Date: 20260116

Files: 485-LP-45132 and 45134

Citation: 2026 FPSLREB 5

Parliamentary Employment and Staff Relations Act

Before the Federal Public Sector Labour Relations and Employment Board

IN THE MATTER OF
THE *PARLIAMENTARY EMPLOYMENT AND STAFF RELATIONS ACT*
and a dispute affecting
the Public Service Alliance of Canada, as bargaining agent,
and the Library of Parliament, as employer,
in respect of all employees of the employer in the Library Science (Reference) and Library Science (Cataloguing) Sub-groups in the Research and Library Services Group bargaining unit; and the Library Technician Sub-group in the Research and Library Services Group and all employees in Clerical and General Services bargaining unit

Indexed as
Public Service Alliance of Canada v. Library of Parliament

In the matter of the *Parliamentary Employment and Staff Relations Act*

Before: Christopher Rootham, deemed to form the Federal Public Sector Labour Relations and Employment Board

For the Bargaining Agent: Morgan Rowe and Nathan Hoo, counsel

For the Employer: Carole Piette and Jean-Michel Richardson, counsel

Heard by videoconference,
June 20, 2025,
and on the basis of written submissions,
filed May 23, June 13 and 18, and July 4, 2025.

ARBITRAL AWARD

I. Outline

[1] This case is about the jurisdiction of the Federal Public Sector Labour Relations and Employment Board ("the Board") to include terms and conditions of employment relating to telework in an arbitral award when serving as an arbitration board under Division III of the *Parliamentary Employment and Staff Relations Act* (R.S.C., 1985, c. 33 (2nd Supp.); *PESRA*).

[2] I have concluded that the Board has the jurisdiction to include terms and conditions relating to telework in an arbitral award, and some of the proposals the Public Service Alliance of Canada (PSAC) made about telework fall within the Board's jurisdiction. Telework as a subject matter does not fall within the areas that may not be included in an arbitral award under ss. 55(2) or 5(3) of *PESRA*. Specifically, telework is not automatically or always about the "organization" of the employer or about the assignment of duties. While proposals number 5 (notice of being called into the office) and 7 (which includes the business address of the employer) are about the assignment of duties and organization of the workplace respectively, the other proposals I considered do not affect an employer's organization or its ability to assign duties.

[3] Therefore, this matter is returned to the parties for 90 days as ordered by the original arbitration panel that heard this case.

II. Procedural background

[4] PSAC represents two bargaining units at the Library of Parliament ("the Library") that are the subject of this decision: the Library Science (Reference) and Library Science (Cataloguing) Sub-groups in the Research and Library Services Group bargaining unit (LS), and the Library Technician Sub-group in the Research and Library Services Group and all employees in Clerical and General Services (CGS-LT). Together, the 2 bargaining units have approximately 135 employees. Negotiations for both bargaining units began in 2020, and both collective agreements expired on August 31, 2020. The parties reached an impasse in July 2022, and PSAC applied to the Board, requesting arbitration under s. 50 of *PESRA*.

[5] A panel of three members deemed to form the Board ("the original panel") issued an arbitral award on October 13, 2023. Among other things, the original panel

heard a proposal from PSAC about telework and remote work. PSAC's original proposal had seven elements:

> *1) The Employer shall not unreasonably deny employee requests to telework.*
>
> *2) Employees shall have the right to have an Alliance representative present in telework discussions with the Employer.*
>
> *3) Where a request to telework is denied the Employer shall provide the reason(s) for said denial in writing. The Alliance Local shall be provided a copy.*
>
> *4) The Employer agrees to engage in meaningful consultation with the Local prior to identifying positions as unsuitable for telework.*
>
> *5) Where teleworking employees are required by the Employer to return to their designated workplace for meetings the Employer shall provide a minimum of seven (7) days notice of such requirement.*
>
> *6) The Employer agrees to implement a policy concerning remote work over the life of this collective agreement and agrees to engage in meaningful consultation with the Alliance during this process.*
>
> *7) The terms "telework", "remote work" and "designated workplace" shall have the same meaning as contained in the Employer's Telework policy dated xx.*

[6] The Library objected to the Board's jurisdiction to consider PSAC's proposal. It objected to the Board's jurisdiction to entertain any term or condition relating to telework, and it also opposed the specifics of PSAC's proposal.

[7] The original panel did not award PSAC's proposal. However, it decided as follows (in *Public Service Alliance of Canada v. Library of Parliament*, 2023 FPSLREB 91):

> …
>
> *[28] The Board believes that this matter is best remitted to the parties to negotiate, with the possibility of coming back to the Board for a decision within a period of 90 days from the date of this award if they cannot agree.*
>
> …

[8] The original panel listed three things that the parties "must take into account": the requirements of the Library, an agreement between PSAC and the Treasury Board about virtual work, and the Library's existing telework policy.

[9] The Library sought judicial review of the original panel's arbitral award. The Federal Court of Appeal allowed the Library's application for judicial review in part, because the original panel did not provide any reasons for concluding that it had the jurisdiction to include that term or condition in an arbitral award (see *Library of Parliament v. Public Service Alliance of Canada*, 2025 FCA 42). The Federal Court of Appeal remitted this dispute to a differently constituted panel of the Board, solely on the issue of jurisdiction with respect to the telework and remote work provision.

[10] The current panel of the Board ("the new panel") was established to decide that jurisdictional question. The parties prepared written submissions and then made oral argument. During the oral argument, I had a question for the parties about one point, and the parties filed written submissions answering that question.

[11] At the suggestion of the new panel, the parties tried to resolve the issue of telework and remote work. The new panel delayed preparing this decision, to allow the parties to try to resolve this dispute on their own. Ultimately, the parties were unable to, and they requested that the new panel make a decision.

