A MESSAGE FROM THE CHAIRPERSON OF THE MANITOBA LABOUR BOARD

I am pleased to submit the 2009-2010 Annual Report outlining the activities of the Manitoba Labour Board for the period April 1, 2009 to March 31, 2010.

During this reporting period, the Board successfully fulfilled its mandate and met its immediate objectives. The Staff of the Board will continue to focus on the activities and strategic priorities which are highlighted in this Report.

During this reporting period, the Board issued a number of important decisions under *The Labour Relations Act* and other statutes which it administers. This is evident from the decisions which are summarized in this Report. The full text of these decisions are posted on the Board's website.

On May 26, 27 and 28, 2009, the second of the recently re-instituted bi-annual seminars for Board Members and Board Officers was held in Gimli, Manitoba. A wide range of topics was discussed including a very informative presentation by the Registrar and the Board Officers on various administrative and procedural topics which the staff of the Board address on a daily basis. This presentation was well received. Further, a panel, comprised of Vice-Chairs and Members, discussed what factors, in their views, were critical when assessing the credibility of witnesses who offer conflicting versions of the same event. The Board is regularly faced with this difficult task. Another presentation was an overview of the Board's new jurisdiction under *The Worker Recruitment and Protection Act*. Again, the seminar was an unqualified success. The opportunity for all members to interact with each other in a non-adjudicative setting is most important, not only from an educational perspective but also in terms of enhancing the collegial atmosphere which exists at the Board.

During this year the Board reviewed and updated its Information Bulletins and issued six new Bulletins, all in bilingual format. These Bulletins were issued to the labour community and published on the Board's website. Of particular significance is new Information Bulletin No. 14 entitled *Bargaining Agent's Duty of Fair Representation*, which, in a question and answer format, addresses the key procedural, practical and legal issues which an applicant ought to consider when bringing an application under Section 20 of *The Labour Relations Act*.

The Board continued to enhance its bilingual capacity by hiring both a bilingual receptionist and board officer.

I take this opportunity to express my thanks to the Vice-Chairpersons, Members and Staff for their dedication and service to the Board.

William D. Hamilton,
Chairperson

MESSAGE DU PRÉSIDENT DE LA COMMISSION DU TRAVAIL DU MANITOBA

J'ai le plaisir de soumettre le Rapport annuel 2009-2010 faisant état des activités de la Commission du travail du Manitoba du 1er avril 2009 au 31 mars 2010.

Au cours de l'exercice, la Commission s'est acquittée de son mandat et a rempli ses objectifs immédiats. Le personnel de la Commission continuera de mettre l'accent sur les activités et les priorités stratégiques exposées dans le présent rapport.

En 2009-2010, la Commission a rendu plusieurs décisions importantes en vertu de la *Loi sur les relations du travail* et des autres lois qu'elle administre, comme le montrent les résumés des décisions inclus au présent rapport.

Les 26, 27 et 28 mai 2009, le deuxième de la série des séminaires semestriels à l'intention des membres et agents de la Commission, qui vient d'être rétablie, a eu lieu à Gimli, au Manitoba. Des sujets nombreux et divers y ont été débattus, avec notamment un exposé très instructif par le greffier et les agents de la Commission sur des questions diverses touchant l'administration et les procédures que le personnel doit traiter quotidiennement. Cet exposé a été bien accueilli. Un peu plus tard, un groupe composé de vice-présidents et de membres a discuté des facteurs qui sont à leur avis essentiels pour évaluer la crédibilité des témoins donnant des versions contradictoires d'un même événement. La Commission est régulièrement confrontée à cette tâche difficile. Un autre exposé a donné un aperçu des nouvelles compétences de la Commission en vertu de la *Loi sur le recrutement et la protection des travailleurs*. Cet exposé a lui aussi connu un franc succès. Il est tout particulièrement important de donner à tous les membres l'occasion d'interagir les uns avec les autres dans un cadre non décisionnel, du point de vue éducatif bien sûr, mais aussi pour alimenter l'esprit collégial qui règne à la Commission.

Au cours de l'exercice, la Commission a révisé et mis à jour ses Bulletins d'information et publié six nouveaux Bulletins, en format bilingue. Ces bulletins ont été diffusés aux intervenants du secteur des relations du travail et publiés sur le site Web de la Commission. Soulignons l'importance du nouveau Bulletin d'information n° 14, intitulé *Devoir de juste représentation des agents négociateurs*, qui traite sous la forme de questions-réponses des principales questions de nature juridique ou relatives aux procédures et aux pratiques dont l'auteur d'une demande doit tenir compte en présentant sa demande en vertu de l'article 20 de la *Loi sur les relations du travail*.

La Commission a continué de renforcer sa capacité bilingue en recrutant une réceptionniste et un agent bilingues.

Je tiens à remercier les vice-présidents et vice-présidentes, les membres et le personnel du dévouement dont ils ont fait preuve et des services rendus à la Commission.

Le président
William D. Hamilton,

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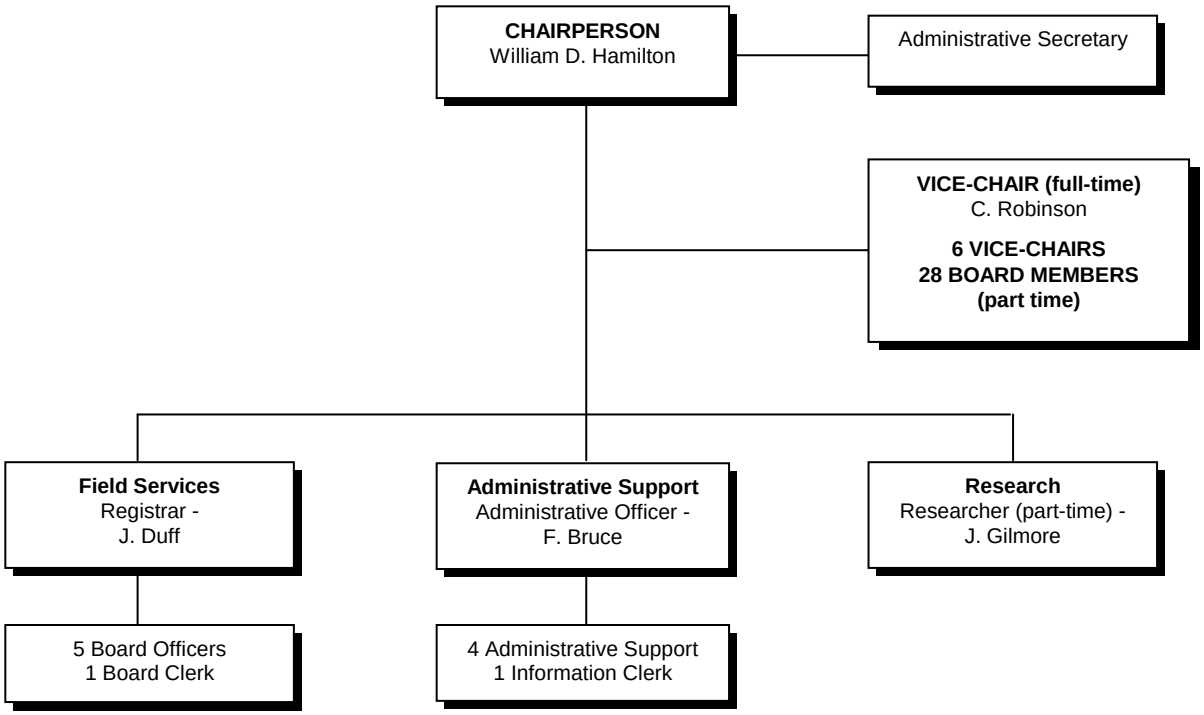

The Manitoba Labour Board

INTRODUCTION

Report Structure

The Manitoba Labour Board (the Board) annual report is prepared pursuant to Subsection 138(14) of *The Labour Relations Act*:

> "The report shall contain an account of the activities and operations of the board, the full text or summary of significant board and judicial decisions related to the board's responsibilities under this and any other Act of the Legislature, and the full text of any guidelines or practice notes which the board issued during the fiscal year."

Vision and Mission

To further harmonious relations between employers and employees by encouraging the practice and procedure of collective bargaining between employers and unions as the freely designated representatives of employees.

Objectives

- to resolve labour issues fairly and reasonably, and in a manner that is acceptable to both the labour and management community including the expeditious issuance of appropriate orders;
- to assist parties in resolving disputes without the need to proceed to the formal adjudicative process; and
- to provide information to parties and/or the general public regarding their dealings with the Board or about the Board's activities.

Role

The Board is an independent and autonomous specialist tribunal responsible for the fair and efficient administration and adjudication of responsibilities assigned to it under *The Labour Relations Act* and any other *Act* of the Consolidated Statutes of Manitoba.

The majority of the applications are filed under *The Labour Relations Act (L10)* and *The Employment Standards Code (E110).* The Board is also responsible for the administration and/or adjudication of matters arising under certain sections of the following *Act*s:

The Construction Industry Wages Act (C190)
The Elections Act (E30)
The Essential Services Act (E145)
The Pay Equity Act (P13)
The Public Interest Disclosure (Whistleblower Protection) Act (P217)
The Public Schools Act (P250)
The Remembrance Day Act (R80)
The Victims' Bill of Rights (V55)
The Worker Recruitment and Protection Act (W197)
The Workplace Safety and Health Act (W210)

The Labour Relations Act

The Board receives and processes applications regarding union certification, decertification, amended certificates, alleged unfair labour practices, expedited arbitration, first contracts, board rulings, duty of fair representation, successor rights, religious objectors and other applications pursuant to the *Act.*

The Employment Standards Code

As the wage board appointed pursuant to the *Code*, the Board hears complaints referred to it by the Employment Standards Division regarding wages, statutory holiday pay, vacation pay and wages in lieu of notice, including provisions pursuant to ***The Construction Industry Wages Act*** and ***The Remembrance Day Act***. Until the April 30, 2007 amendment to the *Code*, the Board also handled hours of work exemption requests and applications for exemption from the weekly day of rest.

The Elections Act

A candidate, election officer, enumerator or an election volunteer for a candidate or a registered political party may file an application relating to requests for leave from employment under Section 24.2 of the *Act*. An employer may apply to the Chairperson of the Board to request an exemption from the requirement to grant a leave under Section 24.2 of the *Act,* if the leave would be detrimental to the employer's operations.

The Essential Services Act

The Board receives and processes applications from unions for a variation of the number of employees who must work during a work stoppage in order to maintain essential services.

The Pay Equity Act

If parties fail to reach an agreement on an issue of pay equity, within the time frames stipulated in the *Act*, any party may refer the matter to the Board for adjudication.

The Public Interest Disclosure (Whistleblower Protection) Act

Pursuant to Section 28 of the *Act,* an employee or former employee who alleges that a reprisal has been taken against them may file a written complaint with the Board. If the Board determines that a reprisal has been taken against the complainant contrary to Section 27, the Board may order one or more of the following measures to be taken:

(a) permit the complainant to return to his or her duties;
(b) reinstate the complainant or pay damages to the complainant, if the board considers that the trust relationship between the parties cannot be restored;
(c) pay compensation to the complainant in an amount not greater than the remuneration that the board considers would, but for the reprisal, have been paid to the complainant;
(d) pay an amount to the complainant equal to any expenses and any other financial losses that the complainant has incurred as a direct result of the reprisal;
(e) cease an activity that constitutes the reprisal;
(f) rectify a situation resulting from the reprisal;
(g) do or refrain from doing anything in order to remedy any consequence of the reprisal.

The Public Schools Act

Certain provisions of *The Labour Relations Act* apply to teachers, principals, bargaining agents for units of teachers and school boards.

The Victims' Bill of Rights

Victims of crime may file applications with the Board relating to requests for time off work, without pay, to attend the trial of the person accused of committing the offence, for the purpose of testifying, presenting a victim impact statement or observing any sentencing of the accused person.

The Worker Recruitment and Protection Act

The Director of the Employment Standards Division is empowered, on behalf of a foreign worker, a child performer or family member on behalf of a child performer, to issue orders to recover the amount of any prohibited recruitment fees or costs charged, directly or indirectly, by the employer or a person engaged in recruitment of the foreign worker or child performer and can also, by order, recover from an employer any reduction in wages or recover any reduction/elimination of a benefit or other term or condition of employment where the reduction is made to cover the costs of recruitment , all of which is contrary to the Sections 15, 16 and 17 of the *Act.* The Board's jurisdiction is triggered when a person affected by a Director's order wishes to appeal an order of the Director under any of these provisions. The Board hears the appeals pursuant to the provisions of *The Employment Standards Code*.

The Workplace Safety and Health Act

Any person directly affected by an order or decision of a safety and health officer may appeal the order or decision to the Director of Workplace Safety & Health. The Director may decide the matter or refer the matter to the Board for determination. Any person affected by an order or decision of the Director of Workplace Safety & Health may also appeal to the Board to have the order or decision set aside or varied.

MANITOBA LABOUR BOARD MEMBERS

In the year under review, the Board consisted of the following members.

Chairperson

William (Bill) D. Hamilton

Appointed as full-time Chairperson in 2005, he has been a part-time vice-chairperson since 2002. He holds a Bachelor of Arts degree from the University of Winnipeg and a Bachelor of Laws degree from the University of Manitoba. Mr. Hamilton, for some years, has carried on an active practice as an interest and grievance arbitrator/mediator in Manitoba.

Vice-Chairpersons

A. Blair Graham, Q.C.

Appointed on a part-time basis in 2006, he holds a Bachelor of Arts degree and a Bachelor of Laws degree from the University of Manitoba. Mr. Graham practices law as a partner in the law firm of Thompson Dorfman Sweatman LLP with an emphasis on civil litigation and labour and commercial arbitration as a chairperson. He was appointed a Queen's Counsel in December 1992, and inducted into the American College of Trial Lawyers in October 2004. He has been active as a chairperson in labour arbitration matters since 1997.

Lynne Harrison

Appointed on a part-time basis in 2008, she holds a Bachelor of Arts degree from Laval University, a Secondary Education Teaching Certificate from Laval University and a Bachelor of Laws degree from the University of Manitoba. Ms. Harrison also serves as an adjudicator under The Human Rights Code (Manitoba). She practices law as a partner in the law firm of Thompson Dorfman Sweatman LLP.

Diane E. Jones, Q.C.

Appointed on a part-time basis since 1985, she holds a Bachelor of Arts degree (Honours) from the University of Winnipeg and a Bachelor of Laws degree from the University of Manitoba. Ms. Jones is currently active as a chairperson in arbitration matters.

Arne Peltz

Appointed on a part-time basis in 2002, he is a chartered arbitrator and carries on an active practice as an interest and grievance arbitrator/mediator in Manitoba. Mr. Peltz has also served as an adjudicator under the Manitoba Human Rights Code and the Canada Labour Code. He was the director of the Public Interest Law Centre for 21 years and entered private practice in 2003. He now practices with Orle Davidson Giesbrecht Bargen LLP in dispute resolution, aboriginal law and civil litigation.

Colin Robinson

Appointed to the Board as full-time vice-chairperson in 2003, he holds a Bachelor of Arts (Honours) degree from the University of Manitoba and a Bachelor of Laws degree from Osgoode Hall Law School. Mr. Robinson was called to the Bar in 1995 and practiced primarily in the fields of labour and administrative law. Mr. Robinson is also the Vice-President of the Manitoba Council of Administrative Tribunals.

Michael D. Werier

Appointed on a part-time basis in 2006, he is a partner in the Winnipeg law firm of D'Arcy Deacon LLP. Mr. Werier carries on a practice as an arbitrator/mediator in Manitoba and as a civil litigator. He is currently chairperson of the Labour Management Review Committee of the Province of Manitoba and chairperson of the Board of Directors of the Workers Compensation Board of Manitoba.

Gavin M. Wood

Appointed on a part-time basis in 2006, he holds a Bachelor of Laws degree from the University of Manitoba and a Masters of Laws degree from Columbia University in New York City. Mr. Wood is presently practicing as a sole practitioner under the firm name of Gavin Wood Law Office. He is currently active as a chairperson in arbitration matters.

Employer Representatives

Jim Baker, C.A.

Appointed in 2000, he is president and CEO of the Manitoba Hotel Association (MHA). Prior to his employment with the MHA, Mr. Baker was a partner in a chartered accountancy firm for 20 years. He is a past executive member of the Hotel Association of Canada and past chair of the Manitoba Tourism Education Council. He was co-chair of the athletes' villages during the 1999 Pan Am Games and has been active as a community volunteer. He currently is the chair of the Friends of the Elmwood Cemetery, a director of the Winnipeg Convention Centre and a member of the Manitoba Employers Council.

Victor W. Becker

Appointed in 2006, he had been vice president of Empire Iron Works Ltd. for 20 years and had worked in the steel industry for 38 years with Dominion Bridge and Empire Iron. Mr. Becker graduated from the University of Manitoba with a Bachelor of Science degree in Civil Engineering and is a member of the Association of Professional Engineers and Geoscientists of Manitoba. He is presently on the Board of Directors for the Construction Labour Relations Association of Manitoba and has been past chairman of the Manitoba Erectors Association. Mr. Becker had been on the Board of Directors of the Canadian Institute of Steel Construction for 28 years and on its executive committee for 20 years. Mr. Becker's term expired December 31, 2009.

Elizabeth M. (Betty) Black

Appointed in 1985, she is a Fellow, Certified Human Resource Professional and holds a Certificate from the University of Manitoba in Human Resource Management. Ms. Black has been employed in senior human resource management positions in a variety of organizations since 1972. She is a member of the Human Resources Management Association of Manitoba and has served as president and chair of the Strategic Advisory Council. She has also instructed in the Human Resource Management Certificate Program at the University of Manitoba.

Christiane Devlin

Appointed in 2002, she has held senior management positions in human resources, integrating human resources within the business needs of companies in the communication and printing, agriculture, manufacturing, health care, and retail co-operative industries. Christiane is currently the Manager, Human Resources with the Kleysen Group. Ms. Devlin's human resource management experience includes both unionized and non-unionized workplaces.

Robert N. Glass

Appointed in 2008, he is a Labour Relations/Personnel Consultant-Negotiator with professional qualifications and extensive experience in labour/management relations including negotiation of contracts, collective agreement interpretation and an in-depth knowledge of organized labour, employment policy, hazard control and loss management. He has experience in the communications industry, government, health care and the construction industry. His educational background is from the University of Manitoba, University of Montreal, Safety Leadership Programs and Human Resource Professional Certification.

Colleen Johnston

Appointed in 1993, she is the Manager,Human Resources for the Manitoba Liquor Control Commission and the president of Integre Human Resource Consulting. Mrs. Johnston is a graduate of the University of Manitoba with a Bachelor of Education and is a Fellow of the Certified Human Resource Professionals. She is a past president of the Human Resource Management Association of Manitoba (HRMAM), a founding director of the Canadian Council of Human Resource Associations and a former member of the Regulatory Review Committee of the Canada Labour Code in Ottawa. She has represented Canadian employers at the United Nations in Geneva and is currently an active member of the Designation Review Committee of the HRMAM, a member of the National Professional Practice Examination Committee and a member of the Board of Directors of CAA Manitoba.

Paul J. LaBossiere

Appointed in 1999, he is currently president of P.M.L. Maintenance Ltd. Mr. LaBossiere is past co-chair of the Employers Task Force on Workers Compensation, a member of the Winnipeg Chamber of Commerce, parliamentarian government affairs advisor and past president of the Building Owners and Managers Association, a member of the Manitoba Employers Council and is a frequent international speaker on issues pertaining to the maintenance and service industries. He is a member of the Board of Directors of the Building Services Contractors Association International (37 countries). He is the Past Board President of the Prairie Theatre Exchange (PTE) and a member of the Board of the PTE Foundation Trust. His past affiliations include vice-chair and treasurer of the Winnipeg Chamber of Commerce and on the Advisory Committee for the Continuing Education Department at the University of Manitoba.

Chris Lorenc, B.A., LL.B.

Appointed in 2003, he is currently president of the Manitoba Heavy Construction Association, president of the Infrastructure Council of Manitoba, president of the Western Canada Roadbuilders and Heavy Construction Association, founding member and chair of the Western Canada Transportation System Strategy Group and member of the Board of CentrePort Canada Inc. He has an extensive background in public policy and writing related to trade and transportation, infrastructure, workplace safety and health. A lawyer by background, Mr. Lorenc graduated from the University of Manitoba with Bachelor of Arts and Bachelor of Laws degrees. He is a former Winnipeg city councillor having served for 9 years between 1983 and 1992. During his tenure on Council, he chaired a number of standing committees and held a variety of senior positions. He has also served and continues to serve on a number of boards of business, cultural, community and hospital organizations.

Yvette Milner

Appointed in 1996, Ms. Milner is a Safety and Disability Management Consultant and President of On-Site Safety and Health Management Solutions, a consulting company specializing in assisting companies to manage injury and illness in the workplace. Past experience includes Director of Safety and Disability Management with Deloitte; President Milner Consulting, a company specializing in Safety and Disability Claims Management; Human Resources Coordinator, Manitoba Health; and Assistant Director of Rehabilitation Workers Compensation Board of Manitoba. Active in the Manitoba business community, Ms. Milner is involved in the Manitoba's Employer's Council and the Employer's Task Force on Workers Compensation.

Maurice D. Steele

Appointed in 1999, he was president of M.D. Steele Construction Ltd. until his retirement in May 1999. Mr. Steele is president of Logan Farms Ltd. and Stradbrook Investments Ltd. both founding partners of the Land Owners Group. He is also vice-president of the AVL Limited Partnership representing lands north and west of Winnipeg James Armstrong Richardson International Airport. He has been involved for a number of years in the construction industry in a managerial capacity.

Darcy Strutinsky

Appointed in 2008, he is currently the Director of the Winnipeg Regional Health Authority Labour Relations Secretariat, representing health care employers throughout the province in collective bargaining and other labour relations matters. Previously he was engaged in providing human resource/labour relations services at the Health Sciences Centre, Seven Oaks General Hospital and University of Manitoba. Mr. Strutinsky is a member of the Manitoba Labour Management Review Committee, Arbitration Advisory Sub-Committee and was a founding trustee of the Healthcare Employees Pension Plan.

Denis E. Sutton

Appointed in 1983, he has had extensive training in business administration and human resource management and has extensive experience in labour relations in both the private and public sectors. Mr. Sutton has served as chairperson of the Industrial Relations Committee, Manitoba Branch of the Canadian Manufacturers Association, chairperson of the Western Grain Elevator Association Human Resource Committee, chairperson of the Conference Board of Canada, Council of Human Resource Executives (West) and is an active member of many labour relations committees and associations. Mr. Sutton is presently employed as Executive Vice President of Human Resources at IMRIS Inc.

Jim Witiuk

Appointed in 2004, he is currently director of Labour Relations for Canada Safeway Limited with responsibility for labour relations matters in Manitoba, Saskatchewan and Ontario. Mr. Witiuk sits on a number of trusteed health and welfare and pension plans as a management trustee and is a member of the International Foundation of Employee Benefit Plans. He is a past member of the Employment and Immigration Board of Referees. He currently serves on the provincial government's Labour Management Review Committee, serves on that group's Arbitration Advisory Sub-Committee and is an active member of the Manitoba Employers Council. He is on the Board of Directors of MEBCO (Multi Employee Benefit Plan Council of Canada). He is a graduate of Carleton University in Ottawa.

Mel V. Wyshynski

Appointed in 2004, he retired from Inco Limited, Manitoba Division in late 2001 after a 40 year career in the mining industry. At the time of his retirement, Mr. Wyshynski was president of the division and had held that position since 1997. He is also past president of the Mining Association of Manitoba Inc. He is actively involved in the Dauphin community where he sits on a number of volunteer boards and is associated with many community initiatives. In addition to this, he is involved with a number of organizations. In 2006, he was appointed a director of Smook Brothers (Thompson) Ltd.

New Member:

Harvey Miller

Appointed in 2010, he is the Executive Director of the Merit Contractors Association of Manitoba. He holds a Bachelor of Arts Degree from the University of Manitoba and a Master of Arts Degree in Psychology from the University of Victoria. Mr. Miller has extensive senior management experience in both public and not for profit agencies, including the Workers Advisory Office and the Workers Compensation Board. He has served on numerous volunteer boards, and is a past president of the Winnipeg Mental Health Association and the Manitoba Biathlon Association.

Employee Representatives

L. Lea Baturin

Appointed in 2007, she has been employed as a national representative with the Communications, Energy & Paperworkers Union of Canada (CEP) since 1995. As a national representative, she deals primarily with grievance arbitration matters, collective bargaining and steward education in the industrial sectors of telecommunications, broadcasting and manufacturing. Ms. Baturin's educational background includes a Bachelor of Arts degree and a Bachelor of Laws degree from the University Manitoba. She received her call to the Manitoba Bar in 1981 and worked as a lawyer at Legal Aid Manitoba and at Myers Weinberg and Associates before joining CEP as staff. Ms. Baturin is a member of the Board of the Manitoba Federation of Labour.

Robert P. Bayer

Appointed in 2004, he had been a staff representative with the Manitoba Government and General Employees' Union (MGEU) since 1982. Previously, Mr. Bayer was the executive director of the Institutional Employees' Union (1975-1982), and manager of Human Resources for the Canadian Broadcasting Corporation - Winnipeg (1965-1975). He retired from the MGEU in December 2007.

Beatrice Bruske

Appointed in 2007, she has been employed since 1993 as a union representative for the United Food and Commercial Workers Union, Local No. 832 (UFCW Local 832). Ms. Bruske has worked as a servicing representative dealing with grievances, negotiations and arbitrations. She has been a full-time negotiator since 2004 and in this capacity she prepares and presents briefs on behalf of the members she represents. She represents the UFCW Local 832 on the Manitoba Federation of Labour Executive Council. Ms. Bruske is a member of the UFCW Local 832 Women's Committee. As well, she is a former member of the UFCW's National Women's Committee. She is a trustee on a number of Health & Welfare Benefit Plans. She graduated from the University of Manitoba with an Arts Degree in Labour Studies.

Irene Giesbrecht

Appointed in 2002, she was employed by the Manitoba Nurses' Union (MNU) as Chief Negotiator from 1978 until her retirement in June 2008. She is a founding member of the Canadian Federation of Nurses Unions. Previous to joining the MNU, Ms. Giesbrecht was employed as a registered nurse. She is on the Blue Cross Board of Directors. Ms. Giesbrecht is currently providing health care/labour relations advice on a part-time consulting basis.

Jan Malanowich

Appointed in 1991, she worked as a staff representative for the Manitoba Government and General Employees' Union from 1981 until her retirement in December 2007. Ms. Malanowich was actively involved in collective bargaining, grievance handling and a multitude of associated activities related to the needs of the membership. Ms. Malanowich is currently appointed as an employee representative on the Employment Insurance Appeal Board of Referees.

Douglas R. McFarland

First sat as a Board member from 1988 to 1996, he was reappointed in 2000. Mr. McFarland has been actively involved in labour relations. In February 2009, he retired from the position of staff representative with the Manitoba Government and General Employees' Union. Mr. McFarland's term expired December 31, 2009.

John R. Moore

Appointed in 1994, he was employed as the Business Agent, Training Coordinator and Business Manager for the United Association of Journeymen & Apprentices of the Plumbing & Pipefitting Industry of the United States & Canada, Local 254, from 1982-2007 and has been an active member for 42 years. Mr. Moore is also a current representative of the Trades Appeal Board of Manitoba.

Maureen Morrison

Appointed in 1983, she has a Bachelor of Arts degree from McGill University and has also completed several courses in labour relations studies. Ms. Morrison has worked for the Canadian Union of Public Employees (CUPE) for many years, first as a Servicing Representative and then as Equality Representative. Her work is primarily in the areas of pay and employment equity, harassment and discrimination, accommodation issues, and other human rights concerns. Ms. Morrison is currently working on a temporary basis as the Acting Director of CUPE's Equality Branch.

James Murphy

Appointed in 1999, he is the business manager of the International Union of Operating Engineers (IUOE), Local 987, being elected to this position in 1995. Mr. Murphy held the positions of business representative of IUOE from 1987 through to 1995 and training co-ordinator from 1985 to 1987. He sits on the executive board of the Canadian Conference of Operating Engineers, is currently president of the Manitoba Building and Construction Trades Council and president of the Allied Hydro Council of Manitoba. Prior to 1985, he was a certified crane operator and has been an active member of the IUOE since the late 1960s.

Sandra Oakley

Appointed in 2008, she has been employed by the Canadian Union of Public Employees (CUPE) since 1981. Ms. Oakley has worked as a National Servicing Representative, dealing with negotiations, grievance arbitrations and other labour relations issues, and as an Assistant Managing Director in the Organizing and Servicing Department of CUPE at its National Office in Ottawa. Since October 2002, she has been the Regional Director for CUPE in Manitoba. Ms. Oakley is a graduate of the University of Manitoba and the Labour College of Canada. She serves on the Board of Directors of the Rehabilitation Centre for Children, the Board of Directors of the Children's Rehab Foundation and on the United Way Cabinet as Deputy Chair Labour.

Dale Paterson

Appointed in 1999, he is retired from the Canadian Auto Workers Union where he was the area director. Mr. Paterson serves on the Premier's Economic Advisory Council. He is also a board member of the Manitoba Public Insurance Corporation and is an employee nominee of the Board of Referees for the Employment Insurance Commission. Mr. Paterson is also a past Winnipeg United Way Campaign Chairperson and currently sits on the Advisory Council of the United Way.

Grant Rodgers

Appointed in 1999, he was employed for 33 years as a staff representative with the Manitoba Government and General Employees' Union (MGEU) and specialized for a number of years in grievance arbitration matters as well as collective bargaining. Mr. Rodgers holds a Bachelor of Commerce (Honours) degree from the University of Manitoba and is a graduate of the Harvard University Trade Union Program. Community involvement has included membership on the Red River College Advisory Board, Director of the Winnipeg South Blues Junior "A" Hockey Team, and involvement with Big Brothers of Winnipeg. Mr. Rodgers retired from the MGEU in January 2008 and has since done some part-time labour relations consulting.

