

Public Service Labour
Relations Board



Parliamentary Employment
and Staff Relations Act
Annual Report 2008 - 2009

Canada



The Honourable James Moore, P.C., M.P.
Minister of Canadian Heritage and Official Languages
House of Commons
Ottawa, K1A 0A6

Dear Minister,

It is my pleasure to transmit to you, pursuant to section 84 of the *Parliamentary Employment and Staff Relations Act*, the Annual Report of the administration of that Act by the Public Service Labour Relations Board covering the period from April 1, 2008 to March 31, 2009.

Yours sincerely,

Casper M. Bloom, Q.C., Ad. E.
Chairperson

Chairperson: Casper M. Bloom, Q.C., Ad. E.

Vice-Chairpersons: Marie-Josée Bédard
Ian R. Mackenzie
Michele A. Pineau

Full-time Members: Roger Beaulieu
Dan Butler
John A. Mooney
Renaud Paquet
Michel Paquette
Dan R. Quigley

Part-time Members: Christopher James Albertyn
Bruce Archibald, Q.C.
Ruth Elizabeth Bilson, Q.C.
George P.L. Filliter
Deborah M. Howes
Margaret E. Hughes
Georges Nadeau
Allen Ponak
John J. Steeves

EXECUTIVE OFFICERS OF THE PSLRB

Executive Director and General Counsel:
Director, Dispute Resolution Services:
**Director, Compensation Analysis
and Research Services:**
Director, Registry Operations and Policy:
Director, Corporate Services:

Pierre Hamel
Gilles Grenier

Guy Lalonde
Susan Mailer
Alison Campbell and
Céline Laporte
(Acting Director)
Robert Sabourin

Director, Financial Services:

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Message from the Chairperson

I am pleased to submit to Parliament the annual report on the administration of the *Parliamentary Employment and Staff Relations Act (PESRA)* for 2008-2009.

Throughout the reporting period, effectively managing a sizeable caseload and reducing the amount of time it takes to close cases through a variety of case management tools remained a priority for the Public Service Labour Relations Board (PSLRB).

The sustained use of case management conferences has made hearings more efficient by clarifying the issues to be decided and by dealing with preliminary matters and procedural issues prior to the hearing. In some cases, conferences can also eliminate the need for an in-person hearing altogether. The PSLRB will continue to use case management conferences and to provide mediation assistance to the parties to deal with its caseload in the most efficient manner.

In previous reports, I expressed my concern that the PSLRB was only given temporary incremental funding on a yearly basis to carry out its mandate under the *Public Service Labour Relations Act*. I am pleased to report this year that the sustained efforts over the last five years to obtain stable funding have been rewarded. As a result of reinvestment proposals in the context of the Treasury Board's strategic review of the PSLRB's activities, we finally received long-term funding under Budget 2009. This funding will enable us to fully meet our statutory responsibilities, to plan more effectively for the longer term and to readily meet our future commitments.

Casper M. Bloom, Q.C., Ad. E.
Chairperson
Public Service Labour Relations Board



Introduction

Under Part I of the *Parliamentary Employment and Staff Relations Act (PESRA)*, employees of parliamentary institutions have the right to form a union in order to negotiate collectively the conditions of their employment. Part I also gives employees the right to file grievances concerning those conditions and, in certain cases, to refer grievances to adjudication before a neutral third party.

Part I is administered and applied by the Public Service Labour Relations Board (PSLRB), an independent quasi-judicial tribunal established under the *Public Service Labour Relations Act*. The Board of the PSLRB consists of a Chairperson, three Vice-Chairpersons and such other full-time members and part-time members as the Governor in Council considers necessary.

Under the *PESRA*, the Board hears such matters as applications for certification by employee organizations to become bargaining agents representing employees; complaints of unfair labour practices; designations of persons employed in managerial and confidential capacities; and arbitrations of disputes.

The Board also adjudicates grievances concerning the interpretation and application of provisions of collective agreements, significant disciplinary action, and all forms of termination of employment except rejection on probation during initial appointments. Grievances concerning demotion, appointment and classification may also be referred to adjudication but are determined not by a Board member but by an external adjudicator chosen by the parties, which are equally responsible for the adjudicator's compensation and expenses.

Through its mediation services, the PSLRB also assists parties unable to resolve their disputes at the bargaining table. This assistance may lead to a resolution without the need for the dispute to be heard formally by the Board or may limit the number of issues.