[12] After that attempt at resolution proved unfruitful, one of the members of the new panel became unable to continue and sadly passed away. At the joint request of the parties, I exercised my authority as the chairperson of the new panel under s. 38(1) of the *Federal Public Sector Labour Relations and Employment Board Act* (S.C. 2013, c. 40, s. 365), which applies to proceedings under *PESRA* (see s. 9 of *PESRA*) to determine this matter. In other words, the new panel is a panel of one.

III. Issues before the new panel

[13] The parties have raised two issues in this redetermination, which I will refer to as the public law and jurisdictional issues.

[14] The public law issue is this: what did the Federal Court of Appeal remit to the Board? The Library of Parliament says that the new panel must rehear its jurisdictional objection to PSAC's initial proposal. PSAC says that the new panel must decide (and

provide reasons for its decision) whether it has the jurisdiction to make the award that the original panel made.

[15] The jurisdictional issue depends in part on the result of the public law issue. Broadly speaking, the jurisdictional issue is about whether ss. 5(3) or 55(2) of *PESRA* prevents the Board from issuing an arbitral award about telework. The Library says that those sections prohibit the Board from granting PSAC's proposal, and it further states that this takes anything to do with telework off the table. The Library says, in the alternative, that everything about telework is outside the Board's jurisdiction, so that even if PSAC is right about the public law issue, the Board still has no jurisdiction.

[16] PSAC says that the Board has jurisdiction over telework proposals generally, and its original proposals specifically.

[17] Normally, I would decide the public law issue first and then the jurisdictional issue, because the public law issue would describe the specific jurisdictional question that I have to answer. However, I have decided not to. Instead, I will decide the jurisdictional issue first. If telework is a subject that is outside the jurisdiction of the Board when crafting an arbitral award, the public law issue becomes moot. On the other hand, if PSAC's proposal — in whole or in part — falls within the jurisdiction of the Board, the public law issue also becomes moot. It is only if telework falls within the Board's jurisdiction, but nothing in PSAC's proposal does, that I need to turn to the public law issue and also decide whether the Board loses jurisdiction over a term or condition of employment when the term or condition falls within its jurisdiction but the specific proposals made about that term or condition do not.

IV. Answer to the jurisdictional issue

[18] I have concluded as follows:

1) Telework falls within the jurisdiction of the Board and is not barred by ss. 5(3) or 55(2) of *PESRA*.
2) Some of PSAC's proposals (but not all of them) fall within the Board's jurisdiction.

[19] In light of those answers, I have decided not to answer the public law issue.

V. Library's objection based on s. 55(2) of *PESRA*

[20] I will address s. 55(2) of *PESRA* first, because it is the easier of the two provisions to deal with. That subsection reads as follows:

> ***55(2)*** *No arbitral award shall deal with the standards, procedures or processes governing the appointment, appraisal, promotion, demotion, transfer, lay-off or release of employees, or with any term or condition of employment of employees that was not a subject of negotiation between the parties during the period before arbitration was requested in respect thereof.*

[21] The Library argues that PSAC's telework proposal dealt with the "… appointment, appraisal, promotion, demotion, transfer, lay-off or release of employees …". However, the Library provided no submissions about why or how PSAC's proposal dealt with any of those subjects. The Library admitted candidly in its written and oral submissions that its jurisdictional objection was focused primarily on s. 5(3) of *PESRA*. It was right to. Nothing in PSAC's proposal touches on the subject matters listed in s. 55(2) of *PESRA*; nor does telework touch on any of those subjects. Since the Library made no submissions otherwise, I will simply state this conclusion and move on.

VI. Library's objection based on s. 5(3) of *PESRA*

[22] The Library's main objection is based on s. 5(3) of *PESRA*. That subsection reads:

> ***5(3)*** *Nothing in this Part shall be construed to affect the right or authority of an employer to determine the organization of the employer and to assign duties and classify positions of employment.*

[23] The Library submits that s. 5(3) constitutes a jurisdictional bar for the Board when issuing an arbitral award because an arbitral award may not contain any term or condition that would affect the employer's rights set out in that subsection. The Library further submits that telework affects its right to determine its organization and alternatively affects its right to assign duties to employees.

[24] To start with the obvious, these are questions of statutory interpretation. Statutory interpretation requires the consideration of the text, context, and purpose of the provision in question. As the Supreme Court of Canada put it recently in *Piekut v. Canada (National Revenue)*, 2025 SCC 13:

…

*[43] The modern principle requires a court to interpret statutory language "according to a textual, contextual and purposive analysis to find a meaning that is harmonious with the Act as a whole" (*Canada Trustco Mortgage Co. v. Canada*, 2005 SCC 54, [2005] 2 S.C.R. 601, at para. 10;* R. v. Downes*, 2023 SCC 6, at para. 24). Even so, a court need not address text, context, and purpose separately or in a formulaic way, since these elements are often closely related or interdependent (*Bell ExpressVu*, at para. 31;* Chieu v. Canada (Minister of Citizenship and Immigration)*, 2002 SCC 3, [2002] 1 S.C.R. 84, at para. 28).*