Lorraine Sigurdson

Appointed in 1990, prior to her retirement she was employed by the Canadian Union of Public Employees (CUPE) for 20 years. Ms. Sigurdson's last position was education representative where her duties included organizing and delivering leadership training for CUPE members in areas such as collective bargaining, grievance handling, health and safety, equality issues and communications. Previously she worked for many years with health care workers, first as an activist and as a negotiator of provincial collective agreements, assisting Locals with grievance handling and Local administration. She was executive vice-president of the Manitoba Federation of Labour and was a board member of the Winnipeg Regional Health Authority for 6 years. She is a graduate of the Labour College of Canada.

Sonia Taylor

Appointed in 2005, she has been employed since 1991 as a union representative with the United Food and Commercial Workers Union, Local No. 832. Ms. Taylor is actively involved in grievance handling, negotiations and arbitrations.

New Member:

Debra Grimaldi

Appointed in 2010, she has been employed as a National Servicing Representative by the Canadian Union of Public Employees since 2000. As a Servicing Representative she is actively involved in grievance processing, collective bargaining, conflict resolution and education of Local Unions. Ms. Grimaldi is a graduate of the Labour College of Canada, class of 1989.

OPERATIONAL OVERVIEW

Adjudication

During 2009/2010, the Board was comprised of a full-time Chairperson, 1 full-time Vice-Chairperson, 6 part-time Vice-Chairpersons and 28 Board Members with an equal number of employer and employee representatives. Part-time Vice-Chairpersons and Board Members are appointed by Order-In-Council and are paid in accordance with the number of meetings/hearings held throughout the year. The Board does not retain legal counsel on staff; legal services are provided through Civil Legal Services of the Department of Justice.

Field Services

Field Services is comprised of the Registrar, 5 Board Officers and 1 Board Clerk . Reporting to the Chairperson, the Registrar oversees the day-to-day field activities of the Board. Applications filed with the Board are processed through the Registrar's office who determines the hearing dates where required and ensures that each application is processed efficiently and in accordance with the Manitoba Labour Board Rules of Procedure and Board practice.

Reporting to the Registrar are 4 "labour relations" Board Officers responsible for processing various cases and conducting investigations pertaining to the applications filed with the Board. They can be appointed to act as Board Representatives in an endeavour to effect a settlement between parties where there has been, and not limited to, an allegation of an unfair labour practice. The resolution of complaints through this dispute resolution process reduces the need for costly hearings. The Board Officers act as Returning Officers in Board-conducted votes, attend hearings and assist the Registrar in the processing of applications. The Board Officers communicate with all parties and with the public regarding the Board's policies, procedures and jurisprudence. They play a conciliatory role when assisting parties to conclude a first collective agreement and subsequent agreements and they are mediators during the dispute resolution process. Also reporting to the Registrar a Board Officer responsible for processing all referrals from the Director of the Employment Standards Division. The Board Clerk processes expedited arbitration referrals. Both the Board Officer and the Board Clerk attend hearings and may also be involved in mediation efforts in an attempt to resolve the issues.

Administrative Services

The staff of the Administrative Services and Field Services work closely to ensure the expeditious processing of applications. Administrative Services is comprised of the Administrative Officer and 5 administrative support staff. Reporting to the Chairperson, the Administrative Officer is responsible for the day-to-day administrative support of the Board, fiscal control and accountability of operational expenditures and the development and monitoring of office systems and procedures to ensure departmental and government policies are implemented.

Reporting to the Administrative Officer are 4 administrative secretaries responsible for the processing of documentation. Also reporting to the Administrative Officer is the Information Clerk who is responsible for the case management system and files and responds to information requests from legal counsel, educators and the labour community for name searches, collective agreements and certificates.

Research Services

Reporting to the Chairperson, the Researcher is responsible for providing reports, statistical data, jurisprudence from other provincial jurisdictions and undertaking other research projects as required by the Board. The Researcher summarizes and indexes Written Reasons for Decision and Substantive Orders issued by the Board and compiles the *Index of Written Reasons For Decision*.

Library Collection

Copies of these documents can be viewed by the public in the Board's office or made available in accordance with the fee schedule.

- Texts, journals, reports and other publications dealing with industrial relations and labour law in Manitoba and other Canadian jurisdictions
- Arbitration awards
- Collective agreements
- Certificates
- Unions' constitution & by-laws
- Written Reasons for Decision and Substantive Orders
- Board orders and decisions

Publications Issued

- *Manitoba Labour Board Annual Report* - a publication disclosing the Board's staffing and membership as well as highlights of significant Board and court decisions and statistics of the various matters dealt with during the reporting period. This bilingual publication may be obtained directly from the Board.
- *Index of Written Reasons for Decision* - a publication containing an index of Written Reasons for Decision and Substantive Orders categorized by topic, employer and section of the *Act* and is available on a subscription basis from Statutory Publications. The Index is updated semi-annually with the updates covering the periods of January - June and July - December.

The Board distributes full-text copies of Written Reasons for Decision, Substantive Orders and arbitration awards to various publishers for selection and reprinting in their publications or on their websites.

Copies of the various statutes and regulations are available for purchase from Statutory Publications, 200 Vaughan Street, Winnipeg, Manitoba or may be viewed on their website www.gov.mb.ca/laws.

WebSite Contents: **http://www.gov.mb.ca/labour/labbrd**

*link to French version available

- Board Members* (list and biographies)
- Forms*
- Library* (hours)
- Publications* (list and links for convenient access, including previous annual reports)
- "Guide to *The Labour Relations Act*"* (explanations in lay persons' terms of the various provisions of the *Act* and the role of the Board and Conciliation & Mediation Services)
- Information Bulletins* (listing and full text)
- Manitoba Labour Board's Arbitrators List* (list of arbitrators maintained pursuant to Section 117(2) of *The Labour Relations Act*.)
- Written Reasons for Decision and Substantive Orders (full text, English only, from January 2007 to present, with key word search capability)
- *The Labour Relations Act**
- Regulations* (including *The Manitoba Labour Board Rules of Procedure*)
- Contact Us* (information and links to the Government of Manitoba Home Page*, other Department of Labour & Immigration* divisions, LexisNexis Quicklaw and Statutory Publications*)

E-mail Address: **mlb@gov.mb.ca**

E-mail service is available for general enquiries and requests for information.

NOTE: The Board does not accept applications or correspondence by e-mail.

If you wish to file an application, contact:

Manitoba Labour Board
Suite 500, 5th floor
175 Hargrave Street
Winnipeg, Manitoba, Canada R3C 3R8
Telephone: (204)945-2089
Fax: (204)945-1296

Information Bulletins

The Board produces Information Bulletins regarding its practice and procedure. In April 2009, the Board completed a comprehensive process to review and update its bulletins. The following is a list of the current information bulletins.

1 - Review and Reconsideration
2 - Rule 28
3 - The Certification Process
4 - Financial Disclosure
5 - Fee Schedule
6 - Arbitrators List
7 - Filing of Collective Agreements
8 - Process for the Settlement of a First Collective Agreement
9 - Objections on Applications for Certification
10 - The Employment Standards Code - Appeal Hearings
11 - Reduction of Deposits on Referrals to the Manitoba Labour Board under The Employment Standards Code
12 - Exemption to Requests for Leave under The Elections Act
13 - Extension of Time to File Documentation, Notice of Hearing and Request for Adjournment
14 - Bargaining Agent's Duty of Fair Representation
15 - Disclosure of Personal Information

The following are highlights of some of the changes:

Information Bulletin No. 6 - Arbitrators List - reflects the fact that the Board will continue to allow each party, on an expedited arbitration referral under Section 130 of ***The Labour Relations Act*** (the "***Act***"***)***, one veto per referral. The veto only applies to expedited referrals and not to other proceedings where the Board is required to select an arbitrator or chairperson.

Information Bulletin No. 10 - The Employment Standards Code - Appeal Hearings - reflects an information circular that has been used by the Board for some time but has formally included as an Information Bulletin.

Information Bulletin No. 11 - Reductions of Deposits on Referrals to the Manitoba Labour Board Under The Employment Standards Code - reflects the criteria which the Chairperson will take into account when an application is made to reduce deposits required on a referral under ***The Employment Standards Code***.

Information Bulletin No. 14 - Bargaining Agent's Duty of Fair Representation - is new and is to be read in conjunction with the new application form for complaints made under Section 20 of the ***Act*** - ***Duty of Fair Representation***.

The full text of the information bulletins follow. In addition, the information bulletins are published in the Manitoba Labour Board's Index of Written Reasons for Decision and on the Board's website.

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April 28, 2009

MANITOBA LABOUR BOARD
INFORMATION BULLETIN NO. 1
REVIEW AND RECONSIDERATION

Section 143(3) of ***The Labour Relations Act***, C.C.S.M. Cap. L10, (the "***Act***") vests in the Manitoba Labour Board (the "Board") the statutory authority to review, rescind, amend, alter or vary any decision, order, direction, declaration or ruling made by it and to rehear any matter if it considers it advisable to do so.

Pursuant to Section 17(1) of the ***Manitoba Labour Board Rules of Procedure, Regulation 184/87R***, (the "***Regulation***") passed under the ***Act***, where an application is made to the Board under Section 143(3) of the ***Act***, the applicant shall, in addition to compliance with the requirements of Section 2 of the ***Regulation***:

…

(a) file a concise statement of any new evidence with such evidence being verified by statutory declaration;

(b) file a statement explaining when and how the new evidence became available and the applicant's reasons for believing that the new evidence so changes the situation as to call for a different decision, order, direction, declaration or ruling; and

(c) in the absence of any new evidence, file a concise statement showing cause why the board should review or reconsider the original decision, order, direction, declaration or ruling.

The Board takes this opportunity to express to parties coming before it on such matters that it will expect compliance with both the letter and spirit of the ***Regulation***. The particulars of the statement to be filed with the Board must clearly set out those features which would justify an exercise of the Board's discretion. If the request for reconsideration involves a matter other than the introduction of new evidence, the "reasons" for such request must include a statement of the arguments to be advanced on the merits with respect to how the original decision was in error and why it should be reviewed, rescinded, etc.

The Board, as a result of receipt of materials under Section 17(1) of the ***Regulation***, shall assume that the applicant has stated the basis for the appeal in its submission. If reasons for review or reconsideration bear no merit therein, the Board may dispose of the request and dismiss same without the holding of a hearing as it may do under the statute and regulations.

As to the substance of a request for review and reconsideration, the Board takes this opportunity to advise, and without restricting the generality of the foregoing, that favourable consideration to an application for reconsideration may be given in, but not limited to, the following circumstances:

a. if there was no hearing in the first instance and a party subsequently finds that the decision turns on a finding of fact which is in controversy and on which the party wishes to adduce evidence;

b. if there was no hearing in the first instance and a party subsequently finds that the decision turns on a finding of fact which is in controversy and on which the party wishes to adduce evidence;

c. if a hearing was held and certain crucial evidence was not adduced for good and sufficient reasons, i.e. where this evidence could not have been obtained by reasonable diligence before the original hearing;

d. if the Order made by the Board in the first instance has operated in a unanticipated way, i.e. having an unintended effect on this particular application;

e. if the original decision turned on a conclusion of law or general policy, which law or policy was not properly interpreted by the original panel, or whether the decision is inadvertently contrary to earlier Board practice; and

f. where the original decision sets a precedent that amounts to a significant policy adjudication.

The Board hastens to add, however, that its exercise of the power of reconsideration will turn on the facts and circumstances of the particular case before it.

As to the manner and composition of panels that may be expected to deal with requests for review and reconsideration, the Board adopts the following general principles to guide itself in these matters:

a. cases that raise issues of an evidentiary nature will go to a quorum that made the original findings a fact;

b. cases that allege breaches of the rules of natural justice may be reviewed by the original panel or by a different panel or may be declined review by the Board depending on the nature of the allegation, i.e. procedural irregularity such as failure to transmit to other parties one party's submissions. More substantive matters such as bias would, in most cases, more properly be dealt with by the Courts; and

c. cases involving interpretations of the law or matters of Board policy will ordinarily, although not necessarily, go to an expanded panel of the Board including the members of the original quorum.

The Board points out that these principles are to be considered as general statements of Board practice and procedure and are not to be considered as inflexible such as to prevent the Board from acting in accordance with the circumstances of the particular case before it and in the exercise of the discretion which it possesses pursuant to its broad powers of review under the ***Act***.

Copies of ***The Labour Relations Act***, C.C.S.M. c. L10, and the ***Manitoba Labour Board Rules of Procedure, Regulation 184/87 R***, may be obtained from Statutory Publications**,** 200 Vaughan Street, Winnipeg MB R3C 1T5, Telephone: (204) 945-3101.

If you require additional information, please contact the Board's office at 945-2089.

April 28, 2009

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MANITOBA LABOUR BOARD
INFORMATION BULLETIN NO. 2
MANITOBA LABOUR BOARD RULES OF PROCEDURE, REGULATION 184/87 R
RULE 28 (PART V - RULES OF BOARD PRACTICE)

This bulletin will confirm the Manitoba Labour Board's (the "Board") general policy regarding its application of Rule 28, when ascertaining whether an individual is considered to be an employee for the purposes of determining membership support in an application for certification situation.

This situation normally arises only when we are dealing with an employer who employs full-time and part-time employees. Once it has been determined that a complement of part-time employees exists, a Board Officer conducts a review of the payroll records for the twelve weeks immediately prior to the date of application. This report is filed with the Board for a determination of employee status, pursuant to Rule 28 of the ***Manitoba Labour Board Rules of Procedure, Regulation 184/87 R***.

Those individuals who normally fall within the employee definition are those who appear on a work schedule and who work all or most of the twelve weeks reviewed by the Board. An example would be an employee who works two days per week for four hours per day. Neither the days nor the hours worked need be the same each week. A person who falls within the above pattern would, in most cases, be determined to be an employee for the purposes of Rule 28.

In situations where a person works sporadically, rather than week by week, the person may not be deemed to be an employee for the purposes of Rule 28.

Clearly, these are general applications of Rule 28 and may be modified in specific situations dealing with a unique industry or employment situation, for example, the Board does not ordinarily apply Rule 28 to employees employed in the construction industry. We trust this information will be of assistance to the community.

Copies of ***The Labour Relations Act***, C.C.S.M. c. L10, and the ***Manitoba Labour Board Rules of Procedure, Regulation 184/87 R***, may be obtained from Statutory Publications**,** 200 Vaughan Street, Winnipeg MB R3C 1T5, Telephone: (204) 945-3101.

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MANITOBA LABOUR BOARD
INFORMATION BULLETIN NO. 3
THE CERTIFICATION PROCESS

This bulletin is intended to provide the labour relations community with information relative to the procedure that will be implemented by the Manitoba Labour Board (the "Board") in processing applications for certification filed subsequent to October 18, 2000.

Effective October 18, 2000, the Board will only be required to conduct representation votes in those certification proceedings where, pursuant to section 40(1)2 of ***The Labour Relations Act***, C.C.S.M. c. L10, (the "***Act***") between forty percent (40%) and sixty-five percent (65%) of the employees in a bargaining unit proposed by the applicant appear to be members of that union on the date of application.

Where, pursuant to Section 40(1)1 of the ***Act***, sixty-five percent (65%) or more of the employees in the proposed bargaining unit appear to be members of the union on the date of application, the Board will now be required to certify the applicant as the bargaining agent for the employees in said unit.

Upon receipt of an application for certification, the application will be processed by the administrative staff of the Board and will be served on the employer, in most cases, by an officer of the Board. Where that is logistically not possible, other means of service, including priority post or facsimile may be utilized. The material served on the employer will include the normal application documentation, as well as notice of a planning meeting to establish the voting criteria. The hearing date shall be set in keeping with the Board's established practice and procedure and notice of such hearing shall be included with the material provided. Correspondence confirming receipt of the application, together with notice of the planning meeting and the hearing date, will simultaneously be sent to the applicant union and other interested parties.

The ***Manitoba Labour Board Rules of Procedure***, ***Regulation 184/87R***, requires the employer to file its return within two (2) days of receipt of the application for certification. It is contemplated that a planning meeting will be tentatively scheduled for the day after the filing of the employer's return. It is further contemplated that, although the legislation provides other than in cases where the Board is satisfied that exceptional circumstances exist, a vote must be held within seven (7) days, most votes will be conducted between the fifth (5th) and seventh (7th) days.

Please be advised that at any time during the course of the proceedings, should the Board satisfy itself that the minimum statutory requirements of Section 40(1)1 of the ***Act*** have been met, the planning meeting and/or the conduct of the representation vote may be duly cancelled. In instances where the representation vote has been conducted, the ballots may not be counted.

INFORMATION BULLETIN NO. 3
THE CERTIFICAITION PROCESS

Where there is a dispute in respect to the appropriateness of the bargaining unit affecting voter eligibility, the disputed ballots will be double-sealed and the sealed ballot box will be returned to the Board's office pending the Board's determination of those issues on the previously scheduled hearing date. Situations where a party or parties purport that they should be treated as falling within the exceptional provisions of the certification process will be dealt with according to the merits of the particular case.

Copies of ***The Labour Relations Act***, C.C.S.M. c. L10, and the ***Manitoba Labour Board Rules of Procedure, Regulation 184/87 R***, may be obtained from Statutory Publications**,** 200 Vaughan Street, Winnipeg MB R3C 1T5, Telephone: (204) 945-3101.

If you require additional information, please contact the Board's office at 945-2089.

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MANITOBA LABOUR BOARD
INFORMATION BULLETIN NO. 4
FINANCIAL DISCLOSURE

The Labour Relations Act, C.C.S.M. c. L10, (the "***Act***") requires a union which operates in Manitoba to provide, at no charge, a copy of the financial statement of the union's affairs to the end of its last fiscal year, at the request of a member. The statement must be certified to be a true copy by the union's treasurer or other officer responsible for handling and administering its funds. The relevant Sections of the ***Act*** are 132.1(1) and 132.1(2).

Should a member of a union complain to the Manitoba Labour Board (the "Board") that the union has failed to give him or her a financial statement in compliance with the ***Act***, the Board may direct the union to:

a. file with the board, within the time the board determines, a copy of the financial statement of its affairs to the end of its last fiscal year, verified by its treasurer or another officer responsible for handling and administering its funds; and

b. give a copy of the statement to the members of the union that the board in its discretion may direct.

The union shall comply with the Board's direction. The relevant Sections of the ***Act*** are 132.1(3) and 132.1(4).

Should a member of a union complain to the Board that the union's financial statement is inadequate, the Board may enquire into the complaint and may order the union to prepare another financial statement in a form, and containing the information that the Board considers appropriate. The relevant Section of the ***Act*** is 132.1(5).

Copies of ***The Labour Relations Act***, C.C.S.M. c. L10, may be obtained from Statutory Publications**,** 200 Vaughan Street, Winnipeg MB R3C 1T5, Telephone: (204) 945-3101.

If you require additional information, please contact the Board's office at 945-2089.

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MANITOBA LABOUR BOARD
INFORMATION BULLETIN NO. 5
FEE SCHEDULE

The Manitoba Labour Board (the "Board"), on request of a particular party, has provided copies of various documents for a nominal charge. In recent years the demand for such information has increased dramatically. As well, the recent amendments to ***The Labour Relations Act***, C.C.S.M. c. L10, in particular, the financial disclosure provisions, enable the Board to charge a reasonable fee, where employees request a copy of the financial and compensation statements filed with the Board.

The Board, by the ***Manitoba Labour Board Rules of Procedure***, ***Regulation 184/87 R***, (the ***"Regulation"***), has established a fee schedule for certain services it provides. The fee schedule is as follows:

1.	General documents at hearing		$ .25/page
2.	Written Reasons for Decision	search copy	$25.00 $ .25/page
3.	Arbitration Awards	search copy	$25.00 $ .25/page
4.	Collective Agreements	search copy	$25.00 $ .25/page
5.	Certificates	search copy	$25.00/certificate $ .25/page
6.	Name searches	search	$25.00 for 1-4 names $10.00 each additional name
7.	Orders/Decisions	search copy	$25.00 $ .25/page
8.	Union financial/compensation information		$25.00 each
9.	Library copying		$ .25/page

If you require additional information, please contact the Board's office at 945-2089.

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MANITOBA LABOUR BOARD
INFORMATION BULLETIN NO. 6
ARBITRATORS LIST

The Manitoba Labour Board (the "Board") maintains a list of arbitrators who have indicated their willingness to act in this capacity and who have displayed qualities and experience that make them suitable to act as arbitrators.

When establishing its list, the Board engages in a consultative process with the Manitoba Labour Management Review Committee. The Manitoba Labour Management Review Committee forwards its recommendations to the Board and those recommendations are then reviewed by the Board's own Arbitration Sub-Committee and the appropriate selection(s) will be finalized. Appointment to the list reflects the consensus of management and labour.

In respect of expedited arbitration referrals under Section 130 of ***The Labour Relations Act***, C.C.S.M. c. L10, the Board will continue to allow each party one veto per referral. Once the vetoes are made known to the Board Officer, an Arbitrator will be selected on the basis of who is available next. Please note that the veto ONLY applies to expedited arbitration referrals and does not apply to other arbitrators or Chairpersons of arbitration boards appointed by the Board in other contexts or under other statutes (e.g. the appointment of a chairperson to an interest arbitration board under ***The Public Schools Act***, C.C.S.M. c. P250, where the parties have been unable to agree).

Copies of ***The Labour Relations Act***, C.C.S.M. c. L10, and ***The Public Schools Act***, C.C.S.M. c. P250, may be obtained from Statutory Publications**,** 200 Vaughan Street, Winnipeg MB R3C 1T5, Telephone: (204) 945-3101.

If you require additional information, please contact the Board's office at 945-2089.

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MANITOBA LABOUR BOARD
INFORMATION BULLETIN NO. 7
FILING OF COLLECTIVE AGREEMENTS

This bulletin is intended to remind the labour relations community of their statutory obligation, pursuant to Section 72(2) of ***The Labour Relations Act***, C.C.S.M. c. L10, to file two (2), signed and dated copies of all duly executed collective agreements with the Manitoba Labour Board. The parties shall comply in a like manner with respect to any amendment to a collective agreement which they make during the term or prior to the termination thereof.

It would be appreciated if you could also provide a copy of the collective agreement in electronic format (suggest Word) by e-mail to mlb@gov.mb.ca.

In order to expand our database, would you please confirm the industry/subgroup of each agreement (see reverse) and indicate the number of employees affected by this agreement in your covering letter.

Copies of ***The Labour Relations Act***, C.C.S.M. c. L10, may be obtained from Statutory Publications, 200 Vaughan Street, Winnipeg MB R3C 1T5, Telephone: (204) 945-3101.

If you require additional information, please contact the Board's office at 945-2089.

Employer:_____

INDUSTRY AND SUB-GROUPS FOR CLASSIFICATION OF COLLECTIVE AGREEMENTS

Industry	**Sub-group**
Agriculture	Animal ☐ Crops ☐
Construction	Buildings ☐ Heavy Construction ☐
Finance, Insurance & Real Estate	Insurance Carriers ☐ Real Estate & Insurance Agencies ☐
Forestry	☐
Manufacturing	Food & Beverage ☐ Tobacco, Rubber, Plastics & Leather ☐ Textiles & Knitting ☐ Clothing ☐ Computer Products ☐ Construction (Building Products) ☐ Wood, Paper & Furniture ☐ Printing & Publishing ☐ Primary Metal ☐ Metal Fabricating ☐ Machinery ☐ Transportation Equipment ☐ Electrical Products ☐ Non-metallic Mineral Products ☐ Petroleum, Coal & Chemical Products ☐ Other ☐
Mining	☐
Public Administration	Provincial ☐ Local ☐
Service	Child Care ☐ Construction (Maintenance) ☐ Education & Related ☐ Health & Welfare ☐ Amusement ☐ Security ☐ Services to Business Management ☐ Personal Services ☐ Accommodation & Food ☐
Trade	Wholesale ☐ Retail ☐ Warehouse ☐
Transportation, Communication& Other Utilities	Transportation ☐ Storage ☐ Communication ☐ Utilities ☐
Other	☐

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MANITOBA LABOUR BOARD
INFORMATION BULLETIN NO. 8
PROCESS FOR THE SETTLEMENT OF A FIRST COLLECTIVE AGREEMENT

This bulletin is intended to advise of the process affecting applications for settlement of a First Collective Agreement [Section 87(1) of ***The Labour Relations Act***, C.C.S.M. c. L10].

Once an application has been filed in accordance with the ***Manitoba Labour Board Rules of Procedure, Regulation 184/87 R***, a hearing date shall be established by the Manitoba Labour Board (the "Board") and the parties shall be duly informed.

The Board shall then appoint a Representative to meet with the parties prior to the scheduled hearing, with the view to resolving or narrowing the issues in dispute.

The Board is hopeful that this additional mediative effort shall assist in clarifying issues remaining in dispute and expediting the process.

Copies of ***The Labour Relations Act***, C.C.S.M. c. L10, and the ***Manitoba Labour Board Rules of Procedure***, ***Regulation 184/87 R***, may be obtained from Statutory Publications**,** 200 Vaughan Street, Winnipeg MB R3C 1T5, Telephone: (204) 945-3101.

If you require additional information, please contact the Board's office at 945-2089.

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MANITOBA LABOUR BOARD
INFORMATION BULLETIN NO. 9
OBJECTIONS ON APPLICATIONS FOR CERTIFICATION

This bulletin is intended to inform the labour relations community of a recent amendment to the ***Manitoba Labour Board Rules of Procedure***, namely ***Manitoba Regulation 17/2002*** (which amends ***Manitoba Regulation 184/87 R***), (the "***Regulations***") as relates to employee objections on applications for certification, specifically Rule 9(2).

Where, in accordance with ***The Labour Relations Act*** or the ***Regulations***, an objection to an application for certification is filed by an employee or a group of employees, the Manitoba Labour Board, upon receipt, shall serve a copy of any such objection in its entirety, with the signature thereon, on the applicant union, the employer and any other interested party.

Copies of ***The Labour Relations Act***, C.C.S.M. c. L10, and the ***Manitoba Labour Board Rules of Procedure, Regulation 184/87 R***, may be obtained from Statutory Publications**,** 200 Vaughan Street, Winnipeg MB R3C 1T5, Telephone: (204) 945-3101.

If you require additional information, please contact the Board's office at 945-2089.

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MANITOBA LABOUR BOARD
INFORMATION BULLETIN NO. 10
THE EMPLOYMENT STANDARDS CODE - APPEAL HEARINGS

This bulletin is intended to help you prepare for your hearing at the Manitoba Labour Board. It is a general guideline and does not attempt to address every issue that may arise.

What is the Manitoba Labour Board?

The Manitoba Labour Board (the "Labour Board") is an independent and autonomous tribunal, separate from the Employment Standards Division (the "Division"). The Labour Board decides disputes between employees and employers when an order of the Division is appealed by one of the parties named in that order.

What is an Appeal Hearing?

An appeal hearing gives you and the opposing party the opportunity to present your case to the Labour Board. It is a new hearing and is open to the public. It is **not** a continuation of the investigation conducted by the Division. If you filed an appeal, then you must prove your case at the hearing. You are welcome to attend a hearing as an observer before your case is heard in order to get a feel for the process.

The matters which the Labour Board will consider are the issues identified in the written statement(s) of appeal filed by either or both parties and the Division's order. The Labour Board may confirm, vary or revoke the order issued by the Division. Remember, if you wish to contest any aspect of the Director's Order, then you must have filed a written ***Notice of Appeal*** with the Director, specifying the grounds for your appeal. If you did not appeal, then you cannot raise any new grounds of your own at the hearing and you will be limited to dealing with the items raised by the appealing party in its ***Notice of Appeal***.

Sections 122(3) and 122(4) of ***The Employment Standards Code***, C.C.S.M. c. E110, (the "***Code***") provide the statutory framework for an appeal. For your information, these sections provide:

> **Board not bound by rules of evidence**
> **122(3)** The board may receive information and evidence under oath affirmation, declaration or otherwise, and is not bound by the rules of law respecting evidence that apply to judicial proceedings.
>
> **Procedure**
> **122(4)** The board may make rules of practice and procedure that it considers necessary to govern the conduct of business before it under this Code.

INFORMATION BULLETIN NO. 10
THE EMPLOYMENT STANDARDS CODE - APPEAL HEARINGS

The Referral Package

The documents contained in the Referral Package, which all parties recently received from the Division, were also sent to the Labour Board. These basic documents provide the necessary framework and context for the Labour Board and may be relied on by the Labour Board in deciding your case. These are the **only** documents which the Labour Board receives in advance of the hearing regarding your case. Therefore, you **cannot** and **should not** assume that the Labour Board has **any** knowledge of this case beyond what is contained in the Referral Package.

You must bring your Referral Package with you to the hearing. If there are any other facts or documents that you wish the Labour Board to consider, then it is your responsibility to provide these facts or documents at the hearing.

Remember, the fact that the Labour Board received the Referral Package does **not** mean that you are prohibited from challenging the contents of any document in the package. The Labour Board recognizes that an appeal is often based on a claim that the factual findings of the Division underlying the initial order were wrong. Such claims will be addressed at the appeal.

During the Division's investigation, you may have furnished information to the Investigating Officer, other than the documents contained in the Referral Package (e.g. letters or statements). If you require any of the documents you gave to the Investigating Officer then you should contact the Investigating Officer who had been assigned to your case or the Division's general enquiry office at (204) 945-3352 or 1-800-821-4307 (toll free in Manitoba).

Will the Labour Board Give Me Advice About My Appeal?

No. The Labour Board is responsible for deciding the appeal. Neither it nor its staff can provide legal advice. However, the Labour Board's staff can answer procedural questions about the process and will be happy to answer your questions in that regard.

Can I Bring a Lawyer or Other Representative to the Hearing?

Yes. Either party may choose to be represented by a lawyer or other person, or you may represent yourself. Many cases proceed without either party retaining a lawyer. The Director of the Division (the "Director") has the right to appear before the Labour Board as a party in any case and occasionally does appear. However, if the Director does appear, the Director is not there to represent either party.

What if I Cannot Be There on the Scheduled Hearing Day?

It is your responsibility to attend the hearing and state your case. If you do not attend, the hearing will proceed and your rights and obligations will be determined in your absence, meaning that an immediate order for wages can be issued or a complaint can be immediately dismissed.