Under the *PESRA*, arbitration is the only means of resolving disputes if bargaining reaches an impasse. In those situations, the Board acts as an arbitration board. On receiving a request for arbitration, the Chairperson appoints a tripartite panel comprising two persons representing the interests of each party along with a Board member who chairs the panel. Such panels are deemed to act as the Board for the purposes of dealing with the dispute. After hearing the parties, the panel renders a decision on the issues in dispute. Those decisions form parts of collective agreements and are binding on the parties and on employees.



Proceedings before the Public Service Labour Relations Board

In 2008-2009, the PSLRB dealt with 69 cases under the *Parliamentary Employment and Staff Relations Act (PESRA)*. Of those cases, 34 were grievances, 1 was a complaint and 34 pertained to other applications.

1) Grievance Adjudication

In 2008-2009, the bulk of proceedings before the PSLRB were grievances. In that period, the PSLRB processed 34 grievances, 21 of which had been carried over from previous years and 13 of which were new.

There are three types of adjudicable grievances under the *PESRA*. The first type arises from the application or interpretation of collective agreements or arbitral awards. Such grievances cannot be referred to adjudication without the approval and support of the bargaining agent. In 2008-2009, the PSLRB processed one such grievance from the Library of Parliament.

The second type refers to disciplinary actions resulting in suspension or financial penalty and to termination of employment for reasons other than rejection on probation for an initial appointment. A member of the Board acting as an adjudicator hears these types of grievances. In 2008-2009, the PSLRB dealt with 9 such grievances; 6 were from the House of Commons, 2 were from the Library of Parliament and 1 was from the Senate.

The third type includes grievances relating to the demotion of an employee, to the denial of appointment and to classification. They are heard and determined by an adjudicator selected by the parties. In 2008-2009, the PSLRB processed 24 such grievances. Five (5) were from the House of Commons, 13 were from the Library of Parliament and 6 were from the Senate. All but 1 of the latter pertained to allegations of incorrect classification.

As of March 31, 2009, of these 34 grievances, 5 were on hold pending the outcome of mediation, 10 were on hold pending other reasons and 1 was awaiting a decision. Eighteen (18) cases were considered completed. Of those cases, 5 were settled, 3 were dismissed and 10 were withdrawn.

2) Complaint Adjudication

Section 13 of the *PESRA* requires the Board to examine and inquire into an alleged failure to observe any prohibition contained in sections 6, 7 or 8, to comply with any regulation respecting grievances made by the PSLRB pursuant to section 71, or to give effect to any provision of an arbitral award or to a decision of an adjudicator with respect to a grievance.

Where the Board upholds a complaint, it has authority under section 13 to order remedial action. If such action is not carried out, section 14 provides that the PSLRB shall make a report to Parliament. The PSLRB processed 1 complaint in 2008-2009, which was dismissed as of March 31, 2009.

3) Other Proceedings

Enforcement of obligations of the employer and employee organizations

Section 70 of the *PESRA* requires that the PSLRB look into allegations that cannot be the subject of a grievance by an individual employee. These situations occur when the employer or the bargaining agent seeks to enforce an obligation alleged to arise from a collective agreement or an arbitral award. Two such cases were dealt with in 2008-2009.

Applications for certification

Under section 18 of the *PESRA*, an employee organization may submit an application to be certified as a bargaining agent for a bargaining unit. The PSLRB did not receive any such applications in 2008-2009.

Applications to review a decision

Under section 17 of the *PESRA*, the PSLRB received 1 application requesting a review of a decision. The employer (the House of Commons) applied for a review of the bargaining unit structure. There are presently 7 bargaining units that are represented by 4 bargaining agents, and the employer argued that the circumstances warranted consolidating that structure into a single bargaining unit. The PSLRB ruled that the evidence did not justify modifying the existing bargaining unit structure (**House of Commons v. Professional Institute of the Public Service et al.**, 2009 PSLRB 23). An application for judicial review is pending before the Federal Court of Appeal.

Determination of membership in a bargaining unit

Under section 24 of the *PESRA*, the employer or an employee organization may ask the PSLRB to determine if an employee or class of employees is included in a bargaining unit. The PSLRB did not deal with any such applications in 2008-2009.

Application for a declaration of successor rights

Section 36 of the *PESRA* provides for the PSLRB to determine the rights, privileges and duties that are required or retained by an employee organization after a merger or amalgamation or a transfer of jurisdiction, other than as a result of a revocation of certification. In 2008-2009, the PSLRB did not receive any such applications.