[44] The modern principle reflects "the common law evolution of statutory interpretation over many centuries" (R. Sullivan, The Construction of Statutes *(7th ed. 2022), at § 2.01[4]; see also S. Beaulac and P.-A. Côté, "Driedger's 'Modern Principle' at the Supreme Court of Canada: Interpretation, Justification, Legitimization" (2006), 40* R.J.T. *131, at pp. 141-42). It recognizes that statutory interpretation "cannot be founded on the wording of the legislation alone" (*Rizzo*, at para. 21) because "words, like people, take their colour from their surroundings" (*Bell ExpressVu*, at para. 27, quoting J. Willis, "Statute Interpretation in a Nutshell" (1938), 16* Can. Bar Rev. *1, at p. 6). As this Court has noted, "[w]ords that appear clear and unambiguous may in fact prove to be ambiguous once placed in their context. The possibility of the context revealing a latent ambiguity such as this is a logical result of the modern approach to interpretation" (*Montréal (City) v. 2952-1366 Québec Inc.*, 2005 SCC 62, [2005] 3 S.C.R. 141, at para. 10; see also* R. v. Alex*, 2017 SCC 37, [2017] 1 S.C.R. 967, at para. 31;* La Presse inc. v. Quebec*, 2023 SCC 22, at para. 23).*

*[45] As a result, "plain meaning alone is not determinative and a statutory interpretation analysis is incomplete without considering the context, purpose and relevant legal norms" (*Alex*, at para. 31; see also* La Presse*, at para. 23;* Vavilov*, at para. 118). At the same time, "just as the text must be considered in light of the context and object, the object of a statute and that of a provision must be considered with close attention always being paid to the text of the statute, which remains the anchor of the interpretative exercise" (*Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Directrice de la protection de la jeunesse du CISSS A*, 2024 SCC 43, at para. 24).*

…

[48] If genuine ambiguity remains after conducting a textual, contextual, and purposive analysis under the modern principle, in the sense that there are two equally plausible readings of the statute in accordance with the intention of the legislation, a court may have recourse to secondary principles of interpretation, including residual presumptions such as the strict construction of penal statutes or the presumption of conformity with the Canadian Charter of Rights and Freedoms *(*Bell ExpressVu*, at para. 29;* La Presse*, at para. 24). A statutory provision is not "ambiguous" in*

> *the required sense simply because different courts or authors have reached different conclusions as to its proper interpretation (*Bell ExpressVu*, at para. 30).*
>
> …

[25] I will break the Library's submissions down into their three parts:

> 1) Does s. 5(3) constitute a jurisdictional bar on the Board when issuing an arbitral award?
> 2) If it does, does telework affect the organization of the employer?
> 3) If not, does it affect the employer's right to assign duties?

A. Is s. 5(3) a jurisdictional bar?

[26] The Library's submission that s. 5(3) of *PESRA* constitutes a jurisdictional bar is best understood by considering the legal history of that provision and its sister provision in the *Federal Public Sector Labour Relations Act* (S.C. 2003, c. 22, s. 2; *FPSLRA*).

[27] *PESRA* received Royal Assent on June 27, 1986. It was introduced in part as a response to efforts by employees to unionize under the *Canada Labour Code* (now R.S.C., 1985, c. L-2), an effort that ultimately ended in failure because the different organs of Parliament are not a "federal work, undertaking or business" captured by the *Canada Labour Code*; see *House of Commons v. Canada Labour Relations Board*, [1986] 2 F.C. 372 (C.A.).

[28] When Parliament enacted *PESRA*, it borrowed heavily from the *Public Service Staff Relations Act* (R.S.C., 1985, c. P-35; *PSSRA*). The *PSSRA* was in force until 2005, when it was replaced by the *FPSLRA*. Subsection 5(3) of *PESRA* was borrowed from s. 7 of the *PSSRA*, which is substantially the same as s. 7 of the current *FPSLRA* as well.

[29] That provision in the *PSSRA* read:

> ***7.*** *Nothing in this Act shall be construed to affect the right or authority of the employer to determine the organization of the Public Service and to assign duties to and classify positions therein.*

[30] In the current *FPSLRA*, it reads:

> ***7*** *Nothing in this Act is to be construed as affecting the right or authority of the Treasury Board or a separate agency to determine the organization of those portions of the federal public*

> *administration for which it represents Her Majesty in right of Canada as employer or to assign duties to and to classify positions and persons employed in those portions of the federal public administration.*

[31] The differences between the *PSSRA* and *FPSLRA* simply reflect changes in terms of art made in the *FPSLRA* and the *Financial Administration Act* (R.S.C., 1985, c. F-11) in 2005 (i.e., changing "employer" to "Treasury Board or a separate agency" and "Public Service" to "portions of the federal public administration"). The core of that provision remained the same and is also the same as in *PESRA*.

[32] In 1986, the Federal Court of Appeal decided *Public Service Alliance v. Canada (Treasury Board)*, 1986 CanLII 3954 (FCA) ("*PSAC 1986*"). That case was about how s. 7 of the *PSSRA* applied to arbitration. In essence, the Federal Court of Appeal concluded that for a proposal to be arbitrable, it must leave intact the prerogatives set out in s. 7 of the *PSSRA*.

[33] The Library asks me to follow the same result in this case and conclude that for a proposal to be arbitrable, it must leave intact the prerogatives set out in s. 5(3) of *PESRA*.

[34] PSAC's submissions are more nuanced. PSAC does not come right out and state that s. 5(3) of *PESRA* is not a jurisdictional bar. Instead, it contrasts s. 5(3) with s. 55(2). PSAC's written submissions read as follows:

> *Subsection 55(2) explicitly identifies the only subject matters which are inherently barred from inclusion in an interest arbitration award. By comparison, subsection 5(3) is not concerned with the subject matter of a provision but rather with whether its effect would actually constrain the reasonable exercise of an unceded management right in some impermissible way.*