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However, if you become aware of a serious conflict with the hearing date, a written request to adjourn the hearing to a new date must be immediately filed with the Labour Board, stating the reasons for the request. The Labour Board will confirm any adjournments granted and the new hearing dates in writing. Proper consideration must be given to the Labour Board's operations and to the other parties. Last minute adjournments due to unforeseeable situations or last minute emergencies will ordinarily be dealt with by the Labour Board at the start of the hearing. You will be expected to proceed with the hearing if a request is denied. To contact the Labour Board, please see the information provided at the top of page 1.

Is There a Way to Settle Without a Hearing?

Yes. Cases often settle without going to hearing. Whether or not you participated in the Alternative Dispute Resolution process provided by the Division, a Labour Board Officer is available to assist the parties to attempt a resolution of the outstanding issues in an informal manner prior to the hearing. You can initiate mediation discussions yourself by contacting the Labour Board Officer. However, you should only take this step if you are serious about settling the dispute or, at the very least, wanting to narrow the issues in dispute. Mediation will not delay a scheduled hearing date unless **both** parties agree to an adjournment.

Everything said in mediation is strictly confidential. The Labour Board is not told anything regarding the content or nature of any unsuccessful settlement discussions.

What Will My Hearing Be Like?

The vast majority of appeals are heard by a panel composed of three (3) Members of the Labour Board. Occasionally, the Chairperson or a Vice-Chairperson of the Labour Board may sit alone. The opposing party is entitled to and will be present throughout the hearing. All witnesses who give evidence before the Labour Board must swear an oath to tell the truth. Witnesses will sit in a separate room until it is their time to testify. The Chairperson or a Vice-Chairperson of the Labour Board will conduct the hearing. It will begin with the Chair of the Labour Board explaining what will happen during the hearing and answering questions you have about the process.

The party appealing the order (the appellant) will proceed with its case first. If both parties filed an appeal, then the Labour Board will decide which appellant will proceed first. This will normally be the party who filed an appeal first but the Labour Board may decide otherwise depending on what makes the most sense from a procedural point of view. Evidence can be your own verbal testimony, the verbal testimony of other witnesses and documents submitted through a witness. You must bring **six (6) copies** of any document you intend to file to the hearing. Each document submitted will be marked with an exhibit number.

After each individual witness (including a party) has finished giving his or her initial evidence regarding the facts (commonly known as direct examination), the opposing party is entitled to ask that witness questions at that time (commonly known as cross-examination). This will be the **only** opportunity to ask **this** witness questions should you wish to clarify the facts or challenge points raised during that person's initial testimony. It is a good idea to take notes as you think of questions so that you will be prepared. The Labour Board is entitled to ask questions of a witness to clarify matters.

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When the party who starts has finished presenting its entire case, the opposing party will follow the same process. After both sides have presented their evidence, the Chair or Vice-Chair of the Labour Board will give each party the opportunity to make a closing statement. Closing statements can only address the facts brought out in testimony or documents received into evidence. Your closing statement is not a time when you can mention new facts that were not received in evidence.

Remember, the purpose of the hearing is to present the facts. Arguing or getting angry during a hearing prevents you from clearly stating the facts of your case. You will give a much better presentation if you stay calm and do not allow emotions to cloud the issues.

After the hearing, the Labour Board will convene privately to decide the appeal. The Labour Board's decision will be sent to you by the Division. You can usually expect to receive the Labour Board's decision some three (3) to four (4) weeks after the hearing has concluded but this estimate depends on the Labour Board's schedule and the complexity of the case.

What Kind of Evidence Will I Need to Bring to the Hearing?

Carefully think through your case to decide what information and documents will help to establish **the facts**. Depending on the nature of your case, you may bring witnesses who have personal knowledge of the facts which you want the Labour Board to know. As a party, you (or your representative) will be responsible for asking a witness clear and direct questions in order to have that witness testify to the facts you wish to bring out. Documents such as letters, contracts, business records, spread sheets, photos or cheques can be submitted to the Labour Board when you testify or through another witness who can identify the document and confirm its accuracy, based on personal knowledge.

Unsworn written statements made by a person who is not present at the hearing cannot be entered into evidence. Letters written to the Minister of Labour and Immigration or to the Board do not qualify as evidence at a hearing or adjudication. In exceptional circumstances only, the Labour Board may receive evidence in the form of a written Statutory Declaration or a letter which is supported by a sworn declaration, where the facts recited in the Declaration or the letter are supported by the person swearing an oath or taking a solemn affirmation that those facts are true. If you wish to file such evidence, then the Labour Board recommends that you make a copy of the sworn Declaration proposed to be submitted available to the other party prior to the hearing. You must also be prepared to give an acceptable reason to the Labour Board why such evidence ought to be accepted from a person who is not available to testify in person. For example, a serious illness or a person having moved away from Manitoba may be sufficient reasons. You should make enquiries of the Labour Board if you contemplate filing evidence in this manner.

How Do I Get a Witness to Come to the Hearing?

Witnesses often come to the hearing voluntarily. However, a subpoena ensures your right to have that person testify. A subpoena legally compels a witness to attend the hearing. Contact the Labour Board well before the hearing if you need a subpoena. The Labour Board will prepare the subpoena but you are responsible for serving the subpoena on the witness and for paying the required conduct money to the witness. The Labour Board's staff can assist you here.

INFORMATION BULLETIN NO. 10
THE EMPLOYMENT STANDARDS CODE - APPEAL HEARINGS

The Awarding of Costs

In certain circumstances, the Board has the power under the ***Code*** to award costs to a successful party on an appeal. The power of the Board to award costs and the basis upon which it may do so is found in Section 125(5) of the ***Code*** which states as follows:

> **Board may award costs**
> **125(5)** The board may, as part of any order it issues to a person under this Code, require the person to pay all or any part of any other party's costs in relation to the hearing, as the board considers reasonable, if in the board's opinion
>
> (a) the person's conduct before the board was unreasonable; or
>
> (b) having the matter referred to the board was frivolous or vexatious.

The Board wishes all parties appearing before it to know that a **failure to appear** before the Board for a scheduled hearing, without an adjournment having been obtained in advance or without a reasonable excuse in the event of extraordinary circumstances, may result in the Board awarding costs to the party who does appear. Costs can include reimbursement for lost wages (if applicable); conduct money paid to witnesses who may have been subpoenaed to appear; transportation and accommodation costs/expenses (if applicable); and payment of all or part of a lawyer's expenses and fees, if the party appearing has engaged a lawyer.

Disclosure of Information:

All information contained in the Referral Package received from the Division and all information provided to the Board at the hearing of any appeal is available to all parties to the appeal. Further, such information may be referred to in the order or reasons issued by the Board at the conclusion of the case, or on the Board's website and in print and online reporting services that may publish the Board's decision.

Copies of ***The Employment Standards Code***, C.C.S.M. c. E110, may be obtained from Statutory Publications**,** 200 Vaughan Street, Winnipeg MB R3C 1T5, Telephone: (204) 945-3101.

If you require additional information, please contact the Board's office at 945-2089.

(Revised April, 2010)

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MANITOBA LABOUR BOARD
INFORMATION BULLETIN NO. 11
REDUCTION OF DEPOSITS ON REFERRALS TO THE MANITOBA LABOUR BOARD UNDER *THE EMPLOYMENT STANDARDS CODE*

Under Section 111(1) of ***The Employment Standards Code***, C.C.S.M. c. E110, (the "***Code***"), a party who is required by an order of the Employment Standards Division (the "Division") to pay wages and who wishes to appeal the order to the Manitoba Labour Board (the "Board") is required to deposit with the Director of the Division, an amount equal to the total amount payable under an order sought to be challenged plus the required administrative fee. This amount must be paid at the time the request to refer the matter to the Board is filed with the Director.

However, Section 111(2) of the ***Code*** authorizes the Chairperson of the Board, on application, to reduce the amount of the deposit otherwise payable to an amount not less than $5,000.00 (the "prescribed amount" under the Regulations). Section 111(2) of the ***Code*** states:

> **Chairperson may reduce deposit**
> **111(2)** If the amount to be paid as a deposit is more than a prescribed amount, the board chairperson may, on application, reduce it to an amount not less than the prescribed amount if he or she is satisfied that it would be unfair or unreasonable not to do so.

The purpose of this bulletin is to advise any party who wishes to make a "deposit reduction" application that the following principles and general questions will be considered when the Chairperson assesses whether it would be unfair or unreasonable not to reduce the full amount of the deposit, in whole or in part:

a. A reduction request will be assessed in the context that the intention of the Legislature in enacting Section 111(1) was to ensure that the full amount of any wages ordered to be paid to (an) employee(s) will be available for immediate distribution to the employee(s) in the event the Board, following the hearing of a referral/appeal on its merits, determines that the amount(s) ordered to be paid by the Division is/are properly owing to the employee(s). The purpose is to provide full security to the employee.

b. As Section 111(2) constitutes an exception to the purpose of Section 111(1), the party seeking a reduction bears the onus to satisfy the Chairperson that it would be unfair and unreasonable not to reduce the amount of the deposit.

c. In order to meet this onus, a party should be prepared address the following issues:

   i. Will there be *prejudice* to the party seeking the reduction in the event that the amount otherwise payable is not reduced? The fact that a party simply objects to paying the full amount is not sufficient, in and of itself, to establish prejudice;

ii. Does the payment of the full amount create an "*undue financial hardship*" for the appellant? Accordingly, consideration may be given to the amount of the Division's order in relation to the requirement that at least $5,000.00 must always be paid. Whether a business is an active, stable and viable business would also be a relevant consideration.

iii. Does the appeal raise arguable or reasonable legal, factual or a combination of legal and factual issue(s)?

iv. In the case of an order issued by the Director of the Division, on his own accord, which affects more than one employee (e.g. a group termination), the amount of the gross wages owing to both the individual employees and the group of employees as a whole, will be considered along with the other principles identified.

The foregoing questions are general guidelines and they are not intended to be exhaustive or inflexible. The circumstances of each case will be considered by the Chairperson before determining whether, in his or her discretion, it would be unfair or unreasonable not to reduce the full deposit. The Chairperson, pursuant to Section 111(3), shall not hear a matter referred to the Board under Subsection 110(1) if he or she hears an application in respect of the reduction request.

As to procedure, a Notice of Hearing on a reduction application is served only on the party seeking the reduction and on the Director of the Division. The Director has the (optional) right to appear at a reduction hearing to make representations.

Copies of ***The Employment Standards Code***, C.C.S.M. c. E110, may be obtained from Statutory Publications**,** 200 Vaughan Street, Winnipeg MB R3C 1T5, Telephone: (204) 945-3101.

If you require additional information, please contact the Board's office at 945-2089.

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MANITOBA LABOUR BOARD
INFORMATION BULLETIN NO. 12
EXEMPTION TO REQUESTS FOR LEAVE UNDER *THE ELECTIONS ACT*

This bulletin is intended to inform the community of the procedures which must be followed in filing of requests for exemption to the requirement to grant leave, pursuant to the provisions of ***The Elections Act***, C.C.S.M. c. E30, (the "***Act***"). An employer may request an exemption if he/she believes the leave would be seriously detrimental to the employer's operations [Section 18(1)]. This bulletin is provided solely as a guideline and does not necessarily reflect all aspects of the process.

Recent amendments to the ***Act*** require an employer, unless exempted under Section 19(3), to grant a leave without pay to an employee who:

a. is a candidate;

b. has been appointed an election officer or enumerator; or

c. has been named an election volunteer by a candidate or a registered political party.

[See Section 14 of the ***Act***.]

A request for such leave must be made in writing by the employee to their employer not less than **five** days before the requested leave is to take effect [Section 15(1)]. The request for leave **must** contain a statement that the employer has the right to apply to the Manitoba Labour Board (the "Board") for an exemption to the requirement to grant leave within **three** days of receiving the request [Section 15(2)].

To request an exemption, the employer must apply in writing to the Chairperson of the Board within **three** days after receiving a request for leave from an employee [Section 18(2)].

When an application is received, the Chairperson of the Board and the Chief Electoral Officer shall together appoint a person to decide the application on an urgent basis. If possible, the person appointed shall be a retired judge [Section 19(1)].

The person appointed to decide the application is not required to hold an oral hearing but may make a decision on the basis of written submissions [Section 19(2)]. The decision is final and binding on both the employer and the employee and is not subject to appeal [Section 19(3)].

At the end of a leave, under Section 20(2), the employer shall reinstate the employee to the position occupied when the leave began or to a comparable position, with no less pay and other benefits than the employee was entitled to immediately before the leave began.

An employee who alleges a contravention may make a complaint to the Manitoba Labour Board under Subsection 30(1) of ***The Labour Relations Act***, C.C.S.M. c. L10, and the matter shall be dealt with as an unfair labour practice [Section 21].

INFORMATION BULLETIN NO. 12
EXEMPTION TO REQUESTS FOR LEAVE UNDER *THE ELECTIONS ACT*

Sections of *The Elections Act* Pertaining to Leave Provisions:

Leave without pay
14 To permit citizen participation in the democratic process, every employer must, if requested, grant a leave without pay to an employee who

(a) is a candidate;

(b) has been appointed as an election official or enumerator; or

(c) has been named as an election volunteer by a candidate or a registered political party.

Written request
15(1) To request a leave, the employee must apply in writing to his or her employer at least five days before the requested leave is to begin.

Notice of employer's right to request exemption
15(2) The request must include a statement that, within three days after receiving the request, the employer has the right to apply to the Manitoba Labour Board for an exemption to the requirement to grant the leave.

Timing of request
15(3) A request for a leave may be made either before or after an election is called.

Part-time leave
15(4) An employee may request either a full-time or part-time leave. If the leave is part-time, the request must specify the days and hours of the leave requested.

Exemption if leave seriously detrimental
18(1) An employer may request an exemption from the requirement to grant a leave under section 14 if the employer believes that the leave would be seriously detrimental to the employer's operations.

Application for exemption
18(2) To request an exemption, the employer must apply in writing to the chairperson of the Manitoba Labour Board within three days after receiving the request for leave under section 5.

Decision maker
19(1) When an application is received, the chairperson of the Manitoba Labour Board and the chief electoral officer must together appoint a person to decide the application on an urgent basis. If possible, they must appoint a retired judge.

Procedure
19(2) The person appointed need not hold an oral hearing but may instead make a decision on the basis of written submissions.

Decision final
19(3) The decision of the person appointed is final and binding and is not subject to appeal.

Right to reinstatement
20(2) At the end of a leave, the employer must reinstate the employee to the position occupied immediately before the leave began or a comparable position, with no less pay and other benefits than the employee was entitled to immediately before the leave began.

Service continuous
20(3) For the purpose of vacation entitlements and pension and other benefits, the employment of an employee who has taken a leave is deemed to be continuous.

Employer's obligations
20(4) An employer must not, because of a leave taken by an employee,

(a) dismiss, lay off, suspend, demote or transfer the employee; or

(b) give the employee less favourable conditions of employment than he or she is entitled to, or diminish any benefit related to the employment that the employee is entitled to.

Complaints
21 An employee who alleges a contravention of section 14 or 20 may make a complaint to the Manitoba Labour Board under subsection 30(1) of *The Labour Relations Act*. The matter must be dealt with as an unfair labour practice under that Act.

Procedure
24.3(4) The person appointed to decide the application need not hold an oral hearing but may instead make a decision on the basis of written submissions.

Decision final
24.3(5) The decision of the person appointed under this section is final and binding on both the employer and the employee and is not subject to appeal.

Reinstatement
24.4(2) At the end of a leave under section 24.2, the employer shall reinstate the employee to the position occupied when the leave began or a comparable position, with no less pay and other benefits than the employee was entitled to immediately before the leave began.

Service continuous
24.4(3) For the purpose of vacation entitlements and pension and other benefits, the employment of an employee who has taken a leave under section 24.2 is deemed to be continuous.

Employer's obligations
24.4(4) An employer shall not, because of a leave under section 24.2,

(a) dismiss, lay off, suspend, demote or transfer an employee; or

(b) give the employee less favourable conditions of employment than he or she is entitled to, or diminish any benefit related to the employment to which the employee is entitled.

Complaints
24.4(5) An employee who alleges a contravention of this section or section 24.2 may make a complaint to The Manitoba Labour Board under subsection 30(1) of *The Labour Relations Act,* and the matter shall be dealt with as an unfair labour practice under that Act.

The Labour Relations Act

Complaint alleging unfair labour practice
30(1) Any employer, employee or other person, or any union or employers' organization, who or which alleges the commission of an unfair labour practice may file a written complaint in respect thereof with the board.

Copies of ***The Elections Act*** ,C.C.S.M. c. E30, and ***The Labour Relations Act***, C.C.S.M. c. L10, may be obtained from Statutory Publications**,** 200 Vaughan Street, Winnipeg MB R3C 1T5, Telephone: (204) 945-3101.

If you require additional information, please contact the Board's office at 945-2089.

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April 28, 2009

MANITOBA LABOUR BOARD
INFORMATION BULLETIN NO. 13
EXTENSION OF TIME TO FILE DOCUMENTATION, NOTICE OF HEARING AND REQUEST FOR ADJOURNMENT

This bulletin is intended to confirm the general policies of the Manitoba Labour Board (the "Board") regarding requests for extensions of time to file documentation, notices of hearing and requests for adjournment pursuant to the ***Manitoba Labour Board Rules of Procedure***, ***Regulation 184/87 R*** (the "***Regulation***") of ***The Labour Relations Act*** , C.C.S.M. c. L10.

Extension of Time - Rules 4(3), 4(4) and 4(5)

Where a request is made for an enlargement of the time prescribed by the ***Regulation*** for the filing of documentation with the Board, the request shall be reviewed by the Chairperson or a Vice-Chairperson on its individual merits. Should the request be granted, it is the Board's policy to grant three day extensions. Lengthier extensions are only granted in unforeseen or extenuating circumstances.

Notice of Hearing to Parties - Rules 5(1), 5(2), 5(14) and 5(15)

1. Hearings shall proceed on the date(s) set by the Board unless adjourned, as hereinafter provided. Automatic hearing dates scheduling certifications, decertifications and unfair labour practices four to five Fridays from the date of the application shall continue to be the Board's practice. In all other instances where the Board has determined that a hearing is required, the parties, in most cases, will be given notice of such hearing no less than five days prior to the date of hearing.

2. Notwithstanding the above, where the Board deems it expedient and advisable, or where parties consent to a shorter period of notice, the Board may give shorter notice if it is satisfied that exceptional circumstances exist.

3. The onus is on the parties to inform the Board as to the number of witnesses they intend to call and the anticipated length of the proceedings.

Requests for Adjournment of a Hearing - Rule 5(13)

1. Where a party having received notice of a hearing makes a request for an adjournment of the hearing, the Chairperson, Vice-Chairperson or the Board may postpone or adjourn the hearing upon such terms as it deems fit and only in circumstances where:

    a. the matter to be heard is scheduled for a hearing for the first time; and

    b. the party making the request for an adjournment has obtained consent to such adjournment from all the parties to the proceedings.

2. When a party who has been served with a notice of hearing refuses to consent to an adjournment of a matter scheduled as a first hearing, all parties served with notice of that hearing shall attend the hearing as scheduled or on a date set by the Board to specifically deal with the request and shall be prepared to speak to the matter of the application or request for adjournment or as otherwise directed by the Board.

3. Where an adjournment of a hearing has been granted, no second or subsequent application request for an adjournment shall be entertained or granted by the Chairperson, Vice-Chairperson or Board unless all parties served with notice of the second or subsequent hearing,

   a. consent to the adjournment; or

   b. are prepared to speak to the matter of the application or request for adjournment at the hearing as scheduled; and

   in the opinion of the Chairperson, Vice-Chairperson or Board, such adjournment should be entertained or granted.

4. Where a party has given to any other party consent to adjournment, the party or parties to whom consent was given shall, in writing, notify the Board that such consent has been given.

5. Where, under Paragraphs 2 and 3 above, the Board has heard an application request for an adjournment of a hearing, the Board may refuse to grant the adjournment and may direct that the hearing proceed as scheduled.

Adjournments Affecting Continuation of Proceeding

The Manitoba Labour Board is concerned with the increasing incidents of applications where the initial dates set aside for hearing are not sufficient to conclude the proceeding. Delays such as these are not in the best interest of either party to a dispute.

In the past, the Board has attempted to accommodate by setting continuation dates that are agreeable to both parties and their respective counsel. Our recent experience in this area has shown that the continuation dates, in our opinion, are being set far in excess of what we consider a reasonable period of time.

The other area of concern is that when dates are established they are usually sporadic, therefore, further complicating the continuity of the proceeding in regards to the presentation of witnesses and their respective testimony. Accordingly, we have instituted the following procedures:

1. The Board's office, whenever possible, should be notified by counsel as to the anticipated length of the proceeding.

2. In situations where adjournments are necessary and the parties cannot agree on continuation dates that are within what the Board considers a reasonable period of time, the Board will set dates on a pre-emptory basis.

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INFORMATION BULLETIN NO. 13
EXTENSION OF TIME TO FILE DOCUMENTATION, NOTICE OF HEARING AND REQUEST FOR ADJOURNMENT

It is the Board's opinion that the expeditious resolution of labour relations disputes tends to reduce friction and disharmony in the workplace.

Your anticipated co-operation will not only be greatly appreciated by the Board, but by the parties directly affected by the proceeding before the Board.

A copy of ***The Labour Relations Act***, C.C.S.M. c. L10, and the ***Manitoba Labour Board Rules of Procedure***, ***Regulation 184/87 R*** may be obtained from Statutory Publications**,** 200 Vaughan Street, Winnipeg MB R3C 1T5, Telephone: (204) 945-3101.

If you require additional information, please contact the Board's office at 945-2089.

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MANITOBA LABOUR BOARD
INFORMATION BULLETIN NO. 14
BARGAINING AGENT'S DUTY OF FAIR REPRESENTATION

This bulletin is intended to inform employees who are represented by a bargaining agent of the procedure to be followed when an application is filed with the Manitoba Labour Board (the "Board") alleging that a bargaining agent, in representing the rights of any employee under a collective agreement, has acted in a manner which is arbitrary, discriminatory or in bad faith, or, in the case of the dismissal of the employee, where it is alleged that the bargaining agent has acted in a manner which is arbitrary, discriminatory or in bad faith or has failed to take reasonable care to represent the interests of the employee.

What is the nature of a union's duty in representing employees covered by a collective agreement?

The Labour Relations Act, C.C.S.M. c. L10, (the "***Act***") [**Section 20**] imposes a duty upon a bargaining agent to fairly represent all of the employees in a bargaining unit covered by a collective agreement, whether the employees are members of the bargaining agent or not, in any matter arising out of the administration of a collective agreement. It is an unfair labour practice for a bargaining agent to represent employees in a manner that is arbitrary, discriminatory or in bad faith in representing the rights of any employee under the collective agreement. In dismissal cases, a bargaining agent must also not fail to take reasonable care to represent the interests of an employee.

What actions on the part of a union will be considered arbitrary, discriminatory or in bad faith?

Arbitrary conduct may be a failure to direct one's mind to the merits of the matter, or to inquire into or to act on available evidence, or to conduct any meaningful investigation to obtain the data to justify a decision. The Board has also determined that acting on the basis of irrelevant factors or principles, or displaying an attitude which is indifferent and summary, or capricious and non-caring or perfunctory may constitute arbitrary conduct. Bargaining agents may be found to act arbitrarily when they completely ignore a grievance or when they treat a matter in an indifferent fashion. However, it is not arbitrary for a union to put its mind to a complaint or grievance and honestly decide not to advance a complaint or grievance to a further or to arbitration.

The duty not to act in a **discriminatory** manner protects against making distinctions between employees and groups of employees for reasons that have no relevance to legitimate concerns, for example on the basis of a prohibited ground such as age, race, religion, sex, or disability. A bargaining agent is only entitled to treat members of a bargaining unit differently when it has valid or cogent reasons for doing so. However, this does not mean that every instance of differential treatment is discriminatory.

Bad faith includes conduct motivated by ill will, hostility, knowing misrepresentation or an attempt to deceive.

INFORMATION BULLETIN NO. 14
BARGAINING AGENT'S DUTY OF FAIR REPRESENTATION

This provision requires that a bargaining agent act honestly and free of any personal animosity toward employees in representing their rights under the collective agreement.

In addition to not acting in a manner which is arbitrary, discriminatory or in bad faith, in a case concerning the dismissal of an employee, a bargaining agent must also take "reasonable care to represent the interests of the employee." **Reasonable care** is the degree of care which a person of ordinary prudence and competence would exercise in the same or similar circumstances.

If, for example, an employee's complaint concerns an alleged mishandling of a grievance, a breach of that duty will not be established if employees simply show that a union could have, or even should have, treated a grievance differently. It is not whether a union is right or wrong that is the concern of the Board, but whether a union's actions are motivated by bad faith, it was discriminating against an employee or it acted in an arbitrary manner, and in a dismissal case, whether a union failed to take reasonable care.

The focus of the Board in evaluating a duty of fair representation complaint is the process used by the bargaining agent in representing the employee's rights under the collective agreement. The Board generally does not second guess the actual decision made by the bargaining agent, so long as the decision is made in compliance with the principles set out in Section 20 of the ***Act***. The Board may also consider degree to which the employee cooperated with the bargaining agent in dealing with his or her issue(s) in making its conclusions regarding the Application.

Can a union refuse to process a grievance or refer it to arbitration?

Employees do not have an absolute right in all circumstances to have a grievance filed on their behalf, to have the grievance advanced through the grievance procedure set out in the collective agreement, or to be referred to arbitration. The duty of fair representation does not impose an absolute duty on a bargaining agent to advance a grievance to arbitration. In fact, the bargaining agent may decide not to pursue a grievance or may settle a grievance even without the employee's agreement, provided that the decision is not arbitrary, discriminatory or made in bad faith, or in dismissal cases, indicative of a failure to take reasonable care.

Bargaining agents may support their decision to not take further action with respect to an employee's issue with a legal opinion from legal counsel. The Board has in the past indicated that a legal opinion supporting the bargaining agent's decision in this regard is a strong defence to a duty of fair representation complaint.

What factors must a union consider when deciding whether or not to process a grievance or refer it to arbitration?

A bargaining agent is entitled to consider many factors including merits of a grievance, relative chances of success and interests of a bargaining unit as a whole. Bargaining agents may make honest mistakes or exercise poor judgement but these occurrences may not in themselves be a violation of the ***Act***. The standard of care required will vary according to the seriousness of the consequences and the nature of the job interest at stake. On matters of critical job interest, such as dismissals, a high degree of recognition of individual rights will prevail in a duty of fair representation complaint. This means that in such cases there is a higher standard imposed on a bargaining agent and its officials.

INFORMATION BULLETIN NO. 14
BARGAINING AGENT'S DUTY OF FAIR REPRESENTATION

Does the Board resolve the merits of an employee's grievance when a union refuses to refer it to arbitration?

No. While the merits of a grievance may be relevant in assessing a union's conduct, the Board will not resolve the merits of a grievance. This is a matter for an arbitrator or arbitration board which is established according to the terms of a collective agreement. However, when a union is found to have breached the ***Act***, the Board may refer a grievance to arbitration. For this reason, the Board may add an employer as a party in a duty of fair representation complaint.

Why is an employer added as a party?

The remedy sought by an employee alleging a breach of the duty of fair representation usually affects an employer. Therefore, an employer is named as a party and is accorded the right to reply to the application.

What can be done if an employee feels a union has acted contrary to its duty?

It is not necessary for an employee to be a bargaining agent member to file a complaint against a union under the ***Act***. Any employee in the bargaining unit who is subjected to union treatment that is arbitrary, discriminatory or in bad faith, or in the case of a dismissal without reasonable care, may file such a complaint. An employee who thinks that a bargaining agent has violated its duty may submit a complaint to the Board on a form specified by the Board.

How is a complaint filed?

Section 20 applications must be filed utilizing ***FORM XX: Application Alleging an Unfair Labour Practice Contrary to Section 20*** supplied by the Board. It is important that you review all of the information in this document prior to completing the form. The application must also be supported by a statutory declaration that the facts set out therein are true or where based upon information and belief, true to the best knowledge of the applicant. The source of the information and belief must also be identified.

It is important for an applicant to include particular facts upon which they intend to rely in support of their Application. Those particulars should concisely indicate the basis upon which the applicant believes that the bargaining agent acted in a manner which was arbitrary, discriminatory or in bad faith, or in the case of a dismissal, failed to exercise reasonable care in representing the employee's interests under the collective agreement. An applicant may wish to file copies of documents which he or she feels supports those allegations.

An applicant must include all of the circumstances relevant to the complaint including what happened, where and when it happened, and the names of the people who he or she says acted improperly. The applicant must also indicate what he or she wishes the Board to order in order to remedy the alleged violation. If an applicant fails to provide this information, he or she may not be allowed to present evidence or make representations regarding those matters which were not included.

However, it should be emphasized that a proper application of this type is ordinarily concise and deals only with relevant matters. The Board may refuse to process or take further action respecting an application that fails to concisely set out the facts and/or includes irrelevant documentation.

INFORMATION BULLETIN NO. 14
BARGAINING AGENT'S DUTY OF FAIR REPRESENTATION

Is there a time limit for filing a duty of fair representation complaint?

The Board may refuse to accept a complaint where the applicant has "unduly delayed" in filing with the Board. The Board has stated that "undue delay" is, in most circumstances, more than six months after the conduct allegedly giving rise to the complaint. If the application is filed more than six months after the bargaining agent's alleged violation came to the applicant's attention, the reasons for the delay must be specifically detailed.

What happens after a complaint is filed?

Once a complaint is filed, a copy is sent to the bargaining agent and the Employer so that they may reply in writing. Following receipt of the reply or replies, the matter is placed before the Chairperson or a Vice-Chairperson of the Board who review the material submitted in order to determine whether the allegations and supporting evidence contained in the Application, if proven true, could constitute a violation of the duty of fair representation. If the Board is not satisfied that is the case, then the Application may be dismissed without holding a hearing [Rule 5(5) of the ***Manitoba Labour Board Rules of Procedure, Regulation 184/87 R***, of the ***Act***]. The Board, following its review of the material submitted may appoint a Board Officer to attempt to settle the dispute. If a Board Officer cannot help the parties reach a settlement, the Board may hold a hearing to deal with the allegations made by the employee [Sections 30(3) and 31(1) of the ***Act***]. Alternatively, the Board may determine that the Application ought to proceed to a preliminary hearing or a full hearing before the Board.