Notice to bargain collectively

Section 37 of the *PESRA* provides that either the bargaining agent or the employer may require, by written notice, to commence bargaining collectively, with a view to concluding a collective agreement. In 2008-2009, the PSLRB received 1 notice to bargain.

Applications under section 38

Section 38 of the *PESRA* requires parties to bargain collectively in good faith and to make every reasonable effort to conclude a collective agreement. The PSLRB dealt with 1 allegation of a violation under section 38 in 2008-2009.

Request for the appointment of a conciliator

Under section 40 of the *PESRA*, parties that are unable to reach agreement on any term or condition of employment embodied in a collective agreement may ask the Chairperson to appoint a conciliator to assist them in reaching an agreement. The PSLRB dealt with 2 such requests in 2008-2009. As not all of the issues were resolved, the 2 cases went to arbitration and will be dealt with in 2009-2010.

Arbitration proceedings

Section 46 of the *PESRA* provides that binding arbitration is the only method available to resolve interest disputes; there is no right to strike under the *PESRA*. The PSLRB dealt with 3 requests for arbitration during the reporting period. In 2008-2009, the PSLRB dealt with 7 requests to establish an arbitration board. One (1) case was carried over from the previous year and resulted in an arbitral award. Of the 6 remaining cases, 1 resulted in a settlement; the other 5 are scheduled for 2009-2010.

Requests for extensions of time

In 2008-2009, the PSLRB did not receive any requests for extensions of time for the presentation of a grievance, as provided for under section 79 of the *P.E.S.R.A. Regulations and Rules of Procedures*.



When a proceeding is brought before the PSLRB, dispute resolution services are offered to help parties resolve their differences without resorting to a formal hearing. In 2008-2009, mediation was not sought by any parties to resolve any grievances.

Tables

Table 1: Bargaining Units and Bargaining Agents under the *Parliamentary Employment and Staff Relations Act*, April 1, 2008 to March 31, 2009

BARGAINING UNITS

BARGAINING AGENTS

House of Commons as Employer

Technical Group	Communications, Energy and Paperworkers Union of Canada
Protective Services Group	House of Commons Security Services Employees Association
Procedural Subgroup and Analysis/Reference Subgroup in the Parliamentary Programs Group	Professional Institute of the Public Service of Canada
Operational Group (except for part-time cleaners classified at the OP A level)	Public Service Alliance of Canada
Reporting Subgroup and Text Processing Subgroup in the Parliamentary Programs Group	Public Service Alliance of Canada
Postal Services Subgroup in the Administrative Support Group	Public Service Alliance of Canada
Scanners	Public Service Alliance of Canada

Senate of Canada as Employer

Legislative Clerk Subgroup in the Administrative Support Group	Professional Institute of the Public Service of Canada
Protective Service Subgroup in the Operational Group	Senate Protective Service Employees Association
Operational Group (except for employees in the Protective Service Subgroup)	Public Service Alliance of Canada

Library of Parliament as Employer

Library Science (Reference) and Library Science (Cataloguing) Subgroups in the Research and Library Services Group	Public Service Alliance of Canada
Administrative and Support Group	Public Service Alliance of Canada
Library Technician Subgroup in the Research and Library Services Group	Public Service Alliance of Canada
Research Officer and Research Assistant Subgroups in the Research and Library Services Group	Canadian Association of Professional Employees

Table 2: Adjudication References, April 1, 2000 to March 31, 2009

	Interpretations [Para. 63(1)(a)]	Discipline [Paras. 63 (1)(b) & (c)]	Party & Party [Sec. 70]	Sub-Total	Paras. 63(1) (d), (e) & (f)	Total
2008-2009	1	9	1	11	24	35
2007-2008	2	7	1	10	19	29
2006-2007	6	12	0	18	28	46
2005-2006	4	11	0	15	25	40
2004-2005	2	4	0	6	0	6
2003-2004	2	2	0	4	0	4
2002-2003	51	3	0	54	29	83
2001-2002	7	0	0	7	0	7
2000-2001	2	2	1	5	12	17

Cumulative Totals, December 24, 1986 to March 31, 2009

359	93	12	464	334	798
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**Table 3: Adjudication References Carried Forward and Received
April 1, 2000 to March 31, 2009**

Fiscal Year	Carried Forward	Received	Overall Total	Dispositions Total
2008-2009	21	13	34	18
2007-2008	23	6	29	7
2006-2007	41	5	46	23
2005-2006	26	14	40	1
2004-2005	26	6	32	4
2003-2004	33	4	37	7
2002-2003	3	83	86	55
2001-2002	10	7	17	14
2000-2001	41	17	58	45