[35] PSAC also cited *Public Service Alliance of Canada v. Canada (Attorney General)*, 2015 FC 55 ("*PSAC 2015*"). That was a case about s. 150 of what is now the *FPSLRA*. The acting Chairperson of the Board decided that some of PSAC's interest arbitration proposals in that case fell outside the jurisdiction of an interest arbitrator because of s. 150. In doing so, the acting Chairperson decided not to rely on some of the case law about s. 5(3) of *PESRA* which held that issues around hours of work and scheduling are appropriate for arbitration. One of PSAC's arguments on judicial review was that s. 150 of the *FPSLRA* and s. 5(3) of *PESRA* were closely enough related that not relying on

those cases was a reviewable error. The Federal Court upheld the acting Chairperson's order, stating:

> …
>
> *[34] In* Treasury Board, *the Federal Court of Appeal considered a provision almost identical to section 5(3) of the* PESRA *(i.e., section 7 of the* Public Service Staff Relations Act, *RSC 1970, c P-35 [the* PSSRA*] (as it appeared in 1986)), and held (at page 475) that when deciding whether something was arbitrable under section 70(1) of the* PSSRA, *a two-step analysis was required: "it must be established first that it falls within one of the classes of matters set out in subsection 70(1) and then that its effect would leave intact the untouchable prerogatives of Government defined in section 7" (*Treasury Board *at 476). By analogy, the Applicant argues that section 5(3) of the* PESRA *has the same effect that paragraph 150(1)(e) does under the* Act, *so there was no reasonable basis for the AC to distinguish the* PESRA *decisions (*Professional Institute of the Public Service of Canada v Canadian Nuclear Safety Commission, *2005 PSLRB 174 at para 45).*
>
> *[35] In my view, however, it was reasonable for the AC to disregard the cases interpreting the* PESRA *for at least three reasons.*
>
> *[36] First, section 5(3) of the* PESRA *has an analogous provision in section 7 of the* Act. *Accepting the Applicant's argument and interpretation of paragraph 150(1)(e) of the* Act *would make such paragraph redundant, an outcome which should be avoided (*Proulx *at para 28;* Canada (Canadian Human Rights Commission) v Canada (AG), *2011 SCC 53 at para 38, [2011] 3 SCR 471). Even if the presumption against tautology could be rebutted, it cannot be said that that would be the only reasonable thing for the AC to do (*Dunsmuir *at para 41).*
>
> *[37] Second, there are material differences between section 5(3) of the* PESRA *and sections 7 and 150(1)(e) of the* Act. *Most notably, section 5(3) only protects the Employer's right to "assign duties and classify* ***positions*** *of employment" (emphasis added). In* Treasury Board, *the Federal Court of Appeal considered this language significant, saying (at page 477) that the analogue to section 5(3) in that case "speaks of the organization of the Public Service and specifically of the assigning of duties to positions within the Public Service. It* ***does not speak, as the Board seems to have understood, of the assigning of duties to persons****" (emphasis added). The same is not true of section 7 of the* Act, *which enshrines the Employer's right "to assign duties to and to classify positions and* ***persons****" (emphasis added). Paragraph 150(1)(e) also includes persons within its scope.*
>
> *[38] Third, while consistency may be desirable (*Spacek v Canada Revenue Agency, *2006 PSLRB 104 at paras 37-38, [2006] CPSLRB No 105 (QL)), previous arbitral decisions are not binding (*Domtar *at 796, 799-801). Accordingly, even if the* PESRA *decisions were*

> *directly on point, the mere fact that the AC departed from them would not make his decisions unreasonable if they are otherwise defensible in respect of the facts and the law. In this case, the proposed clauses dictated which employees would work on any particular survey since they would make it impossible to assign work to term employees if qualified indeterminate employees were available and willing to do it. It was reasonable for the AC to find that this had at least an incidental impact on the Employer's ability to assign duties to persons.*
>
> …

[36] I admit to having real doubts about whether s. 5(3) of *PESRA* shares the meaning that the Federal Court of Appeal attributed to s. 7 of the *PSSRA* in *PSAC 1986*. The structure or architecture of the *PSSRA* is different from that of *PESRA*.

[37] First, the *PSSRA* permitted bargaining agents to choose one of two ways to resolve their bargaining disputes: conciliation (followed by a strike if necessary), and arbitration; *PESRA* does not permit a bargaining agent to go on strike.

[38] Second, the *PSSRA* at the time set out permissible topics of arbitration. By contrast, *PESRA* sets out only impermissible subjects, in s. 55(2). The Federal Court of Appeal decided *PSAC 1986* in light of that structure of the *PSSRA* in force at that time (R.S.C. 1970, c. P-35). The *PSSRA* listed the permissible subjects of arbitral awards in s. 70(1) and then created carve outs from those permissible subjects in ss. 70(3) and 7. The Federal Court of Appeal's decision makes that relationship clear, when it states as follows:

> …
>
> *… There are two provisions in the Act which were clearly aimed at defining these special limitations on arbitrability: section 7 and subsection 70(1), the two provisions relied on by the Board in the two rulings here in question. They read thus* [see earlier quote] *….*
>
> …
>
> *Section 7 is obviously a management rights provision enacted in the form of a rule of construction and to which was given the status of a general and basic principle designed to protect certain rights conferred on the Treasury Board in the* Financial Administration Act*, R.S.C. 1970, c. F-10. Subsection 70(1), on the other hand, is clearly a substantive provision directed specifically to the process of arbitration. Section 7 works negatively in the sense that it designates borderlines by defining areas that are not to be infringed upon, while subsection 70(1) works positively, setting out the classes of matters open to arbitration. (The exhaustive character of the enumeration contained in subsection*