What can the Board do if it finds that a bargaining agent has not fairly represented the employee?

The Board may issue various orders including a direction to cease and desist, an award of compensation and interest, a referral of a grievance to arbitration [Section 31(4) of the ***Act***] and a requirement that a union sign and distribute notices stating that it was found in violation of the ***Act*** and undertakes to comply with the ***Act*** in the future.

Relevant Sections of *The Labour Relations Act* Pertaining to a Bargaining Agent's Duty of Fair Representation:

> **Duty of fair representation**
> **20** Every bargaining agent which is a party to a collective agreement, and every person acting on behalf of the bargaining agent, which or who, in representing the rights of any employee under the collective agreement,
>
> (a) in the case of the dismissal of the employee,
> (i) acts in a manner which is arbitrary, discriminatory or in bad faith, or
>
> (ii) fails to take reasonable care to represent the interests of the employee; or
>
> (b) in any other case, acts in a manner which is arbitrary, discriminatory or in bad faith;
>
> commits an unfair labour practice.
>
> **Complaint alleging unfair labour practice**
> **30(1)** Any employer, employee or other person, or any union or employers' organization, who or which alleges the commission of an unfair labour practice may file a written complaint in respect thereof with the board.

Undue delay
30(2) The board may refuse to accept a complaint filed under subsection (1) where, in the opinion of the board, the complainant unduly delayed in filing the complaint after the occurrence, or the last occurrence, of the alleged unfair labour practice.

Disposition of complaint
30(3) Where the board accepts a complaint filed under subsection (1), the board may

(a) refer the complaint to a representative of the board for purposes of subsection (4); or

(b) proceed directly to hold a hearing into the alleged unfair labour practice; or

(c) at any time decline to take further action on the complaint.

Remedies for unfair labour practice
31(4) Where the board finds that a party to a hearing under this section has committed an unfair labour practice it may, as it deems reasonable and appropriate and notwithstanding the provisions of any collective agreement,

(a) order a party which is an employer to reinstate in employment any employee whose employment has been terminated by reason of the unfair labour practice; or

(b) order any party which is an employer to employ any person who has been refused employment by reason of the unfair labour practice; or

(c) order any party which is a union to reinstate as a member of the union any person whose membership in the union has been terminated by reason of the unfair labour practice; or

(d) order the party to pay to any person referred to in clause (3)(b) an amount in compensation for the diminution of income or other employment benefits or other loss suffered by the person; or

(e) where the unfair labour practice interfered with the rights of any person under this Act but the person has not suffered any diminution of income or other employment benefits or other loss by reason of the unfair labour practice, order the party to pay to the person an amount not exceeding $2,000; or

(f) where the unfair labour practice interfered with the rights of a union, employer or employers' organization under this Act, whether or not the union, employer or employers' organization has suffered any loss by reason of the unfair labour practice, order the party to pay to the union, employer or employers' organization an amount not exceeding $2,000.; or

(g) order the party to cease and desist any activity or operation which constitutes the unfair labour practice; or

(h) order the party to rectify any situation resulting from the unfair labour practice; or

(i) order the party to do, or refrain from doing, anything that is equitable to be done or refrained from in order to remedy any consequence of the unfair labour practice; or

(j) do two or more of the things set out in clauses (a) to (i).

INFORMATION BULLETIN NO. 14
BARGAINING AGENT'S DUTY OF FAIR REPRESENTATION

A copy of the Board's ***FORM XX: Application Alleging an Unfair Labour Practice Contrary to Section 20*** and ***FORM A: Memorandum of General Information Required on all Proceedings*** are attached.

What happens to the information I include in a Section 20 Application?

All information included in your application is provided to the party or parties named as respondents or interested parties. Further, such information may be referred to in the order or reasons issued by the Board at the conclusion of the case, on the Board's website and in print and online reporting services that may publish the Board's decision.

A copy of ***The Labour Relations Act***, C.C.S.M. c. L10, and the ***Manitoba Labour Board Rules of Procedure***, ***Regulation 184/87 R***, may be obtained from Statutory Publications**,** 200 Vaughan Street, Winnipeg MB R3C 1T5, Telephone: (204) 945-3101.

If you require additional information, please contact the Board's office at 945-2089.

(Revised April, 2010)

MANITOBA LABOUR BOARD
Suite 500, 5th Floor, 175 Hargrave Street, Winnipeg MB R3C 3R8
T 204 945-2089 **F** 204 945-1296
www.manitoba.ca/labour/labbrd

April 21, 2010

MANITOBA LABOUR BOARD
INFORMATION BULLETIN NO. 15
DISCLOSURE OF PERSONAL INFORMATION

When filing any application with the Manitoba Labour Board ("the Board"), all information included in the application is provided to the other party or parties named as respondents or interested parties. Further, such information may be referred to in the order or reasons issued by the Board at the conclusion of the case, on the Board's website and in print and online reporting services that may publish the Board's decision.

This Bulletin does not apply to Applications for Certification as these applications are governed by separate Board Rules respecting the confidentiality of membership information provided to the Board.

A copy of ***The Labour Relations Act***, C.C.S.M. c. L10, and the ***Manitoba Labour Board Rules of Procedure***, ***Regulation 184/87 R***, may be obtained from Statutory Publications**,** 200 Vaughan Street, Winnipeg MB R3C 1T5, Telephone: (204) 945-3101.

If you require additional information, please contact the Board's office at 945-2089.

April 21, 2010

Major Accomplishments in the reporting period

- 447 cases before the Board (pending from previous period plus new applications).
- 79% of cases disposed of/closed.
- 137 applications scheduled for hearing.
- 106 hearing dates proceeded.
- Resolved 75% of disputes through the mediation process in cases where a board officer was formally appointed or assisted the parties informally in reaching a settlement. Of those cases not settled, the issues to be heard by the Board were narrowed.
- Met statutory time requirements for 13 Board conducted votes, excluding cases granted "extenuating circumstances".
- Continued to partner with the Department's Information and Technology Services Branch to develop a comprehensive automated case management system.
- Issued 11 Written Reasons for Decision and 49 Substantive Orders which is double the number issued in 2008-2009.
- Expanded the Board's website by including the Manitoba Labour Board's Arbitrators List.
- Updated the "Index of Written Reasons for Decision" for subscribers.
- Conducted the bi-annual seminar for Vice-Chairpersons and Board Members in Gimli, Manitoba on May 26 - 28, 2009;
- Reviewed and updated the Board's Information Bulletins and issued six new bulletins;
- Hired a bilingual receptionist further enhancing the Board's ability to provide service to the public in both official languages;
- Significantly reduced the median processing times for applications received under The Labour Relations Act as compared to processing times for 2008/09 (i.e. - from 101 days to 47 days);

Ongoing Activities and Strategic Priorities

- Update and issue Information Bulletins.
- Develop succession plan for key positions.
- Promote learning plans for staff.
- Conduct seminar for Vice-chairpersons and Board Members - scheduled for May 2011.
- Implement automated case management system.
- Increase appointments of Board Officers to a mediator role to effect successful dispute resolutions without the need for formal hearings
- Evaluate forms and amend as necessary to meet *The Freedom of Information and Personal Privacy Act* (FIPPA) requirements and to meet the French language services concept of "Active Offer".
- Improve practices and procedures and to increase efficiencies.
- Expand information available on the website for ready access by the labour relations community, legal practitioners, educators and the public.
- Maintain accountability for allocated budget.
- Reduce median processing times.

Principales réalisations au cours de l'exercice

- 447 cas ont été portés devant la Commission (demandes en instance depuis l'exercice précédent et nouvelles demandes).
- 79 % des cas portés devant la Commission ont été réglés ou classés.
- Une date d'audience a été fixée pour 137 demandes.
- 106 audiences ont été tenues.
- Règlement de 75 % des différends par le processus de médiation pour les cas où un agent de la Commission a été désigné officiellement ou a aidé informellement les parties à convenir d'un règlement. Parmi les cas non réglés, les questions dont la Commission était saisie ont été circonscrites.
- À l'exception des cas associés à des « circonstances exceptionnelles », les délais prévus par la loi ont été respectés pour les 13 votes tenus par la Commission.
- La Commission a continué de s'associer à la Direction des services d'information et de technologie de Travail et Immigration Manitoba pour élaborer un système informatisé et intégré de gestion des cas.
- Publication de 11 motifs écrits de décision et de 49 ordonnances importantes, soit le double par rapport à 2008-2009.
- Enrichissement du site Web de la Commission avec l'ajout d'une liste des arbitres de la Commission du travail du Manitoba.
- L'*Index of Written Reasons for Decision* a été mis à jour à l'intention des abonnés.
- Organisation d'un colloque semestriel à l'intention des vice-présidents et des membres de la Commission à Gimli, au Manitoba, du 26 au 28 mai 2009.
- Révision et mise à jour des Bulletins d'information de la Commission et publication de six nouveaux bulletins.
- Recrutement d'une réceptionniste bilingue, ce qui renforce la capacité de la Commission à fournir des services au public dans les deux langues officielles.
- Réduction considérable par rapport à 2008-2009 du délai moyen de traitement des demandes reçues en vertu de la *Loi sur les relations du travail* (de 101 à 47 jours).

Activités en cours et priorités stratégiques

- Mise à jour et publication des bulletins d'information.
- Élaboration d'un plan de relève pour des postes de premier plan.
- Promotion de plans d'apprentissage à l'intention du personnel.
- Organisation d'un colloque à l'intention des vice-présidents et des membres de la Commission (prévu en mai 2009).
- Mise en œuvre du système informatisé de gestion des cas.
- Assignation d'agents supplémentaires au rôle de médiateurs afin de régler des différends sans avoir à recourir à des audiences officielles.
- Évaluation des formulaires et modification selon les besoins de manière à satisfaire aux exigences de la *Loi sur l'accès à l'information et la protection de la vie privée* (*LAIPVP*) et au concept d'« offre active » pour les services en français.
- Amélioration des pratiques et des procédures et accroissement des économies.
- Élargissement de l'information accessible sur le site Web afin d'en faciliter la consultation par les intervenants du secteur des relations du travail, les juristes, les éducateurs et le public.
- Maintien de la responsabilité pour le budget alloué.
- Réduction des délais moyens de traitement.

Sustainable Development

The Board strives to achieve the goals set out in the Sustainable Development Action Plan. In compliance with *The Sustainable Development Act,* the Manitoba Labour Board is committed to ensuring that its activities conform to the principles of sustainable development. The Board promoted sustainable development through various activities including recycling, paper management, use of environmentally preferable products and duplex copying.

2(e) Manitoba Labour Board Financial Information

Expenditures by Sub-Appropriation	Actual 2009/10 ($000s)	Estimate 2009/10 FTE	Estimate 2009/10 $(000s)	Variance Over/(Under) ($000s)	Expl. No.
Total Salaries	1,312	16.50	1,383	(71)	1
Total Other Expenditures	417		508	(91)	2
Total Expenditures	1,729	16.50	1,891	(162)	

Explanation Number:

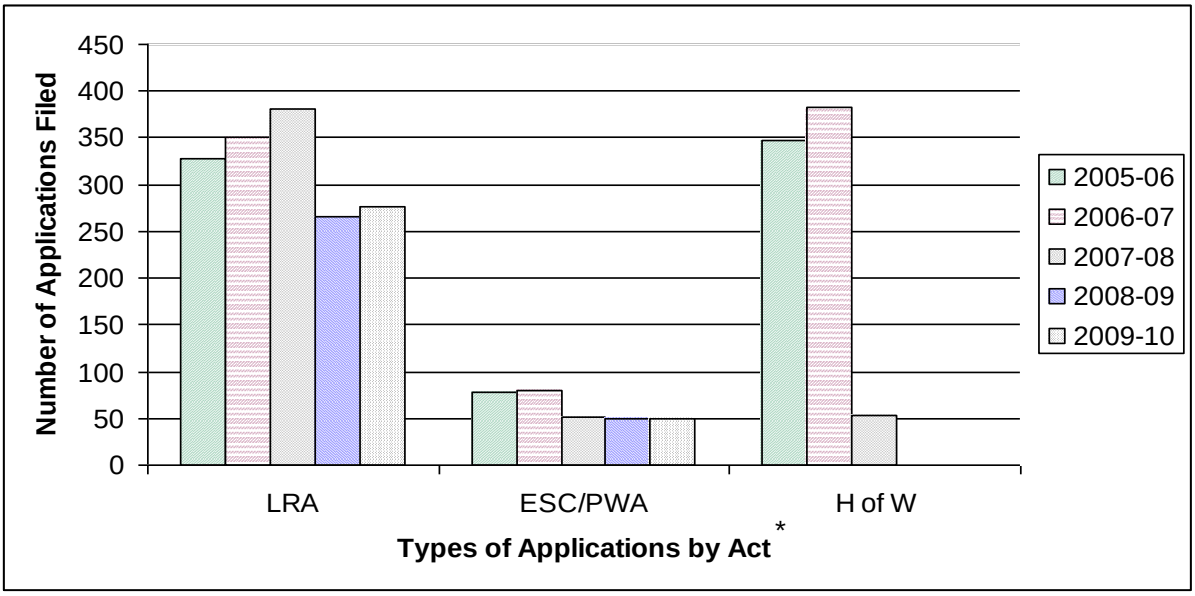
1. *Under-expenditure reflects implementation of vacancy management strategies, which included net staff turnover costs, Board member per diems and savings due to the voluntary reduced work week program partially offset by severance and vacation payout of an employee who retired.*
2. *Under-expenditure reflects implementation of expenditure management strategies which resulted in reductions in legal fees due to fewer appeals, website development costs which were performed internally, travel and training costs of Board members and officers, furniture and equipment purchases, costs of biennial Manitoba Labour Board seminar and computer related charges.*

SUMMARY OF PERFORMANCE

The Manitoba Labour Board adjudicated employer-employee disputes referred to it under various provincial statutes and its decisions established policy, procedures and precedent and provided for a more sound, harmonious labour relations environment. The Board conducted formal hearings, however, a significant portion of the Board's workload was administrative in nature. When possible, the Board encouraged the settlement of disputes in an informal manner by appointing one of its Board Officers to mediate outstanding issues and complaints. The Board monitored its internal processes to improve efficiencies and expedite processing of applications or referrals.

The number of applications filed with the Manitoba Labour Board during the past 5 years (for the period April 1 to March 31) are indicated in the chart below, with hours of work applications shown separately from *The Employment Standards Code.*

Manitoba Labour Board
Number of Applications Filed



***Types of Applications by Act**	
LRA	Labour Relations Act
ESC/PWA	Employment Standards Code/Payment of Wages
H of W	Hours of Work exemptions

The Employment Standards Code amendments effective April 2007 eliminated applications to the Board for hours of work exemptions. Detailed statistical tables and summaries of significant Board decisions can be found later in this report.

During the past reporting year, the Board continued its initiative to measure service activities and client responsiveness.

Program Performance Measurements of the Manitoba Labour Board

April 1 - March 31

Indicator	Actual 2008-2009	Actual 2009-2010
Percentage of Cases disposed of	77%	79%
Number of Hearing scheduled	295	280
Percentage of Hearing that proceeded	35%	38%
Number of votes conducted	12	13
Median processing time (calendar days):		
Labour Relations Act:	101	47
Workplace Safety & Health Act[1]	260	349
Essential Services Act	NA*	105
Elections Act	NA	NA
Employment Standards Code	92	98

* NA - No applications processed in reporting period

[1] - The median processing time for applications filed under *The Workplace Safety and Health Act* and *The Essential Services Act* were based on the processing of 4 and 1 cases respectively. The processing times are not necessarily indicative of the normal median processing times of the Board.

In addition to applications filed, and pursuant to *The Labour Relations Act*, the Board also received and filed copies of collective agreements and arbitration awards. In addition to the 3, 001 collective agreements on file, there are 2,174 arbitration awards and 810 Written Reasons for Decision and Substantive Orders in the Board's collection (a 1.4%, 1.6% and 7.6% increase respectively from the previous reporting period). Copies of collective agreements, arbitration awards and written reasons are available upon request and in accordance with the Board's fee schedule. Copies of Written Reasons for Decision and Substantive Orders issued since January 2007 are posted on the Board's website.

The following table provides information on key performance measures for the department for the 2009/2010 reporting year. This is the fifth year in which all Government of Manitoba departments have included a Performance Measurement section, in a standardized format, in their Annual Reports.

Performance indicators in departmental Annual Reports are intended to complement financial results and provide Manitobans with meaningful and useful information about government activities, and their impact on the province and its citizens.

For more information on performance reporting and the Manitoba government, visit www.manitoba.ca/performance.

Your comments on performance measures are valuable to us. You can send comments or questions to mbperformance@gov.mb.ca.

Performance Indicators

What are we measuring and how?	Why is it important to measure this?	What is the most recent available value for this indicator?	What is the trend over time for this indicator?	Comments/ recent actions/report links
1. We are measuring the Board's caseload by looking at the number of cases filed.	A key element in measuring the Board's workload volume is the number of applications made to the Board.	For 2009/2010, the total number of applications filed was 330. Labour Relations - 276 Employment Standards - 50 Workplace Safety & Health - 3 Essential Services - 1	*Labour Relations increasing. Employment Standards stable.* 4% increase in Labour Relations and 2% increase in Employment Standards from previous reporting period.	The volume of applications filed has a direct impact on the medium processing days. This reporting period saw slight increase from the number of applications filed last year. The Board does not seek out applications but reacts to applications brought before it.
2. We are measuring the level of activity by looking at the percentage of cases disposed of.	The Board's objective to handle matters before it in a fair and expeditious manner can be measured by the number of cases processed and closed.	For 2009/2010, the Board disposed of 79% of its caseload.	*Improving* There was a 2% increase in the number of cases processed over last fiscal year.	The Board filled a Board Officer vacancy and after the initial training period, the resolution rate may increase further in the next reporting period. The rate is also dependent upon the number and types of applications filed.
3. We are measuring cases that are adjudicated by looking at the number of scheduled and actual hearing days.	As mandated by *The Labour Relations Act* for the fair and efficient administration and adjudication of responsibilities, the number of adjudicated matters is indicative of the Board's responsiveness in resolving disputes by providing decisions that enable a stable labour relations environment.	For 2009/2010 there were: 280 hearing dates scheduled, with 106 dates that proceeded.	*Stable* Since 2005/2006, the percent of hearings that proceeded ranged from 29% - 38%.	The level of adjudication is conditional upon the number of cases disposed of without the need of the formal adjudicative process. Applications may be withdrawn by the parties, resolved through mediation, or processed administratively. This indicator helps the Board assess disputes resolved with the assistance of mediation by Board Officers or with the issuance of Substantive Orders which illustrates the Board's progress against a desired outcome.
4. We are measuring the expeditious processing of applications by looking at the number of median processing days.	The number of median processing days is indicative of the complexity in the various types of applications dealt with by the Board.	For 2009/2010 the median processing days for Labour Relations was 47 days. Median for last five years is 50 days. Processing time for Employment Standards is 98 days. Median for last five years is 101 days.	*Stable for Labour Relations.* 2008/2009, was higher than the norm and the median processing days returned to normal levels in 2009/2010. *No trend yet established for Employment Standards* due to April 2007 amendment to the *Code* giving responsibility for hours of work applications to the Employment Standards Division.	Processing days for certain types of applications will vary due to circumstances beyond the Board's control. (e.g. legislative amendments, settlement discussions between the parties and the complexity of the issues raised by the parties in their applications).

The Public Interest Disclosure (Whistleblower Protection) Act

The Public Interest Disclosure (Whistleblower Protection) Act came into effect in April 2007. This law gives employees a clear process for disclosing concerns about significant and serious matters (wrongdoing) in the Manitoba public service, and strengthens protection from reprisal. The *Act* builds on protections already in place under other statutes, as well as collective bargaining rights, policies, practices and processes in the Manitoba public service.

Wrongdoing under the *Act* may be: contravention of federal or provincial legislation; an act or omission that endangers public safety, public health or the environment; gross mismanagement; or, knowingly directing or counseling a person to commit a wrongdoing. The *Act* is not intended to deal with routine operational or administrative matters.

A disclosure made by an employee in good faith, in accordance with the *Act*, and with a reasonable belief that wrongdoing has been or is about to be committed is considered to be a disclosure under the *Act*, whether or not the subject matter constitutes wrongdoing. All disclosures receive careful and thorough review to determine if action is required under the *Act*, and must be reported in a department's annual report in accordance with Section 18 of the *Act*.

The following is a summary of disclosures received by the Manitoba Labour Board for fiscal year 2009-2010.

Information Reported Annually (per Section 18 of The *Act*)	**Fiscal Year 2009-2010**
The number of disclosures received, and the number acted on and not acted on. *Subsection 18(2)(a)*	**NIL**
The number of investigations commenced as a result of disclosure. *Subsection 18(2)(b)*	**NIL**

SUMMARIES OF SIGNIFICANT BOARD DECISIONS

During the reporting period, the Board issued 11 Written Reasons for Decision and 49 Substantive Orders.

The full text of the Written Reasons and the Substantive Orders issued since January 2007 are available on the Board's website (http://www.gov.mb.ca/labour/labbrd/decisions/index.html) or from the Board's office, upon payment of the applicable copying fee.

SUMMARIES OF SIGNIFICANT BOARD DECISIONS *PURSUANT TO THE LABOUR RELATIONS ACT*

Manitoba Public Insurance Corporation - and - Manitoba Government and General Employees' Union - and - Raymond Morin
Case No. 24/09/LRA
April 1, 2009

WHISTLEBLOWER PROTECTION - TIMELINESS - Time periods that constitute an "undue delay" for applications filed under *The Labour Relations Act* equally apply to complaints filed under Section 27 of *The Public Interest Disclosure (Whistleblower Protection) Act.*

WHISTLEBLOWER PROTECTION - PRACTICE AND PROCEDURE - TIMELINESS - Undue Delay - Board relied on its principle that an unexplained delay beyond 6 to 9 months following events complained of constituted unreasonable/undue delay - Employee possessed information relevant to application at time alleged breaches occurred but unduly delayed filing application 18 to 36 months after core events occurred - Application dismissed for undue delay.

WHISTLEBLOWER PROTECTION - PRACTICE AND PROCEDURE - ARBITRATION - Employee, Union and Employer entered into final binding Settlement Agreement as resolution to grievance - Unfair labour practice application based on events covered by settlement - Applicant seeking to re-litigate same matters - Application dismissed.

WHISTLEBLOWER PROTECTION - Application did not disclose facts which constituted disclosure of wrong doing as defined in *The Public Interest Disclosure (Whistleblower Protection) Act* or facts which constituted a prima facie case under Sections 7(h), 17(a)(iii) or 17(b)(ii) and (v) of *The Labour Relations Act* - Application dismissed as Employee failed to establish a prima facie case.

The Employee filed an unfair labour practice application under Sections 7(h), 17(a)(iii), 17(b)(ii) and 17(b)(v), 79, 80(1), and 80(2) of *The Labour Relations Act* and for alleged reprisals taken by the Employer against him, contrary to Section 27(b) of *The Public Interest Disclosure (Whistleblower Protection) Act (PIDA)*. The Employee alleged that the events complained of commenced in February 2006 when he presented his good faith disclosure of wrong doing and delivered his formal complaint against management for harassment, discrimination and unfair labour practices. He asserted that this conduct continued up until the time of his wrongful dismissal without cause in July 2007.

Held: The Employee unduly delayed the filing of the application because the core events upon which he relied were alleged to have occurred 18 to 36 months prior to the filing of the application. He possessed the information which was relevant to his application either at the time of or shortly after the alleged breaches occurred. The Board relied on the principle expressed in a number of its decisions that an unexplained delay beyond a period of 6 to 9 months following the events complained of constituted an unreasonable/undue delay within the meaning of Section 30(2) of the *Act*. The time periods that constitute an "undue delay" equally apply to complaints filed under Section 27 of the *PIDA*. Notwithstanding the finding of undue delay, the Board accepted that, on or about July 5, 2007, the Employee, the Union and the Employer entered into the final and binding Settlement Agreement as a resolution to his grievance. The Release applied to all matters relating to the Applicant's employment up to July 5, 2007. As the Application was based on events which pre-dated July

5, 2007, the Board was satisfied that the Applicant was seeking to re-litigate the same matters. The Board also found that the Employee failed to establish a prima facie case under the PIDA because the Application did not disclose any facts which arguably can be said to constitute a "disclosure" of a "wrong doing", as those terms are defined in the *PIDA* or did not disclose any facts which constitute a prima facie case under Sections 7(h), 17(a)(iii) or 17(b)(ii) and (v) of the *Act*. Sections 79 and 80 of the *Act* cannot be the basis of an unfair labour practice complaint under Part I of the *Act* because those provisions relate to substantive terms which must be included in collective agreements and, as such, are relevant to and may be enforceable under the grievance/arbitration procedures of a collective agreement. The Board determined the Application had no merit within the meaning of Section 140(8) of the Act and that the Employee had unduly delayed filing the Application within the meaning of Section 30(2) of the Act. As a result, the Application was dismissed.

Manitoba Public Insurance Corporation - and - Manitoba Government and General Employees' Union - and - Raymond Morin
Case No. 23/09/LRA
April 1, 2009

DUTY OF FAIR REPRESENTATION - Settlement of Grievance - Intimidation/Coercion - Employee alleged Union chose not to take action against Employer under collective agreement as he requested; chose not to act in his best interest regarding workplace accommodation issues; acted in arbitrary manner when it informed him that it could settle grievance with or without his consent - Board held under terms of Settlement Agreement Employee resigned and executed release of all claims in favour of Employer in exchange for severance payment - Employee warranted that Release was executed voluntarily without any influence or fraud or coercion or misrepresentation by Union - Application had no merit and was dismissed.

PRACTICE AND PROCEDURE - DUTY OF FAIR REPRESENTATION - TIMELINESS - Employee unduly delayed filing application as core events relied upon took place 18 to 36 months prior to filing of application - Board relied on principle expressed in its prior decisions that unexplained delay beyond 6 to 9 months following events complained of constituted unreasonable/undue delay under Section 30(2) of *The Labour Relations Act* - Application dismissed.

The Employee filed an unfair labour practice application under Sections 20(a) and 20(b) of *The Labour Relations Act*. He alleged that the Union ignored its duty to represent him following his filing of a complaint against the Employer for harassment, discrimination and unfair labour practices; chose not to take action against the Employer under the collective agreement when requested to do so; chose not to act in his best interest regarding workplace accommodation issues; acted in an arbitrary manner when it informed him that it could conclude/settle the grievance with or without his consent; and acted in an improper manner when it provided him with no option but to choose to resign or return to a hostile work environment.

Held: The core events, which the Employee alleged to have occurred, took place 18 to 36 months prior to the filing of the application. The Board relied on the principle expressed in a number of its decisions that an unexplained delay beyond a period of 6 to 9 months following the events complained of constituted an unreasonable/undue delay within the meaning of Section 30(2) of the *Act.* Notwithstanding the finding of undue delay, the Board accepted that the Employee, the Union and the Employer entered into the final and binding Settlement Agreement as a resolution to the grievance. Under the terms of the Settlement Agreement, the Employee resigned and received a substantial severance allowance and other monetary benefits and he executed a general release of all claims in favour of the Employer in exchange for the severance payment. In the Release, the Employee warranted that he obtained advice from the Union regarding the Settlement Agreement and the Release itself. He further warranted that the Release was executed voluntarily without any influence or fraud or coercion or misrepresentation. Therefore, the Board determined the application had no merit within the meaning of Section 140(8) of the *Act* and that the Employee had unduly delayed filing the application. As a result, the application was dismissed.

City Of Winnipeg - and - Canadian Union of Public Employees, Local 500 - and - Jim H. Budde
Case No. 65/08/LRA
April 3, 2009

DUTY OF FAIR REPRESENTATION - Contract Administration - Delay in Processing Grievance - Union provided timely advice at time Employee initially brought his concerns to Union - Matter was drawn out due to Employee's refusal to accept Union's and Employer's conclusion - Application dismissed.

DUTY OF FAIR REPRESENTATION - Contract Administration -Failure to Refer Grievance to Arbitration - Employee claimed Union failed to fairly represent him with wage top up grievance - Union discussed matter with Employer and obtained detailed explanation of calculations; provided Employee with Employer's written correspondence regarding top up calculation - Employee declined Union's offers to meet with Employer and Union Executive - *Prima facie* case not established - Application dismissed.

DUTY OF FAIR REPRESENTATION - Duty of Fair Referral - Employee claimed Union failed to fairly represent him with wage top up grievance and should have hired auditor to review his claims - Union unwavering in view that Employer's calculation correct - Decision not retain professional advice did not constitute breach of Section 20 of *The Labour Relations Act* - Application dismissed.

The Employee filed an application seeking remedy for an alleged unfair labour practice. He asserted that the Union breached sections 20(b) and 30(1) of *The Labour Relations Act* by failing to fairly represent him in relation to a grievance concerning the incorrect method used to calculate net pay top up. He was critical of the alleged delay of the Union in responding to his request for assistance with his concerns. In addition, he suggested that the Union failed to represent him when it initially advised him to discuss the issue directly with the Employer. Furthermore, he stated that the Union failed to properly or fully investigate his concerns, refused to discuss his concerns with him, and that it ought to have hired an auditor with an accounting background to review his claims.

