 FPSLREB 6, for example). At this preliminary stage of the proceedings, the Board has not received evidence on the merits of the grievance. As such, I find that it is premature for the Board to assess those merits.

V. Conclusion

[74] After reviewing the *Schenkman* criteria as a whole, and considering the overarching principle of fairness, I conclude that the applicant’s request for an extension of time should be denied. The burden of proof was his. Despite that, he provided little in the way of an explanation for the delay presenting his grievance, although it is noted that the delay was not overly significant. He did not provide a clear, cogent, and compelling reason for the delay.

[75] As well, he provided very little to support his claim of due diligence. Given that a similar grievance was filed that appropriately covers many of the issues surrounding the circumstances of his exemption being denied, I am unpersuaded that denying this grievance presents a significant prejudice to the applicant.

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

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(The Order appears on the next page)

VI. Order

[77] The applicant's request for an extension of time is denied.

[78] The respondent's timeliness objection is granted.

[79] Board file nos. 566-02-47278 and 568-02-50502 are ordered closed.

December 10, 2025.

**Deborah Cooper,
a panel of the Federal Public Sector
Labour Relations and Employment Board**