> *70(1) was confirmed by* Professional Institute of the Public Service of Canada v. Public Service Staff Relations Board, *[1979] 1 F.C. 92 (C.A.).)*
>
> *It seems to me that the two provisions were necessarily meant to play a complementary role in determining whether a particular proposal may be the subject of an arbitral award, one focussing on the subject-matter of the proposal, the other on its eventual effect on management's freedom of action. And since one, the substantive and specific provision of subsection 70(1), must always be construed in the light of the other, the interpretative and general provision of section 7, a two-step analysis is required. To determine that a proposal is arbitrable, it must be established first that it falls within one of the classes of matters set out in subsection 70(1) and then that its effect would leave intact the untouchable prerogatives of Government defined in section 7.*
>
> …

[39] The Federal Court of Appeal did not expressly consider s. 70(3) of the *PSSRA*, but its reasoning applies equally to that provision. What is clear is that the Federal Court of Appeal based its decision on the architecture of the *PSSRA* as a whole, and not solely on the wording of s. 7. The Federal Court of Appeal in *PSAC 1986* based its interpretation of s. 7 on the structure of the *PSSRA* in force at the time. It stated explicitly that ss. 70(1) and 7 "… were necessarily meant to play a complementary role …".

[40] Despite the similarity in wording between s. 5(3) of *PESRA* and s. 7 of the *PSSRA*, I am not bound to follow the Federal Court of Appeal's interpretation of s. 7 of the *PSSRA* in this case. While the provisions are worded similarly, their statutory context is very different. I also share the Federal Court's concern in *PSAC 2015* that treating s. 5(3) as a jurisdictional bar would make s. 55(2) of *PESRA* redundant.

[41] However, I have decided not to proceed further on this issue because of PSAC's submissions. PSAC did not submit directly that s. 5(3) does not circumscribe the jurisdiction of an arbitral panel. In oral argument, it said that s. 5(3) puts down "guardrails" around areas of the Library's authority. While PSAC also said that s. 5(3) is not a subject-matter bar, it did not quite go so far as to submit that s. 5(3) is not a jurisdictional bar. I also noted that, while the cases cited by the Library disallowing certain proposals were all about s. 55(2) of *PESRA*, the Board did treat s. 5(3) of *PESRA* as a jurisdictional bar to certain subject matters separate from s. 55(2) in *National Association of Broadcast Employees and Technicians v. House of Commons*, [1988] C.P.S.S.R.B. No. 77 (QL) at para. 16, when it stated that "… it has no jurisdiction to

consider a proposal which violates subsection 5(3) of the Act." I hesitate to reverse a decision of the Board (even one from 1988) without clear submissions from a party asking me to.

[42] Therefore, I have treated s. 5(3) in the way proposed by the Library — as a jurisdictional bar. I leave for another case the question of whether it actually is so.

B. What is the meaning of "organization of the employer"?

[43] Subsection 5(3) of *PESRA* protects "… the right or authority of an employer to determine the **organization** of the employer…" [emphasis added]. The parties disagree about the meaning of the term "organization of the employer".

[44] The Library argues that the term "organization of the employer" means anything that affects the organization of the workplace. The Library cites the definition of the word "organization" from three dictionaries (the *Canadian Oxford Dictionary*, the *Merriam-Webster Online Dictionary*, and the *Cambridge Online Dictionary*). In the first two, the definition of "organization" is "being organized". In the third, the meaning of "organized" includes "the way in which something is done or arranged."

[45] These definitions are too broad, and too circular, to be helpful to me. Any term or condition of employment could be described as including the way that something is done or arranged. To give one example arising from this case, the original arbitral panel changed the wording of the provision dealing with personal leave to permit leave to be taken in half-day segments. The Library had no objection to the arbitral panel's jurisdiction to deal with that proposal. However, taking leave in a half-day arrangement impacts the way work is done (in half-day increments) or arranged (a half-day at a time). On the Library's overly expansive meaning of "organization of the employer", nothing could ever be the subject of an arbitral award.

[46] Conversely, PSAC argues that "organization of the employer" means the classes, classifications, and grades of employment because that is how the term was used in a heading under Part II of the *Civil Service Act* (S.C. 1960-61, c. 57). I disagree, for two reasons. First, the heading "organization of the civil service" in that statute was the heading for all of Part II, which included not just the classes, classifications, and grades of employment but everything to do with human resources, including pay and allowances. Second, the Board already rejected this same argument in *Professional*

Institute of the Public Service of Canada v. National Research Council of Canada, 2014 PSLRB 57 at para. 82.

[47] As I said earlier, statutory interpretation involves text, context, and purpose. After considering the text in light of its context and purpose, I have concluded that the term "organization of the employer" refers to how workplace duties and functions are structured — i.e., about who does what with whom.

[48] To begin with the text, I agree with the Library that using dictionaries can be helpful to discern the plain meaning of words as a starting point of the interpretive process (see *Lundin Mining Corp. v. Markowich*, 2025 SCC 39 at para. 65). However, the Library was being selective about the definitions it quoted from those dictionaries, which is a reason to be cautious about relying on those definitions (*Lundin Mining Corp.* at paras. 66 and 67). In the *Merriam-Webster Online Dictionary*, the term "organization" has a second meaning from that quoted by the Library, namely, "an administrative and functional structure (such as a business or a political party) … *also*: the personnel of such a structure". I also found *Black's Law Dictionary*, 12th edition (2024), helpful, as it provided a definition of "organization" that reads, "the way in which the various parts of a system are arranged and work together." *Black's Law Dictionary* goes on to quote from Friedrich Hayek's *Law, Legislation, and Liberty*, as follows:

> *The term 'organization' … which in the nineteenth century was frequently used in contrast to 'organism' … is of comparatively recent origin. It seems to have come into general use at the time of the French Revolution, with reference to which Kant once observed that 'in a recently undertaken reconstruction of a great people into a great state the word organization has been frequently and appropriately used for the institution of the magistracies and even the whole state.' … In English, the word appears to have come into general use around 1790 as a technical term for a 'systematic arrangement for a definite purpose.'*

[49] Turning to context, I have considered three contextual features of this phrase: the other words in s. 5(3) of *PESRA*, the use of the term in other statutes, and the case law applying that term.