Held: The Board determined that there was no evidence that the Union acted in a manner which was arbitrary, discriminatory, or bad faith. The Union met and corresponded with the Employee on numerous occasions. It provided him at an early stage with an analysis of the collective agreement with respect to the issue of the calculation. It discussed the matter with the Employer and met with the Employer to obtain a detailed explanation of the calculation. In addition, the Union received written correspondence from the Employer, which it provided to the Employee, regarding the calculation. The Union offered a number of times to meet with the Employee and the Employer to review the calculation; however the Employee refused to attend and ultimately advised the Union to meet with the Employer in his absence. The Employee was given the opportunity to contest the decision not to proceed to arbitration and to make submissions to the Union's Executive Committee; however he chose not to do so. There was no evidence that the decision not to proceed with the Employee's issue was based on any improper considerations, irrelevant factors, hostility, ill-will, discrimination or any other conduct prohibited by Section 20(b) of the *Act*. The Board considered the alleged delay of the Union in responding to the Employee's request for assistance. At the time the Employee initially brought his concerns to the Union, it provided timely advice. The matter was subsequently drawn out due to the Employee's refusal to accept the Union's and Employer's conclusion. The decision of the Union to not retain professional advice did not constitute a breach of Section 20 of the *Act*. The unwavering view of the Union was that the Employer calculated the amount owed to the Employee in a correct manner and in accordance with the collective agreement. The application also referenced Section 30(1) which permits the filing of an unfair labour practice which the Employee had done. Therefore, the Board was satisfied that the Employee failed to establish a prima facie case. As a result, the application was dismissed.

City Of Winnipeg - and - Canadian Union of Public Employees, Local 500 - and - Jim H. Budde
Case No. 66/08/LRA
April 3, 2009

UNFAIR LABOUR PRACTICE - Employee claimed Employer committed unfair labour practice by incorrectly calculating wage top up - No evidence that calculations of benefit was linked to, tainted by, or in any way influenced by any prohibited grounds set out in Sections 7, 17 or any other section of *The Labour Relations Act* - Employee failed to establish *prima facie* case - Application dismissed

The Employee filed an application against the Employer seeking remedy for an alleged unfair labour practice. He asserted that the Employer breached sections 7, 17, 72, 80, and 150 of *The Labour Relations Act* by the incorrect manner in which it calculated his net pay top up.

Held: The Board determined that none of the facts or allegations advanced by the Employee, even if true, would constitute an unfair labour practice by the Employer. The Employee disagreed with the calculation of benefits he felt he was entitled which is a dispute concerning the application of the collective agreement. Conduct which may constitute an unfair labour practice is set out in Part I of the *Act* and includes sections 7 and 17. Sections 72, 80 and 150 of the *Act* are not included in Part I and are not provisions which may be said to ground an unfair labour practice allegation and had no relevance to the facts pleaded by the Employee. Section 7 prohibits employers or persons acting on behalf of employers from discharging, refusing to employ, or discriminating against any person on the basis of certain enumerated factors set out therein. Section 17 prohibits employers or persons acting on behalf of employers from denying or threatening to deny pension rights or benefits to which an employee is entitled or would have been entitled except by reason of a cessation of work due to a strike or lockout or the exercise of a right under this or any other Act of the Legislature or Parliament. Section 17(b) prohibits employers or persons acting on their behalf from using intimidation, coercion, threats, penalties, promises etc. to compel or induce a person to refrain from exercising specific enumerated rights. There was no evidence that the calculations of the benefit to which the Employee claims entitlement was linked to, tainted by, or in any way influenced by any of the prohibited grounds set out in Sections 7 or 17. The application also referenced "any other relevant sections" of the *Act*. There was no evidence that satisfied the Board that any other sections of the *Act* had been violated as alleged. Therefore, the Board was satisfied that the Employee failed to establish a prima facie case and dismissed the application.

City Of Winnipeg - and - Canadian Union of Public Employees, Local 500 - and - Jim H. Budde
Case No. 65/08/LRA
April 3, 2009

DUTY OF FAIR REPRESENTATION - Contract Administration - Delay in Processing Grievance - Union provided timely advice at time Employee initially brought his concerns to Union - Matter was drawn out due to Employee's refusal to accept Union's and Employer's conclusion - Application dismissed.

DUTY OF FAIR REPRESENTATION - Contract Administration -Failure to Refer Grievance to Arbitration - Employee claimed Union failed to fairly represent him with wage top up grievance - Union discussed matter with Employer and obtained detailed explanation of calculations; provided Employee with Employer's written correspondence regarding top up calculation - Employee declined Union's offers to meet with Employer and Union Executive - *Prima facie* case not established - Application dismissed.

DUTY OF FAIR REPRESENTATION - Duty of Fair Referral - Employee claimed Union failed to fairly represent him with wage top up grievance and should have hired auditor to review his claims - Union unwavering in view that Employer's calculation correct - Decision not retain professional advice did not constitute breach of Section 20 of *The Labour Relations Act* - Application dismissed.

The Employee filed an application seeking remedy for an alleged unfair labour practice. He asserted that the Union breached sections 20(b) and 30(1) of *The Labour Relations Act* by failing to fairly represent him in

relation to a grievance concerning the incorrect method used to calculate net pay top up. He was critical of the alleged delay of the Union in responding to his request for assistance with his concerns. In addition, he suggested that the Union failed to represent him when it initially advised him to discuss the issue directly with the Employer. Furthermore, he stated that the Union failed to properly or fully investigate his concerns, refused to discuss his concerns with him, and that it ought to have hired an auditor with an accounting background to review his claims.

Held: The Board determined that there was no evidence that the Union acted in a manner which was arbitrary, discriminatory, or bad faith. The Union met and corresponded with the Employee on numerous occasions. It provided him at an early stage with an analysis of the collective agreement with respect to the issue of the calculation. It discussed the matter with the Employer and met with the Employer to obtain a detailed explanation of the calculation. In addition, the Union received written correspondence from the Employer, which it provided to the Employee, regarding the calculation. The Union offered a number of times to meet with the Employee and the Employer to review the calculation; however the Employee refused to attend and ultimately advised the Union to meet with the Employer in his absence. The Employee was given the opportunity to contest the decision not to proceed to arbitration and to make submissions to the Union's Executive Committee; however he chose not to do so. There was no evidence that the decision not to proceed with the Employee's issue was based on any improper considerations, irrelevant factors, hostility, ill-will, discrimination or any other conduct prohibited by Section 20(b) of the *Act*. The Board considered the alleged delay of the Union in responding to the Employee's request for assistance. At the time the Employee initially brought his concerns to the Union, it provided timely advice. The matter was subsequently drawn out due to the Employee's refusal to accept the Union's and Employer's conclusion. The decision of the Union to not retain professional advice did not constitute a breach of Section 20 of the *Act*. The unwavering view of the Union was that the Employer calculated the amount owed to the Employee in a correct manner and in accordance with the collective agreement. The application also referenced Section 30(1) which permits the filing of an unfair labour practice which the Employee had done. Therefore, the Board was satisfied that the Employee failed to establish a prima facie case. As a result, the application was dismissed.

International Alliance of Theatrical Stage Employees, Local 856 - and - John Bekavac
Case No. 50/09/LRA
April 8, 2009

FINANCIAL DISCLOSURE - Employee argued that Union's audited financial statements did not meet requirements under Section 132.1(2) of *The Labour Relations Act* as statements did not provide details of total wages paid to Union's employees - Board held statements as provided by Union met requirements of *the Act* - Application dismissed.

As per the Employee's written request, the Union forwarded him a copy of its 2007 audited financial statements. The Employee filed an application pursuant to Section 132.1 of *The Labour Relations Act* seeking an order that the Union be required to furnish further details respecting the total wages paid to each of the Union's employees in that the audited financial statement forwarded did not provide sufficient detail to disclose accurately the Union's financial condition and operation and the nature of its income and expenditures, as required by Section 132.1(2) of the Act. The Union asserted that it had complied with the requirements of Section 132.1. It noted that the statements were prepared in accordance with Canadian generally accepted auditing standards by the Respondent's chartered accountants.

Held: The Board was satisfied that the audited financial statements provided by the Union meet the requirements of Section 132.1(2) of the *Act*. As a result, the Board found that the Union had met its obligations to the Employee under Section 132.1(1) of the *Act.* Therefore, the application was dismissed.

City of Winnipeg - and - Canadian Union of Public Employees, Local 500 - and - Theresa Henry
Case No. 405/08/LRA
May 19, 2009

DUTY OF FAIR REPRESENTATION - PRACTICE AND PROCEDURE - TIMELINESS - Employee unduly delayed filing application against Union and Employer under Section 20 of *The Labour Relations Act* relating to denial of dental benefits and other grievances - Application filed 13 months from date Union advised it was not willing to proceed with grievances and 3 years after Employee aware dental coverage cancelled and two years after Employer advised cancellation in error - Board's normal rule or practice not to entertain Section 20 complaint filed six to eight months beyond events in complaint.

DUTY OF FAIR REPRESENTATION - Duty of Fair Referral - Employee claimed Union acted unfairly in refusing to proceed with denial of dental benefits, termination and other grievances - Union made an honest mistake in advising Employee she was not entitled to dental - Application provided extremely limited information on other grievances - Union determined not to proceed with termination grievance based on legal advice - Reliance on legal advice potent defence to duty of fair representation claims under section 20 of the *Act* - Application without merit.

DUTY OF FAIR REPRESENTATION - Employee's allegation Employer acted contrary to Section 20 of *The Labour Relations Act* for denial of dental benefits not properly subject of an unfair labour practice proceeding and Section 80 of the *Act* not an unfair labour practice section - Complaint without merit.

The Employee filed an application that the Union and the Employer violated Section 20 of *The Labour Relations Act*. She claimed the Employer failed or refused to provide dental benefits during her year-long unpaid leave of absence. During her leave, the Employee was unable to afford dental work and postponed having some procedures done. Her teeth deteriorated and two teeth were extracted. Upon returning to work after her leave, the Employer advised her that her dental benefits had been cancelled in error and told her to re-submit her claims. She alleged that, but for the erroneous decision to deny her dental benefits, she would not have endured the loss of teeth and associated costs. She alleged that she repeatedly pressed the Union to take action, but that it steadfastly refused to file grievances or otherwise assist her in seeking a remedy for the denial of dental benefits and other grievances. The other grievances include the alleged failure of the Employer to accommodate her medical condition, unjust discipline, deduction of pay in 2001, a respectful workplace complaint dating back to 2002, an issue referred to as "differential treatment" from 2002 to 2007 and her termination of employment.

Held: The Application was filed thirteen months from the date the Employee said the Union advised her that it was not willing to proceed with any of her grievances. Moreover, that was approximately three years after the Employee was aware that her dental coverage had been cancelled and approximately two years after being advised of the Employer's position that the cancellation was in error. The Employee provided no explanation for her delay in filing the application with the Board. In its previous decisions, the Board has stated that its normal rule or practice was not to entertain a section 20 complaint if it is filed some six to eight months beyond the events referred to in the complaint. The Board determined that the Employee unduly delayed in filing the application. Accordingly, pursuant to section 30(2) of the *Act*, the application was dismissed.

The Board considered whether the application established a *prima facie* case that the Union committed an unfair labour practice in dealing with the dental claim. The most negative conclusion that could be reached was that the Union made an honest mistake in advising the Employee in the manner that it did. The Board was satisfied that any alleged errors were certainly not so flagrant as to be considered arbitrary; nor do the actions of the Union in dealing with the Employee's dental claims indicate indifference, capriciousness, or an otherwise uncaring attitude. The application also refers to the refusal of the Union to proceed with certain other grievances. The application provided extremely limited information. Finally, the Employee noted that the Union did not agree to proceed to arbitration to contest the termination of her employment. The application did not contain facts which disclosed a violation of section 20(a). Indeed, the Employee made it clear that the Union relied upon legal advice in determining that it would not proceed to arbitration. Reliance upon legal advice has long been characterized as a potent defence to duty of fair representation claims under section 20

of the *Act*. The Board also considered the allegation that the Employer committed any unfair labour practice. The Employee only identified section 20 of the *Act* as having been violated. Section 20 does not impose any duties upon employers. The application alleges that the Employer acted unfairly and contrary to the collective agreement. Such an allegation was not properly the subject of an unfair labour practice proceeding. Section 80 of the *Act* does provide that all collective agreements shall include a provision obliging the employer to administer the collective agreement in a manner which is reasonable, fair, in good faith and consistent with the collective agreement as a whole. This section, however, is not an unfair labour practice section. As such, the Employee's complaint that the Union and the Employer committed unfair labour practices was without merit and was dismissed pursuant to subsections 30(3)(c) and 140(8) of the *Act*. Therefore, the Board determined that the Employee unduly delayed in filing a complaint and further that the application was without merit.

Trailblazers Life Choices Inc. - and - Canadian Union of Public Employees - and - Mellissa Lehman
Case No. 391/08/LRA
June 11, 2009

UNFAIR LABOUR PRACTICE - Anti-union Animus - Union alleged Employee terminated for participation in organizing Union - Board assesses whether union participation or activity was present in mind of employer at time of decision to terminate - Employee discussing union matters with management representative on one or two occasions does not, standing alone, constitute unfair labour practice - Held decision to end employment relationship was due to concerns regarding performance after Employee's recent promotion.

The Union filed an unfair labour practice asserting that the Employer interfered with the right of the Employee to be a member of the Union; to participate in the activities of the Union; and to participate in the organization of the Union. The Employer asserted that the Employee was terminated for cause at which time she was paid severance wages of two weeks. In particular, the Employer asserted that the decision to terminate her employment was neither connected to nor did it arise out of any alleged union activities or participation in union activities.

Held: The Board does not function as surrogate arbitration board or court of law when assessing whether or not the reasons given for a termination meet tests which may be applicable in those other forums. The assessment of the reasons given go to establishing whether or not union participation or activity was present in the mind of the employer at the time or was one of the factors leading to the decision to terminate. The fact the Employee and a representative of the Employer may have, on one or two occasions, discussed union matters does not, standing alone, constitute an unfair labour practice. The Employer satisfied the Board that its decision to terminate the employment of the Employee was neither on account of nor influenced by the fact the Employee was a member of the Union; participated in the activities of the Union or was participating in the organization of the Union. In the two months since the Employee had been promoted, the Employer developed concerns regarding her performance and the decision to end the employment relationship was on account of those reasons. Critical to that finding was that for the last two months of her employment, the Employee never spoke of union matters with the Executive Director of the Employer. Therefore, the required nexus between the Employee's participation in union activities and her dismissal had not been established. Accordingly, the Application was dismissed.

Government of Manitoba / Manitoba Civil Service Commission / Organization and Staff Development; Jackie Desrochers, Anna Schmidt Beauchamp and Charlotte Elson - and - Marielle Huguette Marie Rowan
Case No. 327/08/LRA
June 17, 2009

JURISDICTION - Unfair labour practice application cited violations under *Employment Standards Code* and *Workplace Safety and Health Act* - Board functions only in an appellant role and does not possess any original jurisdiction for alleged breaches under *Code or Act*.

JURISDICTION - Unfair labour practice application cited violations under Respectful Workplace Policy, *Personal Investigations Amendment Act*; *Freedom of Information and Protection of Privacy Act* and *Human Rights Code* - Board has no jurisdiction to address complaints under or purported breaches of those statutes and policy.

UNFAIR LABOUR PRACTICE - *prima facie* - Employee claimed Employer violated Section 7 - First element of *prima facie* case established as Employer refused to continue to employ Employee beyond expiry of term appointment - Second element not established as Employee failed to provide facts to satisfy Board she engaged in activities or conduct described in Subsections 7(d), (e) and (h) of *Act* - Application dismissed.

PRACTICE AND PROCEDURE - Board's *Rules of Procedure* does not provide for filing of reply to a Reply.

The Employee alleged that during the time she was employed in a one-year term position the Employer violated various statutes and employment policies. She alleged that the actions complained of were contrary to and in violation of Subsections 7(d), (e) and (h) of *The Labour Relations Act*; various provisions of *The Workplace Safety and Health Act* (WSHA); the Employer's Respectful Workplace Policy (RWP); Sections 34(1) and 133(1) of *The Employment Standards Code* (ESC); certain provisions of *The Personal Investigations Amendment Act* (PIA); Sections 38 and 39(1) of *The Freedom of Information and Protection of Privacy Act* (FIPPA); and Sections 9(2) and 9(11) of *The Human Rights Code* (HRC). The Employee also filed a reply to the Employer's Reply to clarify, confirm and correct information.

Held: The *Manitoba Labour Board Rules of Procedure* do not provide for the filing of a reply to a Reply and the Board would address any challenges taken by the Employer to its filing and would determine what weight, if any, should be placed on such a reply.

The Employee did not provide any facts in the Application which alleged that she had been terminated, laid off or otherwise discriminated against for one or more of the reasons outlined in Subsections 133(1)(a) and (f) of the *ESC*. The Board does not possess any original jurisdiction in respect of alleged breaches under Section 34(1) of the *ESC* or complaints under the *WSHA*. The Board functions only in an appellant role under the *Code* in respect of decisions made by the Employment Standards Division or from decisions made either by a Safety and Health Officer or the Director of the Workplace Safety and Health Division. The Board has no jurisdiction to provide relief under the *HRC* which falls within the purview of the Human Rights Commission. The Board had no jurisdiction to address complaints under or purported breaches of the RWP, the *PIA* or the *FIPPA*. The *PIA* and the *FIPPA* outline the processes to be followed and remedial relief available under those statutes. The Employee only alleged a breach of Subsections 7(d), (e) and (h) of *The Labour Relations Act*. To establish a prima facie case, the Employee must establish two elements. The first element to be established was that the Employer, as an objective fact, refused to employ, discharged from employment, refused to continue to employ or discriminated in regard to employment in respect of the Employee. At a meeting held two weeks prior to the end of the term, the Employee became aware that her term would not be extended which was confirmed in writing. Accordingly, the Board accepted that the Employer refused to continue to employ the Employee beyond the expiry of her term appointment, and that was sufficient to establish the first element of a *prima facie* case. To establish the second element, the Employee had to satisfy the Board she was engaged in one or more of the activities or forms of conduct described in Subsections 7(d), (e) and (h) of the *Act*. The Employee did not provide any facts which would allow the Board to conclude that she had made a complaint or filed an application under the *Act* or any other Act of the Legislature prior to or at the time the term appointment expired, that she had testified or may testify in a proceeding under the *Act* or any other Act of the Legislature, or that she had exercised or was exercising her rights under the *Act* or any other Act of the Legislature. The Board dismissed her application.

Government of Manitoba / Manitoba Civil Service Commission / Organization & Staff Development - and - Manitoba Government and General Employees' Union - and - Marielle Huguette Marie Rowan
Case No. 396/08/LRA
June 17, 2009

UNFAIR LABOUR PRACTICE - Anti-Union Animus - Membership - Appendix "A" to Master Agreement specifically excluded staff of Civil Service Commission from scope of Master Agreement - Applicant not entitled to union representation in respect of her dealings with the Employer at material times referred to in Application.

The Employee filed an unfair labour practice application seeking remedies against the Employer for alleged unfair labour practices contrary to Sections 5(1) and 5(3) of *The Labour Relations Act.* The Employee asserted that the Employer interfered with her right to be a member of a Union and thereby denied her the right to be represented by the Union in respect of certain events while she was employed in an Organization & Staff Development Clerk 3 position at the Civil Service Commission.

Held: After the Employee accepted a term position with the Civil Service Commission, she was excluded from the terms of the Master Agreement between the Union and the Province of Manitoba by reason of Appendix "A" to the Master Agreement. Appendix "A" specifically lists Staff of the Civil Service Commission as being excluded from the scope of the Master Agreement. In accordance with well-accepted labour relations principles, the Applicant was not entitled to union representation, as a matter of right, in respect of her dealings with the Employer at the material times referred to in the Application and while she was employed as an OSD Clerk 3 by the Civil Service Commission. In the result, the Employee had not established a *prima facie* case that the Employer interfered with one or more of the rights referred to in Section 5(1) of the *Act*. Accordingly, the Board declined to take any further action on the Application pursuant to Section 30(3)(c) of the *Act* and dismissed the application.

City of Winnipeg - and - Canadian Union of Public Employees, Local 500 - and - Darren Berg
Case No. 131/09/LRA
July 22, 2009

DUTY OF FAIR REPRESENTATION - TIMELINESS - Employee alleged Union acted in discriminatory manner and in bad faith with regards to reclassification grievance - Last event Employee relied upon occurred more than two years prior to filing of Application - Application dismissed pursuant to Section 30(3) of *The Labour Relations Act* for unreasonable delay - Substantive Order.

The Employee filed an Application seeking various remedies for an alleged unfair labour practice contrary to Section 20 of *The Labour Relations Act*. The Employee alleged that the Union breached the provisions of Section 20(b) of the *Act* in respect of a number of events relating to the reclassification of the Utility "C" classification to the Building Services I classification. He alleged that, from January 2001, when the reclassification(s) occurred, up to and including November 27, 2006, when the Employee attempted to file a grievance concerning the reclassification, the Union acted in a discriminatory manner and in bad faith. The Union asserted that the Application was untimely and ought to be dismissed for undue delay, pursuant to Section 30(2) of the Act.

Held: The core events upon which the Employee relied crystallized in January 2001. The other events to which he referred in the Application occurred in 2003 and 2004, and the latest event occurred on or about November 27, 2006, when the Employee prepared a grievance. The explanations offered by the Employee for the delay were inadequate in that all of the events upon which the Employee relied, commencing in 2001, were clearly known to the Employee at those times and he was aware of his rights under the applicable collective agreement. The last event upon which the Employee relied occurred more than two years prior to the filing of the Application. Therefore, the Board dismissed the application, pursuant to Section 30(3) of the *Act* on account of unreasonable delay in the filing of the Application.

International Union of Operating Engineers, Local 987 - and - Fred Tait
Case No. 195/09/LRA
July 24, 2009

FINANCIAL DISCLOSURE - UNION - Financial Statements Disclosure - No requirement under Section 132.1 of *The Labour Relations Act* that union's financial statement be signed by auditor and/or that method of audit be described - Act requires statement be certified to be true copy by union's treasurer or other officer responsible for handling and administering its funds - Statement certified by Financial Secretary and Treasurer of Union fulfilled requirement of Act - Substantive Order.

FINANCIAL DISCLOSURE - UNION - Financial Statements Disclosure - Financial statement not inadequate for not disclosing full list of Union's assets or appreciated or depreciated value of assets or liabilities - Substantive Order.

FINANCIAL DISCLOSURE - UNION - Scope - Financial Statements Disclosure - In view of delay in providing 2007 Financial Statement, Employee requested Board establish time frame for Union to provide copy of 2008 Financial Statement - Board declined request as Application was related to adequacy of 2007 Statement - Application dismissed - Substantive Order.

The Employee filed an Application with the Manitoba Labour Board pursuant Section 131.1(5) of *The Labour Relations Act* alleging that the financial statement furnished to him by the Union was inadequate in that it did not contain an attachment signed by the Auditor describing the method of audit and, therefore, the Employee considered the Statement to be unverified. The Employee alleged that the Statement did not provide a list of the Union's assets or the appreciated or depreciated value of such assets or liabilities. Further, in view of the delay in providing the 2007 Statement, the Employee requested that the Board establish a time frame for the Union to provide to its members a copy of the 2008 financial statement.

Held: There is no requirement in Section 132.1 of the *Act* that a union's financial statement must be signed by an auditor and/or that the method of audit must be described. The *Act* requires that a statement must be certified to be a true copy by the union's treasurer or other officer responsible for handling and administering its funds. In this regard, the Board was satisfied that the Statement, as certified by the Financial Secretary and Treasurer of the Union, fulfilled that requirement of the *Act*. The Board was further satisfied that the Statement adequately set out the Union's income and expenditures for its 2007 fiscal year and adequately disclosed the Union's financial condition and operation and the nature of its income and expenditure, as required by Section 132.1(2) of the *Act*. The Statement was not inadequate by reason of the fact that it did not disclose a full list of the Union's assets or the appreciated or depreciated value of such assets or liabilities. In respect of the Employee's request that the Board establish a time frame for the Union to provide its members with a copy of the financial statements for 2008, the Board declined to do so because the basis of the Application was related to the adequacy of the 2007 Statement provided by the Union. Therefore, the Board dismissed the Application.

Assiniboine Regional Health Authority - and - Canadian Union of Public Employees, Local 4593 - and - Shelley Genovey, Janet Husak, Leanne Kennedy, Geneva Lindsey, Brenda Patterson, Kathy Waldner, Judie Webb & All Other Employees Represented by the Applicant Union
Case No. 120/08/LRA
July 24, 2009

UNFAIR LABOUR PRACTICE - ARBITRATION - Interference - Employer, without notice to Union, posted memo to bargaining unit stating it would not implement Arbitration Award as it was pursuing judicial review - Deferral of Award pending judicial review "demonstrably bargainable" - Not permissible for employer to unilaterally determine Award not to be complied with and to communicate that directly to bargaining unit, absent consent of Union, without court first issuing stay of arbitrator's decision - . Held Employer interfered with Union and committed unfair labour practice.

UNFAIR LABOUR PRACTICE - ARBITRATION - Change in Working Conditions - Arbitration Award found Employer failed to properly interpret and apply annual vacation entitlement - Arbitrator's interpretation of vacation provisions of collective agreement constituted terms and conditions of employment - Employer's statement that it was not following Award effectively constituted change to terms and conditions of employment.

An Arbitration Award was issued allowing the Union's grievance claiming that the Employer failed to properly interpret and apply one or more provisions in the collective agreement pertaining to annual vacation entitlement. The Employer sought judicial review of the Award. It posted on its premises a memorandum addressed to "All Staff in CUPE Bargaining Unit" which stated that it would not be implementing the Award at that time as it would be pursuing a judicial review of the matter. The Union filed an unfair labour practice application asserting that the Employer violated subsection 6(1) of *The Labour Relations Act* when it posted the memorandum. It argued that the Employer's direct communication with employees in the bargaining unit constituted an interference with its exclusive representation rights.

Held: The vacation provisions of the collective agreement, as interpreted by the Arbitrator, constituted terms and conditions of employment. An edict that an arbitration decision will not be followed effectively constituted a change to the terms and conditions of employment. The certified bargaining agent's monopoly on collective representation extended to the implementation and application of the collective agreement. The Union was essentially caught by surprise by the decision of the Employer and the manner in which it communicated that message to employees. The issues relating to the implementation of the Arbitrator's Award, or its deferral pending judicial review, were "demonstrably bargainable" and the Employer ought to have engaged the Union in a discussion before it took unilateral steps to declare that the Arbitrator's Award would not be implemented as written. An employer need not advise a union that it intended to seek judicial review of an arbitration decision prior to filing its Application in Court. However, it was not permissible for an employer to unilaterally determine that an arbitral award would not be complied with and to communicate that determination directly to bargaining unit employees, absent consent of the bargaining agent, without a court first issuing a stay of the arbitrator's decision. A violation of subsection 6(1) did not necessarily require proof of ill-intent, anti-union animus or other pejorative motive. In acting as it did, unilaterally and without notice to the Union, and communicating directly with the employees in the bargaining unit, the Employer committed an unfair labour practice contrary to subsection 6(1) of the Act. The Board ordered the Employer to post a copy of the Order where it posted the Memorandum.

Howard Johnson Hotel - and - United Food and Commercial Workers Union, Local No. 832
Case No. 204/09/LRA
August 10, 2009

PRACTICE AND PROCEDURE - DUTY TO BARGAIN IN GOOD FAITH - Hearings - Employer did not file Reply opposing or disputing Union's allegations - Oral hearing not convened as facts recited in Application, verified by statutory declaration, stood uncontested - Substantive Order.

DUTY TO BARGAIN IN GOOD FAITH - Employer failed to respond or meet with Union and conciliation officer after several attempts by Union and officer - Held Employer failed to bargain collectively in good faith and make every reasonable effort to conclude renewal or revision of agreement contrary to Section 63(1) of *The Labour Relations Act* - By failing to meet at all with Union, Employer committed unfair labour practice contrary to Section 26 of the *Act* - Substantive Order.

DUTY TO BARGAIN IN GOOD FAITH - REMEDY - Employer failed to bargain in good faith directed to commence collective bargaining with Union not later than 10 days from date of Order; pay Union $2,000 pursuant to Section 31(4)(e) of *The Labour Relations Act;* cease and desist conduct determined to constitute unfair labour practice; and post copy of Order in location accessible to all employees in bargaining unit - Substantive Order.

The Union gave proper notice to negotiate a renewal of the collective agreement. Its numerous attempts to schedule dates to begin negotiations with the Employer were unsuccessful. A conciliation officer did not receive any response from the Employer, despite several attempts. The Union filed an application alleging that the Employer failed to meet and commence collective bargaining; failed to bargain in good faith and failed to make a reasonable effort to conclude a renewal of the collective agreement. The Application was served on the Employer together with a Notice of Hearing. The Employer did not file a reply to the Application, as per Rule 22(1) of the Board's *Rules of Procedure.*

Held: Noting that the Employer had not filed a Reply opposing or disputing the allegations raised, an oral hearing was not convened as the facts recited in the Application, verified as they were, by statutory declaration, stood uncontested. The Board determined that, in failing to respond to or meet with the Union and the conciliation officer, the Employer failed to bargain collectively in good faith and make every reasonable effort to conclude a renewal or revision of the agreement, contrary to Section 63(1) of the *Act.* The Board declared that the Employer committed an unfair labour practice, contrary to Section 26 of the *Act,* by having failed to meet at all with the Union. The Board directed that the Employer not later than 10 days from the date of the Order, meet with the Union and commence collective bargaining in good faith and make every reasonable effort to conclude a renewal of the Agreement; that the Employer pay to the Union $2,000 pursuant to Section 31(4)(e) of the *Act;* that the Employer cease and desist the conduct that had been determined to constitute an unfair labour practice; that a copy of the Order be posted at its premises in a conspicuous location which is accessible to all employees in the bargaining unit covered by the Agreement.

City of Winnipeg and Employee Benefits Board - and - Amalgamated Transit Union, Local 1505 - and - Michael Chartrand
Case No. 193/09/LRA
August 19, 2009

DUTY OF FAIR REPRESENTATION - EMPLOYER - Proper Party - Employee Benefits Board asserted it should be removed as party from Application submitting it was not Employer - Held Benefits Board was not Employer and functioned as independent entity for purposes of administering benefit programs - Employee's rights of appeal in administration of employee benefit did not arise under terms of *The Labour Relations Act* or collective agreement - Board had no jurisdiction in proceedings before Benefits Board - Substantive Order.