[50] First, the other words used in s. 5(3) are helpful context to understanding the term "organization of the employer". To quote from Ruth Sullivan, *The Construction of Statutes*, 7th ed., at para. 8.06:

> *The associated words rule is properly invoked when two or more terms linked by "and" or "or" serve an analogous grammatical and logical function within a provision. This parallelism invites the reader to look for a common feature among the terms. This feature is then relied on to resolve ambiguity or limit the scope of the terms.*

[51] As set out earlier, s. 5(3) of *PESRA* states, "Nothing in this Part shall be construed to affect the right or authority of an employer to [1] determine the organization of the employer and [2] to assign duties and [3] classify positions of employment." The term "organization of the employer" is linked to the other two phrases, "assign duties" and "classify positions". The classification of positions is the process of dividing positions into occupational groups, subgroups, and levels (see *Professional Institute of the Public Service of Canada v. Treasury Board of Canada*, 2025 FPSLREB 93 at para. 6). Assigning duties is (obviously) about who does which duties. The term "organization of the employer" involves a similar subject matter, given its association with those other terms.

[52] Second, the use of the term "organization" in the *Financial Administration Act* is also helpful context. There is a presumption that the same language appearing in different places in a statute is intended to mean the same thing. This presumption can also apply across related statutes, so long as the contexts of those statutes are not dealing with an unrelated subject or operating in a different context (see *Canada (Information Commissioner) v. Canada (Minister of National Defence)*, 2011 SCC 25 at para. 71).

[53] Earlier, I set out the history behind s. 5(3) of *PESRA*; namely, it was copied almost verbatim from s. 7 of the *PSSRA*. The *PSSRA* (and the current *FPSLRA*) are closely linked to the *Financial Administration Act*. The *PSSRA* and *FPSLRA* cross-reference a number of definitions from the *Financial Administration Act*. Section 7 of the *PSSRA* was also split into two parts in ss. 6 and 7 of the *FPSLRA*: instead of a single provision stating, "Nothing in this Act shall be construed to affect the right or authority of the employer to determine the organization of the Public Service and to assign duties to and classify positions therein" in the *PSSRA*, the *FPSLRA* has two provisions:

> ***6*** *Nothing in this Act is to be construed as affecting the right or authority of the Treasury Board under paragraph 7(1)(b) of the* Financial Administration Act.

> ***7*** *Nothing in this Act is to be construed as affecting the right or authority of the Treasury Board or a separate agency to determine the organization of those portions of the federal public administration for which it represents Her Majesty in right of Canada as employer or to assign duties to and to classify positions and persons employed in those portions of the federal public administration.*

[54] Paragraph 7(1)(b) of the *Financial Administration Act* gives the Treasury Board the power to organize the public service.

[55] This is all to say that s. 5(3) of *PESRA* was based on s. 7 of the *PSSRA*, which itself dovetailed with and was based on s. 7 of the *Financial Administration Act*. These are all related statutes, and terms used in one ought to be interpreted the same in the other.

[56] I am particularly concerned with ss. 7(1)(b) and (e) of the *Financial Administration Act*, which read:

> ***7 (1)*** *The Treasury Board may act for the Queen's Privy Council for Canada on all matters relating to*
>
> *…*
>
> ***(b)*** *the organization of the federal public administration or any portion thereof, and the determination and control of establishments therein;*
>
> *…*
>
> ***(e)*** *human resources management in the federal public administration, including the determination of the terms and conditions of employment of persons employed in it ….*

[57] The term "human resources management" in s. 7(1)(e) is further explained in s. 11.1(1), which lists a number of powers of the Treasury Board, including pay, allowances, classification, and hours of work. The version of the *Financial Administration Act* in force in 1986 when *PESRA* was introduced was similar, except that it used the term "personnel management" instead of "human resources management" and listed its powers under that term in s. 11(2) instead of s. 11.1(1).

[58] As the Federal Court of Appeal put it in *E.S.S.A. v. P.S.S.R.B.*, 1982 CanLII 5153 (FCA) at para. 2:

> *… I agree with applicant's counsel that subsection 7(1) of the* Financial Administration Act*, R.S.C. 1970, c. F-10, clearly*

> *separates the power of the Treasury Board to classify positions on the one hand from its power to determine and regulate pay on the other. Paragraph 7(1)*(c) *empowers the Treasury Board to: "provide for the classification of positions and employees in the public service" while paragraph 7(1)*(d) *empowers it to: "determine and regulate the pay to which persons employed in the public service are entitled for services rendered, the hours of work and leave of such persons and any matters related thereto". Because one of the results of a reclassification is a change in rates of pay, that circumstance cannot, in my view, operate so as to deprive an arbitral board of jurisdiction conferred upon it pursuant to subsection 70(1)* supra.…

[59] Similarly, in this case, the *Financial Administration Act* clearly separates the organization of an employer from human resources management. The *Financial Administration Act* uses the term "… organization of the federal public administration or any portion thereof …" in a structural sense. It is about the Treasury Board's right to group duties and functions. The term is different from "human resources management", which is about associating terms and conditions with positions.

[60] Third, I have reviewed the case law applying s. 5(3) of *PESRA* and ss. 7 and 150(1)(e) of the *FPSLRA*. There is not very much jurisprudence on this point; most of the cases applying those provisions are about the assignment of duties or classification or about the specific prohibitions in s. 55(2) of *PESRA* or s. 150(1)(a) through (c) of the *FPSLRA*. As an example of that problem, the Library cited *Public Service Alliance of Canada v. House of Commons*, 2019 FPSLREB 121, in support of its arguments around s. 5(3) of *PESRA*. However, while the Board in that case referred to s. 5(3) at paragraph 67, in actual fact, it rejected a proposal (about distributing hours of work) because of s. 55(2) instead.

[61] The cases I found helpful were in three categories.

[62] First, in *Public Service Alliance of Canada v. House of Commons*, 2018 FPSLREB 30 at paras. 44 to 46, the Board concluded that a proposal about requiring the employer to assign overtime on the basis of seniority was not about the organization of the employer.

[63] Second, in *National Association of Broadcast Employees and Technicians*, the Board concluded that a term or condition that would have prevented the employer from contracting out bargaining unit work interfered with the employer's right in s. 5(3) of *PESRA*. The Board came to the same conclusion in *Federal Government*

Dockyard Trades and Labour Council East v. Treasury Board, 2005 PSLRB 42, and *Public Service Alliance of Canada v. Statistics Survey Operations*, 2013 PSLRB 98 (upheld on judicial review 2015 FC 55), and the Federal Court came to a similar conclusion in *Public Service Alliance of Canada v. National Capital Commission*, 1997 CanLII 6366 (FC).

[64] Third, in *Association of Justice Counsel v. Treasury Board*, 2009 PSLRB 20, the Board heard a series of objections to the jurisdiction of an arbitration panel to hear different proposals. One of the proposals objected to was that each employee would be provided with a closed-door office, with exterior windows. The Board concluded at paragraph 50 that the issue of offices for lawyers was within the jurisdictional limits set by ss. 150 and 7 of the *FPSLRA*. This case is not directly on point because the employer's objection was that the term had not been previously negotiated (and not that it infringed its prerogative over organization), but it is still some indication that a proposal dealing with the location of work is arbitrable.

[65] Those decisions are consistent with the meaning of "organization of the employer" that I set out earlier; namely, it refers to how workplace duties and functions are structured — i.e., about who does what with whom. Assigning overtime on the basis of seniority does not affect who does what with whom — it affects who does what, **when**. Conversely, a no-contracting-out clause would limit an employer's ability to structure the workplace between employees and contractors. It affects who (an employee or contractor) does what (bargaining unit work) with whom (an employee or contractor).

[66] Finally, the purpose of *PESRA* supports a narrow interpretation of s. 5(3). Its purpose is stated simply in s. 5(1): "… to provide to certain persons employed in Parliamentary service collective bargaining and other rights in respect of their employment." The right to collectively bargain includes the right to strike or a meaningful alternative mechanism for resolving bargaining impasses (see *Saskatchewan Federation of Labour v. Saskatchewan*, 2015 SCC 4 at paras. 93 to 96) — in the case of *PESRA*, the latter. The more restrictions there are on arbitration, the greater the impact on collective bargaining — and the greater the limit on achieving *PESRA*'s purpose.

[67] This is not a *Charter*-values analysis. As the Supreme Court said in *Piekut* in the passage I quoted from earlier, the *Canadian Charter of Rights and Freedoms* (enacted

as Schedule B to the *Canada Act 1982*, 1982, c 11 (U.K.); "the *Charter*") is only a secondary tool of statutory interpretation, used when a provision remains ambiguous after considering the primary tools of text, context, and purpose. However, in this case, the purpose of *PESRA* is to effectuate a constitutional right. I am not interpreting *PESRA* in light of the *Charter* but in light of its stated purpose.

[68] In light of the text, context, and purpose of s. 5(3) of *PESRA*, I have concluded that the phrase "organization of the employer" means what I set out earlier; namely, it refers to how workplace duties and functions are structured — i.e., about who does what with whom.

C. What is the meaning of "assign duties"?

[69] As I mentioned earlier, the parties do not dispute the meaning of the phrase "assign duties", and its meaning is clear on its face. I do not need to go through the same exercise of text, context, and purpose when the language of the legislation is clear and the parties agree on its meaning.

D. Do PSAC's proposals affect the organization of the employer or its ability to assign duties?

[70] PSAC's proposal, for ease of reference, reads as follows:

> *1) The Employer shall not unreasonably deny employee requests to telework.*
>
> *2) Employees shall have the right to have an Alliance representative present in telework discussions with the Employer.*
>
> *3) Where a request to telework is denied the Employer shall provide the reason(s) for said denial in writing. The Alliance Local shall be provided a copy.*
>
> *4) The Employer agrees to engage in meaningful consultation with the Local prior to identifying positions as unsuitable for telework.*
>
> *5) Where teleworking employees are required by the Employer to return to their designated workplace for meetings the Employer shall provide a minimum of seven (7) days notice of such requirement.*
>
> *6) The Employer agrees to implement a policy concerning remote work over the life of this collective agreement and agrees to engage in meaningful consultation with the Alliance during this process.*

> *7) The terms "telework", "remote work" and "designated workplace" shall have the same meaning as contained in the Employer's Telework policy dated xx.*

[71] The Library's main argument is that telework and remote work are about the location where work is performed and that the location where work is performed is about the organization of the employer and its ability to assign duties. Specifically, the Library submitted:

> *The Employer submits that subsection 5(3) of the PESRA protects its right or authority to determine where the work is performed and the location(s) where such duties are assigned, including whether those duties are assigned in the workplace or by way of telework or remote work, which is a fundamental and untouchable management prerogative in relation to the organization and direction of the workplace, workforce, work and services, and the assignment of duties to positions.*

[72] I disagree. Subsection 5(3) of *PESRA* protects the employer's right to assign duties and to decide its structure (i.e., who does what with whom). That does not always, or necessarily, involve where the work is performed. Just as parties may arbitrate the location of offices in a building (i.e., whether the offices are exterior or interior), as in *Association of Justice Counsel*, they may arbitrate the location of work in the employer's building or an employee's home.