DUTY OF FAIR REPRESENTATION - JURISDICTION - Employee claimed Union failed to assist him in filing application for long-term disability benefits with the Employee Benefits Board - Employee's rights of appeal in administration of employee benefit did not arise under terms of *The Labour Relations Act* or collective agreement - Board had no jurisdiction in proceedings before Benefits Board - Substantive Order.

DUTY OF FAIR REPRESENTATION - Scope of Duty - Employee had not been member of bargaining unit since ten months before Application filed - Union did not owe him duty pursuant to Section 20 of *The Labour Relations Act* as it was no longer his bargaining agent - Employee failed to establish *prima facie* case - Substantive Order.

The Employee filed a duty of fair representation application. He claimed that after the Union assisted him with the settlement of a grievance he filed, it failed to assist him in filing and processing a new application for long-term disability benefits with the Employee Benefits Board (the EBB). As to remedial relief, he asserted that the Union should be held responsible to get him a hearing with the EBB. The EBB asserted that it should be removed as a party from the Application because it was not the Employer. The Union alleged that, by the time the Settlement Agreement was executed, the Employee had been accommodated into a position outside the bargaining unit and, as such, was no longer a member of the Union.

Held: The Board accepted that the primary position being advanced by the Employee was that he ought to have the right to return to a hearing before the EBB, where new medical evidence could be filed and assessed

by the EBB. The Board was satisfied that the EBB was not the Employer and it functioned as an independent entity for the purposes of administering benefit programs including the long term disability plan. Whatever remedies and/or rights of appeal the Employee may have in respect of the administration of the employee benefit did not arise under the terms of *The Labour Relations Act* or the collective agreement and the Board had no jurisdiction in respect of proceedings that may be brought before the EBB. The Employee was had not been a member of the bargaining unit since ten months before the application was filed. The Union did not owe the Employee a duty pursuant to Section 20 of the *Act* as it was no longer his bargaining agent. The Employee failed to establish a *prima facie* case. Therefore, the Board dismissed the application.

Buhler Trading - and - United Steel, Paper & Forestry, Rubber, Manufacturing, Energy, Allied Industrial & Service Workers International Union (United Steelworkers), Local 9074-33 - and - Bryan McDonald
Case No. 227/09/LRA
August 28, 2009

PRACTICE AND PROCEDURE - DECERTIFICATION - EMPLOYEES - Board determined employees on layoff with recall rights under the collective agreement as of date Decertification Application filed were employees for purposes of determining level of support pursuant to subsection 49(1) of *The Labour Relations Act* - Substantive Order.

The Employee filed an Application Seeking Cancellation of the Certificate of the Union. The Employee took issue with the Employer's Nominal Roll contesting the number of employees noted on the Nominal Roll. He stated that a number of employees' names noted on the Nominal Roll were not employed on the date of Application. The Employer's Nominal Roll listed 59 employees as of the date of the Application, 25 of who were on "lay-off status". The Union stated that the laid-off employees had a continuing interest in the bargaining unit, and had significant rights under the collective agreement and maintained those employees should be considered to be within the bargaining unit for the purposes of subsection 49(1) of The Labour Relations Act.

Held: The Board determined that employees, who were on layoff and who had recall rights under the collective agreement, as of the date of filing a Decertification Application, were employees for the purposes of determining the level of support pursuant to *The Labour Relations Act*. Those individuals on lay-off status had a continuing interest under the collective agreement and they remained "employees" in the bargaining unit, as of the date of the Application, for the purposes of subsection 49(1) of the *Act*. As those employees on lay-off were determined to be part of the bargaining unit, then the Employee failed to demonstrate the support of a majority of the employees in the bargaining unit. Accordingly, pursuant to subsection 50(1) of the *Act*, the Application was dismissed.

International Union of Operating Engineers, Local 987 - and - Fred Tait
Case No. 229/09/LRA
September 11, 2009

FINANCIAL DISCLOSURE - Employee alleged Union violated Section 132.1(1) of *The Labour Relations Act* by failing to provide him with copy of its 2007 financial statement by December 31, 2008 - Held Section 132 of *Act* does not establish time frame union must provide copy of financial statement for latest fiscal year - Employee was in essence requesting Board establish retroactive and mandatory time limit for when 2007 Statement ought to have been furnished - Application dismissed - Substantive Order.

FINANCIAL DISCLOSURE - Employee requested Board order establishing date Union must provide members with 2008 Financial Statements - Section 132 of *The Labour Relations Act* does not establish time limit for Union to provide copy of financial statements - Board accepted 2008 statements still being prepared and would be furnished within reasonable time following receipt by Union - Based on facts of case, no basis for Board to issue pre-emptive order - Application dismissed - Substantive Order.

PRACTICE AND PROCEDURE - Res judicata - Employee filed Application alleging Union delayed to provide him with copy of 2007 Financial Statements - Union asserted current Application was *res judicata* given Board's dismissal of Employee's application filed prior to one in question - Held prior application, which related to adequacy of Statement, referred to time taken to provide Statement but did not seek order addressing issue of delay - Substantive Order.

The Employee filed an Application alleging that the Union was in violation of Section 132.1(1) of *The Labour Relations Act* by failing to provide him with a copy of its financial statement for fiscal year ending December 31, 2007 by December 31, 2008. Further, he requested that the Board issue an order establishing the date the Union must provide a copy of its 2008 statement. The Union asserted that due to delays beyond its control, it did not obtain a final copy of the 2007 statement until May 2009 and that a copy of the statement was furnished to the Employee shortly thereafter. The Union asserted, that, by reason of the Board's dismissal of the Employee's application filed prior to one in question, the Application was *res judicata*.

Held: Although the Employee referred to the time it took for the Union to provide him with the 2007 Statement in the prior application, the Employee did not seek an order addressing the issue of delay *per se*. That Application related to the adequacy of the 2007 Statement. In the current application, the Employee sought an order that the Union was in violation of Section 132.1(1) of the *Act* by failing to provide a copy of the 2007 Statement to the Employee on or prior to December 31, 2008. Section 132 of the *Act* does not establish any time frame within which a union must provide a member with a copy of its financial statement for the latest fiscal year. In the prior Application, the Board found that the 2007 Statement provided to the Employee met the requirements of Section 132.1 of the *Act*. Having made its determination in the earlier application, the Board was satisfied that it had determined all outstanding issues relating to the 2007 Statement and there was no valid basis for the Board to determine that the 2007 Statement ought to have been provided to the Employee on or before December 31, 2008. In seeking such an order the Employee was, in essence, requesting that the Board establish a retroactive and mandatory time limit for when the 2007 Statement ought to have been furnished. As to the Employee's request that the Board determine a date when the Union must provide the 2008 Financial Statement to its members, the Board accepted the Union's statement that the 2008 Statement was still being prepared and that it would furnish the Employee with a copy within a reasonable time following its receipt by the Union. As Section 132 does not establish a defined time limit for the providing of financial statements, the Board was satisfied that it ought not to set predetermined time limits on its own motion. Each case must be decided on its own facts. Based on the documentation before the Board, there was no basis for the Board to issue a pre-emptive order regarding the 2008 financial statements. Therefore, the Application was dismissed.

Burntwood Regional Health Authority - and - Manitoba Association of Health Care Professionals
Case No. 241/09/LRA
September 16, 2009

ARBITRATION - Deferral to - Union filed Application that Employer interfered with Union's rights by entering into direct negotiations with two Midwife Instructors detailing terms and conditions of employment and secondment agreement without Union's participation - Held matter could adequately be determined under provisions of collective agreement for final settlement of disputes and deferred matter to arbitration process pursuant to Section 140(7) of *The Labour Relations Act* - Substantive Order.

The Union filed an Application seeking various remedies for an alleged unfair labour practice. It alleged that the Employer hired two Midwife Instructors, entered into direct negotiations with them, and executed agreements detailing the terms and conditions of their employment without the participation of the Union. The Union further says that the Employer proceeded to second the two instructors to a different employer without consultation or negotiation with the Union. The Union says that the actions of the Employer interfered with the Union's right to represent employees, contrary to Section 6(1) of *The Labour Relations Act*.

Held: The matters raised in the Application regarding the Employer's decision to post, fill and then enter into the Secondment Agreements for Midwife Instructors can be raised through the grievance and arbitration

procedure under the Agreement and, in fact, the Union did file the grievance pertaining to Midwife Instructors one day prior to the filing of the Application with the Board. It is not the role of the Board to function as a surrogate arbitrator in respect of a matter that can be adequately determined under the provisions of a collective agreement for the final settlement of disputes between the parties. Accordingly, the matter ought to be referred to the arbitration process as defined in the Agreement, pursuant to Section 140(7) of the Act, which provides, in part, that "the Board may refuse to hear or continue to hear any matter which it considers can be adequately determined under the provisions of a collective agreement for final settlement of disputes between the parties." Therefore, the Board declined to hear the Application and deferred the matters raised to the grievance and arbitration provisions of the collective agreement.

Triple Seal t/a Northwest Glass Products - and - United Food and Commercial Workers Union, Local No. 832 - and - Lori Bryson, Henry Bucci, Janet Crawley, Ricardo Galima, Michael Hrabi, Richard McClurg, Dustin Morrison, David Strickland, Dwight Syms, Webster Tobias
Case No. 34/09/LRA
October 2, 2009

UNFAIR LABOUR PRACTICE - ORGANIZATIONAL CAMPAIGN - Anti-Union Animus - Discharge - Union Activity - Union alleged discharges retaliatory move by Employer against employees whom it believed were involved in application for certification - Nature of Employer's investigation, conclusions it reached; timing of its decision to terminate Employee two months after event; placing reliance on witness whose testimony contradictory and unreliable; failure to call other witnesses led Board to conclude Employer failed to discharge its onus Employee's union activity was not a reason for termination - However, decisions to terminate other employees based on insubordinate conduct, concerns with absenteeism, or for engaging in prohibited conduct during break while on Employer's property - Substantive Order.

UNFAIR LABOUR PRACTICE - ORGANIZATIONAL CAMPAIGN - Anti-Union Animus - Lay-off - Union alleged layoff of employees while junior employees were kept employed disclosed anti-union animus - Held lay offs based on bona fide shortages of work and Employer utilized absenteeism and disciplinary records as criteria for selecting employees to be laid off - Substantive Order.

UNFAIR LABOUR PRACTICE - ORGANIZATIONAL CAMPAIGN - CHARTER OF RIGHTS AND FREEDOMS - Freedom of Expression - Employer Communication - Employer posted notices in workplace focusing on union dues payable and cost to employees for strike action - Notices urged employees to vote "No" - Communications neither objective statements of fact nor expressions of opinion reasonably held with respect to employer's business and clear expression that Employer did not want a union which violated neutrality required of employers under *The Labour Relations Act* - Substantive Order.

The Union alleged a number of employees were not dismissed for just cause but as a result anti-union animus and as a retaliatory move by the Employer against employees whom it believed were involved in the application for certification and for being supporters of the Union. The Union also alleged that the temporary or permanent layoff of a number of employees while keeping junior employees in its employ disclosed an anti-union animus by the Employer. The Union further asserted that the Employer posted notices in the workplace which went beyond the permissible limits of lawful communication to employees.

Held: With respect to the notices posted, three of the communications focused on the amount of union dues that would be payable and the fourth communication focused on what strike action of varying weeks in length would cost the employees with no mention made of the legal requirement that the Union would be required to conduct a strike vote. All of the communications urged the employees to vote "No". The communications were neither objective statements of fact nor expressions of opinion reasonably held with respect to the employer's business. The communications were clearly expressing to the employees that the Employer did not want a union which violated the neutrality required of employers under *The Labour Relations Act*. The Board declared that the posting of the notices constituted an unfair labour practice, contrary to Section 6(1) of

the *Act*. The Board ordered the Employer pay the Union $2,000 pursuant to Section 34(1)(f) of the *Act* and that the Employer cease and desist from issuing such communications to the employees.

As to most of the terminations alleged to result from anti-union animus, the Board was satisfied that the decisions to terminate were based on insubordinate conduct, concerns with absenteeism, or for engaging in prohibited conduct while on a break on Employer property. The terminations were not related, in any way, to involvement with or participation in Union activities. However, the Board declared that the Employer discharged one of the employees contrary to Section 7 of the *Act.* The nature of the investigation conducted by the Employer at the time of the event; the conclusions the Employer reached; the timing of its decision to terminate his employment two months after the event; its placing reliance on a witness whose testimony before the Board was contradictory and unreliable; the failure to call other witnesses led the Board to conclude that the Employer had failed to discharge its onus, on the balance of probabilities, that the employee's union activity was not one of the reasons for his termination. The Board ordered the Employer to compensate the employee for any loss of income and other employment benefits from the date of his termination until the date of the closure of the Employer's operations.

The Employer discharged its onus under Sections 7 and 9 of the *Act* in that both the temporary and/or permanent lay offs of these employees were based on bona fide shortages of work and that the Employer utilized the absenteeism and disciplinary records of the employees as the criteria for selecting the employees who should be laid off.

Triple Seal Ltd., t/a Northwest Glass Products - and - United Food and Commercial Workers Union, Local No. 832
Case No. 379/08/LRA
October 2, 2009

UNFAIR LABOUR PRACTICE - REMEDY - Interference - Memorandum posted by Employer included statement to employees to vote "no" in potential representation vote not form of communication protected by Section 6(3)(f) of *The Labour Relations Act* and went beyond permissible limits of freedom of speech contemplated by Section 32(1) of the *Act* - Declaration that Employer violated section 6(1) of the *Act* and committed unfair labour practice - Employer ordered to pay Union $2000 pursuant to Section 31(4)(f) of *The Labour Relations Act*, to cease and desist issuing similar communications and post Order at workplace - Substantive Order.

The Union filed an unfair labour practice application contrary to Section 5(1), 5(3), 6(1) and 17 of *The Labour Relations Act*. It alleged that the Employer posted a memorandum in the workplace and went beyond what is acceptable communication with employees and constituted an improper attempt by the Employer to unduly influence any certification vote that the Board may order.

Held: The statements and views expressed by the Employer in the memorandum were not a form of communication protected by Section 6(3)(f) of the *Act* and, further, the memorandum went beyond the permissible limits of freedom of speech contemplated by Section 32(1) of the *Act*. The statements made in the memorandum, including the clear exhortation to employees to vote "no", in anticipation of a potential vote to be ordered by the Board, constitutes a violation of Section 6(1) of the *Act*. Therefore, the Board declared that the Employer committed an unfair labour practice contrary to Section 6(1) by posting the memorandum in the workplace. The Board ordered the Employer to pay the Union $2,000 pursuant to Section 31(4) (f) of the Act. It also ordered the Employer to cease and desist from issuing such communications to its employees and to post the Order at a conspicuous location in its workplace.

Triple Seal Ltd. - and - United Food and Commercial Workers Union, Local No. 832
Case No. 362/08/LRA
October 2, 2009

UNFAIR LABOUR PRACTICE - ORGANIZATIONAL CAMPAIGN - Coercion - Employer filed application claiming Union intimidated, coerced, and threatened employees during organizational campaign -

Employer relied on incident where union organizer physically assaulted and threatened fellow employee - Held altercation was isolated incident between two employees - No evidence of Union misconduct and no employee filed any objection - Application dismissed - Substantive Order.

The Employer filed an unfair labour practice application claiming that the Union intimidated, coerced, and threatened employees during the organizational campaign contrary to Section 19 of *The Labour Relations Act*. In particular, the Employer relied on an incident between two employees. The Employer alleged that one employee, a union organizer, physically assaulted a fellow employee and threatened him and his family for the purposes of preventing employees not supporting the union from freely exercising their rights under the *Act*.

Held: The Employer had not satisfied its onus to establish, on the balance of probabilities, that the Union either before or after the filing of the Application for Certification engaged in either any or a pattern of intimidation, coercion or threats, contrary to Section 19(d) of the *Act,* for the purpose of preventing employees not supporting the Union from freely exercising their rights under the *Act*. The incident, which occurred between the employees shortly after both employees had left work, was an isolated incident between two individual employees. There was no evidence whatsoever of any pattern of misconduct on the part of the Union pre dating the filing of the Application for Certification which would cast any doubt on the membership evidence filed by the Union in support of the Application for Certification. The Board also noted that no employee filed any objection under Section 47(2) of the *Act*. Accordingly, the Board found that the Application should be dismissed.

Health Sciences Centre - and - Manitoba Association of Health Care Professionals - and - Nancy Sakuth
Cases No. 104/09/LRA & 190/09/LRA
October 7, 2009

DUTY OF FAIR REPRESENTATION - Failure to process grievance - Employee asserted Union would take no action on her complaint Employer owed her further payment and benefits from her graduated return to work - Employee and her father discussed her concerns with Union on number of occasions and were advised Union's view that Employer was correct and acting in compliance with collective agreement - Held Application did not disclose facts that Union's decision not to proceed was based on improper considerations, irrelevant factors, hostility, ill-will, discrimination, indifference, or capriciousness - Prima facie case not disclosed - Application dismissed.

The Employee filed a duty of fair representation application under section 20(b) of *The Labour Relations Act.* She claimed she was owed further payment and benefits from the Employer during her graduated return to work. She asserted that the Union would take no action with respect to her complaint that she was not paid all monies owing to her by the Employer. She spoke to one of the Union's Labour Relations Officers and was advised that, in the Union's view, the Employer had not made any mistake and did not owe her additional pay. The Employee's father also contacted the Labour Relations Officer and was advised that the Employer's practice regarding pay during the "Graduated Return to Work Program" was consistent with Article 2205 of the collective agreement. The Employee's father also discussed the issue with the President of the Union who confirmed that the Union could not "take any action" on behalf of the Employee.

Held: The scope of the duty of fair representation in cases not concerning dismissal is limited to acting in a manner which is not arbitrary, discriminatory or in bad faith. There was no evidence that the Union acted in a manner which was arbitrary, discriminatory, or in bad faith as those terms have been characterized by the Board. The material filed by the Employee revealed that she applied for and received benefits from the Healthcare Employees Benefit Plan under the "Disability & Rehabilitation Plan" as provided for under the collective agreement. The Employee participated in discussions regarding her Return to Work Program with the Union and the Employer and she agreed to the Program's written Guidelines. The Application also noted that she and her father discussed her concerns with the Union on a number of occasions and they were advised that the Union's view was that the Employer was correct and acting in compliance with the collective agreement and, accordingly, the Union was not prepared to take further action. The Application did not

disclose any facts that suggested that the decision of the Union not to proceed with the Employee's issue was based on any improper considerations, irrelevant factors, hostility, ill-will, discrimination, indifference, capriciousness, or any other conduct prohibited by Section 20(b) of the *Act*. The Board determined the application did not disclose a *prima facie* case and dismissed the Application.

United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of US and Canada, Local 254 - and - Dave Yallits
Case No. 271/09/LRA
October 15, 2009

FINANCIAL DISCLOSURE - Union denied Employee's request for copy of financial statement but advised he could attend Union's office to review statement - By Section 132.1(1) of *The Labour Relations* Act, Union has mandatory obligation to provide member actual copy of financial statement - Simply advising member to attend Union's offices to review prepared financial statement was not in compliance with the *Act* - Substantive Order.

The Employee filed an application pursuant to Section 132.1 of *The Labour Relations Act* seeking an order requiring the Union to provide him with its financial statement for the year ending May 31, 2009. The Employee asserted that the Union denied his request for a copy of the financial statement, but advised that he could make an appointment to attend at the Union's office to review the financial statement. The Union asserted that it had not denied access to any financial statements to any member and that the past practice of the Union was that any member could arrange to attend at the Union's office to view and review any prepared financial statement.

Held: The Union failed to provide the Employee with a copy of the Union's financial statements as required by Section 132.1(1) of the *Act*. Section 132.1(1) states that there is a mandatory obligation on a union to provide any member who requests same with an actual copy of the financial statement of the union. Accordingly, whatever the past practice may have been, the Union must comply with the requirements of Section 132.1 and simply advising a member that he/she may arrange to attend at the Union's offices to review a prepared financial statement was not in compliance with the *Act*. Therefore, the Board declared that the Union had failed to comply with the mandatory requirements of Section 132.1(1) of the *Act* by having failed to provide the Employee, at his request, with a copy of the financial statement of the Union's affairs to the end of its last fiscal year. Pursuant to Section 132.1(3) of the *Act*, the Board directed the Union to file with the Board, not later than ten days from the date of the Order, a copy of the financial statement of its affairs to the end of its last fiscal year, verified by its treasurer or another officer responsible for handling and administering its funds; and to provide a copy of the financial statement to the Employee not later than ten days from the date of the Order.

TC Industries of Canada Company West - and - Local 9074-USW District 3 Representatives: Bob Church, Wayne Skrypnyk, David Zirk - and - Samuel W. Flett
Case No. 91/09/LRA
October 26, 2009

PRACTICE AND PROCEDURE - TIMELINESS - Undue Delay - Employee filed unfair labour practice application 16 months following date he alleged he was terminated in contravention of *The Labour Relations Act* - Board interprets "undue delay" to mean periods of up to approximately six to eight months - Application dismissed for undue delay- Substantive Order.

The Employee filed an application alleging that the Employer committed an unfair labour practice contrary to Section 7 of *The Labour Relations Act.* He claimed that the Employer terminated his employment, effective September 1, 2007, when it issued him a Record of Employment dated December 20, 2007, which he admitted receiving on December 27, 2007. The Employee claimed that his employment was terminated as a result of a workplace accident or injury and the subsequent filing of a workers compensation claim. The Employee did not file his application with the Board until April 1, 2009.

Held: Under subsection 30(2) of the *Act*, matters are not to be unduly delayed. The term "undue delay" has been interpreted by the Board to mean periods of up to approximately six to eight months. The Board was satisfied that the Employee filed the application long after he knew all of the facts and circumstances set out in the application in support of his position that the Employer committed an unfair labour practice by terminating his employment in December 2007. The delay in filing that complaint was greater than 16 months following the date upon which he alleged that he was terminated in contravention of the *Act.* Pursuant to section 30(2) of the *Act*, the portion of the application concerning the Employee's termination was dismissed. Therefore, the Board dismissed the Employee's application.

Weston Bakeries Limited - and - Dave Kabez, President and Larry Phillips, Business Manager, of BCTGM, Local No. 389 - and - Gary Lee Champagne
Case No. 251/09/LRA
October 30, 2009

DUTY OF FAIR REPRESENTATION - TIMELINESS - Scope of Duty - Employee claimed Union refused to assist him with Workers Compensation claim - Union under no statutory responsibility to represent claims pertaining to rights not derived from collective agreement - Application dismissed - Substantive Order.

PRACTICE AND PROCEDURE - TIMELINESS - Res judicata - Application advanced essentially for same complaints as in case filed month earlier - Principle of res judicata applied - Application also filed long after Employee aware of facts relied in support of complaints - As per Section 30(2) of *The Labour Relations Act,* Board refused to accept complaint for unduly delayed filing of more than six months - Application dismissed - Substantive Order.

The Employee filed an application seeking remedy for an alleged unfair labour practice contrary to Section 20 of *The Labour Relations Act*. He claimed that the Union refused to assist him with his Workers Compensation Board claim. He alleged, without any relevant particulars, that the Union and the Employer had colluded to "cover up" information regarding his Workers Compensation claim. He did not specify what, if any, grievance he wished the Union to file on his behalf or what provision of the collective agreement was allegedly breached by the Employer so as to give rise to a grievance. He filed a similar Application with the Board which was dismissed a month before he filed the present application

Held: Any complaint of the Employee alleging that the Union contravened section 20 of the *Act* when it failed to assist him with his Workers Compensation claims was without merit as the Union was under no statutory responsibility to represent him respecting claims pertaining to rights that were not derived from the collective agreement. Therefore, those complaints were dismissed pursuant to section 140(8) of the *Act*. To the extent that the Application disclosed any other complaints, the Board was not satisfied that the Applicant had demonstrated that the Union acted in a manner which was arbitrary, discriminatory or in bad faith as required to sustain a complaint under section 20(b) of the *Act*. The present Application advanced essentially the same complaints as in his previous case. The Board accepted that the principle of res judicata and dismissed those complaints. Furthermore, the present Application was filed long after he became aware of the facts upon which he relied in support of his complaints. Section 30(2) of the *Act* provided that the Board may refuse to accept a complaint where its filing had been unduly delayed which has been interpreted to mean periods of as little as six months. Accordingly, the Application was dismissed as it was untimely and otherwise without merit.

Manitoba Hydro - and - Canadian Union of Public Employees, Local 998 - and - Leo Kai Yen Wong
Case Nos. 114/09/LRA & 239/09/LRA
October 30, 2009

REVIEW AND RECONSIDERATION - Timeliness - Employee sought review of Dismissal Order dismissing duty of fair representation application for undue delay - Employee submitted he was

medically incapable of filing application sooner and also legal counsel advised Union may be of assistance with complaints he filed with other tribunals - Held Employee filed complaints with other tribunals related to same issues and ascribing priority to other complaints not acceptable explanation for unduly delaying filing Labour Board complaint - Also Employee made conscious decision to delay filing hoping Union would assist with complaint filed with Human Rights Commission - Review application dismissed.

The Employee filed a duty of fair representation application alleging that, between 1994 and 2007, the Union repeatedly failed to comply with section 20 of *The Labour Relations Act*. The Board dismissed the application for undue delay. The Employee filed a Review and Reconsideration Application. He submitted that, due to his documented disability and that he was off work in receipt of Long Term Disability benefits, he was "medically incapable" of filing his application in a timelier manner. In addition, the Employee retained legal counsel in November 2007 to prepare his duty of fair representation complaint. He stated counsel advised him that the Union might be of assistance in his Human Rights Commission complaint against the Employer.

Held: Undue delay has been interpreted by the Board to mean periods of as little as six months in duration. The Employee delayed advancing his claims from approximately 17 months to 15 years. The Board was not satisfied that the particulars and medical documentation which he provided established that his medical condition was such as to prevent him from filing a timely complaint. The particulars indicated that he filed a number of complaints and requests with various tribunals and government offices related to his employment and health issues in 2007 and 2008. Ascribing priority to other complaints or applications was not an acceptable explanation for unduly delaying in filing a complaint with the Labour Board. The Board also noted following consultation with counsel, the Employee made a conscious decision to delay filing his Application in hopes of gaining the Union's assistance with his complaint filed with the Human Rights Commission and not because he was medically incapable of filing a complaint with this Board. The Board dismissed the application for Review and Reconsideration as the Employee has not provided any new evidence or advanced any particulars or submissions sufficient to persuade it that its original decision should be reviewed or reconsidered.

Government of Manitoba, Manitoba Civil Service Commission, Organization & Staff Development, Jackie Desrochers, Anna Schmidt Beauchamp and Charlotte Elson - and - Manitoba Government and General Employees' Union -and- Marielle Huguette Marie Rowan
Case No. 256/09/LRA
November 5, 2009

PRACTICE AND PROCEDURE - Decision - Board denied request for Written Reasons as Dismissal Order adequately set out basis for Board decision - Substantive Order.

REVIEW AND RECONSIDERATION - Employee requested review of Dismissal Order alleging Board did not give weight to unfair workload distribution - Disputes relating to classification standards under *Civil Service Act* or workload distribution do not constitute unfair labour practices - Not a question as alleged that Board gave no weight to unfair workload issue but rather that Board determined workload issue not relevant consideration as to whether *prima facie* violation of unfair labour practice existed - Substantive Order.

PRACTICE AND PROCEDURE - Replies - Employee asserted perception of Board bias by not allowing filing of reply to Reply - Board noted all material filed placed before it and it did not meet with any party as Employee alleged - Board reached its conclusions following consideration of all materials filed by parties - Substantive Order.

REVIEW AND RECONSIDERATION - New Evidence - Review Application recasting of Employee's submissions made in initial application - Did not fall within parameters of Section 17(1) (a) or (b) of the Board's *Rules of Procedure* regarding "new evidence" unavailable at time initial application was filed - Application for review dismissed - Substantive Order.

DUTY OF FAIR REPRESENTATION - REVIEW AND RECONSIDERATION - Employee claimed Employer led her to believe she was employed within scope of collective agreement - In Dismissal Order, Board found Employee not entitled to union representation while employed by Civil Service Commission because staff excluded from terms of Master Agreement - Employee's disagreement with negotiated exclusion not relevant - Substantive Order.

Lockerbie & Hole Eastern Incorporated - and - International Union of Operating Engineers, Local 987 ("Union") - and - Construction & Specialized Workers' Union, Local 1258 (the "Labourers")
Case No. 130/09/LRA
November 6, 2009

VOLUNTARY RECOGNITION - Construction Industry - Union claimed voluntary recognition as bargaining agent - Oral understandings between Employer and Union to follow employers association agreement did not constitute collective agreement within the meaning of *The Labour Relations Act* as Employer not member of employers association and no written agreement in any form.

COLLECTIVE AGREEMENT - Existence - Collective agreement must be in writing but need not take particular written form, may be contained in one or more documents, and may be written agreement to incorporate terms of another collective agreement - As no written agreement between Employer and Union, no term certain for Board to define open/closed periods for third party applications for certification.

APPLICATION FOR CERTIFICATION - Bar - Time - Labourer's union claimed voluntary recognition so Engineers union barred from applying for certification - Board determined collective agreement did not exist as there was no written form of agreement between Labourers and Employer - As per Section 34(2) of *The Labour Relations Act,* where no collective agreement in force and no certified bargaining agent then application for certification may be made at any time - Certification application timely.

APPLICATION FOR CERTIFICATION - Fraud - Intervenor failed to establish Union committed fraud in solicitation of membership cards - Employees completed information on membership cards prior to signing in presence of witness and cards expressly stated that application for certification contemplated and Union seeking to bargain collectively on behalf of employees who signed cards. COLLECTIVE AGREEMENT - RATIFICATION - CONSTRUCTION INDUSTRY - UNION - Hiring Hall - Intervenor claimed voluntary recognition - Union applying for certification argued no ratification by employees pursuant to the mandatory requirements of Sections 69(1) and 69(2) of *The Labour Relations Act* - Board satisfied that ratification of union hiring hall province-wide collective agreement in construction industry negotiated by bona fide recognized employer's organization can be accomplished through secret ballot vote cast by members of union at time province-wide agreement negotiated.