[73] The Library also submitted as follows:

> *The Telework Policy sets criteria for determining whether a position is suitable for telework, which includes (but not limited to): whether the incumbent needs to use equipment or material only available on-site; whether the primary function of the position is to offer in-person client service; whether the nature of the work is related to the maintenance of the designated workplace; whether the primary function of the position is to oversee on-site operations; and whether the nature of the work, when performed off-site, continues to adhere to the LOP's policies. Furthermore, the Employer's right to assign duties to positions includes its ability to specify or determine where those duties are to be performed, including whether they will be done on-site or off-site, and the term "assign" is also broadly defined to not only cover the appointment to a position, task or duty, but also the location where someone is sent to do a job or sent to work in a particular place.*

[74] That submission does not actually respond to any of PSAC's proposals. At most, it states that the Library's *Telework Policy* deals with the assignment of duties.

However, PSAC has not proposed to incorporate the Library's *Telework Policy* into the collective agreement. It made seven discrete proposals instead.

[75] At this juncture, it is useful to remember that the original arbitral panel did not order that any of PSAC's proposals be included in an arbitral award; instead, it ordered that the parties negotiate the issue further. However, the Library's submission is that all seven of PSAC's proposals are outside the jurisdiction of the arbitral panel. If it is wrong — in other words, if any of PSAC's proposals are within the jurisdiction of the arbitral panel — then the original arbitral panel's award is restored.

[76] PSAC's first proposal is that the Library not unreasonably deny employee requests to telework. As I said earlier, telework as a subject matter does not fall within s. 5(3) of *PESRA*, making this proposal within the jurisdiction of an arbitral panel.

[77] PSAC's second and third proposals do not impact or limit the Library's ability to assign duties or organize itself. The proposals are only matters of process: a right to union representation in telework discussions, and an obligation to provide written reasons when telework is denied. In *Professional Association of Foreign Service Officers v. Treasury Board of Canada*, 2004 PSSRB 144, the Board agreed that a proposal about the process of performance reviews (in that case, the timing of assessments, and the consequences of an employee signing their assessment) did not infringe the employer's power or ability to appraise its employees, even though the power to appraise employees is outside the scope of arbitration. Even more specifically, in *Public Service Alliance of Canada v. House of Commons*, [1990] C.P.S.S.R.B. No. 153 (QL), an arbitration board found that it had the jurisdiction to consider a proposal that the employer provide a timely written statement of the reasons for the refusal of any employee request (including those falling within management's reserved rights), stating at paragraph 10 that "… subsection 5(3) has no bearing on the employee's right to request a written statement indicating the Employer's reasons for refusal of his/her request." I reach a similar conclusion in this case, which is that these proposals do not infringe on the employer's power to assign duties or organize itself.

[78] I have concluded that PSAC's fourth proposal also does not impact or limit the Library's ability to assign duties or organize itself. The proposal is to consult about which positions are suitable for telework. According to the Library's *Telework Policy* that is before me, a position is suitable for telework according to the duties of that position. The current policy lists five non-exhaustive factors to consider, all of which

are related to the duties of the position. Nothing in this proposal would affect the Library's ability to assign duties to a position. The question of whether a position is suitable for telework takes the duties as a given and then assesses its suitability in light of those duties.

[79] However, I have concluded that the fifth and seventh proposals affect the rights preserved by s. 5(3) of *PESRA*.

[80] The fifth proposal requires seven days' notice of a requirement to return to a designated workplace for meetings. This proposal would affect the Library's ability to assign a duty to a position (i.e., to attend a meeting) on short notice, contrary to s. 5(3) of *PESRA*.

[81] The seventh proposal defines the terms "telework", "remote work", and "designated workplace" by adopting the current definitions in the Library's *Telework Policy*. That policy defines "designated workplace" as "[t]he business address of the employer and location the employee would work if there were no telework. This business address is located in the National Capital Region for all employees." The business address of the Library and its location is part of its organization, as that term is meant in s. 5(3) of *PESRA*. The business location of an employer is a structural decision about who does what with whom — it is about which employees work together and where they are to meet when they physically work together. The location of an enterprise is part of its organization and captured by s. 5(3) of *PESRA*. Therefore, this proposal falls outside the jurisdiction of an arbitral panel.

[82] The sixth proposal would require the Library to implement a policy about remote work after consulting the bargaining agent. According to the parties, remote work is about carrying out all work duties away from a designated workplace (as opposed to telework, which requires an employee to present themselves to the designated workplace as required).

[83] I have decided that the arbitration panel's jurisdiction to address remote work is a moot point in this case. The original panel decided to remit the matter to the parties to negotiate a telework agreement, not a remote work agreement. Additionally, the parties focussed their submissions on telework and, with the exception of one paragraph in the Library's written argument, did not makes submissions about whether there is a meaningful difference between telework and remote work. Since the

original panel did not remit remote work to the parties, and the parties did not make submissions specifically about remote work, I have decided that it would not be appropriate to address the issue of remote work in this decision.

VII. Conclusion

[84] The Board declares that items 1 through 4 of PSAC's proposal are within the jurisdiction of an arbitral panel and do not infringe ss. 5(3) or 55(2) of *PESRA*.

[85] The parties are to implement the original panel's decision regarding telework within 90 days.

[86] If the parties cannot reach an agreement on telework and require the Board to provide a final determination on the telework proposal, the parties must notify the Board in writing within 90 days of receiving this arbitral award.

January 16, 2026.

Christopher Rootham,
for the Federal Public Sector Labour
Relations and Employment Board