APPROPRIATE BARGAINING UNIT - Union applied for craft unit - Board determined appropriate bargaining unit defined as all labourers because Employer did not, at time Application filed, nor in normal course, directly employ crane operators and apprentices, heavy equipment operators, mechanics or servicemen as applied for by Union.

The Union filed an Application for Certification for a craft unit of all crane operators and apprentices, heavy equipment operators, operators/labourers, mechanics and servicemen. The Employer opposed the Application asserting that the bargaining unit was already represented by the Labourers. The Labourers filed a Notice of Intervention claiming the Employer had voluntarily recognized it to represent employees of the bargaining unit contained in the collective agreement between the Labourers and Masonry Labourers Contractors Trade Division of The Construction Labour Relations Association of Manitoba (the CLRAM). The Labourers therefore asserted that the Application was untimely pursuant to Section 35(2)(d) of *The Labour Relations Act*. Further, it alleged that the Union committed acts of fraud, intimidation or coercion to compel or induce the Members to become a member of the Union.

Held: As the Employer was not a member of the CLRAM, the Board did not accept that any oral understandings reached between Employer and the Labourers to follow the CLRAM Agreement constituted a collective agreement within the meaning of the *Act*. While a collective agreement need not take any particular written form, may be contained in one or more documents, and may be comprised of a written agreement to incorporate by reference the terms of another collective agreement, there must nevertheless be some agreement in writing between the Employer and the Labourers for a term certain to fulfill the definition of a collective agreements contained in Section 1 of the *Act*. There was no agreement in writing between the Employer and the Labourers, (even in the form of a memorandum of understanding), and therefore, there was no term certain. The Board must be able to define open/closed periods with certainty, given that those statutory defined periods confer rights to determine when another union may apply for certification during an open period [Section 35(2)] or determining when an employee or group of employees were entitled to file an application for decertification or termination of bargaining rights [Section 49 of the Act]. Under Section 34(2) of the *Act,* where no collective agreement in respect of the employees of a unit was in force and no bargaining agent had been certified under the Act then an application for certification may be made at any time. The Application was therefore timely.

As to the position of the Applicant that there was no ratification by the employees of the Employer pursuant to the mandatory requirements of Sections 69(1) and 69(2) of the *Act*, the Board's decision did not rest on that particular ground. The Board was satisfied that a ratification of a union hiring hall province-wide collective agreement in the construction industry negotiated by a bona fide recognized employer's organization, on behalf of its members, can be accomplished through a secret ballot vote cast by the members of the union at the time a province-wide agreement was negotiated.

The Board found that the Labourers failed to establish, on the balance of probabilities, that there was fraud in the solicitation of the membership cards. The Board noted that the employees completed, on their own, detailed and relevant information required on the membership cards prior to signing the cards in the presence of a witness and that the wording on the cards was clear in that the cards expressly stated that an application for certification was contemplated and that the Applicant would be seeking to bargain collectively on behalf of the employees who signed the cards.

The Board granted certification to the Union but determined that an appropriate bargaining unit should be defined as all labourers because the Employer did not, at the time the Application was filed, nor normally, directly employ crane operators and apprentices, heavy equipment operators, mechanics or servicemen.

Bristol Aerospace - and - National Automobile, Aerospace, Transportation and General Workers of Canada (CAW- Canada), Local 3005 - and - Ben Michaluk
Case No. 267/09/LRA
November 16, 2009

DUTY OF FAIR REPRESENTATION - Contract Administration - Failure to refer grievance to arbitration - Employee alleged Union wrongfully withdrew policy grievance regarding benefit reductions at age 65 - Union received legal opinion and determined complaint better filed with Human Rights Commission which Employee did - Held, based on legal advice, decision not to proceed to arbitration was reasonable - Not Board's role to decide whether grievance would succeed at arbitration - No particulars provided that Union acted arbitrarily, discriminatorily or in bad faith - Employee failed to establish *prima facie* case - Application dismissed - Substantive Order.

Brandon University and Brandon University Faculty Association - and - John Everitt, Andrew Pernal, James W. Mendenhall and Don Eastman
Case No. 112/09/LRA
November 27, 2009

UNFAIR LABOUR PRACTICE - Discrimination - Anti-union animus - Four recently retired Employees claimed Employer and Union's failure to make pension improvements retroactive in renegotiated

collective agreement was discriminatory act on basis of Employees' union activity or retired status - No facts pleaded on behalf of three Employees regarding union involvement and for fourth bare assertion he was union activist and reference to temporary cutting off of e-mail access did not establish *prima facie* case - Application dismissed - Substantive Order.

UNFAIR LABOUR PRACTICE - Discrimination - Four recently retired Employees claimed Employer and Union's failure to make pension improvements retroactive in renegotiated collective agreement was discriminatory act on basis of Employees' union activity or retired status - Timing of new or improved benefits or differentiating between retired employees and active faculty not discrimination in pejorative or illegal sense nor is negotiation of pension benefits on that basis contrary to *The Labour Relations Act* - To be prohibited conduct, difference in treatment must have no labour relation rationale or reflect prohibited form of conduct or motive - Dissatisfaction with collective bargaining process not violation of Sections 7, 8, 17 of the *Act* - Application dismissed - Substantive Order.

DUTY OF FAIR REPRESENTATION - Recently retired Employees claimed Union failure to make pension improvements retroactive in renegotiated collective agreement was discriminatory act on basis of Employees' union activity or retired status and was breach of Section 20 of *The Labour Relations Act* - Section 20 does not apply to collective bargaining process as it does not involve "representing the rights of any employee under the collective agreement" - Application dismissed - Substantive Order.

DUTY TO BARGAIN IN GOOD FAITH - Discrimination - Recently retired Employees claimed Employer and Union discriminated against them by failing to make pension improvements retroactive in renegotiated collective agreement and therefore failed to bargain in good faith - Individual employees do not have status to bring application pursuant to Section 26 of *The Labour Relations Act* - Right reserved exclusively to parties to collective bargaining namely employer or exclusive bargaining agent - Substantive Order.

PRACTICE AND PROCEDURE - Standing - Application named four Employees but three did not provide Statutory Declaration as required by Board's Rules - Board sought written assurances verified by statutory declarations that they were aware of Application and authorized named Employee to name them as Employees - Subsequent to Employees filing Statutory Declarations, Board satisfied they were properly joined as Applicants to Application - Substantive Order.

PRACTICE AND PROCEDURE - TIMELINESS - Union asserts Employees application untimely - Application filed approximately 6 months following the date of ratification of Agreement - By Board's accepted principle, undue delay determined by reference to filing of an application after 6 to 8 months, following alleged breach - Application timely - Substantive Order.

Canad Inns Club Regent & Hotel and Mr. Harvey Sumka - and - Mr. Calvin Patrick
Case No. 266/09/LRA
December 2, 2009

UNFAIR LABOUR PRACTICE - Discrimination - Jurisdiction - Employee filed Application under Section 7(d) of *The Labour Relations Act* contending he was discharged for complaining about duties assigned to him by banquet captain - No facts pleaded in Application that Employee exercised statutory right by filing complaint or application under the *Act* or any other act of Manitoba Legislature or of Parliament which could be inferred to be reason or motive for discharge - Application itself did not constitute complaint or application within meaning of Section 7(d) - Employee believing dismissal unfair or unjust not within remedial jurisdiction under Section 7 - Applicant failed to establish *prima facie* case - Application dismissed - Substantive Order.

City Of Winnipeg and Employee Benefits Board - and - Amalgamated Transit Union, Local 1505 - and - Michael Chartrand
Case No. 276/09/LRA
December 4, 2009

PRACTICE AND PROCEDURE - Orders - Employee Benefits Board asserted as it had done in main application that it was not Applicant's employer and ought not to be named party to proceedings in Review Application - Board noted that reference to Benefits Board in style of cause simply reflection of how original application was filed - Substantive Order.

REVIEW AND RECONSIDERATION - Review Application did not contain any new evidence - Submissions made by Applicant re-casting and re-submission of arguments advanced on original application which Board considered in arriving at Dismissal - Disagreement with Board's conclusions did not standing alone justify grounds for rescinding prior Board order - As per Rule 17(1)(c), Application dismissed as Applicant neither furnished new evidence which would constitute a reasonable basis for a review or for convening of hearing, nor had Applicant shown sufficient cause why Board should review or reconsider original decision - Substantive Order.

The Real Canadian Wholesale Club and Cash & Carry Division of Westfair Foods Ltd, Western Grocers, Division of Westfair Foods Ltd., Dion MacDonald and Brad Denluck - and - United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Services Workers International Union, Local 9469 - and - Laurie Shappee, Nicholas Ebata and all other employees represented by the Applicant Union as employed by both of the Respondent Companies
Case No. 169/09/LRA
December 16, 2009

PRACTICE AND PROCEDURE - Amendment - Particulars - Union sought leave to amend original Application to include further particulars - In consideration of five-month delay in filing Amended Application and reasons advanced for delay, Board determined Applicant did not file particulars set out in Amended Application promptly as contemplated by Section 3(3) of *Rules of Procedure* - Board refused to grant consent to amend Application - Substantive Order.

ARBITRATION - Deferral to - Union alleged Employer committed unfair labour practice by negotiating directly with employees regarding wage increases that exceeded what employees were entitled to under collective agreement - Application involved consideration and interpretation of provisions of collective agreement which demanded contract interpretation expertise of labour arbitrator more than labour relations expertise of labour board - Board declined to hear Application and deferred matter to grievance and arbitration provisions of collective agreement - Substantive Order.
Mr. W.P. Hite General President of the United Association - and - John Robert Moore
Case No. 202/09/LRA
December 22, 2009

UNFAIR LABOUR PRACTICE - UNION - Internal Union Affairs - Membership - Discrimination - Business Manager, found guilty of misappropriation of Union funds, filed unfair labour practice alleging Union acted in discriminatory manner by expelling him from Union - Board found nothing in materials filed suggested discriminatory or adverse differential treatment - Applicant disagreed with finding of guilt against him and penalty imposed - Not Board's role to sit as a general court of appeal from union decisions regarding their members - Prima facie case of discrimination under Section 19(c) of *The Labour Relations Act* not established - Application dismissed.

The Employee was the Business Manager of Union Local. A series of internal charges were laid against him alleging violations of the union constitution, namely: misappropriation of union funds from the golf account; removal or destruction of union files and books; acceptance of unauthorized wages in the form of severance and vacation pay; and removal of an office laptop and camcorder. The General President exercised his

authority under the Union's Constitution and appointed a member of another local of the union as a hearing officer. A formal trial was held and the Employee was found guilty of misappropriation. The following penalty was imposed: fine of $5,000.00; expulsion from the Union subject to a raised initiation fee of $1,000 for readmission; denial of eligibility for local union office for two terms following the date of the decision. The Employee filed an application with the Board pursuant to Section 19(c) of *The Labour Relations Act* alleging an unfair labour practice by the Union. Section 19(c) provides that "Every union, and every person acting on behalf of a union, … who expels or suspends an employee from membership in a union by applying to him in a discriminatory manner the membership rules of the union …commits an unfair labour practice."

Held: The Employee attached a substantial package of material to his application. He did not assert in his material that the General President applied any membership rule in a discriminatory manner. Nothing in the filing suggested discriminatory or adverse differential treatment. He confirmed at the conclusion of the trial that he had received a full and fair hearing including a full and complete opportunity to present all his evidence. In essence, the Applicant disagreed with the finding of guilt against him and the penalty imposed. It was not the role of the Board to sit as a general court of appeal from union decisions regarding their members. As a result, the Board found that there was no merit to the Section 19(c) application and no jurisdiction to consider the relief sought by the Applicant. The Board found that no prima facie case of discrimination under Section 19(c) of the Act had been asserted or established. The application was dismissed.

Performing Arts Consortium of Winnipeg Inc. t/a Pantages Playhouse Theatre - and - IATSE, Local 63 - and - Winnipeg Arts Council
Case No. 289/09/LRA
January 25, 2010

APPLICATION FOR CERTIFICATION - BARGAINING UNIT - Theatre - Part-time Employee - 12 Week Rule (Rule 28) - Union applied for bargaining unit of Stagehands working at live theatre playhouse - Appropriate to view Stagehands who worked all events as being "full-time" and working regular schedule despite seasonal fluctuations and varying demand in Employer's operation - Rule 28 did not apply - Board included Stagehands in proposed bargaining unit for calculating percentage of employee support - Certification granted.

The Union applied for a bargaining unit of Stagehands. The Union's position was that Rule 28, which was utilized by the Board in determining the percentage of employees who support an Application for Certification in accordance with section 40(1) of *The Labour Relations Act,* should not apply to the case or to the theatrical or live performing arts industry generally. It submitted that the three Stagehands who worked for the Employer on the date of the Application were required for every event which took place on the Theatre's stage. In that context, it was appropriate to view the three employees in the proposed unit as being "full-time" and working a regular schedule despite the intermittence inherent in the Employer's operation.

Held: The Board's Information Bulletin No. 2 plainly stated that the Board may modify the manner in which Rule 28 was applied, or refuse to apply it at all, when dealing with unique industries or employment situations. Rule 28 was intended to aid in the determination of which "part-time" employees should be included along with regular or full-time employees for the purposes of determining employee support for an application for certification. While the operation of the venue itself was subject to seasonal fluctuations and varying demand for theatrical space, the essential fact remained that the house crew worked all of the events. In that context, it was appropriate to view the employees in the proposed unit as being "full-time" and working a regular schedule despite the fluctuations in the employer's operation. Under Rule 28, full-time employees in the proposed bargaining unit on the date of an application for certification are, *prima facie*, included for the purposes of determining employee support. The three employees whom the parties agree were employed on the date of the Application had a clear and strong employment connection to the Employer. Therefore, the Board did not apply Rule 28 and included all of the employees in the proposed bargaining unit on the date of the Application for the purposes of calculating the percentage of employee support. Pursuant to Section 40(1)1 of the *Act*, the Application for Certification was granted.

Westeel, Division of Vicwest Operating Limited Partnership - and - United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial, and Service Workers International Union, Local 9074-34 - and - Chris Bondarenko
Case No. 13/10/LRA
February 26, 2010

DUTY OF FAIR REPRESENTATION - TIMELINESS - Scope of Duty - Employee alleged Union failed to properly address improper calculation of pensionable service under pension plan - Employee unduly delayed filing Application because he raised concerns with Union since mid 1990s - Period in excess of 11 years constituted undue delay - Concerns addressed in 2008 and 2009 were in substance same concerns raised in earlier years - Also Application did not disclose failure by Union to represent Applicant in respect of any rights under collective agreement as no provision in collective agreement addressed pensionable service and pension plan not part of collective agreement- Application dismissed - Substantive Order.

Westeel Limited - and - USWA, Local 9074-35 - and - Julien Toupin
Case No. 12/10/LRA
February 26, 2010

DUTY OF FAIR REPRESENTATION - TIMELINESS - Scope of Duty - Employee alleged Union failed to properly address improper calculation of pensionable service under pension plan - Employee unduly delayed filing Application because he raised concerns with Union since 1994 - Concerns addressed in 2008 and 2009 were in substance same concerns raised in earlier years - Also Application did not disclose failure by Union to represent Applicant in respect of any rights under collective agreement as no provision in Collective agreement addressed pensionable service and pension plan not part of Collective agreement - Application dismissed - Substantive Order.

Vaw Systems Ltd. - and - Sheet Metal Workers International Association, Local Union No. 511 - and - Antoine Drummond
Case No. 31/10/LRA
March 11, 2010

DUTY OF FAIR REPRESENTATION - Applicant dissatisfied with manner Union dealt with his complaints of workplace harassment and discrimination - He took issue with advice received from Union's Business Representative and Shop Steward - Application did not indicate Union failed to take any action Applicant requested or failed to file any grievance on his behalf - Allegations advanced were not sufficient to sustain conclusion Union acted in arbitrary or discriminatory manner or in bad faith contrary to Section 20(b) of *The Labour Relations Act* - Application dismissed - Substantive Order.

Tembec Industries Inc.; Tembec Paper Group Pine Falls Operations - and - United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, Local 3-1375
Case No. 339/09/LRA
March 24, 2010

SUBSEQUENT COLLECTIVE AGREEMENT - Imposition of - Board to settle terms of subsequent collective agreement - Employer stated intention to sell newsprint mill and if no purchaser found would consider permanent closure of site - Union argued Board should not alter or modify expired collective agreement as Employer had no real interest in result of collective bargaining or future of labour relations at site - Board extended terms of recently expired collective agreement without change for six month period to enable Union to bargain with potential purchaser – Substantive Order.

SUBSEQUENT COLLECTIVE AGREEMENT - JURISDICTION - Imposition of - Board to settle terms of subsequent collective agreement - Employer stated intention to sell newsprint mill - Union submitted that if Board award any concessionary changes on a temporary basis then new imposed collective agreement should be condition of sale - Board would not impose such condition because it was beyond Board's jurisdiction to bind an unknown third party – Substantive Order.

SUBSEQUENT COLLECTIVE AGREEMENT - Imposition of - Board to settle terms of subsequent collective agreement - Employer stated intention to sell newsprint mill and requested Board impose permanent and significant across board reduction in wages, amendments to pension plan and severance pay – Board held no structural changes should be made to severance pay as concessions requested would reduce recently negotiated benefit which was to protect employees; no changes to pension plan as that required significant accounting and actuarial assistance to ensure validity of changes and should not be entertained by Board as its mandate limited to 6 months – Substantive Order.

SUMMARIES OF SIGNIFICANT BOARD DECISIONS *PURSUANT TO THE EMPLOYMENT STANDARDS CODE*

Convergys New Brunswick, Inc. t/a Convergys CMG Canada Limited Partnership - and - Robin Beaudry
Case No. 001/09/ESC
April 29, 2009

NOTICE - DISCHARGE - Employee discharged without notice for submitting false claims for tuition reimbursement - Employee claimed she was not active participant - Based on credible evidence, Employer established Employee was dishonest in her employment - Held Employer entitled to terminate Employee without notice pursuant to Section 62(1)(h)(iii) of *The Employment Standards Code* - Appeal dismissed.

NOTICE - DISCHARGE - Employee discharged without notice for submitting false claims for tuition reimbursement - Employee asserted Employer decision to terminate her as her services were no longer needed due to impeding closure of Employer's offices - Board accepted that Employer's investigation was undertaken in good faith and was completed expeditiously.

The Employer terminated the Employee for knowingly making false claims for tuition reimbursement under the Employer's Tuition Assistance Plan. The Employee filed a claim for wages in lieu of notice. The Director of the Employment Standards Division dismissed the Employee's complaint as the Employee was terminated for being dishonest in her course of employment. Therefore, as per Section 62(1)(h)(iii) of *The Employment Standards Code*, notice was not required. The Employee disputed the Order and the matter was referred to the Board. The Employee, while acknowledging that there was a fraudulent scheme developed by at least three other employees of the Employer to wrongfully claim tuition reimbursement and to receive improper referral/solicitation fees, asserted that she was not an active participant in the scheme and that she had neither been dishonest nor intended to be dishonest in her dealings with the Employer. The Employee further asserted that the Employer waited to terminate her employment only when it decided that it no longer needed her services due to the impeding closure of the Employer's offices.

Held: In respect of the Employee's assertion questioning the timing of and the motives underlying the Employer's decision to terminate her, the Board accepted that the Employer's investigation was undertaken in good faith and was completed in an expeditious manner after the scheme was brought to its attention. The Board was satisfied that the Employee submitted a claim for reimbursement to the Employer for $2,450.01. The Employee admitted she had not taken any module comprising the approved course; that she filed a Certificate of Completion and a Transcript showing a course grade of "A", in support of her claim, when in fact,

the course was never completed. The Board accepted that the Employee anticipated that she would receive $250 as her share of the $500 referral fee. Further, the Employee admitted that she initially advised the Employer that she had spent 24 to 48 hours completing the course which was she retracted when the Employer confronted her. The Board was satisfied that the Employer had met its onus, on the credible evidence before the Board, and had established, on the balance of probabilities, that the Employee acted in a manner not condoned by the Employer that was dishonest in the course of her employment. Therefore, the Employer was entitled to terminate the Employee's employment without notice pursuant to Section 62(1)(h) of the *Code*. Accordingly, the Employee's appeal to receive wages in lieu of notice was dismissed.

Paramount Storage Ltd. - and - Thomas Chubaty
Case No. 386/08/ESC
April 30, 2009

PRACTICE AND PROCEDURE - Administrative Fee - Employer took issue with payment of administrative fee - As per subsection 125(3) of *The Employment Standards Code,* when Board orders payment of wages, it "shall require" payment of administrative costs.

NOTICE - Period of Employment - Less than two months after Employee resigned he was rehired but was dismissed six months later - Section 24(5) of *Employment Standards Regulation 6/2007* provides that if an employee rehired within two months after termination with that employer, period between periods of employment included in total period of employment for purpose of any subsequent termination - Employer submitted period of employment should only be deemed continuous where an employer terminates an employee in the first instance and then rehires them - *The Employment Standards Code* specifically contemplates that employment may be terminated by either an employer or an employee - Employee entitled to six weeks' wages.

Less than two months after the Employee resigned his employment, he asked the Employer if he could return to his job. The Employee was rehired and advised that he was starting as a new employee on probation. Six months after being rehired, the Employee was dismissed for failing to follow instructions from his supervisor. The Employee was terminated immediately, however he was paid one week of wages in lieu. The Director of Employment Standards issued an Order requiring the Employer to pay $2800 wages in lieu of notice which represented six weeks' wages in lieu of notice less one week of wages in lieu that were paid to the Employee upon termination of his employment. The Employer was also ordered to pay an administrative fee in the amount of $280. The Employer disputed the Order and the matter was referred to the Board. The Employer also took issue with the payment of the administrative fee.

Held: Section 24(5) of the *Employment Standards Regulation, R.M. 6/2007* provides that if an employee is rehired by an employer within two months after termination of his or her employment with that employer, the period between those two periods of employment is to be included in the employee's period of employment for the purpose of any subsequent termination of that employment. Therefore, the Employee's employment was deemed to be continuous for the purpose of calculating the notice to which he was entitled under section 61 of *The Employment Standards Code*. As a result, his period of employment was greater than five years and less than ten years. In accordance with subsection 61(2) of the *Code*, he was entitled to six weeks' notice of termination or wages in lieu thereof. The Board did not agree with the Employer's submission that an employee's period of employment should only be deemed continuous where an employer terminates an employee in the first instance and then rehires them within the two month period contemplated by the *Regulation*. The *Code* specifically contemplates that employment may be terminated by either an employer (section 61) or by an employee (subsection 62.1(1)). Therefore, the Board ruled that the Employee was entitled to six weeks' wages in lieu of notice, less one week wages in lieu of notice paid by the Employer and payment of the administrative fee. With regards to the payment of the administrative fee, pursuant to subsection 125(3) of the *Code*, where the Board orders the payment of wages, it "shall require" the payment of administrative costs calculated in accordance with subsection 96(1) of the *Code*.

Frontier Management Inc., t/a Frontier Subaru - and - Sean Procewiat
Case No. 25/09/ESC
May 12, 2009

NOTICE - DISCHARGE - Wilful misconduct - Automotive technician terminated for servicing customer's vehicle on off-duty hours - Held Employee innocently assisted individual with work he honestly and in good faith believed Employer was not promoting or performing - Order confirmed for further four weeks wages in lieu of notice.

Employment Standards ordered the Employer to pay $4,559.02 for wages in lieu of notice to the Employee, who was an automotive technician. The Employee was terminated for completing work, for which he received financial compensation, on a customer's vehicle on off-duty hours. The Employer submitted that the Employee engaged in "wilful misconduct" and was not entitled to notice or wages in lieu. The Employee testified that he was asked for advice regarding a performance upgrade that an individual wished to make to his vehicle. The person had purchased some after-market parts that the Employer did not sell. They planned to do the work together, however the individual he was assisting was unexpectedly called away and he completed the work on his own. He did not use tools belonging to the Employer. When the individual returned, he offered the Employee $180 for the work. The Employee accepted the money but he had not expected payment. He did not know that the individual had his vehicle serviced at the Employer's service department thirteen times. He believed that the type of work he performed was not a service that the Employer offered its customers.
Held: The Board was satisfied that the Employee innocently attempted to assist an individual with work that he honestly and in good faith believed the Employer was not actively promoting or performing. There was no evidence that the Employee solicited private automotive repair work to be performed for his personal benefit on his off-duty hours. The circumstances suggest that he acted innocently in agreeing to assist someone who wanted to perform the vehicle modification work himself. It was only after the individual was called away and the Employee completed the work that he was offered compensation which he accepted. In addition, there was no evidence that the Employee acted in a manner which may be characterized as being dishonest in the course of his employment. The Employer did not satisfy the Board that the Employee engaged in "wilful misconduct" or in any other manner contemplated by subsection 62(1)(h) of *The Employment Standards Code*. As the Employee's consecutive period of employment was greater than five years but less than ten years, he was entitled to six weeks' pay in lieu of notice pursuant to subsection 61(2) of the *Code*. The Employer provided two weeks of pay in lieu of notice to the Employee at the time of his termination. Accordingly, the Board confirmed the Order issued by the Employment Standards Division that a further four weeks' pay in lieu of notice remained owing in the amount of $4,559.02.

2127423 Manitoba Ltd. t/a London Limos - and - Yaroslav Tovaryanskyy
Case No. 47/09/ESC
June 1, 2009

NOTICE - Resignation - Employer disputed payment of wages in lieu of notice claiming Employee quit - Employee continued to perform work for Employer and was paid for that work after date when Employer asserted Employee quit - Employee entitled to four weeks wages in lieu of notice - Appeal dismissed.

The Director of the Employment Standards Division ordered the Employer to pay the Employee $3,520 for wages owing in lieu of notice. The Employer disputed the payment arguing that the Employee had quit his employment.

Held: A resignation by an employee has both a subjective element (the intention to resign) and an objective element (an act or acts resulting from the intention to resign). In order for a resignation to take place the employee must subjectively intend, voluntarily and without coercion, to quit and the employee's actions must demonstrate objectively that he has in fact quit. The Board noted that the Employee continued to perform work for the Employer and was paid for that work subsequent to the date when the Employer asserted the

Employee quit. Therefore, the Board was not satisfied that the Employer had established, on the balance of probabilities, that the Employee quit on the date alleged. As a result, the Employer's appeal was dismissed and the Employee was entitled to receive four weeks wages in lieu of notice in the amount of $3,520.

64940 Manitoba Ltd. t/a The Patio Café - and - Randy Glays
Case No. 350/08/ESC
June 17, 2009

EMPLOYER - Employer disputed Order to pay Employee $8259.27 being wages owing - Held employer/employee relationship did not exist between parties - Also found alleged Employee was not an employee as defined in *The Employment Standards Code* - Claim for wages dismissed.

The Director of the Employment Standards Division ordered the Employer to pay the Employee $8259.27 being wages owing. The Employer disputed the payment. At the commencement of the hearing, the Board determined that it would first determine the true employer and then any issue respecting quantum be determined later, if necessary.

Held: The Board was satisfied that the alleged Employer was not, in fact, the employer. As such, an employer/employee relationship did not exist between the parties. It also found that the alleged Employee was not an employee as defined in *The Employment Standards Code*. Therefore, the claim for wages was dismissed.

64940 Manitoba Ltd. t/a The Patio Café - and - Janice Glays
Case No. 351/08/ESC
June 17, 2009

EMPLOYER - Employer disputed Order to pay Employee $1,726.23 in wages owing - Held employer/employee relationship did not exist between parties - Claim for wages dismissed.

The Director of the Employment Standards Division ordered the Employer to pay the Employee $1,726.23 being wages owing. The Employer disputed the payment. At the commencement of the hearing, the Board determined that it would first determine the true employer and then any issue respecting quantum would be determined later, if necessary.

Held: The Board was satisfied that the alleged Employer was not, in fact, the employer. As such, an employer/employee relationship did not exist between the parties. Therefore, the claim for wages was dismissed.

64940 Manitoba Ltd. t/a The Patio Café - and - Patrick Martin Clare
Case No. 352/08/ESC
June 17, 2009

EMPLOYER - Employer disputed Order to pay Employee $444.42 in wages owing - Held employer/employee relationship did not exist between parties - Claim for wages was dismissed.

The Director of the Employment Standards Division ordered the Employer to pay the Employee $444.42 being wages owing. The Employer disputed the payment. At the commencement of the hearing, the Board determined that it would first determine the true employer and then any issue respecting quantum be determined later, if necessary.

Held: The Board was satisfied that the alleged Employer was not, in fact, the employer. As such, an employer/employee relationship did not exist between the parties. The claim for wages was dismissed.

A B Kung Ltd. - and - Duc Van Vu
Case No. 22/09/ESC
July 9, 2009

INDEPENDENT CONTRACTOR - Employee engaged to paint apartment suites and perform some maintenance work - Employer supplied paint and tools and controlled access to apartment, but Employee determined manner and sequence of performance of tasks - Engagement was short term and no evidence Employee was to work exclusively for Employer - Held Employer/Employee relationship did not exist - Employee not entitled to receive any wages, overtime wages, vacation wages or general holiday wages - Substantive Order.

The Director of the Employment Standards Division ordered the Employer to pay the Employee $929.44 for wages owing. The Employer disputed the payment and the matter was referred to the Board. The Employee was engaged by the Employer to do some painting and other miscellaneous repair and maintenance work in one of the Employer's apartment buildings. The Employee argued that the Employer supplied the paint and most if not all of the tools and materials necessary to do the work. He added that he did not have a key to the suites, and therefore was only able to attend to do the required work when the owner was present to allow him access. Further, he argued that he was being paid an hourly rate, not a fixed fee for the performance of the required work. The Employer argued that although the owner was present to allow the Employee access to the apartment, she would typically leave to attend her other business. The Employee performed the work as he saw fit, and that he could leave when he wanted to, as the door locked automatically upon being closed. The Employer submitted that the Employee was paid an hourly rate because when asked for an estimate of the total cost of the work, the Employee indicated he could not give an estimate and expected to be paid by the hour.

Held: The Board found that the Employee was an independent contractor. His engagement to perform the painting and other tasks was relatively short term and related to specific tasks. Although his access to the apartment was controlled by the Employer, the Employee determined the manner and sequence of the performance of the tasks. There was no evidence to indicate he was to work exclusively for the Employer and he was free to undertake other jobs or engagements. Accordingly, the Board found that an Employer/Employee relationship did not exist and the Employee was not entitled to receive any wages, overtime wages, vacation wages or general holiday wages. Therefore, the Board allowed the Employer's appeal and dismissed the Employee's claim.

Omni Facility Services Canada Limited - and - Matheos J. Alert
Case No. 136/09/ESC
August 14, 2009

EVIDENCE - Witness - Credibility - Documentation submitted by Employee contained errors and included hours for meal breaks and time spent doing maintenance at home which Employer provided to him at no cost - Explanations offered regarding hours claimed were not reasonable - Employer's payroll records accepted as more accurate recording of hours worked by Employee - Employee's appeal for wages owing dismissed - Substantive Order.

The Director of the Employment Standards Division dismissed the Employee's complaint filed against the Employer. The Employee disputed the Order. The matter was referred to the Board.

Held: The documentation submitted by the Employee in support of his claim for overtime contained errors and included hours during which he was not performing duties on behalf of the Employer (for example meal breaks and time spent doing lawn and garden maintenance at the home which the Employer provided at no cost to him) which raised serious questions regarding its reliability, and further, the explanations offered by the Employee in his testimony regarding the hours claimed were not, "… in harmony with the preponderance of probabilities which a practical and informed person would reasonably recognize as reasonable in that place and in those conditions …". The Board accepted that the more accurate recording of the hours worked by the Employee were reflected in the Employer's payroll records. In the result, the Employee had not satisfied the Board, on the balance of probabilities that any further overtime wages or other compensation was owed to him. Accordingly, the Employee's appeal was dismissed. The Employer's request that the Board award costs to the Employer, pursuant to Subsection 125(5) of the Code, was dismissed as the Board was not satisfied that the necessary conditions permitting it to award costs were evident in this case.

Duo Enterprises Ltd. - and - Colette Harper
Case No. 159/09/ESC
September 2, 2009

NOTICE - Exemption - Held Employee did not quit but was terminated by Employer without notice - Employer did not assert exemption from providing notice by subsection 62(1) of *The Employment Standards Code* - Employee entitled to one week wages in lieu of notice - Substantive Order.

The Director of the Employment Standards Division ordered the Employer to pay the Employee $217.71 being wages owing. The Employer disputed the payment.

Held: The Employee did not quit but rather was terminated by the Employer without notice or wages in lieu. The Employer did not assert that it was exempted from providing notice to the Employee by application of subsection 62(1) of *The Employment Standards Code*. The Employee was employed for less than one year and was entitled to a notice period of one week pursuant to Section 61 of the *Code.* The Employer was ordered to pay wages owing as was ordered.

Matrix Environmental Solutions Ltd. - and - Ahmad Nia
Case No. 137/09/ESC
September 21, 2009

WAGES - Vacation Pay - Vacation allowance payable under Sections 39(2) and 44(2) of *The Employment Standards Code* to be based on percentage of wages earned in applicable time period - Commissions payable fell within definition of wages in Section 1(1) the *Code* - Therefore, vacation allowance to be paid on commissions which form part of an employee's regular compensation - Substantive Order.

WAGES - Commission - Whether remuneration structure characterized as "bonus" or "commission" was of no particular consequence - Board satisfied Employee compensated based on commission structure - Substantive Order.

WAGES - Commission - Employer contended Employee not entitled to commission for last month of employment as monthly threshold sales figure not met- Board satisfied after discounting invoices Employer asserted not claimable, sales generated by Employee still exceeded monthly threshold - Adjusted sales coincided with commission calculations in Employment Standards Division's Statement of Adjustments - Appeal dismissed - Substantive Order.

The Director of the Employment Standards Division ordered the Employer to pay the Employee $7,615.50 for wages owing. The Employer disputed the commissions described in the Statement of Adjustment for the Employee's last month of work. It contended that the Employee was not entitled to be paid any commission or any bonus for his last month of employment unless he met the monthly threshold sales figure of $10,000. It also argued that vacation allowance was not payable on the commissions, relying on Section 40 of *The Employment Standards Code.*

Held: Whether the remuneration structure was characterized as a "bonus" or a "commission" was of no particular consequence. Any commissions payable represented a key component of the Employee's total compensation for work performed on behalf of the Employer, and, as such, fell within the definition of wages in Section 1(1) *The Employment Standards Code*. Any vacation allowance payable under Sections 39(2) and 44(2) of the *Code* was to be based on the appropriate percentage of the wages earned by an employee in the applicable time period and, by reason of the definition of "wage", vacation allowance was to be paid on commissions which form part of an employee's regular compensation. Section 40 had no application as that Section did not define what was included or excluded from the definition of "wages" for vacation pay purposes. Rather, Section 40 confirmed that the payment of a bonus or other pecuniary benefit by an employer did not affect the employee's entitlement to an annual vacation or vacation allowance. As to the dispute over whether commission was owing for the sales concluded by the Employee for the last month of employment, the Board was satisfied that even after discounting the invoices/accounts which the Employer asserted were not properly claimable by the Employee, there still remained an undisputed amount of sales generated by the Employee which exceeds $10,000 for that month. The adjusted amount coincided with the commission calculations reflected in the Statement of Adjustments prepared by the Employment Standards Division. Therefore, the Board was satisfied that the Employee was entitled to the wages and vacation wages as recorded in the Statement of Adjustment. The appeal of the Employer was dismissed.

Goodway Express Co. Ltd. - and - Robert Sansom
Case No. 221/09/ESC
October 23, 2009

WAGES - Unauthorized Deductions - Employee terminated for theft of company property with criminal charges pending - Employer claimed wages owing be returned as partial restitution - Employer may seek recovery or restitution in other forums, but as per Section 19 of *The Employment Standards Regulation*, Board had no authority to authorize any deduction, off-set or restitution order from the wages earned - Board also applied general law that employer cannot unilaterally determine liability of employee, or quantum of damages and then seek to deduct such amount from wages owing - Substantive Order.

The Director of the Employment Standards Division ordered the Employer to pay the Employee $1,507.50 for wages owing. The Employer disputed the payment and the matter was referred to the Board. The Employer stated that the Employee was terminated for theft of company property, and that, at the time of the Board proceeding, criminal charges were pending. It claimed the amount owing and administration fee be returned to the Employer as a partial restitution.

Held: In cases where there was no dispute that wages were otherwise properly owing to an employee for work performed, the Board had no authority under the Code to authorize any deduction, off-set or restitution

order from the wages earned by the Employee. This arose from Section 19(1) of the Employment Standards Regulation which provides " An employer must not deduct any amount from the wages payable to an employee except as required by federal or provincial law or as permitted by a court order or subsection (2)." Section 19(2) states, in part, "an employer must not deduct any amount to cover any cost or loss arising from faulty work of the employee or damage caused by the employee". The Board must also apply the general law that an employer cannot unilaterally determine the liability of an employee, or the quantum of damages and then seek to deduct any such amount from wages owing to the employee. The Employer may seek recovery or restitution in other forums. In the result, the Board, being a statutory tribunal whose jurisdiction is limited by the provisions of the Code and the Regulation, cannot make the restitution order sought by the Employer. The Board dismissed the appeal of the Employer and confirmed the Order of the Employment Standards Division.

Kildonan Ventures Ltd. t/a Kildonan Auto & Truck Sales - and - Jayson Solodky
Case No. 200/09/ESC
October 29, 2009

WAGES - Unauthorized Deductions - Employer retained $500 from Employee's last pay cheque for deductible for vehicle accident - Employee claimed wrongful deduction - Employer submitted Employee signed document giving Employer blanket authorization to withhold wages for cost of vehicle damage - Held agreement signed at time of hire contrary to or inconsistent with provisions of *The Employment Standards Code* and was unenforceable - While Employer may be able to seek recovery or restitution in other forums, Board has no authority under the *Code* to authorize restitution from wages - Employee did not voluntarily consent to deduction - Employer required Employee pay deductible contrary to Section 19(2)(5) of the *Code* - Appeal dismissed - Substantive Order.

The Employee, who was a Delivery Driver, attended the Employer's office to receive his last pay cheque. He was advised that he was responsible for paying $500 for the deductible for an accident with the Employer's vehicle for which he was determined to be at fault. After discussions with the Employer, the Employee endorsed the cheque, cashed it on the Employer's premises with the Employer retaining $500 in cash. The Employee filed a complaint with the Employment Standards Division claiming that there had been a wrongful deduction from wages owing to him. The Director of the Employment Standards Division ordered the Employer to pay the Employee $500 for wages owing. The Employer appealed the Order arguing that the Employee voluntarily cashed the cheque at the Employer's premises and voluntarily paid the Employer for the accident deductible. The Employer asserted that it did not make an unauthorized deduction. At the time of his hire, the Employee signed a document entitled "Employment and Responsibility Agreement" which stated in part that the Employer had a blanket authorization without the need for individual instruction per incident, and was instructed to withhold wages or make claim if wages did not exist for the cost of seven items, including damage to company property and/or vehicles and the insurance deductible for the cost of such repairs if insurance exists, including any surcharges.

Held: The Board noted that the agreement signed at the time of hire was contrary to or inconsistent with provisions of *The Employment Standards Code* and was unenforceable as per Sections (3)(3) and (4)(1) of the *Code*. Where there was no dispute that wages were otherwise properly owing to an employee for work performed, the Board has no authority under the *Code* to authorize any deduction, off-set or restitution order from the wages earned by the Employee. This arises from Section 19 of *The Employment Standards Regulation*. The Board was satisfied that the Employee did not voluntarily consent to a deduction and further, that the Employer, in effect, required the Employee to pay the $500 deductible contrary to Section 19(2)(5) meaning the amount retained by the Employer was deemed to be a wage owing by the employer to the employee. The Board also applied the general law that an employer cannot unilaterally determine the liability of an employee or the quantum of damages and then seek to deduct any such amount from wages owing to the Employee. While the Employer may be able to seek recovery or restitution in other forums, the Board, being a statutory tribunal whose jurisdiction is limited by the provisions of the Code, and having regard to the factual findings made by the Board, the Board dismissed the appeal.

Kildonan Ventures Ltd. t/a Kildonan Auto & Truck Parts - and - Andrew Brooker
Case No. 35/09/ESC
December 9, 2009

PRACTICE AND PROCEDURE - EVIDENCE - Subpoena - Witness - Compellability - As per Section 121 of *The Employment Standards Code,* Employment Standards Officer not compellable as witness in proceeding - Given ruling on non-compellability Employer did not call evidence in support of appeal - In absence of evidence and as onus on Employer, appeal dismissed - Substantive Order.

PRACTICE AND PROCEDURE - APPEALS - TIMELINESS - Employer appealed Order issued by Employment Standards Division that $297 in wages was owed to Employee - Prior to hearing but eight months after Order issued and Employer's appeal filed, Employee filed correspondence with Board disputing calculations in Order and sought additional monies - Board denied Employee's request as appeal not filed within time period specified in Section 110(1.1) of *Employment Standards Code* - Substantive Order.

5492735 Manitoba Ltd. - and - Aemerosellassie K. Ogbamichael
Case No. 248/09/ESC
December 11, 2009

INDEPENDENT CONTRACTOR - EMPLOYEE - Taxi Driver - Informal and verbal working arrangement between Driver and Employer; manner in which "commissions" were paid, structured or implemented; and manner in which "tips" were dealt with not determinative whether relationship was employer/employee or independent contractor - However, Employer owned, provided, insured and maintained taxi which Employee drove; Employee had no responsibility for expenses, for setting fares (because taxi industry fares tightly regulated) or for engaging helpers - Employee performed duties under Employer's general direction and control for Employer's benefit and did not exercise significant independent decision-making authority - Relationship properly characterized as employer/employee - Appeal dismissed - Substantive Order.

Innvest Hotels GP XV Ltd. - and - Lucy Calisto
Case No. 51/09/ESC
December 21, 2009

PRACTICE AND PROCEDURE - EVIDENCE - Witness Compellability - Subpoena - Employer served subpoena upon Workers Compensation Board employee to give evidence at Labour Board hearing - Section 62 of *The Workers Compensation Act* states employee not compellable witness in civil action or other proceedings - Board proceedings fell within phrase "or other proceeding" - Subpoena quashed - Substantive Order.

DISCHARGE - Resignation - Board considered Employee stated desire to keep working for Employer; her belief she had been dismissed by Employer; absence of evidence she intended to quit or resign; and letter written by Employer stating "we have no alternative but to terminate your employment" - On balance of probabilities Employee did not quit or resign her employment but was terminated by Employer - Substantive Order.

NOTICE - Calculation of wages in lieu - Prior to work related injury, Employee worked 40 hour week - At time employment terminated, Employee worked modified duties on restricted hours or 12 hour week - Board considers definition of "regular hours of work" in Section 77 of *The Employment Standards Code* - Wages in lieu of notice calculated on basis of 12 hour week or actual hours worked - Substantive Order.

40706 Manitoba Ltd. - and - Eleni Salvatore
Case No. 187/09/ESC
January 28, 2010

NOTICE - Deemed Quit - Held Employee did not quit but was terminated - Employer's evidence did not establish, on balance of probabilities, Employee had subjective intention to quit and her objective conduct at time of and shortly after alleged quit did not support conclusion she quit - Held employment terminated without notice and Employee entitled to one week's wages in lieu thereof - Appeal dismissed - Substantive Order.

Wong's Dynasty Ltd. t/a Wong's Asian Bistro - and - Steve Smith
Case No. 246/09/ESC
March 18, 2010

PRACTICE AND PROCEDURE - Orders - Delay - Employer submitted Employment Standards Division acted improperly and beyond jurisdiction when it issued Order two years after verbally advising Employee's claim dismissed - Preparation of draft Dismissal Order irrelevant given it was unsigned and not served upon parties in accordance with section 136 *The Employment Standards Code* - Verbal declaration regarding status of file or disposition of complaint did not equate to issuance of lawful and properly served Order - Delays or administrative failings do not disentitle Employee to wages or wages in lieu of notice.

EVIDENCE - Witness - Vastly differing evidence re date of hire and manner employment concluded - Employee more credible as he provided details of circumstance of hiring, employment duties, manner he was paid, events leading to termination and his evidence was corroborated by his landlord - Employer provided short of fulsome answers - Board accepted Employee's testimony as more truthful.

The Employee filed a claim with Employment Standards Division (ESD) seeking wages and wages in lieu of notice. The Employer stated that Employment Standards Officer originally assigned to the case informed him in July 2007 that the Employee's claim was dismissed and the matter was concluded. The Employer was shocked to receive the Order issued by another Officer, dated June 30, 2009, requiring him to pay wages in lieu of notice. As a result of the Employer's request for documentation from ESD's files, he was provided with unsigned copies of a "Dismissal Order" dated July 16, 2007 and "Reasons for Decision". The Employer sought revocation of the Order submitting that ESD acted improperly and beyond its jurisdiction when it re-opened the Employee's complaint file and issued an Order nearly two years after verbally advising him that the matter was concluded; that the Employee only worked for 17 days and notice of termination was not required within the first 30 days of employment; and the Employee abandoned his position. The Employee claimed he worked for over three months.

Held: Despite what the original Officer may have said to the Employer, no Order was issued by ESD until June 29, 2009. Section 95 of *The Employment Standards Code* provided that an Officer "who investigates a complaint and determines that no contravention of this Code has occurred shall dismiss the complaint by order". The fact that a draft "Dismissal Order" was prepared by the Officer was irrelevant given that, apart from being unsigned, it was not served upon the parties in accordance with section 136 the *Code*. A verbal declaration regarding the status of a file or an indication as to the disposition of a complaint did not equate to the issuance of a lawful and properly served Order. Any delays or administrative failings on the part of ESD cannot disentitle the Employee to wages or wages in lieu of notice. As such, the Board did not accept that ESD did not have the authority to issue the Order dated June 29, 2009. Faced with vastly differing evidence regarding the length of the period of employment and the manner in which that employment concluded, the Board had to make credibility determinations. The Board accepted the evidence adduced by the Employee as being truthful. He provided detailed descriptions of the circumstances of his hiring, his employment duties, the manner in which he was paid, and the events leading to the termination of his employment. In comparison, the Board found the Employer provided something short of fulsome answers and that his evidence was not in harmony with the preponderance of probabilities. The Board also considered that the Employee's evidence was corroborated by his landlord who testified in an honest and straightforward manner that she drove him to

and from work and had witnessed him working there when she ate at the restaurant. The Board noted that the Employer elected not to cross-examine her. The Board was satisfied, on the balance of probabilities, that the Employee commenced employment with the Employer in November 2006 and that the Employer terminated his employment without notice on February 15, 2007. It concluded that the Employee's employment was in excess of 30 days and, therefore, the exception to providing notice set out in section 62(d) of the *Code* was not applicable. The Board did not accept that the Employee abandoned his position but was terminated by the Employer without notice. The Board confirmed the Order of Employment Standards dated June 30, 2009.

SUMMARIES OF SIGNIFICANT BOARD DECISIONS
PURSUANT TO THE WORKPLACE SAFETY & HEALTH ACT

City of Winnipeg - and - Director, Workplace Safety and Health
Case No. 115/08/WSH
May 12, 2009

JURISDICTION - Safety and Health Officer not prevented from issuing Improvement Order for mandatory wearing of hard hats even though no express provision in *Workplace Safety and Health Act* and *Regulation.*

JURISDICTION - Employer undertaking risk assessment and job hazard analysis does not limit authority for Workplace Safety and Health Division to enforce *Act* through Improvement Orders - Division retain overriding authority under *Act* to review employer's safety program.

PRACTICE AND PROCEDURE - Validity of Orders not affected by not containing specific direction for compliance nor identifying specific hazards - Section 33 of *Workplace Safety and Health Act* contained sufficient legislative authority to issue orders in that form.

Two Improvement Orders were issued requiring workers on two of the Employer's construction sites to wear protective hard hats. The Employer appealed on the grounds that the Orders did not provide any specific direction for compliance. Further, Section 6.11 of the *Workplace Safety and Health Regulation 217/2006* did not state protective head wear was mandatory but must "be appropriate for the risk." By the Employer's own risk assessment process, no risks were identified for the work in question. The Employer submitted that an Improvement Order could not be issued based on the contents of the Bulletin 199 noted in the Order which it asserted was inconsistent with the directions in the *Regulation*.

Held: While it may be the Division's policy to require that hard hats be worn on all construction sites, as reflected in the Bulletin, that "policy" was not binding on the Board when deciding an appeal. The Board must be satisfied that the *Act* and *Regulation* provided a proper foundation for the Improvement Order under appeal. While there was no express provision in either the *Act* or the *Regulation* which made the wearing of hard hats mandatory, that did not prevent an Officer from issuing an Improvement Order based on the opinion that the risks associated with an activity dictated the mandatory wearing of hard hats. The validity of the Orders was not affected by not containing specific direction for compliance or identifying specific hazards. Section 33 of the *Act* contained sufficient legislative authority to issue orders in that form. The Employer's argument that its own risk assessment and job hazard analysis satisfied the requirements of the *Act* and, consequently, there was either no or only limited authority for the Division to enforce the *Act* through Improvement Orders was not a sustainable position. The Division retained the overriding authority under the *Act* to review a safety program put into place by an employer to ensure that safety program complies with the requirements of the *Act* and the *Regulation*. The Board was satisfied that the Orders were based on a reasonable assessment of potential and possible risks that were reasonably foreseeable, taking into account the construction tasks that were actually being performed. Therefore, the Orders were "reasonably practicable" in the factual circumstances prevailing and "appropriate for the risk" within the meaning of Section 6.11(2) of the Regulation. The Board dismissed the Employer's appeal.

Forage Orbit Garant - and -Rosaire Jean
Case No. 97/09/WSH
January 20, 2010

APPEALS - PRACTICE AND PROCEDURE - Mootness - Standing - Employee appealed report by Mines Inspector - Employee not employed by Employer since his refusal to work under *The Workplace Safety and Health Act* was not person "directly affected" within meaning of Section 39(1) of the *Act* - "Directly affected" are words of limitation and reflect Legislature's caution to Board not to expand appeal beyond direct/personal interests of individual and to ensure live issue exists - At time appeal filed and as of hearing date, Employee and Employer left work site - No present live controversy existed and criteria for exercising discretion to hear moot case did not exist - Appeal dismissed - Substantive Order.

SUMMARIES OF SIGNIFICANT COURT DECISIONS

Kildonan Ventures Ltd. t/a Kildonan Auto & Truck Parts - and - Andrew Brooker
Court of Appeal of Manitoba
Manitoba Labour Board Cases No. 35/09/ESC
Docket Nos. AI 10-30-07301
Heard by Justice MacInnes
Delivered May 5, 2010

The Employer had deducted $297 from the Employee's wages to pay for a speeding ticket the Employee received while driving the Employee's truck. The Employment Standards Division ordered the Employer to pay the Employee $297 for wages owing. The Employer appealed the order to the Manitoba Labour Board. At the Board hearing, the Employer intended to call the Employment Standards Officer as a witness. The Board ruled that pursuant to section 121 of *The Employment Standards Code*, an Employment Standards Officer was not a compellable witness in the proceeding. The Employer advised that given the ruling on the non-compellability of the Employment Standards Officer, it did not intend to call any evidence in support of its appeal. The Board, in the absence of any evidence from the Employer, dismissed the appeal. As a result of the Board's dismissal, the Employer sought leave to appeal the Board's order. It raised three potential questions: whether the amount paid into trust was the wrong amount; whether the Board erred in not receiving the testimony of the Employment Standards Officer; and whether the Board erred in finding that a photo-enforcement traffic ticket could not be deducted from employee wages.

Held: Leave to appeal from a decision of the Board made under the *Code* can be granted only on questions of jurisdiction or law. The Employer failed on its application to establish that there was any arguable case to be advanced on the issue, namely, the interpretation of section 121 of the *Code*. Given that the Employer chose not to introduce any evidence before the Board, it had not identified any nexus between the compellability of the officer and the merits of the case for which the applicant sought leave to appeal to the court. As regards the other issues raised in the application for leave, neither was raised nor argued before the Board. Furthermore, neither raised a question of law alone or jurisdiction, nor did either issue merit the attention of the court. Accordingly, the Employer had not met the burden of showing that there was a question of jurisdiction or law, let alone such a question warranting the attention of the court. Its application for leave was dismissed.

TABLE 1

Statistics Relating to the Administration of *The Labour Relations Act* by the Manitoba Labour Board

(April 1, 2009 – March 31, 2010**)**

	Cases Carried Over	Cases Filed	Total	Disposition of Cases					Number of Cases Disposed	Number of Cases Pending
				Granted	Dismissed	Withdrawn	Did Not Proceed	Declined to Review		
Application for Certification	5	37	42	32	5	1	0	0	38	4
Application for Revocation	2	7	9	3	4	0	0	0	7	2
Application for Amended Certificate	15	37	52	45	0	1	0	0	46	6
Application for Unfair Labour Practice	14	25	39	3	11	13	0	2	29	10
Application for Board Ruling	27	8	35	4	0	7	0	0	11	24
Application for Review and Reconsideration	3	13	16	1	12	0	0	0	13	3
Application for Successor Rights	0	2	2	1	0	0	0	0	1	1
Application for Termination of Barg. Rights	0	1	1	1	0	0	0	0	1	0
Application pursuant to Section 10(1) [1]	0	0	0	0	0	0	0	0	0	0
Application pursuant to Section 10(3) [2]	1	6	7	5	1	0	0	0	6	1
Application pursuant to Section 20 [3]	6	22	28	0	18	2	0	0	20	8
Application pursuant to Section 21(2) [4]	0	0	0	0	0	0	0	0	0	0
Application pursuant to Section 22 [5]	0	1	1	0	0	1	0	0	1	0
Application pursuant to Section 58.1 [6]	0	0	0	0	0	0	0	0	0	0
Application pursuant to Section 69, 70 [7]	0	0	0	0	0	0	0	0	0	0
Application pursuant to Section 76(3) [8]	0	4	4	4	0	0	0	0	4	0
Application pursuant to Section 87(1) [9]	0	6	6	2	0	4	0	0	6	0
Application pursuant to Section 87.1(1) [10]	0	1	1	1	0	0	0	0	1	0
Application pursuant to Section 115(5) [11]	0	8	8	7	0	0	0	0	7	1
Application pursuant to Section 130(10.1) [12]	0	13	13	13	0	0	0	0	13	0
Application pursuant to Section 132.1 [13]	1	4	5	1	3	0	0	0	4	1
Referral for Expedited Arbitration **	24	81	105	94	-	-	-	-	94	11
Totals	98	276	374	217	54	29	0	2	302	72

1 When an Application for Certification if filed with the Board, changes in conditions of employment cannot be made without the Board's consent until the Application is disposed of.

2 Within the first 90 days following certification of a union as a bargaining agent, strikes and lockouts are prohibited, and changes in conditions of employment cannot be made without the consent of the bargaining agent. Applications under this section are for an extension of this period of up to 90 days.

3 Duty of Fair Representation

4 Permit for Union to visit on Employer's property

5 Access Agreements

6 Business coming under provincial law is bound by collective agreement

7 Complaint re ratification vote

8 Religious Objector

9 First Collective Agreement

10 Subsequent agreement to first collective agreement

11 Request for the Board to appoint arbitrators

12 Extension of Time Limit for expedited decisions

13 Disclosure of information by unions

** See Table 3

TABLE 2

STATISTICS RELATING TO THE ADMINISTRATION OF *THE LABOUR RELATIONS ACT* RESPECTING REPRESENTATION VOTES

(April 1, 2009 – March 31, 2010**)**

TYPE OF APPLICATION INVOLVING VOTE	Number of Votes Conducted	Number of Employees Affected by Votes	Applications GRANTED After Vote	Applications DISMISSED After Vote	Applications Withdrawn After Vote	Outcome Pending	Vote Conducted but not counted
Certification	10	500	7	2	0	1	1
Revocation	3*	94	2	1	0	0	0
Termination of Bargaining Rights	0*	0	0	0	0	0	0
Board Ruling	0	0	0	0	0	0	0

* - One of the votes was a combined Revocation and Termination of Bargaining Rights vote.

TABLE 3

STATISTICS RELATING TO THE ADMINISTRATION OF *THE LABOUR RELATIONS ACT* RESPECTING REFERRALS FOR EXPEDITED ARBITRATION

(April 1, 2009 – March 31, 2010**)**

Cases Carried Over	Number of Referrals Filed	TOTAL	Number of Cases Mediator Appointed	Disposition of Cases					Number of Cases Disposed	Number of Cases Pending
				Settled by Mediation	Settled by Parties	Settled by Arbitration	Declined to Review	Withdrawn		
24	81	105	33	51	2	12	0	29	94	11

TABLE 4

STATISTICS RELATING TO THE ADMINISTRATION OF *THE EMPLOYMENT STANDARDS CODE*

(April 1, 2009 – March 31, 2010**)**

Cases Carried Over	Number of Applications Filed	TOTAL	Orders Issued by the Board	Applications Withdrawn	Not Proceeded with by Applicant	Number of Cases Disposed of	Number of Cases Pending
16	50	66	37	9	0	46	20

TABLE 5

STATISTICS RELATING TO THE ADMINISTRATION OF *THE WORKPLACE SAFETY & HEALTH ACT* BY THE MANITOBA LABOUR BOARD
APPLICATION FOR APPEAL OF DIRECTOR'S ORDER
(April 1, 2009 – March 31, 2010**)**

Cases Carried Over	Number of Applications Filed	TOTAL	Decisions/Orders Issued by the Board	Applications Withdrawn	Number of Cases Disposed	Number of Cases Pending
3	3	6	2	2	4	2

TABLE 6

STATISTICS RELATING TO THE ADMINISTRATION OF THE *ESSENTIAL SERVICES ACT* BY THE MANITOBA LABOUR BOARD
(April 1, 2009 – March 31, 2010**)**

Cases Carried Over	Number of Applications Filed	TOTAL	Orders Issued by the Board	Applications Withdrawn	Not Proceeded with by Applicant	Number of Cases Disposed of	Number of Cases Pending
0	1	1	0	1	0	1	0

TABLE 7

STATISTICS RELATING TO THE ADMINISTRATION OF *THE ELECTIONS ACT* BY THE MANITOBA LABOUR BOARD
(April 1, 2009 – March 31, 2010**)**

Cases Carried Over	Number of Applications Filed	TOTAL	Orders Issued by the Board	Applications Withdrawn	Not Proceeded with by Applicant	Number of Cases Disposed of	Number of Cases Pending
0	0	0	0	0	0	0	0

TABLE 8
STATISTICS RELATING TO THE HEARINGS OF THE MANITOBA LABOUR BOARD
(April 1, 2009 – March 31, 2010**)**

During the reporting period 126 matters were heard involving 137 applications or cases.[1]	Scheduled Hearings	Actual Hearings	Percentage of Actual to Scheduled
Number of hearings [2]	280	106	38%

1 - A "matter" may deal with one or more applications. For example, a matter could involve one application for unfair labour practice or a matter could involve an unfair labour practice and a related application for certification.
2 - A hearing can be either a full or half day.

TABLE 9
FIRST AGREEMENT LEGISLATION REVIEW OF CASES FILED
(April 1, 2009 – March 31, 2010**)**

Union	Employer	Date of Application	Outcome of Application	Status as at March 31
Pending from Previous Reporting Period:				
No applications were pending				
New Applications this Reporting Period:				
Manitoba Government and General Employees' Union	St. Norbert Personal Care Home	April 27, 2009	Board imposed first collective agreement	Expiry June 25, 2010
General Teamsters, Local 979	Praxair Canada	May 21, 2009	Board imposed first collective agreement	Expiry July 14, 2010
United Food and Commercial Workers Union, Local No. 832	Securitas Canada	September 22, 2009	Withdrawn	
United Food and Commercial Workers Union, Local No. 832	Fort La Bosse School Division	October 15, 2009	Withdrawn	
International Union of Operating Engineers, Local 987	City of Steinbach	November 13, 2009	Withdrawn	
International Union of Operating Engineers, Local 987	City of Steinbach	November 18, 2009	Withdrawn	